



## **Note on the Draft Media Law of Somalia**

**January 2008**

This Note summarises ARTICLE 19's main comments on the draft Somali Media Law (draft Law), which was approved on a first reading by the Transitional Federal Parliament of the Somali Republic (TFP) on 1 December 2007. An English translation of the draft Law has been provided to us by the National Media Council.<sup>1</sup>

We understand that the draft Law is to be the subject of ongoing discussions between different stakeholders in Somalia. The purpose of this Note is to provide input into those discussions and, in particular, to provide the different stakeholders with an analysis of the draft Law as compared to international guarantees of freedom of expression.

The draft Law provides for a comprehensive regulatory regime for all media, defined broadly, as well as for journalists. The draft Law includes some positive provisions – for example ruling out censorship and any obligations requiring media to carry statements by either the government or the opposition. Many of its provisions, however, are quite control oriented. Among other things, the Law provides for extensive government control over establishment of media outlets, in direct breach of international law. It also places stringent constraints on media output, as well as workers, threatening serious sanctions for breach.

While we are sensitive to the difficult circumstances in Somalia, we believe that these features of the draft Law are not only contrary to international law, but will also fail to secure the objectives the law seeks to promote, such as more responsible media and better media output. Extensive experience in countries in very different situations around the world demonstrates that imposing strict obligations to respect the truth or not to shock the public, as well as government-controlled registration regimes, do not promote quality media. On the contrary, they promote a media which is cowed and timid, and which fails to mature and grow in a way which maximises its potential to serve the interests of development, democracy and the public generally.

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<sup>1</sup> For a copy of the English translation of the draft see: <http://www.article19.org/pdfs/laws/somalia-media-law.pdf>. We take no responsibility for errors based on translation.

It should be noted that Somalia is a State Party to the *International Covenant on Civil and Political Rights* (ICCPR), the main global human rights treaty which guarantees freedom

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of expression.<sup>2</sup> Article 19 of the ICCPR, which guarantees freedom of expression, allows for limited restrictions on this key right. In particular, it allows only for restrictions to be imposed to ensure respect for the rights or reputations of others, or to protect national security, public order (*ordre public*), or public health or morals. Furthermore, restrictions are only valid where they are set out clearly and narrowly in law, and where they are truly “necessary” to protect that interest.

This Note assesses the main features of the draft Media Law against international standards on freedom of expression drawn from both the ICCPR and the African Charter on Human and Peoples’ Rights,<sup>3</sup> as well as the elaboration of the latter by the African Commission on Human and Peoples’ Rights. Particular reference will be made to the Commission’s *Declaration of Principles on Freedom of Expression in Africa* (African Declaration), which is its most extensive elaboration of the principles which underpin this key right.<sup>4</sup> Reference will also be made to the 2003 Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression,<sup>5</sup> which deals extensively with questions relating to media regulation.

### **Key Recommendations**

#### **Scope:**

- The law should be restricted in scope to the mass media, namely broadcasters and mass circulation periodical publications.

#### **Starting a media outlet:**

- The rules on authorisation/registration should be clarified by providing for clear requirements, clear processes and clear roles for the different bodies involved.
- Only a body which is adequately protected against political and commercial interference should be tasked with regulating media outlets.
- The registration system should either be abolished or restricted to the print media, narrowly defined as mass circulation periodicals. If retained, the system should be technical in nature, and not be unduly onerous or allow any discretion to refuse registration.
- Broadcasting should either be removed from the ambit of the law or the rules relating to broadcasting should be substantially developed to serve clear broadcasting policy in line with international standards.

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<sup>2</sup> General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976. Somalia acceded to the ICCPR on 24 January 1990.

<sup>3</sup> Adopted at Nairobi, Kenya, 26 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

<sup>4</sup> Adopted Commission at its 32nd Session, 17-23 October 2002, available at: [http://www.achpr.org/english/declarations/declaration\\_freedom\\_exp\\_en.html](http://www.achpr.org/english/declarations/declaration_freedom_exp_en.html).

<sup>5</sup> Adopted 18 December 2003. Available at: <http://www.article19.org/pdfs/igo-documents/three-mandates-dec-2003.pdf>.

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#### **Media output:**

- The law should not posit positive objectives for media outlets. If objectives are retained in the law, they should govern media regulation, not media output.
- The reference to ‘right information and ideology’ should be removed from the draft Law.
- Ideally, the rules relating to media output should either be fundamentally reworked as a quasi-self-regulatory system, described in more detail below, or removed altogether from the law.
- If rules on media output are retained in the law, they should be substantially amended so that they are clear and narrow, and protect only interests recognised as legitimate under international law.

#### **The National Media Council:**

- The appointments process to the NMC should be amended to enhance its independence, in particular by removing or limiting the role of the Minister in the process.
- The NMC should have a similar role in relation to both private and public media, at least as regards media output.
- Consideration should be given to expanding the scope of membership of the NMC, for example to include public representatives.

#### **Journalists:**

- Consideration should be given to doing away with the distinction between journalists and other members of the media profession.
- Consideration should be given to doing away altogether with Article 22, providing for obligations of journalists, and instead including a provision appropriately tailored to the protection of confidential sources of information.
- The provision on access to information by journalists in Article 23 should not be seen as a replacement for the need to adopt fully fledged legislation on the right to information.

#### **Public Media:**

- The State media should be transformed into true public service media, protected against political interference, operating in the public interest and accountable to the public rather than the government or MOI.
- Consideration should be given to restricting the types of media outlets that the State will maintain and, in particular, by removing newspapers from the list.
- Consideration should be given to removing the constraints on cooperation agreements between the State and private media, as provided for in Article 20.

#### **Other:**

- The rule requiring newspapers to deposit copies with the NMC, MOI, regional court and office of the Attorney General should be removed.

## Scope

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Article 1 of the draft Law defines ‘the media’ extremely broadly to include any system for disseminating messages publicly, including not only communications platforms commonly understood as the media – such as newspapers, radio, television and news agencies – but also means of communication that are not generally understood to be media – such as speeches, films, drawings, books and websites. It is inappropriate to impose the extensive regulatory controls provided for in the draft Law on all of these communication systems. To give just one example, the draft Law requires all media to be registered by the Minister of Information. It is clearly inappropriate to impose such an obligation on ‘hand drawings’ and ‘speeches’, and even on websites and books.

Subject to the comments below, the scope of the law should be restricted to true mass media, defined as either broadcasters or mass circulation periodical publications.

#### **Starting a media outlet**

A number of sometimes confusing provisions in the draft Law address the question of starting a media outlet. Very generally, Article 3(2) provides that the law will regulate relations between the Ministry of Information (MOI) and media, and standardise relations between media outlets, society and the government. Article 4(1) provides that all Somali citizens, organisations and companies may start a media outlet where they apply to the MOI and the National Media Council (NMC) specifying the type of media they want to establish, along with a number of details such as the power, quality and ownership structure. According to Article 4(2), existing media must also ‘forward a request for the authorization to operate’ which shall include information such as their organigram, structure and so on. Article 4(3) provides that media outlets may not operate unless they have received ‘authorization and registration’ from the MOI.

Article 7(1) provides that ‘every media’ must be registered with the MOI and goes on to provide a list of types of media – radio, television, newspapers, Internet, cinemas and a generic category of ‘media organizations’ – which this covers. It is not clear whether this is a different list than the one provided in the definition of media in Article 1. Article 6(3) provides that those interested in establishing a media outlet (‘media agency’ is the term used in translation) shall forward the request to the NMC which will conduct an initial evaluation and forward the request to the MOI for registration. Similar rules on registration and authorisation apply to foreign media wishing to post representatives in Somalia.

Articles 7(2)-(5) set out rules regarding registration/authorisation. Private and foreign ‘media agencies’ must pay an annual registration fee. Every private media must have an owner and legally responsible director (executor in the translation), although the two positions may be occupied by the same person. The ‘registration’ application shall include, among other things, the ownership papers, the name and personal address of the owner, and the ‘name, knowledge and experience’ of the director. Every media outlet must have a title, office or post office box, email, fax and telephone. ‘Authorisation’ for establishment shall be provided within 30 days where the conditions of the law are met. The same is true of existing media, although they are allowed to continue to operate

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during this 30-day period, until and unless their application is rejected by the MOI. Article 7(6) provides for a complaint to the MOI where an applicant is not satisfied with the decision of the NMC and to the court where an applicant is not satisfied with the decision of the MOI.

Pursuant to Article 8, registration is forfeit where the media outlet does not commence operations, or ceases operations, for six months. Articles 10 and 11 require media outlets to report any material changes to the registration information to the NMC, MOI and the regional court, and such changes shall be registered.

Pursuant to Article 13, any person operating an ‘unauthorised and unregistered media agency’ will be charged and fined USD50-150 and the media outlet closed. A ‘media agency’ that issues a publication other than one that is registered and authorised shall pay a fine of USD500 (the fine is USD1000 for broadcasters), unless a more serious offence has been committed, and it shall also be required to issue the originally authorised and registered version until the proposed changes are approved (Article 14). Legal action will be taken against any media outlet providing false information for registration or authorisation (Article 15).

#### Analysis

Together these provisions establish a confusing system for the establishment of a wide range of media outlets. There are a number of areas where the rules are not clear. It is not clear whether they apply to all media or just the list of types of media provided for in Article 7(1). It is not clear exactly what information must be provided between the lists provided for in Articles 4 and 7. It is not clear what the role of the NMC really is, although it would appear to have a decision-making role, given that this may be appealed against. It is not clear what the difference between registration and authorisation is, or even whether these are clearly different processes.

These provisions are also problematical. It is well established under international law that regulation the media should be undertaken only by bodies which are independent of government. Principle VII(1) of the African Declaration, for example, states clearly:

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.

The main decision-making powers relating to registration/authorisation vest in the MOI, which is clearly not independent of government. Even if regulatory powers are to be vested in the NMC, it needs to be adequately protected against political interference, which is not currently the case (see below).

Second, it is well established that licensing is not legitimate for the print media (as well as many of the other forms of communication that fall within the ambit of the definition of media under the draft Law; licensing is, however, legitimate for broadcasters – see below). The African Declaration refers only to registration systems for the print media (thereby implicitly ruling out licensing systems), and notes that these are legitimate only

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where they do “not impose substantive restrictions on the right to freedom of expression” (Principle VIII(1)). The 2003 Joint Declaration states:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.

As these statements make clear, even for the print media registration is problematical and should ideally not be required. Where registration requirements are imposed, they should conform to the following conditions:

- there is no discretion to refuse registration, once the requisite information has been provided;
- the system does not impose substantive conditions upon the media;
- the system is not excessively onerous; and
- the system is administered by a body which is independent of government.

The rules are very unclear, as noted above, but the system would appear to envisage authorisation being refused in certain cases, in which case it is effectively a licensing system. Furthermore, the rules relating to registration appear to be unduly onerous, at least insofar as they apply to the print media (and again as well as to many of the other forms of communication that fall within the ambit of the definition of media under the draft Law). The rules in the draft Law appear to impose a number of control and structural conditions, although as noted, this is not entirely clear. For example, Article 7 requires applicants to provide the ‘knowledge and experience’ of the director, which is clearly not relevant to a technical registration system. The information that must be provided upon registration needs to be clarified and it should be kept to the minimum required to serve legitimate public interests, such as the name and type of media and perhaps the contact details of someone who is legally responsible for that publication. Finally, there should only be one process – registration – not the two that apparently apply now – registration and authorisation.

Third, inasmuch as they apply to broadcasting, the rules are insufficiently developed. It may be noted that regulation of broadcasting is treated very differently under international law and that some form of licensing is appropriate for broadcasters. However, broadcast regulation is a complex area of law and practice which involves allocating a public resource – the airwaves – to different actors for their exclusive use. A number of factors need to be taken into account in such a regulatory system. These include provision for different types of broadcaster – public, private and community – the need to promote broadcasting that caters to different public needs, such as news and entertainment, and so on. The draft Law fails to achieve these key broadcast regulation objectives. Consideration should be given either to removing broadcasting from the ambit of the draft Law and providing for a separate broadcasting law or to substantially enhancing the provisions on broadcasting in the draft Law.

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#### **Media output**

The draft Law imposes a number of constraints on media output (or media content). Article 1 sets out a number of objectives for the media, including safeguarding and promoting a number of general social interests – Islam, justice, culture, democracy, State unity, solidarity and education – as well as disseminating ‘right information and ideology’.

Article 3(1) provides generally that the ‘media code’ will regulate both private and public media. Article 12, entitled ‘Media Ethics’, sets out a number of prohibitions on media content including undermining Islam, sovereignty, unity, national stability or traditional ethics, or disseminating false or unfounded information, material contrary to ‘religious confession and the Islamic doctrine’, pornography, national secrets, or torture, violence or other material which could shock the public. It is not clear whether or not this is the ‘code’ referred to in Article 3(1).

Article 16 deals with defamatory material, providing that the media should not disseminate false material which undermines the dignity of any Somali citizen, organisation, business entity or the State. In case such material is disseminated, an apology and correction should be provided within 48 hours. Furthermore, the entity claiming to be defamed should be provided with a right of reply for free, which shall be published or broadcast, unabridged, with the same prominence as the original piece. Where these remedies are denied, the person claiming to be defamed may go to court. These rules also apply to deceased persons or persons of unsound mind, in which case the heirs have the right to complain.

Article 17 provides generally that anyone harmed by media output has the right to register a complaint and ask for compensation. Article 6(2) gives the NMC responsibility for and the power to enforce the law and media ethics, deal with complaints and take disciplinary actions against private media (and journalists). Article 25 provides that the officials responsible for criminal matters have the authority to address media violations through the appropriate courts. Article 18 provides that media outlets that have been sanctioned should publish the sentence, failing which they shall be fined USD500-1,500.

#### **Analysis**

Once again, these rules are somewhat confusing and problematical, and suffer from failing to distinguish between the print and broadcast media. Although a professional media may well promote many of the values set out in Article 1, it is not legitimate to impose these as obligation on the media. Music radio, for example, is an extremely popular genre in most countries and yet it fulfils few if any of the Article 1 objectives. Indeed, these objectives would be better cast as objectives for the system of regulation of the media than as media obligations. The reference to ‘right information and ideology’ is concerning, since this suggests that some central authority should decide what information or ideology is right for the people. This notion is directly contrary to basic notions of democracy and should not be included in a media law.

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Almost all of the content rules set out in Article 12 are vague and at least potentially overbroad, depending on how they are interpreted and applied; many are simply illegitimate as restrictions on media content. Indeed, it may be questioned why any specific content restrictions are required in a media law, given that laws of general application should already address harmful expression. Either the criminal law or the civil law of Somalia, or both, presumably already address issues such as undermining religion, protecting national security, and preventing the dissemination of obscene or defamatory material.

Key to any assessment of content restrictions is the manner in which they are to be applied but special restrictions for the media are treated with some suspicion under international law. The Joint Declaration noted above states:

Content restrictions are problematical. Media-specific laws should not duplicate content restrictions already provided for in law as this is unnecessary and may lead to abuse. Content rules for the print media that provide for quasi-criminal penalties, such as fines or suspension, are particularly problematical.

Similarly, the African Declaration promotes non-legally sanctioned approaches, stating:

Effective self-regulation is the best system for promoting high standards in the media.

As a result, we recommend in principle the removal of all content restrictions from the draft Law.

At the same time, it is not clear how these rules are proposed to be applied. A quasi-self-regulatory system, whereby a body like the NMC but with statutory backing processes complaints against a set of rules (a code of conduct) which have been agreed by the media and other key stakeholders, could be an appropriate model for Somalia. The African Declaration addresses the matter of complaints relating to media output in some detail as follows:

IX  
*Complaints*

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:
  - complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
  - the complaints system shall be widely accessible.
2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.

The system of regulating output in the draft Law is very different from this. First, it is unclear as to the precise role and powers of the NMC. For example, the Law fails to specify how the NMC would process complaints and what its powers of enforcement would be. Second, the content rules are set out in the primary legislation rather than being

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agreed in the form of a code of conduct by interested stakeholders. Third, enforcement by the courts appears to be envisaged, along with fines and other criminal sanctions, contrary to the administrative system promoted above.

In terms of the specific nature of the restrictions, several – including the notions of ‘jeopardising the Islamic religion’ or being contrary to ‘religious confession’ – are not sufficiently precise to guide the media as to what is permitted and what is not. The notions of jeopardising sovereignty and endangering the stability of the State are also far too vague, and too broad, to be legitimate as restrictions on freedom of expression. A better formulation would be to prohibit material which is both intended and likely to incite imminent violence, although again this should be provided for in a law of general application. As Principle XIII(2) of the African Declaration states:

Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

If these provisions are retained in the Law, they should be substantially amended so as to meet the requirement that restrictions on freedom of expression be clear and narrow, and provide a clear indication in advance to the media and others of what exactly is prohibited.

In other cases, the restrictions are simply not legitimate under international law. It is not legitimate to ban all false or unfounded information. In recent years, the supreme courts of Zimbabwe and Uganda have struck down analogous provisions as violating the right to freedom of expression.<sup>6</sup> While journalists should generally strive to provide truthful information, it is inevitable that, pursuing their role of providing the public with timely and relevant news, they will sometimes make mistakes. To render them liable for such mistakes is unfair and is likely to have a significant chilling effect on the right to freedom of expression. Ultimately, this will actually reduce the amount and quality of information available and thus impede the public’s right to know as well as journalists’ right to freedom of expression.

It is similarly not legitimate to ban outright all material that ‘can spread shock’ within a community. As the European Court of Human Rights has repeatedly stated:

Freedom of expression ... is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.<sup>7</sup>

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<sup>6</sup> *Chavunduka and Choto v. Minister of Home Affairs & Attorney General*, 22 May 2000, Judgement No. S.C. 36/2000 (Supreme Court of Zimbabwe) and *Onyango-Obbo and Mwenda v. AG*, Constitutional Appeal No. 2, 2002, 11 February 2004 (Supreme Court of Uganda).

<sup>7</sup> *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

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Put differently, reporting on unpleasant or surprising events may shock certain people but the media still have an obligation to undertake such reporting to ensure that the public are informed.

These provisions should be removed from the law altogether.

Article 17, on defamation, is also problematical. This is a complex area of law and one article in a media law cannot do it justice. The article fails, for example, to provide for widely accepted defences to defamation, such as reasonable publication.<sup>8</sup> As with other content restrictions, laws of general application, rather than media specific laws, should govern the issue. The specific rules are also problematical, for example inasmuch as they protect the abstract entity known as the State against defamation, contrary to international standards.<sup>9</sup>

### **The National Media Council**

Article 6 provides generally that the NMC shall be an autonomous body comprising 15 members, ten of whom shall be nominated by the private media and five by the public media, and all of whom shall be appointed by the Minister of Information for a period of two years. Article 6(2) sets out a wide range of responsibilities and powers of the NMC which include, in addition to the complaints and registration/authorisation functions noted above, dispute mediation, monitoring and making recommendations concerning private media and their agreements with foreign media, recommending the withdrawal of 'permits' (presumably these are the registration/authorisation documents) issued to private media, and promoting media freedom and defending journalists.

### Analysis

The formation of a body representing the media to undertake these various roles is very welcome. As noted above, an independent body can play an important role in regulating the media and in dealing with complaints.

At the same time, as has already been noted, the proposal for establishing the NMC under the draft Law fails adequately to protect its independence and its composition means that it would not be appropriate for at least some of these tasks. In particular, the significant role of the Minister of Information, in appointing all 15 NMC members, apparently without conditions other than that members be nominated by the private or public media, is very problematical from the perspective of independence from government. Furthermore, as noted below, the MOI effectively controls the public media, who nominate one-third of the NMC members. A very different structure would be needed to protect the independence of the NMC.

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<sup>8</sup> See, for example, Principle 9 of *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation* (ARTICLE 19: London, 2000), ARTICLE 19's leading statement of international standards in this area.

<sup>9</sup> See Principle 3 of *Defining Defamation*.

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There are also problems with a body entirely composed of media representatives registering new media and addressing media complaints. The former involves potential conflicts of interest, with the established media on the NMC not necessarily wishing to open up to more competition from others. Similarly, an entirely media body may not be seen as representative or objective when addressing media complaints. Furthermore, the role of the NMC is in many cases – for example in some of its roles regarding registration, including the withdrawal of permits, its mediation role, its monitoring role and its disciplinary role – restricted to the private media. This is both unnecessary and unfair, and could lead to obvious problems, with the anomalous result of the private media being subject to higher standards than the public media. The NMC should play, for the most part, a similar role, at least in relation to output/content, for the private and public media.

Consideration might be given to adopting a model similar to that of the Indonesian Press Council, which is also comprised of 15 members, coming from three different groups: journalists, nominated by journalist associations; media managers, nominated by press company associations; and public representatives, nominated by journalist and press company associations. Although formally appointed by presidential decree, the president only has the power to accept or reject all of the 15 nominations and the law provides for other guarantees for independence, such as a longer period of tenure and rules about funding.

### **Journalists**

The provisions of the draft Law on journalists, like some other parts of the draft Law, are somewhat confusing. Article 21 appears to provide for two categories of media worker, journalists and ‘members of the media profession’. The former are those who have graduated from media training institutes, who have ‘equivalent’ qualifications or who have knowledge of the media profession. At the same time, the draft Law provides that everyone has a right to work in the media, and ‘other skilled and experienced’ individuals shall be regarded as ‘members of the media profession’, they should respect the code of ethics and they should be entitled to the same respect as journalists.

Articles 22 and 23 refer, respectively, to the obligations and rights of the ‘journalist’. The former includes a number of prohibitions which sometimes parallel those for media outlets. In particular, journalists should:

- be ‘truthful’ and identify their sources;
- not violate the rights of others, religion or national traditions;
- avoid untrue statements which harm stability, national unity or peaceful cohabitation;
- respect privacy and dignity, and the rights of those providing them with information (to whom they should also ‘demonstrate admiration’); and
- not collect secret information or private photographs through deception.

Editors are required to ‘release thoroughly edited material’ and ‘preserve impartiality demonstrating truthfulness while not damaging freedom of the press’. A gloss on

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confidential sources is that they may be protected where this is consistent with professional media practices, but that confidentiality may be lifted by a court.

Article 23 protects a number of rights of journalists, including to security, to dignity, to receive information unless confidentiality is warranted and to benefit from various labour standards. The State is called upon to encourage training for journalists, while owners and journalists are allowed to form 'private and separate' unions to defend their interests.

**Analysis**

Under international law it is not legitimate to preclude certain individuals from working for the media or to require individuals to belong to a specific union or professional association before they may work for the media. As Principle X(2) of the African Declaration notes: "The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions." The Joint Declaration noted above provides: "Individual journalists should not be required to be licensed or to register" and "There should be no legal restrictions on who may practise journalism".

The draft Law does not appear to impose these restrictions. It does, however, have the unfortunate effect of creating a two-tier profession. Furthermore, the definitions are very unclear so while those who have gained experience from working as a journalist may be counted as journalists, others with experience in journalism and media may only be considered members of the media profession.

More problematical are the obligations imposed on journalists. Many of these have been criticised above in relation to media outlets and they are even more problematical when imposed on individual journalists. The rules on truthfulness and impartiality are prominent such problems, but all of the obligations are unnecessary and most are illegitimate.

The rules on protection of confidential sources do not conform to international standards. Under international law, media workers have a right to protect their confidential sources unless mandatory source disclosure is "justified by an overriding requirement in the public interest".<sup>10</sup> The rules in the draft Law provide for removal of confidentiality whenever the information 'creates grievances or complaints'. Although a secret court session is provided for where needed to protect the safety of the source, this is not the same thing as protecting his or her confidentiality.

Furthermore, the right of journalists to access information absent a conflicting confidentiality interest is useful but it should not be seen as avoiding the need to adopt fully fledged right to information legislation.

**Public media**

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<sup>10</sup> *Goodwin v. United Kingdom*, 27 March 1996, Application No. 17488/90, para 39 (European Court of Human Rights).

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Article 19 provides that the MOI will be responsible for the 'state Media', including by nominating a directorate to coordinate public, private and foreign media. The same article provides for a State news agency, radio, television, newspapers, printer, websites, poets, and so on, which will compete with the private media. The news agency is given the task of responding to requests by State, private and foreign media, and the right to quote from them as well. A brief provision stipulates that the State media 'will operate autonomously', while respecting media ethics.

Article 20 addresses the issue of cooperation between the State and private media, providing that such agreements should be concluded in legal form in the presence of the prosecutor or attorney general, and that a copy of the agreement should be registered with the courts.

It is well established under international law that just as regulatory bodies for the media should be independent, so should the public media. The 1996 UNESCO-sponsored *Declaration of Sana'a*, for example, calls on the international community to provide assistance to State-funded broadcasters only where they are independent and calls on individual States to guarantee such independence.<sup>11</sup> It is clear from the above that the State media are to be under the control of the MOI and therefore not independent. Instead, these bodies should be established as independent media, either pursuant to a separate law on this or through provisions to this effect in the media law. In particular, they should be under the supervision of an independent governing board, which is appointed in a manner that protects it against political interference and which is accountable to the public, not the government.

It is also not clear why the State is deemed to need such a wide variety of media and other forms of communication. It is common for States to have public service broadcasters, and many States have news agencies, but other forms, particularly newspapers, are less common and the need for these are not clear.

The rationale behind the rules on cooperation between the State and private media are not clear. Apart from further undermining the independence of the State media, they also seem designed to prevent it from taking advantage of opportunities to cooperate with other media.

### **Others**

Article 9 requires all printed media to include the name and date, as well as the residence and name of the director and editor on each copy. Furthermore, one copy shall be provided to each of the NMC, MOI, regional court and office of the Attorney General. While it is legitimate to require newspapers to provide copies for purposes of maintaining library or archive resources, the goal here is quite clearly to monitor and control them, which is not legitimate.

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<sup>11</sup> Adopted 13 September 1997. Endorsed by the 29<sup>th</sup> UNESCO General Conference in Resolution 34, of 12 November 1997.