



Memorandum

on the

Broadcasting Authority Law of the State of Israel

February 2007

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SUMMARY OF RECOMMENDATIONS

Recommendations on the mandate of the IBA:

- The instruction in Article 4 for IBA to “provide suitable expression of different approaches” should be reinforced, making it clear that pluralism is an obligation and the guiding principle of the Authority’s operations.
- In addition to equitably representing different perspectives, Article 4 should require the IBA to serve a wide range of audiences, especially those which are not adequately served by commercial broadcasters.
- The IBA’s obligations towards the different groups in society should be formulated in an ethnically neutral way. Article 3 should be amended to this effect.
- The IBA’s obligation towards Jews in the Diaspora should be reworded to a generalised duty to report on and broadcast for overseas populations with strong ties to the citizens of Israel.
- Article 3(A)(1) should be amended, making it explicit that the IBA’s obligation is to broadcast in an impartial and balanced way on all matters of public interest, without necessarily presenting a favourable picture of the State.
- An express guarantee of the IBA’s independence from any other person or entity, including the government, should be added to the BAL.
- Article 4 should be amended, to make it clear that broadcasting “reliable information” is an objective for the IBA, but not a legal obligation.

Recommendations on the governing bodies of the IBA:

- Neither the government nor the Jewish Agency should play any role in the appointment of anyone to a position on one of the governing bodies of the IBA. Instead, this power should be wielded by a qualified majority of the Knesset or a cross-party committee.
- Nominations should be solicited from professional and civil society organisations or from the public as a whole.
- The selection process should be transparent and allow for genuine consultation with the public. In particular, vacancies on the Plenum should be announced through a timely advertisement in leading media, meetings conducted as part of the selection process should be open, and individuals should be able to make submissions to the selecting body.
- The power to remove or temporarily suspend the Director-General, members of the Plenum and members of the Executive Board should rest with the same body responsible for their appointment, following identical rules of procedure.
- Loss of capacity to fulfil the duties of membership should be added to Article 9 as a ground for removing members of the Plenum.
- The BAL should list exhaustively the grounds on which the Director-General may be removed.
- Any decision to remove anyone from a position within the governing bodies of the IBA should be open to appeal in court.
- Consideration should be given to staggering the terms of members of the Plenum.

- Consideration should be given to increasing the length of terms on the Plenum from the current three years.
- A provision should be added to the BAL, requiring persons appointed to positions of responsibility within IBA to serve independently and impartially, to refrain from seeking or accepting instructions, and to refrain from using the appointment to advance their personal interests.
- A set of rules of incompatibility should be added to the BAL, preventing persons with a significant connection to a political party or the government, with a stake in the telecommunications or broadcasting industries, or who have been convicted of a serious crime, from being appointed to the Plenum, Executive Board or the position of Director-General.
- The rules of incompatibility should continue to apply during tenure and failure to observe them should be a ground for removal.
- The BAL should specify basic qualifications which candidates for membership in the Plenum and Executive Board, or for appointment as Director-General, must possess.
- A provision should be added to the BAL, requiring the body making appointments to the Plenum and Executive Board to ensure that its composition broadly reflects the different groups in Israeli society.
- Consideration should be given to guaranteeing that a minimum number of Arabic-speaking Israelis will be represented on the Plenum and Executive Board.

Recommendations on the IBA's structure of governance:

- A statement should be added to the BAL, to the effect that the Plenum is the body responsible for ensuring that the IBA serves the public interest and provides good value for money.
- The statement that the Plenum may decide "from time to time, on a specific broadcast from all aspects" should be removed from Article 13.
- A provision should be added to the BAL stating that the Director-General and senior editorial staff are responsible for editorial policy.
- To ensure a proper separation of powers between the supervisory body and day-to-day management, members of the Executive Board should not be drawn from the Plenum. By contrast, membership in the Plenum should act as a bar to appointment on the Executive Board, and vice versa.
- Consideration should be given to vesting the Plenum with the responsibility to recruit the members of the Executive Board, including the Director-General, who could serve as its chair. At a minimum, the roles of the Executive Board and the Director-General should be clarified and their respective responsibilities clearly delineated.

Recommendations on financial arrangements:

- The powers to authorise rules concerning the licence fee levied on all radio and TV sets, to authorise the IBA's budget and to set the level of remuneration for members of the Plenum should be exercised by the Knesset.
- Consideration should be given to adding mechanisms to the BAL to guarantee a stable level of funding to the IBA, for example by changing to a multi-year funding cycle coupled with annual adjustments for inflation, and imposing constraints on the level by

which overall funding may change from one funding cycle to the next.

- A limit should be imposed on the amount of sponsorship IBA may accept, as a percentage of its budget.

- The BAL should require IBA to clearly identify sponsored programmes as such.

Recommendations on accountability to the public:

- Measures should be taken to enhance the IBA's accountability, including requiring it to produce an annual report, establish a complaints procedure and undertake audience research.

1. INTRODUCTION

This Memorandum provides ARTICLE 19's analysis of the Broadcasting Authority Law of the State of Israel (the BAL) against international standards on freedom of expression.¹ ARTICLE 19 is an international, non-governmental human rights organisation which works with partner organisations around the world to protect and promote the right to freedom of expression. We have previously provided legal analyses in the area of broadcasting law to government and civil society organisations in over 30 countries.²

The BAL was adopted by the Knesset on 8 March 1965 and led to the establishment of the Israel Broadcasting Authority ('IBA' or 'the Authority'), the country's public service broadcaster, which currently operates two television channels and several radio stations. Various amendments have subsequently been passed, although none of very significant import. We understand that plans are afoot to conduct a new review of the law and this Memorandum is intended to contribute an international and comparative perspective to the debate. Our comments are based on an appraisal of the text of the BAL, in an effort to help ensure that public service broadcasting in Israel is given the best possible statutory underpinning.

Overall, we believe that despite some strengths, especially in relation to funding arrangements, the BAL is outdated and offers few guarantees of a broadcaster which genuinely serves the public interest. Our primary concerns are that the BAL fails to require IBA to cater to the whole of the public, and that IBA's editorial and institutional independence is insufficiently guaranteed. We are particularly concerned at the central role of the government in all appointments to the governing bodies of the IBA, as well as the fact that individuals with strong affiliations to the government, political parties or commercial operations in competition with the IBA may freely be appointed. The BAL furthermore fails to offer adequate guarantees that Israel's minorities will be given their equitable voice and that IBA generally will strive to be inclusive of minorities both in programming and institutionally. This is particularly relevant with regard to Israel's minorities, including its Arabic-speaking citizens, who should be given a voice and who should also be equitably represented on IBA's board and in the staff generally.

Our comments are based upon general international standards regarding freedom of expression and broadcast regulation, as found in international human rights instruments and elaborated by the UN Human Rights Committee and other human rights courts, mechanisms and constitutional tribunals around the world. The relevant standards are summarised in two ARTICLE 19 publications, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (the ARTICLE 19 Principles)³ and *A Model Public Service Broadcasting Law*,⁴ which translated the ARTICLE 19 Principles into legal form as they relate to public service broadcasting.

¹ Our analysis is based on an unofficial translation of the BAL provided to us by Il'am, the Media Center for Arab Palestinians in Israel. We take no responsibility for errors based on translation. The translation can be accessed at <http://www.article19.org/pdfs/laws/israel.psb.65.pdf>

² An overview of these analyses can be found on the ARTICLE 19 website, at <http://www.article19.org/publications/law/legal-analyses.html>.

³ London, April 2002. Available online at <http://www.article19.org/pdfs/standards/accessairwaves.pdf>.

⁴ London, June 2005. Available online at <http://www.article19.org/pdfs/standards/modelpsblaw.pdf>.

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A brief overview of international standards on freedom of expression and public service broadcasting is given in Chapter 2 below. Chapter 3 contains the actual analysis of the BAL.

2. INTERNATIONAL STANDARDS ON FREEDOM OF EXPRESSION AND PUBLIC SERVICE BROADCASTING

2.1. Guarantee and Importance of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR)⁵ is the flagship statement of the right to freedom of expression under international law:

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.

As a resolution of the UN General Assembly, the UDHR is not directly binding on States, but parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law.⁶ Moreover, Israel is a party to the *International Covenant on Civil and Political Rights* (ICCPR),⁷ a binding treaty based on the UDHR which contains a very similar guarantee of freedom of expression, again in Article 19. Despite the absence of a written guarantee, the Israeli Supreme Court affirmed as early as 1953 that freedom of expression is also a constitutional principle in domestic Israeli law.⁸

Freedom of expression is often characterised as the cornerstone of the rights guaranteed by the ICCPR and other international human rights treaties, both because of its centrality to the democratic form of government and because of its contribution to securing other human rights. At its very first session in 1946 the United Nations General Assembly adopted Resolution 59(I) which stated, “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”⁹ The European Court of Human Rights has stated:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.¹⁰

As the main conduit for public discussion on any and all matters, the guarantee of freedom of expression is of particular importance to the mass media, including public service broadcasters. The Inter-American Court of Human Rights, for example, has stated: “It is the

⁵ UN General Assembly Resolution 217A (III), adopted 10 December 1948.

⁶ For judicial opinions on human rights guarantees in customary international law, see, for example, *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain) (Second Phase)*, ICJ Rep. 1970 3 (International Court of Justice); *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice); *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit). Generally, see M.S.McDougal, H.D.Lasswell, L.C.Chen, *Human Rights and World Public Order*, Yale University Press (1980), pp. 273-74, 325-27.

⁷ UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976. Israel signed the ICCPR on 19 December 1966 and ratified it on 3 October 1991.

⁸ See, for example, *Kol Ha'am v. Minister of Interior* (1953) 7 P.D. 87.

⁹ 14 December 1946. The term ‘freedom of information’ is used in its wide sense, as the free circulation of information and ideas.

¹⁰ *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, 1 EHRR 737, Para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

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mass media that make the exercise of freedom of expression a reality.”¹¹ The UN Human Rights Committee, the body that interprets and oversees the implementation of the ICCPR, has similarly stressed the importance of free media for the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.¹²

2.2. Freedom of Expression and Public Service Broadcasting

2.2.1. Pluralism and public service broadcasting

The free speech guarantees of the UDHR and ICCPR stress that freedom of expression includes the right of every person to *receive* information and ideas *through any media*. At the outset, this means that States must refrain from placing unjustified restrictions on individuals’ ability to access the statements and opinions of others, irrespective of the medium used for their transmission. Pursuant to Article 2 of the ICCPR, however, the obligation of governments goes further: they must “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.”

In relation to the right to freedom of expression and the broadcast media, this means that governments must take active steps to promote the right of every member of society to receive information from a variety of broadcast sources. The broadcasting landscape a State creates should adequately reflect and serve all the different groups and strata of society – in other words, States are under an obligation to promote pluralism within, and to ensure equal access of all to, the media.¹³

Public service broadcasting – a form of broadcasting that serves the entirety of society, including minorities, and is accountable to it for providing high quality and editorially independent news, information and other output – can make a significant contribution to media pluralism. For this reason, a number of international instruments stress the importance of public service broadcasters and their contribution to realising the right to freedom of expression.¹⁴

2.2.2. Independence of public service broadcasters

In order to be able to fulfil their mandate to broadcast ‘in the public interest’, it is of paramount importance that public service broadcasters (PSBs) are not aligned with any particular political, commercial or other interest but are to the greatest possible degree independent.

¹¹ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

¹² UN Human Rights Committee General Comment 25, issued 12 July 1996.

¹³ For elaboration and justification of this principle, see the European Court of Human Rights’ judgment in *Informationsverein Lentia and others v. Austria*, 28 October 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90.

¹⁴ See, in particular, the 2003 Bangkok Communiqué by the Asia Pacific Ministers of Broadcasting and Information, Bangkok, 27-28 May 2003; UNESCO’s Declaration of Alma Ata on Promoting Independent and Pluralistic Asian Media, endorsed by UNESCO’s General Conference in 1995; UNESCO’s Declaration of Sana’a, 11 January 1996, endorsed by UNESCO’s General Conference in 1997.

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This implies, in the first place, that the body governing of the PSB must itself be independent. This principle has been explicitly endorsed in a number of international instruments, both global and regional in nature. The UN Special Rapporteur on Freedom of Expression, for example, has adopted a Declaration stating that,

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.¹⁵

The Special Rapporteur has also stressed the importance of independence in relation to PSBs in several of his annual reports.¹⁶

A number of national courts have similarly ruled that the right to freedom of expression and the public's right to a pluralistic and free media require that a public service broadcaster's governing body be independent. The Supreme Court of Sri Lanka, for example, held that a draft broadcasting bill which gave a government minister substantial power over appointments to the Board of Directors of the regulatory authority was incompatible with the constitutional guarantee of freedom of expression. The Court noted: "[T]he authority lacks the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought."¹⁷

Independence of the governing body is an important precondition for independence of the PSB, but not sufficient by itself. A number of further measures are necessary to prevent interference in or influencing of the broadcaster's work.

First, the editorial independence of public service broadcasters should be guaranteed, both in law and in practice. Neither the government nor any other outside entity should be entitled to interfere in the day-to-day decision-making of the PSB, particularly in relation to broadcast content. Accountability of the PSB for the observance of its mandate should be achieved through periodic reviews of its work by a body which represents the people, such as parliament; a right to interfere *ad hoc* would expose the PSB to a serious risk of political meddling and thereby undermine its independence.

Similarly, true independence is only possible if funding for the PSB is sufficient, stable and secure from arbitrary government control. Principle 36 ARTICLE 19's *Principles on Freedom of Expression and Broadcast Regulation* states: "Public broadcasters should be adequately funded, taking into account their remit, by a means that protects them from arbitrary interference with their budgets." The importance of well-designed funding rules has been recognised at the international level. Articles 17-19 of Recommendation No. R (96) 10 of the Council of Europe,¹⁸ for example, note that funding for public service broadcasters should be appropriate to their tasks, and be secure and transparent. Funding arrangements should not render public broadcasters susceptible to interference, for example with editorial independence or institutional autonomy. At the domestic level, the Italian Constitutional

¹⁵ Joint Declaration by the UN Special Rapporteur on freedom of Expression, the OAS Special Rapporteur on Freedom of Expression and the OSCE Special Representative on Freedom of the Media, 18 December 2003.

¹⁶ E.g. in his 1998 Annual Report, UN Doc. E/CN.4/1999/64, par. 5; 1997 Annual Report, UN Doc. E/CN.4/1998/40, par. 22.

¹⁷ *Athokorale and Ors. v. Attorney-General*, 5 May 1997, Supreme Court, S.D. No. 1/97-15/97.

¹⁸ Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996.

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Court has held that the constitutional guarantee of freedom of expression obliges the government to ensure that sufficient resources are available to enable the public broadcaster to discharge its functions.¹⁹

Article 35.1 of the ARTICLE 19 Principles summarises the discussion above, recommending that the independence of a PSB be protected in the following ways:

1. specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
2. by a clear legislative statement of goals, powers and responsibilities;
3. through the rules relating to appointment of members;
4. through formal accountability to the public through a multi-party body;
5. by respect for editorial independence; and
6. in funding arrangements.²⁰

¹⁹ Decision 826/1998 [1998] Guir. cost. 3893.

²⁰ Note 3, Principle 35.1.

3. ANALYSIS OF THE BROADCASTING AUTHORITY LAW

The BAL is divided into six chapters. The first chapter defines the mandate of the Israel Broadcasting Authority ('IBA' or 'the Authority'), the public service broadcaster; chapters 2-4 address the governance and management structure of the Authority, and chapter 5 deals with its financing. Finally, chapter 6 contains a number of miscellaneous provisions.

This analysis of the IBA in this Memorandum follows the same order.

3.1. Mandate of the IBA

Overview

Article 3 of the BAL enumerates 5 broad purposes of the IBA. These are:

A. Broadcasting educational, entertainment, and informational programs in the fields of policy, society, economy and industry, culture, science, and the arts, with the goal of:

1. Reflecting the life, struggle, creativity, and achievements of the state;
2. Nurturing good citizenship;
3. Strengthening the bond with Jewish heritage and values and enhancing the knowledge thereof;
4. Reflecting the life and cultural assets of all tribes of the people from the different countries;
5. Expanding education and disseminating knowledge;
6. Reflecting the life of the Jews in the Diaspora communities;
7. Advancing the goals of state education as described in the State Education Law, 5713-1953;

B. Promoting Hebrew and Israeli creativity;

C. Maintaining Broadcasts in the Arabic language for the needs of the Arabic-speaking population and Broadcasts for promoting understanding and peace with the neighboring states in accordance with the basic goals of the state;

D. Maintaining Broadcasts for the Jews of the Diaspora;

E. Maintaining Broadcasts for abroad.

Article 3 should be read in conjunction with Article 4, which requires the IBA to "provide suitable expression of different approaches and opinions current among the public" in fulfilling its mandate, as well as making sure that "reliable information shall be broadcast".

Analysis

The mandate of the IBA contains many elements that are consistent with best international practice. The BAL would benefit, however, from a stronger statement of the Authority's duty to offer programming which satisfies the needs of all sectors of society. Moreover, both the IBA's editorial independence and its duty of impartiality should be spelt out more clearly. These points are elaborated below.

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3.1.1. *Serving all sectors of society*

Article 4 reflects the cardinal principle of public service broadcasting, namely that it should serve the public as a whole. While very useful, this provision could be worded more robustly. As it stands now, the IBA is required to “...provide suitable expression of different approaches...” In its context, this sentence might be taken to list one of several tasks of the Authority, rather than the guiding principle of all the IBA’s work. Such an interpretation can be ruled out by adding a few words, to the effect that IBA’s programming, *taken as a whole*, must equitably reflect different perspectives. In this connection, we also believe the word “suitable” ought to be replaced by something with a less discretionary connotation, such as “balanced” or “equitable” (if such is not already the case in the original language).

In addition to *reflecting* the range of perspectives found in society, the IBA’s programming should *serve* all sectors of society. The two are connected, but not equivalent. One could easily conceive of a TV or radio station which gives voice to different perspectives, but does so in a way which is appealing only to, for example, mainstream viewers or a small elite. A public service broadcaster should not only reflect diverse views, but also serve the widest possible range of audiences, especially those which are not already adequately catered to by commercial broadcasters. An instruction to this effect would improve the BAL.

Article 4(2) of the ARTICLE 19 Model Law contains the following example of how the public service mandate of a PSB can be defined robustly and concisely:

SBC shall provide innovative and high quality broadcasting, which reflects the range of views and perspectives held in society, satisfies the needs and interests of the general public in relation to informative broadcasting, and complements programming provided by private broadcasters.

The duty of a PSB to serve all sectors of society is also relevant to the assessment of Article 3. This provision deals, amongst others, with the delicate question what the role of the IBA should be in relation to the Jewish majority population, the Arabic-speaking and other minorities, the Jewish Diaspora and neighbouring States.

At first blush, Article 3 is consonant with the ideal that the IBA should be a station for all Israelis, regardless of ethnicity. The IBA’s mandate is to promote both “Jewish heritage and values” and to provide broadcasts “for the needs of the Arabic-speaking population”, while also “reflecting the life and cultural assets of all tribes of the people from the different countries.” We understand that in practice, the two television stations operated by IBA broadcast in Hebrew but there is an Arabic-language radio station, serve various minorities, including Muslims, Christians and Druze.

On closer reading, however, Article 3 must be criticised on the basis that it draws a distinction between the type of service to be offered to different ethnic groups. While IBA is required to promote Jewish heritage and values, it has no such duty in relation to the various minorities the country is home to. In the spirit of the IBA’s public service mandate, its obligation towards all the groups in society should be formulated in an ethnically neutral way. Its overall duty should be to promote peace and integration for all. The ARTICLE 19 Model Law contains the following example clauses:

To fulfil its public service broadcasting role, [the public service broadcaster] shall strive to provide a broadcasting service that: –

- contributes to a sense of national identity, while reflecting and recognising the cultural diversity of [insert name of country];

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- gives a voice to all ethnic groups and minorities, including through the establishment of Ethnic/Minority Programming Services and the provision of programming in ethnic/minority languages;
- strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;²¹

According to paragraphs A(6) and (D) of Article 3, a further obligation of the IBA is to reflect the life of the Jews in the Diaspora and provide broadcasting for them. While unusual, this seems a proper goal for the public service broadcaster of a nation, the majority of whose population has strong ties to a population scattered outside its borders. A similar argument can be made, however, on behalf of Israel's Arabic-speaking citizens, who find themselves in an analogous situation, having strong historic, cultural and family ties to a population scattered outside the country's borders. While it is certainly not incumbent on a public service broadcaster to provide precisely equal services to ethnic groups regardless of their size, the significant proportion of Arabic-speakers amongst Israel's population as well as the strength of their bonds with, for example, the Palestinian Diaspora, plead in favour of a similar service in Arabic. We understand that the Arabic-language broadcasts of the IBA are already received in neighbouring countries.

Accordingly, we would recommend reformulating paragraphs A(6) and (D) of Article 3 in an ethnically neutral way. Article 3(A)(6) might read something like "reflecting the life of populations outside Israel with strong ties to the country", while paragraph (D) could be reworded to "maintaining broadcasts for populations outside Israel with strong ties to the country".

3.1.2. Independent editorial line

The duty to broadcast for the benefit of the whole of society implies not only that a PSB should serve the range of different ethnic groups found in the country, but also that it should be neutral in social, political, economic and other questions, and seek to explore the strengths and weaknesses of different ideologies and positions with equal vigour. This requires, first, a legislative instruction to the PSB to maintain impartiality and balance; and second, a guarantee that it will not be subject to external pressure to change its editorial line.

In regard of the former, Article 3(A)(1) gives cause for concern, in that it requires the IBA to reflect "the life, struggle, creativity, and achievements of the state." Insofar as this means that IBA should report on current events in Israel, it is certainly a legitimate instruction for a public service broadcaster. But words like "creativity", "achievements" and "state" can easily give rise to a different interpretation, namely that the role of IBA is to present a favourable picture of the state of society or even of the performance of the government. This should be amended to more clearly reflect the duty of a PSB to explore both sides of any story and report objectively and independently on all important current events, whatever light they cast on the state of society or the achievements of the government of the day. The ARTICLE 19 Model Law proposes the following:

To fulfil its public service broadcasting role, [the public service broadcaster] shall strive to provide a broadcasting service that: –

- (a) is independent of governmental, political or economic control, reflects editorial integrity and does not present the views or opinions of [the public service broadcaster];
- (b) includes comprehensive, impartial and balanced news and current affairs programming, including during prime time, covering national and international events of general public interest;²²

²¹ Article 4(3)(c)-(e).

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- (k) ... contributes to informed debate and critical thought.

In regard to the IBA's editorial autonomy, it is notable that the very word "independent" does not appear anywhere in the BAL. Article 5 grants the Authority separate legal personality, describing it as "a corporation capable of any legal obligation, right, and action"; but this is hardly a guarantee of independence in editorial affairs.

We recommend adding a provision to the Law which explicitly recognises the independence of the IBA, not just from political meddling but from unwarranted interference of any kind. The ARTICLE 19 Model Law recommends the following:

[The public service broadcaster] 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 public service broadcaster] in the discharge of their duties, or to interfere with the activities of [the public service broadcaster], except as specifically provided for by law. This autonomy shall be respected at all times.

Recommendations:

- The instruction in Article 4 for IBA to "provide suitable expression of different approaches" should be reinforced, making it clear that pluralism is an obligation and the guiding principle of the Authority's operations.
- In addition to equitably representing different perspectives, Article 4 should require the IBA to serve a wide range of audiences, especially those which are not adequately served by commercial broadcasters.
- The IBA's obligations towards the different groups in society should be formulated in an ethnically neutral way. Article 3 should be amended to this effect.
- The IBA's obligation towards Jews in the Diaspora should be reworded to a generalised duty to report on and broadcast for overseas populations with strong ties to the citizens of Israel.
- Article 3(A)(1) should be amended, making it explicit that the IBA's obligation is to broadcast in an impartial and balanced way on all matters of public interest, without necessarily presenting a favourable picture of the State.
- An express guarantee of the IBA's independence from any other person or entity, including the government, should be added to the BAL.
- Article 4 should be amended, to make it clear that broadcasting "reliable information" is an objective for the IBA, but not a legal obligation.

3.2. Governing Bodies of the IBA

The previous section remarked on the absence of an express legal guarantee of the IBA's independence. This section will assess to what extent such independence is safeguarded in practice, through the institutional setup of the Authority.

²² Article 4(3)(a)-(b) and (k).

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Overview

The BAL envisages a three-tiered governance structure for the IBA. At the top sits a Plenum, whose composition, appointment and powers are regulated by chapter 2 of the Law. The second level is an Executive Board, covered by chapter 3, whose members are drawn from the Plenum. Lastly, the IBA has a Director-General. The appointment process of the Director-General is dealt with in chapter 4.

The Plenum

The Plenum consists of thirty-one members, appointed by the president of the State. Thirty of these are recommended by the government, after consultation with a range of civic organisations, falling within the following categories: 1) representative organisations of the authors, teachers, and artists in Israel; 2) institutions of higher education; 3) the Academy of the Hebrew Language; and 4) “other public bodies that have an affinity to broadcasting matters” (Article 7(A)(1)). The remaining one member is a representative of the Jewish Agency, recommended by it from amongst its ranks (Article 7(A)(2)). The Jewish Agency is a government-created body with a mandate to strengthen links with the Jewish Diaspora and encourage and facilitate immigration and integration in Israel.²³ The BAL does not specify whether the president enjoys any discretion to reject the candidates proposed by the government and Jewish Agency.

A further power of appointment is exercised by the government, which selects the Chairperson and Deputy Chairperson of the IBA from amongst the Plenum (Article 7(B)).

A simple ‘rule of incompatibility’ applies to candidates for membership in the Plenum. Pursuant to Article 7(C), persons who are in a commercial or employment relationship with the IBA, or who have control over a corporation with such a relationship, are not eligible for appointment. This is further reiterated in Article 7(D).

Members of the Plenum are appointed for three years and may serve a maximum of two consecutive terms (Article 8). Membership in the Plenum may end before the end of a term in four ways: if the member dies, resigns, is convicted of “an offense bearing shame”, or is removed by the government at the recommendation of the Plenum. Removal is only contemplated, however, if the member is absent without adequate reason from all the Plenum meetings during half a year (Article 9).

The Plenum has six scheduled meetings a year and may meet additionally whenever at least ten members so request (Article 11). A quorum consists of sixteen members, “including the chairperson or deputy,” although if a lower number of members presents itself to a meeting, the Chairperson is required to schedule a new meeting within ten days. A rescheduled meeting does not require a quorum (Article 12(B)).

The Executive Board

The Executive Board is a seven-member body, composed of the Chairperson and Deputy Chairperson of the Plenum, and five other members of the Plenum appointed by the government for three years (Article 14(A)).

²³ See the Jewish Agency’s explanation of its mission on its website, <http://www.jewishagency.org/JewishAgency/English/Home/About/Our+Mission>.

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Since all members of the Executive Board are also members of the Plenum, it follows that they are subject to the rule of incompatibility defined in Article 7(B). Article 15 additionally bars members of the Executive Board from engaging in any commercial or contractual transaction with IBA *during* their tenure, or from being employed by it in another capacity. With the permission of the Executive Board, they may however undertake “one-time participation in a broadcast program without remuneration” (Article 15). Article 14(B) further stipulates that the government may not appoint more than two civil servants to the Executive Board.

Loss of membership in the Plenum automatically leads to loss of membership in the Executive Board (Article 14(B)). Pursuant to Article 16(A), whenever someone resigns or otherwise loses membership in the Executive Board, a replacement is appointed by the ordinary procedure for the remainder of the term. It is not apparent whether a member of the Executive Board may choose to resign from the Board but nevertheless remain a member of the Plenum.

The Director-General

The appointment procedure for the Director-General commences with a meeting of the Plenum, convened within 30 days of a request from the responsible Minister (Article 23(B)). The Plenum is obliged to invite the Minister to participate in this meeting, and must repeat the invitation should the meeting be postponed due to the absence of a quorum (Article 23(B) and (C)).

During the meeting, candidates for the position of Director-General can be put forward either by the Minister or by at least nine members of the Plenum (Article 23(D)). After conclusion of the meeting, the Minister recommends a single candidate from amongst the pool of nominees to the government and forwards a summary of the discussion during the meeting (Article 23(E)). The government may then either appoint the candidate preferred by the Minister or one of the candidates nominated by the requisite nine members of the Plenum (Article 23(F)); or it may refuse to appoint any of the nominees, in which case the entire procedure is commenced anew (Article 23(G)).

The Director-General is appointed for five years and may lose his or her office in four ways: through resignation; if the government decides, after consulting the Plenum, that he or she is permanently unable to fulfil the role; if 21 members of the Plenum decide to remove him or her; or if the government decides, upon the advice of the Minister, after consulting with the Plenum, to remove him or her (Article 23A(A)). To these explicitly listed grounds, death may presumably be added.

A Director-General who does not complete the five year term is replaced in the same manner as members of the Executive Board (Article 23(A)(B)). Article 23(B) further stipulates that in case the position of Director-General becomes vacant or the holder of the post is temporarily incapable or absent, the Minister is entitled to appoint a temporary replacement for a period of three months; this term may be extended by three additional months. The determination of temporary incapacity or absence is made by the Minister, after consulting with the Chairperson.

Analysis

Despite some redeeming elements, the governance structure of IBA is deeply flawed and exposes the Authority to the possibility of pervasive control by the government or other unwarranted interference. Moreover, the BAL offers few safeguards that those in charge of IBA are qualified or suited to serve as representatives of the public.

3.2.1. Appointments and dismissals

The government plays a paramount role in all appointments to positions of responsibility in the IBA. The duty to consult with certain professional and civil society organisations and the role of the president in confirming candidates for the Plenum are insufficient checks on the government's very broad discretion.

Any governmental role in appointments is capable, if not likely, to translate into a choice for candidates who are favourably disposed to the ruling party or coalition of the day, and consequently to erode the political impartiality of the PSB. As discussed in Section 2.2.2 of this Memorandum, this danger has been acknowledged by both international bodies and domestic courts. The more recent public service broadcasting laws adopted in democratic countries often foresee no role at all for the executive branch of government in the appointment process, and this must certainly be considered best practice. The central role of government in appointments under the BAL may be an unfortunate legacy from the BBC Charter, which has since been amended.²⁴ We accordingly strongly recommend a comprehensive overhaul of the appointments process, ensuring that it becomes open, democratic, is not dominated by any particular political party or commercial interest, and allows for broad public participation and consultation.

A model that is advocated by ARTICLE 19 and is gaining some currency in democracies is to entrust the responsibility to make appointments to the oversight body of the PSB to a qualified majority of parliament, or to a cross-party parliamentary committee. Amending the BAL to this effect would reduce the danger of politicisation of the IBA, since candidates would not be successful unless they were able to garner some support across the political spectrum found in the Knesset.

Nominations, however, should not be made by political parties, since this is liable to result in a highly politicised pool of candidates and horse trading about their appointment. Instead, they should be solicited from professional and civil society organisations or from the public as a whole. For these purposes, the bodies listed in Article 7(A)(1) would be suitable, if the term "public bodies" is replaced by "non-governmental organisations" in the last category (becoming "other non-governmental organisations that have an affinity to broadcasting matters"). Measures should also be taken to ensure that the selection process is transparent and allows for genuine consultation with the public; vacancies on the Plenum should be announced through a timely advertisement in leading media, meetings conducted

²⁴ Under Article 8(1) of its former Charter, the BBC was overseen by a Board of Governors formally appointed by the monarch, but in practice selected by the government. This arrangement led to a series of controversies over time about allegedly politically motivated appointments. The new Royal Charter of the BBC, effective 1 January 2007, replaces the Board of Governors by a Trust. Article 13(3) fails to conclusively remedy the problem with the appointments process, although its transparency and fairness is overseen by the Office of the Commissioner for Public Appointments, an independent body.

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as part of the selection process should be open, and individuals should be able to make submissions to the selecting body.

The above applies to the appointments process for the Plenum, but *mutatis mutandis* also to appointments to the Executive Board and the appointment of a Director-General. The appointments process for the latter appears especially byzantine; despite the ostensible participation of the Plenum, it is clear that the Minister is likely to be able to secure the appointment of his/her own candidate.

The ARTICLE 19 Model Law summarises the discussion above as follows:

6. (1) Members of the Board shall be appointed by the [insert name of (lower chamber of) parliament], in accordance with the following: –

- 1) the process shall be open and transparent;
- 2) only candidates nominated by civil society and professional organisations shall be considered for appointment;
- 3) a shortlist of candidates shall be published in advance and the public shall be given an opportunity to make representations concerning these candidates;
- 4) a candidate shall be appointed only if he or she receives two-thirds of the votes cast;
- 5) membership of the Board as a whole shall, to the extent that this is reasonably possible, represent a broad cross-section of [insert name of State] society;

The power to remove the Director-General and members of the Plenum and Executive Board is also easily abused for political reasons, and should not reside in the government. Instead, the body that makes appointments should also have the power to remove incumbents, following the same rules of procedure as for appointments. In the case of the Plenum, this means the Knesset or a cross-party committee thereof, voting by qualified majority.

It is positive that the BAL provides protection against unjustified dismissals by stipulating an exhaustive list of grounds on which a removal from the Plenum may be justified. The list may even be considered too limited, because members of the Plenum cannot be relieved of their duty if they lose the capacity to fulfil their responsibilities adequately and fail to resign of their own motion. By contrast, and worryingly, no specific justification is required to remove the Director-General. The power of the Minister to determine that the Director-General has become ‘temporarily incapable’ is also vulnerable to abuse. These provisions should be replaced by a second exhaustive list of grounds for dismissal or temporary replacement. All decisions to remove or substitute a member of the Plenum, Executive Board or the Director-General should be subject to appeal in court.

Finally, the Plenum’s institutional memory and the consistency of its policies would benefit if the terms of its members were staggered; that is, the terms of members should not all commence and end on the same date but should be spaced evenly so that, for example, 10 members are replaced annually. We also believe three years is a relatively short term; consideration could be given to increasing this.

The ARTICLE 19 Model Law provides:²⁵

²⁵ Article 8.

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- 1) Members shall serve on the Board for six (6) years and may be re-elected to serve a maximum of two (2) terms.
- 2) Notwithstanding sub-section (1), from among the first group of appointees to the Board three (3) individuals shall be identified by lot whose initial term of office shall be just two (2) years and another three (3) individuals whose initial term of office shall be just four (4) years and, for these individuals, their first term shall count as a full term.
- 3) The [insert name of (lower chamber of) parliament] may remove a member from the Board only after a hearing and where that individual: –
 - a. becomes, by virtue of section 6(2), ineligible for appointment to the Board;
 - b. is no longer able to perform his or her duties effectively; or
 - c. fails, without valid excuse, to attend meetings of the Board for a period of more than six (6) months.
- 4) Where a Board member has been removed pursuant to sub-section (3), he or she shall have the right to appeal such removal to the courts.

3.2.2. Rules of incompatibility and the duty to serve independently

We note that the BAL does not require that members of the IBA's governing bodies serve independently and use their membership to advance the public interest, rather than any interests of their own. An instruction to this effect should be added, perhaps along the lines of the provision suggested in ARTICLE 19's Model Law:²⁶

- 1) All members of the Board shall be independent and impartial in the exercise of their functions and shall, at all times, seek to promote the Guiding Principles set out in section 4.
- 2) Board members shall neither seek nor accept instruction in the performance of their duties from any authority, except as provided by law.
- 3) Board 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.

Rules of incompatibility are an important practical safeguard of members' independent and impartial service. As described above, the BAL contains a few of these rules, but falls short of what is needed to guarantee full independence.

The only rule of incompatibility for members of the Plenum is that, at the time of their appointment, they may not be in a commercial or employment relationship with the IBA, or control a corporation with such a relationship. This rule continues to apply to members of the Executive Board after their appointment.

Further rules of incompatibility should be added to prevent anyone with a significant connection to a political party or the government, or who has a stake in the telecommunications or broadcasting industries, from being appointed. Consideration could also be given to excluding candidates who have been convicted of a serious crime.

Moreover, it is clearly inadequate if rules of incompatibility cease their operation upon appointment. Rather, they should remain applicable for the duration of the term. They should

²⁶ Article 7.

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also apply to all members of any part of the governance structure – the current arrangement, whereby no more than two members of the Executive Board may be civil servants, does not go far enough. The presence of two government representatives on a board of seven could easily swing decisions the ruling coalition's way.

The ARTICLE 19 Model Law contains the following clause on rules of incompatibility:²⁷

- (2) No one shall be appointed to the Board if he or she: –
- (a) is employed in the civil service or any other branch of government;
 - (b) holds an official office in, or is an employee of, a political party;
 - (c) holds an elected position at any level of government;
 - (d) holds a position in, receives payment from or has, directly or indirectly, significant financial interests in broadcasting or telecommunications; or
 - (e) has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been pardoned, unless five years have passed since the sentence was discharged;

provided that individuals who have been shortlisted pursuant to sub-section (1)(c) shall be given an adequate opportunity to take any necessary steps to remove a barrier to their appointment under this sub-section.

Article 8(3) of the Model Law adds that failure to observe the rules of incompatibility is grounds for removal:

- (3) The [insert name of (lower chamber of) parliament] may remove a member from the Board only after a hearing and where that individual: –
- a) becomes, by virtue of section 6(2), ineligible for appointment to the Board;

3.2.3. Qualifications and representativeness

The BAL does not prescribe any qualifications which candidates for membership in the Plenum and Executive Board, or for appointment as Director-General, must possess. While it is not necessary to set very rigid rules in this regard, a baseline requirement would help prevent appointments based on improper considerations. Article 5(2) of the ARTICLE 19 Model Law proposes the following:

The Board shall be composed of nine (9) members who shall have some relevant expertise, by virtue of their education or experience, including in the fields of broadcasting, policy, law, technology, journalism and/or business.

An additional concern is the absence of any guarantee that the composition of the governing bodies will broadly reflect the diversity of Israeli society. The board of a PSB need not always be a completely faithful representation of the composition of the population; such a requirement would simply serve to politicise the appointments process. At the same time, diversity on the board should be encouraged for reasons of equity, and because it helps advance the goal of achieving diversity in programming. In some countries with minorities or other groups which have historically been marginalised, the law requires a minimum representation of these groups on the board of the PSB. A recent example is Moldova, whose 2006 Audiovisual Code requires the inclusion of at least two women on the board of nine.²⁸

²⁷ Article 6(2).

²⁸ Audiovisual Code of Moldova, Article 56(6). Available online at <http://www.ijc.md/en/mlu/docs/audio.shtml>.

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Consideration should be given to including a similar guarantee in the BAL in respect of Israel's Arabic-speaking citizens.

Recommendations:

- Neither the government nor the Jewish Agency should play any role in the appointment of anyone to a position on one of the governing bodies of the IBA. Instead, this power should reside in parliament.
- Nominations should be solicited from professional and civil society organisations or from the public as a whole.
- The selection process should be transparent and allow for genuine consultation with the public. In particular, vacancies on the Plenum should be announced through a timely advertisement in leading media, meetings conducted as part of the selection process should be open, and individuals should be able to make submissions to the selecting body.
- The power to remove or temporarily suspend the Director-General, members of the Plenum and members of the Executive Board should rest with the same body responsible for their appointment, following identical rules of procedure.
- Loss of capacity to fulfil the duties of membership should be added to Article 9 as a ground for removing members of the Plenum.
- The BAL should list exhaustively the grounds on which the Director-General may be removed.
- Any decision to remove anyone from a position within the governing bodies of the IBA should be open to appeal in court.
- Consideration should be given to staggering the terms of service of members of the Plenum.
- Consideration should be given to increasing the length of terms of service on the Plenum from the current three years.
- A provision should be added to the BAL, requiring persons appointed to positions of responsibility within IBA to serve independently and impartially, to refrain from seeking or accepting instructions, and to refrain from using their position to advance their personal interests.
- A set of rules of incompatibility should be added to the BAL, preventing persons with a significant connection to a political party or the government, with a stake in the telecommunications or broadcasting industries, or who have been convicted of a serious crime, from being appointed to the Plenum, Executive Board or the position of Director-General.
- The rules of incompatibility should continue to apply during tenure and failure to observe them should be a ground for removal.
- The BAL should specify basic qualifications which candidates for membership in the Plenum and Executive Board, or for appointment as Director-General, must possess.
- A provision should be added to the BAL, requiring the body making appointments to the Plenum and Executive Board to ensure that its composition broadly reflects the different groups in Israeli society.
- Consideration should be given to guaranteeing that an equitable number of representatives from Arabic-speaking minorities will be represented on the Plenum and Executive Board.

3.3. Structure of Governance

The previous section considered the makeup of the various bodies charged with governing IBA. This section looks at the division of responsibilities between those bodies.

Overview

Plenum

Article 13 lists the functions of the Plenum. They are, principally, to set the general direction of the IBA's work; review reports of committees established by the IBA; guide the Executive Board; authorise the "seasonal framework of the Broadcasts" (presumably the programme schedule), as well as deciding, "from time to time, on a specific broadcast from all aspects"; to review the budget prepared by the Executive Board and make recommendations in regard to it; to request and assess reports from the Executive Board and Director-General; to review the Executive Board's annual report and present conclusions; and finally, to "discuss any other matter as it shall see fit and to form its conclusions".

Executive Board

Article 19 outlines six broad responsibilities of the Executive Board: 1) to discuss and decide on the Authority's affairs; 2) to receive reports from the Director-General on the regular operations of the Authority; 3) to prepare the annual budget and submit it to the Knesset, along with the Plenum's recommendations; 4) to supervise the implementation of the budget; 5) to submit an annual report on its operations to the Knesset, as well as any reports requested by the Plenum; and 6) to submit any report to the Minister as requested.

Director-General

The BAL does not specify clear responsibilities for the Director-General. Pursuant to Article 23(C), however, he or she must "act in accordance with the decisions and guidelines of the Executive Board."

Analysis

The structure of the IBA follows a common model, with a supervisory organ (in this case the Plenum) responsible for setting the general direction of the public service broadcaster, and an executive organ responsible for day-to-day management. A 'split' management model of this kind can confer several benefits. For example, overseeing whether the broadcaster is properly meeting its mandate to serve the public and providing good value for money requires a different skill-set than managing the actual business and financial skills required to ensure the broadcaster's smooth functioning and operations. Moreover, members of the supervisory organ, who normally work part-time, are better able to observe the broadcaster in a detached way and form a dispassionate opinion than those who work there daily and develop loyalties within the organisation.

The role of the Plenum is fairly well defined in the BAL. We believe it would be useful to add an explicit statement to the law, to the effect that the Plenum is the body responsible for ensuring that the IBA serves the public interest and provides good value for money. However, while it should be responsible for overall programme content, the Plenum should have no powers to interfere directly with programming: this should be the responsibility of the Director-General and senior editorial staff. The Plenum should have a hands-off approach to its governing role and respect the independence of the editorial staff. In this regard, we are concerned about the right of the Plenum under Article 13 to decide "from time to time, on a

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specific broadcast from all aspects.” This provision, which is in any event very vague, should be deleted. Instead a clear statement should be included to the effect that the Director-General and his or her editorial staff are responsible for editorial policy.

The provisions with regard to the Executive Board are problematic. First and foremost, it is simply not very clear from the face of the BAL what the Executive Board is supposed to do or how it relates to the Director-General, whose role is even less well defined. By inference from the fact that the Plenum is responsible for overall oversight, we assume the Board’s mandate “to discuss and decide on the Authority’s affairs” means it is responsible for day-to-day management. It remains unclear which of the two – the Director-General or the Executive Board – is responsible for such matters as recruiting staff, developing programmes, acquiring technical equipment and premises, managing finances, etcetera. It is important that all the respective responsibilities are clearly defined in the BAL.

Another serious concern is the fact that members of the Executive Board are drawn from, and concurrently members of, the Plenum. The benefits of having a division of powers between the two bodies are largely nullified if they are staffed by the same individuals and, as noted above, the skill set required for either role is quite different. It would be much better if, for example, the Plenum were tasked with the duty of recruiting a wholly separate Executive Board to oversee management affairs. The Director-General could be recruited in the same way; and as stated above, one of his or her primary responsibilities should be in the area of editorial policy.

Article 10 of the ARTICLE 19 Model Law reflects many of the ideas put forward above:

- 1) The Board has overall responsibility for the determination of internal policy, for ensuring compliance with all policies and the Guiding Principles set out in section 4, for ensuring that SBC meets the highest standards of probity and value for money, for appointment of senior staff, including the Managing Director, and for setting the overall strategy of SBC.
- 2) The Board shall not interfere with the day-to-day management of SBC or with the editorial independence of the Managing Director and his or her staff, although it does have responsibility for ensuring that, overall, editorial policy respects the Guiding Principles set out in section 4.
- 3) The Board shall, after consultation with the Managing Director, approve the Statutes of SBC, which shall, in accordance with this law and other relevant legislation, establish policies, operational guidelines and procedures.
- 4) The Board shall, after consultation with the Managing Director, prepare an Annual Report and budget for SBC, which shall be presented to the [insert name of (lower chamber of) parliament] for its approval.

Recommendations:

- A statement should be added to the BAL to the effect that the Plenum is the body responsible for ensuring that the IBA serves the public interest and provides good value for money.
- The statement that the Plenum may decide “from time to time, on a specific broadcast from all aspects” should be removed from Article 13.
- A provision should be added to the BAL stating that the Director-General and senior editorial staff are responsible for editorial policy.

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- To ensure a proper separation of powers between the supervisory body and day-to-day management, members of the Executive Board should not be drawn from the Plenum. By contrast, membership in the Plenum should act as a bar to appointment on the Executive Board, and vice versa.
- Consideration should be given to vesting the Plenum with the responsibility to recruit the members of the Executive Board as well as the Director-General. At a minimum, the roles of the Executive Board and the Director-General should be clarified and their respective responsibilities clearly delineated.

3.4. Financial Arrangements

This section looks at financial arrangements for the IBA, covering both its budget and the remuneration for members of its governing bodies.

Overview

Financing of the IBA

The principal source of funding for the IBA is a licence fee levied on owners of all radio and TV sets by the Executive Board, in accordance with a separate regulation adopted by the responsible Minister after consulting the Executive Board (Articles 29(A) and 52). Article 19 envisages the possibility of further allocations from the State Treasury.

There is some contradiction in the BAL about how the IBA's annual budget is authorised. Article 31 states that "the methods of preparation of the budget, its submission to the *government* for authorization, and the methods of authorization thereof shall be determined by the Minister of Finance in the Regulations" (emphasis added). Article 32A, by contrast, provides that "[l]icenses in accordance with Article 29(A) and the budget in accordance with Article 31 require the authorization of the Knesset Finance Committee".

We understand that some of the IBA's broadcasts are nowadays financed through sponsoring. The BAL neither prohibits nor authorises this practice.

Remuneration of Plenum and Executive Board members

Members of the Plenum are entitled to "reasonable remuneration" as well as compensation and reimbursement of any lost income or expenses made in connection with their functions (Article 10). The same rule applies, *mutatis mutandis*, to members of the Executive Board (Article 17). Details on remuneration are contained in a separate regulation adopted by the responsible Minister (Articles 10 and 52).

Analysis

The adequate funding of public service broadcasters is crucial to their functioning as well as to their independence. A steady supply of funding, with no political strings attached, goes a long way to guaranteeing maintenance of the public service broadcaster's independence.²⁹ Funding arrangements should not render public service broadcasters susceptible to

²⁹ Guideline V of the Council of Europe Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting, adopted by the Committee of Ministers on 11 September 1996.

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interference, for example with their editorial independence or institutional autonomy. In some countries, this has even been enshrined as a constitutional principle.³⁰

The fact that IBA is able to draw on a licence fee charged to all owners of radio and TV sets is positive. Compared to direct grants from the treasury, license fees have the advantage of being relatively immune from government interference and of remaining stable from year to year. This will only be the case, however, if the body or person that determines the level of the licence fee is prevented from using this power as a means of pressuring the broadcaster. In this regard, we are concerned that the regulation in accordance with which the licence fee is levied is adopted by the responsible Minister, and that the IBA's budget must (possibly) be authorised by the government. Both powers should reside in the Knesset.

Furthermore, it would be a good idea to take measures to ensure that the level of the IBA's funding does not fluctuate excessively from year to year. Ways of achieving this include providing a funding cycle of more than one year, with a built-in annual adjustment for inflation, so that the IBA can undertake longer-term financial planning. Limits could also be set to the amount of change that may occur in the overall size of the budget from one funding cycle to the next.

Similar considerations apply to the rules concerning remuneration of Plenum and Executive Board members. The decisions of members should not be affected by a fear that their salary will be cut if they upset the government. Consequently, rules regarding salaries should not be set by the responsible Minister. Salaries paid to members of the Plenum could be fixed by the Knesset Finance Committee, while those of the Executive Committee could in turn be set by the Plenum (provided that the Plenum and Executive Committee are divorced from one another, as advocated above).

Finally, while sponsorship may supply helpful additional funding to the IBA, it comes with two key risks. The first is that IBA may reduce the viability of commercial broadcasting by diverting sponsorship funds away from them. The second is that sponsors could improperly influence the contents of IBA programming or that IBA could change its programming schedule in a way contrary to its public service mandate in order to attract more sponsors. Imposing an overall limit on the total amount of funds IBA may raise through sponsorship would go some way to addressing both concerns. Moreover, the BAL should require IBA to clearly identify sponsored programmes as such, along the lines suggested by Article 22 of the ARTICLE 19 Model Law:

- (1) Sponsored programmes shall be clearly identified as such by credits at the beginning and end of the programme.
- (2) Sponsorship shall in no way affect the content or scheduling of a programme.
- (3) News and current affairs programmes shall not be sponsored.

³⁰ The Italian Constitutional Court, for example, has held that the constitutional guarantee of freedom of expression obliges the government to provide sufficient resources to the public broadcaster to enable it to discharge its functions: Decision 826/1998 [1998] Guir. cost. 3893.

Recommendations:

- The Knesset, not the government, should set the level of licence fee levied on all radio and TV sets, authorise the IBA's budget and set the level of remuneration for members of the Plenum.
- Consideration should be given to adding mechanisms to the BAL to guarantee a stable level of funding to the IBA, for example by changing to a multi-year funding cycle coupled with annual adjustments for inflation, and imposing constraints on the level by which overall funding may change from one funding cycle to the next.
- A limit should be imposed on the amount of sponsorship IBA may accept, as a percentage of its budget.
- The BAL should require IBA to clearly identify sponsored programmes as such.

3.5. Accountability to the Public

It is important that public service broadcasters have strong bonds with their public – after all, they exist in order to fulfil the public's right to know. Currently, accountability is envisaged at two levels: through annual reports submitted by the Executive Board to the Plenum (Article 13(E) and 19(E)) through the procedure for authorisation of the budget, discussed in the previous section. We do not believe that this is sufficient. A range of measures may be implemented to ensure that the public service broadcaster is responsive to the wishes and concerns of viewers. Most importantly, the IBA should be required to publish its own annual public (rather than internal) reports, explaining all activities undertaken and, broadly, how it has fulfilled its public service mandate. Guidance on what might be included under the reporting duty can be gained from Article 23 of ARTICLE 19's *Model Public Service Broadcasting Law*:

- (1) The Board shall publish and distribute widely an Annual Report, along with externally audited accounts, for SBC. Each Annual Report shall include the following information: –
 - (a) a summary of the externally audited accounts, along with an overview of income and expenditure for the previous year;
 - (b) information on any company or enterprise that is wholly or partly owned, whether directly or indirectly, by SBC;
 - (c) the budget for the following year;
 - (d) information relating to finance and administration;
 - (e) the objectives of SBC for the previous year, the extent to which they have been met and its objectives for the upcoming year;
 - (f) editorial policy of SBC;
 - (g) a description of the activities undertaken by SBC during the previous year;
 - (h) the Programme Schedule and any planned changes to it;
 - (i) a list of programmes broadcast by SBC that were prepared by independent producers, including the names of the producers or production companies responsible for each independent production;
 - (j) recommendations concerning public broadcasting; and
 - (k) information on complaints by viewers.
- (2) The Board shall formally place the Annual Report and externally audited accounts before the [insert name of (lower chamber of) parliament] for their consideration.

In addition, the IBA should hold periodic meetings with members of the public, in all parts of the country. It should be required to conduct audience research, and generally be responsive

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to the needs of the people of Israel. Furthermore, the IBA should be required to establish an internal complaints procedure, based on a code of conduct covering such issues as accuracy, balance, and fairness. Monthly radio and television programmes could also be scheduled dedicated to discussing audience feedback – both positive and negative. Together, these measures would strengthen the ties between the IBA and the public, and, importantly, give the public a real sense that the IBA is ‘its’ public service broadcaster.

Recommendation:

- Measures should be taken to enhance the IBA’s accountability, including requiring it to produce an annual report, establish a complaints procedure and undertake audience research.