



# **Blasphemy, Freedom of Expression, and Tunisia's Transition to Democracy**

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## **HUMAN RIGHTS FIRST**

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## Background: What's at Stake in Tunisia

The transition to democracy currently underway in Tunisia is the most promising reform process taking place in the Arab region, two years after the mass protests of the spring of 2011. Progress towards securing basic rights and freedoms in a new Tunisia is an important goal in itself, but it would also have a beneficial impact elsewhere as a positive example that democratic change is achievable in a majority Muslim, Arab country. Conversely, if Tunisia's transition were to stall then this would be a drag on hoped for human rights progress throughout the region.

Tunisia has much greater importance to American strategic interests than its relatively small size would suggest. Tunisia's new constitution and its clauses relevant to the protection of human rights will set a precedent for democratic transition in the Arab world. Despite setbacks and challenges Tunisia is moving forward with its transition process in a relatively consensual non-violent manner that compares favorably with similar transitions elsewhere.

Whether and how blasphemy and other speech deemed offensive to religion or religious symbols is regulated in Tunisian law is a contentious issue in the transition process. Rights and freedoms would be threatened by any broadening or strengthening of laws criminalizing allegedly blasphemous speech and several such proposals have been made since the revolution that ousted former President Ben Ali.

Human Rights First visited Tunisia from March 28 to April 3, 2013 in order to explore the current state of the debate on blasphemy and freedom of expression in the country at a time when it is in the process of drafting a new constitution and considering legislative reforms in many areas to sweep away the authoritarian legacy of the Ben Ali years. We met with civil society activists, human rights defenders, Tunisian policy makers, officials at the U.S. embassy, academics, and others. We also presented our global findings and recommendations on blasphemy and human rights at a major international conference. Also speaking were senior Tunisian political leaders including: Prime Minister Ali Laaryedh, Foreign Minister Othman Jerandi, President of the National Constituent Assembly (NCA) Moustafa Ben Jaafar, President of the Ennahdha Party Rached Ghannouchi and representatives of several other Tunisian political parties.

A positive aspect of Tunisia's transition is the opportunity it has created for open debate about issues related to Islam and human rights, including the impact on human rights conditions of an Islamist political movement holding power. Thus, in the course of the visit, Human Rights First heard a variety of opinions on whether there was a need for legal penalties for insulting religion. Reflecting on the atmosphere of open debate, NCA President Ben Jaafar observed, "This week I felt that change is already here, at least in its initial stages." He said that he was drawn to this conclusion because he had heard ministers "speak frankly and admit to mistakes," and heard government leaders "condemning political violence."

## Free Speech and Checks against Political or Religious Violence are Key to Tunisia's Transition

A key aspect of any transition to democracy is the extent to which basic rights and freedoms are protected in law and practice. In his opening remarks to the CSID conference, the prime minister highlighted the achievements of the Tunisian revolution:

*"One tangible outcome is that Tunisians are no longer fearful as a society. We have also restored a more proportional balance in the relationship between civil society and the state."*

Proposals to implement and broaden laws that criminalize blasphemy, or prohibit insulting religion or religious symbols could undermine that balance and present a threat to Tunisia's transition to democracy. They would equip Tunisian authorities with enhanced powers to restrict rights. Such laws would also empower elements of society seeking to restrict debate and dissent on religion, state policy, and law, and increase polarization along a religious versus secular axis within Tunisian society.

Human Rights First has done extensive research on how laws prohibiting blasphemy and defamation of religion have been implemented in practice. As many of the cases we have documented from other countries show, the ability to invoke state power to investigate and prosecute allegations of blasphemy is inflammatory and tends to empower violent extremists who can use such accusations, and the controversy that often surrounds them, to advance their own political agendas. Blasphemy laws and the idea of criminalizing alleged insults against the sacred tend to encourage those who would take the law into their own hands in order to defend religion from

supposed offense, thereby contributing to the creation of a climate in which violence in the name of defending religion becomes more prevalent.

In addition, global campaigns calling for punishment for alleged blasphemy have become an unpredictable and destabilizing element in contemporary international affairs. Extremists have it within their power to provoke violent incidents in many parts of the world, at times of their choosing, and thereby to command the attention of world leaders. The rise of the Internet and social media has empowered extremists to easily create and disseminate provocative material and to post it on the Internet in order to provoke anger, political turmoil, and calls for violence.

### Troubling Cases of Violence in the Name of Blasphemy and Threats to Freedom of Speech

There have been some shocking acts of political violence during Tunisia's transition, including the killing by unknown assailants of the opposition political leader, and outspoken critic of religious extremism, Chokri Belaid on February 6, 2013. Many of the Tunisians we spoke with identified political violence as the greatest single threat to the continued progress of the transition, highlighting the danger of implementing laws that would further encourage violence in the name of defending the sacred.

Indeed, since the revolution, there have been troubling incidents of violence linked to allegations of blasphemy or "harm to public order and to public morals," prohibited under existing articles 121(3) and 226 of the penal code. Article 121(3) of the penal code makes it an offense to "distribute, offer for sale, publicly display, or possess, with the intent to distribute, sell, display for the purpose of propaganda, tracts, bulletins, and fliers, whether of foreign origin or not, that are liable to cause harm to the public order or public morals." Article 226(2) states that a person found guilty of undermining public morals by "intentionally disturbing other persons in a way that offends the sense of public decency" can be sentenced to prison. The existing legislative framework, as well as efforts to use it to prosecute allegedly blasphemous acts, is troubling and has added stress to Tunisia's democratic transition.

Recent examples of such incidents include:

- On May 3, 2012, the owner of the Tunisian TV station Nessma, Nabil Karoui, was convicted under the penal code and ordered to pay a \$1,550 fine. Karoui was

accused of blasphemy after his TV station broadcast the award-winning animated film *Persepolis*, which tells the story of a young girl as she comes of age against the backdrop of the Iranian revolution. On October 14, 2011, about 100 extremists had attacked Karoui's home. The attackers—who arrived in taxis armed with knives and Molotov cocktails—believed that the film violates an Islamic proscription on the depiction of God. Twenty protesters forced their way into Karoui's home, breaking windows and injuring a housemaid. Five alleged attackers were arrested. Protests took place in other parts of the city as well. Demonstrations turned violent when as many as 1,000 individuals approached government offices, attempting to break into the offices of the prime minister in the Kasbah area of Tunis. The police responded with tear gas. On January 24, 2012, a group of Salafists verbally abused and physically attacked protesters rallying in support of Karoui outside the court where he was being tried.

- On June 10, 2012, protesters attacked the Palais Abdelia in Tunis where a modern contemporary art fair was being held. Deeming a number of artworks in the exhibition blasphemous, extremists vandalized the gallery, issued death threats to exhibitors, and rioted in the streets in some of the most serious unrest since the 2011 revolution. The protesters accused the fair of exhibiting blasphemous material, a charge that was denied by the organizers. Two artists, Mohamed Ben Slama and Nadia Jelassi, now face charges of harming public order and morals through their work — charges that could result in them being sentenced to up to five years in prison if convicted. Salafi Imams have called for their deaths, with one saying, "Whoever did this is an infidel in plain terms, whose blood needs to be spilled and should be killed." Government officials condemned the art works that they say were intended to insult and provoke, but were criticized for not preventing the outbreak of violence that appeared planned and coordinated.

Violent Salafism is a relatively small political movement in Tunisia, but it presents a disproportionate threat to peaceful democratic transition. Its ideology is capable of mobilizing support from groups much larger than its core followers. The willingness of Salafists to both engage in violence and to incite mobs by appealing to sensitive religious issues, like alleged insult or blasphemy, means

that it has the capacity to polarize disputes within the society in a uniquely destabilizing manner.

On April 25, 2013 a group of six leading Tunisian human rights organizations issued a public statement called "Freedom of Expression is in Danger: A call to Defend and Protect It."<sup>1</sup> Among the most pressing threats the organizations identified were "numerous aggressions... against journalists, some of whom have received death threats." They accused public authorities of having "remained indifferent and unable to provide protection," further charging that those who threaten journalists "have been enjoying total impunity."

### The Attack on the U.S. Embassy in Tunis: A Turning Point

No single incident has called more attention to the threat presented by this type of violence than the attack on the U.S. embassy in Tunis in September 2012.

On September 14, 2012, two people were killed and 29 others were wounded when police fought hundreds of extremists who attacked the U.S. embassy in Tunis to protest the video "The Innocence of Muslims." The protesters smashed windows and threw petrol bombs and stones at police. Protesters ignited fires in the embassy and around the compound, and set fire to the nearby American school. "The [Tunisian] government does not accept these acts of aggression against foreign diplomatic missions,"<sup>2</sup> said a statement read on state television. Tunisian President, Moncef Marzouki, who represents a secular party that is part of a three-party ruling coalition with Ennahda, condemned the attack and said, "This attack is part of a wider plan aimed at stoking hatred between the people." The Ennahda party had advised Tunisians against participating in the protest.

The authorities arrested 144 people, and a leader from an extremist group known as Ansar al-Sharia has been sentenced to one year in prison for inciting the attack.

The costs to Tunisia have been substantial. Most visibly, the U.S. embassy ordered an evacuation of nonessential personnel, leaving just a handful of staff in the embassy at a time when the U.S. government is trying to implement programs and keep abreast of events in Tunisia that have great implications for U.S. interests across the region. Germany has emerged as a strong international partner in its support of the transition and yet, after the attack, Chancellor Merkel cancelled a scheduled state visit, and planned investment and aid packages were slowed down. Tourism and business confidence inevitably suffered as a result of an incident that showed Tunisia to be insecure. It was easy to draw the conclusion that if this kind of attack could happen at the U.S. embassy, one of the most protected places in the country, then it could happen anywhere.

There is a general agreement that the embassy attack marked a turning point, but different people draw different lessons from it. Those more sympathetic to the government note that after the attack Ennahda was forced to face up to the threat presented by extremist violence from Salafi groups and therefore took more measures to control them. Government critics note that the attack on the embassy and school were predictable and preventable and yet, whether out of incompetence or collusion, the destruction took place. Critics also note that no senior government official has taken responsibility or been held accountable for the event that inflicted such great damage on the transition.

### Blasphemy in the Constitution Drafting Debates

In 2012, the question of blasphemy triggered one of the most controversial debates around the drafting of the new constitution. The governing Ennahda party, controlling 89 out of 217 seats in Tunisia's National Constituent Assembly, proposed Article 3 in June 2012. Article 3 called for the criminalization of offenses against the "sacred," stating that, "The state guarantees freedom of religious belief and practice and criminalizes all attacks on that which is sacred." Ennahdha's proposal stoked fears among civil society groups of a creeping Islamization that would seriously curtail free speech and artistic expression. Tunisians opposing the provision argued that the wording of the article was vague, internally contradictory, and open to misuse.

<sup>1</sup> The signatory organizations were: the Tunisian League for Human Rights, the National Union of Tunisian Journalists, the 'Yakadha' (Vigilance) Association for Democracy and a Civil State, the General Culture and Information Union (affiliated to the General Union of Tunisian Trade Unions (UGTT), the Tunisian Union of Independent and Party Presses; the Tunisian Union of Free Radios.

<sup>2</sup> <http://www.reuters.com/article/2012/09/14/us-protests-tunisia-school-idUSBRE88D18020120914>

Ennahdha had suggested that religious offenses be punished by a two-year prison term for first-time offenders and a four-year term for repeat offenders. However, precisely what would constitute an “attack on the sacred” remained undefined. Police officers, judges and prosecutors could have interpreted such an article at will, potentially criminalizing everything from curses said in passing to artistic expression or political debate, and more. Moreover, extremists would have felt empowered to demand that the state should punish anyone who offended against their definition of the sacred. With vocal opposition to the blasphemy clause by civil rights groups, and after negotiations within the troika (the three-party ruling coalition composed of the Ettakatol party, the Congress for the Republic party and Ennahdha), and with other members of the National Constituent Assembly, Ennahdha agreed to drop the blasphemy clause, even though it continues to be proposed by some of the party's supporters.

President of the Ennahdha party Rached Ghannouchi has insisted in the past that his party's approach is pragmatic. In a keynote address to the conference, he reiterated that message:

*“Democracy does not mean the monopoly of secularists or Islamists...conflict is not necessary. We want our conflict to be political, not ideological. In politics you can compromise.”*

Despite this encouraging statement, he rushed to comment, “But when it comes to religion, you can't.”

The main headline of Ghannouchi's remarks was to emphasize Ennahdha's acceptance of the principle of a civil state, meaning that Tunisia will be governed by a secular constitution, not by a declared adherence to Islamic law. Taken on its face, this is an important statement from the dominant figure in Tunisia's Islamist political movement. However, concerns remain that the government may still invoke religious precepts to curtail freedoms, including the right to freedom of expression.

On December 14, 2012, an amended version of the draft constitution was published. A further draft appeared in late April 2013. These drafts do not include a blasphemy clause; they guarantee free speech and prohibit prior censorship. President of the NCA, Moustafa Ben Jaafar said that the assembly was working to a timetable of beginning to approve the final draft of the new constitution in July of this year. To be adopted, the draft constitution

must either be approved by a two third's majority of the constituent assembly, or subject to a vote by popular referendum. Even though Ennahdha probably has the support to win a simple majority in a referendum, Ghannouchi and other Ennahdha leaders made clear that they did not want to pass the Constitution by a vote of 50% plus one. Rather, they are looking for a much broader consensus for the foundational legal document of the new Tunisia, which strongly suggests that the controversial subject of blasphemy will not be included in the new constitution.

## A Look Ahead

Many members of the NCA appear to believe that placing limits on freedom of expression is necessary in order to protect the sacred from insult. However, the debate about the form such restrictions should take has shown some sensitivity to the problems that imposing such restrictions through law could produce. The decision not to include a blasphemy or insulting religion clause in the draft constitution reflects this pragmatism and was taken only after lengthy discussions within Ennahdha. Rached Ghannouchi pointed to the rationale for this decision in his remarks to the conference when he stressed that “the main challenge in Tunisia is securing freedom” and that he sees “no contradiction between Islam and democracy.”

While somewhat reassuring for freedom of speech advocates, Ghannouchi's words do not indicate full agreement that speech will not be constrained on religious grounds in an Ennahdha-governed Tunisia. Prominent Islamist intellectual Tariq Ramadan, who also spoke at the conference, noted that freedom of expression was not only constrained by law but also by culture and that an Islamic country like Tunisia has its own cultural specificities and sensitivities. Such cultural arguments leave open the possibility that, regardless of the protections for free speech in Tunisia's constitution and laws, Islamists may still call for restrictions on free speech by suggesting that cultural sensitivities should be valued over legal standards.

Moreover, Ghannouchi's equation of Islam and democracy can also be read to mean that, in a Muslim society, the natural will of the majority will be to live in accordance with Sharia, which could include religiously-proscribed restrictions on speech. Freedom of speech activists recognize these possible threats and are therefore advocating for strong freedom of speech protection in the constitution and in the penal law.



One activist expressed his fears that Islamists could use the requirement “not to insult religion” in the same way that the previous regime would discredit its critics by accusing them of “damaging national unity.”

*“With the Islamist party in power if you criticize their policies they can always accuse you of insulting religion. It’s just like in the past, if you criticized the government they accused you of damaging national unity. It’s a threat.”*

For the time being, new legislative proposals on blasphemy, as on many other subjects, have been put aside, in order to focus on the twin main priorities of adopting a new democratic constitution with broad popular support and holding free and fair elections for a new parliament that would, in the words of NCA President Ben Jaafar, “Crown the achievements of the Tunisian revolution.”

Freedom of expression activists are concerned that the ruling political party could still use its influence over the composition of regulatory authorities for print and broadcast media to restrict freedom of the press. The “Freedom of Expression is in Danger” statement from the end of April warned that failure to implement reforms in accordance with international human rights standards would result in the media being used as “propaganda channels, which represents a real danger to the democratic transition.”

On the positive side, freedom of speech activists noted that the government has shown itself to be responsive to both domestic and international pressure on issues relating to human rights protections. They are hopeful for the future, but also wary about how violence has the potential to derail democratic transition very quickly. The government’s responsiveness to public criticism and pressure motivates activists to be vigilant against further restrictions on rights and freedoms. They are committed to opposing any extension of censorship or religiously-defined restrictions on expression and to protesting vigorously when cases of individuals being prosecuted or attacked for allegedly blasphemous speech occur.

## Recommendations to the Tunisian Government

The Tunisian government should take the following steps to protect against violence, ensure freedom of expression, and promote responsible debate about religion, state

policy, and law. The United States and the international community should consider these steps as benchmarks of progress in Tunisia’s transition.

- Senior Tunisian officials should make clear public statements that violence is never an acceptable response to speech, before, during, and after such incidents.
- Investigate and prosecute those responsible for violence in response to allegations of blasphemy.
- Ensure that no laws are expanded to restrict freedom of speech in violation of international standards, including criminal or other penalties for blasphemy, insulting the sacred, defamation of religion, or similar offenses.
- Ensure that the existing legal framework in Tunisia is not used to stifle free expression.
- Ensure that any criminalization of speech is narrowly defined in law and precisely and consistently interpreted, to diminish the possibility of abuse.
- Reduce the existing penalties attached to punishments for speech that does not incite violence.
- Ensure that anyone charged with alleged blasphemy or insulting religion benefits from full legal protection and is able to be represented by a lawyer; take steps where necessary to protect such lawyers from intimidation and harassment.
- Ensure that any judicial proceedings in cases related to blasphemy are not influenced by mob violence, including providing protection when necessary to judges, lawyers, law enforcement officials, and journalists reporting on such cases.
- Protect and secure all those whose lives are threatened and endangered on account of blasphemy— including defenders of those accused of blasphemy as well as parliamentarians, government officials, lawyers, and journalists who speak out against it.
- Ensure that the media can freely report on debates surrounding blasphemy, as well as individual cases, without suffering from pressure, censorship, or intimidation.
- Encourage nonviolent repudiation and rebuttal of speech deemed offensive or blasphemous by some, without resorting to criminal sanctions.

- Invite international experts to provide legal expertise to the relevant bodies in government, as well as the Tunisian lawmakers and members of the Constituent Assembly and the future parliament, on issues relating to the legal implications of blasphemy, freedom of speech, and their importance to securing Tunisia's peaceful transition to democracy.

## U.S. Policy and Recommendations for the U.S. Government

There appears to be a lack of urgency in the U.S. government's policy response to the seismic changes underway in Tunisia. In low-key remarks at the CSID conference, U.S. Ambassador Jacob Walles announced that the U.S. government was providing a total of \$350 million in aid for Tunisia's transition for the three years after 2011. In contrast, the German ambassador stated that Germany is providing 250 million euros per year in bilateral assistance (more than twice the U.S. contribution), in addition to its contributions to substantial European Union economic support programs. Moreover, the activists we spoke with seemed unaware of support the U.S. government is giving to advance human rights and democracy. Part of this may be attributable to the severe understaffing of the embassy in the aftermath of the September 2012 attack. However, by now the context in which the attack took place should be fully understood and the threat to Americans or American interests in Tunisia is surely much lower than in many other countries where the U.S. government operates fully-staffed diplomatic missions. Restoring full capacity to the embassy, especially in its efforts to promote peaceful democratic transition and economic development, should be a priority.

Even if there is skepticism about the power of Tunisia's example, as Ambassador Walles suggested in his remarks to the conference, when he said that "Tunisia was not a model for anyone" there should be no doubt about the high strategic cost of failure. The alternatives to successful democratic transition are unpalatable to the United States. There can be no return to the authoritarian order of the past, while a failing state that became increasingly lawless and unstable and that failed to sustain sufficient economic activity to support its population would result in economic, security and other challenges that could be extremely costly to contain. Tunisia offers a realistic prospect of a successful democratic transition and the U.S. government

would be well advised to support this outcome more vigorously.

The German government, in particular, has made a strategic choice to invest in the success of Tunisia's democratic transition and, perhaps, stands to benefit economically in the future from expanded trade and sales of German goods. However, Germany's strategic calculation to make Tunisia its single largest recipient of bilateral assistance was driven by concern over the negative implications of the possible collapse of transition processes in Tunisia and elsewhere in North Africa. Similar concerns should invigorate U.S. policies towards supporting democratic transitions in Tunisia and elsewhere at a time when these countries are in need of economic support.

Civil society activists we spoke with would welcome support from the U.S. government for strong legal protections for basic rights and freedoms and for the work of civil society organizations active in a range of human rights fields. The U.S. government is not regarded with the level of suspicion and hostility that it faces in some other countries in the region. There is an opportunity for the U.S. government to promote universal values of human rights in Tunisia and it should be doing more to take advantage of that opportunity.

- The U.S. government should renew and reinvigorate its commitment to promoting and supporting a peaceful democratic transition in Tunisia. To that end, the embassy should be restored to full strength and emphasis given to implementing programs that support human rights and democracy.
- In addition to providing necessary economic support and other technical assistance that the U.S. government is able to give, the U.S. government should make clear the importance it attaches to securing clear legal protections for basic freedoms in Tunisia's new constitution and revised laws.
- The U.S. government should emphasize that the issue of potential restrictions on speech and expression in accordance with religious precepts is of great importance to the success of the transition. While Tunisia should be commended for the progress it has made to date in forming a functional coalition government involving secular and religious parties and in openly debating and negotiating the legal framework that will govern a new Tunisia, the concern



that an Islamist party in power will use religion to stifle dissent, discredit its political opponents, and to constrain the rights and freedoms of the people remains.

- The U.S. Embassy in Tunisia website and the Fact Sheet describing U.S. assistance to Tunisia that is currently distributed by embassy staff gives very little priority to the issue of promoting and protecting basic rights and freedoms. This omission should be rectified so that U.S. policy could much more directly address the anxieties felt by many in Tunisia, and by others who may be considering investing or doing business in Tunisia, that a majority Islamist government could be harmful for the climate of respect for human rights in the country.
- The U.S. government should be much more visibly making the case to the Tunisian government that improving legal safeguards for basic rights and freedoms will improve Tunisia's prospects for achieving a successful transition.



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