



Tunisia

Joint Submission to the UN Universal Periodic Review 41st Session of the UPR Working Group

Submitted 31 March 2022

By ARTICLE19

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1. ARTICLE 19, the National Syndicate of Tunisian Journalists¹, Access Now², the Tunisian League for the Defence of Human Rights³, the Yakadha Association for Democracy and Civic State⁴, the Tunisian Federation of Newspaper Directors⁵, the Tunisian Union for Association Media⁶, Washam⁷ Association and Takalam for Freedom of Expression and Creativity⁸ welcome the opportunity to contribute to the process of the fourth universal periodic review through the present report on the assessment of Tunisia's respect for its international obligations in the field of human rights, especially the right to freedom of expression and the media.

2. This report stems from an assessment of Tunisia's application of its voluntary commitments through the ratification and accession to international conventions and the protocols annexed to them, as well as the extent to which Tunisia has enforced and implemented the recommendations it supported and approved before the Human Rights Council in Geneva on the occasion of the third universal periodic review of 2017.

3. In order to achieve the envisaged goals, ARTICLE 19 and its partners organized a consultative meeting in Tunisia on 11 February 2022, to discuss the extent to which Tunisia is fulfilling its commitments in the field of the right to freedom of expression, freedom of the media and access to information, especially following the declaration of the state of exception on 25 July 2021.

4. This contribution revolves around the following topics:

- The political and constitutional context,
- The legislative framework related to freedom of expression and the press,
- The legislative and institutional framework related to freedom of the media,
- Attacks on journalists, bloggers, and human rights defenders,
- Attacks on media outlets,

¹ National Syndicate of Tunisian Journalists (SNJT) is an independent, democratic and professional trade union organization that fights for the material and moral rights of journalists and for freedom of opinion and expression.

² Access Now is an international organisation that works to defend and extend the digital rights of users at risk around the world. Through representation around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age

³ Tunisian League for the Defence of Human Rights (LTDH), Tunisian association that work to observe and defend political and civil Rights, economic and social rights, Immigration, Justice's independence, and requests for liberating prisoners.

⁴ VIGILANCE FOR DEMOCRACY AND THE CIVIC STATE created on 2012 is a Tunisian NGO aiming for equality among citizens in rights and duties on the base of a Civic State

⁵ The Tunisian Federation of Newspaper Managers is an interprofessional union, created in 2013, to defends the moral and material interests of owners, managers and publishers of printed and electronic newspapers. It works to defend freedom of information, opinion, expression, to promote the Tunisian press in its diversity and to safeguard its material and moral interests in the service of democratic transition, as well as to promoting professional ethics and the profession and working towards its development

⁶ The Tunisian Union of Associative Media (UTMA) is an organization created in 2015, which aims to strengthen the role of associative media in Tunisia. Its brings together 24 radio stations established throughout the territory, and is active in defending freedom of expression, promoting the culture of dialogue, supporting the establishment of local media and helping to strengthen capacities, and consolidate local development in the regions and the culture of local media in the regions.

⁷ Washam is an independent Tunisian women's organization established on March 2021. It is concerned with women's issues in their human rights, social, political, economic, and cultural dimensions and sheds light on the history of women's struggle and their success stories and their resistance to all forms of violence and discrimination.

⁸ Taqallam for freedom of speech and creativity, is a Tunisian organization with a North African dimension, created in 2019, and works to supports freedom of expression and artistic creativity, that related to street art, theatre, cinema, storytelling, alternative media and quality journalism, particularly in repressive regimes and marginalized communities.

- The right to access information.

The political and constitutional context

5. After the fall of the authoritarian regime on 14 January 2011, Tunisia enacted several liberal decree-laws related to fundamental freedoms,⁹ in addition to issuing a new constitution that enshrined important guarantees for human rights. Tunisia was expected to establish the institutions stipulated in the constitution of 27 January 2014 in order to complete the constitutional architecture. However, political quarrels hindered the establishment of the Constitutional Court, the Audio-Visual Communication Commission, the Human Rights Commission and other bodies necessary to interpret and enforce constitutional principles and protect rights and freedoms.

6. The political quarrels continued after the 2019 presidential and legislative elections, and a deep political and constitutional crisis emerged due to conflict between the President of the Republic, Kais Saied, and some parties represented in the Assembly of the Representatives of the People. On 25 July 2021, the Tunisian President declared a state of exception in accordance with the provisions of Article 80 of the Tunisian Constitution, justifying this by the exacerbation of the political crisis and the state's inability to manage the health crisis, in addition to wider great economic difficulties.

7. On 25 July, after declaring the state of exception, President Saied dismissed the Head of the Government and some members of the government,¹⁰ and suspended the powers of the Assembly of the Representatives of the People and lifted the immunity of its members.¹¹ He also took other exceptional measures that he said were necessary to confront the political, economic and health crisis that the country had been witnessing for several months,¹² including creating an operations room to manage the health crisis and appointing new Ministers.¹³

8. According to international human rights standards, any state of exception must comply with strict limitations, in particular it must meet the principles of legality, necessity and proportionality, must not be applied arbitrarily or discriminatorily, and must be time-limited and subject to regular review.¹⁴ State Parties to the International Covenant on Civil and Political Rights, including Tunisia, must also follow notification procedures when declaring a state of exception which limits the protection of rights.

9. It should be noted that the notification procedure was not respected following the state of exception declared by President Saied in accordance with the requirements of Article 4 of the ICCPR.

10. The President of the Republic then issued Decree No. 117 of 22 September 2021 regarding exceptional measures, which allows for continued suspension of the Assembly of the People's Representatives, lifting deputies' immunity so that they can face prosecution and introducing a procedure that will block salary payments to the assembly chairman and other members.

⁹ Six decree-laws were promulgated in 2011 regarding fundamental freedoms:

- Decree-law n°35-2011 related to the elections of a national constituent assembly,
- Decree-law n°41-2011 related to the right to access to administrative documents,
- Decree-law n° 87-2011 related to political parties,
- Decree-law n°88-2011 related to associations,
- Decree-law n°115-2011 related to freedom of press, printing and publishing,
- Decree-law n°116-2011 related to freedom of audiovisual communication.

¹⁰ Presidential Decree No 69 of 2021 dated 26 July 2021 related to the dismissal of the head of the government and members of the government.

¹¹ Presidential Decree No 80 of 2021 dated 26 July 2021 related to the suspension of the competencies of the Assembly of the People's representatives.

¹² Presidential Decree No 83 of 2021 dated 30 July 2021 related to provisional measures to fight Covid 19.

¹³ Presidential Decrees No 81, 85 and 87 of 2021 related to the appointment of ministers of interior, technology and finance.

¹⁴ See in this context the General Comment number 29 of 2001 issued by the Human Rights Committee on article 4 of the ICCPR.

11. Also, pursuant to Article 4 of the Decree No. 117, the President of the Republic was empowered to enact decree-laws in 29 areas of the Parliament's competence, such as organizing the judiciary, elections, media, and the press. Moreover, decree-laws issued by the President are immunized from all judicial oversight, in accordance with Article 7.

12. The Head of the Government has been stripped of most of his powers, turning him into a mere assistant to the President of the Republic, who is responsible for appointing members of the government, controls its programs and sets its priorities. Instead of reporting to Parliament, the government now reports to the President of the Republic, who can now revoke one or more of its members.

13. The presidential decree No. 117 also almost suspended the 2014 Constitution, despite its stipulation to continue to work with the Constitution's preamble, its first and second chapters related to general principles, rights and freedoms, and all other provisions that do not conflict with the exceptional measures of presidential decree No. 117.

14. Presidential Decree No. 117 conflicts with Article 80 of the Constitution which stipulates that the measures taken by the President of the Republic must be limited in time and with the aim of addressing an imminent danger. The announced measures are rather permanent in time, such as dissolving the temporary authority on the constitutionality of law projects, reviewing the electoral law, or creating a committee to draft amendments to the constitution.

15. The President of the Republic has also assigned to himself the powers of the parliament which authorizes him to issue decree-laws in various fields such as political parties, associations, constitutional bodies, the organization of justice, elections, the media, and human rights. Furthermore, Article 7 of the Decree No. 117 immunizes these decree-laws against judicial oversight, which constitutes a flagrant violation of the principle of separation of powers requiring each authority to be subject to the supervision of the other, and of Article 102 of the Constitution, which establishes the responsibility of the judiciary to guarantee the supremacy of the constitution, to monitor all legal texts, and to verify their compatibility with the constitution.

16. On 13 December 2021, the President of the Republic announced a road map for a way out of the current constitutional crisis. This path starts with an online consultation from 1 January 2022 to 20 March 2022. Subsequently, a Political Reforms Committee whose members are appointed by President Kais Saied will formulate the consultation's output in the form of new laws and a new draft constitution that will be submitted to a referendum on 25 July 2022. This path ends with legislative elections on 17 December 2022.

17. The online consultation started stumbling as it was postponed for two weeks amid concerns about the digital safety of the platform and the protection of the participants' personal data, in addition to the broad nature of the questions asked and the answers suggested.¹⁵

18. Ambiguity also extended to the Political Reforms Committee, which remains unclear at the level of powers, its working mechanisms, the methods for appointing its members, and the extent of its independence from the President of the Republic.

19. In the same context of these measures, the President of the Republic dissolved the Higher Judicial Council and replaced it with a temporary council in accordance with Decree-law No. 11 of 2022 dated 12 February 2022 related to the creation of the Temporary Higher Judicial Council.¹⁶ By analysing this decree-law, we conclude that the President of the Republic has been empowered with exceptional powers at the level of appointing, disciplining and relieving judges, in addition to appointing 9 members out of a total of 21 members in the Temporary Higher Judicial Council.

¹⁵ <https://www.dw.com/en/tunisia-first-digital-political-consultation-divides/a-60390183>

¹⁶ The decree-law is available here: <https://urlz.fr/hHoY>

20. The declaration of the state of exception has clearly affected rights and freedoms, especially freedom of expression, the press, and the media, as many journalists, bloggers, opponents and human rights defenders were subjected to prosecutions before the military and judicial courts.¹⁷

Recommendations relating to the constitutional and political situation

- Bring the state of exception to an end and ensure respect for democracy in accordance with the principles enshrined in the Constitution;
- Ensure sufficient checks and balances and the separation of executive, legislative and judicial powers in accordance with the Constitution; and,
- Fully respect and implement the international human rights treaties ratified by the Republic of Tunisia.

The legal framework related to freedom of expression and the press

21. During the last UPR, Tunisia supported 8 recommendations related to strengthening legislation related to the right to freedom of expression and the press. Despite this, the government has maintained the same legal framework that suffers from many shortcomings.¹⁸

22. The Tunisian legal framework relating to freedom of expression consists of several laws, such as Decree-law No. 115 of 2011 relating to freedom of the press, printing and publishing,¹⁹ the penal code,²⁰ the communications code,²¹ the code of pleadings and military sanctions.²²

23. Decree-Law No. 115 of 2 November 2011 on freedom of the press, printing and publishing provides fines as a sanction for crimes of defamation and insult, in articles 55 and 57. However, Tunisian courts overlook Decree-Law No. 115 and apply other laws that establish more severe sentences for the same crimes stipulated in the decree-law, including prison sentences. In particular, security and judicial authorities often resort to the Penal Code regarding expressions targeting public servants and political officials, or to the Telecommunications Code when it comes to what is published online.

24. The Penal Code is one of the legal tools used to target freedom of expression and the press and describes vague crimes that could meet the crimes stipulated in Decree-law No. 115. Tunisia has not

¹⁷ On the political and constitutional developments following the state of exception see here:

<https://www.article19.org/resources/tunisia-where-poems-lead-to-prison/>

<https://www.article19.org/resources/tunisia-greater-presidential-powers-threaten-rights-and-freedoms/>

<https://www.article19.org/resources/tunisia-a-grave-step-in-the-wrong-direction/>

<https://www.hrw.org/ar/news/2021/12/23/380861>

¹⁸ The following recommendations were not respected:

- No. 125-22 (Italy): "Continue the process of harmonizing national legislation, including the Criminal Code and Code of Criminal Procedure, with the Constitution and international human rights instruments ratified by Tunisia".

- No. 125- 86 (Czechia): "Strengthening the implementation of legislation in the areas of freedom of expression, access to information, the elimination of discrimination and ensuring the compliance of all relevant laws with the Constitution."

- No. 125-87 (Denmark): "Replacing Decrees 115 and 115 issued in 2011 regarding the press and audio-visual communication with legislation in accordance with Article 65 of the Constitution with regard to the media, press and publication, and Article 127 of the Constitution."

- No. 125- 88 (Lebanon): "Strengthening legislation related to freedom of expression and conscience."

- No. 125-89 (Lebanon): "Continue to promote media freedom and journalists' rights."

- No. 125- 90 (Romania): "Align the legal framework applicable to freedom of the press, publishing and audio-visual communication with applicable international standards."

- No. 125-91 (Spain): "Adopt measures to ensure the protection of free speech and freedom of the press, ensuring that human rights defenders can carry out their legitimate activities".

- No. 125-92 (Finland): "Accelerate the implementation of the laws on the freedom of expression, assembly and association and to ensure alignment with international standards, including under possible emergency measures."

¹⁹ http://www.inric.tn/fr/Decret-loi_relatif_a_la_liberte_de_la_presse.pdf

²⁰ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61250/60936/F1198127290/TUN-61250.pdf>

²¹ https://tunisia.mom-rsf.org/fileadmin/Editorial/Tunesia/Laws/code_des_telecommunications.pdf

²² <https://www.droit-afrique.com/uploads/Tunisie-Code-2017-justice-militaire.pdf>

revised the Penal Code to be compatible with Article 19 of the International Covenant on Civil and Political Rights that ensures that freedom of expression may not be restricted without respect of the three parts test enshrined in its third paragraph, among which is the clarity and accuracy of the legal basis of restrictions. The multiplicity of legal texts that could apply to the same expression precludes respect for this principle.²³

25. In particular, Articles 67²⁴, 125²⁵, 128²⁶ and 245²⁷ criminalise defamation and insult, and establish prison sentences for anyone who publishes opinions or information deemed insulting related to the President of the Republic or public officials, especially judges and security forces. These provisions are formulated in excessively broad and vague terms, giving discretion to the authorities to target journalists and media workers, human rights defenders, and other civil society representatives. The Human Rights Committee affirmed in General Comment No. 34 called for the decriminalisation of defamation and emphasised that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.

26. For example, on 10 February 2020, the Ben Arous Court of First Instance issued a judgement sentencing journalist Taoufik Ben Brik to a two-year prison term on the basis of Article 128 of the Penal Code. The writer Ben Brik objected to the verdict in absentia on 23 July 2020, but the appeal was denied and he was sentenced to one year in prison with immediate enforcement, and he was taken to Mornaguia prison in Tunis. Ben Brik was accused of insulting judges during a television program on 1 October 2019, following comments accusing some judges of corruption and nepotism following a judicial decision not to release the candidate for the presidential elections and head of the Qalb Tounes Party, Nabil Karoui,

27. This judicial ruling is a flagrant violation of the right to freedom of expression and a serious transgression of the role of the judiciary, which is in charge of protecting rights and freedoms. The court decision was characterised by several legal violations particularly relating to the legal ground of the sentence, since the decision was based on the provisions of the Penal Code rather than Decree-Law No. 115 with the aim to inflict on Journalist Taoufik Ben Brik a prison penalty.²⁸

28. Similarly, human rights activist Rania Amdouni was affected by conflicting legal texts related to the right to freedom of expression. On 27 February 2021, she was arrested after she went to a police station in Tunis to file a complaint against the administrators of the Facebook pages of some security force unions, which included publications threatening her with death, violence and rape.

29. Subsequently, she appeared before the District Court in Tunis on 4 March 2021, to issue a verdict in her case, imprisoning her for a period of six months with immediate enforcement, on charges of

²³ The Human Rights Committee has emphasized in General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights that “for the purposes of paragraph 3, the rule to be regarded as “law” must be formulated with sufficient precision in order for an individual to control his or her conduct in accordance with it” and must be made publicly available. the public. The law shall not give the persons responsible for its implementation unfettered discretion to restrict freedom of expression.(1) The law shall provide sufficient guidance to those charged with its implementation to enable them to ascertain appropriately which types of expression are subject to and which are not. See paragraph 25: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

²⁴ “Whoever commits a despicable act against the President of the State in ways other than those set forth in articles 42 and 48 of the Press Code shall be punished with imprisonment for a term of three years and a fine of two hundred and forty dinars or one of the two penalties.”

²⁵ “Whoever insults a public official with words, signs or threats while performing his job or on the occasion of performing it shall be punished with imprisonment for a period of one year and a fine of one hundred and twenty dinars.”

²⁶ “Whoever ascribes to a public official in public speeches or through the press or other means of publicity illegal matters related to their position without providing evidence of the validity of that shall be punished with imprisonment for a period of two years and a fine of one hundred and twenty dinars.”

²⁷ “Defamation occurs with every allegation or accusation of an act in the public in which the honor or reputation of a person or an official body is violated.”

²⁸ for more details:

<https://www.article19.org/resources/tunisia-imprisonment-of-journalist-and-writer-taoufik-ben-brik-should-be-reversed/>

insulting a public official, based on the provisions of Article 125 of the Penal Code²⁹. This article is usually used by security forces to track protesters and human rights defenders and arrest them because of their critical opinions of the Ministry of Interior and violations committed by police agents.

30. We also noted that the judicial authorities continued to exclude Decree-Law No. 115 and to rely on Article 86 of the Telecommunications Code and to impose a prison sentence against anyone who publishes content containing defamation or insults on social media. This jurisprudence can only be understood by the judges' desire to impose prison sanctions instead of the fine penalty stipulated in Decree-Law No. 115.

31. Article 86 broadly and vaguely criminalises any speech that "offends others" or "disturbs their comfort" through public telecommunications networks.³⁰ The application of Article 86 of the Telecommunications Code poses many threats to freedom of expression in the digital space, as the severe nature of the penalties and the frequency of court judgments that impose imprisonment against bloggers or human rights defenders may intimidate individuals and push them to avoid expressing their positions or publishing information of public interest,

32. Some courts have considered the articles stipulated in the Penal Code or the Telecommunications Code to be revoked because they contradict Decree-Law No. 115. For example, on 14 May 2020, the Manouba Court of First Instance issued a judgment in which it considered that Decree-law No. 115 revoked all provisions contradicting it, including crimes related to expressing opinions and ideas contained in the Penal Code or the Telecommunications Code.

33. On 12 March 2020, a group of deputies submitted a proposed law aiming to review Articles 245 and 247 of the penal code in order to criminalize the dissemination of so-called "false news" and defamation through electronic platforms and to increase the prison sentence to two years outside electoral periods and 4 years within them.³¹

34. Although the dissemination of false news and defamation are criminalized under Articles 54 and 55 of Decree-Law No. 115, which establishes a fine penalty in their regard, this legislative initiative aimed to impose a prison sentence. This is contrary to what is required by international standards related to the right to freedom of expression, which considers that prison sentences in crimes of disseminating disinformation or defamation contravene the principle of proportionality enshrined in Article 19 of the International Covenant on Civil and Political Rights and also Article 49 of the Tunisian Constitution.³²

Recommendations on the legal framework related to freedom of expression

- Ensure any restrictions to the right to freedom of expression fully meet the principles of legality, necessity and proportionality and are enforced in line with Decree-Law No. 115 of 2011,

²⁹ More details here:

<https://www.article19.org/resources/tunisia-authorities-must-release-activist-rania-al-amdouni-imprisoned-after-bringing-complaints-of-online-abuse-by-security-forces/>

³⁰ Anyone who intentionally offends others or disturbs their comfort through public telecommunications networks shall be punished with imprisonment for a period ranging from one to two years and a fine of from one hundred to one thousand dinars.

³¹ 46 HR organizations issued a joint communiqué to oppose this draft law:

<https://www.article19.org/resources/tunisia-human-rights-associations-and-organizations-call-for-withdrawing-new-draft-law-that-would-endanger-and-limit-freedom-of-expression-and-press/>

³² General Comment No. 34 of 2011 stated, "It should consider decriminalizing defamation. In no case should the application of criminal law be recognized save for the most serious cases, and imprisonment should never be the appropriate punishment."

See also: ARTICLE 19, Defining Falsehood: Principles on Freedom of Expression and Protection of Reputation, 2017, p. 10.

[https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-\(online\)-.pdf](https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-(online)-.pdf)

ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, p. 10.

[https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-\(online\)-.pdf](https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-(online)-.pdf)

- Repeal Articles 67, 125, 128 and 245 of the Penal Code,
- Repeal Article 86 of the Communications Code.

The legislative and institutional framework related to media freedom

35. Decree-law No. 116 of 2011 relating to freedom of audio-visual communication is the main legal framework regulating audio-visual media in Tunisia. This decree-law created an Independent Higher Authority for Audio-visual Communication (HAICA) with the task of regulating the audio-visual sector.

36. The HAICA includes a board consisting of nine independent representatives, recognized for their expertise, integrity and competence in the field of media and communication, who are appointed by decree. It exercises several competencies of a reporting, monitoring and advisory nature, such as deciding requests for granting licenses to create and exploit audio-visual communication facilities, setting the rules of the electoral campaign in audio-visual means of communication, imposing penalties on non-complying media institutions and expressing a corresponding opinion regarding the appointment of CEOs of public audio-visual communication facilities.³³

37. The 2014 Constitution strengthened, media freedom, which made way for the creation of a constitutional authority to regulate the audio-visual sector. As stated in Article 127: “The Audiovisual Communication Commission undertakes the amendment and development of the audiovisual communication sector. It ensures freedom of expression and information, and guarantees pluralistic, impartial media. The commission has regulatory authority in its field of competence and is obligatorily consulted on law projects related to this field”.

38. The HAICA is a temporary body whose tasks end with the establishment of the Audio-Visual Communication Commission, as per Article 127 of the Constitution. However, instead of replacing the temporary authority with a permanent one the Government and the parliamentary majority has exerted great pressure on the HAICA with the aim of impeding it from ensuring the pluralism of the media sector. In particular, it has forced the HAICA to license some media outlets affiliated with political parties to practice media activity despite not respecting the legal requirements.

39. In 2017, the government prepared a draft law aimed at creating a new authority with weak powers, since important powers of the authority were removed, such as issuing specifications regulating audio-visual communication and imposing penalties on non-complying channels, so that it is not able to regulate the audiovisual sector in a strict manner, but the widespread opposition to this project from the representative structures of journalists, media institutions and civil society organizations prompted the government to withdraw it.³⁴

40. On 4 May 2020, the head of the Karama Coalition in the Assembly of the Representatives of the People submitted a legislative initiative to revise Decree-law No. 116 of 2011. The text of this initiative includes 3 articles related to two issues. First, the composition and renewal of the current HAICA, and second, cancelling the HAICA’s power to grant licenses for television channels and approving the principle of simple declaration for channels to exist.

³³ Which means, according to the principle of parallelism of formulations and formalities, that the termination of services is also subject to its opinion.

³⁴ Organizations Warn of the Danger of the “Audiovisual Communication Authority” Bill:

<https://www.article19.org/en/resources/tunisie-lettre-ouverte-sur-le-projet-de-loi-relatif-a-la-creation-de-linstance-de-la-communication-audiovisuelle/>

A legal analysis of the draft organic law on the audiovisual communication authority prepared by ARTICLE 19:

<https://www.article19.org/wp-content/uploads/2018/01/Tunisia-analysis-Audiovisual-Commission-Analysis-Final-December-2017.pdf>

A reading of the draft organic law on the audiovisual communication authority prepared by the association Vigilance for Democracy and the Civil State:

<https://www.fichier-pdf.fr/2018/01/11/plaidoyer-vigilance-web/plaidoyer-vigilance-web.pdf>

41. The proposed law to amend Decree-law No. 116 comes in the context of attempts to dominate the interim authority, instead of moving towards creating the regulatory commission stipulated in Article 127 of the Tunisian Constitution. This amendment aims to give the most powerful parties in Parliament a large margin in choosing all members of the HAICA, and thus influence their decisions related to amending the media sector. The other purpose of this amendment is to find a legal solution for the television and radio channels that broadcast without the approval of the regulatory commission.³⁵

42. On the other hand, in 2019, the government has prepared a law project related to the creation of the National Agency for managing public advertising and memberships. The law project stipulates the adoption of independent procedures for the management of public advertising and media memberships. It also orders the establishment of an independent public structure to monitor public advertising and newspapers and periodicals subscriptions by public administrations.

43. Despite this, the draft law includes a number of controversial provisions from the perspective of media freedom, especially as it lacks sufficient guarantees to prevent interference with the independence of the media and to guarantee the independence of the agency.³⁶ The Tunisian state should support the media to ensure their pluralism and respect for journalistic ethics without compromising the independence of the editorial line.

44. On 16 September 2020, the professional structures in the press sector created a Press Council whose main task is to ensure self-regulation. The Press Council enjoys great independence in addition to its diverse composition, which includes journalists and specialists in the field of press and media.³⁷

45. However, the Press Council faces many obstacles that have negatively affected its performance as an independent structure that ensures respect for journalistic ethics, since it lacks the necessary funds that would allow it to establish an office and acquire work equipment. Therefore, it is necessary to support this structure that would enhance public confidence in the media and contribute to countering fake news and spreading the principles of education in the media.

Recommendations related to the legal framework for media freedom

- Create and operationalise an Audiovisual Communication Commission in line with international human rights standards, as stipulated in Article 127 of the Tunisian Constitution;
- Enact a law related to public advertising and memberships, with the obligation to provide all guarantees of editorial independence for private media and community media institutions; and,
- Ensure media self-regulation by recognising the Press Council and support its work, including by providing a headquarters and stable public funding.

Attacks on bloggers, human rights defenders and journalists

³⁵ ARTICLE 19 calls for the withdrawal of a proposed new law that threatens freedom of audiovisual communication. <https://www.article19.org/ar/resources/tunisie-46586/>

³⁶ A legal analysis of a draft law related to the creation of a national agency for public advertising and subscriptions: <https://www.article19.org/resources/tunisia-draft-law-on-the-national-agency-to-manage-public-advertisements-subscriptions-august-2020-legal-analysis/>

³⁷ See the press release of ARTICLE 19 on the occasion of the official announcement of the creation of the Press Council: <https://www.article19.org/fr/resources/tunisie-la-creation-du-conseil-de-la-presse-marque-une-etape-fondamentale-dans-le-processus-de-reforme/>

46. In the previous cycle of the UPR, Tunisia accepted 3 recommendations related to the protection of human rights defenders.³⁸ However, attacks have continued and take various forms, including court rulings, physical assaults and seizure of work equipment.

47. Firstly, several court rulings were issued to imprison political opponents, civil society activists and journalists on the basis of their critical opinions of political officials or police officers³⁹. For example:

- On 31 January 2022, the Court of First Instance in Tunis imposed a three-month prison sentence against human rights activist Hamza Nasri for insulting a public servant in accordance with Article 125 of the Penal Code against the background of his participation in the social protests on 14 January 2021.
- On 25 January 2022, the Tunis Court of First Instance imposed a four-month prison sentence against the student Mohamed Jihad Abedi for insulting a public official in accordance with Article 125 of the Penal Code, related to his participation in the demonstrations against the President of the Republic on 14 January 2022.
- On 12 January 2022, the student Maher Horshani was arrested in Gafsa by the police, based on the Articles 67 and 125 of the Penal Code, for publishing blogs about the President of the Republic.
- On 21 December 2021, the Sfax Court of First Instance issued a sentence of imprisonment for 4 months and a fine of 500 dinars (approximately 180 USD) against the human rights activist Mariam Briberi for attacking a public official because of her comment on a video published on Facebook showing police officers in the process of assaulting a young man⁴⁰.
- On 27 November 2021, in the city of Kebili, the security authorities arrested an engineering student and civil society activist Ali Saidi for publishing blogs criticizing the policies adopted by the President of the Republic. He was charged with committing a brutal act against the President of the Republic in accordance with the provisions of Article 67 of the Penal Code.
- On 2 October 2021, TV presenter Amer Ayad was sent to prison by the military judiciary for his reading of the poem by the poet Ahmed Matar, one of whose phrases was qualified as an attack on the dignity of the President of the Republic based on the article 91 of the military justice⁴¹. He was released after a month of detention, but the case has not yet been concluded.
- On 31 July 2021, in the city of Mahdia, a local political activist named Ridha Radaya was arrested and accused of inciting violence and insulting the President of the Republic based on the article 67 of the penal code, after he posted a video on Facebook.
- On 27 February 2021, human rights activist Rania Amdouni was arrested by the police forces with the charge of insulting a public official in accordance with Article 125 of the Penal Code. She was sentenced to six months in prison by the District Court in Tunis on 4 March

³⁸ No. 125-91 (Spain): “Adopt measures to ensure the protection of free speech and freedom of the press, ensuring that human rights defenders can carry out their legitimate activities”; No. 125-93 (South Africa): “Ensure a conducive environment for human rights defenders to carry out their legitimate activities without fear or undue hindrance”; No. 125-94 (Liechtenstein): “Carry out prompt investigations into all threats and attacks targeting human rights defenders and guarantee that those responsible are brought to justice and punished in a manner commensurate with the gravity of their acts.” Tunisia has also committed, in accordance with Recommendation 125-93, to ensure an effective environment for human rights defenders to carry out their legitimate activities without fear or undue obstacles.

³⁹ more details here:

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

⁴⁰ see here:

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

<https://www.article19.org/resources/tunisia-end-unlawful-judicial-harassment-of-bloggers/>

⁴¹ <https://www.article19.org/resources/tunisia-freedom-of-expression-violations-against-journalists-and-politicians/>

2021⁴².

- On 17 January 2021, student Ahmed Gharam was arrested and his computer seized for participating in an unauthorized demonstration and violating quarantine measures.⁴³

48. In addition to the judicial proceedings, police officers have attacked journalist and media workers and demonstrators on several occasions, including:

- On 14 January 2022, journalist Amira Jbali was attacked, her phone was seized with the data contained therein. The reporter of the *French Liberation* newspaper Matthew Galtier was also physically assaulted and his work equipment was seized.⁴⁴
- On 1 September 2021, the security forces attacked journalists while covering the protest of the Manash Msalmine Movement to demand the disclosure of the truth of the political assassinations. The attacks affected several journalists, including Ghaya Bin Mubarak, Noureddine Ahmed, Yousra Al Shekhawi and Ahmed Al-Zarrouqi.
- On 26 July 2021, the security forces attacked several journalists on the occasion of their coverage of the protests against President Kais Saied. Among the attacked were Halima Ben Nasr, Hamza Christo and Yousra El Shekhawy.

Recommendations regarding attacks on bloggers, human rights defenders, and journalists

- Cease the legal harassment and arbitrary detention of human rights defenders and journalists and other media workers;
- Conduct impartial, prompt, thorough, independent and effective investigations into all attacks against human rights defenders and journalists and other media workers, including by through bringing perpetrators to justice and ensuring appropriate restitution, compensation and assistance to their families; and,
- Create an enabling environment for human rights defenders and journalists and other media workers to exercise their right to freedom of opinion and expression, and to develop and implement strategies for combating impunity for attacks and violence.

Attacks on media institutions

49. Since the previous review, there has also been intimidation, harassment and attacks against several national and foreign media outlets, including:

- On 3 February 2022, the Judicial Investigation Squad in Kasserine summoned the legal representative of *Cilium Radio*, a community radio station, to appear before it because of a complaint filed by the Kasserine Hospital administration due to journalistic work revealing administrative abuses in the hospital.
- On 15 December 2021, on the occasion of the Algerian President's visit to Tunisia, the Presidency of the Republic of Tunisia organized a press conference and invited some journalists working for the national television and the *Tunisia Africa News Agency* to attend, on the basis that no question should be directed to President Kais Saied. This set a dangerous precedent and constitutes a direct interference in the freedom of journalistic work. This arbitrary decision angered many journalists due to the absence of any objective and transparent criteria for this option. We fear that the motive behind this choice is to punish some private media organizations for their opposition to the declaration of the state of

⁴² <https://www.article19.org/resources/tunisia-authorities-must-release-activist-rania-al-amdouni-imprisoned-after-bringing-complaints-of-online-abuse-by-security-forces/>

⁴³ <https://www.article19.org/resources/tunisia-tunisian-authorities-should-respect-right-to-protest/>

⁴⁴ <https://www.article19.org/resources/tunisia-security-forces-suppress-peaceful-demonstrations-on-revolution-day/>

emergency by the President of the Republic taken on 25 July 2021. This will have serious risks to the freedom and plurality of media content, as exercising this indirect pressure on the media will push them to change their content to please public authorities and to gain access to information sources.

- The President of the Republic dismissed the CEO of the National Television, and appointed a new CEO on 28 July 2021, according to Presidential Decree No. 78 of 2021, in violation of the provisions of Decree-law No. 116 of 2011 which requires that the exemption and appointment take place in accordance with the corresponding opinion of the HAICA. Subsequently, this institution issued its report on political pluralism,⁴⁵ which highlighted the bias of national television, in addition to the clear exclusion of political parties from appearing in its programmes, which was confirmed by the head of the National Union of Tunisian Journalists on 11 January 2022.⁴⁶

We should also note the recurring nature of this administrative practice in dismissing the directors of public media institutions⁴⁷ without consulting the HAICA, despite the issuance of a decision by the Administrative Court on 5 March 2021 recognizing the illegality of the exemption decisions due to their violation of Decree-law No. 116.

- On the morning of 26 July 2021, the security authorities stormed the office of the Qatari *Al-Jazeera* channel and demanded that the office's staff leave it, seizing its keys without providing any justifications or invoking a judicial permission or a decision issued by the HAICA⁴⁸. Since that time, journalists working for *Al Jazeera's* office have been prohibited from covering any event on the ground, according to an article published on *Inkifada*⁴⁹.
- On 21 May 2021, the legal representative of *Radio 8*, a community radio station, was summoned to attend the National Police Station in Menzel Bourguiba, due to a complaint filed by MP Amna Benhamid, relating to publishing a video showing a group of citizens criticizing the aforementioned MP.
- On 5 April 2021, the government dismissed the Director General of the Tunisia Africa News Agency Mouna Mtibaa and replaced her with Kamel Ben Younes who was rejected by the journalists working for the agency because of his relations with the authoritarian regime that prevailed before the revolution. The government tried to force his appointment by using security units. On 13 April 2021, police officers stormed the agency's headquarters in order to break up the peaceful sit-in, and there were several physical attacks on the sit-in journalists. Police officers also arbitrarily prevented journalists from going to the newsroom and their offices⁵⁰.
- On 8 May 2020, the headquarters of *Dream FM*, a community media station in Kairouan, was subjected to a theft of its technical equipment. The director of the Radio confirmed that this robbery happened based on its editorial line.

Recommendations regarding attacks on media organizations

⁴⁵ Review the commission's report issued on 13 September 2021 on political pluralism from 25 to 31 July 2021: <https://haica.tn/wp-content/uploads/2021/09/Rapport-pluralisme-25-31-juillet-2021.pdf>

⁴⁶ <https://www.reuters.com/article/us-tunisia-politics-media-idAFKBN2JL1EY>

⁴⁷ Several directors were dismissed in violation of the law by the Prime Minister, such as:

Mustafa Bellatif was dismissed from the National Television Administration on 15 November 2015.

Elias Gharbi was dismissed from the National Television Administration on 17 June 2017.

⁴⁸ For more details, please see the press release issued by the International Federation of Journalists. Click [here](#).

To review also the IFEX statement, click [here](#).

About the storming of the headquarters of Al-Jazeera, click [here](#).

⁴⁹ See the article [here](#)

⁵⁰ See: <https://www.article19.org/resources/tunisia-tunisian-and-foreign-ngos-welcome-withdrawal-of-controversial-nomination-of-director-of-tunisias-national-news-agency-and-support-tunisians-right-to-independent-public-media/>

- Cease harassment, intimidation and attacks against media outlets; and,
- Promote the availability and accessibility of the broadest possible diversity of media content and the representation of the whole diversity of society in the media

Right of access to information

50. During the period of the periodic review, Tunisia enacted an Organic Law No. 22 of 2016 relating to the right of access to information⁵¹. The law itself is comprehensive and contains multiple guarantees to protect the right of access to information stipulated in Article 32 of the Tunisian Constitution. However, we have noticed the existence of several administrative practices that have impeded the effective enjoyment of this right, which is one of the basic tools for enriching public debate and enabling individuals to build their opinions and positions in public domains based on reliable information.

51. In the first article of Organic Law No. 22 of 2016 relating to the right of access to information, it is stated that this law aims to strengthen the principles of transparency and accountability and to support public participation in setting public policies, following up on their implementation and evaluating such implementation. Consequently, any infringement of this right necessarily leads to obstructing individuals from extending their control over public authorities and participating in public affairs, in addition to the possibility of the spread of disinformation that are difficult to refute later, especially after they have spread widely.

52. The restriction on the right to access information was triggered by the Head of Government's Circular No. 4 dated 16 January 2017, which in its first point binds public agents to refrain "from making any statement or intervention and from publishing or disclosing official information or documents through the press or other media on topics of interest to their job or the public structure in which they work without the prior and express permission of their immediate superior or the head of the structure to which they belong."⁵²

53. On 10 December 2021, the Head of Government issued Circular No. 19 on the government's communication work rules, in which she calls on ministers to coordinate with the Presidency of the Government regarding the content and form of each media appearance. This circular further obstructed the media from accessing information and conducting press interviews with members of the government, who are now obliged to obtain prior permission from the Head of Government before giving any press interview.

54. On the other hand, the Access to Information Authority warned in its 2019 annual report that several public structures did not respect their obligations under the law relating to the right of access to information, such as the appointment of a person charged with access to information, creating a website, the proactive publishing of information, and preparing annual reports regarding requests for access to information and dissemination. Among the reasons for the weak application of Law No. 22 of 2016, public administrations assign one of their agents the task of providing information in addition to their original functions and without any privileges. In order to overcome this problem, public structures should appoint full-time agents for the task of accessing information so that they can guarantee the tasks entrusted to them by law.

Recommendations relating to the right of access to information

- Ensure the right of access to information held by public bodies, including by fully implementing Organic Law No. 22 of 2016 and by revoking Circular No. 4 dated 16 January 2017 and Circular No. 19 dated 10 December 2021.

⁵¹ Organic Law No. 2016-22 of 24 March 2016 relating to the right of access to information. <https://legislation-securite.tn/ar/law/45656>

⁵² See: <https://www.article19.org/resources/tunisia-circular-regulating-the-work-of-information-and-communications-units-threatens-freedom-of-expression-and-access-to-information/>

- Assign full-time agents with the responsibility to deal with access to information requests.