



COMMENT

on

Amendments to the

2007 Media Law of Somalia

September 2010

About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme operates the Media Law Analysis Unit which publishes a number of legal analyses each year, commenting on legislative proposals as well as existing laws that affect the right to freedom of expression. The Unit was established in 1998 as a means of supporting positive law reform efforts worldwide, and our legal analyses frequently lead to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/publications/law/legal-analyses.html>.

If you would like to discuss this Memorandum further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.

KEY RECOMMENDATIONS

- In order to distinguish between the various issues subject to regulation, we recommend that the amended Media Law include subtitles clearly separating the different areas of regulation.
- The purpose of the Media Law should include regulation of access to information in view of the inclusion of new provisions concerning access to information regime.
- The existing Article 3 of the Media Law should be abolished as it has become redundant as a result of the adoption of the new Article 1.
- Definitions of various terms of the Law shall be amended based on ARTICLE 19 recommendations.
- Article 3 - *Freedom of the media* - shall be replaced by the text suggested by ARTICLE 19.
- In Article 5 of the Media Law , term “the state” should be replaced with term “state bodies”, term “political interest” should be replaced with “political groups” and “commercial interests” with ‘private companies.’
- Provisions of Article 4 - *Right of access to information* – should be expanded and include additional text proposed by ARTICLE 19.
- The text of current Article 6 – *Right to correction* – should be replaced by new text suggested by ARTICLE 19.
- The Media Law should recognize the right to reply and include the suggested provisions in Article 7 of the Law.
- The Media Law should explicitly grant journalists the right to protection of sources, in the line with international standards.
- The Media Law should recognise the state obligation to prevent attacks on journalists and others exercising their right to freedom of expression, and investigate the circumstances of attacks and prosecute those responsible. The text of Article 9 should be revised accordingly.
- The Media Law should include a special chapter setting out substantive and procedural elements of access to information regime as proposed by ARTICLE 19.
- The Media Law should include a provision stating that the National Media Council is adequately funded from the media industry, journalists and international donors.
- The Media Law should include guarantees for the independence of the Communication Commission as suggested by ARTICLE 19 and provide for proper funding.

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- The penalty for failure to register a print media should be diminished.
- The regime of broadcasting media should include provisions specifying the regime of licences and the licensing procedure, as proposed by ARTICLE 19.
- The powers to make regulations with respect to all broadcasting services should be granted to the Communication Commission instead of the Minister of Information.
- The provisions on accreditation should be revised to include more specific and fair criteria for accreditation.
- The requirement for registration of journalists and the entry requirements for practising journalism should be removed.
- Print media owners should provide free copies only to the National Library.

I. INTRODUCTION

This Comment outlines ARTICLE 19's key concerns with the Draft Amendments aiming to reform the problematic Media Law of Somalia ("Media Law").¹ Adopted in December 2007, the Media Law has a number of problematic provision and subjects all media to a largely government controlled regulatory regime. For this reason, the Media Law was criticised by media freedom activities, including ARTICLE 19, that called on the authorities to revise the Law to bring it into line with international standards.

In August, ARTICLE 19 was informed that the Ministry of Information of Somalia and the National Union of Somali Journalists ("NUSOJ") have undertaken an initiative to reform the Media Law of Somalia. A Draft Amendment was produced as a result of two consultative meetings of representatives of the NUSOJ with the International Federation of Journalists, Reporters Sans Frontiers and the UN Human Rights Committee. ARTICLE 19 was requested to provide its/a view of the latter proposals for new provisions to be included in the Draft Amendment.

The Draft Amendment envisages significantly changes in the legal framework in the media field. Few provisions of the current law will remain the same if the proposed amendments are adopted.² ARTICLE 19 supports these efforts in view of our critical assessment of the existing law.³ Our comments, hereunder, are based on observations about the compliance of both the existing Media Law and the proposed amendments with international media freedom standards and best practices.

Positive features

Overall, the Draft Amendment is a welcome improvement on the existing law. In particular, it has many positive features including the following:

- the scope of the Media Law has been narrowed and clarified;
- the problematic objectives of the media (such as safeguarding and promoting the Islamic religion and disseminating correct information and ideology) have been removed;
- the right to freedom of expression is proclaimed; its content is specified;
- the constraints on media outputs are removed;
- print and broadcasting media are distinguished for the purposes of licence requirements;
- the right to freedom of information is recognised;
- the restrictions on foreign media and journalists are removed;
- the autonomous character of a National Media Council and its independence are explicitly specified;
- the procedure for granting licences to broadcasters is elaborated;
- the unclear provisions concerning administrative violations are removed (for example forfeiture of registration permit, changes occurring in previously registered media);
- a procedure for examination of complaints under the law is established.
- state media are transformed into public media.

¹ The text of the Draft Amendment is attached in the Appendix.

² Article 9 on the identification requirements of media; Article 24 on rights to journalists, Article 24 on copyright, Article 25 on law enforcement; and Article 27 on entering into force.

³ See ARTICLE 19, Note on the Draft Media Law of Somalia, January 2008; available online at <http://www.article19.org/pdfs/analysis/somalia-media-note.pdf>.

At the same time, areas for improvement remain. Hence, in the following sections, we analyze the existing Media Law, the Draft Amendment, and make further recommendations for amendments to better harmonize the revised act with international law.

II. ANALYSIS AND PROPOSALS

As a preliminary matter, we recommend that the new Media Law is divided into sections according to the different subject matters it regulates.

The Media Law regulates a wide range of media matters, such as private media ownership, operation of foreign media in Somalia, the establishment and powers of a media regulatory body, the National Media Council, registration of media organisations, administrative liability for breaches of media regulation, status of media professionals including their rights and obligations, copyright regulation and law enforcement responsibilities. In addition, the Draft Amendment to the Media Law includes new subject matters such as a regime of access to information; detailed procedures for licensing of broadcasters; and a revised system of administrative violations including a comprehensive procedure for the imposition of administrative sanctions.

Normally these subject matters are regulated by separate laws. The existence of different laws makes it easier for both professionals and laypersons to understand and navigate through each area of media regulation. The media regulators in Somalia have not opted for such an approach. Instead, they seek to adopt one complex law to simultaneously apply to subject matters concerning all types of media; and in some cases only some of them (for example, licensing is envisaged only with respect to broadcasting activities). At the same time, seeking to regulate access to information in the Media Law is limiting: under international law, anyone has the right to freedom of information and this right is not restricted to media only.

In order to distinguish between the various issues subject to regulation, we recommend that the amended Media Law include subtitles clearly separating the different areas of regulation.

1. General Provisions

a) Purpose of the Media Law

Under the Draft Amendment, the purpose of the Media Law is defined as follows:

An Act of the Transitional Federal Parliament to provide for the legal framework for establishment, operations, privileges, rights and obligations of the media in Somalia in particular to provide for a National Media Council, for the conduct and responsibility of journalists and the media, for the self regulation of the media; to facilitate access to information; ~~the development of the information and communication sector (including broadcasting, multimedia, and telecommunications)~~ (note: the striking through is in the original text!); for the role of the State in the mass and public media sectors and for connection purposes.

We support the newly defined purpose of the Media Law. However, in view of the inclusion of new provisions concerning the access to information regime, ARTICLE 19 proposes that this is mentioned in the new article. Further, we suggest that the word “discipline” be replaced with term “responsibility”.

b) New definitions

Article 2 of the Draft Amendment recommends the inclusion of a set of definitions to clarify the provisions of the law. However, some terms remain unexplained in the current draft. We propose the following definitions should be adopted as Article 2⁴:

“Article 2 Definitions

‘Advocacy’ shall be understood as requiring an intention to promote hatred publicly towards the target group. The promotion, by different communities, of a positive sense of group identity does not constitute hate speech

‘Broadcasting’ shall mean the initial emission or transmission, regardless of the telecommunications means employed, of a radio or television program intended for reception by listeners or viewers. It shall also include the exchange (retransmission) of programs between operators for the purpose of reception of the latter by the audience. It shall not include communication services operated on individual demand.

‘Hatred’ and **‘hostility’** shall refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group

‘Incitement’ shall refer to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.

‘Overriding public interest’ is at hand when the requested information aims at the revealing of corruption and abuse of power, increase of transparency and accountability of obliged bodies

‘Media’ shall mean the system through which information, knowledge, speech, data and ideas are disseminated to society, utilizing visual, auditory and print devices. These include newspapers, magazines and journals, radio, television, and news reporting websites.

‘Print media’ shall mean newspapers, magazines and journals.

‘Private bodies’ shall include any body excluding public bodies that carry on any trade, business or profession but only in that capacity or has legal personality.

‘Public bodies’ shall include any body which forms part of any level or branch of the government, owned, controlled or substantially financed by funds provided by the Government or the State or carrying out a statutory or public function.

⁴ The definition of hate speech is based on the *Camden Principles on Freedom of Expression and Equality* (the “Camden Principles”), a progressive interpretation of international law and standards concerning the balance between the rights to freedom of expression and the right of equality prepared by ARTICLE 19 in consultation with high-level inter-governmental officials, civil society representatives and academic experts. Available at: <http://www.article19.org/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>.

‘**Record**’ shall include any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it or whether or not it is classified.”

c) Defining Freedom of the Media

The Draft Amendment proposes the inclusion of a single article elaborating on the right to freedom of expression, the right of access to information, the right to correction, and the state responsibility to publish information affecting the action. In our view, the Media Law should include not one but several articles dealing separately with these matters. We believe that it is inappropriate to include a general proclamation of the right to freedom of expression in a law which is specifically designed for the media. Such a provision is more suitable for a law on freedom of expression which will apply to all persons. Consequently, we propose that the Media Law includes a provision regarding media freedom.

Noting that media freedom is not absolute we propose that the international law’s test of the legality of the restrictions on the right to media freedom be included. This test is set out in Article 19 (3) of the ICCPR. Also, taking cognisance of Article 20 of the ICCPR we propose the prohibition of hate speech.

Further, we suggest that the regulation concerning the state responsibility to publish information affecting the nation be included in a separate section of specifying the procedure for access to information.

Finally, the ‘state media’ in paragraph 6 is replaced with ‘public media’ in line with our suggestion following below that broadcasting media are public, private and community.

Based on foregoing, we recommend the replacement of Article 3 of the Media Law with the following text:

“Article 3 - Freedom of the media

1. Freedom and independence of electronic, print and other media of all types are guaranteed.
2. The right to freedom of the media is understood to mean the right of every physical and legal person to receive and impart information through the media without prior hindrance by a public authority.
2. Any restriction of the right referred to in the previous paragraph can be established only if it fulfils the following three-part test:
 - a. The restriction shall be directly intended at fulfilment of one of the following legitimate purposes: respect for the rights and reputations of others, protection of national security, public order, or public health and morals
 - b. The restriction shall be necessary for the fulfilment of the legitimate purpose, which implies that 1) it shall be in response to a pressing social need, 2) it shall be proportionate to the legitimate aim, defined in paragraph 2.a, and 3) it is the least restrictive to freedom of expression

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3. The media cannot be censored and cannot be compelled to publicise information complimentary either to the government or to the opposition.

4. The State shall not:

- a) exercise control over, or interfere with, any person concerned in broadcasting, production or circulation of any publication, or in the dissemination of information by any medium; or
- b) harass or penalize any person for any opinion or view, or the content of any broadcast, publication or dissemination;

5. Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures which

- a) are designed to ensure the necessary regulation of the airwaves and other forms of signal distribution; and
- b) are independent of control by Government, political interests or commercial interests.

6. Public media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.

7. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence (hate speech) shall be prohibited.”

d) Access of Information

Proposal 5 iii of the Draft Amendment relates to the recognition of the right to access to information held by state bodies; which is granted to all citizen.

ARTICLE 19 welcomes this inclusion, however, we recommend the respective section of the Law to be further elaborated upon in order to meet the international and regional standards on freedom of expression and freedom of information, including the standards of the African Union.

We note that under the African Commission on Human and Peoples’ Rights’ Declaration of Principles on Freedom of Expression in Africa, the right to access to information applies not only to information held by public bodies but also information held by companies.⁵ In this respect, we point out that the access to information legislation of South Africa is exemplary because it requires private bodies to disclose information which is needed for the protection or exercise of any right. We also recommend to include specifically the provisions on recognition of the public interest override to compel the disclosure of information in the

⁵ Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples’ Rights, 32nd Session, 17 - 23 October, 2002: Banjul, Gambia. The Declaration is widely considered as an authoritative interpretation of Article 9 of the African Charter on Human and Peoples’ Rights, to which Somalia is a state party.

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public interest.⁶ Our proposal includes a list of grounds of denial of information which are regarded as legitimate under international law.

We suggest that the following section is included in the Law:

“Article 4 - Right of access to information

1. Everyone shall be entitled to have free access to records held by public bodies and private bodies.
2. Private bodies are obliged to provide access to requested records which they hold necessary for the exercise or protection of any right.
3. Requested information can be withheld only if the following three-part test is met:
 - a. the withholding aims to achieve a legitimate aim listed in the next paragraph;
 - b. the disclosure threatens to cause substantial harm to that aim; and
 - c. the harm to the aim must be greater than the public interest in having the information.
4. Information can be withheld on one of the following possible aims as mentioned in letter a of the previous paragraph: 1) national security, 2) public safety, 3) protection of privacy, 4) prevention and prosecution of criminal activities; 5) protection of trade secrets and competitively sensitive confidential business information of private and public enterprises.
5. The state has the obligation to publish and publicize any important information affecting the nation, or the environment, health or welfare or its citizens.
6. Every person has the right to access information relating to her/hem and demand the correction or deletion of untrue or misleading information that affects that person.”

e) Freedom of the Media

The Draft Amendment envisages amending the provisions on freedom of media (by including additional paragraphs in Article 2 and renumbering it as Article 5. The new provisions shall read as follows:

“Article 5 Freedom of the Media

- (1) Freedom and independence of electronic, print and other media of all types are guaranteed.

⁶ The Inter-American Court of Human Rights and several national courts have also ruled that information must be disclosed when to do so serves a public interest, even if an important public or private interest could thereby be harmed, so long as the public interest in disclosure outweighs the likely harm. In the case *Claude Reyes et al. v. Chile* the Inter-American Court on Human Rights affirmed the importance of the public interest and harm tests. It ruled that in all cases, a restriction of the right of access: ... must not only be related to one of the [legitimate] objectives [that justify it], but it must also be shown that disclosure could cause substantial prejudice to this objective and that the prejudice to the objective is greater than the public interest in having the information (evidence of proportionality). *Claude Reyes et al. v. Chile*, Judgment of Sept. 19, 2006, para. 77.

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- (2) State bodies shall not –
 - a) exercise control over, or interfere with, the production of any publication or broadcasting programme, or in the dissemination of information by any medium; or
 - b) harass or penalize any person for any opinion expressed in broadcasting programme or print publication;
- (3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures:
 - a) are designed to ensure the necessary regulation of the airwaves and other forms of signal distribution; and
 - b) are independent of control by Government, political groups or private companies.
- (4) All public media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.”

ARTICLE 19 welcomes the inclusion on specific provisions on freedom of media. For the sake of clarity, we recommend that ‘the state’ be replaced with term ‘state bodies’. For the same reason we propose that ‘political interest’ be replaced with ‘political groups’ and ‘commercial interests’ with ‘private companies’.

f) Right to Correction and the Right to Reply

The proposal 5(iii) of the Draft Amendment recognises the right to demand correction or deletion of untrue or misleading information.

As the deletion of untrue information is impossible once a newspaper is published or a TV or radio programme is broadcasted, we suggest to revise the wording of the proposal to improve the clarity of the provision. The provisions of new Article 6 should then be as follows:

“Article 6 Right to correction

Everyone shall have a right to demand that the mass media outlet publish or broadcast a correction where that media outlet has previously published or broadcast incorrect information, provided that he/she can prove that the information is incorrect.”

Moreover, we propose a right to reply to be included in the new Media Law (in Article 7) in line with the ongoing efforts for recognition of this right at the regional level.⁷ This right has been recognised by domestic laws and codes of professional ethics worldwide. New Article 7 will then read as follow:

⁷ See Council of Europe’s “Draft Recommendation of the Committee of Ministers to Member States on the Right of Reply in the New Media Environment” Available on the Internet at: <http://www.culture.gov.uk/images/consultations/MMSOD2004.pdf>.

“Article 7 - Right to reply

Everyone shall have a right to have a mass media outlet disseminate his or her response where the publication or broadcast by that media outlet of facts has infringed a recognised right of that person.”

2. Protection of Journalist’s Sources

Article 22(7) of the Media Law provides only very limited protection of the right of journalists to protect their confidential sources. This is a serious shortcoming as the right has been recognized internationally in a number of international and regional standards as well as in legislation of over 100 countries. For example, the European Court of Human Rights stated in the case of *Goodwin v. UK* stated⁸:

Protection of journalistic sources is one of the basic conditions for press freedom . . . Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press to provide accurate and reliable information may be adversely affected.

The Declaration of Principles on Freedom of Expression in Africa also contains strong protections on protection of sources. It states:

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and disclosure has been ordered by a court, after a full hearing.⁹

We recommend the following language to incorporate the protection of sources into Article 8 of the Media Law.

“Article 8 - Protection of journalistic sources

1. The source of information shall be protected by the absolute privilege and no one shall be entitled to demand the disclosure of this source or any materials or information received from the source.
2. The following measures shall not be applied to uncover a source of information:
 - a. interception orders or actions concerning communication or correspondence of journalists or their employers;
 - b. surveillance orders or actions concerning journalists, their contacts or their employers; or
 - c. search or seizure orders or actions concerning the private or business premises, belongings or correspondence of journalists or their employers or personal data related to their professional work.”

⁸ *Goodwin v. the United Kingdom*, 27 March 1996, Application No. 17488/90 (European Court of Human Rights)

⁹ *Declaration of Principles on Freedom of Expression in Africa*, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia, Principle XV.

3. Protection of Media Workers Against Violence

Physical threats and attacks against media workers aimed at silencing them are arguably the most egregious interference with the right to freedom of expression possible. This is of particular concern to Somalia that has been referred as one of the most dangerous places on earth to be a journalist. Since the collapse of Siad Barre's government in 1991, journalists have operated in an environment where rival clans target journalists for kidnapping and murder. There are also numerous reports on the Transitional Federal Government repeatedly harassing and attacking journalists until early 2009.

The importance of the protection of media workers has been recognized by international and regional bodies at a number of occasions. The African Commission's Declaration of Principles on Freedom of Expression states:

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.
2. States are under an obligation to take effective measures to prevent such attacks [...]10

Similarly, the special mandates on freedom of expression of the United Nations, the Organisation of Security and Cooperation and the Organisation of the American States have called on States to:

take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression¹¹

However, the Media Law and the proposed amendment are silent on this issue. Therefore, ARTICLE 19 recommends that Article 9 of the Media Law is replaced with the following provisions:

“Article 9 - Protection from violence against media workers

For the purpose of the protection of the right to freedom of expression, the state authorities should prevent attacks on journalists and others exercising their right to freedom of expression, investigate the circumstances of attacks and prosecute those responsible.”

4. Access to Information

The Draft Amendment recommends the inclusion of a special section into the Media Law on access to information. Above, we suggested language to further strengthen that right. In this section, we propose provisions that set out a basis of access to information regime. The provisions are numbered in accordance with our view that the section dealing with access to

¹⁰ Declaration of Principles on Freedom of Expression in Africa, *ibid.* Principle XI.

¹¹ Joint Declaration of 29-30 November 2000.

information should be included in the Media Law in the Chapter following the General Provisions.

We propose that the new Chapter include provisions which are based on international law and best practice in the field of the right to information, as summarised in two ARTICLE 19 publications: *The Public's Right to Know: Principles on Freedom of Information Legislation* (ARTICLE 19 Principles)¹² and *A Model Freedom of Information Law* (ARTICLE 19 Model Law).¹³ Below we define these provisions and provide explanations for each of them.

Procedures to obtain information

First of all, we note that no provisions of the Media Law specify the procedure for requesting and obtaining information. There are no safeguards against refusals to grant information either. Therefore, we propose a number of provisions to remedy the deficiency.

Our first proposal in Article 10 aims at facilitating the access to information by ensuring that everybody can request information regardless of his/her ability to write. In line with the best international practices, it is recommended that no reasons for a request be demanded.¹⁴ In order to guarantee the observance of the timelines specified in the Media Law, the information providers are required to confirm the receipt of the information request.

Further, our proposal aims to ensure that requests for information are processed rapidly and we suggest specific time limits for responding to information.

We propose the following new text of Article 10.

“Article 10 - Procedures to obtain information

1. Requests for information shall be oral or written.
2. A public or private body may prescribe forms for requests for information, provided that such forms do not unreasonably delay requests or place an undue burden upon those making the requests.
3. No one shall be required to provide grounds for his/her request for information.
4. A public or private body which receives a request for information shall provide the requester with a receipt documenting the request if they cannot provide the information immediately.
5. A public or private body must respond to a request for information as soon as possible and in any event within twenty calendar days of receipt of the request.
6. Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, a response must be provided within 48 hours.

¹² (London: June 1999). Available at <http://www.article19.org/pdfs/standards/foi-the-right-to-know-russian.pdf>.

¹³ (London: July 2001). Available at <http://www.article19.org/pdfs/standards/foi-model-law-russian-.pdf>.

¹⁴ In various parts of the world states do not demand that reasons for the request of information are presented. Examples for such states are Australia, Canada, Hungary, Ireland, South Africa, and the United States.

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7. The time-limit for responding to a request can be extended only if strictly necessary and in any case not more than ten days.
8. Failure to comply with the time limits shall be deemed to be a refusal of the request.

Fees

Further, ARTICLE 19 suggests that the Media Law should ensure that individuals are not deterred from making requests for information by excessive costs. Fees are controversial issue in freedom of information laws. Only fees for reproduction of documents can be regarded as reasonable.

Hence, we propose the following new text of Article 11 of the media Law.

“Article 11 - Fees

Access to information shall be free. Only costs of reproducing information can be charged. Costs shall be waived for those who are impoverished.”

Measures promoting openness

In ARTICLE 19’s experience, the appointment of Information Officers to the handle with information at each public body is one of the key conditions to ensure effective exercise of the right of access to information. Therefore, we propose the new provisions of Article 12 of the Media Law

“Article 12 Information Officer

1. Every public body shall appoint an Information Officer and ensure that members of the public have easy access to relevant information concerning the Information Officer, including his or her name, function and contact details.
2. The Information Officer, in addition to any obligations specifically provided for in other sections of the Media Law, shall have the following responsibilities:
 - (a) to promote within the public body the best possible practices in relation to record maintenance, archiving and disposal; and
 - (b) to serve as a central contact within the public body for receiving requests for information, for assisting individuals seeking to obtain information and for receiving individual complaints regarding the performance of the public body relating to information disclosure.”

Duty to publish

One of the basic principles of access to information is the obligation of public bodies to publish key information. It implies not only that public bodies should respond to requests for information, but also that they should publish and disseminate widely documents of significant public interest. Although the scope of the obligation to publish proactively depends to some extent on resource limitations the amount covered should increase over time,

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particularly as new technologies make it easier to publish and disseminate information. Hence, we propose this new version of Article 13, dealing with the Duty to publish.

“Article 13 Duty to Publish

Every public body shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information including but not limited to:

- a) a description of its structure, functions, duties and finances;
- b) relevant details concerning any services it provides directly to members of the public;
- c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body’s response;
- d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
- e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- f) any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions.”

Oversight

An independent oversight body should be established to oversee and promote the right of access to information as well as hearing appeals against violations of the right. The body can also be appointed from some other existing body, such as the Parliamentary Ombudsman, so long as it is independent and is given sufficient powers and resources.

The body should have powers to investigate and order releases. In view of this, we propose safeguards to ensure the independence in connection with his/her appointment, performance of its functions and financial autonomy.

The new text of Articles 14 – 17 of the Media Law on the oversight body should read as follows

“Article 14 Appointment of the Head of the Information Oversight Body

- (1) A head of the body shall be appointed by the President of Somalia after nomination by a two-thirds majority vote of Parliament.
- (2) No one may be appointed head if he or she holds an official office in, or is an employee of a political party, or holds an elected or appointed position in central or local government.
- (4) The head shall hold office a term of seven years, and may be re-appointed to serve a maximum of two terms, but may be removed by the President of Somalia upon a recommendation passed by a two-thirds majority vote of Parliament.

“Article 15 Independence of the Information Oversight Body

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The Body shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies, except as specifically provided for by law.

Article 16 Salary

The head of the Body shall be paid a salary equal to the salary of a judge of the Supreme Court.

Article 17 General Activities

In addition to any other powers and responsibilities provided for in this Act, the Body may:

- (a) monitor and report on the compliance by public bodies with their obligations under this Act;
- (b) make recommendations for reform both of a general nature and directed at specific public bodies;
- (c) co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Act;
- (d) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act; and
- (f) hear appeals against failures to respect the right to information.”

Review Procedures and Enforcement Mechanism

It is essential that the Media Law provides for various opportunities to appeal the denial of access to information. Our proposal provides for an internal appeal to higher authority within the same public body, before the independent oversight body and before courts. The different opportunities for appeal will ensure that the review process is rapid, cost-effective and the possibility of a full, well-reasoned approach to disclosure issues.

We propose the new Article 18 of the Law to read as follows

“Article 18 Review Procedures

- (1) A person who has made a request for information may apply to a higher authority within the same public body the Information Oversight Body for decision that a public or private body has failed to comply with an obligation in relation to access to information.
- (2) The higher authority within the same public body or the Information Oversight Body shall decide on the application as soon as reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public or private body an opportunity to provide their views in writing.
- (3) The complainant may within 45 days appeal to the court for a full review of a decision of the independent oversight body pursuant to the previous paragraph.”

Liability for Violations of the Access to Information Regime

The liability for violations of the access to information regime is one of the key guarantees that the latter will properly function. ARTICLE 19 recommends that in the determination of

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the range of the fines account of the living standard in Somalia is taken as well as the sanctions for the other violations of the provisions in the Media Law.

The new Articles 19 and 20 should be then replaced by the following provisions:

“Article 19- Administrative violations and sanctions

(1) If not subject to a harsher penalty, a civil servant who failed to respond within the specified time limits to a request for access to public information without exculpatory reason, shall be fined between(to be determined)

(2) If not subject to a harsher penalty, a civil servant who did not follow a court order to grant access to public information shall be fined between (to be determined)

Article 20 - Bodies entitled to impose sanctions

The violations under this act shall be found by the independent oversight body or the courts.”

5. The National Media Council

In respect to the provisions on National Media Council, ARTICLE 19 suggests that Proposal 9 of the Draft Amendment should be divided into several parts, whereas each part should be an individual paragraph of the new Article 21. The splitting of Proposal 9 of the Draft Amendment is recommended in view of the length of this provision which covers various subjects. The drafters should number the proposed articles below in accordance with the Draft Amendment of the Media Law.

Further, a new paragraph relating to the funding of the National Media Council should be included in the provisions concerning the National Media Council.

In terms of financing, we point out that the best way to finance a press council is through a system that secures its independence. Ideally, there should be a diversity of sources of funding, with the largest contribution being made by the media industry, as in the Netherlands or Sweden, or shared equally by owners and journalists, as in Norway. However, in some countries, such as Switzerland, funding is provided only by journalists.

In countries in transition or in the early stages of developing self regulation, a major role should be played by international donors. A transparent register should be kept of additional donations and all media outlets involved in the self-regulatory body should have secure access to it. Annual reports of the Media Council should contain a financial statement showing the financial contributions of each media outlet.¹⁵

In view of the foregoing, ARTICLE 19 recommends that the Media Law contain a provision setting out that National Media Council shall adequately funded from the media industry, journalists and international donors.

¹⁵ See OSCE The Media Self-Regulation Guidebook, 2008, available on the Internet at: http://www.osce.org/publications/rfm/2008/04/30697_1117_en.pdf

6. The Communications Commission of Somalia

Proposal 10 of the Draft Amendment amends Article 6 of the Media Law on the Communications Commission of Somalia.

ARTICLE 19 supports the amendments in Proposal 10 and suggest additionally dividing it into two articles (Articles 22 and 23). The first and second paragraphs will be included in the new Article 22, while the third paragraph shall make Article 23. This splitting of the Proposal 10 is proposed in view of the length of this provision which covers various subjects.

Further, we propose that the Media Law includes guarantees for the independence of the Communications Commission.¹⁶ However without proper funding, the Communications Commission will not be able to carry out its functions. It is also recommended that the mechanism for determination of the salaries of its members be specified in the law. For example, the Radio and Television Law of Bulgaria specifies that the members of the electronic commission receive a monthly remuneration in the amount of 3 average monthly salaries of persons employed in the national economy according to data by the National Statistical Institute.

Article 22 Communication Commission

1. There is hereby established a commission to be known as Communication Commission of Somalia.
2. The object and purpose for which the Commission is established shall be to license and regulate broadcast media and services and information and communication services in accordance with the provisions of this Act.”

Article 23 Membership of Communication Commission

1. The Communications Commission shall be independent and protected against any interference of political or commercial nature.
2. The Communications Commission shall be composed of 9 members, 5 of whom will be elected by Parliament with a two-thirds majority vote after a process in accordance with the following principles:
 - (a) participation by the public in the nomination process;
 - (b) transparency and openness; and
 - (c) the publication of the shortlist of candidates.
3. The other 4 candidates will be elected by the President of Somalia.
4. No one may be elected or appointed member of the Communications Commission if he or she:
 - (a) holds an official office in, or is an employee or a political party, or holds an elected or appointed position in central or local government.

¹⁶ The proposal follows the recommendations on this subject made by Council of Europe. See recommendation (2000) 23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, 20 December 2000.

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- (b) holds a position or has a significant financial stake in broadcasting or the telecommunications sector.
- 5. The members of the Communications Commission shall hold office for a term of five years, and may be re-appointed to serve a maximum of two terms.
- 6. The members of the Communications Commission shall not be subject to dismissal unless he or she:
 - (a) no longer meets the rules of incompatibility, as set out above;
 - (b) commits a serious violation of his or her responsibilities, as set out in law, including through a failure to discharge those responsibilities; or
 - (c) is clearly unable to perform his or her duties effectively.
- 7. The Communications Commission shall be adequately funded from the state budget, taking into account its mandate.”

7. Registration of print media

The penalty for failure to register a print media in Proposal 13 of the Draft Amendment should be diminished to USD 100 taking into account the low living standard in Somalia and the minor character of the violation.

8. Broadcasting media

Proposal 14 of the Draft Amendment concerning classification requirement and licensing of broadcasting media shall be divided into several articles in accordance with the different issues it regulates. It is proposed that the letter d) of Paragraph 3 of Proposal 14, stating that a person is not eligible to receive a license if he/she “does not fulfil such other conditions as may be prescribed”, be deleted. This proposal is motivated by the concern that the law is not specific and provides no protection against abuses.

Classification Requirement and Licensing of Broadcasting Services

Proposal 14 of the Draft Amendment does not explicitly require that public broadcasting obtain licences and envisages different licence conditions for private and community broadcasting. We consider that there is no justification for setting out special conditions for the licensing of different types of broadcasters. It is for this reason that we deleted the provisions which set up this differentiation. Further, in contrast to Proposal 14, which leaves the list of conditions open for expansion by the Communications Commission, we removed this opportunity, noting that the Draft Amendment does not provide a mechanism for determination of the licence fees we remedy this deficiency by including a special provision on licence fees.

Therefore, ARTICLE 19 suggest including a new provision stating:

“Classification Requirement and Licensing of Broadcasting Services

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1. Broadcasting Services shall be classified for specified areas according to the following service categories :
 - a) Public broadcasting;
 - b) Private broadcasting;
 - c) Community broadcasting.
2. All broadcasters shall be required to obtain a licence to operate.
3. A person shall not be eligible for the grant of a broadcasting license if such person :
 - a. is a political party;
 - b. is adjudged bankrupt or has entered into a composition or scheme of arrangement with his creditors;
 - c. is of unsound mind.
4. The Commission may, upon application in the prescribed manner and subject to such conditions as the Commission may deem necessary, grant a license. Such conditions may relate to:
 - a. the areas and geographical limits of broadcasting;
 - b. a minimum amount of time as may be prescribed, in its programme schedule to locally produced programmes, or, in the alternative, pay such amount of money as may be prescribed, into a fund to assist the development of the Somalia production industry.
5. In considering applications for the grant of a broadcasting license, the Commission shall have regard to :
 - a. observance at all times of public interest obligations in all broadcasting categories;
 - b. diversity and plurality of views for a competitive marketplace of ideas;
 - c. availability of radio frequency spectrum including the availability of such spectrum for future use;
 - d. efficiency and economy in the provision of broadcasting services;
 - e. demand for the proposed broadcasting service within the proposed broadcast area;
 - f. expected technical quality of the proposed service, having regard to developments in broadcasting technology;
 - g. suitability, capability, experience and expertise of the applicant in as far as carrying out such broadcast service is concerned; and
 - h. financial means and business record, if any, of the applicant.
6. Licensee may be charged a licence fee but this should not be excessive taking into account the development of the sector, the competition for licences and general considerations of commercial viability. Fees for different types of licenses should be set out in advance, according to a schedule.”

Duration of licences

Noting that Proposal 14 of the Draft Amendment does not specify the duration of the licences, we remedied this deficiency by ensuring that there are guarantees for fairness of the proceedings of renewal and that broadcasters have realistic opportunities to make investments in their companies without fear that their licence will not be renewed

ARTICLE 19 suggest including a new provision stating:

“Article Duration of licences

1. The duration of licences shall be 5 years.
2. The licences are renewable. Licensees benefit from a presumption of licence renewal, although this may be overcome for public interest reasons or where the licensee has substantially failed to comply with the licence terms and conditions.
3. Any refusal to renew a licence should be accompanied by written reasons.”

Fairness and transparency of the broadcasting licence procedure

We note that neither the Media Law nor the Draft Amendment includes a provision ensuring the fairness and transparency of the licensing provisions. As refusal to grant licence constitutes an interference with the right to freedom to impart information and ideas, the domestic law should afford a measure of legal protection against arbitrary interferences with the right to freedom of expression. In particular, the Media Law should ensure that the manner in which the Communications Commission exercises its powers to grant licences is not arbitrary. Our proposal seeks to provide for such guarantees and is similar to Council of Europe Recommendation no. R (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector. The latter requires that the regulations governing the broadcasting licensing procedure be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity. All decisions taken and regulations adopted by the regulatory authorities should be:

- duly reasoned, in accordance with national law
- open to review by the competent jurisdictions according to national law; and
- made available to the public

Therefore, a new provision should be included in the Media law stating:

1. “The Communication Commission shall examine the applications for licences at public hearings with the participation of the candidates.
2. Candidates for broadcasting licences shall have a right to appeal the decisions of the Communication Commission concerning broadcasting licences before the court.
3. Decisions of the Communications Commissions concerning broadcasting licences shall be duly reasoned and made available to the public.”

The powers of the Minister of Information to make regulations

Part 12 of Proposal 14 of the Draft Amendment grants powers to the Minister of Information to make regulations with respect to all broadcasting services including “prescribing anything that may be prescribed under this Law in relation to broadcasting.” We consider that an overbroad power to prescribe is granted to the Minister of Information. We recommend that the power to prescribe rules is granted to the Commission instead.

The delegation of powers is a standard legal practice around the world. However, the legal discretion granted to the executive should be expressed in terms of an unfettered power. This is not the case here. In view of the fact that the Media Law creates the Communications Commission as an independent regulatory body in the field of regulation, it is more appropriate to delegate the powers to prescribe rules to the Communications Commission. The independence of the latter ensures that the regulations it makes will not seek to impose political or governmental interest

The accreditation scheme for journalists

Proposal 20 of the Draft Amendment states that the Media Council shall consider and approve applications by foreign journalists for accreditation to practice in Somalia and that the accreditation is subject to payment of a fee and is valid for one year. We consider that this provision should be revised to include more specific and fair criteria for accreditation.

The provisions on accreditation should specify in which cases they apply. For example, it is not necessary for foreign journalists who are temporary in Somalia to seek accreditation. The Media Law should ensure that accreditation is used to facilitate access of journalists to office and would not be used to deprive them from the possibility to work. In this regard, the accreditation system should contain safeguards against arbitrariness. It is for this purpose that we recommend that the accreditation provisions specify the procedure for accreditation, including the timelines and a right to appeal to court refusal for accreditation. As the UN Human Rights Committee said in *Gauthier v Canada*

Since the accreditation scheme operates as a restriction of Article 19 rights, its operation must be shown as necessary and proportionate to the goal in question and not arbitrary. The Committee does not accept that this is a matter exclusively for the State to determine. The relevant criteria for the accreditation system should be specific, fair and reasonable, and their application should be transparent.¹⁷

The requirement for registration of journalists

Proposal 20 of the Draft Amendment envisages that journalists are registered with the National Media Council. The same proposal establishes who can be a journalist. We do not support this proposal and advise that the requirement for registration of journalists and the entry requirements for practising the profession of journalist be removed.

In comparison with other professions, the regulation of practicing of journalism is problematic under international law. Unlike the practice of law and medicine, for example, journalists are exercising their human right to freedom of expression. As this right belongs to every person the imposition of a screening scheme affects the freedom of many people who wish to impart ideas and information by the means of mass media.¹⁸

We are also concerned that the registration requirements are not specified in the Proposal 20 of the Draft Amendment and thus there are no guarantees that the screening scheme will not be hostile to freedom of expression by restricting access to the journalism profession of independent-minded persons.

¹⁷ *Gauthier v. Canada* Decision of 7 April 1999, Communication No. 633/1995, para. 13.6 (UN Human Rights Committee)

¹⁸ See e.g., Inter-American Court of Human Rights, 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.

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The mandatory provisions of copies

According to Article 9 of the Media Law, print media owners are obliged to deposit copies of each issue to the National Media Council, the Ministry of Information, the regional court and the office of the Attorney General. We propose that free copies be sent only to the National Library.

We regard the obligation concerning the provisions of free copies as an excessive restriction of the property rights of media owners. If courts and the Ministry of Information wish to receive newspapers they should subscribe to them like any other person and state institution. We are concerned that the current regime of mandatory provision of copies is control-oriented, and hinders freedom of expression. We propose that free copies be sent only to the National Library in view of its responsibility to protect the national cultural heritage. This is the standard practice around the world

APPENDIX:

PROPOSED AMENDMENTS TO THE SOMALIA MEDIA LAW APPROVED BY THE TRANSITIONAL FEDERAL PARLIAMENT ON 8 DECEMBER 2007

In view of the foregoing review of the Media Law (ML) under Part I of this paper and in consideration of the memoranda and submissions on the same by NUSOJ and Article IX, we are of the considered view that the ML should be amended. These proposed changes should be guided by the following factors among other internationally accepted best practices/standards.

1. Censorship, direct or indirect, is unacceptable; thus laws and practices restricting the right of the news media freely to gather and distribute information must be abolished, and the government authorities, national or local, must not interfere with the content of print or broadcast news, or restrict access to any news source.
2. Independent news media, both print and broadcast, must be allowed to emerge and operate freely in all countries.
3. There must be no discrimination by governments in their treatment, economic or otherwise, of the news media within a country. In those countries where government media also exist, the independent media must have the same access as for the official media have to all material and facilities necessary to their publishing or broadcasting operations.
4. States must not restrict access to newsprint, printing facilities and distribution systems, operations of news agencies, and availability of broadcast frequencies and facilities.
5. Legal, technical and tariff practices by communications authorities which inhibit the distribution of news and restrict the flow of information are condemned.
6. Government media must enjoy editorial independence and be open to a diversity of viewpoints. This should be affirmed in both law and practice.
7. There should be unrestricted access by the print and broadcast media within a country to outside news and information services, and the public should enjoy similar freedom to receive foreign publications and foreign broadcasts without interference.
8. National frontiers must be open to foreign journalist. Quotas must not apply, and application for visas, press credentials and other documentation requisite for their work should be approved promptly. Foreign journalist should be allowed to travel freely within a country and have access to both official and unofficial news sources, and be allowed to import and export freely all necessary professional materials and equipment.

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9. Restrictions on the free entry to the field of journalism or over its practice, through licensing or other certification procedures, must be eliminated.
10. Journalists, like all citizens, must be secure in their persons and be given full protection of law. Journalists working in war zones are recognized as civilians enjoying all rights and immunities accorded to other civilians.

From the outset it is worth pointing out that the very title and scope of the statute under review suggests that the intention of the Transitional Federal Government (TFG) was to enact a consolidated law on the media as opposed to having various statutes dealing with distinct aspects of the media such as registration of newspapers, licensing of broadcasters, discipline and self regulation of the media, complaints commission et cetera.

For purposes of this review, we are of the considered opinion that having so brief a consolidated statute like the Somalia Media Law explains in part its various shortcomings because it tends to gloss-over serious matters that specialized statutes would have paid greater attention. In this regard the broadcast sector should have its own statute to provide for licensing, regulation and development of the broader information and communications sector. Likewise the State media should be governed by a separate statute in order to avoid the temptation in the current bill to empower the MOI with functions that make state-control of the entire media section a distinct reality. A separate freedom of information law is advisable as well as a statute to establish and provide for operation of a media council.

However, given the T.O.R. of this consultancy we are inclined to assume that the media laws for Somalia will be contained in the same consolidated statute titled “Media Law”. To be sure, having a consolidated statute is not necessarily a bad thing so long as the drafts then are careful enough to understand the conceptual basis of the various aspects of the law and implications on the media practitioners and the general public whilst bearing in mind the internationally accepted best practices and international treaties to which Somalia is a state party including adherence to commitments under the UDHR and the ICCPR.

In view of the foregoing we therefore propose the following amendments to the ML to provide clarity and also ensure conformity with internationally accepted best practices and standards to the extent possible in a consolidated media law.

7. The principal Act be amended by making provision for the purpose of the Act by inserting the words:-

An Act of the Transitional Federal Parliament to provide for the legal framework for establishment, operations, privileges, rights and obligations of the media in Somalia in particular to provide for a National Media Council, for the conduct and discipline of journalists and the media, for the self regulation of the media; to facilitate the development of the information and communication section (including broadcasting, multimedia, and telecommunications); for the role of the State in the mass media sector and in public media and for connection purposes.

8. The principal Act is amended by inserting a new Article 1 to provide for the short title of the Act as follows:

This Act may be cited as the Media Law 2009

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9. The principal Act should be amended by inserting a new Article 2 to make provision for the definition and/or interpretation of the various words, phrases and terms used in the Act.
10. The principal Act should be amended to renumber the existing Articles in accordance with the foregoing proposed and subsequent proposed amendments to the Media Law approved by the Transitional Federal Parliament on 8th December, 2007.
11. The existing Article 1 should be amended as follows:-
 - i. By removing the first paragraph ending up with the words “available to the public” and inserting them in the interpretation Article of the Act.
 - ii. By deleting the words “with objectives of the media” in the second sentence of the existing Article 1 and deleting paragraphs (a) to (c).
 - iii. By inserting the following new Article in place of the existing Article 1 to provide for freedom of expression and access to information.

Article 1 – Freedom of Expression and Access to Information

- (2) Every person has the right to freedom of expression, as guaranteed in article 19 of UDHR and ICCPR, as well as other international and regional instruments, which includes –
 - a. freedom to receive or impart information or ideas;
 - b. freedom of the press and other media;
 - c. freedom of artistic creativity, including dress; and
 - d. academic freedom and freedom of scientific research.
 - (3) The right referred to in clause (1) does not extend to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
 - (4) Every citizen has the right of access to –
 - a. information held by the State; and
 - (5) Every person has the right to demand the correction or deletion untrue or misleading information that affects that person.
 - (6) The State shall publish and publicize any important information affecting the nation.
12. The existing Article 2 of the principal Act is amended by inserting the following new sections and to number them as 4-7.
 - (1) Freedom and independence of electronic, print and other media of all types are guaranteed.
 - (2) The State shall not –

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- a) exercise control over, or interfere with, any person concerned in broadcasting, production or circulation of any publication, or in the dissemination of information by any medium; or
 - b) harass or penalize any person for any opinion or view, or the content of any broadcast, publication or dissemination;
- (7) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures the –
- a) are designed to ensure the necessary regulation of the airwaves and other forms of signal distribution; and
 - b) are independent of control by Government, political interests or commercial interests.
- (8) All State media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.
13. The existing Article 4 of the existing law should be amended by deleting the entire Sections 2 and 3 and replace them with the following new Sections:
- 2. All private media organizations operating currently shall be deemed to be duly registered or licensed under the provisions of this law but shall avail all information concerning their respective media to the National Media Council or Broadcasting Commission of Somalia as may be prescribed by this law;
 - 3. Upon commencement of this law all the media in operation shall adhere to its provisions regarding registration or licensing by filling the requisite forms and tendering applicable fees within 6 months;
- Provided that in the event of such non-compliance the National Media Council or Broadcasting Commission of Somalia shall give such media organization notice to show cause why its registration or license should not be cancelled, revoked or otherwise withdrawn.
14. The principal Act should be amended by deleting sections 2-5 of Article 5 and inserting a new Section 2 to provide as follows:
- 2. All foreign media institutions and journalists shall be subject to this law and shall enjoy the status of Somalia Journalists as regards the exercise of rights, privileges and obligations under the Media Law and any other relevant law in Somalia.
15. The principal Act should be amended in Article 6 by deleting it in entirety and replacing it with the following new Articles renumbered accordingly:

Article 6 – The National Media Council

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1. There is hereby established an autonomous Council to be known as the National Media Council which shall operate without any political or other bias or interference and shall be wholly independent and separate from the government, any political party, or any nominating authority.
2. The Council is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of -
 - a. Suing and being sued;
 - b. Purchasing or otherwise acquiring, holding, charging and disposing of moveable and immovable property;
 - c. Entering into contracts;
 - d. Doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.
3. The Council shall comprise of 15 members appointed as follows:
 - a. Ten (10) members elected from the private media by journalists and media organizations representatives in accordance with rules prescribed by the Council.
 - b. Five (5) members elected from the public media by journalists and media organizations representatives in accordance with the rules prescribed by the Council.
 - c. A person shall not qualify to be elected to the Council if such person is not a citizen of Somalia and ordinarily resident in Somalia or an undischarged bankrupt.
4. The functions of the Council are to:-
 - a. Mediate or arbitrate in disputes between the government and the media, between the public and the media and intra-media;
 - b. Promote and protect freedom and independence of the media;
 - c. Promote high professional standards amongst journalists;
 - d. Enhance professional collaboration among media practitioners;
 - e. Ensure the protection of the rights and privileges of journalists in the performance of their duties;
 - f. Advise the government or the relevant regulatory authority on matters pertaining to professional, education and the training of journalists and other media practitioners;

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- g. Make recommendations on the employment criteria for journalists;
 - h. Uphold and maintain the ethics and discipline of journalists as set out in this Act and any other relevant law;
 - i. Do all matters that appertain to the effective implementation of its functions under this Act;
 - j. Compile and maintain a register of journalists, media enterprises and such other related registers as it may deem fit;
 - k. Conduct an annual review of the performance and the general public opinion of the media, and publish the results thereof in at least to local newspapers.
 - l. To made recommendations of necessary changes to this law for consideration by Parliament;
 - m. To make rules for the conduct of its business and affairs including registration of newspapers and journalists and accreditation of foreign journalists.
 - n. To consider drafting a Code of Conduct for the practice of journalism, while observing the principle that effective self-regulation is the best system for promoting high standards in the media.
5. (1) There shall be a Secretary who shall be appointed by the Council.
- (2) The Secretary shall hold office for such period and on such terms and conditions of employment as the Council may determine.
- (3) The secretary shall be an ex-officio member of the Council but shall have no right to vote at any meeting of the Council.
- (4) The Secretary shall be the chief executive officer of the Council and shall, subject to the direction of the Council, be responsible for the day to day management of the Council.
- (5) The Secretary shall, in consultation with the Council, be responsible for the direction of the affairs and transactions of the Council, the exercise, discharge and performance of its objectives, functions and duties.
6. The functions of the Secretary shall be to–
- a) ensure the maintenance of efficiency and discipline by all staff of the Council;

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- b) manage the budget of the Council to ensure that its funds are properly expended and accounted for;
 - c) keep registers of journalists, media enterprises and such other registers as the Council may, from time to time, require; and
 - d) perform such other duties as the Council may, from time to time, assign
7. Subject to the provisions of this Act, the Council may, by notice in the Gazette, make rules –
- a) governing its own procedure;
 - b) to formulate a code of conduct for the practice of journalism and effect any amendments whenever necessary

16. The principal Act is amended by inserting a new Article 6A to provide as follows:-

Article 6A – Communications Commission of Somalia

1. There is hereby established a commission to be known as Communication Commission of Somalia.
2. The object and purpose for which the Commission is established shall be to license and regulate broadcast media and services and information and communication services in accordance with the provisions of this Act.
3. The functions of the Commission in relation to broadcasting services shall be to:-
 - b. Promote the observance at all times, of public interest obligations in all broadcasting categories;
 - c. Promote diversity and plurality of views for a competitive marketplace of ideas;
 - d. Ensure the provision by broadcasters of appropriate internal mechanisms for disposing of complaints in relation to broadcasting services;
 - e. Protect the right to privacy of all persons; and
 - f. Carry out such other functions as are necessary or expedient for the discharge of all or any of the functions conferred upon it under this Act;
 - g. To make rules for the conduct of its business and affairs under this Act;

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- h. Do all matters that appertain to the effective implementation of its functions under this Act.

17. The principal Act is amended in Article 6 by inserting a new Article 6B to provide as follows:-

Article 6B – Public Broadcasting Services

1. The Minister for Information shall establish a corporation to be known as Somalia Broadcasting Corporation to operate as the public broadcaster and shall provide public broadcasting services.
2. The powers and functions of the Corporation shall be as follows:-
 - a) provide independent and impartial broadcasting services of information, education and entertainment, in Somali and in such other languages as the Corporation may decide;
 - b) provide, if the Minister so requires, an external broadcasting service for reception in countries outside Somalia and may for that purpose, subject to the acquisition of any requisite license, concessions, rights or privileges, construct or acquire and establish, install, equip and use radio-communication stations in countries or places outside Somalia or in space;
 - c) control and operate such plant, property, installations and services as are, or may be, acquired by the Corporation under this Act;
 - d) advise the Government on all matters relating to the broadcasting services and to matters appertaining to the Corporation generally;
 - e) appoint and enter into agreements with such contractors and artistes as may be necessary for the purposes of this Act;
 - f) conduct the broadcasting services with impartial attention to the interests and susceptibilities of the different communities in Somalia;
 - g) ensure the observation of standards of broadcasting and commercial advertising;
 - h) provide facilities for commercial advertising and for the production of commercial programmes at such fee or levy as the Corporation may determine;
 - i) include in its sound and television programmes a daily service of news, which shall be broadcast in Somali and such other languages as the Corporation may decide at such times as the Corporation may determine;

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- j) Keep a fair balance in all respects in the allocation of broadcasting hours as between different political viewpoints.

18. The principal Act is amended in Article 7 as follows:-

- i. The title to Article 7 is amended by adding the words, “General Provisions on” before the word Registration and the words “of the Media” after the word Responsibility in order to provide as follows:

General Provisions on Registration, Services, Administration and Responsibility of the Media.

- ii. Deleting the words “Ministry of Information” in Section 1 and substituting therefor with the words “National Media Council in case of Print Media and obtain a license from the Broadcasting Commission of Somalia in case of electronic media”.

- iii. Deleting Section 2 and replacing it with the following new section:

2) (a) Privately owned local and foreign media organizations involved in print media services will pay registration fees prescribed by the National Media Council in consultation with the Revenue Authority.

(b) Privately owned local and foreign media organizations involved in electronic media services with pay such licensing fees and license renewal fees as may be prescribed by the Broadcasting Commission of Somalia in consultation with the Revenue Authority.

- iv. Deleting Sections 5 and 6 together with the proviso between the existing Sections 4 and 5.

19. The principal Act is amended in Article 7 by inserting a new Article 7A to provide as follows:

Article 7A – Deposit and Registration of Newspapers

- 1. The Council may, upon application in the prescribed manner and subject to such conditions as the Council may deem necessary, including execution of a bond in the prescribed form, register a newspaper.
- 2. The registration of a newspaper shall entitle the Application under this Article to commence publication of the same.
- 3. (a) The publisher for the time being of every newspaper printed in Somalia shall, within fourteen days after the date on which it is first published, and in the month of January in every year thereafter, make, sign and deliver to the Secretary of the National Media Council a return in the prescribed form in respect thereof.

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- (b) If, after any such return has been so delivered and before the next succeeding return in respect of the same newspaper is so delivered, any change occurs in any of the particulars returned, other than a change in circulation, the publisher for the time being of the newspaper shall, within one month of the change occurring, make, sign and deliver to the Secretary of the National Media Council a return thereof in the prescribed form.

4. Any person who –

- a) publishes any newspaper printing in Somalia and fails to comply with any of the provisions of section 7 or section 8; or
- b) makes any return under section 3 which he knows to be false or does not believe to be true in any particular,

shall be guilty of an offence and liable to a fine not exceeding one thousand US dollars.

20. The principal Act is amended in Article 7 by inserting a new Article 7B to provide as follows:-

Article 7 – Classification Requirement and Licensing of Broadcasting Services

- 1. Broadcasting Services shall be classified for specified areas according to the following service categories –
 - a) Public broadcasting;
 - b) Private broadcasting;
 - c) Community broadcasting.
- 2. A license granted under this section may include conditions requiring the licensee to –
 - a) broadcast in such areas and within such geographical limits as the Commission may prescribe;
 - b) commit a minimum amount of time as may be prescribed, in its programme schedule to locally produced programmes, or, in the alternative, pay such amount of money as may be prescribed, into a Fund to assist the development of the Somalia production industry;
 - c) pay such fees as the Commission may proscribe; and
 - d) fulfill such other conditions as the Commission may require.
- 3. A person shall not be eligible for the grant of a broadcasting license if such person –
 - a) is a political party;

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- b) is adjudged bankrupt or has entered into a composition or scheme of arrangement with his creditors;
 - c) is of unsound mind;
 - d) does not fulfill such other conditions as may be prescribed;
4. The Commission may, upon application in the prescribed manner and subject to such conditions as the Commission may deem necessary, grant a license authorizing the provision of private broadcasting or community broadcasting.
5. In considering applications for the grant of a broadcasting license, the Commission shall have regard to –
- a) Observance at all times of public interest obligations in all broadcasting categories;
 - b) Diversity and plurality of views for a competitive marketplace of ideas;
 - c) Availability of radio frequency spectrum including the availability of such spectrum for future use;
 - d) Efficiency and economy in the provision of broadcasting services;
 - e) Demand for the proposed broadcasting service within the proposed broadcast area;
 - f) Expected technical quality of the proposed service, having regard to developments in broadcasting technology;
 - g) Suitability, capability, experience and expertise of the applicant in as far as carrying out such broadcast service is concerned;
 - h) Financial means and business record, if any, of the applicant; and
 - i) Any other relevant matter that the Commission may consider necessary.
6. Subject to this Act, the Commission may grant a license to any person to provide private broadcasting services.
7. A license granted under this Article may include conditions requiring the private broadcaster to –
- a) provide coverage in such areas as may be specified by the Commission;

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- b) in the case of television, include drama, documentaries and children's programmes that reflect Somali themes.
8. The Commission in considering applications for grant of a license under this Article shall have regard –
- a) to the community of interests of the persons applying for or on whose behalf the application is made;
 - b) as to whether the persons, or a significant proportion thereof constituting the community have consented to the application;
 - c) to the source of funding for the broadcasting service;
 - d) as to whether the broadcasting service to be established is not-for-profit; and
 - e) to the manner in which members of the community will participate in the selection and provision of programmes to be broadcast.
9. A license granted under this Article may contain conditions requiring the licensee to –
- a) ensure that a cross section of the community is represented in the management of the broadcasting service;
 - b) ensure that each member of the community has a reasonable chance to serve in the management of the broadcasting service;
 - c) ensure that members of the community have a way of making their preferences known in the selection and provision of programmes;
 - d) conform to any conditions or guidelines as the Commission may require or issue with regard to such broadcasting service.
10. All licensed broadcasters shall –
- a) provide responsible and responsive programming that caters for the varied needs and susceptibilities of different sections of the Somali Community;
 - b) promote tolerance, pluralism and respect for diversity through programmes;
 - c) gather and present news and information accurately and impartially;
 - d) when controversial and contentious issues of public interest are discussed, make reasonable efforts to present alternative points

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of view, either in the same programme or in other programmes within the period of current interest;

- e) respect the right to privacy of individuals;
- f) respect copyright and neighbouring rights in respect of any work or material;
- g) keep a program log or machine readable record of its programming for a period of one year after the date of broadcasting;
- h) ensure that advertisements, either in terms of content, tone or treatment, are not deceptive or are not repugnant to good taste;
- i) ensure that derogatory remarks based on ethnicity, race, creed, colour and sex are not broadcast.

11. The Commission may in accordance with this Act revoke a license to broadcast where the licensee –

- a) is in breach of the provisions of the Act or regulations made thereunder;
- b) is in breach of the conditions of a broadcasting license; or
- c) fails to use the assigned broadcasting frequencies within one year after assignment by the Commission.

12. The Minister may, in consultation with the Commission, make regulations generally with respect to all broadcasting services and without prejudice to the generality of the foregoing, with respect to –

- a) the facilitation, promotion and maintenance of diversity and plurality of views for a competitive marketplace of ideas;
- b) financing and broadcasting of local content;
- c) mandating the carriage of content, in keeping with public interest obligations, across licensed broadcasting services;
- d) prescribing anything that may be prescribed under this Law in relation to broadcasting.

21. The principal Act is amended by deleting Article 8.

22. The principal Act is amended by deleting Article 10.

23. The principal Act is amended in Article 11 by deleting the word “ accordingly” and substituting therefore the words “at the National Media Commission or Broadcasting Commission of Somalia as the case may be”.

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24. The principal Act is amended in Article 12 by deleting it and inserting the following new Articles:-

Article 12 – Media Ethics

1. The media shall, in a free and independent manner and style, inform the public on issues of public interest and importance in a fair, accurate and unbiased manner whilst distinctly isolating opinion from fact.
2. The media shall keep and maintain high professional and ethical standards and shall, at all times, have due regard to the Code of Conduct prescribed at any given time by the National Media Council.
3. Subject to subsection (b), the Council shall not seek to control or direct journalists in the execution of their professional duties.

Article 12A – Complaints Commission

1. There shall be established a Complaints Commission which shall consist of five persons appointed by the Council, who shall not be members of the Council, as follows –
 - a) a chairperson, who shall be a person who holds or has held a judicial office in Somali or who is an advocate of the supreme court of Somalia or any Court vested with original and civil jurisdiction of not less than ten years standing; and
 - b) four other persons possessing experience and expertise in any one of the following areas, that is, journalism, media policy and law, media regulation, business practice and finance, entertainment, education, advertising or related social issues.

Article 12B – Procedure upon Complaint

1. Any person aggrieved by –
 - a. any publication, or any conduct of a journalist, media enterprise or the Council; or
 - b. anything done against a journalist or media enterprise that limits or interferes with the Constitutional freedom of expression of such journalist or media enterprise,may make a written complaint to the Council setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

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2. Upon receipt of a complaint, the Council shall, within fourteen days from the date of receipt of the complaint, refer the complaint to the Complaints Commission for determination.
3. Upon receipt of a complaint, the Complaints Commission shall notify, in writing, the party against whom the complaint has been made, within fourteen days of receipt thereof, stating the nature of the complaint, the breach, act or omission in question and the date on which the matter shall be considered by the Complaints Commission and shall thereby require such party to respond to the complaint in writing.
4. The Complaints Commission shall, having heard the matter the subject of the complaint, make a report, issue any decision as it deems appropriate and give directions in connection with the complaint, and shall publish its findings if it considers it in the public interest to do so.
5. The Complaints Commission shall communicate its decision to the parties concerned within fourteen days from the time the decision is made.
6. Except upon the request of a party, and approval of such request by the Council, the Complaints Commission shall conduct its hearings in public.

25. The principal Act is amended by deleting Articles 13 - 19.

26. The principal Act is amended by deleting Article 21 and replacing it with the following new Article.

Article 21 – Recognition and Accreditation of Journalists

- i. The National Media Council shall maintain a register of Somali journalists.
- ii. A Somali journalist is any citizen of Somalia who holds a certificate, diploma or a degree in mass communication from a recognized media training institute or institution of higher learning and is recognized as such by the Council, or any other person who was practicing as a journalist immediately before the commencement of this Act, or who holds such other qualifications as are recognized by the Council and earns a living from the practice of journalism or any person who habitually engages in the practice of journalism and is recognized as such by the Council.
- iii. The Council shall consider and approve applications by foreign journalists for accreditation to practice in Somalia.
- iv. The accreditation shall, upon payment of the prescribed fees, be valid for one year and shall be renewable.

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- v. During accreditation, the Council shall take measures to ensure that suitably qualified citizens of Kenya receive priority, and have equal employment opportunities and are equitably represented in all media practice activities and levels in the workforce of all media houses.

27. The principal Act is amended by deleting Article 22.

28. The Principal Act is amended in Article 23 by deleting Section 4 and replacing it with the following new Section.

- 4. Journalists and owners of media organizations have the right to establish and join private and separate unions in order to defend their interests.

29. The principal Act is amended in Article 26 by deleting it and replacing it with the following new Article:-

Whenever the need arises Parliament may alter the Media Law and shall consider such alteration where the National Media Council in consultation with the Minister of Information recommends such alteration.

30. The principal Act is amended by inserting three new Articles to provide as follows:-

Article 28 – Offences by Corporations, Societies

Where any offence under this Act or under any rules made thereunder is committed by a company or other body corporate, or by a society, association or body of persons, every person charged with, or concerned or acting in, the control or management of the affairs or activities of the company, body corporate, society, association or body of persons shall be guilty of that offence and liable to be punished accordingly, unless it is proved by that person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.

Article 29 – Offences relating to the Complaints Commission

- 1. A person who –
 - i. refuses or fails to comply with the requirement of the Complaints Commission which is applicable to him, to the extent to which he is able to comply with it; or
 - ii. Obstructs or hinders the Complaints Commission in the exercise of its powers under this Act;

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- iii. Furnishes information or makes a statement to the Complaints Commission which he knows to be false or misleading in any material particular; or
 - iv. When appearing before the Complaints commission for examination, makes a statement which he knows to be false or misleading in any material particular,
- commits an offence.
- 2. A person convicted of an offence under this section shall be liable to a fine not exceeding USD 500.
 - 3. where an offence under this section is a continuing offence, the person convicted shall in addition to the penalty prescribed in subsection (2), be liable to a fine of one USD 500 for each day during which the offence continues.

Article 30 – Offences relating to broadcasting services

- 1. Any person who provides a broadcasting service without a broadcasting license commits an offence.
- 2. Any person who provides a broadcasting service pursuant to a license granted under this Act Commits an offence if –
 - a) that person provides a broadcasting service which is not of a description specified in the license;
 - b) that person provides broadcasting services in an area for which he is not licensed to broadcast; or
 - c) that person broadcasts in contravention of the Act or the license conditions.
- 3. A person convicted of an offence under this section shall, on conviction, be liable to a fine not exceeding USD 3000.

31. The principal Act is amended by inserting a new article to provide as follows:-

Article 31 – Service of Notices

Service of any notice under this Act or any rules made thereunder may be effected either personally on the person to whom it is addressed or by registered post; and, where the person to be served is a company or other body corporate, or a society, association or other body of persons, service of the notice thereon may be effected by serving it personally on any secretary, director or other officer thereof or on any person concerned or acting in the management thereof, or by leaving it or sending it by registered post addressed to the company, body corporate,

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society, association or body of persons at its registered office, or, where there is no registered office, at any place where it carries on business

32. The principal Act is amended by inserting a new article to provide as follows:-

Article 32 – Rules

1. The Minister may make rules generally for the better carrying out of the purposes of this Act, and in particular may make rules for any of the following purposes –
 - a) prescribing the forms of registers, returns, applications, notices and bonds, and other forms, to be used under this Act;
 - b) prescribing the particulars and matters to be entered in the registers;
 - c) prescribing the place and manner of keeping copies of books and newspapers delivered to the Registrar under this Act, or the manner in which and purposes for which any such copies shall, consistently with the purposes and provisions of this Act, be dealt with or disposed of;
 - d) prescribing penalties for contravention of any such rules, not exceeding in any case a fine extending to five thousand shillings or imprisonment for a term extending to six months or both such fine and imprisonment.