TUNISIA

As a country which has transitioned from filtered to unrestricted Internet, Tunisia is a very unique case. Filtering systems were removed just after 14 January 2011 – the date on which the former Tunisian president Ben Ali, fled the country. To many Tunisians, this date symbolises the beginning of an ongoing democratic transition in response to Tunisian citizens' aspirations for freedom, democracy and social justice. The Internet played a particular[171] role during that revolution and is part of the democratic transition. However, current Internet openness is a fragile situation with the possibility of a return to the previous status quo. Tunisia was previously listed several times in indexes such as the Opennet initiative, Reporters Without Borders (RSF) and Freedom House 'freedom of the net', which list countries implementing Internet censorship and at times labelled an enemy of the Internet.

An important milestone of the transition was the first free democratic election. It brought about a Constituent Assembly with the purpose of drafting a new Constitution. The previous Constitution, passed in 1959 and amended several times since, was suspended, and interim executive power acted through the decree of law. The drafting of a constitution is an opportunity to advocate the inclusion of strong legal provisions, which guarantee freedom and human rights according to international conventions such as the United Nations Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). However, the new constitution is still in draft form and remains unclear. There have been difficulties[172] in its formulation, and its completion has been delayed.[173]

This new political phase sees the increasing participation of social actors concerned with civic affairs, and the rise of debate concerning the transparency and accountability of government actions via Opengov and Opendata. The Internet is a critical tool for increasing civil participation, particularly via social media.[174]

This report aims to illustrate the current Internet situation in Tunisia, with a focus on citizenship and Human Rights. Points to be considered include:

- Current Internet openness and the Tunisian Internet system as a critical means for democratization and political dialogue;
- The current situation around freedom of expression, its challenges and

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171. Responding to that needs a study and it is quite controversial, the author prefers not taking position on that matter

172. http://en.rsf.org/tunisia-cautious-welcome-for-pledge-that-12-10-2012,43535.html

173. The election was held in 23 October 2011 and there was agreement between several political parties prior to the election that the Constituent Assembly presents a constitution by 23th October 2012

174. There is conflation between Internet, web and social media for many users and those terms may be used to indiscriminately

limitations;

- Opengov and Opendata system positions, with specific focus on access to information, transparency and accountability and citizen's participation in political processes;
- The impact of social media on civil liberties;
- E-filtering;
- Analysis of Internet Governance in the Tunisian context from a human rights perspective;
- Recommendations to ensure an open and free Internet, and a multi-stakeholder participation process influencing Internet driven by the needs of citizens.

THE INTERNET: BETWEEN THE STATUS QUO AND CHANGE

In November 2005, Tunisia hosted the second phase of the World Summit on the Information Society (WSIS). This led to a set of principles known as the 'Tunis Agenda for the Information Society'.[175] This Agenda maintained the need for multi-stakeholder participation from government, the private sector and civil society, in Internet policy-making. There was no real follow-up on or commitment to these principles until 2011, and the former regime maintained heavy content control.

However the Agenda is an ongoing process. The first Tunisian Internet Governance Forum (TIGF) meeting was held in September 2012.[176] It resulted

in the creation of a secretariat and a national multi-stakeholder advisory group. Unfortunately, there was a lack of civil society representation at the meeting.[177] Having replicated the global IGF structure, some have also argued that it may add complexity to much-needed flexibility. Such a forum should be an open space for debating Internet Governance issues and moving toward recommending Internet policies at national level, as well as shaping Tunisia's position in international forums. However, such replication does give the national forum some formalisation.

In an attempt to be more open, the current Ministry of Information and Technologies of Communication (MoIToC) published its agenda on Information and Communications Technologies (ICT) up to 2013.[178] This included action to end Internet filtering practices and restructuring both the Tunisian Internet Agency (TIA) and the National Authority for Telecommunications (NAfT). However, there remains a lack of open consultation regarding Internet policy and legislation, as well as a lack of commitment to the multi-stakeholder process in the reform of current laws and regulations.

The Tunisian government pledged to ensure the continuance of online freedom by:

1. in July 2012, signing the resolution[179] of the United Nations Human Rights

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Assises-delIGFNationa-Fr.pdf (in French)

177. www.thd.tn/index.php%3F/WEBSPHERE/igf-tunisie-le-ministere-de-linterieur-au-premier-rang-la-societe-civile-sabsente.html (in French)

178. http://www.data.gov.tn/index.php?option=com_mtree&task=viewlink&link_id=136&Itemid=187 (in Arabic)

179. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.L.17_en.doc

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175. http://www.itu.int/wsis/docs2/tunis/off/6rev1.html

176. http://www.mincom.tn/fileadmin/PDF/Compte-rendu-des-

Council (UNHRC) regarding the protection of human rights on the Internet and affirming 'that the same rights that people have offline must also be protected online', and;

2. joining the Internet Freedom Coalition (IFC) - a coalition of States initiated by Netherlands – at a conference in Nairobi in September 2012, and bidding to organise the next conference in June 2013.[180]

In addition to this, as a member of the International Telecommunications Union (ITU), Tunisia submitted a short proposal which recommended the inclusion of rights of freedom of expression and privacy in the International Telecom Regulations (ITR), with references to Article 19 of the UDHR, ICCPR and UNHRC resolution.[181] This is a positive sign of coherence, which should be translated into national policies, and the reforming of current laws.

These pledges can be seen as 'morally' binding and exert pressure on current and future governments to respect such commitments. However, they are only general principles and, in order to be effective, must be implemented in national law. For example, the TIA, which was managing Internet filtering, is now facing multiple pressures from civil courts to apply Internet censorship to pornographic sites,[182] arguing the case of child protection.[183] Such censorship increases the risk of further restrictions, creating

a precedent for censorship on religious and social grounds.

There is also a significant risk of increased filtering on political grounds, and not necessarily through laws related to the Internet or telecommunications. For example, pages produced by the group *Takriz* were censored by a military court (as opposed to a civil court) on the grounds of defamation.[184] This constitutes a threat to freedom of expression.

The pre-14 January legislation does not regulate content per se.[185] Rather it became the responsibility of a third party, the Internet Service Provider (ISP), to filter what goes through their network. Such indirect regulation should be abrogated or it may also become a threat to freedom of expression. There is also a growing risk for regulation of social media space, in particular Facebook, since it is seen as an important medium and an online political forum.

OPEN GOVERNMENT: NEW OPPORTUNITIES AND POSSIBLE PITFALLS

Since January 2011 there has been an increasing demand from citizens to be involved in the political and decision-making processes. Public pressure for greater transparency and accountability of government and public administration is on the rise. Those demands include the constituent assembly work and constitution-drafting processes, which aim to outline the new political regime and the rights of Tunisian citizens.

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180. http://www.freedomonlinekenya.org/

181. The document was leaked before the official publication of WCIT documents by ITU http://news.dot-nxt.com/itu/wcit/c25

182. http://www.inric.tn/INRIC_Rapport_final_en.pdf

183. http://ati.tn/ar/index.php?id=97

184. http://www.article19.org/data/files/medialibrary/3014/12-04-03-ANAL-ICT-tunisia.pdf

185. Idem

An informal group or network of individuals (with open membership) calling itself 'OpengovTN'[186] advocates the use of social media (more specifically, Facebook)[187] as a platform for discussion.[188] It uses Facebook for information and advocacy purposes and for initiating projects with the collaboration of its members. The group also includes elected members of the Constituent Assembly from several political parties and organised a public campaign called *7ell* (which means 'open' in Tunisian dialect).

Another civil society organization called *Albawasala*[189] focuses mainly on following Constituent Assembly activity and publishing daily information about votes and attendance. It is currently taking legal action against the Assembly regarding their non-publication of committee minutes. The grounds for this action are lack of access to information, and to information which is in the public interest.[190] A similar initiative – *Marsad* - supported by Google, appears to have currently ceased its action for unknown reasons.[191]

The current government[192] expressed interest in joining the Open Government Partnership (OGP)[193] and in 2012 a delegation attended the Brasilia conference.[194] The previous government[195] allowed access to information under Decree 41 of 26 May 2011[196] and Decree 54 of 11 June 2011.[197] These decrees represent the first milestones for citizen access to information and open data. However, they need to be placed into a broader, clearer framework and systematically enforced. The current government also launched an open data portal where documents issued by several ministries are available online.[198] It set up another portal for combating corruption,[199] thereby demonstrating another step toward increased transparency. There are also some limited efforts by the current Constituent Assembly to publish its activities, committees' works and drafts of laws under discussion.[200] At local level, the small town of Sayada started its own initiative of Opendata[201] and is publicising its activities and budget. Thus far, it is the only municipality to do so.

As these two decrees are temporary and of limited duration, they need to be translated into detailed and comprehensive law as soon as possible, following the vote on the constitution. Provision also needs to be made for accountability, transparency, openness and access to information. Moreover, resources and mechanisms will be required to enable such

186. http://www.opengov.tn/ (in Arabic)

187. https://www.facebook.com/groups/opengovtn/

188. Facebook by the number of users in Tunisia is de facto the main platform for many Tunisians and is perceived as media, that cannot be ignored while that raise some question about the dependance to a commercial platform

189. http://www.albawsala.com/fr (in French)

190. http://www.albawsala.com/fr/actu/50475d43b197de7ce3de4def

191. http://mejlis.tn

192. Formed after the first elections in 23rd October

193. http://www.opengovpartnership.org/

194. http://www.opengovpartnership.org/Brasilia2012

195. Signed by the first interim president who held the power of issuing decree-law after constitution suspension

196. http://www.cnudst.rnrt.tn/jortsrc/2011/2011f/jo0392011.pdf (in French)

197. http://www.cnudst.rnrt.tn/jortsrc/2011/2011f/jo0432011.pdf (in French)

198. http://www.data.gov.tn (in Arabic)

199. http://anticor.tn (in Arabic)

200. http://anc.tn (in Arabic)

201. http://villedesayada.tn/ (in French)

provisions. The decrees provide an adequate time-frame for the preparation of public administration to handle open data and access to information requests. They include provisions to enforce compliance with such requests and an appeals process through an independent 'administrative court'. There are also provisions for data protection and privacy which may justifiably limit access to data. Article 16 of Law 41 gives the administrative court the authority to make such decisions. However, limitations on the satisfaction of requests is unclear; intellectual property rationales are included in the same article.

In April 2012 the government, supported by inter-governmental organizations including United Nations Development Program (UNDP) and the World Bank,[202] initiated a conference in Tunisia about Opendata and e-participation. A BarCamp Event called 'Citycamp' was held in Bizerte[203] supported by World Bank initiatives engaging open data experts and partnering with ISOC Tunisia. This initiative focuses on local participation, working with the cities of Gafsa, Bizerte and Sfax. It analyses citizens' needs for local governance, recruits developers, encourages the emergence of 'Citizen technologists' communities and organises further citycamp events to increase awareness and education about open governance and open data.

The private sector has also been active in initiating and deploying an open data portal[204] in order to experiment with the opening up of public and private data. Although this is mainly a technology-oriented project,[205] the initiative also aims to provide a technology platform and to be an 'app store' for developers proposing applications using open data.

A strong focus on technological aspects (ie, apps) is noticeable amongst actors advocating open governance. Many appear to be driven by 'techno-determinism' – using technical solutions to fix all issues related to governance, transparency and accountability. However, they do so without a clear definition of citizens' requirements. 'Citycamp' carries out such work. Interest in open governance by governments is largely due to internal socio-political pressures and international loans requirements including the World Bank, the African Development Bank and the International Bank for Reconstruction and Development.[206] However, due to private sector interests in open data, it is important to clarify regulations and limitations regarding the usage of public data for commercial purposes and to strengthen data protection and privacy laws.

In order for open governance to succeed, it requires a shift of perspective in government, administration and local authorities. This can only be achieved through projects increasing awareness, and an understanding by the population of their rights and needs to access information.

202. http://www.data.gov.tn/index.php?option=com_content&view=article&id=189&Itemid=204 (in Arabic)

203. http://www.citycamptunisia.org/a-propos-du-citycamp-tunisia/ (in French)

204. http://www.opendata.tn/

205. http://www.platform.opendata.tn (in French)

206. http://www.cnudst.rnrt.tn/jortsrc/2011/2011f/jo0482011.pdf (in French)

CONCLUSION

Although we acknowledge changes affecting freedoms and openness on the Internet in Tunisia, the situation may change due to the lack of a solid and sustainable legal framework and instruments guaranteeing and enforcing basic rights of freedom of expression.

The implementation of a mechanism to open Internet policy processes is still lacking. Civil society is not yet included in the policy process and needs resources and expertise to influence such processes.

To achieve freedom and development and to avoid over-regulation and control, a multi-stakeholder bottom-up and consensus-based approach should be applied to governance of the Internet and its management in Tunisia. It should focus on making citizen-oriented policies and prevent other interests from dominating. The Internet should be seen as an opportunity for development and growth, rather than as a threat to be over-regulated or controlled.

In addition to citizen participation in Internet policy-shaping, open governance initiatives should be reinforced to involve more citizens at both national and local levels. A more accessible and affordable Internet, along with the spread of digital literacy and education, can enable such participation on an equal basis and avoid a digital divide.

Finally, Tunisia has a great opportunity to make a dramatic change to its Internet environment and to move toward an open and free model, providing a medium for democratization, citizen participation and engagement, economic development and access to knowledge.

RECOMMENDATIONS

The Internet is a tool which can foster freedoms and democracy if used properly, although it is not an end in itself. Realising this is important in the construction of feasible and realistic national policies. These policies can be implemented respecting the principles included in the Tunis Agenda and aligned with International Human Rights in addition to economic development.

With regard to Internet policy-making and the legal framework, recommendations are:

- Including legal provision in the constitution with regard to the right to universal communication access (beyond the Internet) to prevent any attempt to re-establish excessive Internet filtering and surveillance methods.
- Ratifying and embracing international conventions and treaties including the Council of Europe Convention 108 regarding privacy[207] and the Council of Europe Convention of Cybercrime to ensure more progressive legislation is implemented which is more oriented to the rights of citizens. It is also important to adopt the Charter of Internet Rights and Principles[208] to provide a framework and guidance for national Internet policy-making.
- Focusing on capacity- and awareness-building at all stakeholder levels regarding Internet Governance

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207. http://www.coe.int/t/dghl/standardsetting/dataprotection/modernisation_en.asp

208. http://irpcharter.org/campaign/

issues, on both international and national levels, in order to encourage multi-stakeholder policy processes. Capacity-building should aim to provide all parties with knowledge and toolkits to understand current and emerging issues.

- Encouraging national multi-stakeholder participation including international forums and spaces such as the IGF, the ITU, the International Corporation for Assigned Names and Numbers (ICANN), the African Network Information Centre (AFRINIC) and the United Nations Educational Scientific and Cultural Organisation (UNESCO) where Internet Governance issues should be encouraged.

- Creating an independent Internet Steering Committee at a national level with equal, balanced and diverse representation of all stakeholders and open membership (following the example of Brazil[209] and Kenya[210]). This committee should play an advisory role regarding Internet policies and provide recommendations to legislators regarding Internet-related legislation. It should also be able to assess implemented policies and evaluate their impact.

- Giving TIGF a prominent role in policy circles to institute an ongoing national debate regarding national and global Internet governance issues which include open governance and open

data processes, participation and accountability. The national IGF should be open to all interested parties and conduct regular open consultations with publication of the outcomes and recommendations of these meetings. It should be the primary space for raising awareness and enhancing participation. The Internet Steering Committee should play an important role in managing the national IGF.

- Restructuring national agencies managing Internet aspects e.g. the TIA, NIfT and the National Frequencies Agency (NFA). Their missions should be redefined using an open consultations process, requesting comments and creating adequate multi-stakeholder advisory groups within them. There should be particular focus on the TIA, which has taken action to become a full Internet Exchange Point (IXP) and Network Information Centre (NIC).

- Establishing open consultations and public comments regarding Internet policies to be conducted on- and off-line. The MoIToC should be responsible for conducting these consultations and partnering other organizations.

- Working on empowering and giving resources to existing and new agencies to enforce regulations related to privacy, data protection, competition, consumer rights and communications, so as to ensure the application of laws.

- Creating a system which ensures that any request for Internet filtering is for

209. http://www.cgi.br/english/index.htm

210. http://www.kictanet.or.ke/

limited cases according to the law, and should be made through the courts and not an administrative authority, whilst recognising UNHRD articles including Article 19[211] and aligned with ICCPR in all requests.[212]

- Empowering citizens by educating them on their rights and responsibilities with regard to data protection and privacy, freedom of expression and guaranteed access.
- Encouraging research and academic work related to Internet policy by initiating postgraduate programs and providing grants and fellowships, together with establishing policy think tanks.

With regard to Internet infrastructure, recommendations are:

- Creating more affordable broadband access in all regions and ensuring that a universal, free basic access service is available to all citizens in order to spread digital literacy.
- Liberalizing the Internet market place by encouraging competition between ISPs.
- Increasing international connectivity and encouraging more peering and interconnection between national ISPs. The TIA has a central role to play as do national ISPs. [213] [214]

- Encouraging non-profit initiatives that provide free Internet access, including the liberalisation of spectrum management.
- Encouraging the localisation of content by suppressing all legal and economic barriers (i.e. local hosting) and pushing for open content and usage of open licensing (e.g. creative commons). Content hosting was hindered by tough regulation regarding third-party liability and should be dropped.[215]

With regard to Open governance, recommendations are:

- Capacity-building and intensive educational efforts within public administration and government ministries towards understanding Opengov and Opendata principles and mechanisms.
- Building mechanisms to understand the citizens' needs and expectations regarding governance issues, at national and local level.
- Defining a final holistic legal framework regarding open governance and open data (with clear mention in the constitution) and providing the resources needed to enforce those laws (e.g. an independent instance on Opendata).
- Focusing on Internet access and on services matching real citizens' needs

211. http://www2.ohchr.org/english/bodies/hrcouncil/
docs/17session/A.HRC.17.27_en.pdf

212. http://www2.ohchr.org/english/law/ccpr.htm

213. http://www.ati.tn/TunIXP/

214. http://www.mincom.tn/index.php?id=291&L=1&tx_ttnews[tt_

news]=1329&tx_ttnews[backPid]=11&cHash=2eade78475 (in Arabic)

215. http://www.article19.org/data/files/medialibrary/3014/12-04-
03-ANAL-ICT-tunisia.pdf

to avoid the rise of a digital divide and technology-oriented policy. Providing Internet public access, particularly in underserved regions, as a prerequisite to the use of Opendata services.

- Enforcing data protection and privacy laws related to Opengov and Opendata, accompanied by awareness campaigns regarding these initiatives.