

## **Just the Good News, Please**

### **New UAE Media Law Continues to Stifle Press**

#### **Executive Summary**

The United Arab Emirates (UAE) is currently considering revisions to its media law. On January 20 2009, the UAE's legislature, the Federal National Council, passed the draft law, which was drawn up by the National Media Council. It now awaits the signature of President Shaikh Khalifa Bin Zayed Al Nahyan.

While the pending law is a significant improvement over the existing law, it still suffers from unlawful content-based restrictions on speech, as well as unlawful and onerous government controls on licensing, registration, operation and management of the media.

The UAE's current media law was adopted in 1980 and is a harsh regime whose selective enforcement does little to temper its ill-effects. The law regulates publication of all films, scientific articles, musical compositions, news documents and most other forms of recorded public expression. The law restricts expression through registration requirements and content-based limitations, providing for incarceration of offenders. It has instilled fear of punishment for speaking against the government's position on political, moral and economic concerns, and has pushed UAE journalists and other media organizations into a protracted period of self-censorship and anxiety.

Provisions in the pending media law address some of the problematic aspects of the existing law, and to a certain extent, reflect the government's stated vision and ambition to develop a free media in the country. Thus, a number of the provisions in the pending media law are an important step forward in the reform process. For example, the pending law does not subject journalists to criminal penalties (such as imprisonment). This is indeed an improvement, but the government should go further by providing a preamble to the law that includes an explicit disavowal of criminal penalties for journalists' media activities. In addition, the pending law decreases the number of infractions for which media organizations can be liable. The pending law also instructs government institutions to facilitate information flow to the media and to respond to their requests for information. More significantly, the pending law provides journalists freedom from coercion to reveal

sources, reflecting the government's commitment to the journalistic right to protect sources; in this particular regard, the pending law's protection exceeds that of many advanced democracies, including the United States.

However, a number of problematic provisions and omissions plague the new pending law. It inadequately addresses the failings of the current law and fails to conform to international free speech standards. It includes troubling content-based restrictions on speech, draconian fines, and harsh registration requirements. The content-based restrictions are aimed at stymieing criticism of the government: in ambiguous, overbroad provisions, the pending law prohibits communication that misleads the public and "harms the national economy," or "disparages" government officials. This insulation of public officials from criticism violates the fundamental principle in international human rights law that press freedoms should be wider, not narrower, with respect to speech about politicians and government officials. Also troubling are ambiguous sections setting out who is governed by the law and what standards they must adhere to, provisions laying out a troubling registration regime for certain media (including a provision that requires media organizations to provide a large security deposit to the government), and provisions providing the government supervisory power over the hiring of journalists and editors. These provisions are not only unlawful intrusions by the government into the right of journalists in the UAE to freely express their thoughts and opinions on any subject of their choosing, but also an unjustified attempt to control the independence of the media.

The President should insist that the legislature revise the pending law to conform to the requirements of international law. This is a necessary step in the UAE's development of a free media.

## Background

The UAE is the media hub of the Gulf, servicing the powerful media demand throughout the region.<sup>1</sup> The UAE has a dozen daily newspapers, each with circulations in the tens of thousands.<sup>2</sup> There are more Internet users in the UAE per capita than in any other country in the Gulf, and these users access a plethora of electronic media.<sup>3</sup> In 2000, the Dubai Media

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<sup>1</sup> "UAE: Media hub strategy," Oxford Analytica Daily Brief Services, August, 2008, <http://www.oxan.com/display.aspx?ItemID=DB144725> (accessed March 16, 2009).

<sup>2</sup> "United Arab Emirates," Arab Press Network, <http://www.arabpressnetwork.org/newspaysv2.php?id=144> (accessed March 16, 2009).

<sup>3</sup> "Consumer confidence in eCommerce grows steadily in the UAE," Al Maktoob Group, December, 2006, [http://www.maktoobgroup.com/Press-2-184-Consumer\\_confidence\\_in\\_eC.htm](http://www.maktoobgroup.com/Press-2-184-Consumer_confidence_in_eC.htm) (accessed March 16, 2009).

City (DMC) free zone, was created on the outskirts of the city. Organizations working within this zone, which include domestic and international press organizations, are generally not subject to the current UAE media laws.<sup>4</sup> Numerous news and media outlets have moved their Gulf operations to DMC, including Reuters, Microsoft, and Middle East Business News.<sup>5</sup> Nevertheless, publication of UAE newspapers, electronic media, and other works often occurs outside the zone and is thus subject to the 1980 law's tight restrictions on media freedom.

Under the UAE's existing laws,<sup>6</sup> the government has, on numerous occasions, penalized, fined, and closed media establishments that have expressed criticism of the government. The Committee to Protect Journalists, a U.S.-based non-governmental organization, reported that in 2008, an Abu Dhabi court upheld a "defamation"<sup>7</sup> conviction against the daily newspaper *Emarat Alyoum* resulting in the suspension the newspaper for 20 days and the levy of a fine against the Editor-in-Chief, Sami al-Araimi, of 20,000 dirhams (U.S \$5,445), according to local news reports.<sup>8</sup> An October 2006 article published by the paper had uncovered evidence of a UAE-based company giving steroids to local race horses.<sup>9</sup>

In September 2008, an appeals court affirmed a one year prison sentence and a fine of 70,000 dirhams (U.S. \$19,000) for Majan.net's owner because he refused to remove comments criticizing a government official.<sup>10</sup> In September 2007, a court sentenced two reporters to prison sentences for what it deemed to be libelous reporting.<sup>11</sup> Subsequently, Prime Minister Mohammed bin Rashid al Maktoum issued a decree promising that the government would not jail journalists for their professional activities.<sup>12</sup> The lack of clarity

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<sup>4</sup> Activities of companies based in the Dubai Media City free zone are nominally governed by the Federal Law of Printing and Publishing No. 15 of 1980. However, the Dubai government is permitted to issue special DMC free zone licenses through an understanding with the federal government allowing DMC organizations to operate under the less restrictive Dubai registration requirements and regulations. The new draft media law does not appear to change this arrangement. See: "Media Query: Setting up in Dubai Media City," informational brochure from Al Tamimi and Company: Advocates and Legal Consultants, undated, <http://www.zu.ac.ae/library/html/UAInfo/documents/DubaiMediaCity.pdf> (accessed March 16, 2009).

<sup>5</sup> "Dubai Media City prepares for next phase," Transnational Broadcasting Studies (TBS), <http://www.tbsjournal.com/Archives/Fallo1/dubai.html> (accessed March 16, 2009).

<sup>6</sup> Including Federal Law No 15 for 1980 Concerning Publications and Publishing.

<sup>7</sup> It is not clear whether this conviction was based on the UAE's defamation laws or the 1980 Publications law.

<sup>8</sup> "Attacks on the Press in 2008: Middle East/North Africa Developments," Committee to Protect Journalists (CPJ), February, 2009, <http://www.cpj.org/2009/02/attacks-on-the-press-in-2008-mideast-developments.php> (accessed March 16, 2009).

<sup>9</sup> *Ibid.*

<sup>10</sup> "2008 Human Rights Report: United Arab Emirates," U.S. Department of State, February, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119129.htm> (accessed March 16, 2009).

<sup>11</sup> "UAE ruler's decree save journalists from jail," AFP, November, 2007, [http://afp.google.com/article/ALeqM5hu1YGaXjccrrMq6yzSnX\\_rr4C42A](http://afp.google.com/article/ALeqM5hu1YGaXjccrrMq6yzSnX_rr4C42A) (accessed March 16, 2009).

<sup>12</sup> *Ibid.*

over whether the Prime Minister's decree has the force of binding law has left journalists in a continued state of anxiety and uncertainty about what punishments they could face.

The government has also harassed and intimidated journalists and others through spurious charges unrelated to the 1980 media law. These charges can be very serious, with possible sentences including prison or even death. Human Rights Watch described some of these, and other, abuses in its 2009 report on the UAE.<sup>13</sup> In June 2005, for example, the government accused an outspoken human rights activist, Hassan al-Diqqi, of raping a housekeeper. The charges aroused suspicion, coming two months after al-Diqqi established the "PRO Emirates" website. After al-Diqqi went into hiding, the court sentenced him in absentia to death in a 2005 trial in which forensic evidence did not support the charge, according to a local rights activist and lawyer who viewed the evidence.

The UAE government has also terminated the employment of those whose views collide with the government's. In May 2007, the government fired 83 teachers from their positions because of their suspected Islamist sympathies. In May 2008, without explanation, police arrested Salem Abdullah al-Dousari, a professor of religious education suspected of Islamist sympathies, detaining him for three months in a psychiatric facility.<sup>14</sup>

Even organizations in the Dubai Media City free zone have not been free from abusive governmental interference. In June 2008, according to station managers at Pakistani television channel GEO News, UAE officials threatened GEO News with expulsion unless it ceased broadcasting two political shows that discussed efforts to reinstate judges dismissed by Pervez Musharraf, Pakistan's former president.<sup>15</sup> UAE authorities also temporarily pulled the satellite channel off the air in November 2007 during Pakistani emergency rule, presumably under pressure from Islamabad.<sup>16</sup>

The UAE government is absolutely right to attempt reform of its existing media laws, and this pending law is an important step in that direction. A free media is essential to the healthy and vibrant exchange of ideas, information and discourse necessary to continue the UAE's national project of advancement. However, the pending law suffers from severe flaws. In

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<sup>13</sup> Human Rights Watch, World Report 2009, United Arab Emirates Chapter, <http://www.hrw.org/en/node/79305>.

<sup>14</sup> Ibid.

<sup>15</sup> "2008 Human Rights Report: United Arab Emirates," U.S. Department of State, February, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119129.htm> (accessed March 16, 2009).

<sup>16</sup> "UAE Inches Toward A Freer Media Zone," Forbes.com, August 12, 2008, [http://www.forbes.com/2008/08/11/dubai-media-uae-cx\\_o812oxford.html](http://www.forbes.com/2008/08/11/dubai-media-uae-cx_o812oxford.html) (accessed March 26, 2009)

the hope of drawing attention to the flawed provisions of the pending law,<sup>17</sup> Human Rights Watch offers the following comments. We note at the outset that our comments are in no way meant to be comprehensive. We have simply highlighted areas of concern. Human Rights Watch urges the UAE government to ensure that its pending media law respects international free speech standards and furthers the UAE's progress toward a free media.

## **Recommendations for Revisions to the Pending Law**

### *Restrictions on Media Content*

Recommendation: Amend the UAE media law to conform to international human rights law protecting free speech by removing restrictions on criticism of the UAE government.

Recommendation: Amend the UAE media law to conform to international human rights law protecting free speech by permitting discussion of the economic crisis in the UAE.

The UAE constitution guarantees freedom of speech and of the press.<sup>18</sup> These guarantees are also well established under international human rights law. The International Covenant on Civil and Political Rights (ICCPR) holds that “everyone shall have the right to freedom of expression...to seek, receive and impart information and ideas of all kinds.” While the UAE is not a party to the ICCPR, it constitutes an authoritative source and guideline reflecting international best practice. Accepted international standards only allow content-based restrictions in extremely narrow circumstances, such as cases of slander or libel against private individuals or speech that threatens national security. Restrictions must be clearly defined, specific, necessary, and proportionate to the interest protected.

For instance, Article 19(3) of the ICCPR states that the exercise of the right to freedom of expression may be subject to certain restrictions, but these shall be limited to restrictions that are necessary “for respect of the rights or reputations of others or for the protection of national security or of public order (*ordre public*), or of public health or morals.” The restrictions specified in Article 19(3) should be interpreted narrowly. For example, terms such as “national security” and “public safety” refer to situations involving an immediate and violent threat to the nation. The government may impose restrictions only if they are prescribed by existing legislation and meet the standard of being “necessary in a democratic society.” This implies that the limitation must respond to a pressing public need and be oriented along the basic democratic values of pluralism and tolerance. “Necessary”

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<sup>17</sup> The National Media Council provided HRW with the latest draft of the media law for analysis on March 14, 2009.

<sup>18</sup> Constitution of the United Arab Emirates, article 30

restrictions must also be proportionate, that is, balanced against the specific need for the restriction being put in place. The UN Human Rights Committee has repeatedly highlighted the importance of proportionality.<sup>19</sup> In applying a limitation, a government should use no more restrictive means than are absolutely required. The lawfulness of government restrictions on speech and the dissemination of information are thus subject to considerations of proportionality and necessity. So, for example, the government may prohibit media procurement and dissemination of military secrets, but restrictions on freedom of expression to protect national security “are permissible only in serious cases of political or military threat to the entire nation.”<sup>20</sup> Since restrictions based on protection of national security have the potential to completely undermine freedom of expression, “particularly strict requirements must be placed on the necessity (proportionality) of a given statutory restriction.”<sup>21</sup>

Governmental regulation on the content of speech outside these narrow exceptions unlawfully infringes on internationally guaranteed rights of free expression and muzzles scientific, artistic, and social discourse. In particular, vaguely defined limits on substantive speech, such as the ones in the pending UAE media law, invite abusive and discriminatory enforcement. Governments often use vague regulations as a tool to prevent public criticism of government officials and policies. Such enforcement prevents useful insights and information from disseminating into the public consciousness and runs contrary to the right of citizens to question and challenge their government. The right to criticize one’s government has particularly high priority in the protections of international law because it is precisely the right most likely to meet with harassment, abuse, and denial from a government.

Contrary to the requirements of international law, Article 32 of the pending law harshly penalizes criticism of the government, fining up to 5,000,000 dirhams (U.S. \$1,350,000) anyone who “disparages” senior government personnel or members of the royal family. According to journalists based in the UAE, the staggering amount of such a fine will likely prohibit the media from performing their duties with integrity for fear of falling victim to this

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<sup>19</sup> See, for example, Vladimir Petrovich Laptsevich v. Belarus, Communication 780/1997 of the Human Rights Committee. See also Richard Fries, “The Legal Environment of Civil Society,” *The Global Civil Society Yearbook 2003*, Centre for the Study of Global Governance, London School of Economics, 2003, chapter 9.

<sup>20</sup> Nowak, *CCPR Commentary*, p. 355.

<sup>21</sup> *Ibid.*, p. 357. See also: Human Rights Watch, *No Room to Breathe: State Repression of Human Rights Activism in Syria*, October, 2007, <http://www.hrw.org/en/node/10646/section/7>.

fine.<sup>22</sup> Human Rights Watch opposes any fine-based system of speech regulation, but the problem is particularly acute when the fines are so extreme. Fines of this magnitude are sufficient to close down publications and bring individuals to financial ruin.

Article 32's vagueness exacerbates the problem. Journalists will have little guidance from the Article's enigmatic phrasing, which renders acts of “disparaging” governmental officials illegal, with no explanation or commentary regarding what sort of criticism might constitute unlawful disparagement. Such a vague law invites self-serving interpretation by the government, and with courts that have proven compliant in harshly regulating speech, the result will be continued anxiety, self-censorship, and arbitrary enforcement of the law in the UAE.<sup>23</sup> It appears designed to insulate the government from public accountability and criticism and would deter investigative journalism and undermine the media's role as public watchdog.

Journalists say the pending legislation will do little to mitigate a culture of deeply ingrained self-censorship in UAE's media. “Journalists already don't want to annoy the authorities because they have the power to shut the paper down or make life very difficult for you,” one journalist told Human Rights Watch. “The papers are paranoid and cautious about what they write ... the vague language and fines [in the pending law] won't improve this situation.”<sup>24</sup>

The insulation of public officials from criticism violates the fundamental principle in international human rights law that press freedoms should be wider, not narrower, with respect to speech about politicians and government officials. Politicians and other public figures relinquish part of their rights to reputation and privacy by accepting their positions and must therefore tolerate wider and more intense scrutiny of their conduct.

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1995), which are based on international human rights law and standards, provide: “No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency.”

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<sup>22</sup> This sentiment came up numerous times during interviews with journalists. Human Rights Watch interviewed eight foreign and local journalists based in the UAE on March 25 and 26, 2009.

<sup>23</sup> “UAE's media still has to face its biggest challenge: Its own censorship,” Gulf News, January, 2008, [http://archive.gulfnews.com/indepth/pressfreedom/sub\\_story/10183416.html](http://archive.gulfnews.com/indepth/pressfreedom/sub_story/10183416.html) (accessed March 16, 2009).

<sup>24</sup> Human Rights Watch interview with journalist in UAE on March 25, 2009

The Inter-American Commission on Human Rights expounded on this principle in its report on *desacato* [contempt] laws: “[I]n democratic societies political and public figures must be more, not less, open to public scrutiny and criticism. ... Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.”<sup>25</sup>

The European Court of Human Rights has established particularly strong protections for press freedoms and for journalists and others working in the media. It reviews sanctions against the press in the light of what it calls “the pre-eminent role of the press in a State governed by the rule of law,” and the right of the public to receive information and ideas. Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the concerns of the public; it thus enables everyone to participate in the free political debate – the very core of the concept of a democratic society.<sup>26</sup>

For these reasons, the UAE media should be entitled to greater protection for speech, however “disparaging,” when covering politicians and government officials. Revising Article 32 of the pending media law is insufficient in itself. As a second step, the entire corpus of the UAE’s laws, regulations, and practices restricting speech, must be amended, with particular focus on the nation’s defamation laws, to the extent they are used by public figures to shield themselves from criticism. The pending media law does not appear to modify the susceptibility of media organizations to defamation suits by public officials. Though full analysis of this issue and a review of the UAE’s defamation laws is outside the purview of this brief, the UAE should modify its defamation laws to exclude speech directed at public figures, particularly government personnel.

The content-based restrictions of the pending law are not restricted to provisions shielding public officials from criticism; the pending law also seeks to muzzle discussion about the economy that is deemed “harmful” and “misleading.” Article 33 of the pending law penalizes, in the amount of as much as 500,000 dirhams (U.S. \$136,000), anyone who “disseminates misleading news to the public in such a way that it may harm the national

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<sup>25</sup> Inter-American Commission on Human Rights, Annual Report 1994, Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights, OEA/Ser L/V/II.88, Doc. 9 Rev (1995). *Desacato* laws (also known as contempt laws) were used in a number of Latin American countries to punish speech deemed to be insulting or threatening to public officials. The Commission concluded that such laws serve no legitimate aim and are inconsistent with free expression in a democratic society.

<sup>26</sup> *Castells v. Spain*, Judgment of April 23, 1992, Series A no. 236, para. 43.



economy.” Although a similar provision exists in the 1980 Publications Law, Article 33 of the pending law will take on much greater significance in light of the UAE’s unprecedented economic crisis caused by excessive debt, a burst real estate bubble, and falling oil prices. Real estate prices have declined by as much as 30% in Dubai, for example, and the two national stock exchanges, the DFM and the ADX, declined by 72% and 47.5%, respectively, in 2008.<sup>27</sup> The government has put tremendous pressure on journalists to prevent them from discussing the facts of the decline.<sup>28</sup> Because economic indicators are often fluctuating and cannot be fully predicted, journalists have expressed fear of publishing economic news, since it might be considered “misleading.”<sup>29</sup>

One banking and finance reporter told Human Rights Watch that while she can understand the UAE government’s concern in preventing baseless news reports on the economy, the vague wording of Article 33 will affect “bad and professional journalists alike.”<sup>30</sup>

“They need to be more specific in the law if they want to prevent [these baseless articles] that harm the economy. Every story has the potential to affect the economy -- if I write a story about bad loans at the banks, it will hurt the economy, but it doesn’t mean that it’s a story that shouldn’t be told.”

Instead of punishing media organizations for “misleading” articles, the government should attempt to encourage accurate and responsible coverage through increased governmental transparency and willingness to share accurate economic data, journalists say. “As a journalist here, it’s very hard to get accurate information on the economy or anything else,” another newspaper reporter told Human Rights Watch. “Government officials are afraid to speak to the media, so a lot of us have to rely on anecdotal information and talking to people off the record. ... that doesn’t serve anyone well -- not the rulers, the journalists or the public.”<sup>31</sup>

By restricting discussion of the economic crisis, the pending law continues the UAE’s pattern of repressing speech on subjects it deems sensitive, flouting the fundamental right of free

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<sup>27</sup> “Dubai property prices decline,” Dubai Chronicle, January, 2009, <http://www.dubaichronicle.com/news/analysis/dubai-property-prices-decline-4107> (accessed March 16, 2009).

<sup>28</sup> “Press pressure? Journalists sense chill from Emirates press authorities as bad news heats up,” Associated Press, March, 2009, <http://news.uk.msn.com/uk/article.aspx?cp-documentid=14684657> (accessed March 16, 2009).

<sup>29</sup> Ibid.

<sup>30</sup> Human Rights Watch interview with journalist in UAE on March 25, 2009

<sup>31</sup> Human Rights Watch interview with journalist in UAE on March 25, 2009

expression. The restriction in Article 33 would undermine journalistic integrity and pressure news outlets to be governmental mouthpieces of positive news. Fear of severe fines will prevent essential information from reaching markets, businesses and members of civil society. Moreover, the lack of reliable definitions of the terms “misleading” and “harmful” in Article 33 invites disingenuous interpretation and abusive enforcement.

Preventing the dissemination of key economic facts presents a significant risk of increasing the damage to the UAE markets, protracting the downturn, and driving down the standard of living for the UAE population. The pending law should be amended so as to encourage transparency in the markets and vindicate the internationally recognized rights to journalistic expression by removing Article 33’s restrictions on reporting economic news.

### *Procedural Requirements for Media Organizations*

**Recommendation:** Amend the UAE law to conform to international standards by removing unlawful barriers to entry for media organizations. The unlawful barriers include an opaque registration process and a burdensome security deposit.

**Recommendation:** Amend the UAE law to conform to international standards by striking sections of the law that allow the closing, disabling, or revocation of media licenses.

Registration requirements for media organizations are not necessarily inconsistent with international law, particularly where the licensing process does not involve discrimination. However, the government will be able to use the pending law for discriminatory purposes if not amended. Articles 6–8, 18, and 22 of the pending law set out requirements for registering as a periodical, a printing house, or an audio-visual broadcaster. The requirements for successful registration include, for example, local citizenship, no criminal record, and most importantly, approval from the National Media Council.<sup>32</sup>

Troublingly, these Articles fail to state clearly what standards the National Media Council will apply in approving or denying media licenses, granting the government unfettered power to determine who may or may not publish or transmit information in the UAE. Additionally, it is not clear whether a prospective media participant can seek to challenge a license denial in court, although the National Media Council has stated that a right to appeal for a judicial review exists for any of its decisions. Ominously, the pending law appears to countenance a lengthy application process, extending to as long as 180 days, at which point, if the

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<sup>32</sup> In 2006, the National Media Council replaced the Ministry of Information as the government body responsible for media affairs.

applicant has received no reply, he will know that as a matter of law his application “shall be considered denied.” This language suggests both a protracted process and one that may not yield success, even where it should.

These problems invite the possibility of arbitrary and abusive licensing procedures, in violation of the ICCPR mandate that “everyone” shall have the right to free expression in any “media of his choice.”<sup>33</sup> While a government may be entitled to require and regulate pro forma registration of press operations in its jurisdiction, it is an abuse of its power and an unlawful intrusion into the freedom of the press to determine arbitrarily, without clear, objective criteria, who is or is not allowed to so register and operate. Leaving such absolute power over the media in the hands of the government is an invitation for abuse, and constitutes a breach of the government’s obligation to respect the rights of free speech and press.

The pending law also requires the deposit of security money of an unspecified amount against which fines for violations can be assessed.<sup>34</sup> Depending on the amount required, this could represent an insurmountable barrier for an organization interested in producing a publication. This difficulty is compounded by the pending law’s requirement that if the government assesses a fine against the security deposit, the affected media organization must refinance it within 30 days. Considering that the fines can reach 5,000,000 dirhams (U.S. \$1,350,000), refinancing within a month is an entirely unreasonable requirement. These security deposit provisions will have the effect of discriminating against small media and press operations that operate independently of corporate financing or other sources of wealth. Imposing such onerous financing requirements will result in the absence of independent voices from the mix of news, information and opinion otherwise available in the country.

Article 38 is a particularly dangerous provision that would allow individual infractions to result in punishment of entire media organizations. The pending law gives the UAE Cabinet the power to temporarily suspend the licenses of newspapers, radio stations, and television channels if the license holder has violated a provision of the law. Under Article 38, judicial review is required for suspension of these licenses. However, in a corollary provision under Article 39, the National Media Council can temporarily suspend licenses of any other media activity outside of newspapers, radio and television, for an indefinite period of time, for any

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<sup>33</sup> International Covenant on Civil and Political Rights (ICCPR), Article 19, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 19.

<sup>34</sup> Federal Bill on the Regulation of Media Activities, 2009, art. 9

reason (which need not be specified), and without judicial process. This power is limited only by the proviso that it must be exercised when “appropriate.”

The government’s power to capriciously suspend or abrogate media licenses is inconsistent with the requirements of a free media. The problem is especially acute where judicial process is denied and no standards have been enunciated for the abrogation of the licenses, as is the case in Article 39. Article 38’s requirement of an actual violation of the law does little to allay concerns that the media law will be prejudicially and abusively enforced. Any violation, however insignificant, would allow suspension of the license by the UAE cabinet. Articles 38 and 39 should be removed from the pending law.

The suspension provisions are of particular concern to members of the media currently in the UAE. In an interview with Human Rights Watch, Mohammed Yousef, head of the UAE Journalists Association, emphasized the need to “[remove] the portions of the pending that call for the closing, disabling, or removing the permits of newspapers. Such provisions involve collective punishment and are therefore forbidden according to local law, international law, and even *Sharia*. These portions involve punishing all the workers and their families.”<sup>35</sup>

The pending law should be amended to address these concerns.

### *Penalties*

**Recommendation:** Include a preamble to the pending law that explicitly states that journalists should not be imprisoned or otherwise criminally punished for exercising their rights to freedom of speech, as set out in relevant international law.

The internationally mandated protections for freedom of speech are meant to assure speakers that, except in narrowly prescribed circumstances, speech will not accrue legal liability, either civil or criminal. Fear that one might be subject to punishment, particularly by criminal penalties, freezes communication and threatens the national project of advancement. In light of the UAE’s past willingness to incarcerate free speech participants, the pending law, if not clearly explained, will continue to subject media organizations to tremendous uncertainty. Language should be added to the draft law itself, to a preamble, or to an otherwise authoritative source, indicating a clear disavowal of criminal penalties for journalists’ work to the extent required by international law.

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<sup>35</sup> HRW interview with head of UAE Journalists Association Mohammed Yousef, March 3, 2009.

This approach would be consistent with international law and would reflect Shaikh Mohammed bin Rashid al Maktoum's decree, which issued instructions not "to imprison journalists for reasons related to their work."<sup>36</sup> Any penalty, whether civil or criminal, accrued from the exercise of the right to freedom of expression runs contrary to accepted international law and best practice, except in very narrow circumstances. The problem is particularly severe when a prison sentence is a possible consequence to the exercise of free speech. To maintain media integrity, it is essential that journalists understand that they are protected from incarceration. The UAE government should release official language to address this concern.

### *Governmental Management of Media Affairs*

**Recommendation:** Amend the UAE media law to conform to international standards by eliminating any governmental control over hiring decisions within media organizations.

The right to freedom of expression includes the right to organize, manage, and operate media outlets free from governmental interference. The ability to hire personnel whose work will reflect their own vision and the vision of their organization should not be impinged upon by governmental oversight. The pending law gives plenary authority to the National Media Council to regulate hiring of "an editor, a reporter or writer, a correspondent, a presenter, [or] a producer or director."<sup>37</sup> The Council is given the authority to "set rules and regulations" for all such hiring decisions.

This authority is far too susceptible to abuse. For instance, the government could use this authority as a tool for discrimination, punishing journalists who speak out against the government by refusing to allow them to work. The government could also manipulate media organizations into moderating the content of their stories by using their control over hiring as leverage, threatening to deny the organization its wish to hire a key anchor or journalist. The UAE's record of abuses indicates that these possibilities are real. Allowing provisions so susceptible to abuse to become law would jeopardize the integrity of the UAE media. The pending law should be amended accordingly.

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<sup>36</sup> "Journalists cannot be jailed for work, says UAE Prime Minister," Newswatch Desk, September, 2007, <http://www.newswatch.in/features/178> (accessed March 16, 2009).

<sup>37</sup> Draft Federal Bill on the Regulation of Media Activities, 2009, art. 10