MEMORANDUM

on the

Draft Law Amending the Press Law of Lebanon

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Key Recommendations

- The requirement for journalists to be admitted to the Press Association Roll, along with the sanctions for pretending to be a journalist, should be removed.
- All entry requirements for media professionals should be removed.
- The reciprocity rule concerning permission for foreign journalists to work in Lebanon should be removed.
- The licensing regime for newspaper vendors should be abolished.
- The sanctions of prohibiting the practise of journalism and striking one's name permanently from the press roll should be abolished.
- The Lebanese Press Association and the Lebanese Editors Association should be replaced by independent self-regulatory professional bodies, free of State control and in which membership is voluntary. In particular, the role of the Minister of Information and the Head of Department of the Press and Legal Affairs in relationship to the LPA and LEA should be abolished.
- The licensing system for periodic publications should be abolished.
- A failure to comply with registration requirements for periodic publications should not lead to confiscation and/or suspension.
- Mandatory provision of copies of periodicals to the Ministry of Information and the Prosecutor's Office should be abolished. Any deposit requirement should be limited to the national library service and archives.
- The Press Council should be established by the media community voluntarily, rather than by law and it should not be subject to government control. The scope and nature of its powers should be clarified and it should be required to conduct its activities transparently. The election of its members should be based on clear criteria following public consultations.

I. Introduction

This Memorandum analyses amendments to the 1962 Press Law of Lebanon (*hereinafter* "Press Law") proposed by the Maharat Association, in the form of the Draft Law Amending the Press Law of Lebanon (*hereinafter* "Draft Law"), as well as the underlying Press Law itself.[1] The amendments proposed by the Maharat Association suggest changes to a number of domestic media laws, with a view to bringing these laws into line with the latest media development and international standards of freedom of expression.

ARTICLE 19 welcomes the efforts to reform media legislation in Lebanon. The proposals represent an attempt to embody the main principles of press freedom in the law. There are a number of progressive changes such as the freedom to publish and distribute periodic publications without prior authorisation and the elimination of the Minister of Information's powers in the press media field. At the same time, it is regrettable that it is not proposed to abolish the Press Law altogether as is the case in most democracies. We note with concern that the Draft Law fails to amend key provisions in the original law which are at odds with international standards. For example, journalists must be admitted to the press roll to receive full recognition, there are special professional requirements for journalists, the government controls the press council and so on.

The comments and recommendations in this Memorandum draw on international standards on freedom of expression and media regulation from democratic states. The Memorandum first outlines international standards on freedom of expression, in particular regarding media regulation. It then provides an in-depth analysis of the Press Law and the Draft Law amending it, and offers recommendations for reform.

ARTICLE 19 is an international NGO based in London with a specific mandate to promote the right to freedom of expression and to information. Through the provision of legal expertise and training, ARTICLE 19 has been involved in the adoption and implementation of media laws in many countries around the world.

II. International and Constitutional Obligations

II.1. The Guarantee of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR)[2] guarantees the right to freedom of expression in the following terms:

[1] ARTICLE 19 received an unofficial translation of the draft Law in April 2009. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments based on mistaken or misleading translation.

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

> 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.

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.[3] The *International Covenant on Civil and Political Rights* (ICCPR),[4] to which Lebanon acceded in 1972, imposes formal legal obligations on State parties to respect its provisions. Article 19 of the ICCPR guarantees the right to freedom of expression in the following terms:

> (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 by other regional human rights instruments, including Article 10 of the *European Convention on Human Rights* (ECHR),[5] Article 9 of the *African Charter on Human and Peoples' Rights* (ACHPR),[6] and Article 13 of the *American Convention on Human Rights* (ACHR).[7] These instruments, and the decisions of courts and tribunals made under them, are not formally binding on Lebanon. Nonetheless, they provide authoritative elaboration on the content and scope of the right to freedom of expression as guaranteed internationally as well as in the Lebanese Constitution.

II.2. 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:

> 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.

A similar formulation can be found in the European and American regional human rights treaties and in the *Declaration of Principles on Freedom of Expression in Africa*.[8] These

[3] See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).
[4] UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976.
[5] Adopted 4 November 1950, in force 3 September 1953.
[6] Adopted 26 June 1981, in force 21 October 1986.
[7] Adopted 22 November 1969, in force 18 July 1978.
[8] Article 10(2) ECHR; Article 13(2) ACHR; Principle 2 of the *Declaration of Principles on Freedom of*

have been interpreted as requiring restrictions to meet a strict three-part test.[9] 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."[10] Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word "necessary" 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.[11]

II.3. Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media. 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."[12] It has further stated:

> 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.[13]

Similarly, the African Commission on Human and Peoples' Rights has emphasised,

> … the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy.[14]

And, as the Inter-American Commission on Human Rights has recognised:

> [F]reedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information.[15]

Expression in Africa, adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002.

[9] See, for example, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

[10] *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

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

[12] *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

[13] *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

[14] *Declaration of Principles on Freedom of Expression in Africa*, note 8, Preamble.

[15] Preamble, *Inter-American Declaration of Principles on Freedom of Expression*, approved by the Inter-American Commission on Human Rights during its 108th regular session, 19 October 2000, available online in English at http://www.cidh.oas.org/declaration.htm.

The European Court of Human Rights has also stated that it is incumbent on the media to impart information and ideas in all areas of public interest:

> Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] … it is nevertheless incumbent on it to impart information and ideas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".[16]

II.4. Media Regulation

Regulation of the media presents special problems. On the one hand, the right to freedom of expression requires that the government refrain from interference. This is quite challenging given that the media is an attractive target for control owing to its power to influence public opinion, for example by reporting critically on government policies and exposing corruption, dishonesty and mismanagement. Governments often seek to transform the media from watchdog to lapdog, by making the work of independent or opposition journalists and publications illegal or impossible.

On the other hand, 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 also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under a duty to ensure that citizens have access to diverse and reliable sources of information on topics of interest to them. A crucial aspect of this 'positive obligation' is the need to promote pluralism within, and ensure equal access of all to, the media.[17]

In order to promote pluralism and protect the right to freedom of expression, it is imperative that the media be permitted to operate independently of government control. This ensures the media's role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest.

This has important implications for media regulatory models. First, as has been stated by the African Commission, for the print media, self-regulation is the best system for promoting high standards in the media.[18] Where self-regulation has demonstrably failed, a public authority may be entrusted with some limited aspects of media regulation, provided it does not function as a quasi-judicial organ. With regard to such bodies, it is accepted that, as a general rule:

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[16] *Jersild v. Denmark*, 23 September 1994, Application No. 15890/89, para. 31.

[17] See *Informationsverein Lentia v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, para. 38 (European Court of Human Rights).

[18] African Declaration, note 8, Principle IX. By contrast, the broadcast media may be more strictly regulated in order to manage the limited available radio spectrum.

> All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.[19]

Practical guidance on the establishment and guarantee of the independence of media regulatory bodies may be found in recommendations made within the Council of Europe system, although it is important to note that these are restricted in scope to broadcasting. A Recommendation made by the Committee of Ministers of the Council of Europe, on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector,[20] includes a set of Guidelines regarding broadcast regulatory bodies. The first three sections are of particular relevance here:

> Member States should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence.
>
> The duties and powers of regulatory authorities for the broadcasting sector, as well as the ways of making them accountable, the procedures for appointment of their members and the means of their funding should be clearly defined in law.
>
> The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.

These general principles relating to the independence of broadcasting regulatory bodies would apply equally to any bodies set up to regulate the print sector.

II.5. Constitutional Protection

Lebanon's Constitution[21] guarantees the right to freedom of expression and freedom of the press at Article 13, which states:

> The freedom to express one's opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association are guaranteed within the limits established by law.

The Constitution does not incorporate the three-part test for restrictions on freedom of expression established under international law.

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[19] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, adopted 18 December 2003.

[20] Recommendation (2000) 23, adopted 20 December 2000. See also, but in less detail, Principle VII of the African Declaration. Note 8.

[21] Adopted on 23 May 1926 and subsequently amended. The English translation of the Constitution is available on the Internet at http://www.servat.unibe.ch/law/icl/le00000_.html

III. Analysis of the Lebanese Press Law and Draft Law by Maharat Association

III.1. General Overview

The Draft Law proposed by Maharat Association amends several legal acts. First, it proposes changes to the print media legislation by modifying the Press Law promulgated on 14 September 1962 (*hereinafter* the Press Law) and Decree-law No. 74 promulgated on 13 April 1953 concerning the limitations of the number of political periodical journals. Second, it revises Decree-law N. 104, promulgated on 30 June 1977, regulating the responsibility of media workers for erroneous or false news, threats or blackmailing, insult, defamation and contempt, causing prejudice to the president's dignity, and for sectarian provocation.

This Memorandum focuses only on amendments concerning print media legislation.

The Press Law is a very complex legal act. It regulates the activities of printing houses, press media, libraries, publishing houses and distribution companies. It has undergone numerous amendments since coming into force. At present it comprises 109 provisions grouped into four sections and multiple chapters, among other things covering general principles, regulation of printing houses, publishing houses, media workers and periodicals, regulation of foreign publications, and the various media institutions, including the Press Union, Press Association, Lebanese Editors Association, Superior Council of Press and Disciplinary Council.

The proposed amendments to the Press Law concern the regulation of printing and publishing houses, licensing and ownership of periodicals and foreign publications. A special chapter regulates the establishment and functioning of a new body, the National Council of Press and Publications.

The analysis below focuses on several aspects of press media regulation in Lebanon. In Part III.2, we review the provisions in the Press Law and the Draft Law which impose substantial limitations related to the right to freedom of expression of media professionals. The review covers licensing of media workers, professional requirements, barring from practice, and freedom of association. In Part III.3, we address substantial limitations concerning the print media, focusing on the issue of statutory regulation, licensing and registration, suspensions and bans, and mandatory provision of copies.

III.2. Regulation of Media Workers

III.2.1. Licensing of Journalists

Overview

Chapter Five of Section 4 of the Press Law regulates admission to the press roll administered by the Press Association Roll Committee. The Committee is formed by representatives of the Press Association and the Editors Associations and is chaired by the President of the Press Association. The Head of the Department of Press and Legal Affairs at the Ministry of Information is the Rapporteur of the Committee.[22]

Article 98 provides that the Committee examines applications for admission to the press roll, delivers journalist's cards and press identification symbols and issues permits that enable journalists to travel abroad.

Article 90 of the Press Law provides that foreigners may work as editors without being enrolled on the Press Association Roll. They may obtain a journalist's card provided that they are authorised to reside and work in Lebanon, and a reciprocity rule applies between the country of the foreign editor and Lebanon.

Article 10(2) provides that any person pretending to be a journalist for whatever reason shall receive a punishment of between six months and one year of imprisonment and a fine of one thousand to five thousand Lebanese Pounds.

The Draft Law does not envisage making any changes to these provisions.

Analysis

The analysis of the regulation of journalists in Lebanon makes it clear that the latter need to obtain permission before commencing their professional activities. Although the Press Law contains no explicit provision that journalists need a licence or permit to practise their profession, the powers of the Press Association Roll Committee – in particular to deliver journalist's cards – suggest that those journalists who are not admitted to the roll practise their profession illegally and risk being sanctioned including with imprisonment.[23] In our view, the requirement that journalists be admitted to the roll has the same effect as a licence and therefore amounts to a form of "licensing scheme".

An important source of legal authority on the subject of licensing schemes is an opinion of the Inter-American Court of Human Rights rendered in 1985.[24] It was recognised in the case that licensing was a restriction on freedom of expression. Costa Rica and its supporters argued that a requirement for journalists to become members of a *colegio*

[22] Articles 95 and 97 of the Press Law.

[23] In addition, unlicensed journalists are deprived of some social benefits provided to licensed colleagues. For example, they cannot benefit from reduced airplane tickets and municipal fees or obtain special parking permits.

[24] *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. Available online in English at: http://www.corteidh.or.cr/serieapdf_ing/seriea_05_ing.pdf.

(association) was legitimate for different reasons. The main argument was that the requirement was necessary for public order and that it was the 'normal' way to regulate the profession in many countries. It was further argued that the requirement sought to promote higher professional and ethical standards, which would benefit society at large and ensure the right of the public to receive full and truthful information.

Examining the first argument, the Court observed that the concept of public order would benefit much more from scrupulous respect for freedom of expression:

> It is … in the interest of the democratic public order … that the right of *each individual* to express himself freely and that of society as a whole to receive information be scrupulously respected [*emphasis added*].[25]

Responding to the argument that a licensing regime is simply the 'normal' way to regulate certain professions, the Court distinguished between journalism and, for example, the practice of law or medicine. In contrast to lawyers and physicians, the activities of journalists – the seeking, receiving and imparting of information and ideas – are specifically protected as a human right, namely the right to freedom of expression.[26]

The Court concluded, unanimously, that such regimes constitute a violation of the right to freedom of expression, since they fail the necessity test (See above Part II.2.).

The three special mandates for protecting freedom of expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – adopt a Joint Declaration each year setting out standards relating to important freedom of expression issues. In their 2004 Declaration, they stated:

> Individual journalists should not be required to be licensed or to register.[27]

It is thus clear that, under international law, licensing and even registration of media workers, are prohibited. In practice, licensing schemes for journalists are virtually unheard of in established democracies.

In Lebanon, the situation is particularly problematical because of the control of the government over the admission of journalists to the press roll, given that the Head of the Deparment of Press at the Ministry of Information acts as the Rapporteur of the Press Association Roll Committee. In other words, the Committee lacks independence from government and, as a result, the legal status of journalists in Lebanon is subject to political considerations. All requirements for admission to the Press Association Roll should be abolished, along with any sanctions for pretending to be a journalist.

We are also concerned about the requirements with respect to foreign journalists, inasmuch as they prevent foreign journalists from reporting from Lebanon.[28] Any ban

[25] *Ibid.*, para. 69.
[26] *Ibid.*, paras. 71-72.
[27] Joint Declaration of 18 December 2003, note 19.

based on citizenship which prevents foreign journalists from working in a country, if this is the import of these rules, is a disproportionate restriction on freedom of expression, contrary to international law. We note that such a ban affects not only the journalists, but also the ability of people living in other countries to hear about the news from Lebanon. We therefore recommend either that these rules be removed entirely or it be made clear that they do not apply to foreigners working for foreign media.

III.2.2. Professional Requirements for Media Workers

Overview

Article 10 provides that a journalist is a person who has chosen the press as his or her profession and source of income according to the stipulations of this law.

Article 22 sets out conditions for working as a journalist, namely:

1- He must be a Lebanese citizen and have reached 21 years old.

2- He must hold at least a diploma of a Lebanese Baccalaureate - second part or its equivalent, and he must have effectively and continuously practiced journalism for at least four years following the acceptance of his application to the Press Media as a trainee or holder of the Bachelor's degree in Press from an institute of the Lebanese University or the Bachelor's degree in Press approved by the Lebanese University. The holder of this Bachelor's degree shall be exempted from training; however, holders of other Bachelor's degrees shall be subject to one year of training.

3- He must be in possession of his civil, legal and political rights and not have been convicted of any crime.

4- He must be dedicated to the practice of his profession exclusive of any other profession according to the principles determined by the bylaw.

Article 23 provides that to work as a responsible director, an individual should satisfy the conditions for journalists and also effectively be domiciled at the print venue. Furthermore, the person should not enjoy judicial immunity and should produce a certificate from the Press Association confirming that he has a perfect command of the language of the periodic publication. Individuals who are not journalists can be responsible directors of non-political periodic publications, provided that they comply with the conditions stipulated in the bylaw of the Lebanese Press Union and the publication's subject matter is within the field of specialisation of the director (Article 24).

Article 24 also provides that owners should be journalists and comply with the requirements for responsible directors.

[28] It is not clear whether this is their effect or whether they operate only so as to prevent foreigners from working for local media.

The Draft Law proposes only one change concerning professional requirements for media workers, namely to eliminate the distinction between political and non-political press for purposes of the responsible director, but it retains the requirement that responsible directors of specialised periodic publications should comply with the conditions stipulated in the bylaw of the Lebanese Press Union.

Analysis

Entry requirements are distinct from licensing schemes, insofar as they do not involve an official body making a case by case decision about who may and who may not practise journalism. Nevertheless, entry requirements are inconsistent with international law for the same reasons: they fail to recognise that the right to express oneself through the mass media belongs to *everyone* (See above Part II.1), not only individuals whom the government considers qualified or suitable. They also deprive the general public of the right to receive information and ideas from diverse sources of their own choice.

Furthermore, the practical effectiveness of entry requirements as a means of ensuring quality journalism is questionable. They may prevent talented young people who have not yet reached the age threshold or are not Lebanese citizens from developing their research and writing skills, or drive out competent journalists with no degree in favour of unskilled academics.

The Inter-American Commission on Human Rights has issued a Declaration condemning one specific type of entry requirement:

> Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirement of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression.[29]

We recommend that professional entry requirements for all media professions be removed from the Press Law.

III.2.3. Licensing of Newspaper Vendors

Overview

Chapter II of Section III of the Press Law relates to the sale of publications. Article 74 provides that any person who wishes to sell newspapers, magazines, books, photos, drawings or any other publications must obtain a licence from the Ministry of Information. The licence is given on the basis of a statement that includes the full name, occupation, age and domicile of the applicant. The Press Law sets out fines for sales of publications without a license.

Article 75 prohibits distributors and ambulant sellers from announcing any news not found in the relevant publication, or which contradicts public ethics or is inimical to

[29] Note 15.

national or religious feelings or national unity. Fines are provided for violation of these rules.

The Draft Law abrogates Chapter II of Section III of the Press Law.

Analysis

The licensing of newspaper vendors, to the extent that it introduces restrictions on or control by the government of the distribution of newspapers, violates the right of everyone to receive information and ideas. The right to freedom of expression under international law protects not only the speaker but also others, who wish to hear what they have to say. The licensing of newspaper vendors is an interference which fails to meet the second and third part of the three-part test (see Part II.2. above). The fact that they are not subject to licensing in democracies today demonstrates that licensing is not necessary. Indeed, it is difficult to think of any legitimate interest which might justify licensing vendors. We therefore support the abrogation of Article 74, as proposed by the Draft Law.

We similarly support the abrogation of Article 75. The purpose of prohibiting vendors from announcing news not found in the newspaper is not entirely clear to us but inasmuch as it is designed to prevent selling newspapers under false pretences, it should be dealt with in the same way as this is in other commercial sectors, namely through rules relating to false advertising.

Otherwise, the particular content restrictions in this article fail to meet the three-part test for restrictions on freedom of expression. Article 75 is unclear, in breach of the first part of the test, since it is impossible for anyone to foresee which news might be deemed to contradict public ethics or to be inimical to national or religious feelings, or national unity. Freedom of expression is applicable not only to information and ideas that are favourably received but also to those that "offend, shock or disturb".[30] The restriction is also justified by interests – protection of national, religious feelings and national unity – which are not recognised as legitimate under international law (see the list of legitimate grounds for restricting freedom of expression in Part II.2. above). Finally, the restriction is unnecessary because any legitimate interests could be protected by appropriately narrow laws of general application, for example prohibiting incitement to racial hatred.

III.2.4. Barring from Practice

Overview

Article 105 of the Press Law provides that the Disciplinary Council may impose the following sanctions on journalists: a reprimand, a prohibition on exercising the profession for a period not exceeding two years, and striking a journalist from the press roll for life.

Article 104 provides that a journalist shall be referred to the Disciplinary Council:

[30] Note 12.

1- If he breaches the honour of the profession by virtue of a judgment delivered against him by the tribunals.

2- If he commits disrespectful acts in the journalism releases against the Press Union or the Superior Council or the President thereof or the Press Association or any of its Councils or President or against the Disciplinary Council or any of its members or against the Roll Committee, to avenge his pursuit or the pursuit of any other colleague before the Disciplinary Council or tribunals or administrative authorities related to the delivered judgment.

3- If he breaches the regulations and administrative or disciplinary decisions issued by the Superior Council of Press or any one of both associations.

Both the Lebanese Press Association and the Lebanese Editors Association can determine in their by-laws additional disciplinary matters that should be examined independently by the Disciplinary Council. Under Article 88 and 87, the bylaws of the LPA and LEA have no force unless approved by the Minister of Information.

The Disciplinary Council comprises members of the two professional associations – the Press Association and Editors Association – and a lawyer. Article 102 states that the by-law of the Press Union shall determine the principles to be adopted before the Disciplinary Council and the permissible cases of objection and appeal. Article 94 provides that reporters of foreign newspapers shall be subject to special disciplinary rules, to be determined subsequently.

The Draft Law does not envisage any changes to these articles.

Analysis

The right to practice a profession is a civil right. In the determination of such rights everyone is entitled under international law to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.[31] Therefore, at a minimum, negation of one's right to practice a profession should meet fair trial standards. These standards include the following guarantees:

- a fair and public hearing;
- within a reasonable time;
- by an independent and impartial tribunal established by law;
- with judgment to be pronounced publicly.

The Press Law fails to respect these standards. There are no guarantees of independence and impartiality in the appointment of the Disciplinary Committee members, or for the performance of their duties. The procedural arrangements for fact-finding and evidence-gathering are incomplete and thus fail to guarantee fairness. There is no requirement for public hearings. It is also unclear what the appeal procedures are. Although some fair trial guarantees may be set out in the bylaws envisaged in Article 102, the bylaws themselves are safeguarded from political interference as they cannot come into force without approval by the Minister of Information.

[31] See Article 14 of the ICCPR and Article 6 of the ECHR.

International courts have rarely addressed the question of whether an embargo on a journalist, imposed as a criminal sanction, can ever be a justifiable restriction on freedom of expression. The case of *De Becker v. Belgium,*[32] decided by the European Commission of Human Rights,[33] suggests that a penalty of this type may only be applied in highly exceptional circumstances, if ever.

In that case, De Becker had been sentenced to death for collaborating with the German authorities during the Second World War. The sentence was commuted and De Becker was released, but he was prohibited for life from participating in the publication of a newspaper. The Commission ruled that the ban breached the right to freedom of expression because it was imposed inflexibly, without any provision for its relaxation at a later time when public morals and public order may have been re-established.

The Commission came to this conclusion notwithstanding the extreme circumstances of the case: Belgium was just emerging from five years of war and enemy occupation, during which De Becker had committed treason. It is highly unlikely that an international court would uphold a ban on practising as a journalist, particularly for less serious offences such as libel or tax evasion or violation of professional standards as sets out in Article 104. The prohibition on a journalist from exercising their profession, as set out in Article 105, is therefore a disproportionate restriction which violates the right to freedom of expression.

We recommend that no professional or regulatory body be given the power to suspend or ban journalists from the profession.

III.2.5. Freedom of Association

Overview

Article 77 provides that all journalists shall be organised in the Lebanese Press Association (LPA) and the Lebanese Editors Association (LEA). Both are referred to as "independent bodies". The LPA comprises owners of periodic publications in Lebanon that satisfy the conditions of Article 10, while the LEA is made up of journalists working at periodic publications who are enrolled on the Press Association roll. The Draft Law does not envisage any changes to Articles 77 or 97.

Analysis

The wording of Article 77 may be interpreted as stating that journalists and owners of periodic publications are compelled to become members of LEA and LPA respectively. We refer once again to the opinion of the Inter-American Court of Human Rights in *Compulsory Membership in an Association Prescribed by Law for the Practice of*

[32] *De Becker v. Belgium*, 8 January 1960, Application No. 214/56 (European Commission on Human Rights).

[33] The Commission no longer exists but it used to act as the initial complaints body within the ECHR system for protecting human rights.

Journalists, which highlights the impermissibility of compulsory membership for journalists in professional associations.[34] The Court found that protection of media workers against their employers and improvement of their general welfare could be accomplished through less intrusive means, without the need to restrict the practice of journalism to a limited group. Further, the *Inter-American Declaration of Principles on Freedom of Expression* states, at Principle 6:

> Compulsory membership or requirements of a university degree for the practice of journalism constitute unlawful restriction of freedom of expression.[35]

We recommend that the membership of the LPA and LEA be voluntary.[36]

III.3. Regulation of the Print Media

The Press Law regulates the print media, establishing licensing and registration requirements. In this section we review the regulation of print media and in particular the licensing and registration requirements, rules on suspensions and bans and the mandatory provisions of copies. At the outset, however, we address the question of whether there is any need at all for statutory regulation of the print media.

III.3.1. The need of the print media regulation

Governments in many countries see it as their task to develop complex regulation for every aspect of a society's life, including the mass media. But even when its goal is to safeguard the right to freedom of expression, legislation affecting the media often creates bureaucratic obstacles and opportunities for abuse by those implementing it. Part of the purpose of the necessity test is to make sure that regulation concerning the media is kept to a minimum.

It is notable that most established democracies do not have laws which impose specific regulatory measures on the print media. This is due to a deliberate policy to prevent unnecessary regulation, given that, in contrast to the broadcast media, the nature of the print media does not necessitate regulation. While the broadcasting system depends on a limited resource – the electromagnetic spectrum – the print media is disseminated through an essentially unlimited resource, namely newsprint (and increasingly electronically over the Internet). Furthermore, while radio and television are a powerful medium delivered straight into the living room for free, we can choose the newspapers or journals we wish to read.

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[34] Note 24.
[35] Note 15.
[36] All forms of union membership as a precondition of employment in the UK are strictly illegal under the Employment Act 1990.

At the same time, the print media cannot operate in a legal vacuum. A newspaper's employees must be guaranteed acceptable working conditions; publishers must be prevented from pirating others' works; individuals affected by a defamatory news story should be able to sue for compensation; and so on. But none of these matters raises concerns unique to the print media: employer-employee relationships exist in every company, works can be pirated in many ways, and defamatory remarks can also be made through other media or in public. In contrast to the broadcast media – where there are technical constraints on the number of channels – the print media present very few distinctive features which demand a regulatory response.

As a result, many democracies have chosen to abolish their press laws and treat print media companies like any other enterprise, regulating them through laws of general application, such as the civil code and labour law. This is not to say that a press law can never be consistent with international law; in practice, however, such laws almost always contain some illegitimate restrictions on who may publish and what may be published, or duplicate provisions in laws of general application, sending a chilling 'double warning' to the press. The following sections discuss particularly problematic provisions found in the Press Law. We recommend, however, that consideration be given to the idea of doing away altogether with special regulation of the print media.

III.3.2. Licensing and regulation requirements

Overview

Licences

Article 27 of the Press Law strictly prohibits the publication of any periodic publication without obtaining a prior authorisation. The Draft Law abolishes this prohibition.

The Press Law distinguishes between licences for political and non-political periodic publication and sets out different conditions for each. In addition to the provisions of the Press Law, Article 1 of Decree-law No. 74 of 1953 restricts the granting of new licences to political periodical publications until the number of the current political periodical publications becomes twenty-five daily political publications and twenty provisory political publications, which should comprise at least fifteen Arabic language dailies and twelve Arabic provisory publications.

The Draft Law eliminates the distinction between political and non-political periodic publications and repeals Decree-law No. 74.

Article 30 of the Press Law provides that the licence applicant should be a Lebanese citizen residing in Lebanon, who enjoys his/her civil and political capacities, is not convicted of crimes that are enumerated in the election law and is "not in service of any foreign state". Further conditions are set out in Article 31 for licensing political publications. Licences for these can be granted only to a journalist or company which is fully controlled by Lebanese nationals.

Article 33 set out few additional requirements for granting licences. The latter should be restricted to journalists who are able to issue periodic publications through their own means and press companies whose capital is not less than 500,000 Lebanese Pounds. Owners of periodic publications should present cash or bank guarantees for the various indemnities that may be required. The Ministry of Information assesses the value of such guarantees.

One of the more significant changes introduced by the Draft Law is to abolish this licence requirement. Instead, any natural or legal person who wishes to issue periodic publications must submit a declaration to the National Council of Press. These will only be issued to natural persons who are Lebanese journalists domiciled in Lebanon, enjoying civil and political capacities, not convicted of any of the crimes found in the election law and not being in the service of any foreign State. Depending on the company type, press company partners or authorised persons or owners should be Lebanese citizens.

Article 38 of the Press Law requires licence applicants to provide the names and addresses of their owners and printers, and the names of the responsible directors and deputy directors, and the name and schedule of the publication. Further certified copies of the diplomas of the owners and responsible directors must be provided. The Draft Law envisages no changes to these requirements.

Under Article 42 of the Press Law, the owner of the periodic publication must present a statement on each replacement or modification made to the authorisation. The Draft Law retains this obligation and imposes fines for failures to comply with it.

Powers of the Minister of Information

Under Article 27 of the Press Law, the Minister of Information examines the requests for authorisation of periodic publications and issues a decision after consultation with the Press Association. Article 28 provides that the Minister shall grant authorisation if the candidate satisfies all the applicable legal conditions. The decision of the Minister shall be published in the official gazette. A presumption of refusal arises if the Minister has not responded on time, although an appeal before a tribunal against refusals is possible.

The Draft Law takes these licensing powers away from the Minister of Information. Instead, the National Council of Press and Publication (*hereinafter* "the Press Council") receives declarations of interest to issue periodic publications and determines. Applicants can start publishing one month after submitting their declaration. Either within this period or afterwards, the Press Council can call on applicants to bring themselves into compliance with any requirement in the law and, should they fail to do so, it can initiate court proceedings which can lead to suspension of the publication, confiscation and fines of between one and five million Lebanese Pounds.

Article 43 of the Press Law provides that the Minister of Information shall suspend any periodic publication which does not have a licence, confiscate any copies issued and fine the perpetrator ten to twenty thousand Lebanese Pounds. In addition the perpetrator shall

be deprived of the licence for one year and the responsible manager shall be precluded from assuming responsibility in any other journal during this period. The Draft Law repeals Article 43.

Article 29 provides that the Minister of Information can revoke the authorisation of a print publication under several circumstances: if the publication has not been released six months from the granting of authorisation; if the publication has been suspended for three consecutive months; if the licence breaches some of the general provisions; and if the owner no longer satisfies one or more of the conditions set out by the law. The Draft Law repeals Article 29.

Analysis

We are very concerned about the licensing regime for periodic publications imposed by the Press Law. International law makes it clear that a licensing requirement for the print media is not legitimate, although a technical registration scheme, which does not allow any discretion to refuse registration, might be legitimate. A licensing scheme presents a major obstacle to any publishing activity and consequently the enjoyment of the right to impart information. The specific obstacles may range from minor bureaucratic hurdles to a full barrier (if the licence application is rejected). Such a scheme is therefore an interference with the right to freedom of expression. Even if in some cases licensing schemes address legitimate goals, such as preventing defamation, they fail to meet the requirement of 'necessity' which implies, among other things, that the government should choose those means to achieve its goals which are least harmful to freedom of expression. Clearly, licensing is not the least restrictive means to address defamation. Instead, complaints about offensive articles can be dealt with on a case-by-case basis after publication and, where upheld, elicit a fine or some other sanction. Licensing schemes are particularly problematic because they may easily be abused, for example, to prevent opponents of the government from voicing their opinions.

When examining cases on newspaper registrations, the UN Human Rights Committee, the African Commission on Human Rights and Peoples' Rights, and the European Court of Human Rights have found that the registration systems in question represented a breach of the right to freedom of expression.[37] Various national courts have also addressed the issue of periodic publications licensing. For the majority, registration systems will only be legitimate where they are narrowly restricted to technical registration requirements, whereby only limited information is required to be provided, the fees imposed are nominal processing fees, and there is no possibility of registration being refused.

[37] For example. the UNHRC case *Laptsevitch v Belarus*, 20 March 2000, Communication No. 780/1997, the ACHPR case *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, 31 October 1998, Communication Nos. 105/93, 128/94, 130/94, the ECHR case *Gaweda v. Poland*, 14 March 2002, Application No. 26229/95. It is worth mentioning in this regard the recent decision in the case of *Mavlonov and Sa'di v Uzbekistan* in which the UN Human Rights Committee established for first time that non-registration of a newspaper violates not only the right of freedom of expression of the newspaper owner but also the right to receive information of newspapers' readers. See *Mavlonov and Sa'di v. Uzbekistan*, 19 March 2009, Communication No. 1334/2004.

The licensing regime established by the Press Law is problematic for three reasons. First, it does not meet the requirement of fairness (see Part III.2.4. above). The proceedings are not public and are administered by the Minister of Information, a process which lacks independence. Second, there is the possibility of registration being refused. Third, the regime imposes undue administrative burdens on the media, for example by requiring them to provide large amounts of information to the authorities and by imposing economic burdens on the media which cannot be justified as necessary. It is clear that any legitimate interest may be protected by a system which is fair and not excessively onerous. The established licensing system should be abolished as it does not meet these standards.

In this respect we support the repeal of the licensing regime proposed by the Draft Law. However, we are concerned that the proposals still fail to conform fully to international standards. We note that where democracies impose registration requirements, these serve two purposes, namely to ensure that there is no duplication of names and to ensure that those who may have been dealt with unfairly in publication have an address for purposes of filing a legal suit. Thus, in the United Kingdom, only non-incorporated publications have to register, since the process of incorporation already addresses both of these needs.

We are thus concerned about the possible initiation of court proceedings by the National Press Council which can lead to suspension and confiscation of publications as well as fines if some of the registration requirements are not fulfilled. In our view the sanctions envisaged in the Draft Law are excessive and therefore in violation of international law.

Further, we consider the obligation to provide information about any change of the authorisation or registration to be an excessive administrative burden inasmuch as it includes changes not only regarding proprietors, publishers and printers but also regarding responsible and subsidiary directors. We consider that it is sufficient if proprietors, publishers and printers can be identified for purposes of bringing a case against a newspaper, although any respectable newspaper will as a matter of practice also provide the name of the manager and/or editor. In the UK, Australia and France, where similar requirements exist, only the title of the publication and the names of the proprietor, publisher and printers are subject to registration.

III.3.3. Mandatory Provision of Copies

Overview

Article 20 provides that the owner or the responsible director of the printing house shall forward to the Minister of Information six copies of each non-periodic publication upon its release. One of these copies shall be kept with the Ministry of Information, one copy shall be sent to the National Library, one copy to the National Achieves and two copies to the Lebanese Press Association. In case such publication has political characteristics, one copy shall also be sent to the relevant Public Prosecutor of Appeal.

The above arrangement applies to any book printed or edited in Lebanon, and to audio or visual, or audiovisual materials that are printed, recorded and produced in Lebanon, and are intended to be sold, distributed or kept in the country.

For a violation of this obligation, the Press Law envisages a fine of between 100,000 and 500,000 Lebanese Pounds. In case of re-offence, the sanction shall be doubled.

Article 46 provides that the manager of a periodic publication shall send one copy of each issue upon its release to the Public Prosecutor of Appeal of the publication's venue and two copies each to the Minister of Information, to the National Library and to the Lebanese Press Association. Fines for violation of these provisions are provided. The Draft Law preserves the mandatory provision of copies. The Minister of Information however shall no longer receive a copy of each periodic publication. Instead, there is an obligation for provision of such copies to the Press Council.

Analysis

We consider that the Press Law imposes an overbroad deposit obligation because it fails to distinguish between books, newspapers, magazines and similar publications, and printed matter such as postcards, greeting cards, small brochures and similar, or more 'trivial', output. The result is that that all printing houses, no matter how small the print run, are placed under onerous obligations to provide free copies of their materials to State institutions.

Deposit requirements for the national library serve a legitimate goal, namely to preserve national heritage and knowledge, but there can be little justification for a duty to provide copies of a publication to the Ministry of Information and the Public Prosecutor. The danger that such a requirement may be used as a vehicle for censorship is obvious. In effect the Ministry and the Prosecutor's Office can monitor everything published in Lebanon. It is hard to conceive of any other reason why the government would find it necessary to have copies of every publication. A requirement to send publications to executive bodies and to the prosecutor's office have a chilling effect on freedom of expression, since authors may be more reluctant to speak their mind about the government if they know it is keeping a close watch on their words. Moreover, there is no doubt that the idea behind the requirement to send copies to the Prosecutor's Office is to ensure that prosecutors can control the press and punish authors and publishers.

We recommend that mandatory provision of copies to the Ministry of Information and the Prosecutor's Office be abolished. Deposit requirement should exist only with respect to the national library service and archive.

III.3.4. Regulation of Printing Houses

Overview

Chapter Two of Section One of the Press Law regulates printing houses. Article 12 provides that a person who acquires or manages a printing house should inform the

Ministry of Information thereof. For the breach of this obligation the perpetrator shall be fined between 25 and 500 Lebanese Pounds. For an aggravated violation, the envisaged sanction is imprisonment of between 10 days and 6 months.

The Draft Law repeals all the provisions of Chapter Two and Article 12 states that printing housing shall be unrestricted.

Analysis

We consider that the obligation on printing house owners and managers to inform the Ministry of Information about their status creates unnecessary bureaucratic hurdles and suspicion that printing houses should be subject to some sort of control by the Ministry of Information. We welcome proposals to do away with this requirement in the Draft Law.

III.3.5. Foreign Publications

Overview

Chapter Eight of Section One of the Press Law regulates foreign publications. Article 50 provides that the Minister of Information may prohibit the entry into Lebanon of any foreign periodic publication and order the confiscation of the latter if it appears that such a publication undermines security, prejudices national sentiment, is detrimental to public ethics, or promotes religious tensions. Fines and imprisonment are provided for anyone publishing, editing or distributing within Lebanon any prohibited foreign publication.

The Draft Law envisages total abolishment of prior censorship and free circulation of foreign publication unless a court decides to prohibit the entry or to order confiscation of such publication following a complaint against it.

Analysis

We are concerned about the wide discretionary powers of the Minister of Information to determine which foreign publications may or may not enter the country and the vague description of the circumstances which allow fir prohibition of entry and confiscation. The Minister of Information can in effect censor foreign publications. In fact, the rules on prohibition of foreign publications into Lebanon resemble prior censorship.

International courts have addressed the problem of administrative bodies exercising excessive discretion in relation to prior restraints on publications. In the case of *Gaweda v. Poland*, the European Court of Human Rights noted:

> [A]lthough Article 10 of the Convention does not in terms prohibit the imposition of prior restrains on publications the relevant law must provide a clear indication of the circumstances when such restraints are permissible, and *a fortioiri*, when the consequences of the restraint, as in the present case, are to block completely publication of a periodical.[38]

[38] The case involved a challenge to a print registration regime. See note 37, para. 40.

As granting discretion over the media to politically linked individuals does not satisfy the requirement that restrictions on freedom of expression be "provided by law", we support the stance taken in the Draft law to divest the Minister of Information of powers to prohibit entry of foreign publications in Lebanon.

We support the Draft Law's proposal to abolish prior censorship totally and to ensure free circulation of foreign publication.

III.4. Regulation of Press Authorities

III.4.1. Lebanese Press Union and Superior Council of Press

Overview

According to Article 77 of the Press Law, the Lebanese Press Association (LPA) and the Lebanese Editors Association (LEA) are "independent bodies". The LPA comprises owners of journals in Lebanon that satisfy the conditions of Article 10, while the LEA I made up of journalists who are not owners. The Lebanese Press Union (LPU) is formed from these two bodies as a superior body. The President of LPA chairs the LPU, while the President of the LEA is the LPU's secretary.

Article 81 stipulates that the members of the General Assembly of LPA are divided in two categories depending on whether they represent political or non-political journals, news agencies, reporters' agencies or specialised news. The Draft Law proposes Article 81 to be repealed.

Article 84 provides that the Council of the LPA comprises 18 members, being 5 representatives each of political and non-political journals, along with representatives of news and reporting agencies, and specialised publications. The Council of the LEA comprises 12 members. The Draft Law proposes that the board members of the LPA be elected by its General Assembly.

Article 88 and 87 provide that the bylaws of the LPA and LEA shall not come into force unless approved by the Minister of Information.

The Councils of the LPA and LEA have similar powers, including management of association properties, preparation of the budget, and settlement of professional disputes and conflicts between the members. They can also refer their members to the disciplinary council, or to the courts. Otherwise, however, the Press Law prevents journalists from having recourse to tribunals against their colleagues in any matter related to the profession. Violations of this provision may lead to disciplinary sanctions. The Councils can also amend their financial regulations, which should be approved by the General Assemblies and by the Minister of Information.

Article 96 provides that the Supreme Council of Press (SCP) shall be created from the Lebanese Press Union. The SCP is formed from the offices of the LPA and the LEA. The

Head of the Department of Press and Legal Affairs at the Ministry of Information shall be the State Commissioner "acting in this Council and other committees thereof". The authority of the State Commissioner is determined through a separate decree.

Article 96 also provides that the SCP shall examine any matter of interest to the press and journalists in general, and shall enact the by-laws of the Lebanese Press Union. The latter come into force after approval by the Minister of Information.

Article 97 provides that a Press Association Enrolment Committee shall be formed. It shall consist of representatives of the LPA and LEA, and shall be chaired by the President of the Press Association. The Head of the Department of Press and Legal Affairs of the Ministry of Information is the Rapporteur of the Committee.

The Draft Law excludes the Head of the Department of the Press from participation in the SCP. It increases the powers of the SCP by stating that it shall establish a retirement fund for journalists and shall prepare a Draft law on the privileges of journalists. Furthermore, it shall nominate common committees to represent journalists on "significant and great occasions".

Analysis

We are concerned about State control over the journalist community in Lebanon through these rules. The LPA and LEA are public-law institutions rather than professional organisations. Through them the government is able to exercise control over the press. This control is unjustified and unnecessary in a democratic society, and it therefore violates the rights to freedom of association, as guaranteed by Article 22 of the ICCPR,[39] and of expression.

By establishing the LPA and LEA the Press Law interferes with the freedom of association and expression of Lebanese journalists. The LPA and LEA are regulated as public-law institutions which exercise public control over the press. The Minister of Information approves the bylaws of the LPA, LEA and SCP. The Head of the Department of Press and Legal Affairs at the Ministry of Information is the State Commissioner of the SCP and Rapporteur of the Press Association Roll Committee.

Like the right to freedom of expression, freedom of association is a key democratic right. The European Court of Human Rights has noted, in the case of *G. v Germany*, that the right to freedom of association is "fundamental to democratic society [and it is] not to be restrictively interpreted".[40]

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[39] Article 22 states:

> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

[40] 6 March 1989, Application No. 13079/87.

It is difficult to justify this interference with the rights to freedom of association and expression with any of the legitimate interests provided for under international law for restricting these rights (in Articles 19(3) and 22(2) of the ICCPR). General interests like the protection of health and public order justify the regulation of medical and legal professions, there is no such need for the press. Furthermore, the practice of medicine and law is not a fundamental human right, as is the practice of journalism. It may be noted that modern democracies do not impose organisational constraints on the media.

Furthermore, there is no need for statutory regulation of press organisations. Like their colleagues around the world, journalists in Lebanon should be free to form their own professional organisations and regulate their activities without State aid or control.

We therefore recommend that the media be left free to organise itself however it should choose, on a basis that is purely professional, voluntary and independent of State control. At a minimum, any professional or complaints bodies should be protected against government control. The powers of the Minister of Information in relationship to the LPA and LEA should be abolished and the Head of Department of the Press and Legal Affairs should neither chair any of the structures of the press organisations nor participate in them in his or her official capacity.

III.4.2. National Council of Press and Publications

Overview

The Draft Law establishes a new body, the National Council of Press and Publications (NCPP Press Council). It is envisaged as having a corporate personality. Article 51 stipulates that the NCPP shall be an independent body, while Article 57 provides that it "enjoys complete independence in exercising its missions".

The Press Council's powers include defending freedom of the press and publication; investigating issues concerning journalists' ethics; protecting journalists, publishers and editors from any control by the government and others; delivering opinions regarding press and publication-related proposals and laws; "issuing the journalist gentlemen's agreement in collaboration with the concerned parties"; and classifying publications to protect minors, adolescents and persons with particular needs.

Article 52 provides that the Press Council shall be formed of 10 members, namely the LPA President, the LEA President, the Editors' Union President, the Presidents of the Beirut and Tripoli Bar Associations, the Rector of the Lebanese University and four representative from the artistic or scientific communities or the intelligentsia, to be designated by the permanent members for three years. Members of the Press Council take an oath before the President of the Republic prior to the commencement of their missions.

The Press Council adopts by-laws concerning its operation, which need to be approved by the Council of Ministers before coming into force, and the Council of Ministers determines the salaries of members.

Analysis

It is commendable that the establishment of a Press Council has been proposed. Such councils exist in many democratic countries. Their operation has been proven to be a successful model of media self-regulation. The success of press councils has prompted the African Commission of Human and People's Rights to declare:

> "Effective self-regulation is the best system for promoting high standards in the media."[41]

Democratic press councils share common features. They are private mechanisms, established by journalists and publications, to forestall the need for government regulation. To achieve this purpose, press councils raise journalistic standards and provide redress against unprofessional or inaccurate reporting. The activities of press councils usually consist of standard-setting through the adoption of a code of conduct or code of practice, education of media workers and the general public about this code, and adjudication of complaints submitted by members of the public. In most cases, the only 'sanction' available to press councils is to require the offending media outlet to print their decision that a breach of the code has occurred.

The Draft Law seeks to establish a Press Council which does not possess most of the common features of press councils. First, we note that it is established by law rather than by a voluntary agreement by journalists and press owners. The statutory character of the Press Council puts its independence into question. The risk of State control is higher in countries in transition where democratic processes are still fragile. In order to guard against censorship and undue political interference in the media, it is preferable for bodies aimed at promoting media accountability be established by the media community *voluntarily* and not by law.

In fact the Draft Law gives the government opportunities to exercise control over the Press Council, since the former approves its by-laws and determines the salaries of its members.

Second, we note that the powers and the operation of the Press Council are unclear. For example, how does it "defend freedom of the press", or "protect journalists"? When does it "deliver opinions"? The Draft Law fails to set out the procedures for investigating violations of journalist ethics. It is unclear whether the Press Council has adjudicating powers and whether it can provide redress in cases of unethical conduct. We observe that in contrast to other countries, the Press Council does not appear to have standard-setting powers or be in charge of the adoption of codes of conduct.

Third, although the Press Council includes tripartite representation of journalists, media owners and members of the public, we are concerned about the selection of the members.

[41] *Declaration of Principles on Freedom of Expression in Africa*, note 8.

The Draft Law does not set out the selection criteria for the four public members. Neither does it require public consultations as part of the process of selection.

Fourth, the Draft Law sets out no requirement of transparency in the everyday functioning of the Press Council. The latter is not obliged to report on its activities, budget or sources of funding. The lack of transparency risks undermining the legitimacy and credibility of the Press Council's decision.

We recommend that the Press Council be established by the media community voluntarily and not by a law. The Press Council should be protected against government control. Its powers should be clarified. The election of its members should be based on clear criteria following public consultations. The activities of the Press Council should be transparent.