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## Implications of the Role of Religion in Tunisia's New Constitution for Non-Muslims

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*Cornerstone Series: Implications of Tunisia's new constitution on religious freedom and associated rights, governance, and national and regional stability*

*This Cornerstone Series invites experts, advocates, and analysts to expound on the implications of Tunisia's new constitution for citizens as well as the stability and security of the country and the region.*

*The July 25 constitutional referendum [passed](#) with more than 92% of the vote — but the preliminary voter turnout was 27.5% as some opposition parties boycotted the vote. The new constitution was drafted in what critics describe as a “closed-door” process influenced largely by President Saied with limited consultation with civil society groups or political parties. The new constitution expands the powers of the president and reduces the authority of both the parliament and judiciary. Freedom of belief, opinion, and publication remain protected. The rights afforded to Tunisians in the constitution can only be restricted “by virtue of law and for the necessity of national defense or public security.” The constitution states Tunisia belongs “to the Islamic Ummah” and mandates the state to achieve “the goals of pure Islam in preserving [people’s] souls, money, religion and freedom.” Since his election in 2019, President Saied has sought to demonstrate strong leadership in response to a deepening socio-economic crisis and instability. On July 25, 2021 — exactly one year prior to the referendum — President Saied suspended the parliament and claimed executive control over the government, citing emergency powers afforded to him in the constitution. Some Tunisians welcomed the strong show of leadership as a necessary action to stabilize the country. Others claimed President Saied reinstated the very dictatorial and authoritarian control overthrown through the Arab Spring in 2011.*

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After the fall of the repressive dictatorial regime of President Zine al-Abidine Ben Ali in 2011, Tunisia was at the center of political and constitutional news in the Arab world and internationally, especially in light of the country's major crises that threatened to collapse the nascent democratic experiment. Following three years of wide debates and the [assassinations](#) of the two most prominent politicians opposed to Islamist rule, the 2014 constitution was adopted and Tunisia was widely considered the only Arab country that succeeded in achieving a civilian democratic transition after the Arab Spring revolutions. In the years that followed, Tunisia experienced a new series of political and institutional

crises, which have escalated since the rise of the populists and radical Islamic currents to Parliament in 2019 and [the declaration of the state of exception](#) on July 25, 2021.

The state of exception announced by President Kais Saied — which he exercised according to the presidential powers afforded to him through Chapter 80 of the 2014 constitution — led to the freezing of parliament and the dismissal of the government. Nearly a month after the exceptional measures were announced, President Saied issued [Presidential Decree no°117](#) and canceled the constitution, with the exception of the rights and freedoms section, which was later violated.

On May 20, 2022, the President announced the creation of the National Consultative Commission for the New Republic. The Commission, composed of the Advisory Committee for Economic and Social Affairs and the Legal Advisory Committee, was tasked with drafting a new constitution. The deans of the faculties of law, legal and political sciences in Tunisia [refused](#) to join the legal committee. The first draft of the constitution was prepared in isolation and the majority of civil and political representatives were not involved. On June 30, 2022, President Saied [published](#) a new draft of the constitution in the Official Gazette. The publication was withdrawn a week later to revise more than 46 linguistic mistakes in the original draft and republished without taking into account the opinion of the experts who were assigned to draft the constitution. As the head of Tunisia's constitution committee, [Belaid](#) confirmed the president's version is dangerous and does not resemble the first draft proposed by the constitution committee, reinforcing opposition fears that Saied is seeking to impose a unilateral constitution. Belaid said the draft constitution published by the president contains chapters that could pave the way for "a disgraceful dictatorial regime."

The adoption of the new constitution was announced by the Independent High Electoral Commission following the referendum of July 25, 2022. The new constitution was approved with 94.6% of the votes, although for many, the vote lacked legitimacy as only 30.5% went to vote, with a boycott rate of 69.5% of registered voters.

The new constitution abolished the principle of the civil state that was stipulated in the [2014 constitution](#), which stated: "Tunisia is a civil state based on citizenship, the will of the people, and the supremacy of law" (article 2). Moreover, the 2022 constitution did not address human rights as universal principles that all nations seek to achieve within a civil and democratic state. The failure to mention these internationally recognised universal principles and replace them by talking about human rights in the absolute while abbreviating this concept in its Islamic aspect only, in the preamble to the constitution, in the absence of the idea of a civil state.

Human rights are only mentioned twice in the constitution, and the principle of democracy was replaced with a "society of law." However, this constitution came on a plate of gold, as the ancients say, for Islamic groups of different schools. In their view, this constitution represents the true identity of the Tunisian state and expresses the Islamic affiliation to Tunisia and its people. The 2014

constitution said Islam is the religion of the State. The 2022 constitution affirmed the five objectives of Islamic sharia are to be protected and strengthened by the state.

There were no reactions to this change from non-Islamic religious leaders. They maintained their silence in fear of the future under a constitution that does not explicitly stipulate the religious or ethnic diversity of the Tunisian people and restricts its identity to the Arab and Islamic world alone. It is noteworthy that the [Berbers](#) are the predominant race in the country, followed by the Arabs, Turkish, and European nationalities. Islam is considered the religion of the majority in Tunisia, as it is the faith 97% of the population follows. A large part of the Muslim population follows the Maliki-Ash'ari school of thought. Additionally, there are followers of other Islamic sects, including the Shiites, the Ibadi, the Hanafi, the Hanbali, and the Ahmadiyya.

As for the other religions, there are an estimated 1,500 Tunisian Jews, most of whom live on the island of Djerba. There are about [5,000 Tunisian Christians](#) in the country, most of whom belong to the evangelical and Anglican churches. The majority of Christian hold their prayers and mass or service through in-home gatherings (house churches). There are also an [estimated](#) 30,000 foreign Christians. Additionally, there are hundreds of adherents to the Baha'i faith as well as a significant number of atheists and non-religious or secular Tunisians in the country.

The 2014 constitution triggered a [wave of criticism and protests](#) outside the Constituent Assembly, where many Islamic circles protested against the adoption of freedom of conscience and the prohibition of takfir in the constitution. Salafi parties, Islamic associations, and even the Ministry of Religious Affairs and the Supreme Islamic Council denounced the approval of [Chapter 6](#) of the 2014 constitution, as Ahmed Al-Sami'i, a deputy of the [Al-Nahda bloc](#) considered this chapter "contrary to the teachings of the Islamic religion and it legislates the spread of infidelity, atheism and idolatry, and it prohibits the takfir that came in the law of God." They claimed that the chapter even legalizes idolatry and polytheistic religions such as Christianity and others, which they see as "a threat to the Arab-Islamic identity of the Tunisian people." Supporters of the provisions of Chapter 6 [argued](#), "The phenomenon of takfir exists in Tunisia and led to political assassinations, stressing that its prevention in the constitution aims to "protect people from inciting hatred," knowing that the new constitution removes the criminalization of calls for takfir and hatred.

The new constitution has revived the debate in Tunisia over issues of identity and religion after Tunisians perceived that it had resolved this issue in the 2014 constitution, after long discussions between the various civil and political components. This controversy overshadowed the rest of the bumps and problems in Saied's constitution, which relatively obscured the rest of the problems raised by this constitution. Many parties objected to the vague references included in the preamble and chapter five of the draft constitution about the state's relationship with religion.

The objective legal and constitutional definition of the identity of the state was abandoned in the President of the Republic's draft submitted to the referendum, which instead stipulated in Chapter 5

of the section on general provisions that “Tunisia is part of the Islamic nation, and the state alone must work under a democratic system to achieve the purposes of Islam.”

The word “Islam” is present in four places of the constitution: the preamble, the chapter for general provisions (Chapter 5), the conditions for candidacy and presidency, and the chapter on rights and freedoms. During a seminar organized by the Constitutional Law Association on July 4th, 2022, Professor of Constitutional Law Sanaa Ben Achour noted that, in comparison to the 1959 constitution, Tunisia passed from Islam as the religion of the state, meaning that religion is under state control, to the “Islamic State.” According to Professor Ben Achour, one of the most important effects of chapter 5 of the constitution on the new project on laws is the state’s uniqueness in its interpretation and application, thus obligating it to achieve its purposes, which requires the compatibility of positive legislation to achieve the purposes and objectives of the constitution in matters relating to religion. The “constitutionalization” of Islam, according to Professor Ben Achour, requires that these objectives become general principles of law in all its fields.

Chapter 5 of the new constitution states, “Tunisia is part of the Islamic Umma, and it is incumbent on the state alone to work to achieve the purposes of Islam ([Maqasid Al-Shari’ah](#)) in preserving the soul, honor, property, religion, and freedom.” Based on this provision, nothing prevents the issuance of laws that limit public and individual liberties in order to achieve this end. It also revives the state's establishment of a sense of guardianship and loyalty that it exercises towards the individual and the group. The state also works based on this provision to preserve freedom in accordance with the purposes of Islam. This leads us to adopt a single view of freedom and abolish all the systems of modern man-made rights and freedoms similar to those enshrined in the Universal Declaration of Human Rights. Preserving religion, and what is meant by it, according to Muslim jurists, is to protect Islam and Muslims from advocates of unbelief and change of religion and the introduction of beliefs contrary to Islam and preaching and calling to other than Islam.

Provisions of the 2022 constitution may easily be used to restrict religious freedom, especially the right of minorities to organize and practice their religious rites freely. Article 28 of the 2022 constitution guarantees the freedom to practice religious rites **on the condition that public security is not compromised**. This provision was included in the 1959 constitution but replaced in the 2014 constitution, which afforded more protections to religious freedoms, stating: “The state is the guardian of religion. It guarantees freedom of conscience and belief, the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalization” ([Chapter 6](#)). The revival of religious freedom conditioned on “public security” can be used by authorities to restrict citizens to practice their religious rites in complete security and freedom, under the pretext of protecting Islam as the majority religion.

More than 30 Tunisian NGOs and civil society associations, including the [Attalaki](#) organization, have issued a [joint statement](#) addressing these concerns about the new constitution to President Saied. "The text in question," the statement said, "undermines the notion of citizenship that unites Tunisians

without discrimination based on faith, color, and gender, maintaining the requirement that the head of state be male and Muslim." It added that the constitution proposed by Saied "undermines the principle of a balance of powers, limiting the prerogatives of legislative and judicial powers and the independence of the judiciary as a basis for democracy and guarantee of rights and freedoms." Moreover, "In the chapter on rights and freedoms, reference is made to restrictions in line with the needs of public security and public morality, habitual notions that sanction and justify repression."

Following the constitutional referendum, the situation of minorities will not be better than it is today, especially the issue of recognizing religious minorities from a Muslim background. This includes Christians who converted from Islam or Bahais, who do not have the right to build cemeteries or places of worship or establish a legal entity (association) for their communities. Their demands have been ignored by state institutions that have practiced discrimination on the basis of religion since independence until today, and who have always remained under social stigmatization. They are considered religious transients and are often accused of treason, promoting foreign agendas, and the normalization of Zionism.

As Tunisians, we were struggling to acquire these rights in the light of the former constitution, this will continue in the situation today, and into the future. We will continue the struggle so that religious minorities and all Tunisians can live in a safe environment that preserves their dignity and protects their rights.

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