



**Submission to the UN Human Rights Committee
in advance of the review of Tunisia at its 128th Session**

February 2020

Introduction

1. ARTICLE 19 welcomes the opportunity to contribute to the Human Rights Committee's ("the Committee") review of Tunisia at its 128th Session. This submission examines Tunisia's implementation of the International Covenant on Civil and Political Rights ("the ICCPR"), and responds primarily to the following listed issues put to Tunisia during the 122nd Session:
 - Freedom of expression (Art. 19)
 - Freedom of association and assembly (Arts. 21 and 22)
 - Non-discrimination and equality (Arts. 2, 3, 20 and 26)
2. While the Constitution of Tunisia of 27 January 2014 guarantees the right to freedom of expression, national laws that were enacted before the adoption of the new Constitution have not been updated to reflect these new safeguards. The legal framework, in particular around defamation, allows for the routine harassment and prosecution of journalists and other media workers and creates legal uncertainty. Furthermore, emergency laws and prior notification requirements continue to be used to impede the right to the freedom of peaceful assembly.
3. Our submission bases its analysis on international human rights law on freedom of expression, drawing from the ICCPR and the guidance of the Committee, among other sources.

Freedom of expression (Art. 19)

4. The list of issues, at paragraphs 26 and 27, raise concerns related to freedom of the press, defamation laws, and intimidation and harassment of journalists.
5. During the last review of Tunisia in 2008, the Committee recommended that Tunisia take steps to put an end to direct and indirect restrictions on freedom of expression, including bringing Article 51 of the Press Code in line with Article 19 of the Covenant. Moreover, it recommended that Tunisia investigate and take steps to put an end to acts of intimidation and harassment against human rights organisations and defenders.

Constitutional safeguards for freedom of expression and the right to information

6. The 2014 Constitution of Tunisia appropriately guarantees the rights to freedom of expression and information, as enshrined in the ICCPR.¹
7. **Article 31 of the Constitution** guarantees the right to freedom of expression, specifically prohibiting prior-censorship, while **Article 32** enshrines the right to freedom of information.² In relation to limitations on the right, **Article 49** captures the three-part

¹The Constitution of Tunisia, 26 January 2014. Available at: https://www.constituteproject.org/constitution/Tunisia_2014.pdf

² *Ibid.* Article 31 reads: "Freedom of opinion, thought, expression, information and publication shall be guaranteed. These freedoms shall not be subject to prior censorship." Article 32 reads "The state guarantees the right to information and the right of access to information and communication networks."

test for limitations set out in Article 19 (3) of the ICCPR, entrusting judicial authorities to protect all human rights and freedoms from violations.

8. In relation to freedom of the media, **Article 127 of the Constitution** sets the foundations for the creation of an Audio-Visual Communication Commission, guaranteeing its role in the protection of freedom of expression and information, for “the establishment of a pluralistic media sector that functions with integrity”, setting out the regulatory powers and criteria and term-limits for Commissioners.

Legislative framework of the freedom of press

9. The **Decree Law No. 2011-115** on freedom of the press, printing and publishing, passed on 2 November 2011, repealed and replaced the 1975 Press Code. Significant changes include the recognition of the right of access to information for journalists, the elimination of the prior authorisation operated by the Ministry of Interior, the protection of journalists’ independence against pressure and intimidation, and requiring any limitations on freedom of expression to be justified according to the three-part test set out in the Constitution.³
10. However, challenges in the law remain, with restrictions in the Penal Code of 1913 and Telecommunications Code of 2016 providing alternate channels to limit freedom of the press. In particular, criminal defamation provisions in each law have been abused to summon and prosecute journalists for their work:
 - **Articles 55 and 56 of the Decree Law No. 2011-115** criminalises defamation, requiring proof of direct and personal harm to the defamed person, with fines of 1,000 - 2,000 Dinars, though no custodial penalties, in addition to providing obligations to publish the judgment;⁴
 - **Articles 245 and 247 of the Penal Code** criminalises defamation, with 6 months’ imprisonment and fines of up to 240 Dinars;⁵ and,

³ ‘Decree Law No. 2011-115’, 2 November 2011; available at: <https://internetlegislationatlas.org/#/countries/Tunisia/frameworks/content-regulation>. Article 12 reads: “The opinion issued by the journalist or the information he publishes shall not be grounds for violating his dignity or for attacking his physical or moral inviolability.” Article 13 reads: “No journalist may be held accountable for an opinion, ideas or information that he publishes in accordance with the norms and ethics of the profession, nor can he be held accountable for his work unless it is proven that he is in breach of the provisions of this decree.” Article 1 reads: “Freedom of expression may only be restricted by virtue of a legislative text and with the condition: Its purpose is to achieve a legitimate interest, which is to respect the rights and dignity of others, to maintain public order, or to protect defence and national security. It must be necessary and proportionate to the actions required in a democratic society without being a threat to the essence of the right to freedom of expression and the media.”

⁴ *Ibid.* Article 55 reads: “An allegation or proportion of something publicly incorrect is considered to be defective, which would impair the honour or consideration of a particular person, provided that this results in personal and direct harm to the target person.” Article 56 reads: “The announcement of that claim or that percentage directly or by means of transfer shall be punished for its perpetrator even if this occurred in the formula of probability or was intended by a person whose name was not expressly provided that conversion to it is facilitated by the content of the terms contained in speeches, appeals, threats, writings, publications, or comments, or fees, ads, or electronic publications. The perpetrator of a felony assault is punishable by one of the methods indicated in Chapter 50 of this decree, in a fine of one thousand to two thousand dinars, with permission to publish extracts from the ruling issued in the case on the number of the sentenced person against her, following the date of her notification of the ruling, regardless of the fine for the damage.”

⁵ Penal Code of Tunisia’, 9 July 1913; available at: <https://www.refworld.org/docid/3ae6b5590.html>. Article 245 reads: “There is defamation in any public allegation or imputation of a fact which affects the honour or the consideration of a person or a body corporate. Proof of defamation is authorized in the cases provided for in article 57 of the press code.” Article 247 reads: “Is punished with six months’ imprisonment and a fine of two hundred and forty dinars, whoever is guilty of defamation.”

- **Article 86 of the Telecommunication Code** criminalises disrupting and harassing individuals online, with 1 - 2 years of prison and fines of 100 to 1000 Dinars.⁶

11. The Human Rights Committee has consistently raised concern regarding the compatibility of criminal defamation laws with Article 19 of the ICCPR, noting that in all circumstances imprisonment is a disproportionate punishment for criminal defamation.⁷ UN and regional freedom of expression mandates, including for the African Commission on Human and Peoples Rights, have consistently called for the repeal of criminal defamation laws, including those with non-custodial sentences.⁸ On the continent, the trend is overwhelmingly towards the decriminalisation of defamation, with Kenya, Burkina Faso, South Africa and Zimbabwe either decriminalising entirely, or removing the possibility of custodial sentences.⁹
12. ARTICLE 19 expresses concern at the existence of specific criminal measures in the Press Code targeting journalists and the media, noting that as recently as 2013 Tunisian courts have upheld this unequal treatment for media.¹⁰ Even though Article 50 of the Press Code is clear that its provisions should take precedence in all cases concerning the media, regardless of the channel of communication, courts have also sought to use the Telecommunication Code against journalists and bloggers, in particular in relation alleged defamation online.¹¹ The motivation for pursuing prosecutions under these provisions, rather than the new Press Code, appears to be the availability of harsher penalties, including imprisonment.
13. ARTICLE 19 is a member of a civil society committee, formed in 2015, that has sought to advance a number of recommended reforms to Decree Law No. 2011-115. These include, inter alia, recommending:
 - The title of the law be amended to reflect the purpose of protecting freedom of expression and information;
 - To extend the protective scope of the law beyond traditional media actors to anyone exercising their freedom of expression rights;
 - To recognize and safeguard the role of the Press Council, once established and functioning, as an independent self-regulatory body providing services of mediation as alternatives to censure; and,
 - To specifically reform the Penal Code to remove expression related offences.

⁶ 'Telecommunications Code of Tunisia', 22 February 2016. Article 86 reads: "Is punished by imprisonment from one (1) year to two (2) years and a fine of one hundred (100) to one thousand (1000) dinars anyone knowingly harms or disrupts third parties through public telecommunications networks"; available at: <http://www.legislation.tn/sites/default/files/codes/telecommunication.pdf>

⁷ UN Human Rights Committee, 'General Comment No. 34 on Article 19 of the ICCPR' (CCPR/C/GC/34), 12 September 2011, para. 47. Available at: <https://bangkok.ohchr.org/programme/documents/general-comment-34.aspx>

⁸ Organisation of American States, 'Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade', 3 February 2010. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=784&IID=1>.

⁹ ARTICLE 19, 'Defining Defamation: Principles on Freedom of Expression and Protection of Reputation', 23 February 2017. Available at: <https://www.article19.org/resources/defining-defamation-principles-on-freedom-of-expression-and-protection-of-reputation/>

¹⁰ Court of First Instance of Ben Arous, Judgment No. 745, 13 June 2013 [NOT PUBLISHED].

¹¹ Court of First Instance of Tunis, Judgment No. 614, 25 February, 2012; Court of First Instance of Tunis, Judgment No. 1890, 25 February 2012; Court of Appeal of Tunis, Decision No. 2504, 23 November 2012; Court of Appeal of Tunis, Decision No. 2513, 22 January 2013. [NOT PUBLISHED].

14. The Ministry of Relations with Constitutional Authorities, Civil Society and Human Rights have engaged positively with the recommendations, but have not yet introduced any draft legislation to reform Decree Law no. 2011-115 in Parliament.

15. Recommendation:

- Reform Decree Law No. 2011-115, the Penal Code, and the Telecommunications Code to safeguard freedom of the media, online and offline, including by repealing criminal defamation in its entirety.

Other criminal restrictions on expression

16. Several other criminal restrictions on expression require reform.

17. **Article 121-2 of the Penal Code** prohibits knowingly selling, distributing or reproducing books that have been prohibited on the basis of a judicial or administrative order, or their publication or distribution under a different title, and is punishable by imprisonment from sixteen days to one year and one fine of 60 - 600 Dinars, in addition to the power of the Ministry of Interior to seize the works.¹² In February 2012, the Court of the First Instance of Tunis jailed Nasreddine Ben Saida, the owner of a newspaper "Ettounisia", following its publication of a photograph of football player Sami Khedira with his partially nude girlfriend, Lena Gercke, a German model.¹³

18. **Article 125 of the Penal Code** prohibits the use of offensive language directed at civil servants, and provides for a punishment of one-year imprisonment and a 120 Dinars fine. The broadly worded formulation of Article 125 has led to exclusion of the Press Code in many cases concerning media, with journalist Yathreb Mchiri reportedly harassed through summons under the provision, as well as the jailing of politician Mondher Guefrach,¹⁴ and artist Akram Mag.¹⁵

19. **Article 91 of the Military Justice Code** prohibits dissemination or publication of expression "of a nature to weaken military discipline, obedience and respect to superiors", or "criticism of commands of superiors", and provides punishment of imprisonment from three months to three years. The provision has been abusively applied to prosecute civilian criticism of the military,¹⁶ notwithstanding the Human Rights Committee's clear guidance that such expression should not be prohibited.¹⁷

20. While not yet adopted into law, the **Draft Digital Code** proposes new criminal offences with far greater reach than existing content-based restrictions, posing significant risks to freedom of expression. **Article 250** of the draft provides that: "whoever intentionally

¹² Penal Code, *Op. Cit.*

¹³ The photo showed Khedira's partner appearing to be nude, while he covered her breast with his arm. Amnesty International, 'Tunisia: Drop criminal charges against Attounissia journalists', 23 February 2012. Available at: <https://www.amnesty.org/en/latest/news/2012/02/tunisia-drop-charges-against-attounissia-journalists/>

¹⁴ Court of First Instance of Sousse, June 2018. [NOT PUBLISHED]

¹⁵ Cantonal Tribunal of Sousse, January 2017. [NOT PUBLISHED]

¹⁶ ARTICLE 19, 'Tunisia: Military Justice Threatens Freedom of Expression', 1 November 2016. Available at: <https://www.article19.org/resources/tunisia-military-justice-threatens-freedom-of-expression/>

¹⁷ General Comment 34. *Op Cit.*

offends others or disturbs their comfort through the public networks of electronic communications shall be punished with imprisonment for a period ranging from one year to two years, and in writing from one hundred to one thousand dinars." Premised around the incredibly broad concepts of "insult" and "offence", the provision does not pursue a legitimate aim, and may be abused to target any expression the authorities or powerful sections of society deem objectionable. The proposal fits broader trends internationally where governments are legislating for increasingly harsh criminal penalties for vague offences concerning online expression.

21. Recommendations:

- Repeal Articles 121-2 and 125 of the Penal Code, and Article 91 of the Military Justice Code.
- Withdraw the Draft Digital Code from consideration, and engage in public consultations on what legal measures are required to protect freedom of expression online.

Harassment and threats against journalists and media workers

22. From 1 May 2017 to 30 April 2019, the National Syndicate of Tunisian Journalists (SNJT) registered 301 aggressions against 405 journalists,¹⁸ the majority perpetrated by government actors, notably security forces, as well as by politicians.¹⁹

23. Judicial harassment against journalists and media workers presents a serious impediment to the safety and protection of journalists, particularly the tendency to pursue prosecutions under the Penal Code, to the exclusion of the less severe Press Code:

- On 21 January 2019, Montaser Sassi, a correspondent for Shams FM, was summoned to the judicial police in Hammamet and then interrogated about his work, following a complaint from the syndicate of taxis, on the basis of insult and slander (Articles 245 and 246 of the Penal Code) and disturbance of others through public communications networks (Article 86 Telecommunication Code).
- On 19 February 2019, the director of Radio Oxygen FM Saleh Ben Farhat was summoned to the Attorney General at the court of first instance in Bizerte, where he was accused of improper publication against a civil servant under Article 125 of the Penal Code.
- On 17 January 2019, the journalist Soufien Ben Hamida was summoned to be interrogated by the judge of instruction at the court of first instance of Manouba, regarding his journalistic work at the online newspaper Business news.

24. Journalists are hindered from obtaining information held by the public administration, especially because of administrative measures which create barriers in accessing information, news, data and statistics. The issuing of internal circulars, such as Circular

¹⁸ Aggression is defined in broad terms and it includes physical and verbal violence, but also legal aggressions such as the abuse of judicial procedures or the misuse of legal provisions.

¹⁹ National Syndicate of Tunisian Journalists, '2019 Report', 3 May 2019. Available at: <http://snjt.org/wp-content/uploads/2019/05/1-السنواتي-التقري-1.pdf>; National Syndicate of Tunisian Journalists, '2018 Report', 3 May 2018, Available at: <http://snjt.org/wp-content/uploads/2018/05/3-الصحفية-الحرية-الواقع-السنواتي-التقري-3.pdf>

No.4, circulated on 16 January 2017, specifically direct civil servants to refuse requests for information.²⁰

25. Recommendations:

- Pending amendments to the Penal Code, Press Code, and Military Justice Code, the government must desist from judicial harassment of journalists and media workers, and institute policies to deter vexatious legal proceedings aimed at suppressing reporting;
- Fully implement the Constitutional right of access to information by repealing administrative circulars that are in violation of this right.

Media Regulation and Diversity

26. In 2011, Tunisia adopted a **Decree Law No. 2011-116** on the freedom of audio-visual communications and the creation of the Independent High Authority for Audiovisual Communication (HAICA) to regulate audio-visual media. This legal framework is currently under review, though HAICA and the government have presented alternate drafts as the way forward.

27. The authority of HAICA has been undermined by judicial authorities wrongly seeking to adjudicate cases within HAICA's competence. This includes cases where judicial authorities have prohibited broadcast content on the basis of it being prejudicial to ongoing court proceedings. Notwithstanding legitimate concerns regarding contempt of court, these rulings amount to judicial interference, and are prior restraints on expression against the Constitution.²¹

28. While Tunisia enjoys a diversity of public, private and community media at national and regional levels, a lack of public financial aid has led to many community media transforming into commercial entities.

29. ARTICLE 19 is further concerned at the concentration of media ownership among politicians and political parties, with particular impacts on the public's right of access to information in election periods. Nessma TV is owned by the Heart of Tunis Party, Attesiaa TV by the Tahya Tounes Party, Al-Janoubia by Ayachi Ajroudi, Ezzaytouna TV by Ennahdha Party, and Coran Radio by Errahma Party. In the context of the 2019 elections, HAICA concluded that this in part contributed to a lack of equity in access to broadcast airtime for candidates as a means of reaching the electorate.²²

30. The government should respect the decisions of HAICA, safeguard against judicial interference in its work, and cooperate with HAICA in the implementation of its decisions.

31. Recommendations:

²⁰ Ferchichi, W., 'Liberticidal Circulars: An underground law that governs us', 2018. Available at: http://www.adliitn.org/sites/default/files/circlulaires_fr_eng_ar_lr_19_12.pdf

²¹ For example, a case which prohibited Elhiwar Ettounsi TV from broadcasting investigations of medical acts in a public hospital. The Court of First Instance of Tunis, Judicial No. 280, 14 March 2019. [NOT PUBLISHED]

²² HAICA, 'Report on Media Coverage in 2019 Election', 10 October 2019. Available at: <https://haica.tn/2019/10/14722/>

- Reform **Decree Law No. 2011-116** to safeguard the competence, authority and independence of HAICA, insulating it from judicial interference, and ensuring the cooperation of the executive branch in the enforcement of its decisions.

Freedom of peaceful assembly and association (Arts. 21 and 22)

32. Paragraph 28 of the list of issues raises concerns related to legal and practical restrictions on the rights to freedom of peaceful assembly and freedom of association.
33. During its last review in 2008, the Committee recommended that Tunisia ensure that any restrictions imposed on the right to freedom of peaceful assembly are compatible with the provisions of Articles 19, 21 and 22 of the Covenant.
34. The Constitution protects freedom of peaceful assembly in Article 37, and freedom of association in Article 35, with limitations detailed in Article 49. While these broadly comply with Tunisia's obligations under the ICCPR, a number of laws unnecessarily and disproportionately infringe these rights.

Freedom of association

35. **Law No. 52 of 2018**, relating to the National Register of Companies (NRC), raises concerns for the right to freedom of association.²³ Onerous registration requirements discourage the founding of associations, treating them in similar ways to commercial entities.²⁴ Civil society organisations have protested that these requirements discourage people from founding associations.²⁵
36. ARTICLE 19 is further concerned that the legal framework for freedom of association allows for arbitrary dissolution of civil society organisations. The judiciary have issued positive decisions to push back against government abuses. In 2016, the Court of the First Instance of Tunis ruled in favour of Shams, an NGO established to defend the rights of lesbian, gay, bisexual, and transgender (LGBT) people. Notwithstanding the continued criminalisation of homosexuality under the Tunisian Penal Code, the Court of Appeal upheld this decision in 2019, on the basis that there was no legal basis for dissolution, given that the activities of the association were not shown to be causing harm.²⁶
37. In a second positive move, the Administrative Court has ruled that the Emergency Law cannot be used to allow it to dissolve associations, including those suspected of "terrorist activities", because this is the competency of the judiciary.²⁷

²³ Law No. 52 of 2018 of Tunisia, 29 October 2019. Available at: http://www.legislation.tn/detailtexte/Loi-num-2018-52-du-29-10-2018-jort-2018-089_2018089000521

²⁴ Among the new obligations, provisions of Article 23 which provide that associations have to register by sending: a copy of the declaration and the statute deposited at the general secretariat of the government; a copy of the national identification card of the Tunisian natural persons who found the association; a copy of the residence certificate for foreigners; and a copy of the minutes of the amended implementation report in accordance with the provisions of the legislation regulating the associations.

²⁵ Jaimaity, 'The draft law on the national registry of institutions is a threat to freedom of association in Tunisia', 25 June 2018. Available at: <https://jaimaity.org/2018/06/خطر-للمؤسسات-الوطنى-السجل-قانون-مشروع/>

²⁶ Court of Appeal of Tunis, Judgment on 17 May 2019. [NOT PUBLISHED]

²⁷ Administrative Court of Nabeul, Judgment No. 138836 on 27 February 2019; Administrative Court of Nabeul, Judgment No. 138837 on 27 February 2019; Administrative Court of Nabeul, Judgment No. 138836 on 27 February 2019; Administrative Court of Nabeul, Judgment No. 138870 on 27 February 2019. [NOT PUBLISHED]

Freedom of peaceful assembly

38. The freedom of peaceful assembly, while enjoying greater protection under the Constitution, is still regulated by **Law No. 4 - 1969**, concerning general meetings, processions, parades, demonstrations and assembly.²⁸ The law requires prior notification to authorities of assemblies, with unnecessary administrative obstacles including requirements to receive two signatures of residents of the area where the assembly will occur (Article 2), and the need to provide information on the reason for the meeting (Article 3). Under Articles 6 and 7, the Minister of Interior has extensive powers to forbid assemblies, and while the courts have on occasion overturned such orders, the remedy is often insufficient as the issue individuals wished to protest has past.²⁹

39. Recommendations:

- Reform Law No. 4-1969 on general meetings, processions, parades, demonstrations and assembly, to fully protect the right to freedom of peaceful assembly in line with Article 21 of the ICCPR.

Non-discrimination and equality (Arts. 2, 3, 20 and 26)

40. Paragraphs 7 and 8 of the list of issues concern discrimination and advocacy of hatred against racial minorities, persons with disabilities, and the LGBTIQ community.

41. **Article 21 of the Constitution** guarantees non-discrimination and equality before the law, though it is limited in application to citizens, against the guarantees of the ICCPR and the guidance of the HR Committee on the human rights of non-citizens. Article 6 of the Constitution prohibits advocacy of discriminatory hatred constituting incitement to hostility, discrimination or violence, in similar terms to Article 20 of the ICCPR.

42. There are significant gaps between these Constitutional protections, and laws that ought to implement them. In many instances, discrimination in law is driven by conservative religious doctrine. The lack of legal protection from discrimination, in particular on the basis of gender, in many instances raises concerns for the right to freedom of religion or belief for those targeted.

Organic Law No. 2018-50 on the abolition of all forms of racial discrimination

43. Tunisia faces significant problems of racial discrimination, in particular impacting individuals of sub-Saharan origin, many of whom additionally experience discrimination based on their status as migrants or refugees. Racist hate speech, including advocacy of hatred that constitutes incitement to hostility, discrimination or violence, is also a concern, but is not monitored or condemned. Racial minorities are largely excluded from mainstream public discourse, including in the media and political spheres. The precarious immigration and employment situation for migrants often underlies this

²⁸ Law No. 4 of 1969 of Tunisia, 24 January 1969. Available at: http://www.e-justice.tn/fileadmin/fichiers_site_arabe/droits_homme/legisl_nat/lib_pub/L_1969_4.pdf

²⁹ Administrative Court of Tunis, Judgment No. 129434, 8 January 2016; Administrative Court of Tunis, Judgment No. 128271, 27 June 2014; Administrative Court of Tunis, Judgment No. 121187 on 14 November 2012. [NOT PUBLISHED]

exclusion. This means that while racial minorities may be spoken about, in particular in disparaging terms, they are rarely given prominent platforms to speak or be heard on issues that concern them.

44. **Organic Law No. 2018-50** on the abolition of all forms of racial discrimination is therefore a welcome addition to the legal framework.³⁰ Importantly, from a freedom of expression and information perspective, it sets out obligations and procedures for the collection of data on racial discrimination, which can form an evidence basis to inform public debate and policymaking. It also includes provision on education and teaching programs to counter discrimination, in particular for judges.
45. These measures are positive, and provide the basis for policy action that would address the root causes of advocacy of hatred based on race, in line with the Rabat Plan of Action. However, progress has stalled on creating a National Commission on Combatting Racial Discrimination and the policies and action plans to implement the law have yet to be drawn up, and only one judicial decision has been made in a racial discrimination case.³¹
46. ARTICLE 19 considers that, in addressing racial discrimination, the Committee should make specific reference to the Rabat Plan of Action, in particular measures to ensure representation of racial minorities in public discourse and the media.

The legislative framework on the prohibition of discrimination based on disability

47. Public participation for persons with disabilities remains limited in Tunisia, and is impeded by insufficient legal frameworks to tackle discrimination. Draft Law 30/2015, which would make improvements to Orientation Law No. 2005-83, has not yet been adopted by Parliament.
48. In relation to elections and referenda, **Organic Law No. 2014-16** of 26 May 2014, stipulates the presence of persons with disabilities in the electoral lists for municipal and regional elections. In the first municipal elections in Tunisia in 2018, there were 1,740 candidates with disabilities, and among the 2,074 electoral lists accepted, only 18 of the lists were headed by persons with disabilities. This shows that while there were efforts to include persons with disabilities in lists, they have mostly not been placed in positions where they stand a chance of being elected.³²
49. Opportunities to specifically address challenges and obstacles to the rights of persons with disability to freedom of expression and access to information have been missed. In relation to access to information, the Organic Law No. 2016-22 of 24 March 2016, does

³⁰ Organic Law No. 11, 23 October 2018. Available at: <http://www.legislation.tn/sites/default/files/news/tf2018501.pdf>; ARTICLE 19, 'Tunisia: analysis of the Draft Organic Law on the Elimination of Racial Discrimination', 28 February 2017. Available at: <https://www.article19.org/resources/tunisia-draft-organic-law-on-the-elimination-of-racial-discrimination/>

³¹ The Sfax Court of First Instance issued a judgment sentencing a pupil's mother to a prison sentence for racial discrimination based on colour against a teacher.

³² Council of Europe, 'Information report on the municipal elections in Tunisia', 6 May 2018. Available at: <https://rm.coe.int/09000016808e4a51>; European Union, 'Election Observation Mission, Final Report: Municipal Elections Tunisia – 2018', 6 May 2018. Available at: https://eeas.europa.eu/sites/eeas/files/moe_ue_tunisie_2018_rapport_final_french.pdf

not expressly guarantee against discrimination based on disability, or put in place positive obligations for public authorities to ensure the accessibility of information to persons with disabilities. Nevertheless, the National Authority for Access to Information has put the text of that law into braille, and created a sign-language awareness video on access to information targeting deaf persons. This limited progress should be built upon.

Elimination of discrimination based on sexual orientation and gender identity

50. Discrimination and violence against persons based on sexual orientation and gender identity is a serious concern in Tunisia, institutionalised through the criminalisation of homosexuality and so-called “indecentry” laws in the **Penal Code (Articles 230, 226 and 226bis)**. Until persons can live freely without fear of harassment or prosecution under these laws, they are not free to exercise their rights to freedom of opinion or expression.
51. In June 2018, the Commission on Individual Freedoms and Equality, established by President Beji Caïd Essebsi, proposed, among other measures, to decriminalize homosexuality and end the practice of anal examinations in related criminal investigations. The Commission also proposed to criminalize the unlawful “interception, opening, recording, broadcasting, saving and deleting” of email messages, which is a use of surveillance often abused against persons being investigated under these laws.³³ In October 2018, 13 members of the Tunisian Parliament presented a bill on a code of individual freedoms. This code includes several proposals from the Presidential Commission, including the repeal of Article 230, which criminalizes homosexuality. However, these proposals remain unanswered, and have not been integrated into the priorities of the work the Assembly of the Representatives of the People.
52. The new political environment following the 2019 elections is not conducive to the decriminalization of homosexuality. Indeed, President-elect Kais Saïd is opposed to the decriminalization of homosexuality and public indecency. Moreover, only 5 political parties with 65 seats out of 207 in Parliament support the decriminalization of homosexuality, making legislative approaches to protections against discrimination very challenging.³⁴ In 2018, more than 120 trials based on Article 230 of the Penal Code were recorded. This figure does not represent the actual number of persons tried on the basis of Article 230, but only cases which were managed by the Civil Collective for Individual Liberties.³⁵ Anal examinations continue in the country, and unlawful searches of devices often lead to people being arrested under the Penal Code because of their assumed sexual orientation,³⁶ notwithstanding the existence of data protection laws that prohibit such violations.³⁷

³³ ARTICLE 19, ‘Tunisie: Document de référence sur la réglementation relative à Internet’, May 2013. Available at: <https://www.article19.org/data/files/medialibrary/37135/Tunisia-Report-V7.pdf>

³⁴ Le Collectif Civil Pour Les Libertés Individuelles, ‘Report: Individual liberties and equality in the campaigns of the presidential and parliamentary elections of 2019’, October 2019. Available at:

http://www.adltn.org/sites/default/files/1._rapport_lib_indiv_dans_les_campagnes_electorales_de_2019_version_integrale.pdf

³⁵ Le Collectif Civil Pour Les Libertés Individuelles, ‘Role of Individual Liberties 2018: Masks Off!’, March 2019. Available at: http://www.adltn.org/sites/default/files/files/documents/3._rapport_libertes_individuelles_2019_vs_fr_en.pdf

³⁶ Association Tunisienne de Défense des Libertés Individuelles, ‘The monthly press review of August 2018’, 2 August 2019, Available at: http://www.adltn.org/sites/default/files/revue_de_presse_mensuelle_juillet_2019_act.pdf

³⁷ Article 1 of Law No. 63 on the Protection of Personal Data of Tunisia, 27 July 2004. Available at: <http://media2.mofo.com/documents/The+Organic+Act+2004-63.pdf>

53. As indicated above, while the judicial authorities have quashed government attempts to refuse the recognition of LGBTQI civil society organisations, such as SHAMs, such organisations and persons who work for or are associated with them face discrimination and serious threats of violence.

54. Recommendations:

- Implement the Organic Law No. 2018-50 on the abolition of all forms of racial discrimination, with reference to positive measures to combat discrimination and promote visibility of racial minorities in the media, including by implementing the Rabat Plan of Action.
- Adopt the recommendations of the Commission on Individual Freedoms and Equality, including the repeal of Penal Code Articles 230, 226 and 226bis, and take the necessary measures to combat harassment, discrimination and violence against the LGBT community, so as to ensure the right to freedom of expression and freedom of religion or belief to all people equally.
- Ensure the right of access to publicly held information for persons with disabilities, ensuring that all public authorities are bound to ensure the accessibility of information and procedures for exercise of the right.