

Input to the report of the

**Special Rapporteur on minority issues**

to the UN General Assembly on

**“Institutional arrangements of States**

**that enable minority rights to flourish”**

**May 2024**

1. This written submission from the European Centre for Law and Justice (ECLJ) aims at informing the Special Rapporteur on minority issues for the preparation of the 2024 report to be presented during the 79th General Assembly in October 2024, and that will highlight institutional arrangements of States relevant for tackling minority issues. This concerns the Special Rapporteur in the context of his mandate, established in resolution 2005/79 by the Commission on Human Rights on April 21, 2005, to promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
2. In its submission, the ECLJ wishes to draw the Special Rapporteur’s attention to the situation in Algeria, Tunisia, and Morocco and will respond to question 5. In these States, several legal and administrative obstacles prevent Christian minorities from freely exercising their faith. The ECLJ stresses the need to lift these restrictions to respect the right of persons belonging to minorities “*to participate fully in the cultural, religious, social, economic and public life*” of their country, as set out in article 2 paragraph 2 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
3. The ECLJ is an international non-governmental organization founded in 1998 and dedicated to the promotion and protection of human rights in Europe and worldwide. The ECLJ has held special consultative status with the United Nations / ECOSOC since 2007.

**The legal and administrative barriers to participate effectively in**

**the religious and social life in Algeria, Tunisia, and Morocco**

# The case of Algeria

### Algeria has an estimated population of 43.5 million people[[1]](#footnote-1). It is predominantly Muslim, with approximately 99% of the population identifying as Muslim and less than 1% identifying either Christian or Jewish[[2]](#footnote-2). In its 2022 World Watch List, Open Doors listed Algeria as the 22nd worst place for Christians to live due to severe “Islamic oppression”[[3]](#footnote-3). According to Open Doors, Christians are at risk of “harassment, beatings, threats and imprisonment, as well as pressure to adhere to Islamic customs.”[[4]](#footnote-4)

### Article 51 of the new Constitution of 2020 enshrines freedom of worship and freedom of opinion. However, Algeria undermines these protections in its laws and practices[[5]](#footnote-5). The government adopted Ordinance 06-03 of February 28, 2006, which regulates non-Muslim places of worship. Over the past several years, the government has used this law to shutdown numerous churches proving that the new Constitution does not, in fact, provide for freedom of worship.

6. **Restriction to the exercise of worship.** Ordinance 06-03 states that: “its objective [is] to fix the conditions and rules of exercise of religious worship other than [Islam]” (Article 1) and “guarantees the free exercise of worship” within the framework of respect for “public order” and “good morals” (Article 2). Although this law guarantees respect for different religions, it also gives the government the power to restrict the religious practices of minority religions. Article 5 provides that “the modification of a structure intended for the exercise of a religious cult is subject to the prior approval of the national commission for the exercise of cults provided for in article 9 of the present ordinance.” Furthermore, Article 5 prohibits any activity “in premises intended for the exercise of religious worship, which would be contrary to the nature and objectives for which (the premises) are intended.” For the most part, small communities do not have the material resources to construct compliant buildings and are therefore deprived of the opportunity to meet.

7. **Restrictions to freedom of conscience**. The new Constitution of 2020 abolished Article 36, which provided for the inviolability of freedom of conscience. Now, freedom of opinion and freedom of worship only are provided for in Article 51. However, it does not guarantee freedom of conscience, which is the right to believe or not to believe and to change religion. Ordinance 06-03 essentially prohibits proselytizing and the distribution of any Christian literature, so as not to incite or “shake the faith of a Muslim” (article 11). Anyone who “manufactures, stocks or distributes Christian printed documents or audiovisual sequences” is liable to a prison sentence of two to five years. Law no. 09-01 of June 6, 2001 prohibits blasphemy against Islam and punishes “anyone who offends the Prophet and messengers of God, or denigrates the dogmas or precepts of Islam, whether by writing, drawing, declaration or any other means, with three to five years’ imprisonment and a fine of fifty thousand to one hundred thousand dinars” (Article 144 bis 2). Furthermore, Ordinance no. 06-03 prohibits the conversion of a Muslim to another religion (Article 11).

8. **Restriction to freedom of association.** Ordinance no. 06-03 imposes strict controls on the creation, approval and operation of religious associations, subject to prior registration (Article 6), which should not be compulsory. Law no. 12-06 of January 12, 2012 grants excessive discretionary power to the government in approving associations, which can arbitrarily refuse to register an association if it decides that the object and aims of its activities are contrary to national values, public order, morality and the provisions of laws and regulations in force (Article 2 and Article 10). Article 47 of the law imposes heavy constraints and deadlines for the granting of legal personality, with a double opinion required by the national commission for the exercise of religious practices and by the administration responsible for approval. Article 6 of this law requires too high a minimum number of members to grant legal personality to associations. Article 19 allows excessive intrusion by public authorities into religious affairs. The conditions for suspending or dissolving an association “in the event of interference in the internal affairs of the country or infringement of national sovereignty,” as provided for in Article 39, need to be relaxed.

9. **Restriction to the right of assembly.** Ordinance no. 06-03 adds that anyone practicing unauthorized worship in a building not intended for the purpose is liable to one to three years’ imprisonment and a fine of 100,000 to 300,000 dinars (article 13).

10. **Restriction to the right to marry and found a family.** Mixed marriages are restricted. The Family Code forbids a Muslim woman to marry a non-Muslim man (article 31). Adoption is forbidden and the Family Code only authorizes guardianship of a child taken in by Muslims (article 118), taken up by Ordinance no. 05-02 of February 27, 2005, amending and supplementing law no. 84-11 of June 9, 1984.

11. **Restriction to education.** Law no. 08-04 of January 23, 2008, the National Education Orientation Law, specifies that schools must help to perpetuate in children the image of Algeria as a Muslim and Arab country, and promote the identity and observance of Algerian moral and religious principles, namely Islam as a religion, culture and civilization (Preamble). Algeria’s education reform offers a greater volume of teaching hours for Islamic education and makes no provision for the teaching of other religions.

12. **Restriction to property rights.** The Family Code excludes anathematized persons and apostates from inheritance rights (article 138).

13. The ECLJ is very concerned about Algeria’s lack of commitment to protect the freedom of religion, despite its international and domestic commitments to do so. Apparently, Algeria does not feel compelled to honor the Article 2 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, or its own law that states that, “[t]he State equally guarantees the toleration and respect of different religions”. Not only does the new Constitution specifically leave out a protection from religious discrimination, but Ordinance 06-03, Penal Code, Family and Law 12-06 promote discrimination by punishing any minority religion that dares to proselytize, or insult Islam, as well as targeting and shutting down their churches[[6]](#footnote-6). The government must stop its targeted attack against Christian associations and allow them to operate so openly and freely that every Algerian citizen is able to exercise freedom of religion and belief[[7]](#footnote-7).

# The case of Morocco

14. Morocco has an estimated population of 26.5 million people[[8]](#footnote-8). It is a predominantly Muslim country with 99% of the country identifying as Sunni Muslim[[9]](#footnote-9). The remaining 1% identify as Christians, Jews, or Baha’i[[10]](#footnote-10). Within Morocco, Christians represent a very small fraction of the population and are essentially divided into two categories, Moroccan Christians and foreign Christians. There are approximately 40,000 foreign Christians with approximately 30,000 of them identifying as Roman Catholic and 10,000 as Protestant[[11]](#footnote-11). In its 2022 World Watch List, the human rights watchdog organization, Open Doors, listed Morocco as the 27 the worst place for Christians to live, citing “Islamic oppression” and laws criminalizing acts which “shake the faith of a Muslim”[[12]](#footnote-12).

15. Under Article 3 of the Constitution of Morocco, “Islam is the religion of the State, which guarantees to all the free exercise of beliefs [cultes]”[[13]](#footnote-13). Furthermore, Article 41 establishes that the King is the “Commander of the Faithful” and that “He is the Guarantor of the free exercise of beliefs [cultes]”[[14]](#footnote-14). Because Islam is the religion of States, public laws and policies restrict Christians from participating fully in the exercise of their religious and social life.

16. **Restriction to the exercise of worship.** Penal Code provides penalties for anyone who “undermines the Muslim religion” (Article 267-5) and anyone who deliberately interferes with religious festivals or rites in a way that causes a nuisance or undermines the dignity of these religious acts. The authorities can summarily expel any non-citizen resident whose presence is considered a “threat to public order”. Public authorities have used this clause to expel foreigners suspected of proselytizing.

17. **Restriction to freedom of expression.** Article 220 of the Penal Code punishes “with imprisonment from six months to three years and a fine from 20,060 to 500 dirhams” “anyone who employs means of seduction with the aim of undermining the faith of a Muslim or converting him to another religion, either by exploiting his weakness or needs, or by using educational or health establishments, asylums or orphanages for these purposes.” Article 267-5 of the Penal Code and laws governing the media prohibit anyone, including members of parliament, from criticizing Islam in public, in printed or electronic form, or during public speeches, on pain of two years of imprisonment and a fine of up to 200,000 dirhams.

18. **Restriction to freedom of association.** The conditions for the existence of churches are too strict. To carry out activities on behalf of the group, or to hold public meetings, a religious group must register as an association with the local officials of the Ministry of the Interior in the jurisdiction of the association's headquarters. An individual representative of a religious group that is neither recognized nor registered as an association may be held responsible for all public meetings, transactions, bank accounts, property rentals and/or applications made to the government in connection with the group.

19. **Restriction to the right to marry and found a family.** Family Code states that a Muslim man is authorized to marry a Christian or a Jew, but a Muslim woman is not authorized to marry a man of another religion unless he converts to Islam (Article 39). Adoption is prohibited. However, Law no. 15-01 on the care of abandoned children authorizes guardianship for Muslims only (Article 9). Non-Muslims must officially convert to Islam and be permanent residents of the country before they can become legal guardians of abandoned or orphaned children.

20. **Restriction to education.** Article 1 of the National Charter on Education and Training stipulates that the education system of the Kingdom of Morocco is based on the principles and values of the Islamic religion. Article 1 of Law No. 01-00 on the organization of higher education adds that higher education is based on the principles and values of the Islamic religion. In this sense, some baccalaureate preparation manuals state that “anyone who utters a word contrary to the beliefs and precepts of Islam is excluded from the Muslim community.” All publicly funded educational institutions are required to teach Sunni Islam in accordance with the teachings and traditions of the Maliki and Ashari Islamic School of Jurisprudence. Privately run and funded schools may choose whether to include religious instruction in their curricula. Jewish private schools are allowed to teach Judaism. However, no provision is made for Christian schools.

21. **Restriction to inheritance rights.** Article 332 of theFamily Code states that “there is no inheritance between a Muslim and a non-Muslim.” Consequently, the Christian or Jewish wife of a Muslim Moroccan cannot inherit from her husband, unlike her children, who are considered Muslims by law. Similarly, children from the first marriage of a Frenchman who converted to Islam to marry a Moroccan woman cannot inherit from their father if the terms of succession are those of the *Moudawana*.

22. The ECLJ is deeply concerned about Morocco’s lack of commitment to protect the freedom of religion, despite its international and domestic commitments to do so. Morocco does not feel apply Article 2 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, even though its own law that states that, the State “guarantees to all the free exercise of beliefs [cultes]”[[15]](#footnote-15) (Constitution). Morocco must remove its ban on proselytization within the criminal code so that all of its citizens can practice their religion peacefully and publicly. Morocco must also reform its laws to ensure that Moroccan Christians are granted the same rights and privileges as everyone else. Everyone should be permitted to worship in a place according to the tenets of their faith and not be restricted from marrying whom they wish, regardless of their religious affiliation. We also urge Morocco to utilize inter-faith dialogue and public government condemnation of societal harassment based on religion to put a stop to harassment of Moroccan Christians or any other religious minorities[[16]](#footnote-16).

# The case of Tunisia

23. Tunisia has an estimated population of 11.8 million people[[17]](#footnote-17). Tunisia is predominantly Muslim, with 99% of the population identifying as Sunni Muslim, and less than 1% identifying as Christian, Jewish, Shia Muslim, or Baha’i[[18]](#footnote-18). In its 2022 World Watch List, the human rights watch-dog organization, Open Doors, listed Tunisia as the 35th worst place in the world for Christians to live, particularly Christians who convert from Islam[[19]](#footnote-19). In addition, according to a 2019 report by the Special Rapporteur on freedom of religion and belief, “there are direct and hidden forms of discrimination based on religion or belief in the country; moreover, incidents of social hostility in the form of harassment or pressure directed at converts were reported. Harassment is also carried out by law enforcement officials, in violation of national laws.”[[20]](#footnote-20) As a result, the Christian minority is forced to live out its faith in private[[21]](#footnote-21).

24. Under Article 1 of the Constitution of Tunisia, “Tunisia is a free, independent, sovereign state; its religion is Islam, its language Arabic, and its system is republican”[[22]](#footnote-22). Article 6 enshrines protections for the freedom of religion. However, despite these protections for worship enshrined within the Constitution, Tunisia undermines these protections in their laws and practices.

24. **Restriction to freedom of conscience**. Article 14(8) of the law No. 2015-26 of 7 August 2015 prohibits apostasy[[23]](#footnote-23) and Article 226(2) of the Penal Code Article 226(2) of the Penal Code makes it a crime for anyone 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.” This kind of language is concerning, because it is interpreted in a way that outlaws proselytizing and categorizes sharing one’s faith as “offensive.”

**25. Restriction to education.** Law no. 2002-30 of July 23 stipulates that “the purpose of education is to raise pupils in loyalty to Tunisia [...]. It reinforces in them [...] the feeling of belonging to a civilization with national, Maghrebian, Arab, African Islamic and Mediterranean dimensions” (article 3). This provision *de facto* excludes the teaching of other religions, notably Christianity.

26. It is imperative that the government of Tunisia do more to protect the rights enshrined in its Constitution, including removing the vague criminal laws that have been used to criminalize proselytization. Tunisia must protect the rights of everyone to practice their religion freely and peacefully without fear of being arrested or harassed. Additionally, it is imperative that the police properly investigate complaints filed by Christians who have been attacked because of their faith. Furthermore, we urge the government to promote interfaith dialogue, such as the “National Pact for Coexistence” to encourage greater religious harmony and freedom within Tunisia.

1. [Algeria](%29%2C%20https%3A/www.cia.gov/the-world-factbook/countries/algeria), WORLD FACTBOOK (27 Sep. 2021). [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. [Algeria](https://www.opendoorsusa.org/christian-persecution/world-watch-list/algeria/), Open Doors. [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. ECLJ, [EPU Algeria 2022](http://media.aclj.org/pdf/41-UPR-Algeria-ECLJ.pdf). [↑](#footnote-ref-5)
6. ECLJ, [EPU Algeria 2022](http://media.aclj.org/pdf/41-UPR-Algeria-ECLJ.pdf). [↑](#footnote-ref-6)
7. Id. EPU. [↑](#footnote-ref-7)
8. [Morocco](https://www.cia.gov/the-world-factbook/countries/morocco/), THE WORLD FACTBOOK. [↑](#footnote-ref-8)
9. *Id.*  [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. [After Israel, Will Morocco Normalize with Christians, CHRISTIANITY TODAY](https://www.christianitytoday.com/news/2021/january/morocco-christians-israel-trump-peace-abrahamaccords.html.) (8 Jan. 2020). [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. [Constitution of Morocco art. 3](https://www.constituteproject.org/constitution/Morocco_2011.pdf.). [↑](#footnote-ref-13)
14. *Id.* at art. 41. [↑](#footnote-ref-14)
15. [Constitution of Morocco art. 3](https://www.constituteproject.org/constitution/Morocco_2011.pdf.). [↑](#footnote-ref-15)
16. ECLJ, [EPU Morocco 2022](http://media.aclj.org/pdf/41-UPR-Morocco-ECLJ.pdf). [↑](#footnote-ref-16)
17. [Tunisia](https://www.cia.gov/the-worldfactbook/countries/tunisia/), THE WORLD FACTBOOK (14 Jul. 2021). [↑](#footnote-ref-17)
18. *Id.*  [↑](#footnote-ref-18)
19. [Tunisia](https://www.opendoorsusa.org/christian-persecution/world-watchlist/tunisia/), OPEN DOORS. [↑](#footnote-ref-19)
20. [Report of the Special Rapporteur on Freedom of Religion and Belief](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Documents/A_HRC_40_58_Add.1.doc%20x.), UNHRC (19 Apr. 2019). [↑](#footnote-ref-20)
21. [Tunisia](https://www.opendoorsusa.org/christian-persecution/world-watchlist/tunisia/), OPEN DOORS. [↑](#footnote-ref-21)
22. [Constitution of Tunisia art 1.](%2C%20https%3A/www.constituteproject.org/constitution/Tunisia_2014.pdf.) [↑](#footnote-ref-22)
23. [Law No. 2015-26 of 7 August 2015 art. 14.8](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Documents/A_HRC_40_58_Add.1.doc). [↑](#footnote-ref-23)