

# Reporters Without Borders

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Middle East/North Africa - Tunisia

Clarification needed

## Government urged to clarify announcement about implementing media laws

23 October 2012

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While hailing last week's [announcement by the government](#) that it finally intends to implement two decree-laws regulating the activities of journalists and the media, Reporters Without Borders calls on the government to clarify its intentions.

The announcement was issued on the evening of 17 October, at the end of a one-day strike by almost all of the Tunisian state and privately-owned media, including print, broadcast and online media. [\[1\]](#)

Decree-Law 115 on media freedom, printing and publishing and Decree-Law 116 on the creation of an Independent Broadcasting Authority were signed into law on 2 November 2011 by former Interim President Foued Mebazaa.

But the current ruling coalition, led by the Ennahda party, has been blocking their implementation ever since it took office at the end of 2011 on the grounds that they are "incomplete."

"As it stands, this announcement is positive even if belated," Reporters Without Borders said. "It underscores the decisive character of the struggle that Tunisian media workers, the National Union of Tunisian Journalists, the National Body for Information and Communication Reform and international organizations have been waging for months to end the government's exploitation of the legal void in order to keep the media under its thumb.

"Nonetheless, the government must urgently give a detailed timetable for the implementation of these decree-laws and say whether it is definitive or temporary. The government must also do everything to ensure that this announcement is quickly translated into action or else it will be seen as just a vote-catching promise that was never meant to be carried out."

### **Decree-Law 115**

Decree-Law No. 2011-115 of 2 November 2011 on media freedom, printing and publishing defends journalists' rights, forbids restrictions on the flow of information and protects the confidentiality of journalists' sources.

In its [analysis of the law](#) in February, Reporters Without Borders said: "Even if it continues to be flawed, this law is a major step forward, one that will go down in Tunisia's history. It should constitute a minimum standard of protection. However, it will be meaningless if it is not defended by the authorities and is not accompanied by a complete overhaul of the judicial and administrative systems."

#### **Decree-Law 115's positive points:**

- It states the principle of media freedom.
- It decriminalizes insult, defamation and other press offences.
- It eliminates the crime of offence, the strict regulation of foreign publications and pre-

publication authorization.

- Its provisions on access to information and confidentiality of sources and its definition of aggravated assault on journalists are all imbued with a concern to protect journalists and their investigative reporting.

### ***This decree-law's implementation would lead to:***

- The creation of an independent commission tasked with issuing press cards (article 8). This would require an implementation decree.
- The punishment of those responsible for physical or verbal attacks on journalists, who would in this respect be regarded as civil servants (articles 12 and 14).
- The repeal of "all previous laws that contradict this press law, beginning on the day that this press law takes effect" (article 2).

Nonetheless, as well as repealing provisions contrary to this law, its exclusive character must be enshrined. The application of this law rather than general provisions must be guaranteed. If the criminal code's general provisions or any other law were to be applied to cases of an abuse of freedom of expression in the media, the law would become worthless.

## ***Decree-Law 116***

This decree-law provides for the creation of an Independent Broadcasting Authority that would guarantee "broadcasting freedom." Its responsibilities would include issuing broadcasting licences to radio and TV stations and appointing the persons who run the state-owned media.

Implementation of this decree-law would change the way that those in charge of the state-owned media are appointed, and would (in theory at least) end the [system of political appointments established by the Ennahda-led government](#) since January.

It is important that it should apply to previous appointments, that the government should rescind the appointments it has already made, so that this independent body appoints all the persons running the state-owned media.

On the evening of 17 October, after the government had issued its press release, a verbal agreement was reached at a preparatory meeting between social affairs minister Khalil Ezouiya and representatives of the *Dar Essabah* media group whose journalists began a hunger strike on 3 October. The *Dar Essabah* representatives at this meeting included members of the *Dar Essabah* branch of the National Union of Tunisian Journalists (SNJT), the Tunisian General Labour Union (UGTT) and the *Dar Essabah* board.

Various measures were discussed at this meeting including the dismissal of Lotfi Touati, whose appointment by the prime minister as *Dar Essabah* CEO on 21 August is contested by almost all its employees. They want Touati dismissed pending Decree-Law 116's implementation and the appointment of a new CEO by the new body.

The 17 October meeting was supposed to pave the way for an agreement that would be concluded at a meeting at the social affairs ministry on 19 October. But when the journalists and union representatives went to the ministry on 19 October, they found no one who would negotiate with them.

Reporters Without Borders is meanwhile also very worried by the 13 October announcement's reference to the temporary nature of Decree-Law 116's implementation, pending the creation of an "independent public body responsible for the media" as envisaged in article 45 of the current draft of the constitution.

The constitution should be reserved for major principles. In the case of the media, this should include guarantees for freedom of expression and information, the right of access to information, media pluralism and media independence. But the details should be left to specific laws.

Reporters Without Borders has a number of reservations about the "independent public body responsible for the media" envisaged in the current draft of the constitution.

- The very definition of this body is imprecise. There is no definition of the term "public." The other "constitutional bodies" – a term that is not defined in the draft constitution either – are sometimes referred to as an "independent body" sometimes just as a

"body" but only in this case is the adjective "public" used.

- The terms of articles 7.4, 7.5 and 7.6, covering this constitutional body's functions, are extremely broad and vague. Article 7.4 says it "oversees the organization of the media sector, its readjustment and its development." None of this is explained. What is meant by "media sector," for example? Does it include the electronic media?

The constituent assembly members have failed to specify what they mean or "organization," "readjustment" and "development" and what they mean by "creation of a pluralist media landscape" (article 7.4). Are such broad powers likely to promote and protect the emergence of really independent media? How does this body intend to establish pluralism? Isn't there a danger that it will turn into an information ministry?

There is no mention of such key issues as the method that would be used for adopting this body's statutes or the role that civil society and the media would play, for example, in nominating members.

The procedure for appointing the body's members mentioned in article 7.5, election by parliament, is liable to politicize the body. Reporters Without Borders' representatives pointed this out when they met with constituent assembly members on 3 October.

Reporters Without Borders also stresses that the [criminalization of blasphemy's exclusion](#) from the future constitution, as National Constituent Assembly speaker Mustapha Ben Jaafar promised on 12 October, and its exclusion from laws and judicial practice will continue to be one of its priorities.

#### [1] Journalists' demands

1 - Inclusion of freedom of expression, freedom of the media and freedom of creation in the constitution without any restrictions.

2 - Implementation of Decree-Laws 115 and 116, which were published in the Official Newspaper of the Tunisian Republic, and creation of the Independent National Body for Broadcasting Information without delay; and rejection of bills which provide for criminal sanctions against journalists or which limit freedom of expression and media freedom.

3 - The guaranteed right of journalists' access to information, in accordance with 2011 Decree-Law 41.

4 - Revision of the recent appointments of persons parachuted in to run the state-owned media and certain media under judicial administration, including Dar Essabah, and the revision of decisions taken to this effect, considering that the appointment of persons implicated in the former Ben Ali regime's propaganda apparatus as contrary to the Tunisian Revolution's goals.

5 - Effective separation of administrative and editorial functions, creation of editorial committees by vote or consensus, drafting of an editorial charter and revision of the texts already drawn up.

6 - Complete rejection of any violation of union rights, any restrictions or sanctions against journalists because of their union positions and any withholding of salaries from striking journalists.

7 - Resolution of the precarious situation of employees in various media, rejection of illegal recruitment and adoption of transparency in competitive recruitment based on skill and in accordance with the Labour Code and the conventions relating to it.

8 - Rehiring of journalists who were fired abusively or those whose contracts were terminated or who were transferred without taking account of the legal procedures in effect within the Tunisian radio service.

9 - Conversion of the unpaid salaries of Dar Essabah journalists into shares in the company and the creation of a journalists' association within the company.

10 - Criminalization of physical and material attacks against journalists and media workers and a thorough investigation of all such attacks.

11 - Revision of the composition of the board of governors of the Tunisian Television

Corporation in accordance with international standards.

12 - Adoption of a single collective agreement for all Tunisian journalists.

13 - An equitable allocation of state advertising.

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