

# Freedom of expression at risk in Tunisia: a legal framework that favors silence





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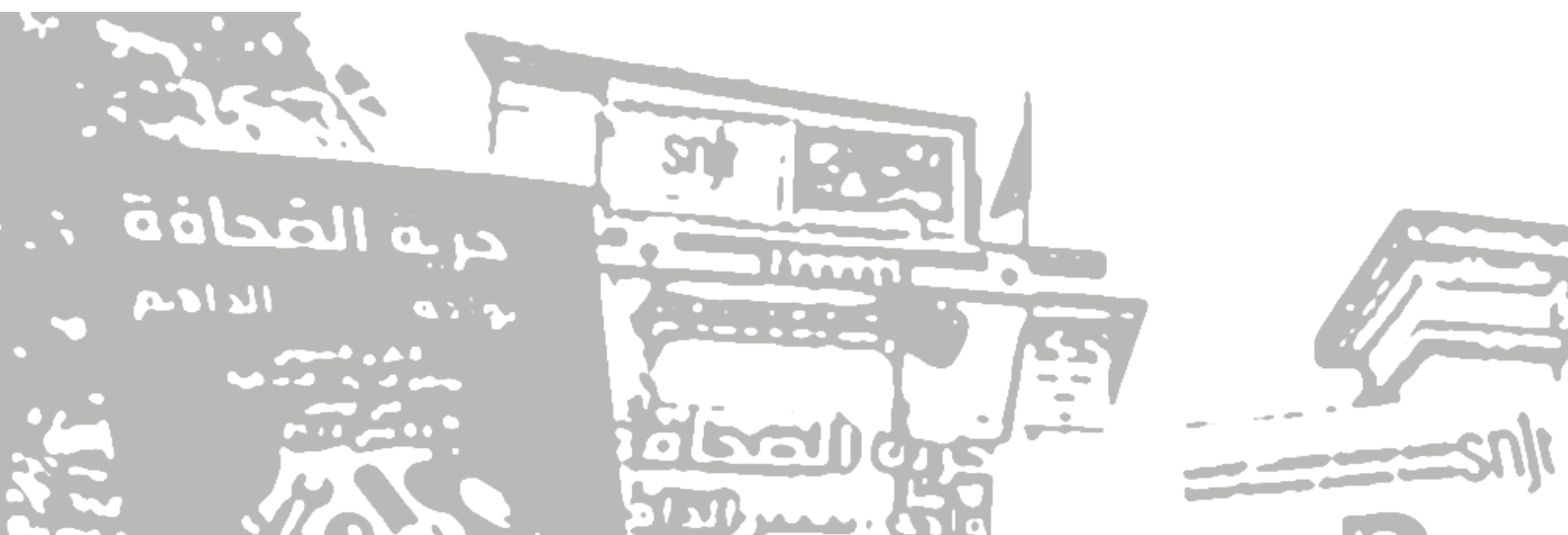
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# Introduction

January 14, 2011 is an important date for Tunisia, marking a turning point in the Tunisian political process toward democracy. The Tunisian revolution unleashed new civic freedoms and shored up Tunisians' fundamental rights.

Freedom of expression has since come under attack, as successive political regimes understood its power to raise awareness and expose anti-democratic practices.

Soon after the revolution, the Tunisian government swiftly created the Higher Authority for Realization of the Objectives of the Revolution, Political Reform and Democratic Transition (“the Higher Authority”), on February 18, 2011.<sup>1</sup> It consisted of a group of important public figures, political party leaders, and legal experts, gathered to elaborate Decree-laws for political reform, with the aim of making concrete the goals of the revolution within the democratic process. In this context, the Higher Authority drafted **six** Decree-laws to safeguard political and civil freedom in Tunisia, known as the liberalization and emancipation texts.

The issued Decree-laws are as follows:<sup>2</sup>

- **Decree-law 35/2011 related to the election of national constituent assembly.**<sup>3</sup> This Decree-law enshrined freedom of expression throughout the electoral period by enabling the candidates to access national media outlets, hold free electoral meetings, and run electoral campaigns. These rights and principles that political candidates now enjoy ended the status quo that prevailed before the Tunisian revolution.
- **Decree-law 41/2011 on access to administrative documents of pub-**

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1. The text is available in French: <https://legislation-securite.tn/fr/law/43391>

2. In Tunisian law, the Decree-law is a text which is taken by the President of the Republic in the field of competence of the parliament when the latter is dissolved or in vacancy or on the basis of a delegation.

3. The text is available in French: <https://legislation-securite.tn/law/43384>

**lic bodies**<sup>4</sup> stipulated the principles and rules regulating access to administrative documents of public bodies. This text, despite its shortcomings, marked the end of an administrative culture that favored withholding information over transparency.

- **Decree-law 87/2011 on regulating political parties**<sup>5</sup> enshrined freedom of political organization, supporting and developing political pluralism and entrenching the principle of transparency in the governance of political parties. It also replaced, for the first time, the requirement to get an authorization to create a new political party with a requirement to only notify that it has been created, paving the way for additional political parties.
- **Decree-law 88/2011 on regulating associations**,<sup>6</sup> which was a milestone for supporting a civil society that plays a major role in society, especially at the political, civil, economic, social, and environmental levels.
- **Decree-law 115/2011 on freedom of the press, printing, and publishing**,<sup>7</sup> a Decree-law that many free speech and media freedom experts consider to be largely in line with international standards, as it removes imprisonment as a penalty for acts such as defamation, insult, or disseminating false or misleading information, and limits punishment to paying a fine. Furthermore, **Decree-law 115** stipulated special proceedings regarding initiating a prosecution, and the statute of limitations, to provide more protection for the right to freedom of expression.
- **Decree-law 116/2011 on the freedom of audio-visual communication and the creation of a supreme independent authority of audio-visual**

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4. The text is available in French: <https://legislation-securite.tn/law/43387>

5. The text is available in French: <https://legislation-securite.tn/law/43428>

6. The text is available in French: <https://legislation-securite.tn/law/43430>

7. The text is available in French: <https://legislation-securite.tn/law/45850>



**communication.**<sup>8</sup> This decree created, for the first time in Tunisia, an independent oversight body responsible for monitoring audio-visual media, vested with a broad mandate to prevent state interference with the independence of private and public media.

These achievements were further enhanced with another set of laws, such as **Organic Law 22/2016 on access to information right**,<sup>9</sup> **Organic Law 58/2017 on eliminating all forms of violence against women**,<sup>10</sup> and **Organic Law 50/2018 on eliminating all forms of racial discrimination**.<sup>11</sup>

However, these achievements were unfortunately insufficient to protect the right to freedom of expression for many reasons. Firstly, repressive legislation enacted before the revolution remained in force in 2011, restricting the freedoms for press and publishing gained and protected under **Decree-law 115**. Secondly, a new draconian law, **Decree-law 54** on Cybercrime, was issued in September 2022 by President Kais Said.<sup>12</sup>

This has led to a duality in the legal system in Tunisia, which contributed to hampering the democratic transition process in the country. On the one hand, Tunisia's legislation post the revolution is relatively well-aligned with international human rights law standards for freedom of expression. On the other hand, oppressive laws that undermine the fundamentals for a democratic state remain in place. One of the most dangerous negative consequences of this legal duality is the discarding of **Decree-law 115** in most prosecution cases related to public affairs, which has led authorities to impose prison sentences on many activists, journalists, and politicians.

Tunisian authorities frequently resort to charges such as “undermining the morale

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8. The text is available in French: <https://legislation-securite.tn/law/43555>

9. The text is available in French: <https://legislation-securite.tn/law/45656>

10. The text is available in French: <https://legislation-securite.tn/law/56326>

11. The text is available in French: <https://legislation-securite.tn/law/104416>

12. The text is available in French: <https://legislation-securite.tn/law/105348>

of the military institution,” “committing a heinous act against the President of the Republic,” “offending a state official,” or “offending others through public communication networks, “all crimes punishable by imprisonment. Such practice threatens freedom of expression and freedom of the press, and leads people to self-censor in order to avoid prison sentences.

This report is an attempt to analyze the contradictions and duality in Tunisian laws which negatively impact the right to freedom of expression in the country. In the first part, we highlight the importance of **Decree-law 115** in protecting freedom of expression and the press, a protection that remains fragile as Tunisian courts continue to resort to laws enacted before the revolution. In the second part, we reflect on the new legal risks introduced by the recent adoption of **Decree-law 54 on Cybercrime**, which stifles the freedom of expression and restricts the press freedom, online and offline.

# PART I: Decree-law 115 on the freedom of the press, printing, and publishing, a substantive guarantee of the right to freedom of expression

The right to freedom of opinion and expression is one of the fundamental rights that are crucial to democratic societies. It provides individuals and communities to express their opinions, share and access information, take part in public debates, and hold public officials and authorities accountable.

Tunisia ratified the International Covenant on Civil and Political Rights (ICCPR) in 1966, enshrining the right to freedom of expression in Article 19 of the treaty. Freedom of expression is also enshrined in **Articles 37** and **38** of the 2022 Tunisian Constitution. Therefore, the Tunisian government is legally bound to uphold, protect, and promote the right to freedom of opinion and expression. In this context, **Decree-law 115** is considered a significant legal guarantee of the freedom of expression, thanks to the procedural and substantive safeguards it introduced. The Manouba Court of First Instance affirmed its value in an important judgment, asserting that “there is no doubt of the rationale on which **Decree-law 115** is based, as it was issued following the Tunisian revolution in 2011, in a relentless effort to further support freedom of publishing and expression, introducing a penal philosophy that aims to reduce prison sentences and limit punishments to financial penalties.”<sup>13</sup>

## I. Decree-law 115’s scope of application

It is worth noting that the Decree-law can be applied on a wide scale. It covers all individuals, including journalists, who exercise their right to freedom of expression by any media of their choice.

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13. The Manouba Court of First Instance, Judgment n°1753 dated May 14th, 2020.

## a. The scope of Decree-law 115 “Ratione Personae”

There has been widespread legal debate over the scope of application of this Decree-law. Some have defended the professional aspect of the Decree-law, and therefore argue that it applies only to journalists, while others see its purpose as ensuring the right to freedom of expression regardless of an individual’s professional role or capacity.<sup>14</sup>

**Decree-law 115** stipulates in **Article 2** that it “aims at regulating freedom of expression.” Therefore, we can argue that it applies to all individuals in Tunisia as long as freedom of expression is a right to which everyone is entitled regardless of their profession.

However, many courts refuse to apply **Decree-law 115** whenever a non-journalist is involved. For instance, in a court case involving a Tunisian rapper who released a song that was considered offensive to the police,<sup>15</sup> the Ben Arous Court of First Instance refused to apply the provisions of **Decree-law 115** on the pretext that the law applies only to journalists. In its judgment n°745 dated June 13, 2013, the court stated that **Decree-law 115** “came to protect the journalistic field by limiting its scope of application to journalists, whereas the accused is not a journalist.”

This interpretation by the court is legally invalid since as the Decree-law is clear on the persons subject to its provisions. Moreover, such an interpretation is at odds with the principle of equality among individuals where they could be subject to dif-

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14. See ARTICLE 19, A report on “the freedom of expression and media reform process in Tunisia,” 2020, p.19

<https://www.article19.org/ar/resources/%d8%a7%d9%84%d9%85%d8%b3%d8%a7%d8%b1-%d8%a7%d9%84%d8%a5%d8%b5%d9%84%d8%a7%d8%ad%d9%8a-%d9%84%d8%ad%d8%b1%d9%8a%d9%91%d8%a9-%d8%a7%d9%84-%d8%aa%d8%b9%d8%a8%d9%8a%d8%b1-%d9%88%d8%a7%d9%84%d8%a5%d8%b9/> and

Bechir Mannoubi Ferchichi, Ali Guiga, and Mohamed Mannoubi Ferchichi, The Penal Framework of the Freedom of Press, Printing, and Publishing, Al-Atrach Group for publishing and distributing specialized books, 2017, Tunisia, page 372 and after.

15. The song is available at the following URL: <https://www.youtube.com/watch?v=F6trgQAjby4>

ferent penalties for the same act under Tunisian law; defamation-related penalties included in **Decree-law 115** (Article **55**) are limited to fines, whereas the Penal Code stipulates prison sentences to sanction the same acts (such as under Article **128**).

## **b. Forms and means of expression under Decree-law 115**

Article 19 of the ICCPR protects all means of expression such as “spoken, written, and sign language and such non-verbal expression as images and objects or art. Means of expression include books, newspapers, pamphlets, posters, banners, dress, and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression.”<sup>16</sup>

**Article 50** of the Decree-law stipulates the means that can be used to exercise freedom of expression. They include “speeches, statements, and warnings in public spaces or through printed materials, images, engravings, symbols, or any other written or drawn form, either for sale or exhibited in public spaces or public meetings, or through posters and ads exhibited to the public, or through any audio-visual or electronic media.”

Human rights defenders, political opponents, or others who participate in demonstrations and public meetings have been routinely prosecuted under the Penal Code in Tunisia, on the pretext that **Decree-law 115** applies exclusively to content published via audio-visual or print media outlets. However, the Decree-law is not limited to audio-visual or print media such as television, radio, or newspapers, but includes other means, such as electronic modes of expression and direct discussions during public meetings.

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16. Paragraph 12 of General Comment 34 issued by the Human Rights Committee on Article 19 related to freedoms of opinion and expression. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/453/31/PDF/G1145331.pdf?OpenElement>

## II. Procedural gains of Decree-law 115

**Decree-law 115** included several procedural gains, including reducing the prescription period — that is, the period of time after which individuals or public prosecutors lose the right to file a lawsuit to prosecute actions.

In this context, **Article 76** stipulates that “[the] right to public action and a civil proceeding is prescribed for the offenses and infringements indicated in the Decree-law, within six months from the date of their occurrence or the date of the last procedural action.” As such, it is not possible to take legal action against individuals for publishing opinions or information after six months have passed since publication.

The prescription period is reduced compared to the one stipulated in **Article 5** of the Code of Criminal Procedures,<sup>17</sup> which is a positive step in line with international standards. The UN Human Rights Committee has confirmed that “It is impermissible for a state party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.”<sup>18</sup>

The second procedural gain is related to the person who has the right to file a penal lawsuit for defamation and insults against an individual. In principle, Tunisian criminal procedure law grants the right to initiate penal proceedings to the public prosecution regarding the aforementioned crimes.

However, pursuant to **Articles 69** and beyond of **Decree-law 115**, the public prosecutor does not have the right to initiate penal proceedings unless the defaming or offensive published content is aimed at a category of people of specific origin, race,

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17. According to the Code of Criminal Procedures, the statute of limitations ranges between one to 10 years, depending on the nature of the crime.

18. Human Rights Committee, General comment **No. 34/2011**, available at: <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/G11/453/31/PDF/G1145331.pdf?OpenElement>

or religion.

This means that penal proceedings cannot be initiated when defamation and insults are addressed to individuals, including senior political officials, police officers, or court officials, unless these individuals are the ones who initiate it.

This is different, for example, from the crimes related to content that are stipulated by the Penal Code, where the public prosecution is allowed to take the initiative to file these lawsuits without waiting for the victim to file the complaint themselves. This practice is very common when it comes to crimes such as “offending a state official” (**Article 125** of the Penal Code), “attributing illegal activities to a state official” (**Article 128** of the Penal Code), or “committing a heinous act against the President of the Republic” (**Article 67** of the Penal Code).

The above reasoning might also justify resorting to the Penal Code that allows the public prosecution to initiate penal proceedings against journalists, bloggers, politicians, and citizens in general, in cases related to defamation and insult against senior political officials and public figures, without requiring the latter to file the lawsuit themselves.

### III. Substantive gains of Decree-law 115

**Decree-law 115** includes several substantive gains, such as in **Article 9**, a provision preventing public authorities from imposing any restrictions that would inhibit the free flow of information, hinder the right of different media outlets to get equal access to information, or deprive a citizen of his/her right to access information. **Article 12** criminalizes assaulting or attacking journalists for their opinions or the information they share.

Below, we will focus on provisions eliminating deprivation-of-liberty penalties in defamation and insult cases, as well as the journalists’ right to protect their sources. Both gains have been routinely targeted by judicial actions in Tunisia both through sidelining **Decree-law 115** and relying on other oppressive laws.

## a. The elimination of imprisonment penalties for the crimes of disseminating false news, defamation, or insult

Occasionally, media outlets can publish erroneous information, even following investigation and fact checking, causing potential harm to persons. **Decree-law 115** has taken this issue into consideration and provided a number of methods to deal with such false or misleading content, such as exercising the right to reply and rectify the misinformation, as stipulated in **Articles 39** and beyond of **Decree-law 115**.

It also criminalizes disseminating misinformation or content that includes any form of insult or denigration and stipulates the fine penalty. **Articles 54**,<sup>19</sup> **55**,<sup>20</sup> and **57**<sup>21</sup> criminalize spreading false news, defamation, and insult by imposing a fine of **5000 TND (1650 USD)** for false news and a fine that ranges from **1000 to 2000 TND (330 to 660 USD)** for defamation and insult.

Removing custodial sentences is considered a positive step given the chilling effect of prison sentences on individuals, particularly journalists and human rights defenders. In this regard, the UN Human Rights Committee called on the states to consider decriminalizing defamation and limiting the punishment to civil penalties

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19. “Anyone who intentionally publishes false news that could affect public order using the means mentioned in **Article 50** of this Decree-law shall be punishable by a fine that ranges from **2000 to 5000** dinars.”

20. “Any claim or incorrect public attribution that could damage the honor or reputation of a certain person is considered as defamation provided that it causes the targeted person a personal and direct harm.

Announcing this claim or attribution in a direct manner or by quoting shall be punishable even if it takes the form of an assumption or refers to a person without explicitly mentioning their name by using phrases that facilitate recognizing the person in speeches, calls, threats, writings, printed materials, posters, drawings or ads, or online posts.”

21. “Any phrase that violates dignity or a contemptuous term or a curse that does not include a specific attribution, is considered an insult. The act of insulting through the means stipulated in **Article 50** of this Decree-law shall be punished by a fine ranging from **500 to 1000** dinars, while authorizing to publish excerpts of the judgment rendered in the case in the number of the convicted periodical that follows its reception of the judgment notification.”



when the dignity and reputation of individuals is affected, with the exception of the most serious of cases.<sup>22</sup> Unfortunately, Tunisian courts resort most of the time to other oppressive laws in order to impose physical punishment, in clear violation and sidelining of **Decree-law 115**.<sup>23</sup>

## b. The journalist's right to protect their sources

Journalists have the right to maintain the confidentiality of their sources. This right is one of the core foundations on which the journalistic profession is based, as it serves as an essential guarantee of trust between the journalists and their source. The UN Human Rights Committee called upon state parties to “recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources.”<sup>24</sup> It entails the right not to disclose any data that would lead to the identification of the source.

**Article 11 of Decree-law 115** ensures the utmost protection of the journalist's right to protect sources. The Article stipulates the following:

“Under protection are the journalists' sources in the course of practicing [their]

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22. “Where relevant, state parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. State parties should consider the decriminalization of defamation. And, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” Human Right Committee, General comment No. **34/2011**, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/453/31/PDF/G1145331.pdf?OpenElement>

23. To conduct research for this report, we looked into more than **50** judgments and verdicts rendered between **2011** and **2022**, in addition to penal actions initiated based on **Decree-law 54** related to information and communication systems.

24. UN Human Rights Committee, General Comment **34** of **2011**, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrdB0H1I5979OVGG-B%2BWPAXiks7ivEzdmLQdosDnCG8FaQQQ8NtR0qo4QbSwsZswN%2B9bC7%2FEzsK6tod9c78bXmcQ6Ah-dwIYbPRQT9A3SJawC8>

duties, as well as the sources of any person who contributes to the making of the journalistic material. The confidentiality of these sources shall not be directly or indirectly violated unless for pressing matters of state security or national defense and under the control of the judicial authority.

Any act carried out by a public authority targeting a journalist or any person with whom they have a relationship that falls under the scope of investigation, inspection, searches, or surveillance of correspondence or communications to reveal their sources, is considered a violation of source confidentiality.

A journalist may not be subjected to any pressure from any authority, nor may a journalist or any person contributing to the preparation of the journalistic material, be required to disclose the sources of their information except by means of a warrant granted by a competent judge, and provided that such information relates to crimes posing a serious threat to the physical integrity of others, that obtaining it is necessary to avoid the commission of said crimes, and that it qualifies as a category of information that cannot be obtained in any other way.”

Based on this Article, the reporter’s right to protect their sources can only be overruled when three conditions are met, namely:

- The existence of a judicial warrant granted by the competent judge (this cannot be requested by the executive branch or any other non-judicial body);
- The aim is to avoid offenses that pose a serious threat to the physical integrity of others and that access to such information is necessary to avoid the commission of said offenses;
- To qualify as a category of information that cannot be obtained by the authorities in any other way.

However, this acquired right remains limited due to the possibility of resorting to **Article 37** of the **Anti-Terrorism Law**, which compels journalists to reveal their

sources.<sup>25</sup> For example, Tunisian journalist Khalifa Guesmi was arrested on March 18, 2022 after publishing an accurate story about a successful mission carried out by a security unit targeting the capture of a terrorist cell in the city of Kairouan.<sup>26</sup> The journalist invoked his right to maintain the confidentiality of his sources in accordance with the provisions of **Decree-law 115**. However, this protection was overridden by **Article 37** of the **Anti-Terrorism Law**. The Tunis Court of First Instance handed down a one-year prison sentence in its judgment on November 29, 2022, a ruling the journalist appealed.

Although the procedural and substantive gains set forth under **Decree-law 115** are highly relevant, they were nevertheless weakened and overlooked through the use of repressive laws, the implementation of which leads to intimidation and harassment of people who wish to exercise their right to freedom of expression and criticize the various political, economic, religious, and military forces in society.

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25. Article **37** of Organic Law **2015-26**, dated August **7, 2015**, related to anti-terrorism and anti-money laundering, which was revised by Organic Law **2019-9**, dated January **23, 2019**, stipulates that: “A person who refrains, even if subject to professional secrecy, from immediately notifying the relevant authorities of the acts they have been able to witness and the information or instructions they have received about the actual or potential commission of one of the terrorist crimes stipulated in this law, shall be considered a perpetrator of a terrorist crime and shall be punished by imprisonment for one year to five years and a fine of five thousand dinars to ten thousand dinars.

Parents, children, and spouses are excluded from the provisions of the preceding paragraph. Lawyers and doctors are also excluded from the law with respect to secrets of which they are made aware while carrying out their duties. Journalists are also excluded in accordance with the provisions of **Decree-law 115**, dated November 2, 2011, related to freedom of the press, printing, and publishing. These exceptions shall not apply to information to which they have access and are considered information potentially relevant in preventing future terrorist offenses if reported to authorities. It is not possible to initiate a fine or criminal prosecution against a person who, in good faith, undertakes the duty of notification.”

26. On this issue, see: <https://www.article19.org/ar/resources/%D8%AA%D9%88%D9%86%D8%B3-%D9%85%D9%84%D8%A7%D8%AD%D9%82%D8%A9-%D8%A7%D9%84%D8%B5%D8%AD%D9%81%D9%8A%D9%8A%D9%86-%D8%AA%D8%B5%D8%B9%D9%8A%D8%AF-%D8%AE%D8%B7%D9%8A%D8%B1-%D9%81%D9%8A-%D8%A7%D9%86%D8%AA/>

## PART II: Violation of the gains of Decree-law 115 through resorting to repressive laws

As earlier discussed, **Decree-law 115** relating to freedom of the press has been neutralized through the weaponization of authoritarian laws that prevailed prior to the Tunisian revolution, and continue to be used today. These laws are brought into play for the purpose of enforcing custodial punitive measures instead of the penalties introduced by **Decree-law 115**, which are mostly of financial nature.

Restrictions on **Decree-law 115** relating to freedom of the press have further increased by dint of **Decree-law 54 on Cybercrime**, issued on September 13, 2022, the scope of which extends to both digital and print publications, as well as live broadcast or recorded audio content uploaded to social networks or other digital platforms. In this section, we outline the repressive laws that pre-date the Tunisian revolution and how they restrict freedom of expression online. We also shed light on the recently adopted cybercrime decree-law and its impact on freedom of expression and civic space in Tunisia.

### I. The perpetuation of the use of pre-revolution legal texts

Among the most relevant legal texts leading to undermining the gains brought forth by **Decree-law 115** are: **the Penal Code**,<sup>27</sup> **the Telecommunications Code**,<sup>28</sup> and **the Code of Military Justice**.<sup>29</sup>

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27. The Penal Code can be found at the following link: <https://legislation-securite.tn/en/law/43760>

28. The Code of Telecommunications can be found at the following link: <https://legislation-securite.tn/en/law/43891>

29. The Code of Military Justice can be found at the following link: <https://legislation-securite.tn/en/law/40920>

## a. The Penal Code: custodial penalties for defamatory, disinformation, and insult crimes

When examining a number of court cases related to freedom of expression in Tunisia, we noted that the Penal Code is often applied in cases involving statements about public officials, such as the security, the judiciary, or senior government officials.

The most prominent pressed charges are “insulting a state official” (**Article 125** of the Penal Code),<sup>30</sup> and “the attribution of unlawful acts to a state official without substantiation” (**Article 128** of the Penal Code).<sup>31</sup> On March 4, 2021, for instance, the Tunis Court of First Instance sentenced human rights activist Rania Amdouni to six months in prison on charges of “insulting a state official” because of her aggressive reaction to security agents who refused to admit a complaint she had filed against the administrators of Facebook pages, allegedly belonging to law enforcement associations, for posting death, violence, and rape threats against her person.<sup>32</sup>

On February 21, 2023, judicial proceedings were also held against the head of the Journalists Syndicate, Mahdi Jlassi, accompanied by journalists Wael Nawar, Asrar Jouira, Nawras Douzi, Saif Ayadi, and Khalil Zeghidi, on the same charges mentioned in **Article 125** of the Penal Code, as a result of a complaint filed by police officers against them, accusing the journalists of assaulting them during the dispersal of a demonstration on July 18, 2022 opposing the constitutional referendum.

The second common charge is “the attribution of unlawful acts to a state official

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30. **Article 125** of the Penal Code stipulates that: “Any person who insults a state official or insinuates to them through words, demonstration, or threats during the exercise or occasion of their job shall be punished by imprisonment for a period of one year and a fine of one hundred and twenty dinars.”

31. **Article 128** of the Penal Code stipulates that “anyone who attributes to a state official, through speeches, in the eyes of the public or through the press or other means of publicity, illegal matters related to their job without substantiation shall be punished by two years’ imprisonment and a fine of one hundred and twenty dinars.”

32. For more details: <https://www.hrw.org/en/news/2021/03/09/378129>

without substantiation.” This crime is highly analogous to the defamation crime covered in **Decree-law 115**, as both provisions criminalize the same act of wrongfully attributing actions that may harm the reputation of individuals without substantiation. However, there are two differences.

The first difference is that **Article 128** of the Penal Code concerns a state official, while Article **55** of **Decree-law 115** concerns all individuals regardless of their status. Secondly, **Article 128** of the Penal Code adopts a penalty of a two-year prison sentence, while **Decree-law 115** argues for a financial penalty.

**Article 128** of the Penal Code is often invoked in cases related to investigations or the expression of opinions about state institutions.

For example, in the case of journalist Tawfik Ben Brik, the Ben Arous Court of First Instance ruled that the Penal Code remains applicable to journalists. In this case, **Article 128** was applied, which criminalizes the defamation of state officials.<sup>33</sup>

The court sentenced the journalist to one year in prison because of his harsh criticism of the judges and his use of expressions of contempt towards some judges. His comments came during the presidential election campaign in 2019, in which he considered that the judicial authority is not independent and is controlled by the government.<sup>34</sup>

It should be noted that there are other legal provisions within the Penal Code that are implemented in specific cases. For example, when individuals publish opinions that could be considered by some to be insulting or offensive, targeting the President of the Republic, the courts resort to the famous **Article 67** relating to an offense

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33. Ben Arous Court of First Instance, Judgment No. **2263** dated **23 July 2020**.

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

committed against the President of the Republic.<sup>35</sup>

Many individuals have been convicted on the basis of this Article.<sup>36</sup> For example, the blogger Amina Mansour was sentenced to six months in prison under the judgment issued by the Tunis Court of First Instance on May 24, 2022, **for** publishing posts that were described as offensive to the President of the Republic.

All the legal grounds mentioned contravene international standards, which consider that adopting harsher penalties based on the status of the victim violates the right to freedom of expression and contradicts the principle of equality between individuals. In this context, the UN Human Rights Committee has expressed concern “regarding laws on such matters as, lese majesty, desecration, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honor of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.”<sup>37</sup>

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35. Article **67** of the Penal Code stipulates that: “Anyone who commits a brutal act against the Head of State in other than the forms indicated in articles **42** and **48** of the Press Code shall be sentenced to three years’ imprisonment and a fine of **240** dinars, or one of either.”

36. “Al-Jil Al-Khataa” (the Wrong Generation Movement), activist Ghassan Bogdiri appeared before the Beja Court of First Instance on November 22, 2022 on charges of committing a heinous offense against the President of the Republic because of his posts criticizing and revolving around the Presidency of the Republic. On November 21, 2022, political activist Abu Yarub Marzouki appeared before the Tunis Court of First Instance on the same charge.

37. UN Human Rights Committee, General Comment **34** of **2011**, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhserdB0H1l59790VGGB%2BWPAXiks7ivEzdmLQdosDnCG-8FaQQ8NtR0qo4QbSwsZswN%2B9bC7%2FEzsK6tod9c78bXmcQ6AhdwIYbPRQT9A3SJawC8>

## b. Code of Telecommunications: custodial penalties for ‘offensive’ and ‘spammy’ digital content

Although the Code of Telecommunications was published before the advent of social media, Tunisian courts have used one of its articles to track individuals based on what they post online.<sup>38</sup>

The legal basis is **Article 86**, which states that “Anyone who intentionally offends others or disturbs their comfort through public telecommunications networks shall be punished by imprisonment for a period of one-to-two years and a fine of one-hundred-to-one-thousand dinars.”

As is the case for the repressive Articles of the Penal Code, authorities use **Article 86** of the Telecommunications Code to circumvent **Decree-law 115** because it allows for the possibility of imposing custodial penalties.

Returning to **Decree-law 115**, we note that it covers not only audiovisual or print media but also electronic media in accordance with the provisions of **Article 50** thereof.

Several prosecutions have been conducted<sup>39</sup> on the basis of **Article 86** of the Telecommunications Code in the past years, including:

- In March 2023, the Ben Arous Court of First Instance issued an eight-month prison sentence against a woman member of the new People’s Assembly for posts deemed offensive to a state official.
- On November 29, 2022, lawyer Lazhar Akermi appeared before the investigating judge of the Tunis Court of First Instance due to his blog posts in which he talked about corruption in the judicial institution.

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38. The Code of Telecommunications was published in 2001.

39. For more details, see: <https://www.hrw.org/en/news/2019/10/15/334444>



- On December 20, 2021, the Sfax-2 Court of First Instance issued a sentence of four months of imprisonment against civil society activist Maryam Bribri for a post that was considered offensive to law enforcement officers.<sup>40</sup>
- On November 12, 2020, Wajdi Mehouchi was sentenced to two years in prison by the Tunis Court of First Instance for publishing a video criticizing a judge.
- On February 16, 2019, the Tunis Court of First Instance sentenced blogger Fadila Belhadj to two years in prison for posts deemed offensive to government officials.

### **c. The Code of Military Justice: trial of civilians before the Military Court**

Many civilians in Tunisia have been prosecuted before the Military Court because of the opinions and information they have published and broadcast. Regardless of the content of these views, the appearance of civilians before military courts is a flagrant violation of the right to freedom of expression.

In this context, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, expressed his concerns about the independence of military courts in a report issued after his visit to Tunisia in **2012**.<sup>41</sup>

**Article 91** of the Code of Military Justice is one of the most frequently used legal articles by military courts to prosecute civilians for exercising their right to freedom

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40. Sfax Court of First Instance **2**, Judgment No. **6502/20** dated **20** December **2021**.

41. The report can be found at the following link: <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session24/list-reports>

of expression.<sup>42</sup>

In this regard, we note that this article contains very broad terms such as “the spirit of the military regime,” “the morale of the army,” or “the dignity of the army.” The UN Human Rights Committee has affirmed that laws containing ambiguous language are incompatible with the requirements of the principle of legality with regard to the accuracy and clarity of the legal text.<sup>43</sup>

Among the civilians who were referred to the military court at the end of **2021**, we mention the journalist Amer Ayed for reading a poem by Ahmed Matar, and the former MP Yassin Ayari for publishing posts criticizing the President of the Republic.<sup>44</sup>

In 2021, blogger Salim Jebali was sentenced to three months in prison by the Per-

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42. Article 91 stipulates that: “Any person, whether a member of the military or a civilian, shall be guilty of insulting the flag or the army, of undermining the dignity, reputation, and morale of the army, of acts likely to weaken the discipline, obedience, and respect due to superiors in the army, or of criticizing the actions of superior commanders or army officials, thereby undermining their dignity, if they intentionally do so in a public place by means of words, gestures, writings, drawings, photographic reproductions, or paintings, and shall be punished by imprisonment for a term of three months to three years. Any person, whether a member of the military or a civilian, who knowingly publishes, communicates, or discloses in peacetime, shall be punished by imprisonment for a term of two months to two years. Any information concerning military incidents occurring inside or outside barracks or measures taken by the military authority with regard to one of its members or orders and decisions taken by this authority or any information concerning the movements of military corps and detachments and any operations carried out by the armed forces of the State. Exceptions to this rule are press and radio releases ordered by the competent authority. If the offense takes place in time of war or a state of war, the penalty is doubled.”

43. Human Rights Committee, General Comment **34** of **2011**, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsrcdB0H1l59790VGGB%2BWPAXiks7ivEzdmLQdosDnCG-8FaQQQ8NtR0qo4QbSwsZswN%2B9bC7%2FEzsK6tod9c78bXmcQ6AhdwIYbPRQT9A3SJawC8>

44. Amnesty International, “Tunisia: Alarming rise in the number of civilians appearing before military courts,” November **10**, **2021**. <https://www.amnesty.org/en/latest/news/2021/11/tunisia-alarming-increase-in-number-of-civilians-facing-military-courts/>

manent Military Court of First Instance in Kef for publishing a post that was considered by the court to be offensive to the President of the Republic as the Supreme Commander of the Armed Forces.<sup>45</sup>

In **2022**, journalist Saleh Attia was arrested following the opening of an investigation, by the Permanent Military Court of First Instance in Tunis, over statements made by the journalist on an Arabic-speaking channel.<sup>46</sup>

## II. Decree-law 54: a legal instrument for closing the digital public space

Reflecting on the provisions of **Decree-law 54** on combating cybercrime leads us to acknowledge that it compiles all the threats resulting from the implementation of the Penal Code, the Telecommunications code, or other repressive laws that are resorted to in order to prosecute individuals for exercising their freedom of expression.<sup>47</sup>

This Decree-law enables law enforcement and judicial authorities to gain extensive powers regarding the seizure of phones, computers, and all devices used for data storage. It also legalizes tracking of individuals and intercepting their communications. In addition, **Article 24** of the Decree-law combines most of the crimes related to expression in Tunisian law with harsher penalties, in total contradiction to constitutional requirements and Tunisia's international commitments.

**Article 24** establishes harsh prison sentences ranging from five to **10** years for anyone who uses information and communication networks and systems to disseminate false news, statements, rumors, or forged or falsified documents with the aim

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45. Permanent Military Court of First Instance, Judgment No. **89913** dated June 9, **2021**.

46. Amnesty International, "Drop all charges against journalist Saleh Attia," August 16, **2022**. <https://www.amnesty.org/en/latest/news/2022/08/tunisia-drop-all-charges-against-journalist-salah-attia/>

47. A detailed legal analysis of **Decree-law 54** was published by ARTICLE 19, available at the following link: <https://www.article19.org/resources/tunisia-cybercrime-law-is-threat-to-free-expression/>

of violating the rights of others, harming public security or national defense, spreading terror among the population, defaming or damaging others, physically or morally harming them, inciting attacks against them, or inciting hate speech.

### **a. Lack of the necessary guarantees to conduct seizures, tracking, and interception actions**

In his **2019** report on “Censorship and Human Rights,” the UN Special Rapporteur on the promotion of the right to freedom of opinion and expression stressed the consistent impact that violations of the right to privacy can have on the ability of individuals to effectively enjoy the right to freedom of expression.<sup>48</sup> The relationship between the two rights is particularly strengthened in the digital age, as online privacy is a fundamental guarantee for the free exercise of the right to freedom of expression without fear.

For its part, the UN Human Rights Committee considered in **2017** that the right to privacy requires that robust, independent oversight systems are in place regarding surveillance, interception, and hacking, including through ensuring that the judiciary is involved in the authorization of such measures, in all cases, and through affording persons affected with effective remedies in cases of abuse, including, where possible, an ex post notification that they had been placed under surveillance or that their data had been hacked.<sup>49</sup>

In this context, it should be noted that failure to respect judicial guarantees when conducting seizures, hacking, or wiretapping, or the absence of urgent and real justifications for resorting to such acts, logically leads to individuals reluctant to express their opinions and journalists who practice self-censorship, and to the violation of

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48. Report available at the following link:

<https://digitallibrary.un.org/record/3814512?ln=en>

49. Ibid., para. 25

their right to confidentiality of sources.

Referring to the provisions of Articles **9**<sup>50</sup> and **10**<sup>51</sup> of **Decree-law 54**, we conclude that there are insufficient legal guarantees to protect the right to privacy, which is acquired by means of **Article 30** of the Constitution and **Article 18** of the ICCPR. **Article 9** of the Decree-law allows the public prosecutor, the investigating judge, or the judicial police authorized to do so to order the seizure of computers, telephones,

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50. Article **9** reads as follows: “The public prosecutor, the investigating judge, or the officers of the judicial police authorized in writing may order:

Access to information data stored in a system, information carrier, or related to a communication data traffic, its users, or other data that would help reveal the truth.

Confiscation of the entire information system or part of it or an information carrier, including the data stored in it, which would help to reveal the truth. If the confiscation of the information system is not necessary or cannot be carried out, the data related to the crime and the data that secure its reading and understanding shall be copied to the information carrier in a manner that ensures the correctness and integrity of its content.

Immediate collection or recording of communication data traffic using appropriate technical means.

They can also access any information system or carrier directly or with the help of experts they deem appropriate and conduct an inspection in order to obtain stored data that would help to uncover the truth.

The competent authorities of the Ministry of National Defense and the Ministry of Interior shall be responsible for securing the seizure process, its location, and access to the information systems, data, stored data, software, and all its holders related to the two ministries, each according to its field.”

51. Article **10** stipulates that: “Interception of the communications of persons under suspicion may be resorted to in cases where the need arises by virtue of a reasoned written decision of the public prosecutor or the investigating judge. In the same cases, on the basis of a reasoned report by the judicial officer in charge of examining the crimes, interception of the communications of persons under suspicion may be resorted to by virtue of a reasoned written decision of the public prosecutor or the investigating judge. The interception of communications includes obtaining traffic data, wire-tapping, or accessing the content of communications, as well as copying or recording them using appropriate technical means and, where appropriate, using the competent structures, each according to the type of service it provides. Traffic data is the data that allows one to determine the type of service, the source of communication, the destination to which it is sent, the network through which it passes, its hour, date, size, and duration.”

all stored data, the immediate recording of traffic data, and, in general, all data that would help to uncover the truth.<sup>52</sup>

This Article raises several legal problems, perhaps the most prominent of which is the absence of a requirement for reasons when issuing judicial warrants, which gives prosecutors and investigating judges immense discretionary power, and in particular enables the judicial police to arbitrarily request public prosecutors to enable them to resort to similar procedures dangerous for the right to privacy.

**Article 10** provides for the interception of suspicious persons' communications by virtue of a reasoned written decision of the public prosecutor or the investigating judge. Despite the requirement of a reasoned decision by the public prosecutor or the investigating judge to conduct surveillance or wiretapping operations, this Article lacks the requirement to inform the target of the surveillance operation of the measures taken against them after the conclusion of the investigative work and the outcome of the recordings or data obtained during the period of surveillance and hacking.

**Article 10** also represents a regression from the gains achieved through **Decree-law 115** regarding the right of journalists to protect their sources, since it is possible to violate the right to confidentiality of sources without respecting the three conditions stipulated in **Article 11** of the Press Decree-law.

## b. The chilling effect of Article 24

The internet is a special medium of expression due to its technical characteristics,

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52. We can mention among the commissioners of the judicial police: police governors, police officers, heads of police stations, officers of the National Guard, non-commissioned officers of the National Guard, and heads of the National Guard stations.

which allow a wide range of individuals to publish and receive all types of opinions and information without geographical borders.

While the right to freedom of expression is a fundamental right, it is not absolute, since it is subject to the legitimate restrictions contained in **Article 19**, paragraph 3, of the ICCPR and also **Article 55** of the Tunisian Constitution.<sup>53</sup>

The UN Human Rights Committee has interpreted what is called the triple test in restricting the right to freedom of expression as:<sup>54</sup>

1. Provision for restriction is the core of a legal text that is clearly and accurately drafted so that individuals can regulate their behavior accordingly and anticipate the penalties that can be imposed on them in the event of a violation of the legal text.
2. The restriction was intended to achieve one of the legitimate purposes, namely respect for the rights or reputations of others, protection of national security, public order, public health, and morals.
3. The condition of necessity and proportionality in a democratic society is the choice of the least intrusive penalty or measure capable of achieving the same purpose as the most restrictive punishment or measure.

The application of these standards to **Article 24** of the Decree-law leads us to ac-

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53. Article 55 of the Constitution states: "Restrictions on the rights and freedoms guaranteed by this Constitution shall be established only by law and only if required by a democratic system and for the purpose of protecting the rights of others or for the requirements of public security, national defense, or public health. These restrictions must not affect the essence of the rights and freedoms guaranteed by this Constitution and must be justified by its objectives, commensurate with its reasons. No revision shall impair the human rights and freedoms guaranteed in this Constitution. All judicial bodies must protect these rights and freedoms from any violation."

54. See General Comment No. 34 of 2011, available at the following link: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrdB0H1I5979OVGGB%2BWPAXiks7ivEzdmLQdosDnCG8FaQQQ8N-tR0qo4QbSwsZswN%2B9bC7%2FEzsK6tod9c78bXmcQ6AhdwIYbPRQT9A3SJawC8>

knowledge its conflict with the Tunisian Constitution and relevant international standards due to its lack of clarity and the disproportionate penalties it provides.

**Article 24** stipulates that:

“Anyone who deliberately uses networks and information and communication systems to produce, promote, disseminate, send or prepare false news, statements, rumors, or documents that are fabricated, falsified, or falsely attributed to others with the aim of violating the rights of others, harming public security or national defense, or spreading terror among the population shall be punished by imprisonment for a period of five years and a fine of **50,000 TND (16000 USD)**.

The same penalties prescribed in the first paragraph shall be imposed on anyone who deliberately uses information systems to publish or disseminate news, fabricated or falsified documents, or data containing personal data or the incorrect attribution of acts with the aim of defaming, denigrating, or physically or morally harming others, inciting attacks against them, or inciting hate speech.

The prescribed penalties shall be doubled if the targeted person is a state official or similar.”

On the one hand, **Article 24** contains vague terms and phrases such as “wrong news, wrong statements, or false rumors.” We also note that some acts have been criminalized twice, as the first paragraph of the Article criminalizes anyone who deliberately uses networks and information and communication systems to publish false or forged documents with the aim of violating the rights of others. We find almost the same act in the second paragraph, which criminalizes “anyone who deliberately uses information systems to publish or disseminate news, fabricated or forged documents or data containing personal data, or the incorrect attribution of acts in order to defame or disrepute others.”



We conclude that the act of deliberately posting fabricated documents on social media with the aim of violating the rights of others has been criminalized twice, which demonstrates the Decree-law's poor wording and the lack of clarity and accuracy.

In **2016**, the UN Special Rapporteur for free expression emphasized that the use of broad terms is inconsistent with the requirement of precision since they “allow officials excessive discretionary power in determining their meaning.”<sup>55</sup>

At the same time, **Article 24** of the Decree-law establishes the same penalty of a five-year imprisonment regardless of the interest to be protected and the harm that could be caused, as incitement to attack or insult an individual carries the same penalty, which is contrary to the requirements of necessity and proportionality.

Finally, it should be noted that the gravity of **Article 24** of the Decree-law lies in its applicability to all opinions, ideas, and information that may be considered prejudicial to the rights of individuals, institutions, or society. This is due to the looseness and high level of interpretability of its terms, which nullifies the public authorities' need for the repressive legislative arsenal contained in the Penal Code, the Telecommunications Code, or other texts.

While at first glance it appears that the sphere of application of **Decree-law 54** is the digital space, the fusion of the various means of expression renders them undistinguishable, since almost everything that occurs “offline” is transmitted or shared over the internet. This means that **Decree-law 54** restricts not only the virtual space, but also the real one.

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55. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on contemporary challenges to freedom of opinion and expression, September 6, 2016, A/71/373, para 13.

Among the most important prosecutions that have taken place through the implementation of Article **24** of **Decree-law 54** are:

- Journalist Monia Arfaoui for criticizing the Minister of Religious Affairs.<sup>56</sup>
- Journalist Mohamed Boughalleb for criticizing the Minister of Religious Affairs.<sup>57</sup>
- Lawyer and politician Ghazi Chawachi for criticizing the Minister of Justice.<sup>58</sup>
- Lawyer and politician Ayachi Hamami for criticizing the Minister of Justice.<sup>59</sup>
- The politician Chaima Issa for criticizing the President of the Republic.<sup>60</sup>
- Journalist Nizar Bahloul for publishing an opinion piece criticizing the Prime Minister.<sup>61</sup>
- Student Ahmed Bahaa Eddine Hamada for publishing information

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56. More details are available at the following link: <https://www.businessnews.com.tn/la-journaliste-monia-arfaoui-laissee-en-liberte.520,127896,3>

57. More details are available at the following link: <https://kapitalis.com/tunisie/2023/04/08/tunisie-qui-veut-faire-taire-mohamed-boughalleb/>

58. More details are available at the following link: <https://www.businessnews.com.tn/Ghazi-Chaouachi-de-nouveau-poursuivi-par-Leila-Jaffel-en-vertu-du-d%C3%A9cret-54.520,127004,3>

59. More details are available at the following link: <https://kapitalis.com/tunisie/2023/01/02/affaire-des-juges-revoques-ayachi-hammami-poursuivi-en-justice-en-vertu-du-decret-54/>

60. More details are available at the following link: <https://kapitalis.com/tunisie/2023/01/18/tunisie-chaima-issa-convoquee-a-comparaitre-devant-la-brigade-criminelle-de-la-garde-nationale/>

61. More details are available at the following link: <https://www.businessnews.com.tn/Sur+la+base+du+d%C3%A9cret+54+%3A+Najla+Bouden+fait+traduire+Business+News+devant+la+Criminelle,544,124464,3>

about protests in a popular neighborhood.<sup>62</sup>

- Former member of the Electoral Commission Sami Ben Slama for criticizing the Electoral Commission Council.<sup>63</sup>
- Civil society activist Hamza Labidi for a blog post advocating for revolution.<sup>64</sup>

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62. More details are available at the following link: <https://ultratunisia.ultrasawt.com/%D8%A5%D8%B7%D9%84%D8%A7%D9%82-%D8%B3%D8%B1%D8%A7%D8%AD-%D8%B7%D8%A7%D9%84%D8%A8-%D8%A3%D8%AD%D9%8A%D9%84-%D8%A8%D9%85%D9%82%D8%AA%D8%B6%D9%89-%D9%85%D8%B1%D8%B3%D9%88%D9%85-%D8%AC%D8%B1%D8%A7%D8%A6%D9%85-%D8%A7%D9%84%D8%A7%D8%AA%D8%B5%D8%A7%D9%84-%D9%85%D8%AD%D8%A7%D9%85%D9%8A%D9%87-%D9%8A%D9%88%D8%B6%D8%AD-%D9%84%D9%80%D8%A7%D9%84%D8%AA%D8%B1%D8%A7-%D8%AA%D9%88%D9%86%D8%B3/%D8%A7%D9%84%D8%AA%D8%B1%D8%A7-%D8%AA%D9%88%D9%86%D8%B3/%D9%85%D8%AC%D8%AA%D9%85%D8%B9/%D8%A7%D9%94%D8%AE%D8%A8%D8%A7%D8%B1>

63. More details are available at the following link: <https://www.businessnews.com.tn/sami-ben-slama--je-suis-poursuivi-dans-des-affaires-politiques,520,125394,3>

64. More details are available at the following link: <https://www.assabahnews.tn/ar/%D8%A7%D9%84%D8%A7%D8%AE%D8%A8%D8%A7%D8%B1/%D8%AC%D9%87%D8%A7%D8%AA/50320-%D9%88%D9%81%D9%82%D8%A7-%D9%84%D9%84%D9%85%D8%B1%D8%B3%D9%88%D9%85-54-%D8%A5%D9%8A%D9%82%D8%A7%D9%81-%D8%B4%D8%A7%D8%A8-%D9%81%D9%8A-%D8%A7%D9%84%D9%82%D8%B5%D8%B1%D9%8A%D9%86-%D8%A8%D8%B3%D8%A8%D8%A8-%D8%AA%D8%AF%D9%88%D9%8A%D9%86%D8%A9-%D9%81%D8%A7%D9%8A%D8%B3%D8%A8%D9%88%D9%83%D9%8A%D8%A9-%D9%88%D8%BA%D8%B6%D8%A8-%D9%8A%D8%AC%D8%AA%D8%A7%D8%AD-%D9%85%D9%88%D8%A7%D9%82%D8%B9-%D8%A7%D9%84%D8%AA%D9%88%D8%A7%D8%B5%D9%84-%D8%A7%D9%84%D8%A7%D8%AC%D8%AA%D9%85%D8%A7%D8%B9%D9%8A>

## Recommendations

In general, we conclude that the national legislative framework related to freedom of expression in Tunisia is incompatible with the relevant international standards due to the conflicting legal provisions that stipulate crimes in the field of expression, the existence of penalties that do not respect the principles of proportionality and necessity, and the harshness of penalties relating to the protection of political officials compared to other individuals, especially the large number of broad phrases that paves the way for broad interpretation and restricts many forms and types of expression, in violation of **Article 55** of the Tunisian Constitution and **Article 19** of the International Covenant on Civil and Political Rights.

With the purpose of developing a legal framework related to freedom of expression in Tunisia in line with international standards, Access Now recommends the following:

- Engage in extensive consultation with diverse civil society organizations and professional groups concerned with the right to freedom of expression and information, in order to advance a legal framework compatible with constitutional requirements and relevant international standards;
- Pending the repeal of repressive provisions, apply **Decree-law 115** to all individuals, regardless of profession or status;
- Repeal Articles **67, 125, 128, 121 bis, 121 ter, 245, 246, and 247** of the Penal Code because similar crimes exist within the scope of **Decree-law 115** with more appropriate penalties;
- Repeal Article **86** of the Telecommunications Code because similar crimes exist within the scope of **Decree-law 115** with more appropriate penalties;
- Repeal of Article **91** of the Code of Military Justice or revise to exclude

civilians from appearing before military courts in cases related to the right to freedom of expression;

- Exclude journalists from the scope of application of Article **37** of the Anti-Terrorism and Anti-Money Laundering Law; and
- Repeal **Decree-law 54**, especially Article **24** thereof, and halt all the prosecutions that took place on its basis.

