



United Nations
Educational, Scientific and
Cultural Organization

IPDC THE INTERNATIONAL PROGRAMME
FOR THE DEVELOPMENT OF COMMUNICATION



Assessment of Media Development in Tunisia

Based on the UNESCO Media Development Indicators



United Nations
Educational, Scientific and
Cultural Organization

IPDC THE INTERNATIONAL PROGRAMME
FOR THE DEVELOPMENT OF COMMUNICATION



Assessment of Media Development in Tunisia

Based on UNESCO's Media Development Indicators

Assessment of Media Development in Tunisia

Published in 2013 by the United Nations Educational, Scientific and Cultural Organization 7, place de Fontenoy, 75352 Paris 07 SP, France

Original title : Etude sur le développement des médias en Tunisie basée sur les indicateurs de développement des médias de l'UNESCO

Published in 2012 by the United Nations Educational, Scientific and Cultural Organization 7, place de Fontenoy, 75352 Paris 07 SP, France

Translation from French original : Steve Buckley

Dates of research : April - September 2012

Authors : Steve Buckley, International Consultant
Sawsen Chaabi, National Consultant
Bechir Ouarda, National Consultant

Coordinated by the Project Office of UNESCO in Tunis :

Mehdi Benchelah, Chief of Bureau
Aurélie Socias, Programme Assistant

Acknowledgement :

This study of the media sector in Tunisia, using the Media Development Indicators, has benefitted from support of the Kingdom of Belgium, in the framework of a project of the International Programme for the Development of Communication (IPDC) of UNESCO.

Revision :

If readers wish to propose corrections to the evaluation of the media sector in Tunisia these may be taken into account in a second version of the report. This revised version will, where appropriate, be published in electronic form and accessible on the UNESCO website.

© UNESCO 2013

All rights reserved

ISBN 978-92-3-001188-8

The designations employed and the presentation of material throughout this publication do not imply the expression of any opinion whatsoever on the part of UNESCO concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

The ideas and opinions expressed in this publication are those of the authors; they are not necessarily those of UNESCO and do not commit the Organisation.

Graphic design : UNESCO

Cover design : Pierre Finot for UNESCO Publishing

Typesetting and layout : Garcicom

Printing : Simpect

Printed in Tunisia



Preface

This study on media development in Tunisia based on UNESCO's Media Development Indicators (MDIs). Its purpose is to analyse the situation of the media in Tunisia and the progress achieved since the Revolution of 2011.

The objective of this study, consistent with the mandate of UNESCO, is to accompany Tunisia in the process of democratic transition, contributing to the development of free, independent and pluralist media through a comprehensive analysis of the media landscape.

The MDIs, which serve as the framework for this study, have been approved by the Intergovernmental Council of the International Programme for the Development of Communication (IPDC) of UNESCO, in March 2008, as an "important diagnostic instrument" to evaluate the state of development of the media in a given country.

Through detailed analysis of all aspects of the media landscape, they act to guide the efforts of different actors working for media development, as well as the formulation of policies in this field. Already applied in more than ten countries, the MDIs analyse both the legal and regulatory framework and the economic framework in which the media operate, their democratic potential, training and skills development, and the information and communication infrastructure. While the analysis is based on international standards and good practices, the recommendations are adapted to the particularities of the national context according to the advice of national actors.

The present study on the development of the media based on the MDIs has been carried out between April 2012 and September 2012. It is intended to provide a detailed picture of the situation in the country and to make a contribution to discussions that are underway on legal and constitutional reform and to engage with this area. Coordinated by a team composed of two national experts and one international expert, it builds on the work of the National Authority for Reform of Information and Communication (INRIC), of the government, of media trade unions and professional associations, of civil society and of international organisations, and has been implemented in consultation with the principal national stakeholders.

This study of the media sector forms part of an enhanced collaboration between UNESCO and Tunisia to support transformation of the media and, in turn, the democratic transition in Tunisia. Since January 2012, UNESCO has opened a Project Office in Tunis to accompany reform of the media and the Tunisian legal framework in collaboration with partners and the national authorities. On 3 May 2012, UNESCO chose to hold the World Press Freedom Day Conference in Tunisia, on the theme "New Voices: Media freedom helping to transform societies". More than 700 participants, coming from nearly 90 countries, participated at the Conference which closed with the adoption of the Declaration of Carthage. This latter underlined,

in particular, the importance of guaranteeing media freedom and the safety of journalists. This event once more demonstrated the will of Tunisia to place itself in the first rank in the process of democratisation started with the Arab Spring of 2011.

We hope the analysis presented here will constitute a useful reference for all actors wishing to contribute to this process in constructing a landscape of free, independent and pluralist media consistent with the principles established in the Declaration of Windhoek of 1991.

Jānis Kārklīņš

**UNESCO Assistant Director-General
for Communication and Information**

Table of Contents

Preface.....	3
Table of Contents.....	5
Abbreviations and acronyms.....	6
Executive Summary	8
Introduction.....	15
1. A system of regulation conducive to freedom of expression, pluralism and diversity of the media.....	23
A. Legal and policy framework.....	25
B. Regulatory system for broadcasting.....	36
C. Defamation laws and other legal restrictions on journalists.....	40
D. Censorship.....	45
2. Plurality and diversity of media, a level economic playing field and transparency of ownership.....	51
A. Media concentration.....	53
B. A diverse mix of public, private and community media.....	55
C. Licensing and spectrum allocation.....	59
D. Taxation and business regulation.....	62
E. Advertising.....	63
3. Media as a platform for democratic discourse.....	69
A. Media reflects diversity of society.....	71
B. Public service broadcasting model.....	73
C. Media self-regulation.....	76
D. Requirements for fairness and impartiality.....	78
E. Levels of public trust and confidence in the media.....	80
F. Safety of journalists.....	82
4. Professional capacity building and supporting instructions that underpins freedom of expression, pluralism and diversity.....	87
A. Availability of professional media training.....	89
B. Availability of academic courses in media practice.....	93
C. Presence of trade unions and professional organisations.....	96
D. Presence of civil society organisations.....	100
5. Infrastructural capacity is sufficient to support independent and pluralistic media	103
A. Availability and use of technical resources by the media.....	105
B. Press, broadcasting and ICT penetration.....	105
Annex A. Selected Bibliography.....	110
Annex B. Legislation relating to the media.....	112
Annex C. Individuals consulted.....	114

Abbreviations and acronyms

AFJ	African Federation of Journalists
AJT	Association of Tunisian Journalists
AJU	Arab Journalists Union
ANC	National Constituent Assembly
ANCE	National Agency for Electronic Certification
ANF	National Agency for Frequencies
ARIJ	Arab Reporters for Investigative Journalism
ATCE	Tunisian Agency for External Communication
ATDJ	Tunisian Association of Newspaper Managers
ATFD	Tunisian Association of Democratic Women
ATI	Tunisian Internet Agency
ATJJ	Tunisian Association of Young Journalists
ATP	Tunisian Advertising Agency
AWG-MM	Arab Working Group for Media Monitoring
CAPJC	African Centre for the Training of Journalists and Communicators
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERT	Centre for the Study and Research of Telecommunications
CFI	Canal France International
CGTT	General Confederation of Tunisian Workers (1925 /1937)
CGTT	Tunisian General Confederation of Labour (2011)
CNLT	National Council for Freedom in Tunisia
CPR	Congress for the Republic
CSO	Civil Society Organisation
CTLP	Tunis Centre for Press Freedom
DTT	Digital Terrestrial Television
FDTL	Democratic Forum for Work and Freedom - Ettakatol
FM	Frequency Modulation (broadcasting)
FOPRODI	Fund for the Promotion and Decentralisation of Industry
GNI	Gross National Income
HAICA	Independent High Authority for Audiovisual Communication
HD	High Definition (television)
HIROR	High Authority for Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition
ICCPR	International Covenant on Civil and Political Rights
ICFTU	International Confederation of Free Trade Unions
ICT	Information and communication technologies
IFEX	International Freedom of Expression Exchange
IFEX-TMG	IFEX Tunisia Monitoring Group

IFJ	International Federation of Journalists
INRIC	National Authority for Reform of Information and Communication
INT	National Council for Telecommunications
IP	Advertising expenditure
IPDC	International Programme for the Development of Communication
IPSI	Institute of Press and Information Sciences
ISIE	Independent High Authority for Elections
ISP	Internet Service Provider
ITU	International Union of Telecommunications
IXP	Internet Exchange Point
JT	Television News (8pm on National Television)
LMD	Licence, master, doctorate
LTDH	Tunisian League for Human Rights
MDIs	UNESCO's Media Development Indicators
MW	Medium Wave (broadcasting)
NGO	Non-governmental organisation
OGP	Open Government Partnership
OLPEC	Observatory for the Freedom of the Press, Publishing and Creation
ONT	National Broadcasting Office
PDG	President-Director General
PDP	Progressive Democratic Party
RCD	Democratic Constitutional Rally
RFI	Radio France International
RT	Tunisian Radio
RTC	Tunisian Review of Communication
RTCI	Tunisian Radio International Service
SNIFE	New Society for News Printing and Publishing
SNJT	National Union of Tunisian Journalists
SPIP	Union of Independent and Partisan Press
STDM	Tunisian Union of Media Directors
STRL	Tunisian Union of Free Radios
TAP	Tunis Africa Press Agency
TT	Tunisian Television
UGTT	Tunisian General Labour Union
UIT	Tunis International University
UPL	Free Patriotic Union
UTT	Tunisian Workers Union
UHF	Ultra High Frequency (broadcasting)
UN	United Nations
VHF	Very High Frequency (broadcasting)
WSIS	World Summit on the Information Society

Executive Summary

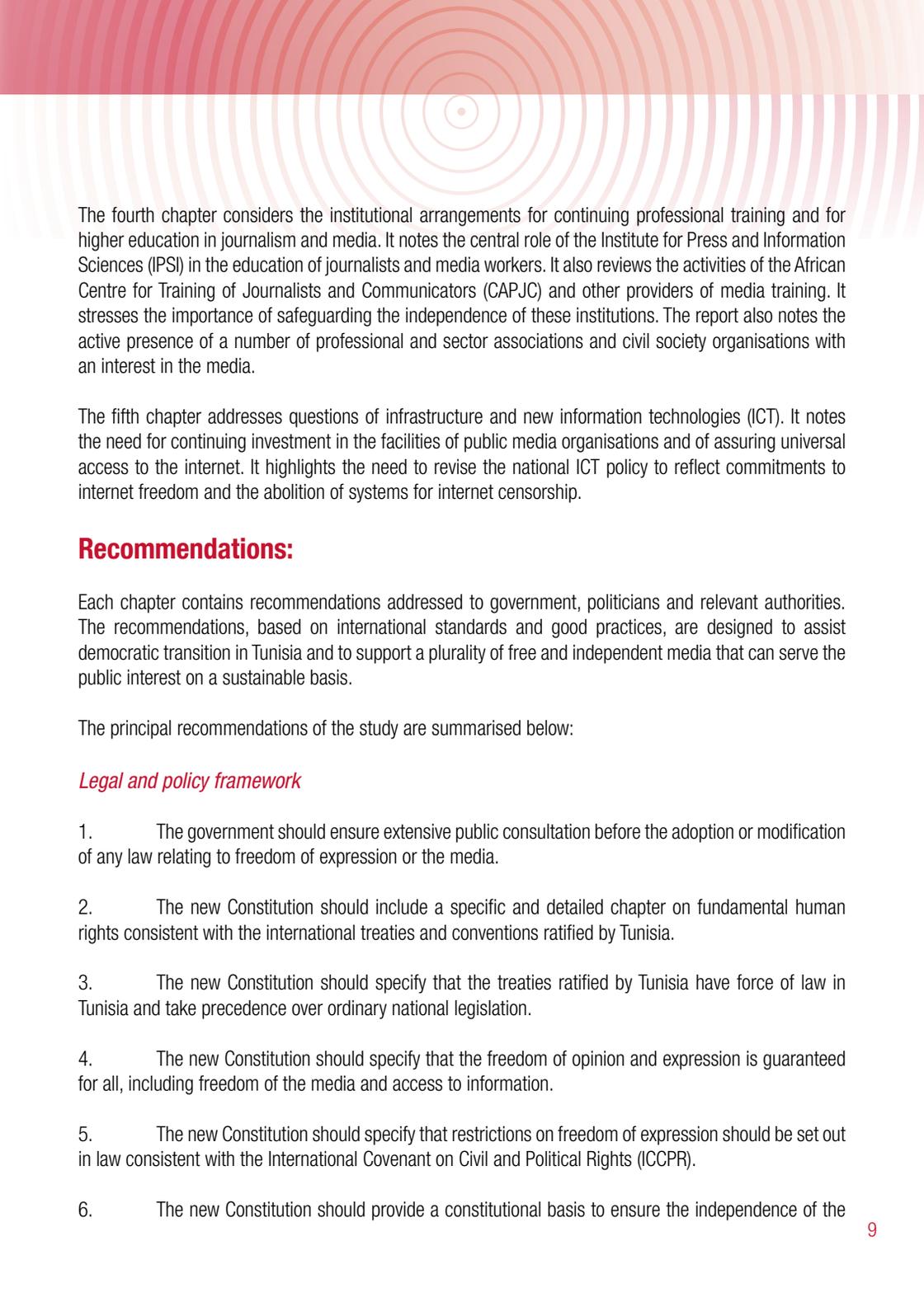
This study is an assessment of media development in Tunisia since the Revolution of 14 January 2011, based on UNESCO's Media Development Indicators (MDIs). The MDIs framework, approved in 2008 by the 26th session of the Intergovernmental Council of the International Programme for the Development of Communication (IPDC), comprises a comprehensive system for assessment of the media landscape.

The report is structured according to the five categories of the indicators.

The first chapter evaluates the constitutional and legal framework for freedom of expression and its support for pluralism and diversity of the media. The report notes the transitional context in Tunisia. It highlights the importance of adopting constitutional guarantees of the right to freedom of expression, access to information and media freedom, consistent with international law. The report draws attention to the lack of transparency and independence in the appointment of heads of public media organisations and the absence of a framework for independent regulation of the audiovisual sector. It notes also that defamation remains a criminal offence in Tunisia.

The second chapter examines the degree of media pluralism and diversity including financing of the media sector and transparency of ownership. It welcomes progress that has been made in authorising new radio and television services but expresses concern that the regulatory framework for private and community broadcasting, set out in Decree Law 2011-116, has not been implemented and that control of broadcasting infrastructure remains centralised. It notes the growth in the number of independent newspapers and the economic challenges they face due to the lack of reform of systems for allocation of public advertising and distribution to newsstands.

The third chapter reviews the performance of the media as a platform for democratic debate. It finds that the majority of Tunisians are satisfied with the performance of the media but there has been a lack of structural reform of the public broadcasters to ensure their independence from the government. It notes also the lack of a system of self-regulation for the media sector and the absence of mechanisms for handling complaints from the public. The safety of journalists is a growing concern in the face of attacks on media organisations by religious extremists that have taken place with impunity. The public authorities should take concrete measures to ensure the safety of journalists and media professionals.



The fourth chapter considers the institutional arrangements for continuing professional training and for higher education in journalism and media. It notes the central role of the Institute for Press and Information Sciences (IPSI) in the education of journalists and media workers. It also reviews the activities of the African Centre for Training of Journalists and Communicators (CAPJC) and other providers of media training. It stresses the importance of safeguarding the independence of these institutions. The report also notes the active presence of a number of professional and sector associations and civil society organisations with an interest in the media.

The fifth chapter addresses questions of infrastructure and new information technologies (ICT). It notes the need for continuing investment in the facilities of public media organisations and of assuring universal access to the internet. It highlights the need to revise the national ICT policy to reflect commitments to internet freedom and the abolition of systems for internet censorship.

Recommendations:

Each chapter contains recommendations addressed to government, politicians and relevant authorities. The recommendations, based on international standards and good practices, are designed to assist democratic transition in Tunisia and to support a plurality of free and independent media that can serve the public interest on a sustainable basis.

The principal recommendations of the study are summarised below:

Legal and policy framework

1. The government should ensure extensive public consultation before the adoption or modification of any law relating to freedom of expression or the media.
2. The new Constitution should include a specific and detailed chapter on fundamental human rights consistent with the international treaties and conventions ratified by Tunisia.
3. The new Constitution should specify that the treaties ratified by Tunisia have force of law in Tunisia and take precedence over ordinary national legislation.
4. The new Constitution should specify that the freedom of opinion and expression is guaranteed for all, including freedom of the media and access to information.
5. The new Constitution should specify that restrictions on freedom of expression should be set out in law consistent with the International Covenant on Civil and Political Rights (ICCPR).
6. The new Constitution should provide a constitutional basis to ensure the independence of the

regulatory body for broadcasting.

7. The new Constitution should define strict limits on the declaration of a state of emergency as well as strict limits on the restriction of rights during a state of emergency.

8. The right of access to information should be made the subject of a law consistent with international standards and with much wider scope than a simple right to access administrative documents.

9. The right of access to information should be ensured by an independent body such as an information commissioner who can assess appeals against decisions.

10. The appointment of the directors of the public media should be done through an open and transparent process, based on merit and independent of government.

Regulatory system for broadcasting

11. The regulation of broadcasting should be the exclusive responsibility of an independent body as provided in Decree Law 2011-116.

12. The process for selection and allocation of broadcasting licences should be defined in law.

Defamation laws and other legal restrictions on journalists

13. The definition of professional journalists contained in Decree Law 2011-115 should be broadened to include all persons who practice journalism on a regular basis.

14. The penalties of imprisonment contained in Decree Law 2011-115 should be removed.

15. Defamation should be a civil offence only and the provisions for defamation contained in the Penal Code should be abolished.

Censorship

16. The Tunisian Internet Agency should have a status independent of all government interference.

Media concentration

17. Measures to prevent concentration within and between different media sectors should be strengthened and transparency of ownership should be ensured.

A diverse mix of public, private and community media

18. The system for regulation of the broadcasting landscape should have as its principal objective the promotion of a diverse mix of public, private and community media.
19. The system for regulation of the media should be transparent and based on clear and fair rules.
20. Measures should be adopted to ensure the active promotion of the development of community media.

Licensing and spectrum allocation

21. The monopoly of the National Broadcasting Office (ONT) in the establishment and maintenance of transmission networks for broadcast programmes should be abolished.
22. The planning and allocation of frequencies assigned to broadcasting in the national frequency plan should be under the control of the independent regulatory body for broadcasting.
23. There should be a public consultation on the development of the FM radio band involving the stakeholders and supported by an independent technical study.
24. There should be a public consultation on the development plan for digital terrestrial television (DTT) involving the stakeholders and supported by an independent technical study.

Taxation and business regulation

25. Modifications should be introduced to the Code for the Promotion of Investment to include measures for the promotion of the development of the audio-visual media.
26. Broadcast licensing fees for non-commercial and community radio and television services should be reduced.
27. There should be a support fund for radio established, in co-operation with all concerned parties, to assist regional and community radios.

Advertising

28. The system of state aid to the press should be evaluated in a scientific manner with a view to the adoption of objective, transparent and fair criteria for allocation, and having particular regard to public advertising.

29. Scientific and reliable mechanisms should be put in place to measure press circulation and broadcast media audiences.

Media reflects diversity of society

30. The media should be encouraged to reflect ethnic, cultural and political diversity and to ensure access for all including the most marginalised.

31. Measures should be taken to promote equal representation of women at all levels of the media including in management and governing boards.

Public service broadcasting model

32. The public service objectives of the public media should be defined and guaranteed in law.

33. The legal framework of the public broadcaster organisations should be revised to ensure that they operate in the public interest, without editorial interference of the government or of political or economic interests.

34. The governing boards of the public broadcasting organisations should be appointed through an open and transparent process set out in law and designed to ensure a diversity of interests, opinions and expertise, independent of political or economic interests.

35. The President-Directors General (PDG) of the public broadcasting organisations should be selected by an independent body based on merit and following an open, transparent and fair process.

36. The public media should adopt a Code of Conduct that sets out their ethical principals based on criteria of quality, professionalism, pluralism, independence and respect for human rights.

Media self-regulation

37. Professionals working in the press and electronic publishing should be encouraged to put in place a system of self-regulation consistent with international norms.

Requirements for fairness and impartiality

38. The independent regulator for broadcasting, provided for by Decree Law 2011-116, should be tasked with responsibility to produce a Broadcasting Code of Conduct to ensure respect for fairness and impartiality.

Level of public trust and confidence in the media

39. Interactive mechanisms of mediation between media companies and the public should be established with the responsibility of receiving and handling complaints and grievances of readers, listeners and viewers.

Safety of journalists

40. Public authorities should establish training and procedures to ensure the safety of journalists, media workers and media organisations against all forms of threat, harassment and physical assault.

41. Measures outlined in the collective agreement for journalists should be implemented in order to protect their social and economic interests.

Availability of professional media training

42. The independence of CAPJC should be guaranteed and safeguarded against all forms of political interference.

43. The technical and logistical equipment of CAPJC should be improved in order to provide professionals with better training conditions and to support their skills development.

44. The legal status of CAPJC should be changed to a non-administrative public organisation in order to give it the flexibility necessary to strengthen its management and to further develop its competences.

45. CAPJC should establish regional training offices with the objective of facilitating access by professionals to training sessions and to avoid centralisation.

Availability of academic courses in media practice

46. The independence of IPSI should be guaranteed and safeguarded against all forms of political interference.

47. The technical and logistical equipment of IPSI should be improved in order to provide students with better learning conditions and to facilitate their integration into the labour market.

48. Media managers should be encouraged to undertake training in new management methods, change management and good governance.

Presence of trade unions and professional organisations

49. The SNJT, as the most representative trade union for journalists, should be recognised as a legitimate partner for negotiation of the professional and social interests of journalists.

Press, broadcasting and ICT penetration

50. The national ICT strategy should be reviewed to reflect commitments to freedom of the internet.

Introduction

On 17 December 2010, Mohamed Bouazizi, 26 years old, set fire to himself outside the offices of the governorate of Sidi Bouzid, a deprived region in the centre of Tunisia. His action was taken in response to harassment by the local police who had prevented him from working as a street seller - the sole means of survival for himself and his family. The desperate act of this young man, driven by humiliation and anguish, became a powerful symbol of discontent that sparked the Tunisian Revolution and subsequently engulfed the Arab world and beyond.

At the time of Bouazizi's action, no Tunisian State media dared criticize the autocratic regime of Zine El Abidine Ben Ali, who had ruled the country since 1987. Opposition newspapers were marginalized, books were censored, critical websites were systematically blocked by a centralized system of internet filtering and the freedom of association was strictly limited. Demonstrations against the regime were isolated and quickly suppressed. For over twenty years, the regime had made censorship a system of governance, establishing complex and ingenious mechanisms to lock down the space for media and information and to control, with an iron fist, all means of communication, public and private.

The demonstrations that followed in Sidi Bouzid were ignored by the Tunisian State media, but quickly became a focal point for the expression of a broader frustration - to denounce the high rate of unemployment, rising food prices, economic marginalization of the interior of the country and the corruption of the ruling family. Reports spread quickly through social networks, mobile communications and word of mouth. News of clashes between protesters and police were taken up by the international media, notably the satellite channel, Al Jazeera, which began transmitting images and videos posted on Facebook and YouTube by friends of Bouazizi and by citizen journalists¹.

On 28 December 2010, aware of the growing threat to his regime, Ben Ali was shown on State television in hospital at the bedside of the young street vendor from Sidi Bouzid. The same day, Ben Ali issued a statement through the State media, expressing his regret at what had taken place, criticizing the international media coverage and describing the protesters as a minority of agitators and extremists². Meanwhile, protests had reached Tunis. Across the country, Tunisians had overcome their fear of the regime and taken to the streets, defying the crackdown, to demand respect for civil liberties and social justice.

After the death of Bouazizi, who succumbed to his injuries on 4 January 2011, the protests gained new momentum, coalescing around a single slogan - "Dégage!" - addressed to Ben Ali and the ruling party, the Democratic Constitutional Rally (RCD). On 14 January 2011, Ben Ali and a few members of his immediate family fled the country, marking the end of one of the most repressive regimes in the Arab world and triggering a series of regional events that gave rise to the Arab Spring.

.....
¹ Aljazeera.com, 20 décembre 2010, Riots reported in Tunisian city; Images posted on social-network sites show police intervening to halt disturbances ignored by national media

² Le Monde, 28 décembre 2010, Ben Ali regrette les troubles en Tunisie et accuse les médias étrangers

Tunisia is now engaged in a process of reform and democratic transition. The Constituent Assembly elected on 23 October 2011 set up a transitional government and is working to draft a new Constitution. Legislative elections for a new parliament are scheduled for 2013. It is widely recognized that the media have a central role to play in the transition to democracy and the strengthening of political rights and civil liberties.

This study, based on the Media Development Indicators (MDIs) of UNESCO, examines progress that has been made in media development in Tunisia since the Revolution of 14 January 2011. The MDIs provide a comprehensive framework for analyzing strengths and weaknesses of the current media environment in Tunisia, drawing on a proven methodology that is based on international standards and good practice. The purpose of this study is to support the democratic transition in Tunisia and to contribute to the development of free, independent and pluralist media.

Media in Tunisia

Under Ben Ali, the printed press was dominated by pro-government publications, especially newspapers owned by the State, such as *La Presse* and *Essahafa*, and the organs of the RCD, *Le Renouveau* and *El Horria*. These newspapers benefitted from State advertising revenue and a very effective distribution network. Opposition newspapers, such as *Al Maoukif* and *Mouwatinoun*, were marginalised and almost invisible, deprived of advertising revenue, hidden in the newspaper kiosks, and relying only on their activists for distribution³.

Public radio and television were the voice of the regime which controlled two television channels (TV7 and Tunisie 21), four national radios (Radio Nationale, Radio Tunis Chaîne Internationale, Radio Jeunes and Radio Culture) and five regional radios (Monastir, Sfax, Le Kef, Gafsa and Tataouine).

Two private television channels were authorised to broadcast via satellite (Hannibal TV and Nessma TV) and five private radios were authorised on the FM band (Radio Mosaïque, Radio Jawhara, Shems FM, Express FM and Radio Zitouna). All of these media were close to the regime and lacked any editorial independence. Among the private radios only Radio Zitouna, with a religious mission, had the benefit of national coverage. To be informed about what was happening in their country Tunisians were obliged to turn to the satellite channels such as *Al Jazeera* and *Al Arabiya*, and to the internet, even though it was strictly censored.

After the fall of Ben Ali, the traditional media, public and private, print and broadcasting, rapidly sought to align themselves with public opinion, carrying expressions of the popular will and leading to the disappearance of most of the red lines and taboos. Web sites which had been censored started to become gradually available as the system of filters was removed. The two national public television channels were renamed *Wataniya 1* and *Wataniya 2* (National 1 and National 2). The President-Directors General (PDGs) of the two public broadcasting organisations, television and radio, were replaced and programming began

.....

to air a variety of viewpoints. The private broadcasters Shems FM and Radio Zitouna were brought under State control following the seizure of assets of the former ruling family and their associates. Other private broadcasters rapidly switched their allegiance becoming passionate advocates of the Revolution to the extent of being described by some as “super-revolutionaries”, demonstrating their unreserved support for the Revolution in the same manner as they had previously for the old regime ⁴.

Since 14 January 2011, Tunisia has adopted a constitutional way forward under an interim civilian government. The President of the Chamber of Deputies, Fouad Mebazaa, was named interim President on January 15, 2011, and remained in office until 13 December 2011. Mohammed Ghannouchi, prime minister under Ben Ali, resigned on 27 February 2011 and was replaced by Beji Caïd Essebsi, who led a technocratic administration and prepared the way for elections to the National Constituent Assembly (ANC). Political leadership was provided by the “High Authority for Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition” (HIROR), created on 15 March 2011 and comprising representatives of political parties, civil society organisations and the trade union movement ⁵. HIROR was dissolved on 13 October 2011, 10 days before elections for the ANC.

On 23 October 2011, elections to the ANC produced a majority of the vote for the Islamist party, Ennahdha, which proceeded to form a coalition government with the Congress for the Republic (CPR) and the Democratic Forum for Work and Freedom (FDTL). The main powers of the State are divided between the three political parties, with Moncef Marzouki (CPR) as interim President, Hamadi Jebali (Ennahdha) as Prime Minister, and Mustapha Ben Jaafar (FDTL) as President of the ANC. This coalition is known as the “Troika”. The ANC is mainly responsible for drafting a new constitution, but it also has legislative power and control over government action.

One of the first decisions taken by the post-Ben Ali government was announced, on 19 February 2011, as a general amnesty for those convicted under repressive laws used against the political opposition, including the 1975 Press Code ⁶. On 2 March 2011, the government announced the establishment of the National Authority for Reform of Information and Communication (INRIC) to engage in reform of the media landscape, in accordance with international norms and standards. Dozens of new newspapers were launched in 2011. New radio and television stations have been authorised following a call for proposals conducted by INRIC.

During the period between 14 January 2011 and the election of the ANC, it was HIROR which effectively exercised legislative power, providing a political forum for national unity. HIROR created a sub-committee of experts on information and culture who developed the only laws passed since the change of regime and

.....

4 IFEX-TMG (2011) L'oppression a laissé de profondes cicatrices dans les médias tunisiens : Évaluation des exigences critiques pour la liberté d'expression dans la transition démocratique en Tunisie

5 La HIROR est née officiellement le 15 mars 2011 par la fusion du Conseil de défense de la révolution et de la Commission supérieure de la réforme politique

6 Il convient de noter que le Décret-loi 2011-1 du 19 février 2011, portant amnistie, ne s'étend pas aux violations qui concernent la diffamation et l'injure envers les particuliers

relating to the information and communication sector, specifically: Decree Law 2011-41 of 26 May 2011 on the right of access to administrative documents held by public bodies, as amended by Decree Law 2011-54 of 11 June 2011; Decree Law 2011-115 of 2 November 2011 on freedom of the press, printing and publishing; and Decree Law 2011-116 of 2 November 2011 on freedom of broadcasting and the creation of an Independent High Authority for Audiovisual Communication (HAICA). The last two legislative texts were developed by HIROR, in close consultation with INRIC.

At the time of writing this report, only Decree Law 2011-41 is in full force, according to a Circular of Application dated 5 May 2012. Decree Law 2011-115 is awaiting the appointment of an independent commission that is responsible for assigning the national card for professional journalists. Decree Law 2011-116 is awaiting the appointment of members of the HAICA without which the provisions of this Decree Law can not be applied. These two last texts, though already published in the Official Journal on 4 November 2011, are being reviewed by a committee of the ANC.

Since the elections of 23 October 2011, progress on media reform has slowed down and became more hesitant. Signs of regression in terms of freedom of expression have emerged. The heads of the public press, radio and television have been replaced without public consultation⁷. On 15 February 2012, Nasreddine Ben Saida, editor of the daily *Attounissia*, became the first journalist to be jailed since the fall of Ben Ali. He was accused of “endangering morality and disturbing public order”. Two bloggers were sentenced, on 28 March 2012, to seven years in prison for publishing cartoons deemed offensive to Islam. Violent attacks against the media and journalists have been recorded on several occasions.

During this transition period, attention to the legacy of the past has been a major concern for the media. This study proposes, in the light of analysis of the current media situation, a series of recommendations for the future. It should be noted, however, that practices of the past have left deep scars on the media landscape and on the profession of journalism⁸. Remedies for the future must take into account the particular difficulties inherent in building a democracy on the ruins of a despotic regime. Under the regime of Ben Ali, censorship, self-censorship, harassment and attacks against journalists and independent media were systematic. Ethical violations and recruitment on the basis of allegiance rather than competence were other symptoms of an institutionalized sclerosis⁹. The risk of a return to such practices remains high as well noted by Larbi Chouika in his recent retrospective of 55 years of propaganda in Tunisia¹⁰. The same concerns were expressed by several international observers such as IFEX Tunisia Monitoring Group in its latest report¹¹.

7 Reporters sans frontières, 3 July 2012, L'opacité des nominations à la tête des médias publics met en cause leur indépendance

8 IFEX-TMG (2011) op cit.

9 Correspondence from Rachida Ennaifer, 1 August 2012

10 Chouika, L. (2012) De l'indépendance à nos jours: crises et embellies, article in *La Presse* special issue May 2012, Médias en Tunisie: Libres mais jusqu'à quand?

11 IFEX TMG (2012) Du printemps à l'hiver? Des réalisations précaires et des défis exceptionnels pour les défenseurs tunisiens de la liberté d'expression - Rapport du Group d'observation de la Tunisie de l'IFEX

Economic and social context

The media situation is not independent of the economic and political context. Tunisia is a country of 10.7 million inhabitants, of which more than 20 percent live in Greater Tunis, which includes four governorates. Political power has been highly centralized since independence in 1956 until the Revolution of 2011. Wealth is concentrated in Greater Tunis, in major coastal urban centres such as Sfax and Sousse, and in the tourist centres such as Bizerte and Cap Bon. The inland provinces are isolated by distance, poor infrastructure, neglect, and lack of public and private investment ¹².

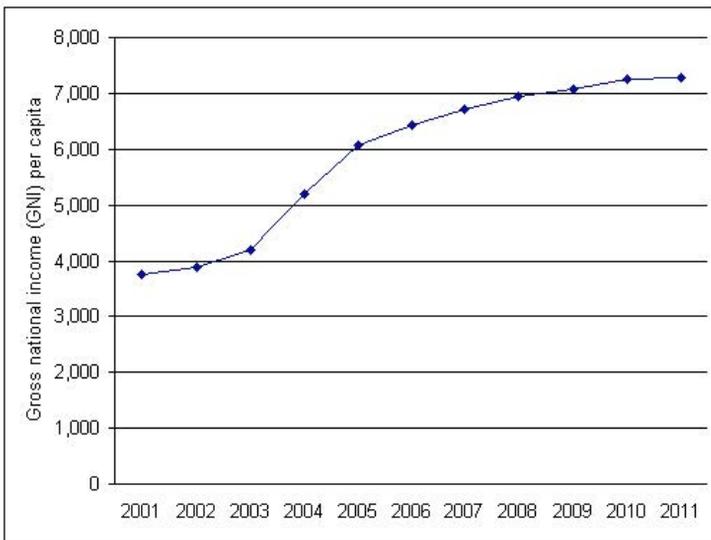


Figure 1. Gross national income per capita 2001-2011

Source: UNDP Human Development Reports - Tunisia

Over the past ten years, Tunisia has achieved strong economic growth, with 94 percent increase in GNI between 2001 and 2011, but the high level of corruption in the Ben Ali regime¹³ has deprived Tunisians of a real chance to improve their economic situation and unemployment has remained at high levels. Growth has slowed with onset of the global economic recession and recovery has been delayed by the impact of the Revolution, especially in mining, manufacturing and tourism. According to the National Institute of Statistics, the unemployment rate reached 18.1 per cent in the first quarter of 2012, against 18.9 per cent for the fourth quarter of 2011¹⁴.

.....

12 Brisson, Z. and Krontiris, K. (2012) Tunisia: from revolutions to institutions (World Bank/InfoDev)

13 See, for example, Transparency International (2011) Corruption Perceptions Index 2011

14 Institut national de la statistique (2012) Note emploi premier trimestre 2012

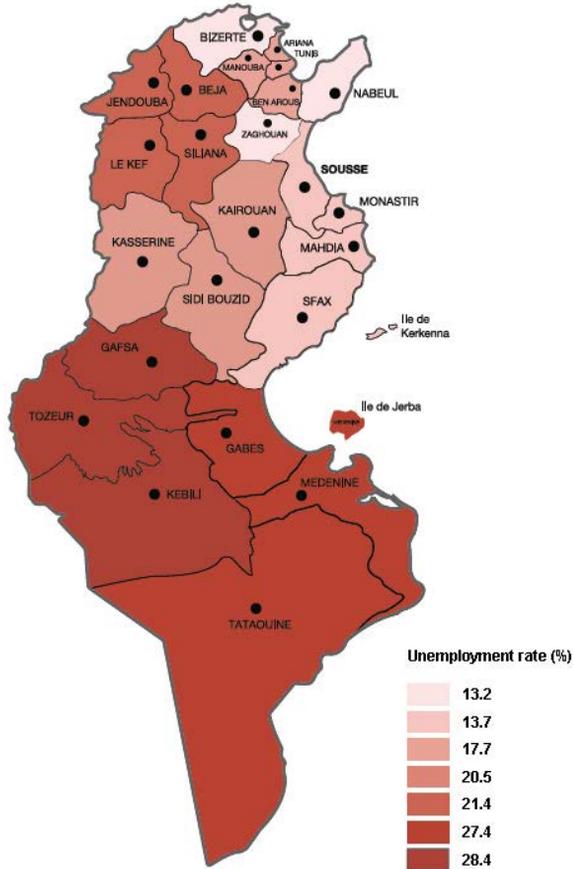


Figure 2. Employment levels by governorate in the first quarter of 2012
 Source: National Institute for Statistics ¹⁵

For most Tunisians, economic security is the most important concern. According to a survey of the Pew Research Center, conducted between 19 March and 20 April 2012, the majority of Tunisians consider freedom of expression and the media as a priority, but not to the same extent as economic security, justice and free elections.

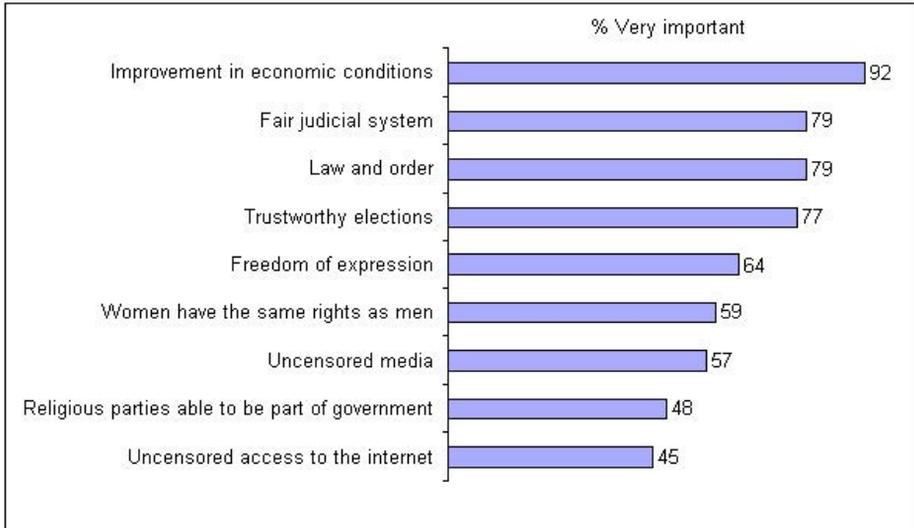


Figure 3. Priorities for the future of Tunisia

Source: Pew Research Center ¹⁶

Methodology

There is no doubt that 14 January 2011 marked an awakening of the right to freedom of opinion and expression in Tunisia. At the same time, this unprecedented situation has created new challenges that are the subject of this study. This report consists of five chapters corresponding to the main categories of the UNESCO Media Development Indicators. It includes observations, analysis and recommendations. The methodology responds to three distinct requirements: to collect reliable data that corresponds to all of the indicators; to ensure the engagement and confidence of national stakeholders; and to respect the constraints of cost, time and resources.

Data collection was based on a thorough review of primary and secondary texts as well as on interviews with a wide range of stakeholders, including media professionals, trade unions and professional organizations, policy makers and government agencies, and civil society activists. The format of the interviews was flexible, varying according to the theme and responsibilities of the interviewee. The investigation builds on existing and available data sources.

.....

To ensure the extensive participation of stakeholders, focus group discussions were organised to discuss the different indicators and a national validation conference was held in Tunis, 11 July 2011, to review and comment on the preliminary report and to discuss issues raised during the consultation.

Acknowledgements

We wish to thank all those who participated in the consultation process, including the interviewees as well as participants in the workshops and the validation conference. We are grateful for the assistance of professional associations, civil society organizations and public bodies, who provided us with important information and advice, and in particular the National Commission for Cooperation with UNESCO, the National Agency for Frequencies (ANF), the Tunisian Association of Newspaper Managers, the Tunisian Association of Democratic Women, the Tunisian Internet Agency, the Tunisian Association of Young Journalists, the Center of Arab Women for Training and Research (CAWTAR), the African Centre for Training of Journalists and Communicators, the Tunis Centre for Press Freedom, the National Council for Freedom in Tunisia, the Institute of Press and Information Sciences, the Independent High Authority for Elections, the Tunisian League for Human Rights, the Ministry of Foreign Affairs, the Ministry of Information and Communication Technologies, the Observatory for the Freedom of Press, Publishing and Creation, the National Broadcasting Office, Tunisian Radio, the National Union of Tunisian Journalists, the Union of Independent and Partisan Press, the Tunisian Union of Media Directors, the Tunisian Free Radio Union, Tunis Africa Press Agency and Tunisian Television. We appreciate the contributions of those who submitted written comments, including Emmanuel Bouterin, Hamida El Bour, Larbi Chouika, Rachida Ennaifer, Hichem Guerfali, Abdelkrim Hizaoui, Mohsen Ghomam Malek, Saorla McCabe, Toby Mendel, Mustapha Masmoudi and Kristina Stockwood. Finally, we wish to thank Kamel Labidi and his colleagues at INRIC for their extensive support throughout the investigation.



Category 1

**A system of regulation
conducive to freedom of
expression, pluralism and
diversity of the media**



KEY INDICATORS

A. Legal and policy framework

- 1.1 Freedom of expression is guaranteed in law and respected in practice
- 1.2 The right to information is guaranteed in law and respected in practice
- 1.3 Editorial independence is guaranteed in law and respected in practice
- 1.4 Journalists' right to protect their sources is guaranteed in law and respected in practice
- 1.5 The public and civil society organisations (CSOs) participate in shaping public policy towards the media

B. Regulatory system for broadcasting

- 1.6 Independence of the regulatory system is guaranteed by law and respected in practice
- 1.7 Regulatory system works to ensure media pluralism and freedom of expression and information

C. Defamation laws and other legal restrictions on journalists

- 1.8 The state does not place unwarranted legal restrictions on the media
- 1.9 Defamation laws impose the narrowest restrictions necessary to protect the reputation of individuals
- 1.10 Other restrictions upon freedom of expression, whether based on national security, hate speech, privacy, contempt of court laws and obscenity should be clear and narrowly defined in law and justifiable as necessary in a democratic society, in accordance with international law

D. Censorship

- 1.11 The media is not subject to prior censorship as a matter of both law and practice
- 1.12 The state does not seek to block or filter Internet content deemed sensitive or detrimental

Category 1 : A system of regulation conducive to freedom of expression, pluralism and diversity of the media

A. Legal and policy framework

Indicator 1.1

Freedom of expression is guaranteed in law and respected in practice

In the first free elections since the country's independence in 1956, Tunisians elected a National Constituent Assembly (ANC). The 217 Members of the Assembly are tasked with drafting of a new Constitution which should provide a definitive break with the oppressive system of the past. They are also responsible for exercise of legislative power and control of government action.

The ANC includes six constitutional committees, including the Committee on "Rights and freedoms" charged, among others, with the portfolio for information and the press; eight legislative committees, including the Committee on "Rights, freedoms and external relations"; and four special committees¹⁷. At the date of this report, a draft had been published, collating the work in progress of the constitutional committees from 13 February 2012 to 10 August 2012¹⁸.

It is not within the scope of this report to provide a detailed analysis of an unofficial draft of the Constitution, but it is to be welcomed that the draft includes a substantial chapter on rights and freedoms, which guarantees freedom of opinion, expression, information and creation. The text of these guarantees could be strengthened along the lines that have been recommended by UNESCO¹⁹, Article 19²⁰, Amnesty International²¹ and other international experts, and consistent with international law.

In particular, it should be specified that the right to freedom of expression includes the right to seek, receive and impart information and ideas, regardless of the means of transmission, including the print and broadcast media, creative works, books, arts, academic research and electronic and oral communication. It should also be noted that the limits of freedom of expression and access to information must be clear, precise, prescribed by law and strictly necessary for the protection of the rights and reputation of others or protection of national security, public order, health or morals.

.....

17 See, Observatoire de l'Assemblée nationale constituante, <http://marsad.tn>
18 Projet de brouillon de la constitution, 14 August 2012, published at <http://marsad.tn>
19 Recommendations constitutionnelles à l'Assemblée constituante de la Mission internationale soutenue par l'UNESCO, Juillet 2012
20 Article 19 (2012) Tunisie : La protection de la liberté d'expression et la liberté de l'information dans la nouvelle constitution: Document d'orientation (Mars 2012)
21 Amnesty International (2011) Public statement on human rights and the Tunisian constitution

The draft of Article II-16 of the Constitution states: “The State guarantees freedom of conscience and of worship, and criminalizes violations of the sacred.” Clearly, this provision does not comply with international law. According to Article 20 of the International Covenant on Civil and Political Rights, it is forbidden to deliberately advocate “national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”²², but criticism of religion or belief is protected as long as it does not constitute incitement.

The drafting of a new Constitution is a historic opportunity for Tunisia to be at the forefront of the Arab world in the transition to democracy and to effectively guarantee the rights and freedoms of its people. The new Constitution should retain a substantial chapter on human rights consistent with international law and affirming that treaties ratified by Tunisia have force of law, notably the specific provisions to ensure the freedom of expression, including freedom of the media and access to information.

Other constitutional provisions could assist to strengthen the guarantees of the right to freedom of expression such as a confirmation of the independence of media regulatory bodies and the protection of journalists’ sources.

It is a paradox of the political transition in Tunisia that, after years of repression, the practical exercise of freedom of expression has commenced while the minimal constitutional guarantees of freedom of expression provided for in the 1959 Constitution, have been suspended. In addition, the country exists, since the fall of the former regime, under a state of emergency that provides extensive powers to the public authorities and potential restrictions to freedom of expression. On the other hand, journalists convicted under the repressive laws of the old regime have benefitted from an amnesty as a result of one of the first decisions of the government after the revolution of 14 January 2011²³. Currently under review by the ANC, the new Press Code (Decree Law 2011-115)²⁴, contains in its Article 1, a strong and quasi-constitutional declaration on freedom of expression and media :

The right to freedom of expression is guaranteed and is exercised in accordance with the provisions of the International Covenant on Civil and Political Rights, other related treaties ratified by the Republic of Tunisia and the provisions of this Decree Law.

The right to freedom of expression includes the free flow of ideas, opinions and information of all kinds, their publication, reception and exchange.

Freedom of expression may be restricted only as prescribed by law and provided that:

- *It is for the purpose of pursuing a legitimate interest consisting in assurance of the rights and dignity of others, the preservation of public order or the protection of defence and national security.*
- *And it is necessary and proportionate to measures to be adopted in a democratic society, without constituting substantial risk of harm to the right to freedom of expression and information*²⁵.

.....
22 International Covenant on Civil and Political Rights, Article 20

23 Décret-loi 2011-1 du 19 février 2011, portant amnistie

24 For independent commentaries on Decree Law 2011-115 see: Article 19 (2011) République Tunisienne: Décret-Loi Relatif à La Liberté de la Presse, De l’impression de l’édition; and Reporters sans frontières (2011) Analyse du décret-loi n°2011-115 du 2 novembre 2011, relatif à la liberté de la presse, de l’impression et de l’édition

25 Décret-loi 2011-115 du 2 novembre 2011 relatif à la liberté de la presse, de l’impression et de l’édition (translated for this study from the unofficial translation in INFRIC (2012) Rapport général - version française)

A similarly clear formulation should be included in the new Constitution.

Pending approval of a new Constitution, it is important to note the transitional context. The Constitution of the Republic of Tunisia from 1959 states: “The freedoms of opinion, expression, press, publication, assembly and association are guaranteed and exercised under the conditions defined by law”²⁶. This statement provides only a weak guarantee which, as history has shown, can easily be withdrawn, by invoking oppressive laws such as the Press Code of 1975 and the Penal Code to pursue legal cases against the media and journalists. The 1959 Constitution places no restrictions on the adoption of laws that contain conditions restricting freedom of expression.

In the preamble to the Decree Law 2011-14, adopted on 23 March 2011, it is stated that, as a result of the permanent vacancy of the presidency on January 14, 2011, “the full application of the provisions of the Constitution have become impossible”²⁷. Decree Law 2011-14 provides transitional arrangements for the exercise of public authority, including the enactment of laws by presidential decree. It does not retain the guarantees of rights and freedoms.

After the elections to the National Constituent Assembly on 23 October 2011, a new “petite Constitution” was adopted, replacing the Decree Law 2011-14 and confirming that the Constituent Assembly “approves the previous suspension of the Constitution of 1 June 1959 and decides to bring to an end its application from the enactment of this constitutional law”²⁸.

The “petite Constitution” provides for the organization of government, including the functions and operation of the Constituent Assembly itself, pending the drafting of a new Constitution. In the preamble, Members of the Assembly solemnly declare their intention to realise the principles and objectives of the Revolution, to be faithful to the memory of the martyrs and to the sacrifices of Tunisians across the generations, to complete the democratic constitutional process, and to guarantee human rights and freedoms.

This statement is far from a legal guarantee of rights and freedoms. It is further weakened by the fact that the country is still under a state of emergency. One of the last acts of Ben Ali, before fleeing the country on 14 January 2011, was the proclamation of a state of emergency, which was confirmed the next day by a decree of the interim president, Fouad Mebazaa²⁹.

The law governing the state of emergency dates back to the Bourguiba era. This law was introduced for the first time in 1978 . It was invoked from 26 January to 24 February 1978 ³⁰ following a general strike by the UGTT and again from 3 January to 25 January 1984 during the bread riots ³¹ .

.....
26 Constitution de la République Tunisienne 1959, Article 8

27 Décret-loi n° 2011-14 du 23 mars 2011, portant organisation provisoire des pouvoirs publics

28 Loi constitutive n° 2011-6 du 16 décembre 2011, relative à l'organisation provisoire des pouvoirs publics, Article 27 (traduction non-officielle)

29 Décret n° 2011-184 du 15 janvier 2011, instaurant l'état d'urgence sur tout le territoire de la République

30 Décret n°78-50 du 26 janvier 1978, réglementant l'état d'urgence

31 TunisiaLive.net, 5 May 2012, State of Emergency Extended in Tunisia Until Late July 2012

The emergency law allows the government to ban strikes, demonstrations and public meetings, to restrict freedom of movement and to impose curfews and other restrictions. It explicitly entitles the Minister of the Interior to “take all measures to ensure the control of the press and publications of all kinds as well as radio broadcasts, film screenings and theatrical performances”³² throughout the territory where the state of emergency is in force.

Since 15 January 2011 the Emergency Law has been in effect throughout the country. It has been extended eight times—three times by Fouad Mebazaa³³ and five times by his successor, President Moncef Marzouki³⁴. The last time it was extended until 30 September 2012. Among the reasons given for maintaining the state of emergency are the continuance of social protests and demonstrations, tribal conflicts particularly in the south of the country, and the control of arms trafficking and smuggling³⁵. In a statement accompanying the most recent extension, it was pointed out that the state of emergency should not affect the personal and public freedoms of Tunisians³⁶. But the emergency law itself lacks such protections, and its prolonged use has caused concern among civil libertarians who question its justification³⁷.

During a state of emergency, international law provides for very limited restrictions on human rights and only “in time of public emergency which threatens the life of the nation”³⁸. These restrictions should be “to the extent strictly required by the exigencies of the situation” and not be inconsistent with other obligations of Tunisia under international law.

While the new Constitution remains a “work in progress”, Tunisia maintains important international obligations as a party to international treaties relating to the right to freedom of opinion and expression, including the ICCPR, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. One of the significant decisions at the start of the interim government was the approval, on 19 February 2011, of accession to the Optional Protocol to the ICCPR³⁹, which allows individuals to complain to the Human Rights Committee of the United Nations in the case of a violation of the Covenant by a signatory State.

On the same date the accession of Tunisia was confirmed to the Statute of the International Criminal

.....

32 Décret n° 78-50, Article 8, op. cit.

33 Décret n° 2011-185 du 14 février 2011 prorogeant l'état d'urgence sur tout le territoire de la République; Décret n° 2011-999 du 21 juillet 2011 prorogeant l'état d'urgence sur tout le territoire de la République; Décret n° 2011-4244 du 28 novembre 2011 proclamant l'état d'urgence sur tout le territoire

34 Arrêté républicain n° 2011-3 du 30 Décembre 2011 proclamant l'extension d'état d'urgence sur tout le territoire; Arrêté républicain n° 2012-62 du 30 Mars 2012, instaurant l'état d'urgence sur tout le territoire de la République; Arrêté républicain n° 76 du 28 Avril 2012, prorogeant l'état d'urgence sur tout le territoire de la République; Arrêté républicain n° 2012-142 du 31 Juillet 2012 instaurant l'état d'urgence sur tout le territoire de la République

35 Agence France Presse (AFP), 5 April 2012, Tunisie: état d'urgence prolongé à fin juillet 2012

36 TunisiaLive.net, 5 May 2012, State of Emergency Extended in Tunisia Until Late July 2012

37 FIDH (2011) La Tunisie post Ben Ali face aux démons du passé

38 International Covenant on Civil and Political Rights, Article 4

39 Décret-loi n° 2011-3 du 19 février 2011, portant approbation de l'adhésion de la République Tunisienne au protocole facultatif se rapportant au pacte international relatif aux droits civils et politiques

Court⁴⁰, the International Convention for the Protection of All Persons against Enforced Disappearance⁴¹ and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴². These decisions, widely welcomed, indicate the serious intention of the interim government to strengthen Tunisia's compliance, in law and in practice, to international standards on human rights.

Tunisia has also removed most of its reservations with regard to the international standards on women's rights contained in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴³. However, it retains the "General Declaration", Tunisia having said it will not take any legislative or regulatory decision that is inconsistent with the first Article of the Tunisian Constitution. This statement leaves doubt about the full commitment of the Tunisian State to the rights enshrined in CEDAW and leaves open the question of the primacy of Islamic Sharia versus CEDAW. The text of the new Constitution should be consistent with the terms of CEDAW in order that Tunisia's "General Declaration" can also be removed.

In addition to these international obligations, Tunisia is a State party to the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child. Tunisia has signed but has not ratified the Arab Charter on Human Rights.

Indicator 1.2

The right to information is guaranteed in law and respected in practice

The 1959 Constitution of the Republic of Tunisia contains no guarantee of the right to information, referring only to freedom of opinion and expression. In practice, the Ben Ali era was characterized by a culture of secrecy in public affairs. The drafting of the new Constitution offers government agencies the opportunity to lay the foundations for a new culture of openness, through the inclusion of an explicit guarantee of the right to information at the constitutional level.

An important step forward in the right to information has been made with adoption of Decree Law 2011-41 on access to administrative documents⁴⁴. This law, the first of its kind in Tunisia, has been further improved by instituting a more limited regime of exceptions and the partial removal of a two year grace period for implementation⁴⁵.

None the less, this Decree Law is far from providing a right to information⁴⁶. It will be important to establish

.....

40 Décret-loi n° 2011-4 du 19 février 2011, portant approbation de l'adhésion de la République Tunisienne au statut de Rome de la cour pénale internationale et à l'accord sur les privilèges et immunités de la cour

41 Décret-loi n° 2011-2 du 19 février 2011, portant approbation de la convention internationale pour la protection de toutes les personnes contre les disparitions forcées

42 Décret-loi n° 2011-5 du 19 février 2011, portant approbation de l'adhésion de la République Tunisienne au protocole facultatif se rapportant à la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

43 ATFD (2011) La levée des réserves à la convention CEDAW mais non au maintien de la déclaration générale.

44 Décret-loi No. 2011-41 du 26 mai 2011 concernant l'accès aux documents administratifs détenus ou produits par les autorités publiques

45 Décret-loi No. 2011-54 du 11 juin 2011 modifiant le décret-loi no. 2011-41 du 26 mai 2011

46 See, for example, the analysis of Article 19 (2011) - Commentaires sur le Décret relatif à l'accès aux documents administratifs des autorités publiques de Tunisie

a constitutional basis for the right to information and a new organic law should be adopted to articulate this right comprehensively. It is notable, in particular, that Decree Law concerns «administrative documents» rather than “information” held by public authorities. Persons may be limited in the exercise of their right to information if they are unable to specify in which document the information is contained or if the information they seek is not preserved in print.

The law provides for the right to refuse publication of a document on the basis of the legal protection of personal data, the violation of literary and artistic property rights, a court order or in the case where the document has been provided to the public body on a confidential basis⁴⁷. It also provides, in Article 17, for other exceptions where the public body may refuse to disclose a document especially when it could be harmful :

- *to relations between States or international organizations,*
- *to the formation or development of effective public policy*
- *to security or national defence,*
- *to detection, prevention or investigation of crime,*
- *to the arrest and trial in court of accused persons,*
- *to the administration of justice, respect for the rules of fairness and transparency procedures for public procurement,*
- *to the process of deliberation, exchange of advice and opinions, examination or testing, or legitimate commercial or financial interests of the public body concerned*⁴⁸.

It is important that the exceptions provided for in Article 17 are not to be applied in the case where documents are required by law to be in the public domain, where publication of the document is necessary to expose and prosecute serious human rights violations or war crimes, or where the public interest in publication outweighs the interests protected for reasons of health, safety, environmental protection, risk of crime or corruption or of mismanagement in the public sector⁴⁹.

International law sets out a three part test for exceptions to the right of access to information: that the exception serves a legitimate interest, that it is required by law and that the publication of the information would be prejudicial to a legitimate interest to an extent that exceeds the damage caused if it is not published. The Decree Law is generally in line with international standards. However, an uncooperative public authority may still find justification in the list of exceptions to prevent a person from exercising their right to information.

Decree Law 2011-41 does not provide for an independent administrative authority, such as an Information Commissioner, who could offer a means of redress in the case of retention by a public body of information

.....

47 Décret-loi No. 2011-41 du 26 mai 2011, op. cit., Article 16

48 Ibid. Article 17

49 Décret-loi No. 2011-41 du 26 mai 2011, op. cit., Article 18

that is legitimately requested.

While the adoption of this law has been welcomed, its implementation has yet to be tested. A Circular of Application of the law was published on 5 May 2012⁵⁰, which describes the legal and procedural aspects for public bodies, including proactive publication and how to respond to public inquiries. The government announced, on 17 August 2012, the online launch of a single portal for information published by ministries and institutions reporting to the office of the Prime Minister on different sectors⁵¹. It requires public authorities to implement training and awareness programs and to proactively comply with the disclosure requirements before May 2013.

It should be noted that Tunisia has ratified, in 2008, the Convention against Corruption, of which Article 10 has been interpreted as carrying an obligation for States parties to enact legislation guaranteeing the right to information.

Tunisia has also signalled its intention to join the Open Government Partnership (OAM), launched in 2011⁵². To become a member of the OGP, participating countries must adopt a high-level declaration on open government, provide a national action plan developed in a public consultation, and commit to an independent study on the progress to be made in the future.

Also to be noted is the existence of certain Tunisian civil society groups, such as OpenGov, which are playing a role in promoting access to information and monitoring progress towards open government⁵³.

Indicator 1.3

Editorial independence is guaranteed in law and respected in practice

During the Ben Ali era, government influence on the editorial content of public and private media was systematic. State-owned press and broadcasting organisations were deployed as instruments of propaganda. Reporting was strictly controlled and hagiographic coverage of the president was a daily requirement. Appointments to the leadership of Tunis Africa Press Agency (TAP), Tunisian Television and the New Company for News Printing and Publishing (SNIPE) were made on a partisan basis. The managers were chosen for being active members of the Constitutional Democratic Rally (RCD) and Ben Ali partisans, and were directly accountable to the government through the Ministry of Communication.

The private media were only marginally more independent. Private newspapers which had significant readership also supported the government line in exchange for access to the newspaper distribution system and public advertising revenues, controlled centrally by the Tunisian External Communication Agency (ATCE). Private radio stations and licences for radio and television broadcasting were awarded to

.....

50 Circulaire No 25 du 5 mai 2012 relative à l'accès aux documents administratifs des organismes publics

51 See <http://www.data.gov.tn>

52 [Opengov.tn](http://opengov.tn), 27 April 2012, La Tunisie va rejoindre à l'OpenGov Partnership

53 See <http://www.opengov.tn/fr>

owners and managers considered favourable to the government. Members of the ruling family and their close associates were among the shareholders of the private media. News reporting relied heavily on TAP, controlled by the government.

Only a handful of opposition newspapers exercised some degree of editorial independence, in return for which they had no access to public advertising. They had a barely visible presence in the newsstands and were subject to a system of prior censorship whose effect would be the prevention or delay of publication⁵⁴.

Since 14 January 2011, the conditions of editorial independence have fundamentally changed. The central system of censorship disappeared. There is no longer any special treatment for the government in the media. Critical reporting of the government is common in the press and radio. But, in the absence of legal and structural reform to the process of appointment of leaders of the public press and broadcasting organisations, there remain concerns about the risk of government interference.

Since the Revolution, the public press, radio and television, under their new leadership, have all sought, with some success, to develop a public service model. During the period which immediately followed the Revolution, the journalists themselves, inside the public media, formed editorial committees to defend the independence of news and information which they have since sought to transform into permanent structures.

Since the formation of a new government after the elections of 23 October 2011, the leaders of public press, radio and television organisations have been replaced again, by decree of the Prime Minister. The appointments were made without public consultation and have created considerable tension between management and the editorial teams⁵⁵.

More recently, on 21 August, a new Director General was appointed to head Dar Assabah a newspaper company that came under State control after the confiscation of the assets of the Ben Ali family. The new Director General, Lotfi Touati, has a controversial background, which has also provoked protests from journalists⁵⁶.

There is consequently a pressing need now to ensure the editorial independence of the public media through legal and structural reform.

The editorial independence of private media is better protected, but these media also face a series of economic and political pressures, including from non-state actors. In effect most newspapers are under the control of certain political or business lobbies and their priority is, therefore, to not produce editorial

.....
54 IFEX TMG (2010) *Derrière la façade : Comment un système judiciaire politisé et des sanctions administratives minent les droits de la personne en Tunisie*, Rapport de la 7e mission du TMG de l'IFEX en Tunisie

55 Tunisia-live.net, 21 May 2012, Journalists of Tunisian public radio denounce "interference" in editorial line

56 Tunisie Numérique, 1 September 2012, Lotfi Touati, nouveau directeur de Dar Assabah avoue avoir travaillé 31 ans au ministère de l'intérieur

content that acts against these interests. Private broadcasters are also to a large extent, politically aligned, as has been demonstrated by media monitoring conducted during the election campaign⁵⁷. Religious extremist groups pose a major challenge for the editorial independence of the media. They notably provoked a public campaign against the editorial decision of Nessma TV to broadcast the Franco-Iranian animated film, Persepolis. They also prevented the university scholar, Dr. Iqbal Gharbi, from taking her position at the head of the religious radio service, Zitouna⁵⁸. The case of Nessma TV has led to a controversial court action, described in more detail in Section 1.10 which concerns legal restrictions on freedom of expression. Direct physical attacks and threats are discussed in more detail in Section 3.13 below on the safety of journalists.

Indicator 1.4

Journalists' right to protect their sources is guaranteed in law and respected in practice

The adoption of Decree Law 2011-115 of 2 November 2011⁵⁹, mentioned in Section 1.1 above, marks a definitive break with Ben Ali era provisions on press freedom through the repeal of the 1975 Press Code which had no provision on journalists' right to protect their sources.

Article 11 of Decree Law 2011-115, provides a legal guarantee for the protection of sources in the following terms:

*In the exercise of his work, the journalist's sources, as well as the sources of any person who contributes to the production of journalistic material, are protected.*⁶⁰

Article 11 further stipulates as being a violation of the confidentiality of sources: "all enquiries, all acts of research and investigation, all interceptions of correspondence or communications that are conducted by the public authorities against a journalist in order to discover his sources or against any person maintaining a particular relationship with him". The provisions of Article 11 have, however, significant limitations.

First, the definition of a professional journalist is quite restrictive. In accordance with Article 7 of Decree Law 2011-115, a professional journalist must hold an advanced degree and must be engaged on a regular basis and gain their main income from journalistic work. The 2002 Declaration of Principles on Freedom of Expression in Africa indicates that the right to express oneself through the media by practising journalism should not be subject to undue legal restrictions. In effect the right to protection of sources should be applied more generally to the practice of journalism.⁶¹

.....

57 See, in particular, ATFD (2012) Monitoring des médias en période transitoire: Tunisie août/décembre 2011, Rapport final; et ISIE (2011) Rapport de l'Unité de monitoring des médias, Quatrième rapport - La campagne électorale (1-23 octobre 2011)

58 Tunisia-live.net, 31 January 2012, Tunisian Islamic radio station in chaos as gov't appointed Director rejected

59 Décret-loi 2011-115 du 2 novembre 2011, op. cit.

60 Ibid. Article 11

61 CADHP (2002) Déclaration de principes sur la liberté d'expression en Afrique

Second, Article 11 provides for certain exceptions to the right to the protection of sources. It gives power to the judicial authorities to require that sources be revealed “for a compelling reason of State security or national defence”⁶². It provides also for an exception in the case of offences where there is serious risk of physical harm to others or where disclosure is necessary to prevent the commission of such offences or if the information can not be obtained by other means. In this case, disclosure can only be authorized by a competent court of law.

Of these exceptions, the first concerning “State security or national defence” is too broad and should be deleted. The second is more precise and is also legitimate. However, in order to comply with international standards, including the Declaration of Principles on Freedom of Expression in Africa in 2002, mentioned above, it should be balanced by a public interest test to show that the benefit in disclosure exceeds the harm to freedom of expression.

Indicator 1.5

The public and civil society organisations (CSOs) participate in shaping public policy towards the media

Since the Revolution of 14 January 2011, there has been broad public participation in the process of media policy reform. The most important decision in this regard was the creation, on 2 March 2011, of the Independent National Authority for Reform of Information and Communication (INRIC)⁶³ as an independent advisory body tasked with developing proposals to reform the information and communication sector, in accordance with international standards on freedom of expression.

INRIC was headed by Kamel Labidi, a respected freelance journalist and human rights defender, who spent many years in exile. The members of INRIC and their key staff were independent journalists, media trade unionists, academics and lawyers.

The mission of INRIC was to evaluate the state of the media sector, to make proposals for its reform, including the drafting of legislation, to consult stakeholders and the general public on the results of its evaluation and proposals, and to advise on the allocation of licences for the establishment of new radio and television channels. During its first year of work, INRIC organized 29 workshops and consultation events, numerous meetings and field visits, which led to the assessment of 74 applications for new radio stations and 33 applications for new television channels, and contributed to the drafting of new laws on access to information and the regulation of press and broadcasting. It published a General Report on its activities and on the state of media and communications, accompanied by recommendations for media reform⁶⁴.

62 Décret-loi 2011-115 du 2 novembre 2011, op. cit.

63 Décret-loi No 2011-10 du 2 mars 2011, portant création d'une instance nationale indépendante pour la réforme de l'information et de la communication

64 INRIC (2012) Rapport Général de l'Instance Nationale pour la Réforme de l'Information et de la Communication, April 2012

INRIC drew on the experiences of other democratic countries and engaged in debate with a wide range of civil society organizations active in the field of media and communication. In contributing to new legislation

- the Decree Laws 2011-41, 2011-115 and 2011-116 - it worked in collaboration with the Sub-Committee on the Media of the High Authority for the Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition (HIROR).

On 4 July 2012, INRIC announced its decision to end its activities due to the government's refusal to consider its recommendations and to apply the new Decree Laws 2011-115 and 2011-116 concerning the press and broadcasting. In a statement published on the occasion, INRIC stressed that, in the absence of concrete action reflecting a genuine political will to lay the foundations for a free and independent media confirming with international standards, it refused to continue to serve as a fig leaf while the situation of the sector is in regression⁶⁵.

Several Tunisian civil society organisations are also actively engaged in the public debate and have called for policy reform and media development. These notably include human rights organisations that were persecuted by the Ben Ali regime such as the Tunisian League for Human Rights (LTHD), the Tunis Centre for Press Freedom (CTLP) and the Tunisian Association of Democratic Women (ATDF).

They also include professional organizations such as the National Union of Tunisian Journalists (SNJT), the Tunisian General Labour Union (UGTT), the Tunisian Union of Free Radios (STRL) and the Tunisian Association of Newspaper Managers (ATDJ); and newly formed groups such as the Tunisian Union of Media Directors (STDM), the Union of Independent and Partisan Press (SPIP) and the Tunisian Association of Young Journalists (ATJJ).

A Tunisian Coalition of NGOs⁶⁶ was formed to oversee a media monitoring project in the period before and after the elections of 23 October 2011. In its final report, the Coalition presented a series of recommendations for media reform⁶⁷.

In April 2012, the government proposed a “national consultation” on the legal framework for the media starting with a one-day workshop to which various organisations were invited. The event was boycotted by INRIC and SNJT who condemned the improvisation and lack of prior consultation, the date of the event having coincided with the launch of the General Report of INRIC⁶⁸. In an interview with Tunisian Television, the Prime Minister, Hamadi Jebali, admitted that the consultation was not well prepared⁶⁹.

65 Communiqué de l'INRIC publié le 4 juillet 2012

66 Including ATFD, LTDH, SNJT, CNLT and AFTURD, with the support of the organisation International Media Support (IMS)

67 ATFD (2012) op. cit.

68 Nawaat.org, 27 April 2012, Démarrage très controversé de la consultation nationale sur les médias

69 La Presse, 1 June 2012, La charia, c'est la démocratie...

It is important that the government maintains a commitment to broad consultation with media stakeholders before adopting or amending laws that impact on freedom of expression and the media. This consultation should be conducted on the basis of clear objectives and a well-defined agenda. There should be a reasonable time for responses from all stakeholders.

B. Regulatory system for broadcasting

Indicator 1.6

Independence of the regulatory system is guaranteed by law and respected in practice

Tunisia has no independent regulatory system for broadcasting. The legal framework for broadcasting consists of a combination of repressive laws that have not been modified, including the Penal Code, and State agencies that have not yet been reformed, including the National Agency for Frequencies (ANF) and the National Broadcasting Office (ONT). Media provisions in the 2011 Electoral Code provide no effective enforcement mechanism and the various realities on the ground reflect an incomplete process of transition with only partial opening of the broadcasting landscape.

There is an urgent need to develop a comprehensive framework for the regulation of radio and television, as well as a specialized body for broadcasting regulation whose independence should be guaranteed by law.

Historically, the public media were under direct government control. Similarly, the authorization of private broadcasters was a government decision, and the Prime Minister was responsible for signing letters of agreement. The private media had no editorial independence whether in their reporting or in their news coverage. The strict limits, set in the agreements between the government and the director of a radio or private television channel, are described in more detail in Section 1.11 below.

Since the Revolution of 14 January 2011, the public broadcasters have demonstrated greater editorial freedom. The establishment internally of elected editorial committees has contributed to this change. However, there is no legal or regulatory framework to ensure the independence of public broadcasting. The closure of the Ministry of Communications has removed the tool of daily interference from the era of former President, Ben Ali. But the government retains the right to appoint heads of the public radio and television organisations, and the present government has done so without any public consultation and without reference to INRIC, the consultative body set up to advise government on media and communication policy.

Private radio and television services authorized before the Revolution of 14 January 2011 operate on the basis of Conventions and Regulations that have not been altered but are no longer effectively

implemented. Several new radio and television stations authorised in 2011 have begun to broadcast without any signed agreement other than a general letter of intent from the Office of the Prime Minister. Radio stations that broadcast on the FM band require assignment of a frequency by ANF and are required to use the transmission services of ONT, but some have chosen to use their own means of transmission. Private television channels are able to acquire a satellite channel by commercial negotiation with satellite operators, principally Nilesat, and some have begun broadcasting without obtaining legal authorisation to do so.

Among other responsibilities, INRIC contributed to the drafting, by the HIROR Sub-Committee on the Media, of Decree Law 2011-116⁷⁰ which provides for the creation of an independent regulator for broadcasting, the Independent High Authority for Audiovisual Communication (HAICA). Decree Law 2011-116 was approved on 2 November 2011 and published in the Official Journal of the Tunisian Republic, on 4 November 2011. According to Article 52, this law comes into force on the date of its publication. However, members of the HAICA, whose composition is provided for in Article 7, are to be appointed by decree. Since the law was passed in November 2011, no decree has been issued to appoint its members. The HAICA has therefore not been established. The current regulatory gap is a result of the reluctance of the new government to implement Decree Law 2011-116, or to propose its replacement by another mechanism. It is to be noted, in this context, that the three political parties that form the current coalition government, the Troika, each published election manifestos in which they affirmed their commitment to the creation of an independent regulatory body for broadcasting⁷¹.

Decree Law 2011-116 has been the subject of several independent legal comments⁷². It is not the intention of this report to provide a comprehensive analysis of the law, but to address some key provisions and some significant points of conflict.

The first point is that Decree Law 2011-116 provides for a regulatory body, the HAICA whose independence is expressly guaranteed. Its nine members are appointed for a term of six years which is non-renewable. No member is to be removed except by a decision of the Board of HAICA in strictly limited circumstances. Its members are to be nominated by various bodies and are required to act independently and not to take, during their mandate, any political position, elected post, public function or professional activity which might limit their independence other than lecturing and occasional scientific research. The members of HAICA are not allowed to have a financial interest or financial participation in any media or communication business. The law also provides that the HAICA should have budgetary autonomy and should be financed from a diversity of sources. These provisions on the independence of broadcasting regulation are consistent with international law and best practices.

.....
70 Décret-loi No 2011-116 du 2 novembre 2011, relatif à la liberté de la communication audiovisuelle et portant création d'une Haute Autorité Indépendante de la Communication Audiovisuelle

71 Ennahdha (2011) Le programme du mouvement Ennahdha; Congrès pour la République (2011) Un plan pour la Tunisie; and Ettakatol (2011) Programme Ettakatol en 100 propositions

72 For example, Article 19 (2011) Tunisie : Projet de Décret sur la Liberté de la Communication Audiovisuelle et la Création d'une Haute Autorité Indépendante de la Communication Audiovisuelle; Janssen, M. and Furnémont J-F (2012). Analyse du Décret-loi 2011-116 pour le Groupe des partenaires techniques et financiers en appui au secteur des médias tunisiens; and Info Juridiques (2012) No 130/131, Mars 2012 pp 14-19

The second point concerns the powers and responsibilities of HAICA. These are defined very broadly. They include all the important features required for regulation of independent radio and television, but they could benefit from being more explicit. For example, Article 16 gives HAICA the power to assess proposals for authorisation to broadcast and to fix the terms of the Agreements and Regulations, but it does not specify the selection criteria or the conditions necessary for grant of licences.

The third point, and most controversial, concerns the system for evaluation of complaints and sanctions contained in Chapter 3. It is this point that has been the focus of attention by opponents of Decree Law 2011-116 and particularly the broadcasters who obtained their licences under Ben Ali. The list of sanctions is extensive, from a simple warning to the closure of the service and withdrawal of the authorization, in addition to the power to impose substantial fines. Although it is desirable to have a graduated system of sanctions, there is a risk that HAICA could take decisions which abuse its powers of sanction and undermine the freedom of expression. The circumstances in which a broadcaster may be liable to a fine, suspension or closure must be strictly defined by law, be necessary to prevent recurrence of the offense, be proportionate to the nature of the offense and be compatible with the legitimate limits on freedom of expression in international law.

In summary, the Decree Law 2011-116 is far from perfect, but its implementation would represent a remarkable breakthrough in the Tunisian context. It would allow the normalisation of the status of existing broadcasters and provide an essential mechanism for new broadcasting services. Its implementation would also create the first independent regulatory body for broadcasting in the Arab world. Any amendments to the broadcasting law should only be made after a public consultation and should continue to guarantee the independence of the broadcasting regulator.

Indicator 1.7

Regulatory system works to ensure media pluralism and freedom of expression and information

As noted in Section 1.6 above, Decree Law 2011-116 to establish an independent regulatory system for broadcasting has not yet been implemented. Article 15 of Decree Law 2011-116 explicitly provides that the regulator, HAICA, is officially responsible for regulating broadcasting in accordance with the principles of strengthening democracy, human rights and rule of law, strengthening and protection of freedom of expression, enhancing the quality and diversity of the broadcasting sector - public, private and community – guaranteeing pluralism and diversity with respect to the public's right to information, and preventing concentration of ownership.

The Decree Law grants the HAICA power⁷³ to evaluate applications for licensing of broadcasting services, to order the National Agency for Frequencies (ANF) to make available to them frequencies reserved

.....

for broadcasting and to conclude agreements and licensing conditions with providers of broadcasting services. It also gives the HAICA the power to enforce compliance with the rules and regulations governing the broadcasting sector, and provides for a system of sanctions. Taken together, these provisions of Decree Law 2011-116 provide the regulator with the legitimacy to oversee the development of the broadcasting industry in a way that should ensure fairness, pluralism and respect for freedom of opinion and expression. As noted in Section 1.6 above, certain aspects of the regulatory framework would benefit from being specified in law, including selection criteria and licence conditions. The law does not explicitly mention the role HAICA should play in relation to public service broadcasting, but it does provide that HAICA must “give its consent with regard to the appointment of the President-Directors General of the public broadcasting organisations”⁷⁴. HAICA has the responsibility to set the rules and conditions for the content of programs during election campaigns, and to establish rules regarding the content of advertising, but not the explicit responsibility to develop and oversee a comprehensive code for the broadcasting of audiovisual content.

In order to further develop the conditions for freedom of expression, pluralism and diversity of the media in Tunisia, the establishment of an independent regulatory body should be complemented by a general law on the regulation of broadcasting. This would give a necessary legislative form to other important aspects of the regulatory framework, including the selection and allocation of licences and the main elements of a general code on broadcasting content as well as the codification of the relationship between HAICA and the public broadcasting organisations.

C. Defamation laws and other legal restrictions on journalists

Indicator 1.8

The state does not place unwarranted legal restrictions on the media

The old Press Code⁷⁵ contained no provision relating to the status of journalists other than one which states that at least half of the editorial team must be journalists who hold the national press card and a diploma in journalism and information sciences, issued by a Tunisian institution of higher education or a recognised equivalent diploma in the same specialism (Article 15 bis).

Under the new legislation⁷⁶, access to the status of “professional journalist” is conditional upon obtaining a university qualification (at least at degree level) in any discipline. This remains an unjustified restriction by international standards.

Article 7 of this Decree Law provides :

*“A professional journalist, under the provisions of this Decree Law, is considered to be any person who
.....*

74 Décret-loi No 2011-116 du 2 novembre 2011, op. cit., Article 19

75 Loi n°1975-32 du 28 avril 1975

76 Décret-loi n°115 du 2 novembre 2011, relatif à la liberté de presse, d’impression et d’édition

holds at least a degree or equivalent qualification, and whose primary and regular activity consists in gathering and publishing news, information, opinions and ideas, and conveying them to the public, in one or more daily newspapers or periodicals, through news agencies or in one or more broadcasting or electronic communications enterprises, to the extent it forms their primary income”.

All correspondents in Tunisia or abroad are also considered to be a professional journalist provided they meet the conditions specified in the preceding paragraph. The status of professional journalist is also subject to obtaining a press card.

According to Article 8 of Decree Law 2011-115, the card is assigned by an independent commission composed of seven members who include a Counsellor to the Administrative Court, three members nominated by the organization that is most representative of journalists, one member representing directors of public media organisations, one member proposed by the organization for the managers of Tunisian newspapers and one member proposed by the most representative organization of the directors of private broadcasting organisations.

The president and the members of the committee are appointed by decree for a period of four years, non-renewable. Although the Decree Law 2011-115 has been published in the Official Journal, 4 November 2011, the decree of appointment has not yet been published, which means the committee does not yet exist. An interim committee set up by the government, and composed of representatives of the National Union of Tunisian Journalists (4), the Tunisian Association of Newspapers Managers (1), and the Tunisian Union of Media Directors (1) and chaired by a government representative, met, exceptionally, in June 2012, to approve press cards.

Coverage of ordinary events that take place in the country is not subject, most of the time, to any regulation. For coverage of some official or special activities - for example, international events or visits by foreign heads of state - the authorities require the professional card or demand the use of a badge.

Indicator 1.9

Defamation laws impose the narrowest restrictions necessary to protect the reputation of individuals

Under the old regime, the defamation laws were applied selectively. The manipulation of justice by the executive power meant that victims of defamation were mainly political opponents, human rights activists and independent journalists. In the old 1975 Press Code⁷⁷, defamation and insult were subject to custodial sentences, ranging from 16 days to 5 years depending on the persons targeted⁷⁸. The defamation laws were never enforced against mercenaries of the regime, who for years acted with total impunity against their colleagues, opponents of the regime and human rights activists.

77 Loi N°75-32 du 28 avril 1975, op. cit.
78 Ibid. Articles 56 et 57

In the new Press Code (Decree Law 2011-115⁷⁹), custodial sentences have been removed for defamation and insult. A fine of one to two thousand dinars is provided for defamation, regardless of the person concerned and a fine of five hundred to one thousand dinars is provided for in case of injury regardless of the targeted person⁸⁰. Unlike the old Code, if the charge or allegation relates to public affairs, the burden of proof of defamation now rests with the complainant and not the reporter⁸¹.

However, offences relating to defamation and slander remain a part of the Penal Code⁸² and are still subject to custodial sentences. Article 245 states: «There is defamation in any public claim or allegation of a fact that is prejudicial to the honour or reputation of a person or body corporate». These defamation provisions of the Penal Code give wide powers of discretion for interpretation by the judge. It is not limited to defamation which consists of a factual error, but may also include truthful statements.

Under international law, defamation should not be treated as a criminal act, but as a civil matter. Nevertheless, in several proceedings in Tunisia, the Penal Code is still invoked. In a press conference on June 1, 2012, the Minister of Human Rights and Transitional Justice announced the refusal of Tunisia to decriminalize defamation⁸³.

Since the fall of the regime, a wind of freedom has blown across the press, broadcasting, and above all, the electronic media. Some critical comments, especially on social networks, are so virulent that they sometimes border on defamation. However, few politicians have taken action against defamation. The majority of the political class show tolerance, forgiveness or just impotence, saying media blunders are inevitable in this period of transition to democracy. There have, nevertheless, been several defamation actions.

The first of the post-revolutionary era was filed in April 2011 by star journalist of the Qatari channel Al Jazeera, M'Hamed Krichen, against Jeridi Abdelaziz, director of two tabloids Al Hadath and Kol Ennas⁸⁴ for facts dating back to the period before the fall of the Ben Ali regime. On 13 June 2011, Jeridi was sentenced to four months in prison and a fine of ten thousand dinars⁸⁵. In February 2012, the Court of Appeal quashed the sentence and reduced the fine to five thousand dinars.

Behind many court cases, in reality, lurk political interests. For example, on 9 November 2011, Hajlaoui Nabil, an agronomist of Sidi Bouzid, was sentenced to two months in prison for criticizing the Tunisian military⁸⁶.

.....

79 Décret-loi n°115 du 2 novembre 2011 relatif à la liberté de presse, d'impression et d'édition
80 Ibid. Articles 56 et 57
81 Ibid. Article 59
82 Code pénal (2005) Edition mise à jour et revue par le conseil national chargé de la réorganisation des dispositions législatives et réglementaires en vigueur (Conformément à la loi n° 2005-46 du 6 juin 2005), Articles 246-248
83 La Presse, 2 June 2012, Les recommandations ajournées feront l'objet d'un dialogue national
84 Kapitalis, 16 April 2011, M'hamed Krichen poursuit en justice Abdelaziz Jeridi
85 Kapitalis, 13 June 2011, Le journaliste Abdelaziz Jeridi condamné à 4 mois de prison
86 Globalvoices.org, 10 November 2011, Tunisie : Deux mois de prison pour avoir critiqué l'armée

On 26 March 2012, Samir Feriani, a police officer, was sentenced to a fine of two hundred dinars in criminal proceedings concerning the charge of making accusations without proof against a state official, and a tiny amount in civil proceedings brought by the Department of the Interior to restore its reputation⁸⁷. Samir Feriani was arrested after writing a letter to the Minister of the Interior, alleging serious abuses. Indeed, he accused officials of the Ministry of Interior of destroying incriminating records⁸⁸.

On 7 June 2012, the Minister of Youth and Sports, Tarak Dhiab, lost a libel action against the Arabic newspaper Al Akhbar Joumhouria⁸⁹. But the most disturbing case of this kind, described in more detail in Section 1.12 below, was filed against two young internet surfers in the town of Mahdia, each sentenced to seven and a half years in prison for moral offence, defamation and disturbing public order, after publication of a text deemed blasphemous to the Prophet Muhammad on their Facebook page⁹⁰.

Decree Law 2011-115 contains some new provisions that are likely to limit the discretion of the judge in cases involving journalists. It provides in Article 12 that “Opinions expressed by a journalist and news that he is obliged to publish can not constitute a reason to attack his dignity or his physical or moral integrity” It is more precise in Article 13: “The journalist can not be held liable for an opinion, idea or report published in accordance with the practices and ethics of the profession; he can only be held responsible for these functions where it is established he has violated the provisions of this Decree Law”. It should be noted this provision goes beyond international law, creating a situation where journalists seem to be “above the law”.

The definition of defamation is set out in Article 55 which states:

Defamation is considered to be any claim or allegation, made in a public manner, of something inaccurate, the nature of which is likely to be prejudicial to the honour and reputation of a particular person, and where it results in direct and personal harm to that person. The publication of this claim or allegation, directly or by way of republication, is punishable even if it is in the form of implication where the identification of that person, having not been explicitly named, is made possible by the content of the remarks made in speeches, appeals, threats, writings, print, posters, drawings, advertisements or electronic publications.

This definition is more precise than in the Criminal Code, but it could be improved further if defamation was limited to statements judged to be untrue.

The laws on defamation provide a means of redress. According to Article 57 of Decree Law 2011-115, extracts of the judgment made in a defamation process should be published in the issue of the periodical

.....
87 Business News, 22 March 2012, Samir Feriani condamné à une amende de 200 dinars
88 Business News, 10 June 2011, Human Rights Watch appelle à la libération de Samir Feriani
89 Kapitalis, 7 June 2012, Tarak Dhiab perd son procès contre Akhbar el Joumhourya
90 La Presse, 25 June 2012, Sept ans de prison confirmés pour des caricatures du Prophète

concerned, following the date of notification of the judgment. Article 248 of the Penal Code provides that “The court may order the insertion in full or by way of extracts of the judgment in one or more newspapers at the cost of the convicted”.

From these two pieces of legislation arise some confusion at the level of definition of concepts and a silence on who is entitled to sue for defamation. Article 58 of Decree Law 2011-115 states, however, that:

The provisions relating to defamation are not applicable to defamation or insult against dead people, except in cases where they amount to a personal attack on the honour or reputation of their heirs. The heirs or spouse may exercise the right of reply, regardless of the intent or otherwise of the author of the defamation to cause harm to their honour or reputation.

In Decree Law 2011-115 and in accordance with international standards of freedom of expression, Article 44 states that the defamation claim can only be brought on an individual basis or by means of an association empowered by its statute to defend human rights, and being duly authorized by the victim to do so.

Decree Law 2011-115 provides in Article 59 that:

Evidence of the purpose of defamation can not be made in the following cases:

a- If the alleged offence relates to the private life of the individual,

b- If the alleged offence relates to an infringement that elapsed due to a pardon or by prescription or by a penalty that includes the collection of duties.

Evidence to the contrary can be presented in the offences of defamation and insult under Articles 55, 56 and 57 of this Code.

Proceedings for defamation are halted if the charge or allegation concerns public affairs and the burden of proof lies, in this case, with the complainant.

If the alleged offence is the object of criminal proceedings on demand of the public prosecutor or following a plea by the accused, the trial proceedings are suspended in the defamation case, pending the determination of criminal proceedings.

The time limit for actions in pursuit of damages caused by defamation in the press was set at three months in the old Press Code. It was extended to six months in Decree Law 2011-115⁹¹.

.....
91 Décret-loi 2011-115 du 2 novembre 2011, op. cit, Article 76

Indicator 1.10

Other restrictions upon freedom of expression, whether based on national security, hate speech, privacy, contempt of court laws and obscenity should be clear and narrowly defined in law and justifiable as necessary in a democratic society, in accordance with international law

The Penal Code contains several provisions relating to offenses that can be committed by the press, other than defamation, slander or libel, which are punishable by imprisonment. These provisions concern “attacks against the external security of the State”⁹², “attacks against the internal security of the State”⁹³, “insults or violence against a public servant or equivalent”⁹⁴ and “moral offence”⁹⁵. The Penal Code contains no provision stating that the offenses committed by the press or by other means can be justified for reasons of public interest as a defence.

The legal formulation of concepts related to these offences is often very vague and open to several interpretations, which gives the judicial authorities wide discretionary powers. Moreover, even if the wording is quite clear and unambiguous, the problem remains of the independence of the judiciary which has been completely undermined under the reign of Ben Ali. This is all without counting on resort to special laws, such as Law 2003-75⁹⁶ relating to support for international efforts in the struggle against terrorism and the prevention of money laundering.

The most visible case was that of the private television channel Nessma TV. On 7 October 2011, a few days before the elections of the National Constituent Assembly, the channel broadcast the Franco-Iranian film *Persepolis* of which one scene, considered blasphemous, provoked violent reactions from Salafists⁹⁷. On 10 October, even though the station manager, Nabil Karoui, had publicly apologized on the air of a regional radio station, 144 lawyers sued on the basis of Articles 44 and 48 of the former Press Code and Articles 226 and 226 bis of the Penal Code which punishes “offences against belief”, “obscene insults” and “attacks on decency and public morality”⁹⁸. The trial opened on 17 November 2011 and has seen many twists and turns. On 3 May 2012, coinciding with World Press Freedom Day, the station manager was convicted on the basis of Articles 226 and 226 bis of the Penal Code, with a fine of 2,400 dinars for “disturbing the public order and breach of morality.” The head of output and the owner of the company that translated the dialogue of the film were, in turn, each sentenced to a fine of 1,200 dinars for disturbing public order.

92 Code Pénal, op. cit. Articles 60 à 62 bis

93 Ibid. Articles 63 à 81

94 Ibid. Articles 125 à 130

95 Ibid. Articles 226 à 240 bis

96 Loi n° 2003-75 du 10 décembre 2003, relative au soutien des efforts internationaux de lutte contre le terrorisme et à la répression du blanchiment d'argent.

97 Libération, 10 October 2011, En Tunisie la diffusion de « Persépolis » énerve les salafistes

98 Réalités, 26 April 2012, Affaire Nessma TV: L'histoire complète

On 15 February 2012, Nasreddine Ben Saida, editor of the daily Attounissia was arrested and imprisoned for “attack on decency and disturbing public order” according to Article 121 ter of the Penal Code, which prohibits “the distribution, the sale, exposure to public view and holding for distribution, sale, exposure for the purpose of propaganda, of pamphlets, newsletters and flyers of foreign origin or otherwise, of the nature to undermine public order or decency”. This arrest came after the publication on the front page of the newspaper Attounissia of a photograph of footballer Sami Khedira with his supermodel wife, Lena Gercke, unclothed⁹⁹. The same photo was published in Tunisia in the international magazine GQ without consequences. The journalist spent eight days in jail before being released following a hunger strike. On 8 March 2012, he was sentenced to a fine of 1,000 dinars. The use of the criminal code in such a case is clearly contrary to international law.

D. Censorship

Indicator 1.11

The media is not subject to prior censorship as a matter of both law and practice

Under the regime of Ben Ali, prior censorship was systematic for all types of media, public and private, with the exception of some opposition newspapers. Guidelines and instructions came directly from the Palace of Carthage, the Tunisian External Communication Agency (ATCE) or the Ministry of Communication. But the chief conductor was Abdelwahab Abdallah, the political adviser to Ben Ali who controlled a network of auxiliaries embedded in the different media.

Censorship not only included sensitive topics such as political trials, the events in Slimane in 2006 or the uprising in the mining area of Gafsa in 2008. Much less sensitive and non-political events, such as natural disasters (floods, fires, train accidents) were taboo subjects.

But prior censorship also took other forms including the refusal to grant permission to publish a newspaper. In effect, according to the old Press Code, to launch a newspaper, it was necessary to file a declaration with the Ministry of Interior and to obtain a receipt (Article 13) which had to be presented to the printer (Article 14). It was therefore impossible to print a newspaper without the receipt of the Ministry of the Interior,

.....
⁹⁹ L'Express, 9 March 2012, Un journaliste condamné en Tunisie pour « atteinte aux bonnes mœurs »

which transformed the declarative regime into a disguised authorization.

The new Press Code (Decree Law 2011-115) deleted this provision and established a real declarative system and without any ambiguity. The competent authority is no longer the Ministry of the Interior but the Ministry of Justice.

Article 18 of the new Press Code states: “Before the initial publication, the editor of the newspaper must file with the President of the territorially competent Court of First Instance a declaration written on stamped paper. A receipt will be given. In case of refusal to issue a receipt, the simple notification of the declaration shall be made by registered letter with notification of delivery which will serve as valid receipt of the declaration”¹⁰⁰.

In addition, there is a disguised monopoly in Tunisia in the form of newspaper distribution, mainly in the region of Greater Tunis where a single network or retailers controls most access to newsstands. This form of distribution, which above all benefits newspapers that served the Ben Ali regime, was maintained after 14 January 2011, to the dismay of the owners of new newspapers that appeared after the fall of the old regime.

The distribution of foreign periodicals in the Tunisian market is controlled by another company, the Tunisian Press Society, SOTUPRESSE. At the beginning of January 2012, the French weeklies *Le Point* and *L'Express* and a special edition of *Nouvel Observateur* were not distributed on newsstands. The issue of *L'Express* contained a representation of the Prophet Muhammad, the first page of the magazine *Le Point* was titled “Questions and Answers on the existence of God” and the special issue of *Nouvel Observateur* included, among others, a reproduction of a scene from the French-Iranian film *Persepolis* in which the heroine, a child, is in dialogue with God. On 3 January 2012, SOTUPRESSE said in a statement that the editors of the two French weeklies had delivered copies to Tunisia, but that SOTUPRESSE decided not to distribute them “in respect for the sacred values of the Islam and the Tunisian people”¹⁰¹.

The owners of broadcast media who obtained broadcasting licenses under the old regime, have signed, with the State, Agreements and Regulations that have very restrictive clauses. These clauses are no longer respected by the media, but they remain in effect.

The “Agreement for the establishment and operation of a television channel”¹⁰² requires the director to “communicate to the Tunisian State, as an obligation, the main features of the annual programming, before the date of 1 December of the preceding calendar year” The director of the channel “also agrees, if notified of inconsistency by the State, to modify its schedule according to the comments raised and return the

.....

100 Décret-loi 2011-115 du 2 novembre 2011, op. cit, Article 18

101 TAP, 3 January 2012, La Sotupresse nie avoir empêché la distribution de deux revues françaises en Tunisie

102 Convention régissant l'établissement et l'exploitation d'une chaîne de télévision, du type signée par les patrons des chaînes de télévision Hannibal TV et Nessma

corrected schedule within fifteen days of the date of notification”.

The director of a channel agrees “not to produce, co-produce and broadcast news programs of a political nature in any form or nature whatsoever and regardless of origin (newspapers and television bulletins, magazines , reports, interviews, reviews, special pages, records, editorials, comments...) as well as debate programmes (talk shows, roundtables, vox pops...). No derogation is permitted without written consent of the Tunisian State”. The Director also agrees “to disseminate the statements and speeches of the President of the Republic, without interruption, as broadcast by public television”.

Article 29 of the Agreement provides that in case of default under the Convention, the Tunisian State will put on notice the owner of the channel with a view to complying with such obligations. The owner of the chain agrees within a period of fifteen days from the date of receipt of such notice to submit, in writing, a programme satisfactory to the Tunisian state in order to remedy the breach indicated. In the case where the owner of the channel does not respond in a timely manner, or if the program does not meet the approval of the Tunisian State, the termination of the Agreement may be notified. In Article 30 of the Agreement, it is stated that «the Tunisian State may at any time, without notice and without incurring any right to compensation, order the termination of the Agreement» in several circumstances including “the production, co-production and broadcasting of informational programmes of a political character, in any form or nature whatsoever and regardless of origin”.

The Agreements and Regulations currently in force do not provide for financial penalties against the Broadcasters. There is also no provision for graduated penalties.

The new Agreements and Regulations¹⁰³ developed in 2011 have not yet entered into force because of the legal vacuum resulting from the non-application of Decree Law 2011-116 on audiovisual communication. Its Article 29 states : “In case of violation of the provisions and obligations imposed by the legislation in force, the regulations, or licence agreements, the President of the HAICA will address a warning to the institution concerned to cease the activities contrary to the law, regulations or licence agreements. The offender must comply with the notice within a period not exceeding fifteen (15) days from the date of receipt of the warning”.

Decree Law 2011-116 provides a degree of graduation of the penalties ranging from warnings to permanent withdrawal of the license, and including temporary withdrawal. It provides, with respect to monetary fines, that “the sanction be proportionate to the seriousness of the offence committed and the benefit the offender could have drawn from the offence and that the sanction not exceed five percent (5%) of the revenue before tax made during the financial year ending in the year preceding that of the offence”.

.....

103 INRIC, 16 March 2012, Projets des cahiers des charges et des conventions relatifs à l’octroi d’une licence de création et d’exploitation des chaînes de radio et de télévision privées

Indicator 1.12

The state does not seek to block or filter Internet content deemed sensitive or detrimental

Officially there does not exist in Tunisia a public body that grants permission to access the Internet. The Tunisian Internet Agency (ATI)¹⁰⁴, established in 1996, and which played, under the reign of Ben Ali, the role of “Internet police” has departed from its original mission. According to the statements of its current PDG, Moez Chakchouk, “We have gone beyond the time when everything was controlled, everything was observed. We decided to open the internet freely. There is no way to return to censorship. Today, no site is blocked, no site is censored”¹⁰⁵.

The Tunisian Internet Agency is a wholesale supplier of internet access in Tunisia. Its mission is to provide Internet Service Providers (ISPs) with access to various internet services and, in particular, it functions as a national “Internet Exchange Point” (IXP) allowing interconnection between ISPs and with the rest of the internet. “For security reasons” ATI only hosts servers of a few public institutions. It exercises no control over private servers and does not even manage the domain names that are under responsibility of ISPs.

Under the old regime, it was the Tunisian Internet Agency (ATI), which controlled and censored websites. Faced with the lockdown on traditional media, Tunisians had no other choice to find out what was happening in their country than to use satellite channels and social networks on the internet, for the most astute knowing the use of proxies. In the annual reports of international human rights NGOs, Tunisia was ranked among the most closed countries in terms of freedom of expression and Ben Ali was among the worst enemies of the internet. Since 14 January 2011, things have somewhat changed, but censorship has not completely disappeared.

The first case dates back to 5 May 2011¹⁰⁶. In pursuit of an order from the judge to the Permanent Military Tribunal of Tunis, five web pages were censored by the ATI. According to the military, these pages disseminated video footage, comments and misleading articles in order to undermine the military institution and its senior executives, to shake the confidence of citizens in relation to the national army and to sow confusion and disorder in the country¹⁰⁷.

On 26 May 2011, the ATI was again plunged into a case of censorship¹⁰⁸. Following a complaint lodged

104 <http://www.ati.tn>

105 Interview with Moez Chakchouk, 23 June 2012.

106 Businessnews.com, 5 May 2011, Le tribunal militaire ordonne la censure de quatre pages sur Facebook

107 For details of the five pages see <http://filtrage.ati.tn/>

108 Businessnews.com, 30 May 2011, L'ATI refuse la censure des sites porno

by three lawyers who had ruled that pornographic sites had a clear danger to children and were not suited to the Muslim values of Tunisia, the Court of First Instance in Tunis decided on 26 May 2011, to close all pornographic websites. The PDG of ATI, Moez Chakchouk, opposed the decision of the Court of First Instance and the subsequent decision of the court of appeal ¹⁰⁹, by taking recourse to the Court of Cassation. He eventually succeeded on 22 February 2012 ¹¹⁰.

On 28 March 2012, the Court of First Instance of Mahdia made a judgment that has created controversy on social networks but is ignored in most mainstream media. Two men, Jabeur Mejri and Ghazi Beji, were each sentenced to seven years and six months in prison and a fine of 1,200 dinars, after the public authorities were alerted to the dissemination by each of the accused of a text considered blasphemous against Islam. They had become subject of a collective complaint filed by residents of the small coastal town of Mahdia on 2 March 2012. The writings they disseminated across the social networks were described by the proceedings as “disturbing to public order”, “transgressing morals” and causing “damage to a third party.” The first has been the subject of a preliminary hearing, while the second is on the run¹¹¹ .

.....
109 Kapitalis, 1 June 2011, L'Ati s'oppose à la censure de l'Internet

110 Tekiano.com, 22 February 2012, Première victoire de l'ATI contre la censure

111 Kapitalis, 8 April 2012, Deux Tunisiens condamnés à 7 ans de prison pour avoir tourné l'Islam en dérision

Recommendations

- The government should ensure extensive public consultation before the adoption or modification of any law relating to freedom of expression or the media.
- The new Constitution should include a specific and detailed chapter on fundamental human rights consistent with the international treaties and conventions ratified by Tunisia.
- The new Constitution should specify that the treaties ratified by Tunisia have force of law in Tunisia and take precedence over ordinary national legislation.
- The new Constitution should specify that the freedom of opinion and expression is guaranteed for all, including freedom of the media and access to information.
- The new Constitution should specify that restrictions on freedom of expression should be set out in law consistent with the International Covenant on Civil and Political Rights (ICCPR).
- The new Constitution should provide a constitutional basis to ensure the independence of the regulatory body for broadcasting.
- The new Constitution should define strict limits on the declaration of a state of emergency as well as strict limits on the restriction of rights during a state of emergency.
- The right of access to information should be made the subject of a law consistent with international standards and with much wider scope than a simple right to access administrative documents.
- The right of access to information should be ensured by an independent body such as an information commissioner who can assess appeals against decisions.
- The appointment of the directors of the public media should be done through an open and transparent process, based on merit and independent of government.
- The regulation of broadcasting should be the exclusive responsibility of an independent body as provided in Decree Law 2011-116.
- The process for selection and allocation of broadcasting licences should be defined in law.
- The definition of professional journalists contained in Decree Law 2011-115 should be broadened to include all persons who practice journalism on a regular basis.
- The penalties of imprisonment contained in Decree Law 2011-115 should be removed.
- Defamation should be a civil offence only and the provisions for defamation contained in the Penal Code should be abolished.
- The Tunisian Internet Agency should have a status independent of all government interference.



Category 2

**Plurality and diversity of
media, a level economic
playing field and
transparency of ownership**



KEY INDICATORS

A. Media concentration

- 2.1 State takes positive measures to promote pluralist media
- 2.2 State ensures compliance with measures to promote pluralist media

B. A diverse mix of public, private and community media

- 2.3 State actively promotes a diverse mix of public, private and community media
- 2.4 Independent and transparent regulatory system
- 2.5 State and CSOs actively promote development of community media

C. Licensing and spectrum allocation

- 2.6 State plan for spectrum allocation ensures optimal use for the public interest
- 2.7 State plan for spectrum allocation promotes diversity of ownership and content
- 2.8 Independent and transparent regulatory system

D. Taxation and business regulation

- 2.9 State uses taxation and business regulation to actively encourage media development in a non-discriminatory manner

E. Advertising

- 2.10 State does not discriminate through advertising policy
- 2.11 Effective regulation governing advertising in the media

Category 2

Plurality and diversity of media, a level economic playing field and transparency of ownership

A. Media concentration

Indicator 2.1

State takes positive measures to promote pluralist media

The State monopoly in broadcasting was established in 1957¹¹². But this monopoly has been “placed in competition” on several occasions since 1960, by the Italian channel RAI UNO, the French channel France 2 and Canal Horizons Tunisia. These exceptions have been granted by arbitrary State decisions and for a limited time¹¹³. The opening of the broadcasting landscape in 2003 was a sham. It was done on a “selective and restrictive” basis¹¹⁴.

In fact, the owners of five radio stations and two television stations that obtained broadcast licenses between 2003 and 2010, in the most complete opacity and on the basis of criteria not known to the public, were either members of the Ben Ali family or personalities close to the State. The brother of the deposed president, Belhassen Trabelsi, was a shareholder of the first private radio station Mosaïque FM¹¹⁵. His daughter, Cyrine, married name Mabrouk, was the owner of Shems FM launched in 2010. Sakhr Materi his son created the religious radio “Zitouna for the Holy Quran” (2007). The millionaire, Larbi Nasra, whose son is linked to the Trabelsi clan by marriage, is the owner of the TV channel Hannibal TV (2005). The son of Ben Ali’s personal physician, Mourad Gueddiche, is the co-founder of Express FM (2010). Jawhara FM (2005) is owned by a group of businessmen close to the former regime, as is Nessma TV (2009), which is in co-ownership between the Ghazi brothers and Nabil Karoui (50 per cent), film producer Tarak Ben Ammar (25 per cent) and former Italian Prime Minister, Silvio Berlusconi (25 per cent).

This selective opening was made in the face of persistent criticism of the regime by international NGOs active in the field of freedom of expression and human rights, on the eve of the opening in Tunis of the second phase of the World Summit on the Information Society (WSIS 2005)¹¹⁶. Agreements and Regulations of the radio and television services have very stringent provisions, despite the complicity of the media owners with the system in place.

112 Décret No 105 du 25 avril 1957 portant institution d’un monopole de la radiodiffusion sonore et visuelle en Tunisie et la création d’un budget annexe de la Radiodiffusion et Télévision tunisienne

113 Chouikha, L. (2010) L’audiovisuel en Tunisie : une libéralisation fondue dans le moule étatique, dans L’Année du Maghreb [en ligne] Il 2005-2006, mis en ligne le 8 juillet 2010

114 Ibid.

115 Launched 7 November 2003, anniversary of the coming to power of Ben Ali

116 Chouikha, op.cit.

After 14 January 2011 and the fall of the Ben Ali regime, guarantees of pluralism and diversity of media and audiovisual landscape and the prevention of media concentration were inscribed as fundamental principles in the text of the new laws. Decree Law 2011-115 contains detailed provisions on pluralism and concentration¹¹⁷.

Article 33 of Decree Law 2011-115 provides that one person, whether an individual or a legal entity, may own or control a maximum of two current affairs or general periodicals at the same time, and each in a different language. It also states that no one can control more than thirty percent of the total circulation of such periodicals.

The Competition Council is responsible for the monitoring and investigation of the concentration of the press on the basis of its own initiative or at the request of the Minister of Commerce or of an interested third party. It can demand all necessary information from administrative bodies or individuals. The administrative bodies and the persons concerned may not withhold information except where strictly permitted by law. The Competition Council or anyone who is the victim of practices contrary to financial transparency or economic concentration may demand the competent court take up these violations and put a stop to them, notwithstanding damages.

For its part, Decree Law 2011-116 on broadcasting¹¹⁸ confers on the independent regulatory body, the Independent High Authority for Broadcasting (HAICA), the task of ensuring compliance with respect to transparency, pluralism and diversity of opinions in the broadcast media. Article 3 of this Decree Law provides that «the freedom of audiovisual communication is guaranteed, in accordance with international conventions and treaties ratified by Tunisia». In Article 5, it states that the exercise of this freedom is based, among others, on the principles of “pluralism in the expression of ideas and opinions” and “objectivity and transparency.” In its Article 15, it states the need “to avoid concentration of ownership of the means of audiovisual communication and to establish healthy competition in the sector.” Decree Law 2011-116 lacks a detailed legal framework for ensuring diversity of ownership and avoiding concentration. Theoretically, HAICA, if established, will have sufficient powers in the audiovisual field, but detailed rules to prevent concentration should be better defined.

Among the criteria applied by INRIC for the licensing of new radio and television channels is, notably, the prohibition of joint ownership between broadcast media and an advertising or communications agency. INRIC also prepared draft Agreements and Regulations¹¹⁹ that distinguish between commercial and community broadcasters.

The new government, formed after the elections of 23 October 2011, has not taken any initiative either in the installation of transparency and pluralism in the information and communication sector, or through

117 Décret-loi 2011-115, op. cit., Articles 33 - 38

118 Décret-loi 2011-115, op. cit., Articles 33 - 38

119 INRIC, 16 March 2011, Tunisie : Projets des cahiers des charges et des conventions relatifs à l'octroi d'une licence de création et d'exploitation des chaînes de radio et de télévision privées

the application of Decree Law 2011-116 and the establishment of the Independent High Authority for Audiovisual Communication (HAICA). The legal uncertainty, which has lasted for many months, does not encourage transparency either of the press or of broadcasting. This situation is to the benefit of influential Tunisian and foreign political and financial interests, of whom some were themselves involved with the former regime.

Indicator 2.2

State ensures compliance with measures to promote pluralist media

Despite the clear provisions of Decree Law 2011-115, there has been no action taken to prevent concentration of ownership of the press. In practice, ownership of private newspapers is diverse, but there is risk of the emergence of concentration in the future. Article 36 of the Decree Law provides for a fine of five to ten thousand dinars in the case of breach of the rules on ownership. It also encourages courts to order compliance with the laws on concentration of media ownership, but no case has been reported.

In the absence of the Independent High Authority for Audiovisual Communication (HAICA), there is no qualified body to ensure compliance with measures to avoid excessive concentrations of ownership of private radio and television services.

The guarantee of pluralism and diversity has been adopted among the principal selection criteria by INRIC¹²⁰ for the award of a licence for a radio service on the FM band or for a television channel on the terrestrial network or by satellite. INRIC examined, on the basis of its advisory powers, proposals for the award of broadcast licences. In making its recommendations, it turned down five applications where the proposers either already own an advertising or communications agency, or proposed to launch several media at once, or their funding sources were not clearly identified.

B. A diverse mix of public, private and community media

Indicator 2.3

State actively promotes a diverse mix of public, private and community media

Historically, State-owned press and broadcasting were the dominant media in Tunisia since independence. As noted in Section 2.1 above, there were a limited number of private radio and television channels before the Revolution of 14 January 2011, but no action was taken to promote community broadcasting. State media retained privileged access to government. The State news agency, TAP, founded in 1961, evolved into a political instrument of the regime and the only official source of information. Private pro-government media disseminated the reports of the TAP Agency in an indiscriminate manner.

120 INRIC, 28 June 2011 Rapport final sur l'attribution des fréquences aux radios privées

Since the fall of the Ben Ali regime, the existing public and private media have adopted a more diverse and critical coverage. New newspapers and electronic media have been launched and new radio and television stations have been authorised, including three community radio stations and a non-commercial television channel. INRIC promoted a broadcast model of three categories - public, private and community - in line with international standards, and recommended that a fund be established to support community media¹²¹.

Ministers and government representatives have shown themselves willing to speak directly to the private media, even when faced with a hostile interview, although important government announcements tend to be made through the public media. At the same time, legal and practical measures have been taken to improve general access to government information and the development of e-government services, including Decree Law 2011-41 discussed in Section 1.2 above.

In the development of digital terrestrial television (DTT), the public service television has been considered the priority and existing channels have been automatically included and are transmitted by the sole terrestrial DTT multiplex.

Since June 2012, the ONT launched, on an experimental basis, a Tunisian digital bouquet that includes seven television channels: Wataniya 1 and Wataniya 2, Nessma TV, Hannibal TV, TWT, El Hiwar Ettounsi and the leading Italian channel, RAI Uno, which has broadcast in Tunisia, on the analogue network, since 1960¹²².

Before the Revolution, it was almost impossible to start a new independent newspaper given that government approval was required for printing to be authorised. Many requests went unanswered. Since 14 January 2011, there are no longer restrictions. 228 new titles were registered by the end of November 2011. Thirty periodicals have started up, the majority being weekly publications¹²³.

Indicator 2.4 **Independent and transparent regulatory system**

Despite electoral promises made by the three political parties that form the present government, there does not exist yet an independent and transparent system for the regulation of broadcasting. As explained below in Section 2.8, INRIC conducted a quasi-regulatory assessment process that resulted in recommendations for award of new radio and television services. This assessment was in two stages, the first being assessment of radio projects of which the results were announced on 28 June 2011¹²⁴, followed by assessment of television projects with the results announced on 7 Sept 2011¹²⁵.

.....

121 INRIC (2012) Rapport général, op. cit.

122 Comments of ONT for this study, 2 August 2012

123 Ibid.

124 TAP, 21 June 2011, Recommandation pour attribuer des fréquences à 12 nouvelles stations

125 La Presse, 7 September 2011, L'INRIC recommande l'attribution de licences pour la création de cinq nouvelles chaînes de télévision

Following these assessments, no new procedure has been introduced for new applicants who want to create radio and television services. Consequently, Tunisia has slowed down in terms of the diversification of the media landscape since legitimate demands for the creation of new radio and television channels have no means to be considered in the absence of a competent authority. This legal vacuum has prompted several television channels to start broadcasting on satellite without authorisation and it would not be surprising were the same to happen with FM radio.

The current situation is clearly not in line with international standards including with respect to the commitments of Tunisia as a signatory to the International Covenant on Civil and Political Rights. The Committee of Human Rights of the United Nations (UN), in its General Comment No. 34 on Article 19 of the ICCPR states:

*It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.*¹²⁶

The ICCPR is a reference in international law and general comments of the Committee of Human Rights of the United Nations are considered the most authentic interpretation of the articles of the Covenant. In 2011, the Committee adopted by consensus the terms of General Comment No. 34, which replaced the previous General Comment No. 10, adopted in 1983. Tunisia was one of the 18 members of the Committee who prepared the text of the present General Comment. It is relevant in the current context to note that General Comment No. 34 also states that :

*States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters.*¹²⁷

The implementation of Decree Law 2011-116 would mark a major step forward towards fulfilment of these requirements, although some aspects of the law on HAICA could be improved, as discussed in Section 1.7 above. It should be noted that Decree Law 2011-116 states explicitly that HAICA has the mission to ensure “the strengthening of the national broadcasting sector, public, private and associative, in its quality and diversity”.

.....
126 United Nations Human Rights Council (2011) General Comment No. 34
127 Ibid.

Indicator 2.5

State and CSOs actively promote development of community media

As indicated in Section 2.3, INRIC has promoted a three tier broadcasting model, including public, private and community broadcasters. The procedure for assessment of applications for the launch of new radios and television channels includes criteria for diversity of the types of broadcasting services, including the promotion of community broadcasting. Of the twelve cases recommended for approval, three relate to radio services described in their applications as community or associative ¹²⁸.

Decree Law 2011-116 also states in Article 16 that it is the responsibility of the HAICA to strengthen the “associative” broadcast media, and says, in Article 17, this should include a specific process for assessment of proposals for licensing. It does not specify incentives such as the reservation of frequencies, reduced licence fees, terms and conditions to protect the content of these broadcasting services, the right to exploit their own transmission equipment, and a specialist support fund.

Apart from the general need to put in place an appropriate procedure for authorization, it is the transmission costs which represent the main obstacle to the development of community broadcasting, in particular because of the high fees proposed for transmission by ONT. According to its statute¹²⁹, the ONT is tasked with “exclusively ensuring the transmission of radio and television programmes” which it has interpreted as providing a monopoly on broadcasting distribution, even though this is unusual in a democratic country. It is clear the fees proposed by ONT are well above the costs that would be expected to be incurred by local and community radio broadcasters for the installation and operation of their own equipment.

Article 2 of the law establishing the ONT sets out, in particular, two important objectives. The first is to establish, operate, maintain and develop the network for distribution of radio and television programmes. The second is the control and protection of the quality of reception of the broadcast radio and television programs. With regard to local and community radio stations, it would be better that the ONT provide a service of technical quality control, without requiring them to accept the ONT as the sole provider of distribution networks.

Modern radio transmission equipment for the FM band compliant with international technical standards is widely available, at low price and with high levels of reliability. The promotion of community radio in particular, and local radio in general, would be greatly facilitated by ensuring that broadcasters that wish to be able to acquire, install and operate their own equipment.

In practice, some local and community broadcasters are already doing this, but they are well aware of being in a grey area from a legal point of view, with potential conflict with the ONT and with the authority responsible for frequency assignment, the National Agency for Frequencies (ANF).

128 Radio 6 Tunis, Sawt al Manajem, Radio Chaambi

129 Loi No 93-8 du 1er février 1993, portant création de l’Office national de télédiffusion, Article 2

C. Licensing and spectrum allocation

Indicator 2.6

State plan for spectrum allocation ensures optimal use for the public interest

Tunisia has a national frequency plan which complies with international standards and recommendations of the International Telecommunications Union (ITU). It includes the frequency assignments for terrestrial sound broadcasting, terrestrial television and satellite broadcasting. The responsibility for planning and spectrum allocation rests with the National Agency for Frequencies (ANF).

The table below shows the frequencies allocated to broadcasting on the basis of information published on the website of the ANF¹³⁰.

From	To	Assignment
148.5 KHz	283.5 KHz	Broadcasting – LF radio
526.5 KHz	1606.5 KHz	Broadcasting – MF radio
2300 KHz	2498 KHz	Broadcasting – HF radio
3200 KHz	3400 KHz	Broadcasting – HF radio
3950 KHz	4000 KHz	Broadcasting – HF radio
4750 KHz	4850 KHz	Broadcasting – HF radio
4850 KHz	4995 KHz	Broadcasting – HF radio
5005 KHz	5060 KHz	Broadcasting – HF radio
5900 KHz	6200 KHz	Broadcasting – HF radio
7200 KHz	7350 KHz	Broadcasting – HF radio
7350 KHz	7450 KHz	Broadcasting – HF radio
9400 KHz	9900 KHz	Broadcasting – HF radio
11.6 MHz	12.1 MHz	Broadcasting – HF radio
13.57 MHz	13.87 MHz	Broadcasting – HF radio
15.1 MHz	15.8 MHz	Broadcasting – HF radio
17.48 MHz	17.9 MHz	Broadcasting – HF radio
18.9 MHz	19.02 MHz	Broadcasting – HF radio
21.45 MHz	21.85 MHz	Broadcasting – HF radio
25.67 MHz	26.1 MHz	Broadcasting – HF radio
62 MHz	68 MHz	Broadcasting – VHF I - TV
87.5 MHz	108 MHz	Broadcasting – VHF 2 - FM radio
174 MHz	230 MHz	Broadcasting – VHF 3/4 - TV
470 MHz	838 MHz	Broadcasting – UHF TV / DTT
838 MHz	862 MHz	Broadcasting – UHF TV / DTT
862 MHz	876 MHz	Broadcasting – UHF TV / DTT
1452 MHz	1492 MHz	Broadcasting – Satellite / Terrestrial
2520 MHz	2670 MHz	Broadcasting – Satellite
11.7 GHz	12.5 GHz	Broadcasting – Satellite / Terrestrial
21.4 GHz	22 GHz	Broadcasting – Satellite

Figure 4: Frequencies assigned to broadcasting

Source : ANF

130 See <http://www.anf.tn>

For greater transparency, it is necessary to develop more detailed planning of the sub-bands assigned to broadcasting. At present, there is no plan published and there has been no public consultation on the development of the VHF band 2 (87.5 - 108.0MHz) which is assigned to FM sound broadcasting (FM radio) in accordance with international agreement in the framework of the ITU ¹³¹.

Similarly, there has been no public consultation on the future planning of the UHF television bands, even though the ITU has provided for transition from analogue terrestrial television to digital terrestrial television (DTT) by 2015¹³². The transition to DTT is scheduled to release a portion of the UHF spectrum for significant new uses, including HD (high definition) television, mobile television and 4G mobile telephony. The introduction of DTT receivers and decoders in Tunisian homes has been slow because satellite has become the dominant mode of television reception.

Radio and television services authorized before 14 January 2011 are subject to an Agreement between the broadcaster and the State, as discussed in Section 1.11 above. This Agreement contains technical requirements, under which a director of a radio or television is required to file an application to the National Agency for Frequencies (ANF) in accordance with the Telecommunications Code. Agreements for new radio services authorized in 2011 and television have not been signed due to the lack of implementation of the Decree Law 2011-116, notably the absence of an independent regulatory body, HAICA.

Indicator 2.7
State plan for spectrum allocation promotes diversity of ownership and content

As noted in Section 2.6 above, there has been a lack of planning and public consultation on the future use of the FM band and on the frequencies assigned for digital terrestrial television. Historically, priority was given to public service broadcasting, which was joined only later by two private television operators in the UHF analogue television band and by five private FM radio operators.

Since the Revolution of 14 January 2011, the demand for new radio and television has grown substantially. New television operators have been offered satellite transmission only. ONT was able to identify frequencies for most of the newly authorised FM radio services but it should put in place a national plan for the use of VHF band 2 in anticipation of the future development of FM radio.

Government should work with public, private and associative media providers on a programme for deployment of DTT to ensure a wide range and diversity of television channels for households which do not have access to satellite services and to assess the viability of local digital television services.

There is also a need to conduct an independent review of the VHF Band 2 and to hold a public consultation

.....

131 ITU (1984) Final Acts of the Regional Administrative Conference for the Planning of VHF Sound Broadcasting (Region 1 and Part of Region 3), Geneva 1984
132 ITU (2006) Final Acts of the Regional Radio communication Conference for planning of the digital terrestrial broadcasting service in parts of Regions 1 and 3, in the frequency bands 174-230 MHz and 470-862 MHz (RRC-06)

on the further development of FM broadcasting. The development plan for FM radio should ensure an equitable allocation of frequencies between public, private and community radios and a mixture of national, regional and local channels in order to respond to public demand.

Indicator 2.8

Independent and transparent regulatory system

Since its creation in March 2011, INRIC has put in place a quasi-regulatory process for assessment of applications for new radio and television services. In doing so, within the constraints of time and resources, it has sought to implement a selection process based on international standards and best practices, including a call for proposals, publication of selection criteria, presentation of proposals at expert hearings, and an assessment system designed to provide fair treatment to all applicants.

After examining the proposals - 74 applications for radio and 33 applications for television - INRIC recommended the licensing of 12 radio stations¹³³ and five television channels¹³⁴. INRIC recommended that the term of the licence should be one year for radio and five years for television. INRIC has published reports of its assessment process, one for radio and another for television, and presented its recommendations to the Interim Prime Minister. The recommendations were accepted by the Prime Minister and the letters of intent were sent to applicants.

The recommendations of INRIC have been the subject of criticism and protests from some candidates whose applications have not been selected, such as the Tunisian Union of Free Radios (STRL)¹³⁵.

INRIC has also contributed to the drafting of Agreements and Regulations for the new radio and television services, including separate Regulations for radio and television, private and community. These documents remain in draft form pending the establishment of the independent regulatory body, HAICA, which would be responsible for issuing licenses.

Meanwhile, several radio and television stations have begun broadcasting on the basis of the letter of intent from the Prime Minister's Office. The licence fees for the new broadcasting operators are not yet clearly established. Distribution costs are also payable to ONT. INRIC, in its General Report¹³⁶, recommended that the costs of new services be reduced and that community radio pay only a nominal fee.

Decree Law 2011-116, which remains to be applied, provides that HAICA be responsible for carrying out the review of applications for new broadcasting services, the allocation of frequencies and conclusion of licence agreements with broadcasters.

.....
133 INRIC, 28 June 2011, Attribution des fréquences aux radios privées

134 INRIC, 7 September 2011, Recommandation relative à l'attribution de licences pour la création de nouvelles chaînes de télévision

135 Gnet.tn, 8 July 2011, L'instance des médias s'explique sur l'octroi des licences radio

136 INRIC (2012) Rapport général, op. cit.

D. Taxation and business regulation

Indicator 2.9

State uses taxation and business regulation to actively encourage media development in a non-discriminatory manner

For the press, the only preferential treatment enjoyed by newspapers is an exemption on VAT and on import tax for newsprint, which makes up twenty-five per cent of the price of the paper. This only effectively benefits the major newspapers that import large quantities of paper and have an efficient administration capable of complying, in management terms, with detailed and complicated audit procedures to ensure the imported paper is used exclusively in the manufacture of newspapers.

Apart from some minor benefits granted on the recommendation of INRIC (exemption of ONT fees during the first year and reduction by twenty percent in 2012), private broadcasters which gained broadcasting licences after 14 January 2011 receive no preferential treatment on the import of equipment and materials. On the contrary, materials and equipment imported must be approved by the Centre for Telecommunications Studies and Research (CERT) and the National Agency for Electronic Certification (ANCE). It is forbidden for broadcasters to acquire and install their own transmitter.

Under the regime of Ben Ali, each private broadcaster was theoretically required, under the Agreement signed with the State, to file an application with the National Agency for Frequencies, to conclude an agreement with the National Broadcasting Office, to pay fees in accordance with the laws and regulations in force, and to pay the State a fixed annual fee of two million dinars.

The practice was completely different. For example, the agreement between Radio Mosaique FM and the Tunisian government was signed on 7 November 2003. Yet it was a holiday and even the announcement of the signing was made by Ben Ali in person in an official speech on the anniversary of his accession to power.

Similarly, the owner of Radio Zitouna for the Holy Qur'an, Sakhr Materi, son of deposed President Ben Ali, has never signed an Agreement with the State and paid no fee¹³⁷.

Some media such as Hannibal TV received forms of preferential treatment, but in exceptional circumstances and by arbitrary decision¹³⁸. Hannibal TV received a three-year exemption from tax owed to the state, an exemption for two years on the fee levied by ONT¹³⁹, and benefits provided for in Article 52 of the Code for Encouragement of Investment, relating to the exemption from customs duties and VAT due on the importation of equipment.

.....

137 Testimony of ONT officials taken from workshops organised by INRIC and reported in INRIC (2012) Rapport général
138 The production company, AVIP, part of Hannibal TV, has benefitted from the provisions of Article 52 of the Code for the encouragement of investment relating to exemption from customs duties and taxes on importation of equipment
139 Rapport général de l'INRIC (April 2012)

Private broadcasters having obtained licenses under the regime of Ben Ali complain about what they consider exorbitant rates charged by ONT and the high amount of the annual licence fee to the Tunisian state (two million dinars per year). Until 20 June 2011, the debts of public and private media to ONT totalled 6,585 million dinars, according to correspondence from ONT, dated 8 August 2011, addressed to INRIC¹⁴⁰.

The new Agreements and new Regulations developed by INRIC provide for a distinction between commercial media and community media. But the fees remain the responsibility of ONT, a public institution which holds the technical monopoly.

Tunisia has a coherent legal framework to encourage investment in a wide range of industries, but there is a recognized need for its reform¹⁴¹. The Code for Encouragement of Investment¹⁴² provides a framework for the promotion of investment in small and medium enterprises, including in the cultural industries. An investment fund called the “Fund for the promotion and decentralization of industry” or FOPRODI has been created to support these activities. Access to FOPRODI support was extended in 2008¹⁴³ to include support for “film, theatre, television and radio”, but this was changed in 2009 with the elimination of television and radio¹⁴⁴. The Code should be revised again to restore support for public investment in broadcasting.

Local and community radio stations tend to operate with very small margins and there is a need to reduce costs of start-up and operations. In particular, the new local and community radio stations authorized in 2011 should be able to acquire, install and operate their own transmission equipment if they wish, and not be forced to use the infrastructure of ONT. It would also be possible to assist these media and others by offering an exemption on customs duties for import of equipment for production and distribution.

E. Advertising

Indicator 2.10

State does not discriminate through advertising policy

Advertising was one of the favoured instruments of the Ben Ali regime to control the print and broadcast media. The “carrot and stick” policy was practiced through the Tunisian External Communication Agency (ATCE) which had a monopoly on the distribution of institutional and public advertising. Through this policy, in effect since 1990, the date of the creation of the ATCE¹⁴⁵, the regime was able to exercise control over

140 INRIC (2012) Rapport général, op. cit.

141 TAP, 17 May 2012, Révision attendue du Code d'incitation aux investissements

142 Loi n°93-120 du 27 Décembre 1993 portant promulgation du code d'incitation aux investissements

143 Décret n° 2008-388 du 11 février 2008, portant encouragement des nouveaux promoteurs, des petites et moyennes entreprises, des petites entreprises et des petits métiers.

144 Décret n° 2009-2753 du 28 septembre 2009, modifiant et complétant le décret n° 2008-388 du 11 février 2008

145 Loi n°18-76 du 7 août 1990 portant création de l'Agence de communication extérieure

most of the mass media, including private media.

But this policy has also had adverse effects on the development of the advertising industry in Tunisia, which remained embryonic in comparison with neighbouring countries¹⁴⁶. According to figures for the first quarter of 2011¹⁴⁷, the sector recorded a drop of 45.9% compared to the same period in 2010 due to economic recession and social tensions in the country since the fall of the old regime, but also the fact that “major advertisers are still in judicial administration after the confiscation of property of relatives of the former president”.

It is the television channels¹⁴⁸, with 73.1 million dinars (MD) of advertising revenue in 2011, which hold the largest market share. In the lead, are the private channels Hannibal TV (36.5 MD), Tounsia TV (20.9 MD) and Nessma TV (15.7 MD)¹⁴⁹. They are followed by private radio: Mosaique (MD 11.6), Jawhara (7.2 MD), Shems (3.7 MD) and Express (2.6 MD). In print, it is the daily newspapers which come out on top with 18.1 MD. The biggest advertisers in 2011 were Tunisiana (14.4 MD), Orange (12.4 MD), Delight Danone (9.8 MD) and Tunisie Telecom (9.7 MD).

The ISIE (Independent High Authority for Elections) appears in fifth place (5.3 MD), UPL (Free Patriotic Union) in tenth place with advertising spend of 2 million dinars and the PDP (Progressive Democratic Party) in thirteenth place (1.4 MD). These data reflect the entry in force of political advertising in Tunisia, on the occasion of the elections to the National Constituent Assembly on 23 October 2011.

Public advertising served for many years as a privilege conceded or removed by the degree of allegiance to the regime. It is now seen by some media owners as an inherited right or, at least, as a form of aid that the state should distribute equitably without taking into consideration any objective criteria such as the circulation of the newspaper or the audience ratings of the broadcaster.

It can be noted it is the same newspapers and media who were tools in the hands of the regime that continue to receive the largest market share of public advertising, while new newspapers barely survive due to their lack of means. Nabil Jridet¹⁵⁰, director of the Arabic-language weekly *Al Oula*, born after the fall of the regime, went on hunger strike for eight days to force the government to find a fair and transparent solution to the problem of distribution of public advertising. The problem was discussed at length within INRIC with the new Union of Independent and Partisan Press (SPIP). INRIC recommended to adopt objective and transparent criteria, but warned against the creation of a new statutory body which would be responsible for distribution of public advertising.

.....

146 Sigma Conseil, 21 January 2012, OpenSigma. According to Sigma, advertising spend in Tunisia, in 2011, was of the order of 145.3 million dinar, compared to 1,060.7 MD in Morocco

147 Babinet.net, 20 April 2011, Tunisie : le secteur publicitaire à l'ère de la révolution, -45.9% depuis le début de l'année

148 The advent of television advertising dates from 1988

149 Sigma Conseil, 21 January 2012, op.cit

150 Kapitalis, 8 May 2012, Un directeur de journal en grève de la faim à partir de mercredi ; Businessnews.tn, 9 May 2012, Face au favoritisme et au silence du pouvoir, Nabil Jridet entame sa grève de la faim sauvage

Following the hunger strike by Mr. Nabil Jridet, the government promised to hold a national conference to discuss the problem¹⁵¹.

Historically, the advertising industry remained under State monopoly from 1963 until 1971¹⁵², the date of the first publication of legislation on the organization of the profession of commercial advertising agent¹⁵³. In 2001, a new law abolishing the administrative authorizations issued by the services of the Ministry of Commerce¹⁵⁴ also set out regulations governing the exercise of certain professions including commercial advertising agent. In the space of four years (2001-2005), 106 advertising agencies were created, against 111 agencies in 30 years (1971-2001).

Regarding the regulatory aspect, the 2005 study by the consulting firm "Tema Consulting", included in the INRIC General Report¹⁵⁵, lists nearly thirty laws governing, directly or indirectly, the sector of commercial advertising¹⁵⁶, not including other laws of general application (Labour Code, Press Code, Telecommunications Code, etc.) which also include provisions relating to commercial or public advertising.

There is a pressing need to unify these laws and bring them together in a single code - an Advertising Code. This profusion of legislation has led to a legal and administrative maze and a multiplicity of stakeholders. The situation opens the door to fraud and embezzlement and explains today, the extent of corruption in the reign of Ben Ali in this area, as in many others.

The most comprehensive and serious study of the advertising industry in Tunisia dates back to 2005-2006. According to a study by the Economic Mission of the French Embassy in Tunisia¹⁵⁷ in August 2006, Tunisia had 237 advertising and consulting agencies which employed 5,000 staff. According to the study, "only two companies stand out for their degree of internationalization, companies that offer services throughout the Maghreb, North Africa and some countries in the Middle East. These are Karoui & Karoui World¹⁵⁸ (in the field of creative advertising and communication) and Sigma Conseil (audience research and media development)".

.....

151 TAP, 16 May 2012, Dilou: Conférence sur la publicité publique fin mai

152 Study made in 2005 by the research agency Tema Consulting (Tunisio-Européenne de Management), reported, in part, in INRIC (2012) Rapport général op. cit.

153 Loi n° 71-22 du 25 mai 1971 portant organisation de la profession d'agent de publicité commerciale

154 Loi n° 2001-66 du 10 juillet 2001, relative à la suppression d'autorisations administratives délivrées par les services du Ministère du commerce

155 INRIC (2012) Rapport général, op. cit.

156 The most important are: Loi du 29 juillet 1991 relative à la concurrence et aux prix ; Loi du 7 décembre 1992 relative à la protection du consommateur; Loi du 2 juin 1998 relative aux techniques de vente et à la publicité commerciale ; and Loi du 9 juillet 2002 relative aux jeux promotionnels.

157 Merat, B. (2006) Publicité et Communication en Tunisie, Ambassade de France Mission économique <http://www.webmanagercenter.com/be/documents/rapport-amb-france.pdf>

158 Co-owner of the private television channel, Nessma TV

Indicator 2.11 Effective regulation governing advertising in the media

Under the Ben Ali regime, the only criteria for the allocation of advertising to the press and broadcast media were the degree of loyalty and allegiance to the regime. The monopoly in the distribution of public advertising was held by the ATCE. For economic interest or political expediency, private advertisers aligned themselves with the policies of the ATCE and implicitly followed the lines it set out.

In the broadcasting sector, it is a private production company, Cactus Prod, of Belhassen Trabelsi, brother of deposed President Ben Ali, and his partner, Sami Fehri, which has gained the largest amount of advertising receipts, through the system of bartering. All top shows broadcast at prime time on the public channel had a single creator - Cactus Prod¹⁵⁹ - which offered «freely» its productions in exchange for advertising space. During the month of Ramadan commercials lasted up to 15 minutes continuously during «prime time» and could reach up to 144 minutes per day¹⁶⁰, even though the law¹⁶¹ fixed the maximum duration of a single continuous advertising announcement as eight minutes. According to some observers, some sixty percent of the revenue of public television went into the coffers of “Cactus Prod”, a subsidiary of the Belhassen Trabelsi group, Carthago¹⁶².

There is still no code of advertising established by a professional organization or an independent regulatory body. The main laws currently governing the advertising sector are :

- Law 71-22 of 25 May 1971 on the organization of the profession of commercial advertising agent, which ended the monopoly of the Tunisian Advertising Agency (ATP)
- Law 91-64 of 1991 dated 29 July 1991 on competition and prices
- Law 98-40 of 1998 dated 2 June 1998 on commercial sales and advertising
- the Telecommunications Code promulgated by Law 2001-1 of 2001 dated 15 January 2001, as amended by Law 2002-46 of 2002 dated 7 May 2002 and Law 2008-1 of 2008 dated 8 January 2008
- Decree Law 2011-116 of 2011 on audiovisual communication, which gave the HAICA the responsibility to establish the rules of conduct with regard to advertising and to ensure compliance with these rules¹⁶³

INRIC has also developed Agreements and Regulations relating to the creation and operation of radio and

159 Souk-elmedia.com, 11 March 2011, Cactus, sujet épineux

160 Jeune Afrique, 21 November 2011, Tunisie : trop de pub tue la pub

161 Webmanagercenter.com, 20 November 2011, Tunisie médias modalités de diffusion des spots publicitaires sur les chaînes de télévision publiques et privées

162 Souk-elmedia.com, 11 March 2011, op. cit.

163 Paragraph 11 of Article 16, Décret-loi 2011-116.

television channels in which are included time limits for advertising spots and ethical and professional standards that broadcast media should respect, in addition to the obligation on media owners to set their advertising rates¹⁶⁴.

Decree Law 2011-115 provides, in several of its articles¹⁶⁵, provisions governing the advertising sector in the press. In Article 26 it highlights, in particular, that “each general news periodical must fix its specific advertising rates and, where appropriate, its common advertising tariff with one or more other general news periodicals, and it should inform the public of this. In the case of violation, the owner of the newspaper is liable to a fine of 2000 to 5000 dinars“. Article 31 of Decree Law 2011-115 prohibits political advertising in general information periodicals.

.....
164 <http://www.inric.tn>

165 Décret-loi 2011-115, op. cit., Articles 26-31

Recommendations

- Measures to prevent concentration within and between different media sectors should be strengthened and transparency of ownership should be ensured.
- The system for regulation of the broadcasting landscape should have as its principal objective the promotion of a diverse mix of public, private and community media.
- The system for regulation of the media should be transparent and based on clear and fair rules.
- Measures should be adopted to ensure the active promotion of the development of community media.
- The monopoly of the National Broadcasting Office (ONT) in the establishment and maintenance of transmission networks for broadcast programmes should be abolished.
- The planning and allocation of frequencies assigned to broadcasting in the national frequency plan should be under the control of the independent regulatory body for broadcasting.
- There should be a public consultation on the development of the FM radio band involving the stakeholders and supported by an independent technical study.
- There should be a public consultation on the development plan for digital terrestrial television (DTT) involving the stakeholders and supported by an independent technical study.
- Modifications should be introduced to the Code for the Promotion of Investment to include measures for the promotion of the development of the audio-visual media.
- Broadcast licensing fees for non-commercial and community radio and television services should be reduced.
- There should be a support fund for radio established, in co-operation with all concerned parties, to assist regional and community radios.
- The system of state aid to the press should be evaluated in a scientific manner with a view to the adoption of objective, transparent and fair criteria for allocation, and having particular regard to public advertising.
- Scientific and reliable mechanisms should be put in place to measure press circulation and broadcast media audiences.



Category 3

**Media as a platform for
democratic discourse**



KEY INDICATORS

A. Media reflects diversity of society

- 3.1 The media – public, private and community-based – serve the needs of all groups in society
- 3.2 Media organisations reflect social diversity through their employment practices

B. Public service broadcasting model

- 3.3 The goals of public service broadcasting are legally defined and guaranteed
- 3.4 The operations of public service broadcasters do not experience discrimination in any field
- 3.5 Independent and transparent system of governance
- 3.6 Public service broadcasters (PSBs) engage with the public and CSOs

C. Media self-regulation

- 3.7 Print and broadcast media have effective mechanisms of self-regulation
- 3.8 The media displays culture of self-regulation

D. Requirements for fairness and impartiality

- 3.9 Effective broadcasting code setting out requirements for fairness and impartiality
- 3.10 Effective enforcement of broadcasting code

E. Levels of public trust and confidence in the media

- 3.11 The public displays high levels of trust and confidence in the media
- 3.12 Media organisations are responsive to public perceptions of their work

F. Safety of journalists

- 3.13 Journalists, associated media personnel and media organisations can practice their profession in safety
- 3.14 Media practice is not harmed by a climate of insecurity

Category 3 Media as a platform for democratic discourse

A. Media reflects diversity of society

Indicator 3.1

The media – public, private and community-based – serve the needs of all groups in society

Nearly all Tunisians speak dialectal Arabic. Arabic is the official language, but many Tunisians also speak French, which is widely used in education. Press and broadcasting are available in Arabic and French, including public and private daily newspapers. Public broadcasting services transmit primarily in Arabic, with the exception of Radio Tunis International Channel (RTCI), which broadcasts mainly in French, but also contains programs in English, German, Italian and Spanish.

A small minority of people in the south speak the Berber language, known as “Chelha”¹⁶⁶, mainly in parts of the island of Djerba and some mountain villages of the south. Under the deposed President Ben Ali, there was no institutional support in Tunisia for the protection of indigenous languages. Since the Arab Spring, there has been new interest at regional level in Amazigh culture and identity¹⁶⁷, and new associations have emerged and gained profile through media coverage and a presence on the web and social networks¹⁶⁸.

Before the Revolution of 14 January 2011, community and associative media, such as Radio 6 Tunis and Nawaat.org, had been suspended or blocked. They now operate without interference, as do several new citizens and community initiatives, including radios on the internet, blogs and FM radio giving voice to youth and marginalized communities.

Traditional Tunisian media are highly centralized. With the exception of regional public radio services, they are largely based in Tunis. With the opening of the media landscape, community media projects have started in Gafsa, Kasserine, Regueb, Jendouba and other locations in the interior of country that were previously marginalized in social and economic terms. It should also be noted that Tunisian Radio through Radio Gafsa and in cooperation with the Hironnelle Foundation, has opened four permanent offices in the governorates of Tozeur, Kebili, Kasserine and Sidi Bouzid. A dozen young journalists from these regions have been hired as correspondents¹⁶⁹.

Public press, radio and television organisations have also made significant progress in terms of openness to the diversity of opinions and political perspectives even though, apart from the regional broadcasting

166 Gabsi, Zouhir (2011) Attrition and maintenance of the Berber language in Tunisia, *International Journal of the Sociology of Language*. Volume 2011, Issue 211, Pages 135–164, August 2011

167 Tunisialive.com, 8 March 2012, Tunisian Amazighs Push to Institutionalize Language and Culture in Tunisia

168 Nawaat.org, 27 February 2012, Interview avec l'Association Tunisienne de Culture Amazighe

169 Correspondence of Zouhair Ben Hamad, Radio tunisienne, 1 August 2012

services, much of the news still comes from Tunis and focuses on political decision making policy. More attention should be given in the public media to regional news, investigative journalism, and reflection of the views and concerns of the public on social, economic and environmental issues.

Almost all of the population has access to the media, particularly television and radio, though the range of television services is limited for those who can not afford a satellite subscription.

Particular attention could be paid to special needs such as children's programming , educational programming¹⁷⁰ and subtitling of programs for the deaf and hard of hearing¹⁷¹ .

Indicator 3.2 **Media organisations reflect social diversity through their employment practices**

The public and private media suffered for several years from the oppressive system of information control which was at the heart of the Ben Ali regime. Independently-minded journalists or those with views critical of the regime were either unable to access government-controlled media or obliged to become a part of the propaganda machine. Social diversity was not a criterion. The vast majority of journalists were trained at the Institute of Press and Information Sciences (IPSI), which became a school of government communication that stifled independent journalism¹⁷².

The launch of new media companies, radio and television provides an opportunity to diversify the social base of the media, but it is also necessary to reform the organization of public media, and to introduce new ideas and new perspectives.

Reforms are underway at IPSI as a new generation of journalists, who have not suffered the heavy hand of government interference, enter the Institute in autumn 2012. It should be noted that the new leadership of IPSI, in June 2012, succeeded in gaining from the Ministry of Higher Education the establishment of an entrance exam for new students in order to guarantee a minimum level of Arabic and French. But, in general, much more remains to be done to recruit the next generation of media professionals from a broader social base and to integrate critical thinking and independence.

Women are well represented in the media, but very few are in leadership positions. The case of Dr. Iqbal Gharbi, prevented from taking up her position as director of Radio Zitouna in 2011, reported above in Section 1.3, was of a particular context, but may also reflect broader resistance to the presence of women in senior positions.

.....
170 See, in particular, Chouikha L., Ferjani R., Hizaoui A., Touzri F. (2011) Etude sur les représentations de l'enfant, de l'adolescent et du jeune dans les médias tunisiens (UNICEF)

171 Kapitalis, 31 December 2011, Tunisie. Les élus du peuple entendront-ils l'appel des sourds ?

172 Baraket, Hédia (2012) Une école sous trois tutelles, La Presse Hors-série Mai 2012, Médias en Tunisie – Livres mais jusqu'à quand?

B. Public service broadcasting model

Indicator 3.3

The goals of public service broadcasting are legally defined and guaranteed

The Tunisian broadcasting system began in 1938 with the launch of Radio Tunis under the French colonial administration. After independence, it was confirmed by the Decree of 25 April 1957 that radio and television broadcasting in Tunisia is a State monopoly¹⁷³.

According to law, the State still retains today a monopoly over the broadcasting distribution system - the facilities, infrastructure and sites from which radio and television are transmitted. The infrastructure of transmission was separated in 1982 from the function of radio and television programme production. Programme production remained under the responsibility of the State broadcaster, while the distribution system became the responsibility of a technical services agency, the National Broadcasting Office (ONT). The ONT was established in 1982 under the general directorate for broadcasting of the Ministry of Communication and became, in 1993, a public institution. In 2007, the State broadcaster was divided into two institutions, Tunisian Radio and Tunisian Television.

According to Law 2007-33, public institutions in the broadcasting sector, radio and television, are non-departmental institutions under the supervision of the Ministry of Communication. They are charged with the following mission :

- *To provide the public service of the broadcasting sector*
- *To contribute to the promotion of communication, culture and general policies of the State while reflecting the characteristics of national identity,*
- *To enrich and develop the broadcasting landscape*
- *To enrich the content of audiovisual communication through the gathering of news, the provision of information at national and regional level, the facilitation of access to information and the coverage of events inside and outside the country,*
- *To contribute to the enrichment, awareness and promotion of national creativity*
- *To promote international cooperation and exchanges in the broadcasting sector*
- *To preserve and digitize broadcasting archives*
- *To make use of new technologies*¹⁷⁴.

The law does not contain any specific guarantee of their editorial independence. On the contrary, the fact of their assignment of the mission to “contribute to the promotion of communication, culture and general policies of the State” and of their position under the control of Ministry of Communication, indicates that they were created in order to have a propaganda function.

173 Décret du 25 avril 1957, portant institution d'un monopole de la radiodiffusion sonore et visuelle en Tunisie et création d'un budget annexe de la Radiodiffusion Télévision Tunisienne, Article 1

174 Loi n° 2007-33 du 4 juin 2007, relative aux établissements publics du secteur audiovisuel

The income of public institutions in the broadcasting sector consists of their own resources and income (donations, bequests and grants, loans), and State subsidies which constitute their primary financial income.

It is evident the public broadcasting institutions have the technical and financial resources necessary for their operation. Also to be noted is their progress in terms of content and more diverse perspectives. However, it is clear there are gaps from a legal point of view to ensure that they operate in the public interest, without editorial interference from the government of the day.

Indicator 3.4

The operations of public service broadcasters do not experience discrimination in any field

The public service broadcasting organisations have priority over the transmission systems of ONT, whether analogue or digital, including sound broadcasting and terrestrial television frequencies. Tunisian Television also has a presence on several satellites of which Nilesat is the most important. This presence is assured by means of commercial negotiations between ONT and the satellite operators.

Indicator 3.5

Independent and transparent system of governance

The governance arrangements for Tunisian Radio and Tunisian Television are set out by Decree¹⁷⁵. Each institution is administered by a board of directors chaired by a PDG appointed by decree of the Prime Minister. The Board of Directors consists of eight members representing the State and two members representing the ONT and the other public broadcasting institutions. The eight members representing the State are appointed by decree of the Minister of Communication, that is to say today, the Prime Minister. The other two are appointed by the PDG after approval by the Board of Directors and on the nomination of the afore-mentioned institutions.

Since 14 January 2011 nothing has really changed. One week after the fall of the old regime, the PDG of Tunisian Television was replaced by Bechir Hmidi¹⁷⁶ on the decision of the first interim government. In the same mode, the PDG of Tunisian Radio was replaced by Habib Belaid¹⁷⁷. A month later the new CEO of Tunisian Television was in turn replaced by Mokhtar Rassaa. This latter appointment was made following strikes by the journalists and technicians of Tunisian Television. They demanded resignation of the PDG of the television station, non-intervention in the editorial decision-making and direct broadcasting of events without censorship¹⁷⁸.

.....

175 Décret n° 2007-1867 du 23 juillet 2007, portant création, organisation administrative et financière et modalités de fonctionnement de la « radio tunisienne »; Décret n° 2007-1868 du 23 juillet 2007, portant création, organisation administrative et financière et modalités de fonctionnement de la « télévision tunisienne ».

176 Leaders.com.tn, 23 January 2011, Béchir Hmidi revient à tête de la Télévision Tunisienne, 23 ans après

177 Leaders.com.tn, 24 January 2011, Habib Belaid revient à la Radio, mais cette fois-ci en tant que PDG

178 Webdo.com, 24 February 2011, Nouveau PDG de l'établissement de la Télévision tunisienne, Mokhtar Rassaa

On 7 January 2012, Mokhtar Rassaa was replaced by Adnan Kheder on decree of government elected on 23 October 2011. On 24 April 2012, the PDG of the Tunisian Radio, Habib Belaïd, was replaced by Mohamed Meddeb¹⁷⁹. These decisions were taken without any public consultation and with an obvious lack of transparency. The new PDG of Tunisian Radio replaced the heads of nine national and regional radio stations, without prior consultation with the relevant professional organizations¹⁸⁰.

More recently, on 17 August 2012, a new PDG was appointed, by decree, as head of the Tunisian Television organisation, in the person of Imen Bahroun, who had served as director of the second channel (Wataniya 2). This appointment was strongly opposed by the trade unions, SNJT and UGTT, though this did not prevent the new PDG from unilaterally designating, on 3 September 2012, two new directors to head the television channels 1 and 2.

Appointments to the leadership of the public service broadcasting organisations should be open, transparent and free from any direct governmental interference, or any control on the part of special interests, whether political or economic.

To ensure the independence of the public service broadcasting organisations, there should be an independent board of directors with a public service mission and the responsibility to ensure editorial independence. This body should be able to call for nominations for the post of PDG and to conduct a fair process of assessment of candidates so that the appointment is made on the basis of merit.

Indicator 3.6

Public service broadcasters (PSBs) engage with the public and CSOs

Since the 14 January Revolution, the public broadcasting organisations, Tunisian Television and Tunisian Radio, have improved the diversity of opinion and representation of the public and of civil society organisations. The heads of these organisations have also engaged in public debates on media policy and media development in Tunisia.

However, no procedure exists to ensure the accountability of these organisations to the general public. There have been no further steps to involve the public in the appointment of members of the board of directors, as we have seen in Section 3.5 above, nor any mechanism for complaints handling, such as an ombudsperson.

.....
179 Kapitalis, 24 April 2011, Un illustre inconnu remplace Habib Belaïd à la tête de la Radio nationale
180 Nawaat.org, 2 July 2012, Manque de transparence dans la nomination des directeurs des radios publiques

C. Media self-regulation

Indicator 3.7

Print and broadcast media have effective mechanisms of self-regulation

Apart from Tunisian Television, no Tunisian media, print or broadcast, public or private, has a general code of ethics. Since 2012, Tunisian television has had a code of ethics developed in collaboration with the BBC. Tunisian Radio had the merit to produce an election charter setting out ethical guidelines for election reporting and including specific provisions for the ANC elections¹⁸¹. Tunisian Radio started, in September 2012, a project to develop a general code of ethics for its nine channels. The legal statutes of the public media (news agency, radio and television) contain no specific provisions with regard to their mission as media organisations, and very little on their editorial activities. Nowhere in their organizational framework do they mention responsibility for defining the editorial line to comply with professional and ethical rules or to ensure the responsibility of these media to the public.

The boards of directors of these media, composed by a majority of representatives of the State and government, do not include any representative of journalists. Under the reign of Ben Ali, no Tunisian media, public or private, had a council or editorial board that could be described as such. At Tunis Africa Press (TAP), the largest media company in the country, there was not even - and there still is not - a daily editorial meeting¹⁸². On the rare occasions where journalists met with senior management of the organisations, it was only to allocate topics and to schedule the release of special editions the agency was required to publish on the occasion of major national events, and especially the anniversary of Ben Ali's accession to power on 7 November.

After the fall of the regime, a number of media organisations (TAP, SNIPE, Dar Essabah, Tunisian Radio and Tunisian Television) proceeded to create councils or editorial boards. These new self-regulatory structures very quickly demonstrated their limitations and inefficiencies, and for several reasons. In some of the media, these editorial councils have been perceived by the PDG as some kind of abdication of a part of their sovereignty. So they mobilized all means to infiltrate and undermine them from within. In other private media, employers still continue to deny the principle of self-regulation. On the other hand, the method followed for the appointment of the members of the editorial boards, being by election, was not good, carrying with it the risk of creating internal conflicts between different interest groups.

Indeed, in a profession for many years undermined by corruption, individualism and opportunism, it was not obvious that the best would be elected. This is notably the view expressed repeatedly by the National Authority for Reform of Information and Communication (INRIC), which opposed from the outset the principle of elections, but sometimes at odds with the wishes of the journalists. All of the self-regulatory bodies created within media organisations, after the fall of the regime, are now either completely broken

180 Correspondence of Zouhair Ben Hamad, Radio tunisienne, 1 August 2012

181 INRIC (2012) Rapport général, op. cit.

182 INRIC (2012) Rapport général, op. cit.

or have been shelved.

At the sector level, the National Union of Tunisian Journalists (SNJT) has a Code of Ethics which was adopted in 1983, in the time of the Association of Tunisian Journalists (AJT), predecessor of the union. Each union member is required to sign a form under which they agree to comply with the Code, the text of which is carried on the back of the membership card. The Code has not been revised since its adoption. After the fall of the regime, SNJT took the initiative, in March 2011, of creating an ethics observatory which released a single report, on 3 May 2011, on the occasion of World Press Freedom Day. Efforts are currently underway to reactivate this observatory.

Other actions relevant to self-regulation have also been undertaken, such as the development by INRIC of a practical guide for journalists during election periods¹⁸³, an elections charter for Tunisian Radio¹⁸⁴ and a code of ethics for Tunisian Television¹⁸⁵. A two day international workshop was also organized, in September 2011, on the theme “journalistic ethics and democratic transition”¹⁸⁶.

INRIC has also called repeatedly on the SNJT, the Tunisian Association of Newspapers Managers (ATDJ) and the Union of Independent and Partisan Press (SPIP) to create a self-regulatory body for the press, in the form of a “Press Council” that would bring together the journalists’ union and associations of media owners.

Article 17 of Decree Law 2011-115 on freedom of the press, printing and publishing provides for a separation between editorial and administration but does not mention a self-regulatory body, or an editorial board.

Institutional mediation mechanisms, responsible for receiving and handling complaints from the public, do not exist in the Tunisian media, print or broadcasting. In a few media, particularly newspapers, there is at best a provision for “letters to the editor”. Violations of ethical standards are an everyday practice, especially in the print newspaper, including defamatory attacks and partisan reporting.

In the time of Ben Ali, the perpetrators of these violations were often journalists close to the regime who acted on instructions and with complete impunity. Today, the violations of ethical standards belong rather to a total dysfunction across the whole sector. They no longer obey any apparent logic.

Indicator 3.8

The media displays culture of self-regulation

The National Union of Tunisian Journalists (SNJT) is one of the most dynamic organizations of civil life in Tunisia. In its annual reports on press freedom in Tunisia, published on 3 May each year, on the occasion

183 NRIC (2011) Guide du journaliste

184 TAP, 4 October 2011, La Radio Tunisienne à l’heure des élections

185 TAP, 4 May 2012, La Télévision tunisienne aura bientôt son code de déontologie

186 TAP, 22 September 2011, Atelier de travail sur la « Déontologie journalistique et la transition démocratique »

of the World Press Freedom Day, the Union devotes a chapter to violations of ethical rules.

With other civil society actors, including Tunisian League for Human Rights (LTDH), Tunisian Association of Democratic Women (ATFD), National Council for Liberties in Tunisia (CNLT), and Observatory for Freedom of the Press, Publishing and Creation (OLPEC), the Union has participated in all efforts relating to self-regulation and monitoring of the media, particularly during major elections. CNLT and OLPEC recently announced the creation of an “Observatory of the Press” under the aegis of the Arab Working Group for Media Monitoring (AWG-MM)¹⁸⁷.

Under the regime of Ben Ali, censorship was practiced in a systematic manner in all print and broadcast media, with the exception of a few opposition newspapers. In addition to the red lines set explicitly by the regime, by means of direct instructions dictated to the media owners, most Tunisian journalists voluntarily avoided dealing with certain issues they considered to be forbidden, including corruption.

After the fall of the Ben Ali regime, the space for freedom has grown considerably. Many red lines have completely disappeared. But new frontiers emerged including matters pertaining to religion and morality, as discussed in more detail in Section 1.1 on censorship, above, and in Section 3.13 and 3.14, on the safety of journalists, below.

Generally, most of the print and broadcast media respect the right of reply which is codified in law - Articles 26 to 34 of the old Press Code and Articles 39 to 44 of the new Code, Decree Law 2011-115.

D. Requirements for fairness and impartiality

Indicator 3.9

Effective broadcasting code setting out requirements for fairness and impartiality

There is no content regulation code for public and private broadcasters. Broadcasters are required to comply with laws and regulations that apply to all media, including the Penal Code and the new Press Code, Decree Law 2011-115.

Decree Law 2011-116, which provides for the establishment of HAICA, the independent regulatory body for broadcasting has not been implemented in so far as an additional decree is needed for the appointment of its members. The law setting up HAICA includes a chapter on the provisions applying to election campaigns, including responsibility for HAICA to develop rules applying to broadcast content during the election campaign. Pending the establishment of HAICA, there is no mechanism in Decree 2011-116 to establish the rules for election campaigns.

The regulatory framework for media coverage of the elections to the Constituent Assembly, on 23 October

2011, was defined in the Decree Law establishing the Independent High Authority for the Elections (ISIE)¹⁸⁸. Article 44 provides that the election campaign takes place exclusively in the national media. Articles 45 and 46 provide ISIE with powers to set rules to avoid discrimination between candidates and to set conditions for the dissemination of the campaign messages of all candidates.

In preparation for the elections to the Assembly, ISIE published a set of regulations based on principles of fairness, balance and impartiality of the media during the election campaign¹⁸⁹. Under these provisions, public radio and television services are responsible for the recording and dissemination of campaign messages of all candidates. The private media have the right to broadcast the messages, but should do so for all candidates and must adopt the same order and the same times of broadcast as the public broadcasters, unless otherwise agreed with ISIE.

The regulations also require the media, public and private, to provide fair, balanced and impartial coverage of candidates during the election campaign, to keep recordings of their production in the six weeks preceding the elections, and to provide a weekly report to ISIE on the participation of candidates in political debates and other broadcasts.

ISIE has no power to impose a fine or other more onerous sanction for non-compliance by broadcasters, but it may require a media company to publish a correction, order the suspension of the program concerned for a limited period, or withdraw the right of the company to provide election coverage. ISIE may also refer the company to the competent authorities for violations of the electoral law. In case of non-compliance, the company is liable to a fine of up to five thousand dinars. In practice, the role of ISIE in relation to media coverage was more one of moral persuasion, including talking directly with broadcasters in the case of a problem and advising them on the correct procedure.

The law establishing ISIE and the regulations on media coverage during the election campaign comply with international standards, but from reports provided by ISIE on media monitoring during elections, it appears there were significant imbalances in the actual coverage by some broadcasters, and rules to prevent the dissemination of campaign messages through international media were not respected..

Indicator 3.10

Effective enforcement of broadcasting code

As noted in Section 3.9 above, there is no general code for regulating the distribution of broadcast content, nor any self-regulatory mechanism that applies to all broadcast media. Decree Law 2011-116 provides that HAICA, once created, should establish regulations concerning distribution of content but, with the exception of the rules on election coverage, the scope of those regulations is not well defined.

.....

188 Décret-loi n° 2011-35 du 10 mai 2011, relatif à l'élection d'une Assemblée nationale constituante.

189 Arrêté du 03 septembre 2011 fixant les règles auxquelles les médias audiovisuels doivent se conformer pendant la campagne électorale; Arrêté du 03 septembre 2011 fixant les règles et les procédures de la campagne électorale; and Arrêté du 03 septembre 2011 fixant les conditions de production, de programmation et de diffusion des émissions radiophoniques et télévisées relatives à la campagne électorale.

HAICA is empowered to call on a wide range of sanctions that can be applied without requiring reference to a court of law. On the other hand, it lacks a clear legal framework for dealing with complaints from the public. The latter would be useful to provide a graduated approach to regulation that places primary emphasis on moral persuasion and the promotion of a culture of good journalistic practice.

E. Levels of public trust and confidence in the media

Indicator 3.11

The public displays high levels of trust and confidence in the media

Polls show the public to have a very mixed opinion of the media. These surveys do not address the perceived quality of media products among the public. The question most addressed is that of satisfaction with the regard to the media in general.

An opinion poll conducted by the consulting firm, Sigma Conseil¹⁹⁰, published in March 2012, reports that 47.4 per cent of Tunisians are satisfied or very satisfied with the performance of the media, against 46.8 per cent who expressed dissatisfaction. A survey by 3C Etudes, between 23 and 28 May 2012, indicates that the media enjoy the satisfaction of 63 per cent of Tunisians, but 33 per cent are dissatisfied, of which 14 per cent are completely dissatisfied¹⁹¹. In another poll conducted by Pew Research Center between 19 March and 20 April 2012, 63 per cent of Tunisians surveyed declared that the media have a good or very good influence on the development of Tunisia against 36 per cent who declared media influence to be bad or very bad¹⁹².

The richness of the Tunisian reality due to the dynamic of the political scene in this period of democratic transition and to the proliferation of social demands throughout the country has brought greater balance between local and national news.

Local events are more common in reports, documentaries, the press and electronic media, but the proportion of national news remains substantial. The Television News (JT) at 8pm on the national Tunisian Television treats regional news with the same interest as national news. Among other examples, the newspaper Echorouk devotes a daily supplement to regional news. The second national channel, Wataniya 2, became, from 2 January 2012, a channel dedicated to regional news. Private radio stations and the regional public radio stations also feature local journalism¹⁹³.

A few journalists, notably those of Tunisian Television who defended the old regime during the Revolution, are perceived as corrupt. For more than fifty days, in front of Tunisian Television, demonstrators called for a «purge» of the public media and the removal of «corrupt» journalists who collaborated with the former

190 African Manager, 7 March 2012, Tunisie : Le public, plutôt content des médias

191 3C Etudes (2012) Baromètre politique Tunisie – sixième vague juin 2012

192 Pew Research Center (2012) Most muslims want democracy, personal freedoms, and Islam in political life, Global Attitudes Project, publié le 10 juillet 2012

193 Retro vision, Samira Dami, la Presse magazine, n° 1227-24 April 2011

regime. On 28 April 2012 three women journalists¹⁹⁴ resigned from presenting the Television News at 8pm, in the face of pressure and accusations of collaborating with the old regime. The President of Tunisian Television decided to give the Television News at 8pm a facelift, proceeding with a casting to recruit new presenters. This step aims to breathe new life into it and to calm the protesters.

The public authorities and their supporters believe public television is indifferent towards the activities of the government and fails to highlight their achievements. Other people complain that public television does not reflect their demands and grievances. Although the Tunisian media, particularly broadcasting, have made progress thanks to the wind of freedom that has blown after the Revolution, the public perception of the media is not as uniform as the polls have shown.

Public participation in the media depends on the nature of the media. There are few television programs that give voice to the general public, particularly as television space is occupied now by politicians and experts. Radio stations are considered the most accessible media. People express themselves through radio stations that open the airwaves for long periods of telephone debate or even for criticisms and testimonials. All means of communication available are used by the radio stations to welcome the opinions of the public (telephone, email, social networks). In contrast, the press ignore readers' letters, probably because of the wealth of news.

Indicator 3.12

Media organisations are responsive to public perceptions of their work

Tunisian media have been used in recent decades to serve the image of the old regime. In this respect citizens could access the media on condition they avoided taboos and red lines. Spaces of public expression were open only for singing the praises of the President and the political regime. To realise the change that is hoped for, media are called today to dedicate themselves to independent and neutral news reporting, by showing professionalism such that the journalism reflects the reality of the country and the aspirations of Tunisians.

Media professionals have realized the need to put in place a process of change management to respond adequately to the demands of a vigilant public. This process is focused on restructuring of institutions and staff training. Nevertheless, the process of change has not incorporated mechanism of accountability to ensure transparency and dialogue with the public, such as the creation of a new role of ombudsperson between the public and the editorial or of a system for handling public complaints.

.....
194 Naima Abdallah, Insaf Ben Moussa and Khadija Soua

F. Safety of journalists

Indicator 3.13

Journalists, associated media personnel and media organisations can practice their profession in safety

Before 14 January 2011, it was mostly independent journalists and committed activists that were beaten in the streets and public places. The assailant was easily identified - the political police.

Today, after the fall of the Ben Ali regime, it is now any journalist who may one day or another find themselves attacked on the street. These attacks may be the act of the security forces but also of party political activists or extremist groups, and even ordinary citizens. In its annual report on press freedom in Tunisia, published on 3 May 2012, on the occasion of the World Press Freedom Day¹⁹⁵, SNJT recorded more than thirty attacks and acts of violence committed against journalists between 3 May 2011 and 3 May 2012. The reports states: "Attacks against journalists, their professional organizations and media reached an average of one attack a week".

Since the second half of 2011, journalists face the rise of religious extremism. The most radical movements have no hesitation in attacking media and journalists when the latter address religious issues from a critical perspective.

More worrisome, many Tunisian journalists have been victims of aggression since the appointment of the new democratic government. Reporters Without Borders¹⁹⁶ responded, on 14 January 2012, on the occasion of the anniversary of the Revolution, with an open letter to the Tunisian authorities to express its concerns about freedom of expression in Tunisia, as has the IFEX Tunisia Monitoring Group¹⁹⁷.

On 15 July 2011, several journalists were beaten by police. SNJT filed a complaint against the Minister of the Interior for violation of the rights of journalists. "Though some journalists did not have distinctive signs, those who were clearly identifiable from their photographic equipment and their camera, were also not spared by the police", noted Reporters Without Borders¹⁹⁸. RSF further deplored, in a statement issued on the occasion, the declarations of Prime Minister Beji Caïd Essebsi, who in a speech on 18 July, had clearly equated the journalists with troublemakers, suggesting their responsibility for the violence experienced across Tunisia.

On 9 and 11 October 2011, the television channel Nessma TV was attacked by about 300 demonstrators who protested against the screening of the film Persepolis. Acts of vandalism occurred and threats were made against the staff and the director of the channel. While the political parties condemned the attack, the

195 SNJT (2012) Le rapport annuel sur la liberté de la presse en Tunisie

196 RSF, 12 January 2012, Lettre ouverte de Reporters sans frontières aux autorités tunisiennes

197 IFEX-TMG, 11 January 2012, Le TMG de l'IFEX s'inquiète des attaques contre les journalistes et les universitaires

198 RSF, 19 July 2011, Journalistes agressés pendant des manifestations à Tunis

majority of them also condemned what they described as provocation in a pre-election period.

On 9 April 2012, on the occasion of the commemoration of the Feast of the Martyrs, a demonstration on Avenue Habib Bourguiba was punctuated by attacks on journalists, national figures and human rights defenders. Some protesters accused “militias” of the Ennahdha movement as well as the security forces¹⁹⁹. Rached Ghannouchi, leader of the party, meanwhile, denied any connection between Ennahdha and the “so-called” militia that attacked the protesters and journalists²⁰⁰.

On 23 and 24 April 2012, violence erupted outside the headquarters of Tunisian Television between journalists of the institution and a group of protesters close to Ennahdha, present outside the headquarters of the channel since 2 March 2012 to call for cleaning up the public media. The conflict intensified following statements of Ameer Laarayedh, member of the political office of the Ennahdha movement and member of the Constituent Assembly, and Rached Ghannouchi, leader of the party, referring to a potential “privatization of the public media”²⁰¹. It was reported that the sit-inners had inscribed at the entrance to the organisation and on placards, the phrase “Channel 7 For Sale”²⁰².

In a press release on 25 April 2012, the Ennahdha movement denounced “the violence, Monday and Tuesday, outside the headquarters of the national television regardless of who is responsible”, reaffirming the right “to peaceful protest and the exclusive right of the State to control anything beyond that”. According to the statement of Ennahdha, the national television is “a public service that holds particular importance,” “an institution going through a crisis, due to the continuation of certain parties to process news with partiality and to orient the main news bulletin”²⁰³.

All of these events highlight the mistrust that exists between the government elected on 23 October 2011 and a large part of the existing media, critical of the Islamist movements. The case of the Tunisian national television and the statements of the leaders of the Islamist movement on the privatization of these media²⁰⁴ illustrate the growing tension between the dominant party and Tunisian journalists, accused of systematically denigrating government action or plotting to overthrow the executive.

For its part, the main party in government, Ennahdha, is wary of the media, both because they collaborated with the Ben Ali regime, but also because they are considered close to left-wing circles.

Under the old regime, it was independent journalists who were often victims of aggression. Some among them were illegally detained or prosecuted on charges of common law which had no connection with their

.....
199 WebmanagerCentre.net, 9 April 2012, Fête des martyrs à Tunis : Chronologie des affrontements entre manifestants et forces de l'ordre
200 Tunisie Numérique, 10 April 2012, Rached Ghannouchi: « Ennahdha n'a pa de milices et ne portera pas plainte contre Hamma Hammami »
201 RSF, 26 April 2012, Violences devant le siège de la télévision nationale après l'annonce d'une éventuelle privatisation des médias publics
202 La Presse, 24 April 2012, Sit-in devant l'Établissement de la télévision nationale : Les provocations montent d'un cran
203 TAP, 25 April 2012, Le mouvement Ennahdha « dénonce la violence devant le siège de la télévision nationale quel qu'en soit l'auteur »
204 INRIC (2012) Les pays démocratiques ne cèdent pas leurs médias audiovisuels publics au capital privé

journalistic activity. There is a list of these journalists in the General Report of INRIC²⁰⁵. Since 14 January 2011, attacks against journalists have become more frequent than under the old regime. But only one case of imprisonment has been recorded, that of the director of the newspaper Attounissia (see above in Section 1.10), who spent eight days in jail before being sentenced to a fine of one thousand dinars.

SNJT emphasizes that “the refusal of the Government to implement the Decree Law 2011-115 and its Article 14²⁰⁶ on the protection of journalists has encouraged certain parties and militias close to political parties, particularly Ennahdha, to think that they could act with complete impunity, paving the way for the assault and intimidation of journalists”. Article 14 states: “Anyone who (...) offends, insults a journalist or attacks them by words, gestures, actions or threats, in the exercise of their functions, will be punishable under the charge of insult to a public official or equivalent, provided for in Article 123 of the Penal Code”. It should be noted, nevertheless, that Article 14 is not compatible with restrictions provided for in international law on freedom of expression, which carry no specific protection for journalists against insults or other critical remarks.

SNJT has repeatedly asked for the opening of official investigations and even filed a complaint against the authorities, in particular against the Minister of the Interior. No serious investigation has been conducted and no complaints have resulted. Most perpetrators of attacks against journalists have never been identified, and even those who have been arrested have also been immediately released by the court.

The Labour Code and the Collective Agreement for the newspaper industry require newspaper companies to ensure conditions of security for their journalistic staff and others. Threats to the security of journalists are not just limited to physical or verbal abuse. They also relates to security of employment, wages and working conditions.

With the exception of major public media (TAP Agency, Tunisian Radio and Tunisian Television), most media companies in the private sector do not comply with legal provisions relating to the safety and social welfare of journalists. Many Tunisian journalists are today in very precarious conditions, especially among young people of whom some no longer regard freedom of expression as their priority. Temporary and freelance staff employed by the media, often in much greater numbers than permanent staff, are very poorly paid sometimes with no social security coverage.

.....
205 INRIC (2012) Rapport general, op. cit.
206 SNJT (2012) op. cit.

Indicator 3.14

Media practice is not harmed by a climate of insecurity

Given the increasing number of attacks against journalists, a climate of fear is in the process of being reinstalled, reinforced by legal actions, including the case of Nessma TV and the action against the bloggers, Jabeur Mejri and Ghazi Beji, each sentenced to 7 years and 6 months in prison for distributing a text judged to be blasphemous, as noted in Section 1.12. With this can be seen an insidious return of self-censorship, particularly in the broadcast media, and especially among journalists in the field and press reporters working in the interior regions.

Recommendations

- The media should be encouraged to reflect ethnic, cultural and political diversity and to ensure access for all including the most marginalised.
- Measures should be taken to promote equal representation of women at all levels of the media including in management and governing boards.
- The public service objectives of the public media should be defined and guaranteed in law.
- The legal framework of the public broadcaster organisations should be revised to ensure that they operate in the public interest, without editorial interference of the government or of political or economic interests.
- The governing boards of the public broadcasting organisations should be appointed through an open and transparent process set out in law and designed to ensure a diversity of interests, opinions and expertise, independent of political or economic interests.
- The President-Directors General (PDG) of the public broadcasting organisations should be selected by an independent body based on merit and following an open, transparent and fair process.
- The public media should adopt a Code of Conduct that sets out their ethical principals based on criteria of quality, professionalism, pluralism, independence and respect for human rights.
- Professionals working in the press and electronic publishing should be encouraged to put in place a system of self-regulation consistent with international norms.
- The independent regulator for broadcasting, provided for by Decree Law 2011-116, should be tasked with responsibility to produce a Broadcasting Code of Conduct to ensure respect for fairness and impartiality.
- Interactive mechanisms of mediation between media companies and the public should be established with the responsibility of receiving and handling complaints and grievances of readers, listeners and viewers.
- Public authorities should establish training and procedures to ensure the safety of journalists, media workers and media organisations against all forms of threat, harassment and physical assault.
- Measures outlined in the collective agreement for journalists should be implemented in order to protect their social and economic interests.



Category 4

**Professional capacity building
and supporting institutions
that underpins freedom of
expression, pluralism and
diversity**



KEY INDICATORS

A. Availability of professional media training

- 4.1 Media professionals can access training appropriate to their needs
- 4.2 Media managers, including business managers, can access training appropriate to their needs
- 4.3 Training equips media professionals to understand democracy and development

B. Availability of academic courses in media practice

- 4.4 Academic courses accessible to wide range of students
- 4.5 Academic courses equip students with skills and knowledge related to democratic development

C. Presence of trade unions and professional organisations

- 4.6 Media workers have the right to join independent trade unions and exercise this right
- 4.7 Trade unions and professional associations provide advocacy on behalf of the profession

D. Presence of civil society organisations

- 4.8 CSOs monitor the media systematically
- 4.9 CSOs provide direct advocacy on issues of freedom of expression
- 4.10 CSOs help communities access information and get their voices heard

Category 4

Professional capacity building and supporting institutions that underpins freedom of expression, pluralism and diversity

A. Availability of professional media training

Indicator 4.1

Media professionals can access training appropriate to their needs

Two public institutions provide training for journalists in Tunisia. The first is the Institute of Press and Information Sciences (IPSI), based at the University of Manouba, and the second is the African Centre for Training of Journalists and Communicators (CAPJC). This section examines the system of continuing education, including the role of CAPJC. IPSI is discussed in Sections 4.4 and 4.5 below.

CAPJC, established in 1982²⁰⁷, is a non-departmental public institution under the supervision of the Prime Minister and having financial autonomy and legal personality. Following its creation, the CAPJC quickly fell under the control of the old regime. This seizure was an extension of the government's policy with regard to media to ensure that training should be of a purely technical nature.

Decree 2002-632 of 1 April 2002²⁰⁸, which fixes the mission, administrative organisation, financial and operational modalities of the CAPJC, requires approval of the supervisory authority before entering into agreements with similar national or international institutions (Article 3), including "contracts, training agreements, studies and research related to the missions of the centre" (Article 5). This dependence upon the supervisory authority has deprived the Centre of the flexibility needed to contribute to the improvement of the professional skills of journalists.

From January 2011, the CAPJC has tried to focus on new themes at the request of its clients, who have experienced much pressure due to their new responsibility to the audience that has become more important than obedience to the government.

Training courses organized in 2011 and 2012 have been facilitated by Tunisian and international trainers. CAPJC hosted 23 international trainers in 2011, including five French, two Irish and two Americans, one German, one Swiss, one Canadian and one Polish who provided training in French.

.....
²⁰⁷ Article 133 of Loi de finance n°84-1982

²⁰⁸ Décret 2002-632 du 1er avril 2002 fixant les missions du Centre africain de perfectionnement des journalistes et communicateurs

Since its establishment, CAPJC has been supported by the Friedrich Naumann Foundation. During the year 2011-2012, CAPJC organised 22 training courses in collaboration with this German foundation and other new international partners. Since 2011, international organizations have proposed to CAPJC the planning of joint activities in the field of vocational training in the framework of cooperation agreements²⁰⁹. Various organizations and institutions have provided training dedicated to journalists on new themes. Among these partners are the BBC, France 24, Radio France Internationale (RFI), Radio Monte Carlo, Deutsche Welle Akademie and Arab Reporters for Investigative Journalism (ARIJ). Generally, the success of the training depends on recruitment of a good trainer, the requirements in terms of skills, and the period of work necessary.

Under the old system, some training themes were favoured over others because of the restrictions imposed. Training sessions on technical themes such as information and communications technology were frequent. These include sessions focusing on the production of websites and newsletters, website content management, newspaper design and layout, information monitoring, ICT in the service of media relations, etc.

Since January 2011, courses proposed have been oriented towards themes recommended by professionals in the different media to meet the needs of the period of democratic transition such as in directing debates and media coverage of elections to the Constituent Assembly. At the same time, CAPJC has dedicated training courses that focus on proper use of the Internet and social networking, on the management of digital archives, and managing access to information sources.

CAPJC has two training rooms each equipped with 15 computers and ancillary equipment for production. Both rooms also have access to the TAP Agency news feed and have high speed internet connection. The Centre also has a joint radio and television studio fitted with digital equipment and a newsroom that can accommodate 20 journalists.

Media executives have expressed the need to decentralise training and to organise on-site courses in the regions, in order to promote the principle of localness and to respond to the demands expressed by managers of the regional media. The latter are constrained not to allow journalists to be absent for a long period (of 3 to 6 days) in order to participate in a training course, due to their lack of adequate staffing or because of their large workload. They believe the most appropriate solution is to organize on-site training in the regional media and take into account the particular nature of their socio-cultural environment. The management of CAPJC has, from their side, confirmed having received requests to provide training in the regions.

Some international organizations, such as BBC, RFI and Deutsche Welle, have organized numerous training sessions in Tunisia on their own initiative and addressed directly to the relevant media. Most of these courses are held in the capital since the majority of public and private media are located in Tunis. Only a

few sessions have been delivered in the regions, particularly in the regional public radio stations (Le Kef, Sfax, Gafsa and Tataouine) in July 2011, organized by UNESCO²¹⁰ and two others organized by the Arab Institute of Human Rights on-site at the radios of Le Kef and Gafsa.

UNESCO has invited four trainers, three French and one Tunisian to facilitate eight training courses, of which half were in French. Paul Biondi²¹¹, one of the trainers, noted that “language was not a real difficulty. Students have mastered sufficient French to undertake the training and to discuss the subjects with the trainer. Practical exercises were conducted in Arabic and did not prevent the trainer or members of the group from validating the achievements reached by the end of the course”²¹².

Technical equipment (computers, cameras etc) are handled with ease, as they have programmes in Arabic and/or French and/or English, the languages used and understood reasonably well by the participants in the training sessions, through the educational system based on the teaching of modern languages.

RFI has also organised two training sessions conducted in late 2011 and another in January 2012 for new private operators. These courses are focused on administration, management and programming. RFI and Radio Monte Carlo also hosted for two weeks ten trainee journalists in their newsrooms in Paris in December 2011. A month later a dozen journalists had the opportunity to spend two weeks in the newsroom of Radio Monte Carlo.

The BBC has offered the opportunity to Tunisian journalists to receive training distance during the month of March 2012, on ethics and editing techniques. Some fifteen journalists from the public broadcasters and press attended this session.

A very large number of training courses were conducted in January 2011. However, statistics have not been obtained to show the rate of participation of women and marginalized groups in this process.

The diversification of training sessions on journalistic techniques, directing debates, election coverage, etc. and a strong orientation of the training towards international standards have not been followed by evaluation of learning outcomes achieved and the impact of the training on the development of the media has not been measured in a systematic and scientific manner, according to a manager at Tunisian Radio²¹³. On the other hand, training reports of international organizations such as the BBC and UNESCO present an evaluation of the training courses by each participant, in addition to the undertaking of a comprehensive evaluation by the trainer.

The conversion of State media into public media has demonstrated the need to strengthen good governance

.....

210 Rapport de formation et recommandations élaboré par Farida Ayari : Formation destinée aux journalistes des radios régionales tunisiennes (Le Kef, Sfax, Tataouine et Gafsa) à la couverture de l'élection de l'assemblée constituante d'octobre 2011 (7-22 juillet 2011)

211 Journalist at Radio France and trainer at Media Training Centre

212 Compte rendu formation UNESCO- Radio Monastir du 21 au 23 juin 2011- Paul Biondi, p2

213 Discussion group organised by l'UNESCO at CAPJC, 25 May 2012

and quality management. However, there is absence of a centrally organised training structure in the public radio which lacks the means necessary to deliver training adapted to the main challenges of media transition.

Indicator 4.2

Media managers, including business managers, can access training appropriate to their needs

Officials from the public and private media have expressed the need for training in business administration, management, good governance, program scheduling, building a television channel and marketing.

In the first half of 2012, CAPJC organized a workshop dedicated to managers of traditional media called “from monomedia to multimedia”²¹⁴ , in collaboration with Canal France International. This workshop was designed to raise awareness of the benefits of new media products that can enrich the media offer and provide more flexibility and responsiveness towards audiences. CAPJC also provided a training course for publishers and managers of new media with the title “What business model for new media?” This course was designed to give a clear view of the methods of value creation on the internet and to come up with potentially profitable projects.

CAPJC had programmed, in March 2012, a training course for developers and media managers on “management of a media project” which it had to postpone because there was no demand²¹⁵ . The reluctance of professionals in the public sector with respect to sessions proposed may be explained by the legislation in force that affects some wage premiums for participation in some training placements²¹⁶ .

Indicator 4.3

Training equips media professionals to understand democracy and development

Before January 2011, CAPJC only provided training of a purely technical nature, without addressing issues such as the responsibilities of the media or investigative journalism. After 14 January 2011, CAPJC has cooperated with ARIJ to train four trainers in investigative reporting and responding to a strong and growing demand. CAPJC also plans to introduce as soon as possible an “ethics” section in each training module to be delivered in 2012, without developing a specific module²¹⁷ .

It is essential now to think of the means to ensure transition to a democratic society while reducing the risk of ethical shortcomings in the media. It is therefore important to embed those ethical principles which are the basic principles of journalism.

.....

214 See <http://capjc.nat.tn>

215 Discussion group organised by l'UNESCO at CAPJC, 25 May 2012

216 Zouhair Ben Hamad, Radio Tunisienne - Discussion group organised by l'UNESCO at CAPJC, 25 May 2012

217 See <http://www.capjc.nat.tn/>

B. Availability of academic courses in media practice

Indicator 4.4

Academic courses accessible to wide range of students

IPSI since its establishment in 1967²¹⁸ until 1973 has provided trained of two-year in a double degree for students drawn from other subjects (law, economics, sociology, literature etc.). In 1973, IPSI became a non-departmental public institution enjoying financial autonomy and legal personality²¹⁹. It now provides full training of journalists from the baccalaureate to the master's degree in journalism and communication²²⁰. Under the regime of Ben Ali, the IPSI found itself "under three supervisors"²²¹ - administrative supervision of the Ministry of Higher Education, to which was added that of the Presidency of the Republic and of the ruling party, the RCD.

IPSI is the only public institution that has offered courses in journalism since its establishment. Students gain a master's degree after four years of study. The Institute offers students the opportunity to study a master's in information technology and communication and also a master's in electronic media²²². It has been possible to pursue research at the IPSI to gain a doctorate since 2004-2005. The Institute has diverse areas of specialisation in the third cycle and has created a professional master's degree - in broadcast journalism and in press and electronic media.

IPSI, under the old four year system, provided a fairly specialized training, which allowed entry for graduates trained in certain disciplines and which represented a plan for future specialised journalists. With the new formula LMD (licence, master, doctorate) applied from 2008-2009, professionals have realized the shortcomings in specialization. This is why IPSI decided to offer students the opportunity to specialize at Master's degree level and to provide them with journalistic tools that they can out into practice. IPSI has also strengthened its computer training. It has enough functioning equipment, but the renewal of such facilities is not always guaranteed.

Teaching at the IPSI is also based on a system of training which, according to management, should be revised because students are not sufficiently supervised during placements. The student is called, during the first year, to undertake an initial field placement of three or four days in a local or regional administrative institution, economic enterprise or social or cultural organisation. In the second year, an alternative placement of fifteen days is undertaken and validated by a report. A two-month internship in the third year is intended for professional integration of students both into press or broadcasting organisations and into agencies and departments of communication. Students must submit a report containing a description of the tasks they had to perform daily. They are also called upon to present a review of the work done and of

218 Loi de finances n°57-1967 du 30 décembre 1967

219 INRIC (2012) Rapport général, op. cit.

220 Ibid.

221 Baraket, H. (2012) op. cit.

222 Interview with the Director of IPSI

the media in which they were hosted.

The Director of IPSI has said she will try to change the image of the curriculum offered by the Institute from one favouring the academic component over the practical aspect. Moreover the number of hours of supervised work far exceeds the volume of lectures. IPSI has launched a “newsletter” which is a news round-up (reports and pictures) of what’s happening on campus. It aims to create a certain dynamic by teaching students professional rules and deadlines. The Institute has also launched a magazine called “Academia”²²³ to encourage students to become involved in something new. The Director of IPSI also plans to launch a web radio station for the university, following the acquisition of a new server. These initiatives aim to increase awareness, motivation and encouragement of students.

In the framework of initiatives to reform the Tunisian press, access to IPSI will become, from the academic year 2012-2013, through competition. Graduates that express a desire to join IPSI must pass an entrance exam to assess their ability to pursue studies in information and communication sciences. This reform will enable IPSI to train better journalists and to satisfy a market more demanding than ever.

The adequate training of journalists requires acquisition of high-performance equipment that can handle new technologies. The equipment used in training is imported from Western countries. Their use requires mastery of a foreign language - usually English or French. As for reference books, they are available in different languages: English, French and sometimes Arabic. IPSI has overseen the publication of a bilingual periodical «Tunisian Review of Communication» (RTC) since 1982 with a view to promoting scientific research in Arabic in journalism and communication.

IPSI has audiovisual facilities that consist of two radio studios, two television studios, a photographic lab and layout units. To provide training in appropriate conditions, IPSI has gradually equipped with modern facilities thanks to donations from international institutions. Management has succeeded in digitalisation twenty percent of the television studio equipment with a budget equivalent to U.S. \$120,000 in 2011-2012. Equipment performance and availability of infrastructure has had an impact on the quality of training by the university ²²⁴. Students specialising in radio have benefited from better training thanks to availability of technical equipment for editing and mixing. As for students specialising in television, they are less able to master the technical tools due to shortcomings in the facilities available, given the very high cost of equipment. IPSI also has an electronic link with the national news agency, TAP.

After strengthening of training in computer science and technology, IPSI will need to acquire appropriate and necessary computer equipment. Currently, IPSI has a suite of computers used both for basic training in computing, internet, multimedia and graphic arts as well as for specialized training in DTP (desktop publishing) and electronic journalism. But the Institute needs to renew its computer equipment for higher performance.

.....

223 See <http://www.ipsi.mu.tn/academia-news/archives/1.htm>

224 Discussion group organised by l'UNESCO at CAPJC, 25 May 2012

Three private universities located in Tunis offer academic training in journalism. They offer a curriculum in LMD which consists of six semesters over three years. These universities are Central University²²⁵ , Private Arab University of Science²²⁶ and Centrale Com²²⁷ which is the only one offering a specialization in the form of an applied licence and basic licence in various sectors - a professional master's degree in multimedia engineering and a professional master's degree in media engineering.

International University of Tunis (UIT) in partnership with the Graduate School of Journalism Paris launched a one-year intensive training in cross-media journalism (television, radio, print and web media). This training is available on selection and interview in the framework of the validation of prior experience to journalists having at least three years of experience²²⁸ .

Indicator 4.5

Academic courses equip students with skills and knowledge related to democratic development

Under the regime of former President Ben Ali, IPSI provided courses said to be cross-cutting and addressing human rights from the perspective of propaganda. Nevertheless, a discrete resistance movement within IPSI managed to instil in students principles of democracy and the foundations of human rights, through the individual efforts of certain teachers²²⁹ . From the 2011-2012 academic year these courses are offered in the context of the abolition of political taboos, questioning of old media practices and building cooperative participation, according to the Director of IPSI²³⁰. The training courses focus on current issues, address needs expressed by professionals and take account of imperatives linked to the period of democratic transition in the country. No training addresses the relation of the media to marginalized groups nor has been considered.

Scholars admit that the old method of a four-year degree prompted students to specialize by offering them training focussed on economics, culture, sports, among others. The new LMD formula (licence, master, doctorate), in place since 2008, has shortcomings at the level of specialization. The management of the Institute has envisaged providing students the opportunity to specialize at Master's Degree level and to first give them the practical tools of journalism.

Initial training of journalists is assured by the Institute of Press and Information Sciences (IPSI), which offers the only public course in Tunisia supported by the "Theophrastus" network. The course is spread over six semesters during which students are required to take courses on legislation such as constitutional law, administrative law, the right to information and the right to communication in order to have knowledge

225 See <http://www.universitecentrale.net/>
226 See <http://www.uas.ens.tn/>
227 See <http://www.centralecom.tn/>
228 See <http://www.uitunis.com/>
229 Baraket, H. (2012) Op. cit.
230 Discussion group organised by l'UNESCO at CAPJC, 25 May 2012

of the main legal texts that guarantee the rights of citizens and which regulate the functioning of the media landscape. Courses in press ethics, media knowledge, media economics and enterprise culture are provided from the second year.

One course at IPSI focuses on human rights and is taught in the first year for two semesters. During the years of study at IPSI, students are introduced to the practice of various journalistic genres through courses on editing techniques. Two other courses addressing national and international events offer aspiring journalists the opportunity, once in the field, to be better equipped to deal with all professional aspects of news gathering.

Introductory courses in quantitative and qualitative research methodologies are offered to students to familiarize them with scientific methods of thinking to help develop critical thinking skills and to master the tools of independent analysis.

The Institute of Press and Information Sciences has a network of international partners (BBC, Theophrastus, Konrad Adenauer Foundation, Deutsche Welle Akademie, among others). Through this cooperation, IPSI provides specialized training sessions. It has hosted several experts and internationally renowned speakers to animate some of its courses in order to introduce students to modern practices in the world of communication. The UNESCO publication "Model Curriculum for Training in Journalism"²³¹ will serve as an important reference to the process of change management within IPSI.

Professionals admit that change at IPSI represents a real challenge that must be addressed at both collective and individual level within the Institute whilst mobilizing national and international partners.

C. Presence of trade unions and professional organisations

Indicator 4.6

Media workers have the right to join independent trade unions and exercise this right

Trade union freedom is guaranteed by Tunisian law in Articles 242, 250 and 252 of the Tunisian Labour Code, which state that trade union freedom and the constitution of trade unions has no need for authorization or prior agreement of the authority in place. These articles are also in accord with the contents of two international conventions No. 87²³² and 98²³³ adopted by the International Labour Organization and ratified by Tunisia. During the era of deposed President Ben Ali, trade unions have been subject to various forms of manipulation by RCD cadres, which prevented them in practice from acting with real independence.

.....

231 UNESCO (2009) Modèles de cursus pour la formation au journalisme
232 ILO (1948) Convention on freedom of association and protection of the right to organise, 1948
233 ILO (1949) Convention on the right to organise and collective bargaining, 1949

The Tunisian labour movement was born in the early twenties, as a result of efforts in this direction by Mohamed Ali Hammi who created the first General Confederation of Tunisian Workers (CGTT), 19 January 1925. In 1937, Belgacem Gnawa founded the second CGTT. On 20 January 1946, the General Union of Tunisian Workers (UGTT) held its founding congress in Tunis and Farhat Hached was elected as General Secretary. Welcomed and popular in nationalist circles, the UGTT was to play a key role in social and national struggles. In 1951, the UGTT joined the International Confederation of Free Trade Unions (ICFTU).

Two general trade unions were born after 14 January 2011: the Tunisian General Labour Confederation (CGTT) which announced on Tuesday, 1 February 2011 the start of its activities, and the Union of Tunisian Workers (UTT), created 1 May 2011.

The Tunisian media landscape is characterized by the presence of a large number of active professional organizations. The National Union of Tunisian Journalists (SNJT), the General Union of Culture and Information within the UGTT and the Tunisian Union of Independent Press are the most important. The National Union of Tunisian Journalists is the most representative union of journalists with 1,200 members.

The trade unions aim to be real forces for social purpose and militant protagonists in all areas of activity while maintaining their vocation of trade union action. To do this, they rely on multiple networks of Tunisian and international expertise. They claim an active role in managing the democratic transition to a new democratic Republic.

According to the Labour Code²³⁴, trade unions have the exclusive object of investigating and defending the economic and social interests of their members. Since 14 January 2011, the unions have made their voices heard. They have reached a level that is obviously apparent. Industrial action is more and more frequent in all regions of the country and not only in the homes of protest.

The National Union of Tunisian Journalists (SNJT) is affiliated with the following international organizations: the International Federation of Journalists (IFJ), the Federation of African Journalists (FAJ) and the Union of Arab Journalists (UJA).

The mission of the trade unions is determined by law particularly Article 243 of the Labour Code. They exclusively focus on the study and defence of the economic and social interests of their members, regardless of social kind. The question of discrimination between men and women in the media has not been addressed.

.....

234 Code du travail, Loi no 66-27 du 30 avril 1966, comme révisé

Indicator 4.7

Trade unions and professional associations provide advocacy on behalf of the profession

SNJT is recognized as the legitimate representative of the journalists even if the union is not recognized as a full partner in negotiations concerning the professional interests of journalists. SNJT produces an annual report on violations of press freedom and is active in response to attacks against journalists and the media.

To deal with excesses and attract the attention of professionals to the need to respect ethical rules, SNJT has developed an "Observatory of ethics", which includes seven committees being :

- Committee on newspapers and news agencies,
- Committee on the weekly press and the partisan press
- Committee on radio broadcasting
- Committee on television broadcasting
- Committee on the electronic media
- Committee on the regional press
- Committee on relations with civil society.

SNJT participated in 2011 in the debate on legislation on freedom of the press, printing and distribution as well as on the freedom of audiovisual communication and the creation of the Independent High Authority for Audiovisual Communication. It was invited by the Committee on constitutional bodies to a hearing session to consider proposals from SNJT about the reorganization of the information sector and development of the legal system²³⁵.

SNJT chose to boycott the national consultation on the legislative framework for the media sector, organized by the Prime Minister on 27 and 28 April 2012 in the House of Councillors²³⁶.

SNJT organized has several actions and demonstrations to defend the profession. For example, it called for a sit-in on Monday, 9 January 2012, at the seat of government²³⁷ following the appointment of the heads of public media announced by the government, by decree on 7 January.

SNJT published on Wednesday, 15 February 2012, a statement in which it criticized non-compliance with the ethical rules of the profession in several newspapers. These practices reflect a malaise that began to develop after the dissolution and freezing of the institutions of control and censorship²³⁸. The union has held that freedom of expression does not mean non-compliance with the rules of journalistic ethics.

.....

235 Nawaat, 26 April 2012, L'INRIC et le SNJT seront absents de la consultation nationale sur les médias
236 Nawaat, 26 April 2012, L'INRIC et le SNJT seront absents de la consultation nationale sur les médias
237 Nawaat, 9 January 2012, Tunisie : Manifestation contre les récentes nominations dans le secteur des médias
238 There are two institutions : the Ministry of Communications and its relations with the Chamber of Deputies and the Chamber of Councillors, and the directorate of information

In a statement released on Monday, 9 April 2012, the National Union of Tunisian Journalists (SNJT) called on all journalists to boycott the activities of Interior Minister Ali Larayedh for a week, and this to take effect from Tuesday, 10 April 2012. In the same statement, the SNJT also called on journalists to wear a red armband throughout the day on Thursday, 12 April 2012 in protest against the repression of the demonstration 9 April 2012, on the occasion of the commemoration the Feast of the martyrs. This incident is described in Section 3.13 above.

SNJT also condemned the sacking of the local television channel El Hiwar Ettounsi on the night of Saturday, 26 May 2012.

Other unions have defended claims considered legitimate. The Union of Employees in Administration and Production as well as the Union of Employees in Direction at Tunisian Television called on the entire staff of the institution to wear red armbands on 2 February 2012. They affirmed their decision of wearing the armband was in response to the silence of the authorities with regard to their demands to ensure the independence of Tunisian Television, to create an independent board of directors and to ensure independence of the editorial line. The two unions also called for the opening the archives of the Ministry of Interior concerning the political police infiltrated into the institution and having worked for the Tunisian External Communication Agency (ATCE).

The union bases at Tunisian Television are recognized by the authorities as partners in negotiations. Indeed, representatives of the Union of Production and Technicians at national television were invited by the Minister of Social Affairs to hear their claims following, in particular, the strike announced for 8 March 2012²³⁹, which was cancelled after the signing of an agreement between the government, the direction of the Tunisian Television and representatives of the UGTT, on 6 March 2012.

There are four employers' associations in Tunisia: Tunisian Association of Newspapers Managers (ATDJ), the Tunisian Union of Media Owners (STDM), the Tunisian Union of Free Radios (STRL) and the Union of the Independent and Partisan Press (SPIP), created in November 2011.

The ATDJ and STDM have often expressed their opposition to the new media legislation, explaining that they had been excluded from the development of Decree Laws 2011-115 and 2011-116. Both agencies believe that Decree Law 2011-116 is "liberticidal". They have called for development of a new project involving all stakeholders while expressing their determination to defend their rights by any means provided by law²⁴⁰. Pending the establishment of a regulatory body, the private broadcasters already in place have the opportunity to continue their activities without being controlled by an independent body.

.....

239 The union demanded publication of a decree providing for the independence of the institution and the constitution of a board of directors with greater powers of decision making for Tunisian Television

240 Réalités, 28 juin 2011, L'appel de l'ADJ et du STDM,

D. Presence of civil society organisations

**Indicator 4.8
CSOs monitor the media systematically**

A coalition of Tunisian NGOs²⁴¹ was formed to contribute to the success of the transition to democracy by stepping up efforts to monitor the media for a specified period and to develop qualitative and quantitative analysis of the content and of their operation in order to identify gaps and deficiencies that might compromise their professionalism. Their activities include the publication of three observation reports of media content during pre-election, election and post-election periods. These reports include an analysis of the presence of political parties in the public and private media. The NGOs have criticized in their report the lack of neutrality of certain media. The reports published by the NGO coalition devoted a large part to the media coverage of political activities of women candidates in the elections to the National Constituent Assembly on 23 October 2011 - a category whose presence is described as “barely perceptible”. The responsibility of the media is not the only cause. This situation is related essentially to the composition and practices of political parties, where parity between men and women is far from being realised, despite enactment of a Decree Law in 2011 requiring gender parity on candidate lists for election to the ANC.

**Indicator 4.9
CSOs provide direct advocacy on issues of freedom of expression**

During the years of repression, independent NGOs such as LTDH and CNLT had an important role in exposing the practices of the old regime with regard to freedom of expression and of journalists. Reports were published describing the situation and listing the abuses. Their own ability to function was severely limited and they were subjected to harassment and censorship.

Since the Revolution of 14 January 2011, organizations of civil society have been able to operate openly and to express their demands. For example, organizations and associations met on 31 October 2011²⁴² following the call of SNJT to demand, in a statement sent to members of the National Constituent Assembly, the introduction in the new Constitution of an article explicitly guaranteeing “the right to information as a fundamental human right, and the right to freedom of opinion, expression and information, and to prevent the development of specific laws to silence them”. The signatories considered that the repression of freedom of expression is at the root of crimes of corruption²⁴³. A few months later, a coalition of civil society led by the Tunisian League of Human Rights, which brings together associations and NGOs born before and after 14 January 2011 (including ATFD, SNJT LTDH, CNLT Touensa the Doustourian Manifesto, Jadal Observatory) organized on 3 May 2011 a sit-in in front of the Municipal Theatre of Tunis to demand freedom of expression²⁴⁴.

.....
241 ATFD, AFTURD, LTDH, CNLT and SNJT
242 SNJT, SGOI, UGTT, ATDJ, CAPJC, INRIC, CNIIC
243 Tunisie Numérique, 1 November 2011, La société civile veut un article garantissant la liberté de l’information et de l’expression
244 Tunivisions.net, 2 May 2012, Journée mondiale de la liberté d’expression : SIT-IN le 3 mai devant le Théâtre municipal Tunis

Indicator 4.10

CSOs help communities access information and get their voices heard

Since January 2011, citizen groups have often asked to speak in front of the headquarters of Tunisian Television to attract the attention of policy makers and public opinion on various topics (for example, illegal immigration or those injured in the Revolution). Citizen journalists have won the esteem and respect of Tunisians in covering the Revolution of 14 January 2011. The Tunisian pact, a group of more than 6,500 signatories, launched the project “Speak out Tunisia” to form the first network of citizen journalists in Tunisia. The project has the objective to train fifty “citizen journalists” throughout the country, through participatory and independent funding²⁴⁵.

.....

245 Tuniculture.net, 30 December 2011, Speak out Tunisia, se charge de former 50 journalistes citoyens tunisiens

Recommendations

- The independence of CAPJC should be guaranteed and safeguarded against all forms of political interference.
- The technical and logistical equipment of CAPJC should be improved in order to provide professionals with better training conditions and to support their skills development.
- The legal status of CAPJC should be changed to a non-administrative public organisation in order to give it the flexibility necessary to strengthen its management and to further develop its competences.
- CAPJC should establish regional training offices with the objective of facilitating access by professionals to training sessions and to avoid centralisation.
- The independence of IPSI should be guaranteed and safeguarded against all forms of political interference.
- The technical and logistical equipment of IPSI should be improved in order to provide students with better learning conditions and to facilitate their integration into the labour market.
- Media managers should be encouraged to undertake training in new management methods, change management and good governance.
- The SNJT, as the most representative trade union for journalists, should be recognised as a legitimate partner for negotiation of the professional and social interests of journalists.



Category 5

**Infrastructural capacity
is sufficient to support
independent and pluralistic
media**



KEY INDICATORS

A. Availability and use of technical resources by the media

5.1 Media organisations have access to modern technical facilities for news gathering, production and distribution

B. Press, broadcasting and ICT penetration

5.2 Marginalised groups have access to forms of communication they can use

5.3 The country has a coherent ICT policy which aims to meet the information needs of marginalised communities

Category 5

Infrastructure support for the development of independent and pluralistic media

A. Availability and use of technical resources by the media

Indicator 5.1

Media organisations have access to modern technical facilities for news gathering, production and distribution

Media organizations in Tunisia in general have good access to modern information and communication technologies. Internet access rates are affordable and telecommunications infrastructure is robust and reliable.

Public organizations of press, radio and television, follow the main technological developments in their areas, including adoption of digital modes of production and distribution.

The main centres for media education and vocational training, IPSI and CAPJC are also engaged in upgrading their facilities to ensure that students are able to acquire skills and experience in digital production.

Private broadcasters that existed before the 14 January Revolution are generally well equipped, benefiting from large capital investments and access to public and private advertising revenue with sufficient margins to allow investment in the most up to date technologies.

The new radio and television services authorised in 2011 have difficulty in raise the necessary funds and not all have yet started broadcasting. Bank loans in particular are scarce, due to the economic slowdown in Tunisia in 2011 and international pressure. There is a need provide these media with economic and fiscal incentives to support their development.

B. Press, broadcasting and ICT penetration

Indicator 5.2

Marginalised groups have access to forms of communication they can use

Tunisia has some of the most advanced telecommunications infrastructure in Africa with mobile phone networks that cover nearly 100 percent of the population. According to the Ministry of Communication Technologies, the penetration of telephone lines is 127.4 lines per 100 inhabitants of which are 111.6 ¹⁰⁵

are mobile subscriptions. Almost everyone has access to a mobile phone at prices that are generally affordable.

There are three mobile operators - Tunisie Telecom, Tunisiana and Orange. Tunisie Telecom is the incumbent fixed-line operator and held a state monopoly until 2002. Orange also offers fixed line services and is the first commercial to exploit the 3G network. Tunisie Telecom and Tunisiana also provide 3G services²⁴⁶.

There are eleven internet service providers (ISPs), including ATI which acts as the sole national internet exchange point (IXP). International transit of the internet passes through submarine cables and satellite plus terrestrial connections (fibre and microwave) via Algeria and Libya. Two ground stations transit via Intelsat and Arabsat satellites. All international telecommunications gateways - marine, satellite and terrestrial - are under the control of Tunisie Telecom which, although partially privatized in 2006, is still majority owned by the state. The head of Tunisie Telecom is appointed by the Minister of Information and Communication Technologies as is the head of ATI, even though the State does not hold a majority stake in ATI²⁴⁷.

Internet subscriptions have grown exponentially over the course of the last ten years. According to Internet World Stats, internet penetration in Tunisia has reached 36.3 per cent of the population at 31 December 2011²⁴⁸.

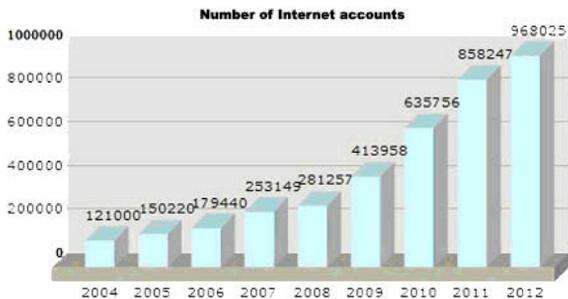


Figure 5: Internet accounts 2004 - 2012
Source: Ministry for Information and Communication Technologies

Broadcasting infrastructure is well developed. According to ONT, which holds a monopoly on the distribution of terrestrial broadcasting, the analogue network of public television services reached 99.8 per cent of households²⁴⁹. Forty million dinars have been invested to develop the network of digital terrestrial television (DTT) and DTT infrastructure is in place for around 90 per cent of the population. At present, there is a

246 BuddeComm (2011) Tunisia – Telecoms, Mobile and Broadband
247 According to the current PDG, Moez Chakchouk, the capital of ATI consists of 37% Tunisie Telecom, 13% Tunisian government, 5% CERT and the remainder a bank loan. Interview for this study, 23 May 2012.
248 See <http://www.internetworldstats.com>
249 See <http://www.telediffusion.net.tn>

Tunisian digital package that works on an experimental basis and encompasses seven chains: Wataniya 1 and Wataniya 2, Nessma TV, Hannibal TV, TWT, El Hiwar Ettounsi and the leading Italian channel RAI Uno, which has broadcast in Tunisia intermittently since 1960.



Figure 6: DTT coverage
Source: National Broadcasting Office

The audience for national television is increasingly migrating from terrestrial reception to satellite reception in search of more choice and diversity, mainly via the Nilesat platform. The public television channels are also available on Nilesat and on some other satellite platforms, including Eutelsat.

Among the private television services, only Hannibal TV and Nessma TV are available on the analogue terrestrial network. Other Tunisian private television channels are broadcast by satellite only. Given the rapid migration of audiences to the satellite, there is a risk that Tunisia’s DTT infrastructure could fall into obsolescence.

The publicly-owned radio broadcasting services also have a technical reach to most of the population. Around 90 per cent coverage is provided on VHF/FM for three of the national public radio services – Culture, Jeunes and RTCI. The fourth, Nationale, is delivered through FM and Medium Wave (MW). In most parts of the country there is also a regional public radio service receivable.

Radio Zitouna, now in state ownership, is available on the FM band to around 80 per cent of the population. Other radio stations existing before 14 January 2011 - Mosaique, Express, Shems and Jawhara - have regional coverage. The twelve newly authorised local radio services go some way to improving the choice of radio listeners outside of Grande Tunis and the main regional centres, but there is need to develop the radio landscape through a further call for proposals similar to that conducted by INRIC in 2011. This should include the development of new community radio services.

Indicator 5.3

The country has a coherent ICT policy which aims to meet the information needs of marginalised communities

Tunisia was among the first countries in Africa to embed an ICT policy within its national planning framework. Since 2002 with the opening up of the telecommunications sector and the promotion of the development of mobile telecommunications and high speed broadband the country has experienced a rapid growth in ICT access. Strategic priorities have included the construction of a robust ICT infrastructure, the creation of a network of technology parks with ICT services, promoting public access to the internet through schools, libraries and public internet access centres (Publinets), and promoting growth of a new knowledge-based economy through education and business support ²⁵⁰.

Paradoxically, the government of deposed President Ben Ali maintained, over the same period, one of the most repressive systems in the world in terms of control and censorship of Internet content. Under the policy rubric of building a “ trustworthy environment for ICT development ²⁵¹ ” Tunisia’s national cybersecurity strategy extended well beyond its stated objectives of combating cybercrime and cyber terrorism to become an instrument for the systematic suppression of dissident.

Zouhair Yahyaoui, founder of the satirical online website TUNeZINE, became the first cyberdissident to be

.....

²⁵⁰ World Economic Forum (2010) The Global Information Technology Report 2009-2010

²⁵¹ Ibid

imprisoned when he was arrested on 4 June 2002 for publication of a letter critical of the former President. Yahyaoui was held in secret and tortured at a military detention centre before being transferred to Borj al Amri prison, where he spent 18 months until his release on 11 November 2003.

Yahyaoui, whose health was weakened by prison conditions and hunger strikes, died of a heart attack on 13 March 2005, the year that Tunisia hosted the World Summit on the Information Society. In honour of Yahyaoui and in recognition of the role of bloggers and cyberdissidents in the struggle against dictatorship, President Marzouki, announced, at an official ceremony on 13 March 2012, henceforth this date be celebrated as National Internet Freedom Day.²⁵²

Recommendation

- The national ICT strategy should be reviewed to reflect commitments to freedom of the internet.

Annex A. Selected Bibliography

- Amnesty International (2011) Public statement on human rights and the Tunisian Constitution, 22-11-11
<http://www.amnesty.org/es/library/asset/MDE30/022/2011/es/d16e28a0-4bcc-4806-a83b-3b9c0973e874/mde300222011en.pdf>
- Article 19 (2011) Commentaires sur le décret relatif à l'accès aux documents administratifs des autorités publiques de Tunisie
<http://www.article19.org/data/files/medialibrary/2945/12-04-04-LA-tunisia-FR.pdf>
- Article 19 (2011) Tunisie: Projet de décret sur la liberté de la communication audiovisuelle et la création d'une Haute autorité indépendante de la communication audiovisuelle
<http://www.article19.org/data/files/medialibrary/2942/12-04-30-LA-tunisia.pdf>
- Article 19 (2011) République Tunisienne: Décret-Loi Relatif à La Liberté de la Presse, De l'impression de l'édition
<http://www.article19.org/resources.php/resource/2944/fr/R%C3%A9gulation%20de%20la%20presse%20en%20Tunisie>
- Article 19 (2012) Tunisie: La protection de la liberté d'expression et la liberté de l'information dans la nouvelle Constitution: Document d'orientation
<http://www.article19.org/data/files/medialibrary/2942/12-04-30-LA-tunisia.pdf>
- ATFD (2011) La levée des réserves à la convention CEDAW mais non au maintien de la déclaration générale.
- ATFD / Coalition des ONGs (2012) Monitoring des médias en période transitoire: Tunisie août/décembre 2011, Rapport final
- Brisson, Z. and Krontiris, K. (2012) Tunisia: from revolutions to institutions (World Bank/InfoDev)
- Chouikha L., Ferjani R., Hizaoui A., Touzri F. (2011) Etude sur les représentations de l'enfant, de l'adolescent et du jeune dans les médias tunisiens
<http://www.unicef.org.tn/medias/etude-medias.pdf>
- Congrès pour la République (2011) Un plan pour la Tunisie
http://www.cpr.tn/images/programmes/prgcpr_fr.pdf
- Ennahdha (2011) Le programme du mouvement Ennahdha
<http://www.slideshare.net/Ennahdha/programme-du-parti-ennahdha/download>

Ettakatol (2011) Programme Ettakatol en 100 propositions

http://www.ettakatol.org/programme/Prog_fr/files/08.pdf

FIDH (2011) La Tunisie post Ben Ali face aux démons du passé

<http://www.fidh.org/La-Tunisie-post-Ben-Ali-face-aux>

IFEX TMG (2010) Derrière la façade : Comment un système judiciaire politisé et des sanctions administratives minent les droits de la personne en Tunisie, Rapport de la 7^{ème} mission du Groupe d'observation de la Tunisie de l'IFEX

http://ifex.org/tunisia/2010/06/07/tmg_report/

IFEX TMG (2011) L'oppression a laissé de profondes cicatrices dans les médias tunisiens : Évaluation des exigences critiques pour la liberté d'expression dans la transition démocratique en Tunisie, Rapport de la 8^{ème} mission du Groupe d'observation de la Tunisie de l'IFEX

http://ifex.org/tunisia/2011/06/16/deep_scars/

IFEX TMG (2012) Du printemps à l'hiver ? Des réalisations précaires et des défis exceptionnels pour les défenseurs tunisiens de la liberté d'expression

Rapport du Groupe d'observation de la Tunisie de l'IFEX

http://www.ifex.org/tunisia/2012/07/10/duprintempsalhiver_rapportdutmgedlifexjuillet2012francais_final.pdf

INRIC (2011) Guide du journaliste

INRIC (2012) Rapport Général de l'Instance nationale pour la réforme de l'information et de la communication

ISIE (2011) Rapport de l'Unité de monitoring des médias, Quatrième rapport - La campagne électorale (1-23 octobre 2011)

Janssen, M. and Furnémont J-F. (2012). Analyse du Décret-loi 2011-116 pour le Groupe des partenaires techniques et financiers en appui au secteur des médias tunisiens

La Presse (2012) Hors-série Mai 2012, Médias en Tunisie: Libres mais jusqu'à quand?

Pew Research Center (2012) Pew Global Attitudes Project Arab Spring Report, published 10 July 2012

<http://www.pewglobal.org/files/2012/07/Pew-Global-Attitudes-Project-Arab-Spring-Report-FINAL-Tuesday-July-10-2012.pdf>

Reporters Without Borders (2011) Analyse du décret-loi n°2011-115 du 2 novembre 2011, relatif à la liberté de la presse, de l'impression et de l'édition

http://fr.rsf.org/IMG/pdf/120227_code_de_la_tunisie.pdf

SNJT (2012) Rapport annuel sur la liberté de la presse en Tunisie

Annex B. Legislation relating to the media

Décret du 25 avril 1957, portant institution d'un monopole de la radiodiffusion sonore et visuelle en Tunisie et création d'un budget annexe de la Radiodiffusion Télévision Tunisienne

Loi n° 71-22 du 25 mai 1971 portant organisation de la profession d'agent de publicité commerciale

Code de la Presse 1975, version consolidée de 2010, y compris Loi n°1975-32 du 28 avril 1975 et les modifications de 1988, 1993 et 2001

Loi n°18-76 du 7 août 1990 portant création de l'Agence de communication extérieure

Loi n°93-8 du 1er février 1993 portant création de l'Office National de Télédiffusion

Décret 2002-632 du 1er avril 2002 fixant les missions du centre africain de perfectionnement des journalistes et communicateurs

Loi organique n°2004-63 portant sur la protection des données à caractère personnel

Code Pénal (2005) Edition mise à jour et revue par le conseil national chargé de la réorganisation des dispositions législatives et réglementaires en vigueur (Conformément à la loi n° 2005-46 du 6 juin 2005)

Loi n°2007-33 du 4 juin 2007 relative aux établissements publics du secteur audiovisuel

Décret n°2007-1867 du 23 juillet 2007, portant création, organisation administrative et financière et modalités de fonctionnement de la « radio tunisienne »

Décret n°2007-1868 du 23 juillet 2007, portant création, organisation administrative et financière et modalités de fonctionnement de la « télévision tunisienne »

Décret-loi No 2011-10 du 2 mars 2011, portant création d'une instance nationale indépendante pour la réforme de l'information et de la communication

Décret-loi No. 2011-41 du 26 mai 2011 concernant l'accès aux documents administratifs détenus ou produits par les autorités publiques

Décret-loi No. 2011-54 du 11 juin 2011 modifiant le décret-loi no. 2011-41 du 26 mai 2011

Arrêté du 03 septembre 2011 fixant les règles auxquelles les médias audiovisuels doivent se conformer pendant la campagne électorale

Arrêté du 03 septembre 2011 fixant les règles et les procédures de la campagne électorale

Arrêté du 03 septembre 2011 fixant les conditions de production, de programmation et de diffusion des émissions radiophoniques et télévisées relatives à la campagne électorale.

Décret-loi 2011-115 du 2 novembre 2011 relatif à la liberté de la presse, de l'imprimerie et de l'édition

Décret-loi No 2011-116 du 2 novembre 2011, relatif à la liberté de la communication audiovisuelle et portant création d'une Haute Autorité Indépendante de la Communication Audiovisuelle

Circulaire No 25 du 5 mai 2012 relative à l'accès aux documents administratifs des organismes publics

Annex C. Individuals consulted

Abdelkrim Hizaoui	CAPJC
Abdessatar Ben Moussa	Tunisian League for Human Rights
Amel Mzabi	STDM
Amel Souissi	Archibat
Andrew Heslop	WAN-IFRA
Anis Ben Abdallah	Nessma TV
Atidel Mejbri	CAWTAR
Aymen Rezgui	El Hiwar Ettounsi
Bali Abderraouf	ANJJ
Bechir Tombari	Radio Gafsa
Bochra Bel Haj Hamida	ATFD
Emmanuel Boutterin	AMARC
Fahem Boukadous	CTLP
Fathia Hizem	ATFD
Fatma Ghandour	Tripoli University
Fayçal Bayouli	Ministry of Information Technology and Communication
Fethia Ben Ammar	Tunisian Television
Ghofrane Akremi	Radio Express FM
Habib Belaid	ex PDG Tunisian Radio
Habib Nasra	Hannibal TV
Hafedh Mribah	Al Jazeera
Hajer Ajroudi	Express FM
Hajer Bahri	La Voix de la Tunisie
Halima Jouini	ATFD
Hamida El Bour	ISIE, IPSI
Hatem Salhi	Chaambi FM
Hayet Cheour	LTC
Hichem Guerfali	3C Etudes
Hichem Snoussi	Article 19, INRIC
Imededdine Boulaaba	leskoop.com
Issam Kheriji	TWT
Jalel Lakhddhar	Tunisian Television
Jameleddine Bouriga	Journal Essabah
Jameleddine Jamel	Agence TAP
Jamil Ben Ali	Radio Monastir
Jorgen Ringgaard	IMS
Kamel Abdelkader	ANF
Kamel Labidi	INRIC

Kamel Samari	Dar Essabah
Kamel Zouiten	Kif FM
Khadija Taboubi	African Manager
Khouloud Mejri	Nessma TV
Krtisina Stockwood	IFEX
Larbi Chouika	ISIE, IPSI
Lassaad Boukhchina	TWT
Lotfi Hajji	Journalist, Al Jazeera
Lotfi Zitoun	Advisor to the Head of Government
Lucas Roxo	Le Maghreb
Mabrouk Maachaoui	Radio Le Kef
Mahmoud Dhaouadi	Tunis Centre for Press Freedom
Manoubia Ben Ghedahem	University of Tunis
Maryam Ben Salem	CAWTAR
Melek Lakdar	Le Temps
Meriem Zeghidi	ATFD
Moez Chakchouk	ATI
Mohamed Hasnaoui	Centre Saphir
Mohamed Hedi Abdellaoui	La Presse
Mohamed Kocht	Oasis FM
Mohamed Meddeb	PDG, Radio Tunisienne
Mohamed Salah Bettaieb	Grand Maghreb Media
Mohamed Taieb Yousfi	PDG, TAP Agency
Mohammed Maali	Tunis Centre for Press Freedom
Mohsen Ghomam Malek	ONT
Mokhtar Dhahri	UNICEF
Mokhtar Tlili	Chambi FM
Mongi Marzouk	Minister for ICTs
Mongi Thameur	Ministry for ICT
Mustapha Ben Letaief	University Professor
Mustapha Masmoudi	ATUCOM
Narjes Hammami	Tunisian Television
Nebil Jridet	Al Oula
Nedra Boukesra	INRIC, Journalist
Nejiba Hamrouni	SNJT
Nouha Belaid	Espace Manager
Nourredine Boutar	Radio Mosaïque
Olfa Belhassine	La Presse
Olivia Gré	RSF
Omar Mestiri	Radio Kalima
Rabeb Ismail	ATFD

Rachida Ennaifer	Law Scholar
Radhouane Charfi	STDM
Riadh Ferjani	Consultant, Media expert
Riadh Guerfeli	Nawaat.org
Riadh Slama	Tunisian Radio
Rym Gacem	INRIC, Journalist
Sadok Tourni	ONT
Saida Rachid	ATFD
Salah Fourti	STRL
Samir Hadj Mansour	ONT
Samira Guediche	Education nationale
Sayda Hammami	ANJJ
Sihem Bensedrine	CNLT, OLPEC
Siwar Amaidia	La Voix des autres
Souad Ben Ahmed	Radio Sfax
Souha Ben Othman	ATFD
Soumaya Hamlaoui	Radio 6
Taher Ben Guija	Student
Taher Ben Hassine	El Hiwar Ettounsi
Taoufik Rojbi	Ministry for ICT
Taoufiq Yacoub	IPSI
Toby Mendel	Centre for Law and Democracy
Virginie Jouan	IFEX-TMG
Youssef Weslati	Syndicat des Journaux Indépendants et Partisans
Zeineb Essaddam	Forum Tunisie
Zied El Heni	SNJT
Zouhair Ben Hamad	Tunisian Radio
Zouheir Makhoulouf	Amnesty International – Tunisia Section



United Nations
Educational, Scientific and
Cultural Organization

IPDC THE INTERNATIONAL PROGRAMME
FOR THE DEVELOPMENT OF COMMUNICATION



9 789230 011888