ARTICLE 19

Middle East and North Africa: Historic Opportunity for Freedom of Expression

2010 – 2011 Review

Legal analysis

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About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme 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, the Law Programme 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. This analytical 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 of our analyses are available at http://www.article19.org/resources.php/legal/.

If you would like to discuss this report 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.

Introduction

ARTICLE 19 has closely monitored events in the Middle East and North Africa (MENA) as change has swept across the region in the last twelve months. At the outset of this report, we must acknowledge and remember the sacrifices that continue to be made by individuals who confront the injustice of autocracy and demand that their voices be heard in defining the destinies of their own nations. This has led to the toppling of repressive regimes in Tunisia, Egypt and Libya, while movements for democratisation in a dozen other countries have promoted a dialogue for reform, frequently in the face of violent and oftentimes lethal crackdowns.

Standing in solidarity with these individuals, ARTICLE 19 recognises the historic opportunity this moment presents for governments, civil society organisations, and all regional stakeholders to lay the foundations for long-lasting democracy and peace. Furthermore, we recognise that the success of this endeavour will depend largely upon fostering and safeguarding the right to freedom of expression and information. These rights must define the process for change and be entrenched within any legal framework promulgated by it. The essential value of a free and independent media, print, electronic and on-line, must also be affirmed through this process.

This report builds upon ARTICLE 19's extensive experience of working towards legal and policy reform on matters concerning the protection of freedom of expression and freedom of information in the MENA region. Most recently, in October 2011, we joined the Arab International Media Support Delegation's weeklong visit to Libya to assess their immediate and long-term freedom of expression and media freedom needs. We have conducted similar missions to Tunisia, Egypt, Iraq and Yemen over the last year. Throughout 2011, we have provided extensive support to the process of legal reform to freedom of expression related laws in Tunisia, working hand in hand with local stakeholders to bring legislation in line with international freedom of expression standards. ARTICLE 19 has also produced numerous legal analyses of draft and recently enacted legislation in countries across the region, including media codes, election regulations, cyber-crimes legislation, access to information laws, and laws to protect journalists and their sources. These analyses have frequently led to substantive legislative amendments.

In this report, ARTICLE 19 does not attempt to comprehensively chronicle all legal and policy developments relevant to freedom of expression and freedom of information in the region, nor do we offer a one-size fits-all solution to the complexity of the problems faced there. Instead, our objective is to reflect upon positive and negative examples of legislative developments in 2010 – 2011, to identify key trends and make recommendations going forward from a freedom of expression perspective. We hope that this will provide an informed contribution to the debate in countries grappling with significant legal and political challenges at their various stages of democratic transition.

Firstly, the report provides a brief synopsis of the international human rights standards that bind the countries in the MENA region to respect the right to freedom of expression and freedom of information. Aspects of those rights are then identified thematically, detailing how key legislative developments are likely to impact freedom of expression and information.

Through this exercise, we have identified a number of positive developments. In terms of constitutional reform, Morocco has adopted by referendum a new constitution with protections for freedom of expression and information. This new constitutional framework may provide a legal foundation for reforming the country's penal and media codes and the adoption of access to information legislation. Constitutional reforms are pending in Egypt, Tunisia and Libya, with initial drafts and discussions indicating that the right to freedom of expression and information will be integrated.

There have been significant developments in Tunisia with substantive media reforms that contain a number of positive elements. Qatar has embarked upon a similar project, making some positive improvements to media regulation in the country but requiring significant further revision to comply

with international standards. These examples are countered by media reforms in Syria that, given recent events, appear to be no more than a diversionary tactic from state brutality against journalists and demonstrators. Further signs of regression are evident in Saudi Arabia, whose new media laws increase fines dramatically, and provide the state with ever-broader police powers over the media.

The transitional authorities in Tunisia and Egypt have also made steps to increase transparency by engaging with access to information reform. Tunisia has adopted legislation in this respect already, which has been welcomed by ARTICLE 19. Egypt is in the process of drafting similar legislation, which is a project that ARTICLE 19 supports.

At the same time, there are many examples of regressive legislative practices and state action across the MENA region that violate international standards on freedom of expression and freedom of information and the correlative rights to free association and peaceful assembly.

The most concerning trend is the use of the military and police to attack and sometimes kill journalists and individuals exercising their right to freedom of expression and right to peaceful assembly, as well as the use of arbitrary detention, forced disappearances and torture. Related to this is the use of military tribunals to prosecute journalists, bloggers and peaceful demonstrators under the pretence of draconian emergency national security legislation. These tribunals have imposed excessive custodial and financial penalties on individuals engaged in legitimate expressive conduct.

The rights to freedom of expression and information have been eroded in a much more clandestine manner by the proliferation of cyber security legislation in the region. Often premised on imperatives of national security, these laws exploit hysteria over cyber-terrorism to extend or legitimise state practices of censoring legitimate on-line expression. Iraq, Iran, Jordan and Syria have joined the ranks of a number of countries that have already adopted such laws. Collectively, these laws allow for capital punishment, excessive jail sentences and enormous fines for criminal defamation, transgressing moral or religious values, or engaging in political discussions on subjects as broad as economics or the military. The integral role that technology has played in enhancing the right to freedom of expression in the region, particularly in effecting democratic change, demonstrates the urgency with which reform to these laws should be addressed.

Under the same masquerade of protecting national security, Saudi Arabia and Israel are both considering drafts to extend their anti-terror legislation to impose significant limitations on the right to freedom of expression, information and association. Notably, the Israeli Knesset has adopted such laws to undermine freedom of association, particularly related to peaceful political protests such as boycotts and Nakba celebrations. These laws have a particularly discriminatory impact on Palestinians and Arab citizens of Israel.

ARTICLE 19 notes that at this historic juncture, the situation for freedom of expression and freedom of information is precarious; it is not a time for complacency. In the transitional states of Egypt, Tunisia and Libya we already see tensions between the media, asserting its newfound confidence as an adversary to authority, and transitional powers attempting to establish order and sustain control. In countries that remain under autocratic leadership, this conflict is often more pronounced and the consequences frequently dire. The outcome of these struggles will determine the future of democracy and peace in the region.

ARTICLE 19 reiterates its call to all governments, civil society organisations and reform movements to respect the rights to freedom of expression and information. These rights must both define the agenda for change, and be fully integrated in any new legal framework or instrument promulgated by it.

International and Regional Standards on Freedom of Expression

The rights to freedom of expression and freedom of information are fundamental human rights. Both are necessary conditions for the realisation of the principles of transparency and accountability that are, in turn, essential for the protection of all human rights in a democracy. These rights are protected by a number of international human rights instruments that bind the nations within the MENA region.

Universal Declaration of Human Rights

Article 19 of the Universal Declaration of Human Rights (UDHR)[1] guarantees the right to freedom of expression in the following terms:

> "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."

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.[2]

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) elaborates upon and gives legal force to many of the rights articulated in the UDHR. The ICCPR binds its 167 states party to respect its provisions and implement its framework at the national level.[3] Article 19 ICCPR guarantees the right to freedom of expression as follows:

1. Everyone shall have the right to freedom of opinion
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   a) For respect of the rights or reputations of others;
   b) For the protection of national security or of public order (ordre public), or of public health or morals.

The majority of countries included in this report have ratified the ICCPR, the exceptions being the United Arab Emirates, Qatar, Saudi Arabia, Oman and Palestine.[4] While not formally bound by the terms of the ICCPR as a matter of treaty law, Article 19 of the ICCPR is reflective of customary international law, which binds all states as the law of nations.

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[1] UN General Assembly Resolution 217A(III), adopted 10 December 1948.

[2] *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980)(US Circuit Court of Appeals, 2nd circuit).

[3] Article 2 of the ICCPR, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

[4] For ICCPR ratifications, see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

The Revised Arab Charter on Human Rights

The Arab Charter on Human Rights[5] is controversial from an international human rights perspective, as it provides less robust protections for certain fundamental rights. Initially, the ACHR lacked any provisions explicitly guaranteeing the right to freedom of expression and information. This protection was incorporated through amendments in 2004. Article 32 of the Revised Arab Charter on Human Rights (the Revised Arab Charter) now protects freedom of expression in the following terms:

> 1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.
> 2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

In addition, Article 42 protects the right to scientific and artistic research and creative activity, and the right to take part in cultural life. Importantly, Article 24 now guarantees the right to political participation, including the freedom to pursue political activity, to form and join associations with others and to freedom of assembly. All of the countries covered in this report, except for Israel, are signatories of the Revised Arab Charter.[6]

The African Charter on Human and Peoples' Rights

Algeria, Egypt, Libya, Mauritania, and Tunisia are also members of the African Union,[7] and signatories of the principal human rights instrument for the African continent; the African Charter on Human and Peoples' Rights (ACHPR).[8] Article 9 of the ACHPR guarantees freedom of expression in the following terms:

> 1. Every individual shall have the right to receive information.
> 2. Every individual shall have the right to express and disseminate his opinions within the law.

The African Platform on Access to Information

The African Platform on Access to Information has been recently developed by groups across Africa including ARTICLE 19 and has been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights.[9] These principles provide guidance to African states on the right to freedom of information, including the importance of battling corruption, protecting whistleblowers, to promote unhindered access to Information Communication Technologies, and access to electoral information.

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[5] League of Arab States, Arab Charter on Human Rights, May 22, 2004. Entered into force March 15, 2008.

[6] See, at footnote 3: http://www1.umn.edu/humanrts/instree/arabhrcharter.html##3

[7] For the list of member states, see http://www.au.int/en/member_states/countryprofiles.

[8] Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

[9] Adopted September 2011, see: http://www.pacaia.org/images/pdf/apai%20final.pdf

The Declaration of Principles on Freedom of Expression in Africa

The Declaration of Principles on Freedom of Expression in Africa (African Declaration), adopted by the African Commission on Human and Peoples' Rights in 2002,[10] in Article II also affirms that

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

In Article XII of the African Declaration, which deals with the protection of reputation, stipulates

1. States should ensure that their laws relating to defamation conform to the following standards:
   - No one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
   - Public figures shall be required to tolerate a greater degree of criticism; and
   - Sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
2. Privacy laws shall not inhibit the dissemination of information of public interest.

Similarly, in Article XIII, on criminal measures, the African Declaration mandates states to review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society. It also further affirms that freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

The Union for the Mediterranean

The Union for the Mediterranean promotes economic integration and democratic reform across 11 states in North Africa and the Middle East: Algeria, Egypt, Israel, Jordan, Lebanon, Mauritania, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey.

The Union for the Mediterranean was founded in the Barcelona Declaration, which obliges states to act in accordance with the Universal Declaration of Human Rights, and identifies as fundamental the rights to freedom of expression, association, thought, conscience and religion, and non-discrimination.[11]

[10] Adopted at the 32nd Session of the African Commission on Human and Peoples' Rights, 17-23 October 2002.

[11] The Euro-Mediterranean Partnership: Barcelona Declaration and Working Programme. Nov. 1995. The European Commission, DG IB, External Relations.

Legal Developments in 2010 – 2011

Constitutional Protections of Freedom of Expression

A number of countries in the MENA region have either adopted or are in the process of adopting new constitutions. These significant legal developments will provide the foundations and building blocks for the protection of fundamental human rights in these countries. Whether these reforms are a consequence of revolution or concessions made by incumbent regimes, the significance of each will be accentuated as nations look to one another for guidance on best practices. Those countries engaging in reform must lead by example, and implement robust guarantees for freedom of expression and information.

Egypt

As ARTICLE 19 releases this report, Egyptians are going to the polls to elect a Constitutional Assembly tasked with drafting a new constitution. The Supreme Council for the Armed Forces (SCAF), the military authority overseeing the transition from the Mubarak regime, have promised that Presidential elections will follow in March or April 2012.

The most recent round of elections occurred amid a fresh wave of protests against the dominant role of the military in Egyptian politics; with reports showing repeated violent clashes between protestors and the police and armed forces. At least thirty people have reportedly been killed in these clashes. The military are perceived as having appropriated the peoples' revolution of January 2011, and are also accused of attempting to retain the dominance they have long exercised over Egyptian politics.

On 1 November 2011 SCAF released a 22-article "Draft Declaration of the Fundamental Principles of the Egyptian State", which lend credence to these accusations. These are a series of supra-constitutional principles that would guide the work of the soon to be elected Constitutional Assembly. If adopted, these principles would severely limit the freedom of the Constituent Assembly and undermine its democratic legitimacy.[12] The principles reserve to the military a role as guarantor of the constitution, allowing it to veto legislation concerning the military. This would place the military beyond the scrutiny of a democratically elected parliament and limit access to information on the military's budget, which it would be responsible for allocating.

The "principles" would also change the make-up of the Constitutional Assembly, making 80% of its members military appointees from a variety of institutions and only 20% representatives elected by the people. This significantly changes the terms of the Constitutional Assembly elections as approved by the people in a referendum in February 2011.

Morocco

In a referendum on 1 July 2011, the Moroccan people voted in favour of adopting a new constitution. The former Constitution, adopted in 1996, affirmed the right to freedom of expression at Article 9(b).[13] The 2011 Constitution improves upon Article 9(b), containing a number of Articles related to freedom of expression and information.

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[12] For an unofficial English translation of the Draft Declaration of the Fundamental Principles of the Egyptian State, see: http://www.constitutionnet.org/files/2011.11_-_constitutional_principles_document_english.pdf

[13] Constitution of the Kingdom of Morocco, adopted on 13 September 1996; available at http://www.pogar.org/publications/other/constitutions/mrc-constitution-96-e.pdf

Article 25 of the Constitution protects freedom of thought, of opinion and of expression in "all their forms." It further provides guarantees specifically for literary and artistic expression, as well as scientific and technical research.

ARTICLE 19 welcomes the inclusion of a standalone guarantee for the right to information in Article 27 of the Constitution, and hopes that it forms the basis for the adoption of a comprehensive access to information law. However, this constitutional provision does not comply with international standards in a number of respects. Firstly, only citizens can claim rights under Article 27, rather than all persons. Secondly, only elected public institutions are subject to the obligation to provide access to information, excluding unelected bodies and private entities that exercise public duties.

At Article 28, there are guarantees that assure freedom of the press. This includes guarantees against prior censorship, and "encourages" independence of the press. However, limitations may be placed on these rights "as provided by law". This does not comply with Article 19(3) of the ICCPR, which requires restrictions on the right to freedom of expression to be provided by law, to pursue a legitimate aim, and to comply with the principles of necessity and proportionality.

While imperfect, ARTICLE 19 hopes that the reforms to the Moroccan Constitution reflect a genuine and good faith renewal of the country's commitment to freedom of expression and access to information. We call upon Morocco to demonstrate this commitment through comprehensive legal reforms that address existing laws that do not adequately protect the right to freedom of expression, including the Penal Code and Press Code.

Libya

In August 2011, the Libyan Transitional National Council published a Draft Constitutional Charter for the Transitional Stage.[14] Although the Draft Constitutional Charter contains provisions that protect some elements of the right to freedom of expression, ARTICLE 19 believes more comprehensive and robust protections are required to address the culture of secrecy and human rights violations that were so prevalent under Gaddafi's regime. The proper protection of freedom of expression and freedom of information is vital to the protection of all human rights, is central to human dignity, and essential to ensure the full participation of Libyan people in the upcoming elections and drafting of a new constitution.

In the current version of the Draft Constitutional Charter, Article 13 guarantees, among other rights, "freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication, liberty of press, printing publications and mass media." ARTICLE 19 welcomed this provision as a good start, but recommended a number of amendments to ensure that these rights are fully protected.[15] For example, the right to freedom of expression should be defined broadly and explicitly state that it includes the right to seek, receive and impart information and ideas, to cover all types of expression and modes of communication, and to grant this right to every person. The Constitutional Charter should also prohibit censorship, as well as guarantee the right of access to information held by or on behalf of a public body, as well as access to information held by private persons necessary to enforce a right.

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[14] The Libyan Draft Constitutional Charter for the Transitional Stage, August 2011 version; available at http://www.article19.org/data/files/medialibrary/2709/Libya-Draft-Constitutional-Charter-for-the-Transitional-Stage.pdf

[15] See ARTICLE 19, *Libya: Protect Freedom of Expression in Transitional Constitutional Charter*; 25 August 2011; available at http://www.article19.org/resources.php/resource/2709/en/libya:-protect-freedom-of-expression-in-transitional-constitutional-charter

ARTICLE 19 has urged the Libyan Transitional National Council to ensure that all provisions on human rights in the Constitutional Charter comply with international standards in their respective areas; and that guarantees for these rights contained in international treaties are specifically incorporated into Libyan law.

Regulation of the Media

A free and independent media is essential to the development and sustenance of a vibrant democracy, and integral to realising the public's right to a diversity of information and viewpoints. As repressive regimes fall across the region, the opportunity for media to reassert their role in society will depend to a large extent upon a legal environment that allows them to fulfil their potential. This section identifies recent developments in media regulation and highlights issues on which there has been progress as well as areas for concern.

Lebanon

Two proposed media regulation reform bills have been recommended to the Lebanese Parliament recently. ARTICLE 19 notes that the momentum for change in this area has slowed, and encourages Lebanese Parliamentarians and civil society groups to renew their commitment to reform media regulation.

MP Ghassan Moukheiber submitted a Media Reform Bill to Parliament's Media and Communications Committee for review on 24 February 2011. This would condense the 109 provisions of the 1962 Media Law down to 75 provisions. The bill aims to move away from a system of press licensing to one that promotes transparency and disclosure, with clarity over press ownership and financial influence. Other positive features include commitments to media freedom, as already guaranteed by Article 13 of the Lebanese Constitution. There are also stronger protections for freedom of information, in particular the right of journalists to publish confidential documents. However, there are numerous weaknesses with the Bill also, including a failure to distinguish between print and electronic media, and the retention of several broad content based restrictions related to expression endangering national security and content that breaches moral standards.

A second Media Reform bill has been proposed by MP Robert Ghanem. This version contains 130 provisions, and aims to increase fines so that they reflect inflation and maintain their deterrent effect. The agenda this law promotes is antithetical to the right to freedom of expression. If adopted, this law would represent a significant regression in terms of media freedom in Lebanon.

ARTICLE 19 urges the Lebanese Government to collaborate with civil society organisations and the media in the process of drafting this important legislation and to renew efforts to legislate for media reforms in the country.

Qatar

On 2 October 2011, the Qatari government released the text of a Draft Media Law, which was published in the Arabic daily newspaper Alsharq. The draft was approved by the State Cabinet on 1 June 2011 and is awaiting ratification. While the Draft Law contains a number of provisions that liberalise restrictions on the media in Qatar, it retains several illegitimate restrictions on the right to freedom of expression and the right to information.

ARTICLE 19 welcomes the guarantee in the Draft Law that journalists will no longer be detained for questioning by law-enforcement agencies without a court order. However, the Draft Law does not clarify the bases for authorising detention orders, nor the permissible duration of such orders. It may be no more than a substitution of non-judicial detention without charge for judicially sanctioned detention

without charge. This practice would violate international standards on the right to freedom of expression and the right to liberty.

The Draft Law would also increase protections for journalists to maintain the anonymity of their sources, requiring authorities to seek a court order before compelling disclosure. However, the Draft Law does not clarify the circumstances under which disclosure orders would be granted. International standards on freedom of expression require that these measures be used only exceptionally; all alternative measures to gain the information must have been exhausted and the public interest in disclosure must clearly outweigh the public interest in non-disclosure.[16] Appropriate situations for compelling disclosure include for the protection of human life; to prevent a major crime; or in the defence of a person accused of having committed a major crime.[17]

Another positive development in the Draft Law is the abolition of custodial sentences for criminal defamation charges against journalists. However, the Law would continue to promote a culture of self-censorship through the threat of fines upward of Riyals 50,000 ($13,730) for journalists who violate criminal defamation laws. It should be noted that custodial sentences would continue to apply to non-journalists through the operation of Articles 326 – 330 of the Penal Code, which contains an arsenal of content-based restrictions on the right to freedom of expression.

ARTICLE 19 has identified a number of regressive features of the Draft Law that require immediate attention. The most concerning of these is a blanket prohibition on journalists' reporting content related to national security or "friendly countries." This contradicts provisions in the same law that guarantee freedom from censorship. The concepts of national security or "friendly countries" are not defined, and the prohibition appears to apply irrespective of the harm the expression causes or threatens to these vague interests. The ambiguity of this prohibition essentially allows the government to control expression in these spheres and insulate Qatar's political allies from scrutiny in the media.

Media freedom would be further eroded by the requirement in the Draft Law that all journalists be licensed by the Ministry of Arts, Heritage and Culture (the Ministry). This essentially confers on a non-independent government body the power to control the composition of the media and creates unduly restrictive eligibility criteria that discriminate between nationals and non-nationals. Nationals must be at least 21 years old and must have passed their secondary education, while editors-in-chief must be university graduates with five years' media experience. Non-nationals must hold a post-graduate degree in mass communications and be accredited by a specialised committee within the Ministry.

Lastly, we are concerned at proposals to subject media entities and publications to a licensing requirement. It is unclear what degree of discretion the Ministry will have in allocating licenses, and the extent to which it liberalises the current regime. Several media analysts contend that the Ministry of Arts, Heritage and Culture is merely an avatar of the former Information Ministry, which was disbanded in 1995 and notorious for its role in censoring the media.

Saudi Arabia

In March 2011, Saudi Arabia enacted the Implementing Regulations of Electronic Publishing (IREP), extending the scope of the Publishing and Publications Law and its draconian restrictions on freedom of expression to electronic publications. This includes prohibitions on expression that threatens national security and public policy; the defamation or offending of public officials; the exciting of

[16] Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information, adopted 8 March 2000.

[17] Council of Europe Committee of Ministers, Explanatory Memorandum to Recommendation No. R(00) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information, para 37-41.

fanatical instincts or the causing of discord; expression that damages the public interest, and expression that contradicts Sharia'a. IREP applies each of these prohibitions to all electronic publications.

IREP is supplemented by Royal Order No.O-71, which prohibits the dissemination of prejudice, exaggeration, heresy and extremism. Together these broad restrictions allow the suppression of any expression that is marginally controversial irrespective of the public interest in that expression or the degree of harm caused.

A subsequent Royal Order significantly increased the penalties that may be imposed on journalists and media entities for violations of the amended Publishing and Publications Law. The Ministry of Information's "emergency" power to withdraw publications that conflict with Sharia'a is expanded to a general power that can be used "whenever necessary." Maximum fines are also increased by 1000% to £133,000 with double-fines for repeat violations. In addition, print and electronic newspapers and websites may be temporarily or permanently closed down, and individual journalists may be prohibited from writing in future publications or participating in satellite channels. It should be noted that these amendments do not prevent the incurrence of criminal liability under other laws; meaning that corporal punishment and detention will often be available in addition to fines and closure orders.

The singular progressive feature of the amendments is the establishment of a special committee with exclusive jurisdiction over media disputes, with the availability of appeals to a secondary panel. This takes the responsibility for regulating the media out of the hands of the regular and religious courts. However, the aforementioned provisions are so severely regressive that they eclipse any positive impact this special committee could have on freedom of expression in Saudi Arabia.

Syria

Responding to months of widespread protests in a speech on 20 June 2011, Syrian President Bashar Al-Assad promised "change within the regime." He pledged to establish a committee to recommend legal reforms, including guarantees of press freedom, amendments to the elections law and possible changes to the one-party system of governance that has kept Al-Assad in power since 2000. On 28 August 2011, Al-Assad approved limited changes to Syria's media laws. However, recent state practice demonstrates that these reforms are superficial, and no more than a cynical attempt to divert attention from the ongoing brutal crackdown on protesters, which to date has claimed 5000 civilian lives.[18]

The new Media Law purports to guarantee freedom of expression as a fundamental right, oppose concentrations of media ownership, and commit to the principle of access to information. These features are countered by regressive calls for "responsible" freedom of expression, including a ban on expression that incites sectarian divisions that threaten national unity. A blanket prohibition on reports related to the Syrian military is particularly antagonistic to the purposes of the reforms, but has been unable to prevent the global dissemination of information on crimes against humanity committed by the military. Another flagrant disparity between the law and the ongoing violent crackdown is the guarantee in Article 11 of the Media Law that an attack on journalists will be treated as an attack on a Syrian Government Official. Attacks on journalists should be treated as attacks on journalists, which are reprehensible in their own right. The state has a positive duty to prevent such attacks, to investigate them where they occur, and to hold those responsible to justice.

These reforms should also be considered in the context of Syria's Penal Code, which retains a number of draconian restrictions on press freedom. These include the offenses of "damaging the national prestige" (Article 287), "publishing false news" (Article 285), publishing "false or exaggerated

[18] See 12 December 2011 statement by Navi Pillay, UN High Commissioner for Human Rights http://www.ohchr.org/EN/NewsEvents/Pages/Media.aspx?IsMediaPage=true

information that weakening national sentiment" (Article 286), and "insulting the President" (Article 376). Syria's press law (Decree No. 50/2001) grants the government additional powers to control print media which has been expanded to apply to online outlets.

Promises to amend election laws and the one-party system of governance have not been forthcoming.

Tunisia

Following the popular uprising in Tunisia in January 2011, and the departure of President Ben Ali, there have been a number of positive developments in Tunisia aimed at reforming restrictive media legislation. The Tunisian Prime Minister Mohammed Ghannouchi announced that "all undemocratic laws put in place by the former authoritarian regime would be scrapped during the transition to democracy". The interim government took immediate steps towards protecting freedom of expression in the post-revolution context. These included proclaiming freedom of information and expression as a fundamental principles; lifting Internet censorship on many previously blocked websites; and releasing jailed journalists, activists and bloggers.

In addition, the Interim Government abolished the Information Ministry (Ministère de l'Information), the Supreme Council for Communication (Conseil Supérieur de la Communication) and the Propaganda Agency (Agence de Propagande) and also abolished the death penalty, among other measures. The Interim Government also agreed to accede to a number of international human rights instruments and to reform domestic legislation. On 15 March 2011, the High Authority for the Achievement of the Revolution's Objectives, Political Reform and Democratic Transition, (HAARO) was established, taking over from the High Commission of Political Reforms and the High Commission for the Protection of Revolution, that were previously in charge of the political reforms. The HAARO operated until 13 October 2011 and was responsible for overseeing the transition towards a fully democratic country. Its responsibilities included immediate legal reforms, such as the electoral code, the law on political parties and the election of the new Constituent Assembly.

Special sub-commissions have been established within these structures to review a number of laws, beginning with the press code, to investigate incidents related to the revolution including the unlawful killing of protesters, to investigate corruption and to supervise the elections and resolve conflicts during the election period.

Press Code

On September 23 2011, HAARO approved a Draft Decree on the Press Code for the news media, which is currently awaiting the signature of the Interim Government.

The Press Code addresses some of the worst problems of the 1975 Tunisian Press Act by removing or curtailing provisions used to suppress press freedom under the Ben Ali regime. ARTICLE 19 has previously welcomed a number of the Code's provisions, in particular: the prohibition of prior authorisation, the removal of governmental discretion on newspaper registration, the reduction in privileges enjoyed by public authorities, and the strengthened ability to preserve confidentiality of sources, with a court order required to compel a journalise to disclose sources. Most encouragingly, the Press Code eliminates the offences of defaming public officials, religions, or state institutions.

However, ARTICLE 19 is concerned about numerous shortcomings in the Code. First, we note that nearly half of the provisions impose a strict regime of criminal liability. While prison terms have been reduced, there are still over a dozen crimes for which journalists may be imprisoned, in some cases for up to five years. The Code contains a number of broad provisions restricting content, such as the offence of publishing and promoting false information (though now only punishable by a fine) or the crime of criminal insult (which is conflated with that of blasphemy), and leaves unacceptably broad discretion to authorities to determine its scope. The Code would also make it easy for print media to be suspended for offences such as violation of privacy and insult. The Code requires a vast range of media, including newspapers, books, CDs and even digitally stored material, to be registered; it also provides

opportunity for prior restraint by obliging printers and publishers of non-periodical printed work to deposit copies to the Minister of the Interior. Furthermore, the Code appears to allow for the licensing of journalists via "journalist cards". While recognising the right of journalists to protect the confidentiality of their sources, the regime does not protect journalists from surveillance nor prevent their property from being searched and seized. Similarly, there are no protections to prevent communications from being intercepted.

Broadcasting laws

The sub-commission of the HAARO has also proposed a draft Decree on the Freedom of Audiovisual Communication and the Creation of an Independent Higher Authority for Audiovisual Communication of Tunisia.

Although the Draft Decree responds to the pressing need for legal reform of broadcasting regulation in Tunisia, it has a number of shortcomings from a freedom of expression perspective. While the law contains guarantees for the right to freedom of expression, it does not elaborate upon the specific application of this to the media. For example, the law lacks guarantees for pluralism and diversity in the media, adequate safeguards to secure editorial independence from government influence, or measures to promote universal access to broadcasting and to ensure fair and non-discriminatory access to state resources.

Furthermore, the Draft Decree needs to address flaws in relation to the independence of the broadcast regulator that it seeks to establish. The regulations should ensure that members of the broadcast council are not conflicted in their obligations through interests as journalists or media owners. Also, the Draft Decree should expand the power to select the members of the regulatory body beyond the three branches of government to enable public and civil society participation in this process. Finally, the Draft Decree should clarify the conditions for dismissing members of the broadcast council to ensure that this power is not used arbitrarily.

In terms of content restrictions, the Draft Decree ought, in compliance with Article 20 of the ICCPR, contain provisions on the protection of minors and specific prohibitions against incitement to hatred based on race, sex, religion or nationality. The provisions also lack guidelines on the duty of broadcasters to carry certain content and conduct themselves in a particular way during elections; the comments made in relation to the election media regulations for the constituent assembly elections should be considered and integrated into these regulations for all future elections.

The Draft Decree is also deficient in its provision of remedies. Broadcasters should be obliged to recognise a right of reply if a person is affected by a statement in a broadcast. The opportunity to respond should be provided for free and broadcast under similar circumstances to the statement complained of. Similarly, the decree should also recognise a right of correction. The law should also provide liability exemptions for broadcasters in certain circumstances; particularly when the content is in the public interest or during a live broadcast.

Media and elections

The legal framework for the Tunisian Constituent Assembly Election was enacted on May 10 2011 as Decree No.35. These elections took place on October 23, the first in the region since the Arab Spring. ARTICLE 19 provided an analysis of an earlier draft of this Decree,[19] and welcomed the efforts by the Interim Authority to regulate for a credible and peaceful election. However, we also noted that the Decree lacked provisions guaranteeing media independence during the elections; assurances of pluralism in media coverage; guarantees of candidates' and voters' rights to impart, seek and receive

[19] See ARTICLE 19, *Comment on the Decree on Election of National Constituent Assembly of Tunisia*, May 2011; available at http://www.article19.org/pdfs/analysis/comment-on-the-draft-decree-on-election-of-national-constituent-assembly-of-.pdf

opinions related to the elections; or any provisions ensuring that candidates receive equitable access to the media.

The Interim Authority subsequently issued the Media Regulations for the Constituent Assembly Elections that addressed many of the concerns raised in ARTICLE 19's earlier legal analysis. In our assessment of the Media Regulations,[20] we highlighted a number of positive advancements. There are strong guarantees for editorial independence for the media, free movement of journalists, and protections for journalists and their property and sources against acts of violence. There are also robust obligations for the public and private media to educate the public on election issues, including the extensive provision of free and equitable direct access programming. The principles of impartiality and non-discrimination are fairly well integrated, particularly the importance of gender equality. The law encourages the equal participation of men and women in the election as candidates, as voters, and as individuals represented in the media.

However, the analysis of the Media Regulations found that a number of provisions either directly undermine or are too weak in their protection for the right to freedom of expression. Recommendations to address this imbalance included incorporating an explicit guarantee of the right to freedom of expression, emphasising its heightened importance during elections in a transitional democracy. There are also prohibitions on defamation that lack defences for expression that is in the public interest, particularly concerning public officers. Finally, the broad availability of severe sanctions for violations of the Media Regulations, including the revocation of broadcasting licenses, lack assurances of proportionality.

ARTICLE 19 encourages Tunisia to continue to engage with civil society organisations in developing its media laws after the election of the Constituent Assembly. Enacting a regulatory framework for the media that conforms to international standards will provide a crucial foundational block for the transition toward a more democratic and transparent form of government. The Tunisian Constitutional Authority must harness the momentum of this election to institutionalise respect for freedom of expression and engage in wholesale reform of the penal code and media laws.

Cybercrimes Legislation

An increasingly concerning trend across the MENA region is the proliferation of cyber security legislation that unduly restricts freedom of expression and information. In most instances, these laws appear to exploit hysteria over cyber-terrorism to extend or legitimate state practices of censoring legitimate on-line expression. The integral role that technology, in particular the Internet and social networking, has played in enhancing the right to freedom of expression in the region, particularly in effecting democratic change, demonstrates the urgency with which reform to these laws should be addressed.

Iran

In February 2011, the Islamic Republic of Iran enacted a Computer Crimes Law saturated with provisions that criminalise legitimate expression. ARTICLE 19 expressed concern that this law acts to extend Iran's vast censorship apparatus, demonstrating the government's resolve to pursue human rights defenders, bloggers, and journalists and restrict use of the last available sanctuary for freedom of expression and political dissent in the country.[21]

[20] The analysis is available on request from ARTICLE 19 Law Programme.

[21] The text of the analysis is available on request from ARTICLE 19 Iran Programme, at iran@article19.org.

Provisions criminalising expression that is against "public morality and chastity" allow the authorities to impose their undefined moral code as they see fit without regard to the plurality of views in society. Chapter 5, titled "disrepute (dishonour) and dissemination of lies", includes broad criminal defamation provisions that are antithetical to the right to freedom of expression, providing no defences for statements that are true or in the public interest. The essential elements of all offenses appear to be deliberate and cynical in their ambiguity, granting unfettered discretion to the Government to pursue its own prerogatives above the interests of the public and the imperatives of international human rights law.

The Computer Crimes Law mandates severe sentences that penalise legitimate expression, offending the proportionality principal that is central to human rights protection. ARTICLE 19 is particularly concerned by the availability of the death penalty for crimes committed against public morality and chastity. Other sanctions on legitimate expression include lengthy custodial sentences, draconian fines, and judicial orders to close organisations and ban individuals from using electronic communications. These penalties also apply to Internet Service Providers that fail to enforce content-based restrictions, incentivising the private sector to promulgate Iran's censorship culture.

ARTICLE 19 has urged the Iranian government to repeal the Computer Crimes Law as part of a comprehensive reform agenda to safeguard the right to freedom of expression in the country. The value of free expression and information must be asserted as norms, while limitations on free expression must be kept as the exception.

Iraq

In September 2011, the Presidential Council of Iraq issued a Draft Law on Informatics Crimes. ARTICLE 19 urged Iraqi Parliamentarians, civil society and other stakeholders to reject the Draft Law in its entirety.[22]

As with a number of draft laws related to cyber security, the Draft Law places too great an emphasis on the negative uses of technology without acknowledging their critical role enhancing enjoyment of the rights to freedom of expression and information. These rights are inadequately protected and in some instances significantly eroded by the law.

Notably, the Draft Law imposes a number of content-based restrictions on expression without citing legitimate bases for doing so. Provisions related to national security and public order fail to demonstrate a causal link between the restrictions placed on free expression and the harm to a protected interest.

For example, Article 3 of the Draft Law prohibits computer use that compromises the independence of the state or its unity, integrity, safety or any of its high economic, political, social, military or security interests. This essentially grants law enforcement an incomprehensibly broad power to censor any electronic expression it deems necessary. Article 3 is among a number of provisions that carry a maximum sentence of life imprisonment.

Article 6(4) of the Draft Law appears to prohibit the publication or broadcasting of any false or misleading facts with the intent to weaken trust in electronic trading and monetary systems. This feasibly incorporates any expression that intends to encourage critical discussion of these systems and is a flagrant attempt to limit the right of people in Iraq to engage in political speech.

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[22] See ARTICLE 19, *Iraq: Draft Informatics Crimes Law*, October 2011; available at: http://www.article19.org/data/files/medialibrary/2792/11-10-26-ANAL-iraq.pdf.

Moreover, the Iraqi government purports to grant itself the legal authority to impose its own moral code on the people of Iraq. The broadest of these restrictions, Article 21(b), imposes severe custodial and financial penalties on "whoever violates principles, religious, moral, family, or social values … through information networks or computers." Again, this an impermissibly broad content-based restriction that targets a spectrum of innocuous and harmless expression that the state has no interest in regulating.

The Draft Law further erodes the rights to freedom of expression and access to information by criminalising electronic defamation (Article 22(3)) and by failing to protect the right of journalists to protect their sources (Article 13(1)(c)).

Jordan

On 22 September 2010, a Royal Decree was issued implementing the Information Systems Crime Law in Jordan.[23] The Royal Decree establishes a legal framework for the prosecution of crimes committed on the Internet, including hacking and illegally obtaining information, but also contains a number of expansive content-based restrictions on free expression. The Decree aroused suspicion among media activists within Jordan who allege that it formed part of a campaign against local media in the run up to parliamentary elections in November 2010. They allege that a contemporaneous ban on civil service staff accessing news websites while at work was also part of this campaign.

In response to pressure from media organisations and activists, the Jordanian Government amended their provisional draft of the Decree at the end of August 2010. Welcome reforms include clarification in Article 12 of the Royal Decree that law enforcement authorities must obtain warrants prior to searching premises in connection with cyber crimes. The provision prohibiting defamatory or insulting comments online (originally Article 8) has also been scrapped. However, the provision was only removed because it essentially duplicates what is now Article 14, which incorporates criminal defamation provisions of the Jordanian Penal Code into the law, imposing particularly harsh sanctions for speech against a public official.[24]

The Royal Decree retains various other restrictions on freedom of expression. Article 11A prohibits the posting of information previously unavailable to the public that concerns Jordan's national security, foreign relations, public order or the economy. The minimum sentence is four months in prison and a fine of at least 500 Dinars. This is likely to have a severely restrictive impact on investigative journalism. Article 10 of the Royal Decree also contains a vague prohibition on content that promotes the following of terrorist ideologies, which may be imposed to prevent open media discourse on the ideology behind political groups.

ARTICLE 19 appreciates the willingness of the Jordanian Government to engage in consultations on the draft law and its responsiveness to constructive criticism. However, the Royal Decree still retains broad prohibitions that may be used to suppress legitimate expression that is in the public interest, as well as more innocuous forms of computer-use. This demonstrates the continuing need for comprehensive reform of criminal provisions impacting freedom of expression in Jordan.

Lebanon

On 17 August 2011, the Lebanese Parliament withdrew the latest draft of the E-transactions Law, returning it to the Parliamentary drafting committee. The Law, if enacted, would create a new public authority with a broad mandate for regulating electronic signatures, commercial transactions as well as a number of provisions related to privacy rights and individual freedoms. These regulations have been

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[23] The official English translation of this law is available at: http://www.moict.gov.jo/pdf_files/IE.pdf

[24] Jordanian Penal Code, Article 22, Articles 188-199, Article 193, Article 195, Article 196, Article 197.

pursued without consulting civil society organizations or affected stakeholders.

The Draft Law has attracted criticism since its inception in June 2010 for promoting too many disconnected and potentially conflicting interests in one piece of legislation. The Draft Law couples economic incentives for regulation with ambiguous provisions that potentially intrude on individual freedom of expression and privacy rights. The new regulatory body created by the law lacks judicial oversight or clarity as to its powers relating to the management of private data and Internet use. Without accountability, this body is likely to abuse its powers to engage in broad surveillance and censorship of online expression.

Syria

Syrian President Bashar Al-Assad signed the Internet Communications Law on February 2011, imposing severe criminal sanctions on Internet-users who violate strict online content prescriptions.

ARTICLE 19 is extremely concerned that seventeen of the forty-one provisions in the Law relate to the punishment of bloggers and Internet users. These include provisions broadly criminalising publications on the Internet related to politics, religion, and ethnic minority rights. The Law also gives broad powers to any "judicial auxiliary" to conduct investigations on journalists suspected of committing crimes as "defined by law;" thus incorporating broad content-based restrictions such as those outlined in the Penal Code above. The term "judicial auxiliary" is deliberately ambiguous as it is unclear which body will conduct investigations and which legal framework, if any, will constrain their conduct. The Law confers on this "auxiliary" the power to search the premises of journalists and seize their computers.

The Law also grants the Minister of Information a broad power to block any website. Punishments for violations of the law include orders to close websites, fines up to $42,000 and prison terms of up to three years. The imposition of such severe criminal penalties for exercising one's right to freedom of expression is entirely illegitimate.

Coinciding with the ratification of this Law, the Syrian government lifted a block on the websites Facebook, YouTube and Blogspot, allowing access to social media platforms without the use of proxy servers for the first time since 2007. However, this appears to be motivated out of a desire to facilitate the government crackdown on demonstrators. Detained activists have reported that authorities have interrogated them for their Facebook passwords. Others claim that pro-government "spam-bots" have flooded forums with pro Al-Assad propaganda and benign content to undermine attempts at establishing a coherent online presence for regime change. In September 2011 twitter users in Syria reported that access to the popular blogging platform WordPress had been blocked.

Legal Protection of Journalists, Human Rights Defenders and Bloggers

All countries in the MENA region are under a positive obligation to protect the lives and physical integrity of all people, including journalists, human rights defenders and bloggers from violence and threats of violence by state or private entities. There is a corresponding duty to investigate such conduct where it occurs and to hold those responsible to account.

It is beyond the scope of this report to document the many violations of these rights in the last year. Journalists, human rights defenders and bloggers have played an integral role in exposing wrongdoing and disseminating the information that has both inspired and coordinated movements for change across the region. In many cases these individuals have been intimidated, attacked, detained, tortured, disappeared, denied due process rights, prosecuted by military tribunals and in many cases have lost their lives. This violence contravenes international law, and in many instances appears to form a systematic pattern of abuse by states against civilians.

These events highlight the exigent need for robust legal protections that enable journalists, human rights defenders and bloggers to exercise their role without fearing for their lives or safety. According to our study, only Iraq has enacted such legal reforms in the last year. Legal reform in this area is a priority for all countries across the region.

Iraq

On August 9 2011 the Iraqi legislature, the Council of Representatives, passed a Law on the Protection of Journalists, following vigorous discussions in Iraq on this legislation that began in 2009. ARTICLE 19 commented on earlier versions of this Law in August 2009[25] and in May 2010.[26]

Although ARTICLE 19 recognised the attempts in Iraq to provide protection to journalists and noted that the enacted Law improved on previous drafts, it still fell short of international human rights standards on the right to freedom of expression and the right to freedom of information.[27]

According to ARTICLE 19, positive features of the Law include the expansion of the definition of "journalist" by removing the requirement of membership in a professional association, thereby extending the scope of the law's protections. The purposes of the law are also framed in positive human rights language, appropriately reflecting Iraq's obligations under international law. Another positive feature is the provision of compensation schemes and healthcare provision for journalists who endure injuries through the performance of their duties.

However, the Law retains several provisions that still require reform to comply with international standards on freedom of expression and freedom of information. A number of these provisions are restricted by their reliance on previous legislation, using terms such as "in accordance with law", thus entrenching existing deficiencies in the Iraqi legal framework. For example, Article 4(1) of the Law guarantees the right of journalists to access information in accordance with law, despite the lack of an institutional or legal framework in domestic law to facilitate the exercise of this right. Similarly, the right of journalists to freedom of expression is subjected to existing law, thereby incorporating the insufficient Constitutional protections of the right and the broad criminal defamation provisions of the 1968 Publications Law and 1969 Penal Code.

Although the definition of journalists has been improved, the Law still limits its application to "full-time" journalists, without explaining the rationale for excluding part-time journalists. The Law also discriminates against non-national journalists by denying them access to the free health care and compensation schemes and also providing lesser penalties for those convicted of attacking non-nationalist journalists.

The Law also suffers from a lack of clarity in its provisions on the protection of journalists' sources. The scope of this protection and the circumstances under which it can be overridden are not provided in the law.

ARTICLE 19 has requested that the Iraqi Government consider reforms to this Law in light of these recommendations. We also encouraged the Iraqi Government to provide safety training courses for journalists, allocate enhanced resources and training for law enforcement officials, prosecutors and the

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[25] See ARTICLE 19, *Comment on Draft Journalists Protection Law of Iraq*, August 2009; available at http://www.article19.org/pdfs/analysis/iraq-comment-on-draft-journalists-protection-law.pdf.

[26] ARTICLE 19, *Comment on Draft Journalists Protection Law of Iraq*, May 2009; available at http://www.article19.org/data/files/pdfs/reports/comment-on-draft-journalist-protection-law-of-iraq.pdf.

[27] See ARTICLE 19, *Iraq: Law on journalists' protection fails to protect rights*, 14 September 2011; available at: http://www.article19.org/resources.php/resource/2734/en/iraq:-law-on-journalists'-protection-fails-to-protect-rights

judiciary, and to adopt legislation on the right to information and reform Iraq's criminal defamation laws.

Defamation

Criminal and civil defamation laws have been extensively used throughout the MENA region in the last year to silence critics of both incumbent and transitional governments. Draconian laws that ostensibly protect the reputations of individuals, particularly public officials, remain on the books in most countries throughout the region. We have noted above that there have been limited improvements in Qatar in relation to defamation by media outlets, and also reforms through Tunisia's media regulatory reforms. It was also noted that Saudi Arabia has significantly increased penalties from criminal defamation. In addition to these changes, Mauritania has adopted positive reforms.

Mauritania

On 6 October 2011, the Mauritanian Government approved a Law abolishing the provision of custodial sentences for the Press Law crimes of insulting the President, foreign heads of states and ambassadors, and publishing "wrong information" that could spread chaos and disturb the discipline of the armed forces. Journalists had previously been imprisoned under these laws for critical articles they had published.

ARTICLE 19 welcomes the abolition of custodial sentences for these offenses as a positive step. However, the offences themselves are still retained by the Press Law, as custodial sentences have merely been substituted for financial penalties. We have consistently advocated for the abolition of all criminal defamation laws, irrespective of the penalties that they impose. The imposition of fines will still have a significant chilling effect on expression, particularly in Mauritania where media advertising and circulation revenues are especially low.

ARTICLE 19 notes that other expression-related offences retain prison sentences for articles that are perceived to incite hatred, racism or praise crimes. Other problematic provisions retained in the Press Law include Article 11, which forbids the importation, printing or public distribution of Bibles or other non-Islamic religious literature.

National Security

Freedom of expression has often been curtailed on the premise that it is necessary for the protection of national security. The protection of national security can be a legitimate basis for restricting expression under Article 19(3) of the ICCPR if that expression poses a threat to the country's existence or territorial integrity. However, across the MENA region the protection of national security is frequently cited to protect the government from embarrassment or the exposure of wrongdoing, to conceal information about the functioning of its public institutions, or to entrench a particular ideology. Reliance on legislation to restrict free expression in this manner violates international human rights standards.[28]

Israel

[28] ARTICLE 19, *the Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, November 1996; available at http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf.

On 27 July 2011, Israel published a proposed a "comprehensive Counter-terrorism Memorandum Law" with the dual objective of consolidating existing counter-terrorism legislation and providing Israeli authorities with the necessary legal tools to support effective counter-terrorism policing. Although the latest draft of the law identifies the necessity of balancing the country's security needs with the imperative of protections for fundamental human rights, it contains a number of problematic Articles that do not comply with international standards on freedom of expression and national security.

The Counter-terrorism Law contains broad definitions of terrorism and membership in terrorist organisations that may be interpreted over-inclusively and disproportionately restrict freedom of expression and freedom of association. The provisions on incitement are particularly expansive, and the offences of "identification with a terrorist agenda" and "the conveyance of a terrorist threat" potentially criminalise forms of expression and association that pose no direct or immediate threat to national security.

On 28 March 2011, the Knesset enacted the Citizenship Law (Amendment no.10) which allows courts to revoke the citizenship of persons convicted of treason, espionage, assisting the enemy in time of war, and acts of terrorism as defined under the Prohibition on Terrorist Financing Law (2005). If the individual only has Israeli citizenship and does not reside abroad, they will be downgraded to "residency" status, which severely restricts their rights to political participation – a right closely entwined with the right to freedom of expression and access to information. This appears to be an effort to condition Arab Israeli's citizenship on broad and vague concepts of national loyalty.

Saudi Arabia

Following a legislative review in June 2011, the Shura Council, a government-appointed consultative body, proposed the adoption of a Draft Penal Law for Terrorism Crimes and Financing of Terrorism. The Law would further restrict freedom of expression in the country, entrenching practices for suppressing dissent in law on the pretext of safeguarding national security.

ARTICLE 19 is also concerned that if adopted, the Draft Law would provide a mandatory minimum custodial sentence of 10 years for the offence of questioning the integrity of the King or the Crown Prince. Other provisions would ambiguously criminalise "endangering…national unity", "halting the basic law or some of its articles", or "harming the reputation of the state or its position".[29] These provisions do not pursue legitimate aims under Article 19(3) of the ICCPR and should be not be adopted.

Freedom of Information

Tunisia

In July 2011, as a part of reforms undertaken by the Interim Government, Tunisia adopted a Decree on Access to Administrative Documents, marking an important development in the campaign for a recognised right to information. With the Decree, Tunisia joined Jordan to become the second country in the MENA region to adopt dedicated RTI legislation.

ARTICLE 19 welcomed the adoption of this Decree[30] as an important step in its democratic transition and highlighted its great potential to play an important role in abolishing the culture of secrecy that

[29] The draft is available in Arabic at: http://www.amnesty.org/sites/impact.amnesty.org/files/PUBLIC/Saudi%20anti-terror.pdf

[30] See ARTICLE 19, *Comment on the Decree on Access to the Administrative Documents of Public Authorities of*

marked the previous regime. Access to information legislation will play a central role in establishing democratic, open and transparent governance in Tunisia.

ARTICLE 19 found that a number of provisions in the Decree conform to international standards on the right to information. The right of access to administrative documents is granted to everyone; public authorities have a positive obligation to publish key categories of information of significant public interest; public authorities are required to assist individuals and legal entities seeking access to administrative documents; disclosure refusals can be appealed in court, and fees for disclosure are capped at the cost of reproduction.

At the same time, ARTICLE 19 found that the Decree falls short of international standards on the right to information in a number of respects. The definition of public authorities is under inclusive, as it does not cover private bodies exercising a public function. The decree also lacks provisions to protect whistleblowers, and does not provide for an independent oversight mechanism with responsibility for implementing the decree. The regime of restrictions should also be revised in line with international standards and be subject to a public interest override.

Egypt

In September 2011, the Egyptian legislature proposed a Constitutional Article and a Draft Bill for Obtaining and Giving Access to Information. If adopted, these provisions would form progressive steps towards guaranteeing the right to information in Egypt.

ARTICLE 19 provided an analysis of the initial draft of this Bill.[31] The analysis found that the Draft Bill displays a number of positive features including recognition that the proposed right to information legislation prevails over other laws. The duty to promote transparency and affirmatively publish information is imposed not just on public bodies but on all "relevant entities", including private bodies. There are also welcome guarantees for the protection of whistleblowers, and the establishment of a High Commission for Information to oversee the law's implementation.

To comply with international standards on access to information, it is necessary that the draft law address a number of issues. Firstly, the right to information must be guaranteed as a human right, and not just a right for citizens. Secondly, all exceptions to the disclosure obligation must be subject to the harm and public interest tests; to be withheld the information must relate to a specific legitimate aim, disclosure must threaten to cause substantial harm to that aim, and the harm caused to that aim must be greater than the public interest in having the information.

In addition to the Constitutional Article and the Draft Bill, on 21 November 2011, the Supreme Council for the Armed Forces (SCAF) issued an "Anti-Political Corruption Law". The Law essentially amends the existing 1952 "Treachery Law," but substitutes the exclusive jurisdiction of the military courts with that of the civilian criminal courts.

The Anti-Political Corruption Law is problematic; its terms are so vague that they would allow SCAF the discretion to arbitrarily exclude from political life any person associated with political parties that they do not favour. A person may be prosecuted if they acted "with the purpose of corruption of political rule or political life by harming the country's national interest or cooperating in this or failing to respect laws." Similarly, "harmful interference with the public good in the conduct of affairs without formal authorisation to intervene or accept intervention" is also an offence. The law applies with retroactive effect to all offences committed in the two years preceding 25 January 2011.

Tunisia, July 2011; available at: http://www.article19.org/data/files/medialibrary/2208/Tunisia-FOI-Comment-July-2011-Fina-version-for-PR.pdf.

[31] Text of the analysis is available on request from ARTICLE 19 Law Programme.

Furthermore, the penalties provided by the law essentially have the effect of excluding all those convicted under it from political life for a period of up to five years. Penalties include: depriving an individual of the right to vote or hold public office; denial of membership in the People's Assembly or the Shura Council; deprivation of the right to belong to a political party, and deprivation of membership in any board of directions in a public institution.

Lebanon

On 24 June 2010, the Lebanese Access to Information Network presented a draft Whistleblowers' Protection Law. The legislation covers both the public and private sectors, offering protections for whistleblowers' employment and their personal safety and their family members. It includes a mechanism for reparations to whistleblowers whose disclosures lead to the recovery of public funds or prevention of material loss or damage.

ARTICLE 19 welcomes this effort by civil society in Lebanon to push for greater legal protections for whistleblowers. However, we regret that it does not appear that there has been any progress from the Lebanese Parliament in adopting this legislation. ARTICLE 19 stands ready to provide any support that may be required to reinvigorate the campaign in Lebanon for increased protections for whistleblowers.

Freedom of Association and Assembly

The freedom to gather with those who hold common values and collectively call for changes is an essential feature of a democracy, and integral to the exercise of freedom of expression. These rights have been severely and systematically abused by regimes across the MENA region in the last year; as the military and police have been used to intimidate, illegally arrest, injure, and kill those collectively exercising their right to freedom of expression. Legal protections for these rights must be supported by public order policing that facilitates peaceful protest rather than suppresses it.

Iraq

On 17 May 2011, Iraq's Council of Ministers approved a Draft Law on Freedom of Expression, Meeting and Peaceful Demonstration. As it does not comply with international standards on freedom of expression, ARTICLE 19 called on Iraqi Parliamentarians and all stakeholders in Iraqi civil society to reject the Draft Law.[32]

The problems with the Draft Law are illuminated by the purposes given for its enactment, as it aims to protect the rights to freedom of expression, meeting and peaceful demonstration "in a way that does not disrupt public order or manners." The protection of manners is not a legitimate basis for suppressing expression. It may be due to this error that the Draft Law contains restrictions on expression that are far too broad.

Articles 6 – 10 of the Draft Law cover freedom of assembly, but the right is defined too narrowly, applying only to citizens and requiring prior notification and authorisation to be lawful. There are also blanket prohibitions on assemblies in certain public spaces and institutions and at certain times. This does not comply with international standards on freedom of expression and free association.

[32] See *ARTICLE 19, Iraq: Draft Law on Freedom of Expression, Assembly, and Peaceful Protest*: available at http://www.article19.org/data/files/medialibrary/2266/11-07-14-LEGAL-iraq.pdf.

There are a number of additional flaws in the Draft Law. These include an under-inclusive definition of the right to freedom of expression, which is a reserved only for citizens and not all persons. It also does not cover the right to seek, receive and impart information through any media. The provisions on access to information also lack details of the government's duties under the Law and the institutional changes that will be necessary to implement it.

Furthermore, the Draft Law contains a number of content-based restrictions on expression. At Article 5 it prohibits advocacy for war, acts of terrorism, or national, racial, religious and sectarian hatred in language broader than that required by Article 20(1) of the ICCPR. Also at Article 5, it prohibits the denigration of "religions, sects, orders, and beliefs and degrading them or their followers." Protecting abstract religions, beliefs, ideas and symbols from offensive speech does not fit within a legitimate aim for restricting speech under Article 19 of the ICCPR.

ARTICLE 19 recommended that in addition to withdrawing the Draft Law, Iraq ought to engage in a range of reforms to existing laws that undermine the right to freedom of expression, including the 1969 Penal Code and 1968 Publications Law.

Israel

On 11 July 2011, the "Anti-Boycott Law", approved by the Knesset by a majority of 47 to 38 votes, came into force.[33] The Law prohibits "public call[s] for a boycott against the State of Israel," within the contested Israeli settlements in the West Bank and within Israel itself. A boycott is defined as "deliberately avoiding economic, cultural or academic ties with another person or another factor only because of his ties with the State of Israel, one of its institutions or an area under its control, in such a way that may cause economic, cultural or academic damage."

The Law imposes civil damages on those who breach its terms. It applies to any person who publishes a public call for a boycott where there is a reasonable probability that a boycott will result. There is no requirement to prove that a boycott occurred or caused actual harm. The Law is likely to significantly chill free expression in Israel, as civil society organisations, as well as academic, cultural and scientific institutions risk losing state support, tax exemptions and other legal rights and benefits if they call for a boycott or commit to take part in one.

ARTICLE 19 condemned the Law for restricting political expression without providing a legitimate reason for doing so under Article 19(3) of the ICCPR. The law appears targeted at suppressing criticism of Israeli policy and is a means of silencing a non-violent avenue of political expression. In addition, we noted the widespread opposition to this law within Israel, and the efforts by civil society groups and academics to have the law overturned.

On 3 January 2011, the Israeli Knesset voted to order the House Committee to consider establishing two Parliamentary inquiry commissions. The first is to be tasked with investigating the funding of Israeli organisations "accused of working to prosecute IDF soldiers and officers abroad," and the second commission with an inquiry into "the involvement of foreign governments and bodies in funding actions against the State and in attempts to purchase its lands." ARTICLE 19 expressed its concern that these inquiries do not aim at establishing transparency but rather at "labelling the organisations and singling them out as they do not follow the party line."

On 7 November 2010, the Ministerial Committee for Legislation discussed a private bill, entitled the Bill for Protecting the Values of the State of Israel (Amendment Legislation), 2009 ("the Jewish and

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[33] See ARTICLE 19, *Israel: new anti-boycott law violates freedom of expression*, 21 July 2011; available at: http://www.article19.org/resources.php/resource/2340/en/israel:-new-anti-boycott-law-violates-freedom-of-expression.

Democratic State Bill"). This bill requires organisations to pledge loyalty to Israel as "Jewish and democratic" and authorises the Registrar of Associations and the Registrar of Companies to close down and refuse registration to entities whose goals or actions do not comply with this pledge. This provision violates both the right to freedom of expression and the right to freedom of association.

In March 2010, the Israeli Knesset passed the Bill (2009) to Amend to the State Budget Law (1985), otherwise known as the "Nakba Bill." The Bill severely limits the right to freedom of expression and association by allowing the Finance Minister to reduce or cut state-funding to any individual or organization that marks Israel's Independence Day as a day of mourning. The law potentially conditions the economic viability of public institutions, NGOs and civil society organisations on their rejection of this symbolic act of protest that has become an integral part of the Arab Israeli and Palestinian identity and sense of history.

Conclusions

In the last twelve months, the mass demonstrations against autocracy and injustice in the Middle East and North Africa have inspired people globally to expect more of their governments, and to hold them to account when they do not deliver. People across the MENA region have demonstrated *en masse* that the rights to freedom of expression and information are critical for achieving political change. Incumbent regimes resisting change also recognise this; responding to the exercise of freedom of expression and association with violence aimed at silencing criticism and maintaining the status quo.
ARTICLE 19 believes that integrating robust protections for the rights to freedom of expression and information is essential to guaranteeing democracy and protecting all human rights in the MENA region. The momentum for change that currently exists provides a historic opportunity to safeguard the rights to freedom of expression and information through comprehensive legal, political and institutional reform.

This report highlights that there have been positive steps in this direction already. Transitional governments are proactively engaging with civil society and enacting protections for freedom of expression through constitutional reforms, access to information legislation, and changes to safeguard the independence and plurality of the media. While there is still a lot of work to be done, progress is already being made.

At the same time, we have seen in almost all countries across the region evidence of regression in terms of respect for freedom of expression. In practice, this has included violent crackdowns on demonstrators, and violence against journalists, human rights defenders and bloggers. A variety of existing legislation, including national security provisions and criminal defamation laws, have been used as pretences to intimidate and incarcerate those exercising their rights to free expression and association. The pursuit of activists onto the Internet through the proliferation of on-line surveillance and cyber-security laws is a further cause for concern.

The situation for the right to freedom of expression and information is still precarious in the MENA region; now is not the time for complacency. Constitutional reforms that are on the way must include robust guarantees for freedom of expression and information. Significant legal, political and institutional reforms are required to ensure appropriate protections for freedom of expression and information, and this will take time. Priorities for the year ahead include: protecting journalists, human rights defenders and bloggers from attacks and threats to their safety; guaranteeing the right to peaceful assembly and protest; enacting comprehensive access to information reforms; ensuring freedom of expression and information on the internet; decriminalising defamation, and ensuring an independent and pluralistic media.

ARTICLE 19 will continue to monitor progress on these issues, and stands ready to assist governments and civil society organisations in the region in advancing legal reforms in this area.