

Introduction

1. Tunisia is a party to several United Nations human rights treaties, including the International Covenant on Civil and Political Rights and its first Optional Protocol, which guarantees freedom of expression. On a regional level, in 1983, Tunisia ratified the African Charter on Human and Peoples' Rights which guarantees individuals the right to receive information as well as the right to express and disseminate information under Article 9.¹
2. Tunisia's 2014 Constitution guarantees the right to privacy and personal data protection,² the freedom of opinion, thought, expression and information without prior censorship, including the right to access communication networks.³ Although the reforms to align the legal framework to constitutional standards started as early as 2011, provisions in several texts including the Penal Code, the Military Justice Code and the Telecommunication Code are still being used to restrict digital rights in Tunisia.
3. During the third UPR cycle in 2017, Tunisia received 248 recommendations and supported 189 at the adoption of its UPR outcome at the Human Rights Council. The government vowed to support recommendations that enhance freedom of information and the rights of journalists⁴ and to align its legal framework applicable to freedom of the press and publication and to audio-visual communication with applicable international standards.⁵
4. By January 2021, there were an estimated 7.92 million internet users in Tunisia, and a 66.7% internet penetration rate, reflecting a 5% increase from 2020.⁶ In the same period, the estimated number of social media users also increased by 12% to 8.20 million users, amounting to 69% of the total population. Tunisia's mobile connections had also increased to 17.4 million users, an equivalent of 150.2% of the population.⁷
5. On this basis, Freedom House in their 2021 *Freedom on the Net* report rated Tunisia as having the highest internet freedom score in the Middle East and North Africa region.⁸ This notwithstanding, the state continues to prosecute and harass persons deemed to be critical of the government and

¹ Article 9 of the African Charter on Human and Peoples' Rights
<https://www.achpr.org/legalinstruments/detail?id=49#:~:text=of%20these%20freedoms.-,ARTICLE%209,his%20opinions%20within%20the%20law.>

² Tunisia's Constitution of 2014, article 24, See, https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en

³ Ibid, Articles 31 and 32

⁴ A/HRC/36/5 - Para. 125

⁵ A/HRC/36/5 - Para. 125

⁶ <https://datareportal.com/reports/digital-2021-tunisia>

⁷ Ibid.

⁸ Freedom House, *Freedom on the Net*, 2021, see, <https://freedomhouse.org/country/tunisia/freedom-net/2021>

security forces on various digital platforms.⁹

Follow up from previous review

6. Tunisia's improved digital footprint has been attributed to the government's "*Digital Tunisia 2020*" program, a five-year national strategic plan for digital transformation across all sectors. The project ends in December 2022.¹⁰
7. According to the *World Press Freedom Index* which measures pluralism, media independence, legislative framework and media violations among others, between 2017 and 2021, Tunisia's ranking has improved from 97th up to 73rd out of the 180 countries assessed. In their latest, 2021 rankings, Reporters Without Borders states that freedom of the press and the freedom to inform are the most important achievements of Tunisia's 2011 revolution. However, since the 2019 general elections, these rights have been politicised, with increasing violations against the media.¹¹
8. On July 25, 2021, Tunisian President-elect, Kais Saied announced the dismissal of the Prime Minister, and the indefinite suspension of the elected Parliament.¹² He then issued Presidential Decree No. 117 of 2021, which suspended the Tunisian Constitution with the exception of its preamble and the first two chapters, relating to general provisions and to rights and freedoms. Decree 117 transferred both the legislative power from Parliament and the executive powers of the Head of Government to the President. In the absence of institutional checks and balances, the measures enshrined in this Decree grant the President of the Republic unprecedented powers, including abrogation of the Constitutional order.
9. On February 8, 2022, President Saied shut down the High Judicial Council, an independent judicial oversight body set up after the country's 2011 revolution to shield judges from government influence. The UN High Commissioner for Human Rights described the dissolution of the Council as a "clear violation of the country's obligations under international human rights law"¹³.

⁹ Ibid.

¹⁰ Africa Development Bank Group project portal, Tunisia; see, <https://projectsportal.afdb.org/dataportal/VProject/show/P-TN-G00-003>

¹¹ Reporters Without Borders 2021 rankings, <https://rsf.org/en/tunisia>

¹² VOA, Tunisian President Sacks Premier, Suspends Parliament, 26 July 2021, see;

https://www.voanews.com/a/africa_tunisian-president-sacks-premier-suspends-parliament/6208718.html

¹³ "Dissolution of Supreme Judicial Council seriously undermines rule of law in Tunisia (Bachelet)", TAP. February 20, 2022 <https://www.tap.info.tn/en/Portal-Politics/14857772-dissolution-of>

Freedom of Expression and Opinion

10. Article 31 of the Tunisian Constitution guarantees the freedom of press, freedom of opinion, thought, expression, information and publication. It further stipulates that these freedoms shall not be subject to prior censorship. Articles 9 and 12 of the Decree-law No. 115 of 2011 relating to the freedom of the press, printing and publishing forbids restrictions on the free circulation of information and any actions that might undermine the dignity or physical or moral integrity of journalists. The implementation of these articles and serious prosecutions of offenders is rare.
11. Decree-law 115 restricts the definition of journalist under article 7 to degree holders, which may bar bloggers and other online platform users from working as media practitioners. However, the Court of Appeal extended protection to online users in its February 14, 2013 decision in case No 2500.¹⁴
12. Persecuting journalists for failure to disclose sources goes against principles under Article 11 of the Decree-law 115 and Article 37 of 2015-26 Law on the Fight against Terrorism and Money Laundering which guarantee the protection of journalistic sources and professional secrecy.
13. Article 12 of Decree Law 115 of 2011 prohibits attacks on the physical and moral inviolability of journalists providing that "...a person who insults a journalist or assaults him/her" through words, deeds, visible verbal or physical threats while the journalist "carries out his/her work will be penalised under Article 123 of the Penal Code.
14. Despite the Constitutional and legislative provisions, authorities have limited the exercise of these rights through other laws that barely conform to constitutional and international normative standards on freedom of expression and the media.
15. During the review period, attacks against journalists have taken various forms, including illegal use of force and arrests while covering protests, seizure of equipment, detention, prosecution and imprisonment.¹⁵
16. On the 18 of March 2022, *Khalifa Guesmi*, a journalist with Radio Mosaïque was detained for refusal to reveal sources of information in a story about the arrest of suspected terrorists in Kairouan. During his detention, his phone was allegedly searched by anti-terrorism officials, which

¹⁴ Tunisia, Internet Legislation Atlas, page 2, <https://internetlegislationatlas.org/data/summaries/tunisia.pdf>

¹⁵ "****Journalisme en Tunisie : l'heure de vérité", RSF, January 2022**** <https://rsf.org/fr/rapports/un-rapport-point-nomme-journalisme-en-tunisie-lheure-de-verite>

ultimately revealed the identity of the sources. A week after his detention on March 25, the Anti-Terrorism Court ordered Khalifa's release pending investigations.

17. On March 23, 2022, Police blocked two photojournalists working with the online platform, *Nawaat website* from filming protesters. Their equipment was seized and they have been summoned to appear before the Ben Arous Court of First Instance on 14 April 2022.¹⁶
18. Media houses, including international bureaus have also been restricted. On July 26, 2021, police officers stormed the offices of Al-Jazeera, ordered the staff to leave, and seized equipment without a warrant.¹⁷ They are currently broadcasting from the journalists syndicate courtyard.
19. In October 2021, the Independent High Authority for Audio-visual Communication shutdown the operations of four media outlets - Hannibal TV, Nessma channel, Zitouna TV and Holy Quran Radio. The regulatory authority also confiscated the outlets' equipment, on allegations of not "regularising their operations".^{18 19}
20. On December 15 2021, local private media were barred from attending a press conference organised for the visit of the Algerian president. State media working with the National Television and Tunis Afrique Press were blocked from asking questions.²⁰
21. July 28, 2021, the Director of the Public National Television was dismissed and a new acting Director was irregularly appointed without approval from the Independent High Authority for Audiovisual Communication (HAICA)²¹. The National Union of Tunisian Journalists stated that there had been a decision within the national broadcaster to exclude political parties from their political talk shows.²² Away from the media, their human rights defenders have also been affected by authorities' highhandedness. In December 2021, the First Instance Court of Sfax sentenced Meryam Bribri, a human rights activist to four months imprisonment and a fine of 500 dinars (about 180 USD) for insulting a public official in a Facebook comment on a video showing police

¹⁶ Ibid.

¹⁷ "Evicted from Their Office, Al Jazeera Works from a Front Yard in Tunisia", Human Rights Watch, November 17, 2021 <https://www.hrw.org/news/2021/11/17/evicted-their-office-al-jazeera-works-front-yard-tunisia>

¹⁸ "Après Al Quran Al Karim et Nessma, Hannibal TV est la prochaine sur la liste", Tunisie Numerique. October 27, 2021 <https://www.tunisienumerique.com/apres-al-quran-al-karim-et-nessma-hannibal-tv-est-la-prochaine-sur-la-liste/>

¹⁹ Al-Monitor, Media freedom in Tunisia stirs wide debate, 13 November 2021; see <https://www.al-monitor.com/originals/2021/11/media-freedom-tunisia-stirs-wide-debate>

²⁰ "Tunisia: Where poems lead to prison", Article 19, February 5, 2022 <https://www.article19.org/resources/tunisia-where-poems-lead-to-prison/>

²¹ HAICA, see; <https://www.rirm.org/en/haica-haute-autorite-independante-de-communication-audiovisuelle->

²² T.Amara, "Tunisia press union says state TV bars political parties", Reuters, January 11, 2022 <https://www.reuters.com/article/us-tunisia-politics-media-idAFKBN2JL1EY>

officers assaulting a young man.²³

22. Journalists continue to be prosecuted on the basis of the Military Justice Code and the Penal Code rather than the Decree law No 115-2011, relating to the freedom of the press, printing and publishing. In October 2021, the Military Court charged Amer Ayad, a journalist and Abdellatif Aloui, a Member of Parliament for remarks they made on *Al-Zaytouna TV* criticising the president. The duo were charged with “calling for insurgence, degrading the morale of the military army, committing a denigrating act against the head of state, and attributing illegal matters to a public official”.²⁴
23. Civilians have also been increasingly prosecuted for social media posts in military courts.²⁵ Charges have been mostly brought under the Penal Code, the Military Justice Code and the Telecommunication Code. For example, on November 12, 2021, the Permanent Military Court of Appeal in Tunisia sentenced a blogger to six months imprisonment based on his Facebook posts criticising the president's performance and other government officials.²⁶ The blogger was charged under Article 91 of the Code of Military Procedures and Sanctions for insulting the President.
24. Several activists have been subjected to physical and sexual harassment for their work and documentation of security forces during protests.²⁷ The harassment includes security forces unions sharing their personal photos, and personal information such as residential information and phone numbers. Women and LGBTQI+ activists were specifically targeted.²⁸

The Right to Access Information

25. Under Article 32 of the Constitution, the state guarantees the right to information and the right of access to information and communication networks. This is in line with Tunisia's regional and

²³ Article 19, Tunisia: Trials against human rights activists on the rise, 24 December 2021, see;

<https://www.article19.org/resources/tunisia-trials-against-human-rights-activists-on-the-rise/>

²⁴ Article 19, Tunisia: Freedom of expression violations against journalists and politicians, 6 October 2021.

<https://www.article19.org/resources/tunisia-freedom-of-expression-violations-against-journalists-and-politicians/>

²⁵ “Tunisia: Alarming increase in number of civilians facing military courts”, Amnesty international,

<https://www.amnesty.org/en/latest/news/2021/11/tunisia-alarming-increase-in-number-of-civilians-facing-military-courts/>

Reports of the National Syndicate of Tunisian journalists Monitoring and Documentation Unit, <http://protection.snjt.org>

²⁶ Y.Jouini, :Tunisia: New prosecutions resurrect shadow of dictatorship”, Global Voices, December 16, 2021,

<https://globalvoices.org/2021/12/16/tunisia-new-prosecutions-resurrect-shadow-of-dictatorship/>

²⁷ R.Sghaier, :Rights groups in Tunisia mobilize against police protection bill; Global Voices, October 9, 2020,

<https://advox.globalvoices.org/2020/10/09/rights-groups-in-tunisia-mobilize-against-a-bill-to-legalize-impunity-for-security-forces/>

²⁸ :Access Now condemns escalating attacks against activists and peaceful protesters in Tunisia; Access Now, February 3, 2021,

<https://www.accessnow.org/escalating-attacks-against-activists-protesters-tunisia/#:~:text=Access%20Now%20strongly%20condemns%20the,by%20publishing%20their%20personal%20information%2C>

<https://www.accessnow.org/escalating-attacks-against-activists-protesters-tunisia/#:~:text=Access%20Now%20strongly%20condemns%20the,by%20publishing%20their%20personal%20information%2C>

international obligations on the right to information.

26. In 2016, Parliament voted for the Organic Law on the Right to Information No. 22 of 2016, which regulates information disclosure by government bodies, public agencies, organisations and entities that receive government funding. The law requires all of these entities to periodically publish specific types of information, including policies and programs that concern the public, regulatory text governing activities, and certain types of statistical data.
27. Tunisia's Right to Information law has been rated 14th out of 135 countries with information laws, by the RTI rating, which is a tool that analyses and measures the strength of legal frameworks based on the right of access, scope, requesting procedures, exceptions and refusals, appeals, sanctions and promotion measures.²⁹
28. However, the implementation of the access to information act lacks efficiency, particularly proactive disclosure.³⁰ During the COVID-19 pandemic, the Health Ministry on a daily basis published vital information on Facebook, related to the virus including confirmed cases and deaths. These posts eventually slowed in frequency and then stopped altogether as the country faced a second wave starting from August 2020.³¹ The Health Ministry resumed providing information after a few weeks.³² The Health Ministry also withheld information related to the pandemic including numbers on hospital capacity. These restrictions on access to information are in contradiction to Article 31 of the Constitution which bars prior censorship and Article 9 of Decree-Law No. 115 of 2011 which prohibits any restrictions that hinder circulation of information, barrier to equal opportunities for the various media institutions to access to information, or disrupt the citizen's right to a free, pluralistic, and transparent media.
29. Responsiveness to information requests is also a challenge. *Inkyfada*, a media website, received incomplete data three months after submitting a request to the Ministry of Health for access to the number of intensive care beds available in Tunisia, as well as the number of medical and paramedical staff in all the hospitals in the country.³³ Unresponsiveness to information requests,

²⁹ Centre for Law and Democracy, RTI ratings. See, <https://www.rti-rating.org/country-data/>

³⁰ Access to Information in Tunisia, The Tahrir Institute for Middle East Policy, July 2021, <https://timep.org/explainers/access-to-information-in-tunisia/#:~:text=In%202014%2C%20Tunisia%20passed%20a,to%20information%20and%20communication%20networks.%E2%80%9D>

³¹ N.Hizaoui, "ACTUALITÉS COVID-19: Communication défailante et inadaptée", LaPresse. October, 2020 <https://lapresse.tn/74950/covid-19-communication-defaillante-et-inadaptee/>

³² Y.Jouini, "Tunisia's fight against COVID-19 unmasks shaky ground for digital rights", Global Voices, January 19, 2021 <https://globalvoices.org/2021/01/19/tunisias-fight-against-covid-19-unmasks-shaky-ground-for-digital-rights/>

³³ "Accès à l'information : inkyfada dans le dédale de la bureaucratie tunisienne", Inkyfada, March 10, 2021, <https://inkyfada.com/fr/2021/03/10/acces-information-inkyfada-dedale-bureaucratie-tunisie/>

beyond the mandated 20 days, has also been reported by other civil society organisations.³⁴

30. In April 2021, the Tunisian Ministry of Health issued a ministerial order threatening sanctions against doctors and health workers issuing unauthorised statements about the COVID-19 pandemic in the media or online. Permission from the Minister of Health had to be sought prior to speaking to the media or posting information online. The order received backlash from civil society actors, who accused the government of censorship and attempting to falsely portray the country's public health situation.³⁵
31. *Circular No. 19* regarding the government communications issued on December 10, 2021 requires all ministers to coordinate with the Presidency regarding the content and form of media appearances. The circular increased the reluctance of officials, especially at the regional and local levels, hindering the media and other citizen's right to access information.

The Right to Privacy

32. The right to privacy is enshrined in Article 24 of the Tunisian Constitution which guarantees the state's protection of the right to privacy and inviolability of the home, confidentiality of correspondence, communications and personal information.
33. In 2004, Tunisia introduced a Data Protection Law. The Organic Act No. 2004-63 of 27 July 2004³⁶ on the Protection of Personal Data created the National Authority for Personal Data Protection (INPDP). Under Article 7, the Law stipulates that the processing of personal data must be declared to the data protection authority prior to commencing. Article 50 also prohibits the transfer of personal data to a foreign State whenever it may endanger public security or Tunisia's vital interests.
34. Civil society organisations have called for the review and amendment of the Organic Act No. 2004-63 on the Protection of Personal Data, as it contains several provisions that jeopardise the right to privacy including: the lack of safeguards of independence of INPDP in relation to its board members nomination and financial support, the insufficient allocation of financial and human resources to articulate its mandate, and the limitations of its field of intervention to hold

³⁴ Access Now, To safeguard privacy, Tunisia must be transparent on tech used to fight COVID-19, 17 September 2020. <https://www.accessnow.org/to-safeguard-privacy-tunisia-must-be-transparent-on-tech-used-to-fight-covid-19/>

³⁵ Amnesty International Tunisia: Rescind ministerial order censoring health workers over Covid-19 (2021) <https://www.amnesty.org/en/latest/news/2021/04/tunisia-rescind-ministerial-order-censoring-health-workers-over-covid19/> (Accessed on 15 January 2022)

³⁶ Organic Act n°2004-63 of July 27th 2004 on the protection of personal data, see <https://www.ictpolicyafrica.org/en/document/1bmfv348zkf>

the private and public sector accountable in cases of breaches of data protection principles.³⁷

35. Public institutions benefit from substantial exemptions surrounding personal data under the 2004 Data Protection Law. In the 2009-2017 report by the INPDP, it was outlined that complaints, which were lodged against public authorities, including the interior ministry, were not able to be considered because of the exemption.³⁸
36. The current data protection law fails to put in place adequate mechanisms to ensure that any interference with citizens' communications upholds international standards and does not infringe on their rights, including the right to proper redress and remedy when privacy violations occur. It gives large exemptions to public institutions who are not bound by the strict provisions on processing data.³⁹
37. On a positive note, in November 2017, Tunisia became a Party to Convention 108 on Protection of Individuals with regard to Automatic Processing of Personal Data.⁴⁰ This is a step in the right direction to reforming and aligning Tunisia's data protection legal regime with international standards.⁴¹
38. Incidents of violation of privacy rights have been recorded including through unlawful search and seizure of the personal devices of arrested bloggers and activists and sexual minorities.^{42 43}
39. According to Privacy International, Mobile phone customers are required to present documentary evidence to prove their identity when purchasing a SIM card. Telecom operators keep records of customers' data, including identities, dates of birth, postal addresses, and national identity numbers (CIN).⁴⁴ In March 2019, the government tightens the rules required for allocating SIM cards in an apparent effort to fight terrorism. In July 2019, the telecom regulator INT threatened operators who failed to comply with the regulations with sanctions.⁴⁵

³⁷ "As elections approach, Tunisia must ensure protection of personal data", Access Now, August 2019, <https://www.accessnow.org/tunisia-protecting-personal-data-during-elections-is-at-stake/>

³⁸ تقرير نشاط الهيئة
http://www.inpdp.nat.tn/Rapport_2009-2017.pdf

³⁹ Organic Act n°2004-63, See Articles 53-61

⁴⁰ <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=108>

⁴¹ Council of Europe, 24 May 2019, Tunisia, 30th country to sign Convention 108+

<https://www.coe.int/en/web/data-protection/-/tunisia-30th-country-to-sign-convention-108->

⁴² M.Derbali, "Protests in Tunisia : Police Violate Personal Data Protections", Nawaat. March 20. 2021

<https://nawaat.org/2021/03/20/protests-in-tunisia-police-violate-personal-data-protections/>

⁴³ "Tunisia: Privacy Threatened by 'Homosexuality' Arrests," Human Rights Watch, November 8, 2018,

<https://www.hrw.org/news/2018/11/08/tunisia-privacy-threatened-homosexuality-arrests>

⁴⁴ "Contexte General", Sajalni, <https://sajalni.tn/#about>

⁴⁵ <https://privacyinternational.org/long-read/3018/timeline-sim-card-registration-laws>

40. In January 2021, Tunisian authorities introduced a centralised platform, *Sajalni*, to allow the identification of mobile terminals connecting to the national telecommunications network aimed at fighting against organised crime and tax evasion.⁴⁶ Sim card registration is also compulsory. Telecom operators are required by law to keep records of customers' data, including identities, dates of birth, postal addresses, and national identity numbers.

Access to internet

41. According to the ministry of communication, the total number of internet subscriptions per 100 inhabitants increased from 72.4% in 2017 to 97.7% in 2021. The percentage of households with internet access increased from 44.5% in 2017 to 51.5% in 2019.⁴⁷

42. In 2017, the ministry of communication technologies started implementing a five-year plan to increase internet access, mobile coverage, public internet centres, and access for people with disabilities in 94 underserved areas.⁴⁸

43. In May 2020, Prime Minister Elyes Fakhfakh announced the allocation of five million dinars (1.81 million USD) in the state budget to finance the media sector rehabilitation program and support it in engaging in digital transformation.⁴⁹

44. A survey conducted by the Ministry of Education revealed that 93% of primary school pupils cannot pursue an online education due to lack of equipment, and 73% had no access to the internet.⁵⁰

Proposed recommendations

Given this background on Tunisia's record on freedom of opinion and expression, freedom of information and censorship of content, and the right to data protection and privacy on the Internet, the submitting organisations propose the following recommendations:

⁴⁶

⁴⁷ Espace indicateurs, MCT, accessed on March 22, 2022 <https://www.mtc.gov.tn/index.php?id=325&L=964>

⁴⁸ "Projet de couverture des zones blanches [White area coverage project]," MCT, June 11, 2020, https://www.mtcen.gov.tn/index.php?id=119&L=2%27A%3D0&tx_ttnews%5Btt_news%5D=4049&cHash=11d45942db63b2d23cb217987770dd1b

⁴⁹ COVID-19: Tunisia rolls out support package for media," North Africa Post, May 7, 2020 <https://northafricapost.com/40695-covid-19-tunisia-rolls-out-support-package-for-media.html>

⁵⁰ "LE E-LEARNING TARDE À ÊTRE UNE ÉVIDENCE EN TUNISIE," Tuniscopie, October 8, 2020, <https://www.tuniscopie.com/article/213827/tech/high-tech/e-learning-321212>

Tunisian authorities are called upon to:

1. Restore Constitutional order and guarantees to fundamental human rights and freedoms by annulling Presidential Decree No. 117 which set aside the 2014 Constitution, and bestowed upon the President sole powers to legislate in disregard of principles of separation of powers
2. End intimidation, harassment and persecution of media houses, journalists, bloggers and others exercising their right to free expression and hold to account those that violate their freedom of expression and access to information rights
3. Review and amend Act No. 2004-63 on data protection to ensure that it is in line with Tunisia's international human rights commitments and obligations, including holding public institutions accountable in cases of data breaches.
4. End all restrictive policies hindering access to information rights of journalists and other citizens and ensure the implementation of the access to information law particularly through proactive disclosures.