



ARTICLE 19

Tunisia: Draft Decree on the establishment of a Press Council

December 2014

Legal analysis

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Executive summary

In December 2014, ARTICLE 19 examined the Draft Decree on fixing a framework for establishing and funding a Press Council for Tunisia (Draft Decree) for its compliance with international freedom of expression standards.

Since 2012, ARTICLE 19 has been working extensively on issues related to freedom of expression and media freedom in Tunisia, and analysed a number of laws and regulations in this area. This is ARTICLE 19's latest substantive commentary on proposed legislation in the state.

In ARTICLE 19's opinion, the Draft Decree presents a sound basis for a model of self-regulation underpinned by law (in this case a Presidential Decree) or a model co-regulation of the press. The Draft Decree exhibits a number of positive features:

- It indicates that it is the representatives of the press, namely the National Union of Tunisian Journalists and Tunisian League of Newspaper Managers, who are responsible for creating the Press Council as a self-regulatory body for the print and Internet-based press;
- The Press Council as envisaged by the Draft Decree is to encompass civil society organisations; and the Press Council is intended to advocate for or promote "the freedom of the press" in various ways, including through the development of an ethical code for the press.

At the same time, the Draft Decree shows a number of flaws in terms of the style of its drafting and substantive content. Most notably

- The Preamble to the Draft Decree fails to situate the instrument in the context of Tunisia's international human rights obligations and relevant constitutional provisions, which should frame and inform the interpretation of the Draft Decree;
- The value of self-regulation is not adequately reflected in the current draft;
- The current terms of the Draft Decree suggest that representatives of the press community shall not be represented on the Press Council;
- The list of activities for the Press Council suggests that some of these functions are mandatory or compulsory;
- The "right to information" is identified as a right of citizens rather than as a human right, and the "public's right to information" does not accurately reflect international standards. In response to these and other shortfalls,

ARTICLE 19 makes a number of recommendations for the Draft Decree's improvement.

Summary of recommendations

- The Preamble of the Draft Decree should make express reference to Tunisia's international human rights treaty obligations and relevant constitutional provisions, particularly with respect to freedom of expression;

- The Draft Decree should state that the instrument aims to establish an effective system of self-regulation of the press whilst ensuring freedom of the press and protecting freedom of expression in Tunisia;
- The sources of law currently referenced in the Preamble should not be used to unjustifiably curtail media freedom or journalists' rights;
- Article 3 of the Draft Decree should indicate that the Press Council is composed of representatives of the journalistic profession as well as members of the public;
- The Draft Decree should indicate that one of the aims of the Press Council is to promote freedom of expression, particularly press and media freedom, and freedom of information and may achieve these goals through activities. Further, the role of the Press Council in "modernising and developing the press profession ... and implementing the necessary mechanisms for upgrading the sector" (Article 4) should be clarified;
- The reference to "duties" in Article 4 should be replaced with the term "responsibilities;"
- References to the term "mandatorily" should be removed from Article 4;
- Article 4 should be amended to state that the Press Council may contribute "to improvement of media legislation by submitting proposals of draft legislation as well commenting on draft legislation and draft regulations related to the media sector;"
- In Article 4, references to an "ethical code on press profession," the "ethical Charter of the press profession" and "the press profession's Charter of rights and duties should all be replaced by the term, the "Press Code of Ethics." Article 4 should also indicate that the Press Council "may examine and respond to readers' complaints" instead of "[study and follow-up] reader's petitions;"
- The provisions of Article 4 should be further redrafted to read that the Press Council may
 - "contribute to and give opinions on all matters relating to the allocation of public funds to the press, including the criteria for distributing and managing public advertising for paper or electronic newspapers and magazines;"
 - "give its opinion on all matters related to professional ethics and may adopt guiding principles for members of the press community in relation to controversial matters, such as opinion polls, terrorism issues and children's issues;"
 - "promote and defend freedom of information, particularly the public's right to easy, prompt, effective and practical access to information, as well as the public's right to receive media output;"
 - "undertake research, publish reports, conduct training courses and other activities in order to promote high standards of journalism;" and
 - "promote media literacy in society through activities in the field of media education;"
- Article 5 should be redrafted to state that the Press Council shall be funded through public subsidies (as agreed by the legislature), fees collected from its membership press organisations, donations and gifts.
- The Tunisian government should ensure that on-going consultations on the Draft Decree involving the main political parties, the press community, the broader media community, NGOs, civil society organisations, academic experts and members of the public. In doing so, the government should reach out to members of the press community to ensure that support for the framework established by the Draft Decree;
- All stakeholders should engage in constructive negotiations about the content of the Draft Decree. These discussions should focus on two issues: a) whether it includes sufficient guarantees for freedom of the press and freedom of expression generally; and b) whether it realise the fundamental objectives of self-regulation, namely the accountability of members of the press to their peers, accountability of media outlets to the public and protection for members of the profession;
- The government should ensure that the process of consultation on the Draft Decree is fully inclusive, transparent and accessible by the public (e.g. through live-streaming).

Introduction

This ARTICLE 19 legal analysis examines the Draft Decree on fixing a framework for establishing and funding a Press Council for Tunisia (Draft Decree).¹ This is ARTICLE 19's latest substantive commentary on proposed legislation in Tunisia.²

This analysis also forms part of ARTICLE 19's broader engagement on issues concerning freedom of expression and freedom of information in Tunisia since 2012,³ including the establishment of press regulator. We have previously welcomed efforts made by the stakeholders of the print and electronic media sector in Tunisia to set up an independent self-regulation body and have urged all journalists and press owners to define a common strategy to set up their press council which ensures the media's credibility and the public's trust.⁴ We have expressly indicated that it considers the establishment of a press council as a means for print media self-regulation is a crucial step towards completing the process of media reform and development in Tunisia which has seen the media sector grow since the 17 December – 14 January Revolution.⁵

In ARTICLE 19's opinion, the Draft Decree presents a sound basis for a model of self-regulation underpinned by law (in this case a Presidential Decree) or a model co-regulation of the press.

The Draft Decree exhibits a number of positive features:

- It indicates that it is the representatives of the press – the National Union of Tunisian Journalists and Tunisian League of Newspaper Managers – who are responsible for creating the Press Council as a self-regulatory body for the print and Internet-based press;
- The Press Council is to encompass civil society organisations; and
- The Press Council is intended to advocate for or promote “the freedom of the press” in various ways, including through the development of an ethical code for the press.

At the same time, the Draft Decree shows a number of flaws. Most notably, the Preamble fails to situate the instrument in the context of Tunisia's international human rights obligations and relevant constitutional provisions, which should frame and inform the interpretation of the Draft Decree; the value of self-regulation is not adequately reflected in the current draft; the current terms of the Draft Decree suggest that representatives of the press community shall not be represented on the Press Council; the list of activities for the Press Council suggests that some of these functions are mandatory or compulsory; the “right

¹ This analysis is based on the English version of the Draft Decree, reproduced in the Appendix. Although the Draft Decree is a translation from the Arabic version, in many places it lacks clarity and precision. Furthermore, there are a number of grammatical and stylistic errors that render the current English version confused, unclear in parts and hence difficult to understand. These problems of vagueness and poor style should be corrected in the redrafting of the Draft Decree because they will affect the meaning given to the final instrument in its interpretation.

² See, for example, ARTICLE 19 Legal Analysis, [Tunisia: Draft Organic Law on Access to Information](#), 10 November 2014; [Tunisia: Specifications for Licensing and Content Regulation of Private TV Stations](#), 4 April 2014; [New constitution adopted by consensus](#), 27 January 2014; or [Tunisia: Third Draft Constitution of the Tunisian Republic](#), 30 May 2013.

³ For all ARTICLE 19's work on Tunisia, visit the [Tunisia section on ARTICLE 19's website](#).

⁴ See ARTICLE 19, [Tunisia: Print media stakeholders must define common strategy to set up press council](#), 14 February 2014.

⁵ *Ibid.*



to information” is identified as a right of citizens rather than as a human right, and the “public’s right to information” does not accurately reflect international standards.

In response to these and other shortfalls, ARTICLE 19 makes a number of recommendations for the Draft Decree’s improvement.

In addition, ARTICLE 19 expresses its full readiness to continue providing technical and legal support to the Tunisian government, state authorities and relevant organisations involved in the process of consultation and deliberation on the legal framework for the establishment of a press council in the state.

Commentary on Draft Decree

This analysis examines the Draft Decree from the perspective of international human rights standards on freedom of expression. Before the analysis of the provisions of the Draft Decree in detail, we highlight the relevant provisions of international and regional human rights law on this right.

Relevant international freedom of expression standards

The right to freedom of expression is protected by a number of international human rights instruments that bind states, including Tunisia, in particular Article 19 of the *Universal Declaration of Human Rights* (UDHR)⁶ and Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR);⁷ as well as a number of other international human rights instruments.⁸ As a result of ratifying the ICCPR, Tunisia is not only bound as a matter of international law by the provisions of the ICCPR, but is obliged to give effect to that treaty through national legislation.⁹

Moreover, Tunisia is also a member of the African Union and ratified the *African Charter on Human and Peoples' Rights* (ACHPR) which also guarantees freedom of expression.¹⁰

International standards on the regulation of the press

Under international law, states should also guarantee freedom of expression as a fundamental human right and “foundation stone for every free and democratic society.”¹¹ At the same time, many governments around the world consider that it is necessary to regulate the press in various ways. Indeed, state regulation of the press exists in states right across the world, including developed democracies. It has become accepted that statutory media regulation is justified in many situations, for example, where the protection of minors, privacy or reputation is concerned. Yet, when states decide to regulate the press, they must comply with international standards, on freedom of expression in particular. The issue, therefore, is whether and in what circumstances states may be permitted to regulate the press under international human rights law concerning freedom of expression.

It is important to note that international law does not prescribe a specific model of press regulation as such. At the same time, the importance of the press as a key form of media has been emphasised by a range of international and regional human rights bodies, particularly

⁶ UN General Assembly Resolution 217A(III), adopted 10 December 1948. The UDHR, as a UN General Assembly Resolution, is not directly binding on states. However, parts of it, including Article 19, are regarded as having acquired legal force as customary international law; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

⁷ [GA res. 2200A \(XXI\)](#), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967); Tunisia acceded to the ICCPR on 18 March 1976.

⁸ Article 21 of the Convention on the Rights of Persons with Disabilities of 2006, 13 December 2006; and Article 13 of the Convention on the Rights of the Child, 20 November 1989. This right is also protected by the American Convention on Human Rights (article 13) and the European Convention on Human Rights (Article 10).

⁹ Articles 2(1)(b), 14(1) and 16, Vienna Convention on the Law of Treaties 1969.

¹⁰ [The African Charter on Human and Peoples' Rights](#), adopted 27 June 1981.

¹¹ HR Committee, [General Comment No 34](#), 12 September 2011, para 2.

the Human Rights Committee (the HR Committee) – the authoritative international human rights body on the interpretation of Article 19 of the ICCPR.

In its General Comment No 34 on freedom of expression, the HR Committee has highlighted that “free press” should be “able to comment on public issues without censorship or restraint and to inform public opinion;”¹² and has also stressed that in order to comply with its international obligations under the ICCPR, a state must ensure that any regulation of the press meets the three-part test set out in Article 19(3) ICCPR:¹³

- *First*, any restrictions on the right to freedom of expression must be **prescribed by law**. To be characterised as a law a norm must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. Ambiguous, vague or overly broad restrictions on freedom of expression or freedom of information which fail to set the exact scope of their application are therefore impermissible under Article 19(3);
- *Second*, interferences with the right to freedom of expression must **pursue a legitimate aim** as exhaustively enumerated in Article 19(3) of the ICCPR, namely the “respect of the rights or reputations of others”, or “the protection of national security, public order (ordre public), public health or morals.” As such, it would be impermissible to prohibit expression or information solely on the basis that they cast a critical view of the government or the political social system espoused by the government;
- *Third*, legitimate restrictions on the right to freedom of expression must be **necessary** in a democratic society and **proportionate** to the aims pursued. Necessity requires that there must be a pressing social need for the restriction. The party invoking the restriction must show a direct and immediate connection between the expression and the protected interest. Proportionality requires that a restriction on expression is not over-broad and that it is appropriate to achieve its protective function. It must be shown that the restriction is specific and individual to attaining that protective outcome and is no more intrusive than other instruments capable of achieving the same limited result.

The Tunisian Draft Decree therefore must be assessed for its compliance with this three-part test.

Models of press regulation

ARTICLE 19 recalls that there are different types of media regulatory systems around the world that reflect the cultural, social and political traditions of individual states:¹⁴

- The term **statutory regulation** applies to any measure passed by parliaments to direct the media, and is characterised by a stronger level of state interference (e.g. France, Italy or Spain) than self-regulation.
- The model of **co-regulation**, sometimes also called “regulated self-regulation”, is ambiguous and not clearly defined. Typically, it contains elements of self-regulation anchored in a statute (e.g. Denmark or Ireland). We have argued that the new, hitherto untested model of press regulation in the UK under the Royal Charter on Self-Regulation

¹² *Ibid*, paras 13 and 20.

¹³ *Ibid.*, para 17.

¹⁴ See also ARTICLE 19 Legal Analysis, “UK: Final Draft Royal Charter on Self-Regulation of the Press”, 29 October 2013 <http://www.article19.org/resources.php/resource/37316/en/uk:-royal-charter-on-self-regulation-of-the-press>

of the Press offers “a new construct for press accountability” but essentially “resembles a model of co-regulation where the basis of the self-regulation is established in legislation”. As such we consider that this UK model is a “hybrid” offering “neither a model of strict state control nor a voluntary and autonomous self-regulation model”.¹⁵

- **Self-regulation** is a framework that relies entirely on voluntary compliance; legislation plays no role in enforcing the standards (e.g. Germany or Sweden). Those who commit to this type of regulation do so not under threat of legal sanction, but for positive reasons such as the desire to further the development and credibility of their profession. Self-regulation relies first and foremost on members’ common understanding of the values and ethics that underpin their professional conduct. However, ARTICLE 19 points out that there is no uniform definition of “self-regulation” of the print press. Models labelled “self-regulation” in one country may qualify as “co-regulation” elsewhere. As we have argued elsewhere, there is no single “one size fits all” model of self-regulation.¹⁶ Each state should develop its own version that suits its political, cultural, social and economic environment – as long as that model meets international standards on freedom of expression.

ARTICLE 19 has long argued that sector-wide self-regulatory bodies should be:

- **independent from government, commercial and special interests;**
- established via a **fully consultative and inclusive process;** and
- **democratic and transparent** in their selection of members and decision-making.

ARTICLE 19 reiterates that international law does not proscribe particular forms of press regulation, including state regulation co-regulation. At the same time, it has been acknowledged that self-regulation is the least restrictive method of interference with press freedom.¹⁷ All three models indicated above may be acceptable from the standpoint of international standards provided they meet the three-part test and if they also include sufficient safeguards for media freedom. Any press regulation must be simultaneously geared towards promoting and protecting press freedom rather than only imposing restrictions on the media.

¹⁵ ARTICLE 19, [UK: Final Draft Royal Charter on Self-Regulation of the Press](#), 29 October 2013, p 8.

¹⁶ *Ibid.*, p.9.

¹⁷ For example, Resolution No.2 on Journalistic Freedoms and Human Rights adopted at the European Ministerial conference on Mass Media Policy states that “public authorities... should recognise that all those engaged in the practice of journalism have the right to elaborate self-regulatory standards - for example, in the form of codes of conduct – which describe how their rights and freedoms are to be reconciled with other rights, freedoms and interests with which they may come into conflict, as well as their responsibilities.”

Analysis of Draft Decree

The Draft Decree consists of the Preamble and six substantive provisions.

Title and preamble

Framed as a Draft Decree, the instrument suggests that it is intended to take the form of a presidential order which has the force of law, rather than another type of legal instrument which would be adopted by the legislature.

It is interesting that, before the substantive provisions of the Draft Decree, the Preamble reflects on or has “regard to” on a number of authorities. These include decrees on:

- “media freedom, printing and publishing”;
- “freedom of broadcasting and the creation of an Independent High Authority for Audiovisual Communication”;
- “associations”;
- on “establishing a Prime Ministry and specifying the functions of the Prime Minister”; and
- the “organisation of the Prime ministry;”
- The Preamble also refers to the “republican orders” on “charging Mister Mehdi Jomaa to form a government,” “appointing a prime minister” and “members of the Government”, as well as the “opinions” of the Ministry of Finance and Administrative Tribunal, and “deliberation of the Council of Ministers and after notifying the President of the Republic”.

While it may be appropriate to refer to these sources of law given the particular legal and political context of Tunisia, it is unclear why it is deemed necessary to refer to every single one of these sources (especially the republican order charging Mister Mehdi Jomaa to form a government). Furthermore, the sources of law referenced in the Preamble should not be applied restrictively from a freedom of expression perspective, to justify freedom of the media or journalists’ rights. For instance and most notably, the Draft Decree on associations which is referenced in the third paragraph of the preamble should not be relied upon to require compulsory membership in an association for practising journalism; such a requirement has been held to be a violation of freedom of expression by the Inter-American Court on Human Rights.¹⁸

Despite a reference in Article 4 of the Draft Decree to “international standards and relevant national legislation,” the Preamble statement makes no such reference. Yet international human rights law and the new Constitution of Tunisia are significant in ensuring that the future understanding and interpretation of the Draft Decree is in accordance with these norms and obligations. We believe that Tunisia’s international human rights obligations on freedom of expression should be acknowledged in the Preamble as providing the parameters within which the Tunisian state may be permitted to regulate the press.

¹⁸ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A. No. 5.

To this end, in ARTICLE 19's opinion, the Preamble should expressly state that the Draft Decree also has regard to Tunisia's international human rights treaty obligations, particularly on freedom of expression, as well as the protection of freedom of expression as guaranteed by Article 31 of the Tunisian Constitution.

Recommendations:

- The Preamble of the Draft Decree should make express reference to Tunisia's international human rights treaty obligations and relevant constitutional provisions, particularly with respect to freedom of expression. In doing so, it should ideally refer to Article 19 of the ICCPR, Article 9 of the ACHPR and Article 31 of the Tunisian Constitution.
- The sources of law currently referenced in the preamble should not be used to unjustifiably curtail media freedom or journalists' rights.

Substantive provisions

Article 1 of the Draft Decree states that it “determines the general framework for the creation and the funding of the Press Council in Tunisia”.

While this provision appears to set out the purpose of the Draft Decree, this might be complemented through a provision setting out the aims of the Draft Decree. ARTICLE 19 suggests that an additional provision is inserted before the current Article 1. This provision should recognise the value of self-regulation of the press as a matter of principle, and state that the Draft Decree aims to establish an effective system of self-regulation of the press whilst ensuring freedom of the press and protecting freedom of expression in Tunisia.

Article 2 goes on to state that the Press Council shall be created by the “National Union of Tunisian Journalists and the Tunisian League of newspaper's managers [sic].” The Press Council is “charged of the self regulation of the written and electronic press” and shall “take the form of a non-governmental association” under law. This provision suggests that the scope of the Draft Decree covers Internet-based press and press which has an online presence. This recognition of the importance on such forms of media in setting up a system of self-regulation for Tunisia is positive. At the same time, as indicated above, the reference to the law on associations should not be interpreted to curb freedom of expression of the press, whether traditional or electronic/Internet-based. Moreover, the term “print press” is more appropriate than “written press”.

Article 3 indicates that the “National Union of Tunisian Journalists and the Tunisian League of newspaper's managers agree on the composition of the Council, providing that it should be a representation of civil society organisations acting in the field of freedom of expression, human rights and specialised researchers in information, communication and law”. While it is positive that this provision recognises the potentially valuable contribution of a range of actors – particularly civil society organisations and researchers – in the composition of the Press Council, the provision should indicate that the council shall also be composed of representatives of the journalistic profession (i.e. journalists, editors and publishers). Although the Draft Decree indicates that the union and league are to create the Press Council, the Draft Decree needs to indicate in express terms that members of the profession shall be included in the Press Council.

Article 4 sets out the various activities of the Press Council. It states that the Press Council “advocates for freedom of press and the citizen’s right to information” in various ways. This statement should be amended and should instead state that the Press Council “promotes freedom of expression, particularly press and media freedom, and freedom of information and *may* achieve these goals through activities...”

ARTICLE 19 recommends the reference to the citizen to be deleted as it suggests that freedom of information is a right for citizens only. The right to freedom of expression and information is the right for all, irrespective of their citizenship states. In addition, the activities or functions of the Press Council should not be set in stone through this Draft Decree. Therefore, it is strongly recommended that the term “may” rather than “should” or even “shall” be used to reinforce the notion of the Press Council’s independence and the self-regulatory model it purports to embrace.

Article 4 then indicates a list of twelve functions of the Press Council, which are currently not enumerated as they should be.¹⁹ Although these functions are generally viewed as appropriate, and the reference to “international standards” in (1) is particularly welcome, ARTICLE 19 has a number of significant comments concerning these functional activities.

- The reference to “duties” in (1) should be replaced with the term “responsibilities”. The term might be interpreted to mean *legal* duties rather than ethical responsibilities.
- The role of the Press Council in “modernising and developing the press profession ... and implementing the necessary mechanisms for upgrading the sector” in (2) is unclear. Is it through making recommendations and proposals about subjects such as the impact of information and communications technologies. Further clarity on this provision should be given.
- The term “mandatorily” in (4), (8) and (9) reads very awkwardly and is also misplaced as it suggests the Press Council should be obliged or even compelled to give opinions on draft media laws, on the allocation of public funds and on all matters related to professional ethics. While the Press Council may well give its opinion on such matters of its own volition, it should not be “mandatorily” obliged or legally obliged to do so.

¹⁹ These include

- (1) developing an ethical code on press profession rights and duties;
- (2) modernising and developing the press profession in general, written press institutions, especially electronic one’s and implementing the necessary mechanisms for upgrading the sector;
- (3) contributing to the design of public policies in field of media;
- (4) contributing to the improvement of media legislation by submitting proposals for this purpose and expressing mandatorily opinion on draft laws and regulatory texts related to the media sector;
- (5) monitoring and reporting, periodically, violations to the ethical Charter of the press profession;
- (6) publishing an annual report on the respect of the press profession’s Charter of rights and duties;
- (7) studying and following-up reader’s petitions and treating complaints according to the agreed accountability mechanisms set by the Council’s internal regulation/ general statute and ensuring mediation and conciliation between journalists and media organizations from one hand and citizens from the other hand;
- (8) contributing to and expressing mandatorily opinion on all matters relating to the allocation of public funds to written press, including the criteria for distributing and managing public advertising for paper or electronic newspapers and magazines;
- (9) expressing mandatorily opinion on all matters relating to the profession ethics, and enacting guiding rules which can be followed by professionals when dealing with controversial issues such as the rules of the publication of opinion polls or terrorism issues and children’s issues;
- (10) defending the public’s right to free, fair and accurate information;
- (11) making researches, studies, trainings, coaching and promoting a culture of quality journalism; and
- (12) contributing to spread the culture of media education.

ARTICLE 19 suggests that references to “mandatorily” in (4), (8) and (9) be removed completely.

- Provision of Article 4 bullet 4 should state that that the Press Council may contribute “to improvement of media legislation by submitting proposals of draft legislation as well commenting on draft legislation and draft regulations related to the media sector;”
- There are various references to a code of ethics to be drafted by the Press Council, including an “ethical code on press profession” in bullet 1, the “ethical Charter of the press profession” in bullet 5 and “the press profession’s Charter of rights and duties” in bullet 6. The references should all be made consistent. In doing so, it is recommended that the simpler and more straightforward term that should be adopted is the “Press Code of Ethics;”
- Reference to “reader’s petitions” should be corrected to “readers’ complaints” in bullet 7. Furthermore, the task for the Press Council in this regard should be more accurately described as “examining and responding to” rather than “studying and following-up” on;
- Reference to “citizens” in bullet 7 should be replaced with “individuals” for the same reason as indicated above: human rights, including freedom of expression and freedom of information, are for all, not only citizens;
- Reference to the “*written* press” (emphasis added) should be omitted in (8) as the written nature of the press is understood. Bullet 8 should be redrafted to read that the Press Council may “contribute to and give opinions on all matters relating to the allocation of public funds to the press, including the criteria for distributing and managing public advertising for paper or electronic newspapers and magazines;”
- For reasons stated above, the reference to mandatorily in bullet 9 should be omitted. The provision should be redrafted to read that the Press Council may “give its opinion on all matters related to professional ethics and may adopt guiding principles for members of the press community in relation to controversial matters, such as opinion polls, terrorism issues and children’s issues;”
- As it stands, bullet 10 presents an inaccurate reflection of the public’s right to know or the individual’s right to freedom of information. There is no such “public’s right to free, fair and accurate information”, as such. In order to reflect the position of international law more accurately, this provision should state that the Press Council may “promote and defend freedom of information, particularly the public’s right to easy, prompt, effective and practical access to information”.²⁰ This provision might be further bolstered through the recognition of the right of the public to receive media output.²¹
- As it stands, bullet 11 reads rather awkwardly. It should be redrafted to state that the Press Council may “undertake research, publish reports, and conduct training courses and other activities in order to promote high standards of journalism;”
- Bullet 12 indicates that the Press Council will contribute “to spread the culture of media education”. Media education is the means by which the goal of media literacy amongst

²⁰ General Comment No 34, *op.cit.*, para 19.

²¹ General Comment No 34, *op.cit.*, para 18.

the public should be achieved. It would be therefore better to state that the Press Council may “promote media literacy in society through activities in the field of media education”.

In terms of the final provisions, **Article 5** states that the “resources of the Council shall be composed of public subsidies, membership fees, donations and gifts”. The provision could be improved to state that the Press Council shall be funded through public subsidies (as agreed by the legislature), fees collected from its membership press organisations, donations and gifts.

Recommendations:

- An additional provision, which should be inserted at the beginning of the substantive provisions of the Draft Decree, should state that the instrument aims to establish an effective system of self-regulation of the press whilst ensuring freedom of the press and protecting freedom of expression in Tunisia;
- Article 2 should refer to “print press” instead of “written press;”
- Article 3 of the Draft Decree should indicate that the Press Council is composed of representatives of the journalistic profession as well as civil society organisations and researchers working in relevant fields, particularly freedom of expression, human rights and communications;
- Article 4 should state that the Press Council “promotes freedom of expression, particularly press and media freedom, and freedom of information and may achieve these goals through activities;”
- The twelve functions of the Press Council should be enumerated in Article 4;
- The reference to “duties” in the first bullet of Article 4 should be replaced with the term “responsibilities;”
- The role of the Press Council in “modernising and developing the press profession ... and implementing the necessary mechanisms for upgrading the sector” in the second bullet of Article 4 should be clarified;
- References to the term “mandatorily” should be removed from Article 4, particularly the fourth, eighth and ninth bullets;
- The fourth bullet of Article 4 should be amended to state that the Press Council may contribute “to improvement of media legislation by submitting proposals of draft legislation as well commenting on draft legislation and draft regulations related to the media sector;”
- References to an “ethical code on press profession” in the first bullet, the “ethical Charter of the press profession” in the fifth bullet and “the press profession’s Charter of rights and duties in the sixth bullet of Article 4 should all be replaced by the term, the “Press Code of Ethics;”
- The seventh bullet of Article 4 should indicate that the Press Council “may examine and respond to readers’ complaints” instead of “[study and follow-up] reader’s petitions;”
- The eighth bullet of Article 4 should be redrafted to read that the Press Council may “contribute to and give opinions on all matters relating to the allocation of public funds to the press, including the criteria for distributing and managing public advertising for paper or electronic newspapers and magazines;”
- The ninth bullet of Article 4 should be redrafted to read that the Press Council may “give its opinion on all matters related to professional ethics and may adopt guiding principles for members of the press community in relation to controversial matters, such as opinion polls, terrorism issues and children’s issues;”
- The tenth bullet of Article 4 should be redrafted to state that the Press Council may “promote and defend freedom of information, particularly the public’s right to easy,

prompt, effective and practical access to information, as well as the public's right to receive media output;"

- The eleventh bullet of Article 4 should be redrafted to state that the Press Council may "undertake research, publish reports, conduct training courses and other activities in order to promote high standards of journalism;"
- The eleventh bullet of Article 4 should be redrafted to state that the Press Council may "promote media literacy in society through activities in the field of media education;"
- Article 5 should be redrafted to state that the Press Council shall be funded through public subsidies (as agreed by the legislature), fees collected from its membership press organisations, donations and gifts.

Additional comments

In addition to these specific recommendations concerning the substance of the Draft Decree, ARTICLE 19 makes the following further recommendations for the enhancement of the draft. These mainly concern the process for the drafting, negotiation and agreement of the Draft Decree towards its adoption.

Recommendations:

- The Tunisian government should ensure that on-going consultations on the Draft Decree involving the main political parties, the press community, the broader media community, NGOs, civil society organisations, academic experts and members of the public. In doing so, the government should reach out to members of the press community to ensure that support for the framework established by the Draft Decree;
- All stakeholders should engage in constructive negotiations about the content of the Draft Decree. These discussions should focus on two issues:
 - whether it includes sufficient guarantees for freedom of the press and freedom of expression generally; and
 - whether it realise the fundamental objectives of self-regulation, namely the accountability of members of the press to their peers, accountability of media outlets to the public and protection for members of the profession.
- The government should ensure that the process of consultation on the Draft Decree is fully inclusive, transparent and accessible by the public (e.g. through live-streaming).

About ARTICLE 19

The ARTICLE 19 advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, ARTICLE 19 publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression and develops policy papers and other documents. This work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All materials developed by the Law Programme are available at <http://www.article19.org/resources.php/legal/>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org. For more information about the ARTICLE 19's work in Tunisia, please contact Saloua Ghazouan Oueslati, at saloua@article19.org.

Appendix

Draft decree n°2014-...., dated ... 2014 on fixing a framework for establishing and funding a Press Council for Tunisia.

The President of Government,

Having regard to the decree-law n°2011-115 dated 2 November 2011 on media freedom, printing and publishing, and notably articles.....;

Having regard to the Decree-Law n°2011-116 dated 2 November 2011 on freedom of broadcasting and the creation of an Independent High Authority for Audiovisual Communication ;

Having regard to the decree-law n°2011-88 dated 24 September 2011 on associations;

Having regard to the decree n°1969-400 dated 7 November 1969 on establishing a Prime Ministry and specifying the functions of the Prime Minister;

Having regard to the decree n°1970-118 dated 11 April 1970 on the organization of the Prime ministry services as amended by decree n°1987-1311 dated 5 December 1987;

Having regard to the republican order n°2014-21 dated 26 January 2014 on charging Mister Mehdi Jomaa to form a government;

Having regard to the republican order n°2014-32 dated 29 January 2014 on appointing a prime minister;

Having regard to the Decree n° 2014-413 dated 3 February 2014 on appointing the members of the Government.

Having regard to the opinion of Ministry of finance,

Having regard to the opinion of the Administrative Tribunal,

Having regard to the deliberation on the Council of Ministers and after notifying the President of the Republic.

Decrees the following:

Article 1:

The present decree determines the general framework for the creation and the funding of the Press Council in Tunisia.

Article 2:

The National Union of Tunisian Journalists and the Tunisian League of newspaper's managers creates a press council in Tunisia, charged of the self regulation of the written and the electronic press and the Council takes the form of a non-governmental association created pursuant to the provisions of the decree-law n°2011-88 dated 24 September 2011 on associations.

Article 3:

The National Union of Tunisian Journalists and the Tunisian League of newspaper's managers agree on the composition of the Council, providing that it should be a representation of civil society

organisations acting in field of freedom of expression, human rights and specialised researchers in information, communication and law.

Article 4:

The Press Council advocates for the freedom of press and the citizen's right to information and particularly through:

- developing an ethical code on press profession rights and duties, in accordance with international standards and relevant national legislation;
- modernising and developing the press profession in general, written press institutions, especially electronic one's and implementing the necessary mechanisms for upgrading the sector;
- contributing to the design of public policies in field of media;
- contributing to the improvement of media legislation by submitting proposals for this purpose and expressing mandatorily opinion on draft laws and regulatory texts related to the media sector;
- monitoring and reporting, periodically, violations to the ethical Charter of the press profession;
- publishing an annual report on the respect of the press profession's Charter of rights and duties;
- studying and following-up reader's petitions and treating complaints according to the agreed accountability mechanisms set by the Council's internal regulation/ general statute and ensuring mediation and conciliation between journalists and media organizations from one hand and citizens from the other hand;
- contributing to and expressing mandatorily opinion on all matters relating to the allocation of public funds to written press, including the criteria for distributing and managing public advertising for paper or electronic newspapers and magazines;
- expressing mandatorily opinion on all matters relating to the profession ethics, and enacting guiding rules which can be followed by professionals when dealing with controversial issues such as the rules of the publication of opinion polls or terrorism issues and children's issues.
- defending the public's right to free, fair and accurate information;
- making researches, studies, trainings, coaching and promoting a culture of quality journalism;
- contributing to spread the culture of media education.

Article 5:

The resources of the Council shall be composed of public subsidies, membership fees, donations and gifts.

Article 6:

The present decree shall be published in the Official Gazette of the Republic of Tunisia.

Tunis ...