

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/326625496>

Reforming the broadcasting sector in the Southern Mediterranean: a critical overview

Technical Report · July 2018

CITATIONS

0

READS

165

1 author:



[Dima Dabbous](#)

Phoenicia University, Lebanon

13 PUBLICATIONS 47 CITATIONS

SEE PROFILE

Reforming the broadcasting sector in the Southern Mediterranean: a critical overview

Paper prepared by **Dima Dabbous**, Ph.D.
Assistant Dean, Phoenicia University, Lebanon

MedMedia Closing Conference, May 8-9 2018
Headquarters of the Arab States Broadcasting Union (ASBU)
Tunis, Tunisia

Introduction

In my previous report for the MedMedia project on Public Service Broadcasting in the MENA and the legal reforms that followed the 2011 revolutions in the region, several key issues and challenges were identified.¹ To start with, the notion of “public” in public service broadcasting was an “anomaly” in the MENA region: not only there was no intent by the governments in general (old or new) to serve the public or relinquish control of traditionally state controlled media on the one hand, there was practically no understanding among most stakeholders of what “public service broadcasting” actually meant, and clearly no desire to give audiences what audiences want from their national, publicly-owned media. Consequently, audiences across the region were turning to private and regional (mostly satellite) broadcasters as their public broadcasters failed to provide the content they were looking for.

Moreover, by the time the research was concluded in 2014, many countries were still experiencing internal political upheavals due to regime change and internal instability. By the end of 2014, many MENA countries had introduced legal reform in the media sector, but had not had the time to implement these reforms which were a crucial aspect of the democratic transition. At the time, the question that posed itself was whether the on-going reforms (on paper) were going to prompt any real and positive changes in actual media practice and output, and whether the focus on creating and implementing new media regulations and structures was actually going to translate into more accountability, improved programming, and better openness to pluralism and diversity in the public broadcasting sector. My report back then:

“found little evidence that there has been a growth of pluralistic, non-partisan coverage of news and current affairs which can be directly ascribed to the reform processes. Public broadcasters were continuing to tow the government line rather than challenge the official

¹ Dabbous, Dima (2015). *Assessing Public Service Broadcasting in the Southern Mediterranean Region*, BBC Media Action, the UK (2015). Available at: <http://www.med-media.eu/wp-content/uploads/2015/08/MedMedia-PSB-report.pdf>

version of events whilst private media remained reliant on politically-motivated financial backing.”²

Knowing that the PSB model, as a model, is being re-evaluated around the world and is facing increased pressure and competition from private broadcasters, the challenges to this model are “particularly acute in the Arab world where the digital revolution has coincided with (and, some would argue, triggered) a political revolution”.³

The present paper builds on the findings of the previous MedMedia report (2015) by tracking the legal changes that occurred between early 2015 and early 2018.⁴ Whenever there are recent legal changes related to broadcasting in general, such changes are mentioned and evaluated. The objective is to provide a critical overview of the state of public service broadcasting and the new regulatory reforms introduced since early 2015, in order to assess the impact of the Arab Spring (directly or indirectly) on the nature and performance of the public broadcasting sector in the Southern Mediterranean region, and the extent to which the wheels that were set in motion in 2011 have resulted in an improved and more democratic public broadcasting sector in these countries-- one in which the notion of “the public” is supposed to be at the core of the reform endeavor.

The structure of the paper follows largely that of the 2015 MedMedia report on public service broadcasting, covering legal reform in each of the Arab countries in the South Mediterranean separately. However, only 5 of the original 8 countries included in the 2015 report are the focus of the present update: Egypt, Algeria, Libya, Tunisia, and Morocco. Tunisia, Egypt, and Libya underwent regime change between 2011 and 2012, and soon after constitutional changes followed suit. Morocco and Algeria did not experience revolutionary change, yet they sought to defuse existing public tension with constitutional changes and several legal reforms of the media sector. By contrast, no constitutional changes occurred in Lebanon, Palestine or Jordan,

² Aida al-Kaisy, in *Assessing Public Service Broadcasting in the Southern Mediterranean Region*, op. cit, 2015, p. 6.

³ Aida al-Kaisy, op. cit.

⁴ In order to avoid duplication, no mention of the state of public service broadcasting will be made, when that state is more or less the same as what has been assessed in the 2015 MedMedia report titled *Assessing Public Service Broadcasting in the Southern Mediterranean Region*. All translations from Arabic or French in the present paper are made by the author.

and legal reform in their broadcasting sector remained minimal in the last few years, which sets these last 3 countries apart from the first five countries considered in this paper.

Egypt

On 18 January 2014, a new constitution was introduced in Egypt. It marked a significant departure from previous ones by guaranteeing civil liberties and freedom of the media. An entire chapter, Chapter 3, is dedicated to guaranteeing freedom of expression and freedom of the media (Articles 65, 70). Article 71 prohibits the imprisonment of journalists on press-related charges and protects the media from any form of censorship, knowing that “by way of exception, they may be subject to limited censorship in times of war or general mobilization.”⁵ Article 72 guarantees the independence of state-run media as well as their ability to express diverse opinions.

By the end of 2014, except for the introduction of the new constitution, no media-related legal reform had been introduced in Egypt. The early period after the ousting of the Mubarak regime was characterized by relative media freedoms, an increase in the number of private media outlets, diverse opinions, and the abolishing of the ministry of information in the first cabinet reshuffle. However, this short-lived experience was followed by periods of crackdown and greater restrictions on media outlets and journalists, and increased control by the army over state media.

After his election to office, on 16 June 2014, President Sisi formed a Supreme Committee for Legislative Reform whose role was to draft new laws and decrees that are compatible with the new Constitution.⁶ At the top of the agenda back then was introducing a national broadcasting

⁵ English translation of the 2014 Egyptian Constitution is available at <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>, accessed on 21 June 2018.

⁶ “Sisi decrees forming of legislative reform committee”, in *Mada Masr*, 17 June 2014, available at <https://www.madamasr.com/en/2014/06/17/news/u/sisi-decrees-forming-of-legislative-reform-committee/>

council for regulating and guaranteeing the independence of the state-owned media. But no laws were introduced or reformed for nearly 2 years after introducing this Committee, which resulted in a legal vacuum for a while.

The election of a new parliament in late 2015 (convened for the first time on January 2016) put an end to a period of rule by executive decree. However, the situation did not improve with the new parliament, which has been rubber stamping laws introduced by the executive instead of providing a check on the latter.

By 2018, 7 years after the revolution, Egypt had regressed in its ranking with respect to media freedoms and has been ranking consistently “not free” by Freedom House since 2013-- similar to its ranking during the Mubarak regime (it was “partly” free only in 2012)⁷. According to the Committee to Protect Journalists (CPJ), 20 journalists were still behind bars in 2017. With Egypt becoming “one of the world’s biggest prisons for journalists”, and the 3rd worst jailer of journalists in the world after Turkey and China, the state of media freedoms in post-revolutionary Egypt had become “abysmal”.⁸

Indeed, since his election in July 2013, President Sisi has been governing in an authoritarian manner, consistently shutting off opposition voices in a process that came to be known as the “sisification of the media”. In the current media environment, most public and private outlets are supportive of the regime, with the government exercising direct pressure on media owners regarding content. To make matters worse, an anti-terrorism law was introduced on 15 August 2015, further limiting the margin of freedom of expression in the country. This recent law makes it very difficult to report freely on events related to terrorism or insurgency, especially in Sinai. The law also provides such a vague definition of terrorism that the word can “encompass civil disobedience”.⁹ The law also grants “law enforcement personnel sweeping powers and

⁷ Check the ratings for Egypt between 2011 and 2017 at <https://freedomhouse.org/report/freedom-press/2012/egypt>

⁸ Reporters Without borders, Egypt 2018, available at <https://rsf.org/en/egypt>, accessed on 11 June 2018

⁹ “Egypt: Counterterrorism Law Erodes Basic Rights”, *Human Rights Watch*, 19 August 2015, available at <http://www.refworld.org/topic,50ffbce5220,50ffbce5226,55d58e414,0,,EGY.html>, accessed on 21 June 2018.

immunity while carrying out their duties,”¹⁰ and prohibits journalists from publishing any information about militant violence when this information contradicts the official, government account. Punishment for violations include heavy fines (200 000 to 500 000 EGP) and a one year ban from practicing journalism.

Although the 2014 Constitution, in its Article 68, preserves the right to have access to information, there is no such law to date. A draft exists in parliament, but has not yet been voted on.

Whereas the existing media-related laws and the counter-terrorism law severely restrict the margin of freedom of expression in Egypt and allow authorities to easily arrest and imprison journalists, some of the latter are often arrested based on dubious charges related to administrative procedures and not based on any existing media laws. One such recent example regards Al-Jazeera journalist Mahmoud Hussein who was arrested in December 2016 upon arriving to Egypt on vacation, due to “failing to secure proper registration”.¹¹

Crackdowns also extended to social media, with a number of users facing arrest or prosecution for offenses related to blasphemy, inciting protests, or opposing the government online. As of May 2017, there has been an escalation in the governments’ effort to muzzle online media. According to The Association for Freedom of Thought and Expression (AFTE), nearly 500 websites had been blocked by December 2017, “though the authorities had yet to acknowledge the scale of the blocking or provide a legal justification”.¹²

¹⁰ Freedom of the Press, Egypt profile 2017, Freedom House, available at <https://freedomhouse.org/report/freedom-press/2017/egypt> Accessed on 21 June 2018.

¹¹ Freedom of the Press, Egypt profile 2017, Freedom House, available at <https://freedomhouse.org/report/freedom-press/2017/egypt> Accessed on 21 June 2018.

¹² Freedom of the Press, Egypt profile 2017, Freedom House, available at <https://freedomhouse.org/report/freedom-press/2017/egypt> Accessed on 21 June 2018.

As a result of all these crackdowns, state media and all surviving private media support the President and the military, with both self-censorship and official censorship being practiced, in contradiction to the guarantees found in the 2014 Constitution (articles 65, 68, 70, 71, and 72).

Finally, 2 years after introducing the 2014 constitution, in December 2016, as per the requirements of the new Constitution, parliament finally passed legislation No. 92 of 2016 for regulating print and audiovisual media.¹³ The new law (qanoun alhay'at al i'lamyyah) cancelled Law no. 13 of 1979 (about the Egyptian Radio & Television Union or ERTU), and Chapter 4 of Law no. 96 of 1996 about regulating the press.

Law no. 92 of 2016 created 3 media regulatory bodies, with sweeping powers over content and licensing:

1. The National Media Authority (to manage state-owned television and radio)
2. The National Press Authority (to manage state owned print media)
3. The Supreme Council for Media Regulation (the most important of all three bodies, with licensing powers for both audiovisual, print, and online media, in charge of supervising the entire media landscape in coordination with the other two bodies or agencies).

The appointments to these bodies, which heavily rely on the executive, and the heavy control of Sisi over Parliament (which only appoints a few members) severely affect their independence from the executive. For instance, According to law no. 92, The President nominates the head of all three councils, in addition to 2 members of the Supreme Council (*majlis*). Moreover, journalists' unions nominate four names which are sent to the President, who chooses two of them.

The new Supreme Council is tasked with ensuring fair competition among media organizations, and their independence and adherence to journalistic ethics. Most importantly, it has the

¹³It appeared in the Official Gazette on 26 December 2016, after having been signed into law by president Sisi.

power to introduce penalties, and sue and fine organizations which violate its regulations or licensing terms.¹⁴

According to some critics, these new regulatory bodies still have to operate according to old media laws (i.e. apply old legal provisions that exist in previous laws) which will highly constrict their work. For instance, the Supreme Council for Media Regulation cannot issue licenses for electronic media because existing (old) laws do not mention electronic media. And in case a license for a new television channel is issued, then old laws will apply.¹⁵

In early April 2017, President Abdel Fatah al-Sisi issued a decree to establish the three new bodies (created by Law no. 92) responsible for regulating the work of the media in Egypt. On 13 April 2017, the Supreme Council for Media Regulation started meeting. Its first decisions were mostly related to censorship: the Council complained to the Public Prosecutor about journalists such as Ibrahim Issa, and prevented other journalists from appearing in the media (e.g. Riham Said and Mohamad al Ghaiti). It also decided to stop audience polls and ratings surveys, and imposed fines on some channels because of their Ramadan programming, while welcoming the decision to block websites and forming an observatory to “identify websites that threaten national security”.¹⁶

In May 2017, the Head of the Supreme Council for Media Regulation, Makram Ahmed, emphasized his support for the decision to ban a number of news websites,¹⁷ accusing them of publishing content that supports terrorism and propagates lies. On the top of the list comes the news platform Madamasr followed by Al Jazeera, Al Sharq, Masr Al Arabia, Arabic 21,

¹⁴ New Egyptian law establishes media regulator picked by president, Ahmed Aboulenein, 26 December 2016, available at <https://www.reuters.com/article/us-egypt-media/new-egyptian-law-establishes-media-regulator-picked-by-president-idUSKBN14F11S> , accessed on 26 June 2018.

¹⁵ “iqrar qanooun al i3lam almasri aljadid almouthir liljudal”, by Mahmoud Bakri, RT Arabic, 28 December 2016, available at <https://bit.ly/2II0zcd> , accessed on 9 July 2018.

¹⁶ “abla fahita wa najib mahfouz yakhdoshan al haya’a”, *al-arabi al jadid*, 10 March 2018, available at <https://bit.ly/2Kyh53B> , accessed on 9 July 2018.

¹⁷ Head of Supreme Council for Media Approves the Ban Decision of the 21 News Websites, Egyptian Streets, 25 May 2017, available at <https://egyptianstreets.com/2017/05/25/head-of-supreme-council-for-media-approves-the-ban-decision-of-the-21-news-websites/>, accessed on 27 June 2018.

Huffington Post Arabic, and Horria Post among many others.¹⁸ In Feb 2018, the Supreme Council also banned the Arabic version of SNL broadcast on ONTV. According to the Council, “the program consistently used sexual expressions, phrases, and gestures which are not suitable for viewers and which violate ethical and professional standards.”¹⁹

By the end of March 2018, the number of blocked websites had reached 424 according to an Egyptian monitoring body, and 10 journalists were being tried in military courts for “propagating false news”, including journalist and researcher Ismail al-Iskandarani who wrote an investigative report about the situation of the inhabitants of Sinai. In order to circumvent the Constitutional ban regarding prison sentences for journalists, he was accused based on crimes related to terrorism and threatening national security. On 22 May 2018, after spending 2 years and 2 months in pre-trial detention and being referred to military prosecution in January 2018, he was sentenced to 10 years in prison “on accusations of belonging to an illegal organization and spreading false news regarding national security in Sinai.”²⁰

Critics of the Supreme Council already see in it a setback--a throw back to the older, pre-revolution days of tight media control. They are also alarmed by the Council’s focus on “morality” and “indecentcy” in the media, and neglect of more pressing issues such as the government blocking of electronic websites.²¹

According to a recent report by an Egyptian media monitoring NGO (mouassasat horryat al fikr wal ta’bir), the Supreme Council is limiting its role to exercising censorship and control on media and artistic work, and putting its “regulatory work” on the backburner.²²The 2014 Constitution (Article 211) stipulated the establishment of a Supreme Council for Media

¹⁸ Ibid.

¹⁹ “Egypt bars Arabic version of SNL over “ethical violations””, AFP, The Times of Israel, 13 February 2018, available at <https://www.timesofisrael.com/egypt-bars-arabic-version-of-snl-over-ethical-violations/> Accessed on 5 June 2018.

²⁰ Military court sentences Iskandarani to 10 years in prison”, *Egypt Today*, 22 May 2018, available at <https://www.egypttoday.com/Article/1/50656/Military-court-sentences-Iskandarani-to-10-years-in-prison>, accessed on 9 July 2018.

²¹ masr nahwa mazid men iqaf albaramej al-televisionnyah bi zati’at al-akhlaq”, al-arabi al-jadeed, 27 March 2018, available at <https://bit.ly/2tZvWJR>

²² Ibid.

Regulation that would have “technical, financial, and administrative independence”, for the purpose of “safeguarding [the media’s] independence, neutrality, plurality and diversity”. However, since its introduction, the Council has been mostly playing the censor’s role, and ensuring that the media are in compliance with “the national security needs” (Article 211, 2014 Constitution), by issuing disciplinary measures and fines against the media for infringing the (highly restrictive) code of ethics and the requirements of national security.²³ According to the above NGO, the Council’s independence is further compromised by its partnership with the Nasser Academy, which trains editors and heads of media departments in both public and private media on concepts related to national security.²⁴ The Council is also not playing its regulatory role related to introducing a new press law and a Freedom of Access to Information Law, with the drafts lingering in the drawers for over a year.

With respect to private broadcasting, in the last 3 years, several private television channels and newspapers have been launched or acquired by businessmen and individuals with ties to the military and intelligence services. On 14 Jan 2017, the DMC network started broadcasting, “establishing itself as a major player in the Arab media landscape”.²⁵ According to the same source, “so far, little information has been made available clarifying leadership structure and budget, however based on the quality and diversity of programming, their operational budget is sizable”.²⁶

According to Reporters without Borders, whose website is blocked in Egypt since early 2017, in addition to allowing more businessman close to power to own Egyptian media outlets, the appearance of the DMC network has allowed the executive to tighten its control over media in Egypt. For instance, the network is receiving preferential treatment, with its reporters allowed

²³ The content of the ERTU code of ethics is available on its website at <http://dotnet.ertu.org/laws.pdf> accessed on 28 June 2018.

²⁴ Cited in “Al-I’lam fi masr: nahwa askara tonhi hurryat al l’lam wal sahafa”, by Saif-eldine el Ameri, *AJO*, 22 February 2018, available at <https://bit.ly/2Kpvakp>, accessed on 9 July 2018.

²⁵ “DMC TV Network Takes Over”, Arab Media & Society, by Basem Aly, 28 February 2017, available at <https://www.arabmediasociety.com/dmc-tv-network-takes-over/>, accessed on 26 June 2018.

²⁶ DMC TV Network Takes Over”, Arab Media & Society, by Basem Aly, 28 February 2017, available at <https://www.arabmediasociety.com/dmc-tv-network-takes-over/>, accessed on 26 June 2018.

to access sites for covering news whereas requests by other reporters are denied. The network also reproduces through its “exclusive interviews” the official discourse to fight opposition.²⁷

The trend to allow the operation of private media outlets exclusively by owners with interlocking control with government and security officials not only threatens the independence of such media, it has already had consequence for journalists working for them. For instance, businessman Ahmad abu Hushaima was able to acquire 17 media outlets and more than 50% shares in a major film production company (misr lil cinema). Moreover, several satellite channels are now managed by former intelligence officers, such as “al hayat”, which was acquired by one of the biggest security companies in the country. The new ownership/leadership in these outlets has led to the firing of many journalists who are critical of the government or the president.²⁸

It is worth noting that, to date, there are still no clear criteria regarding obtaining a broadcast license in Egypt.²⁹ So far only some satellite channels are allowed to operate (no private terrestrial channels are operating in Egypt), owned by businesspeople with close ties to the regime. Opposition media outlets have been successfully shut down by the Sisi government. Consequently, “state media and most surviving private outlets strongly support Sisi and the military.”³⁰

The state broadcaster, meanwhile, continues to be a mouthpiece of government, having undergone practically no significant structural or editorial change since the regime change in 2011.³¹ It is burdened by overstaffing (not less than 46 000 individuals), nepotism, lack of

²⁷ Cited in “al-l’lam fi masr: nahwa askara tonhi hurryat al l’lam wal sahafa”, by Saif-eldine el Ameri, *AJO*, 22 February 2018, available at <https://bit.ly/2Kpvakp> , accessed on 9 July 2018.

²⁸ “al-l’lam fi masr: nahwa askara tonhi hurryat al l’lam wal sahafa”, by Saif-eldine el Ameri, *AJO*, 22 February 2018, available at <https://bit.ly/2Kpvakp> , accessed on 9 July 2018.

²⁹ A draft law for the media is being finalized before being sent to Parliament for debate by the end of June 2018.

³⁰ Freedom House Egypt 2016, available at <https://freedomhouse.org/report/freedom-world/2016/egypt>, accessed on 11 June 2018.

³¹ See details about ERTU in *Assessment of Public Service Broadcasting in the Southern Mediterranean Region*, by Dima Dabbous, 2014, available at <http://stmjo.com/en/wp-content/uploads/2015/09/MedMedia-PSB-report.pdf> pp 11-15.

trained media professionals, and still relies heavily on state funding since the minimal fee paid by viewers is unable to cover its expenses. The Egyptian president issues by decree the budget of the public broadcasting network and the compensation of its board members, which greatly compromises the independence of this public institution:

Not only is financial autonomy nonexistent for ERTU [Egypt's public broadcaster], but the compensation of those in charge is directly related to the state's satisfaction with ERTU's performance. It is only natural, then, that ERTU acts as a tool to serve the state, even if posing as a public entity.³²

This is the state of the media and media freedoms after 7 years of the January 2011 revolution in Egypt: greater muzzling of freedoms and of accounts that contradict the official stories, mostly via the newly introduced regulatory bodies; increased self-censorship among journalists; a public broadcaster that continues to be at the service of the regime; and deeper interlocking control between state security and military apparatus and ownership of television channels and production companies. Some critics already foresaw the inability of the new constitution and the new regulatory bodies to change the grim state of the media in Egypt, since legislation alone cannot be effective unless the government starts practicing a hands off policy. Some of them even believe that, with the introduction of the new regulatory bodies, the state of the media took a "turn for the worse", giving the "government control over not only public media but private and electronic media as well".³³

Algeria

Algeria did not undergo revolutionary change as neighboring Tunisia and Egypt did, yet its leadership, represented by President Abdel Aziz Bouteflika, introduced early on in 2011 a series of pre-emptive legal reforms that appeared to be drastic in their attempt to defuse inner

³² Rasha Abdulla, "Navigating the Boundaries Between State Television and Public Broadcasting in Pre- and Post-Revolution Egypt", in *International Journal of Communication*, 10 (2016), p 4228.

³³ Ibid.

tensions, liberalize the country economically, and expand the margin of media and other civil freedoms in it.

On 3 February 2011 the state of emergency was finally lifted, after being in force for nearly 30 years. In 2012, six new laws were passed by parliament and promulgated: on 12 January 2012 parliament passed Information Law No. 12-05 of 2012, in order to replace the older restrictive media law of 1990. However, this new law proved to be disappointing in many respects: although Article 2 states that the collecting of information is to be exercised freely, the long list of vaguely worded content-related restrictions (e.g. Article 2 and Article 92) makes it practically impossible to cover any issue (social, political, or economic) without risking retaliation by the authorities. Indeed, among the 133 articles of the new law, “at least 32 can be used to restrict coverage by stifling free expression [...]. Several of the provisions are ambiguous and impose undue restrictions on access to information as well as heavy fines for violations of the law.”³⁴

In 2014, another law was promulgated by parliament in order to put an end to nearly 50 years of state monopoly over the broadcasting sector. Broadcast Law No. 14-04 of 24 February 2014 was finally going to make it possible to license private broadcasters in Algeria. This new law was also met with heavy criticism: it contains several vague content-related restrictions and many restrictions regarding allowed speech: licensed operators have to respect the requirements of “national unity, security, and defense”, in addition to the “economic and diplomatic interests of the country”, and the “national religious authorities”, among others.³⁵ More importantly, it only grants licenses to thematic private channels, making it impossible for applicants seeking a nationwide audience to apply for a license to broadcast general programming consisting of a mix of entertainment and news (Article 17).

In 2016, in another bold move to pre-empt discontent within the country, the Algerian Constitution was revised to guarantee media freedoms. It was approved on 7 Feb 2016, and

³⁴ “In Algeria, new media law stifles free expression”, by Fethi Belaid, Agence France Press, cited in *Assessment of Public Service Broadcasting in the Southern Mediterranean Region*, Dima Dabbous, MedMedia, 2014, available at <http://stmjo.com/en/wp-content/uploads/2015/09/MedMedia-PSB-report.pdf>, p. 7.

³⁵ Al-tanzim al-qanouni li nashat al-qitaa al-sam’l al-basari, by Abdelmoumene ben Saghir, Al-markaz al dimoqrati al-arabi, 5 October 2016, available at <https://democraticac.de/?p=38153>, accessed on 13 June 2018.

published in the Official Gazette on 7 March 2016. Despite protecting media freedoms in the 2016 constitution, mostly by abolishing the prison sentence for print-related offences, (Article 50), journalists continued to be imprisoned for their opinions, based on the Penal Code which the courts still prefer to apply when it comes to media cases.³⁶ In December 2016, journalist Mohamed Tamalt, who was sentenced to 2 years for insulting the president on Facebook, died in prison, “after engaging in a hunger strike and reporting beatings by prison guards”.³⁷

In another recent development, ARAV, the new authority for broadcast regulation introduced in the 2014 Broadcast Law (Article 55 of Law no. 14-04 of 2014), was finally formed on 20 June 2016 by Prime Minister Sellal. Although the aim of this new regulatory body is to regulate the newly liberalized sector and to function at arm’s length from government, the appointment of its members does not ensure such independence: all nine members are appointed by presidential decree, and five out of the nine members, including the president of the authority, are appointed by the president of the republic.³⁸

Whereas a number of laws, directly and indirectly related to the media, have been introduced since 2011 in order to liberalize the sector and increase the margin of freedoms, the broadcasting sector itself has remained practically unchanged, heavily controlled, and censored. Since the introduction of the media law of 2012, only 5 private television operators have been *authorized* (not licensed) to operate through approved offices in Algeria. These are: Eshourouq, Ennahar, Dzair, el-Djazairia, and Hogar-- all outlets believed to be close to the government.³⁹ Other television operators (mostly opposition networks) are still operating/ beaming from abroad (e.g. Jordan, Bahrain, or the UK), under the status of “offshore companies”.

³⁶ Hal touammem al-souloutat aljazairyya al qanawat al televisionyya al khasa bi qanoun el l’lam al jadid?, by Aed Omaira, 23 October 2017, available at <https://www.noonpost.org/content/20402>, accessed on 13 June 2018.

³⁷ Freedom House, Algeria Profile 2017, available at <https://freedomhouse.org/report/freedom-world/2017/algeria>, accessed on 13 June 2018.

³⁸ “Algeria: Arav Adopts Terms of Reference Set by Government”, Algerie Press Service, 27 June 2016, available at <http://allafrica.com/stories/201606280616.html>, accessed on 13 June 2018.

³⁹ Algeria profile, BBC News, 2 May 2017, available at <https://www.bbc.com/news/world-africa-14118855> Accessed on 13 June 2018.

Moreover, between 2014 and 2016, in the absence of a regulatory body (ARAV was introduced 2 years after the broadcast law of 2014), the authorities shut down private television stations deemed critical of government. In 2014, Al-Atlas TV offices were raided and shut down. In 2015, el Watan TV was shut down by the government. In both cases, Reporters Without Borders considered the closures to be “politically motivated punishments for their editorial policy”.⁴⁰ Both TV stations were shut down, respectively, for giving air time to political opponents and for broadcasting content that criticized the President’s candidacy for a 4th term.⁴¹

Finally, in October 2017, when the licensing door was opened to private thematic channels six years after President Bouteflika announced the liberalization of the broadcasting sector, the call for applications excluded applicants/operators with general programming, and restricted the number of licenses to be allocated to 7 operators, each having to broadcast content restricted to pre-determined themes (i.e. one channel for news, one for youth, one for culture, one for cooking, one for documentaries, one for drama series, and one for sports). Such a decision to impose content on licensees, regardless of market needs or shares (based on audience ratings, etc.), is inimical to the concept of liberalizing the broadcasting sector, and reflects the nature of the decision to liberalize the sector by a government which was fully against privatization and liberalization prior to 2011, and continues to act so after the legal reforms were introduced. It should be noted that the radio sector is not yet liberalized, with all existing radio operators being state-run.

With respect to the number of television licenses that will be granted, the reason given by the government justified limiting the licensees to seven because of the “limited capacity” of the Algerian satellite (Al-SAT) that will carry them. This decision to limit the number of private television operators, which is not based on objective criteria or specific provisions in the laws or

⁴⁰ Algeria: RSF decries Algeria’s plan to “clean up” TV broadcasting, Reporters Without Borders, 30 May 2016, available at <https://rsf.org/en/news/algeria-rsf-decries-algerias-plan-clean-tv-broadcasting> Accessed on 13 June 2018.

⁴¹ Hal touammem al-souloutat aljazairyya al qanawat al televisionyya al khasa bi qanoun el l’lam al jadid?, by A’ed Omaira, 23 October 2017, available at <https://www.noonpost.org/content/20402>, accessed on 13 June 2018.

books of specifications (cahiers des charges), is most likely political, reminiscent of a similar decision by the Lebanese authorities in the early 1990s:⁴² as the broadcasting sector was being liberalized following the introduction of the audiovisual law of 1994, the Lebanese government and the newly appointed National Audio-visual Council announced that, due to the “limited spectrum”, only 4 television stations could be licensed. Eventually, despite the existence of independent technical reports that proved this number to be incorrect (and too small), the Lebanese government licensed 4 private operators only, all of whom directly affiliated with government officials and prominent politicians representing the four major political parties or coalitions in the country, and excluded successful and popular channels which objectively fulfilled the criteria for licensing.⁴³

Indeed, commentators already foresee that the successful television applicants that will be licensed in Algeria will be pro-government, with interlocking control and ownership with government officials. They expect the following channels will be licensed: Samira Tv, shourouq news, Dzayer news, nahar laka, al bilad, aljazayryyah, cnbc bana.⁴⁴

In a later development, just a couple of weeks after issuing the decree which opens up the consultation process regarding private TV applications, the licensing process was postponed/frozen, in order to allow the authorities some “reflection time,” according to Minister of Communication Djamel Kaouane.⁴⁵ In his view, more consultation is needed with stakeholders before the licensing process is undertaken. The reasons for backtracking and maintaining the status quo are questioned by some critics, who believe that the government

⁴² Indeed, the number of “possible licenses” based on spectrum capacity changed from one minister to the other. Whereas Algerian Minister of Communication Keouane decided 7 is the limit, his predecessor, Hamdi Grain, announced that 10 TV licenses can be granted. See details in “Hal touammem al-souloutat aljazairyya al qanawat al televisionyya al khasa bi qanoun el l’lam al jadid?”, by A’ed Omaira, 23 October 2017, available at <https://www.noonpost.org/content/20402>, accessed on 13 June 2018.

⁴³ Dima Dabbous (2013). *Regulating Lebanese Broadcasting: A Policy Analysis* (2013). Germany: Lambert Academic Publishing.

⁴⁴ Hal touammem al-souloutat aljazairyya al qanawat al televisionyya al khasa bi qanoun el l’lam al jadid?, by Aed Omaira, 23 October 2017, available at <https://www.noonpost.org/content/20402>, accessed on 13 June 2018.

⁴⁵ Creation de nouvelles chaines de television privee: le government recule, by Rania Aghiles, *Algerie Focus*, 28 October 2017, available at <https://www.algerie-focus.com/2017/10/creation-de-nouvelles-chaines-de-television-privées-gouvernement-recule/>, accessed on 13 June 2018.

froze the licensing process under pressure from current private operators who are trying to avoid the restrictive licensing conditions (e.g. the 300 million dinar non-refundable fee, the 40% limit on ownership for each individual, etc.) and in order to exclude competition from new comers.⁴⁶

In sum, the Algerian example continues to be one of a “revolution waiting to happen”. Since the reelection of Bouteflika in 2014, there has been a “progressive asphyxiation” of the media, according to Reporters Sans Frontieres, and Algeria saw its ranking with respect to media freedoms slide back.⁴⁷ Despite introducing laws that are meant to liberalize the audiovisual sector, the government has been proving its actual reluctance to do so, directly or indirectly. Moreover, the unwillingness to license private operators is not the only means of controlling the media in Algeria. State control continues to be exercised through the arbitrary arrests of journalists who are critical of government (Mehdi Benaissa and Ryad Hartouf of Khabar Broadcasting Corporation),⁴⁸ and through conducting court hearings based on the Penal Code. On 11 December 2016, Algerian-British journalist Mohammad Tamlat died while being under arrest.⁴⁹

Whether by restricting the types of broadcast licenses, or by not actually licensing any private television operator based on the new media law years after its introduction, or by arbitrarily arresting journalists and prosecuting them based on the penal code, the end result has been the same: more muzzling of media freedoms and more control of the private television sector, mostly in an attempt to maintain the status of the public broadcaster as a mouthpiece of government.

⁴⁶ Ibid.

⁴⁷ “RSF publishes report on media and journalism in Algeria”, Reporters Without Borders, 21 December 2016, available at <https://rsf.org/en/reports/rsf-publishes-report-media-and-journalism-algeria>, accessed on 13 June 2018.

⁴⁸ Freedom House, Algeria Profile, 2017, available at <https://freedomhouse.org/report/freedom-world/2017/algeria>, accessed on 13 June 2018.

⁴⁹ “al-maghreb al-arabi: al-l’lam la yazal fi intizar al-thawra”, by Saif el-Dine al-Ameri, 28 December 2017, *al-marsad al-arabi lil-sahafa*, available at <https://orientxxi.info/magazine/article2194>. Accessed on 9 July 2018.

Libya

Seven years after the revolution that threw out the Ghaddafi regime, the print and broadcasting media are operating in a complete legal vacuum. Journalists, reporters and media practitioners continue to work in life threatening circumstances, in a country where conflict between the different armed factions is still raging, and where there is still no unified government.

After the collapse of the Gaddafi regime, freedom of expression and freedom of the press were guaranteed in Article 14 of the Interim Constitutional Declaration, also known as the Draft Constitutional Charter for the Transitional Stage of 2011, which repealed all laws that restricted freedom of expression until new laws were to be introduced later on. This has not happened yet, as the transitional authorities (and competing governments) have not yet been able to agree on the official body or entity that will be responsible for reorganizing the media landscape and introducing new media laws. There were repeated (and separate) attempts by the National Transitional Council (or NTC) and the association of journalists to introduce a higher media council to regulate the media in Libya, but in vain.

A constitutional declaration introduced in 2011 is still Libya's legal document pending the adoption of a new constitution. On 29 July 2017, The Libyan constitution-making body approved the final draft of the Libyan Constitution. The draft contains some general protections for media freedom and independence, and prohibits the imprisonment of journalists (Articles 37 and 38).⁵⁰ The new draft constitution, however, was criticized by local and international organizations lobbying for human rights. Such organizations, led by Article 19, wrote an open letter to the Libyan Constitution Drafting Committee, identifying the weakness of the media-related provisions and their inability to meet international standards with respect to media freedoms and regulation. For instance, the open letter noted how the few articles that refer to freedom of expression (Art. 37), pluralism and independence of the media (Art. 38),

⁵⁰ An unofficial translation of the 2017 draft Constitution is available at <https://www.temehu.com/CDA/final-draft-libya-constitution-29-july-2017-english-translation.pdf>, accessed on 14 June 2018.

and freedom of access to information (Article 46) are too ambiguous, and the draft itself fails to mention international conventions and treaties to which Libya is a signatory. It recommended referencing international standards such as the ones set out in the ICCPR and its article 19 in specific.⁵¹

Moreover, a number of currently enforced laws and decrees contain provisions that are restrictive of media freedoms: the Ghaddafi-era Publications Law of 1972; Law 15 of 2012, prohibiting any discussion in the media about religious opinions put forth by the National Council of Islamic Jurisprudence; Decree 5 of 2014 which allows the suspension of satellite TV channels that criticize the 2011 Revolution; and Law 5 of 2014 which amended the penal code to make it punishable for up to 15 years in prison if anyone made statements that harm the 2011 revolution or insults the executive, judiciary, or legislative bodies or any of their members.

Starting in 2011, the media sector witnessed a proliferation of outlets in the absence of a regulatory framework for audio-visual media – a legal vacuum that the successive governments were unable to fill. This led to religious, ethnic, politico-economic and ethnic groups to own and control media outlets, promote violence and hate speech, and lead to increased polarization of and division in the country.

The state of chaos that Libya is living in since the collapse of the democratic process in 2014 is such that the public media are divided between East and West. The competing government authorities controlled rival state channels and news agencies throughout 2015, and militias took over and controlled premises such as the Libyan TV, the news agency, the Centre for developing the media, and the printing company (*sharikat al matabe3*). The Islamic State took control of local outlets (private and state-owned) after occupying Sirte in 2016. Local councils in some areas are operating their own television and radio stations.

⁵¹ The open letter, titled “Libya: ARTICLE 19 and others urge protection of free expression in new Constitution”, is available at <https://www.article19.org/resources/libya-article-19-and-others-urge-protection-of-free-expression-in-new-constitution/>, accessed on 15 June 2018.

Some media outlets became mouthpieces for the armed groups and defended their views, which included promoting attacks against the Libyan army. The situation prompted the union of media practitioners to issue a statement on 29 September 2016 condemning hate speech and incitement to violence on an-Naba' channel. In April 2017, the Libyan Centre for Press Freedom issued a report about hate speech that identified an-Naba' channel as the outlet most responsible for broadcasting hate speech.⁵² The prevalence of hate speech and incitement to violence and incitement against ethnic and political minorities, in addition to defamation and verbal slurs in political talk shows on television and on websites, are abetted by the dominant culture of impunity and the absence of media regulation.

Meanwhile, Libyan audiences are mostly served by a variety of privately owned satellite channels broadcasting from abroad. By contrast, terrestrial broadcasters and newspapers are facing serious security and economic issues, and have had their services reduced or interrupted during 2015.

Journalists were able to form advocacy groups and professional associations (e.g. the Libyan Center for Freedom of the Press), but their ability to operate continues to be severely impeded by intimidation and violence. Journalists continued to be abducted and killed in 2016 by militias and extremist groups, with a culture of impunity prevailing (e.g. the owner and director of Al-Anwar production company was killed in his office in 2015, and four Libyan journalists kidnaped in 2014 were found dead in April 2015). Just in the first half of 2017, 25 assaults on press teams were recorded, in addition to verbal attacks and insults, especially in the areas where military conflicts are ongoing.⁵³ Several journalists were forced to cease working and many went into

⁵² "Al l'am fi Libya: bayna al qam' wal adlaja", by Abdel Baset Ghbara, Afrigatenews.net, available at <http://www.afrigatenews.net/node/166175>, accessed on 15 June 2018.

⁵³ "Libyan Center for Freedom of Press condemns restrictions on journalists in Tripoli", *The Libya Observer*, 28 June 2017, available at <https://www.libyaobserver.ly/news/libyan-center-freedom-press-condemns-restrictions-journalists-tripoli>, accessed on 5 July 2018.

exile.⁵⁴ Since 2011, reportedly more than 50 journalists chose to flee the country and the reigning chaos.

The civil war, the lack of the rule of law and of media regulation, and the dominant culture of impunity combined have put the journalists in the dangerous situation of having to choose between accepting to working under very repressive circumstances (and exercise self-censorship) on the one hand, or adopting the ideology of violent groups whose work motto is “you are either with us or against us”.⁵⁵ In 2018, Reporters Without Borders classified Libya 162nd with respect to press freedoms.⁵⁶

In such a precarious environment, public broadcasting continued to deteriorate, plagued by a number of problems: lack of regulatory framework in general, and absence of a regulatory authority to monitor the media and enforce a public service remit in specific. The sector is also mired in corruption, with a number of administrators appointed to high ranking positions without the required experience or qualification to run the sector. The total lack of any understanding of the ethos of public service broadcasting in Libya is best exemplified by the names given to the public broadcasting channels themselves: one is called “the national channel” (*al watanyya*), while another is referred to as the “official channel”(*al rasmyya*)-- both duly omitting any reference to the “public” and reinforcing the pro-government nature of these public operators.

⁵⁴ Verbal threats and insults against journalists have also been made by government officials. See Freedom of the Press Libya 2016, Freedom House, available at <https://freedomhouse.org/report/freedom-press/2016/libya>, accessed on 14 June 2018.

⁵⁵ “Al l’lam fi Libya: bayna al qam’ wal adlaja”, by Abdel Baset Ghbara, Afrigatenews.net, available at <http://www.afrigatenews.net/node/166175>, accessed on 15 June 2018.

⁵⁶ Check ranking by Reporters Without Borders for 2018 available at https://rsf.org/en/ranking_table, accessed on 15 June 2018.

Tunisia

Early on in the Tunisian revolution, on 17 January 2011, the Ministry of Information was abolished and a few months later a number of new media laws (decrees) were introduced by the National Authority for Information and Communication Reform (or INRIC) and approved by the interim government. Decree 115 cancelled and replaced the press law of 1975, and made the courts, rather than the ministry of interior, the arbiter in press violations. It also cancelled the licensing system for publications, which was controlled by the Ministry of the Interior. Decree 116 called for the introduction of an independent regulatory authority (the HAICA) for the media. Decree 41, enacted on 26 May 2011, “established for the first time in Tunisia a duty to disclose public bodies’ documents with the aim to promote a culture of transparency and to improve relations between government and citizens”.⁵⁷

Two years after the promulgation of Decree 116 of 2011 which called for the creation of a regulatory body for the media, on 3 May 2013, the HAICA was introduced. The make-up, structure, budget, and mandate of the HAICA serve to guarantee its independence in a manner consistent with international best practice.⁵⁸

Despite a few shortcomings, the various legal reforms that were introduced since the collapse of the Ben Ali regime reflect the degree to which the revolution has been successful in reshaping the legal framework of a democracy in transition. These reforms culminated in the introduction of a new constitution in 2014, the youngest of its kind in the Arab world. The new constitution introduced many provisions that guarantee human rights and media freedoms in a way not found in any of the constitutions of other Arab countries, and especially not in those that have experienced regime change since 2011. The ultimate test, with respect to the newly

⁵⁷ “Right to access public information in Tunisia: Towards partnership between civil society and government”, UNESCO website, available at <https://en.unesco.org/news/right-access-public-information-tunisia-towards-partnership-between-civil-society-and>, accessed on 5 July 2018.

⁵⁸ Mendel, Toby, “Assessment of Media Development in Tunisia”, UNESCO, 2012, available at <http://unesdoc.unesco.org/images/0022/002227/222701e.pdf>, accessed on 23 July 2014, p. 35.

introduced laws and regulations, was to see whether their *implementation* was going to consecrate media freedom, independence, and pluralism.

Between 2014 and 2018, major developments in the audiovisual sector occurred, some of them so critical, they will have a bearing on the future development of the media landscape in Tunisia:

1. The postponement of the decision concerning the new make-up of the HAICA, which was expected to be completed before May 2018, but ended up being postponed until the end of the year.
2. The introduction of the Antiterrorism Law of July 2015 (which includes some protections for journalists, but also curbs journalistic freedom when covering terrorist acts and contains harsh penalties for infringements);
3. The Access to Information Law of March 2016, replacing Decree 41 of 3 May 2012 (with its flaws regarding the number of exemptions and its failure to protect journalistic sources)⁵⁹;
4. The latest controversial draft law for the media (replacing Decree 115 and Decree 116).

With respect to the new draft law for the media, in mid-November 2017, Minister al Mahdi ben Gharbyyah, whose ministry is in charge of the relationship between constitutional committees and civil society, announced that a new draft law to amend the audio-visual sector will be soon approved in the Cabinet and sent to Parliament for approval before the end of 2017. The draft law is meant to replace Decrees 115 and 116 which were introduced early in 2011. According to Minister ben Gharbyyah, the new draft law promotes press freedoms for practicing journalists by removing restrictions on them and the licensing requirement for journalistic practice, by increasing their protection according to international standards, and by introducing

⁵⁹ “Tunisia Assembly Adopts Freedom of Information Law”, 14 March 2016, [freedominfo.org](http://www.freedominfo.org/2016/03/tunisia-assembly-adopts-freedom-of-information-law/), available at <http://www.freedominfo.org/2016/03/tunisia-assembly-adopts-freedom-of-information-law/>, accessed on 5 July 2018.

the concept of conflict of interest in journalistic work.⁶⁰ In sum, the new law was meant to be “a mini-constitution for media in Tunisia”.⁶¹

However, both the National Union of Tunisian Journalists (*an-naqaba al watanyya lel sehafyn al tunisyyn*) and Article 19 NGO criticized the new draft law and saw in it a step backwards in the development of the sector. In their view, despite its flaws, Decree 116 of 2011, which the new draft law is supposed to replace, is still “much better than the draft media law currently being considered by Parliament”.⁶²

Civil society organizations and critics are also concerned by the current turn in the reform process in Tunisia and the attempt to create multiple laws for the media: one for the media regulatory authority, one for freedom of communication, and one for printing & publication. Another criticism is that the draft law for the media does not explain/expand on the concept “independent” with regards to the new regulatory authority, which should have included independence in appointments, administration, and finance. The draft law also does not require that the funding of the new regulatory authority be diverse in order to preserve its independence from government, the way it was required in Decree 116 of 2011. Other criticisms revolve around the concentration of ownership in the public media. The new draft law simply mentions the concept, but does not offer any mechanisms to prevent concentration and the control of the media by the politico-economic elites.

Moreover, as opposed to Decree 116 of 2011 which called for the creation of the HAICA and involved consultations with a wide array of stakeholders from civil society and the professional/journalistic world, discussions of the current draft seem to have involved a smaller

⁶⁰ “qanoon al l’lam alsama’i al basari aljadeed mahall jadal fi tounis, 3 February 2018, available at <https://bit.ly/2NtyCse>, accessed on 5 July 2018.

⁶¹ “Qawaneen al i3lam al jadida, jadal tounisi mustammer”, Mohammad Ma’ mari, 19 November 2017, available at Retrieved on March 23, 2018 from Al-Arabi Al-Jadeed Webpage: <https://www.alaraby.co.uk/Print/2058f341-4d14-4d86-adbc-2fe747e2dc33/a26dc7d1-a0ce-445d-a75b-52a0260e48cc> Accessed on 23 March 2018.

⁶² neqabat al sehafyyn wa munazzamet Almadda 19”, 25 January 2018, available at <https://www.babnet.net/cadredetail-154854.asp>, accessed on 9 July 2018.

number of societal actors, with the government preferring to “conduct consultations with those CSOs that are close to parties in power”.⁶³ On 13 March 2018, Article 19 wrote:

“The Draft Law is part of an ongoing process of harmonisation of Tunisian legislation with the 2014 Constitution [...].The Draft Law and the reforms of the broadcasting legislation have already been subject to criticism by civil society. Civil society organisations, including ARTICLE 19, have expressed concerns that the broadcasting regulatory reforms do not offer any comprehensive vision for the reform of the current regulatory system, and are dispersed in several laws, rather than in one comprehensive piece of legislation. Concerns have also been raised that the Draft Law is being introduced without meaningful prior consultations with all stakeholders in the media sector and civil society”.⁶⁴

On 30 January 2018, nearly 60 national and international different organizations (many of which members of IFEX) called on the government to withdraw the draft law but to no avail.⁶⁵

In sum, according to national and international critics, the negative aspects of the new draft law for the media outweigh its positive aspects, and consequently the draft law, if passed, will constitute a step backward with respect to media freedoms and legal reform in Tunisia.

Challenges faced by the HAICA since its introduction: The HAICA, since its introduction, has been facing a number of challenges, including a crisis of legitimacy. Early on, the private television outlets were very vocal in their rejection of the HAICA rules regarding the licensing of private operators, and they seemed to be supported by journalists and editors who did not want to have their newly found freedom of expression (and ability to express openly their political bias) constricted in any way. At the same time, soon after the introduction of the HAICA, the Ennahda-led government seemed to ignore the role of the HAICA with respect to

⁶³ “wasael al-l’lam altounisyya mouhaddada bel mal alfased”, by Kamal al-Abidi, *AJO*, 14 March 2018, available at <https://bit.ly/2u5YvpV>, accessed on 9 July 2018.

⁶⁴ “Tunisia: Draft Law on Audio-Visual Commission”, Article 19, 13 March 2018, available at <https://www.article19.org/resources/tunisia-draft-law-audio-visual-commission/>, accessed on 5 July 2018.

⁶⁵ “wasael al-l’lam altounisyya mouhaddada bel mal alfased”, by Kamal al-Abidi, *AJO*, 14 March 2018, available at <https://bit.ly/2u5YvpV>, accessed on 9 July 2018.

nominations for top positions in the public broadcasting sector, forcing the HAICA to sue the government in the courts.

In 2014, then Prime Minister Mehdi Jomaa declined to consult with the HAICA when he decided to close a radio station and a TV station for broadcasting extremist views. In November 2015, Prime Minister Habib also undermined the HAICA authority when he fired the head of the national public broadcaster and replaced him with an interim head without going through the process of consulting with the HAICA. By doing so, he continued “a prior pattern of undermining the regulator’s authority”. The HAICA challenged the government’s action by lodging a complaint.⁶⁶

One year before the latest government introduced a new draft media law to replace Decree 116 of 2011, in a clear demonstration of the rift between the government and the HAICA, this latter published on its website its own draft law for the media, and asked journalists to comment on it and to contribute to amending some of its chapters, in what seems like a pre-emptive move with respect to the draft law prepared by the government. Indeed, for some, this was an attempt to impose the HAICA draft law on the government, and to introduce the draft law “as a collaborative work between law experts, the HAICA, and journalists”.⁶⁷

The fact that the government prepared separately and is ready to send to Parliament another draft media law reflects the extent of the rift and lack of coordination between the government and the HAICA. Following the official statements about the introduction of the new draft law, the head of the HAICA, al Nouri al-Lajmi, in a press conference, warned that “the circumstances the country is going through are difficult, the democratic transition is not complete, and there is a serious problem which is a step backward, especially with respect to rights and freedoms”.⁶⁸ Another member of the HAICA, Radia al-Saidi, made public statements where she believed that

⁶⁶ Freedom of the Press 2016, Tunisia Profile, Freedom House, available at <https://freedomhouse.org/report/freedom-press/2016/tunisia> Accessed on 5 July 2018.

⁶⁷ “Qawaneen al i3lam al jadida, jadal tounisi mustammer”, Mohammad Ma’ mari, 19 November 2017, available at Retrieved on March 23, 2018 from Al-Arabi Al-Jadeed Webpage: <https://www.alaraby.co.uk/Print/2058f341-4d14-4d86-adbc-2fe747e2dc33/a26dc7d1-a0ce-445d-a75b-52a0260e48cc> Accessed on 23 March 2018.

⁶⁸ Ibid.

“there is no real intention by the successive Tunisian governments since 2011 to reform the media”.⁶⁹

The rift was confirmed by the head of the HAICA himself, who revealed the lack of interaction between the government and the HAICA concerning the latter’s proposal (prepared in wide consultation with media experts), and the decrease in the HAICA funding for 2018 by 25%, compared to its funding in 2017, without any consultation with civil society and constitutional entities.⁷⁰ Moreover, the HAICA revealed that it received correspondence from the former director general of the Tunisian Public TV confirming the amount of pressure exercised on him in order to affect the editorial line of this public institution. When the HAICA asked the government for clarifications on the matter, the issue was ignored.⁷¹

With respect to the role and mission of the HAICA in general, the 5 years since its introduction have shown the toothless nature of this independent regulatory body. For instance, since its introduction, the HAICA has made decisions to stop certain radio and TV programs but despite its decisions these programs continued to be broadcast. More recently, on 16 January 2018, the HAICA announced its decision to stop the broadcast of a show titled “ahla sabah” on radio Mosaic FM for a full week. Although the radio administration said they will abide by the decision, the show continued airing the next day, while omitting the title of the show. Its presenter asserted that out of respect for the HAICA decision the title of the show became “balash enwan” (“without title”). To the HAICA, this was a clear attempt to “circumvent” its decision to stop the show.⁷²

Several national and international non-governmental organizations are warning against the refusal to abide by decree 116 of 2011 for nearly 18 months now, and the hijacking by government of some of the prerogatives of the HAICA, especially with respect to regulating the public audiovisual sector. The newly proposed draft media law, in light of the above, is seen as a

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² “al Haica al tounisyah toukef bath barnamej iza’i”, by Mohammad Maamari, 17 January 2018, available at <https://bit.ly/2J4Rpqr>, accessed on 6 July 2018.

consecration of the desire by the government to replace the HAICA with another regulatory authority that is much less independent than the HAICA. Such move is perceived by critics as an “act of rebellion against the first independent regulatory authority for audio-visual media in the Arab world”.⁷³

Moreover, according to critics, the attempt to transform and control the audiovisual landscape (mostly by replacing Decree 116 and the HAICA) is being led by lobbying groups consisting of the politico-economic elites which are seeking control of the private audio-visual sector, while simultaneously seeking to weaken the public and community media. This politic-economic elite lobbying group is believed to be led by Nabil al Qarawi, the head of the union of media owners in Tunisia and founder of Nessma TV in 2008 (with ties to Berlusconi’s Mediaset Investment).⁷⁴ Such interference is becoming a source of alarm for independent observers due to the increasing interlocking control of the media sector with the business and political elites.

It should be reminded that, between 2011 and 2013, civil society organizations, helped by the National Union of Tunisian journalists (SNJT) and its former president Najiba al Hamrouni, supported by strikes led by journalists in 2012 and 2013, successfully lobbied for the implementation of Decree 116 and the creation of the HAICA in 2013. Both Decrees 115 and 116 of 2011 were endorsed by UNESCO, the UN, and the African League, among others, who saw in them a positive step towards the democratization of a country in transition.

Both the HAICA and the National Union of Tunisian Journalists have been vocal against calls for the privatization of public television and radio. Proponents of privatization justify their opinion based on the financial losses incurred by the public broadcasting sector and the erosion of its public funding. Indeed, the difficult economic conditions of the country and the high unemployment rate have led to the dismissal of close to 200 journalists and delayed wages for several hundred others.⁷⁵ However, the HAICA, the Union, and other supporters of public

⁷³ “wasael al-l’lam altounisyya mouhaddada bel mal alfased”, by Kamal al-Abidi, *AJO*, 14 March 2018, available at <https://bit.ly/2u5YvpV>, accessed on 9 July 2018.

⁷⁴ Ibid.

⁷⁵ Freedom of the Press 2016, Tunisia Profile, Freedom House, available at <https://freedomhouse.org/report/freedom-press/2016/tunisia>, accessed on 5 July 2018

broadcasting continue to advocate for public broadcasting, believing it to be a pillar of the nascent democracy in Tunisia. They also warn against the executive control of the public media and call for their support, with measures to guarantee their independence and to make sure they function as public service media for all Tunisians, based on public funding.

On 31 Jan 2018, the National Union for Tunisian Journalists decided to declare Friday 2 February 2018 a “day of anger” (*yom ghadab*) and called on members to wear a red ribbon in order to protest the setbacks and attacks on press freedoms by government, especially the Ministry of Interior. The campaign comes on the trail of the smear campaigns and intimidation and harassment (including surveillance) against journalists by the security apparatus.⁷⁶

In sum, 7 years after the revolution, Tunisia has established itself as a country with one of the freest environments for the media in the region. Much of the freedoms are protected by the 2014 Constitution and the decrees introduced very soon after the revolution. In the years subsequent to the revolution, despite some stalling and reluctance to implement the decrees (including Decree 116 of 2011), there is a clear effort to replace the early 2011 decrees related to media freedoms with laws that are in harmony with the progressive 2014 Constitution (e.g Freedom of Access to Information Law of March 2016). Some of the new laws, however, such as the draft Audiovisual Law and the Anti-Terrorism Law of 2015 have been criticized for being a step backward, because they introduce measures that reduce media freedoms and independence, especially as is the case with the new draft law replacing the HAICA with a less independent regulatory authority, the new Audio-Visual Communication Commission.⁷⁷ Moreover, while there is a clear effort to reform the media sector through new legislation, in practice the legal framework for the media continues to be based on both new and old elements: while Decrees 115 and 116 enable journalists to work freely, to access information

⁷⁶ “al sahafa al tounisyya fi yom ghadab”, by Mohammad Maamari, 2 February 2018, available at <https://bit.ly/2E268VI>, accessed on 8 July 2018.

⁷⁷ “Tunisia: Analysis of Draft Law on the Audio-Visual Commission”, Article 19, 13 March 2018, available at <https://www.article19.org/resources/tunisia-analysis-draft-law-audio-visual-commission/> Accessed on 5 July 2018.

and publish without prior approval from the Ministry of Interior, journalists continue to be prosecuted in military courts, based on the Penal Code or other non-media related laws.

Morocco

Nearly a decade before the start of the Arab Spring, the country embarked on a media reform process that culminated in the introduction of a series of laws in the early 2000s. Morocco, along with Lebanon and Jordan, is one of the first Arab countries to introduce laws to liberalize the broadcasting sector and create a regulatory authority for its regulation, the Haute Autorite de la Communication Audiovisuelle (the HACA). These laws are, respectively, Dahir No. 1-02-212 of 31 August 2002 on creating the HACA, and Decree-law No. 2-02-663 of 10 September 2002 on ending state monopoly in television broadcasting. Broadcast Law No. 77-03 of 2005 is an extension of the two 2002 laws and its purpose was to establish a pluralist media environment and to offer prospects to private operators. These and other reforms were part of the state's commitment to promote the values of democracy and pluralism in the country.

This commitment was more recently reiterated in the new constitution of June 2011, which reasserted Morocco's adherence to the universal principles of human rights and the promotion of freedom of expression (Article 25). More importantly, in a unique move in the Arab context, Article 165 of the constitution affirmed the role of the HACA as the single most important regulatory body responsible for respecting the diversity of opinion in the kingdom's media landscape.

Compared to other Arab countries, Morocco is quite advanced and comprehensive with respect to the promotion of the values of public service broadcasting and the introduction of institutional and legal frameworks to guarantee them. Morocco is the first Arab country to enshrine, both in its constitution and in the various national laws, the duty of the highest regulatory authority (the HACA) to guarantee and protect pluralism in the media. Moreover, various decrees and related decisions have been promulgated in the last decade or so in order to detail and enhance the public service mission of the public operators. The importance of the

HACA was such that the Tunisian regulatory authority for broadcasting (both public and private), the HAICA, was modeled in many respects on its Moroccan counterpart, and soon after its introduction it started cooperating with the HACA in order to learn from the latter's older, relatively more established experience in the field.

However, the new media-related laws and the creation of the HACA did not lead to the liberalization of the private television sector 15 years after the introduction of Decree-law No. 2-02-663 of 10 September 2002. Unlike the case of Tunisia, which actually liberalized the broadcasting sector in a much shorter time span, the HACA has not yet licensed a single private TV operator, despite the number of applications it continues to receive.⁷⁸ State monopoly over the terrestrial broadcasting sector continues to be exercised.⁷⁹

In my earlier assessment of public service broadcasting in Morocco, I concluded with the following:

With some already referring to Morocco's liberalization and reform efforts as being "theoretical", the challenge ahead for Morocco is the extent to which ideals can be turned into reality with respect to the broadcasting sector".⁸⁰

Since then, despite the myriad recent constitutional and other legal reforms promising more independence and diversity in the broadcasting sector, the King and the government continue

⁷⁸ The Tunisian HAICA website lists the names of 10 private TVs, (15-19) private radios, and (9) community radios. Check details at <http://haica.tn/%D9%81%D8%B6%D8%A7%D8%A1-%D8%A7%D9%84%D9%85%D9%87%D9%86%D9%8A%D9%8A%D9%86/%D8%A7%D9%84%D9%82%D9%86%D9%88%D8%A7%D8%AA-%D8%A7%D9%84%D8%A5%D8%B0%D8%A7%D8%B9%D9%8A%D8%A9-%D9%88%D8%A7%D9%84%D8%AA%D9%84%D9%81%D8%B2%D9%8A%D8%A9/#firstPage>, accessed on 16 June 2018.

⁷⁹ The special and complex/perplexing case of Medi 1 TV, which kept oscillating between the status of public and private operator, is described in *Projet de collecte de donnees statistiques sur les marches cinematographiques et audio-visuels dans 9 pays mediterraneen: Maroc*. Monograph published by Euromed Audiovisuel, March 2012, available at <http://www.racines.ma/fr/node/17> accessed on 5 May 2018.

⁸⁰ Dabbous, Dima (2015). *Assessing Public Service Broadcasting in the Southern Mediterranean Region*, BBC Media Action, the UK, p. 35. Available at: <http://www.med-media.eu/wp-content/uploads/2015/08/MedMedia-PSB-report.pdf> accessed on 19 June 2018.

to exercise control over the editorial content the media. The end result is sanitized media content that does not reflect the interest of the people.⁸¹ Authorities also resort to a variety of means in order to harass and intimidate journalists covering sensitive topics, including the regular use of lengthy, drawn-out procedures when suing Moroccan journalists and immediate deportation when it comes to foreign journalists.⁸²

In February 2016, the President of the National Syndicate of the Moroccan Press, Abdallah Bakkali, who is also editor-in-chief of the opposition daily newspaper *al-alam*, was sued for defamation by the Interior Ministry. The lawsuit targeted an article he had written in which he criticized some recent local elections for being fraudulent. The case was postponed several times, and was still pending by the end of 2016.⁸³

Foreign journalists were deported in April and September 2016 for reporting on sensitive issues (LGBTQ, issues, Western Sahara, and sex trafficking). Three French and two Italian reporters were deported for respectively covering the attacks against a gay couple in Beni Mellal and child prostitution networks in Marrakech. The authorities justified the decision to deport the Italian journalists on the same day by saying that they did not have the authorization to film in Morocco.⁸⁴

In such a restrictive environment, self-censorship is common. Journalists try to respect official red lines (including the Western Sahara) in order to avoid heavy fines, prison sentences, and sometimes intimidation and physical violence because of their stories.⁸⁵ The population is able,

⁸¹ In January 2016, when an earthquake hit the northern part of Morocco, citizens were surprised by the absence of television coverage of this major national event, according to Moroccan researcher Abdellatif Ben Safyyah, cited in "al-maghreb al-arabi", 28 December 2017, available at <https://orientxxi.info/magazine/article2194>, accessed on 10 July 2018.

⁸² Freedom of the Press, Morocco Profile, Freedom House, 2017., available at <https://freedomhouse.org/report/freedom-press/2017/morocco>, accessed on 18 June 2018.

⁸³ Freedom of the Press, Morocco Profile, Freedom house, 2017, available at <https://freedomhouse.org/report/freedom-press/2017/morocco>, accessed on 18 June 2018.

⁸⁴ Ibid.

⁸⁵ Ibid.

however, to access different media with different viewpoints through satellite broadcasts, private radio, and the internet.

In 2016, several laws seeking to reform the media sector (for both the press and broadcasting) were passed by the government, as part of the effort started in 2011 to consolidate democracy in the country and further its media and civil liberties. April 2016 saw the promulgation of Law n° 90.13 to establish the National Press Council (Conseil National de la Presse or CNP, or *al-majlis al-watani lil-sahafa*). The CNP is to be a self-regulatory body in charge of mediating disputes in the sector. While the creation of the CNP was seen as a welcome step towards upholding professional ethics in the country as a statutory means for self-regulation, the Director for Freedom of Expression and Media Development at UNESCO, Guy Berger, noted that “a press council in current times should do more than simply address complaints and uphold professional standards”.⁸⁶ According to the same law n°90.13, the Council is to be operational within one year. The Council was finally established on 22 June 2018.⁸⁷

In July 2016, the Lower House of Parliament approved a long awaited draft law for freedom of access to information, in fulfilment of Article 27 of the 2011 Constitution.⁸⁸ Problems with the new law include the narrow range of institutions covered, the long list of exceptions, and the vague wording. Such weaknesses combined would “give administrators broad discretion to withhold information”.⁸⁹ By the end of 2017, the draft law still had not passed, knowing that it

⁸⁶ “UNESCO links media self-regulation with Media and Information Literacy in Morocco”, UNESCO website, 22 november 2017, available at <https://en.unesco.org/news/unesco-links-media-self-regulation-media-and-information-literacy-morocco>

Accessed on 18 June 2018.

⁸⁷ “Maroc : A quoi va servir le Conseil national de la presse ?”, Union Internationale de la presse francophone, 6 Juillet 2018, available at <https://www.presse-francophone.org/generalites/article/maroc-a-quoi-va-servir-le-conseil-national-de-la-presse>, accessed on 10 July 2018.

⁸⁸ The draft was presented to Parliament for discussion for the first time in July 2014.

⁸⁹ Freedom of the Press, Morocco Profile, Freedom House 2017, available at <https://freedomhouse.org/report/freedom-press/2017/morocco> accessed on 18 June 2018.

was discussed on 28 December 2017 in the House of Councilors, after sleeping a full year in their drawers.⁹⁰

Also in July 2016, Parliament approved a revised law for the press (Law no. 88-13 of August 2016).⁹¹ The new law affirms the freedom of the press while reiterating the same long list of forbidden subjects found in all-media related laws in Morocco (Article 71 and Article 81). The new press law thus prohibits any expression damaging to Islam; the monarchy; the territorial integrity of the Kingdom; the private life of the King, or heir to the throne, or members of the Royal family. The sections regarding defamation exclude practically all public officials and the army, including high ranking ones (national and foreign) from public criticism, by imposing heavy fines in cases of defamation targeting them, whereas fines for defaming private individuals are significantly lower (Articles 74, 84 and 85) .

The new press law is notable, however, for its exclusion of the prison sentence in cases of defamation, and limiting sanctions to monetary fines. It also strengthens provisions for fair trial, and protects journalists' sources (subject to judicial review). Online news outlets are recognized in the new law. However, the new law has been criticized for imposing heavy fines and granting the authorities the power to impose censorship on publications and to suspend them. More importantly, and despite removing prison sentences for press-related offenses from the new press law, and despite revising the penal code in July 2016, the latter can still be used in order to "prosecute and imprison journalists", thus "diminishing the value of the protections" provided by the Press Code of 2016.⁹² In 2015, the authorities arrested and tried 7 people who were conducting training programs on citizen journalism. Their trial was extended due to repeated delays. According to observers, "authorities regularly use such lengthy procedures to

⁹⁰ "Right to Access to Information: The Stillborn of the Moroccan Constitution", by Chaima Lahsini, *Morocco World News*, 29 December 2017, available at <https://www.morocoworldnews.com/2017/12/237414/access-information-moroccan-constitution/>, accessed on 8 July 2018.

⁹¹ The French text of the new Press Code no. 88-13 of August 2016 is available at <http://www.wipo.int/edocs/lexdocs/laws/fr/ma/ma069fr.pdf> accessed on 19 June 2018.

⁹² Freedom of the Press, Morocco Profile, Freedom House 2017, available at <https://freedomhouse.org/report/freedom-press/2017/morocco> accessed on 18 June 2018

harass and intimidate journalists and other critics”.⁹³ There were also many journalists who were tried in court in 2015 and 2016 based on the 2003 anti-terrorism law.⁹⁴ The process followed a clear pattern of repeatedly postponing the press-related trials to make them last over a year, and create a climate of fear and intimidation to ensure journalists tow the government line.

In July 2016, Parliament approved a draft law to restructure the HACA (Law n° 11-15). The new law gives the HACA the mandate to ensure that broadcast communication is exercised freely, and to ensure the respect for the cultural, political, and linguistic pluralism of Moroccan society (Article 1 and Article 4, paragraph 6) and the right of access to information (Article 3, paragraphs 2 & 3). The HACA is also mandated to secure a broadcasting landscape that is “diversified, pluralist, balanced, and complementary” based on quality and independence, and respectful of the notion of public service and the values of human dignity (Article 3, paragraph 4). Among other things, the HACA also receives license applications relating to the broadcasting sector and grants licenses (Article 4, paragraph 1), while preventing monopolistic practices and promoting “free competition” (Article 3, paragraph 10).⁹⁵

With respect to the appointment of the members of the HACA, the new law did not seek to introduce more independence for this important regulatory body. According to Article 9 of Law no. 11-15 of 2016, 5 out of the 9 members (including the President of the HACA), are appointed by the King with no time limit for the term of their appointment being included. Of the remaining four members, whose term is for 5 years renewable once, two are appointed by the head of government, one by the head of the Lower House, and one by the head of the Upper House of Parliament.

⁹³ Ibid.

⁹⁴ Examples include the case of Ali Anouzla; the 7 trainers accused of threatening national security; and Abdallah Bakkali, President of the National Syndicate of the Moroccan Press who was sued by the Interior Ministry for defamation). See more details in Freedom of the Press, Morocco Profile, 2017, available at <https://freedomhouse.org/report/freedom-press/2017/morocco> Accessed on 19 June 2018.

⁹⁵ Dahir n° 1-16-123 du 25 aout 2016 portant promulgation de la loi n° 11-15 portant réorganisation de la Haute Autorité de la communication audiovisuelle, available at http://www.haca.ma/sites/default/files/upload/BO_6522_Fr%20opt.pdf, accessed on 19 June 2018.

The fact that, nearly 16 years after liberalizing the audio-visual sector with Broadcast Law No. 77-03 of 2005, 7 years after the introduction of the new Constitution, and 2 years after reorganizing the HACA on July 2016, not a single private terrestrial television station has been licensed by the HACA is a reflection of the lack of the political will to liberalize the sector on the one hand, and the lack of independence of the HACA from that will on the other, despite the legal change on paper. Since 2006, date of the first ever licensing process in the country, the HACA has launched two calls for tenders for private television channels, but has granted only one license – to the news channel Medi 1 TV, which quickly ceased to be private.⁹⁶ By contrast, 14 private radio stations have been authorized.

Last year, in June 2017, in order to circumvent Morocco's current laws on private television channels and the HACA's reluctance to grant licenses to private TV channels, Télé Maroc was launched from Madrid. Although the head office is in Spain, the channel has many offices in Morocco, mostly in Casablanca, making it legally "a Spanish television channel but with Moroccan content" according to its founder Rachid Niny.⁹⁷ For Niny, there was no question of "waiting until the HACA finally frees up the broadcasting field. We must dare elsewhere and create free and independent channels."⁹⁸

A recent research project concerned with media ownership in specific, an under-researched area regarding media in the Arab world, scrutinized for the first time the media landscape in Morocco, including its connection with the power centers in the country. Results revealed not only that the royal family is a leading media owner, but also that there was an "intersection of the political and business worlds, a cartel that is undermining pluralism and therefore media

⁹⁶ The special and complex/perplexing case of Medi 1 TV, which kept oscillating between the status of public and private operator, is described in *Projet de collecte de données statistiques sur les marchés cinématographiques et audio-visuels dans 9 pays méditerranéens: Maroc*. Monograph published by Euromed Audiovisuel, Mars 2012, available at <http://euromedaudiovisuel.net/Files/2013/08/20/1377006300959.pdf>

⁹⁷ "Morocco / Télé Maroc, a new private channel on Nilesat", 6 June 2017, available at <http://mediterranee-audiovisuelle.com/morocco-tele-maroc-a-new-private-channel-on-nilesat/?lang=en>
Accessed on 19 June 2019

⁹⁸ Ibid.

independence” in the country.⁹⁹ According to the report of the Media Ownership Monitor Morocco (MOM), “nine of the 36 media companies involved in Morocco’s most influential media are directly linked to the state, the government, or the royal family”.¹⁰⁰ According to the same report, when it comes to the TV sector in specific, the state is the leading owner, along with the royal family and one of Morocco’s wealthiest businessmen. By contrast, radio ownership is more diverse, although the sector remains dominated by the state.

⁹⁹ “Pluralism is more than figures- RSF and Le Desk release Media Ownership Monitor Morocco Findings”, 21 November 2017, available at <https://rsf.org/en/news/pluralism-more-figures-rsf-and-le-desk-release-media-ownership-monitor-morocco-findings>
Accessed on 19 June 2018.

¹⁰⁰ “Pluralism is more than figures- RSF and Le Desk release Media Ownership Monitor Morocco Findings”, 21 November 2017, available at <https://rsf.org/en/news/pluralism-more-figures-rsf-and-le-desk-release-media-ownership-monitor-morocco-findings>
Accessed on 19 June 2018.