MEMORANDUM

on the

Audiovisual Media Law
(Provisional Law No. 71, 2002)
of the Kingdom of Jordan

London
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TABLE OF CONTENTS

I. Introduction 2

II. International and Constitutional Guarantees 3

II.1 The Importance of Freedom of Expression 3
II.2 The Guarantee of Freedom of Expression 3
II.3 Broadcasting Freedom 4
II.4 Independent Regulatory Bodies 5
II.5 Pluralism 6
II.6 Restrictions on Freedom of Expression 7

III. Analysis of the Audiovisual Media Law 7

III.1 Outline of the Law 7
III.2 The Audiovisual Commission 8
III.2.1 Composition of the Commission 8
III.2.2 Political Independence of the Commission 9
III.2.3 Financial Independence of the Commission 13
III.2.4 Powers of the Commission 14
III.2.5.1 Granting of Licences 14
III.2.5.2 Revocation and Renewal of Licences 18
III.2.5.3 Penal Provisions 18
III.3 Content Restrictions 20
III.4 Software/Recorded Materials 21

I. Introduction

This Memorandum provides an analysis of the Audiovisual Media Law (Provisional Law No. 71 for the year 2002) of the Kingdom of Jordan (the Law) and its accompanying 'bylaws'.[1] We understand that this Law has been submitted for approval to Parliament, which is expected to deal with it over the next few months. In the meantime, the Law has become provisionally operational, and as of February 2006 several licenses had been issued, including eight for FM radio stations.

Importantly, the Law creates the Audiovisual Commission, which advises the Council of Ministers and the Minister of Information (whose duties were assumed by the Prime Minister after the abolition of the Information Ministry)[2] on the administration of licenses for broadcasters, and exercises a degree of regulatory authority over the audiovisual media sector. The establishment of an autonomous regulator signifies an important step for the development of free media and establishes Jordan as a regional frontrunner. At the same time, the Commission's independence and powers are still very modest compared to international best practice, and this needs to be addressed if Jordan is to have truly free media and a flourishing audiovisual industry. In particular, under the current regime the executive has the final say over broadcast licence applications and the appointment procedure for members of the Commission lacks appropriate safeguards for their independence.

Our analysis is based upon general international standards regarding freedom of expression binding on Jordan, as reflected in ARTICLE 19's *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (the ARTICLE 19 Principles),[3] a set of guidelines developed based on international standards, comparative constitutional law and best practice in countries around the world. Reference will also be made to other standards, for example from regional systems for the protection of human rights, which, while not formally binding on Jordan, provide good evidence of generally accepted understandings on the nature and scope of the right to freedom of expression.

The next section of this Memorandum underlines the importance of respect for freedom of expression and outlines Jordan's international and constitutional obligations to ensure respect for this key right. Section III analyses the present Audiovisual Media Law in the light of those obligations, identifying key areas where improvement is possible and providing concrete recommendations to this end.

[1] The Law is in Arabic and we have used an English translation of the Audiovisual Media Law made available by the Audiovisual Commission, which is available online at http://www.avc.gov.jo/docs/avc%20law.zip. For the bylaws, we commissioned separate translations. ARTICLE 19 takes no responsibility for the accuracy of these translations or for comments based on mistaken or misleading translation.
[2] The position of Minister of Information was abolished by royal decree of 13 November 2003. All the Minister's powers and responsibilities were devolved to the Prime Minister. In this Memorandum, we refer to the Minister of Information wherever the Provisional Audiovisual Media Law does so although, in practice, these responsibilities are now exercised by the Prime Minister.
[3] London, April 2002. Available online at http://www.article19.org/publications/law/standard-setting.html.

II. International and Constitutional Guarantees

II.1 The Importance of Freedom of Expression

It is difficult to overestimate the importance of freedom of expression to the wellbeing of a society. Where information and ideas are not permitted to flow freely, good government and social progress are not possible.

A government cannot help its subjects improve their lives if it does not know what their concerns and problems are. If citizens can speak their minds without fear, and the media can report what is being said without interference, the government will have an opportunity to adjust its policies to meet the concerns of the public.

There is no doubt that respect for the right to freedom of expression necessitates the occasional toleration of harsh, nonsensical and even offensive speech. Citizens sometimes expect the impossible from their government or voice unfair criticism of its policies. In a State where such ideas are voiced in the public arena, the government can respond to them and explain why it is unable to achieve a certain goal or has chosen to follow a particular course of action. In States where people are discouraged from speaking their minds, false rumours, spread by word of mouth, cannot be refuted.

The right to freedom of expression includes, by necessity, a right to receive information. Free expression would be pointless if its counterpart, the right to hear that which is expressed, were not also respected. The right to receive information is of particular concern to individual citizens, who depend on information to plan their lives and run their businesses.

Through the declarations of international organisations and the rulings of courts, the international community has recognised freedom of expression and information as a paramount human right. In its very first session, in 1946, the United Nations General Assembly adopted Resolution 59(I),[4] which states:

> Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.

II.2 The Guarantee of Freedom of Expression

The right to freedom of expression is enshrined both in Jordanian law and in international treaties and instruments to which the country has committed itself. King Abdullah II has described the growth of independent media as "essential to our development" and considers human rights "a key part" of his reform programme.[5]

At the domestic level, the guarantee is found in Article 15 of Jordan's 1952 Constitution, which provides that "every Jordanian shall be free to express his opinion by speech, in writing, or by means of photographic representation and other forms of expression, provided that such does not violate the law."

[4] 14 December 1946.
[5] Remarks by His Majesty King Abdullah II to the Foreign Press Association, London, 23 November 2004.

At the international level, Article 19 of the *Universal Declaration of Human Rights* (UDHR)[6] contains the principal statement of the right. It reads as follows:

> 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 is a resolution of the United Nations General Assembly and, as such, is not directly binding on States. But large parts of the UDHR, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.[7]

The *International Covenant on Civil and Political Rights* (ICCPR),[8] a legally binding treaty which Jordan ratified on 28 May 1975, guarantees the right to freedom of opinion and expression in very similar terms to the UDHR, again in Article 19. Because it has not yet been published in the Official Gazette, as required by Article 93-2 of the Constitution, the ICCPR lacks the force of law within the domestic legal system of Jordan. This is unfortunate, as it deprives Jordanian citizens from relying upon its provisions before domestic courts. At the same time, Jordan is bound to respect the ICCPR as a matter of international law.

By Royal Decree of 19 May 2004, Jordan endorsed the *Arab Charter of Human Rights*, which was adopted by the Council of Ministers of the Arab League in March of the same year. The present Arab Charter is a revised version of a 1994 document, which came about largely as a result of Jordanian efforts, but failed to enter into force. Article 32 of the Charter largely mirrors Articles 19 of the UDHR and ICCPR.

Another important document of a regional character is the *Sana'a Declaration on Promoting Independent and Pluralistic Arab Media*, which was adopted by Arab journalists in 1996 and subsequently endorsed by the General Conference of UNESCO, of which Jordan is a member, in 1997.[9] Among other things, the Sana'a Declaration calls upon the Arab States to enact, revise or abolish laws, as necessary, with a view to implementing press freedom.

II.3 Broadcasting Freedom

Because of their pivotal role in informing the public, the guarantee of freedom of expression is of particular importance to the broadcast media, whether private or public. Without due protection for the broadcast media's rights, the public cannot fully realise its own right to receive information.

The special significance of the media, including broadcasters, has been widely recognised by national and international courts and tribunals. In the words of the Inter-American Court of Human Rights, "[i]t is the mass media that make the exercise of freedom of expression a

[6] UN General Assembly Resolution 217A(III), adopted 10 December 1948.
[7] See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).
[8] UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.
[9] *Sana'a Declaration on the Promoting Independent and Pluralistic Arab Media*, adopted 11 June 1996, endorsed in Resolution 34 of the twenty-ninth session of the General Conference of UNESCO, 12 November 1997.

reality."[10] The European Court of Human Rights has consistently emphasised the "the pre-eminent role of the press in a State governed by the rule of law."[11] 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 […] free political debate […].[12]

Ensuring the freedom of broadcasters, although key to the guarantee of freedom of expression, does not imply that the broadcast media should be left unregulated. A wholly unregulated broadcast sector would in fact be detrimental to free expression, since the audiovisual spectrum used for broadcasting is a limited resource and the available bands must be distributed in a rational manner to avoid interference. The problem was summarised by the US Supreme Courts in the following terms:

> If 100 persons want broadcast licenses but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the [guarantee of freedom of expression], aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.[13]

Two principles are key to effective broadcast regulation. First, the airwaves are a public resource and they must be used for the benefit of the whole public, including people with minority views or interests. Therefore, the available frequencies must be distributed in a manner which maximises the diversity of broadcasting, both in terms of programme content and station ownership. Second, due to the universally observed tendency of governments and businesses to want to minimise access of their critics and competitors to the broadcast media, it is vital that all bodies with regulatory powers in this area are legally and practically independent of government, commercial and other interference.

II.4 Independent Regulatory Bodies

The importance of regulatory independence in the broadcast sector has been recognised in international instruments, the practice of States and in ARTICLE 19's Principles. The need for protection against political or commercial interference was, for example, stressed in a recent Joint Declaration by the three specialised mandates for the protection of freedom of expression of the UN, OSCE and OAS, which stated:

> 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.[14]

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[10] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, 13 November 1985, Inter-American Court of Human Rights (Ser.A) No.5, para. 34.
[11] See, for example, *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.
[12] *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.
[13] *Red Lion Broadcasting Co., Inc., et al. v. Federal Communications Commission, et al. No. 2*, 395 U.S. 367, 389 (1969).
[14] Adopted 18 December 2003.

Factors which are regarded as key to the independence of regulatory bodies include an open appointments process designed to promote pluralism, guarantees against dismissal, and rules on conflict of interest.[15] Principle 10 of *Access to the Airwaves*[16] enumerates a number of ways in which the independence of regulatory bodies should be protected:

> Their institutional autonomy and independence should be guaranteed and protected by law, including in the following ways:
>
> - specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
> - by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body;
> - through the rules relating to membership;
> - by formal accountability to the public through a multi-party body; and
> - in funding arrangements.

II.5 Pluralism

The broadcast media are a key vehicle through which the public exercises its right to freedom of expression. As discussed above, governments have an important obligation not to impede the work of the media. But mere non-interference is often not enough to guarantee the public access to a wide variety of sources of information. Positive measures are necessary, for example, to prevent monopolisation of the airwaves by one or two players. Article 19 of the ICCPR mandates the implementation of such measures, a point stressed by the United Nations Human Rights Committee in its General Comment on that article:

> [B]ecause of the development of the modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression.[17]

An important aspect of States' positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and to ensure equal access of all to, the media. As the European Court of Human Rights stated: "[Imparting] information and ideas of general interest … cannot be successfully accomplished unless it is grounded in the principle of pluralism."[18] The Inter-American Court has held that freedom of expression requires that "the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media."[19] This implies that the airwaves should be open to a range of different broadcasters representing a fair cross-section of the different groups and viewpoints in society. At the same time, these measures should be carefully designed so that they do not unnecessarily limit the overall growth and development of the sector.

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[15] Articles 3-8 of the Council of Europe Recommendation No. (2000)23 on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, adopted by the Committee of Ministers on 20 December 2000; Principle 13 of *Access to the Airwaves*.

[16] See note 3.

[17] Human Rights Committee, General Comment 10, Article 19, adopted 26 June 1983, U.N. Doc. HRI\GEN\1\Rev.1 at 11 (1994).

[18] *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, para. 38.

[19] *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.

II.6 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, American and African regional human rights treaties. These have been interpreted as requiring restrictions to meet a strict three-part test.[20] 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."[21] 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.[22]

III. Analysis of the Audiovisual Media Law

III.1 Outline of the Law

The Audiovisual Media Law is divided into 7 sections. The first section (Articles 1-2) defines certain terms used in the law and deals with its entry into force.

The second section (Articles 3-9) mandates the establishment of an Audiovisual Commission with separate legal personality (Article 3), but affiliated to the Minister of Information (Article 4). It also defines the Commission's composition (Articles 6, 7, 9), the duties of the Commission as a whole and specifically of the Director (Articles 4 and 8) and the Commission's relationship with the Telecommunications Regulatory Committee (Article 5).

The third section (Articles 10-17), entitled 'The Commission Resources', deals with financial matters, a topic which is addressed primarily in Articles 10-14. Articles 15-17 appear to be more related in subject matter to the fourth section (Articles 18-25), which outlines the procedure for issuing broadcast licences.

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[20] See, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).
[21] *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).
[22] *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

The fifth section (Articles 26-27) deals with 'software/recorded materials', a term which is defined in Article 2 as "any visual or audible item or both, recorded on any sort of technical means such as tapes, records, compact and digital discs as well as others." Articles 26-27 prohibit the unlicensed import of software/recorded materials other than for personal use, leaving the details of the licensing procedure to a later regulation.

The sixth section (Articles 28-29), entitled 'punishment', deals with the consequences of violations of the Audiovisual Media Law.

Finally, the seventh section (Articles 30-35) deals with miscellaneous matters. Article 30 vests the Director of the Commission with the same powers as the judicial police for the purposes of enforcement of the Audiovisual Media Law. Article 31 entitles the Commission to settle any violation of the Law through the collection of cash compensation in lieu of punitive measures. Articles 32-35 deal with the practical operation of the Law, including its relationship to other laws and the adoption of concomitant bylaws.

III.2 The Audiovisual Commission

The Audiovisual Commission, consisting of a Director and Executive Staff, is vested with a certain amount of regulatory authority over the broadcast media in Jordan. Its primary task is to assist the Council of Ministers in the allocation and administration of broadcast licences.

ARTICLE 19 welcomes the decision to create a Commission with independent legal personality to oversee broadcasting activities in Jordan. The establishment of the Audiovisual Commission is an important step for the development of free broadcasting, consistent with Jordan's ambition to be a regional leader in terms of civil liberties. Nevertheless, ARTICLE 19 has several concerns relating to the composition, independence and powers of the Commission, which should be resolved in order to bring the Law more fully into line with international standards.

III.2.1 Composition of the Commission

Articles 6 and 7 of the Law govern the composition of the Audiovisual Commission. Considerable power is wielded by the Director, who is not only responsible for the management of the Commission (Articles 6(d), 8(b)) but also fulfils a range of other tasks, including the consideration of complaints against licensees (Article 8(j)-(k)), the enforcement of licence terms (Article 8(i)) and the issuing of licences for the circulation of software/recorded materials (Article8 (f)).

The Director is assisted by the Executive Staff, consisting of "officials and employees" whose tasks and terms of employment are to be defined in a bylaw (Article 6(e)). According to Article 6(d), the Director "may delegate some of his powers to any of the Commission's officials", but delegation must be "written and well-defined".

Article 7(1) sets out the qualifications which candidates for the position of Director must possess. The person to be appointed must 1) be a Jordanian citizen; 2) have at least a first university degree; 3) be experienced "in the field of information"; and 4) not have been convicted for any "crime or offence of honour or integrity".

Analysis

As noted, ARTICLE 19 welcomes the creation of a broadcasting Commission with independent legal personality, but believes its independence and ability to promote pluralism is insufficiently guaranteed in practice.

First, although Article 7(1) does provide proper safeguards as to the competence and aptitude of the Director, we believe that the Law concentrates far too much power in his or her person. The requirement under international law to promote pluralism in the broadcast media (see section II.5) is best served by a Commission on which a plurality of viewpoints is represented with equal voting rights. To this end, broadcasting authorities in most countries are governed by a board with a number of members (usually between 5 and 15), appointed in a manner which ensures they are broadly representative of society as a whole.

Second, and related to the first point, the division of labour between the Director and the staff is not sufficiently defined. The Director's responsibilities, as enumerated in Article 8, overlap to such an extent with the duties of the Commission as a whole (listed in Article 4) that the two are barely distinguishable. Although the Director may choose to delegate 'some' of his powers (Article 6(d)), it is not clear whether any powers are non-delegable. If the Director elects not to delegate any of his powers, he can effectively govern Jordanian broadcasting on his own (albeit subject to political supervision).

Recommendations:

- The Commission should be governed by a Board consisting of several members with equal votes. The appointment mechanism should be designed to ensure that the Board is independent and that its composition reflects Jordanian society as a whole.
- The division of labour between the Director(s)/board and the Executive Staff should be clearly defined and the Law should make it clear which powers can be delegated to the Executive Staff.

III.2.2 Political Independence of the Commission

Pursuant to Article 3(a), the Audiovisual Commission enjoys "a financial and administrative independent corporate identity", that is, separate legal personality. At the same time, a number of other provisions in the Law show that the Commission enjoys little independence in practice from the executive branch of government.

The rules regarding the appointment procedure for the Director of the Commission are illustrative of the body's close ties with the government. Pursuant to Article 6(b), the Director of the Commission is appointed and dismissed by the Council of Ministers, upon the recommendation of the Minister of Information. Moreover, Article 3(b) states that the Commission "is financially and administratively affiliated to the Minister [of Information]," although it does not further expound on the nature of this affiliation.

In decision-making matters, the Commission suffers from a similar lack of autonomy from the executive. Article 8 provides generally that the Director "…shall be responsible before the Minister [of Information] for the progress of the Commission's works…" Article 8(d) specifically requires the Director to "[refer] his recommendations to the Minister regarding the granting, renewal, amendment or cancellation of broadcasting licences…" It is to be read in conjunction with Article 18(a): "The Council of Ministers may, by recommendation of the Minister based on the Director's recommendation, approve the granting, renewal,

modification or cancellation of broadcasting licences…" Finally, Article 8(m) requires the Director to "[Execute] any assignments or duties entrusted to him by the Minister and related to the implementation of the provisions of this law."

Analysis

As discussed in section II.4, the independence of regulatory bodies in the broadcasting sector is an important precondition for the development of genuine free media. Many countries have chosen to adopt an explicit statement in their legislation recognising such independence, a practice which ARTICLE 19 encourages.

The separate legal personality which the Jordanian Audiovisual Commission enjoys is one facet of regulatory independence. It enables the Commission, for example, to own and dispose of assets without the need for political approval. But legal personality is by no means the litmus test for regulatory autonomy. Without a range of further guarantees, the possibility of interference in the Commission's affairs cannot be foreclosed.

First, true independence requires an explicit legislative guarantee of the Commission's autonomy. Consideration should be given to including a statement to that effect in the Audiovisual Media Law; the ARTICLE 19 principles, for example, provide the following model clause:

> The [Audiovisual Commission] shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies. This autonomy shall be respected at all times and no person or entity shall seek to influence the members or staff of the [Audiovisual Commission] in the discharge of their duties, or to interfere with the activities of the [Audiovisual Commission], except as specifically provided for by law.[23]

Second, and even more importantly, the Law should provide for an appointments process for the Director and members of the Board which promotes their independence. At present, pursuant to Article 6(b), such appointments are simply made by the Council of Ministers, upon the recommendation of the Minister of Information. This arrangement leaves the Commission highly vulnerable to political interference. There is nothing to stop the Minister of Information and Council of Ministers from installing a Director who would be subject to political control by the government.

In order to guarantee the independence of the Commission, a fundamental overhaul of the selection process is necessary. Board members should be appointed in an open and democratic way,[24] for example by a multi-party committee of Parliament through a procedure that allows for consultation of and nominations by civil society. Appointment should be for a fixed term (no term is currently specified), and the Law should include an exhaustive list of grounds on which a Board member may be dismissed before the end of his term. The Board should appoint the Director, who should be subject to similar protections as Board members.

Third, the Law should include more stringent rules prohibiting certain individuals from becoming a Director. Article 7, setting out certain requirements relating to the Director, is welcome. Similarly, Article 9, of the Law, which aims to ensure the Commission's independence from the audiovisual media sector, is an excellent provision which shows a clear legislative commitment to preventing commercial interference in the Commission's

[23] See *Access to the Airwaves*, Principle 11.
[24] *Ibid.*

affairs. It provides that the Director and senior executive staff, as well as their spouses and relatives up to the second degree, may not have any stake or investment in the sector for the duration of their tenancy.

We do note two apparent omissions in Article 9, which may however be due simply to a translation problem. First, it is apparently not prohibited for the Director and senior staff members to be *employed* in the audiovisual media sector concurrently with their tenure on the Commission. Secondly, although they may be prosecuted, it is not stated that the Director and senior staff members will also be dismissed if they fail to disclose their stakes in the audiovisual media sector.

Furthermore, the Law does not contain any 'rules of incompatibility' relating to political connections. A complete set of rules of incompatibility is important in order to avoid political interference in the Commission's affairs. The ARTICLE 19 Principles contain a list of model exclusions:[25]

> No one should be appointed who:
> - is employed in the civil service or other branches of government;
> - holds an official office in, or is an employee of a political party, or holds an elected or appointed position in government;
> - holds a position in, receives payment from or has, directly or indirectly, significant financial interests in telecommunications or broadcasting; or
> - has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime, and/or a crime of dishonesty unless five years has passed since the sentence was discharged.

Article 7 already excludes those who have been convicted of a crime involving dishonesty from being appointed as Director and Article 9 covers the third bullet point above. We recommend adding in political rules of incompatibility. Similar rules should also apply to the Board members and other senior members of the Commission staff.

Fourth, a number of provisions make it clear that the Commission falls under the direct supervision of the Minister, further undermining its independence. As noted above, these include rules stating that that Commission is "financially and administratively affiliated to the Minister", that the Director is responsible to the Minister and that the Director shall undertake any duties entrusted to him by the Minister ((Articles 3(b), 8 and 8(m)). Also in this category is Article 6 of the 'Administrative Organisation Regulation of the Audiovisual Media Commission',[26] one of the bylaws whose adoption is foreseen by the Audiovisual Media Law. Under Article 6, the Minister of Information may create, merge or abolish Directorates within the Commission, upon the recommendation of the Director.

In order to prevent possible interference, the Commission, and by implication the Director and board members, should not be accountable to the executive but to the general public, through its representatives in Parliament. These formal rules and arrangements should be clearly specified in the Law and not be delegated to bylaws.

There is no reason why the Minister should not be able, in principle, to entrust some tasks to the Commission. However, the open-ended nature of Article 8(m) is vulnerable to abuse and

[25] *Ibid.*, Principle 13.
[26] Regulation No. 162 for the year 2003.

we recommend adding a statement to the effect that any assignment or duty entrusted to the Commission should not be incompatible with the Commission's role as an independent broadcast regulator.

The provisions providing for issuance of licenses by the Council of Ministers go to the heart of independent broadcast regulation and are particularly problematic. Broadcast licences are the key instrument through which the broadcast media are regulated. There can be no question of independent media if the power to administer licences is not vested exclusively in an autonomous regulatory body. Under the scheme of the Law, the Audiovisual Commission plays a merely advisory role. ARTICLE 19 strongly recommends that the Law be amended to remove all involvement of the Minister of Information and Council of Ministers in the licensing process, and to place the responsibility for administering licences squarely with the Commission.

An important question arises as to how, if the Audiovisual Commission is fully independent, it can also be accountable to the public. As noted above, this is achieved formally through accountability to the Parliament. Further guidance can be derived from the practice of countries which already have a fully independent body regulating broadcasting. Mechanisms commonly employed to ensure that such bodies are accountable to the public include the following:

1) Appointments to the governing board are made by a committee of Parliament on which all political parties are represented;
2) Non-governmental organisations, such as journalists' associations, may nominate candidates for the board;
3) Candidates are required to have appropriate training, professional experience and high moral standing before being eligible for appointment;
4) Members of the board are subject to strict conflict of interest rules, to reduce the possibility of corruption and to maintain public trust and confidence; and
5) Board members are guaranteed tenure on the board for a fixed period of time, but can be removed on grounds which are clearly set out by law.

Recommendations:

- The independence of the Audiovisual Commission from political, commercial and other undue interests should be explicitly guaranteed by law, ideally in the Constitution but at a minimum in the Audiovisual Media Law.
- The process for appointing the Director/members of the Board should be taken out of the hands of the Minister and Council of Ministers, and entrusted to a representative body, such as a committee or subcommittee of Parliament. The appointments process should be open and consultative and involve genuine input from civil society organisations.
- The rules of exclusion in Article 7 should be supplemented with provisions disqualifying from appointment anyone working in the service of the government.
- Article 9 should explicitly prohibit the Director and senior staff of the Commission from holding positions in the audiovisual media sector concurrently with their tenure.
- Failing to disclose information about a stake in the audiovisual media sector should be one of the limitative grounds on which the Director and senior staff members can be dismissed.

- The length of the Director's and Board members terms, and the grounds on which they may be dismissed prior to its end, should be clearly stated in the Law.
- Article 3(b), providing that the Commission is affiliated with the Minister, should be removed from the Law.
- The internal organisation of the Commission should either be regulated in the Audiovisual Media Law or be left to the Commission itself. It should not be the subject of a separate bylaw.
- The Director and Board of the Commission should be responsible to Parliament, not to the Minister. Article 8 should be changed to reflect this situation.
- The power to issue, amend and retract licences should be the exclusive province of the Commission. Those parts of Articles 8(d), 18, 20 and 22 which refer to a role for the Minister or Council of Ministers in this area should be amended accordingly.
- Article 8(m) should state explicitly that the Minister may not entrust tasks to the Commission which would be incompatible with its role as an independent regulator.

III.2.3 Financial Independence of the Commission

Pursuant to Article 10 of the Law, the Audiovisual Commission has two sources of income: an annual allowance allocated under the general budget, and any donations, gratuities, grants or other resources acquired by it with the approval of the Council of Ministers. Article 11 provides that the Commission has its own, independent budget, which is ratified by the Council of Ministers at the Minister of Information's recommendation. The procedure for drawing up and ratifying the budget is elaborated further in a bylaw adopted pursuant to Article 32(e) of the Law.[27]

Analysis

A guarantee of adequate funding is a crucial component of a broadcast regulator's independence. If the regulator is forced to negotiate for finances, it may find itself compelled to sacrifice part of its independence in order to ensure its continued existence. Reflecting this concern, Recommendation No. 23 of the Council of Europe's Committee of Ministers states:

> 9. Arrangements for the funding of regulatory authorities - another key element in their independence – should be specified in law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently.
>
> 10. Public authorities should not use their financial decision-making power to interfere with the independence of regulatory authorities. Furthermore, recourse to the services or expertise of the national administration or third parties should not affect their independence.
>
> 11. Funding arrangements should take advantage, where appropriate, of mechanisms which do not depend on ad-hoc decision-making of public or private bodies.[28]

[27] Regulation No. (62) for the year 2004 on 'Financial Regulation of the Audiovisual Media Commission', Articles 11 and following.

[28] Recommendation No. 23 of the Council of Europe's Committee of Ministers to Member States, on the Independence and functions of Regulatory Authorities for the Broadcasting Sector, 20 December 2000.

Ideally, a broadcast regulator should have independent sources of income to minimises its reliance on general State funds. In many countries, regulatory bodies have their budget approved by their oversight bodies, ideally the parliament or a (sub-) committee thereof, but sustain themselves with the funds generated from licence fees, topped up if necessary by a grant from the general budget. Such a setup represents a good compromise between accountability and independence. A statutory guarantee that sufficient funds will be allocated to the Commission to enable it to do its work would represent an additional safeguard of its independence.

Furthermore, while donations may be taken into account in assessing the budget, it is not appropriate to give the Council of Ministers direct control over the approval of any funding provided on a grant or donation basis. Alternative measures could be put in place to ensure that the Commission is not receiving funds from individuals with a direct interest in broadcasting, who might seek to influence the Commission in a particular way. For example, Article 10 could state that the Commission may not accept funds from anyone with a present or anticipated stake in audiovisual media sector.

Finally, under Article 39 of the bylaw concerning the Commission's finances,[29] the Minister of Information is empowered to "specify one bank or more to deposit the Authority's funds with…" The Commission's independence could be further strengthened by specifying that it will have a separate bank account, not the same account used by other public bodies. In addition, we reiterate that internal regulations of this kind should either be defined in the Law itself or left to the discretion of the Commission.

Recommendations:

- The supervisory role of the Minister of Information and Council of Ministers over the Commission's budgetary affairs should be transferred to parliament or a (sub-) committee thereof.
- Consideration should be given to allowing the Commission to be funded from licence fees, topped up by a grant from the general budget if necessary.
- The Council of Ministers should not be allowed to vet grants and donations to the Commission.
- Article 10 should state that no funds may be accepted by the Commission from individuals or organisations with a present or anticipated stake in the Jordanian audiovisual media sector.
- The Audiovisual Media Law should specify that the Commission will have a separate bank account administered by the Commission itself.

III.2.4 Powers of the Commission

III.2.5.1 Granting of Licences

Article 15 imposes a licensing requirement on all Jordanian broadcasters. According to Article 16(a), applications for a licence may be made only by legal persons, although Article 17 disqualifies an applicant if "he or any of his partners or major shareholders has been judged for bankruptcy".

[29] See note 27.

The licensing procedure commences when an application form is submitted. Article 16(b) lists the materials that should accompany the application. These include a receipt proving the payment of application fees, a statement describing the applicant's technical and administrative capabilities, its financial situation, the types of services to be provided by it, the technology to be used and the geographical area to be covered, the names of individuals holding a share of more than 5% in the applicant, and any other data required by the Commission. According to Article 17, an applicant for a licence must also "submit a performance bond according to the terms of the licence."

Once submitted, a licence application is first considered by the Commission, which pursuant to Article 19 must "seek the approval of the Telecommunications Regulatory Commission regarding any matters falling within its jurisdiction, specifically the licences for frequencies." The Director then refers his approval or rejection recommendation to the Minister of Information, requesting a decision within 30 days (Article 16(c)(1)). The Minister subsequently prepares his own recommendation for the Council of Ministers, which issues a final decision within 60 days (Articles 16(c)(2) and 18). The Council of Ministers "may refuse to grant broadcasting licences to any entity without stating the reasons for such rejection" (Article 18(b)).

If the Council of Ministers decides that a licence request should be granted, the Commission draws up a licence agreement, which will include the terms listed in Article 20. Most of the terms are of a practical nature, including the following: the term of the licence, the fee to be paid and any fines payable in the event of a breach of its terms by the licensee; a commitment by the licensee to provide periodically details of its broadcasting and re-broadcasting works, and to permit the commission's officials to examine the authenticity of the details provided; the licensee's commitment to abide by the agreement and any instructions or decisions issued by the Commission; the procedure for resolving disputes between the Commission and the licensee; and the licensee's commitment to give priority to Jordanian 'material and human resources.'

Analysis

ARTICLE 19 welcomes the fact that the Audiovisual Law provides a clear overview of the steps that a prospective broadcaster must take in order to be considered for a licence. The requirements that licence applicants must meet are mostly in line with international standards, although a few useful adjustments could be made. By contrast, the procedure for *deciding* on licence applications is problematic because it highly susceptible to politically motivated awarding of licences. Substantial change is necessary in order to ensure that private broadcasting in Jordan will in fact increase the diversity of information available to citizens and stimulate democratic debate within the country.

In this respect, we reiterate the need for the licence procedure to be administered entirely by an independent regulator. This point was discussed in section III.2.2 above. The arguments presented there will not be repeated here; suffice it to say that we would applaud a decision to dissociate the Minister of Information and the Council of Ministers from the licensing procedure, and to place responsibility for it with the Audiovisual Commission alone.

An additional major concern is that the law does not specify which considerations should guide the choice between competing licence applications. Instead, the Council of Ministers may grant or withhold licences without stating any reasons (Article 18(b)). There is, then, no institutional guarantee that broadcasting will serve the interests of the public as a whole: it is

left up to the government whether to tolerate stations which represent different views from its own.

In the interest of the public's right to diverse sources of opinion and information, ARTICLE 19's Principles recommend that licence applications should be assessed according to clear criteria set out in advance in legal form (through laws or regulations). The criteria should, as far as possible, be objective in nature, and should include promoting a wide range of viewpoints which fairly reflects the diversity of the population and preventing undue concentration of ownership, as well as an assessment of the financial and technical capacity of the applicant.[30] Any decision to refuse a license should be accompanied by written reasons and should be subject to judicial review.[31] We believe that implementing these principles in the Audiovisual Media Law would greatly strengthen its democratic credentials and set an important example for the region.

Turning to the practical aspects of the licensing procedure, we note that Article 16(a) imposes an incorporation requirement on applicants. The ARTICLE 19 Principles discourage imposing such a condition,[32] as small community broadcasters may not be able to meet it. Moreover, there is little reason to assume that the corporate form will guarantee better performance from the broadcaster.

Applicants for a broadcasting licence are required to pay a fee and a "performance bond according to the terms of the licence." ARTICLE 19's Principle 21.2 recommends the following with regard to such expenses:

> …No one should be required to pay in advance for a licence they have not yet received, although a reasonable administrative fee for processing applications may be charged.[33]

The nature of the performance bond required by Article 17 is not entirely clear to us, but we would recommend against requiring any security from a broadcaster who has not yet received a licence. Requiring prospective or even licensed broadcasters to provide a bond against future possible infractions of the law is unnecessary and not a practice that is followed in other countries. It would exert an unfortunate chilling effect on the sector as a whole and amounts to pre-judging new broadcasters. Also, the Law does not specify the size of the application fee. Although the levying of such a fee is certainly permissible, it should be in the nature of a small administrative charge.

We note further that the time limits specified in the law do not cover all parts of the procedure. While the Minister is allowed 30 days to submit his recommendation to the Council of Ministers, which must then decide on the licence application within 60 days, no deadlines are imposed on decision-making at the level of the Audiovisual Commission or the Telecommunications Regulatory Commission. This creates potential for substantial delay, which could easily be addressed by adding further time limits.

Furthermore, it would be preferable for the Law to set out directly the duration of different types of licences. This would ensure equality between different licensees and prevent external

[30] Principle 21.2.
[31] Principle 21.3.
[32] Principle 20.
[33] Principle 21.2.

considerations from being taken into account in this process. These terms should be sufficient to allow applicants a realistic opportunity to recoup their investment.[34]

While most of the standard terms to be included in a licence agreement (Article 20) are unproblematic, this list should be complete and it should not be possible to specify additional terms through a bylaw, except in the form of a schedule of licence fees. In addition, to prevent the schedule of fees from becoming an instrument of (in)direct control, the Law should provide fair and transparent guidelines on the amount that may be charged, and set a ceiling.[35]

The current bylaw concerning licensing and licence fees (Regime No. 163 for the year 2003) illustrates the problems that can result if the Audiovisual Media Law delegates too much authority to subsequent bylaws. Under Article 11(f) of the bylaw, licences which include the right to carry news and political programming incur a 50% surcharge. There is no objective reason for imposing additional costs on broadcasters of news and current affairs programming, especially since such programmes are already expensive to produce. Indeed, if anything, the licensing regime to include measures to promote and encourage the production of news programming, given its importance in a democracy. Article 11(f) may deter potential licence applicants and give an undue advantage to the news programmes of the Jordan Radio and TV Corporation, the State broadcaster, thereby depriving the public of alternative perspectives on the news. At the time of writing, no licence for news and current affairs programming had yet been issued.

Furthermore, open-ended powers to impose license terms should be avoided. For example, the provision which requires licence holders to abide by "any instructions or decisions issued by the Commission" should be amended to make it clear that broadcasters need not tolerate arbitrary interference in their affairs and that only appropriate conditions may be imposed.

Finally, it should not be possible for Council of Ministers to waive fees for broadcasting by governmental departments and institutions (as is currently foreseen by Article 22). The Law already guarantees exemption from fees for the national broadcaster, JRTC, and there is no reason why public bodies would need to communicate with the public through their own separate broadcasters. Indeed, the idea of broadcasters being controlled by officials is very problematical from the perspective of freedom of expression. In addition, the possibility of exemption from fees might lead to unfair competition with non-State broadcasters.

Recommendations:

- The licensing procedure should be taken out of the hands of the executive, and left exclusive with an independent regulator, presumably the Audiovisual Commission.
- The Law should provide clear and objective criteria for deciding between competing licence applications.
- The size of the application fee should be specified in the Law, and applicants should not be required to pay any bond before they have been awarded a licence.
- Applicants for a broadcast licence should not be subject to an incorporation

[34] Article 19, Principle 22.3.

[35] Article 19, Principle 22.4. The UK Communications Act for example, adopted in 2003, provides that licence application fees should not exceed that which is necessary to pay for the running of the regulator's office: Section 347.

requirement.
- Every step in the licensing procedure should be subject to a time limit.
- The duration of broadcast licences should be set out in the Law.
- Article 20, on licence terms, should not refer to any bylaw other than a separate schedule of fees. The Law should provide fair and transparent guidelines on the magnitude of license fees that may be charged under this schedule.
- The surcharge imposed on broadcasters who carry news or political programmes pursuant to Regime No. 163 should be abolished.
- Broadcasters should not be required to adhere to instructions or decisions of the Commission which do not serve a rational broadcasting goal.
- Article 22, which permits the Council of Ministers to waive licence fees for broadcasting by government bodies, should be deleted.

III.2.5.2 Revocation and Renewal of Licences

Article 23 provides that the Commission may cancel a broadcast licence if the broadcaster does not commence broadcasting within one year of the issuance of the licence, or ceases broadcasting for more than 60 consecutive days or a total of 120 days within one year.

Analysis
The rule set out in Article 23 is a fair way of ensuring that licences are used effectively.

One situation not addressed in the Law is the renewal of licences upon their expiry. ARTICLE 19's Principles recommend the following:

> Licensees should benefit from a presumption of licence renewal, although this may be overcome for public interest reasons or where the licensee has substantially failed to comply with the licence terms and conditions. Licence renewal may also provide an opportunity for both the licensee and the regulator to review licence conditions. Any refusal to renew a licence should be accompanied by written reasons.[36]

Recommendation:
- The law should create a presumption of licence renewal, unless public interest reasons dictate otherwise or if the licensee has operated in significant breach of the terms of its licence.

III.2.5.3 Penal Provisions

Article 29 sets out a regime of sanctions applying to broadcasters who operate without a licence or in breach of their licence conditions. The former carries a prison sentence of between one and five years and/or a minimum fine of 100,000 J.D. (approximately US$141,000) and the latter a fine of between 10,000 and 50,000 J.D (US$14,100-70,500).

Analysis
It is not immediately clear who is responsible for the enforcement of Article 29, although Article 30 states: "For the execution of the provisions of this law, the Director or any official authorised by him shall be considered part of the judicial police…" The institution of criminal proceedings is a grave matter, which should be left to prosecutors. The Director could, for

[36] Principle 22.5.

example, be authorised to inform the prosecutor's office if a broadcaster breaks the criminal law, but he should not be allowed to file criminal proceedings by himself.

The introduction to Article 29 states that the penalties it provides are "[s]ubject to any severer penalty stipulated in any other legislation." As the penalties laid down in Article 29 appear to be extremely strict, there should not be a need for any further penalties. Indeed, we note that imprisonment for operating without a licence is an unduly harsh sanction, and unnecessary to ensure respect for the law. This is true even more with respect to breaches of license conditions. Such breaches would often be very minor in nature and, if the pertinent license terms are not sufficiently clear, prosecuting people for breach of them could be unfair and a breach of international human rights law.

Under Article 29(b), the Commission has the right to suspend a broadcasting licence for a maximum two months if the broadcaster violates its terms. If the violation is continued or repeated, the Council of Ministers may, upon the Minister's recommendation based on the Director's recommendation, terminate the licence.

Licence suspension is, second only to licence revocation, the most serious sanction which can be imposed on a broadcasting outlet and should only be applied in the most serious cases of repeated and gross abuse of licence conditions. At a minimum, the Law should stipulate that a licence cannot be suspended unless other measures, such as warnings and fines, have failed. The decision eventually to revoke a licence should be taken by an independent body, preferable the Audiovisual Commission, without the need for the consent of the executive, and should be subject to judicial review.

Finally, we note that Article 31 allows the Commission to

> …settle for a conciliation of any matter incurred by any violation of this law by way of collecting cash compensation from the violator, not less than twice the amount of fine determined for this purpose under the provisions of this law.

We are concerned that this provision may create an incentive for the Commission to supplement its income by aggressively using its prosecutorial and conciliatory powers. One possible solution would be to stipulate that any moneys paid as part of a conciliation agreement go towards the general budget and will not be taken into account in assessing the Commission's grant.

Recommendations:

- The Law should provide that the Director shall refer any criminal cases to the public prosecutor, unless conciliation is undertaken.
- All legislation establishing criminal sanctions for broadcasting activities should be brought together in one place, either the Audiovisual Media Law or the criminal code.
- The suspension of a broadcasting licence should only be considered in the most extreme cases and where other measures, such as warnings and fines, have failed. The right to terminate licenses should be vested solely in an independent body, such as the Commission, and suspension and termination decisions should be subject to judicial review
- Proceeds from conciliation proceedings should flow into the general budget, not directly to the Commission.

III.3 Content Restrictions

Pursuant to Article 19(3) of the ICCPR, discussed above in section II.6, restrictions on the content of what may be broadcast or published are subject to a three-part test. According to the test, any restriction must a) be provided by law, b) be for the purpose of safeguarding a legitimate public interest and c) be necessary to secure this interest.

Article 20 of the Audiovisual Media Law lists a number of standard licence terms relating to the content of broadcasts. These include the licensee's obligation to:

1) honour the freedoms and rights of others, including intellectual property rights;
2) broadcast news events objectively;
3) observe the requirements of public order, national security and the public interest;
4) refrain from broadcasting any ethnically or racially provocative materials or anything that might disrupt national unity or promote terrorism, racism and religious discrimination, or offend the Kingdom's relations with other countries;
5) refrain from broadcasting comments or issues which would jeopardize Jordan's monetary or economic system.

Furthermore, Article 20 allows "other conditions" to be stipulated under a bylaw.

Many of the obligations listed in Article 20 – in particular (1), (3), (4) and (5) – are matters which are normally covered in laws of general application, in particular the criminal law. It is unnecessary to repeat them in a broadcasting law and there is a danger that such a "double warning" about what is illegal may have a chilling effect on programming decisions. Moreover, some of the prohibitions are very vague, such as those relating to the "public interest" and "national unity." As such, they do not give broadcasters sufficient notice of what exactly is prohibited, in contravention of the three-part test discussed above, and could easily be abused to strip government-unfriendly stations of their licence. The bylaw adopted in accordance with Article 20 (Regime No. 163 for the year 2003) contains yet further restrictions on the content of what may be broadcast, and these restrictions again suffer from excess vagueness. Article 6, for example, contains a ban on "immoral" programmes. We recommend that all content restrictions are removed from the Law and its bylaws, and that broadcasters are subject only to content restrictions defined in laws of general application. This does not rule out, however, an administrative system governing content as described below.

Article 21(l) requires broadcasters to "[a]bide by the instructions for the commercial programs, advertisements and publications set up by the Commission." This is an apparent reference to Article 8(l), which states that the Director is responsible for "issuing regulations of programmes, advertisements and commercials." We note that the regulations issued by the Director may cover both ordinary programmes and programmes of a commercial nature.

According to international standards, the amount of advertising carried by broadcasters may be made subject to overall limits, but these should not be so stringent as to undermine the development and growth of the broadcasting sector as a whole.[37] Ordinary programs, too, may be subject to an administrative regime regulating their content. Such a regime however usually takes the form of a Code of Conduct, which is developed through a process of genuine

[37] ARTICLE 19, Principle 25.1.

consultation between broadcasters, the broadcast regulator and representatives of the public.[38] The Director should not be permitted to define such rules unilaterally, since this may lead to a regime which broadcasters find unworkable or which fails to address legitimate concerns of the public. Furthermore, the application of this system is administrative in nature, not criminal.

Articles 8(j) and (k) list as two of the Director's responsibilities the "[c]onsidering of complaints presented to him by the public against the licensees…" and "[c]onsidering the complaints presented by a licensee against another … with the exception of financial disputes." In many countries, broadcast regulators may receive and act upon complaints from the public or the broadcasting sector, but these powers are strictly limited to ensure an appropriate balance between maintaining broadcasting standards and respecting freedom of expression. In particular, there need to be clear, accessible standards against which such complaints are measured. These standards can, as noted above, best be set through a Code of Conduct developed by the regulator, the broadcasting sector and other interested parties jointly. Codes of Conduct, like any restriction on freedom of expression, should meet the three-part test discussed above.

Recommendations:

- All the content restrictions contained in Article 20 and Regime No. 163 should be removed, as broadcasters are already subject to laws of general application regarding such issues as incitement to hatred or threats to public order.
- A genuinely consultative process should be instituted in order to complete the task currently entrusted to the Director, of establishing an administrative regime (or Code of Conduct) for licensed broadcasters.
- The Law should stipulate that the Commission will measure complaints presented to it against the standards found in the Code of Conduct, taking full account of the need to promote freedom of expression.

III.4 Software/Recorded Materials

Articles 26 and 27 of the Law deal with 'software/recorded materials', defined in Article 2 as "any visual or audible item or both, recorded on any sort of technical means such as tapes, records, compact and digital discs as well as others." A licence is required for the import of software/recorded materials, unless for personal use (Article 26(a)). No software/recorded materials (whether imported or domestically produced) may be displayed or circulated if they have not been approved and licensed by the Commission (Article 27). The procedure for issuing licenses is to be stipulated in a separate bylaw (Article 26(b)).

Analysis

Articles 26-27, by requiring approval of the Commission for the importation of materials intended for broadcasting or circulation through other means, amount to a regime of prior censorship.

Prior censorship is one of the most extreme ways of restricting freedom of expression. If the authorities are able to suppress publications which nobody else has seen, it becomes impossible for the public to verify whether the suppression was indeed justified; such an

[38] ARTICLE 19, Principle 23.3.

unchecked power can easily be abused to prevent criticism of government. Because of its disadvantages compared to sanctions imposed after the fact, several domestic constitutions, as well as the American Convention on Human Rights, prohibit prior censorship. Article 13(2) of the ACHR states:

> The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship.

The US Supreme Court has repeatedly stated its position that "[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity."[39] International bodies have echoed this point of view. The European Court of Human Rights has ruled that "the dangers inherent in prior restraints are such that they call for the most careful scrutiny".[40] The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Freedom of Expression stated that "any system of prior restraint on freedom of expression carries with it a heavy presumption of invalidity under international human rights law."[41]

Some countries still maintain classification systems for films, whereby these must be rated for different age groups, but prior censorship of all recorded material is not compatible with the right to freedom of expression. We therefore strongly recommend that Articles 26-27 of the Law are repealed.

Recommendation:
- Articles 26 and 27 should be repealed.

[39] For example, *Bantam Books, Inc. v. Sullivan,* 372 U.S. 58 (1963).
[40] *Observer and Guardian v. the United Kingdom*, 24 October 1991, Application No. 13585/88, para. 60.
[41] *Report on the mission to the Republic of Korea of the Special Rapporteur*, UN doc,. E/CN.4/1996/39/Add.1, p. 8.