

The Legal Enabling Environment for Independent Media in Egypt and Tunisia

On September 1, 2011, CIMA and Internews Network co-hosted a roundtable discussion at the National Endowment for Democracy on the legal enabling environment for independent media in Egypt and Tunisia. More than 70 legal experts, journalists, media development specialists, and representatives from international organizations participated in the event. The discussion focused on the current regulatory environment and the windows of opportunity for democratic reform in the media sector. This report summarizes that event.

SUMMARY

The world has been riveted by events occurring throughout the Middle East and North Africa that have come to be known collectively as the “Arab Spring.” Popular protests have toppled dictatorships in Egypt and Tunisia, creating opportunities for transitions to genuine democracy. The window of opportunity to reform the legal regulatory environment for independent media will not be open long, and civil society activists, with the support and expertise of the international community, must take advantage of this opportunity quickly before it dissipates.

Both states still technically operate under the same legal framework as that in place during the previous regimes, but the application of those laws has changed significantly, and a number of key officials have been replaced. Still, the media laws on the books are vague at best and oppressive at worst. Reforming them poses a formidable challenge. The Tunisian situation initially looked promising with the abolition of the Ministry of Information, but nearly every media outlet remains connected to the regime of ousted president Zine el Abidine Ben Ali. In Egypt, media law is comprehensively out of line with international standards. Governmental authority is so invasive that virtually every law pertaining to media must be amended or discarded.

Transitional governments in both states are showing signs of the same authoritarianism from which the two countries suffered for decades, especially in the realm of freedom of expression and information. Tunisia is currently operating under a provisional constitutional framework that will last until elections on October 23, 2011. The High Commission for the Realization of the Objectives of the Revolution (HC) currently acts as a transitional government. Tunisians have



held periodic protests against the HC, which they see as not moving quickly enough, especially in light of the postponement of elections and corruption trials for officials of the Ben Ali regime.

In Egypt, the Supreme Council of the Armed Forces (SCAF) has assumed the role of transitional government and had broad popular support at the onset of the post-Mubarak era, but recent crackdowns on freedom of expression are worrisome for the prospects of democracy. The government recently raided the Cairo offices of al-Jazeera, on the grounds that the biggest Arab satellite channel did not have a license to broadcast in Egypt, and harassment, detention, and deportation of bloggers has been commonplace.

Civil society in both countries needs capacity-building support and expertise from the international community to move forward in the transition process, but this is contested in Egypt. The issue of what to do with the massive state-owned media institutions remains a priority, and the propagation of independent media outlets will have a great impact on the direction of the transition. The training and professionalization of journalists will help them overcome a culture of self-censorship and make new governments accountable to the people in these fledgling democracies.

BACKGROUND

Presenting at the discussion were Toby Mendel, founder and executive director of the Centre for Law and Democracy; Joan Barat Mir, vice dean for international relations at the Blanquerna Communications School at the Universitat Ramon Llull in Barcelona; Enrique Armijo, associate at Covington & Burling, LLP; Amy Hawthorne, senior advisor at the Office of Middle East Partnership Initiative, Bureau of Near East Affairs; Drusillia Menaker, senior media advisor at the International Research and Exchanges Board (IREX); Natasha Tynes, program director at the International Center for Journalists (ICFJ); and Jamal Dajani, vice president for the Middle East, North Africa, Latin America, and the Caribbean at Internews Network. The event was divided into two sessions, each consisting of presentations followed by discussion. This report outlines the presentations and discussion in the order in which they occurred.

ASSESSING THE LEGAL ENABLING ENVIRONMENT FOR INDEPENDENT MEDIA IN EGYPT AND TUNISIA

Presentations

Toby Mendel, founder and executive director of the Center for Law and Democracy and author of the Internews report [*Political and Media Transitions in Egypt: A Snapshot of the Media Policy and Regulatory Environment*](#)¹

Mendel told participants:

- The legal environment in post-Mubarak Egypt hasn't changed—even the Emergency Law (which the Mubarak regime used for 30 years to justify the circumvention of constitutional law) is still in place. However the application of the law has changed quite a bit, and officials have been replaced in many areas.

- An overlapping patchwork of laws that are often contradictory has created legal confusion and undermined the rule of law. Many are vague and flexible in nature so they can be applied at will by authorities. An example is the legal requirement for journalists to be members of the Journalists Syndicate. There are 5,500 members of the syndicate but more than 14,000 working journalists in the country. No one has ever been prosecuted for not being a member of the syndicate, but there have been cases of prosecutions for “impersonating a journalist,” which is a crime.
- In parallel to the legal system—which as a means to control media was used infrequently by the Mubarak regime—the government imposed an informal system of control in which threats and intimidation were used against media, such as phoning journalists to tell them what they should and shouldn’t be reporting. A general understanding about red lines that could not be crossed instituted a culture of self-censorship. Above all, there was a pervasive system of security monitoring and infiltration of media institutions, which has changed quite a bit in the post-Mubarak transition. Previously, security forces vetted all applications for newspaper or broadcast licenses. This was not written into law and was never admitted to by authorities, but the current government announced it would stop doing this.
- Constitutional guarantees of freedom of expression are weak and subject to legislative whim. While citizens are protected from arbitrary measures taken by an administration, the legislature is free to pass restrictions at will. There are no positive measures such as freedom of information provisions, protection of journalistic sources, or independent media regulatory bodies.
- Content restrictions are spread through the penal code, press law, and many other laws. Defamation is a criminal offense; criticism of public officials, bodies, the state, and its flag are prohibited. State media are “massive players in the media sector.” They have been historically dominant in both the print and broadcast sectors. State media are firmly under governmental control in law, practice, and programming.
- The Supreme Press Council (SPC), a government-controlled entity, licenses print media. Civil society and media have called for the abolishment of both the SPC and licensing. No real authoritative body exists to regulate broadcast media, though satellite companies must apply for a license through the General Authority for Investment. Private terrestrial broadcasting is currently prohibited. Though the Mubarak regime’s shutdown of the Internet was one of the most high profile oppressive measures that took place during the popular demonstrations, the Internet has been a relatively freer space for expression than other media.

Joan Barata Mir, vice dean for international relations at the Blanquerna Communications School at the Universitat Ramon Llull in Barcelona and author of the Internews report [*Political and Media Transitions in Tunisia: A Snapshot of Media Policy and Regulatory Environment*](#)²

Barata Mir told participants:

- The oppressive press code of 1975 is still in place and the formal legal framework still in force, but the application of these laws is in question. The HC has drafted an access to information decree and two versions of a press code. A leaked version of the first draft of the press code was highly criticized by journalists and civil society; the second version is considered more democratic and may be approved before elections.
- Instance Nationale pour la Réforme de L'information et Communication (INRIC) is an advisory body whose president, Kamel Laabidi, is a prestigious independent journalist with democratic credentials. INRIC may eventually become a regulatory body. It is currently engaged in drafting laws pertaining to journalists.
- For fair elections, a landscape in which media can present all political options must exist, but it is not clear if media in Tunisia is able to do so currently. The state broadcaster, which had been controlled by the Ben Ali regime, is managed by a “system of organized anarchy,” as personnel with higher responsibilities were stripped of their decision-making authority when the government fell.
- Some private terrestrial broadcasting licenses were granted under Ben Ali, but they were awarded to people linked to the old regime and who still have strict control over their media and journalists.

Enrique Armijo, associate at Covington & Burling, LLP

Armijo offered a series of questions to stimulate discussion, some of which were addressed by the participants and are reflected below.

- Tunisia abolished its Information Ministry, while Egypt replaced its minister after briefly considering abolishing the ministry. Is there a role for ministries of information to play in post-conflict states?
- Media in the Middle East and North Africa has historically been controlled by quasi-governmental bodies such as press councils and journalists syndicates. How do reformers work with these organizations, if at all?
- Both countries must look at the state of media law defense. Who is defending journalists? What are the chances for fair judicial hearings for them?

- On the subject of political campaign laws—what is the role of statutory political obligations to report on political activity? What should the law oblige the media to do during transition periods?
- Should the United States make media development a condition for foreign aid? To what extent should the U.S. government become involved, especially in light of hostile attitudes?
- As was the case with many oppressive actions over three decades, the Mubarak regime justified cutting off the Internet through the Emergency Law. Would it be more efficient to focus efforts on reforming emergency laws rather than aiming efforts at reform of media laws?

Discussion

Participants discussed the U.S. media law model versus the French civil code model for instituting freedom of information laws. Can the U.S. model, which is based on case studies and precedence, fit in the development of places such as Tunisia, where law is based on the French tradition? Indeed, Mendel went so far as to say he did not recommend the U.S. model for most countries across the globe. The limited role of government that characterizes U.S. media regulatory law is not a view shared by much of the world. The question is how much regulation is too much? In countries where censorship has hindered freedom of expression for many years, any attempt to regulate expression is often seen as censorship, or at least stakeholders use censorship as a rationale to oppose regulations on their industry.

Pluralism was a recurring theme throughout the discussion. The dictatorships of Egypt and Tunisia allowed little space for citizens to express sentiments other than those supporting their regimes, so the space that has been created by the revolutions is new. In a transitional context how do you put into place a positive regulatory framework that fosters a pluralistic media, a hallmark of the international media sector? Without effective government regulations that address diversity, ownership of media becomes concentrated.

Freedom of information laws apply not only to journalists but to all citizens, thus making it easier to gain support for development or reform of these laws than media laws. NGOs from all sectors often come together to support reform of access to information and freedom of expression laws. The Egyptian-American Bar Association is working with others to draft a freedom of information law for Egypt. Currently, freedom of information and expression efforts have stalled, largely because of the exemptions that are being pushed by SCAF, especially those designed for “national security” purposes.

A conflict between the governing military authority regarding foreign assistance is brewing, as the SCAF wants all foreign assistance to come to it instead of going directly to NGOs. A minority of Egyptian citizens view U.S. foreign assistance as “imperialism” and have begun what one participant characterized as a “sort of witch hunt” against Egyptian NGOs receiving U.S. assistance.

WINDOWS OF OPPORTUNITY FOR THE MEDIA SECTOR IN EGYPT AND TUNISIA

Presentations

Amy Hawthorne, senior advisor at the Office of Middle East Partnership Initiative, Bureau of Near East Affairs

Hawthorne told participants:

- Press freedom in the Middle East and North Africa is important to the United States and the Obama administration. The administration considers independent media as one of the pillars of democracy and a key area for attention and support for the transitions in Egypt and Tunisia. MEPI's support for independent media is part of a broader set of tools for promoting democracy. During the transition process, MEPI will focus on working with civil society, building coalitions, and helping new journalists and youth.
- The biggest window of opportunity for legal reform is the political will for significant change and popular pressure for a broad overhaul of the laws governing media. Transparency, accountability, and the dignity that comes from free expression were key demands of the revolution.
- Despite the strong desire for quick change, transformation will happen gradually because media law reform is a complex, intertwined entity, touching the political, economic, and social systems of a country.
- The electoral process will be a key test for freedom of expression and for candidates and new governments to allow neutral broadcasting and equal access to media outlets by candidates.
- The process of writing new constitutions in Egypt and Tunisia will provide broad markers about freedom of expression and commitments to independent media. Under the previous regimes there was no public discourse; new laws present the opportunity to remedy that.
- Early on media pluralism will be a "thorny issue." It is imperative that a new legal framework allow a range of media ownership and investment and prevent concentration among a small group. In the transition, many political factions have established media outlets. Most want unfettered freedom of expression; however, some conservative forces, such as Islamists, have an opposing view.
- The looming issue is the future of state media. Will it be dismantled or transformed into public interest media? Will state media officials under the former regimes be prosecuted for corruption, as many activists are demanding? Will state media institutions remain, and

if so, what role would they have in democratic Egypt and Tunisia? Tens of thousands work in state media and form a powerful force against dismantling these institutions.

Drusilla Menaker, senior media advisor at the International Research & Exchanges Board (IREX)

Menaker told participants:

- The revolutions are about transparency, accountability, and freedom of expression, not just media freedom, yet they present an opportunity to improve work that has already been done in the field of media development.
- Currently state media are soaking up limited public resources and commercial advertising that might be expended elsewhere. Their size and deeply rooted role cannot be underestimated. A key issue for media development institutions is how to progress and to what degree should media development organizations invest in these organizations?
- Media development implementers should focus on capacity building of those engaged in making laws, including assistance in research, monitoring the legislative process, training media lawyers, and building up the media law reform community.
- Media development organizations and donors must look at a more platform-neutral future and where media is going worldwide rather than dismissing old media as bad and viewing new media as good. We should reexamine the way we look at media in a segmented way that divides broadcast, print, and Internet media. Assistance should be targeted to create a continuum from the oldest journalism professional to the youngest journalist in training so that traditional platforms are combined with newer digital media.
- An information vacuum at the local level could be addressed by focusing more support for local media. Radio is a quicker, more economically viable way to reach democratic goals.
- International donors should recognize that comprehensive reform is a slow process and not rush to declare failure when reform does not quickly materialize.

Natasha Tynes, program director at the International Center for Journalists (ICFJ)

Tynes told participants:

- ICFJ implements a successful mentorship program. A new phase of the mentorship project will teach citizen journalists how to cover a state in transition and includes an online course, field training, and town hall meetings that will engage citizen journalists and the public in debates with public officials as they prepare for elections.

- Other ICFJ media programs include a Digital Media Bootcamp held in Egypt that teaches journalists how to use digital tools in covering public service, a NED-funded project in Tunisia focusing on election reporting and ethics, and the Knight Fellows program, which gives journalists from around the world the resources to pursue ideas for improving the quality of news and information. In Egypt, one fellow began investigative reporting departments in newsrooms. Another created the first Middle East chapter of Hacks and Hackers, an international organization bringing journalists and technology developers together to create mobile applications for media.
- Challenges remain, including registering as a legal NGO in Egypt, finding Arabic trainers who specialize in topical areas, knowing if other NGOs are doing similar work, working outside of Cairo, and knowing the political agendas of those who would benefit from training and support.

Jamal Dajani, vice president for the Middle East, North Africa, Latin America, and the Caribbean at Internews Network

Dajani told participants:

- Much reform discussion centers on media law legal framework and not enough on how to protect journalists, as there are many laws in the Middle East and North Africa that tell journalists how they must behave but few to protect them.
- New media outlets in post-authoritarian Egypt and Tunisia could face sustainability issues, as competition for advertising revenue is fierce and there is not enough local revenue to support the explosion of new outlets. A cautionary lesson can be found in post-war Bosnia, where an enormous infusion of international donor funding opened new media outlets that could not compete for the limited advertising revenue once that funding dried up. This left media open to political manipulation as political organizations were often the only local sources of funding. Because 70 percent of ad revenue in Egypt and Tunisia comes from outside sources the issue of foreign control must also be considered.
- Regional media play a great role in the Middle East, where populations largely receive their information from regional satellite channels like al-Jazeera and al-Arabiya.
- Past attempts to deal with state media and its massive staff and incompetent management, and other issues weren't enough. The Egyptian government remains confused about what direction to take on reform of state media institutions. One possible solution revolves around the idea of public access rather than privatization.

Discussion

One of the greatest challenges facing media reform involves what to do with state-owned media institutions. Panelists and participants agreed that reform of these institutions is imperative, as

both Tunisia and Egypt have massive state media structures that are neither economically nor politically viable in a democracy. Participants discussed the possibility of turning state media broadcasting institutions into public service broadcasting venues, although the suggestion to model state media broadcasting institutions after the BBC was met with mixed response. In neither country does the political will exist for public service broadcasting, but strengthening private media and advocacy could create demand for it. As the environment of freedom of expression expands, political pluralism will put more pressure on state-owned media. The performance of these outlets in upcoming elections will be a test of the extent to which either country is committed to reform.

Categorizing media as broadcast, print, and Internet bears implications for regulation. One participant asked if the transitions in Egypt and Tunisia presented the opportunity to rethink how we define media barriers. Should our objective be to regulate not by media mode but by the information delivered? If so, how is the law applied? Panelists concurred that content should not be regulated on any platform. However, each platform must be regulated differently because of its nature. Government involvement in broadcast media is necessary because frequencies are limited. A poorly regulated broadcast media raises the possibility of monopoly of ownership. This can be seen in Egypt, where the two satellite television broadcasters—the state-owned NileSat and the Saudi-owned Arabsat—are able to control broadcast content because they are the only available carriers. The question is how to achieve independent, non-politically driven government involvement.

On the Internet, participants asked how a legal structure could be put together that would prevent government tampering while not interrupting connectivity or regulating content. One participant pointed out that the Internet is not a medium but a platform for distribution where different media, even conventional media, are found. The constituency for keeping the Internet free is not only social media users, but also traditional media outlets, who should use it along with more traditional media platforms. However, this raises the question of whether and to what extent press laws should apply to online content. Bloggers benefit from not falling under oppressive press laws.

The issue of the role of foreign assistance was raised. While U.S. assistance is valuable, the revolutions will succeed or fail based on what the people themselves do. The willingness of the Egyptian government to allow support is an important test on whether Egypt will be open to the world.

GOING FORWARD

Media actors and reformers in Egypt and Tunisia could be assisted by the international community through capacity-building. Local media outlets and media support NGOs need skills in consensus-building, setting priorities, and advocacy.

State-owned media should be reformed. State-owned institutions reach more people, especially in rural areas, and employ far too many people to abolish them. Reform must focus on sustainability of the institutions, as the current models are not economically viable.

Media pluralism should be promoted. Regulations that address diversity can ensure that media ownership does not become concentrated.

Professional development of journalists is crucial. Journalists need more training to understand the role of the media in a democracy and to overcome years of institutionalized self-censorship. Journalists with more professional skills are better able to report on reform efforts and the policies and legal framework that are being established by the new governments, as well as provide information that will help the public make educated decisions about what kind of governments they will elect.

Media reform should be part of a comprehensive reform process. Media is just one pillar of a democracy. If positive changes to media laws are not accompanied by other structural changes, these advances may be reversed.

Media reform does not end at revisions to laws. Legal and regulatory gains require sustained advocacy and monitoring to ensure laws are properly implemented and enforced

Endnotes

¹ http://www.internews.org/pubs/MENA/Internews_Egypt_MediaLawReview_Aug11.pdf

² http://www.internews.org/pubs/MENA/Internews_Tunisia_MediaLawReview_Aug11.pdf

*Summary by: Cathie Glover
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The Center for International Media Assistance (CIMA), an initiative of the National Endowment for Democracy, works to strengthen the support, raise the visibility, and improve the effectiveness of media assistance programs by providing information, building networks, conducting research, and highlighting the indispensable role independent media play in the creation and development of sustainable democracies around the world. An important aspect of CIMA's work is to research ways to attract additional U.S. private sector interest in and support for international media development.

CIMA convenes working groups, discussions, and panels on a variety of topics in the field of media development and assistance. The center also issues reports and recommendations based on working group discussions and other investigations. These reports aim to provide policymakers, as well as donors and practitioners, with ideas for bolstering the effectiveness of media assistance.

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