



# Political and Media Transitions in Tunisia:

A Snapshot of Media Policy and Regulatory Environment

by Joan Barata Mir

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## **Political and Media Transitions in Tunisia: A Snapshot of Media Policy and Regulatory Environment**

*Political and Media Transitions in Tunisia* is a snapshot of the current media policy and regulatory environment in Tunisia. The research for this paper was carried out in May and June of 2011 by Joan Barata Mir.

This, and a companion study on the media and transition challenges in Egypt, was prepared for a three-day meeting – Informing the Dialogue and Creating a Roadmap: Workshop in Comparative Media Law, Policy and Regulation in the MENA Region – organized by Internews in collaboration with the Center for Global Communication Studies at the University of Pennsylvania’s Annenberg School for Communication, and the Center for Media and Communication Studies at the Central European University of Budapest, Hungary.

The meeting, the first in a multi-part series of workshops, brought together key stakeholders from the academic, law and policy and civil society communities interested in participating in a dialogue intended to aid the media transitions in the Middle East and North Africa. Various media stakeholder groups from the MENA region and several international experts attended the meeting and explored strategies and opportunities for media law reform in Tunisia and Egypt.

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**Cover photo:** A Tunisian protester displays her sign: “The Tunisian Revolution is not for sale or compromise.” Jamal Dajani/Internews

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## Introduction

The revolution and political change initiated in Tunisia on January 14, 2011 with the flight of the dictator Zine el Abidine Ben Ali, who had ruled the country for more than two decades, signifies the starting point of a reform movement of historical reach and importance across the Arab world.

A steady, promising democratic revolution is now taking place in a relatively hopeful and peaceful social context. Despite continued problems and uncertainties with the process and pace of reform in Tunisia and across the Middle East and North Africa, it is indisputable that Tunisia triggered a process of upheaval and change that subsequently rocked the region.

Tunisia has great potential to successfully meet the challenges of the transition to democracy: a highly educated population, few serious internal conflicts or divisions, social structures based on a strong middle class, relatively low levels of poverty for the region, a relatively high level of respect for certain determined rights (for example, the rights of women as a group), lack of territorial or political conflicts with neighboring countries, and a functioning economy with strong prospects in tourism, textiles and the automobile industry.<sup>1</sup>

The democratic transition has already faced a number of challenges, however, including renewed outbreaks of violence and repression, accusations of torpor and lack of vision on the part of the new governing class, and insufficient openness and diversity in the media.

In such an environment, Tunisia will require international support to carry out its reform process successfully. The country needs the collaboration of other states and international organizations, particularly those dedicated to cooperation with the Mediterranean region and the Arab world. Tunisia

has already taken important steps to facilitate this process, adhering to crucial international human rights norms and demonstrating willingness to conform to all the international systems and structures that protect and defend such rights (for example, the International Criminal Court). There also needs to be cooperation at the level of non-governmental organizations (NGOs) and voluntary and charitable organizations specializing in this field.

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With regards to the media, with the fall of the Ben Ali regime, the Ministry of Information, a once-powerful instrument of media control, was abolished. At this stage, it is unclear exactly how its responsibilities have been reallocated and reformulated. Although some of the mechanisms that were used to control the press under Ben Ali are still in force, including the Press Code and the Penal Code, the provisional government seems to be reluctant to apply their provisions, and at the present time there is a high degree of legal uncertainty around this sector. As such, this report will focus on the ongoing transformation of the regulatory environment, rather than on details of the existing laws.

It is important to emphasize that the analysis and

conclusions in this report are specific to Tunisia's particular situation and characteristics and it would be a mistake to apply them to North Africa or the Arab world more broadly. The countries in these regions are extremely diverse and cannot necessarily be assumed to be part of the "Arab Spring" movement. In some cases this is simply because the pace of change is almost imperceptible (for example, Algeria); in others, with a more mature political and institutional infrastructure relative to the region (such as Morocco) a popular uprising to force change is not necessary. The process of revolt and government response has played out very differently in Egypt, Libya and Syria, making an individual analysis of each country absolutely essential.

Finally, it is important to note the role of political Islam in the process of political change. Most analysts of the Arab Spring phenomenon have emphasized the relatively minor and limited role played by Islamic parties or factions, although the exact role varies from country to country. The input of Islamic groups has been almost irrelevant in the case of Tunisia. Their current strategy appears to have been to immerse themselves in the popular movement for change and try to make common cause with other groups, despite their differing ideology. Tunisian Islamists are well aware of the fact that the country's social and cultural structure would ultimately prevent the introduction of an Islamist political agenda. However, any failure of the political transition, such as moments of upheaval aggravating the economic crisis, could result in their increased influence.<sup>2</sup>

## The Media Panorama in Tunisia

An in-depth description and analysis of the media landscape of Tunisia is beyond the scope of this report. Nevertheless, given the extent to which

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the current environment will largely condition the media's future evolution, it is crucial to outline some general characteristics.

Virtually the whole of the Tunisian media is connected, to a greater or lesser degree, to the previous regime. Being founded during the dictatorship and before the revolution, media groups were inevitably obliged to work out the best way to survive and "coexist" with the Ben Ali regime. This has given rise to a significant and understandable situation: Tunisians do not trust their country's media, and international sources of information such as France 24 or Al Jazeera carry far more weight in the forming of public opinion than local news sources.

Tunisia's news sources are concentrated into few hands and lack diversity. The press essentially consists of four main daily papers, more or less tied to the previous regime (*La Presse*, linked directly to the state; *Le Temps*; *Le Quotidien*; and *Al Yaoun*) and three daily papers with links to the old opposition (*Al Maouqif*; *Al-Mouatinoun*; and *Al Tariq al-Jadid*). The audiovisual space includes two large state television channels, two private television channels, and 12 radio stations, two of which belong to the state. Although the two private television channels, *Hannibal TV* and *Nesma TV*, are purely commercial in content, they are nevertheless connected to the family and friends of Ben Ali; *Nesma TV* is also

partially controlled by Italian Prime Minister Silvio Berlusconi. According to their license agreement (*cahier de charges*), private television channels cannot provide political information. There is also the national press agency, TAP, which until recently served as a powerful propaganda weapon. There is surprisingly little tradition of regional and local news outlets, or social or community radio and television, although there are a few unlicensed community radio stations. In addition, the Internet is opening up a new space for the media, through online newspapers and journals and social networking.

In this period of transition, media sources whose funds were directly controlled by members of Ben Ali's Constitutional Democratic Rally party (RCD) have had these funds frozen by the interim government and subject to court administration (for example, *Le Renouveau*, *Assabah* and *Sabeeh*).

Specific issues and recommendations for the different media sectors will be explored in more detail below.

## Important Elements in the Process of Political and Institutional Change

This analysis of the process of Tunisian political and institutional change will start with the decisions taken by the second provisional government, led by Béji Caïd Essebsi, who replaced Mohammed Ghannouchi, Prime Minister of the first provisional government. Ghannouchi was forced out by the pressure of popular protests over the slow pace of change after the revolution.

A full description of the content and scale of the various reform options and decisions being taken by the current government is beyond the scope of

the report. Nevertheless, the most important and far-reaching changes in the field of social communications must be highlighted.

Most important, with the fall of Ben Ali, the interim government abolished the Ministry of Information, which had served as a key institution controlling the media and limiting freedom of speech. Two months after Ben Ali's departure, on March 15, the government constituted the *Haute Commission pour la réalisation des objectifs de la révolution, de la réforme politique et de la transition démocratique* (HC). This organization, which has been called "revolutionary," was created by merging pre-existing organisations; its main function is to reform the Tunisian state through a process of legislative change. In strictly legal terms, this refers to a legal-political provisional process, in which there is no clean break between the previous and the emerging legal systems. Instead, the preceding structures, judicial powers and legal and constitutional framework will be used to carry out reforms that will lead to a new legal and constitutional framework. This model of transition from an authoritarian political system to a democratic one has worked well in countries such as Spain, Chile and Argentina. Of course, this is a very complicated process, to the extent that former structures are being replaced by new ones, and in some cases the "old regime" may be reluctant to disappear. As the transition continues, many actors from Tunisia's former regime who still remain in power will have to intervene in some way.

With regards to the media, the HC has a technical sub-commission (*sous-commission technique*) made up of three legal experts who are solely responsible for questions relating to the regulation of the media.

The HC is collaborating with the second provisional government to initiate the process of popular elections to the future Constituent Assembly, whose function will not only be to draw up a new Constitution but also to draft the basic judicial

framework that will ensure a democratic political and institutional infrastructure. At the time of writing, the government has postponed the Constituent Assembly elections that were due to take place on July 24 until October 23.

The HC is made up of representatives of political parties, trade unions, social associations, citizens' groups, etc., although its everyday activities are carried out by civil servants and professionals considered by diverse sectors of society as out of touch with reality, bureaucratic, and still bogged down in the principles and methods of the old regime.

It should be outlined that the moderate Islamic party *en-Nahda* has decided, very recently, not to participate in the activities of the HC. There are several reasons, chief among them a feeling that the decisions taken by the HC try somewhat to decrease the impact of *en-Nahda* in the elections to the Constituent Assembly by establishing rules that are seen as too restrictive. The Islamist party now has a strong vocation to occupy the center of the new political framework and to lead the process of institutional change.

An Electoral Commission (EC) with an independent statute has also been set up to monitor the election process. The HC has intervened decisively in approving a basic framework that will guide the electoral process, including provisions such as the parity of men and women as candidates, a proportional voting system, and the prohibition of certain candidates with ties to the old regime. Some of these guidelines, however, are somewhat general and vague: for example, they do not include concrete provisions to guarantee pluralism, adequate representation of the various political forces in the media, or balance in the formation of public opinion. To adequately address the needs of the media during elections, it will be important for Tunisia to approve provisional rules concerning the protection and the proportional presence of different political options

(at least on public media) before the elections.

It is important to note that the HC has been attempting to introduce changes into the Tunisian legal system before the approval of the new Constitution. For example, following the HC's advice, the second provisional government is now discussing legislative projects relating to public access to administrative documents. Similarly, the technical sub-commission of the HC has prepared a Project of Press Law intended to regulate this sector, and to create a Higher Information Commission—that is, a supervisory authority apparently subject to political control. This project, which has been the object of critical analysis by NGOs,<sup>3</sup> liberal political parties and journalism professionals, is along the same lines (even if improved in some aspects) as the *Código de la Presse* (Press Code), Law 75-82, passed in 1975.

While the proposed new press law is less restrictive in some capacities than its predecessor, for example with regards to regulations limiting media ownership, it still reflects authoritarian thinking. Its new system of press regulation replaces the previous licensing regime, but is no clearer. It demands the submission of a great deal of information to the public authorities, including the Public Attorney; sanctions for failure to register are exorbitant; regulation of the right to reply is extensive and overly benefits public officials; and rules covering defamation are far too strict.

The development of this proposal was basically made by the sub-commission without external consultation or input, and was disseminated without the consent of the members of the HC itself. The public distribution of this document, as well as the criticisms made so far, especially by the professional journalism sector, has resulted in a strong consensus against it. After this experience, it seems that the HC has undertaken the preparation of a new proposal for a legal regulatory framework in the field of freedom of expression, press regulation and

audiovisual media services regulation (including the creation of an audiovisual regulation authority). It appears that this will be radically different from the proposals originally made by the technical sub-commission. In the meantime, however, a stable democratic regulation of social communications is lacking.

A second important new institutional body involved in communications reform is the *Instance nationale pour la réforme de l'information et la communication* (INRIC), set up at the end of February by the second provisional government by means of a Law Decree. The institution has only accepted a consultative role, and is not seeking any kind of administrative profile. This is a very important point to be outlined, to the extent that many sectors of civil society and even some journalists believe that the INRIC is an actual regulatory authority.

The INRIC is presided over by Kamel Laabidi, who, like other members of the institution, is an outstanding communication professional with democratic credentials. The INRIC appears to be a less technical, less bureaucratic and more realistic organization than the sub-commission of the HC, and less vulnerable to the influence of the previous regime's thinking and operational modes. Members of the INRIC have first-hand experience in the field of media and communications and a more transparent approach.

The creation of the INRIC, and the naming of Laabidi as its President, has been generally well received by the communications sector, though these high hopes could well be disappointed. It must be remembered that this institution now occupies the building just vacated by the repressive (and now dissolved) Ministry of Information.

In general terms the INRIC needs to make an accurate and realistic diagnosis of the media situation in Tunisia, and of the best ways to improve and advance the communication sector, enhance the

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Tunisian media, and actively promote impartiality, objectivity and respect for democratic norms, such as determining which future mechanisms will ensure that the licensing of radio and television stations is based on objective, proportional and non-discriminatory criteria.

One of the most important priorities of the INRIC should be to “inspire” legislative reforms that will modify the current legal regime of the communications industry, whether through reforms based on the Press Code of 1975 or via the drawing up of a completely new set of laws. This task should, in principle, be carried out in conjunction with the technical sub-commission of the HC. On May 17, 2011, Laabidi declared that this joint effort “*sera complémentaire et il y aura un échange de vues pour parvenir à des lois sectorielles propres à offrir au journaliste des garanties pour le libre exercice de sa profession.*”<sup>4</sup> However, difficulties linked to the fierce public opposition which arose from the leaking of the proposed Press Code may mean that the INRIC will adopt a cautious approach from now on, merely acting as a consultant to the government and the HC. The HC is trying to involve the communications sector in the discussions of these new proposals, and will ask the INRIC to provide its advice and insights before drafting the final versions. The decision to submit these proposals to the interim government or to wait until the election

of the Constituent Assembly will be in the hands of the highest members of the HC.

Two other important functions that are fundamental to the construction of a democratic public sphere also fall within the jurisdiction of the INRIC.

First, the INRIC will need to prepare and assess the future elaboration of a legal framework that will regulate the granting of licenses to new radio and television services. This is of great importance in guaranteeing media pluralism and the emergence of a media sector that is completely free of ties to the previous regime. Due to the specific need to guarantee some degree of pluralism within the public sphere before the elections to the Constituent Assembly, the INRIC very recently recommended that the government grant several provisional licenses to a group of radio and television broadcasters that can be considered to be independent from the government and the status quo private media companies.<sup>5</sup>

Second, the INRIC should define the aims and the role for an authentic public service broadcaster, including the legal and institutional structures that would allow for the establishment of this kind of media. This would satisfy the need of the public for information and promote an informed public opinion. These public services must have clearly defined objectives, transparent financing mechanisms and institutional structures that allow them to function autonomously.

Other vital issues include retraining media professionals to prepare them for the new system, putting in place new professional standards and promoting the use of new technologies.

It appears, however, that the INRIC (and also, to an extent, the HC) lacks the proper human and professional resources to carry out its work effectively. Not only is the budget inadequate but there is a shortage throughout the whole country of legal

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experts who specialize in the issue of the democratic regulation of the media. Furthermore, the sheer number of “urgent” demands now made on the institutions charged with leading the democratic transition of Tunisia has led to their saturation and hampered their ability to effectively prioritize their obligations. As a result, the INRIC, in spite of its professionalism and relative lack of bureaucracy, has been perceived by the communications industry and the general population as somewhat ineffective.

One possible approach to media regulation would give the Ministry of Industry and Technology and the Ministry of Culture joint responsibility for this sector, though of course a new audiovisual regulatory authority could also be created in the future. According to some sources, the task of reforming the communications sector has been, to some extent, directly assumed by the Prime Minister’s office, in close connection with some specific private interests, in particular private broadcasters. The Ministry of the Interior also plays a key role in controlling the press, in particular in areas such as authorizations, registration and control of content.

Other organisms that were clearly repressive under Ben Ali are still operating, even if their current functions remain unclear.

One example of this phenomenon is the *Agence Tunisienne d'Internet* (ATI). At the moment, this agency operates under the umbrella of the Ministry of Industry and Technology and has a monopoly on the provision of wholesale Internet access services, Internet addresses in Tunisia and even the national domain tag, dot tn. Although these powers are not necessarily incompatible with a free democratic system, the introduction of competition into the provision of these services is clearly to be recommended. The most important thing, however, is that under Ben Ali the ATI exercised both intensive and widespread control over Tunisian Internet traffic, including management and censorship of content. Although these powers have now been formally suppressed, NGOs such as the Electronic Frontier Foundation have reported that in some cases the ATI may be forced to use them, following the orders, for example, of the Military Tribunal of Tunis.<sup>6</sup> There has also been a recent decision taken by a Tunisian court that obliges the ATI to cut access from the general public to all pornographic sites in Tunisia, although several sources have reported that ATI officials have been reluctant to comply and execute these court decisions.

Tunisia's telecommunications authority, the *Office National de Télédiffusion* (ONT), manages the radio and television signal distribution monopoly. Until now, the ONT has served as a state instrument of control, in part by restricting access to the frequencies that allow the transmission of broadcast content. In fact, until now obtaining a radio or television license fully depended on the political discretion of the government. As mentioned before, the INRIC has recently recommended the granting of some provisional licenses; however, no objective criteria or licensing processes can be found since there is no legislation at all on these issues.

The case of *Tunisie Télévision 1* (TT1) provides an illustration of the government control historically exercised over this sector. TT1 is an independent

broadcaster, directed and owned by people completely independent from the old regime. It does not use terrestrial airwaves, but a satellite distribution system through Nilesat. However, TT1 applications have been rejected several times during the last five years.

Obviously a modification of licensing procedures, in line with what has been mentioned above, would directly affect the role and functioning of ONT.

## Factors and Elements Affected by the Process of Change

### Media Professionals

The dismantling of the authoritarian regime has given media professionals a renewed possibility to dream of freedom of expression. After a long period of exercising their profession within the constraints of an authoritarian regime, where information was controlled, manipulated and repressed by the state, journalists are now going through a true catharsis. To quote the Tunisian political analyst Larbi Chouikha,<sup>7</sup> there is an "explosion of words."

On the one hand, this has led to what could be considered a certain degree of anarchy in the profession. For many journalists, escaping from the propaganda machine has meant working freely for the first time, and being able to express the criticisms and observations that until now they had to hold back. In this context, the obvious risk exists that the finally liberated journalist opts to become an activist instead of a reporter, that is, a neutral observer who reports on, rather than influences, current events. Concepts such as professionalism, objectivity, rigor, adherence to professional norms and ethics, and the elaboration and assimilation of editorial rules based on professional criteria are completely new and still have not been fully understood and taken on

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by journalists. Neither do journalists currently have access to adequate systems or training mechanisms that would help them to adapt to these new circumstances. In addition, salaries and working conditions have historically been, and continue to be, precarious; indeed, in the post-revolutionary environment, tensions may have even increased given that protest over labor conditions is now possible.

This progressive recuperation of freedom can be seen more clearly in the public media than in the private media. Whereas public outlets have lost some political sponsors after the revolution and directors do not have clear political directives to impose, private media remain in the same hands as before; even if owners now try to get close to the new political powers, they maintain a hierarchical relationship with the professionals who work for them.

The *Syndicat National des Journalistes Tunisiens* (SNJT) does not enjoy the necessary resources to carry out the tasks appropriate to a trade union, above all in the areas of developing professional norms and ethics and staff training. However, it is an institution fully committed to change and freedom of speech, and it has a close relationship, in some cases, with the INRIC and its objectives. For the moment, however, it is hampered by the lack of an updated code of ethics and no adequate structures for the application of a self-regulatory scheme.

Lastly, the new political leaders will have to reflect on the modernization or establishment of new uni-

versity centers with the aim of training new media professionals to operate within the framework of a fully democratic culture. Everything points towards the fact that current resources are both insufficient and obsolete.

## Radio and Television

Both public radio and television and private audiovisual groups have always worked under the orders, and in the service, of the Ben Ali regime, whether due to strictly hierarchical motives (in the case of public media) or due to indirect economic control (in the case of privately-owned media). In the case of the former, the fall of the authoritarian regime has generated a situation of transition and uncertainty, with journalists finding themselves deprived of any clear indication of how to proceed in their work, even though, with the disappearance of the Ministry of Information, they are under the direct supervision of the Prime Minister. The lack of norms regulating their specific duties and the system generally has only aggravated this situation, making reform of the public media urgent within the media transition agenda. In the case of the private channels, as already noted, the current situation has not shifted power away from the directors and managers to the professionals.

Another important issue is the management and granting of available frequencies. According to the ONT, all frequencies for the transmission of radio and television services are already in use, supposedly making it impossible for new operators to use new frequencies. This is hardly credible, particularly in a context of digital transition, and given the pace of technical evolution and ever-increasing capacity. The argument will lose even minimal credibility once the slow but steady transition towards digital is achieved – although as yet there are no clear public policy directives on this issue.<sup>8</sup> Consequently the ONT now has to carry out an in-depth study on the

true capacity of airwaves in Tunisia, making possible a rational planning process that will permit the entry of new audiovisual media outlets into the market. Maintaining the current audiovisual panorama would mean that only media outlets that were granted frequencies during the dictatorship – that is, through non-transparent procedures and without clear delineation of their obligations through properly elaborated license agreements – would be able to operate. As it has already been pointed out, media companies such as TT1 have faced numerous obstacles in obtaining the necessary authorization to operate; recent reports from the INRIC confirm that there are at this moment up to 75 pending applications for radio frequencies. The recent recommendation of the INRIC that several new provisional licenses should be immediately granted by the government indicates a potential shift in policy that would alleviate the authoritarian criteria previously existing in this field. For the moment, however, this is just a provisional solution, provided by interim institutions without a formal legal framework.

## New Media

While the exact role of electronic media and social networking sites vis a vis social, economic and political factors in the MENA revolutions has been hotly debated, there is little doubt that new media have been significant in providing a medium for the spread of revolution and political reform in Tunisia and across the region.

This phenomenon began before the revolution and the fall of the Ben Ali administration, particularly with the Wikileaks revelations on corruption that were freely accessible by the Tunisian population online. At that time, the police also detained various online activists whose blogs and web pages alarmed the regime.

Tunisia's young, urban, educated and westernized population is a large factor in the equation.<sup>9</sup>

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According to the latest reports, 18 percent of the population has a Facebook account, and the high percentage of young people in the general population facilitates and promotes the use of mobile phones and computers. To give a striking example, the impact of the young Tunisian street vendor who set himself on fire in October 2011, sparking the revolution, was hugely magnified by such new technologies.

As a consequence, while it may be the case that the constraints still facing the conventional media (especially radio and television) will only allow for reform and the emergence of new voices in the medium term, "new media" – including online networks, digital media, video, music and photo sharing in online communities, social networking, blogging, alternative online news outlets, and other emerging formats – will converge to provide an outlet for introducing new discourses into the public sphere.

Despite the possibilities, there is a certain amount of insecurity about the degree of liberty now enjoyed by digital media in Tunisia. Formally, there is no applicable law (the Press Code of 1975 only applies to newspapers), even though it is clear that the digital media are still being controlled by the same censorship techniques as during the dictatorship; for example, there are reports of control over content by

the military, and of political bodies trying to use the ATI to restrict access to the Internet. At a minimum, the law should guarantee a certain amount of leeway for Internet activities relating to free speech, and limit the use of the ATI's technological capacity to control online traffic (i.e., prevent it from abusing its privileged position as a monopoly in the provision of access services).

## Proposals for Change and Implementation in Communications Policy and Regulation

### The Constitutional Point of View

The Constitution of the Tunisian Republic (CT) was approved in 1959, and has been since been subject to occasional ad hoc modifications, including as recently as 2008. Most of these modifications have introduced more restrictions on the rights of citizens. The Constitution is basically “organizational” and “institutional” in that it only establishes the political architecture of the Republic (i.e., the criteria and procedures by which the most important state organizations, including Parliament, Government, Prime Minister, Council of State, and Constitutional Council function). Scant attention is paid to the protection of human rights and citizens' rights in general, the references to which are brief, superficial and inadequate.

With specific reference to the right of freedom of expression and freedom of information, Article 8 establishes that “Freedom of opinion, expression, of the press, of publication, of assembly and association are guaranteed and exercised under the conditions defined by law.” The content of this constitutional precept does not meet the minimum standards needed to protect fundamental human rights; while it appears to establish certain rights, at the

same time it acknowledges the virtually unlimited political discretion of the legislator to limit them. The only minimum guarantee is the requirement that the law doing so should be an “organic law” (Article 28) that is, among the laws which are approved through a longer and more rigorous process. This purely formal safeguard does nothing to firm up such a weak recognition of the freedom of expression and information, and indicates a lack of protection on the part of the Constitution from possible illegitimate interferences.

It is not the place to enter here into the terms by which Tunisia must forge a new constitutional text. The elections to the Constituent Assembly now scheduled for October 2011 will be a key moment in this process; certainly the most advisable course of action would be to draw up a completely new Constitution from scratch. Whatever the case, with regards to freedom of expression and of information, significant improvements could be made in the following areas:

- a) Recognition of the freedom of expression and of information, clearly establishing the extent of the legislator's power in the setting of possible limits, along the lines of what is established in Article 10 of the European Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights. Essentially this means that the limits of these freedoms must be determined only by the need to protect, adequately and proportionally, other rights and principles equally recognized by the Constitution. It is a matter, therefore, of preserving certain core aspects of these essential rights, which cannot be breached by legislative, executive or judicial power.
- b) The establishment of a set of criteria to reinforce the protection of essential rights. Apart from the role for the Constitutional Council to ensure that no law violates constitutional rights, the

Constitution should clearly grant citizens the right to exercise and reclaim their rights before ordinary courts (through a diligent and simplified due process) as well as before a Constitutional Court (such as, for example, those existing in Spain or Germany). Reform of the judiciary, and potentially the exclusion of some of its current members, is also needed.

## Legislation Regulating the Exercise of Freedom of Expression and of Information

International best practice recommends the passing of a law that, while respecting the core aspects of the rights to freedom of expression and of information, sets out clear restrictions on the limitations of these rights. Such a law would be applicable to all means of communication, including the press, audiovisual media and the Internet.

Such a general law on freedom of expression and on information should include the following elements:

- a) Protections for journalists, specifically the right not to reveal anonymous sources.
  - b) Regulation of the right of conscience, guaranteeing legal protection in the case of conflict between the individual's professional and ethical standards and the editorial line of the news outlet.
  - c) Guarantee of journalistic (and public) access to information held by public authorities. The existence of a law regulating access to public information is a fundamental element of any democracy.<sup>10</sup> It seems that the interim government has approved, very recently, a Decree that tries to deal with this important issue. However, only an Arabic version was available at the time of writing, so a full analysis is not yet possible.
- c) Adequate regulation of the right to reply. The exercise of this right must be limited to those cases in which the dissemination of false information can be clearly seen to cause direct harm to any citizen. It must not in any way privilege public officials in cases in which issues of public interest are being unveiled. Basically it should consist of the right to contest the information in the same public space where it appeared, and grant the courts responsibility for addressing and solving the controversy if the parties do not find common ground. This is particularly important in cases where media are reluctant to give a space to the complainant.
  - d) A clear promotion of the progressive adoption of professional standards and standards of self-regulation; such standards might be too detailed and viewed as excessive if they are imposed by public authorities. Although implementation of such self-regulatory standards is a direct responsibility of media professionals and their organizations, it must also be fostered and encouraged by the legislator. The SNJT has at this moment an *Observatoire de la Déontologie* (Observatory of Journalism Ethics), formally in charge of applying the Code of Ethics. Tunisia should work towards:
    1. Drafting a new code of ethics, adapted to the trends of the new public sphere and a democratic polity, and
    2. Analyzing whether it would be more appropriate for the SNJT to focus on labor and professional conditions of journalists and therefore to create a specific independent body (some kind of "information council" formed by distinguished and outstanding journalists) in charge of applying the code, or according to a self-regulation scheme. Lastly, the law should also promote the creation of "editorial committees" in each media outlet, in charge of managing the relationship between media owners and

managers and journalists, in particular in order to preserve a minimum degree of professional autonomy for the latter.

- e) The establishment of concrete boundaries around freedom of expression and information, in particular the need to preserve other constitutional rights and values such as honor, dignity, privacy, the protection of children, and the preservation of judicial fairness. These limits must be foreseen with as much precision as possible. An independent judiciary should serve as the final arbiter of conflicts. It is essential that this task be carried out at the level of civil, rather than criminal, courts. The use of the Penal Code and criminal courts must be restricted to the prevention of grave violations of human rights, such as the dissemination of child pornography or serious cases of defamation, and not applied indiscriminately to limit freedom of expression.
- f) Article 1 of Tunisia’s current Constitution establishes Islam as the state religion. Nevertheless, unorthodox opinions with respect to Islamic issues should not be exempt from the right to freedom of expression. In this sense, debate and the exchange of opinions on religious matters should not be punished if they are not aimed at directly attacking the religious convictions of other citizens.

## Press Legislation

Most Western countries have almost completely scaled down regulation of the press, except for the general rules and criteria (described in the previous section) that seek to establish an appropriate balance between freedom of expression and information and the need to preserve other constitutional rights and values.

The democratization of communications regulation in Tunisia demands the progressive adoption of this

system. In contrast to the provisions that appeared in the proposal for a new Press Code, it is essential to reduce the paperwork and controls applied to the newspaper industry to a minimum. To this end, press regulation:

- a) Should be based on a notion of “publication,” “newspaper” or other press category that is exclusively dedicated to mass media communication and that attempts to influence public opinion. Other written and printed materials (such as business leaflets, advertising posters, and so on) should not be regulated, at least from the point of view of communications law.
- b) The requirements regarding the “registers” or “legal deposits” of publications should be minimal. The administration and the government must not be able to control the content of this type of material, so the details demanded by public authorities when a business launches should be reduced to a minimum, in order to guarantee a basic level of transparency in terms of ownership and editorial responsibility. It would be advisable to set up a single central office, reduce bureaucracy and paperwork, and eliminate the intervention and control of the Public Attorney. In this vein, it would also be advisable to reduce or remove completely the highly restrictive criteria in terms of capital investment, income, degrees or professional qualifications currently required of owners, publishers, editors and journalists.
- c) The prohibition of a publication’s distribution, or its withdrawal from the market once distributed, should be an extremely rare event. This would only be acceptable in the case of a court order (i.e., with the aim of properly defending other rights as discussed in the previous section).

## Audiovisual Legislation

Tunisia has no specific regulation of the audiovisual

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*The special nature and impact of audiovisual media (radio and television) suggest that Tunisia should draw up a specific law to regulate these services, similar to current European models and those of other liberal democracies.*

sector. The special nature and impact of audiovisual media (radio and television) suggest that Tunisia should draw up a specific law to regulate these services, similar to current European models and those of other liberal democracies. Such a law must be based, above all, on the principle of technological neutrality—that is, it should be applied to any audiovisual content, irrespective of the means of transmission, such as cable, satellite, airwaves, etc.

Any future audiovisual law should include:

- a) The granting of licenses for the transmission of radio and television services. In the case of radio and television stations that use the airwaves (that is, through a finite resource), it is essential that the law defines and clarifies the selection criteria and proceedings with objective, proportional and non-discriminatory parameters.<sup>11</sup>
- b) Regulation of media ownership. Pluralism in the audiovisual media system can only be guaranteed by the introduction of a set of rules that prevent the excessive concentration of power in the hands of too few players. In the Tunisian case, this regulation is extremely important because of the extent to which the media environment has historically been directly or indirectly controlled by companies or individuals linked to the previous regime. It is therefore vital to set up legal

mechanisms, possibly including cross-ownership restrictions,<sup>12</sup> that will allow new voices to enter the audiovisual media arena. At this moment the priority is to open up licensing processes to allow the entry of new competitors. At the same time, it is also essential to establish a set of norms preventing any further power-grabbing on the part of the current operators.

- c) Regulation of public service broadcasting. Tunisia needs to convert its state media into real public service media. Audiovisual legislation must undertake this issue and clearly establish:
  1. A public service remit for such media outlets (including mandates to provide objective information, offer programs of educational and cultural merit and interest, serve all sectors of the population, and promote cultural diversity).
  2. An adequate financing system, based on a previously-established budget, that would allow autonomous economic management.
  3. A direction and management structure that guarantees independence from political supervision or pressure, particularly preserving the rights of media professionals.
- d) Regulation of content. This is always a delicate and problematic issue in post-authoritarian societies, where any kind of content regulation is seen as censorship. Given the potential impact of audiovisual media, mature democracies have established specific norms setting criteria and boundaries intended to protect citizens. While the aims of these norms depend on the specific needs of the society in question, in general they seek to limit the dissemination of content inappropriate for children; hate speech or language inciting to violence; advertising and other forms of commercial communication that do not respect the rights of consumers; and content that discriminates against the rights of any particular

group such as women or minorities. If Tunisia wishes to benefit from audiovisual legislation similar to that of democratic and pluralistic countries it needs to incorporate a comparable regulation of content.

e) Under international best practice, the regulation of audiovisual content is overseen by an administrative body that is independent of the political influence of the government. This independence should be based on a number of factors:

1. Clear, detailed, legally-established parameters, setting out the competences, responsibilities and powers of the authority.
2. The election of the commission members from a pool of qualified and reputable professionals by a parliamentary majority.
3. The mandate of members of the authority should exceed the four years of the executive in order to avoid possible interference from election processes and political change.
4. Elected members cannot be expelled before the end of their term.

The actual duties of a future Tunisian Audiovisual Council must cover the following areas:

1. Licensing.
2. Content regulation.
3. Supervising public service broadcasting performance.
4. Ensuring pluralism and preventing concentration in audiovisual media.

Lastly, it would be fruitful for a future Tunisian Audiovisual Council to join the existing international networks in the region, such as RIARC (*Réseau des Instances Africaines de Régulation de la Communication*) or RIRM (*Réseau des Instances de Régulation de la Méditerranée*) in order to develop capacity and establish standards.

## New Media

The central role of digital media in the political transition of Tunisia has already been mentioned. Ad hoc control of online content continues to be exercised by authorities like the ATI, and clear and specific legislation relating to digital media does not exist. The Law 2007-13 relating to the digital economy, passed on February 29, 2007, only sets out generic norms that establish basic objectives and priorities in the area of Internet public policies.

It is indisputable that the current situation in Tunisia – with media concentrated into few hands and a corresponding lack of pluralism – demands a *laissez faire* approach to the regulation of alternative electronic media. While a clear communications law, with appropriate but not overbroad restrictions, is essential, this report advocates leaving the sector virtually unregulated for the moment.

## International Assistance in Tunisia's Media Transition

A number of foreign governments and international organizations are currently providing various kinds of assistance in media and media policy reform in Tunisia.

Most significant is the presence of European countries belonging to the francophonie (French-speaking community). France has undertaken a large training program for journalists together with organizations such as *Canal France International – Media Cooperation* (CFI), *Radio France International* (RFI) and *France 24*. These programs are basically funded by French public resources. The French audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel*) will also provide special assistance to journalists, with a specific training program aimed at disseminating professional criteria for election periods.

Belgium has a program for the training of professionals as well. A number of journalists have been sent to Belgian media outlets for some time in order to acquaint themselves with good professional practices in the field. There is also currently a “media expert” from the Belgian French-speaking community based in Tunisia. Lastly, Belgium and the European Commission are preparing two large conferences due to take place in Tunis in September: one on codes of ethics and self-regulation systems, and the other on media and elections. These events are now under preparation, but it seems that they aim to gather many relevant actors from Tunisia and from Europe as well.

Outside the French-speaking community, Spain has offered, through the Embassy in Tunis, a small internship program in national media outlets.

A number of institutions have offered and begun providing support to the activities of the INRIC: Article 19 is providing assistance on future media licensing processes, the Belgian Conseil Supérieur de l’Audiovisuel has sent several missions to the institution, the World Association of Community Broadcasters (AMARC) has organized a workshop on media reform, and Reportiers Sans Frontières has provided advice on media regulation during election periods.

In the field of international associations, on May 31, UNESCO organized a conference to support Tunisian and Egyptian broadcasters and to promote the transition from state to public service broadcasting in those countries.<sup>13</sup>

A small level of international support was available to Tunisia’s media sector in recent years, even before the revolution. A few organizations, including Internews Network, UNESCO, the European Commission and a few French and Belgian organizations were present in Tunisia before January 2011. The rest of the ongoing assistance initiatives have been spurred by the new opportunities for reform that have opened

in the past few months, come from the outside and consist of short-term missions to Tunisia.

There have not yet been actions or initiatives directly targeted towards civil society, with the aim of promoting a better understanding of the role of media in a democracy, and eventually fostering the progressive creation of community media. This is an important area of attention, given that a majority of media outlets operate on a national scale and, while economically powerful, are situated very far from common citizens and from the specific needs of certain areas of the country or specific sectors of the population.

## Final Recommendations

The Tunisian transition is still ongoing, and the current situation is one of very high uncertainty. Transition institutions are undertaking great efforts in order to build the elements of a future democratic system, and it seems that a new set of proposals to regulate the communications sector will be made public very soon. Such proposals will certainly generate a public debate among experts, journalists, public institutions, and civil society.

The challenges of this interim period are significant, and the stakes are high. Not surprisingly, many activists wish that things were moving more quickly. However, political and institutional decisions seem to be progressing in the right direction, even if in some cases some of the steps made so far can be seen as somewhat naïve and immature. The election of a Constituent Assembly is a crucial moment, and it will open the most important era of modern Tunisian politics. The approval of a fully democratic Constitution and the articulation of a new legal regime that should guarantee a plural, open, modern and advanced society are challenges that new Tunisian politicians will have to face and solve successfully. There are many reasons for hope, but the final outcome remains only in the hands of Tunisian people.

## Endnotes

1. See the article by Jordi Vaquer "Túnez tras la revolución," *El País*, February 15, 2011.
2. See the article by Sami Naïr "Gérer l'islamisme Tunisien," at <http://www.medelu.org/spip.php?article729>, and Marina Ottaway "Tunisia: The Revolution is over. Can Reform Continue?," at <http://carnegieendowment.org/2011/07/13/tunisia-revolution-is-over-can-reform-continue/3ljo>.
3. See the analysis by Toby Mendel of the Centre for Law and Democracy at <http://www.law-democracy.org/wp-content/uploads/2010/07/11.04.Tunisia.Prs.pdf>.
4. *La Presse de Tunisie*, May 17, 2011. [English translation: will be complementary and there will be an exchange of views to achieve laws that will provide journalists with guarantees for the free exercise of the profession.]
5. See, in this sense [www.tunivisions.net/cinq-nouvelles-chaines-tv-tunisiennes-sont-nees,12693.html](http://www.tunivisions.net/cinq-nouvelles-chaines-tv-tunisiennes-sont-nees,12693.html) and [www.tap.info.tn/fr/fr/medias/5198-radios-privees-recommandation-pour-attribuer-des-frequences-a-12-nouvelles-stations-inric.html](http://www.tap.info.tn/fr/fr/medias/5198-radios-privees-recommandation-pour-attribuer-des-frequences-a-12-nouvelles-stations-inric.html).
6. [www.eff.org/deeplinks/2011/05/week-internet-censorship-0](http://www.eff.org/deeplinks/2011/05/week-internet-censorship-0)
7. See the column "En Tunisie, les médias s'émancipent," published by the French newspaper *Le Figaro*, April 26, 2011.
8. More information on Tunisia's transition to digital television is available at <http://www.telediffusion.net.tn/index.php?dvv>.
9. See the interesting article on this theme by Timothy Garton Ash published in *The Guardian*, January 19, 2011 <http://www.guardian.co.uk/commentisfree/2011/jan/19/tunisia-revolution-twitter-facebook>.
10. Act 88-95, August 2, 1988, currently regulates public and private archives, even though its content is clearly inadequate in terms of freedom of information.
11. On this point, the NGO Article 19 has said: "1. The airwaves are a public resource and they must be used for the benefit of the whole public, including people with minority views or interests. In particular, licences should be issued to all three tiers of broadcasting (public, commercial and community), the two types of broadcasters (radio and television) and broadcasters of different geographic reach (national, regional and local). 2. All licensing processes and decisions should be overseen by an independent regulatory body which shall enjoy operational and administrative autonomy from any other person or entity. It should in particular be protected against interference, particularly of a governmental, political or commercial nature. 3. The process for obtaining a broadcasting licence, including temporary ones, should be fair and transparent, include clear time limits within which decisions must be made and allow for effective public input and an opportunity for the applicant to be heard. 4. The assessment criteria should, as far as possible, be objective in nature. They should reflect the diversity of the population, prevent undue concentration of ownership, as well as include an assessment of the financial and technical capacity of the applicant. Any decision to refuse a license should be accompanied by written reasons and should be subject to judicial review. 5. Where licensees also need a broadcasting frequency, they should not have to go through a separate decision-making process to obtain this frequency; successful applicants should be guaranteed a frequency appropriate to their broadcasting licence and they should be free to make their own arrangements for transmission, subject to complying with general technical standards. 6. Given the Tunisian environment and the well understood thirst for expression and communication, as demonstrated by the requests

for radio licensing coming from many sides of society, demands for radio licenses should be treated as a matter of priority, ahead of the constitutional elections and of the assessment of TV licenses.”

12. Currently only the Press Code of 1975 (article 15) has a set of provisions that limit ownership in the sector of press.
13. [http://www.unesco.org/new/en/mediaservices/singleview/news/unesco\\_highlights\\_needs\\_of\\_public\\_broadcasters\\_in\\_egypt\\_and\\_tunisia/](http://www.unesco.org/new/en/mediaservices/singleview/news/unesco_highlights_needs_of_public_broadcasters_in_egypt_and_tunisia/)

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