



Access Now Submission to the United Nations Human Rights Council on the Universal Periodic Review 41st Session Fourth Cycle for Tunisia

31 March 2022

About Access Now

Access Now is an international organisation that works to defend and extend the digital rights of users at risk around the world. Through representation worldwide, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations (U.N.) in support of our mission to extend and defend human rights in the digital age.¹

Follow-up from Tunisia's third cycle

1. The Universal Periodic Review (UPR) is an important U.N. mechanism aimed at addressing human rights issues across the globe. Access Now welcomes the opportunity to contribute to Tunisia's fourth review cycle. This submission examines the state of the right to privacy and data protection, the right to freedom of expression and the right to peaceful assembly and association on and offline in Tunisia.
2. During the third UPR cycle, Tunisia received 248 recommendations, supporting 189 and noting 59.² None of the recommendations addressed digital rights specifically. Tunisia supported 5 recommendations on freedom of expression and 1 recommendation on freedom of peaceful assembly and association.³
3. Since the last UPR review, the political situation in Tunisia has seen the election of a new parliament and a new President of the Republic in 2019. Despite Tunisia's peaceful democratic transition, the situation of human rights has rapidly deteriorated especially

¹ Access Now, available at, <https://www.accessnow.org/>, accessed March 2022.

² UPR Info, 2RP: Responses to Recommendations & Voluntary Pledges, Tunisia, available online: https://www.upr-info.org/sites/default/files/document/tunisia/session_27_-_may_2017/response_to_recommendations_tunisia_2017.pdf, 2017.

³ *Id.*

following the outbreak of the COVID-19 pandemic which exacerbated Tunisia's ongoing economic crisis and led to major protests in January 2021.⁴ Later tensions between the parliamentary blocs as well as between the president and the legislature body have further exacerbated the situation. Combined with a deadly wave of COVID-19 during June and July 2021,⁵ thousands of Tunisian citizens took to the streets in protests on July 25, 2021. On the same day, President Kais Saied announced in a public speech the enactment of Article 80 of the Tunisian Constitution, which allows him to enforce a state of exception and rule the country by decree.⁶ In what his opponents consider as a coup,⁷ President Saied also suspended the Tunisian parliament and lifted all judicial immunity of its members. On September 22, 2021, President Saied issued Presidential Decree No. 117 of 2021 to maintain the suspension of powers of the Tunisian parliament and take full control over the executive and legislative powers.⁸ On February 12, 2022, the President issued a second decree, Decree No. 11 of 2022, by which he dissolved the Supreme Judicial Council and replaced it with a temporary entity under the oversight of the executive.⁹ On March 30, 2022, President Saied officially dissolved the parliament in accordance with a very broad interpretation of Article 72 of the Constitution.¹⁰ Simultaneously, Tunisia's Minister of Justice asked the Attorney General to open an investigation into a number of members of parliament on charges of "conspiring against state security".¹¹ The President's decision came in reaction to an online plenary session of the legislature held earlier on the same day in defiance of Saied's suspension. During the session, MPs adopted a new law proposal that repeals all decrees issued unilaterally by the president since July 25, 2021.¹²

⁴ The Guardian, 'Things are getting worse': Tunisia protests rage on as latest victim named, available online: <https://www.theguardian.com/global-development/2021/jan/27/things-are-getting-worse-tunisia-protests-rage-on-as-latest-victim-named>, 27 January 2021.

⁵ Reliefweb, UNHCR Tunisia Operational Update - July 2021, available online: <https://reliefweb.int/report/tunisia/unhcr-tunisia-operational-update-july-2021>, 1 September 2021.

⁶ Official Facebook page of the Tunisian Presidency, *Speech of President Kais Saied on July 25, 2021*, available online: <https://www.facebook.com/Presidence.tn/videos/323343259519706/>, 25 July 2021.

⁷ Reuters, *Tunisian president ousts government in move critics call a coup*, available online: <https://www.reuters.com/world/middle-east/tunisian-president-relieves-prime-minister-his-post-2021-07-25/>, 26 July 2021.

⁸ Reuters, *Tunisian president moves to cement one-man rule*, <https://www.reuters.com/world/africa/tunisia-president-takes-new-powers-says-will-reform-system-2021-09-22/>, 23 September 2021.

⁹ DCAF Tunisia, *Décret-loi n° 2022-11 du 12 février 2022, relatif à la création du Conseil supérieur provisoire de la magistrature*, available online: <https://legislation-securite.tn/fr/law/105201>, consulted on 31 March 2022.

¹⁰ Reuters, *Tunisian crisis escalates as president dissolves parliament*, available online: <https://www.reuters.com/world/africa/tunisian-parliament-defy-president-with-full-session-2022-03-30/>, 31 March 2022

¹¹ Reuters, *Tunisia orders an investigation against members of parliament -local media*, available online: <https://www.reuters.com/world/africa/tunisia-orders-an-investigation-against-members-parliament-local-media-2022-03-30/>, 30 March 2022.

¹² France 24, *Tunisian president dissolves parliament after MPs vote to roll back his power grab*, available online: <https://www.france24.com/en/africa/20220330-tunisian-president-dissolves-parliament-after-mps-vote-to-roll-back-his-power-grab>, 30 March 2022.

4. During this reporting period, the Tunisian authorities committed several human rights violations, from arbitrary detentions of protestors to the military trial of civilians for exercising their right to freedom of expression and opinion- online and offline. In addition, during the COVID-19 pandemic, the Tunisian government has adopted a number of digital technologies and solutions which threaten the right to privacy in the country given the weak data protection legal framework and lack of robust privacy and data protection safeguards.

Tunisia's international and domestic human rights obligations

5. Tunisia has signed the Universal Declaration of Human Rights (UDHR) and ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among other international human rights instruments.
6. Tunisia's Constitution of 2014 contains several provisions which affirm the right to privacy and data protection, freedom of expression, and freedom of peaceful assembly and association on and offline throughout the country including, but not limited to:
 - a. Article 24 states that "the state protects the right to privacy and the inviolability of the home, and the confidentiality of correspondence, communications, and personal information";
 - b. Article 31 guarantees "freedom of opinion, thought, expression, information and publication shall be guaranteed";
 - c. Article 35 ensures that "the freedom to establish political parties, unions, and associations is guaranteed";
 - d. Article 37 which stipulates that "the right to assembly and peaceful demonstration is guaranteed."¹³

Freedom of expression

7. Freedom of expression has been one the biggest gains of the Tunisian revolution of 2011. And while Tunisia is widely considered the only lasting success story of the Arab Spring, in recent years, the Tunisian government has tightened its noose around activists, bloggers, journalists and anyone who is critical of the government and its policies. Tunisian security forces have exerted increased repression and cracked down on peaceful

¹³ Constitute, *Tunisia Constitution of 2014*, available online: https://www.constituteproject.org/constitution/Tunisia_2014.pdf, consulted on 31 March 2022.

protesters, political opponents, and journalists.¹⁴ During mass protests in January 2021, the Tunisian police used excessive force, including firing tear gas to disperse protesters, which led to the death of a 21-year-old protester and the injury of another, after being hit by a gas canister.¹⁵

8. The Tunisian League of Human Rights documented around 1,500 cases of protesters who were arbitrarily detained by the Tunisian authorities either for participating in protests or for their posts on social media platforms.¹⁶ Around 30% of these protesters are children below the age of 18. This is an escalation of an ongoing trend of targeting bloggers and dissidents who criticise public officials, the police, or security forces on online platforms with criminal prosecutions under charges of “inciting violence,” “insulting a public servant” as well as “violating public morals.”¹⁷ Many were denied access to legal and medical assistance, including Hamza Nasri¹⁸ and human rights activist Ahmed Ghram,¹⁹ among others.
9. While the 2014 Constitution enshrines freedom of expression and opinion, many of the draconian laws of the Ben Ali era have not been reformed and have been used to prosecute bloggers and internet users for their online speech and activity, including provisions in the Penal Code, the Press Code, and the Telecommunications Code.
10. In addition, and over recent years, the Tunisian authorities have increasingly prosecuted civilians in military courts under the 1957 Code of Military Justice or Law no. 82-70 of August 6, 1982, on the General Status of the Internal Security Forces, over charges related to offending agents of the internal security forces “while performing their duties”— a crime tried “before the competent military courts.”²⁰ Members of Parliament Yassine Ayari, Seifeddine Makhlouf, and Nidhal Saoudi, as well as the former head of the Bar Association in Tunisia Abderrazak Kilani, have all been prosecuted in military courts

¹⁴ Al Jazeera, ‘Police everywhere, justice nowhere’: Hundreds protest in Tunisia, available online: <https://www.aljazeera.com/news/2021/1/30/police-everywhere-justice-nowhere-hundreds-protest-in-tunisia>, 30 January 2021.

¹⁵ Reuters, *Injured Tunisian protester dies, fuelling new clashes*, available online: <https://www.reuters.com/article/us-tunisia-protests-idUSKBN29U2HP>, 25 January 2021

¹⁶ Nawaat, *Interview with lawyer Bassem Trifi after the wave of arbitrary arrests*, available online: <https://nawaat.org/2021/01/30/%d8%ad%d9%88%d8%a7%d8%b1-%d9%85%d8%b9-%d8%a7%d9%84%d8%a3%d8%b3%d8%aa%d8%a7%d8%b0-%d8%a8%d8%b3%d8%a7%d9%85-%d8%a7%d9%84%d8%b7%d8%b1%d9%8a%d9%81%d9%8a-%d8%a8%d8%b9%d8%af-%d9%85%d9%88%d8%ac%d8%a9-%d8%a7/>, 30 January 2021

¹⁷ Front Line Defenders, *Detention of Human Rights Defender Hamza Nasri*, available online: <https://www.frontlinedefenders.org/en/case/detention-human-rights-defender-hamza-nasri>, consulted on 31 March 2022.

¹⁸ *Id.*

¹⁹ Front Line Defenders, *Human Rights Defender Ahmed Ghram Acquitted*, available online: <https://www.frontlinedefenders.org/en/case/human-rights-defender-ahmed-ghram-acquitted>, consulted on 31 March 2022.

²⁰ DCAF Tunisie, *Loi n° 82-70 du 6 août 1982, portant statut général des forces de sécurité intérieure*, available online: <https://legislation-securite.tn/law/40866>, consulted on 31 March 2022,
DCAF Tunisie, *Décret n° 57-9 du 10 janvier 1957, portant promulgation du Code de justice militaire*, available online: <https://legislation-securite.tn/fr/law/40920>, consulted on 31 March 2022.

for speech offences in recent months.²¹ On February 14, 2022, a military court sentenced MP Ayari in absentia to 10 months in prison for insulting the president and the army.²²

11. Prosecuting a civilian before a military tribunal violates the right to a fair trial and due process guarantees. Under international human rights law, governments are prohibited from using military courts to try civilians when civilian courts can still function. The Resolution on the Right to a Fair Trial and Legal Aid in Africa noted that “the purpose of Military Courts is to determine offences of a pure military nature committed by pure military personnel.”²³

Freedom of peaceful assembly and association in the digital age

12. The freedom of association and the creation of civil society organisations in Tunisia is regulated by Decree-Law 88 of 2011, according to which both Tunisians and resident foreigners may freely establish civil society organisations, carry out a broad range of activities, lobby the authorities regarding laws and policies, speak publicly about their work and opinions, and receive foreign funding without government authorization.²⁴
13. A new draft amendment to Decree 88 was recently leaked. If adopted, it would constitute a major threat to freedom of association, severely shrink civil society space in Tunisia, and reverse a major gain for human rights following the 2011 revolution.²⁵ For example, Article 35 of the leaked draft law would impose a new requirement that all foreign funding be approved by the Tunisian Financial Analysis Committee (CTAF), a unit within the Tunisian Central Bank tasked with fighting money-laundering and terrorism financing.²⁶ The leaked draft law would also empower authorities within the office of the Head of Government to summarily dissolve civil society organisations that remained inactive beyond a certain length of time. It might also permit the authorities to dissolve such groups at will and outside of judicial procedure.²⁷

²¹ Human Rights Watch, *Tunisia: Courts Ramp up Speech Prosecutions*, available online: <https://www.hrw.org/news/2021/12/23/tunisia-courts-ramp-speech-prosecutions>, 23 December 2021.

²² TAP, *Yassine Ayari sentenced to 10 months in prison (Lawyer)*, available online: <https://www.tap.info.tn/en/Portal-Politics/14895369-yassine-ayari>, 18 February 2022.

²³ African Commission on Human and Peoples' Rights, *41 Resolution on the Right to Fair Trial and Legal Aid in Africa - ACHPR/Res.41(XXVI)99*, available online: <https://www.achpr.org/sessions/resolutions?id=46>, consulted on 31 March 2022, African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, 2003, available online: <https://www.achpr.org/legalinstruments/detail?id=38>, consulted on 31 March 2022.

²⁴ Jamaity, *Décret-loi 2011-88 du 24 septembre 2011, portant sur l'organisation des associations*, available online: <https://jamaity.org/publication/decret-loi-2011-88-du-24-septembre-2011-portant-sur-lorganisation-des-associations/>, consulted on 31 March 2022.

²⁵ Nawaat, *Droit d'association : Le projet liberticide du gouvernement Bouden*, available online: <https://nawaat.org/2022/02/08/droit-dassociation-le-projet-liberticide-du-gouvernement-bouden/>, 8 February 2022.

²⁶ Access Now, *Looming curbs on Tunisian civil society must be stopped*, available online: <https://www.accessnow.org/tunisia-civil-society/>, 30 March 2022.

²⁷ *Id.*

14. This draft legislation was accompanied by dangerous rhetoric from President Saied, who accused civil society organisations of serving foreign interests and trying to meddle in Tunisian politics in a videotaped speech on February 24, 2022 during the Council of Ministers meeting, and stated that he intended to ban all funding for such groups from abroad.²⁸

The right to privacy and data protection

15. Data protection in Tunisia is regulated by the 2004 Organic Law on the protection of personal data,²⁹ and the National Instance of the Protection of Personal Data³⁰ (INPDP) is the official state-affiliated body ensuring its protection. The INPDP has both a judicial and monitoring role. Despite these safeguards, the situation of personal data protection is vulnerable in Tunisia.
16. Since the onset of the COVID-19 outbreak in mid-February of 2020, the Tunisian government has adopted a set of measures to prevent the virus from spreading, including leveraging technology such as robots, drones, and other technological solutions. Within the framework of a public-private partnership, the Ministry of Health's National Centre of New and Emerging Diseases has entered into a contract with Wizzlabs, a company specialising in the design and development of software, to licence the use of "E7mi," an app used to track confirmed cases, as well as those suspected to be infected with the virus. The government has not shared information to show how it is safeguarding individuals' personal information using this app, despite a formal request for access to information submitted by Access Now,³¹ asking for a copy of the consultation conducted between the Ministry of Health and the INPDP, regarding the conformity and compliance of the "E7mi" app with the requirements of the Law on the Protection of Personal Data of 2004, and the terms of agreement and a copy of the contract concluded between the startup company, Wizzlabs, and the Ministry of Health concerning the terms and conditions for using the app.
17. In another response to the COVID-19 pandemic, former Prime Minister Elyes Fakhfakh, in collaboration with the Minister of Local Affairs and the Minister of Communication Technologies and Digital Transformation, issued a governmental decree on May 12, 2020

²⁸ Official Facebook page of the Tunisian Presidency, *President Saied's speech on February 24, 2022*, available online: <https://www.facebook.com/Presidence.tn/videos/959141931436749>, 24 February 2022.

²⁹ INPDP Official website, *Loi organique numéro 63 en date du 27 juillet 2004 portant sur la protection des données à caractère personnel*, available online: http://www.inpdp.nat.tn/ressources/loi_2004.pdf, consulted on 31 March 2022

³⁰ INPDP official website, available online: <http://www.inpdp.nat.tn/>, consulted on 31 March 2022

³¹ Access Now, *To safeguard privacy, Tunisia must be transparent on tech used to fight COVID-19*, available online: <https://www.accessnow.org/to-safeguard-privacy-tunisia-must-be-transparent-on-tech-used-to-fight-covid-19/>, 17 September 2020

to set up a system for national unique citizen identification,³² and a second decree on May 15, 2020 to clarify its implementation,³³ which would amass a large amount of Tunisians' personal information. According to Fakhakh, the Tunisian government decided to pass the decree on the unique identifier as one of the top priorities for dealing with the COVID-19 crisis. To date, there has been no executive annex to the two decrees that would outline the technical aspects of the unique identifier including its data processing and storage.

18. The impetus for establishing a unique identifier is to gather together information about a person, such as their identity, civil status, social security, income, tax information, and much more, using a single code.³⁴ The code would allow multiple state entities to access consolidated information about a citizen³⁵, which raises significant concerns about the right to privacy in Tunisia in the absence of robust safeguards against government abuse of individuals' personal data.
19. Another major threat to the right to privacy is the Ministry of Interior's project on biometric passports and ID cards. The Ministry first submitted the draft proposal for new biometric ID cards with an electronic microchip to parliament in 2016 as an amendment to Law No. 27 of 1993 on the National Identity Card.³⁶ At the time, national and international civil society organisations in Tunisia strongly opposed the draft law for its failure to provide sufficient legal and technical safeguards to protect the right to privacy, stipulated in Article 24 of the Constitution, and to protect Tunisian citizens' personal data, in compliance with the Law on the Protection of Personal Data of 2004.³⁷ As a result, the Ministry officially withdrew the draft bill after two years, but submitted a new draft to the Presidency of the Government in June 2020, along with the draft law on biometric passports.³⁸ The Parliamentary Committee on Rights, Freedoms and Foreign Relations started the debate on this draft bill in 2021 before the suspension of Parliament on 25 July 2021. On 17 January 2022, the Ministry of Interior issued a

³² DCAF Tunisie, *Décret-loi du Chef du Gouvernement n° 2020-17 du 12 mai 2020, relatif à l'identifiant unique du citoyen*, available online: <https://legislation-securite.tn/fr/law/104817>, consulted on 31 March 2022

³³ DCAF Tunisie, *Décret gouvernemental n° 2020-312 du 15 mai 2020, fixant le contenu et les spécifications techniques de l'identifiant unique du citoyen et les règles régissant la tenue et la gestion de son Registre*, available online: <https://legislation-securite.tn/fr/law/104820>, consulted on 31 March 2022

³⁴ Access Now, *What is Tunisia's unique identifier, and why is it being pushed now?*, available online: <https://www.accessnow.org/what-is-tunisias-unique-identifier-and-why-is-it-being-pushed-now/>, 14 July 2020.

³⁵ *Id.*

³⁶ Al-Bawsala Marsad Majles' website, *Draft bill to amend the 1993 law on National ID in Tunisia*, available online: <https://majles.marsad.tn/ar/media/download/760>, consulted on 31 March 2022

³⁷ Access Now, *Tunisia: Statement on Proposed National ID Card*, available online: <https://www.accessnow.org/tunisia-statement-proposed-national-id-card/>, 18 November 2016

³⁸ Access Now, *Statement: Tunisia's newly proposed biometric ID and e-passport threaten privacy*, available online: <https://www.accessnow.org/tunisia-biometric-id-passport-threaten-privacy/>, 9 March 2021

statement announcing plans to “resume launching the project.”³⁹

20. 32 national and international organisations signed a statement reiterating the concerns of civil society in relation to the right of privacy and data protection, mainly on the nature of data to be stored in the biometric database and its location, the authorities who have access to this personal data, the institutions or individuals who have the right to access the encrypted personal data, and procedures for ensuring the security of the data.⁴⁰ In this context, the signatories insisted on the fact that the mass collection of biometric data is a huge threat to citizens’ security and privacy, as cyber threats, hacking, and data leaks have become inevitable in today’s digitised world. Many incidents related to violating, leaking, and stealing data have proven that no matter how strong and tight the cybersecurity procedures to protect these data are, there is not a single system in the world that is immune to hacking and abuse of its data.⁴¹ The signatories also noted the lack of transparency and the absence of a participatory approach that should be applied to legislation affecting the rights of Tunisian citizens, especially the right to privacy and to personal data protection.

Recommendations

21. We urge that the right to privacy and data protection, the right to freedom of expression, and the right to freedom of peaceful assembly and association on and offline are prominent issues in the upcoming UPR review cycle. We therefore recommend that Tunisia:

- a. *Adhere to international human rights standards, and uphold its commitments to promote and protect the right to privacy and data protection, freedom of expression, and freedom of peaceful assembly and association on- and offline;*

³⁹ Ministry of Interior of Tunisia’s official website, *Resume launching the project on biometric passports and ID cards and expedite its implementation*, available online:

<https://www.interieur.gov.tn/actualite/27229/%D8%A7%D8%B3%D8%AA%D8%A6%D9%86%D8%A7%D9%81-%D8%A8%D8%B9%D8%AB-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D8%A5%D9%86%D8%AC%D8%A7%D8%B2-%D8%AC%D9%88%D8%A7%D8%B2-%D8%A7%D9%84%D8%B3%D9%81%D8%B1-%D8%A7%D9%84%D8%A8%D9%8A%D9%88%D9%85%D8%AA%D8%B1%D9%8A-%D9%88%D8%A8%D8%B7%D8%A7%D9%82%D8%A9-%D8%A7%D9%84%D8%AA%D8%B9%D8%B1%D9%8A%D9%81-%D8%A7%D9%84%D8%A8%D9%8A%D9%88%D9%85%D8%AA%D8%B1%D9%8A%D8%A9-%D9%88%D8%AA%D8%B9%D8%AC%D9%8A%D9%84-%D8%AA%D9%86%D9%81%D9%8A%D8%B0%D9%87>, 17 January 2022

⁴⁰ Access Now, *Human rights organizations call for dropping the draft bill introducing biometric passports and ID cards in Tunisia*, available online: <https://www.accessnow.org/draft-bill-biometric-passports-id-tunisia/>, 31 January 2022.

⁴¹ Reuters, *New data leak hits India’s national ID card database Aadhaar - ZDNet*, available online:

<https://www.reuters.com/article/india-biometric-idUSL3N1R608M>, 24 March 2018,

The Record, *Hacker steals government ID database for Argentina’s entire population*, available online: <https://therecord.media/hacker-steals-government-id-database-for-argentina-entire-population/>, 18 October 2021,

Al Jazeera, *Cyberattack on ICRC exposes data on 515,000 vulnerable people*, available online:

<https://www.aljazeera.com/news/2022/1/20/cyberattack-on-icrc-exposes-data-on-515000-vulnerable-people>, 20 Jan 2022.

- b. *Enact a new law on personal data protection that inherently focuses on Tunisian citizens, respects individuals' rights, and ensures the protection of Tunisian citizens' private and unique personal data;*
 - c. *Reform the legal framework on freedom of expression in accordance with the 2014 constitution and Tunisia's international commitments to end the criminalization of online and offline speech, particularly the Penal Code, the Press Code, and the Telecommunications Code;*
 - d. *End the practice of arbitrary detention and prosecution for participating in protests or publication of posts on social media platforms;*
 - e. *Ensure prompt, impartial, and independent investigation into the arbitrary arrests and prosecutions for participating in protests or for posts on social media platforms;*
 - f. *Refrain from prosecuting civilians in military courts;*
 - g. *Maintain Decree-Law 88-2011 as the main legal framework regulating associations and non-governmental organisations;*
 - h. *Refrain from the revision of laws regulating rights and freedoms during the state of exception;*
 - i. *Adopt a transparent and participatory approach when drafting legal texts directly linked to the rights and freedoms of Tunisian citizens through comprehensive, transparent, and public consultations with civil society organisations and all stakeholders;*
 - j. *Cooperate with U.N. and international investigative bodies, and issue standing invitations to U.N. Special Procedures, including the U.N. Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and association, and the right to privacy to visit the country.*
22. The UPR is an important U.N. process aimed to address human rights issues worldwide. It is a rare mechanism through which citizens around the world get to work with the government to improve human rights and hold them accountable to international law. For more information, please contact: un@accessnow.org.