

# Reporters Without Borders

<http://www.rsf.org/tunisia-tunisia-s-constitution-should-be-a-06-12-2013,45566.html>

Middle East/North Africa - Tunisia

Joint appeal

## Tunisia's constitution should be a model to protect free expression in the region, say rights groups

6 December 2013

The following joint appeal by over 50 IFEX members and partners is being sent to the Tunisian civil society groups who have the ability to contribute to the constitution building process:

Tunisia's long-awaited constitution should be a model for protecting freedom of expression in the region, say rights groups.

Ms Wided Bouchamaoui, President of the Tunisian Industry, Trade and Handicrafts (UTICA)

Mr Hussein Abassi, Secretary General of the Tunisian General Labour Union (UGTT)

Mr Abdessatar Ben Moussa, President of the Tunisian League for the Defence of Human Rights (LTDH)

Mr Mohamed Fadhel Mahfoudh, President of the Tunisian Bar Association

Dear leaders of UTICA, UGTT, LTDH and the Tunisian Bar Association,

The undersigned local, regional and international organisations committed to the right to freedom of expression are writing to recognise the leading efforts you are making together to support the ruling Islamist-led coalition and the main opposition parties to reach an agreement. Such an agreement would end Tunisia's political deadlock and hopefully revive the democratic expectations which the uprising against autocratic rule inspired in Tunisians and others yearning to end despotism in the region, nearly three years ago.

We remain, however, deeply concerned about the failure of the National Constituent Assembly (NCA) to propose, after more than two years of discussions, a draft constitution that would protect the right to freedom of expression in line with Tunisia's obligations under international law and, in particular, Article 19 of International Covenant on Civil and Political Rights (ICCPR). We believe that the Tunisian constitution should serve as a model in a region where attacks on freedom of expression and independent journalism are on the rise, as documented by regional and international human rights groups.

The fourth and most recent draft of the constitution was made public on 1 June 2013, although further debate has repeatedly been interrupted since then, particularly since the political assassination of NCA member and opposition figure Mohamed Brahmi on 25 July. This draft fails to conform to international standards in the area of freedom of expression, and instead poses a threat to independent journalism.

A reference to the need for independent oversight bodies, including in the areas of broadcasting and the right to information, and for respect for freedom of expression should be added to the third paragraph of the preamble. We note that this paragraph includes a long list of democratic references, and that the absence of any reference to the right to freedom of expression is notable.

Under international law, the right to freedom of expression includes the rights to "seek and receive" as well as to "impart" information and ideas, but Article 30 of the draft constitution, which guarantees freedom of expression, fails to include references to the rights to "seek and receive" information. It also allows for restrictions on this right as long as they are provided by the law which aims to protect one of the interests listed, such as the rights and reputations of others, but it does not require such restrictions to be necessary to protect those interests. As a result, any law, even one that was heavy-handed, overbroad and disproportionate would be deemed acceptable.

Article 31 allows for restrictions on the right to information whenever access "compromises

national security or the rights guaranteed by the constitution.” This is reminiscent of the way rights, including freedom of expression, were guaranteed in the abrogated 1959 Constitution, which allowed for broad restrictions. The Article 31 formulation does not even require restrictions to be provided by law and also fails to include the necessity test, noted above.

We also echo the legitimate concerns expressed by local and international human rights groups about the unduly broad mandate of the “information authority” to “regulate and develop the information sector and to ensure protection of freedom of expression and information, the right to access information and the establishment of a pluralistic and honest media landscape” (Article 124). This fails to reflect the broad range of these tasks and the fact that in democracies entirely different independent bodies are used to regulate the broadcast media sector and ensure respect for the right to access information. We are also concerned that the proposal for political parties to elect the members of this body (Article 122) would fail to protect its independence.

#### Recommendations:

- A reference to freedom of expression and the need for independent oversight bodies, including in the areas of broadcasting and the right to information, should be added to the third paragraph of the preamble.
  - Article 30 should guarantee the right to “seek, receive and impart” information and ideas.
  - Both Article 30 and Article 31 should only allow for restrictions on these rights when they are provided for by law, and are “necessary” to protect one of the listed interests.
- The constitution should provide for the establishment of two independent bodies, one with a mandate limited to regulating the broadcast media and one with a mandate to ensure respect for the right to access information. Effective systems should be put in place to ensure that these bodies are independent, including through the manner in which their members are appointed.

Best regards,

Arabic Network for Human Rights Information  
Adil Soz - International Foundation for Protection of Freedom of Speech  
Africa Freedom of Information Centre  
ARTICLE 19  
Bahrain Center for Human Rights  
Canadian Journalists for Free Expression  
Cartoonists Rights Network International  
Center for Media Freedom and Responsibility  
Centre for Independent Journalism - Malaysia  
Committee to Protect Journalists  
Derechos Digitales  
Espacio Público  
Foundation for Press Freedom - FLIP  
Freedom Forum  
Independent Journalism Center - Moldova  
Index on Censorship  
Initiative for Freedom of Expression - Turkey  
International Press Institute  
International Publishers Association  
Journaliste en danger  
Maharat Foundation  
Media, Entertainment and Arts Alliance  
Media Rights Agenda  
Norwegian PEN  
Observatorio Latinoamericano para la Libertad de Expresión - OLA  
Pacific Islands News Association  
Palestinian Center for Development and Media Freedoms - MADA  
PEN International  
Reporters Without Borders  
World Association of Newspapers and News Publishers  
Assemblée des citoyens-Maroc  
Association de la recherche sur la transition démocratique, Tunisia  
Association tunisienne de défense des valeurs universitaires  
Centre d'études sur l'opinion publique, les médias et la gouvernance locale, Tunisia  
Centre for Law and Democracy  
Comité pour le respect des libertés et des droits de l'homme en Tunisie (CRLDHT)

Community Media Solutions  
Le Forum des Alternatives Maroc  
Freedom Foundation, Yemen  
Gulf Centre for Human Rights (GCHR)  
International Media Support (IMS)  
Lam echaml, Tunisia  
Moroccan Association for Human Rights (AMDH)  
National Syndicate of Tunisian Journalists (SNJT)  
Nawaat.org  
Observatoire tunisien des libertés académiques des universitaires  
Regional Centre for Training and Development of Civil Society (RCDCS)  
Sudanese Initiative for Constitution Making (SICM)  
The Syrian Observer  
Tunis Center for Press Freedom (CTLP)  
Tunisian Association of Democratic Women (ATFD)  
Tunisian League for Human Rights (LTDH)  
Tunisian Syndicate of Free Radio Stations  
Tunisian Syndicate of Independent and Partisan Press  
Vigilance for Democracy and the Civic State

---