

**Memorandum**  
**by**  
**ARTICLE 19**  
**International Centre Against Censorship**  
**on**  
**Jordan's proposed 1998 Press and Publications Law**

**London**  
**July 1998**

**Introduction**

This memorandum has been prepared in response to the draft 1998 Press and Publications Law (hereafter PPL), which was adopted by Jordan's Ministerial Cabinet in June 1998 and is currently being tabled before the Jordanian Parliament.

ARTICLE 19, the International Centre Against Censorship, is gravely concerned about certain of the provisions of the draft law which, if enacted, will seriously restrict freedom of expression, including media freedom, and freedom of association in Jordan.

To an extent, the draft PPL reintroduces highly restrictive amendments to the 1993 Press and Publications Law which were made by royal decree in May 1997 but subsequently struck down on technical grounds earlier this year by Jordan's High Court. The May 1997 amendments were strongly criticised by media professionals and others within Jordan and internationally, including by ARTICLE 19. They had an immediate and severely detrimental effect on the Jordanian media, particularly weekly publications, several of which were forced to cease publication, so reducing the extent and diversity of media information available to the Jordanian public. The amendments were widely interpreted, within Jordan and abroad, as being motivated by a desire on the part of the head of state and government to curb press criticism of official policies and practices, notably the peace process with Israel and relations with other Arab governments.

The draft PPL, in fact, while replicating most of the restrictions contained in the May 1997 amendments, includes significant additional restrictions and so constitutes an even greater threat to freedom of expression in Jordan.

ARTICLE 19's report, *Blaming the Press: Jordan's Democratization Process in Crisis*, published in October 1997, provided a detailed analysis of Jordanian media law and practice and called for the revocation of the May 1997 amendments. A similar call was made by a gathering of distinguished Jordanians – including several former government ministers, leading editors and other media and legal experts - who attended a seminar in Amman on 28/29 October 1997, which was jointly convened by

ARTICLE 19, Al-Urdun Al-Jadid Research Center and the Arab Institute for the Media.

In this Memorandum, ARTICLE 19 reviews certain of the most worrying provisions of the draft PPL in the light of relevant international human rights law and standards and Jordan's treaty obligations, notably as a state party to the International Covenant on Civil and Political Rights (ICCPR).

In doing so, ARTICLE 19 seeks to make a constructive contribution to the promotion and protection of freedom of expression and media freedom in Jordan. These freedoms are vitally important for the protection and promotion of other rights, and for ensuring good governance and democratic accountability.

The Jordanian government, at the highest level, has committed itself over several years to a process of democratisation and, as noted above, has also voluntarily entered into treaty agreements with other states according to which it has undertaken to respect human rights, including freedom of expression. In its present form, the draft PPL runs directly counter to such commitments, as the following analysis shows.

ARTICLE 19 urges the Jordanian Parliament to reject the draft law and calls on the Jordanian Government to establish a new legislative and structural framework to enable the people of Jordan fully to exercise their rights to freedom of expression and association, and to facilitate media freedom, independence and plurality.

## **Overview**

The draft PPL, in Article 3, states that "the press is free and freedom of expression is guaranteed for every Jordanian" who "has the right" to express their opinion freely by speech, writing, photography, art and other forms of expression. Similarly, Article 4 states that the press is entitled to practice "freely" in presenting news and other information or commentary. Yet, many other provisions of the draft law directly undermine these rights and freedoms by introducing a comprehensive new regime of state regulation of journalists, publications, the press and organisations involved in the dissemination of information and ideas. Severe restrictions on who may practise journalism, which are contained in the Jordan Press Association Law, are applied to all publications, defined in the broadest of terms, and would tighten the existing degree of government control over journalists – in practice, they are likely to deter investigative journalism and to reduce the media's potential to act, on the public's behalf, as a watchdog of government. Restrictions are also imposed on who may be a director of an organisation, owner of a periodical and editor: this has similar implications.

Further, a comprehensive licensing regime, controlled by government departments and ministers, would regulate not only periodicals but also specialised publications and even study and research centres. Formidable financial obligations are imposed on publications and research centres, including significant minimum capital and deposit requirements and an absolute prohibition on receiving funding from any foreign sources. Similar obligations, when introduced as part of the May 1997 amendments,

led directly to the closure of several weekly publications which had been critical of the government.

The draft PPL also establishes a wide range of broadly-framed content restrictions which will have the effect of directly stifling media debate in Jordan on important matters of public interest. These content restrictions far exceed permissible restrictions under international law: for example, they prohibit any material that may promote provincialism, contradict the values of the Arab Islamic Nation, include false news, shake confidence in the national currency, relate to the Armed Forces or degrade any religion. These restrictions are backed up by a comprehensive prior censorship regime, again run by a government department, for non-periodical and specialised publications, books and all foreign material.

### **International Obligations**

Jordan has binding obligations under international law to respect freedom of expression. In particular, Jordan is a state party to the ICCPR, an international treaty between states, whose Article 19 guarantees freedom of expression in the following terms:

1. Everyone shall have the right to hold opinions without interferences.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 22 of the ICCPR guarantees the right to freedom of association. Restrictions on freedom of association are permitted under paragraph 2 of that article but are even more strictly limited than restrictions on freedom of expression.

International bodies and courts have made it very clear that freedom of expression and information is one of the most important human rights. In its very first session in 1946 the United Nations General Assembly adopted Resolution 59(I) which stated:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.

As this resolution notes, freedom of expression is both fundamentally important in its own right and also key to the fulfilment of all other rights. It is only in societies where the free flow of information and ideas is permitted that democracy can flourish. In addition, freedom of expression is essential if violations of human rights are to be exposed and challenged.

The importance of freedom of expression in a democracy has been stressed by a number of international courts. For example, the Inter-American Court of Human Rights stated:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. ... [I]t can be said that a society that is not well informed is not a society that is truly free.<sup>1</sup>

This has repeatedly been affirmed by both the UN Human Rights Committee – the treaty-monitoring body established under the ICCPR - and the European Court of Human Rights. The following quotation of the European Court now features in almost all its cases involving freedom of expression:

[F]reedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.<sup>2</sup>

As is clear from Article 19(3), international law does permit some restrictions on the right to freedom of expression and information in order to protect various private and public interests. Such restrictions must, however, meet a strict three-part test. This test, which has been confirmed by the Human Rights Committee,<sup>3</sup> requires that any restriction must a) be provided by law, b) for the purpose of safeguarding one of the legitimate interests listed in Article 19(3) and c) be necessary to achieve this goal.

The third part of this test means that even measures which seek to protect a legitimate interest must meet the requisite standard established by the term “necessity”. Although absolute necessity is not required, a “pressing social need” must be demonstrated, the restriction must be proportionate to the legitimate aim pursued, and the reasons given to justify the restriction must be relevant and sufficient.<sup>4</sup> In other words, the government, in protecting legitimate interests, must restrict freedom of expression as little as possible. Vague or broadly defined restrictions, even if they satisfy the “provided by law” criterion, will generally be unacceptable because they go beyond what is strictly required to protect the legitimate interest.

## Key Concerns

### 1. Government regulation

Under the draft PPL, the Director of the Press and Publications Department (PPD) – a government official - is given extensive powers to regulate the press, publications in general, foreign correspondents and an array of other institutions involved in the production or dissemination of information. The Minister of Information and the Council of Ministers are also granted significant powers.

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<sup>1</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 70.

<sup>2</sup> *Handyside v. United Kingdom*, 7 December 1976, Series A, No. 24, 1 EHRR 737, para. 49.

<sup>3</sup> For example, in *Mukong v. Cameroon*, No. 458/1991, views adopted 21 July 1994, 49 GAOR Supp. No. 40, UN Doc. A/49/40, para. 9.7.

<sup>4</sup> *Sunday Times v. United Kingdom*, 26 April 1979, Series A, No. 30, 2 EHRR 245, para. 62. These standards have been reiterated in a large number of cases.

Under Article 9, the PPD is empowered to regulate the accreditation of foreign correspondents. The PPD is also the authority to which applications for licenses must be submitted by press publications (Article 12); specialised publications (Article 15); and, under Article 18, the following institutions: printing presses, distribution agencies, publishing houses, study and research centres, polling centres, translation offices, and advertising and promotional bureaux. The PPD Director may recommend that certain bodies are granted an exemption to the strict financial requirements established under the law (Article 17) and no transfer of its license by a press publications may take place without the approval of the PPD Director (Article 21).

The PPD exercises a number of censorship functions, including in relation to specialised publications (Article 31), foreign publications (Article 36), non-periodical publications (Article 39) and books (Article 40). The PPD also wields considerable enforcement powers, including to ban foreign publications for two weeks for refusing to print a reply (Article 34), to confiscate material that has been printed without the author's permission (Article 41), to prohibit the entry of foreign publications that violate a wide range of content restrictions (Article 42), to close down study and research centres that receive foreign funding (Article 46) and to file cases for various allegations of breach of the law (Articles 48, 49 and 52).

The Council of Ministers and the responsible minister are ultimately responsible for granting licenses to the Jordanian News Agency (Petra) and foreign news agencies (Article 11(c)), for approving exemptions from financial requirements (Article 17) and for granting licenses to press publications, specialised publications and those institutions which require a license under the law (Article 20).

Many of the regulatory powers noted above are in themselves illegitimate (see below). Regardless of this, however, it is clear that regulatory powers exercised by government departments or ministers open up the possibility of political interference with freedom of expression and of association. Given that such powers could easily be exercised by an independent body, thus precluding this possibility, direct government control of this sort cannot be justified. The Human Rights Committee, for example, has noted that "effective measures are necessary to prevent such control of the media as would interfere with freedom of expression."<sup>5</sup> Such regulation as is permitted by Articles 19 and 22 of the ICCPR should be administered by an independent body whose decisions are subject to judicial review to ensure against arbitrary or capricious behaviour.

### **Recommendation**

ARTICLE 19 strongly recommends that neither the Press and Publications Department nor government ministers should be granted any regulatory powers under the PPL.

## **2. Licensing Requirements**

As has already been noted, press publications (Article 12), specialised publications (Article 15), printing presses, distribution agencies, publishing houses, study and

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<sup>5</sup> General Comment 10(19) in *Report of the Human Rights Committee* (1983), 38 GAOR, Supp. No. 40, UN Doc. A/38/40.

research centres, polling centres, translation offices, and advertising and promotional bureaux (Article 18) are all subject to licensing regimes. Publication is defined to include any means of expressing information or ideas, including by words, symbols, pictures or photocopies. Specialised publications are defined very broadly to include publications which are delivered to concerned individuals (as opposed to those which are made public). Given the broad definition of publication, this could include almost anything which is reproduced, including, for example, reprints of paintings, flyers for a social event and even wedding invitations.

A number of restrictions on the grant of these licenses are established in the draft law. For example, only journalists, specialised press companies or legalised political parties may be granted a press publication license (Article 11). Detailed information on a prospective press publication, including the type of material to be published, must be provided to the authorities (Article 12). Severe financial conditions are established for licensees, including high minimum capital requirements of JD500,000 for daily publications and JD150,000 for non-dailies (Article 13), and mandatory deposits of JD100,000 for dailies, JD50,000 for non-dailies and JD20,000 for non-specialised publications (Article 14). A number of restrictions relating to personnel are established in respect of potential licensees (see below). Periodicals will lose their license if they do not meet strict publication deadlines (Article 22) and cannot apply for another license for at least one year (Article 23). Specialised publications may not publish anything outside their specified domains (Article 31).

Purely formal registration requirements for mass-distribution periodicals do not *per se* offend guarantees of freedom of expression - as long as registration is automatic once the technical requirements, such as filing certain information, have been met and responsibility for administering the process is vested in a body which is fully independent of government. But this is not what is provided under the draft law: as we have seen, this prescribes a system of licensing which facilitates government control over the exercise of freedom of expression by means of publishing.

Periodicals should not be subject to a licensing regime; anyone who wishes to produce a publication should be allowed to do so without restraint. Licensing requirements for non-periodical publications and associations, such as study and research centres, are similarly illegitimate, particularly given the very broad definition of publication under the draft PPL.

Registration requirements which go beyond the need to supply basic information also offend freedom of expression since they unnecessarily inhibit press freedom. Such requirements often do not even serve one of the legitimate interests listed in Article 19(3) of the ICCPR, such as national security and the rights of others, and in any case do not meet the strict standard of necessity required under the three-part test for restrictions on freedom of expression. In particular, financial requirements, restrictions on who may register or work for a periodical, limitations on the scope of what may be published and deadlines regarding publication are all unnecessary and should be removed from the draft law. The deposit requirements are perhaps particularly insidious as they effectively remove working capital from publication businesses. Small non-specialised publications, for example, may well be unable to deposit the requisite JD20,000.

## **Recommendation**

ARTICLE 19 strongly recommends that:

- All licensing provisions should be removed from the PPL.
- Anyone should be allowed to produce a periodical or specialised publication.
- There should be no restrictions on the right of individuals to freely establish associations.
- Financial requirements for publications, including minimum capital and deposit requirements should be removed from the PPL.
- There should be no restrictions on the type of material that may be published by specialised publications.

### **3. Restrictions Relating to Professional Practice**

The draft law establishes a number of restrictions on personnel engaged in the dissemination of information and ideas. Article 10, in conjunction with Article 2, provides that only journalists who meet the conditions of the Jordan Press Association (JPA) Law and are currently working as journalists may practice journalism or be hired on a full-time basis by publications. The JPA Law restricts the practice of journalism to those who either have a university degree, or who have received training from a Jordanian publication for three years, and are working full-time as journalists. Institutions, as defined by Article 18 (which include printing presses, distribution agencies, publishing houses, study and research centres and advertising bureau), must have a director who has Jordanian nationality, resides in Jordan, has not been convicted of an immoral act, does not direct any other institution, and has a degree and sufficient relevant experience (Article 19). Similar restrictions apply to the editors of specialised publications (Article 30). Periodical editors are subject to even stricter requirements and must, in addition to meeting the conditions imposed on directors, have worked as journalists for at least 10 years, be members of the JPA and be proficient in the language(s) of the publication (Article 27). Owners of periodicals must be Jordanians, living in Jordan, who have not been convicted of an immoral act (Article 25).

Restrictions on who may enter the journalistic profession have long been considered to breach international guarantees of freedom of expression and association. In its report on Jordan, *Blaming the Press*, ARTICLE 19 noted its concerns with the JPA law, particularly the requirement that journalists meet a number of criteria before they may become members of the JPA and that individuals must be members of the JPA before they may work as journalists.

Freedom of expression includes the right both to impart and to receive information and ideas. The press has a role in respect of both these aspects of freedom of expression. Mandatory membership requirements impede the ability of those who do not meet those requirements to impart information and ideas and hence breaches their right to freedom of expression. More importantly, the right of the public to receive information is also breached by mandatory membership requirements. In particular, restricting access to the profession will inhibit the development of a vibrant, independent and pluralistic press without which the public's right to receive information and ideas will be compromised.

It is this aspect of mandatory membership which the Inter-American Court of Human Rights found particularly offensive when it held that mandatory membership requirements breach international guarantees of freedom of expression. It stated:

[A] law licensing journalists, which does not allow those who are not members of the "colegio" to practice journalism and limits access to the "colegio" to university graduates who have specialized in certain fields, is not compatible with the [right to freedom of expression].<sup>6</sup>

The same principles apply to minimum standards for other media professionals. By restricting access to those positions, the government is denying both the freedom of expression rights both of those who do not meet the criteria and the general public by impeding the ability of the sector to develop in a dynamic, pluralistic fashion.

### **Recommendation**

ARTICLE 19 strongly recommends that the restrictions on who may practise journalism, own periodicals, work as editors or direct institutions should be removed from the draft PPL, and that the JPA law should be amended to similar effect.

## **4. Censorship**

The draft PPL grants far-reaching censorship powers to the PPD. Specialised publications, which, as has already been noted, are defined very broadly, must provide the PPD with five copies of each document upon publication (Article 31(b)). Printing presses must provide the PPD with two copies of every non-periodical document they print, prior to distribution (Article 39(d)). No document which has been banned may be printed (Article 41). Explicit censorship powers are also provided for in the draft law. Bookstores must provide the PPD with two copies of any foreign publication before sale; the Director of the PPD may prohibit distribution if he or she deems that a publication breaches the PPL (Article 36). Two copies of all books submitted for printing in Jordan must be provided to the PPD; the Director may prohibit printing if he or she deems that the book breaches the PPL (Article 40).

Censorship is one of the most extreme ways of restricting freedom of expression. In recognition of this, Article 13(2) of the Inter-American Convention on Human Rights expressly prohibits all prior restraint. The European Court of Human Rights has indicated that it regards even specific instances of prior censorship with great suspicion. In *Observer and Guardian v. the United Kingdom*, it held that an injunction against publication of a book (*Spycatcher* – in which a former British intelligence operative accused the British security service of law-breaking), purportedly for reasons of national security, breached the guarantee of freedom of expression. The Court stated:

[T]he dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court.<sup>7</sup>

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<sup>6</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5. The "colegio" is the Costa Rican equivalent of the JPA.

<sup>7</sup> 26 November 1991, Series A No. 216, 14 EHRR 153, para. 60.

National courts have also noted the dangers inherent in any system of prior restraint.<sup>8</sup>

The prior censorship regime established by the draft PPL is pervasive and insidious. It subjects all Jordanian books and all foreign publications to explicit government approval before they may be printed or distributed. Being required to provide two copies of every foreign publication to the government might act as a significant financial disincentive to importers apart from its censorship implications. A vast array of other information to be reproduced must be submitted to the PPD either before or upon distribution. The message is clear: you are being monitored and will be prosecuted for anything deemed harmful.

### **Recommendation**

ARTICLE 19 strongly recommends that the censorship requirements should be dropped from the draft PPL, the censorship functions of the PPD abolished and the censorship unit closed down.

## **5. Restrictions on Content**

The draft PPL establishes a number of content restrictions either in relation to publications or journalists, including, among other things, prohibitions on publishing material which:

- contradicts the principles of freedom and national responsibility (Article 5);
- contradicts the values of the Arab Islamic Nation (Article 5);
- does not present news with accuracy, integrity and objectivity (Article 7(d));
- instigates prejudice, bigotry, sectarianism or provincialism (Article 7(e));
- disparages the King or Royal Family (Article 42(1));
- relates in any way to the Armed Forces or Security Forces, unless permission has been obtained from those forces (Article 42(2));
- degrades any religion (Article 42(4));
- sows dissension (Article 42(5));
- includes false information or rumours that harm the common good (Article 42(9));
- includes information deemed confidential (Articles 42(10) and (11));
- shakes confidence in the national currency (Article 42(12));
- instigates public gatherings (Article 42(14));

Restrictions on content, like all other restrictions on freedom of expression, are only permissible under international law if they are justified by reference to legitimate interests and a strict standard of necessity. Certain of the restrictions prescribed in the draft PPL, such as instigating provincialism, shaking confidence in the national currency or instigating public gatherings, simply do not correspond to the list of legitimate interests provided in Article 19(3) of the ICCPR, noted above. Prohibitions on expression which may be deemed to contradict Arab values or national

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<sup>8</sup> The United States Supreme Court, for example, has stated that any system of prior restraints bears a heavy presumption against its constitutional validity. See *New York Times Co. v. United States*, 403 U.S. 713 (1971).

responsibility, sow dissension, or constitute rumours that harm the common good are unacceptably broad or vague and hence breach the necessity part of the test.

Still other restrictions - such as instigating prejudice and degrading religion, not presenting news accurately, disparaging the King, or including information on the Armed and Security Forces or deemed confidential - breach the test for restrictions either because they go beyond what is necessary to protect the legitimate interest or because they cause disproportionate harm to freedom of expression. Protection of minorities or religious groups against hate speech is provided for in Article 20 of the ICCPR which prohibits “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Any hate speech restrictions under Jordanian law should be modelled on Article 20. Restrictions which go beyond this standard, however, unnecessarily restrict freedom of expression. The monarch and other public officials have a right to be protected against defamation, but this is a limited right: it is well established under international law that such public figures must tolerate a greater degree of criticism than private individuals because of the positions of power they occupy.<sup>9</sup> The draft law, by prohibiting “disparagement”, does not meet this higher standard.

A requirement that the presentation of news be completely accurate may represent an important professional goal but as a legal restriction it exerts an unacceptable, chilling effect on freedom of expression. The media’s role is to provide the public with timely information but even the very best journalists will occasionally make mistakes. It is unacceptable to penalise these journalists, particularly where they have acted professionally and in good faith. As the Privy Council noted in a case from Antigua and Barbuda:

[I]t would on any view be a grave impediment to the freedom of the press if those who print, or *a fortiori* those who distribute, matter reflecting critically on the conduct of public authorities could only do so with impunity if they could first verify the accuracy of all statements of fact on which the criticism was based.<sup>10</sup>

Instead of imposing rules on journalists which inhibit their ability to undertake investigative journalism, the authorities should provide more funding for professional training.<sup>11</sup>

The absolute prohibition on publication of material on the Armed or Security Forces without prior authorisation is excessive. While it is legitimate to prohibit the publication of certain material for reasons of national security, there are strict limits which apply to this. For example, Principle 12 of the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, adopted by an international group of experts in 1995 and noted with approval by the UN Commission on Human Rights,<sup>12</sup> states:

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<sup>9</sup> See, for example, *Lingens v. Austria*, 8 July 1986, Series A, No. 103, 8 EHRR 407, para.42.

<sup>10</sup> *Hector v. Attorney General of Antigua* [1990] 2 A.C. 312, p. 318.

<sup>11</sup> The need for more and better professional training was voiced at a conference on freedom of expression in October 1997, held jointly by ARTICLE 19, [OTHER PARTNERS – SAID].

<sup>12</sup> Res. 1997/27.

A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.

Principle 16 adds:

No person may be subjected to any detriment on national security ground for disclosing information that he or she learned by virtue of government service if the public interest in knowing the information outweighs the harm from disclosure.

The draft PPL, by prohibiting publication of all material relating to security forces, clearly does not conform to this standard.

### **Recommendation**

ARTICLE 19 strongly recommends amendment of the draft PPL in order to ensure that:

- Restrictions on content that do not relate to a legitimate interest as listed in Article 19(3) of the ICCPR are dropped.
- Restrictions on content that are too vague or broad, or that go beyond what is necessary to protect a legitimate interest, should either be dropped or redrafted in sufficiently precise and narrow terms to meet the test under international law for restrictions on freedom of expression.

## **6. Restrictions on Foreigners**

The draft PPL restricts foreigners both in terms of financial involvement in publications and institutions and in terms of foreign media operating in Jordan. Article 24 prohibits periodicals from receiving financial support from foreign parties or countries and Article 45 effectively extends this to individuals working for any publication. Article 46 prohibits institutions from receiving any financial assistance from non-Jordanians. Article 9 provides that foreign correspondents, including Jordanians writing for foreign publications, will be accredited only on a basis of reciprocity. Journalists are prohibited from having any working relationship with non-accredited foreign correspondents. Similarly, Article 11(c) provides that foreign news agencies may be licensed, but only on a basis of reciprocity and as long as the editor-in-chief is Jordanian. Other restrictions, for example on foreigners owning periodicals, have been noted above.

Article 19 of the ICCPR specifically provides that freedom of expression applies regardless of frontiers. This implies that any restrictions on foreign involvement in Jordanian associations or publications must meet the strict three-part test for such restrictions. The absolute bans on foreign financial support to publications or institutions, even if they did serve a legitimate interest, which is doubtful, could not be justified as necessary to protect that interest. In fact, many study and research institutions derive a substantial portion of their income from foreign sources and this allows them to contribute greatly to freedom of expression in Jordan and, indeed, to the improvement of living standards and development in general. Given the breadth of the definition of publication, Article 46 effectively precludes any foreign support even for artistic endeavours in Jordan. Theoretically, a Jordanian author could be in breach of this provision for accepting funds to attend a conference abroad.

Similarly, the restrictions on foreign media activities, particularly correspondents, cannot be justified. Rights like freedom of expression cannot be restricted on a basis of reciprocity; the adage “two wrongs don’t make a right” is appropriate here. The restriction on Jordanian journalists working with non-accredited foreign journalists is excessively broad. In any case, it cannot be justified; local journalists are not responsible for monitoring the accreditation of those working for foreign publications. Similarly blanket restrictions on foreigners occupying certain positions in press publications and other bodies, such as research centres, are excessive.

### **Recommendation**

ARTICLE 19 strongly recommends that:

- Restrictions on foreign funding for institutions should be removed from the PPL.
- The restrictions on foreign funding for publications should be significantly amended to ensure that they do not unnecessarily inhibit beneficial foreign support for local publications.
- Foreign news agencies and correspondents should not require licenses or accreditation; such requirements should never be imposed on a basis of reciprocity.

## **7. Penalties**

The draft PPL provides for a series of penalties for breach of its provisions, ranging from fines to closing down the offending body. Article 46 allows the Director of the PPD to close down for up to six months study and research centres which receive funds from non-Jordanian parties. A violation of Article 42, imposing a number of content restrictions, will, according to Article 53(a), lead to fines. However, the publication will be suspended until the fine has been paid. Under the same article, publications receiving funds from non-Jordanian parties are subject to a fine. Pursuant to Article 53(b), publications may be suspended for up to a year for a second violation of Article 53(a) within three years and have their licenses revoked for a third violation within five years.

Article 55(a) provides that publications operating without a license will be fined and prohibited from receiving a license for a year. In addition, the chief editor is prohibited from working for another publication for at least one year. Under Article 55(b) institutions, including research centres, who operate without a license will be closed and their assets confiscated. Under Article 57, existing publications must comply with the law within 60 days or face suspension; if they continue to operate for another 30 days, their licenses will be annulled. Institutions must comply within 60 days; if they remain in breach of the license conditions established pursuant to the draft law for 60 days, their licenses will be annulled.

The guarantees of freedom of expression and association clearly require not only that the substance of restrictions be proportionate but also that any sanctions for breach of those restrictions be proportionate.<sup>13</sup> In other words, even when the substance of a

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<sup>13</sup> See *Tolstoy Miloslavsky*, 13 July 1995, No. 323, 20 EHRR 442.

restriction is legitimate, the imposition of too severe a sanction by itself breaches these international guarantees.

Revoking the license of a publication is the most serious sanction that can be imposed, effectively ending the existence of that publication. Suspension, though less dramatic, is also a very severe form of punishment. If permitted at all, these sanctions should be reserved for the most extreme situations. This implies that they may only be applied in the context of a pattern of repeated and flagrant breaches of the law. In the vast majority, if not in all cases, fines should be sufficient to guarantee respect for the law.

**Recommendation**

ARTICLE 19 strongly recommends that the draft PPL should be amended in order to ensure that it accords with the following principles:

- Sanctions should never be disproportionate to the harm caused.
- In particular, license revocation and suspension should be applied, if ever, only in the context of repeated and flagrant breaches of the law.