



**Tunisia  
Monitoring  
Group**



***BEHIND THE FAÇADE: HOW A POLITICISED  
JUDICIARY & ADMINISTRATIVE  
SANCTIONS UNDERMINE TUNISIAN  
HUMAN RIGHTS***

Report from the Seventh TMG Mission to Tunisia (6 June 2010)

### About the Tunisia Monitoring Group (TMG)

The TMG is a coalition of 20 organisations set up in 2004 to monitor freedom of expression in Tunisia in the run up to and following the WSIS, held in Tunis in November 2005. The 20 organisations are all members of IFEX, a global network of around 90 national, regional and international organisations committed to defending the right to freedom of expression.

The seventh mission of the TMG to Tunisia took place in the context of a 30-month project *Monitoring & Advocacy in Support of Independent Human Rights Defenders in Tunisia*, funded by European donors and managed by Index on Censorship, which started in January 2010. It was comprised of Amadou Kanoute of ARTICLE 19, Yousef Ahmed of Index on Censorship, Anthony Mills of the International Press Institute (IPI), Carl Morten Iversen of Norwegian PEN, and Tamsin Mitchell of the Writers in Prison Committee of International PEN (WiPC). Barbora Bukovsa of ARTICLE 19 was not granted a visa on time by the Embassy in London (as has happened for previous members of TMG missions requiring a visa. None of the other mission participants required a visa.)

The first TMG mission took place in January 2005 and led to the first report *Tunisia: Freedom of Expression Under Siege*, published in February 2005. The report described the TMG's initial findings and set out a series of recommendations to the Tunisian government. Subsequent missions took place in May and September 2005, in April 2006 and in February/March 2007, leading to three other mission reports which reviewed the initial findings of the TMG and reported on any progress or setbacks. TMG members actively took part in WSIS itself in November 2005.

Other members of the TMG are: Arabic Human Rights Information Network (ANHRI), Bahrain Center for Human Rights (BCHR), Cairo Institute for Human Rights Studies (CIHRS), Canadian Journalists for Free Expression (CJFE), Cartoonists Rights Network International (CRNI), Egyptian Organization for Human Rights (EOHR), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Publishers' Association (IPA), Journaliste en Danger (JED), Maharat Foundation, Media Institute of South Africa (MISA), World Association of Community Radio Broadcasters (AMARC), World Association of Newspapers and News Publishers (WAN-IFRA) and World Press Freedom Committee (WPFC).

For more information, including past mission reports, see: <http://ifex.org/tunisia/tmg/>

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## Executive Summary

The following report from the fact-finding mission to Tunisia, from 25 April to 6 May 2010, is the first milestone in a new phase of activities launched this year by the Tunisia Monitoring Group (TMG). The TMG is a coalition of 20 members of the International Freedom of Expression eXchange (IFEX) network.

This newly launched project builds on the activities of the TMG, IFEX's longest running and most successful campaign, which has since its establishment in 2004 monitored freedom of expression abuses in Tunisia before, during and after the UN World Summit on the Information Society (WSIS) in November 2005.

The project at hand addresses three different but equally urgent issues through a series of monitoring, reporting and campaigning activities. The three themes led by TMG members include: the detention of Tunisian prisoners of opinion, the use of administrative sanctions to punish dissident views and the obstruction of the emergence of an independent judiciary; restrictions on freedom of association for peaceful purposes and the right of all civil society groups to be legally established and hold meetings in Tunisia; and censorship of the Internet, the arts, books and periodicals by legal, administrative and extrajudicial means in Tunisia.

## Summary of Findings

Over the years, including during the recent fact-finding mission to Tunisia, which aimed to explore the first theme of the project, the TMG has documented a range of worrying violations to the rights of free expression and association, as detailed below.

These violations have continued unabated despite continued efforts by the Tunisian government to attain "advanced status"<sup>1</sup> with the EU. Indeed the recurring cases of harassment, surveillance, and imprisonment of journalists and human rights activist, the potpourri of administrative sanctions used to limit the already narrow alleys of freedom and the ploys used to hinder the emergence of an independent judiciary all point to Tunisia's dismal human rights record.

The following report is divided into three chapters highlighting cases and trends of each of the three patterns of violations. The first chapter focuses on prisoners of opinion focusing on a select number of cases who have been held captive in harsh conditions, harassed physically, dismissed from their jobs and have had

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<sup>1</sup> EU-Tunisia relations are developing in the framework of the Association Agreement signed in 1995. The EU and Tunisia have started negotiations for Tunisia to attain "advanced status." Such a status upgrade would pave the way for a "common economic space" based on the rules of the European Economic Area, a deeper free trade agreement, access to European security agencies and crisis management operations, and regular political summits between the EU and Tunisia.

their privacy, access to information and freedom of movement seriously hindered. The second chapter surveys the series of administrative sanctions used to exert indirect pressure on journalists and human rights defenders. To achieve this end, the government applies a series of measures including applying financial pressure on the opposition newspapers, withholding radio and newspaper licenses from opposition applicants, closure and seizure of newspapers and harassment of critical journalists and human rights defenders and confiscation of books, amongst others. The third chapter analyses the tactics the Tunisian authorities have employed in an effort to disallow the emergence of an independent judiciary, in spite of its national and international obligations.

Members of the TMG urge the government to take serious steps to adhere to international standards of basic human rights, as guaranteed by the Tunisian Constitution as well as by the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

## Methodology

The cases and trends documented in this report are based on a series of interviews carried out during this recent visit to Tunisia in addition to the previous six visits to the country. Unfortunately, however, TMG mission members, whose circle of varied contacts has been widening since 2005, were unable to meet all journalists, bloggers and rights activists whom they would have liked to meet, because those people are under heavy surveillance. Since the TMG mission members were also heavily monitored during their time in Tunisia this spring, it would have put those people at risk to meet with the TMG members.

Furthermore, as with previous missions, the TMG requested meetings with Tunisian officials on various administrative and political levels. Unlike the previous six trips, the requests for meetings sent to the Tunisian embassies in Vienna and London were not met. The embassies responded claiming they were unable to set up such meetings and asking if the TMG could postpone the mission. The TMG Chair then replied agreeing to discuss dates for a future meeting when the representatives were available, but as of today, no response has been received. The TMG, however, remains willing to send a representative(s) to Tunis for such a meeting at any reasonable time.

Although no official meeting with government officials took place, the mission met with an individual claiming to work as an adviser to the Ministry of Communication who "wanted to discuss" certain issues with the mission. This person, who identified himself as Borhan Bsaies and was accompanied by a translator, candidly conceded on several issues: "It is not a perfect situation... no one denies that there are problems and that the government is responsible for these problems." While these outspoken comments were new, the meeting was unofficial.

The five members of the recent TMG mission were ARTICLE 19, Index on Censorship, the International Press Institute (IPI), Norwegian PEN, and the Writers in Prison Committee (WiPC) of International PEN.

## I. Prisoners of opinion

While the Tunisian government claims there are no political prisoners in Tunisia, a number of the local human rights organisations with whom the TMG mission met<sup>2</sup> work with prisoners whom they consider to fall under this category. Figures are hard to come by<sup>3</sup> but they estimate that there are currently around a thousand political prisoners in the country, serving sentences ranging from one to more than 70 years. It is thought that the majority of these prisoners have not actually violated any laws but have been jailed on fabricated charges related to their exercise of their right to freedom of expression, assembly or association.

Most political prisoners have been jailed for common law offences or under the antiterrorism legislation thus allowing the authorities to deny political imprisonment. The TMG interviewed several journalists who were formerly imprisoned for such offences rather than press offences. A few of these cases, to be further discussed below, include the cases of Taoufik Ben Brik charged for assault, Slim Boukhdhir for 'insult', Zouhayr Makhoulouf for 'harming and disturbing others through the public communication network' or Zakia Dhifaoui for taking part in demonstrations. Lawyer Mohamed Abbou was similarly jailed for insult and assault after writing articles on torture and President Ben Ali's autocratic rule. Meanwhile, journalist Fahem Boukadous has also recently been sentenced to four years in prison for allegedly taking part in a social protest which he was covering. His sentence is expected to be confirmed on appeal.<sup>4</sup>

### 1. Arrests on fabricated charges of terrorism and other offences continue

While most of the political prisoners imprisoned in the 1990s are now free<sup>5</sup>, activists are still being jailed on a regular basis. For instance, 20 students were reportedly arrested and imprisoned in November 2009 for taking part in a protest organised by the General Students' Union of Tunisia (Union Générale des Étudiants de Tunisie, UGET), eight of whom were still in prison as of 30 April 2010.<sup>6</sup> On 27 April 2010, the TMG mission was present when an appeals court in Gafsa confirmed a four-year sentence against activist Hassan Ben Abdallah for alleged involvement with the 2008 social protests in the region.<sup>7</sup>

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<sup>2</sup> Association Internationale de Soutien aux Prisonniers Politiques (AISPP); Liberté et Équité; Association de lutte contre la torture en Tunisie (ALTT); Ligue Tunisienne de défense des droits de l'Homme (LTDH)

<sup>3</sup> The only independent organisation allowed to visit prisons on a regular basis is the Red Cross and it is not allowed to make its reports public; other organisations which have been granted prison visits have reportedly been shown the blocks with better than average conditions. Media coverage of politically motivated trials or prison conditions is restricted, as are the activities of the human rights organisations that work with political prisoners, most of which have not been allowed to register with the authorities and are therefore officially illegal. Many families of political prisoners are also anxious that their children should not be identified due to fear of further harassment.

<sup>4</sup> Some members of the TMG delegation travelled to Gafsa to attend the appeal hearing of Fahem Boukadous scheduled for 27 April. However, Boukadous was admitted to a clinic after suffering a severe asthma attack on 26 April and the hearing was postponed until 18 May and then to 22 June. While in Gafsa, the TMG attended the appeal of a related case, that of activist Hassan Ben Abdallah who had also been sentenced (in absentia) to four years in prison for alleged involvement with the 2008 social protests in the region. Despite a lengthy and impassioned defence by lawyers, which highlighted numerous irregularities in the trial including allegations that witnesses had been tortured, Ben Abdallah's sentence was confirmed. This would appear to indicate that the same will happen at Boukadous' appeal.

<sup>5</sup> One notable exception is Sadok Chourou, former president of the banned political party Ennahda, who was released in November 2008 after serving 18 years but was re-imprisoned the next month after giving media interviews on prison conditions.

<sup>6</sup> Source: ALTT

<sup>7</sup> See note 4 above

However, the largest group of political prisoners at present are suspected Islamists jailed for alleged terrorist activity, despite the lack of concrete evidence they were involved in either terrorism or violence. Those most affected are young people, some of whom are reportedly tried simply for being in contact with Islamist groups or accessing information on Islam on the Internet.<sup>8</sup> Torture, falsified evidence, summary trials and long sentences are the norm in these cases. This injustice serves to radicalise young people, some of whom become further radicalised in prison. The UN Special Rapporteur on the promotion and protection of human rights while countering Terrorism, who visited Tunisia in January 2010, confirmed that the country's 2003 Anti-terrorism Law (Loi Tunisienne n° 2003-75 du 10 décembre 2003 relative au soutien des efforts internationaux de lutte contre le terrorisme et à la répression du blanchiment d'argent) is being abused<sup>9</sup>. According to one human rights group, the Tunisian government can get away with imprisoning suspected Islamists on political grounds if they can be presented as terrorists rather than members of political or civil society groups.<sup>10</sup>

## 2. Harsh prison conditions and ill treatment

Furthermore, and according to rights groups and former prisoners with whom the TMG mission met, prison conditions are extremely harsh. Cells are dirty and overcrowded, food quality is poor and the medical attention inadequate. Ill treatment in custody is reportedly common, including physical punishment such as beatings, which are reportedly sometimes so severe that the prison authorities prevent prisoners from seeing their families or lawyers so the injuries cannot be seen or reported. Torture is said to be systematic both in police cells and prisons, although allegations are rarely properly investigated and those responsible, in the few cases when it is proven, are rarely held accountable.

According to the International Association of Solidarity with Political Prisoners (Association Internationale de Soutien aux Prisonniers Politiques, AISPP), eight political detainees are known to have died under torture in Tunisia, seven of them in 1991. AISPP has also recorded a further 43 former political prisoners who have died due to lack of medical care in custody or following their release. The true figures are thought to be much higher.

Although one recently released journalist said he had been well treated in prison due to international pressure<sup>11</sup>, others have been less lucky and have been subject to additional punishment one former prisoner likened to a "slow death." Some of these additional punishments include being held for prolonged periods in solitary isolation with very little light, detained in prisons very far from their families, denied access to visits from family or lawyers or reading or writing materials. Relatives of some political prisoners are also sometimes harassed and placed under police surveillance.

The ill treatment does not stop when political prisoners are released, however. Many face further formally imposed controls such as having to report to the police on a regular basis or being denied a passport or access to healthcare. Meanwhile, harassment such as police surveillance, monitoring of communications, and restriction of the right to freedom of movement or of work are routine and shall be discussed below in

<sup>8</sup> According to Liberté et Equité, around 3,000 young people have been imprisoned for their Islamic views, and of these some 800-900 remain in jail.

<sup>9</sup> See press release issued by the UN Office of the High Commissioner for Human Rights on 26 January 2010: 'UN Expert on Human Rights and Counter Terrorism concludes visit to Tunisia' (available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9772&LangID=E>)

<sup>10</sup> Source: AISPP

<sup>11</sup> Zouhayr Makhoulouf (see interview below)



the section on Administrative Sanctions<sup>12</sup>. With an estimated 10,000 former political prisoners in Tunisia<sup>13</sup>, the potential scale of such repression is almost beyond belief.

### 3. Reporting on political prisoners is punishable

Even the subject of political prisoners and prison conditions is highly sensitive for the Tunisian authorities and several journalists or former prisoners who have spoken out on these matters have been detained for doing so. Zouhayr Makhoulouf was imprisoned in October 2009 for posting testimonies on the Internet relating to the deaths under torture of political prisoners, and on 24 April 2010 was beaten and arrested by police after reporting about an imprisoned activist. Sadok Chourou, former president of the banned political party Ennahda, was released in November 2008 after serving 18 years in prison but was jailed again a month after his release for talking to the media about prison conditions.

Furthermore, and in an effort to prevent journalists from reporting on the court hearing of Taoufik Ben Brik in November 2009, journalists were prevented by plainclothes police from accessing their newspaper offices.

Also, the books and published works of a number of former political prisoners, including those by Taoufik Ben Brik, Hamma Hammani, Moncef Marzouki and Cheikh Larbi Akrimi are banned.<sup>14</sup> Even *Mon combat pour les Lumières*, a book written by Mohamed Charfi, former Minister of Education under President Zine Abidine Ben Ali, published in France after his death in 2008, is still awaiting government approval to make it to Tunisian book stores. Charfi, who was a political prisoner and one of the founders of the Tunisian League for Human Rights (LTDH) during President Habib Bourguiba's rule, merely criticised some of Ben Ali's top aides in his book.

### 4. Interviews with former prisoners

**Mohamed Abbou:** *human rights lawyer and defender. In March 2005, Abbou was sentenced and imprisoned for three and a half years on various charges including "publishing false reports," "insulting the judiciary" and allegedly assaulting a female colleague, after posting articles on President Ben Ali's autocratic rule and torture in Tunisian prisons on the Internet (for details, see the previous four TMG reports.) He was conditionally released on 23 July 2007 under a general amnesty.*

Upon his release, Abbou immediately fell subject to surveillance which continues today to varying degrees, ranging from a covert police presence outside his home to police physically stopping him from leaving his house. Most guests have also been prevented from entering his home since February 2010, when he invited a known political opponent to his house. Abbou says that repressive measures against those seen as opponents to the government have tightened since October 2009, as this is President Ben Ali's last term in office, which means that he either has to amend the Constitution to stay in office or place someone else at the helm. This has sparked a fear of opposition parties, he said.

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<sup>12</sup> See also the following recent reports on the harassment of former political prisoners in Tunisia: Amnesty International, *Freed but not free: Tunisia's former political prisoners*, March 2010 (available at <http://www.amnesty.org/en/library/asset/MDE30/003/2010/en/11495e9c-da2b-4af1-98bc-67b5b7c97c76/mde300032010en.pdf>) and Human Rights Watch, *A larger prison: repression of former political prisoners in Tunisia*, March 2010 (available at <http://www.hrw.org/en/reports/2010/03/24/larger-prison-0>)

<sup>13</sup> Source: AISPP

<sup>14</sup> Source: Ligue des Écrivains Libres

Abbou has been harassed by airport police on three occasions between October 2009 and March 2010. On 9 October, he was searched upon arriving at Tunis airport and 12 of his books on international and Moroccan law and free expression issues were confiscated. On 27 February, Abbou was stopped and searched by the police at Tunis airport upon his arrival from Morocco. The police continued to insult him even after he turned to tourists and told them he was being harassed by the political police. Abbou was stopped and searched again upon his return from Algeria in March.

Abbou has also had his communications under surveillance. He cannot access his email or his Facebook accounts in spite of paying for telephone and Internet services; as a result he is planning to take the provider Globalnet to court. Furthermore, he believes his telephone is tapped since the police invariably turn up at all meetings he arranges on the phone.

It has also become increasingly difficult for Abbou to earn a living. Some people are too afraid to be associated with an opposition lawyer and he has lost many clients, to the point that he says he can only survive because he has inherited some property, otherwise he would have left Tunisia by now. Other opposition lawyers, he says, have also lost many or all of their clients and simply do not earn enough to eat. Some clients are even prevented from entering the offices of opposition lawyers by police agents posted outside the offices. Abbou and other opposition lawyers have also been subject to fiscal harassment, resulting in massive tax bills.

His family has also been threatened with a number of court cases, once around the time of Taoufik Ben Brik's trial and again around the time Abbou was defending Zouhayr Makhoulouf.

**Taoufik Ben Brik:** *journalist and author, was sentenced to six months in prison on 26 November 2009. Although charged with various crimes including assault, it is widely believed that he was imprisoned for having published articles critical of President Ben Ali during the October 2009 election campaign. He was released on 27 April 2010 having served his sentence in full. The TMG interviewed him one day after his release.*

Ben Brik said that he had health problems in prison due to Cushing's Syndrome, from which he suffers, and not due to his imprisonment. However, prison conditions made him even more susceptible to minor ailments due to his cell being cold and draughty.

In response to an 11-day hunger strike to protest disallowing visits from his family and lawyers, he was transferred to Siliana prison, in a remote part of north-western Tunisia, without anyone being informed. According to Ben Brik, this transfer, regarded as an additional punishment, was illegal as his appeal had not yet been heard. He claims he was also manhandled and force-fed by eight prison guards in the presence of a doctor.

Ben Brik described conditions at Siliana prison as "prehistoric." His cell was small and shared with 18 other inmates, all illiterate and mostly imprisoned for robbery. Ben Brik believes this was a deliberate decision. He was also forbidden access to paper, pens and books and his family had to travel for nearly two hours to reach Siliana and then were only allowed short visits, sometimes lasting only a few minutes. While in prison, Ben Brik's family's house was surrounded by police, which was particularly traumatic for his 13-year-old teenage son. According to Ben Brik's wife, Azza Zarrad, their telephone line has been cut, phone calls abroad are not allowed, their email addresses are hacked into and she fears that even their house may be bugged.

Ben Brik said that the authorities made a number of attempts to negotiate with him, both before and during his imprisonment. The first time was in October 2009, after he began publishing a series of articles about the presidential elections on August 28. On October 13, following an article critical of the President, Ben Brik received a phone call from a former activist and political prisoner whom he used to know but had not heard from since 2004. This person advised Ben Brik to stop writing against the President in exchange for a job as a government minister or advisor. Should he accept, the contact said, all his problems, including the fact that Ben Brik's brother is not allowed to practice law because of his political activities, would be resolved. The man now apparently works for one of the President's sons-in-law.

On 19 November 2009, the day of his trial, Ben Brik received a message informing him that the Ministry of Justice would be lenient if Ben Brik told the media, particularly Al-Jazeera, that he had faith in Tunisian justice. In prison, he was also repeatedly asked by the authorities to sign a document stating that he would not write against Ben Ali and his family after his release. He refused all such offers.

Ben Brik's plans now are to continue writing and to cause trouble for the President or "*emmerder le Président*," as he put it. While in some other countries, journalists are killed, he said, in Tunisia it is the profession of journalism that has died in so far that there are practically no journalists in the country who know how to write investigative pieces. Instead, he continued, there are some free-minded people who want to express themselves. "Writing is the only battle that will harm Ben Ali – it's the only way of getting to him," he added. "Lawyers should stop defending people because [the justice system] is a farce," he concluded.

**Slim Boukhdhir:** *freelance journalist and blogger (former contributor to the London-based newspaper Al Quds Al Arabi and Dubai-based Al Arabiya.net)*

Boukhdhir was arrested on 26 November 2007 presumably because of some articles critical of the Tunisian authorities, in particular an exclusive article he wrote on the withdrawal of Tunisian nationality from Suha Arafat, widow of the late Palestine Liberation Organisation leader Yasser Arafat. He was stopped by the police as he was leaving Sfax, a city in south-eastern Tunisia, forced out of his car, insulted and accused of being a spy for the US Embassy.

He was charged for attacking a government employee and violating "public morality standards," and was taken to Sfax prison and placed under the responsibility of the "political security" department. He was later brought to court and sentenced to one year in prison. Boukhdhir eventually spent eight months in jail, all of which were spent in solitary confinement. The first four months were spent in a 2.8 x 2.8m cell with no light. He was later given a television.

Since his release on 21 July 2008, Boukhdhir has found it more difficult to work as a journalist.

Furthermore, the authorities have failed to return Boukhdhir's identity card – stolen, according to him, by plainclothes police who kidnapped him on 28 October 2009 following an interview with the BBC; therefore making it impossible to use most Internet cafés, which under government orders have to keep a record of all customers' identity details.

On 28 October 2009, and upon Boukhdhir's return home after giving an interview to the BBC, he was abducted by plainclothes police, he said, who took him to a park, robbed him and beat him, leaving him with a broken nose and injuries to the head, which required hospital treatment. On 7 and 8 November 2009, plainclothes police prevented Boukhdhir and his family from leaving their house for 48 hours.

**Zakia Dhifaoui:** *journalist and teacher*

Dhifaoui was arrested on 27 July 2008 during a women's demonstration demanding the release of political prisoners which she was covering for the opposition weekly newspaper *Mowatinoon*. As she was taking some photos, a group of people approached her, insulted and attacked her and took her camera. They turned out to be policemen and they took her to the station for questioning. There they allegedly beat and humiliated her and asked her to sign a false confession saying that she had been chanting anti-government slogans, participating in an illegal gathering and blocking traffic. She initially refused to sign but was later forced to do so as the policemen harassed her sexually and threatened to rape her.

Dhifaoui was sentenced to eight months' imprisonment, later reduced to three and a half months on appeal. She says the authorities deliberately set her sentence at more than three months to make it possible to fire her from her other job as a school teacher, for under Tunisian law anyone jailed for more than three months is barred from public sector employment. However, in this case Dhifaoui was actually dismissed by the school she worked for two days before the court's decision. She went to court to fight the decision but says that the authorities are obstructing the process.

After her release from jail, Dhifaoui continued her work as a journalist, but the police kept confiscating her recorders and cameras and preventing her from attending public meetings or press conferences. "I could not bear all that and decided to stop working," she said. "I have had no income for months, except what friends and relatives give me from time to time."

**Zouhayr Makhlof:** *correspondent for the news website Assabil Online and the opposition weekly newspaper Al-Mawkif and political activist.*

Makhlof believes his arrest and imprisonment were triggered by items he posted on the Internet about the deaths under torture of two political prisoners in 1991 rather than his report on environmental problems, which probably served as the excuse to jail him. To date, he has posted a total of 98 photos and interviews on human rights abuses on *Assabil Online* and YouTube.

On 8 October 2009, Makhlof posted online testimonies from former political prisoners who confirmed that the student activist Faisal Barakat who died in custody in 1991 had died as a result of torture, rather than in a road accident as the authorities claimed. On 10 October, Makhlof posted images of an Islamist who also died under torture in 1991. On 11 October, he posted a report on pollution in the industrial area of Nabeul. The next day he was summoned by the police because he had supposedly interviewed someone without his permission. He was summoned for further questioning on 14, 18 and 20 October. A defamation lawsuit was brought against Makhlof by a man who had briefly appeared in his aforementioned documentary on pollution. The plaintiff allegedly recognised himself from a clip on Youtube and then complained that he had not given permission to be filmed. He had been interviewed for about a minute and had spoken about the lack of electricity and sanitation and the problem of pollution. Makhlof believes the police threatened to jail the man unless he disavowed his statements and spoke out against Makhlof.

A week later Makhlof was sentenced to three months in prison, but was held for an additional three weeks. He was not allowed to attend the funeral of his sister who died a few days after the expiry of his sentence. He then went on hunger strike. One week later his appeal was finally heard by the appeals court, which added one month to his sentence and a 6,000 dinar (3,165 Euros) fine. He was released on 12 February 2010 but has yet to pay the fine and the authorities could theoretically seize his possessions to recover it.

Makhlouf, who previously spent two years in prison between 1991 and 1993 for belonging to an illegal group, said that he experienced improved conditions and treatment in 2009. The prison director told him that he would be treated like a prisoner of conscience because of the media coverage of and international pressure. Indeed, Makhlouf said he was not ill treated and was allowed family visits and medical treatment. However he was not allowed to see his lawyer for two and a half months, because the lawyer had, at Makhlouf's request, smuggled out three open letters on prison conditions to the press. After Makhlouf's release he was followed closely by the police for three weeks.

On 24 April 2010, Makhlouf was severely assaulted by police in front of his family and neighbours and then briefly detained. The police questioned him about his posting on the Internet of an interview with the mother of an activist who was assaulted by the police and then imprisoned. However, Makhlouf believes that this may have been a pretext to prevent him from attending a meeting with a French lawyer that evening. He is planning to take the police to court on the basis of the medical certificate showing the extent of his injuries from the attack, which included a broken nose.

**Mohammed Nouri:** *former lawyer and head of the non-governmental organisation Li berty and Equity (Liberté et Equité)*

Nouri was sentenced to six months in jail for writing an article in the now defunct Islamic weekly *Al-Fajr* that claimed that military courts are unconstitutional. He was himself tried in a military court where, according to Nouri, judges have no legal training and there are no possibilities for appeal. As a result, says Nouri, such courts are often used to sentence opposition leaders. Although Nouri was sentenced to six months he was kept in jail for almost a year.

Despite being released almost 20 years ago, Nouri continues to suffer from harassment. He has been subject to fiscal investigation and at one point was ordered to pay 120,000 dinars in tax. This was calculated on the basis of past earnings, even though he was making considerably less money by that point. He was even ordered to pay tax on earnings of another lawyer with the same name as his in Sfax, although he proved that there was an error. As he was also losing clients who were being harassed by the police, Nouri decided to retire from practising law. His home and office are under constant surveillance by police and family members are prevented from visiting. When he travels outside Tunis he is followed by policemen. "If you try to oppose one measure, the authorities will always find a way to get you," he said.

The board members of Liberté et Equité, which include other former political prisoners, are also harassed, and have their phone lines and Internet access tapped. "There is no freedom of expression, association or movement in Tunisia," said one board member. "As a result, civil society is suffocating."

Nouri's son, a small business owner, is also reportedly being persecuted. One evening the police stopped his car and ordered him to get out, which he refused to do. The police then broke his window and he drove off. The police later prosecuted him for "fleeing a car accident" and he was recently sentenced in absentia to four years in prison. Nouri's son is currently abroad and planning to apply for political asylum as if he comes back to Tunisia he will be jailed.

## II. Administrative Sanctions

Tunisia's freedom of expression climate today is marked by a paradox. While the official discourse claims there are no "red lines" in the country, the rights to free expression and association appear to be systematically suppressed. Indeed, according to journalists and human rights activists who met with the TMG mission, the official discourse is an attempt to convince foreign governments of the existence of democracy in Tunisia.

There are only three opposition newspapers (*Al Mawkif*, *Tariq Al-Jadid* and *Mouwatinoun*), which dare criticise the government and consequently face many difficulties to the extent that they are sometimes more accessible in influential Western countries than Tunisia itself. The Tunisian External Communication Agency (ACTE) regularly sends these opposition papers to international groups and agencies and lobbying firms to back its customary claim that freedom of expression is a "fact of life in Tunisia."

Newspapers, such as *Al Mostakbel*, *Al Wehda*, *Al Watan*, *Ettunsi* and *Al Oufok* published by "opposition" parties supportive of President Ben Ali are rewarded for their allegiance to his policies.

Amongst the obstacles facing newspapers in Tunisia are administrative sanctions which in turn take many forms, as examined below.

### 1. Financial pressure through control of advertising and state subsidies; and defamation campaigns in pro-government newspapers

Tunisia's state control of public advertising through the ACTE provides it with much influence as according to opposition newspapers, it withholds advertisements from newspapers critical of the government. As a result, two of the three opposition newspapers, *Al Mawkif* and *Mouwatinoun (Citizens)*, are permanently left without much-needed advertising revenue and are therefore facing intense financial struggles, which have forced *Mouwatinoun* to switch from issuing on a weekly basis to a monthly basis.

The editor of the opposition newspaper *Tariq Al-Jadid*, which receives annual state funds because it is published by a political party represented in Parliament, said that since the presidential and legislative elections in October, his paper stopped receiving public advertising. He subsequently wrote an editorial explaining this phenomenon as punishment for his newspaper's position during the election. "Maybe they wanted to punish us for going on strike with two opposition newspapers," he said.

Another editor of an opposition party newspaper said that he and other party members had to finance their publication from their salaries. While some newspapers, he added, receive absolutely no advertising, the "gutter press" which "specialises in defaming journalists and opposition activists," and enjoys "total immunity" receives the lions share. The editor said that he has been a victim of slur campaigns but that none of the complaints he has filed have been dealt with. Similarly, critical journalists like Neziha Rejiba, Slim

Bagga, Sihem Bensedrine, Taoufik Ben Brik and Lotfi Hajji have also been victims of a defamation campaign against them in the media. Tunisian journalists, particularly Mohamed Krichen of the influential Qatar-based Al-Jazeera Satellite TV and his colleagues, the managing director and even the Qatari ruling family, were targeted in 2009 by an unprecedented government-backed slur campaign mainly for giving voice to Tunisians denied the right to freedom of expression in their own country.

## **2. Access to information hampered and deliberate obstruction of exposure to opposition media and parties**

The TMG mission spoke to a number of journalists who said that they had been prevented from attending press conferences, including those involving visiting foreign politicians and opposition leaders.

Furthermore, as one journalist told the TMG mission, official sources rarely respond to some journalists. “I have my sources... on the municipal council and get different information about mismanagement and corruption at the municipal level for instance ...but when you ask for information from other sources you get total silence.”

Meanwhile, coverage of the parliamentary sessions is strictly controlled. Although the parliamentary question and answer sessions are broadcast on a bi-monthly basis, state TV ends its coverage at 12pm just before the opposition MPs have the chance to pose their questions. Political parties are therefore obliged to resort to their newspapers and websites to report on their activities, which have very little exposure as television remains the dominant source of information in Tunisia. According to the leader of an opposition party, on the rare occasion that the state media was to report on a question posed by his party members, they merely say “a question was posed by a certain member of parliament.”

On one occasion, he added, the speaker of parliament sent a letter to the President, on behalf of all MPs, entreating him to run again. His political party was obliged to clarify that the letter did not represent *its* view. On another occasion the authorities gave instructions to the printing house his party uses to delay the release of their political manifesto for the October elections. The authorities were allegedly unhappy with a few statements, which he could not modify because millions of copies had already been printed. As a result his party lost approximately 9 of the 13 days allotted for publicising its manifesto. In a similar indirect attempt to limit his party’s exposure, the opposition member spoke of when he was suddenly asked to deliver a one-hour speech at 6 pm rather than during prime time as initially agreed.

## **3. Closure of newspapers, banning and confiscation of issues, pressuring kiosk sellers and citizens not to sell and buy opposition newspapers**

According to the editor of an opposition newspaper, the government hinders the distribution of a newspaper sometimes for three days if an opposition newspaper publishes a “sensitive” report. Alternatively, the Minister of the Interior can demand newspapers to be seized from the government-

controlled kiosks. Issues of both *Tariq Al-Jadid* and *Mouwatinoun* newspapers have been banned or saw their distribution disrupted on several occasions.

In spite of exercising some self-censorship with regards to criticising the president, reporting about the private lives of politicians and corruption-related accusations, *Mouwatinoun*, according to its editor, is rarely displayed at newsstands and therefore many Tunisians are even unaware of its existence. So are the issues of the two other opposition weeklies, particularly *Al Mawkif*.

Before President Ben Ali came to power in 1987, he said, the authorities would block an issue and assume the responsibility for doing so. Now they prevent the printing, or seize the newspapers at the kiosks thereby absolving themselves of the responsibility. Indeed less than two months after the President's ascent to power more than 22 years ago following a bloodless coup, the independent weekly *Er-rai* was forced to close down through oblique tactics, which became the normal way to silence critical newspapers. The last issue of this prestigious weekly which did not make it to the newsstands carried a critical column by Neziha Rejiba comparing Bourguiba and Ben Ali and underscoring the need for the new president to genuinely implement his promise to democratise the country.

Still others, according to the managing editor of *Mouwatinoun*, Mustapha Ben Jaafar, "have changed their tune in return for financing they feel they have to accept." He concluded, "We seek compromise within the constraints imposed upon us."

Adel Chaouach, editor of *Tariq Al-Jadid* newspaper of the opposition Ettajdid Movement, said Tunisians sometimes receive text messages warning them against buying the paper so only those committed to the cause purchase it.

Mokhtar Trifi, the president of the Tunisian League for Human Rights (LTDH), concluded, "it has become virtually impossible to express oneself in newspapers."

#### 4. Impeding the start-up process for independent newspapers / associations / radio stations

The Tunisian Press Code decrees that in order to start up a newspaper one must file a dossier to be granted the permission to print.<sup>15</sup>

The managing editor of *Mouwatinoun* said his party was legally acknowledged in 2002, eight years after it was founded. The party's newspaper was launched in 2007 because until then the party was not allowed to undertake any activity outside its office.

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<sup>15</sup> See the first TMG mission report for more on the restrictive press code:  
[http://ifex.org/tunisia/2010/02/16/tmg\\_report\\_feb\\_05\\_free\\_expression\\_under\\_seige\\_en.pdf](http://ifex.org/tunisia/2010/02/16/tmg_report_feb_05_free_expression_under_seige_en.pdf)



Meanwhile, the 28-year-old weekly *Tariq Al-Jadid* of the Ettajdid Movement, according to its editor, has the right to state funding because the political party is legal. The editor, Adel Chaouach, who is also an MP, expressed reservations about the 1959 Law on Associations.

The LTDH president, who is a former secretary general of the now-defunct Association of Tunisian Journalists, said other associations were in a worse condition as they haven't even been allowed to register. In fact, he pointed out; the last legal registration of an association was of the Tunisian Association of Democratic Women in 1989.

Indeed, Neziha Rejiba, editor of Radio *Kalima*, and Sihem Bensedrine, secretary general of Tunisian PEN, have not even attempted to register PEN with the authorities given the repeated refusal to recognise the registration of or even acknowledge receipt of the application from *Kalima* and the Observatory for the Freedom of Press, Publishing and Creation (OLPEC) after several attempts and legal challenges with the support of the TMG.

Similarly, lawyer Samir Ben Amor, secretary-general of the International Association to Support Political Prisoners (Association Internationale de Soutien aux Prisonniers Politiques, AISPP), was physically prevented from applying for official registration, as the application must be submitted in person. They were later invited to apply for registration only to have their application refused without explanation. In 2005, they appealed to the administrative court but no judge has been assigned to the case as of yet.

Others like the founders of groups such as Freedom and Equity (Liberté et Équité), the League of Free Writers, the Association Against Torture in Tunisia and the Tunis Center for the Independence of the Judiciary, were also prevented from applying for legal registration. OLPEC and the National Council of Liberties in Tunisia (Conseil national pour les libertés en Tunisie, CNLT) have not been legally registered after the Minister of the Interior refused to acknowledge their existence.

Radio licenses have faced similar obstacles in spite of the existence of a law to license and regulate private broadcasting. "No license to launch (private) radio stations in Tunisia have been granted to independent-minded people," said Lotfi Hidouri of Radio *Kalima*, whose magazine applied for a licence but the radio did not as it is broadcast on the Internet from a foreign-based server. Salah Fourti (Radio 6), Ziyad EL Hani (Radio Carthage) and Rachid Kechana (Shir'a) have however applied for licenses but have not even received a receipt for their application, which it appears is common practice as legal procedures cannot be initiated without proof that the application was submitted.

## 5. Attacks, arrests, monitoring and threats to journalists, activists and opposition politicians

Journalists, editors, activists and opposition politicians face many threats. They are often under constant police surveillance. Their phone lines and emails are monitored, their websites are blocked and they are often denied access to an international phone line and the Internet. They can face arbitrary arrest on trumped charges, physical assaults and harassment. Their release from prison may be delayed or they may be transferred to remote prisons.

The former president of Tunisia's democratically-elected and since-ousted National Journalists Syndicate of Tunisia (SNJT), Neji Bghouri, has received anonymous phone calls threatening him and has often been over the past five years under police surveillance. His problems started after he and other leading journalists at the now-defunct Association of Tunisian Journalists published a report on the occasion of World Press Freedom Day in 2005. Then after he became president of the newly-constituted union in 2008, he was prevented by pro-government journalists from fully presenting a report on World Press Freedom Day in May 2009. His situation intensified in 2009 when the government decided to take control of the SNJT mainly because Bghouri publicly opposed pressure to have SNJT express its support for President Ben Ali's candidacy for a fifth term in office in the 2009 October elections. The day of the eviction of the democratically elected SNJT board headed by Bghouri in mid-August 2009, the pro-government board and journalists sent a message of allegiance to Ben Ali for his "sustained keenness on further promoting the Tunisian media landscape."

Citing the cases of Ben Brik and Slim Boukhdhir, who was accused of insulting a policeman, an independent reporter said on condition of anonymity, "journalists are not imprisoned directly because of what they have written, but on other, trumped-up charges." He added, "We are not even given the honour of being charged for what we have written."

Meanwhile, Sofiene Chourabi, another independent journalist interviewed by the TMG mission said that since the elections in October 2009 and contributions to a foreign newspaper he "joined the list of journalists who are harassed... because I said [the elections] weren't free and fair." On a recent visit to another Arab country, he said, his Tunisian host was asked at the embassy if she knew him or the popular Europe-based Tunisian blogger Sami Ben Gharbia.

There is no doubt that there is systematic control of Tunisians outside the country through the Tunisian embassies and consulates, he added citing an incident in 2003 when an individual followed Tunisian participants to a conference in Morocco organised by the National Council for Liberties in Tunisia (CNLT). The editor of *Mouwatinoun*, the newspaper of the opposition party the Democratic Forum of Labour and Liberties (le Forum Démocratique pour le travail et les libertés), also reported similar experiences abroad.

Yet another restriction afflicting Chourabi and others is the blocking of blogs, websites and Facebook groups. Scores of blogs – as well as news, human rights and political websites, including those of opposition parties – are locally blocked<sup>16</sup>. The LTDH website has been blocked since 2005. Chourabi said that his blog and Facebook account are blocked in Tunisia and he is forced to changing its address often. While he uses a proxy server to access his Facebook account his 'friends' are unable to do so and instead get '404 not Found' on their screen.

Chourabi also pointed out that since 24 April 2010, the opposition newspaper website *Tariq Al-Jadid* has been blocked, without any justification. Similarly the blog of Bassam Bounenni, a Qatar-based Tunisian journalist who works for Al-Jazeera, is also blocked in Tunisia. So is the blog of journalist and activist Zied El Heni. "We are kept in the dark," Chourabi lamented.

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<sup>16</sup> See Annex 1 and refer to the OpenNet Initiative report on Tunisia at <http://opennet.net/research/profiles/tunisia>

The number of blocked blogs keeps rising. In September 2009, Mohamed Bouebdelli, founder of Tunisia's first private university, the Université Libre de Tunis (ULT), saw his blog blocked immediately after posting a book in which he explained how he realised that Tunisia, which for decades seemed one of the most qualified Arab countries to become a democracy, "was no longer a land of freedom." Published in France and posted on the Internet, this book apparently prompted the closure of this renowned private university allegedly for "administrative and pedagogical irregularities."

On a different front, Chourabi described how he was stopped and cross-examined as he was returning from reporting on protests in Gafsa in January 2007. In January 2008, and during his presence at a Gaza-solidarity demonstration, someone snatched his camera and ran off with it. The police deemed the incident as theft. Journalist Ayman Rezgui also had his camera confiscated and was briefly detained in April.

The managing editor of *Mouwatinoun*, Mustapha Ben Jaafar, also spoke of his experience of living under constant surveillance. Phone lines are cut particularly when he speaks to international media corporations such as the BBC or Al-Jazeera and police always show up to all meetings he schedules over the phone, he said. Organising conferences has also been problematic, he said.

This constant surveillance has triggered a move towards the Internet only to have the authorities follow, in a "cat and mouse game," as the editor put it. Indeed, his access to the Internet has been blocked although he pays for a subscription.

"Under a 24-hour siege" is how journalist and editor-in-chief of Kalima Radio Neziha Rejiba chose to describe her experience. Her phones continue to be tapped and there is constant police surveillance, even following her to her brother's funeral in 2007. Internet access at her home and her husband's office, which she used for a while to access her email, has been cut or most sites were blocked. She and lawyer Radhia Nasraoui both reported receiving threatening and insulting calls from Egyptian and Algerian numbers. So did other journalists, including Bensedrine, Ben Brik, Boukhdhir, Hajji and El Heni.

At least three journalists, Bensedrine, Ben Brik and Bagga (who has been living in exile for nearly two decades), received death threats from anonymous callers or plainclothes police or by mail since 2009. This rather disturbing development, prompting serious fears for their lives, was unheard of before last year.

Given the constant surveillance and pressures, the Tunisia PEN Centre, founded in August 2009 has been unable to function properly. Some writers have expressed their fear of joining PEN due to its unregistered status and the government's negative portrayal of individuals who work with international organisations.

The League of Free Writers, an unregistered association which was tolerated between 2001 and 2004, has since been subject to such harassment. Organising events with other groups and even holding meetings has become more difficult. The League's meeting in May 2010, planned to be held at the Tunis office of an international organisation which supports civil society organisations, was obstructed by the police.

Prior to and during the electoral campaign, when President Ben Ali and his wife got the lion's share of media coverage, journalists and activists monitoring the elections were tightly restricted. French journalist Florence Beaugé of *Le Monde* was refused entry to Tunisia in October when she arrived to cover the elections. Local

journalists and rights activists covering and monitoring the elections found their freedom of movement was tightly restricted.

Many human rights lawyers, including Mohamed Abbou, Abderraouf Ayadi, Ayachi Hammami, Mokhtar Jellali, and Radhia Nasraoui have had their phone and emails bugged and many of their clients decline their services due to political police pressure and intimidation.

On 24 April 2010, police came to the home of Makhlouf, a former prisoner of opinion<sup>17</sup>, and arrested him on the grounds that he had posted online images offensive to Tunisia. He was physically assaulted by the police and detained for three hours although the police did not have a warrant. The incident was reported on Al-Jazeera and TMG mission members and Abbou took pictures of Makhlouf's injuries. The reason for the arrest may have been that Makhlouf had planned to meet a visiting French human rights lawyer.

The TMG mission members set up an appointment with Radio Kalima's Mouldi Zouabi and Lotfi Hidouri. But Zouabi decided not to leave his home city and go to Tunis for the meeting because he was afraid the police (who presumably knew about the meeting from listening in on Hidouri's telephone conversations, and then intensified their presence near his home) would prevent him from travelling to Tunis. Zouabi has often been harassed or assaulted by the police.

## 6. Pressure on journalists and editors in the workplace

Many of the independent journalists with whom the TMG mission spoke believe that editors-in-chief of private newspapers, with a few exceptions, cannot be hired without the approval of the government. This means that even among the many private newspapers in Tunisia there is no editorial independence

Journalists and editors are threatened with expulsion from their newspapers and are at times denied access to their offices. A journalist told the mission that he arrived at work a few weeks ago only to find his office locked. He has since lost access to the Internet and telephone.

The editor of the opposition newspaper *Tariq al-Jadid* said the managing editor of the paper was prevented from accessing his office presumably because an opposition figure visited the newspaper. Another newspaper editor and opposition party official said that police forbid some individuals from attending events organised at the party headquarters.

Chourabi said that he was also prevented by plainclothes police from entering his newspaper on the day of Ben Brik's hearing in November. A *Tariq al-Jadid* journalist was prevented from accessing Ben Brik's court hearing. Critical journalists are often denied access to politically motivated court hearings

Meanwhile Hidouri recounted how on 29 January 2009, a few days after Radio Kalima started to broadcast on satellite, police prevented journalists from accessing the office and confiscated everything from

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<sup>17</sup> See interview with Makhlouf above

recorders, cameras, computers, and books, to batteries and even paper. The police then changed the locks of the office and announced through the official media that a legal case had been initiated against Bensedrine for allegedly “using an apartment in Tunis for radio transmission without a license.” The Italy-based Internet Radio Kalima called this accusation “groundless.”

Despite this attack on Radio Kalima, the radio resumed transmission one day later. Its reporters, Faten Hamdi, Moez El Bey and Moez El Jamai, continue to work from their homes and other locations, despite continuous assaults and restrictions.

### **7. Preventing travel through confiscation of passports, or court hearings coinciding with travel plans**

As discussed above, many former political prisoners have been denied a passport. Many journalists, judges and activists have reported their passports and ID have been confiscated, or delayed in being renewed, said LTDH President Mokhtar Trifi. This prevents them from travelling. Another punitive measure is to prevent their children or relatives from obtaining passports.

At other times, other measures may be taken to prevent travel. Mohamed Abbou was recently invited by the TMG to the 47<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR) and NGO forum in Gambia<sup>18</sup> in May. However, just before he was due to depart, he and two other prominent and routinely harassed human rights lawyers sharing the same office, were called to appear in court for a case regarding eviction from their office, thus preventing him from making the trip.

### **8. Confiscation of books at the airport and book censorship**

The confiscation of books at Tunis airport is a common occurrence, which intensified after the publication of *La Régente de Carthage*, about the life of President Ben Ali's wife Leila Trabelsi, just before the October 2009 elections. According to Mohamed Abbou, who provided the TMG mission with a list of books taken from him at Tunis airport on 9 October 2009, an airport official told him that they had recently been ordered to confiscate all books (See Section I.4. above.)

The police also confiscated books, including two copies of the Committee to Protect Journalists (CPJ) annual report, *Attacks on the Press* from Lotfi Hidouri who returned on the same flight with Abbou from Morocco in February 2010. According to Abbou, Hama Hammani of the Tunisian Workers' Communist Party, was similarly harassed and beaten by police at Tunis Airport in October 2009 upon arrival from Paris and had his books confiscated – presumably for criticising Ben Ali on Al Jazeera.

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<sup>18</sup> See TMG statement from the ACHPR: [http://ifex.org/tunisia/2010/05/12/tmg\\_achpr/](http://ifex.org/tunisia/2010/05/12/tmg_achpr/)

One journalist interviewed by the TMG mission said he had had books confiscated at the airport three times and has his luggage thoroughly searched every time he travels. Most of the books confiscated, he said, were not even related to the internal affairs of Tunisia and include a report by the Cairo Institute for Human Rights Studies (CIHRS), a book on how to manage institutions and copies of the independent Moroccan weekly *Nichan*.

The head of one of the opposition political parties said he has also been subject to this measure at Tunis airport, although it occurred less often now that he is the head of a legal political party. Still, they continue to search his luggage without his knowledge and some materials he obtained from an international conference in Paris has gone missing.

Likewise, Rejiba told the TMG mission of having to go through similar searches by apologetic police.

According to lawyer Mokhtar Jellali, although the requirement to register books according to the legal submission system (*dépôt légal*<sup>19</sup>) under the Tunisian Press Code was abolished by the President in 2007 – a move he sees as one aimed at appeasing the European Union (EU) and achieving Tunisia's "advanced status," books are still controlled in several ways. Printers continue to be threatened and pushed into refusing to print a book. If a book does manage to be published, the authorities can confiscate and destroy the copies. While these measures do not discourage bookshops from stocking books because they get them on sale or return, the publishers bear the brunt and the losses. Indeed, getting published in Tunisia has become quite difficult even for the not so critical authors and poets. As in journalism, authors and poets have turned to the Internet or to foreign publishers.

The 2010 Tunis International Book Fair accurately mirrored the censorship operation as not many new titles made it to the fair. Instead old religious books and children's books were the most dominant. Publishers wishing to have a stand were expected to submit a list of titles to organisers well before the fair. Certain books are vetoed at this level, others confiscated upon arrival at customs and still others removed from the stands at the fair.

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<sup>19</sup> The *dépôt légal* (legal submission) of the Tunisian Press Code stated before its cancellation that publishers should deposit copies of new books with the Ministry of Culture, the National Library, the Ministry of the Interior and the Public Prosecutor's Office. A receipt issued by the Ministry of the Interior then allowed the distribution of the books within the country. But the receipts were often unforthcoming, preventing books from being published and violating citizens' freedom of access to information. On the twentieth anniversary of his accession to power, 7 November, 2007, President Ben Ali announced his decision to remove administrative control on books, publications and artistic works. This decision was formally implemented in 2008.

**The rules of a relentless censorship: "Le Paradoxe Tunisien"**

*by Lotfi Hajji, Tunisian journalist, and former President of the Tunisian Journalists Syndicate*

This Tunisian paradox is based on two fundamental principles:

- On the one hand, the official rhetoric claims the government is committed to human rights and observance of the law. One example of this is favourable messages each year on the occasion of World Press Freedom Day by pro-government journalists in the union, or the Higher Communication Council, which lauds President Ben Ali for "his unwavering support to journalists and communicators, to ensure the existence of a free, objective and pluralistic information likely to consecrate a healthy democratic process and contribute to enhancing a developed and organised political life."
- On the other hand, and in practice, the state strongly represses freedom of expression, independent journalists and human rights defenders.

In addition to this fabricated and official rhetoric, the government further attempts to hide or downplay its repressive practices by reminding the international community that it has ratified all international conventions relating to freedom of expression and human rights.

See: Tunisian News Agency (TAP) 3 May 2010, *Higher Communication Council extends sincere consideration to President Ben Ali*

[http://www.tap.info.tn/en/index.php?option=com\\_content&task=view&id=7733&Itemid=28](http://www.tap.info.tn/en/index.php?option=com_content&task=view&id=7733&Itemid=28)

### III. Independence of the judiciary and freedom of expression and information

The Independence of the judiciary was a recurring demand of the Tunisian Association of Magistrates (AMT) until the government dismissed its democratically-elected board in 2005. Previous TMG missions highlighted the obstruction to an independent judiciary as a stumbling block to freedom of expression and democracy in Tunisia.

In an open letter dated 6 July 2001, judge Mokhtar Yahyaoui alerted the Head of State, in his capacity as Chair of the Superior Council of Magistrates (*Conseil supérieur de la Magistrature*), to the diminishing margin of independence available to the Tunisian judiciary.

While the judiciary may include many diverse actors such as legal experts, ushers, notaries, clerks, lawyers and other auxiliaries of the judicial system, the most important role falls on the magistrate, the judge who is “custodian of the law.

The refusal of any external interference or pressure to safeguard the impartiality of the judiciary is a key prerequisite for a functioning democracy and for an effective judicial protection of freedom of expression.

In authoritarian and repressive systems or when the judicial system is part of the executive and is not independent, there is no judicial protection granted to those prosecuted for legitimate expression or in cases relating to free expression in general.

While assessing the independence of the judiciary is a complex endeavour as it includes issues of judicial education, judicial appointments, budgetary requirements for judicial system, salary requirements for judges, disciplinary systems over judges and control, possibility for removal of a judge, case filtering and a tracking system, among other dimensions, the TMG mission has chosen to focus on structural issues that can shed some light on why judicial protection is lacking.

A more thorough assessment will be conducted at a later stage focusing on the way free expression is protected/not protected in the justice system in light of the functioning and structure of the judicial system in Tunisia.

#### 1. International and national provisions guaranteeing independence of the judiciary in Tunisia

Tunisia has signed, ratified or is party to many national and international obligations. Among those: The African Charter of Human and People’s Rights, adopted on 26 June 1981 by the 18th Summit of the Organisation of African Unity and which came into effect on 21 October 1986, was ratified by Tunisia on 16 March 1983.

Article 6 of the Charter grants all individuals the right to freedom and integrity of their person and Article 7 guarantees the right to be heard, which includes access to a qualified judge, right to defence, the presumption of innocence and the impartiality of justice.



The Tunisian State adheres to certain statements of principles such as the Universal Declaration of Human Rights (1948) whose Articles 8, 9, and 11 guarantee all citizens access to an equitable and fair justice system and recognise the presumption of innocence.

The Tunisian State also ratified in 1969 the International Covenant for Civil and Political Rights (ICCPR). The ICCPR underscores in Article 14 the necessity of State parties to uphold the independence of the judiciary so as to ensure the proper administration of justice. It states: "In the determination of any criminal charge against him, or of his rights and obligations in a suit as law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

For such statements to be effective, some principles should be upheld, among which:

- the independence of the judiciary, as stated by the 7th congress of the UN for the prevention of the crime which was held in Milan (26 August – 6 September 1985)
- the un-removability of the judges as stated by UN General Assembly's resolutions 40/32 of 29 November 1985 and 40/146 of 17 December 1985.

At national level, the preamble of the Tunisian constitution pledges to entrench democracy built upon its people's sovereignty and a stable political regime based on the separation of powers.

The constitution further states that:

- Judgments are made in the name of the people and are carried out in the name of the President of the Republic (article 64);
- The judiciary authority is independent; the magistrates are subjected in the performance of their duties only to the authority of the law (article 65);
- Magistrates are appointed by a decree of the President of the Republic on a proposition from the Superior Council of Magistrates. The methods of their recruitments are laid down by the law (article 66);
- The Superior Council of Magistrates whose composition and missions are laid down by law looks after the guarantees granted to the magistrates with regards to their appointment, promotion, relocation and discipline (article 67).

Finally the law n° 67-29 of 14 July 1967 modified by the organic law 2005-81, 4 August 2005 establishes the Superior Council of the Magistrates, its composition and mission. The Superior Council is chaired by the Head of State.

## 2. Assessing independence of the judiciary and freedom of expression in Tunisia

Independence of the judiciary is a key ingredient to freedom of expression, freedom of association, human rights activism and to a transparent and democratic political system.

#### Widening the spheres of persecution of FOE and HR in Tunisia

“CARTHAGE, May 19, 2010 (TAP) – The Cabinet meeting was held, on Wednesday, under chairmanship of President Zine el Abidine Ben Ali.

Given the importance of the economic security in enhancing the homeland's invulnerability and preserving the citizens' vital interests, the meeting examined a draft law completing the provisions of Article 61a of the Penal Code, by adding measures, that .... any Tunisian who establishes deliberately contacts with foreign sides instigating to harm Tunisia's vital interests will be sanctioned. And the country's vital interests are anything that has to do with its economic security.

This bill is part of bolstering efforts to protect the foundations of economic security in the context of the changes experienced by the world which imply the preservation of Tunisia's vital interests against any form of violation, as is the case for the laws in a number of states. President Zine el Abidine Ben Ali stressed that the protection of Tunisia's vital interests against any harm or violation is a national responsibility which is dictated on all Tunisians, given the evolution experienced by the world which have consecrated the economic dimension as a key priority in strengthening the basis of stability and invulnerability.”

This draft law is yet another instrument to stifle freedom of expression, freedom of association and is part of the intimidation legislative arsenal enacted by the Tunisian government to prevent FOE and HR activists to interact with “foreign” colleagues, institutions and to freely seek, receive, and impart information and ideas through any media and regardless of frontiers.

Tunisian HR and FOE activists, academics and opposition parties view this draft law on Tunisia's vital interests as “extremely dangerous and another step toward using the judiciary to criminalise contacts with international groups and institutions.”

With a crime so vaguely defined and a possible prison sentence of up to five years in peacetime, and 12 years in war, it is conceivable that such a law will be used to target Tunisians who meet with international activist groups, who have urged the European Union to reconsider preferential trade agreements with Tunisia because of the country's poor human rights performance. The law could also be used against any Tunisian who reports abuses they have been victims to an international fact finding mission or against any Tunisian who makes a statement at an international conference.

The 2010 TMG mission conducted interviews with magistrates, lawyers, academics, human rights activists, politicians and journalists to assess whether their demands of an independent judiciary have received proper attention. Interviews aimed to determine whether the Tunisian government is complying with the above international and national provisions to which the country is signatory and what may account for the lack of effective enactment and implementation.

All interviewees were of the view that the independence of the judiciary is not guaranteed in Tunisia. In particular they noted that “spheres of how persecution is done are actually being widened” and that “no

freedom and peace are granted to magistrates and their organisations unless they show allegiance to the executive power.”

The following are excerpts from interviews conducted by the mission. Names and occupations of interviewees are concealed to protect the security and integrity of our informants.

In 2004, the AMT initiated a reform of the law on the statute of the magistrates with the objective to ensure the professional promotion of magistrates and their independence. The motion was rejected by the Justice Minister and the democratically elected nine-member Board of the AMT, which included three women, was evicted and most of the members removed and relocated many kilometres away from Tunis.

When asked about the independence of the judiciary, most interviewees said that no judge or magistrate can be free in Tunisia. “The Minister of Justice intervenes in your life from the day you are appointed to the day you retire. Your mobility is restricted and the Ministry decides when you can leave the country, if at all, even if it was for your annual leave,” said one interviewee.

Some of those interviewed said that they had been forced to miss international congresses as they did not get an authorisation from the Minister to leave the country. In addition to disallowing travel, some have complained of having to miss the local Magistrates Congress in Tunis “because the police prevented them from going out of their house on that day.”

While some of the interviewees acknowledge that there is a provision in the statutes of the magistrates that allows the Minister to do so, they are convinced it has “become a weapon in the hand of the Minister since 2005 after the legitimate AMT board challenged the Minister and was disbanded.”

Another complaint voiced during most of the TMG mission's meetings was that there are no transparent criteria for the promotion of magistrates, and their terms and work conditions. “We can be removed and relocated anywhere, anytime. We are not protected at all. How do you expect the judge to say the law, to express an independent voice and standpoint when a human rights defender or freedom of expression campaigner is brought to court before them?” asked one of the judges.

There cannot be any talk of an independent judiciary, they added, when more than 80% of the members of the Superior Council of Magistrates out of 36 members are appointed by the Executive power and can be fired anytime by that very same Executive power.

Article 18 of the law n° 67-29 of 14 July 1967 modified by the organic law 85-79 of 11 August 1985 “strictly prohibits members of the judiciary to go on strike or undertake any joint action likely to disturb, stop or block the functioning of the jurisdictions.”

According to the interviewee, that provision is vague thus opening the door for several interpretations. “It is not only the right to strike which is prohibited, but any joint or concerted action. In fact, it is simply an outright prohibition of the right for magistrates to form a trade union; which is the only right guaranteed without any limitation by the Tunisian constitution. This legislative prohibition is purely and simply anti-constitutional,” the interviewee said.

When asked about the origin of the tense relationships between the AMT and the Ministry of Justice, most of the magistrates who met with the TMG mission point to the time “when the AMT endorsed the written statement issued by the lawyer and human rights defender Mohamed Abbou denouncing “the abuses and attacks against the inviolability of the court.” Abbou, as discussed above, was sent to jail and brought to court in March 2005.

Yet another point of contention between the two bodies was when the AMT proposed to reform the law on the statute of the magistrates. Three main questions were at the core of the clash: the revision of the composition of the Superior Council of Magistrates, especially the mode of appointment of magistrates, the requirement of the prior consent of magistrates for any measure of relocation from the working station, and the possibility of redress against power abuse in disciplinary decisions by the Superior Council of Magistrates.

These claims triggered three reactions from the government including the transfer of approximately one third of the members of the AMT executive board, most of whom are magistrates, from their place of residence to other cities. Five of them were relocated to district courts far from Tunis.

- Kalthoum Kennou, Secretary General of the AMT, was sent to Kairouan.
- Wassila Kaâbi, member of the Board, appointed to Gabes
- Essia Labidi and Leila Bahria, members of the administrative commission, were moved to Kasserine.
- Noura Hamdi, active member of the association, was moved to Médenine.

While this may seem like a trivial managerial decision, it is actually perceived as a disguised sanction, aiming at ensuring control over the association. “The effects over the normal course of the association and the personal life of the magistrates had very heavy consequences,” interviewees pointed out.

Indeed, the quorum of the executive board became practically difficult to reach and its deliberations were thus blocked. At a personal level, the women magistrates who were removed from their city of work encountered personal difficulties including the separation from their families.

The “punitive” measure brought back to the centre of the debate the principles of un-removability of the magistrates as well as the guarantees of independence necessary to carry out their duty.

The second reaction was through the Parliament when they adopted a law<sup>20</sup> on the Superior Council of Magistrates and the statute of magistrates, which was the opposite of what the AMT had demanded, in particular with regards to the independence of the judiciary.

“The third reaction was when government duplicated the organs of the association while blocking the activities of the original one, exploiting its internal divisions, evicting its executive board by organising an extraordinary congress on 4 December 2005 during which a motion was passed withdrawing confidence from the legitimate board members,” said someone interviewed by the TMG.

As for Judge Yahyaoui who had addressed the President of the Republic in 2001, as Chair of the Superior Council of Magistrates – in order to safeguard their margin of freedom, he has since then been denied his basic right to mobility with the non-renewal of his passport. The same applied to one of his children, studying outside the country, who has been unable to renew her passport.

Furthermore, the pressure not to challenge the lack of independence of the judiciary comes from the hierarchy. Yahyaoui wrote the letter to the President “in good faith thinking he could reform the judiciary from the inside” only to discover later with surprise that his hierarchy – to whom he had sent the letter for

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<sup>20</sup> Organic law 2005-81 of August 4<sup>th</sup>, 2005

transmission – refused to do so by asking him to withdraw his letter. According to Yahyaoui, they probably did not want “the letter to remain in the files and go down in history.”

Even the public services play their part in preventing citizens from challenging the executive. That was the case when the post office returned Yahyaoui’s registered letter to the President, claiming “they did not know President Ben Ali’s address.”

The aggressive response from the government has included harassment ranging from opening and delaying Yahyaoui’s mail including letters from his son’s school, to having his office broken into and searched.

Furthermore, colleagues who have shown solidarity have been relocated, threatened and intimidated. “Most judges are now scared. They fear for their careers, and their families. They fear being arbitrarily relocated far from their families. This is not what we had under Bourguiba, even though he was not an angel, but he studied law, he was a lawyer,” he said. “How can you have an independent justice if there is no freedom of expression?” he concluded.

## IV. Conclusion and recommendations

The recent TMG fact-finding mission, on which this report is based, has once again shown that the situation of free expression and association in Tunisia remains in a dire state. The TMG members are particularly concerned by the continued arrests, detentions and intimidations of media practitioners, human rights defenders and legal practitioners in Tunisia.

Journalists continue to have their applications for independent newspaper licenses or radio frequencies ignored and websites and blogs remain blocked and opposition newspapers continue to face legal, administrative and extrajudicial obstacles.

The detention of journalists, lawyers and human rights defenders has not abated. Instead, the authorities have resorted to the use of administrative sanctions, sophisticated tactics and trumped-up charges to punish dissident views and to obstruct the emergence of an independent judiciary.

Indeed, the judiciary's independence has been seriously undermined in recent years and judges who have challenged this worrying situation have been removed from their positions, harassed, put under constant police surveillance, and sent hundreds of kilometres away from their families.

The mission members have also noted, with concern, the contrast between the country's highly visible institutional and legislative architecture and the notable failure of those very institutions and laws to support independent and credible journalism, protect human rights activism and entrench an objective judiciary.

The following 18 recommendations are based on the statements made by the wide variety of civil society representatives which the TMG mission members met and the TMG's thorough assessment of the situation in Tunisia.

The TMG strongly urges the Tunisian government to:

- Drop all charges against journalist Fahem Boukadous, sentenced in January 2010 to four years in prison for allegedly taking part in social protests which he was merely covering, and whose appeal hearing is due to be heard on 22 June 2010.
- Release all prisoners of opinion detained for their publicly expressed political, religious or other beliefs and who have not used violence or advocated violence or hatred.
- End the persecution of former political prisoners and their families and lift restrictions on their right to earn a living and other basic rights.
- End the practice of prosecution and imprisonment of journalists, lawyers, activists and others who voice dissent on common law offences or under counter-terrorism legislation; cease other forms of harassment including monitoring of phones and emails and blocking access to the Internet.
- Repeal all provisions in the Penal Code, Press Code and other relevant laws which criminalise the peaceful exercise of the rights to freedom of expression, association and assembly; this should include the decriminalisation of defamation.
- Review the 2003 anti-terrorism legislation in line with the January 2010 recommendations of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

- Ensure that prison conditions and the treatment of prisoners comply with the standards specified by international law such as the United Nations Minimum Rules for the Treatment of Prisoners and the Convention Against Torture, to which Tunisia is party, and that any allegations of ill treatment or torture are properly investigated and those responsible for the abuses are brought to justice. Tunisian and international independent human rights organisations should be permitted to visit prisons, and to make their findings public.
- Grant legal registration to Tunisian non-governmental organisations that work with current and former political prisoners and other human rights NGOs and to allow them to carry out their legitimate work unimpeded.
- Stop blocking blogs, websites and Facebook groups which contain alternative news and opinions, or are operated by human rights groups and political parties.
- Ensure that public advertising and state subsidies managed by the Agency for External Communication are fairly distributed among media outlets, regardless of their editorial stance.
- Refrain from influencing decisions on naming editors-in-chief of newspapers and from applying pressure on employers, including media outlets, to fire, not to hire in the first place, or to harass, critical journalists and activists.
- Allow all journalists and activists – regardless of their views – access to information, including press conferences held by opposition politicians and visiting foreign dignitaries.
- Cease using oblique tactics to strangle critical newspapers, banning issues, and pressuring kiosk owners not to sell, and citizens not to buy such newspapers and lift all impediments to starting up truly independent newspapers, broadcasters and associations.
- Deliver receipts for applications submitted for radio licenses
- Cease harassing critical journalists and activists when they travel abroad or return; refrain from unnecessary searches, as well as the confiscation of books passports and IDs, to effectively prevent travel abroad.
- Refrain from undue interference in the election of the Superior Council of Magistrates and put in place an effective, transparent and fair election model of the majority of the magistrates by the magistrates themselves.
- Grant the Council the means and guarantees to effectively manage the judges' career (recruitment, promotion, relocation and discipline) and in particular modify law 67-29 of July 14<sup>th</sup> 1967 to include a rule that forbids the relocation of magistrates without their consent and due consideration of their familial situation.

The TMG recommends media practitioners, state-owned media outlets, as well as private outlets that are close to the government to:

- Ensure that any criticism – especially of other, independent journalists and advocates – falls within the parameters of a voluntary editorial code of ethics and does not cross the line to deliberate defamation.

## Annex 1: Sample of locally blocked websites in Tunisia:

SOURCE: OLPEC (as of 28 May 2010)

Arabic Network for Human Rights Information (ANHRI) [www.anhri.net](http://www.anhri.net)

World Organisation Against Torture (OMCT) [www.omct.org](http://www.omct.org)

Reporters Without Borders (RSF) [www.rsf.org](http://www.rsf.org)

Front Line [www.frontlinedefenders.org](http://www.frontlinedefenders.org)

IFEX [www.ifex.org](http://www.ifex.org)

Euro-Mediterranean Human Rights Network <http://en.euromedrights.org/>

Freedom House [www.freedomhouse.org](http://www.freedomhouse.org)

Observatory for Freedom of Press, Publishing and Creation (OLPEC) [www.olpec-marsed.org](http://www.olpec-marsed.org)

The Initiative for an Open Arab Internet <http://www.openarab.net/>

### New Websites and video sharing:

[www.dailymotion.com](http://www.dailymotion.com)

[www.youtube.com](http://www.youtube.com)

[www.afrik.com](http://www.afrik.com)

[www.aljazeera.net](http://www.aljazeera.net)

<http://www.swissinfo.org>

<http://www.lematindz.net> (Algeria)

<http://www.elwatan.com> (Algeria)

<http://www.aafaq.org> (USA)

[www.tunisiawatch.com](http://www.tunisiawatch.com)

[www.kalima-tunisie.info](http://www.kalima-tunisie.info)

[www.tunisnews.net](http://www.tunisnews.net)

[www.alhiwar.net](http://www.alhiwar.net)

[www.tunis-online.net](http://www.tunis-online.net)

[www.assabilonline.net](http://www.assabilonline.net)

[www.bouebdelli.org](http://www.bouebdelli.org)

[www.cprtunisie.net](http://www.cprtunisie.net)

[www.nahdha.info](http://www.nahdha.info)

[www.albadil.org](http://www.albadil.org)

[www.pdpinfo.org](http://www.pdpinfo.org)

[www.fdtl.org](http://www.fdtl.org)

<http://www.liqaa.net>

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