



Oppression Family

Position Paper on the Arsenal of Laws Employed
by the Tunisian Authorities in Restricting Freedom
of Opinion and Expression

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Executive Summary:

Tunisia is currently governed by outdated laws that do not comply with global development, which contradicts human rights principles and international conventions. Freedom of speech has been witnessing violations because of the political administration and potential legislation aimed at repressing this right. Starting from 2021, Tunisia witnessed political events that led to the suspension of the parliament and the monopoly of power by the presidency. During this period, rights and freedoms were jeopardized as the authority relied on restrictive laws, resulting in false accusations against the opposition. Oppressive laws are utilized to monitor the freedom of opinion and expression and the digital space aiming at silencing opposing voices. This position paper evaluates these laws, proposes alternatives to reduce violations, and provides recommendations to the authorities to safeguard the remaining human rights and democratic achievements.



Introduction:

Since July 25, 2021, Tunisia has witnessed rapid political negative developments, starting with the announcement by President Kais Saied declaring a state of exception, and suspending the activities of the parliament until the presidency monopolized all powers within the state. The situation lingered until the establishment of a new constitution in August 2022, followed by parliamentary elections in late 2022. During this period, there were concerns about the human rights and freedoms systems as the ruling authorities persistently, and arbitrarily imposed charges against anyone who opposed the president and his government or criticized the policies adopted for managing state affairs. Notably, the authorities consistently relied on an arsenal of laws that imposed unfair restraints on the right to freedom of opinion and expression. This is evident in the Tunisian Penal Code, such as Article 67, which charges people who criticize or express their opinion about the president's performance and handling of current issues in Tunisia with the offense of committing a heinous act against the president. In addition, Article 125 is the most known and frequently utilized by the ruling authorities or police forces, as well as the Communications Code in Article 86 is employed for similar purposes. Furthermore, the post-July 25 regime went beyond these measures and enacted a new legislative text, Decree No.54, to impose more self-censorship, especially in the digital space, as well as silence every opposing voice, given the vague concepts and terms followed by imprisonment penalties exceeding five years for many crimes. This includes opinions on public affairs, considering such expressions as spreading rumors or content deemed a threat to the state and public security.

In this context, the Position Paper has been prepared to highlight the laws adopted by Tunisian authorities to restrict the right to freedom of expression, reaching the point of violating this right. In recent years, the Tunisian authorities have frequently been exerting these laws against various human citizens, particularly human rights advocates, politicians, journalists, and lawyers, to varying degrees. This paper criticizes the content of these legal texts, the extent of their danger to freedoms in Tunisia, and the threat they pose to the foundations of democracies under the rules of Tunisian President Kais Saied. It also proposes alternatives to alleviate these violations and imprisonment violations faced by those expressing their opinions. At last, it concludes with recommendations to the Tunisian authorities, as they bear responsibility for this issue, and calls upon civil and political forces to address this problem.

Freedom of speech, a right guaranteed by international conventions and local laws:

The Universal Declaration of Human Rights¹, adopted by the United Nations General Assembly in Paris on December 10, 1948, is one of the most important texts that protect rights and freedoms. Article 19 states, «Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. In addition, the International Covenant on Civil and Political² Rights, as a multilateral convention adopted by the United Nations General Assembly, states in Article 19 that “Everyone shall have the right to hold opinions without interference.”² Everyone has the right to freedom of expression. This right includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any media of choice.³ The exercise of these rights carries with it special duties and responsibilities. In this regard, such freedom may be subject to certain restrictions. Still, these restrictions should be specified by law and deemed necessary: (a) to respect the rights or reputation of others and (b) to protect national security, public order, public health, or public morals. These provisions serve as necessary safeguards for the freedom of expression, alongside the African Charter on Human and People’s Rights and the UNESCO Declaration of 1978³, establishing the right to freedom of expression as a fundamental right that countries must respect and protect. The Tunisian State is bound to respect these conventions as all its constitutions entrenched the right to freedom of expression as a right to be respected, namely the January 2014 Constitution⁴, deemed the first constitution after the 2011 Revolution that dedicated a whole section to rights and freedoms, such as Article 31 which addressed the freedom of opinion, thought and expression, and Article 32 which insisted on freedom of press and access to information. This constitution is considered one of the constitutions that guaranteed freedoms and rights in the Republic of Tunisia even after 25th July, when President Kais Saied enacted a new constitution. The 2022 constitution does not differ from its predecessor in terms of rights and freedoms, especially freedom of expression. Article 37 of the second section titled “Rights and Freedoms” states, «Article 37 – Freedom of Opinion, Thought, Expression, Media and Publications is guaranteed. Prior censorship of these freedoms is not allowed.” Thus, this provision is a crucial safeguard and affirmation of the fundamental right to freedom of opinion and expression. However, this has not been sufficient to curb the violations committed by the authorities against Tunisian citizens and the varying degrees of restrictions on freedom of expression over the years. This is based on a criminal legal system that enables everyone in power to confiscate the opinions of opponents or other citizens, as well as intimidate them with imprisonment, in a flagrant violation of the constitutional text or the rest of the international guarantees protecting this right.



A legal system ready to restrict freedom of opinion and expression:

Chapter 125 of the Penal Code, “Insulting a public official”

Article 125 of the Penal Code⁵ states: “Anyone who insults a public official or compares them unfavorably by word, gesture or threat upon the commencement of their duties or on the occasion of their performance, shall be punished with imprisonment for one year and a fine of one hundred and twenty Dinars.” The article is part of the second section, “Insulting public officials and their peers resisting them using violence.” from the fourth title, “In an attack on the public authority composed of individuals.”

This article is one of the most frequently used legal texts by police forces to chase, monitor, and legally pursue activists. In fact, Tunisia has witnessed several arrests and cases in relation to activists and human rights advocates on the grounds of their activities and exercising their freedom of expression. Additionally, it is one of the legal chapters in the penal code that is most subjected to political exploitation against participants in peaceful assemblies and protests. Furthermore, it contradicts the principle of a fair trial and the transparency of legal procedures and entrenches the principle of inequality before the law, as police forces, usually the complaining party, are simultaneously prosecuting, which conflicts with the content of Article 23 of the constitution⁶. This article stipulates that citizens are equal in rights and duties and are equal before the law without any discrimination.

Moreover, the content of Article 125 includes vague expressions that allow for broad interpretation and open door to imprisonment for anyone criticizing a public official, whereas the penal provisions allow for narrow interpretation. The language of the legal texts needs to be clear and specific⁷. General Comment No.34 of the Human Rights Committee, in paragraph 34⁸, states that it is not permissible to restrict freedom of expression, especially when it comes to public figures, including public officials, as it

is stipulated in the paragraph mentioned above “those exercising the highest political authority, such as heads of states and governments, are legitimately subject to criticism and political opposition.” The Committee on Human Rights adds in paragraph 47 that laws regulating freedoms should be carefully drafted to avoid becoming texts restricting freedoms. Besides, it emphasizes refraining from applying criminal laws, imprisoning citizens, and labeling them criminals.

Chapter 86 of the Communications Code:

“Anyone intentionally causing harm to others or disturbing their peace through public communication networks shall be imprisoned for a period ranging from one to two years and a fine of one hundred to one thousand Dinars.” This is the content of Article 86 of the **القسم** Communications Code⁹ that was issued at the beginning of the twenty-first century, precisely on January 15, 2001. At that time, in Tunisia, the only means of communication was the landline or the mobile phone. With the amendment that the code underwent, especially in terms of Law No.10 of the year 2013, dated April 12, 2013, which is related to the amendment and completion of the Communications Code, the term “Internet” was introduced. This Article falls under the second section, “Criminal Penalties,” sixth title, “Violations and Penalties.” Tunisian Judiciary has used this article on several occasions in cases involving activists, human rights advocates, and politicians who expressed their opinions regarding “public officials,” especially state employees, including ministers in most governments that succeeded each other after the revolution until this year. The latest is the caricature artist Taoufik Omran¹⁰, who was prosecuted under this article for publishing a cartoon that resulted in restricting freedom of expression in Tunisia as the authorities have turned it into a tool to intimidate citizens and deter them from engaging in discussions related to public affairs or criticizing state officials. In this regard, Intersection Association for Rights and Freedoms believes that the legal prosecution of citizens, particularly bloggers on social media and diverse communications channels, under charges such as defamation or causing a disturbance as stipulated in the article, constitute accusations and measures that contradict and conflict with international treaties, standards, and the content of the Tunisian constitutions, namely the previous constitution of 2014 and constitution of 2022 which is considered a guarantee for freedom of opinion and expression. These arrests and prosecutions due to expressing opinion, especially criticizing public institutions, are forms of repression and infringing upon a fundamental right that constitutes a crucial component of democracy.

Decree No.54: A New Brother in the Repression Family

Despite the existence of a range of laws related to the digital space and the protection of its users from cybercrimes, such as defamation, as mentioned in the Communications Law, the political authority deemed it necessary to add another provision to exert more control over freedom of opinion and expression, reaching the point of infringing on the essence of this right under the guise of combatting cybercrimes. Decree No.54, issued on September 13, 2022¹¹, included a section dedicated to curbing the diffusion of rumors, whereas the Budapest Convention of 2001¹² did not address this issue. As a result, it can be deduced that the intent behind this provision was to impose more control on dissenting opinions, particularly those of activists, journalists, human rights advocates, and other citizens.

Therefore, Decree No.54 is a legal text that disregards safeguards dictated by

international conventions that protect the right to freedom of expression and personal data. In addition, it includes legal provisions that pose a real threat to freedom of expression, such as Article 9, which grants broad powers to the public prosecutor, investigating judge, or judicial police officers. This chapter allows them to “collect instantly record communication data using appropriate technical means”¹³ and “directly access or, with the assistance of experts, access any system or information carrier and conduct an inspection to obtain stored data that could help reveal the truth.”

What opens the door to violations and turns this decree into a sword hanging over the heads of anyone expressing their opinions on public matters is the same decree, Article 18 in particular. This chapter allows tapping communications of suspected individuals by virtue of a written decision from the public prosecutor or investigating judge directly or with a detailed justification report from judicial police officers. In this regard, it should be highlighted that there are no guarantees against the continuation of these procedures or the existence of real constraints that determine the duration and scope of what is stated in the article, which constitutes a violation of the citizens’ privacy. Reference can also be made to Resolution No. 5029/71 of the European Court of Human Rights¹⁴, where the court emphasized that “secret surveillance of citizens is a characteristic of police systems and is unacceptable unless there is an extreme necessity to protect democratic institutions.”

The most significant part of this decree is Article 24, which falls under the third subsection of the entitled “On Rumors and Fake News.” This article led to the referral of a significant number of citizens in 2023, most of whom were politicians, journalists, lawyers, and other activists, including politician Ghazi Chaouachi¹⁵ and human rights activist Ayachi Hammami¹⁶. Other activists were arrested and tried for expressing their opinions. From a legal perspective, this article violated the constitutional constraints mentioned in Article 55 of the Tunisian Constitution, which must be respected when constraining rights and freedoms. It did not respect the conditions of necessity and proportionality and its measures related to rights and freedoms, which could limit achieving protective function. Here, we note the imprisonment penalties for an act classified as a crime related to spreading fake news or false rumors. Such actions were equated with other crimes like defamation and slander, and the punishment is increased if the false news concerns a public official or a quasi-official, reaching a sentence of up to ten years in prison and a fine of one hundred thousand dinars. This has led to further trials in Tunisia, especially after 2021, transforming this decree aimed at combatting cybercrimes into a legal text that undermines freedom of expression and makes it hostage to political stances.

Article 67 of the Penal Code: “The Frightening Order” – a Ready-Made Charge for Anyone Criticizing the President:

Article 67 of the Penal Code of 1913 introduces the charge of committing a heinous act against the President of the Republic, which enforces a punishment of three years and a fine of two hundred and forty dinars or either of these penalties. This article falls under the category of offense against public order and was initially established to protest the ruling families during the Bey regime. The late President Habib Bourguiba preserved this provision with minor amendments by virtue of the decree dated May 31, 1956. This article was forcibly present after 25th July 2021, where anyone expressing criticism of the President of the Republic in public spaces, media, or social media became subject

to legal action simply for exercising their right to freedom of expression. This was evident in the case of journalist Amer Ayed in late 2021 after he criticized President Kais Saied and Politician Chaima Issa¹⁷, who was prosecuted under this article due to a radio commentary criticizing the President. Additionally, citizen Hassan Labidi¹⁸ was sentenced to eight months in prison for sharing a video criticizing the President. This has not happened despite the necessity, significantly since the 2011 revolution, to expedite the abolition of this provision in particular and other repressive laws that contradict human rights principles and undermine their essence, especially the freedom of opinion and expression. Therefore, such legislations remain tools utilized by the successive authorities in Tunisia to monitor and pursue anyone who criticizes them or exercises their right to expression.

How We View These Laws and Violations:

In light of what has previously been clarified, Intersection Association for Rights and Freedoms expresses its grave concern about the continuous adoption of laws and legislations that clearly violate freedom of expression and criminalize opinions despite this right's constitutional and international entrenchment. Imprecise and flexible legal texts such as Article 125 and Article 86 of the Penal Code and Communication Code have consecutively become tools employed by the authorities to pursue, harass, and imprison opponents, activists, journalists, and human rights advocates. In addition, new laws such as Decree No. of 2022 aim to impose greater control on expression under the guise of combatting false news and rumors, which totally contradicts international human rights conventions.

The association strongly condemns the exploitation of these laws by the authorities to oppress any opposing or disagreeing voices, turning citizens into criminals facing imprisonment for merely expressing their opinions. The association is also concerned about the worsening scourge of imprisoning journalists and activists under these laws, posing a real threat to the future of public freedoms and human rights in Tunisia. Intersection Association for Rights and Freedoms demands the legislative authority to urgently revoke freedoms restraining laws, such as Decree No. 54 and others, and to review the remaining legislation in line with international human rights conventions. The association also demands calls for an immediate halt to all forms of prosecution of citizens and the urgent release of all unjustly imprisoned under these unfair laws. Adherence to the freedom of expression principle is vital for building a real democracy based on respecting human rights.



Conclusion:

The laws and legislations highlighted in this paper are a blatant violation of freedom of expression in Tunisia, despite this right's constitutional and international entrenchment through international agreements and conventions. In fact, imprecise and flexible legal texts such as Article 125 and Article 86 and others have become tools employed by the authorities to persecute opponents, activists, journalists, and human rights advocates. The enactment of new laws, such as Decree No.54 of 2022, flagrantly aims to impose greater control on freedom of expression, which contradicts international human rights conventions.



Recommendations:

Intersection Association for Rights and Freedoms issues a set of recommendations to:

Legislative Authority:

- Revoking Decree No.54 related to combatting digital crimes due to the dangers it poses against freedom of expression in particular and the rights and freedoms system in Tunisia in general. Besides, they do not comply with the universal human rights values and principles.
- Amending all texts that criminalize criticism of public officials, employees, and other public figures, as well as clarify its concepts, such as Article 125 and Article 67 of the Penal code
- Reviewing and amending the Communications Code, especially Article 86, employed as a tool to try bloggers and activists on social media and determine its wording to be more precise than it currently is.

Judicial Authority:

Dropping all charges and cease all judicial and legal proceedings against citizens who have been tried under laws criminalizing freedom of opinion and expression, especially cases related to Decree No.54, the number of which has continued to rise since the law's enactment.

Civil Society and Political Parties:

- Submitting proposals for legislative system reforms, particularly in the field of rights and freedoms, to amend or revoke all the articles that criminalize opinion and result in imprisoning citizens for expressing their views.
- Intensifying efforts and meetings with various active civil forces to expose the practices carried out by the Tunisian state against the citizens and violating their right to expression.

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