Comments on draft media and access to information laws of Sudan

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1. INTRODUCTION

This Memorandum[1] comments on a set of four draft laws for Sudan: a draft freedom of information law, a draft public service broadcasting law, a draft law setting up a broadcast regulator and a draft law to regulate the print media. We understand that all four drafts have been developed by external consultants working under the auspices of the United Nations Development Programme (UNDP), and will be the subject of discussion with parliamentarians and other stakeholders later this year. This Memorandum intends to inform that discussion by comparing the four draft laws against international standards and best practice in the area of freedom of expression and access to information.[2] Our comments are based on a translation of the Arabic original, provided to us by UNDP.

While we welcome the intent to improve the regulatory regime for the media in Sudan - we have severely criticised the existing regulatory regime before, as have international bodies such as the United Nations Human Rights Committee – we are concerned that the versions of the four draft laws that we have seen will do little to improve on the poor current situation of freedom of expression in Sudan. The draft Press Law would abolish the 2004 Press and Publications Law, but establish in its place a regulatory regime very similar to that which currently exists and which is actively used to repress the media; the draft Broadcasting Law would establish a regulatory body whose independence will not be guaranteed and which can be expected to be under the influence of the government; and the draft Freedom of Information Law contains exemptions so broad as to practically nullify the right of access to information. The only law that may have some positive impact is the Draft Public Service Broadcasting Law, which aims to reform the current state broadcaster into a broadcaster that truly serves the public interest in the whole of Sudan. But even that draft Law insufficiently protects the independence of the broadcaster or its public service mandate.

Overall, we are seriously concerned that the proposed new laws will not bring the much needed reform that ARTICLE 19, amongst many others, has long called for; instead, they would likely serve to maintain the status quo for another series of years. We are in no doubt that this will also hinder Sudan's democratic development. Respect for freedom of expression and media freedom is a crucial ingredient in democratic governance, as is access to information: proper scrutiny and criticism of government policies is impossible in a climate of secrecy.

We would also like to voice our concern at the lack of proper consultation with stakeholders during the preparation of the new laws. Although we know that the drafts have been under discussion within UNDP since the autumn of 2006, and a final draft was ready in December 2006, there has only been one public meeting to discuss them and the draft text of the laws was released to us and other stakeholders only in May 2007. Yet, the laws may soon be

[1] ARTICLE 19 thanks UNESCO and the European Commission for their funding for this project.

[2] We will refer in particular to the *International Covenant on Civil and Political Rights*, the flagship UN Human Rights treaty, and to the *African Charter on Human and Peoples' Rights*, the main regional human rights treaty. Sudan is party to both and bound under international law to give effect to the rights guaranteed under these treaties, which include the right to freedom of expression. We will also make reference to the *Declaration of Principles on Freedom of Expression in Africa*, a standard-setting instrument issued by the African Commission on Human and Peoples' Rights, the body established to monitor implementation of the *African Charter*; and to judgments and resolutions issued by human rights bodies from around the world which interpret and clarify the meaning of freedom of expression in different contexts.

presented for adoption: a June 2007 Report from the Joint Technical Committee on the Information Sector between the Government of National Unity and the Government of Southern Sudan describes the Broadcasting Law as in the process of being finalised and soon to be submitted to the Council of Ministers and Parliament for adoption, following some input from the Government of Southern Sudan. We believe that far more consultation with stakeholders will be needed before laws with such far-reaching consequences for the media should be submitted for discussion in Parliament.

The following paragraphs highlight our principal concerns and recommendations for improvement of the four laws.

2. THE DRAFT PRESS LAW

2.1. Overview

The draft Press Law sets up a new Press Council, to be appointed by the Sudanese National Assembly, which will regulate the media and the journalistic profession. It also requires that all publications are registered with the Press Council, and lays down some further requirements regarding publications. It would allow for publications which breach the law more than twice to be shut down, and for reprimands or fines to be imposed on first or second time offenders.

As outlined in the introduction, we are concerned that this proposal leaves significant scope for governmental control over the media and that overall, it will do little to improve on the current legal regime. The following paragraphs discuss our recommendations, under the following headings:

- general principles on press freedom;
- the registration and licensing regime;
- functions and independence of the press council; and
- conditions placed on newspapers, editors and journalists.

2.2. General principles

Chapter Two of the draft Press Law lays down the following 'basic principles':

> 1. The press will carry out its mission in freedom and independence, aiming at developing society and the welfare of the nation and citizens, committed to protect individual privacies and honor, as well as security and peace in society.
> 2. No censorship of newspapers is allowed, save that a limited level of censorship is allowed in the announcement of a state of emergency or during war or on issues regarding public peace or national security.
> 3. Confiscation or stoppage or cancellation of licence of newspapers is permitted only by a court ruling, on the same grounds, and proportional to the offence committed or attempted.,
> 4. Ruling to stop newspapers includes a number of criteria on the legality of limits imposed on freedom of opinion and expression;
>
> - Existence of an opinion and expression.
> - The law should be clear and precise.
> - The limit imposed should be according to law with the causes provided.
> - The limit should be necessary in a democratic society.
> - It should aim at achieving a pressing social need.
> - It should be justified by common good.

- The limit should be proportional to the purpose of imposing.
- Limits should not be exercised as reactions against criticism of the state or any government institution.

We have two general concerns with regard to these provisions. First, we note that this is a provision of a constitutional character. It announces some very general principles, particularly with regard to restrictions that may be placed on the right to freedom of expression, which are best placed in the Constitution itself. This draft Press Law is of an 'ordinary' character and it is of equal status to other legislation. It is unclear whether, in the Sudanese legal tradition, it overrides earlier legislation or what its status is with regard to later laws. These are important questions, particularly in regard to paragraph 4 which appears to be an attempt to limit restrictions that may be placed on freedom of expression through other legislation. Unless it is clear that the draft Press Law can indeed limit restrictions placed on freedom of expression pursuant to other laws, our recommendation is therefore that these provisions are placed in the Constitution. Either way, we recommend that, for the sake of legal clarity, all existing restrictions on freedom of expression are reviewed for compliance with these principles. We note that such a review of the criminal law has already been recommended by the African Commission on Human and Peoples Rights.[3]

Our second concern is with regard to the principles themselves, which we believe can be significantly improved on, in the following respects:

a. The first paragraph needs to be expanded to recognise that the main mission of the press is to report the news and to act as a public watchdog of government. The press must be allowed to criticise, in clear and robust terms, those in power and generally hold them to account for their acts. The role of the press cannot be seen solely as to promote peace, development and to safeguard security.
b. The reference to privacy and honour in the first paragraph seems to place these values very prominently among the 'mission' of the press. We do not believe this is appropriate. The notions of 'privacy' and 'honour' are often abused to silence legitimate criticism or opposition voices. As we note above, the primary mission of the press is to report the news, to scrutinise government and, where necessary, to criticise. While we recognise that the right to freedom of expression is not unlimited, we would recommend an alternative formulation for this principle, 'with due regard for the rights of others'.
c. The second principle, which allows "a limited level of censorship … on issues regarding public peace or national security" as well as during war or times of national emergency is very vague and open to significant abuse. While we recognise that freedom of expression may be limited under some circumstances, the draft Press Law or other applicable laws should set out clearly what limitations may be placed on freedom of expression, and for what purpose. These limitations should be limited to those truly necessary in a democratic society to achieve the legitimate purpose;[4]
d. As we will elaborate under the heading "registration and licensing", below, international law frowns on the licensing of newspapers. We therefore recommend that paragraph 3 is deleted;
e. Paragraph 4 is extremely vaguely worded, both in the English translation and in the Arabic original. The intention of this paragraph – which may be positive insofar as it

[3] See its *Declaration of Principles on Freedom of Expression in Africa*, adopted October 2002, Principle XIII.
[4] See Article 19(3) of *the International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Sudan ratified the ICCPR in March 1986.

attempts to limit restrictions that may be placed on freedom of expression – must be clarified. As recommended earlier, if appropriate, essential elements from this provision may need to be included in the Constitution.

2.3. Registration and licensing

Under Section 21, every person or organisation that intends to publish in Sudan must submit a 'notification' to the Press Council, and send the Council documents that show 'competence', 'financial capacity', the 'requirements of professional performance' and 'the rights of journalists according to regulations'. The Press Council has 45 days to consider the notification, and may reject the notification in writing for any reason but within the limitations of Article 39(5) of the 2005 interim Constitution.

Under Section 27, foreign publications must also obtain a licence to publish inside Sudan, but no detail is provided regarding the applications process.

We are concerned that these proposals would establish a licensing regime for the press similar to the one that exists now, which is incompatible with the internationally guaranteed right to freedom of expression. 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.[5]

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

> Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.[6]

And in 2000, the UN Human Rights Committee, the body that monitors implementation of the *International Covenant on Civil and Political Rights*, ruled that a licensing regime for the print media was incompatible with the right to freedom of expression guaranteed under that Convention – which Sudan is a party to also.[7] Print media licensing laws have been struck down by national courts, including on the African continent, for similar reasons.[8]

Our main recommendation, therefore, is that the licensing regime proposed in Articles 21 and 27 is dropped from the Bill. Given the history in Sudan of abuse of regulatory regimes for the press – as criticised, for example, by the United Nations Human Rights Committee in 1997[9] – we have grave concerns that even a purely technical registration regime, which would not on

[5] Joint Declaration, 18 December 2003.
[6] Note 2, Principle VIII.
[7] Communication No. 780/1997, 20 March 2000, paragraph 8.5.
[8] See for example the decision of the Zambian High Court in *Kasoma v. Attorney General*, 22 August 1997, 95/HP/29/59.
[9] Concluding observations of the Human Rights Committee, Sudan, 19 November 1997, UN Doc. CCPR/C/79/Add.85, para. 18.

its face allow the Press Council any discretion to refuse publications, will be abused and we do not recommend its introduction either.

2.4. The Press Council

Chapter 3 of the draft Press Law proposes the establishment of a new Press Council, which would have the following main duties and responsibilities:

1. to develop journalism and improve professional standards "in order to produce a press that is satisfactory to readers";
2. to uphold ethical standards;
3. to "help in the provision of materials for newspapers and publications" and to widen dissemination; and
4. to carry out research and studies in the field of "journalism performance such as recording the history of Sudanese press/journalism".[10]

The Press Council, which is described as "an independent entity that respects variety and cultural, social and political pluralism", will be made up of 23 members, as follows:

- five members of parliament;
- seven elected by registered journalists;
- two elected by newspaper owners;
- two representing newspaper editors;
- two media academics nominated by parliament; and
- five "public figures concerned with journalism".

The Press Council is to be accountable to the National Assembly, which will also control the Council's budget.

We are concerned that if there is to be a Press Council, it should be fully self-regulatory and its mission should be to promote press freedom. Both points are especially important in Sudan, where the current general environment for the media is very poor.

The proposals in the draft Law fail on both of these points. First, the mission of the Press Council as described in Chapter 3 is geared towards 'controlling' the media more than protecting it. Not one of the four bullet points that set out the Press Council's mandate even mentions promoting media freedom or establishing a regulatory environment in which a free and independent media can flourish. The third bullet point, which mentions abolishing physical obstacles in the dissemination of papers and to help secure printing paper and other materials, is the closest the draft Law gets to promoting freedom of expression. Many of the other points, in particular those related to ethics and ensuring a press "that is satisfactory to readers", point to a Council that will be 'police' the press. We do not believe that this is the appropriate way forward for print media regulation in Sudan.

Second, we are concerned that the mechanisms proposed in the draft law to safeguard the independence of the Press Council are insufficient. In particular, we are concerned that various of the Council's members will be political appointments, and that only registered journalists will be represented on the Council. We are also concerned that there is very little transparency in the appointments process, and that the National Assembly will fully control the Council's budget. We would recommend that for the Council to be fully independent, all

[10] Clauses in this chapter are not numbered.

members are appointed through an open, fair and transparent process, preferably run by media organisations themselves. There is no reason why the National Assembly or any other political body, such as a ministry, should have any representation on the Council. It should be funded by the media themselves, and neither the National Assembly nor any other political body should have any financial control over it. Self-regulatory bodies such as these exist in democratic countries around the world, including in neighbouring countries such as Kenya, and can effectively work to both promote press freedom and to promote public trust by receiving and settling complaints from members of the public. We note that Southern Sudanese media have just agreed on a code of ethics and are working to set up a self-regulatory mechanism to ensure its implementation, and we see no justifiable reason why such a body could not also exist in Sudan.

2.5. Restrictions on journalism

Chapter 5 places various restrictions on "involvement in journalism". Under Article 22, only persons who are academically qualified and have a certificate proving that they have "dedicated themselves" to the profession may be registered as a journalist. Under Article 23, editors-in-chief must be registered journalists who hold a university degree and have never been convicted of a crime against honour – such as a defamation conviction – or trust. Article 23(2) allows the Council to exempt candidates from any of these requirements if they possess "qualitative characteristics".

Both these provisions place restrictions on involvement in journalism that are not compatible 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*,[11] 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 this Court gave judgment in response to a request by the government of Costa Rica, its reasoning on the interpretation of the right to freedom of expression is valid universally, and applies equally to Article 19 of *the International Covenant on Civil and Political Rights (*to which, as we recalled earlier, Sudan is a party). The Court stated:[12]

> 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.

The applicant government had argued that licensing was necessary in order to preserve public order, to ensure that the media act in good faith and in accordance with the ethical demands of the profession. The Court disagreed, stressing that the opposite was in fact true:

[11] Note 2, Principle X.2.
[12] *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.

> [G]eneral welfare requires the greatest possible amount of information, and it is the full exercise of the right of expression that benefits this general welfare. In principle, it would be a contradiction to invoke a restriction to freedom of expression as a means of guaranteeing it. Such an approach would ignore the primary and fundamental character of that right, which belongs to each and every individual as well as the public at large. A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.[13]

The Court also stressed that journalism is to be distinguished from other professions that are more strictly regulated:

> [J]ournalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional [association].[14]

Moreover, the Court disagreed that the argument of 'strengthening the profession' could justify imposing restrictions on access to the profession, stating that "the establishment of a law that protects the freedom and independence of anyone who practices journalism is perfectly conceivable without the necessity of restricting that practice only to a limited group of the community."[15]

The Inter-American Court's reasoning clearly illustrates why placing the kind of restrictions on access to the journalistic profession proposed in the draft Law is fundamentally incompatible with the right to freedom of expression. The Court's judgment has been followed internationally, and the UN special Rapporteur on Freedom of Opinion and Expression has stated, unambiguously:

> Individual journalists should not be required to be licensed or to register.[16]

By analogy, it also applies to the restrictions placed on editors-in-chief. We strongly recommend therefore that Articles 22 and 23 are dropped from the draft Law.

Recommendations

- The 'general principles' should be redrafted to promote media freedom. It should be made clear that the mission of the print media is to report the news, be critical and to act as a public watchdog. While it should also respect privacy and honour, and where possible contribute to the peace building effort, these should not be among its primary goals.
- The fourth paragraph of the general principles, which sets out the conditions under which freedom of expression may be limited, should be redrafted in clearer language. Consideration should be given to moving language from this paragraph to the constitution.
- There should be no licensing or registration requirement for newspapers or for

[13] *Ibid*., para. 77.
[14] *Ibid*., para. 71.
[15] At para. 79.
[16] Joint Declaration, note 4.

individual journalists.
- There should be no restrictions on entry to the journalistic profession, nor should there be legal restrictions on who can be an editor-in-chief.
- If a Press council is to exist, it should be fully self-regulatory and its mission should be to promote media freedom and trust in the print media, including by receiving and settling complaints from the public. There should be no government involvement with it, and it should be renamed "Independent Press Commission".

3. THE DRAFT ACCESS TO INFORMATION LAW

3.1. Overview

The draft Law on "Freedom of Access to and Classification of Information" aims to set up a regime for access to information in Sudan. If enacted, it would be among the first laws of this kind in the region and we warmly welcome the initiative. However, we are highly concerned that while this very short draft Law – it contains only 13 provisions – has some positive elements, it also establishes a regime of exceptions to information so broad that it will in practice serve as a 'secrecy law'. As we will outline in the following paragraphs, the regime of exceptions is extremely widely drawn and can be relied on by public bodies to refuse almost any request for information except for the most trivial material. Crucial elements are also missing from the law, such as an independent oversight mechanism or a duty to publish information proactively.

3.2. Access and exceptions

Under Article 4 of the draft Law, any person has a right of access to information from public bodies, including from any private body that performs services of a public nature. Article 5 sets out the procedure for access, including a requirement that persons lodging a request must state their reasons for wishing to have access to the information. Requests must be responded to as soon as possible, and at the latest twenty days from the date the request was made; if the information is necessary to save life or limb then a response must be provided within 48 hours. Article 6 allows for a fee to be charged, but such a fee should never exceed the real cost of searching for and providing the information.

If a request is refused, reasons must be given and any refusal may be appealed to a specialised committee of the Press Council. The Press Council's decision may be appealed to court. Articles 9 and 10 set out the regime of exceptions, allowing for access to be refused to the following categories of information:
- information that damages national security or the defence of the nation;
- any information the dissemination of which has been "banned ... by legal procedures" by the department to which the request is made;
- information, the disclosure of which would damage life, health or an individual's welfare;
- information related to the prevention or detection of crime, the arrest or trial of people accused of a criminal offence, the administration of justice, the assessment or collection of taxes, the capacity of the government to manage the national economy, or commercial, financial or legal interests of the department to which the request is made;
- any minutes of investigations, appeals and trials the dissemination of which "would be damaging to just procedure and public welfare".

Article 9(e) provides that after 25 years, documents must be released.

While certain elements of this regime are progressive and welcome, such as the setting of strict deadlines and the broad definition of what constitutes a 'public body', we are concerned that the regime of exceptions is far too broadly drawn. We are particularly concerned at the apparent ability of departments to classify information they do not wish to release for any reason whatsoever; this provision completely undermines the rest of the access regime. Other elements are problematic also: information that merely 'relates to' the administration of justice may be refused, and there is no provision for the release of information in the public interest. This last oversight means that if information would reveal corruption but would also have some effect on legal interests of the government department concerned, the draft Law would allow access to be refused. This would severely undermine the right of access to information and allow corruption and mismanagement of public assets to continue to thrive.

Finally, we are concerned at the requirement that requesters should state their reasons for seeking access to particular information, in Article 5(1). This suggests that when an official believes that the applicant has not sufficiently set out his or her case for seeking access, disclosure would be refused. This would be illegitimate under international law, which guarantees the right of access without having to justify one's reasons. We strongly recommend that all these elements are addressed.

3.3. Omissions

A number of crucial elements, necessary for the successful implementation of the right of access to information in any country, are missing from the draft Law. Briefly, these include the following:

- the omission of an independent monitoring and oversight body;
- the omission of an obligation on public bodies to provide a range of information proactively, in the absence of a request; and
- the absence of any protection for so-called 'whistleblowers' (individuals who provide information about wrongdoing in the public interest, but without official sanction from the government body they work for).

Lack of independent oversight and supervision

Any access to information regime, to be implemented effectively, requires an independent body to monitor compliance with the Law, receive complaints from individuals, raise general awareness and provide training. Most countries that have recently introduced access to information laws, such as Mexico, have set up such bodies which have proven to be of great value.[17] Under the Sudanese draft Law, there would be a specialised committee within the Press Council that would hear complaints, but no other provision is made for oversight or supervision.

We do not believe that this is sufficient, for three reasons. First, as set out above, we do not believe that the Press Council is sufficiently independent from the government to monitor compliance with the Act by public bodies. Second, freedom of information is not a 'media issue'. Rather, it is closely related to public administration, and the Press Council lacks the competence and expertise that is required to deal with these issues. Third, the draft Law envisages oversight only in relation to complaints, and does not provide for a wider role in

[17] See, in Mexico, the Federal Institute of Access to Public Information: http://www.ifiai.org.mx.

terms of providing training or raising awareness. These are important tasks for a monitoring body, and should be provided for. We therefore recommend the establishment of a truly independent body for oversight and supervision of implementation of the right of access to information, including the consideration of complaints.

Proactive publication

Freedom of information implies not only that public bodies accede to requests for information but also that they publish and disseminate widely documents of significant public interest, subject only to reasonable limits based on resources and capacity. Which information should be published will depend on the public body concerned, but at a minimum, public bodies should be under an obligation to publish the following categories of information:

- operational information about how the public body functions, including costs, objectives, audited accounts, standards, achievements and so on, particularly where the body provides direct services to the public;
- information on any requests, complaints or other direct actions which members of the public may take in relation to the public body;
- guidance on processes by which members of the public may provide input into major policy or legislative proposals;
- the types of information which the body holds and the form in which this information is held; and
- the content of any decision or policy affecting the public, along with reasons for the decision and background material of importance in framing the decision.[18]

The draft Law does not require any such information to be published, and we believe this to be a significant oversight. It is important to realise that freedom of information means not only responding to request, but a general turn-around in attitude of government and a willingness to be open and transparent. This in turn means that important categories of information, such as those mentioned above, should be made public without a member of the public having to make a request for them.

Protection of 'whistleblowers'

So-called 'whistleblowers' – individuals who, in the public interest, release information on wrongdoing discovered in the course of their employment but without official sanction – play an important role in ensuring transparency in public bodies. Often, in transitional as well as in established democracies, significant wrongdoing by senior public officials can be uncovered only when civil servants who work with them feel confident that they will be protected when they 'blow the whistle' on them. This means that they will need to be protected by law. Whistleblowers should benefit from protection as long as they act in good faith and in the reasonable belief that the information they disclose is substantially true and discloses evidence of wrongdoing. Such protection should apply even where disclosure would otherwise be in breach of a legal or employment requirement.

Recommendations

- The regime of exceptions should be redrafted to allow for access to be refused only when disclosure would cause serious harm to a legitimate protected interest, and there is no overriding public interest in the disclosure.
- The draft Law should provide for the establishment of an independent body to

[18] See recommendations made by the UN Special Rapporteur on Freedom of Expression and Opinion, UN Doc. E/CN.4/2000/63, pp. 15-6.

monitor compliance with the law, to provide training and to raise awareness. This body should also handle complaints – this task should not be left to a Press Council committee.
- The draft Law should require for a range of material to be published proactively, as indicated above.
- The draft Law should protect 'whistleblowers' – individuals who release information on wrongdoing in the public interest.

4. BROADCASTING LAWS

4.1. Overview

The last two of the four proposed new laws are a draft Law setting up a regulatory body for broadcasting, which we will refer to as the Licensing Law, and a draft Law to reform the existing state television and radio services into 'public service' organs, which we will refer to as the Public Service Broadcasting Law, or PSB Law for short.

Our main criticism of both laws, which show some good intent, is that they insufficiently protect the independence of the bodies they establish, leaving them vulnerable to government interference. This is a crucial oversight. As the UN Special Rapporteur on Freedom of Expression and Opinion has 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.[19]

Both laws also fail to protect the right to freedom of expression of broadcasters, including their right to criticise, as well as the public's right to receive information and ideas from a variety of sources and viewpoints, and reflecting all sides of the political spectrum.

In the following paragraphs, we will limit our criticism of both laws to these two key issues.

4.2. Independence of regulatory bodies

Both draft laws provide for governing bodies only some of whose members are elected by parliament. Article 5 of the draft Licensing Law provides that of the ten members, six will be appointed by parliament while one will represent the telecommunications agency, two are appointed by the National Radio Corporation and the final one will represent private broadcasters. The draft PSB Law envisages a governing body for the new public broadcaster consisting of 16 members, three of whom are presidential appointees while the other 13, including the chair, will be serving members of parliament, reflecting Sudan's cultural, social and ethnic diversity as well as gender equality.

[19] Joint Declaration with OAS and OSCE counterparts, 18 December 2003, http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&lID=1.

We do not believe that as envisaged, the bodies will be sufficiently protected from political interference. We strongly recommend that all members of the regulatory and governing bodies should be elected by parliament, following a fair and open process in which nominations have been invited from all interested parties. There should be no political appointees, and no serving member of parliament or government minister should be allowed to also serve on the board of either of the bodies. There should be public hearings to assess the suitability of candidate members, and the laws should require that members of both bodies are competent and experienced, that they will serve independently in the public interest, and that, viewed as a whole, they will fairly represent a cross-section of Sudanese society. All links with government departments should be cut and both bodies should be accountable only to parliament. The draft laws should also clearly stipulate the independence of both bodies. We would suggest a set of clauses along the following lines:

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

2. The [name of regulatory body] shall consist of [insert number] Members, who shall have some relevant expertise, by virtue of their education or experience, including in the fields of broadcasting policy, law, technology, journalism, entertainment or business and who shall be known for their high moral standards, integrity, impartiality and competence.

3. Members of the [name of regulatory body] shall be elected by the National Assembly by a two-thirds majority, and in accordance with the following process: –
   (a) there shall be an open nominations process;
   (b) there shall be public parliamentary hearings to assess the suitability of candidates;
   (c) all nominations shall be published in advance and the public shall be given an opportunity to make representations concerning these candidates; and
   (d) membership of the [regulatory body] as a whole shall, to the extent that this is reasonably possible, represent a broad cross-section of Sudanese society.

4. No one shall be appointed to the [regulatory body] if he or she: –
   (a) is not a citizen of Sudan;
   (b) is employed in the civil service or any other branch of government;
   (c) holds an official office in, or is an employee of, a political party;
   (d) holds an elected position at any level of government; or
   (e) holds a position in, receives payment from or has, directly or indirectly, significant financial interests in broadcasting or telecommunications.

5. (1) All members of the [regulatory body] shall be independent and impartial in the exercise of their functions.
   (2) Members shall neither seek nor accept instruction in the performance of their duties from any authority, except as provided by law.
   (3) Members shall act at all times in the overall public interest and shall not use their appointment to advance their personal interests, or the personal interests of any other party or entity.

4.3. Promoting pluralism and diversity

The current broadcasting climate in Sudan is characterised by a lack of diversity – most terrestrial channels are controlled by the State and the few private terrestrial broadcasters that do exist are limited to entertainment. This has deprived the public of its right to receive ideas and information from a variety of sources, and remedying the situation ought to be a key objective of legislators.

We are concerned, therefore, that while the draft PSB Law provides at least the outline of a public service mandate,[20] the draft Licensing Law is silent on the issue of achieving a pluralistic and diverse radio spectrum. Both laws are also silent on defending the right to freedom of expression of broadcasters, and the related right of the public to receive information and ideas from a variety of sources and from different political viewpoints. We strongly recommend, therefore, that at the very minimum, both laws are amended to provide the necessary mandates, as follows:

- the governing body for the new public service broadcaster should be required to ensure that the broadcaster's output is impartial and independent, while fairly reflecting all sides of Sudanese society – including different political viewpoints;
- the broadcast regulator should be required to defend media freedom, as well as the public's right to a diverse and pluralistic radio spectrum.

Recommendations

- The independence of both governing bodies should be clearly stipulated in the draft Laws.
- Both draft Laws should require that members of the regulatory and governing bodies are competent and experienced, that they should serve independently in the public interest.
- Viewed as a whole, the governing body for the public service broadcaster should fairly represent a cross-section of Sudanese society.
- As far as possible, all links with government departments should be cut and both bodies should be accountable only to parliament.
- The appointments process for members of regulatory and governing bodies should be redrafted to strengthen their independence, in line with the following principles:
  - All members of the regulatory and governing bodies should be elected by parliament, following a fair and open process in which nominations have been invited from all interested parties.
  - There should be no political appointees, and no serving member of parliament or government minister should be allowed to also serve on the board of either of the bodies.
  - There should be public hearings to assess the suitability of candidate members.
- The governing body for the public service broadcaster should be required to ensure that the broadcaster's output is impartial and independent, while fairly reflecting all sides of Sudanese society – including different political viewpoints;
- The broadcast regulatory body should be required to defend and promote media freedom as well as the public's right to a diverse and pluralistic radio spectrum.

[20] See Article 5.