



ASSESSMENT OF MEDIA LEGISLATION IN TUNISIA

BY AHMED GHAZALI

MEDMEDIA

This report has been produced with the assistance of the European Union.
The content is the sole responsibility of the MedMedia project and can in no way
be taken to reflect the views of the European Union.



This project is
funded by the
European Union



Tunisia's new constitutional, legislative and institutional framework, set up in the wake of the Jasmine Revolution, remains embryonic, subject to the inconsistencies and difficulties of a post-revolutionary transition period.



THE AUTHOR

AHMED GHAZALI was president of Morocco's regulatory body, La Haute autorité de la communication audiovisuelle, between 2003 and 2012. He was also president of Réseau des instances de régulation Méditerranéennes (RIRM) in 2008.

Report completed: October 2014
Photography: Sophia Baraket
Library pictures from iStockPhoto

CONTENTS

4

1. EXECUTIVE SUMMARY

- 1.1. Emergence of private media
- 1.2. Press freedoms
- 1.3. Access to information
- 1.4. Internet freedoms
- 1.5. Fair access to finance for communication and information activities
- 1.6. Legal limits to freedom of expression
- 1.7. Questions raised in this report

6

2. INTRODUCTION

8

3. THE POLITICAL AND LEGAL CONTEXT

- 3.1. Opening up to private and foreign television and radio channels
- 3.2. Regulation of print media
- 3.3. The emergence of the internet
- 3.4. The liberalisation of the media landscape and its legal framework

11

4. LEGISLATIVE CONDITIONS FOR ACCESS TO THE MEDIA MARKET

- 4.1. Freedom of audio-visual enterprise and the guarantee of diversity of private media in the new constitutional and legislative system
- 4.2. The assignment of radio frequencies in the new legislative and regulatory system
- 4.3. Freedom of the press and publications
 - 4.3.1. Provisions relating to pluralism
 - 4.3.2. The right to be informed and have access to information
 - 4.3.3. Freedom of the electronic press

14

5. MEDIA FINANCING

- 5.1. Financing for audio-visual media
 - 5.1.1. State aid for the financing of audio-visual media
 - 5.1.2. Advertising regulations for the broadcast sector
- 5.2. Financing of the printed press
 - 5.2.1. Material state support
 - 5.2.2. Advertising
 - 5.2.3. Rules guaranteeing the transparency of newspaper financing

16

6. SAFEGUARDING A FREE PRESS AND FREEDOM OF EXPRESSION

- 6.1. Limitations on the freedom of audio-visual communication
 - 6.1.1. Legislative restrictions on exercising freedom of audio-visual communication
 - 6.1.2. Legislation intended to protect minorities, children and women
 - 6.1.3. Legal limitations on exercising freedom of the press

20

7. SWOT ANALYSIS

22

8. RECOMMENDATIONS

I. EXECUTIVE SUMMARY

Since the Jasmine Revolution, a new constitutional and institutional framework has been put in place in Tunisia, laying the foundations for the liberalisation of the media. But this framework remains embryonic and the situation fragile, and there is an urgent need to address shortcomings in media governance.

After the Jasmine Revolution a series of new institutions was created in Tunisia and legislation was liberalised (Decrees No. 115 and No. 116, 2 November 2011) to recognise the formation of a private media sector. However, the legacy of Tunisia's authoritarian media system is such that attempts to bring about freedom of expression are frequently hindered by financial, political and security constraints. The new constitutional, legislative and institutional framework remains embryonic, subject to the inconsistencies and difficulties of a post-revolutionary transition period.

1.1. EMERGENCE OF PRIVATE MEDIA

Decree No. 2011-116 of 2 November 2011 allows the licensing of private media, thereby creating a private audio-visual sector. The Haute Autorité Indépendante de la Communication Audiovisuelle (Independent Supreme Authority for Audio-visual Communication) (HAICA) is the independent administrative authority set up to organise, guarantee and regulate this emerging sector. To create and operate a private audio-visual enterprise requires a licence and compliance with certain terms and conditions. Radio frequencies are awarded by the Agence Nationale des Fréquences in co-ordination with HAICA and in line with Decree No. 2011-116.

1.2. PRESS FREEDOMS

Liberalisation of the press is now formally acknowledged by the new Tunisian legislative system. Decree No. 2011-115 of 2 November 2011, which replaces the previous 1975 Press Code, stipulates freedom of the press. It also allows for greater freedom of enterprise – any private citizen or a legal entity can set up a newspaper or periodical. There are also provisions guaranteeing the pluralism of companies and the transparency of the press.

1.3. ACCESS TO INFORMATION

Tunisia has undergone extremely positive change in respect of the right to be informed and have access to information. The new Constitution provides for this in Article 31. It also establishes the right of access to social networks and encourages the state to guarantee this right. Decree No. 2011-41 of 26 May 2011, adopted just a few months after the revolution and which guaranteed access to administrative documents in Tunis, was supplemented to reduce the number of exceptions and shorten the grace period for its implementation.

1.4. INTERNET FREEDOMS

Freedom of the electronic press and the right to publish online, although exercised in full following the revolution, is not expressly provided for in current law and remains unprotected.

1.5. FAIR ACCESS TO FINANCE FOR COMMUNICATION AND INFORMATION ACTIVITIES

Current legislation does not provide the necessary financial conditions for free and independent media. Access to financing by potential media owners and operators is still very unequal. Another problem is that the legislation of the former regime is still in force while the newly introduced legal provisions do not yet provide a complete and consistent legal system for private media financing. This is true for audio-visual and print media, whether state-funded or funded by commercial advertising.

1.6. LEGAL LIMITS TO FREEDOM OF EXPRESSION

The most notable developments are as follows:

- *Decline in institutionalised censorship.* The new legislative and regulatory system has prompted a dramatic decline in institutionalised censorship. Nevertheless, freedom of audio-visual communication must be within the limits set out by law, particularly with respect to the dignity of the individual, private life and freedom of beliefs, and protect children, public health, national security and public order.
- *Guarantee of pluralist expression during elections.* Tunisian audio-visual laws guarantee fair access to broadcast media for electoral candidates. However, they make no provision for fair access at other times.
- *Continuing shortcomings in the protection of women, children and minorities.* Current

legislation does not provide any specific protection regarding images of women nor any special rights to cultural and linguistic minorities as represented by broadcast media.

According to the new Tunisian Press Code, press freedom may be restricted only by statute, and any restriction should be:

- based on a legitimate concern to respect the rights and dignity of others, preserve public order and/or protect national defence and security;
- necessary and proportionate, in line with the values of a democratic society, and without constituting a risk to the overall right of freedom of expression and information.

1.7. QUESTIONS RAISED IN THIS REPORT

The SWOT analysis shows clearly discernible, if fragile, trends favourable to the regulated liberalisation of the media in Tunisia. It is important to build on this momentum by tackling the existing legal shortcomings in media governance in order to make the legal and institutional systems compliant with the new Tunisian Constitution.

In starting this process there are three main considerations to address:

- *Existing legislation.* Does it assist efforts to liberalise the press and the audio-visual sector in terms of licensing media operators? Is it helpful in safeguarding media ownership, transparency and the professionalism of the media? Does it protect freedom of expression?

- *Mechanisms for financing the media.* These deserve careful attention and action to ensure fair competition between companies in the print and audio-visual sectors. In particular, it is useful to consider how state funding might work in the context of fair competition and non-discrimination and also how best to legislate for private (as well as state-funded and political) advertising in the media.

- *Freedom of expression.* How far is this protected by legal provisions? For example, is there institutionalised censorship, whereby legislation restricts what can be published for political or social reasons? Is there a guarantee of fair access to the media during elections? Is there any regulation of the internet and new communication technologies?

Before considering these questions it is necessary to understand the purpose of the constitutional, legislative and regulatory systems we are analysing, and the political, economic and social context in which they are evolving.



The SWOT analysis shows clearly discernible, if fragile, trends favourable to the regulated liberalisation of the media in Tunisia. It is important to build on this momentum...



2. INTRODUCTION

This report provides an outline of the legal framework covering the print, audio-visual and electronic media in Tunisia, looking at the impact on liberalisation, financing structures and the extent to which the framework encourages freedom of expression.

This report describes the legal framework for the media in Tunisia. It covers three sectors (the printed press, private audio-visual and electronic media) and explores three main themes:

- How does legislation affect the liberalisation of the media sector?
- To what extent do current financing structures favour media liberalisation?
- How is freedom of expression protected by Tunisian legislation?

The first part covers the wider context for the introduction of new information and communication legislation in Tunisia after the Jasmine Revolution. The report goes on to analyse the different strengths, weaknesses, opportunities and threats currently affecting Tunisia in these areas in order to define key development imperatives. Finally, the report makes recommendations regarding the best way to ensure continuing development of the media sector, which, in turn, will guide the social development and democratisation of the country.

The broad aims of this report are to assess and evaluate the legislation in force, to propose a road map to

accompany changes occurring in the region, and to enrich and stimulate discussion on media legislation in Tunisia.

This report focuses mainly on the following strands:

- the legal framework of the printed press, publishing and audio-visual sectors;
- legal developments regarding electronic media;
- an analysis of the current constitutional, legislative and regulatory systems in relation to the media;
- an assessment of the existing legal framework based on a comparative analysis of the lessons learnt by the EU and the legal situation of countries in the region;
- a SWOT analysis of Tunisia's current legal framework in these fields; and
- recommendations aimed at upgrading of the legal framework of Tunisian media in the interests of the development, democratisation and the social and cultural progress of the country.

This research draws on published and unpublished sources as well as qualitative interviews with key players in the information and communication sectors.



3. THE POLITICAL AND LEGAL CONTEXT

In the past, Tunisia's media landscape has been characterised by use of the mass media to promulgate the policies of the incumbent regime. Since the Jasmine Revolution, moves towards liberalisation have included authorising foreign channels and encouraging the development of the internet.



The media landscape under President Habib Bourguiba, and particularly under the presidency of Zine al-Abidine Ben Ali, has principally been characterised by a concern to control and exploit the mass media in line with the policies and economic model promoted by the regime.¹ Attempts at liberalisation, more recently to meet the challenges of unhindered access to satellite broadcasters such as Al Jazeera, ushered in some reforms, the most significant of which are: the authorisation of foreign channels; the opening up of the audio-visual sector to private investment; the internationalisation of the audio-visual offer; and the controlled development of the printed press and the internet.

3.1. OPENING UP TO PRIVATE AND FOREIGN TELEVISION AND RADIO CHANNELS

The deregulation of the broadcasting sector was not based on a legal text. It was carried out de facto and precipitated by events on the ground, with the government initially giving permission for the broadcasting of certain foreign channels. This started in 1961 with the

terrestrial Italian TV channel Rai Uno, five years before the creation of the Tunisian national channel in 1966.² In June 1989, the second French television channel Antenne 2 (currently France 2) was also authorised to broadcast its programmes terrestrially in Tunisia.³

This relaxation of restrictions also took the form of the creation, on 7 November 1992, of the first encrypted private channel in Tunisia, christened "Canal Horizons Tunisie". This breakthrough, however, came with strict broadcasting terms and conditions.⁴ The opening up of the audio-visual sector to private television did not begin in earnest until February 2005 with the launch of Hannibal TV, founded by a major Tunisian investor, Arbi Nasra, who is also director of the channel. It has both terrestrial and satellite broadcasting licences. At the outset it covered Greater Tunis and the Sahel region, with large audience shares. A second private television channel was created in March 2007. This was the entertainment channel Nesma TV, created by the advertising agency Karoui and Karoui with a budget of \$30 million.

It began broadcasting by satellite (NileSat and ArabSat) from Paris.

In November 2003 Radio Mosaique FM became the first private radio station to be authorised to broadcast in Greater Tunis, the northern suburbs and the Hammamet region. Radio Jawhara FM started broadcasting on 25 July 2005 from the town of Sousse, covering the Tunisian Sahel, encompassing the towns of Sousse, Mahdia, Kairouan, Monastir, Nabeul and part of Sfax. It targets the large clusters of university students in its catchment area, focusing on their interests.

3.2. REGULATION OF PRINT MEDIA

On the eve of the Jasmine Revolution, the press sector consisted of 264 newspapers and magazines, including eight dailies and 15 weeklies. Almost all of them belonged to private Tunisian investors. Print media were more intensely legislated for than other media, primarily through the 1975 Press Code, which was modified on numerous occasions and clearly bears the marks of a succession of authoritarian governments. The 1975 code set out

the principle of press freedom⁵ and contained general provisions apparently in support of this, but press freedom was, in fact, severely limited in scope.

The opposition press and independent newspapers were unable to offer critical analyses of political, economic and social realities; instead they were ordered to present a picture of stability in line with government narratives. Censorship and self-censorship, the fear of criminal sanctions and the removal of public aid and advertising hindered press freedom and audio-visual and electronic communication in general throughout this period.

3.3. THE EMERGENCE OF THE INTERNET

The internet in Tunisia goes back to 1991, but this means of communication only really developed under the auspices of the Agence Tunisienne d'Internet (ATI), created in 1996 under the supervision of the Ministry of Communication Technologies. As the main internet service provider (ISP), this agency exercised rigorous control over all electronic exchanges of information and managed the connections of other providers and user accounts. The state authorities regulated internet usage through a decree of 1997, which required each ISP to perform constant surveillance over the pages it hosted and to check that the content it carried was not contrary to "public order and morals". The ATI could also suspend any internet access service without notice if it was being used for purposes which were non-compliant with stringent contractual conditions. Anyone wishing to use an internet café had to present an ID card.

The provisions of the Press Code are also applicable, with the same evident concern for state security, to content distributed online. So Tunisia, which has the most detailed legislation in the region,

has some of the strictest controls over the internet in the world. Due to the fear of criminal sanctions, self-censorship has been the rule among Tunisian bloggers throughout this period.⁶

Press legislation, like the international agreements the state subscribes to, proclaims the principles of freedom of expression, opinion and publication, as well as the citizen's right to information. However, the practice and conduct of the Tunisian authorities are deliberately ambiguous, discriminatory in respect to citizens and marked by a determination to control the media. By way of example, publishing a newspaper or magazine – albeit subject to a declaratory regime recognised to be the most liberal – constitutes a major obstacle for the free expression of opinion. Very often the administration refuses to issue records so as not to be forced to justify the reasons for its refusal in case of a publication request being rejected. When authorisation is granted, the beneficiary must show evidence of a 'political flair' to publish without being attacked by the administration. He must also, and particularly, report information in the "right" way to avoid crossing the moving red lines set by the authorities.⁷

3.4. THE LIBERALISATION OF THE MEDIA LANDSCAPE AND ITS LEGAL FRAMEWORK

The Jasmine Revolution swept away the old regime and ushered in a new legislative and political landscape, with immediate plans to replace the 1956 Constitution, which recognised freedom of expression in theory but did not protect it in practice.

This impetus rapidly led to the dismantling of the institutional system for authoritarian control of the media⁸ and the setting up of new institutions responsible for consecrating and

guaranteeing freedom of expression and the reorganisation of the media sector. The Haute Instance pour la Réalisation des Objectifs de la Révolution (Supreme Body Responsible for Achieving the Objectives of the Revolution) set up a media subcommission a few weeks after the collapse of the regime. The Instance Nationale chargée des Réformes de l'information et de la Communication (National Body for Reform of Information and Communication) (INRIC) was created in its wake and entrusted with assessing the legacy of the regime and proposing the measures needed to free up and liberalise the media sector. The Haute Autorité Indépendante de la Communication Audiovisuelle (Independent Supreme Authority for Audio-visual Communication) (HAICA) was also set up with a view to strengthening and protecting the freedom of audio-visual communication.

In legislative terms, the transition government then promulgated three important decree-laws relating to the Press Code, the freedom of audio-visual communication and access to information.

In constitutional terms, in a step that was very popular with observers, the new Constitution of 26 January 2014 includes a guarantee, in Article 31, of "freedom of opinion, thought expression, information and publication" and prohibits their prior censorship. Article 32 guarantees the right to information and the right to access information. Unlike the Moroccan Constitution, this fundamental law even provides for access to social networks, and has encouraged the state to guarantee the same. HAICA, responsible for regulating the freedom of audio-visual communication and overseeing the development of this sector, was formally acknowledged in the Constitution of 2014.⁹

¹ "La Configuration audiovisuelle tunisienne entre monopolisation et libéralisation du secteur", by Nozha Smat. LARA, 26 April 2009. Available at: <http://w3.lara.univ-tlse2.fr/entrelacs/spip.php?auteur68>

² This channel ceased terrestrial broadcasting on 31 December 2010 after not renewing its authorisation request, but it was again available on the digital package launched by the Office National de Télévision in June 2012.

³ Since 25 October 1999 France 2 programmes have no longer been broadcast terrestrially. The experience of France 2 in Tunisia revealed, according to the words of R. Ferjani (2002, p. 171), the strategy of a "controlled internationalisation of the Tunisian terrestrial space" which was doomed to failure. Cited in "La configuration audiovisuelle tunisienne entre monopolisation et libéralisation du secteur", op. cit.

⁴ Canal Horizon Tunisie shut down for good in October 2001 for economic reasons. Subscribers to the channel fell from 65,000 to 35,000, 50% less than the peak achieved during its boom years. This decline was mainly due to the proliferation of free-to-air satellite channels. Idem. ibid.

⁵ Article 1 (Amended by Organic Law No. 93-85 of 2 August 1993): "The freedom of press, publication, printing, distribution and sale of books and publications is guaranteed and exercised under the conditions defined by this code."

⁶ As documented by Reporters Without Borders and Tunisia Watch, 2009.

⁷ Larbi Chouikha, "L'audiovisuel en Tunisie : une libéralisation fondue dans le moule étatique" (<http://anneemaghreb.revues.org/165?lang=en>).

⁸ The Information Ministry was abolished, and the activities of the Tunisienne de Communication Extérieure (Tunisian External Communications Agency) (ATCE), which controlled information through the awarding of public body advertising contracts, and those of the Tunisienne d'Internet (Tunisian Internet Agency) (ATI), which controlled and censored websites, were frozen, and the Conseil Supérieur des Médias (Supreme Media Council), created in 1989, was dissolved.

⁹ Article 127 of the Constitution of 26 January 2014 states that: "The audio-visual communication body is responsible for the regulation and development of the audio-visual communication sector. It guarantees freedom of expression and information and plural and honest information. The body has regulatory power within its jurisdiction, and must be consulted on draft laws falling within its jurisdiction. The body is comprised of nine independent members – impartial, competent and honest. They serve a single term of office of six years. The body is renewed by a third every two years."

4. LEGISLATIVE CONDITIONS FOR ACCESS TO THE MEDIA MARKET

In media terms, the revolution rapidly burst the authoritarian bubble and led to the blooming of new media formats in the three spheres of information: the audio-visual sector; the print media; and electronic media. At the proposal of INRIC, the government authorised the creation of 12 new private radio stations¹⁰ and five private television channels.¹¹ Seven channels are available free of charge on the digital terrestrial television package TNT recently launched by the Office National de Télédiffusion

(National Broadcast Office) (ONT), four of them private. The package contains: la Télévision Tunisienne Nationale (TTN) 1, la TTN 2, Hannibal TV, Nessma, Al Hiwar Ettounsi, Tunisia World Television (TWT) and the first Italian national television channel, RAI 1.

After January 14th 2011 the liberalisation of the press enabled the creation of a large number of journals and newspapers, although few of them were sustainable. In this context some 20 newspapers

(all Arabic-language, with the exception of *l'Audace*) were created¹² but, in the absence of resources, some had already folded by the elections of October 2011. As a result of liberalisation, the three "opposition" newspapers that existed before the revolution – *Al-Maouqif*, *Al-Mouatinoun* and *Al Tariq al-Jadid* – can now be printed and distributed normally, and are no longer experiencing "technical" problems with printers and distributors.

The new constitutional and legislative system engages the audio-visual landscape in a true dynamic of change, generally favourable to freedom of expression, both economic and political, in the Tunisian media. But this new system remains incomplete and under assault, pulled in different directions and subject to the inconsistencies, fortunately minor, that characterise the institutional and legal constructions of the post-revolutionary scene.

“The new constitutional and legislative system engages the landscape in a true dynamic of change...but it remains incomplete and under assault, pulled in different directions.”



In the main, the legislation covering the various different media channels is supportive of free and democratic expression, although the state media monopoly established in 1927 has yet to be officially repealed.

4.1. FREEDOM OF AUDIO-VISUAL ENTERPRISE AND THE GUARANTEE OF DIVERSITY OF PRIVATE MEDIA IN THE NEW CONSTITUTIONAL AND LEGISLATIVE SYSTEM

At the legislative level, unlike Morocco, where a 2002 decree explicitly removed the state's broadcasting monopoly established by the French protectorate in 1927, no legal provision has repealed Decree 1957 that legally established the state media monopoly in Tunisia. However, as in Morocco, this monopoly was in effect relaxed before legislation codified the liberalisation of the audio-visual sector and opened it up to private investors (see 3.1. above). The legislation in question is Decree No. 2011-116 of 2 November 2011, which covers the freedom of audio-visual communication and entrusts to an independent administrative authority the task of organising, guaranteeing and regulating the exercise of this freedom. It also codifies the right of each citizen to have access to information and audio-visual communication. The Decree sets out, in two articles on its general provisions, the principles according to which the freedom of audio-visual communication

must be exercised¹³ and specifies the rules that must be respected in applying these principles.¹⁴ It contains no rules defining the legal nature and conditions for the creation of private audio-visual enterprises.

The Decree entrusts HAICA with examining applications for licences to create and operate:

- audio-visual communications enterprises; and
- associative not-for-profit radio stations and television channels, and Tunisian associations created according to current legislation.

It states that a fee is payable when a licence is granted, the amount of which is fixed by HAICA in consultation with the ONT and the Agence Nationale des Fréquences (National Frequencies Agency), and that licences may be transferred to third parties only in extraordinary cases, and with the agreement of HAICA (Article 16).

There is a danger therefore that another authority could in effect overrule HAICA in order to prevent a politically or otherwise undesirable channel from

being set up. Before HAICA, the first private radio stations and television channels were authorised by the decision of the Tunisian prime minister on the advice of INRIC. The wording of Decree No. 211-116 leads one to conclude that HAICA does not itself decide on the granting of the licence; it merely examines the case for it. However, a recent decision by HAICA fixes the conditions for granting a licence to create and operate a private television channel in Tunisia.¹⁵

Creation of a new channel depends on being granted a licence by HAICA. The potential operator may be a private individual or a company subject to Tunisian law and the candidate must be a Tunisian resident and national. The licence is granted to the proposed operator or founders of the trading company. When it is a public limited company, the shareholders holding the licence undertake not to sell or trade their shares in the first three years of operation.

¹⁰ Radio Karama (Sidi Bouzid), Radio Chaambi (Kasserine), Radio Oasis (Gabès), 6-Radio Sabra (Kairouan), Radio Cap FM (Cap-Bon, Nabeul), Radio Oxygène (Bizerte), Radio Kali-ma, (Greater Tunis), Radio 6 (Greater Tunis), Radio Kif FM (Greater Tunis), Radio Ibtissama FM (Sourire): Greater Tunis).

¹¹ These are: El Hiwar Ettounsi (Tahar Belhassine), Golden TV (Mohamed Hannachi), Khamsa TV (Mohamed Moncef Lemkachar), Ulysse TV (Nasr Ali Chakroun), TWT (Issam Kherigi). Two other TV channels were created in 2012: Tunisia TV and Al Qalam TV.

¹² These are: *Al Hakika (La Vérité)*, *Arissala (Le Message)*, *Al Yaoum (Le Jour)*, *Al Massa (Le Soir)*, *Al Qattous (Le Chat, satirical journal)*, *Al Fajr (L'Aube, organ of Ennahdha)*, *Al Waka'a (Les Faits)*, 14 janvier, *Al Akhbar (Les Informations)*, *Al Irada (La Volonté)*, *Asrar (Confidences)*, *Al Hassad El Ousboui (Bilan de la semaine)*, *L'audace and its Arab language version El Jor'aa (bi-monthly)*, *Arabia, Arraya (L'Etendard)*, *Sawt Echaab (La Voix du peuple, organ of the Communist party PCOT)* and *Al Karama (La Dignité)*.

¹³ According to Article 5 of this law, the rights and freedoms mentioned in Articles 3 and 4 are exercised on the basis of the following principles: respect for international conventions and agreements relating to human rights and public freedoms; freedom of expression; equality; pluralism of the expression of ideas and opinions; objectivity and transparency.

¹⁴ According to Article 5 of this law, the application of these principles is subject to rules on respect for the rights of others or their reputation, and in particular: respect for the dignity of the individual and their private life; respect for freedom of belief; protection of the child; protection of national security and public order; protection of public health; the encouragement of culture and production in matters of national information and communication.

¹⁵ Decision by the Haute Autorité indépendante de la Communication Audiovisuelle No. 4 of 2014, dated 5 March 2014, on the publication of terms and conditions fixing the conditions for granting a licence to create and operate an associative television channel in Tunisia.



4.2. THE ASSIGNMENT OF RADIO FREQUENCIES IN THE NEW LEGISLATIVE AND REGULATORY SYSTEM

Radio frequencies are granted to audio-visual enterprises according to the National Radio Frequencies Plan in co-ordination with HAICA and according to the provisions of Article 17 of Decree No. 2011-116 of 2 November 2011. HAICA investigates applications for frequencies and decides whether or not to award them in co-ordination with the Agence Nationale des Fréquences. It is the Agence Nationale des Fréquences that actually allocates frequencies to newly licensed audio-visual operators, whereas HAICA is responsible (via Article 64 of HAICA Decision No. 4 of 2014) for the technical obligations that the operator of an audio-visual enterprise must meet.

This dual agency approach does not appear to encourage rational and efficient use of the frequency spectrum and nor does it serve the independence of HAICA as the regulatory body of this sector, since, by not allowing it to control

frequency allocation, it deprives it of a significant lever for influencing and controlling the audio-visual operators under its jurisdiction. The Moroccan law on audio-visual communications (Law No. 77.03) avoided this duality of management of audio-visual frequencies by having a single body to authorise and control the operation of frequencies and collect the corresponding fees.

4.3. FREEDOM OF THE PRESS AND PUBLICATIONS

Decree No. 2011-115 of 2 November 2011 covers freedom of the press. According to Article 15, "publication of any periodical is free, without a need for prior authorisation, without prejudice to respect for the declaration procedures set out in Article 18 of this decree-law."

The Decree also specifies, for reasons of editorial responsibility, that:

- all periodicals must have a responsible director who is Tunisian, an adult, able to exercise his/her civil and political rights and having a known domicile in Tunisia;
- when the periodical is published by a

legal entity the director must be chosen, as applicable, from the members of the management body;

- when the periodical is published by a private individual, this person must be the publication director;
- when the director of the periodical benefits from any immunity whatsoever, the periodical must choose another director.

Current legislation shows a marked improvement on press freedom from the 1975 Press Code. In particular, Article 18 ensures that the publication of national periodicals is subject to a more transparent prior declaration procedure that is less conducive to "invisible censorship" by the state.

The publication director files a written declaration of content to the local judiciary, which they acknowledge. If for some reason they do not issue a receipt, notification of the declaration can be made by registered mail and proof of postage serves as a valid receipt of the declaration.

Further major innovations in post-revolutionary legislation include legal provisions guaranteeing the pluralism of companies and transparency of press organisations. Each edition of a periodical must publish information on the owners.¹⁶ A fine of 50–100 Tunisian dinars is payable for each edition published in contravention of these rules.

4.3.1. Provisions relating to pluralism

With a view to preserving pluralism in the press, Article 33 of Decree 115-2011 limits the number of different periodicals, in terms of language and publication frequency, that may be owned by a single person. The printing of periodicals owned by a single person must not exceed 30% of the total publication of this category published in Tunisia.

It is similarly prohibited to acquire or otherwise dominate a general political information periodical if this acquisition could cause the purchaser to possess or dominate, directly or indirectly, general information periodicals whose printing exceeds 30% of the total of this category. Anyone planning to transfer or acquire majority ownership, allowing them effectively to dominate any establishment by publishing a political and general information periodical, must declare this to the competition board. The violation of any of these provisions is punishable by a fine of 50,000–100,000 dinars.

4.3.2. The right to be informed and have access to information

The corollary of press freedom is the right to be informed and have access to information. Tunisia has seen extremely positive developments in this

area. The new Constitution provides for this in Article 31 and, unlike the Moroccan Constitution, for example, this fundamental law enshrines the right of access to social networks and encourages the state to guarantee the same.

Previously, Decree No. 2011-41 of 26 May 2011, adopted just a few months after the Jasmine Revolution, had promoted the right of access to administrative documents in Tunisia. The law was supplemented, with a view to strengthening this right, through the establishment of a more restrictive system of exceptions,¹⁷ and the partial enactment of a two-year grace period for its implementation.

4.3.3. Freedom of the electronic press

There is no new legislation that expressly relates to internet freedoms, but the freezing of the activities of the ATI and the general terms used in Article 2 with regard to publications¹⁸ and periodicals¹⁹ suggest that internet publishing is subject to the same laws as the print media. However, the creation by Decree No. 2013-4506 of 6 November 2013 of the Agence Technique des Telecommunications (National Telecommunications Agency) has raised alarm bells about a possible return to control and censorship of the internet. This new agency was set up to provide "technical support for legal investigations into crimes involving information and communication systems".



The corollary of press freedom is the right to be informed and have access to information. Tunisia has seen extremely positive developments in this area, including under Article 31 of the new Constitution.



¹⁶ Article 23 – Any establishment publishing a general periodical must publish, in each edition: the names and surnames of the naturalised persons that own it, if the establishment lacks legal personality; the form of the establishment, its corporate purpose, its capital, its registered address, the name of its legal representative, the names of the three main shareholders and its legal term, in the event that this establishment is a legal entity; the name of the managing director and the editorial director; the number of copies of each publication.

¹⁷ The law sets out the right to refuse the publication of a document on the basis of the legal protection of personal data, the violation of literary and artistic rights, the decision of a court or when a document has been provided to a public body on a confidential basis. It also provides, in Article 17, other exceptions where the public body may refuse to disclose a document, particularly when it may be prejudicial to: relations between states or international organisations; the formation or development of an effective governmental policy; national security or defence; criminal detection, prevention or investigation; the arrest of and legal action against the accused; the administration of justice, respect for the rules of fairness and the transparency of public procurement procedures; processes of deliberations, exchanges of opinion and points of view, examinations, tests or legitimate commercial or financial interests of the public body in question.

¹⁸ The term "publications" refers to all publications made available to the public in whatever form.

¹⁹ The term "periodicals" refers to all periodical publications, whatever their form, published under a single title, at frequent or distant intervals, even in an irregular manner, as long as this occurs over an indeterminate period, and their editions are consecutive. "Periodicals" is understood to mean, in particular, daily, twice weekly and bi-monthly newspapers, magazines, printed or illustrated periodicals and reviews.

5. MEDIA FINANCING

Post-revolution Tunisia is yet to establish a complete and consistent legal framework for private media financing – essential to the creation of a media sector that properly represents the diverse range of voices among the country's population.

Equality of opportunity to access funding is a necessary condition for the creation of a diverse and viable media sector fit to represent the plurality of ideas and voices in Tunisia. This is why the legislative and regulatory system must favour fair and transparent access to sufficient media financing and prevent financial hegemony within the sector. Caught between pre-revolutionary and nascent post-revolutionary legislation, Tunisia does not yet have a complete and consistent legal framework for private media financing.

5.1. FINANCING FOR AUDIO-VISUAL MEDIA

5.1.1. State aid for the financing of audio-visual media

The government has not yet dealt with the issue of reforming state aid for the media; no legislation has been passed in this area at all. The private radio and television media authorised by the new authorities to broadcast in Tunisia benefit from no preferential treatment regarding the import of equipment and materials. All imported equipment must be approved by the competent authorities.²⁰

On the recommendation of INRIC, ONT – the public body with a technical monopoly over the audio-visual broadcasting network – granted the operators that were authorised to broadcast after 14 June 2011 an exemption from tariffs²¹ for the first year and a reduction of 20% after 2012.²² The new terms and conditions established by INRIC envisage a distinction being made between commercial and association-based media.

5.1.2. Advertising regulations for the broadcast sector

Several pre-revolutionary laws currently govern the advertising sector in general.²³ In the audio-visual sector Decree No. 2011-116 on audio-visual communication sets out the new legal bases for advertising, entrusting HAICA with the task of setting and enforcing the rules of conduct. These rules were established in the terms and conditions set out by HAICA's Decision dated 5th March 2014 addressed to licence applicants applying to operate private television channels in Tunisia. Article 48 of these terms and conditions sets out

the ways in which advertising and all types of commercial communication must comply with current laws and states that their content must be based on a socially responsible commitment to consumers and respect for the principles of fair competition. Other articles set out the obligations of audio-visual operators holding an operating licence, for example:

- the duration of each advert must not exceed eight minutes per 60 minutes of broadcasting or, exceptionally during Ramadan, 12 minutes per 60 minutes;
- there must be a clear distinction between the advertisement and the rest of the programming, and the beginning and end of advertising spots must be announced;
- news programmes may not be interrupted by advertising, nor may they be sponsored;
- advertising may not interrupt the broadcasting of a film more than once, or twice if the film is longer than one hour and 30 minutes;
- programmes, opinion pieces or advertisements in favour of a political party or list of candidates for election

may not be broadcast with or without a counter-opinion, and political parties are banned from sponsoring television programmes;

- there is a ban on advertising military equipment and other prohibited products such as tobacco, charlatanism and clairvoyance;
- advertising spots must have the same sound levels as other programmes;
- adverts should show respect for consumers whatever their social and cultural level, and refrain from seeking to influence their decisions;
- misleading adverts should not be broadcast;
- all adverts must comply with codes of ethics, respect human dignity and avoid any form of exclusion, including exclusion due to provenance, religion, gender, age or disability;
- the obligation to inform viewers of programmes that are sponsored, at the beginning and end of the advertising spot, for a period of five seconds, without this period exceeding seven seconds;
- the obligation to respect the intellectual property rights of others in the event that their creation, name or images are exploited in an advertisement.

5.2. FINANCING OF THE PRINTED PRESS

5.2.1. Material state support

From 1997 the Tunisian state decided to grant subsidies to newspapers of the political parties represented in the Chamber of Deputies. These newspapers also benefited from a share of public-sector advertising, the amount of which depended on their level of loyalty towards the regime. In addition, large subsidies were paid to certain periodicals published in Tunisia and abroad without any requirement for disclosure.²⁴

The material support regularly provided by the Tunisian state to the press now consists of production aid, mainly through subsidies for printing via the Tunisian Trade Office, which imports the paper and sells it to press enterprises at a cost below the import price then exempts it from Value Added Tax (VAT) and import tax (currently set at 25%).

This is one of the few benefits that the Tunisian state grants to newspapers. The main daily newspapers benefit the most, because they import large quantities of paper and have management procedures in place to deal with the processes involved in accepting with state subsidies.

5.2.2. Advertising

The distribution of public advertising also represents a tool for the state authorities to help newspapers. Before 1990 ministers, enterprises, public establishments and local authorities entrusted their advertising to the newspapers with the largest audience. In 1991 a manifestly unfair change was made to this system via a circular which entrusted the Agence Tunisienne de Communication Extérieure (ATCE) with distributing this advertising. Thus the distribution of advertising became a tool for the state authorities to reward newspapers favourable to the regime and punish others. This had obvious repercussions for the distribution of private-sector advertising, as these advertisers avoided using newspapers boycotted by the ATCE.

The new decree on press freedom (Decree No. 2011-115) refers to advertising only to guarantee the transparency of the tariffs applied by periodicals (Article 28), to protect readers from disguised advertising (Article 29) and to prevent general newspapers, with the exception of the partisan press, from issuing propaganda in the form of adverts in favour of one or other of the political parties or candidates to the general elections (Article 31).

5.2.3. Rules guaranteeing the transparency of newspaper financing

Any person or company that directly or indirectly holds at least 20% of the capital or voting rights in a newspaper publisher must be nominated, not elected. The board of directors or the supervisory board must approve any transfer of shares that are part of the capital of the establishment publishing a general newspaper. In the event that the transfer or promise to transfer would lead to the direct or indirect appropriation

of at least 20% of the capital, a notice must be published to this effect in the newspaper or newspapers owned by the establishment.

With regard to the transparency of financing sources, Article 23 of Decree No. 2011-115 obliges all establishments publishing a general information newspaper to publish, in each edition during the ninth month of the current year, and in both its electronic and paper versions, the average print run during the previous financial year, its balance sheet and the profit and loss statement of the establishment publishing the newspaper. This information should include all relevant details (specified in full in the legislation) of ownership, interests, shareholdings and securities, as would be required in an internationally acceptable annual report. A fine of 50–100 dinars is payable for each edition published in contravention of these provisions.

²⁰ These are the Centre d'Etudes et de Recherches en Télécommunications (Centre for Telecommunication Studies and Research) (CERT) and the Nationale de Certification Electronique (National Electronic Certification Agency) (ANCE).

²¹ A radio broadcasting licence covering the whole area comes to 2 million dinars; it costs 200,000 dinars for Greater Tunis and 57,000 dinars in the regions.

²² A radio broadcasting licence covering the whole area comes to 2 million dinars; it costs 200,000 dinars for Greater Tunis and 57,000 dinars in the regions. The ONT, nevertheless, agreed to provide its services free of charge in the last few months of 2011 and to give a reduction of 20% in 2012.

²³ These are: Law 71-22 of 25 May 1971 on the organisation of the commercial advertising sector, which ended the monopoly of the Tunisienne de Publicité (Tunisian Advertising Agency) (ATP); Law 91-64 of 29 July 1991 on competition and prices; Law 98-40 of 2 June 1998 on sales and commercial advertising and the Telecommunications Code promulgated by Law 2001-1 of 15 January 2001 as modified by Law 2002-46 of 7 May 2002 and by Law 2008-1 of 8 January 2008.

²⁴ See the INRIC report, Page 62.

6. SAFEGUARDING A FREE PRESS AND FREEDOM OF EXPRESSION

The Tunisian Constitution is liberal by comparison with those elsewhere in the Arab world, providing a broad guarantee of freedom of expression – although there is as yet no guarantee of freedom of enterprise.

As we have seen, the new Tunisian Constitution guarantees freedom of expression in its broadest interpretation, as well as the right to information and the right of access to information for all citizens. While it does not guarantee freedom of enterprise as does, for example, the Moroccan Constitution, and nor include specific provisions on press freedom and fair access by political parties to audio-visual media, it is undoubtedly liberal compared with other Arab constitutions in the way it enshrines individual and collective freedoms and protects human dignity.

In this section we will analyse existing restrictions on the freedom of expression legislation in the communication and information fields, particularly looking at:

- institutionalised censorship justified by considerations of public order, morals or political considerations;
- legislation guaranteeing pluralist political expression during electoral periods; and
- legislation aimed at protecting minorities, children and women.

6.1. LIMITATIONS ON THE FREEDOM OF AUDIO-VISUAL COMMUNICATION

According to Article 43 of Decree 2011-116, freedom of expression may be restricted only in extreme and/or exceptional cases and on the basis of specific criteria relating to respect for the rights of others and their honour, national security, public order or health. In general, these restrictions are on the grounds of preserving human dignity and protecting the weak or powerless. The other main reason for restrictions is in order to guarantee the pluralist expression of ideas and thoughts, particularly during an electoral period.²⁵

6.1.1. Legislative restrictions on exercising freedom of audio-visual communication

The legislation put in place since the Jasmine Revolution is not yet sufficiently explicit and complete to fully support freedom of expression in the broadcasting sector; but it sets out milestones that represent a radical change from the inherited system of institutional control and censorship.

Article 5 of Decree No. 2011-116 relating to the audio-visual sector sets out the requirements for broadcast content and states that freedoms of audio-visual communication must be exercised on the basis of the following principles:

- respect for international conventions and agreements relating to human rights and public freedoms;
- freedom of expression;
- equality;
- pluralism in the expression of ideas and opinions;
- objectivity;
- transparency.

The legislation also sets out prohibitions with regard to broadcasting advertisements for political parties or electoral candidates. This applies to content whether it is carried free of charge or has paid-for airtime. Any violation of this prohibition will result in a fine of up to 10,000 dinars. Other limitations that affect broadcasting come from the general rules set out in Article 5 of Decree No. 2011-116, which stipulate a requirement to ensure:

- respect for the dignity of the individual and their private life;
- respect for freedom of belief;
- protection of children;
- protection of national security and public order;
- protection of public health.

Any serious violation of these rules is subject to administrative sanction by the regulator, who may then decide immediately to suspend the programme in question after informing the broadcaster of such a decision. Article 30 of the decree sets out the penalties for violations by the licensees, which include both administrative²⁷ and judicial sanctions.²⁸ The law states that: "in all cases, the sanction must be proportional to the gravity of the violation committed and the benefit that the contravening party has taken from this violation, without the sanction exceeding five per cent (5%) of turnover net of tax realised during the complete financial year of the year prior to that of the violation."

The regulatory authority also sets out the terms for holders of a licence to operate a private television channel (Decree No. 2011-116). These terms and conditions support responsible broadcasting in the private sector – they strive for balance and impartiality and are designed to protect human dignity. Article 24 prohibits:

- defamation and insults against individuals either by journalists of the establishment or guests on programmes broadcast by the channel, whether live or recorded;
- the broadcasting of false information and fallacious accusations.

It also obliges the holder of a private television licence:

- not to broadcast testimonies that may humiliate persons or groups of persons;
- not to broadcast anything that may incite, exclude, or defame;

- not to receive or broadcast testimonies from children that are contrary to their best interests without the agreement of their parents;
- to guarantee the contribution of children to the audio-visual landscape and work towards the dissemination of a culture that promotes the rights of the child with the focus on child participation and increased involvement;
- to guarantee the participation in programmes of people with special needs and to provide sign language for news programmes;
- not to receive or broadcast testimonies of victims in case of an accident;
- not to exploit or market personal dramas in television programmes;
- not to initiate or participate in making any talk show or interactive programme, game or entertainment programme that is conditional on any waiver by participants, definitive or provisional, of their fundamental rights, particularly the right to private life and the right to bring legal action for damage;
- to guarantee the presence of women on television programmes and undertake to treat them with respect.

Thus, the new Tunisian legislation seeks to support freedom of expression in the television sector and to make a radical break with the past in terms of ensuring balance, impartiality and credibility of content.

However, there are still questions about the way in which the new legislation coexists with legislation from the former regime that is still in force. Article 30 of Decree 116-2011 refers to this legislation. Pre-existing legislation is not compliant with the spirit of the new Tunisian Constitution and the new laws framing freedom of expression. This can make for an uncomfortable legal landscape.

Article 51 of the decree on Freedom of Audio-visual Communication²⁹ and

Article 80 of the decree on Printing, Publication and the Press³⁰ repeal all texts contrary to their provisions. However, in the absence of a general text applicable to audio-visual communication and of texts implementing a new code of printing, publication and the press, there remains a risk that laws from the former regime that have not expressly been repealed could be used as a legal basis for resolving problems with the implementation of freedom of expression. There is also a risk that, where a text repeals its predecessors in blanket terms (as in Article 51 of Decree No. 2011-116), gaps could be left in the legislation.

The new Tunisian Constitution is still evolving in terms of developing and adopting a complete range of legal texts consistent with its principles and values, particularly in matters of communication and information.

6.1.2. Legislation intended to protect minorities, children and women

The new Tunisian legislation lays down special provisions intended specifically to protect women and children. Under Article 5 of Decree no. 2011-116, private television broadcast licence holders must, in particular, ensure that they respect international conventions and agreements relating to human rights. Private television operators are subject to further obligations that restrict their freedom of expression where this could come into conflict with the rights of minorities, children and women.

6.1.2.1. Women's participation

As mentioned at 6.1.1. above, the licence holder undertakes to guarantee the presence of women on television programmes and their effective participation in discussion shows, and to treat them with respect on the basis of their skills and knowledge of the subject under discussion.

²⁵ Article 28 of Decree No. 116-2011 states: "in the event that facts constituting a violation of current legislation are brought to the attention of controllers, such as practices contrary to the respect due to humans and their dignity, the protection of children, the profession's code of ethics, as well as any violation of the provisions of terms and conditions by establishments holding the licence, they are required to immediately inform the president of HAICA who shall decide, after deliberation of the board of the body, on the measures to be taken, including bringing the case before the competent administrative, jurisdictional and professional authorities."

²⁷ Article 30 states that "in the event of violation of the provisions and obligations set out by current law, terms and conditions or licence agreements, the president of HAICA shall send a warning to the establishment in question to cease practices contrary to legislation, terms and conditions or licence agreements. The contravening party must comply with the warning within no later than fifteen (15) days from the date of receipt of the warning. If it refuses to obey HAICA may decide, after deliberation, to order the publication of a warning, suspend, for no more than one month, the production or the broadcasting of a service or services relating to a programme, a part of a given programme or an advertising spot, or reduce the licence term. In case of repeat offending, HAICA may order the temporary suspension or definitive withdrawal of the licence or apply a fine followed, as applicable, by a provisional or definitive suspension of the production or broadcast."

²⁸ HAICA may, as applicable, bring it before the competent jurisdictional or professional authorities.

²⁹ Article 51: All prior legislation contrary to the provisions of this decree-law are repealed.

³⁰ Article 80: All prior contrary legislation is repealed, particularly the press code promulgated by Law No. 75-32 of 28 April 1975, all subsequent texts supplementing and modifying it, and Articles 397, 404 and 405 of the employment code.

6.1.2.2. The protection of the rights of minorities in the audio-visual media

The legislation requires private operators to guarantee the participation of people with special needs on television programmes and to provide sign language for news programmes. It also bans private television stations from receiving or broadcasting the testimonies of accident victims to avoid exploiting people for dramatic effect.

Linguistic diversity in both the audio-visual media and the written press is limited to Arabic and French. There is no provision for the Amazigh language.

However, although there are no official statistics on the Tunisian Berber-speaking population, the Amazigh issue is regularly raised when Tunisia reports to the United Nations Human Rights Council on the application of the international agreement for the elimination of all forms of racial discrimination.

The Constitution and the new laws governing the media reserve no special treatment for the Jewish or Amazigh minorities of Tunisia.³¹ The new authorities failed to respond to the Tunisian Amazigh

people's request to have their identity and language recognised when drawing up the Constitution of the Second Republic. So far the recommendations on linguistic diversity for the audio-visual sector put forward by the Amazigh Council have not been addressed.³²

6.1.2.3. The protection of women and children in advertising

There are no special provisions regarding the protection of women in advertising, but all adverts must comply with codes of ethics, respect human dignity and avoid any form of exclusion, including exclusion

Officially recognised ethnic groups in Tunisia

Ethnicity	Mother tongue	Linguistic affiliation	Population
Tunisian Arabs	Tunisian Arabic	Chamito-semitic family	10,000,000
Algerian Arabs	Algerian Arabic	Chamito-semitic family	218,000
Levantine Arabs	Standard Arabic	Chamito-semitic family	198,479
Shawiya	Chaouia (Berber)	Chamito-semitic family	39,000
Djerbi (Jerba)	Nafusi (Berber)	Chamito-semitic family	26,000
French	French	Romance language	11,000
Maltese	Maltese	Chamito-semitic family	7,100
Tmagourt	Sened (Berber)	Chamito-semitic family	5,954
Sened	Sened (Berber)	Chamito-semitic family	5,400
Ghadamès	Ghadamès (Berber)	Chamito-semitic family	2,000
North African Jews	Moroccan Arabic	Chamito-semitic family	1,500

Source: "Al Jumhuriyah at Tunisiya" 2009



The new authorities failed to respond to the Amazigh people's request to have their identity and language recognised by the Constitution...[and] recommendations on linguistic diversity for the audio-visual sector have not been addressed.



³¹ There are around 2,000 Tunisian Jews resident in the country, compared with 600 in 1956. The number of Amazigh in Tunisia varies between 500 thousand and one million. But the authorities claim there are only 90,000.

³² The CMA recommends that Tunisia provide legal protection for the Amazigh population of the country; immediately end all forms of barrier and discrimination against Amazigh people and populations, restore the legitimate place of the Amazigh identity and introduce it into the fields of teaching and research, as well as the public media. Human Rights Council Working Group on the universal periodic review. Thirteenth session Geneva, 21 May–4 June 2012. Summary drawn up by the High Commission for human rights pursuant to paragraph 5 of the annex to Resolution 16/21 of the Human Rights Council.



due to background, religion, gender, age or disability. Regarding children:

- they cannot be used in advertising unless the subject of the advert directly concerns them;
- if the product being advertised constitutes a danger for minors, this must be indicated clearly and legibly for a period of no less than four seconds at the beginning of each advert;
- if the advert relates to unhealthy food products which may negatively affect the health of children, notice should be displayed for at least four seconds that it should be consumed in moderation.

6.1.2.4. Legislation guaranteeing pluralist political expression during elections

There are several new pieces of legislation designed to ensure equitable distribution of airtime for the political parties participating in elections or referenda.

Decree No. 2011-35 of 10 May 2011 on the election of a constituent national assembly sets out in Article 44 the principle according to which candidates are authorised to use national media solely within the framework of

their electoral campaigns and for no other "incidental" appearances during the campaign period. The Independent Supreme Electoral Body is responsible for overseeing the use of the media at these times. It sets the technical criteria and rules for any coverage of electoral campaigns, whether aired on state-run or private television channels. It also establishes the rules and procedures for the period of the electoral campaign – this includes the duration of broadcasts, programmes and slots reserved for the various candidate lists, their distribution and scheduling in the different media – in consultation with the different parties concerned, on the basis of respect for pluralism, transparency, equality and equality of opportunity.

Chapter 4 of Decree No. 2011-116 on audio-visual freedom is also dedicated to electoral campaigns. It establishes HAICA as the independent authority responsible for guaranteeing media pluralism and diversity during electoral campaigns and for removing all legal and administrative obstacles to media access, based on equity between all candidates and all electoral lists. HAICA is authorised to set the rules and special conditions for the production as well as the scheduling and

broadcasting of programmes, reports and sequences relating to electoral campaigns. It sets equivalent rules for all audio-visual media and may enforce these in law.

6.1.3. Legal limitations on exercising freedom of the press

The previous Press Code of 1975 was repealed and replaced by Decree No. 2011-115 of 2 November 2011 on freedom of the press, printing and publication. The decree is much clearer and more liberal in matters of the publishing business and press freedom.

Decree No. 2011-115 guarantees the right to freedom of expression, consisting of the free circulation of ideas, opinions and information of any nature, their publication, their receipt and exchange, which must be performed in accordance with the stipulations of the international agreement on civil and political rights, and other treaties relating thereto ratified by the Tunisian Republic.

The exercise of this freedom may be restricted only in terms specified in law, and as long as this law:

- is legitimately concerned to respect of the rights and dignity of others, preserve public order and/or protecting national defence and security;
- is necessary and proportionate to the measures that must be adopted in a democratic society, without constituting a risk of affecting the substantial right of freedom of expression and information.

7. SWOT ANALYSIS

	POSITIVE ELEMENTS	NEGATIVE ELEMENTS
INTERNAL	<p>Strengths</p> <ul style="list-style-type: none"> • Strong mobilisation for the reform of public authorities • A demanding civil society • Democratic stabilisation of political life • The setting up of independent regulatory bodies including ISE and HAICA • New liberal and democratic constitution • A secular and democratically elected head of state who supports change • The existence of a diversified private media landscape 	<p>Weaknesses</p> <ul style="list-style-type: none"> • Economic fragility of the media sector • Organised civil society as yet in embryonic form • A heavy shadow cast by the authoritarian regime • Weakness of public financial resources • Slowness in drawing up the new legislative and institutional framework • Absence of a representative elected legislative power • Strong presence of a conservative trend in the political landscape • Climate of insecurity and Salafist violence
	<p>Opportunities</p> <ul style="list-style-type: none"> • Support of the EU and Western democratic states • Positive perception of the Tunisian experience as an example to be followed in the region • Support of international institutions • Development of the global information and communication society 	<p>Risks</p> <ul style="list-style-type: none"> • Proximity of households to political and military tensions • Fanaticism of jihadist groups • Inadequacy of Western, particularly European, political and economic support
EXTERNAL	General short- and medium-term trends	



8. RECOMMENDATIONS

The country surveys highlight some important challenges, which should be tackled as a matter of urgency if the international community is to optimise and streamline media development interventions in the MENA region.

In the audio-visual sector it is recommended that:

- Legislation is adapted to meet the provisions in the new constitution.
- Legislation inherited from the pre-revolutionary period is repealed and replaced with new legislation to resolve the contradictions between current and pre-revolutionary laws.
- A new audio-visual communication law is drafted that precisely and comprehensively covers audio-visual activity in a way that is fit for technical and technological developments (digital terrestrial, convergence, conditional access audio-visual services, etc.). It must also establish rules guaranteeing the pluralism and diversity of the media and protecting the audio-visual sector from a concentration of ownership of media outlets.
- New legislation is drafted to protect the principle of the pluralist expression of ideas and thoughts in the audio-visual

media (including fair access of political parties to audio-visual media outside electoral periods).

- Legal and technical rules for measuring audiences are developed.
- New legislation is drafted to regulate advertising in the audio-visual media.

With regard to the printed press, it is recommended that:

- Decree No. 41-2011 is revised regarding access to administrative documents with a view to getting rid of the remaining ambiguities and reducing the exceptions and limitations.
- Custodial sentences are abolished.

With regard to the electronic media, it is recommended that:

- Electronic media are covered by and subject to general press legislation and that this is made clear: Journalists working on the electronic press should share the same status and be governed by the same laws as other journalists.

- The public bodies responsible for the authoritarian control of the written and electronic press are either abolished or their mission is reframed to ensure the freedom of the press and electronic audio-visual communication.



MEDMEDIA

www.med-media.eu

 MedmediaNetwork

 MedmediaNetwork

