

# LONDA



2021



**Tunisia Digital Rights and Inclusion Report**

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**TUNISIA DIGITAL RIGHTS AND INCLUSION 2021 REPORT**

A PARADIGM INITIATIVE PUBLICATION

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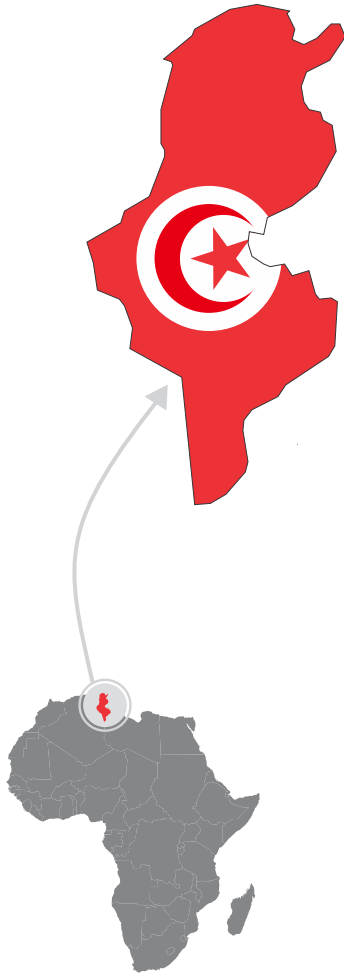
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## EXECUTIVE SUMMARY

In 2021, Tunisia commemorated a decade since the uprising protests that toppled the 23-year-rule of the autocratic former president Ben Ali. While crucial reforms affecting digital rights took place during this last decade, major gaps in the legislation remained in effect at a time when the country witnessed major setbacks to online freedom of expression following the president's announcement of exceptional measures on July 25, 2021.

The report provides an overview of Tunisia's current digital rights environment, focusing on freedom of expression and the right to access to information, the national laws used to repress it, as well as the country's adherence to international and regional commitment to the protection of human rights.





## INTRODUCTION

# DIGITAL RIGHTS AND INCLUSION IN TUNISIA

The Republic of Tunisia covers an area of 163,610 km<sup>2</sup>, and shares borders with Algeria and Libya. Following the overthrow of a long-standing dictatorial regime, in 2011 Tunisia began the transition to democracy. However, on July 25th, 2021, the President proclaimed the dismissal of the Prime Minister, a freeze of the elected parliament, and his ruling by decree. The announcement has fueled growing concerns about the country entering a major political crisis.

## COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Tunisia is co-signatory to several international and regional treaties and conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Union's Convention on Cyber Security and Personal Data (Malabo Convention). Article 20 of the Tunisian Constitution reiterates the State's engagement to international treaties adopted and ratified by the Assembly of the Representatives of the People. It establishes the primacy of international treaties over domestic legislation. However, in its sixth periodic report of Tunisia, the Human Rights Committee expressed concerns that the Tunisian courts rarely apply such treaties.<sup>1</sup>

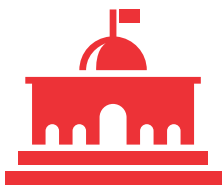


**THE LEGAL FRAMEWORK IN TUNISIA COMPRISES SEVERAL TEXTS THAT ARE IN CONTRADICTION WITH THE PROVISIONS OF SIGNED TREATIES.**

The legal framework in Tunisia comprises several texts that are in contradiction with the provisions of signed treaties. For instance, for violations of International Human Rights law, defamation and slander are criminalised under the Penal Code and subject to prison sentences.

1. Human Rights Committee Concluding observations on the sixth periodic report of Tunisia (27 March 2020) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshMktQJn68GxgXXTdAYdq%2ftwMVHhGRP3qVL6wOK3YX6MZZQmxEb2zWM7SDcgF%2bASrTCdzjmayBB05%2f9feUIKjNt7OszprXjfceSMUNC%2fQ>





Moreover, guidelines from the African Commission on Human and Peoples' Rights (ACHPR), mandated to interpret the African Charter on Human and Peoples' Rights ratified in Tunisia in 1983, state that military courts should not *"under any circumstances whatsoever exercise jurisdiction over civilians."* However, while Article 110 of the Constitution stipulates that *"military courts are courts of competent jurisdiction for military crimes"*, civilians continue to be prosecuted before military courts, as laws in force have not yet been amended in accordance with the provisions of Article 110 of the Constitution.

## FREEDOM OF EXPRESSION ON THE INTERNET IN 2021

In 2021, Tunisia witnessed an alarming increase in the number of prosecutions against journalists, political activists, and social media users for the content they shared online. Amid the protests that broke out in January 2021, on the 10th anniversary of Tunisia's revolution, hundreds of protestors were detained, some for their online activity, and a number of activists were targeted through online harassment and physical attacks as a result of their social media posts on the protests. Protesters further used social media to document the disproportionate response taken by security forces.<sup>2</sup>

Following the July 25th presidential takeover, the military courts were increasingly used by the Presidency to press charges for *"insulting the president"* and *"slandering the army"*. According to an Amnesty International statement, over three months, between July 25 and November 2021, the military justice system investigated or prosecuted as many as ten civilians.

To contextualise, the statement reads that in the seven years between 2011 and 2018, human rights organisations documented only six cases of civilians brought before the military justice system.

Freedom of expression is protected under article 31 of the Constitution's Rights and Freedoms chapter which is one of the two chapters of the Constitution remaining in force after the publication of the presidential decree No. 2021-117 of September 22nd, 2021, on exceptional measures.

Decree 117 includes several major measures:

- It suspended the Constitution with the exception of its preamble and the first two chapters, relating to general provisions and to rights and freedoms;
- It gave the possibility for the President of the Republic to legislate in all areas with no possibility of appealing against the unconstitutionality of decree laws.



***The measures enshrined in this decree grant the President of the Republic unprecedented confiscatory power by the president, with no institutional controls.***

2. "Injured Tunisian protester dies, fuelling new clashes". Reuters, January 25, 2021, <https://www.reuters.com/article/us-tunisia-protests-idUSKBN29U2HP>

## ACCESS TO INFORMATION

In April 2021, Tunisian Minister of Health Faouzi Mehdi issued a ministerial order threatening sanctions against doctors and health workers issuing unauthorised statements about the COVID-19 pandemic in the media or online. The order faced backlash from civil society actors, who accused the government of censorship and of attempting to falsely portray the country's public health situation.<sup>3</sup>

In December 2021, Article 19, an international human rights organisation criticised the government for removing private media outlets from accessing press conferences, and curbing journalists from addressing questions to the president.<sup>4</sup> The organisation called out the Presidency's approach of refraining from holding press conferences and giving interviews, restricting Tunisians' right to access to information and to free and pluralistic media.<sup>5</sup>

Access to information has been enshrined in the Constitution under Article 32. Decree-law No. 115 on freedom of the press, printing, and publishing also states under Article 9 that *"it is forbidden to impose any restriction impeding the free circulation of information, or which prevents equal opportunities between the various media outlets in obtaining information, or that would impede the citizen's right to a free, pluralistic and transparent media."*

In 2016, Parliament voted for the Organic Law on the Right to Information No. 22 of 2016. The law regulates, amongst others, government bodies, public agencies, and organisations and entities that receive government funding, among others.



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

4. Article 19 Tunisia: The President must guarantee free press and access to information (2021) <https://www.article19.org/resources/tunisia-the-president-must-guarantee-free-press-and-access-to-information/> (Accessed on 15 January 2022).

It requires all of these entities to publish specific types of information, including policies and programs that concern the public, regulatory text governing activities, and certain types of statistical data all on a website that is updated at least once every three months.

Under this law, an “*Access to Information Commission*” consisting of nine members elected by the Parliament for six-year terms was formed in 2017. Members include judges, a journalist, a representative of The National Authority for the

Protection of Personal Data, and a representative of Associations active in the fields related to the right of access to information. While law No. 22 might have shortcomings regarding the specification of deadlines for appeal, it has generally been praised in the region as a progressive step. However, the implementation of this law remains limited for several reasons, including poor understanding of this right, lack of resources and a penchant to over-rely on exemptions stated in the law including “*damage to security or national defence*”, as well as Protection of Personal Information.



## CONCLUSION AND RECOMMENDATIONS

The findings presented in this report point to increased restrictions of Tunisians' digital rights, compared to the previous year. Legal loopholes continue to be used to restrict freedoms, interfere in the judicial process, and stifle critics. The following recommendations are made:

- The government must withdraw the prosecutions of journalists and internet users over opinions shared online.
- The government must reform the legal framework including the penal code, the telecommunication code and the military justice code as well as undertake more efforts to protect the citizens' rights within the digital sphere.
- The government and civil society organisations are urged to collaborate in increasing joint efforts to raise awareness over the right to access information, the implementation of the relevant law and its procedures.

5. Article 19 Tunisia: The President must guarantee free press and access to information (2021) <https://www.article19.org/resources/tunisia-the-president-must-guarantee-free-press-and-access-to-information/> (Accessed on 15 January 2022).



**Londa 2021 expands on last year's report with findings from 22 countries, examining themes of privacy, freedom of expression, access to information, segmentation and exclusion, digital transformation, affordability, gender and others within existing legislative frameworks, and against the backdrop of a widening digital divide. This edition captures the gaps and proffers recommendations to achieve a digitally inclusive and rights - respecting Africa.**



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