MEMORANDUM

on

the Broadcasting Ordinance 1976 of the Solomon Islands

by

ARTICLE 19
Global Campaign for Free Expression

London
July 2003

I. Introduction

This Memorandum provides an analysis of the Broadcasting Ordinance 1976 (the Ordinance) of the Solomon Islands, establishing the public broadcaster, the Solomon Islands Broadcasting Corporation (SIBC). There are moves to reform this legislation with a view to ensuring that SIBC becomes a true, independent public service broadcaster, in line with international standards. This analysis is designed as input to that process.

II. International and Constitutional Standards

A. International Guarantees of Freedom of Expression

The *Universal Declaration on Human Rights* (UDHR),[1] guarantees the right to freedom of expression in the following terms:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

[1] UN General Assembly Resolution 217A(III), 10 December 1948.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.

The *International Covenant on Civil and Political Rights* (ICCPR),[2] a treaty with 149 States Parties as of May 2003, imposes formal legal obligations on State Parties to respect its provisions. Although The Solomon Islands has not ratified the ICCPR, it is widely seen as an authoritative elaboration of many of the rights contained in the UDHR, and is hence persuasive evidence of their scope. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

> 1. Everyone shall have the right to freedom of opinion.
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Freedom of expression is also protected in all three regional treaties on human rights, specifically at Article 10 of the *European Convention on Human Rights* (ECHR),[3] at Article 9 of the *African Charter on Human and Peoples' Rights*,[4] and at Article 13 of the *American Convention on Human Rights*.[5] Although the decisions and statements adopted under these systems are clearly not directly binding on the Solomon Islands, at the same time they provide persuasive evidence of the scope and implications of the right to freedom of expression which is of universal application.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. For example, the European Court of Human Rights has repeatedly stated:

> Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man … it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.[6]

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasised "the pre-eminent role of the press in a State governed by the rule of law."[7] It has further stated:

---

[2] UN General Assembly Resolution 2200A(XXI), 16 December 1966, in force 23 March 1976.
[3] Adopted 4 November 1950, in force 3 September 1953.
[4] Adopted at Nairobi, Kenya, 26 June 1981, entered into force 21 October 1986.
[5] Adopted at San José, Costa Rica, 22 November 1969, entered into force 18 July 1978.
[6] *Handyside v. United Kingdom*, 7 December 1976, Application No.5493/72, 1 EHRR 737, para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.
[7] *Thorgeirson v. Iceland*, 25 June 1992, Application No.13778/88, 14 EHRR 843, para. 63.

> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.[8]

B. Pluralism

Article 2 of the ICCPR places an obligation on States to "adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant." This means that States are required not only to refrain from interfering with rights, but that they must take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know.

An important aspect of States' positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and to ensure equal access of all to, the media. As the European Court of Human Rights stated: "[Imparting] information and ideas of general interest … cannot be successfully accomplished unless it is grounded in the principle of pluralism."[9] The Inter-American Court has held that freedom of expression requires that "the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media."[10]

This implies that the airwaves should be open to a number of different broadcasters, but also that the State should take measures to prevent monopolisation of the airwaves by one or two players. At the same time, anti-monopoly measures should not be such as to limit unnecessarily the overall growth and development of the sector.

C. Public Service Broadcasting

Public service broadcasting – through a broadcaster which is not oriented towards profits, which is independent of the State and which has an overall mandate to provide a wide range of quality programming that serves all the people and that informs, enlightens and entertains – can make an important contribution to pluralism. The German Federal Constitutional Court, for example, has held that promoting pluralism is a constitutional obligation for public service broadcasters.[11] For this reason, a number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.

---

[8] *Castells v. Spain*, 24 April 1992, Application No. 11798/85, 14 EHRR 445, para. 43.
[9] *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, 17 EHRR 93, para. 38.
[10] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism,* Advisory Opinion OC-5/85, November 13 1985, Inter-American Court of Human Rights (Ser.A) No.5 (1985), para. 34.
[11] See *Fourth Television* case, 87 BverfGE 181 (1992). In Barendt, E., *Broadcasting Law: A Comparative Survey* (1995, Oxford, Clarendon Press), p. 58.

A *Resolution of the Council and of the Representatives of the Governments of the Member States*, passed by the European Union,[12] recognises the important role played by public service broadcasters in ensuring a flow of information from a variety of sources to the public. It notes that public service broadcasters are of direct relevance to democracy, and social and cultural needs, and the need to preserve media pluralism. As a result, funding by States to such broadcasters is exempted from the general provisions of European Law, which otherwise prohibit subsidies of this sort for competitive reasons. For the same reasons, the 1992 *Declaration of Alma Ata*, adopted under the auspices of UNESCO, calls on States to encourage the development of public service broadcasters.[13]

D. Independence and Funding

The State's obligation to promote pluralism and the free flow of information and ideas to the public, including through the media, does not permit it to interfere with broadcasters' freedom of expression, including that of publicly-funded broadcasters. This follows from a case before the European Court of Human Rights which decided that any restriction on freedom of expression through licensing was subject to the strict test for such restrictions established under international law.[14] In particular, any restrictions must be shown to serve one of the legitimate interests recognised under international law and, in addition, must be necessary to protect that interest.

An important implication of these guarantees is that bodies that exercise regulatory or other powers over broadcasters, including the boards of publicly-funded broadcasters, must be independent. This principle has been explicitly endorsed in a number of international instruments. The most detailed of these is Recommendation (96)10 on the *Guarantee of the Independence of Public Service Broadcasting* (Council of Europe Recommendation), passed by the Committee of Ministers of the Council of Europe.[15] This Recommendation states that governing and regulatory bodies should be established in a manner which minimises the risk of interference in their operations, for example through an open appointments process designed to promote pluralism, guarantees against dismissal and rules on conflict of interest.[16]

These principles have been reaffirmed in a number of other authoritative statements by international human rights bodies. For example, the African Commission on Human and Peoples' Rights recently adopted a *Declaration of Principles on Freedom of Expression in Africa* (African Declaration).[17] Principle VI of that Declaration states, among other things: "public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature".

ARTICLE 19 has adopted a set of principles drawn from international law and comparative practice relating to broadcasting, entitled, *Access to the Airwaves:*

---

[12] Official Journal C 030, 5 February 1999, clause 1. See also EU Council Resolution of 21 January 2002 on the development of the audiovisual sector, OJ C32, 5 February 2002, p. 4.
[13] Adopted 9 October 1992 at a UNESCO conference in Alma Ata. Clause 5.
[14] *Groppera Radio AG and Ors v. Switzerland*, 28 March 1990, Application No. 10890/84, 12 EHRR 321, para. 61.
[15] 11 September 1996. Available at: http://cm.coe.int/ta/rec/1996/96r10.html.
[16] Articles 9-13.
[17] Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002. Available at: http://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html.

Principles on Freedom of Expression and Broadcast Regulation (ARTICLE 19 Principles).[18] Again, the need to protect and guarantee the independence of public broadcasters is stressed. Principle 35.1 states:

> Public broadcasters should be overseen by an independent body, such as a Board of Governors. The institutional autonomy and independence of this body should be ensured in the same way as for regulatory bodies, in accordance with Section 4. In particular, independence should be guaranteed and protected by law in the following ways:
>
> - specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
> - by a clear legislative statement of goals, powers and responsibilities;
> - through the rules relating to appointment of members;
> - through formal accountability to the public through a multi-party body;
> - by respect for editorial independence; and
> - in funding arrangements.

Principle 34 notes generally the need to transform government or State broadcasters into public service broadcasters.

These same principles are also reflected in a number of cases decided by national courts. For example, a case decided by the Supreme Court of Sri Lanka held that a draft broadcasting bill was incompatible with the constitutional guarantee of freedom of expression. Under the draft bill, the Minister had substantial power over appointments to the Board of Directors of the regulatory authority. The Court noted: "[T]he authority lacks the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought."[19]

Similarly, the Supreme Court of Ghana has noted: "[T]he state-owned media are national assets: they belong to the entire community, not to the abstraction known as the state; nor to the government in office, or to its party. If such national assets were to become the mouth-piece of any one or combination of the parties vying for power, democracy would be no more than a sham."[20] As regards the governing body, the National Media Commission, the Ghanaian Supreme Court stated that it was their role, "to breathe the air of independence into the state media to ensure that they are insulated from Governmental control."[21]

Many of these standards reflect both the idea of independence of governing bodies and the related but slightly different idea that the editorial independence of public service broadcasters should be guaranteed, both in law and in practice. This is reflected, for example, in Principle VI of the African Declaration, which states: "the editorial independence of public service broadcasters should be guaranteed". Principle 35.3 of the ARTICLE 19 Principles also states: "The independent governing body should not interfere in day-to-day decision-making, particularly in relation to broadcast content, should respect the principle of editorial independence and should never impose prior censorship." The governing body may set directions and policy

[18] (London: ARTICLE 19, 2002). Available at: http://www.article19.org/docimages/1289.htm.
[19] *Athokorale and Ors. v. Attorney-General*, 5 May 1997, Supreme Court, S.D. No. 1/97-15/97.
[20] *New Patriotic Party v. Ghana Broadcasting Corp.*, 30 November 1993, Writ No. 1/93, p. 17.
[21] *Ibid.*, p. 13.

but should not, except perhaps in very extreme situations, interfere with a particular programming decision. The same approach is reflected in Principle 1 of the Council of Europe Recommendation, which notes that the legal framework governing public service broadcasters should guarantee editorial independence and institutional autonomy as regards programme schedules, programmes, news and a number of other matters. The Recommendation goes on to state that management should be solely responsible for day-to-day operations and should be protected against political interference, for example by restricting its lines of accountability to the supervisory body and the courts.[22]

Similarly, true independence is only possible if funding is secure from arbitrary government control and many of the international standards noted above reflect this idea. Principles 17-19 of the Council of Europe Recommendation note that funding for public service broadcasters should be appropriate to their tasks, and be secure and transparent. Funding arrangements should not render public broadcasters susceptible to interference, for example with editorial independence or institutional autonomy. These principles are also reflected in Principle VI of the African Declaration and Principle 26 of the ARTICLE 19 Principles.

E. Restrictions on Freedom of Expression

The right to freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet. It states:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Restrictions must meet a strict three-part test.[23] International jurisprudence makes it clear that this test presents a high standard which any interference must overcome in the strictest sense. The European Court of Human Rights has stated:

> Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.[24]

First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."[25] Second, the interference must pursue a legitimate aim. These are the aims listed in Article 19(3) of the ICCPR. Third, the restriction must be necessary to secure one of those aims. The word "necessary"

[22] Articles 4-8.
[23] See, *Mukong v. Cameroon*, 21 July 1994, No. 458/1991 (UN Human Rights Committee), para. 9.7.
[24] See, for example, *Thorgeirson*, note 7, para. 63.
[25] *The Sunday Times v. United Kingdom*, 26 April 1979, Application No.13166/87, 2 EHRR 245 (European Court of Human Rights), para. 49.

means that there must be a "pressing social need" for the restriction. The reasons given by the State to justify the restriction must be "relevant and sufficient" and the restriction must be "proportionate to the aim pursued."[26]

F. The Constitution of the Solomon Islands

The Solomon Islands is a member of the United Nations. As such, it is legally bound to protect freedom of expression in accordance with general international law. Article 2(2) of the ICCPR provides an authoritative statement of this obligation:

> Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Freedom of expression and freedom of the press are protected by Article 12 of the Solomon Islands Independence Order 1978, which serves as the constitution, as follows:

> (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.
> (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –
> (a) in the interests of defence, public safety, public order, public morality or public health;
> (b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or
> (c) that imposes restrictions upon public officers,
> and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

It may be noted that these guarantees are consistent with those under international law. The scope of protection is broad, extending to holding opinions, and receiving and communicating ideas and information. The scope of restrictions is limited. The grounds for restrictions, while set out in more detail than those of the ICCPR, are largely similar and, indeed, closely parallel those found in the European Convention on Human Rights. Furthermore, restrictions must be shown to be "reasonably justifiable in a democratic society", and standard that is very close to the international one of necessity.

[26] *Lingens v. Austria*, 8 July 1986, Application No.9815/82, 8 EHRR 407 (European Court of Human Rights), paras. 39-40.

III. Analysis of the Law

A. Appointment of Members to SIBC

1. Existing Provisions

Section 4(1) of the Ordinance states simply that SIBC shall consist of a chairman, deputy chairman and between six and seven other members, all appointed by the Minister after consultation with the Council of Ministers. Section 6(1) provides that members hold office for the period specified in the instrument appointing him or her to be a member, presumably prepared by the Minister. Furthermore, the Minister may, after consultation with the Council of Ministers, remove a member who has been absent for more than three months without permission, who has become bankrupt, who is physically or mentally incapacitated or who "is otherwise unable or unfit to discharge the functions of a member" (section 6(1)).

These provisions are clearly open to abuse for political purposes and fail to guarantee the independence of members. Members are appointed by the Minister, after consultation with other ministers, all senior political figures representing the government. The term of office is set by the Minister, and could vary between members, for example depending on their perceived loyalty to the government. Two of the conditions for removal of members are open to broad interpretation, namely those relating to incapacity. The last ground, in particular, refers to cases where a member is unable or unfit to discharge his or her duties, vague terms open to wide interpretation.

There are two main systems around the world for appointing members to governing boards of public broadcasters in a manner which protects their independence, although a number of other variations are possible, including by combining these systems. The first system provides for a multi-party body to appoint members, after an open, fair selection process which allows for some public input. Under this system, for example, the parliament or a sub-committee thereof may appoint, and the law may provide for a shortlist of candidates to be published, along with a mechanism for public input. This ensures multi-party input, as well as public participation, both checks against political bias.[27]

The second system provides for nomination of members by various established bodies and/or sectors of society. Under this system, for example, the legal profession, academics, religious authorities, unions and/or NGOs may be given the right to nominate members. The idea behind this system is that these various bodies will represent diverse interests in society, ensuring that the board is not dominated by one political or social viewpoint.

To further bolster the independence of members, they should be appointed for a fixed period of time and their tenure should be protected outside of limited, clearly defined circumstances. Only the appointing body should be able to remove members.[28] The

[27] See the ARTICLE 19 Principles, Principles 13.1 and 13.2 and the Council of Europe Recommendation, Principles II(2) and III(2).
[28] See the ARTICLE 19 Principles, Principle 13.4 and the Council of Europe Recommendation, Principle II(2).

grounds for removal in the Ordinance are largely consistent with international practice but the fact that this power is exercised by the Minister leaves them open to abuse. Finally, members should have the right to appeal any removal to the courts.

Recommendation:

- The appointments process should be completely revised in line with the recommendations above. In particular:
  - a multi-party body or diverse social interests, rather than the Minister, should appoint;
  - the term of office should be set out clearly in the law;
  - the same body should be responsible for removing members, on clear grounds set out in the law; and
  - individuals should have the right to appeal their removal to the courts.

2. Omissions

The Ordinance fails to incorporate a number of other process guarantees relating to the appointment of members which would enhance their independence. It should be clearly stated in law that members are appointed in their personal capacity, and that they are required at all times to exercise their powers impartially and in the public interest.

Certain individuals should not be eligible for appointment, what is termed 'rules of incompatibility' in the ARTICLE 19 Principles. Those Principles prohibit, in particular, the appointment of any individual who:

- is employed in the civil service or other branches of government;
- holds an official office in, or is an employee of a political party, or holds an elected or appointed position in government;
- holds a position in, receives payment from or has, directly or indirectly, significant financial interests in telecommunications or broadcasting; or
- has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime, and/or a crime of dishonesty unless five years has passed since the sentence was discharged.[29]

On the other hand, the law should require that all members have some expertise which qualifies them for appointment. This helps avoid both political and patronage appointments. Furthermore, the law should require membership as a whole to be representative of the society, to help ensure that all groups are represented on the board.[30]

[29] Principle 13.3.
[30] See the ARTICLE 19 Principles, Principle 13.2 and the Council of Europe Recommendation, Principle III(2).

Recommendations:

- The law should state clearly that members shall be independent and impartial in the exercise of their duties.
- The law should include certain rules of incompatibility to ensure that individuals with strong political connections, or who are otherwise unsuitable, may not be appointed as members.
- Individuals should be required to have some expertise before being appointed and membership as a whole should be representative of the society.

B. Other Matters Relating to Independence

The Ordinance provides at section 10(1) that the SIBC may appoint a manager, secretary and other staff, upon terms approved by the Minister. The Ordinance is silent as to any remuneration for members themselves.

This power potentially allows the Minister to interfere in the work of the SIBC to the detriment of its independence. The law should set out clearly any remuneration for members, as well as any other terms and conditions of membership, which should not be set by political actors such as the Minister. It should then be up to the members, not the Minister, to appoint the manager and other staff, although this power may be delegated to the manager. Furthermore, the members, or the manager, should set the terms and conditions of employment, although these may be required to conform to existing, general rules, for example for the civil service.

The Ordinance also fails to include a number of important mechanisms for ensuring independence. It lacks a general statement relating to the independence of the SIBC. While such a statement may be largely symbolic, it is important to provide legal recognition of this key matter.[31]

A related but different concept is the need to explicitly guarantee the editorial independence of the SIBC. This protects the manager, programme producers and staff from interference from the members or governing board, adding a further layer of protection. It is appropriate for the board to make general interventions regarding programming, for example relating to quality or availability of certain types of programmes, but not for them to override specific editorial decisions of staff.[32]

The law should also set out clearly the mandate of the SIBC. Section 25(2) does set out some very general rules regarding news, but the mandate should be far more detailed, giving clear direction to the broadcaster as to what is expected. The African Declaration, for example, provides, at Principle VI:

> [T]he public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.[33]

[31] See the ARTICLE 19 Principles, Principle 11.
[32] See the ARTICLE 19 Principles, Principle 35.1 and the Council of Europe Recommendation, Principle I.
[33] See also, the ARTICLE 19 Principles, Principle 35.3 and the Council of Europe Recommendation, Principle VI.

This is important both to protect independence and as a mechanism of accountability. In the face of criticism, including of a political nature, the members can always point to the detailed mandate and claim that they are fulfilling it. On the other hand, the public, and the parliament, can hold the members, and the broadcaster more generally, to account if they fail to live up to this mandate.

Finally, the law should make it clear that, as with appointments, the SIBC is accountable not to the government, or a minister thereof, but to the parliament as a whole. This ensures appropriate multi-party supervision and accountability.

Recommendations:

- The law should state clearly any remuneration for which members are eligible; the members, with the manager, should then set the terms of employment for the rest of the staff.
- The members should appoint the manager and other staff, although this latter power may be delegated to the manager.
- The law should include a clear statement of both the general independence of the SIBC, as well as of its editorial independence regarding programming matters.
- The law should set out clearly the mandate of the SIBC.
- The law should make it clear that the SIBC is accountable to the parliament, not the government.

C. Funding

Section 15 of the Ordinance requires the Government to pay such subsidy to the SIBC as may be determined by the Minister of Finance, after consultation with the Minister and SIBC itself.

Funding questions are always very difficult in relation to public broadcasters and a number of local considerations are relevant to what funding mechanism is used. However, in principle, an effort should be made to ensure that funding mechanisms are clear and precise and, to the extent possible, insulated from political interference. In this regard, for example, Principle V of the Council of Europe Recommendation states:

> The rules governing the funding of public service broadcasting organisations should be based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions.

The African Declaration provides, at Principle VI: "public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets".[34]

It is clear that funding approved by the Minister of Finance is not well protected against interference. At a minimum, any direct public funding should be voted by parliament, not a minister. However, efforts should be made to ensure that other

[34] See also the ARTICLE 19 Principles, Principle 36.

funding mechanisms, such as advertising or a user television licence fee, are adequate to cover the costs of running the SIBC.

Recommendations:
- Any direct public subsidy should be voted by Parliament, not a minister.
- Efforts should be made to ensure that protected forms of funding, such as a user licence fee, are adequate to cover the costs of running the SIBC.

D. Accountability

Section 20 of the Ordinance requires the SIBC to submit an annual report to the Minister detailing its activities and setting out any other information that the Minister may require; the Minister is then required to table this report before the Legislative Assembly.

The annual report is an important accountability mechanism. However, it would be preferable for the law to set out in more detail precisely what should be included in this report, rather than leaving this up to the Minister. Furthermore, SIBC should be under an obligation to make the annual report widely available to the public including, for example, on its website.

Consideration should be given to including two other accountability mechanisms. First, SIBC should be required to keep itself under regular public review. Such review may take many forms, for example public meetings or polls, but some such review should be required. The BBC, for example, is under an obligation to ensure that it remains under constant and effective review from outside, including by public meetings and seminars.[35]

Second, consideration should be given to establishing some sort of public complaints mechanism. The system should include the development of a code of conduct, setting out standards relating to programming, along with some formal system for receiving and deciding upon complaints. The latter could be internal to SIBC or could be done through some external body.

Recommendations:
- The law should set out in detail what must be included in the annual report rather than leaving this important matter up to the discretion of the Minister.
- The SIBC should be required to make its annual report widely available to the public.
- SIBC should be required to keep itself under regular public review.
- Consideration should be given to establishing a public complaints mechanism.

E. Content Rules

1. Power to Prohibit

Pursuant to sections 24(1) and (2) of the Ordinance, the Minister may prohibit the SIBC from broadcasting "any matter, or matter of any class or character" as may be specified. Such requests must be confirmed in writing within 24 hours and must be

[35] See the BBC Royal Charter, Article 6.

reported to the Legislative Assembly at its next sitting. Other than this, however, there are no formal restrictions on the exercise of this power.

This power of prohibition is cast in extremely broad terms – indeed there are apparently no formal limits to what might be prohibited – and it is clearly open to potential abuse. Furthermore, it is unclear why such a power was deemed necessary. Laws of general application, for example on defamation or hate speech, apply to SIBC as to other forms of expression. These should be sufficient to protect the various private and public interests that may be affected by SIBC. Furthermore, the protections provided – namely that the prohibition be confirmed in writing and laid before the legislature – are inadequate given the enormous breadth of this power and the fact that it is exercised by a political figure.

In the UK, a similar power in the Broadcasting Act 1981 was used in 1988 to prohibit any matter which included words spoken by persons representing a list of organisations, including Sinn Féin, a legal political party with representatives in Parliament.[36] This clearly politically motivated ban was widely condemned both within the UK and more broadly. Furthermore, broadcasters effectively made a mockery of it by using Irish-accented voice-overs instead of the actual voices of members of Sinn Féin. The ban was lifted in 1994 and the power has not been used since.

2. 'Must Carry' Rules

Section 24(3) of the Ordinance requires SIBC to broadcast or televise "any matter the broadcasting of which is directed by the Minister as being of National Interest." A request of this sort must be confirmed in writing within 24 hours but not necessarily laid before the Legislative Assembly.

Requiring broadcasters to carry certain types of messages is both unnecessary and may be abused. Public messages are a matter for editorial decision-making and should not be imposed as a legal requirement. Such requirements are very rare in other countries and yet media coverage of matters of public importance is perfectly adequate. The best way to ensure such coverage is by promoting a diverse, independent broadcast media, not by imposing obligations on the media.

Furthermore, positive obligations of this sort are open to abuse, particularly where they are exercised by political figures such as the Minister and are subject to few conditions. In this case, the only condition is that the matter should be in the national interest, a notorious flexible concept. Under this rule, for example, the Minister may deem it in the public interest to require the public broadcaster, for example, to carry material showing the ruling party in a positive light.

The Council of Europe Recommendation voices concern over "must-carry" requirements, stating:

> The cases in which public service broadcasting organisations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities,

[36] See ARTICLE 19 Censorship News No. 9, October 1991: <http://www.article19.org/docimages/335.htm>.

> should be confined to exceptional circumstances expressly laid down in laws or regulations.[37]

Applying such rules to all matters of 'National Interest' hardly qualifies as an 'exceptional circumstance'.

Recommendations:

- Sections 24(1)-(3) should be repealed.

[37] Principle VI.