



# CRIMINAL PROSECUTIONS OF ONLINE SPEECH

OUTDATED AND FLAWED LAWS USED TO RESTRICT SPEECH IN  
TUNISIA

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**Cover photo:** 02/11/11 - TUNIS, Tunisia - Graffiti thanking Facebook for its role in the revolution downtown Tunis. (Photo by Jim Rankin/Toronto Star via Getty Images)

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# 1. INTRODUCTION

Over the past three years, an increasing number of prosecutions of bloggers and Facebook users have taken place in relation to their peaceful expression of opinion online. They have been investigated or charged or sometimes sentenced on criminal charges including defamation, insulting state institutions and “harming” others through telecommunication networks. Amnesty International has examined the cases of 40 bloggers, administrators of widely followed Facebook pages, political activists and human rights defenders, who have been targeted by such prosecutions. These cases point to a worrying trend of people being tried for peacefully exercising their right to freedom of expression online.

Freedom of expression and freedom of the press are among the most important human rights gains that the Tunisian people achieved after their 2010/2011 uprising. Tunisia's 2014 Constitution guarantees the right to freedom of expression in Article 31.<sup>1</sup> Tunisia is party to the International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom of expression. Since 2011, Tunisian legislators made a number of positive reforms to Ben Ali-era laws governing audio-visual media and extensively reformed the legal framework regulating the Press.

Tunisia, generally considered to be the only success story of the Arab Spring uprisings, has been hailed for the past decade for protecting freedom of speech and fostering an environment for all kinds of expression, including criticism of the authorities and state policies.

Yet, that environment exists despite the lack of comprehensive reforms of deeply flawed Ben Ali-era laws governing expression and has started to fray at the edges. An increasing number of criminal prosecutions for peaceful expression have taken place over the past years and recurrent statements by the Ministry of Interior and police unions have threatened to prosecute any criticism of the security forces.

While the days of the harsh systematic repression of any dissent or criticism in pre-2011 Tunisia have not (yet) returned, retaining the laws that were used to curtail free speech keeps the door open to regression and the possibility of once again jailing peaceful critics.

Many bloggers, civil society activists and Facebook users find themselves being prosecuted on the grounds of their online expression. These prosecutions are incongruent with the progress that the country has made in terms of human rights protections and respect for freedom of expression. They are also contrary to Tunisia's obligations under international human rights law and its own 2014 Constitution, which enshrine freedom of opinion and expression. The provisions most often used to prosecute online speech are included in the Penal Code, the Telecommunications Code, and the Decree-Law 115 on the freedom of the Press (the Press Code).

A comprehensive approach is necessary to remove all criminal restrictions on freedom of expression in Tunisian legislation and to fully protect the exercise of the right. Amnesty International is calling on the new parliament to prioritize reforming all these three laws that criminalize speech.<sup>2</sup> Until this reform occurs, judicial authorities must refrain from using these outdated, overly-broad and repressive legal provisions to prosecute individuals for exercising their right to freedom of expression online.

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<sup>1</sup> Article 31 of Tunisian Constitution of January 2014: " Freedom of opinion, thought, expression, information and publication shall be guaranteed. These freedoms shall not be subject to prior censorship."

<sup>2</sup> Amnesty International, *Tunisia: A Human Rights agenda for the first six months of Tunisia's new parliament* (Index: MDE 30/1111/2019), [www.amnesty.org/en/documents/mde30/1111/2019/en/](http://www.amnesty.org/en/documents/mde30/1111/2019/en/)

## 1.1 GROWING INTOLERANCE OF CRITICISM

Over the past two years, the Tunisian authorities have displayed increasing intolerance towards those who criticize public officials or institutions and have increasingly initiated prosecutions of bloggers and internet users for peaceful speech deemed insulting or disrespectful.

While many of these cases did not lead to an indictment after the initial investigation, and therefore did not go to trial, the summons for interrogation themselves amount to harassment and intimidation of people who express legitimate critical opinions towards a public official.

Ministry of Interior officials have repeatedly and publicly expressed their intolerance of any criticism, threatening prosecutions. On 18 October 2019, the Ministry issued a [statement](#) in which it announced that it would "take legal action against those who intentionally offend, question, or attribute false allegations to its departments." The same statement goes on to claim that "recent repeated statements by people of affiliations and qualities in some websites and in the media are considered dangerous and can jeopardize the security institution. Many of these statements are in violation of the laws in force, especially Articles 54 and 55 of the Press Code, as well as articles of the Penal Code related to defamation and making false accusations against public officials."<sup>3</sup>

Before that, on 29 January 2018, then Minister of Interior Lotfi Brahem [stated](#) before the parliament that his ministry would file a complaint with the public prosecutor against "every blogger who questions the security establishment and undermines the morale of security officers."<sup>4</sup> The minister added that the "law will be the arbitrator for those who arouse public opinion and cause confusion with their words and writings on social media pages and everyone should be responsible for what they say."<sup>5</sup>

Lawyer Mohamed Ali Bouchiba, founding member of the association [Bloggers Without Borders](#), which defends the right to freedom of expression online, told Amnesty International that cases of bloggers brought before courts were infrequent until September 2018, when there was a sharp increase in these types of cases. Bouchiba told Amnesty International that he alone defended people in around 50 cases in 2019. He said:

**"In the beginning we [a group of lawyers] created an informal lawyers network to share the bloggers' cases between us, but when it became a bigger load by the end of 2018, we decided to found the association to make sure all the cases that we become aware of get a proper defence and also organize to face this pattern and advocate for legal reforms to enhance protection of freedom of expression."<sup>6</sup>**

On 8 October 2020, a police union called on its members, in [a statement](#) on its official Facebook page, to lodge complaints against people who have "insulted, provoked or verbally assaulted security forces" after a wave of protests against impunity for police violence. The statement called on "all colleagues in the different regions of the Republic to coordinate with the central and regional unions to submit group petitions to the Public Prosecution in every Court of First Instance against whoever the investigation reveals to be responsible." The union committed to covering all litigation costs for these complaints in all its stages.<sup>7</sup> This statement came after protests against police impunity and police violence took place on 6 and 7 October 2020. The protests were organized by an anti-impunity group called "*Hasseb'hom*" (hold them accountable) and were part of a campaign against a [draft law](#) that would, if adopted, reinforce impunity for security forces and protect them from any criminal responsibility for using unwarranted lethal force.<sup>8</sup>

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<sup>3</sup> Acharaa Al Magharibi, "The Ministry of Interior warns against insults, skepticism, or false claims made about its structures" (title translated from Arabic), 18 October 2019, [acharaa.com/ar/455385](http://acharaa.com/ar/455385)

<sup>4</sup> L'Economiste Maghrébin, "Les déclarations de Lotfi Brahem suscitent une vive polémique", 30 January 2018, [www.leconomistemaghrebin.com/2018/01/30/lotfi-brahem-declarations-polemique](http://www.leconomistemaghrebin.com/2018/01/30/lotfi-brahem-declarations-polemique) (in French)

<sup>5</sup> L'Economiste Maghrébin, "Les déclarations de Lotfi Brahem suscitent une vive polémique", 30 January 2018, [www.leconomistemaghrebin.com/2018/01/30/lotfi-brahem-declarations-polemique](http://www.leconomistemaghrebin.com/2018/01/30/lotfi-brahem-declarations-polemique) (in French)

<sup>6</sup> Interview with lawyer Mohamed Ali Bouchiba, Tunis, 29 November 2019.

<sup>7</sup> Facebook post, 8 October 2020, [www.facebook.com/1700183346748113/photos/a.1705425076223940/2872239182875851](https://www.facebook.com/1700183346748113/photos/a.1705425076223940/2872239182875851) (in Arabic)

<sup>8</sup> Amnesty International, *Tunisia: Members of parliament must reject legalizing impunity for security forces*, (Press release, 5 October 2020) [www.amnesty.org/en/latest/news/2020/10/tunisia-members-of-parliament-must-reject-legalizing-impunity-for-security-forces/](https://www.amnesty.org/en/latest/news/2020/10/tunisia-members-of-parliament-must-reject-legalizing-impunity-for-security-forces/)

# 2. METHODOLOGY

Amnesty International reviewed 40 cases of individuals summoned for investigation or prosecuted between 2017 and 2020 in relation to peaceful online speech, usually on Facebook, including two cases that took place during the country's COVID-19 lockdown. Between October 2019 and October 2020, Amnesty International conducted interviews with 22 of the individuals impacted, reviewed case documents and interviewed six lawyers representing over 20 individuals. Each of these prosecutions took place after complaints filed by government officials, the President or Prime Minister, or security officers or were initiated by the Office of the Prosecutor on behalf of public institutions.

This research focuses on investigations and prosecutions of people on grounds of their expression on Facebook under provisions of the Penal Code, Press Code and Telecommunications Code. Amnesty International's recommendation go beyond those laws to include other legal provisions in Tunisian law that must be reformed or repealed in order to protect and ensure freedom of expression.

The cases examined did not all lead to successful prosecutions. In four of these cases, the case remains at the stage of the preliminary investigation. Similarly, the people prosecuted under these charges have not all been arrested and detained; only nine of the 40 cases that Amnesty International examined involved the accused being arrested and detained.

The Facebook posts that led to these prosecutions included allegations of corruption, criticism of state policies, satiric statements about state officials and criticism of police conduct and government officials' performances. None of the statements reviewed by Amnesty International included any incitement to violence or other forms of speech that could legitimately amount to a recognizable criminal offence.

# 3. PROSECUTIONS UNDER AN ARCHAIC LEGAL FRAMEWORK

Although international law allows the exercise of the right to freedom of expression to be subject to certain limitations, these must meet all elements of a stringent three-part test: they must be provided by law (which must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly); and demonstrably necessary and proportionate (the least restrictive measure to achieve the specified purpose) for the purpose of protecting specified public interests (national security, public order, or public health or morals) or the rights or reputations of others.<sup>9</sup> There must be procedural safeguards against abusive imposition of restrictions, including provision for appeal to an independent body with some form of judicial review.

However, contrary to these narrow limitations, a number of laws in Tunisia still contain broadly worded articles that penalize peaceful speech. The articles provide heavy sentences, such as prison terms of up to five years for various types of peaceful speech, notably speech deemed offensive or defamatory toward individuals and state institutions as well as speech deemed liable to disturb the public order or morality, which are not a recognizable offence under international law.

These provisions have been used to pursue criminal investigations and prosecutions of several people in the years since 2011 for comments and opinions published on social media criticizing state officials or state institutions. Prosecutions have included charges under the Telecommunications code, the Penal Code and Decree-Law 115/2011 on Freedom of the Press.

The UN Human Rights Committee states in General Comment 34 that "when a state party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself."<sup>10</sup> Restrictions which do not comply with this test violate freedom of expression even where there is no resulting penalty. They violate not only the right to freedom of expression of those people on whom the restriction is imposed, but also the right of others to receive information and ideas.

Such restrictions must never include the censorship of criticism of public figures and state officials. In fact, as regard the rights and reputation of others, international human rights law and standards require that public officials tolerate a higher degree of scrutiny and criticism than private individuals. And there should not be more severe penalties for insult or defamation of public officials. In this regard, the UN Human Rights Committee states in General Comment 34 that all public figures are legitimately subject to public criticism, and that there should be no prohibition of criticism of public institutions.<sup>11</sup> The Committee said that

**"In circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of**

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<sup>9</sup> Article 19 of the International Covenant on Civil and Political Rights.

<sup>10</sup> Human Rights Committee, General Comment 34, para.21

<sup>11</sup> Human Rights Committee, General Comment 34, para.38

**expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties."<sup>12</sup>**

According to International law, defamation should be treated as a civil, not a criminal, issue and never punished with a prison term.<sup>13</sup> Public officials or others that seek redress on issues relating to defamation, should do so in a civil court not criminal court. The only purpose of defamation, libel, slander and insult laws must be to protect reputations and not to prevent criticism of governments. The use of defamation laws with the purpose or effect of inhibiting peaceful criticism of government or public officials violates the right to freedom of expression.

### **3.1 PROSECUTIONS UNDER THE TELECOMMUNICATIONS CODE**

**"It was very surprising for me to find out after almost two years that the trial had taken place and that I had been sentenced to one year imprisonment for what I wrote on Facebook but unfortunately this is not a rare occurrence. These prosecutions aim to intimidate me and others to limit our criticism of corrupt politicians."**

Ahmed El-Jedidi, blogger and political activist

Article 86 of the Telecommunications Code of 2001 states that "whoever who intends to offend others or disturb their comfort through public telecommunications networks is punishable with imprisonment for a period ranging from one to two years and a fine from one hundred to one thousand dinars."

Article 86 has been used to prosecute bloggers for their peaceful expression on Facebook in 16 of the 40 cases that Amnesty International reviewed.

On 8 October 2020, **Myriam Bribri**, an anti-impunity activist, appeared before the Court of First Instance of Sfax after being charged the same day with Article 86 of the Telecommunications Code on the basis of a Facebook post she had published a week before, where she shared a footage of a police officer beating a person, with her comment referring to the police "cursed be the best of you bastards."

On 3 October 2020, Myriam received a phone call from a person claiming to be from the Judicial Police Brigade and asking her if she had been the one who had insulted the police on Facebook. She told Amnesty International that the caller told her that she must go to the police headquarters for investigation but she refused and informed him that she will only go if she is officially summoned. She described what happened next:

**" After I told him that if the police want me to go for investigation, they must send me an official summons, the person on the other end of the call started insulting me and my family so I hung up. Up until then I thought one of my friends was pulling a prank on me."<sup>14</sup>**

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<sup>12</sup> Human Rights Committee General Comment 34, para. 38

<sup>13</sup> Human Rights Committee, General Comment 34, para. 47

<sup>14</sup> Telephone interview with Myriam Bribri, 12 October 2020.



On 7 October, Myriam received an official summons for investigation from the headquarters of the Judicial Police in Sfax. The following morning, police questioned her in relation to the complaint they had received from the Secretary General of the Regional Section of the Security Forces Union in Sfax for "insulting the police" through her aforementioned Facebook post. After the questioning, the police ordered Myriam's detention and transferred her to court on the same day to be formally charged by the prosecution under Article 86 of the Telecommunications Code.

She told Amnesty International that, after arriving at the court, she had to wait for at least two hours without fully understanding the situation before her lawyers were informed that the first hearing in her case had been scheduled for that afternoon:

**"I didn't even get to meet with the prosecutor, I was indicted and put in custody automatically on the grounds of the conclusion of the police investigation. I didn't expect to be transferred to trial right away but there I was waiting to appear before the court."<sup>15</sup>**

The judge accepted the request by Myriam's lawyer to postpone the hearing, which is rescheduled to 14 December, and ordered that she be provisionally released. The charges against Bribri stand and she could face a sentence of up to two years should the judge deem her use of her Facebook page to criticise the police to be "offensive."

On 6 October 2020, **Imed Ben Khoud**, an activist from Kerouane (160 kilometre south of Tunis), [shared a cartoon](#) by an anonymous cartoonist on Facebook depicting police officers as dogs and the Tunisian Interior Ministry building as a dog house. He told Amnesty International that when he left his home later that day, he was stopped by two policeman who told him that he would be punished for sharing content against police on Facebook.<sup>16</sup>

Two days later, Imed received a summons for investigation from the National Guard Brigade of Kerouane. On the morning of 12 October, he went for questioning accompanied by two lawyers. He told Amnesty International:

**"The investigator showed me a screenshot of the cartoon that I shared on my feed and told me that the Judicial Police Brigade of Kerouane had pressed charges against me for insulting them with that cartoon and that the prosecution ordered an investigation under Article 86 of the Telecommunications Code. He then asked me why I was against the security forces bill and why I have a problem with the police. After they finished questioning me, they informed me that the prosecution had ordered my detention and they put me in a dark cell for at least four hours."<sup>17</sup>**

At 6 p.m., national guard officers transferred Imed to court, where he was questioned by the prosecutor. According to him, the prosecutor told him that it was not acceptable to call the police 'dogs' and there are ways to exercise freedom of expression that are "appropriate" but not in this way. Later that evening, the prosecutor released Imed without indicting him, but the investigation remains open.

Amnesty International is aware of at least three other activists who received summons for investigations in October 2020 after sharing Facebook posts that were critical of the police.

In April 2019, the Court of First Instance of Gafsa sentenced political activist and blogger **Ahmed El-Jedidi**, in absentia to one year's imprisonment for "offending others through communications network," under Article 86 of the Telecommunications Code. El-Jedidi is a resident of the town of Gafsa in the south west of Tunisia.

His prosecution stemmed from a Facebook post he published on 16 November 2017 reproaching a member of parliament representing his governorate for making false claims about the political situation in the mining towns of Gafsa and accused her of acts of "nepotism" and "racism" in 2011. Later that week, Ahmed received a summons to appear in front of the criminal police brigade after the member of parliament filed a complaint with the prosecutor of the Gafsa court.

On 5 December 2017, Ahmed appeared before an investigative judge and learned that he was being investigated for violating Article 86 of the Telecommunications Code. After the initial interrogation, he did not receive any further summons or information about the progress of the case. Yet, in April 2019, he was surprised to learn that the court had tried, convicted and sentenced him in absentia to one year in prison. Ahmed appealed the sentence, and on 7 May 2019 the conviction and sentence were overturned, and he was acquitted. He told Amnesty International:

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<sup>15</sup> Telephone interview with Myriam Bribri, 12 October 2020.

<sup>16</sup> Telephone interview with Imed Ben Khoud, 13 October 2020.

<sup>17</sup> Telephone interview with Imed Ben Khoud, 13 October 2020.

**"It was very surprising for me to find out after almost two years that the trial had taken place and that I had been sentenced to one year imprisonment for what I wrote on Facebook but unfortunately this is not a rare occurrence. These prosecutions aim to intimidate me and others to limit our criticism of corrupt politicians."<sup>18</sup>**

In addition to the fact that the charges against El-Jedidi were not legitimate offences and his speech should have been fully protected by his right to freedom of expression, all those charged with a criminal offence have the right to be tried in their presence. This requires the authorities to notify the accused in sufficient time of the date and location of the trial and to invite the accused to attend.<sup>19</sup> Trying defendants in their absence having failed to do so is a flagrant violation of the right to a fair trial.<sup>20</sup>

**Emna Zouidi**, from Sidi Bouzid, is another activist who faced charges under Article 86 of the Telecommunications Code for criticizing police conduct. In December 2018, she wrote a Facebook post calling on the minister of interior to "control his dog" in reference to the chief of police in Sidi Bouzid, who she accused of having ill-treated, threatened and hit one of the young protesters who in December 2018 had organized a sit-in demanding employment opportunities in Sidi Bouzid. A week later, Emna received a summons for investigation about charges brought against her by the chief of police under Article 86. She was charged and later acquitted by the Court of First Instance of Sidi Bouzid in February 2019. This is not the first time that Emna, who is a political activist, has faced charges for her legitimate exercise of her rights to freedom of expression and peaceful assembly. She told Amnesty International:

**"I am tired of fighting charges because of my participation in protests. It has been two years now that I am constantly under pressure because of the recurrent complaints against me. This is harassment."<sup>21</sup>**

## **3.2 PROSECUTIONS UNDER DECREE-LAW ON FREEDOM OF THE PRESS, PRINTING AND PUBLISHING**

**"Can you imagine? They interrogated me about comments that other people wrote on posts that I published on my Facebook page! It feels like this nightmare will only end if I stop blogging. Otherwise they will keep harassing me."**

Aymen Ben Khassib, blogger

In November 2011, "Decree-Law No.115 on Freedom of the Press, Printing and Publishing" repealed and replaced the 1975 Press Code. It brought significant positive changes including the removal of most custodial penalties, setting out the state's obligations with regards to the protection of journalists' independence against pressure and intimidation, and requiring the justification of any limitations on freedom of expression according to the three-part test set out in the Constitution.

However, the Decree-Law still includes a number of problematic provisions in relation to defamation and insult. Articles 55 and 56 criminalize defamation, requiring proof of direct and personal harm to the defamed person, with fines from 1000 to 2000 Tunisian Dinars (approximately 350 to 700 USD). Articles 52 and 53 retain prison sentences of up to three years for "inciting hatred between religions through hostile means or violence" and "offending authorized religions."

<sup>18</sup> Telephone interview with Ahmed El-Jedidi, 25 October 2019.

<sup>19</sup> Section N (6) c of The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

<sup>20</sup> Article 14. Para 3 of the ICCPR.

<sup>21</sup> Telephone interview with Emna Zouidi, 9 October 2019.

Article 59 of the Decree-Law specifies that in cases of defamation where the accusations made concern public affairs, the burden of proof of the veracity of the accusations lies with the defendant. Under international standards, in cases involving public authorities or other matters of public interest, the plaintiff should bear the burden of proving the falseness of the claims in question.<sup>22</sup>

Article 57 of the Decree-Law defines insults as “any expression that offends dignity, or any term of contempt not involving the accusation of anything specific” and provides for a fine between 500 and 1000 Tunisian Dinars (approximately between 147 and 350 USD).

Under international human rights law, the offence of “insult” should not exist and should never be subject to penalization, given the inherently subjective nature of such claims and the chilling effect it would have on expression and political discussion.

In July 2020, the Tunis Court of First Instance sentenced 27-year old blogger **Emna Chargui**, to six months in prison after convicting her on charges relating to a social media post deemed to be “offensive to Islam.” Two months earlier, on 2 May, Emna Chargui had shared a photo on Facebook containing text that imitated the format of a Quranic verse. The text in the photo said that the COVID-19 virus had come from China and advised people to wash their hands. It stirred a strong reaction from people on social media who found it offensive and called for her to be punished.<sup>23</sup> On 4 May, the judicial police summoned Chargui and questioned her the next day in the presence of her lawyer. Two days later, she appeared in court before the prosecution who did not allow her lawyer to accompany her.

Emna Chargui told Amnesty International that a panel of seven court officials interrogated her for half an hour, including questions related to her faith; the panel did not introduce themselves. She told Amnesty International that she was not sure who the prosecutor was. One panellist even asked her if she had consulted a psychotherapist, suggesting that she might be mentally disturbed. On 6 May, the prosecutor of the Tunis Court of First Instance charged her with “inciting hatred between religions through hostile means or violence” and “offending authorized religions” under Articles 52 and 53 of the Tunisian Press Code. On 14 July, the Tunis Court of First Instance sentenced her to a six-months prison sentence. Emna Chargui left the country and applied for asylum in Europe.

On 25 October 2019, the Court of First Instance of Manouba convicted Facebook blogger **Aymen Ben Khassib** of “insulting others through the press” and sentenced him to a fine of 1000 Tunisian Dinars under Articles 55 and 56 of the Decree-Law 115. He had published on 1 May 2019 a [Facebook post](#) in which he mentioned two members of the municipal council of his neighbourhood by name, who he alleged were responsible for a project in the area around which there was a social controversy. The two members of the municipal council pressed charges against him for defamation.

On 3 June 2019, police interrogated Aymen about why he had named the members of the municipal council. He told Amnesty International that during the investigation, the investigator had questioned him about comments that other Facebook users had left in response to the posts he published on his page. He told Amnesty International:

**"Can you imagine? They interrogated me about comments that other people wrote on posts that I published on my Facebook page! It feels like this nightmare will only end if I stop blogging. Otherwise they will keep harassing me."<sup>24</sup>**

Aymen’s case was then heard by the prosecutor of the Court of First Instance of Manouba on 12 June. The case went to trial on 19 September and the court convicted him in October 2019 and sentenced him to pay a thousand dinars fine under Article 55 of the Decree-Law 115. Aymen appealed the sentence that remained pending to the date of the publication of the report. Aymen is facing charges in at least three other trials under article 86 of the telecommunications code as well.

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<sup>22</sup> Decree Law No. 2011-115, 2 November 2011; available in Arabic at: [www.legislation.tn/sites/default/files/fraction-journal-officiel/2011/2011A/084/TA20111152.pdf](http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2011/2011A/084/TA20111152.pdf)

<sup>23</sup> Amnesty International, *Tunisia: End Prosecution of Emna Chargui, and investigate alarming death and rape threats* (press release 27 May 2020), [www.amnesty.org/en/latest/news/2020/05/tunisia-end-prosecution-of-emna-chargui-and-investigate-alarming-death-and-rape-threats](http://www.amnesty.org/en/latest/news/2020/05/tunisia-end-prosecution-of-emna-chargui-and-investigate-alarming-death-and-rape-threats).

<sup>24</sup> Interview with Aymen Ben Khassib, Manouba, September 2019.

### 3.3 PROSECUTIONS UNDER THE PENAL CODE

**"All this scrutiny on Facebook started to bother them, so they pressed charges against me, but I know my rights and I know I didn't do anything wrong. I have seen how they succeeded in overwhelming other bloggers with this kind of investigation."**

Chamseddine BelHadj Ali, civil society activist and blogger

Chapter Four of Tunisia's Penal Code entitled "Attacks Against Public Authorities" lists crimes of acts of violence against public functionaries and includes in this list insulting or defaming them. Article 125 imposes a prison sentence and fines on anyone who insults a civil servant in the course of or in connection to the exercise of his duties. Article 126 increases the penalty if the offence was committed at a judicial hearing. Article 128 provides for up to two years prison sentence and a fine on any person who accuses a public official of illegal acts, unless they can prove the truth of their accusations.

In violation of international human rights law, defamation and slander are criminalized under the Penal Code and subject to prison sentences. Article 226 of the Penal Code further criminalizes offences against public morals, while Article 121(3) carries a prison sentence of up to five years for those who "distribute, offer for sale, publicly display, or possess, with the intent to distribute, sell, display for the purpose of propaganda, tracts, bulletins, and fliers, whether of foreign origin or not, that are liable to cause harm to the public order or public morals." Defamation and calumny are criminalized under Articles 245-247 of the Penal Code and punishable by prison sentences of up to five years. These articles continue to be used to prosecute peaceful speech in Tunisia.

In April 2020, police arrested two bloggers, Anis Mabrouki and Hajer Awadi, for criticising their local government's distribution of aid during the COVID-19 lockdown.

On 12 April 2020, **Hajer Awadi**, an activist from El-Kef, in the north west of Tunisia, posted a [video](#) on her Facebook page where she criticised the government's poor distribution of basic foodstuff in El-Kef, saying she believed there was corruption involved. In the video, she also said that the local police had verbally assaulted and threatened to arrest her and her uncle when they went to complain about corruption.<sup>25</sup>

Hajer's lawyer told Amnesty International that police had arrested Hajer and her uncle just one hour after she posted the video. The following day both appeared before the prosecutor in the Court of First Instance of El-Kef who charged them with "insulting a civil servant" under Article 125 of the Penal Code and "causing noises and disturbances to the public" under Article 316 of the Penal Code in reference to the altercation that took place before the arrest when the police tried to stop Hajer from filming her Facebook live on the street. Hajer and her uncle remained in custody for a week until the first instance court sentenced them, on 20 April 2020, to a suspended 75-day prison term.

On 13 April, blogger **Anis Mabrouki** posted a [video](#) on his Facebook page showing a crowd of people standing in front of the building of the closed mayor's office in Tebourba (a town 30 km from the capital Tunis), demanding financial aid which had been promised by the government amid the COVID-19 lockdown. The next day he received an official summons letter from the authorities after the mayor pressed charges against him. On 15 April, Anis was charged with "causing noises and disturbances to the public" and "accusing public officials of crimes related to their jobs without furnishing proof of guilt" under Penal Code Articles 316 and 128, respectively. He was arrested on the same day and detained until the Court of First Instance of Manouba city acquitted him on 30 April.<sup>26</sup>

<sup>25</sup> Amnesty International, *Tunisia: End prosecution of bloggers for criticizing government's response to COVID-19* (press release 21 April 2020) <https://www.amnesty.org/en/latest/news/2020/04/tunisia-end-prosecution-of-bloggers-for-criticizing-governments-response-to-covid19/>

<sup>26</sup> Amnesty International, *Tunisia: End prosecution of bloggers for criticizing government's response to COVID-19* (press release 21 April 2020) <https://www.amnesty.org/en/latest/news/2020/04/tunisia-end-prosecution-of-bloggers-for-criticizing-governments-response-to-covid19/>

In November 2019, political activist and lawyer **Maryam Mnaouar** was convicted and sentenced in absentia to a 10-month prison sentence after former minister of interior Lotfi Brahem pressed charges against her for a [Facebook post](#) she had published on 31 January 2018. Maryam had shared an open letter she had written to Lotfi Brahem in which she criticized the minister's threat to press charges against persons who criticize the police. She wrote that as a government official who is paid from taxpayers' money, the minister should be held accountable and accept the scrutiny of people who pay for him to perform his duties.

Maryam was charged under Article 128 of the Penal Code for "attributing illegal acts to a public employee without providing evidence" and Article 86 of the Telecommunications Code and sentenced in absentia to 10 months imprisonment. Maryam, who lives between France and Tunisia, only learnt about this sentence in July 2020. She appealed the sentence and was acquitted by the court of First Instance of Tunis on 30 July 2020.

On 7 September 2018, **Amina Mansour**, a blogger who lives in southern Tunis, received a summons for investigation related to a Facebook post that she published on 28 August of the same year. In the post, she [criticized the Prime Minister](#) for allegedly promoting corrupt customs officers and accused a general director at the Customs Office of corruption. The 47-year-old mother of three has 8,000 followers on Facebook. Her Facebook post was addressed to the Prime Minister Youssef Chahed and finished with "Sorry, Youssef, my dear, your corruption show has fallen apart." The criminal cases branch office at the Hay el Khadra police station in Tunis questioned Amina Mansour about her post for more than two hours, after which she was arrested and detained for the night by an order of the public prosecutor. The prosecutor charged Amina with "offending others through the public means of telecommunications" and "attributing illegal acts to a public employee without providing evidence," under Article 86 of the Telecommunications Code and Article 128 of the Penal Code, respectively. The Ben Arous Court of First Instance sentenced Amina to a two-month suspended prison sentence, which was overturned on appeal on 19 February 2019 by the Court of Appeal of Tunis. While international human rights law would allow for a potential civil suit by an individual public employee accused of corruption and there would be an examination of the defence of truth, in all cases a criminal prosecution by the state is a violation of freedom of expression.<sup>27</sup>

**Hichem Mejri** is a blogger and resident of Tunis who faced prosecution due to his criticism on Facebook of the former president of Tunisia and of the security forces for their excessive use of force. He also accused a prison director and other officials of corruption. Hichem told Amnesty International that in September 2017, the National Guard's intelligence and research unit in Tunis interrogated him about his Facebook posts and his opinion on counter-terrorism operations. On 7 September 2017, the public prosecutor referred him to the criminal chamber of the Tunis Court of First Instance under Article 86 of the Telecommunications Code and Article 128 of the Penal Code. The court acquitted him on all charges in October 2018.<sup>28</sup>

**Chamseddine BelHadj Ali** is an activist and the administrator of a widely followed local Facebook page called "Gafsa Today." Since 2018, he has been investigated twice for matters related to the content shared on the Facebook page he manages. In the summer of 2018, Chamseddine posted on Facebook about allegations of corruption in a deal between the local authorities and a businessman in Gafsa. He told Amnesty International that after posting the allegations, he had started receiving testimonies from people about the same businessman related to other corrupt deals. He shared the testimonies on the Facebook page, which led the local authorities to put an end to their dealings with the businessman who in turn decided to press charges against him. In November 2018, the National Guard in Gafsa investigated Chamseddine on charges including Article 86 of the Telecommunications Code and Article 128 of the Penal Code. The businessman also accused him of incitement to murder, based on violent comments people had made on the Gafsa Today Facebook page. Chamseddine told Amnesty International that the questions the national guard investigators asked him included: "How did you know he is corrupt? Can you prove your claims about corruption? Why do you incite people against him?"

Chamseddine told Amnesty International

**"I think he wanted to intimidate me through the police. All their questions were about how I knew he was corrupt and why I had a vendetta against him. All I did was expose what I knew and share people's testimonies. That is not something I should [have been] investigated for. He should be investigated based on what we shared on the page."<sup>29</sup>**

The investigation did not lead to prosecution, as the businessman withdrew his complaint in December 2018.

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<sup>27</sup> Interview with lawyer Mohamed Ali Bouchiba, Tunis, 29 November 2019

<sup>28</sup> Interview with lawyer Mohamed Ali Bouchiba, Tunis, 29 November 2019

<sup>29</sup> Telephone Interview with Chamseddine BelHadj Ali, 3 December 2019.

In September 2019, Chamseddine discovered that he was being investigated again after the municipal council pressed charges against him under Article 125 of the Penal Code and Article 86 of the Telecommunications Code. He told Amnesty International that the municipal council had already expressed discontent over the continuous scrutiny that he and other bloggers and civil society actors exercise over them. The investigation remains open.

He told Amnesty International:

**"On the Facebook page that I manage, we shared a lot of criticism of the performance of the municipal council, including for exceeding the legal deadline in preparing their bylaws and for not responding to citizens and civil society's suggestions. All this scrutiny on Facebook started to bother them, so they pressed charges against me, but I know my rights and I know I didn't do anything wrong. I have seen how they succeeded in overwhelming other bloggers with this kind of investigation."<sup>30</sup>**

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<sup>30</sup> Telephone Interview with Chamseddine BelHadj Ali, 3 December 2019.

# 4. CONCLUSIONS AND RECOMMENDATIONS

This continuing erosion of the right of freedom of expression guaranteed by the Tunisian Constitution threatens the progress in protecting human rights that Tunisia has achieved since 2011. To enhance the protection of freedom of expression, Tunisian authorities must end the criminalization of expression and order a halt to all complaints filed by officials related to laws which stifle criticism and order prosecutors to halt all defamation prosecutions and instead deal with defamation as a purely civil matter. The parliament must repeal or reform provisions in the law that are being used to arbitrarily curtail expression.

Amnesty International presents the following recommendations, urging

## **Judicial authorities to:**

- Drop all charges against individuals being investigated or prosecuted for their peaceful exercise of the right to freedom of expression, in particular for criticizing the authorities or for “insult.”
- Reform all practices to ensure everyone charged with a criminal offence receives a fair trial, in accordance with international human rights law and standards. In particular, stop the practice of trying defendants in absentia.

## **The parliament to:**

Prioritize reforming all laws to ensure they comply fully with Tunisia’s obligations to uphold the right to freedom of expression. As a matter of priority:

- Repeal provisions prohibiting insult of symbols, institutions, public officials and others, including Article 125 of the Penal Code and Article 57 of the 2011 Decree Law on Media Freedom, Printing and Publishing (Press Code);
- End the criminalization of defamation (and similar expression-related ‘offences’) of officials and others by repealing Articles 128, 245, 246 and 247 of the Penal Code and Article 86 of the Telecommunications Code; Instead treat defamation as a civil offence.
- Repeal provisions prohibiting or criminalizing defamation or insult of state institutions – including the military – and of symbols, including Article 91 of the Military Justice Code;
- Reform overly broad or vague definitions of “national security”, “public morals”, and “public order” that are used to arbitrarily restrict expression, such as Articles 121(3) and 226 of the Penal Code;

## **All state officials to:**

- Tolerate greater criticism than private individuals and exercise restraint in resorting to legal proceedings against journalists and others.

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WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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# CRIMINAL PROSECUTIONS OF ONLINE SPEECH

## OUTDATED AND FLAWED LAWS USED TO RESTRICT SPEECH IN TUNISIA

An increasing number of prosecutions of bloggers and Facebook users have taken place in relation to their peaceful expression online. They have been investigated or charged or sometimes sentenced on criminal charges including defamation, insulting state institutions and “harming” others through telecommunication networks. Amnesty International has examined the cases of 40 bloggers, administrators of widely followed Facebook pages, political activists and human rights defenders, who have been targeted by such prosecutions. These cases point to a worrying trend of people being tried for peacefully exercising their right to freedom of expression online.