



NOTE
on
Draft Press and Printed Press Materials Act of
Sudan
by
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London
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This Note summarises ARTICLE 19's main concerns regarding the draft Sudanese Press and Printed Press Materials Act (the draft Law), which we understand is due to be tabled in Parliament.¹ The purpose of this Note is to provide input into the public and parliamentary discussions and, in particular, to provide the different stakeholders with a review of the draft Law's compatibility with the international freedom of expression standards.

ARTICLE 19 has already been involved in previous efforts at reform and development of media laws in Sudan, including by providing an analysis of the 2004 Press and Printed Press Materials Act,² and comments on freedom of expression in Sudan.³ Most recently, we reviewed a number of pieces of draft media legislation in Southern Sudan.⁴

¹ The analysis is based on an unofficial translation of the draft Law. ARTICLE 19 takes no responsibility for errors in the analysis below resulting from inaccuracy or erroneous translation.

² Available at: <http://www.article19.org/pdfs/analysis/sudan-memorandum-2004.pdf>.

³ Available at <http://www.article19.org/pdfs/analysis/sudan-foe-07.pdf>.

⁴ Available at: <http://www.article19.org/pdfs/analysis/southern-sudan-media-laws-comment.pdf>.

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ARTICLE 19 has serious concerns with the draft Law. Although it seeks to repeal the very restrictive 2004 Press and Printed Press Materials Act (the law currently in force), it preserves the main limitations on free expression.⁵ In particular, we are concerned about the licensing and registration system for the press, which the draft Law could leave intact. Moreover, the Press and Printed Press Materials National Council (Press Council) will continue to be in charge of issuing licenses for media organisations and also act as a gatekeeper for access to the profession of journalism. Indeed, the draft Law would introduce very few changes to the present regime. One major difference is that the President would, under the draft Law assume the supervisory role currently played by the Minister of Information and Communication in relation to the Press Council, which will continue to lack independence.

These features of the draft Law are contrary to international law and will limit the ability of the print media in Sudan to fulfil their informational role in society. We note that since the introduction of the 2004 Act, several newspapers have been suspended.⁶ In view of the forthcoming 2010 national elections and the 2011 referendum in Sudan, restrictions against media are likely to intensify unless the strict framework for regulation of the print media in Sudan is democratised.

1. Overview

The draft Law would repeal the current Press and Printed Press Material Act of 2004. A comparison between the two laws reveals an unfortunate degree of similarity. Print media and printed materials are regulated in the same fashion. The current legal framework allowing for stringent State control over the media and journalistic profession would remain intact.

There are a number of differences between the draft Law and the Law in force but these are mostly minor and do not resolve the key problems with the existing regime:

- A new chapter sets out guiding principles on freedom of the press and journalists.
- A new provision states that the Press Council shall be independent in performing its work and in its budget.
- The Presidency will take over from the Minister of information and Communication in terms of supervising the new Press Council. The Presidency will have significant powers regarding the new Press Council including:
 - to advise the Press Council regarding the general policy of the State in the field of journalism;
 - to request information and reports by the Press Council;
 - the President shall appoint eight of the 21 members of the Council and the Government will be deprived of its powers to appoint members; and
 - the President, as opposed to the Minister of Information and Communications, will approve the budget.

⁵ We recalled that legal experts and international organisations have voiced their concerns regarding the Act in question and pointed Then on September 1, 2008 the NPC suspended both *the Sudan Tribune* and *The Citizen* for several days. Information provided by Max Planck Institute, available at:

http://www.mpil.de/shared/data/pdf/comment_on_press_act_2004_version_2_.pdf), and by Human Rights Watch, available at: <http://www.hrw.org/en/node/80840/section/1>.

⁶ Examples include *Al Sudani* and *Al-Watan* in 2007 and *the Sudan Tribune* and *The Citizen* in 2008. See: <http://www.article19.org/pdfs/press/sudan-press-council-uses-restrictive-regulations-to-suspend-sudanese-newspap.pdf>.

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- Documentation on the history of journalism and press materials in Sudan will fall within the competence of the Press Council.
- Publishing and distribution companies will not longer obtain licenses but permissions from the Press Council.
- The Press Council will be vested with powers to nominate the Secretary General, whilst the President shall preserve his powers to appoint the latter.
- The Secretary General will be vested with powers to appoint staff, evaluate their performance and take disciplinary measures against them.
- The Council shall hold an extra-ordinary meeting at the request of one third of its members, as opposed to a majority, as the Law currently provides.
- Members of the Press Council may be dismissed not only following convictions for contravention of the Act but also for convictions for any offense involving honesty or moral turpitude.
- The time period for appeals against decisions and penalties of the Press Council will be reduced from 60 to 30 days.
- The requirement for editors-in-chief to have at least 15 years of experience will be reduced to 10 years. Similarly, journalists will only be required to be 35 years old instead of 40. However, they shall be required to have specific university qualifications in the field of journalism, as opposed to any university degree.
- Journalists should refrain from causing irritation or exaggerating when presenting the news of crimes or civil offences. They should not comment on investigations or trials until after a final decision.

2. The Press Council

We are concerned that the Press Council suffers from being subject to undue control by the President, instead of being transformed into a properly independent body. Chapter II of the draft Law establishes the Press Council as a body under the supervision of the Presidency. The Presidency advises the Press Council on the general policy of the State with regard to the profession of journalism, and requests information and reports from it. The Press Council must submit its budget to the President for approval. The Press Council shall consist of 21 members, eight appointed by the President, upon consultation with the First Vice President, eight elected by the General Assembly of the General Union of Journalists, as approved by the Work Organisations Registrar, and five elected by the publishers and the proprietors of press printing houses.

As we have noted on a numerous occasions, ARTICLE 19 is of the view that self-regulation is the most appropriate model for the print media. While sensitive to the particular situation in Sudan, we stand on the principle position that journalists and media are better placed than government to regulate the print media, including by establishing and implementing professional and ethical standards. The print media sector presents very few distinct features which demand regulatory responses. In contrast to the broadcasting sector, there are no technical constraints on the number and distribution of newspapers and print materials. Moreover, where press laws exist, Governments tend to abuse them to restrict press freedom. As a safeguard against such abuses, many countries opt to allow the print media to self-regulate. We note that South Sudan is following this trend.⁷

⁷ As reported on: <http://www.article19.org/pdfs/press/sudan-media-ethics.pdf>.

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With respect to the Press Council, we are concerned that the draft Law fails to protect its independence, in particular from the Presidency. A number of key independence features are lacking, in addition to the fact that the President appoints a large number of members. The draft Law fails to prohibit politicians or businessmen with media conflicts of interest from becoming members, and the Presidency supervises the activities of the Press Council and controls its budget. This is contrary to the established international standards whereby public bodies with regulatory powers over the media, such as the Press Council, should be protected against political or governmental interference.

We are also concerned that the Press Council is vested with policing powers with respect to journalists and the print media. Under the draft Law, the Press Council enforces public policy concerning journalism, and disciplines journalists and the print media, including through possible suspension of newspapers. This regulation runs counter the well-established position that it is not appropriate for media regulatory bodies to ‘police’ the media. Rather, they should ensure that the sector functions smoothly by establishing a climate of dialogue, openness and trust in dealing with media practitioners.

If the idea of a statutory Press Council is retained, we recommend that it be fully independent from the Government and the Presidency and divested of powers to impose punitive sanctions.

3. Registration and Licensing

We are concerned that the draft Law preserves the current licensing regime for the press, which is incompatible with the right to freedom of expression as guaranteed under international law. Chapter III of the draft Law sets out the licensing and registration regimes for both media practitioners and print publications. Under Section 24, all publications in Sudan must be licensed by the Press Council. Section 25 stipulates the conditions which applicants should meet to obtain a licence to publish a newspaper: publication of newspapers, press publications or the provision of press information should be among their major purposes; they should deposit a sum of money, as the Council may specify; contract a sufficient number of journalists who satisfy the minimum criteria for journalists set out in the Press Development By-Law; have information centres, and abide by the specialisation for which they have been approved.

Various authoritative international bodies have issued statements and declarations condemning licensing of the print media. For example, a Joint Declaration issued by the freedom of expression rapporteurs of the United Nations, the Organisation for Security and Cooperation in Europe (OSCE) and the Organisation of American States (OAS) states:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.⁸

The *Declaration of Principles on Freedom of Expression in Africa*, adopted by the African Commission on Human and Peoples’ Rights in 2002, states similarly:

⁸ Joint Declaration, 18 December 2003.

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Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.⁹

In 2000, the UN Human Rights Committee, the body that monitors implementation of the *International Covenant on Civil and Political Rights* (ICCPR), ruled that a licensing regime for the print media was incompatible with the right to freedom of expression guaranteed under that Convention,¹⁰ which Sudan has ratified. Print media licensing laws have been struck down by national courts, including in Africa, for similar reasons.¹¹

Our main recommendation, therefore, is that the licensing regime proposed in Articles 24 and 25 be removed from the draft Law.

We are also concerned about the requirement for journalists to register with the Press Council before practicing their profession and the conditions placed on chief editors. Under Section 26 of the draft Law, all individual journalists must be registered with the Press Council. Section 26(2) prohibits someone being appointed editor-in-chief of a newspaper unless they are Sudanese, are at least 35 years old, have worked in the profession for at least 10 years, possess a university degree in the field of journalism, and have not been convicted of any offence “inconsistent with honour, honesty” or any offence under the Press Act. The requirements relating to age, nationality, experience and possession of a university degree may be waived if the applicant “satisfies the quality characteristics”.

Both of these provisions place restrictions on involvement in journalism, which are incompatible with the right to freedom of expression. Under international law, everyone has the right to express themselves through the media, subject only to the right of the media to decide whom to hire as a journalist. To place arbitrary restrictions on that right violates both the right of the would-be journalist and the right of the public to a pluralistic media. This principle has been laid down in various international declarations, including the *Declaration of Principles on Freedom of Expression in Africa*,¹² as well as through decisions of international human rights courts. The clearest reasoning on why restricting access to the journalistic profession violates the right to freedom of expression has been provided by the Inter-American Court of Human Rights. Although a regional Court, its reasoning on the interpretation of the right to freedom of expression is equally valid for Article 19 of the ICCPR. The Court stated:

If freedom of expression requires, in principle, 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, it must be recognized also that such media should, in practice, be true instruments of that freedom and not vehicles for its restriction.¹³

We recommend that the obligation on journalists to enrol with the Press Council before practicing their profession be dropped from the draft Law.

⁹ 32nd Session, 17-23 October 2002, Principle VIII.

¹⁰ Communication No. 780/1997, 20 March 2000, paragraph 8.5.

¹¹ See for example the decision of the Zambian High Court in *Kasoma v. Attorney General*, 22 August 1997, 95/HP/29/59.

¹² Note 9, Principle X.2.

¹³ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, November 13 29, 1985, Inter-American Court of Human Rights (Ser.A) No.5 (1985), para. 34.

4. Journalists' Duties

We are concerned about the vaguely defined duties which the draft Law places on journalists, and the criminal responsibility which their non-observance entails. The list of duties repeats the duties under the Law in force such as the duty of journalists to promote truthfulness and integrity in the performance of their profession and not to publish any secret information. The list also includes a new duty on journalists to refrain from causing irritation and from exaggerating when presenting the news of crimes or civil offences, and a prohibition on commenting on investigations or trials before a final decision is reached.

Provisions which require journalists to “intend truthfulness and integrity” or “abide to cause irritation or exaggeration when presenting news of crimes and civil offenses” are excessively vague and fail the requirement under Article 19(3) of the ICCPR that a law restricting freedom of expression must be precise.¹⁴

Many of the duties set out in the draft Law are not necessary to protect any legitimate aim. This is the case, for example, with the prohibition on journalists to comment on investigation, interrogations or trials before a final decision comes into force. This makes it impossible to discuss in public any major domestic and international trial before its end, even though most trials are public in view of people's right to observe justice being done.

It is inappropriate to impose such rules on journalists, as opposed to media outlets as such, which in the end of the day is responsible for what it publishes or broadcasters. Furthermore, criminal sanctions for breach of any journalistic duty are disproportionate. Criminal sanctions are a harsh restriction on freedom of expression and their use should be minimal. Violations of a code of ethics can be dealt with adequately through sanctions imposed on media outlets such as requiring the publication of the findings of the oversight body. It is necessary to bear in mind that there are rules of general application, for example in the civil law, relating to matters such as defamation or undue invasion of privacy. As a result, all criminal sanctions should be removed from the draft Law.

¹⁴ Article 19(3) of the ICCPR sets out 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.

Key Recommendations

Recommendations for the Press Council:

Consideration should be given to removing the Press Council from the law and instead letting the print media sector address problems on a self-regulatory basis.

If the Press Council is retained, it should be independent from the Government and the Presidency.

The Press Council should not exercise quasi-judicial functions and the system of sanctions should be administrative rather than criminal in nature. Its powers and functions should be described in clear and narrow terms.

Recommendations on Registration and Licensing:

The mandatory registration requirement for print media outlets and for journalists should be removed from the law.

The restrictions on who may be an editor should also be removed.

Recommendations on Journalists' Duties

All criminal sanctions should be removed from the Act and the sanctions which the Press Council – reconstituted as a fully independent body – may impose should be limited to a warning and to requiring an offending media outlet to publish its findings.

About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation. These publications are available on the ARTICLE 19 website: <http://www.article19.org/publications/law/standard-setting.html>.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme's operates the Media Law Analysis Unit which publishes around 50 legal analyses each year, commenting on legislative proposals as well as existing laws that affect the right to freedom of expression. The Unit was established in 1998 as a means of supporting positive legal reform efforts worldwide, and our legal analyses frequently lead to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/publications/law/legal-analyses.html>.

If you would like to discuss this Note further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us at the address listed on the front cover or by e-mail to law@article19.org