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## **Building New Media Institutions in the MENA Region: A Roadmap towards Media Law and Policy Reform Summary Report**

Cynthia Wong

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# Building New Media Institutions in the MENA Region: A Roadmap towards Media Law and Policy Reform Summary Report

## Abstract

Building New Media Institutions in the MENA Region: A Roadmap towards Media Law and Policy Reform was the first in a multi-part series of workshops aimed at bringing together key stakeholders from the academic, law and policy and civil society communities interested in participating in a dialogue intended to aid the media transitions in the Middle East and North Africa. The workshop was organized by the Center for Global Communication Studies at the Annenberg School for Communication, University of Pennsylvania, with support from Internews Network.

This synthesis report draws both from meeting discussions and draft reports submitted and presented at the meeting: Dr. Joan Barata, Draft Report on the Political Transition in Tunisia from the Point of View of Regulation of Communication Media (June 2011); Toby Mendel, Draft Report on Freedom of Expression in Egypt: Opportunities for Reform (June 2011); and Draft Report on the Internet Policy Framework in Egypt (June 2011).

Click [here](#) to learn more about the workshop.

## Disciplines

Communication | International and Area Studies

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# Building New Media Institutions in the MENA Region: Summary Report

A workshop organized by the Center for Global Communication Studies,  
Annenberg School for Communication, University of Pennsylvania and  
Internews Network

June 25–27, 2011  
Budapest, Hungary

By Cynthia Wong

## About the Workshop

Building New Media Institutions in the MENA Region: A Roadmap towards Media Law and Policy Reform was the first in a multi-part series of workshops aimed at bringing together key stakeholders from the academic, law and policy and civil society communities interested in participating in a dialogue intended to aid the media transitions in the Middle East and North Africa. The workshop was organized by the Center for Global Communication Studies at the Annenberg School for Communication, University of Pennsylvania, with support from Internews Network.

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## About the Author

Cynthia Wong is an attorney at the Center for Democracy & Technology (CDT) and Director of CDT's Project on Global Internet Freedom. CDT is a Washington, DC-based NGO dedicated to keeping the Internet open, innovative, and free. Cynthia conducts much of CDT's work promoting global Internet freedom, with a particular focus on international free expression and human rights. Cynthia also serves as co-chair of the Policy & Learning Committee of the Global Network Initiative (GNI), a multistakeholder organization that advances corporate responsibility and human rights in the technology sector.

## About CGCS

The Center for Global Communication Studies (CGCS) at the Annenberg School for Communication, University of Pennsylvania, is a leader in international education and training in comparative media law and policy. It affords students, academics, lawyers, regulators, civil society representatives and others the opportunity to evaluate and discuss comparative, global and international communications issues.

Working with the Annenberg School, the University of Pennsylvania, and research centers, scholars and practitioners from around the world, CGCS provides research opportunities for graduate students; organizes conferences and trainings; and provides consulting and advisory assistance to academic centers, governments, and NGOs.

CGCS draws on various disciplines, including law, political science, and international relations, among others. The Center's research and policy work addresses issues of media regulation, media and democracy, measuring and evaluation of media development programs, public service broadcasting, and the media's role in conflict and post-conflict environments.

# Meeting Context and Goals

## Goals

In late June 2011, representatives of various media stakeholder groups from the Middle East and North Africa (MENA) region and several international experts met to explore strategies and opportunities for media law reform in Tunisia and Egypt. From the outset, the meeting's goal was to provide space for developing a "roadmap" for the transition in Egypt and Tunisia: what is the machinery of transition, how have goals been articulated, and what inputs have been planned? Participants took current developments – particularly from Egypt and Tunisia, but also from other MENA states – as a way of asking how information can best be gathered, coalitions built, and expertise deployed to foster a strong media sector that will undergird democratic development and meaningful reform.

In the opening session, participants articulated several further goals for the meeting and for future follow-up meetings:

- Identify priorities and achievable first steps towards media policy reform;
- Identify relevant norms, international standards, and good models to guide drafting of new legislation;
- Analyze particular local contexts and assess whether there are novel, creative possibilities that could be developed in Egypt and Tunisia;
- Map out the current state of civil society and discuss strategies for enabling civil society to participate in media policy reform discussions;
- Discuss the role of the international community in supporting local reform efforts.

## Local political and legal context and key stakeholders

Media reform strategies will be intimately tied to the local political and social contexts that led to the current revolutions, which will also continue to shape broader democratic reforms. However, several shared themes emerged that are relevant to both Egypt and Tunisia (and potentially elsewhere in the MENA region).

The key theme of the opening session was the question of how the MENA region will develop new institutions and media structures – and change the culture of media – after an extended period of state control. For the first time in decades, people are able to speak and listen freely, but the public is struggling with how to manage vastly different views and sectarian and political diversity. A key challenge will be how to encourage a pluralistic media environment while maintaining free and independent institutions and transitioning state-controlled media into true public service models.

### Egypt

A key theme that emerged from the meeting is that the Egyptian revolution is still very much in progress. While some major public figures associated with the former regime have been removed, much of the old government remains in place and it can still be dangerous to criticize public figures. In addition, the military has shown little tolerance for dissent or criticism of itself. One important challenge is to convince the Military High Council to refrain from making new laws until a new parliament is in place. Elections will take place in October and the immediate task is to ensure elections are as democratic and legitimate as possible.

Towards that end, there has been much discussion among stakeholders around what media reforms are necessary to, at a minimum,

ensure campaigns are reported on and reflected fairly for the elections. For example, participants expressed the need for basic rules to ensure sufficient pluralism. However, there is debate over how much legal reform is required before the election, and what may be taken up afterwards. The relationship between the military council and civil society remains very volatile, with some military officials viewing civil society as tools of foreign governments seeking to create national security threats. However, for the interim period before the elections, the application of laws and informal controls on media and expression has changed: the Minister of Information has departed and has not been replaced. Anecdotal, the role of the security service and other informal controls has been greatly reduced, though these controls have not gone away entirely.

Currently, coalitions comprised of human rights NGOs, journalists, and lawyers are drafting laws and proposed reforms for the Constitution and regulation of all forms of print, broadcast, and telecommunications/online media, in large part outside of formal legislative processes.

### **Tunisia**

The Tunisian elections will take place in late October 2011. The second transitional government created the *Haute Commission pour la réalisation des objectifs de la révolution, de la réforme politique et de la transition démocratique* (HC) with the mandate to reform the Tunisian state through a process of legislative change. The HC was formed by merging pre-existing organizations, including political parties, trade unions, and civil society groups, though its work is carried out by civil servants with strong ties to the former bureaucracies. The HC has a technical

sub-commission (*sous-commission* technique) comprised of legal experts who are tasked with making recommendations on media reform. In addition, the provisional government set up the *Instance nationale pour la réforme de l'information et la communication* (INRIC) to provide input and consultation on media issues. Comprised of media professionals, the INRIC has adopted a more transparent approach than the HC, though its role is purely consultative.

The immediate challenge in Tunisia is to ensure elections are fairly covered. Some stakeholders are pushing for media reforms with respect to print media, broadcast media, and journalists to be passed before the election. Internet policy reform will not be addressed until after the elections, as part of a telecommunications reform process. After the election, the Constituent Assembly will move on to constitutional reforms and reform of the basic judicial framework, and then to further regulatory reforms consistent with the new democratic institutions (including further media and Internet reforms). At the moment, the debate between the national council and civil society actors is very volatile.

## **Media Law and Policy Reform: Priorities and Challenges**

Participants expressed a strong desire to learn from the experiences of other countries that have been through analogous transitions or are facing similar questions. Participants examined and discussed the experiences of other countries (particularly Indonesia, Jordan, and Hungary) and identified several overarching lessons to be drawn for the MENA region:<sup>1</sup>

- **Move quickly to identify priorities to push through first.** There is a clear window of opportunity to enact progressive and lasting reforms while the power of the street is still strong. In Indonesia, there was clear, unified focus on a specific priority, which was abolishing the press law and creating independent print media institutions. Tunisia and Egypt may have a less clear and unified vision with respect to these objectives, and it is more difficult to organize around a package of reforms.
- **Set up sustainable structures of government to ensure checks and balances.** When a country finds itself in a “constitutional moment” – a time of political crisis that enables citizens to fundamentally transform the country’s Constitution and political structures – it must set up structures that will limit governmental power over media, build in checks and balances against consolidation of political control, and ensure that these foundational structures are hard to amend in the future (by, for example, requiring a supermajority to amend the Constitution or important media laws).
- **Do not neglect private threats to media freedom such as defamation laws and concentration of commercialized media.** In Indonesia, the political and legal context gave rise to a strong focus on public threats to media freedom. Indonesia is now seeing the emergence of private threats to media freedom in the form of defamation cases and concentration of media ownership, which were not adequately addressed during transitional reforms.

- **Individuals are key to getting new institutions on a progressive track.** Indonesia’s first press council was filled with individuals viewed as having real legitimacy and independence from the old regime.

## Freedom of Expression, Freedom of the Press, and Access to Information

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Multiple participants emphasized the need to separate media regulation from the definition of rights in reform efforts. The two tasks are intertwined, but policymakers must pay close attention to each of them separately in order for reforms to be effective: Regulation should not be able to alter rights, and rights should constrain what regulation may do to limit expression. A strong rights framework can also help address past experiences with “mission creep” in regulation, where regulation passed for one purpose (for example, to protect national security) is then applied or misused in other areas (in this same example, to silence criticism of public officials).

In both Egypt and Tunisia, participants asserted that constitutional reforms should focus on ensuring a strong rights framework for media and freedom of expression, regardless of the communications medium. On substantive rights and standards, participants discussed drawing from international and national precedents like Article 10 of the European Convention on Human Rights, the First Amendment of the U.S. Constitution, and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). In broad terms, the rights to be addressed include the rights to opinion, expression, and of the free press; the rights to

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<sup>1</sup>One participant pointed to [mediapolicy.org](http://mediapolicy.org) for still more resources on media reform and transition case studies.

assembly and association; and the right to access public information. Limitations to these rights must comport with international human rights standards defining the scope of permissible restrictions.

In addition, some participants argued that protecting the right to privacy is a critical enabler for the right to freedom of expression and should also be protected in any rights and regulatory framework. Finally, reform efforts must also strive to ensure a robust, independent judicial structure so courts can act to guarantee these rights. In sum, these reforms are especially important for the transformation of institutions that have been responsive to political power into ones that are responsive to public aspirations and interests.

Participants identified the following priorities for future constitutional and regulatory reform efforts:

- Strong protections for the rights to opinion, expression, the press, and the rights to association and assembly, consistent with international human rights norms
- Strong protections against government intrusion into private communications
- Laws guaranteeing robust access to public information
- Laws ensuring the independence of media regulatory bodies
- Right to protection of journalistic sources
- Prohibition on licensing/registering journalists and print media outlets
- Requirement to allocate the frequency spectrum in the public interest among

public, commercial, and community broadcasters

For both Egypt and Tunisia, stakeholders identified the need for model laws and constitutional norms drawn from international best practices, and for capacity building to allow civil society, policymakers, and other relevant stakeholders to begin crafting constructive reform proposals.

### **Egypt**

An interim “Constitutional Declaration of 2011” amending the Egyptian Constitution was passed in March 2011, but most of the 1971 Constitution remains in force. The new articles primarily deal with revisions to facilitate new elections. Provisions for expression and media remain largely unchanged: Article 12 protects freedom of expression “within the law” and Article 13 forbids censorship except for times of emergency or war. In practice, neither article provides significant protections for freedom of expression. In addition, there is no law protecting access to information: the press law theoretically gives journalists the right to request information from the government, but explicates no procedures, timelines, or guarantees, and this right is limited to journalists. Finally, the new Constitutional Declaration of 2011 does provide new protections for communications privacy in Article 11, which prohibits confiscating, reading, or censoring messages sent by various communications media.

The regulatory framework includes numerous defamation provisions in the penal code and special protections for the President, the People’s Assembly, the army, and other public officials. There are also prohibitions on “false news,” advocating changes to the Constitution, and publishing information about ongoing court cases. The Press Law also prohibits



hate speech and blasphemy. Finally, there are numerous overbroad and vaguely drawn laws dealing with secrecy.

In addition, some participants identified other provisions in the Penal Code and the Emergency Law that must be amended to conform to international human rights standards.

Article 59 of the 1981 Emergency Law sets aside constitutional protections against censorship (among other things) during states of emergency. In practice, the government kept Egypt in a state of emergency for 30 years, violating Article 59's own procedural protections. As written, this provision does not comport with Article 4 of the ICCPR, which places limits on when rights may be suspended in times of emergency.

The Penal Code contains several provisions that are inconsistent with international human rights norms, including (but not limited to) Article 179 (insults to the President), Article 184 (defamation against the People's Assembly, the army, or the courts), Article 184 (defamation of public officials), Article 186 (defamation of the judiciary), and Articles 188 & 305 (publication of "false news").

Participants highlighted as a priority the need to identify where current constitutional and national law are not consistent with international human rights norms, to identify gaps in rights protections, and to develop specific proposals for amending or rescinding these provisions.

### **Tunisia**

The Constitution of the Tunisian Republic (CT) was approved in 1959 and has since been subject to occasional ad hoc amendments. Most of these amendments have sought to further restrict the rights of citizens. References to human and citizens' rights are brief, super-

ficial, and inadequate. For example, Article 8 guarantees freedom of opinion, expression, the press, publication, assembly, and association "exercised under the conditions defined by law" – giving nearly unlimited political discretion to lawmakers to limit these rights.

In general, Tunisian policymakers and civil society need norms that can guide drafting in the area of media and constitutional reform since no progressive norms currently exist in the Tunisian Constitution or regulatory frameworks. At the moment, some drafting bodies are looking to international agreements on civil and political rights agreed to by Tunisia, including the ICCPR. Some participants also recommended that constitutional reforms address the role of the courts. Tunisia needs mechanisms that allow individuals to assert and protect their rights against governmental violation. In practice, building an independent judiciary may require exclusion of some of its current members, to the extent that they are not committed to democratic reforms.

Finally, there is a new law in force guaranteeing the right of access to information, which some stakeholders view as a very good development.

## **Audiovisual Broadcast (Radio and Television)**

Participants identified reform of state-owned, state-controlled broadcasters as an area of high priority and discussed whether such institutions can be transformed into public service broadcasters. However, different stakeholders held different visions of the role of "public service broadcasting," especially in pluralistic communities. Several important questions will require further discussion as reform efforts unfold:

**Who should own and direct the public service broadcaster?**

Some participants felt that a true public service broadcaster must be owned by the government, but controlled by an independent body. Others felt that the broadcaster must be owned collectively by the people to truly reflect public interest.

**Should public broadcasters reflect majority views? Or should public broadcasters strive to reflect the views of an aspirational, culturally integrated society?**

One participant presented a model from the Netherlands: Different pillars in society (for example, Catholics, Protestants, Liberals, etc.) organize their own broadcasting clubs. The state's role is to ensure different clubs get blocks of time proportionate to the club's size. This system has generally worked, though some issues remain around skewed distribution with smaller minorities.

Some felt the role of a public service broadcaster should be to help integrate all voices and increase mutual understanding between minority and majority groups.

However, some participants warned against overburdening public media by mandating too much of their content. Public broadcasters are competing against private stations. Regulation must allow media professionals to create content that will be of interest to viewers.

To ensure small minorities are not completely excluded, some states have successfully created structures to enhance minority voices through board governance, management, oversight, and the creation of an ombudsman's office.

**Given the context of the current transitions in Egypt and Tunisia, should broadcasters strive to express the view of the street because there are no other public outlets doing so?**

Participants identified the need for a study of international standards for public service broadcasters in order to address a range of topics: what constitutes autonomy, independence, and neutrality, and how can regulation ensure broadcasters fulfill their public mandate (whatever the vision) through oversight and governance?

Many participants agreed that there was a need to study other countries' models for public broadcasters, especially in Europe and elsewhere in the Arab world. Participants identified several lessons learned from other countries that have undergone similar transitions or who are confronting similar issues:

- In Indonesia, the state-controlled broadcaster was not properly reformed and the new public broadcaster still suffers from corruption and entrenched ties to old structures and editorial procedures.

The government decided early on that simply abandoning the institution was not an option because of its size. In retrospect, some Indonesian stakeholders believe it may have been preferable to break up the broadcaster and privatize portions.

Potential harm from a formerly state-controlled broadcaster is mitigated by strong private sector competition. However, it is important to ensure that any public service broadcaster that is created from state-controlled media is set on the right path from the outset.

- Jordan has been trying to transition its state-owned television and radio institutions into public service broadcasters, but the transition has suffered from weak implementation, lack of resources, and lack of commitment from middle management within these institutions. The transition from a state institution to a public service broadcaster must be properly strategized with strong leadership throughout all implementation phases and commitment from key stakeholders within the old institution.
- In addition, if the government is not willing to refrain from interfering, any gains will be temporary, as was the case in both Jordan and Hungary. Checks and balances must be built into the governance and management of new public broadcast institutions to ensure their independence so that such institutions do not slip back to propaganda.

Regulation can facilitate structural independence by, for example, ensuring different societal stakeholders have representation on the governing board, and insulating the board appointments and decision-making from political branches.

Drawing from discussions of the Indonesian experience, some participants felt that an important component of growing a robust media ecosystem was to quickly empower independent private broadcasters. Both Egypt and Tunisia should prioritize the institution of a licensing process that fosters a competitive private market, grants licenses to operators with strong independent broadcast content and skills, and then gives them freedom to act independently through new constitutional guarantees and reformation of laws that have restrained broadcasting in the past. A healthy

private broadcasting sector should go hand-in-hand with a strong public service broadcaster.

Some participants emphasized that reform efforts must address how to ensure structural independence of public media and how to ensure commercial viability of private media. If the commercial viability of media is not addressed, then the media ownership environment will eventually revert back to the status quo.

### **Egypt**

In Egypt, many TV stations are now independent for the first time in decades, but are also now operating without a permit. Many TV stations would like to obtain permits, but there is currently no ministry in place to approve licenses. There is an urgent need to reform the licensing regime, but it is unclear what the permit requirements will be – or should be – moving forward.

One priority area is the reform of the Egyptian Radio and Television Union (ERTU), the state-owned and -controlled broadcasting service. Within the ERTU, there is momentum to reform the institution to improve its credibility and transform it into a true public service broadcaster. There may also be political will to carve out TV channels and radio stations from the ERTU's structure to create freestanding, private networks.

However, there is vigorous disagreement over the long-term vision for the ERTU among a broader set of stakeholders. Some stakeholders believe that trying to revive the ERTU would be a mistake because it is hopelessly bureaucratic and aligned with maintaining the status quo. Several participants argued that a true public service broadcaster must be built from scratch; any attempt to reform the existing in-

stitution would be a failure. Others believe the best that can be achieved is to convince the government to break up the ERTU and privatize the pieces.

Participants at the meeting were mainly in agreement that a public service broadcaster in Egypt was necessary in order to counterbalance commercialized broadcasters with their own biases and interests. Post-revolution, the ERTU has been consulting with governmental stakeholders on how to move forward, but not necessarily with broader civil society groups. Some in the ERTU want to open this consultation to the public.

There are, however, many obstacles to sustainable reform: The ERTU employs some 40,000 people, the majority of whom come from the state security apparatus. Much of the staff lacks professional and technical training and burdensome bureaucracy is still deeply entrenched in the culture of the organization. There is no ERTU Chairman at the moment, so there is no mechanism for implementing recommended reforms, which is creating chaos and uncertainty at the highest levels of the organization.

The ERTU faces an uphill battle to regain credibility and public trust because of its long status as a state controlled institution. Media pluralism was not really a part of pre-revolution policy dialogues within the ERTU. The ERTU tried to give voice to various groups, but not in any systematic or measured way. Now, discussion around pluralism focuses on how to create a discourse of reconciliation in the media that ensures balanced coverage of issues that might be of concern to ethnic and religious minority groups, such as the Coptic community.

Participants raised many questions around what constitutes pluralism, what vision of pluralism can support democratic reform goals, and how to measure pluralism in media content. There is a need to study models from other countries that have undergone transitions, and to develop indicators for assessing media pluralism.

### **Tunisia**

The technical sub-commission is drafting a new regulatory framework for broadcasting as there is currently no broadcast regulatory authority and no specific regulation for this sector in Tunisia.

Before the revolution, the telecommunications authority, the *Office National de Télédiffusion* (ONT), managed the radio and television signal distribution monopoly. An institution closely tied to the Ben Ali regime, the ONT had complete discretion over the granting of licenses and no objective criteria existed to guide this process. State channels also had a monopoly in providing news. In the past, the ONT claimed that all frequencies for radio and TV transmissions were already in use, making it impossible to grant frequencies to new operators. This argument holds little credibility with media professionals and the ONT is planning to carry out a study on the true capacity of the airwaves in Tunisia. Currently, the power to issue licenses is in the hands of the Prime Minister. Hundreds of applications have been submitted for licenses, but the timeline and criteria for the granting of licenses is unclear.

Creating a truly independent regulatory authority requires drafting criteria to make the process of awarding licenses objective and transparent. The sub-commission is working on this issue and current drafts draw on Belgian law and some African models. The sub-

commission's work will also address the creation of a new audio-visual regulatory body. In every stage of its work on broadcast issues, the drafting commission is trying to implement a broader consultative process with the journalist's union and other civil society groups. However, there is an ongoing debate about whether there has been adequate consultation with civil society.

Some stakeholders have identified the following elements that should be addressed in future audiovisual broadcasting law:

- **Granting of licenses for radio and television services.** The law should define and clarify the selection criteria and proceedings with objective, non-discriminatory parameters.
- **Regulation of media ownership.** Pluralism can be facilitated by rules that prevent excessive media ownership concentration.
- **Regulation of public service broadcasting.** Legislation must set foundational parameters for how state media will transition to public service media, and how the public service media will be governed moving forward.
- **Regulation of content.** Regulation of content should be restrained by constitutional and human rights standards on how government can restrict expression.
- **Creation of independent broadcast regulatory authority.** The authority must be structurally independent from the influence of government.

## Regulation of Journalists and Print Media

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Participants viewed regulation of journalists as another key point of government control. Both Tunisian and Egyptian laws regulate the profession directly, including through journalistic codes of conduct enforceable through legal sanction. Participants agreed that modernizing the legal treatment of journalists should be a priority.

The press code regulates both journalists and print media and stakeholders in both countries are discussing what reforms to the press code are necessary. The approach thus far has been to take precedents from the West, particularly from France and other European countries. However, some participants disagreed with this approach and argued that a 19th century-style press code is not appropriate for contemporary Egypt and Tunisia. Instead, participants felt that the press code should define the rights of journalists, including protection of sources, and any ethical guidelines should be enforced on the level of self-regulatory professional sanction, and not through law. Finally, as addressed in Section 2.1 above, reform of defamation laws and passage of robust access to information laws are necessary conditions for freedom of the press.

Participants noted that most Western democracies have greatly scaled down the regulation of the press, reducing the ownership requirements and controls over print media drastically. Tunisia and Egypt should follow this trend. Any requirements for setting up a print newspaper should be kept to a minimum, only to guarantee a basic level of transparency in terms of ownership and editorial responsibility.

However, some provisions may be necessary to prevent media concentration, both horizontal (within a media format) and cross-ownership (across different media formats).

## **Egypt**

Participants identified the Journalist Syndicate Law as a priority for reform. Formally, only members of the Journalist Syndicate may be practicing journalists (though there is some ambiguity on this point in the law). Though this requirement was not always enforced in practice, it provided opportunities for abuse – for example, giving police legal justification to stop a person filming a segment on the street and demand their credentials. Currently, the Syndicate has only 5,500 members out of an estimated 14,000 eligible journalists, and many members are deeply invested in legacy state-controlled media institutions.

The Press Law and the Journalist Syndicate Law create an administrative system of disciplinary rules. Through these laws, the Syndicate can take action against journalists for violations of the law, the Press Code of Ethics, or other “professional duties.” Thus, participants viewed the Syndicate as having a mixed impact. In one sense, it acts as a tool of control because it imposes registration requirements and can impose penalties on journalists – and in effect, the Syndicate Law gives the government extensive control over its operation. However, the Syndicate also acts as a union and provides many benefits to members. It is not merely a government tool, but neither is it independent.

New journalists’ associations are being formed in post-Mubarak Egypt. An important question and priority will be how to reform the Press Law, the Syndicate Law, and the Syndicate’s structure itself to allow it to operate free of government control, while still providing strong institutional support for the rights of journalists.

Participants viewed regulation of print media as another key point of government control. The national newspapers are managed by individuals appointed by the Shura Council and enjoy financial support from the government. Outside of state-controlled publications, under the Press Law, a license from the Supreme Media Council is required to publish a privately owned newspaper or magazine. Because Media Council members are selected by the Shura Council, it is not structurally independent from the government. The Supreme Media Council has a long history of exercising broad discretion in the granting of licenses, and the state security apparatus has significant influence over the process. The Press Law also imposes stringent capital, ownership, and funding requirements for private newspapers; while ownership requirements help avoid media concentration, they also make it much more difficult to publish print media (though in practice, ownership requirements may not have been fully enforced). Several participants argued that the current licensing regime does not comport with human rights standards nor is it justified by any objective need. Participants urged prioritizing reformation of the Supreme Media Council and the Press Law.

There is also uncertainty as to the future of state-controlled newspapers. As with state-owned broadcast institutions, similar questions arise as to whether and how to privatize the state-owned newspapers, or whether these publications can be preserved as public service media with more independent governance and management.

In addition, there are no rules on concentration of private media ownership and cross-ownership. Media concentration is not yet a major concern in Egypt, in part because license requirements have been prohibitively

stringent. However, the revolution presents a crucial opportunity to introduce progressive reforms in this area, addressing both horizontal and cross-ownership concentration. There may be helpful precedents from other countries who have undergone analogous transitions, necessitating the identification of good models for study and emulation.

### **Tunisia**

An initial draft of a new press code was drafted by the sub-commission in order to repair the existing repressive version. The draft press code was leaked, which led to strong criticism that the new code was not progressive enough and did not adequately protect journalists and free speech. A new draft is being formulated, drawing on input from groups like Article 19, and this draft was circulated in July 2011.

Tunisia also has a journalist syndicate (*Syndicat national des journalistes tunisiens* (SNJT)). Not every journalist is a member, and the SNJT operates largely independently of the government. Its role is to develop and monitor compliance with the journalistic code of conduct. There is potential for the SNJT to be a progressive voice in reform debates: as an institution, it is fully committed to change and the promotion of freedom of expression and media. In some cases, it has worked closely with the INRIC and has aligned with its objectives.

Nonetheless, some participants noted that some reform of SNJT may be necessary to bring it up to international standards. Participants also expressed the view that a syndicate's role should be to promote the rights and working conditions of journalists and to develop codes of ethics that are enforced only on the level of self-regulatory professional sanction, not legal sanction.

## **Internet and New Media**

The nature of the revolutions coupled with long-standing state-controlled institutions gives rise to the importance of preserving space for citizen journalism online as a counterpart to broadcast and print media in both Tunisia and Egypt. The transition to independent and public service broadcast institutions will be fraught, and past experience in other transitioning countries has shown that true independence can be difficult to sustain. It will be important to open up online spaces even more, to counterbalance much more entrenched legacy media institutions.

Some participants counseled that we should not overstate the role that social media played in the revolutions; after all, the Internet penetration rate is still quite low in much of the MENA region, while television is nearly ubiquitous. However, participants acknowledged that social media had a multiplier effect within the context of the revolutions. At the same time, governments in the MENA region have become increasingly sophisticated in using ICTs to exert greater control. Government strategies differ from country to country but include increased filtering, hacking into civil society websites and accounts, cyber attacks, surveillance (combined with arbitrary arrests and detention), and use of emergency laws, cybercrime laws, and defamation laws to justify arbitrary arrests and prosecutions.

Stakeholders in Tunisia and Egypt are in varying stages of considering how to reform laws that impact freedom of expression, privacy, and freedom of the press online. However, participants have identified reform of Internet regulation as a key area that must be taken up after the elections in both Egypt and Tunisia.

However, many stakeholders felt that there was no need for extensive, Internet-specific regulation for Internet content. Content regulations that apply to offline expression can be used to deal with online expression, consistent with human rights and constitutional protections for expression – as long as such protections are robust and can be applied in a technology-neutral way. However, some participants cautioned that content regulations designed for specific offline media (newspapers, television) may be difficult, impossible, or undesirable to apply wholesale to the Internet because of the unique technical attributes of the Internet. For example, requiring a broadcast license may be more justifiable in the television context because of technical limitations in spectrum. However, the Internet can support a nearly unlimited amount of audiovisual content, making licenses for websites that offer audiovisual content technologically unnecessary and undesirable from an economic and human rights perspective.

To the extent that expression on the Internet is to be regulated, participants agreed that the medium's nature – compared to other media – should inform how the medium should be regulated. Several participants emphasized that the "Internet" is not just the web, but also applications like email and VoIP. The Internet enables both mass communication and user-to-user communication. Many agreed that the broadcast model for regulation is not the best model for Internet regulation, especially since the Internet is more analogous to the telephone in some applications than broadcast. In addition, users have much more control over what they see or hear online. From a regulatory perspective, the Internet should be treated differently than print and broadcast media.

The Internet also raises novel questions about how to regulate new entities like Internet service providers (ISPs) and websites that allow users to post their own content (Twitter, blog platforms, social media networks, often called "user-generated content platforms"). These entities are often referred to as "Internet intermediaries" – entities that provide the tools and services for individual expression online.

The United States and the EU have progressive regulatory models that may be useful for Egyptian and Tunisian stakeholders to examine. For example, in the United States, Internet intermediaries are not legally liable for the unlawful or defamatory expression of users of these services. For copyright infringement under U.S. law, an intermediary is not liable for user infringement as long as the intermediary removes the content when notified (often referred to as a "notice and takedown regime"). To be eligible for legal protection, the intermediary must also provide a process for the user to then challenge the takedown if desired. Under this framework, the first-party individual that has committed a crime or harm may still be held liable, but the third-party service used by the individual may not. Many free expression advocates believe this regulatory framework for Internet intermediaries is just as important as constitutional and human rights protections because it creates a legal environment that allows intermediaries to continue providing tools for expression.

Participants asserted that the constitution and laws should protect the rights of Internet users and that governments have a duty to ensure the exercise of human rights online. For example, governments should promote access to the Internet and ensure network neutrality and fair access to Internet technologies. Governments must encourage a business environment that promotes open platforms and net-



works. Additionally, regulation in other areas like cybercrime or national security should take place within a rights-based framework. For example, governments must enact protections against surveillance of Internet communications to safeguard individual privacy. Fundamental freedoms must be protected and mediated through the judicial power, not the executive and administrative bodies.

Participants acknowledged that Internet users also have duties, and that the right to free expression does have permissible limits. Participants discussed an issue with particular relevance in the Arab world: who should be responsible for protecting morality? Different cultures will have different notions of permissible speech in order to protect public morals. Many participants felt strongly that users should determine what speech reaches their computer screens through voluntary use of filters they personally control.

Finally, participants agreed it is essential to maintain the medium's independence from legacy media regulatory authorities and political institutions. The presumption should be against regulation of online expression or access to the Internet; restriction should be allowed only in compelling or extreme situations, consistent with human rights standards on proportionality and necessity.

## **Egypt**

Under current law, operation of a "telecommunications service" requires a license from the National Telecommunications Regulatory Authority (NTRA). A "telecommunications service" is defined quite broadly, and includes both wired and wireless communication networks, even possibly extending to operators of Wi-Fi networks. Telecom service licenses impose a number of duties on operators, including a requirement that licensees abide

by commitments related to national security restrictions and a requirement that equipment may only be used for communications authorized by the NTRA. In practice, licensing arrangements, national security laws, and emergency laws give the NTRA broad powers over operation of telecommunications services and surveillance of networks, with little transparency, oversight, or substantive protections for privacy or freedom of expression. These provisions have not yet been addressed in post-revolution reforms. In practice, previously there was not much need for extensive Internet regulations because the government simply did what it wanted. Past tactics included extralegal surveillance and arbitrary arrests and detentions.

Resentment over the Internet shutdown in Egypt was still evident among the Egyptian participants at the workshop. The sentiment was that if ISPs were willing to shut down services in response to government pressure, they should not be allowed to operate in Egypt. These actions in the context of the protests have created a strong impetus for protections against this kind of government action in the future, from both a technical and legal perspective.

Some participants from Egypt felt that activists should be involved in drafting any actual laws that regulate use and administration of the Internet, given the role the Internet is playing in facilitating the revolution. Led by several NGOs, some discussions are already taking place in Egypt on how to reform the regulatory framework for telecommunications and Internet services, including the structure and governance of the NTRA. These discussions are addressing both freedom of expression and surveillance issues. However, as with general media law reform, telecom reform will be taken up after the elections and constitutional reform is complete.

## Tunisia

Some discussion took place about the role of the Tunisian Internet agency (*Agence Tunisienne d'Internet* (ATI)), which, under the former regime, controlled Internet content under the umbrella of the Ministry of Industry and Technology. For a short time at the beginning of the revolution, this agency moved away from control over Internet content and towards a more limited focus on the technical management of Internet services. However, there is growing conflict between the ATI and the judiciary: the courts, under pressure from religious groups, want authority to issue injunctions to restrict “pornographic” websites on the Internet. There is also growing evidence that the ATI has again been active in blocking or taking down content, sometimes under the pretext of protecting public morals (addressing pornography) and national security.

Participants discussed whether Western experience with online content regulation is really a good example for the MENA region. Several participants asserted that in Tunisia, regulation of pornography has been (and is now being) used to excuse or justify imposing controls on the Internet, just as copyright is in the West. Some participants argued that developments in Europe and in the West are setting a bad precedent – for example, France has enacted a “three strikes law” to enforce copyright, which would deny Internet access to some repeat copyright infringers. Western countries are allowing more and more power over the Internet to be transferred to administrative authorities, rather than leaving disputes to be decided by independent courts. Participants felt strongly that this is a precedent that the MENA region should not follow.

Generally, there has not been much formal discussion around what legal reforms may be necessary for the Internet in Tunisia. The focus has thus far been on print and broadcast me-

dia reform, in preparation for elections and the constitutional reform process. Internet law reform will be dealt with after these phases, in the process of reforming the ATI and telecommunications regulation.

The current plan is to take up Internet and telecommunications reform separate from (and after) media reforms focused on print, broadcast, and regulation of journalists. But there is need for capacity building efforts for civil society and governmental stakeholders to ensure progressive players are prepared for reform debates when the time comes. Civil society has a need to investigate and understand model Internet policy frameworks from other countries that have been successful at supporting privacy, freedom of expression, and an open Internet.

## Summary of Reform Priorities

### Identifying constitutional reform proposals

In both Egypt and Tunisia, provide technical assistance to identify areas where constitutional protections do not conform to international human rights standards, as well as gaps in rights protections. This work should address a range of rights that are critical for media freedom and democratic reforms, including the rights to freedom of expression, opinion, and of the press; the right to association and assembly; the right to access information; and the right to privacy.

### Transitioning state-owned media

Increase opportunities for civil society to work with the emerging public bodies in their definitions of media law and policy and to identify models from other countries that may be emulated.

In Tunisia, this means focusing on the processes of the High Media Council. Given the short history of policy formation in Tunisia, assuring broader discussion and transparency to avoid conflicts in the future will be paramount.

In Egypt, this means formulating an ambitious process by which elements of civil society are adequately prepared to play a constructive role as the debates over the future of ERTU unfurl. This will mean attention to:

- The shift from state broadcaster to public service broadcaster
- Privatization of some of the NTN channels
- Design of the regulator and process of defining broadcast licenses

In Egypt and Tunisia, this means following through on Article 19 analyses and providing technical assistance to civil society as they press for improvement of legal analysis, and identifying models for governance and how to structure regulatory bodies, spectrum allocation, and licensing requirements to ensure greatest independence.

## Reform of broadcast licensing framework

Prioritize the reform of broadcast licensing to quickly empower independent private broadcasters with strong independent content and skills to operate. In both Egypt and Tunisia, this means:

- Development of licensing criteria that comports with international standards
- Building in protections to ensure transparency, objectivity, and non-discrimination in the process for granting licenses.

- Identifying necessary structures for ensuring independence of broadcast regulatory authority.

## Defining vision for media pluralism and identifying indicators

Increase opportunities for consultation among civil society and media professional stakeholders to define a vision for media pluralism.

- Identify models for media pluralism and ways to measure pluralism.
- In Egypt, look at Al-Tahrir as a model of a new kind of channel—somewhere between a “street channel” and a private broadcaster
- In both Tunisia and Egypt, determine what space exists for community broadcasting and help to implement a program for community broadcasting. What is the right combination of private broadcasters, public sector broadcasters, and community media? How can we structure and cultivate each of them as independent sectors and build progressive relationships between the three?
- In both Tunisia and Egypt, explore models from other countries for how to support public interest programming.
- Identify what protections will be necessary to address media concentration. Identify best policy practices in other countries.

## Reforming journalists’ syndicates and press codes

- Provide technical assistance on modernizing the syndicate’s relationship to journalists in Egypt and Tunisia and developing

of professional codes of conduct that are consistent with international standards.

- Regulatory reform efforts should focus on modernizing regulations for print media, which many participants felt should be substantially scaled down.

## Coverage of election campaign

Participants urged acting swiftly to develop processes for fair and equitable coverage during the upcoming elections to contribute to election-related legitimacy.

- This area of work might include training journalists on election coverage and promotion of self- or co-regulatory regimes for the journalism profession during these periods.
- The various media outlets have a critical role to play in covering the elections and contributing to constructive public debates. There is need for media professionals to discuss how to best fulfill this role in the next critical year: Does the media have a public interest role to play in guiding the power of the street? What is the best way to enable broadcasters, print media, and online media to contribute to the revolution's reform goals?
- Explore what role online media can play to supplement coverage of elections in broadcast and print media.

## Preparing for Internet policy reform

- Provide legal and technical assistance, in collaboration with international NGOs and the private sector, to build capacity of

civil society and critical consultative bodies to further Internet policy that is consistent with international standards on freedom of expression and privacy.

- Convene a further consultation to define issues and priorities, identify and explore model regulation, and prepare specific proposals for reform.

## Capacity Building and Other Identified Needs

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### Gathering comparative models for transition

- Some participants expressed interest in commissioning a paper and having a workshop in Tunisia or Egypt on comparative transitions in other nations, including Hungary, Russia, and India, focusing on lessons learned and lessons to be applied from these transitions. There is also need to examine models and lessons to be learned from France, the UK, and other European models for addressing public service media, pluralism, and ownership concentration.
- Some stakeholders would welcome technical support in drafting specific legislative language for discussion at this stage.

### Capacity building and consultation with civil society.

Participants expressed a pressing need to prepare civil society for media reform discussions on all forms of media so that a range of stakeholders will be ready to present policy proposals and constructively contribute to public debate on media reform issues.

- As part of this process, how can participants help translate social demands and the “power of the street” into specific legislative and constitutional proposals?
- The street is also not monolithic in its demands. There is need to assess the different priorities of various interest groups and channel these viewpoints into reform discussions.
- Several civil society-led efforts are already underway.<sup>2</sup> Capacity building efforts should be planned and implemented in consultation with existing civil society coalitions and should include new media stakeholders like bloggers and online activists.

## Capacity building for all governmental stakeholders

- Work on capacity building through training for policy-related, regulatory, and government positions.

## Support and solidarity to address ongoing human rights violations

The Egyptian and Tunisian revolutions are an ongoing process and many day-to-day challenges still exist. For example, more support or statements of solidarity from the interna-

tional community to address arbitrary detentions is needed, in addition to calling out instances of censorship that are still occurring.

## Donor coordination

At times, previous media development programs in the MENA region were never fully implemented or were not well-executed or well-coordinated given local conditions (especially programs directed at state media development). Any media reform strategy in Egypt and Tunisia must, in part, seek to improve program coordination, in consultation with relevant stakeholders. The priorities of different stakeholders will vary – compare the needs of state-owned broadcaster management to the needs of the blogging and activist community. Donors must ensure that strategies and programming undertaken to meet the needs of various stakeholders do not work at cross-purposes.

Ultimately, participants felt this meeting was valuable for exchanging experiences with counterparts outside of the MENA region and for defining problems and identifying common ground. Participants requested that any follow-up meeting take place in the MENA region to make it more accessible to a wider group of stakeholders, including media officials, local academics, the legal community, and bloggers and activists.

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<sup>2</sup> For example, see the Media Freedom Declaration, Cairo, May 3, 2011, drafted by the national Coalition for Media Freedom (NCMF), <http://ncmf.info/?cat=19>. The NCMF is a coalition of human rights and press freedom NGOs, lawyers, and both online and offline activists.