



ASSESSMENT OF MEDIA REGULATION IN THE SOUTHERN MEDITERRANEAN REGION

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I. EXECUTIVE SUMMARY

This research examines and assesses media regulation in countries of the Southern Mediterranean region. It highlights the challenges faced by a largely government-controlled media, and offers key recommendations on developing regulation within each country's specific legal, political and social parameters.

Regulation of the media is complicated because, on the one hand, it constitutes an essential element of an overall legal environment which promotes freedom of expression and, on the other, it provides an opportunity for illegitimate government control over the media, as well as undue restrictions on media freedom. Getting the balance right between creating an enabling regulatory environment and excessive regulation is complex, and democracies around the world have struggled and continue to struggle with this.

In the Middle East and North Africa (MENA) region, regulation has, in many countries, served more to promote government control over the media than to support and foster media independence and diversity. This report describes the main regulatory systems in each of the nine countries covered by this research, namely Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia. Each country section follows the same template. A brief introduction is followed by a sub-section entitled "Independence and diversity", which looks at the overarching themes of the independence of regulatory bodies from the government and the extent to which regulation promotes media diversity. The following three sub-sections – "Regulation of journalists", "Regulation of print media"

and "Regulation of broadcasting" – focus on the regulatory rules for each of these three sectors. Finally, a set of key recommendations is provided for each country, highlighting the main reforms needed to bring its regulatory systems into line with international standards.

The primary methodology used in preparing this report was extensive desk research focusing on a range of sources: laws and regulations; official reports by inter-governmental organisations; academic reports; publications by non-governmental organisations (NGOs); blogs; and other online sources. This was supplemented by three other means of collecting information: in-person interviews during a trip to Lebanon; informal interviews over the phone; and expert reviews of draft chapters.

In **Algeria**, the last few years have witnessed the putting in place of a new legal regime in the area of information and the media. It is too early to judge whether or not this will bear fruit, but it does promise some important new developments, such as the advent of private broadcasting. It is positive that the new Broadcasting Law envisages an autonomous regulator, although more could be done to promote its structural independence from government.

Egypt presents a complex case in as much as the new constitution provides for a completely new set of relatively independent bodies to regulate the media sector, but legislation to give effect to these promises remains pending. Otherwise, the historic legislative regime remains largely in place, including unduly intrusive controls over practically every media sector – journalists, the print media and broadcasters – alongside an absence of positive rules, for example on the right of journalists to protect their confidential sources of information or limiting the concentration of media ownership. Among other concerns, there are restrictions on who may practise journalism, special legal status is afforded to the Journalist Syndicate, there is effectively a licensing regime for newspapers, and broadcasters are licensed by a government body.

Jordan has traditionally had a relatively freer media than many countries in the MENA region, although there are still important constraints compared with democracies, including an effective government monopoly in the terrestrial television sector. There have even been some rollbacks recently, most importantly in terms of new rules requiring news websites to register. As in other countries in the region, regulation of the media is largely controlled by government, with licences for both print media and broadcasters

being issued by government. There are also conditions on who may practise journalism, and a formal requirement of membership of the Jordanian Press Association. Finally, there is no dedicated broadcasting law, and this sector is instead dealt with exclusively under the rules relating to telecommunications.

It is often claimed that the media in **Lebanon** are the freest in the region, and there are vibrant print and broadcasting sectors. At the same time, the legal framework is significantly outdated and, at least formally, regulatory power resides largely with government or bodies that are controlled by government. The rules also establish some outdated and highly problematical constraints, such as the dual system of the Lebanese Editors Association (for journalists) and the Lebanese Press Association (for owners), and the artificial limits on the number of newspapers. There are also a number of formal conditions on who may work as a journalist – although, as in some other countries, these are often ignored in practice.

The situation in **Libya** is the most chaotic and transitional in terms of media regulation out of all the countries reviewed in this report. There has been a massive liberalisation on the ground and a flowering, albeit brief in many cases, of new media. But this has not (yet) been accompanied by structural and legal reforms in the sector. The current security situation makes it impossible to say how things will move forward.

In **Morocco**, as in many countries of the region, there is a reasonably developed independent print media sector, operating alongside a largely government-controlled broadcasting sector. The principle of independent media regulation has at least been recognised in Morocco – unlike in most other countries in the region – with the establishment of a broadcast regulator which, while independent in practice, lacks the structural guarantees to ensure it remains so over time. The scope of who is defined as a journalist excludes part-time and volunteer journalists, and there are no formal guarantees of the right of

journalists to protect their confidential sources of information.

As with many countries in the region, **Palestine** presents a complex scenario in terms of media regulation, due to both a measure of Israeli control over broadcasting frequencies and the divisions, administratively but also legally, between the West Bank and the Gaza Strip. As is common in the region, the licensing of both print media outlets and broadcasters is done by government rather than an independent body, but this has not prevented the emergence of a lively media in both sectors. Formal limitations on who may practise journalism are honoured more in the breach than in the observance. There is also an absence of developed rules on broadcasting, so that there are no rules on concentration of ownership, no proper complaints system and no formal classification of broadcasters into different categories, including community broadcasters.

The security situation in **Syria** almost precludes current debate about media regulation, but it is still important to understand the situation so as to be prepared when an opportunity for reform does present itself. As in most other countries in the region, there is an absence of independent bodies, with regulatory functions instead being undertaken directly by government. Privileged legal status is provided to the Journalists' Syndicate and there are formal restrictions on who may practise journalism. Licensing systems apply to both the print media and broadcasting sectors, while there is no proper developed regime for the latter.

Tunisia is the country in the region which has made the most progress in recent years in terms of translating a commitment to freedom of expression and of the media into concrete regulatory rules. The print media and broadcasting laws that were adopted in late 2011 are both largely in line with international standards. Although there have been some problems with implementation, the situation has moved forward and the focus needs to be on continuing with

this process. In other respects, the rules impose unnecessary limitations on both journalists and periodicals, and a more developed system of complaints for both the print and broadcast sectors is needed.

Overall, the Arab world remains one of the least advanced in terms of media development and freedom. State media continue to dominate the information space in most countries. This is particularly true for broadcasting – where there are no private players in some countries and where they operate under structural constraints in others – but it is even true of the print media sector in some countries. As a result, government media play a very significant role in the media ecology of most countries in the region.

Many countries have nicely phrased constitutional guarantees for freedom of expression, but these guarantees may be overridden by ordinary laws, depriving them of much of their usefulness. A few of the more recent constitutions, in particular those of Egypt and Tunisia, provide for independent regulatory bodies for the media, but it remains too early to see if these will be effective in practice.

Only Tunisia has really moved forward with the creation of truly independent media oversight bodies and, even there, this has been problematic, including because of delays. In every other country, the government exercises significant control over the regulation of the media, both in law and in practice.

Only a few countries in the region have proper rules prohibiting undue concentration of media ownership, and none has put in place robust systems to promote media diversity, including through the broadcast licensing process. Very few countries have put in place taxation or other commercial regimes to promote the development of the media sector.

Many countries continue to regulate journalists as professionals in the same way as doctors or lawyers, although this is not legitimate because the work of

journalists involves a human right. This is often manifested in legally mandatory single statutory journalists' syndicates and restrictions on who may be a journalist. Most countries do have fairly strong legal provisions on the protection of journalists' confidential sources of information, although implementation varies in practice.

For print media, regulatory functions are often conducted directly by ministries of information via systems that are tantamount to licensing requirements. Most countries also impose some sort of structural requirements on print media outlets, whether in the form of paid-in capital rules, rules regarding structure or constraints on who may serve as director and/or editor-in-chief.

Rights of reply and correction are well established across the region, although most are too broad in nature. Several countries also vest special rights of reply in public authorities, purportedly to protect the overall public interest but in practice more as another vehicle for influence over the media.

The idea of binding professional standards in the form of codes of practice or conduct, linked to a complaints system, is not well established in the region. A few journalists' associations have developed professional standards, and some also have disciplinary bodies, but established and active complaints systems are largely unknown for both the print and broadcast media sectors.

The number of countries in the region that have established formally autonomous bodies to regulate broadcasting is growing, although in several this remains a function of the ministry of information. However, in most of these countries the government exercises significant control over the body through its control over the process of making appointments to the board.

Even where there is a dedicated broadcasting law, systems for licensing broadcasters tend to be relatively underdeveloped. For example, few laws set out clear rules on the criteria for deciding between competing licence applications,

the procedural rules regarding applications for licences, or promoting the development of the community broadcasting sector.

Overall, media regulation in the region is characterised by a high degree of government control and relatively underdeveloped systems for promoting freedom of expression and the public interest in the media sector. Instead of rules that promote freedom of expression and the public interest, one all too commonly finds rigid rules – for example, regarding who may be a journalist or imposing structural requirements on print media outlets – that appear to have proliferated around the region without proper consideration as to whether or not they are helpful. As a result, there is a need for root and branch review of media regulation in almost every country in the region. Tunisia stands out as having made substantial progress since the revolution of January 14th 2011, at least in terms of legal rules, but even there much remains to be done.

1.1. KEY RECOMMENDATIONS

- Strong constitutional guarantees, which may not be overridden by ordinary laws, should be adopted.
- Regulation of the media should be undertaken by independent bodies



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rather than directly by government or by bodies which are effectively under government control.

- Print media should not be required to obtain a licence to operate.
- There should be no statutory conditions on who may practise as (or be considered to be) a journalist.
- Statutory rules establishing journalists' associations or syndicates should be repealed and journalists should be free to establish associations.
- Rules prohibiting the undue concentration of media ownership and promoting media diversity should be put in place.
- The introduction of tax or other commercial benefits to support media development should be considered.
- Rules on the protection of journalists' confidential sources of information should be applied robustly.
- Rigid and unnecessary constraints should not be imposed on the structure or other operations of print media outlets.
- Effective complaints systems for both the print and broadcast sectors should be put in place across the region, based on published codes of conduct and fair procedures for dealing with complaints.
- Properly developed broadcasting systems should be put in place, including criteria and procedures for deciding on licence applications.

2. INTRODUCTION

This report provides an overview of media regulation in countries in the MENA region. Data has been collated from reports, publications and online sources, and further supplemented and verified by sources on the ground.

Rules that specifically govern regulation of the media are found in every country. At a minimum, it is necessary to have rules for the allocation of frequencies to broadcasters, if only to avoid chaos in the airwaves. However, in many countries, including all of those in the MENA region, regulation of the media goes well beyond this. Better practice is to include rules aimed at such goals as promoting media diversity and avoiding undue concentration of media ownership; addressing harmful content in the media (particularly in the broadcast media); and recognising the right of journalists to protect their confidential sources of information.

While regulation can serve positive goals, within the MENA region it has in every case gone well beyond this. Indeed, instead of fostering robust media sectors, the rules have traditionally been oriented towards controlling the media and limiting their freedom. There is, as a result, considerable scope for reform of the rules relating to media regulation in the region.

2.1. METHODOLOGY

The methodology for this report was based on desk research. This included references to primary sources in the form of laws and regulations, utilising unofficial translations into English or French. Desk research sources also included official reports (for example, by UNESCO or other inter-governmental organisations), academic reports, publications by NGOs, blogs and other online sources.

The desk research was supplemented by three other means of collecting information. First, the author took advantage of a trip to Lebanon to conduct in-person interviews with a range of different stakeholders and experts. Second, interviews were conducted with a number of other stakeholders and experts at a distance, either by phone/Skype or via email. In both of these cases, the approach was informal questioning rather than structured interviews, given the goal of filling gaps in the available knowledge rather than trying to obtain comparable responses from all interviewees. Third, where possible, experts were asked to review the draft chapters to provide comments and feedback.

2.2. COUNTRIES

This report covers nine countries across the Arab world, namely Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia. The same template was used for each country. However, as considerably more information was available on some countries than others, the length of the reports does vary somewhat.

3. ALGERIA

New information and broadcasting laws promise greater media autonomy in Algeria, as long as regulation can be structured independently from government.

A brief flowering of media freedom in Algeria starting in 1990, which included the adoption of a new press law, was soon brought to an end following the success of the Islamic Salvation Front in the first stage of national legislative elections held in December 1991 and the subsequent army takeover. A legal state of emergency, which was in effect from 1992 until February 2011, gave the authorities extensive control over the media.

Over time, there have been gradual moves to liberalise the media environment, and the country now boasts a fairly vibrant independent print media sector, with over 80 newspapers (albeit many with close links to the government). The government also exercises indirect control over many newspapers through its dominance in the area of printing, although a growing number of newspapers now have their own printing presses. Broadcasting, on the other hand, remains essentially under state control.

A new *Loi organique n° 12-05 du 18 Safar 1433 correspondant au 12 janvier 2012 relative à l'information* (Information Law) adopted in early 2012 holds promise for change, albeit with some problems, while a very recent *Loi n° 14-04 du 24 Rabie Ethani 1435 correspondant au 24 février 2014 relative à l'activité audiovisuelle* (Broadcasting Law) promises to bring in

private broadcasting. So far, however, little action has been undertaken under either law, giving rise to some doubts about how comprehensive the reform effort will be.

3.1. INDEPENDENCE AND DIVERSITY

Article 41 of the 1989 Constitution, as amended, includes a very general guarantee of freedom of expression. Article 38 guarantees freedom of intellectual, artistic and scientific innovation, and also prohibits the seizure of any publication unless there is a warrant for this.

Algeria is proposing to put in place quasi-independent bodies to regulate the media. The Information Law describes the commission for the regulation of the written press (the press commission) as an independent body. Its 14 members are nominated as follows: three by the president, two each (non-parliamentarians) by the heads of the two Houses of Parliament, and seven (by majority vote) by journalists with 15 or more years' experience. Members have a mandate of six years and may only be removed after final conviction for a crime with a penalty of imprisonment. The funds of the commission are controlled by its president and come from the state budget. Members may not engage in

political or other professional activities, or have financial links to the media sector (Articles 49–57).

The broadcasting commission, established by the Broadcasting Law, is less independent from a structural perspective, although the law also describes it as independent. Its nine members are appointed as follows: five by the president, including the head (president) of the commission, and two each (non-parliamentarians) by the heads of the two Houses of Parliament. Members are chosen for their expertise, competence and interest in broadcasting, and may not hold any other position during their six-year mandate apart from as a teacher. The law also imposes clear conflict of interest rules, and members are even prohibited from engaging in broadcasting activities for two years after the end of their mandate. Their salaries and benefits are fixed by decree and the budget is proposed by the commission and overseen by the president of the commission (Articles 57–73).

The Information Law refers to pluralism of thoughts and ideas as one of the guiding themes for its regulatory provisions (Article 2), and this is also one of the objectives of the press commission (Article 40). The law also imposes a number of positive content

obligations on publications, including that 50% of their content should be local in nature (i.e. relate to the area in which they are published). Diversity is mentioned several times in the Broadcasting Law, for example as one of the general rules to be included in the cahiers des charges or licences of broadcasters. The law also imposes a number of minimum quotas on broadcasters, including that at least 60% of programmes must be produced in Algeria – with the same percentage applying to national musicals and cultural productions – and that a maximum of 20% of foreign programmes may be dubbed, while at least 20% must be in the original language with subtitles.

The Information Law only permits one person to own one periodical with the same frequency of publication (such as a daily) (Article 25). For its part, the Broadcasting Law requires licensees to inform the broadcasting commission of any changes in ownership. No one person may own more than 40% of a licensed service, or have shares in more than one broadcasting enterprise (Articles 44–46).

The Information Law contains a chapter on assistance and promotion of the press, which calls on the state to support freedom of expression through aid and training, although the modalities of this are to be set out in a future regulation.

3.2. REGULATION OF JOURNALISTS

The Information Law defines a journalist as someone who works in the media sector regularly and who derives most of his or her income from this work, or as someone who has a permanent contract to work for a media outlet. Those who qualify as journalists may obtain a press card from the relevant commission, to be created by decree. Interestingly, instead of suggesting that one may not work as a journalist without such a press card, the rules instead stipulate that at least one-third of the employees at a periodical should be card-holding journalists (Article 79).

The Information Law contains relatively detailed provisions on the right of journalists to access information from public authorities, but fails to provide for a right to protect their confidential sources of information.

3.2.1. Regulation of print media

Registration is a quasi-technical matter in Algeria. It is done via a declaration signed by the director, with various pieces of information about the publication. Following that, the press commission has 60 days to sign an agreement with the publication, which sets out the characteristics of the publication. Failure to issue an agreement must be accompanied by written notice. The delay and reference to an agreement suggest that this registration is not automatically given upon the filing of the requisite details, as is the case in many other countries.

A few conditions are placed on publications. The director must have a university degree and at least ten years' experience in the newspaper sector, as well as being Algerian and enjoying his or her civil rights (i.e. not having been legally stripped of civil rights such as the right to publish or to vote).

Detailed rules on the right of reply are set out in Articles 100–114 of the Information Law. A right of correction arises in the context of the publication of facts or opinions which are inaccurate, while anyone who has been the subject of a report which undermines their honour or reputation may claim a right of reply. The right must be claimed within 30 days, and carried promptly and with the same prominence as the original article (and more promptly during election campaigns).

A detailed set of rules on professionalism is set out in the Information Law, which describes in some detail the standards that should be respected. It also calls for the creation of an ethical council, to be elected by professional (i.e. card-carrying) journalists and supported by public funds. The council is to be tasked with developing a professional charter of honour and addressing breaches of

this charter, with its precise powers of sanction to be fixed (by the council itself) once it is created (Articles 94–99).

3.2.2. Regulation of broadcasting

The Broadcasting Law sets out detailed requirements for the licensing of broadcasters, with licences only to be issued to Algerian legal persons and owned entirely by Algerians. To be eligible to obtain a licence, all of the shareholders of the applicant must enjoy their civil rights; there must also be professional journalists among them. The specifics of how licensing is to work are not contained in the law, but are to be set out in regulations adopted by the broadcasting commission. The law does specify what information must be included in an application: this includes how the applicant will disseminate their broadcasts, the nature of the service, the zone of coverage, the languages to be used, technical specifications, a general description of the programming, the rules for advertising and the proportion of national programmes to be included in the service (Article 24).

In terms of criteria for deciding between competing applications, these include promoting a diversity of owners of broadcasting services, as well as ensuring adequate levels of experience, funding and ability for the service to contribute to national programme production. A contract or licence will be concluded between successful applicants and the commission. There is no mention of community broadcasters, let alone a specific licensing regime for this sector.

3.3. KEY RECOMMENDATIONS

- The independence of bodies with regulatory powers over the media, in particular of the press and broadcasting commissions, should be enhanced.
- The right of journalists to protect their confidential sources of information should be guaranteed.
- The system of registration for periodicals should be transformed into a purely technical registration system.
- The right of reply should be limited to cases where inaccurate statements have breached a legal right of the claimant.

4. EGYPT¹

The regulatory and legal landscape in Egypt is in flux, but the 2014 Constitution may stabilise this – specifically with the establishment of independent media regulation bodies.

The legal and regulatory framework for the media in Egypt is in a state of rapid flux, despite the fact that only a few actual legal changes have been made since the January 25th revolution. This apparently contradictory statement flows from the fact that only a few relatively minor legal changes have been made to the legal framework that was in place at the end of the Mubarak period. At the same time, the adoption of the new constitution in January 2014 will require major institutional changes. How far these go in actually transforming the regulatory environment will depend on the substance of the rules, which largely remains to be seen.

The current media landscape in Egypt is characterised by a large number of both public and private newspapers. Between 1960 – when President Gamal Abdel Nasser nationalised the print media – and the late 1970s, private newspapers were prohibited. Party political newspapers were the first to be permitted, with commercially operated newspapers first appearing in the mid-1990s and now numbering in the hundreds. The public press was very dominant until recently, but the balance has started to shift in recent years, starting in the mid-2000s and especially since the January 25th revolution.²

Terrestrial broadcasting remains a virtual state monopoly, but private satellite channels started appearing in the early 2000s and their number increased rapidly after the revolution, although some stations with religious leanings were shut down after President Morsi was removed from power.

4.1. INDEPENDENCE AND DIVERSITY

At the end of the Mubarak period, the legal framework for the media in Egypt had the effect of working against the achievement of independence for regulatory bodies and the promotion of diversity in the media. As has been well documented in the UNESCO report “Assessment of media development in Egypt: Based on UNESCO’s Media Development Indicators”,³ by the end of the Mubarak period the regulatory regime for the media was designed to promote state control over the key regulatory bodies, namely the Supreme Press Council, the Egyptian Radio and Television Union (ERTU), the General Authority for Investment (GAFI) and even, to some extent, the Journalist Syndicate. These bodies, in turn, used their power and influence to try to limit, as far as possible, serious criticism of the government or support for alternative political players.

The 1971 Constitution,⁴ which was in place until the end of the Mubarak period, contained two relatively simple provisions on freedom of expression (in Articles 47 and 48). Together, these guaranteed freedom of opinion, expression and of the press, as well as constructive criticism, and prohibited censorship or administrative controls (except in the case of an emergency). However, as is well known, a formal state of emergency was in place for the entirety of the 30-year Mubarak period, largely eviscerating the application of any constitutional protections.

The 2012 Constitution (sometimes called the Morsi Constitution) developed these guarantees further, providing a right to access information held by public authorities (right to information) (Article 47) and for freedom of the press, while stipulating that the establishment of broadcasters would be regulated by law (Articles 48 and 49). In an important development, the 2012 Constitution established two “independent bodies” to regulate the media. Like all such bodies, these were appointed by the president with the approval of the Shura Council (Article 202). The first – the National Media Council – was to regulate print, broadcast and digital media, including by promoting their independence (Article 215). The second – the National Press

and Media Association – was to manage state-owned “press and media institutions” (Article 216).

This has been taken a step further in the 2014 Constitution. Article 65 contains a general guarantee of freedom of expression and Article 68 guarantees the right to information. Article 70 guarantees freedom of the media, with the proviso that the law shall regulate the establishment of broadcasters (and online newspapers). Article 71 rules out censorship, as well as imprisonment for press crimes (although the law shall stipulate penalties for certain kinds of expressive crimes, such as incitement to violence or discrimination or impugning the honour of others). Importantly, Article 72 calls on the state to ensure the independence, neutrality and impartiality of all state media.

Chapter 10 of the constitution, titled “Supreme Council for the Regulation of Media”, establishes three separate bodies tasked with media regulation. The first, the Supreme Council for the Regulation of Media (Article 211), is an “independent entity that has a legal personality, and enjoys technical, financial and administrative independence, and has an independent budget”. It has a mandate to “regulate the affairs of audio and visual media and regulate the printed and digital press, and other media means”. The Council has a number of tasks, including protecting the freedom of the media, safeguarding media “independence, neutrality, plurality and diversity”, preventing monopolies, monitoring the legality of funding for the media and “developing the controls and criteria necessary to ensure compliance by the press and media outlets with the professional and ethical standards, and national security needs as stated in the Law”. The composition and regulations of the Council are left up to a future law.

The other two bodies – the National Press Organisation (Article 212) and the National Media Organisation (Article 213) – are both independent bodies tasked with managing and developing,

respectively, the state print and broadcast media, including by ensuring their independence and neutrality. Like the Council, these bodies are to be established by law.

The new Egyptian president, Abdel Fattah el-Sisi, was sworn in on June 8th 2014. Preparations for parliamentary elections were due to commence in July 2014, so it will be some time before laws establishing these bodies are adopted.

As per the general terms of the constitution, these bodies will be independent. At the same time, and as is clear from the more specific provisions in the 2012 Constitution, the term “independence” as used in these documents may mean only formal legal and institutional autonomy. While these forms of autonomy are important, they do not necessarily lead to proper structural independence from political forces, in the sense that the members of these bodies are not controlled by political elites. International law requires this more structural form of independence for bodies that exercise regulatory powers over the media.

Freedom to establish newspapers is guaranteed by Article 70 of the new constitution, while Article 211 gives the Council a mandate to promote pluralism and diversity while preventing monopolies. At present, there are no general anti-monopoly rules in Egypt. Formally, Law No. 96 of 1996 (the Press Law) imposes stringent conditions on the structure of private newspapers, which must take the form of co-operatives owned exclusively by Egyptians, with no one person owning more than 10% of the overall capital. While technically a form of diversity provision, the real purpose of this rule is not clear and it would appear not to have been applied, even in the Mubarak era. There is no dedicated broadcasting law in Egypt, and hence no diversity rules for that sector, including positive rules (for example, rules relating to local content).

There are no preferential taxation or other business rules for print media,

although from time to time in the past the government has adjusted the tax rate on advertising, which clearly affects the profitability of newspapers. For example, in June 2006 this tax was massively reduced from 36% to 15%. Most of the private satellite broadcasters are registered in the Free Zones of Egypt, which means that, like all Free Zone businesses, they do not pay tax on imported goods, although they do have to pay fees on revenues.

4.2. REGULATION OF JOURNALISTS

A complex set of legal rules applies to the registration/licensing of journalists in Egypt. Article 65 of Law No. 76 of 1970 (the Journalist Syndicate Law) provides that an individual must be a member of the Syndicate to practise as a journalist in the print media sector. Article 103 of this law makes it a crime for a newspaper to hire someone as a journalist who is not a member of the Syndicate. A breach of these articles may result in a prison sentence of up to one year and/or a fine (Article 115).

In practice, these rules have not been applied for many years. However, membership of the Syndicate essentially creates a two-tier profession among journalists, with those who are members and veteran journalists receiving a number of practical benefits, in addition to the status of being able to carry a Syndicate card. Formally, these benefits include certain protections in case of disciplinary action or legal prosecution, employment benefits and, importantly, access to a fund which pays a stipend to all practising journalists, although financial challenges have undermined the ability of the Syndicate to provide all these benefits.

In the past, membership of the Syndicate was not always allocated on the basis of the strict criteria set out in the Journalist Syndicate Law (see Article 5), with many individuals who qualified not having been granted membership. There are also other problems with the system: it has historically covered only print media journalists (i.e. to the exclusion of

¹ Thanks to Naomi Sakr, Professor of Media Policy, University of Westminster, who provided comments on this section of the report.

² See “Assessment of media development in Egypt: Based on UNESCO’s Media Development Indicators”, by Toby Mendel. UNESCO. Available in English and Arabic at: www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/assessment-of-media-development-in-egypt/.

³ *ibid.*

⁴ Available at: www.sis.gov.eg/En/Templates/Articles/tmpArticles.aspx?CatID=208#.U6eT_6Xio5s.

broadcast and online journalists) and only those working for one main media outlet (i.e. to the exclusion of freelancers). Since the January 25th revolution, there have been extensive discussions as to how to resolve these problems, although a clear way forward has not yet been agreed and the legal framework remains unchanged.

Formally, the Syndicate is not an independent body, with various provisions in the Journalist Syndicate Law linking its head and board to the government of the day. In practice, these rules no longer apply (or even could apply, since some refer to the Arab Socialist Union, which no longer exists). There are currently ongoing debates about the future of the Syndicate, as well as the establishment of a number of new professional bodies in the aftermath of the January 25th revolution, and it remains very unclear what will happen in the future.

Article 7 of the Press Law provides some protection for journalists' right not to reveal their confidential sources of information by ruling out forced disclosures, except "in compliance with the relevant laws". These include criminal procedure and evidence rules and, as a result, in practice Article 7 provides only limited protection for confidential sources.

4.2.1. Regulation of print media

Article 46 of the Press Law requires anyone who wishes to publish a newspaper to first obtain a licence from the Supreme Press Council. The application must contain a variety of information, including the name, language, periodicity, business sector and editorial structure of the publication; the nationality and place of residence of the proprietor; the budget structure and sources of funding; the name of the editor-in-chief; and the address of the printing house that will print the publication. The Supreme Press Council may refuse an application to publish a newspaper, in which case it shall provide the applicant with justified reasons and the applicant may appeal to the Court of Administrative Adjudication (Article 47). There is no indication of what would constitute a "justified reason" to refuse to

issue a newspaper licence, but Article 50 bars those who are prohibited by law from exercising their political rights from owning or publishing a newspaper, and Article 49 stipulates that to publish a newspaper is a "special privilege".

Prior to the revolution, it was quite difficult to get a licence to publish a newspaper: the process allegedly included vetting by the security forces and, to avoid the stringent rules, many of the newspapers published in Egypt were formally registered in Cyprus. This has now changed and it has become much easier to get this permission. As noted above, the 2014 Constitution establishes a right for all Egyptians to publish newspapers.

Previously, the Supreme Press Council was formally under the control of the Shura Council, or upper house of the Egyptian Parliament – which, in turn, was largely under the control of the president until it was dissolved in July 2013. In August 2013, a decree issued by Interim President Adly Mansour amending a number of articles in the Press Law changed the composition of the Supreme Press Council, allocating it all of the powers over the press that had previously been exercised by the Shura Council. The new membership, which was originally expected to serve a four-year term, comprises 15 individuals appointed by various different bodies and is far more diverse, including representatives of the Syndicate, trade unionists, journalism and law professors and a number of public figures and veteran journalists.⁵ It is not yet clear whether the Supreme Press Council will in due course be replaced by the yet-to-be-formed Supreme Council for the Regulation of Media, but this would appear to be a logical development.

The Press Law provides for both a right of correction and a right of reply. Article 24 requires newspapers to publish a correction "upon request". The rule does not formally limit this to cases where the original information was incorrect, although this condition may be

assumed. Article 25 provides for a right of reply without stipulating any formal conditions for this, but requests for either a correction or a reply may be refused when they are made more than 30 days after the original publication, where a correction has already been published or where the correction may involve a criminal act or contravene public order (Article 26). A breach of these rules attracts a sanction of imprisonment for up to three years or a fine (Article 28).

The question of complaints and ethics is, once again, quite complex in Egypt. A document called the "Press Code of Ethics" was issued by the Supreme Press Council in 1988.⁶ Article 19 of the Press Law requires all journalists to abide by the code of ethics and Article 70(10) calls on the Supreme Press Council to adopt a code of ethics (or, formally, to release "the code of ethics developed by the Journalist Syndicate", which Article 47 of the Journalist Syndicate Law calls for the Syndicate Board to develop). A complex set of arrangements for taking disciplinary action against journalists is provided for in the Press Law and Journalist Syndicate Law (including several provisions which are contradictory between the two laws). In practice, however, these systems are not active and there have been ongoing discussions about putting in place a complaints system for the media in Egypt.⁷

4.2.2. Regulation of broadcasting

Perhaps paradoxically, and in part due to the way that private broadcasting has developed in Egypt – i.e. primarily as a system of satellite television broadcasting – there are only fairly rudimentary formal rules governing broadcasting in the country. There is no general law that regulates private broadcasting and, with a few minor exceptions, there are no private terrestrial broadcasters. As a result, key questions such as spectrum allocation and (to some extent) even the digital transition – which only really applies to ERTU stations, some of which are already operating digitally – have hardly come up in public discourse. Formally, frequency



allocation falls under the jurisdiction of the National Telecommunications Regulatory Authority, established by Law No. 10 of 2003, although in practice ERTU is essentially the only broadcaster to use these frequencies.

This should change once the constitutional requirement to put in place a legal framework for broadcasting starts to be addressed. There is some debate as to whether private television broadcasters in Egypt would even wish to take up terrestrial broadcasting, given the significant and growing penetration of satellite access and the high costs of setting up terrestrial transmission systems. But it must be assumed that there will at least be interest in private terrestrial radio stations,⁸ including community radio. At present, both of these forms of broadcasting are essentially absent from the Egyptian media scene.

In terms of licensing, most of the private satellite television stations are based in the Free Zones of Egypt and, in particular, the Media Public Free Zone.⁹ These zones are essentially treated as offshore tax havens for regulatory purposes, although they are physically located in Egypt. The right to establish businesses of all types, including broadcasters, falls under the purview of GAFI, which is part of government and therefore subject to political control. According to the information we were able to obtain, there are no general rules relating to the establishment of broadcasting enterprises in the Free Zones, although specific rules are found in the licensing agreements of individual broadcasters.

As is the case with other media, the right to broadcast was subject to extensive political control prior to the January 25th revolution. Following that, control was relaxed and the number of television stations – including a number of religious stations – increased substantially. There were still, however, opportunities for various public actors to interfere with broadcasting, which continues to happen. Most of the religious stations, for example, were closed after Morsi was overthrown in July 2013.

Formal systems for the regulation of content in broadcasting are rudimentary. Basic rules on content – for example, regarding sexual content and respect for religion – can be found in the contracts between private satellite television stations and NileSat, the Egyptian government satellite company that carries most of them; and their licences also require them formally to respect the Arab Media Code of Ethics, adopted by the Council of Arab Information Ministers. Again, formally, Article 6(1) of the law governing ERTU, Law No. 13 of 1979, modified by Law No. 223 of 1989, requires ERTU to adopt a code of conduct for all broadcasters. These systems do not appear to be operational in practice.

4.3. KEY RECOMMENDATIONS

- The new media regulatory bodies provided for in the 2014 Constitution should be established by law as substantively independent bodies (i.e. with both legal and political independence).
- Rules on media diversity, including diversity of ownership, should be adopted

in Egypt, whether as free-standing legal rules or as part of the system of regulation of the media.

- The restrictions on who may practise journalism should be removed from Egyptian law.
- The special status of and benefits associated with membership of the Journalist Syndicate should be removed from Egyptian law and, instead, everyone should be free to set up their own associations for journalists.
- The rules on protection of journalists' sources should be enhanced so that they may only be defeated by an overriding interest.
- There should be no requirement to license newspapers, and any registration rules that are imposed should be merely formal in nature (i.e. registration should be given as soon as the requisite information is provided).
- The right of correction should be limited to cases where media outlets have disseminated false information. The right of reply should be limited to cases where media outlets have disseminated false information that harms the legal rights of the applicant, and that harm cannot be repaired merely with a correction.
- A proper broadcasting law should be adopted which sets out fair rules for licensing broadcasters, based on the idea of promoting diversity in the airwaves, and which is overseen by an independent body.
- Steps should be taken to put in place a fair and modern system of complaints for the media, whether via self-regulation or regulation by an independent complaints body.

⁵ See "Egypt: Interim President Issues Decree On Re-Formation of Supreme Press Council". Posted on August 6th 2013 at: <http://allafrica.com/stories/201308061310.html>. See also "Egypt interim president appoints new board for Supreme Press Council". Posted on August 5th 2013 at: <http://english.ahram.org/NewsContent/1/64/78366/Egypt/20Politics-%20Egypt-interim-president-appoints-new-board-for-Sup.aspx>.

⁶ Pursuant to Decree No. 4 of 1988. On file with author.

⁷ See, for example, "Egypt president calls for media code of ethics". Posted on September 18th 2013 at: <http://en.aswatmasriya.com/news/view.aspx?id=16944161-f266-4528-a2eb-167c1e4d7f1c>.

⁸ A number of Egyptian radio stations are available via the internet.

⁹ See: www.tpegypt.gov.eg/eng/freezone.aspx. This is popularly referred to as the Egyptian Media Production City.

5. JORDAN¹⁰

Jordan traditionally has a more liberal media than other countries in the region, but government monopoly of terrestrial TV and lack of a dedicated broadcasting law makes regulation challenging.

Jordan has gone through periods of relative media flowering followed by periods of less freedom. The all-important Press and Publications Law (PPL) has been amended frequently over the years, and these changes have often signalled either greater openness or a closing down of the space for freedom. Liberal changes introduced in 1993 led to an increase in the number and social importance of newspapers, while a provisional law of 1997 introduced restrictive rules that led to the closure of 13 weeklies. However, according to Marwan Muasher, former Jordanian Foreign Minister (2002–2004) and Deputy Prime Minister (2004–2005), the many efforts at more profound reform that have been tried have been undermined by vested interests: “[A]ll efforts to open up the political system have been thwarted by a resilient class of political elites and bureaucrats who feared that such efforts would move the country away from a decades old rentier system to a merit-based one.”¹¹

The country has a number of daily and weekly newspapers, although the government has a majority stake in *Al-Rai*, the largest daily, and minority shares in

Al-Dustour, the second largest. Some private radio stations have emerged since the government broadcasting monopoly was brought to an end with the 2002 Audiovisual Law. However, in practice the government maintains a monopoly on terrestrial television, although a few satellite TV stations have been given licences.¹² Amendments to the PPL in 2012 brought the rapidly expanding and popular internet media sector under much greater government control, and led to the blocking of some 300 news websites in June 2013.¹³ In its 2013 Press Freedom Rankings, Freedom House gave Jordan a score of 63 out of 100 (lower scores are better), resulting in a “not free” rating and a position of 145 out of 197 countries, behind several other Arab countries.¹⁴

5.1. INDEPENDENCE AND DIVERSITY

The 1952 Constitution, as amended, contains a number of provisions of direct relevance to media regulation. Article 15(3) guarantees freedom of the press and information media, but only “within the limits of the law”, significantly undermining the value of the guarantee (since it fails to impose any conditions on laws that would limit

media freedom). Article 15(4) rules out suspending or revoking media licences, except by judicial order; but Article 15(5) allows for “limited censorship” in times of emergency.¹⁵ Article 15(6), finally, calls for the law to regulate the means by which the resources of newspapers shall be controlled.

As in many Arab countries, regulation of the media is essentially undertaken by bodies which are not independent of government. Applications to publish a newspaper must be submitted to the minister of information (Articles 12 and 15 of the PPL). Pursuant to Article 17(a), the Council of Ministers shall decide on the application, based on a recommendation by the minister of information. For specialised publications (i.e. those with a specific thematic focus), the minister of information shall decide on the application (Article 17(b)). To support its regulation of print media, there is a specialised body within the Ministry of Information called the Press and Publications Department, which is specifically referred to in the PPL (for example, in relation to the mandatory deposit of copies of publications with the Press and Publications Department; see Article 34(d)).

The Audiovisual Commission (AVC), established by Provisional Law No. 71 of 2002 (the Audiovisual Media Law), is the specialised body responsible for regulating broadcasters. Pursuant to Article 3(b) of that law, “The Commission is financially and administratively affiliated to the Minister”. The director is appointed by the Council of Ministers upon the recommendation of the minister of information (Article 6(b)). The AVC cannot, therefore, be described as an independent body. In any case, it is the Council of Ministers and not the AVC which takes decisions regarding the licensing of broadcasters (see Articles 16(c)(2) and 18).

There are no special rules relating to ownership or cross-ownership of media outlets (for example, rules limiting the concentration of ownership with a view to promoting diversity). Although there are administrative constraints on establishing newspapers, which are subject to political control, there are no rules that specifically limit or restrain ownership with either the purpose or effect of promoting or undermining diversity.

In terms of broadcasting, as noted above, in practice it has proved difficult to obtain a licence to operate a private television station. One such station was licensed in 2007, but it was closed down just before it was due to go on air, with the result that there are currently no private television stations in the country (this is clearly not conducive to diversity in the airwaves). The Audiovisual Media Law does contain some provisions that could be deemed to promote diversity. Specifically, Article 20 allows the AVC to impose various conditions on licensees, including a requirement to respect the rights of others and to promote diversity of expression and objectivity when broadcasting news and current affairs (Article 20(l)).

There are, similarly, no particular taxation or commercial rules or incentives that support media development or diversity. If anything, the opposite is true. For example, Article 13 of the PPL imposes

onerous paid-in capital obligations (i.e. obligations to hold certain sums of money in reserve) on newspapers. Although these were reduced for non-daily publications in the 1999 amendments, they remain significant in terms of size and represent an important barrier to establishing newspapers.

The AVC also levies special financial barriers on the broadcasting of news, in particular by requiring broadcasters that carry news to pay licence fees which are 50% higher than for stations which do not carry news.¹⁶

5.2. REGULATION OF JOURNALISTS

Jordan imposes strict formal licensing requirements on journalists. In law, no one may practise journalism unless they are members of the Jordanian Press Association (JPA). The JPA, first established as a statutory body in 1983, now operates under Law No. 15 of 1998 (the JPA Law). There have been ongoing discussions about reforming this law, which have not yet come to fruition. The government did refer a new draft law to Parliament in 2014, but this has not moved forward.¹⁷ Article 2 of the PPL defines a journalist as “Any member of the [JPA] who has been registered in its records, and practises journalism in accordance with the provisions of its

law”. Article 10, furthermore, prohibits anyone who is not a “journalist” from practising journalism or from presenting himself or herself as a journalist, a common restriction across the region (see also Articles 15 and 18 of the JPA Law).

The JPA Law imposes a number of restrictions on who may be considered a journalist, including a sliding scale of education and time spent working in the field of journalism (the amount of time required ranges from four years for those with the equivalent of a high school diploma to no time for those with a PhD in media or journalism). Furthermore, journalists are not allowed to engage in a second profession, belong to another union or exercise their profession “in a manner that contradicts the laws and regulations on the press” (Article 46). Journalists who breach the rules or bring the honour of the profession into disrepute may be prohibited from working as journalists for up to three years, or may be expelled from the JPA and prohibited from working as journalists indefinitely (see Articles 5, 46 and 50 of the JPA Law).

In practice, these rules are widely flouted, despite periodic attempts by the JPA to enforce them, for example by publishing advertisements about the

“ Liberal changes introduced in 1993 led to an increase in the number and social importance of newspapers, while a provisional law of 1997 introduced restrictive rules that led to the closure of 13 weeklies. ”

¹⁰ Thanks to Sa'eda Kilani, human rights expert, and Yahia Shukkeir, Jordanian journalist and media law expert, who provided comments on this section of the report.

¹¹ “A Decade of Struggling Reform Efforts in Jordan: The Resilience of the Rentier System”, by Marwan Muasher. Carnegie Endowment for International Peace, Washington. Available at: www.carnegieendowment.org/publications/index.cfm?fa=view&id=43939.

¹² Information on licences issued to broadcasters in Arabic is available at: www.avc.gov.jo/Default.aspx.

¹³ See: www.law-democracy.org/live/jordan-press-law-amendments-seriously-threaten-online-speech/.

¹⁴ See: www.freedomhouse.org/sites/default/files/Global%20and%20regional%20tables.pdf.

¹⁵ All three of these provisions were amended as recently as 2011.

¹⁶ See “Introduction to News Media Law and Policy in Jordan: A primer compiled as part of the Jordan Media Strengthening Program”. USAID. Available at: www.global.asc.upenn.edu/fileLibrary/PDFs/revisedjordanprimer_eng.pdf.

¹⁷ See: <http://jordantimes.com/deputies-endorse-draft-amendments-to-press-association-law>.

rules. The JPA also provides government with a list of journalists on its roll, along with a request that non-journalists be excluded from press events. These rules are not only oppressive but also anachronistic. For example, they are understood as applying only to journalists working in print media (see Article 8 of the JPA Law), which is an increasingly irrelevant dividing line in the modern media world.

Article 6(d) of the PPL grants journalists the right to protect their confidential sources of information as part of freedom of the press. It is not clear, however, to what extent this is respected in practice.

5.2.1. Regulation of print media

As noted above, there have been numerous versions of and/or changes to the PPL over the years, including important developments in 1993, 1997 (struck down by the courts as unconstitutional), 1998, 1999, 2007 and 2012 – the last of which, controversially, effectively extended the rules to online content and publications.¹⁸

Article 2 of the PPL characterises publications as dailies and non-dailies that carry general news content, and specialised publications that focus on a particular field or theme. A licence is required to publish any of these (Article 47). Only Jordanians or Jordanian companies may obtain such a licence (Articles 11 and 21), and the application for a licence to publish must contain basic information about the applicant, the proposed publication and its editor-in-chief. Importantly, Article 13 of the law imposes rather onerous paid-in capital obligations – up to 500,000 Jordanian dinars (approximately \$700,000) – for a daily. It was the introduction of capital requirements in 1997 that led to the demise of 13 weeklies.

Applications for licences to publish a daily or non-daily must be submitted to the minister (Article 15) and are supposed to be decided upon by the Council of Ministers within 30 days. The applicant should be notified within

another 15 days, with any rejections being accompanied by written reasons (Article 17). The law is not very clear as to the formal requirements for a licence or the reasons for which an application might be rejected, although it does require publications to have a managing director who meets certain conditions, for example to be a Jordanian domiciled in Jordan who has not been convicted of “crimes of honour”, who is employed as managing director of one publication only, and who has appropriate academic and practical qualifications (Article 16). Publications must also have an editor-in-chief who meets similar conditions and who has been a member of the JPA for at least four years (Article 23).

Article 19 provides for the cancellation of a licence if the publication does not appear within six months or stops for more than three months (for a daily), or following a court order for failing to respect its licence conditions. Publications are prohibited from receiving any funding from abroad (Article 20).

Articles 27 to 29 of the PPL provide for the rights of correction and reply. These rights arise in relation to anyone who has been the subject of an “untrue and unfounded news item”. A special right of reply arises where a publication prints “an untrue and unfounded news item or article with unfounded information concerning public interest”, in which case the public authority concerned may assert this right. The rules do not indicate when a right of correction shall be provided and when a right of reply is warranted. A reply may be refused where the news item has already been “satisfactorily” rectified; where it is claimed by someone other than the affected individual; where it is in a different language from the original piece; where the content is illegal or incompatible with ethics; or where the claim is made more than two months after the original piece. The rules also apply to foreign publications and, should they refuse to respect the rules, the journalists may be denied the right to enter Jordan for two weeks or more.

All journalists are bound by the journalistic code of ethics in accordance with Article 7 of the PPL. This sets out basic rules for the code, including that it should require journalists to respect the rights of others, to be balanced and objective in their presentation of information and to refrain from fuelling discord among citizens. A code of honour was adopted by the JPA in 1996 and then replaced in 2003, with the second code being incorporated into law in the 2007 amendments to the PPL. This code addresses many of the standard issues found in such codes, including the rules in Article 7 and other rules, such as separating news from advertisements.¹⁹

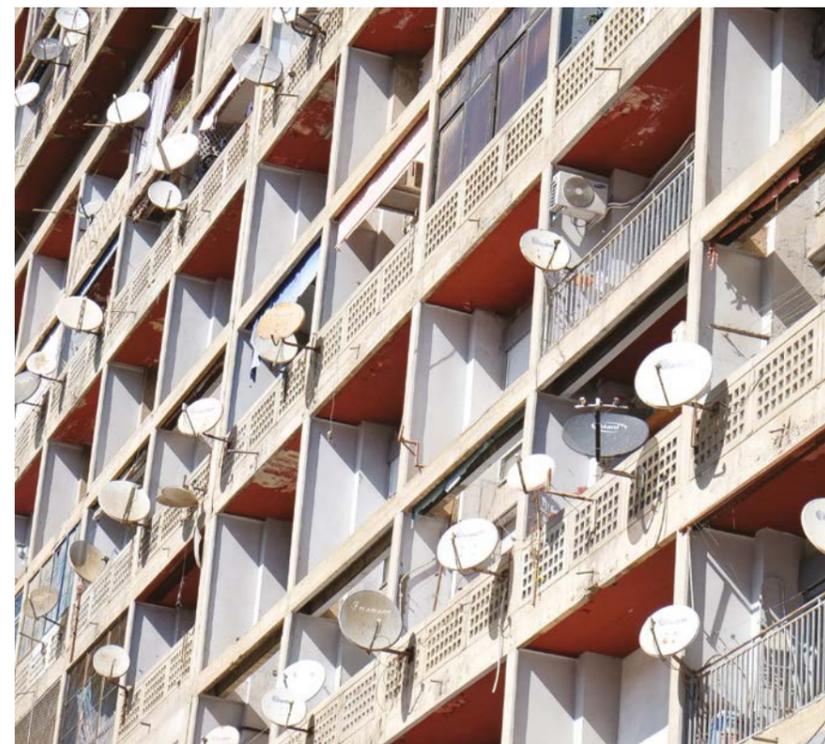
The JPA’s disciplinary committee oversees implementation of the code of honour, as well as violations of the JPA Law and relevant provisions in the PPL. Breach of the code can lead to temporary suspension of the right to practise journalism, as well as fines. The decisions of the disciplinary committee can be appealed in court.

5.2.2. Regulation of broadcasting

As noted above, the licensing of broadcasters is carried out by the Council of Ministers on the recommendation of the AVC, which is not an independent body. The process also involves co-ordination with the Telecommunications Regulatory Commission (TRC) regarding frequencies (see Articles 5 and 19 of the Audiovisual Media Law; the TRC was established by Law No. 13 of 1995).

The rules on licensing are relatively brief. Only corporate bodies may obtain a licence, and the application must detail the applicant’s technical, financial and human resources, the type of service to be provided and any shareholders who own more than 5% of the company. There are no criteria for assessing licence applications and, pursuant to Article 18(b), the Council of Ministers may reject an application “without stating the reasons for such rejection”.

Article 20 sets out the conditions to be attached to any licence, which



include the fees to be paid, the broadcasting commitments of the station, various technical conditions, a general requirement to give priority to Jordanian content, a requirement to respect intellectual property rights and a requirement to develop the national audiovisual industry. Article 20 also includes both negative and positive content rules. The former include prohibitions on racially provocative content, promoting terrorism, and harming the economy or relations with other countries. The latter include respecting the rights and freedoms of others, ensuring objectivity and diversity of information and ideas in the news, and promoting public order, national security and other national interests.

There is no mention in the law of either community broadcasting or the digital transition. Given the absence of any private television stations, the latter will presumably be a project for the public broadcaster, the Jordan Radio and Television Corporation.

The Audiovisual Media Law does not establish a proper system for complaints or for the development of professional standards for broadcasters. Article 8(k) states that one role of the AVC is to consider complaints presented by one licensee against another, but does not refer to public complaints. However, Article 12 of the AVC’s Instructions No. 1 of 2006 states that the AVC will receive and process complaints submitted by members of the public against broadcasters. A procedure is provided for, and broadcasters are required to implement any decision of the AVC. In practice, however, complaints are normally dealt with informally, based on the broad and rather vague content rules in the law rather than on a formal code of conduct or some other such document setting out clear minimum standards.²⁰

5.3. KEY RECOMMENDATIONS

- Regulation of the media should be undertaken by independent bodies rather than government entities.

- Consideration should be given to introducing rules on the concentration of media ownership.
- The approach towards regulating “news” websites should be revised, so that these are not required to register; in addition, they should not otherwise be treated as media outlets, whether or not this is actually the case.
- The paid-in capital requirements for publications should be removed, and broadcasters should not have to pay more for the right to broadcast news.
- Conditions on who may practise journalism, including the requirement to belong to the JPA, should be removed.
- Journalists should be free to create their own associations.
- Licensing requirements and conditions for print media should be dropped and replaced with a technical registration regime.
- The special right of reply for official bodies should be removed, and the main right of reply should apply only where a published statement is both false and breaches the legal rights of the claimant.
- A breach of the code of honour should only lead to a requirement to publish a statement recognising the breach, rather than suspension of the right to practise as a journalist.
- An independent body should be created to regulate broadcasting, with full powers to issue licences.
- The rules relating to licensing, including the criteria and procedures for obtaining a licence, should be set out clearly in the law, and the oversight body should apply these rules fairly with a view to providing licences to private television and radio companies. These rules should envisage the licensing of community broadcasters.
- A proper complaints system should be provided for, with clear standards (i.e. a code of conduct) and procedural rules, and this should be overseen by the independent broadcast regulator.

¹⁸ See “Jordan: Press Law Amendments Seriously Threaten Online Speech”. Centre for Law and Democracy. Available at: www.law-democracy.org/live/jordan-press-law-amendments-seriously-threaten-online-speech/.

¹⁹ See “Introduction to News Media Law and Policy in Jordan”, op. cit.

²⁰ *ibid.*

6. LEBANON²¹

Media in Lebanon are relatively free compared to other Arab countries, but government still has a degree of control, and operates in a legal framework that is significantly outdated and problematic.

The media in Lebanon are often regarded as being the freest in the region,²² and the country was the first in the Arab world to authorise private radio and television stations with the adoption of Law No. 382 of 1994 (the Broadcasting Law). At the same time, the legal framework is outdated – the main Press Law dates from 1962 – and there have been no amendments to these laws since 1994, when the Broadcasting Law and the most recent amendments to the Press Law were adopted. Furthermore, although the government (which is weak and divided along sectarian and partisan lines) has exercised limited direct control over the media, some have argued that powerful sectarian interests effectively use their power – direct and financial – to control the media.²³ In its 2013 Press Freedom Rankings, Freedom House gave Lebanon a score of 53 points out of 100 (lower scores are better), resulting in a “partly free” rating and a position of 112 out of 197 countries – one point behind Tunisia, the top-rated Arab country.²⁴

Article 13 of the 1926 Constitution provides general protection for freedom of expression and freedom of the press, although this is subject to any limits established by law, largely undermining the value of the protection (i.e. freedom of

the media is protected but may be taken away by law). In practice, the country boasts a diverse media, at least in terms of quantities of outlets, with a number of leading television stations, dozens of radio stations and a number of “political” newspapers (i.e. newspapers authorised to carry news).

6.1. INDEPENDENCE AND DIVERSITY

As in many Arab countries, most regulatory decisions in the area of the media are either taken directly by government representatives – including the minister of information and the Council of Ministers (i.e. the cabinet) – or by bodies which are largely controlled by the government.

From among these, the various bodies that regulate journalists are relatively more independent, but even here official control has a degree of reach. The Press Law establishes two bodies for the print media: the Lebanese Editors Association (for journalists) and the Lebanese Press Association (for owners). The by-laws of the Lebanese Press Union, the body formed from the two associations, have to be approved by the minister of information (see Articles 88(2) and 96(2) of the Press Law). The head of

the Department of Press and Legal Affairs at the Ministry of Information is the state commissioner of the Superior Council of Press, which exercises various official functions. The same person is also the reporter of the all-important Press Association Roll Committee, which admits journalists to the “Roll” and issues them with press cards (see Article 95 of the Press Law).

There is no separate body which regulates print media, and most regulatory functions in this area – including the granting of authorisation to publish a newspaper – are undertaken directly by the minister of information. A National Audiovisual Council (NAC) is established under the Broadcasting Law (Article 17), with various powers in relation to broadcasters. The ten members of the NAC are appointed in equal numbers by the Council of Ministers and the National Assembly, meaning that the body is largely controlled by political elites. More importantly, it is the Council of Ministers and not the NAC that actually issues licences to broadcasters (Article 16). For satellite broadcasting, pursuant to Article 2 of Law No. 531 of 1996, the Council of Ministers is responsible for leasing channels to private

parties based on the recommendation of the minister of telecommunications.

As a result, the principle of independent regulation of the media is not recognised in Lebanese law. As noted above, real power is vested more in sectarian and partisan power structures than in a central entity in the form of the government, and members of the NAC, for example, are appointed more as representatives of different sectarian interests than for their independence, expertise or commitment to media freedom and development.²⁵

There are no rules relating to diversity of ownership for the print media, whether in the Press Law or any other law. The former also fails to impose any diversity requirements in terms of language, instead implicitly recognising the right to publish in any language – albeit requiring that the managing director be proficient in the language(s) of the newspaper (Article 23(5)).

Instead of allowing anyone to start a newspaper, and letting the market dictate success or failure, a bizarre anti-competitive regime for newspapers was established in Decree Law No. 74 of 1953. This seeks to limit the number of “political” publications (i.e. those allowed to carry news) to a maximum of 25 dailies and 20 weeklies (or other periodicals). To address the fact that there are more publications than these target numbers (there are still about 110 licences), a publisher may only start a new periodical by obtaining two existing licences and then cancelling them.

This regime has had a profound and essentially distorting effect on the newspaper market in Lebanon. One main effect has been to turn newspaper licences into commercial commodities, with great value based on factors other than their real value (i.e. artificial limits on supply). Some owners are reputed to publish their periodicals only a few times a year, simply to continue to hold on to the licence – much in the way

one might speculate in gold or diamonds.²⁶ Looked at from a different angle, this rule artificially bars potential new entrants to the newspaper market, stifling innovation and competition to the detriment of the reader.

Strict overall language rules also apply to periodicals, with a maximum of ten of the 25 dailies and eight of the 20 other periodicals (i.e. 40% of each cohort) being allowed to be published in languages other than Arabic. This may help to promote broadcasting in Arabic, which is the *lingua franca* for most of the population. However, given that it is based on the problematical limits to the number of periodicals, it is still difficult to justify.

The Broadcasting Law, on the other hand, imposes strict concentration of ownership rules at the level of each individual broadcaster, instead of the more common approach of limiting ownership within the sector as a whole (for example as measured by market share or number of stations). Specifically, no one moral or legal person may own more than 10% of the total shares of any broadcasting company (Article 13(3)). This means that a minimum of ten different shareholders is required to start any broadcasting station. Furthermore, no one may own shares in more than one broadcasting company (Article 13(4)), and each company is limited to owning one television and one radio station (Article 12). Broadcasting companies must publish a list of their owners in the official gazette (Article 14). For its part, Law No. 531 of 1996, which governs satellite broadcasting, does not impose any limits on the number of shares one person may hold in a satellite broadcasting enterprise.

Broadcasters are generally free to operate in any language they wish, assuming they have a licence to do so. However, Decree No. 7997 of 1996, known locally as the book of specifications (a sort of code of conduct for the sector), requires all broadcasters to broadcast a minimum of 30 minutes

of news per day in Arabic (chapter 3, paragraph 7), while those that broadcast more than 12 hours per day must carry two such slots. Article 30 of the Broadcasting Law also imposes general obligations on broadcasters to provide at least one hour of government programming per week, while the book of specifications requires private broadcasters to carry dozens of hours per year of public service programming, for example about national heritage and culture, and educational and children’s programming.

6.2. REGULATION OF JOURNALISTS

As in many Arab countries, the situation regarding who is considered to be a journalist is unclear in Lebanon. According to Article 10 of the Press Law, a journalist is someone who meets the conditions of this law (see below). Importantly, it is a crime to pretend to be a journalist, with those flouting this law subject to fines and imprisonment for between six months and one year (with the minimum period of imprisonment being mandatory).

Article 22 imposes a number of conditions on journalists, including that they must be Lebanese citizens of at least 21 years of age who enjoy their civil, legal and political rights, who have not been convicted of any crime and who practise no other profession. Journalists must have at least a high school education, in which case they must work as trainee journalists for four years. Those with a university degree only have to work as trainees for one year, and those with a degree in journalism do not have to spend time as trainees. Those who were already on the Press Roll prior to these rules coming into force did not need to upgrade their status.

In practice, many people working as journalists arguably do not meet these conditions, since there are no formal rules as to what constitutes “training”. The rules are also somewhat confusing, since it is not clear how one might distinguish

²¹ Thanks to Dima Dabbous, Visiting Assistant Professor, Stanford University, USA, and Tony Mikhael, lawyer and media expert, Maharat Foundation, who provided comments on this section of the report.

²² See “Lebanon profile”. BBC News. Available at: www.bbc.com/news/world-middle-east-14648683.

²³ See, for example, “The Myth of Media Freedom in Lebanon”, by Nabil Dajani. *Arab Media and Society*, Issue 18, Summer 2013. Available at: www.arabmediasociety.com/articles/downloads/20130610081413_Dajani_Nabil.pdf.

²⁴ See: www.freedomhouse.org/sites/default/files/Global%20and%20regional%20tables.pdf.

²⁵ *ibid.*

²⁶ See “ACRLI 2007 Country Report: Media in Lebanon”, by Dima Dabbous-Sensenig. Available at: www.arabruleoflaw.org/Files/Outline/EN_MediaReport_Lebanon.pdf.

between a trainee and a qualified journalist. The relationship between being a journalist and being a member of the Lebanese Editors Association, the official representative body for journalists, is also not clear, although it is presumed that, at least formally, only journalists may be admitted.

Some of these issues came to the fore in a 2000 case involving Youssef Bazzi, a columnist for the daily *Al-Mustaqbal*. Bazzi, who was not a member of the Lebanese Editors Association, was charged with defaming and insulting the minister of defence and was briefly detained. An important issue in the case was whether his detention constituted a form of provisional detention which had been abolished for journalists by Law No. 330 of 1994 (amending Article 28 of Legislative Decree No. 104 of 1977). In other words, the issue was whether an individual had to be a member of the association to benefit from the prohibition on provisional detention. The issue was never resolved properly, because the charges against Bazzi were dropped and no case was put forward challenging the preventive detention.²⁷

It is, however, clear that journalists who are members of the statutory Lebanese Editors Association are eligible to receive benefits such as access to a press card and some financial and other forms of support, at least in theory.

There is no equivalent set of rules for broadcast journalists. However, the book of specifications does impose some conditions on broadcasters. All directors and heads of department, for example, must have held Lebanese citizenship for at least ten years, have university degrees in their fields of specialisation and have at least three years of experience (this is also specified in Article 28 of the Broadcasting Law). At least half of all employees must have either a university degree or a technical high school degree.

Lebanese law does not contain a rule allowing journalists to refuse to disclose the identity of their confidential sources, although this is reflected in Article 3

of the Lebanese Press Code, known as the Charter of Professional Honour, adopted in 1974 by the Lebanese Press Association (which is formed by the owners of periodicals).

6.2.1. Regulation of print media

According to Article 27 of the Press Law, it is forbidden to issue a journal (i.e. a periodical or regular publication) without first obtaining authorisation from the minister of information after consultation with the Lebanese Press Association. There are two types of journals – political and non-political – with the rules of Decree Law No. 74 of 1953 applying to the former (i.e. restricting their total number). Pursuant to Article 28, the minister must provide a reasoned decision on an application within one month, which shall be published in the official gazette. The application must contain a long list of details (Article 38), and any changes to that information must be notified to the minister within 30 days (Article 42).

A number of substantive conditions apply. The applicant must be a Lebanese citizen residing in Lebanon (Article 30), and there are strict prohibitions on foreign ownership (Article 31 (b)). The applicant must have a responsible director and a starting capital of at least 500,000 Lebanese pounds (\$330 at today's rates) for unlimited partnership companies, while much higher capital requirements apply to joint stock and limited liability companies (of, respectively, \$3,300 and \$20,000, along with such financial guarantees as may be required by the minister; see Articles 33 and 35). The latter must satisfy the conditions for being a journalist, be domiciled at the venue of the journal, not be protected by legal immunity or be the director of more than one publication, and be proficient in the language(s) of the journal (Article 23). Importantly, the minister of information may, with two weeks' notice, cancel an authorisation on various grounds, including non-commencement for six months, having been suspended for three months (or less, by reasoned decision) or for breach of the rules in Articles 30, 33

or 34. The non-consistent application of these rules, in the sense of journals being allowed to continue despite appearing infrequently, has contributed to creating a market for journal licences and authorisations.

Detailed rules relating to the right of reply are found in Articles 4–11 of Legislative Decree No. 104 of 1977, amending the Press Law. The minister of information may claim a right of rectification for any "erroneous or false articles or news concerning public interest", and a failure to publish this rectification will attract a fine of between five and 20 million Lebanese pounds (approximately \$3,300–\$13,200) and imprisonment for between 15 days and three months (Article 4).

Ordinary citizens may claim a right of reply in relation to any article which mentions or alludes to them, failing which a sanction may be imposed.²⁸ Where the reply exceeds the length of the original article, the claimant may be asked to pay the costs of publishing the excess (Articles 6 and 7). A reply may be refused where the matter has already been rectified, where it is anonymous or pseudonymous, where it is in a different language from the original article, where it contains material which is illegal, unethical or offensive, or where it is not claimed within 30 days of the original article (Article 9). Article 31 of the Broadcasting Law establishes a right of reply in relation to broadcasters (on the request of the minister of information) whenever information relating to public authorities has been disseminated; and on the request of anyone else whose reputation or honour has been harmed by a programme. Otherwise, the rules in the Press Law for the right of reply apply to broadcasting.

Articles 99 and 100 of the Press Law establish a disciplinary council formed of the chairs and one other member of each of the boards of the Lebanese Press Association and Lebanese Editors Association, plus a lawyer. Journalists may

be referred to the council if they breach professional honour as reflected in a legal case; if they commit disrespectful acts towards any of the institutions governing the profession; if they breach "the regulations and administrative or disciplinary decisions issued by the Superior Council of Press or any one or both associations"; or for breach of any other matter considered to be disciplinary in nature according to the by-laws of either association (Article 104). In terms of sanctions, the council can issue a warning, suspend the individual from working as a journalist for up to two years, or remove the individual permanently from the Press Roll (Article 105).

A 15-article charter of professional honour was adopted by the Lebanese Press Union in 1974, and largely reiterates the basic content restrictions found in the Press Law. For example,

Articles 7 to 9 require journalists to publish truthful and reliable information, Article 6 deals with incitement to hatred, libel and insults, Article 12 is about blackmail, and Article 11 addresses the issue of privacy.²⁹

6.2.2. Regulation of broadcasting

The most important rules on broadcasting are found in the Broadcasting Law (Law No. 382 of 1994), which came into force in September 1996. These rules are supplemented, for



Most regulatory decisions in the area of the media are either taken directly by government representatives or by bodies which are largely controlled by the government.



²⁷ *ibid.*

²⁸ This was originally just 1,000 Lebanese pounds, but it has been amended upwards twice.

²⁹ *ibid.*

7. LIBYA³¹

satellite broadcasters, by the Satellite Broadcasting Law (Law No. 531 of 1996). There is no regulatory framework for the cable industry, much of which operates illegally, or for the internet.

As noted above, licences for both terrestrial and satellite broadcasters are issued by the Council of Ministers – in the former case, on the recommendation of the NAC (see Article 16 of the Broadcasting Law) and, in the latter case, based on a recommendation by the minister of telecommunications (see Article 2 of the Satellite Broadcasting Law). Satellite broadcasters need a specific form of licence from the government to broadcast political programmes (i.e. news; see Article 3(4a)).

Articles 10 and 11 of the Broadcasting Law set out the different categories, respectively, of radio and television licences. The first category for both is stations broadcasting news, which must cover the whole country; and the second is stations not broadcasting news, which must also cover the whole country (the other categories are digital and satellite broadcasters). In both cases, these national broadcasters may disseminate up to 20 hours per week of local programming (i.e. programming aimed at a particular region).

The main criteria for obtaining a licence are set out in Article 7 of the Broadcasting Law. These include general technical and resource (human and financial) considerations, as well as a number of other substantive issues. For example, Article 7(2) refers to the capacity of the broadcaster to respect the rights and freedoms of others, pluralism of opinions and ideas, objectivity in the news, respect for public order, the needs of national defence and the national interest. Article 7(3) refers to developing the sector; Article 7(4) to local production and Article 7(6) to not promoting relations with the “Zionist enemy”. In practice, these rules have been interpreted by the NAC since 1996 to require shareholders in broadcasters to be from different religious and regional backgrounds, and

to reflect the societal make-up of Lebanon.³⁰ Licences are issued for 16 years, and the Broadcasting Law establishes a clear schedule of fees for broadcasters (Articles 26–27). There is no mention anywhere in the law of community broadcasting.

The Broadcasting Law does not establish a complaints system for broadcasting. Furthermore, the code adopted by the Lebanese Press Association does not apply to broadcasters, and no code has otherwise been developed for this sector (although the NAC has received and responded to complaints about broadcasting). The Broadcasting Law does provide for rather harsh penalties where a broadcaster breaches any law. For a first violation, the Ministry of Information, on the recommendation of the NAC, can suspend the broadcaster for up to three days. For a second violation within one year, the Council of Ministers, on the recommendation of the minister of information and the NAC, can suspend the station for up to one month (Article 35). Article 3(4) of the Satellite Broadcasting Law also contains a number of content rules and, in case of breach, the Council of Ministers, on the recommendation of the minister of information, may suspend programming for up to one month or even terminate a station’s licence (see Article 4).

Article 42 of the Broadcasting Law gives the minister of information extensive powers to review the financial situation of broadcasters and, if he or she finds them to be operating in substantial deficit, to take remedial measures, which may include a long period of suspension.

6.3. KEY RECOMMENDATIONS

- Regulatory decisions relating to the media should be made by independent bodies. In particular, the government should play no role in the governance of journalists’ and owners’ associations, or the regulation of print media.
- The restrictions on the number of political newspapers should be repealed.
- The limitation of ownership to 10% of a broadcasting company should be repealed and replaced by reasonable

rules limiting overall ownership in the sector, whether measured by market share or the number of broadcasters.

- The rules and conditions on who qualifies to be a journalist should be repealed.
- Journalists should be free to establish their own associations, and the rules formally setting up two associations should be repealed.
- The law should provide protection for journalists who refuse to reveal their confidential sources of information.
- It should not be necessary to obtain authorisation to start a periodical, and there should be no substantive limitations on this; rather, providing limited information about the journal, such as its name and publisher, should be sufficient.
- The minister of information should not benefit from a special right of reply, and the right should be limited, for others, to cases where a legal right of the claimant has been breached by a false statement.
- The statutory system for dealing with complaints and otherwise regulating journalists should be replaced with either a fully independent system or, preferably, a self-regulatory system. Sanctions should be limited to a requirement to make public a statement acknowledging any breaches.
- The NAC should be transformed into an independent body with full decision-making powers regarding broadcast regulation, including licensing and complaints. These should be assessed against a published code of practice and should follow fair procedural rules.
- The minister of information should have no power to review the financial situation of broadcasters; any such power should be vested in the independent broadcast regulator.

Ongoing military conflict and civil unrest has resulted in a chaotic environment for media regulation in Libya, so any liberalisation on the ground has not been accompanied by structural reform.

The situation in Libya is perhaps the most chaotic and transitional in terms of media regulation of any of the nine countries being reviewed in this report, something which has been exacerbated by ongoing military conflicts – including those that followed the June 2014 election of the House of Representatives. Muammar Qaddafi seized power in 1969 and, throughout his 42-year reign, largely prohibited independent media, while retaining tight control over the state-owned media. A number of online media oriented towards Libya did exist, but most were operated from abroad.

A brief quasi-respite came in 2007, when Saif al-Islam Qaddafi (Muammar Qaddafi’s son) initiated the Al-Ghad media project, which involved two semi-private newspapers, *Oea* and *Quryna*, a satellite TV station, Al-Libiyya, and a news agency, Libya Press. These media presented at least the appearance of challenging the state media monopoly, and were popular with Libyans. However, the experiment was short-lived, with Al-Libiyya being closed in 2009 due to its reporting, and the same fate befalling the other outlets shortly thereafter, although some were later reopened under more direct government control.

Following the revolution, the situation changed dramatically, with a very

significant growth in the extent of media freedom, albeit accompanied by other problems such as financial and other forms of instability, insecurity and a lack of professionalism. The interim government, the National Transitional Council (NTC), issued a number of new licences and there was a significant proliferation of media outlets. However, many have closed down, while others have proved unable to operate regularly; professionalism also remains a huge challenge.³² According to Freedom House’s Freedom of the Press 2014 report, which covers 2013:

Libya’s media landscape remains fluid. There was a proliferation of new outlets in the wake of the revolution, but many have since closed due to lack of funding or experienced journalists. There are currently about 50 television channels and dozens of radio stations. Two public dailies, the official state paper *February* and the state-sponsored *Libya*, operate alongside nearly a dozen prominent private weeklies and monthlies published in Tripoli, Benghazi, and Misrata. Hundreds of other newspapers are registered, but many publish only sporadically. . . . There are five main private television news stations and a number of smaller special-interest channels. In some cases, the ownership of these outlets remains unclear.³³

The state media have gone through numerous changes and challenges. In its Decision No. 7, adopted in December 2011, the NTC formally abolished the existing state media and transferred control over their resources and staff to the Ministry of Culture and Civil Society. Control was subsequently passed to the High Media Council, back to the Ministry of Culture and Civil Society and then to the Ministry of Information. Decision No. 7 also decreed that the state media would be reduced in number to one television station, one radio station and one newspaper:

According to Freedom House’s Press Freedom Rankings, Libya went from a score of 94 in the 2011 rankings (which cover 2010) – the lowest in the MENA region – to a score of 60 in 2012 (i.e. relating to 2011). Its score in 2014 was 62, placing it just in the “not free” category and in sixth place among the 19 countries from the region that were rated.

7.1. INDEPENDENCE AND DIVERSITY

Libya’s effective constitution is the Draft Constitutional Charter for the Transitional Stage, adopted in August 2011 by the NTC. Article 13 of the charter protects the “sanctity” and “secrecy” of means of communication, while Article 14 states:

³⁰ *ibid.*

³¹ Thanks to Martin Hillbert, Project Manager, Team Africa, Deutsche Welle Akademie, who provided comments on this section of the report.

³² See “Libya Media Wiki”. Available at: http://en.libyamediawiki.com/index.php?title=Overview#Media_Today.

³³ Available at: <http://freedomhouse.org/report/freedom-press/2014/libya#.VAKJB6W-Q5Q>.



Freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication, liberty of the press, printing, publication and mass media, freedom of movement, freedom of assembly, freedom of demonstration and freedom of peaceful strike shall be guaranteed by the state in accordance with the law.

As with many Arab constitutions, this guarantee is significantly compromised by the fact that it protects these rights only “in accordance with the law”, without placing any conditions on the quality of such laws. Article 35 provides a basis for nullifying previous laws, stating that provisions in existing legislation remain in effect only in so far as they are not inconsistent with the provisions of the charter. The Supreme Court has demonstrated some willingness to strike down laws for failing to respect constitutional guarantees. For example, in June 2012 it struck down Law No. 37, adopted by the NTC, which prohibited the glorification of Qaddafi, insulting “Islam, or the prestige of the state or its institutions or judiciary, and every person who publicly insults the Libyan people, slogan or flag” and any other statement which would “harm the 17 February revolution”.³⁴

The Libyan Constitutional Assembly was elected in February 2014 and given responsibility for drafting a new constitution. This process is supposed to be ongoing, although the continuous political and military conflict in the country has rendered its work difficult.

As with many aspects of post-revolution Libya, responsibility for regulation of the media remains unclear and transitional. In May 2012, the NTC adopted Decree No. 44, which created a High Media Council, the members of which were all appointed by the government. This had broad powers over the media, including, among other things, preparing regulations and draft laws governing the media, granting licences to media outlets, adopting a code of conduct, entertaining complaints against the media, oversight of the state media, and making recommendations as to how members of the Council should be selected in future.

The existence of the Council was short-lived, as the decision to create it and the process for making appointments – along with the content of two other decisions adopted at the same time relating to the state media – led to a huge backlash. Just one month later, in June 2012, some

1,000 media professionals gathered at the Jadu conference which, among other things, elected a new High Media Council in what was something of a grassroots exercise in democracy. The authority of this council was subsequently recognised by the NTC in Decree No. 63, which also transferred responsibility for the state media back to the Ministry of Culture and Civil Society.

In November 2012, the General National Congress, which had replaced the NTC following elections in July 2012, voted to create a new Ministry of Information. This replaced the High Media Council and effectively vested responsibility for regulating the media back with government.

7.2. REGULATORY RULES

The erstwhile almost complete control by the government over the media sector in Libya meant that there was little point in adopting laws or rules governing that sector. Very few would appear ever to have been adopted by the Qaddafi regime and, apart from general rules allocating responsibility for the sector to different actors (noted above), no laws regulating the media appear to have been adopted in the post-Qaddafi period. For example, there are no clear rules or



Libya faces profound challenges on a number of levels, including establishing itself as a viable, peaceful state. Clearly the media have a foundational role to play in this process. While putting in place a clear regulatory framework for the media may not be the first priority for the authorities, this will need to be done in due course.



authority for issuing frequency licences, leading to a lot of interference, especially in Tripoli.

The Law on Publications (Law No. 76 of 1972), modified by Law No. 120 of 1972 and Law No. 75 of 1973, set out some rules governing the print media sector. Article 1 guarantees the right to publish, but only “within the framework of the principles, values and objectives of the society”. This appears to have meant that the right was protected only in so far as it was not used to challenge established governmental norms and practices. The same law apparently limited the right to publish to two public entities: Al Dar al-Jamahiriya and the General Corporation of Press, Professional Unions and Syndicates.³⁵ It is not clear whether this law remains in force.³⁶

A few rules relating to the media are found in Law No. 17 of 2013. Article 14 of that law, for example, states in part:

All candidates in the final list shall use public and private media for

their electoral campaign on equal footing. The Commission shall establish the rules and procedures of electoral campaigning in a manner that guarantees equal airtime in the programmes dedicated for all candidates and the distribution of airtime on all mass media... It is permissible to use electronic mass media for campaigning, as per the provisions of this law.

Article 15 supports this by requiring all mass media to be impartial as regards the election. It is unclear to what extent these rules were respected during the election.³⁷

The former practical constraints on forming journalists’ organisations have fallen away, and journalists have created several new associations. These include the General Union for Libyan Journalists (which aims to become the main national association for media professionals) and the Libyan National Media Union, based in Misrata, as well as a number of media centres and other organisations.³⁸

7.3. KEY RECOMMENDATIONS

Libya faces profound challenges on a number of levels, including establishing itself as a viable, peaceful state. Clearly the media have a foundational role to play in this process. While putting in place a clear regulatory framework for the media may not be the first priority for the authorities, this will need to be done in due course. The recommendations below are rather general in nature, given the lack of existing media legislation.

- The guarantees for freedom of expression and of the media in the new constitution should be robust and should place clear constraints on any laws which seek to limit those freedoms.
- Following the adoption of a new constitution, the Libyan authorities should put in place a broad process of consultation with a view to adopting a set of progressive, enabling rules governing the media in the country, including clear regulatory frameworks for both the private and state/public media.

³⁴ See: www.hrw.org/news/2012/05/05/libya-revoke-draconian-new-law.

³⁵ See “Carnegie Endowment for International Peace: Libya”. Available at: www.google.com/url?sa=t&rc=1&usq=AFQjCNE2v4k-sOn0xrqGBMS2wz3u2J0Sfg&bvm=bv.74115972,d.dGc.

³⁶ According to a 2008 IREX report, the law was at one point repealed. See “Media Sustainability Index 2008”. IREX. Available at: www.irex.org/system/files/MSIMENA08_Libya.pdf. However, it was referred to in Freedom House’s report “Freedom of the Press 2011”. Freedom House. Available at: www.freedomhouse.org/report/freedom-press/2011/libya#.VAKgTKW-Q5Q.

³⁷ For a general report on the election, see “The 2014 Constitutional Drafting Assembly Elections in Libya: Final Report”. The Carter Center. Available at: www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/libya-06112014-final-rpt.pdf.

³⁸ See Freedom House’s report “Freedom of the Press 2014”. Freedom House. Available at: <http://freedomhouse.org/report/freedom-press/2014/libya#.VAKJB6W-Q5Q>. See also “Libya Media Wiki”, op. cit.

8. MOROCCO³⁹

Morocco's new constitution recognises the importance of media regulation in principle, and has a new set of relatively independent bodies to regulate the sector. However, it lacks the structure with which to make these laws effective.

Historically, the state dominated the media sector in Morocco, as was the case in many Arab countries. A gradual process of liberalisation started in 1991 with the creation of the Human Rights Ministry and the Human Rights Council, and continued in 1999 when King Hassan II was succeeded by his son, Mohammed VI. Since that time, the number of private print media publications has grown significantly, to the point where today there are over 600 registered publications, including some two dozen daily newspapers, numerous weeklies and hundreds of magazines, of which some 70% are estimated to be privately owned, along with a number of dominant government publications.⁴⁰

Unfortunately, the broadcasting sector has not seen the same process of liberalisation, despite promises and important legal developments. These include *Décret-loi n° 2-02-663 portant suppression du monopole de l'État en matière de radiodiffusion et de télévision* (September 10th 2002), which formally brought to an end the state monopoly on broadcasting; *Dahir n° 1-02-212 portant creation de la Haute Autorité de la Communication Audiovisuelle* (August 31st 2002) – the HACA Law, which created HACA, a special body to regulate broadcasting; and *Dahir n° 1-040257 portant promulgation de la loi n° 77-03*

relative à la communication audiovisuelle (January 7th 2005) – the Broadcasting Law, which established the rules for the broadcasting sector.

An initial licensing process in 2006, overseen by HACA, resulted in a number of new licences being issued, but only one private television licence (despite a number of applications) in addition to ten private radio licences. A second licensing process, in 2009, resulted in a further four private radio licences, bringing the total to around 19. Today, however, there are no private television stations in Morocco. The station licensed in 2006, now called Média 1 TV, was originally a joint French–Moroccan partnership. However, changes in ownership initially led to it being fully Moroccan-owned, with the state holding the majority of the shares⁴¹ and, later on, attracting foreign investment.⁴²

In terms of the Freedom House Press Freedom Rankings, in 2013 Morocco scored 66 points, putting it in the “not free” category. Globally, it was 149th out of the 197 countries that were assessed.

8.1. INDEPENDENCE AND DIVERSITY

Article 25 of the 2011 Constitution guarantees the rights to freedom of expression and publication, among other things. Article 28, for its part, focuses on

freedom of the press, which is guaranteed to everyone within the limit of the law, while prior censorship is prohibited. There are also general statements about organising the media sector in an independent and democratic manner that promotes access by citizens to means of expression so as to ensure linguistic, cultural and political diversity. This article also calls on the organ established by Article 165 (which is, in practice, HACA) to promote this pluralism.

Article 165 falls under the general heading of “Commissions (or Authorities) of Good Governance and Regulation”. It states that HACA is responsible for promoting the pluralistic expression of opinions and thought, and the right to information in the area of broadcasting, in accordance with the fundamental values of civilisation and the laws of Morocco. There is no mention of independence in this article relating specifically to HACA – unlike the National Human Rights Council, the Ombudsman and the Competition Commission – but Article 159 provides generally that all such bodies shall be independent.

In terms of the independence of regulatory bodies, Morocco stands somewhere between Tunisia, with its relatively robust models of independence, and other Arab countries, which suffer

from significant government control. In terms of print media, while there are rules on how they must function, these tend to be applied via legal actions before the courts rather than by an administrative entity or the government. Journals and periodicals – defined very broadly in Article 11 of *Dahir n° 1-58-378* of November 15th 1958, as modified by Law No. 77-00 of October 23rd 2002 (the Press Law) – are required to file a declaration with the public prosecutor associated with the court of first instance in the area where their head office is registered before they may commence publication. The process is a technical registration system (see below) but, in any case, prosecutors are supposed to be relatively independent of government.

There is also a relatively light touch towards the regulation of journalists (again, see below). A key regulatory function relates to the issuing of press cards. These are issued by the government (the governmental authority responsible for information, according to Article 5 of *Dahir n° 1-95-9 portant promulgation de la loi n° 21-94 relative au statut des journalistes professionnels* (22 February 1995 – the Journalists' Law)), but after consultation with the press card commission. The latter is made up of a government representative, who is the chair, along with four representatives of the journalists' association and four representatives of the Federation of Newspaper Publishers.

HACA (or “the Authority”) was created by the HACA Law in 2002. The law does not describe the Authority as being independent. Pursuant to Article 6 of the law, the governing board has nine members, of whom five, including the chair, are appointed by the king, two by the prime minister and one each by the presidents of the two chambers of Parliament. The separation of sorts between the king and the government means that this is not quite as entirely government-controlled as the rules might suggest, and in fact appointments have been reasonably independent, but it still lacks the structural attributes that characterise real independence.

Article 7 of the law prescribes a number of rules relating to incompatibilities, or functions which are incompatible with being a member of the board, such as holding an elected position, being a public official (except for a teacher) or holding any other remunerative position that might compromise one's independence. Members are also prohibited, with some minor exceptions, from receiving any funding or benefits from the broadcasting sector, as a sort of conflict of interest rule. They are also required to file asset and activity declarations, and to update them every three years (Article 7b). Their salaries and other benefits are linked to existing positions – namely ministers and members of parliament – which helps to bolster their independence (Article 10). The prime minister sets a maximum budget allocation for HACA, but the detailed budget is developed by the board (Article 18).

An important limitation here is that HACA may only issue a call for broadcasting licence applications on the request of the government, which ultimately means that the government controls the number of licensed broadcasters. However, as described below, it is HACA which is responsible for allocating the actual licences to individual broadcasters.

Diversity is not fully embedded in the licensing system for broadcasters, in the sense of this being a key criterion to be taken into account in the award of licences. Indeed, the approach has been to leave these criteria to be developed by HACA in the context of individual licensing competitions rather than to include them in the Broadcasting Law.

At the same time, both HACA and the Broadcasting Law make a number of references to diversity as an important broadcasting value. Article 3(13) of the HACA Law describes the promotion of respect for pluralistic expression and different currents of thought as one of the functions of HACA. Article 22 tasks HACA with putting in place the necessary rules to, among other things, promote respect for pluralistic expression

of thought and opinion and ensure equitable space in broadcasting for a wide range of stakeholders.

There are a number of references to diversity in the Broadcasting Law. Article 3 refers to the free nature of broadcasting and the need to exercise broadcasting freedom in a way that respects the diverse and pluralistic nature of expression, so as to capture all currents of thought and opinion. Article 4 again refers to the importance of pluralism in freedom of expression when noting that broadcasters are free to conceive their own programmes.

The Broadcasting Law imposes clear limits on the concentration of ownership and control over broadcasting enterprises. Article 19 requires HACA generally to ensure that changes in the ownership of licensed broadcasting services do not undermine diversity of ownership. Article 20 provides that no one legal or moral person may control, directly or indirectly, more than 51% of the capital or voting rights of a licensed broadcasting service. Article 21 provides that a legal or moral person with shares in one broadcasting enterprise may not own more than 30% of the capital or voting shares in another such enterprise, or control that enterprise, either acting alone (which can happen with less than 30% of the shares) or in concert with others. Article 22 contains cross-ownership rules which effectively limit those with interests in broadcasting from participating in the ownership of more than one periodical, and vice versa.

In terms of financial rules, only Moroccans can provide funding to local periodicals (Articles 12 and 20 of the Press Law), but no such limit is imposed on broadcasters. Advertising rates must be set annually in advance for periodicals, and no other rates than these may be charged (Article 19 of the Press Law). For broadcasters, rules on advertising, including the maximum amount of advertising, will be included in their *cahiers des charges* or licences (Article 65 of the Broadcasting Law). Broadcasters are also required to carry official messages, for example to ensure public order, although it is not clear whether or not these are to be carried for free (Article 10).

³⁹ Thanks to Said Essoulami, Director of CMR-MENA, and Saad Filali Meknassi, Moroccan freedom of information activist/expert, who provided comments on this section of the report.

⁴⁰ See, for example, “Morocco – Media Landscape”. European Neighbourhood Journalism Network. Available at: www.journalismnetwork.eu/index.php/_en/country_profiles/morocco/.

⁴¹ See “Projet de Collecte de Données Statistiques sur les Marchés Cinématographiques et Audiovisuels dans 9 Pays Méditerranéens: Monographies nationales: 2. Maroc”. Euromed Audiovisuel III. Available at: <http://euromediaudiovisuel.net/Files/2013/03/26/1364299652831.pdf>.

⁴² See: www.lavieeco.com/news/economie/les-emiratis-prennent-pied-dans-l-audiovisuel-marocain-29390.html.

There would appear to be limited taxation and other rules to support the financial viability of the media. According to one source, the state provides quite a substantial stipend to be allocated to newspapers that abide by certain conditions set by the Ministry of Communication and the Moroccan Federation of Newspaper Editors.⁴³

8.2. REGULATION OF JOURNALISTS

As already noted, there is only limited regulation of journalists, mainly through the vehicle of issuing press cards. There are no direct restrictions on who may be considered a journalist, but it is a crime to present oneself as a journalist if one has not been provided with a press card (Article 11 of the Journalists' Law). To qualify for a press card, one must work as a journalist, or in a related field (e.g. as a cameraman or translator), as one's principal, regular and paid profession (Article 1). This must be for Moroccan media outlets – whether print or broadcast, and whether for one or more outlets – although providing press cards to foreign journalists is also envisaged (Articles 19–21). Importantly, only those who have worked for two years qualify for a press card; trainee cards are issued to those with less than two years' experience (Article 8).

Press cards are issued, and may be withdrawn, by the government on the advice of the press card commission, which is made up mainly of representatives of the Journalists' Syndicate and the Federation of Newspaper Publishers, along with a representative of the Ministry of Communication as chair. The journalists' union, the *Syndicat de la presse*, has historically been very political, and a significant percentage of journalists are not members. Furthermore, although the government needs to consult with the commission, it retains ultimate discretion as to whether or not to issue a card. Cards may be withdrawn for a final sentence involving immoral behaviour (which is not defined), for a violation of the Press Law or for failing to observe the ethical rules of the profession, which

is again not defined. There are some procedural protections here, including the right to appear before the commission with counsel.

Both the Journalists' Law and the Press Law provide for a right to access sources of information, within the limits of the law (Articles 4 and 1 respectively), but the right to protect one's confidential sources of information does not appear to be safeguarded.

8.2.1. Regulation of print media

As noted above, the system of registration for periodicals in Morocco is a technical registration system, whereby those wishing to publish a periodical simply have to register their details with the authorities, although commencing publication without going through the formalities is prohibited. In this case, again as noted, the relevant authorities are the public prosecutors of the court of first instance in the area where the head office of the aspirant media outlet is registered. The declaration of registration must be in triplicate, signed by the director, and contain a range of information about the director, the printer and the title, mode of publication, financial resources, language and legal incorporation details of the periodical. Any change in these details must be provided to the court within 15 days.



The separation of sorts between the king and the government means that HACA is not quite as entirely government-controlled as the rules might suggest... but it still lacks the structural attributes that characterise real independence.



An interim receipt (*récépisse*) must be provided immediately, and a proper receipt must be provided within 30 days; the receipt is the evidence of registration (Articles 3, 5 and 6).

There are a few rules relating to periodicals. If they do not commence publication within one year of registration, the registration fails. Every periodical must have a director, who must be an adult living in Morocco who enjoys his or her civil rights and has never been deprived of those rights (Article 4). The address of the printing house must be carried on the periodical, and four copies of each issue must be provided to the government (and two to the court) (Article 8). If there is a majority shareholder, that person must be the director (who is legally responsible for the publication). Otherwise, the president of the board or equivalent must be the director (Article 15).

The rules on the right of reply for periodicals are found in Articles 25 and 26 of the Press Law. A correction must be provided where a public authority notifies a periodical that it has published inaccurate reports about the work or functions of that authority. A right of reply must be granted to anyone who has been named or identified in a periodical. The reply must be carried

for free, as long as it is not more than twice the length of the original article, in which case a fee may be charged for the excess. It should be noted that these are extremely broad and onerous rules regarding the right of reply, which may cause newspapers to think twice before they mention someone in an article.

The rules on the right of reply for broadcasters, found in Article 10 of the Broadcasting Law, are much narrower. In this case, a broadcaster is required to carry a reply, at the request of HACA, in cases where someone has suffered harm from a programme that was broadcast by the station due to it undermining his or her dignity or it being false. A very slightly different formulation is found in Article 5 of the HACA Law, which calls for a right of reply where someone has suffered harm due to the broadcasting of a programme which undermines his or her honour or which is manifestly false.

The Press Law contains a large number of rules about what sorts of content may not be published in newspapers, and even gives the Ministry of the Interior the right to seize copies of newspapers in certain cases (e.g. where the content threatens public order, attacks Islam or the king, or undermines Moroccan sovereignty over the Sahara region). However, it does not provide for a system of complaints from the public regarding unprofessional conduct, or for the establishment of a code of conduct for print media.

8.2.2. Regulation of broadcasting

No one may engage in broadcasting without a licence from HACA (see Articles 5 and 13 of the Broadcasting Law). The National Agency for Regulating Telecommunications is primarily responsible for allocating frequencies (in bands) to be used for broadcasting, and HACA then assigns those frequencies to individual broadcasters. As noted above, calls for expressions of interest in obtaining a broadcasting licence are made by HACA, but only at the request of the government.

The Broadcasting Law contains only rather general rules on the specifics of licensing. Pursuant to Article 25, the

rules applicable to any call for licences, including the criteria for assessing competing licence applications, are to be set by HACA in advance of the tender. The law sets out the types of issues that need to be covered in any rules adopted by HACA – such as the object of the competition, the conditions for participating, what must be included in an application and the criteria for allocating licences – but it does not provide even a general framework for actual rules for licence competitions. Similarly, Article 26 sets out in some detail what types of issues should be addressed in the *cahier des charges* or licences for broadcasters, but does not provide any actual rules. In other words, HACA is given broad discretion to set rules in both of these very important areas. There are no rules relating to community broadcasters or even an attempt to recognise this sector, although the Broadcasting Law does envisage the issuing of short-term licences for the purpose of broadcasting temporary cultural and related events.

Article 18 sets out the rules governing who may bid for a licence. This is restricted to Moroccan companies in which someone with experience in broadcasting holds at least 10% of the shares, and in which at least 51% of the shares are held either by one person (which is also the maximum number of shares any one person may hold) or by a group of investors bound together by an agreement. For its part, Article 8 imposes some general obligations on broadcasters, for example that they must provide pluralistic and accurate information; that they must encourage national audiovisual productions; that they must cover as much of the country as possible; that they must present political issues objectively, without favouring any particular political party; and that their overall programming must reflect diversity of opinion in a more general sense.

Neither the Broadcasting Law nor the HACA Law establishes a proper system for public complaints or for setting minimum professional rules, for example via a code of practice or conduct.

Article 4 of the HACA Law provides for HACA to receive complaints from political parties, unions and certain types of associations regarding a violation of the law or regulations by licensed broadcasters. Article 15 of the same law provides generally that HACA investigators should monitor broadcasters to ensure that they are abiding by their licences and the relevant laws and rules. But these roles are quite different from the complaints function undertaken by many broadcast regulators, which requires them, among other things, to adopt a clear code of conduct and to establish clear rules for processing complaints. At the same time, Article 3(8) of the HACA Law provides generally that HACA has the power to ensure that all relevant stakeholders respect the law, and this has been used as a basis for entertaining all types of complaints.

8.3. KEY RECOMMENDATIONS

- The structural independence of HACA should be enhanced, for example through a more robustly independent appointments process.
- Full powers to issue calls for broadcasting licences should be vested in HACA, rather than it having to wait for government approval to do this.
- Diversity should be made an explicit criterion for deciding between competing licence applications, so as to give effect to the provisions of Article 28 of the constitution.
- Consideration should be given to relaxing the rules on who may obtain a press card, in order to include part-time and volunteer journalists, as well as journalists who have less than two years of experience.
- The right of journalists to protect the identity of their confidential sources of information should be guaranteed by law.
- The rules on the right of reply for periodicals should be engaged only where a false statement causes harm to the legal interests of the claimant.
- A proper complaints system should be put in place for both the print and broadcast media.
- More detailed direct rules on broadcasting, both of a procedural and substantive nature, should be included in the Broadcasting Law – among other things, so as to reduce the discretion of HACA in this area.

⁴³ See "Morocco – Media Landscape", op. cit.

9. PALESTINE⁴⁴

Despite complex political, social and geographical restrictions, there is a proliferation of both print and broadcast media in Palestine. The existing legal framework should be reviewed in order to support the development of a fully independent sector.

Palestine has historically been well regarded for its lively print media. However, in the period immediately prior to the 1993 Oslo Accords there were limited Palestinian media. Only established newspapers, such as *Al-Quds*, which has been published in East Jerusalem since 1951, were still active. Since Oslo, however, there has been a significant proliferation of media in Palestine, including a number of daily newspapers, both government-controlled and private. The greatest growth, however, has been in the area of broadcasting, and there are dozens of public and private radio and television stations.⁴⁵

In assessing the media environment in Palestine since Oslo, it is necessary to take into account the complex relationship with Israel and the degree of control, in particular over frequencies, exercised by Israel, which the Oslo Accords failed to address properly. It is also necessary to consider not only the political divisions that emerged between the West Bank and the Gaza Strip in 2007⁴⁶ (and the geographical divide), but also important social and developmental differences, as well as the fact that the two territories

operate at least in part under different legal systems. The Palestinian media, for example, are heavily concentrated in the West Bank, where the legacy of Jordanian laws often applies alongside laws adopted more recently by the Palestinian Authority. At the same time, the key legal rules – namely the 2002 Palestinian Basic Law,⁴⁷ Law No. 9 of 1995 (the Press and Publications Law or PPL)⁴⁸ and the Decision of the Council of Ministers No. 182 of 2004 Concerning the Regulation of the Licensing of Radio, Television, Satellite and Wireless Stations (the Broadcasting Decision) – apply in both territories.

9.1. INDEPENDENCE AND DIVERSITY

The Palestinian Basic Law, which effectively serves as the constitutional foundation for Palestine, provides a very general guarantee of freedom of expression, as per Article 19, which protects the right to express opinions in any form, but subject to “the provisions of the law”. As with guarantees in other Arab countries, this last phrase seriously undermines the value of the guarantee, since it may essentially be abrogated by

any law. Article 27 guarantees media freedom, providing for freedom to establish mass media outlets – albeit with sources of funding subject to “censorship of the law” – and prohibiting censorship, except in accordance with the law and pursuant to a judicial decision.

An application for permission to issue a print publication must, pursuant to Article 20 of the PPL, be made to the director general of press and publications at the Ministry of Information. The minister of information shall decide on an application within 30 days, giving written reasons for any refusal, and his or her decision may be appealed to the High Court of Justice.

There is also no independent regulatory body for broadcasting in Palestine. Instead, licensing and other decisions are, pursuant to the Broadcasting Decision, undertaken by a tripartite committee made up of the Ministry of Interior, the Ministry of Information and the Ministry of Telecommunications and Information Technology, all government bodies. Within the tripartite committee, the Ministry of Interior looks after security issues and grants security approval, the

Ministry of Information is responsible for media content, and the Ministry of Telecommunications and Information Technology allocates frequencies. Following the political divide in 2007, this role has been undertaken in Gaza by the General Administration for Press and Publication Department, affiliated to the Ministry of Information and the Governmental Media Office.

Palestinian law does not include any specific rules limiting concentration of ownership within, or cross-ownership between, media sectors. In terms of diversity more generally, there is no proper system for promoting diversity via licensing in broadcasting. However, the Broadcasting Decision does at least provide, in Article 13(3), that broadcasters shall respect the rights and freedoms of others, promote pluralism of information and ideas and respect principles of objectivity in news reporting.

The Paris Economic Protocol, which is annexed to the Oslo Accords, limits the ability of the Palestinian Authority to grant special commercial or tax benefits to the media, for example in relation to equipment. Law No. 1 of 1998 (the Law on the Encouragement of Investment in Palestine) encourages “investment to achieve the objectives and priorities for development in Palestine”. One element of this is to provide exemptions from customs duties and other taxes for investors. However, media businesses are not covered by this, and investment in this sector requires approval from the Council of Ministers (see Article 4).

As in Jordan, instead of supporting tax rules, publications are required to have a minimum “registered capital” of 25,000 Jordanian dinars (approximately \$35,000)⁴⁹ for a daily and a less substantial sum for non-dailies and specialised publications. It is not clear if these rules are still applied.

9.2. REGULATION OF JOURNALISTS

Formally, journalists in the West Bank are subject to the Jordanian Journalists’ Syndicate Law (Law No. 17 of 1952), a

Jordanian law which was applied to the West Bank. This law provides that only members of “the Syndicate” (presumably the Palestinian Journalists’ Syndicate or PJS) may work as journalists. According to the rules of the PJS, to be a member one has to be practising journalism for a media outlet. However, these rules are not applied in practice and the PJS will defend journalists who are not members, for example when they face legal challenges. Furthermore, Article 1 of the PPL provides that a journalist is someone who “undertakes Journalism as a profession or source of income, in accordance with the provisions of this Law”. Given that the PPL was adopted by Palestinian officials after the Jordanian Journalists’ Syndicate Law, its provisions may be assumed to dominate.

Article 4(d) of the PPL includes, as one of the attributes of freedom of the press, a right of journalists to protect their sources as follows: “The right of a Press Publication, news agency, editor and journalist to keep confidential the sources of information or news obtained, unless the court, during the review of a criminal case, decides otherwise for the protection of the security of the State, the prevention of crime or the realisation of justice.” This rule, although cast in terms of the print media, is applied to journalists working in the audiovisual media as well, in the absence of a dedicated broadcasting law. This rule does not, however, appear to be well respected in practice.⁵⁰

9.2.1. Regulation of print media

According to Article 16 of the PPL, only resident citizens can own publications (which are classified as dailies, non-dailies and specialised publications), although non-resident citizens may obtain authorisation to own a publication from the Ministry of Interior. Furthermore, Article 17 restricts those who may hold licences to journalists or companies of journalists. Pursuant to Article 9, publications cannot receive funds from foreign states, and may only receive funds from “external” NGOs with the permission of the minister of information.

The application form for a licence to publish must contain information about the publication (language, address, periodicity, etc), its owner and the editor-in-chief, as well as its authorised capital and a statement signed by a bank to the effect that it has sufficient reserves to cover its employees’ salaries for six months (Article 18). The law also includes conditions regarding the editor-in-chief, who must be a resident journalist who is competent in the language of the publication, who does not play any role relative to any other publication, who has not been convicted of a crime of honour or dishonesty, and who does not benefit from legal immunity (Article 11). The law also imposes minimum registered capital requirements on publications, as noted above.

Procedurally, also as noted, licences are issued by the minister of information, and are subject to a court appeal. The law envisages applications being refused, but does not indicate what would justify a refusal to issue a licence.

Articles 25 to 29 of the PPL set out detailed rules regarding the right of reply. This arises whenever a publication prints incorrect information, at which point the person concerned may demand either a reply or a correction (no indication is provided as to when each would apply) (Article 25). A concerned authority may also demand a right of reply for incorrect information “related to the public interest” (Article 26). These rules also bind foreign publications and, in case of a failure of such a publication to respect these rules, the minister of information may apply any “measures which he deems appropriate” (Articles 27 and 29). A reply may be refused where the matter has been “accurately and adequately corrected”; where the reply is under a pen name or in a different language from the original article; where the content violates the law or is against public order or morals; or where the request is made more than two months after the original article was published.

⁴⁴ An important source of information for this chapter was “Assessment of Media Development in Palestine: Based on UNESCO’s Media Development Indicators”. UNESCO. (The author was the international advisor for this report.) Available at: www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/assessment-of-media-development-in-palestine/. Thanks also to Saorla McCabe, Assistant Programme Specialist, Division for Freedom of Expression and Media Development, UNESCO, who provided comments on this section of the report.

⁴⁵ See “Media Landscapes: Palestine”. European Journalism Centre. Available at: http://ejc.net/media_landscapes/palestine.

⁴⁶ These now come under the reconciliation agreement signed between Fatah and Hamas in April 2014.

⁴⁷ The Basic Law was passed by the Palestinian Legislative Council in 1997 and ratified by President Yasser Arafat in 2002.

⁴⁸ Available at: http://books.google.ca/books?id=ujOgzr5JKLkC&pg=PA127&lpg=PA127&dq=Palestine+Press+and+Publications+Law+No.+9+of+1995&source=bl&ots=uU_YVn3qgl&sig=D6lRdHnQc8dZdN11e9PHIXiKbY&hl=en&sa=X&ei=OqK6U_HaAsr-8AGq0lCoBQ&ved=0CClQ6AEwAQ#v=onepage&q=Pal%20Press%20and%20Publications%20Law%20No.%209%20of%201995&f=false.

⁴⁹ The PPL uses Jordanian dinars as a currency.

⁵⁰ See “IHCRC 18th Annual Report”. Independent Commission for Human Rights. Cited in “Assessment of Media Development in Palestine”, op. cit.

10. SYRIA⁵²

There are limited systems for complaints against publications in Palestine. Complaints committees have been established by both PJS branches⁵¹ – in Gaza (2011) and the West Bank (2012) – but neither has adopted a code of conduct and there have been very few complaints to either body. Formally, Article 8 of the PPL requires journalists to respect ethical rules and sets out a very basic framework for these rules, while Article 48 provides for fines and even imprisonment of up to one month for breaches of these rules.

9.2.2. Regulation of broadcasting

There is no broadcasting law in Palestine, and the rules on broadcasting – contained mainly in the Broadcasting Decision – are fairly general in nature. Applications for a licence to operate a private broadcaster must be submitted to each of the three ministries that form the tripartite committee, which examine the applications separately and then together. If approved, two licences are issued: a frequency and technical licence by the Ministry of Telecommunications, and a professional and content licence by the Ministry of Information. Reasons must be provided for any refusals, and the applicant can appeal to the courts against a refusal.

There are no clear legal criteria upon which decisions to grant or refuse a broadcasting licence are based. Article 12 of the Broadcasting Decision sets out conditions for editors-in-chief of broadcasters which are similar to those for print media outlets, namely being a resident Palestinian citizen who holds a degree in media or communications, who has relevant practical experience and who has not been convicted of an offence of honour or dishonesty.

Allocation of frequency spectrums is complicated in Palestine, and this has been further complicated by political considerations. The Oslo Accords did generally recognise the right of Palestinians to engage in broadcasting, but only allocated very limited frequencies to this end, all of which were allocated to the public broadcaster. In practice, the authorities have allocated licences to use additional frequencies, but this remains a grey area. Due to the relative overcrowding of the airwaves in the West Bank and the imminence of the digital switchover, the tripartite committee stopped accepting new applications for broadcasting licences in 2008.

There are no special provisions for community broadcasters in Palestine. However, a number of private broadcasters do present themselves as having either general public service or more specific community orientations, along with some educational stations, such as Al-Quds Educational Radio, which works in conjunction with Hona Al-Quds Community Radio, and Birzeit University Radio.

There is no proper system for regulating broadcasting content or for handling complaints against broadcasters, although the Ministry of Information does formally have the power to engage in this sort of regulation.

9.3. KEY RECOMMENDATIONS

- The power to regulate the media should be vested in independent bodies rather than in the government.
- Rules on concentration of ownership of the media should be adopted, and diversity should be an important consideration when licensing broadcasters.
- The registered capital and other minimum capital reserve rules for publications should be removed.
- The rule about journalists belonging to “the Syndicate” should be formally repealed, and anyone should be free to form their own association or union for journalists.
- The rules on establishing publications should be transformed into a technical registration system, with no power to refuse to license or register aspirant media outlets.
- The right of reply should be engaged only where the publication of a factually false statement has breached the rights of the claimant; the authorities should not have a special basis for claiming a right of reply.
- Proper complaints systems, with clear codes of conduct overseen by independent bodies, should be put in place for both the print and broadcast media.
- A fully fledged broadcasting law should be adopted, establishing an independent broadcast regulator along with clear rules and criteria for licensing different types of broadcasters, including community broadcasters.

The current situation in Syria means there are more pressing concerns than the development of an independent media. However, there is still a requirement for regulatory reform in the medium to longer term.

The government of Syria has exercised extensive control over both the print and broadcast media throughout recent times. There was a brief and limited flowering of the print media after Bashar al-Assad first became president in 2000, when a number of private publications were licensed, essentially for the first time since the 1963 *coup d'état* by the Arab Socialist Ba'ath Party. However, most owners had close ties to the government and, in any case, this period was short-lived and was reined in with the adoption of a new and repressive 2001 Press Law, Decree No. 50 of 2001.⁵³ Broadcasting remains largely a government monopoly; the authorities have issued licences to satellite television stations based in the Damascus Free Zone, but these are prohibited from carrying “political” reporting (i.e. news). A number of private FM radio stations have also been licensed, again on the condition that they are not allowed to broadcast news.⁵⁴

The current situation, where the government has lost control of large parts of the country, has undermined its

ability to enforce its repressive legal framework for the media. This has led to some broadcasters attempting to carry more news, albeit at risk of retaliation from the authorities. This period has also witnessed the emergence of local opposition newspapers, social networking sites and online news sites and webcasting.⁵⁵ Syria got a score of 88 in Freedom House's Press Freedom Rankings for 2013, earning it a rating of “not free” and placing it in 189th place out of 197 countries.⁵⁶ This is partly due to the fact that a state of emergency imposed in 1963 remained in place until 2011.

10.1. INDEPENDENCE AND DIVERSITY

A new Syrian constitution was adopted in February 2012, largely in an attempt to legitimise the current government. It eliminates the constitutionally supported Ba'ath Party monopoly over the leadership of the Syrian state and limits one person to two presidential terms of seven years. Article 42(2) guarantees

freedom of expression generally, while Article 43 guarantees “freedom of the press, printing and publishing, the media and its independence in accordance with the law”. The emphasis on print media here is significant, along with the limitation of the guarantee to matters that are in accordance with the law. There is no mention in the new constitution of bodies that regulate the media.

As in many countries in the region, the government exercises direct control over numerous aspects of media regulation. Pursuant to Legislative Decree No. 50 of 2001, adopted on September 22nd 2001 (the Press Law),⁵⁷ it is the prime minister who allocates licences to print media outlets. As noted above, only a few licences have been allocated to broadcasters, and this has also been done directly by the government.⁵⁸

In 2011, a new law – Legislative Decree No. 108 of 2011 (the Media Law)⁵⁹ – was adopted. This purports to introduce important changes to the regulation



⁵¹ The PJS, in a reflection of the political division, also split into West Bank and Gaza branches.

⁵² Due to lack of access to either primary materials (i.e. translated laws) or experts with direct knowledge of the situation in Syria, this chapter of the report relies entirely on secondary sources, the accuracy of which it was not possible to verify fully.

⁵³ See, for example, “Syria's Crisis of Expression”, by Akram al-Bunni. Available at: www.scpss.org/lbbs/spaw/uploads/files/Articles/Syria_Crisis_of_Expression.pdf.

⁵⁴ See, for example, “Syria: Media Landscape”. Available at: www.journalismnetwork.eu/index.php/_en/country_profiles/syria/brief.

⁵⁵ See, for example, “The role of social media in the present Arab uprisings” and articles on Syria by J. Harkin and H. Gherr in *Westminster Papers in Communication and Culture*, Volume 9, Issue 2, April 2013.

⁵⁶ See: <http://freedomhouse.org/report/freedom-press/2013/syria#U7vx0KW-Q5Q>.

⁵⁷ Much of the information on the Press Law is drawn from “Memorandum to the Syrian Government, January 31, 2002: Decree No. 50/2001: Human Rights Concerns”. Human Rights Watch. Available at: www.hrw.org/legacy/background/mena/syria/. See also “Restructuring Radio Broadcasting in Arab Countries”. Panos Paris Institute. Available at: http://omec.uab.cat/Documentos/dades_med/0073.pdf.

⁵⁸ The first private satellite broadcaster, Sham TV, operated for a short period of time during 2004–2005 from outside the Damascus Free Zone, but ceased operation. The cause of this is contested – it was shut down before it began news broadcasts, but also because it was reluctant to move in order to operate from the Free Zone. It was also in competition with the newly licensed Dunya TV, a nominally private enterprise that nonetheless had government political and financial backing.

⁵⁹ There is also Legislative Decree No. 10 of 2002, which provides for and regulates private commercial radio stations, but not private television.

of the media sector but, so far, has not delivered results.⁶⁰ It establishes a National Council of Information, which enjoys formal legal and administrative autonomy but which is “linked to the cabinet” and otherwise lacks structural independence from the government. The Council has a general duty to regulate and organise the media and information sector, including setting the conditions and granting licences for different media. So far, it is unclear how the Council will operate, and there appears to be little evidence that it has begun to engage earnestly in media regulation. The precise relationship between the new law and the 2001 Press Law is not clear.

As noted above, diversity has never been a goal of media regulation in Syria, which instead has sought to ensure government control over the sector. The new Media Law does make a general reference to preventing media monopolies, but does not appear to establish how this will be done.

The Media Law makes general references to a number of issues relating to tax and commercial benefits. The National Council of Information is to specify the rules governing both direct and indirect support for media outlets, whatever these may be, and also to set maximum percentages of advertising vis-à-vis total content. Media outlets are required to allocate a minimum of 5% of their

advertising space to free public interest advertisements. Finally, media outlets are required to maintain their financial accounts in accordance with trade law, and these may be inspected to ensure that this is being done properly.

10.2. REGULATION OF JOURNALISTS

Legislative Decree No. 58 of July 27th 1974 establishes the official Journalists’ Syndicate. Article 9 of this law defines the practice of journalism as processing “journalistic raw material by means of comment in its various forms and reporting it in printed, broadcast or photographic form, or by way of studying, translating or comparing it”. The same article describes a journalist as someone “whose main income is from journalistic work”. Article 11 requires the Syndicate to prepare a list of all its members and to classify them as working journalists, trainee journalists or associate journalists. The article also states that a journalist does not have the right to work as a journalist until his or her name is on the list and the list has been ratified by the minister of information.

Article 13 imposes minimum training requirements for those wishing to register as journalists: two years for people with a higher degree, four years for those with secondary education, and six years for those without secondary education. Neither working nor trainee journalists

may practise any other profession. Both print and broadcast journalists must be members of the Syndicate in order to obtain press cards, which are issued by the minister of information and are only valid for one year (Articles 27 and 28). In recent years there have been some attempts by journalists to break the monopoly of the Journalists’ Syndicate by starting alternative or rival syndicates.⁶¹

The 2011 Media Law also sets out some rules for journalists, including that they are not allowed to receive financial support (either directly or indirectly) through working to prepare or post advertisements.

The Media Law provides some protection to journalists who refuse to reveal their confidential sources of information, although they may still be ordered to do so by the judiciary.

10.2.1. Regulation of print media

The 2001 Press Law provides for a system of licensing of print media. The prime minister is responsible for the issuing of licences for publications, and can refuse “to grant a licence for reasons he deems to be related to public interest”; he or she may, furthermore, impose wide-ranging conditions on licensees (Article 12). Periodicals are divided into political and non-political publications, of which only the former can carry news. The prime minister may also cancel a licence if the licensee violates its terms (Article 24). Pursuant to Articles 9 and 10, the minister of information must approve all foreign publications, and may ban them if he or she deems them likely to undermine national security or offend public morality. Licensed publications may not receive foreign funding (Article 55(b)).

The Press Law also places restrictions on who may own a periodical: this is limited to those who have been Syrian Arab nationals for longer than five years, are over 25 years old, hold a university degree and have not been stripped of their civil or political rights (Article 16). Conditions are also placed on directors and editors-in-chief. The former must have



“The current situation, where the government has lost control of large parts of the country, has undermined its ability to enforce its repressive legal framework for the media.”



⁶⁰ Much of the information on the 2011 Media Law comes from “President al-Assad Issues Legislative Decree on Media Law”. Posted on August 29th 2011 at: <http://imra.org.il/story.php3?id=53556>. See also “Public service broadcasting in the MENA region: potential for reform”. Panos Paris Institute and Mediterranean Observatory of Communication. Available at: <http://iwsaw.lau.edu.lb/publications/documents/PSB-Book.pdf>.

⁶¹ See “Syrian Journalists Union: Speaking for the Other Side”. Posted on February 22nd 2012 at: <http://english.al-akhbar.com/node/4451>.

a university degree or have practised journalism for a minimum of six years (Article 18), while the latter must have a university degree and have practised journalism for a minimum of ten years (Article 19). Any changes in the owner, director or editor-in-chief must be submitted for approval to the Ministry of Information. Refusals may be appealed to the courts (Article 20).

Pursuant to the 2011 Media Law, licensing functions are supposed to be undertaken by the National Council of Information, but licensing decisions only become effective once ratified by the cabinet, again asserting ultimate political control over the process. The ban on foreign funding is maintained, and the rules provide for an appeal to the administrative courts against any refusals to provide a licence.

Article 30 of the Press Law provides for a right of correction or reply (once again, the rules on when each applies are not properly defined) whenever a newspaper publishes reports about the work of public authorities.

10.2.2. Regulation of broadcasting

Article 19 of the 2011 Media Law creates a National Audiovisual Council with many powers in relation to broadcasting, such as making recommendations about the allocation of licences to private broadcasters and monitoring broadcasting content. However, the Council is not independent, with Article 19 stating that it shall be “connected with the Council of Ministers”. Furthermore, its powers are essentially recommendatory, since major decisions, for example regarding licensing, have to be approved by the cabinet (Article 49).

10.3. KEY RECOMMENDATIONS

The current situation in Syria clearly means that there are more pressing needs than reforming the regulatory system for the media. However, there is still a requirement for regulatory reform in the medium to longer term, and the recommendations below capture the main reforms needed when the appropriate time arrives.

- A strong constitutional guarantee of freedom of expression and of the

media, which is not subject to the law, should be adopted.

- Regulation of the media should be undertaken by independent bodies. If this is to be done by the National Council of Information, the Council should be transformed into an independent body.
- Clear anti-monopoly laws should be adopted for the media sector.
- The statutory basis for the Journalists’ Syndicate should be abolished, and journalists should be free to establish their own organisations and unions.
- Conditions on who may be considered to be a journalist (and be issued with a press card) should be repealed.
- The system of licensing for print media should be replaced with a technical registration system, and conditions such as those placed on owners, directors and editors-in-chief should be repealed.
- A fully fledged regime for broadcasting should be put in place which promotes the licensing of different types of broadcasters, including private broadcasters with a mandate to carry news.

Following the 2011 revolution, Tunisia is the only country in the Arab world with a truly independent media regulatory structure. There have, however, been delays and attempts to undermine the effectiveness of these new bodies.



Prior to the success of the Tunisian revolution in driving out former President Ben Ali on January 14th 2011, the print media sector in Tunisia had been largely dominated by state newspapers, newspapers owned by the ruling party (the Democratic Constitutional Rally) and private newspapers, most of which had close ties to the ruling elite. The state-run national news agency, Tunis Afrique Presse, also played a dominant role, as local newspapers were legally required to rely on it as their main source of information about Tunisia. There were also a few small opposition newspapers, which struggled to survive. In terms of broadcasting, there were state broadcasting channels, two private satellite television stations and a handful of FM radio stations, again all largely aligned one way or another with the ruling party.

On March 2nd 2011, the Independent National Authority for Reform of Information and Communication (INRIC) was created with a mandate to drive forward reform in the media sector. One of the early reform needs identified by INRIC was to open up the broadcasting environment so as to create a more level playing field for the upcoming elections (among other things). It conducted a quasi-formal licensing process for both

radio and television in June and September 2011 respectively, recommending the licensing of 12 new radio stations and five new television channels. As a result of this process, and an opening up of the space for newspapers, in the initial period after the revolution numerous new newspapers were launched and a number of new radio and television stations were authorised.

Despite these important changes, there are ongoing problems in transforming the media environment, in part due to a lack of political will on the part of the governing authorities.⁶³ Although the former media outlets largely repositioned themselves in the immediate post-revolution environment, matters have become more complicated in the medium term, with an array of competing political actors, including some powerful figures from the previous period (in some cases buoyed up by their media holdings). The opening up of the broadcasting environment has slowed, due in part to the approval process but also the non-implementation of the new Broadcasting Law. There are also major challenges relating to professionalism and a lack of legal clarity, not to mention internal struggles which have undermined the implementation of some of the new laws that have been adopted.

11.1. INDEPENDENCE AND DIVERSITY

Tunisia adopted a new constitution in January 2014. This contains a fairly standard guarantee for freedom of expression and of the media, including a prohibition on prior censorship (Article 31). Of particular relevance to the issue of media regulation, Article 127 establishes an Audiovisual Communication Commission to oversee the development of the audiovisual communication sector and to guarantee freedom of expression and of the media, as well as the existence of a “pluralistic and fair media”. To achieve these goals, the Commission will have regulatory powers and must also be consulted on relevant draft laws. It will be composed of nine “independent, impartial and experienced members”, who will have a six-year tenure, with one-third (i.e. three) of the members being replaced every two years. Significantly, earlier proposals for this provision included the idea of a generic body to regulate the information sector, including media and access to information; but opposition to such an all-powerful and integrated body, which is not found in democracies, resulted in the changes that were reflected in the final version of the constitution.⁶⁴

Tunisia distinguishes itself from other countries in the Arab world by the fact

that, at least on paper, it has, since the January 14th 2014 revolution, created truly independent structures of media regulation.

A new law, *Décret-loi n° 2011-115 du 2 novembre 2011, relatif à la liberté de la presse, de l'impression et de l'édition* (the Press Law), was adopted in late 2011 and radically transformed the rules governing the print media sector. At the same time, it should be noted that this law has yet to be fully implemented, and there remains some confusion about its relationship with older laws, in particular the Penal Code.

Under the Press Law, registration of periodicals is done via filing a declaration with the Court of First Instance, which has territorial competence in that area. Not only is this a truly technical registration system, but it is carried out via independent bodies, namely the courts. Article 8 of the Press Law also creates an independent commission to issue press cards to journalists. The commission is to be composed of seven members as follows: a judge from the administrative tribunal; three members nominated by the most representative journalists' organisation; one member representing the directors of public media outlets; one member proposed by the most representative organisation of Tunisian newspaper owners; and one member proposed by the most representative organisation of private broadcasting directors. Although this body has still not been created, it is at least robustly independent in its structure.

A similarly independent approach was taken in the broadcasting sector, pursuant to *Décret-loi n° 2011-116 du 2 novembre 2011, relatif à la liberté de la communication audiovisuelle et portant création d'une Haute Autorité Indépendante de la Communication Audiovisuelle* (the Broadcasting Law), adopted on the same day as the Press Law. The creation of the regulator – the Haute Autorité Indépendante de la Communication Audiovisuelle (HAICA) – was, like the press card commission, delayed for nearly 18 months, but the members were finally

appointed in May 2013. Given that it is the only independent body of its kind in the Arab world, it is worth elaborating in some detail on the rules that apply to it. The intended relationship of this body to the new Constitutional Commission created by Article 127 is unclear, but they are structured sufficiently similarly to be the same body.

Article 6 of the Broadcasting Law creates HAICA and states that it is independent (both financially and administratively) and that no one should interfere with its operations. Article 7 provides for the appointment of its nine members, who are required to be independent experts, as follows: one nominated by the Tunisian president, after consultation with HAICA, who shall be the president;⁶⁵ two judges nominated by the organisations which represent the largest number of judges; two nominated by the president of the Parliament; two nominated by the organisations which represent the largest number of journalists; one nominated by similar organisations representing non-journalist audiovisual professionals; and one nominated by the most representative organisations of media owners. Individuals who, during the last two years, have held governmental or political positions may not be nominated, and nor may individuals who have financial interests in media or communications businesses.

Members are appointed for six years, non-renewable, with one-third of the members being appointed every two years. Members may only be removed by a vote of the other members (after being given an opportunity to be heard) if they have missed three consecutive meetings without cause, violated the secrecy of deliberations or violated other rules pertaining to members (Article 8). Members may not, during their mandates, engage in political activities or receive any financial benefits from sources other than HAICA (Articles 10 and 11). Their salaries and benefits are set by decree (Article 14). HAICA also has budgetary autonomy and is financed from a range of sources to prevent overdependence on any one

source (Article 23). Taken together, this is an impressive array of means of guaranteeing HAICA's independence.

Both the Press Law and the Broadcasting Law include clear rules on concentration of ownership. Article 33 of the Press Law prohibits anyone, whether a moral or a legal person, from controlling more than two current affairs or general periodicals (or more than one in the same language), or from controlling more than 30% of the total market share of such periodicals. Any person who wishes to acquire control of a periodical must inform the Competition Commission in advance, which may then investigate the matter (Article 35).

The Broadcasting Law fails to set out clear licensing criteria, and so does not include diversity as one of these criteria. However, it refers in several places to the importance of diversity as one of the goals of the system of broadcast regulation. For example, Article 5 states that the exercise of freedom of expression is based, among other things, on the principles of “pluralism in the expression of ideas and opinions” and “objectivity and transparency”. Promoting diversity is also one of the main objectives of HAICA (Article 6): references to diversity and pluralism feature heavily in Article 15 (on the principles that underpin broadcast regulation) and they are referred to again in Article 16 (on frequency planning). Therefore, even if the rules on licensing are rather general, HAICA certainly has sufficient powers to promote diversity.

Only limited tax and other commercial benefits are accorded to the media in Tunisia. One such benefit is the exemption on paying taxes – both import and value added – that newspapers enjoy in relation to newsprint.⁶⁶

11.2. REGULATION OF JOURNALISTS

Tunisia does not impose licensing requirements on journalists, unlike many countries in the region. However, Article 7 of the Press Law does include a rather restrictive definition of who is a journalist,

⁶² Thanks to Kamel Labidi, Tunisian journalist and former president of the National Commission to Reform Information and Communication, who provided comments on this section of the report.

⁶³ See, for example, “Tunisian Media In Transition”, by Fatima el-Issawi. Carnegie Endowment for International Peace, Washington.

⁶⁴ See “Note on Freedom of Expression provisions in Latest Draft of Tunisian Constitution”. Centre for Law and Democracy. Posted on June 19th 2013 at: www.law-democracy.org/live/tunisia-freedom-of-expression-in-draft-constitution/.

⁶⁵ The Decree Law is not clear about how the first round of appointments should be made. In practice, President Marzouki consulted with the former president of INRIC on who should be the first chair of HAICA.

⁶⁶ See “Assessment of Media Development in Tunisia: Based on the UNESCO Media Development Indicators. UNESCO. Available at: <http://unesdoc.unesco.org/images/0022/002227/222701e.pdf>.



Article 127 establishes an Audiovisual Communication Commission to oversee the development of the audiovisual communication sector and to guarantee freedom of expression and of the media.



and who is therefore entitled to obtain a press card. In particular, that article defines journalists as individuals who have a degree or equivalent qualification and whose primary activity and source of income involves gathering information and ideas, and publishing them via a media outlet. The article does go on to include a range of related roles – such as assistants, translators and cameramen – within the definition of a journalist, but the definition remains unduly narrow.

Article 11 of the Press Law protects the right of journalists not to reveal their confidential sources of information. This right may not be undermined either directly or indirectly, for example by searches, investigations or interceptions of correspondence or communications, or even by putting pressure on journalists. However, subject to judicial control, journalists may be required to reveal their sources for urgent reasons of national security or where this is necessary to prevent or investigate offences involving a serious risk of physical harm to others, assuming that the information cannot be obtained by other means.

11.2.1. Regulation of print media

There is no licensing system for the print media under the Press Law; indeed, prior authorisation for publications is explicitly ruled out by Article 15. Instead, aspirant publishers simply need to file a paper declaration with the local Court of First Instance, with a stamp containing information about the director and each administrator (name, date of birth,

nationality), the publication (name, field of interest, address and periodicity), the printer, the language(s), etc. A receipt shall be provided against delivery of this declaration, which effectively serves as proof of registration (Article 18).

A few rules do apply to periodicals. According to Articles 16 and 17, they must have an editor-in-chief, who must be a Tunisian national of at least 30 years of age with full civil and political rights (similar requirements apply to the director). There are also a few rules about employing journalists. General information dailies, for example, must have editorial committees composed of at least 20 professional (i.e. card-carrying) journalists employed on a full-time basis, along with at least half that number again of freelance journalists. There are also rules about transparency, including financial transparency (Articles 23 and 24); about setting clear rates for advertising (Article 26); and about foreign funding, which may only be used for certain purposes such as training (Article 28).

Articles 39 to 46 establish the rules on the right of rectification and reply. The law does not clearly define these two remedies, but it seems that the former may be what is more commonly known as a right of correction. It may be claimed by anyone who has a direct and legitimate interest in the publication of erroneous information, while the right of reply may be claimed by anyone whose personal rights have been harmed by a

publication. A reply of up to 200 lines must be provided for free and without further comment. There are fines for a failure to respect these rules, but replies may be rejected where the media outlet has already published an effective rectification; where more than six months have passed since the original article was published; or where the reply is against the law or harms the legitimate interests of third parties or the reputation of the author of the original article. A reply may be claimed by a representative of a group where the article attacks the dignity of the group based on its origin, gender or religion.

The National Union of Tunisian Journalists, in its former guise as the Association of Tunisian Journalists, adopted a code of ethics in 1983. Union members are required to sign a form committing them to complying with the code. There is no proper complaints system for applying the code, however, and there are no other complaints systems for the print media.

11.2.2. Regulation of broadcasting

HAICA is responsible for licensing broadcasters, although the specific rules governing this are rather sketchy in nature. Article 15 of the Broadcasting Law sets out a number of principles which govern the regulation of broadcasting, such as promoting democracy and human rights (including freedom of expression), strengthening the broadcasting sector (including the public, private and community sectors), supporting the public's right to know, avoiding undue concentration of ownership, encouraging

high-quality programmes, promoting the widest possible distribution of services and ensuring strong training programmes, among other things.

Article 16 gives HAICA the power to undertake the licensing of broadcasters and to consult with the body responsible for frequencies to make sure there are appropriate allocations of frequencies for broadcasting. The rules are rather general as to the criteria or processes for allocating licences, but this could presumably be addressed through regulation.

Article 16 notes that HAICA's responsibilities include the promotion of non-profit "associative" or community broadcast media, and this also finds support in Article 15, which refers to promoting the three broadcasting sectors – public, private and community – as one of the objectives of broadcast regulation. The law falls short, however, of setting out specific rules for these broadcasters.

The Broadcasting Law fails to refer to the idea of a code of conduct for broadcasters, or to any professional complaints system, although it does impose a number of restrictions on what may be broadcast. It also includes a reference to the powers of HAICA to regulate broadcasters during elections, including in relation to certain forms of content (see, for example, Article 40).

11.3. KEY RECOMMENDATIONS

- The commission to issue press cards should be constituted forthwith.
- The definition of who is a journalist should be broadened, for example to include individuals who only work part-time as journalists.
- The rules on periodicals should be reviewed and revised so as not to impose unduly rigid constraints on those wishing to establish new print media outlets.
- More effort should be put into establishing a proper system of professionalisation and complaints for both the print and broadcast sectors.
- Clear rules setting out both the criteria and procedures for licensing broadcasters should be adopted; these should also provide for special procedures for licensing community broadcasters.



12. CONCLUSIONS

This report highlights state dominance of traditional media in the MENA countries, and emphasises the need for truly independent regulatory bodies in order to support an autonomous media and the free circulation of information.



The Arab world remains one of the less developed regions of the world in terms of media development and freedom. In most of the countries in the region, state media continue to dominate the information space. This is particularly true of the broadcast sector, where private players are relatively new entrants in many countries or operate under structural constraints in others, but it is also true of the print media sector in some countries. Although this was not the subject of this report, other reports for this project describe how, in most cases, state media operate under a significant degree of government control rather than as independent public service broadcasters. As a result, it remains the case that government-oriented media play a very significant role in the broadcasting ecology of most countries in the region, to the detriment of the public's right to know. At the same time, online media are starting to offer a real alternative to the more state-controlled traditional media in some countries, and this development promises to be an ongoing opportunity in the region.

Running in parallel to and supporting this "on-the-ground" media structure are the systems of media regulation that are in place in countries in the

Arab world. Many countries have nicely phrased constitutional guarantees for both freedom of expression and media freedom, along with, in some cases, specific constitutional provisions relating to the institutional framework for media regulation.

In many countries, the primary guarantees of freedom of expression and of the media may be overridden by ordinary laws. This fails to reflect more robust constitutional guarantees, as well as international guarantees, which recognise the possibility of restricting media freedom by law but place strict conditions on those laws. Under international law, for example, any law which restricts freedom of expression is deemed legitimate only if it serves one of a short list of protected interests – such as the rights of others and national security – and if it is also "necessary" to protect those interests.

It is relatively common to find specific constitutional prohibitions against media censorship; more common, indeed, than in more established democracies. In some cases, however, these are ineffective due to the fact that they may be waived or overcome, for example in situations of emergency such as in Egypt and Jordan.

A few of the more recent constitutions, in particular those of Egypt and Tunisia, include specific provisions requiring the establishment of regulatory bodies for the media. In both cases the bodies are, according to the constitution, required to be independent and to promote positive media values such as independence, freedom of expression and media diversity. In both cases, however, the new constitutions were only adopted in January 2014, so it remains to be seen how effective they will be in promoting the creation of properly independent media regulators. The history of the region, and also of other regions, suggests that while constitutional rules are helpful, they are not, of themselves, sufficient to guarantee independent or human rights-compliant regulation.

In practice, from among the countries studied, only Tunisia has really moved forward with the creation (at least in law) of truly independent media oversight bodies – and, even there, this has been problematic, including because of delays and attempts to undermine the effectiveness of the new bodies. In every other country in the region, the government continues to exercise significant control over the regulation of the media, both in law and in practice.

Formally, this control is most often exercised in relation to the print media sector, where regulatory functions are often conducted directly by ministries of information. In some countries, this is justified by a legal fiction that these are just registration systems, so that it is not necessary to establish independent bodies to conduct these functions. However, many of these systems are tantamount to licensing requirements, so that, in practice, the ministry can exercise extensive power over the sector, thus emphasising the need for independent regulation.

A growing number of countries in the region have now established formally autonomous bodies to regulate broadcasting, although in several this remains a function of the ministry of information. However, only Tunisia has established a properly independent body in the more substantive sense of that word (i.e. so that government does not control the regulatory body through its control over the process of making appointments to the board). In some countries, although an autonomous regulator has been established, true regulatory power – in the sense of the power to decide who actually gets a licence – remains with the ministry of information or the cabinet.

The matter is more complicated, and more hidden, in relation to journalists' associations. Many countries continue to regulate journalists as professionals in the same way as doctors or lawyers, although it is clear under international law that this is not legitimate because the subject matter of the work of journalists involves a human right, unlike that of other professionals. As a result, it is common for the legislative framework to provide for a single statutory journalists' syndicate with special powers of protection and the provision of benefits to members, contrary to international standards pursuant to which journalists should be free to organise themselves as they might wish. In many countries, there is an unfortunately close relationship between these mandatory syndicates and the

government, representing another channel for governmental influence over the media.

Only a few countries in the region have proper rules prohibiting undue concentration of media ownership, once again most notably Tunisia. While concentration of ownership has not yet begun to manifest itself in most countries, this is precisely the time to put in place rules to prevent it. It is extremely difficult to deconstruct monopolies once they have emerged, as the experiences of countries like Italy and Thailand clearly demonstrate.

Another important way to promote diversity, at least in the broadcasting sector, is through the licensing process, where a contribution to diversity can be a key licensing criterion. However, no country in the region has put in place robust systems to promote diversity through the broadcast licensing process, although there are general references to it here and there.

Very few countries in the region have put in place taxation or other commercial regimes to promote the development of the media sector, although a few have provided for tax-free benefits for some media inputs, such as newsprint.

Almost all countries in the region impose some sort of restrictions on who may be a journalist, over and beyond a simple (albeit problematic) requirement to belong to a particular syndicate. In many countries, this consists of minimum requirements of education or on-the-job training (for example as an intern). While superficially attractive, these sorts of rules almost always create opportunities for control over the profession and/or unnecessary rigidities, and they rarely have any positive impact on professionalism, their purported justification.

Most countries have fairly strong legal provisions regarding the protection of journalists' confidential sources of information. Practice here seems to vary, with some countries providing good

actual protection in this area, while others are less effective in practice.

Many countries, as noted, impose what essentially constitute licensing regimes on the print media sector, sometimes explicitly so and sometimes in the form of registration systems that allow for discretionary refusals to register, often on vague or non-explicit grounds. Lebanon takes a peculiarly problematic approach, providing for overall limits on the number of news periodicals. Most countries also impose some sort of structural requirements on print media outlets, whether in the form of paid-in capital rules, rules regarding structure or constraints on who may serve as director and/or editor-in-chief.

Rights of reply and correction are well established across the region. Although there are some differences in terms of when and how these rights arise, in most countries the barrier to this is unduly low, for example whenever an erroneous report affects someone rather than when someone's legal rights are infringed. Several countries also vest special rights of reply in public authorities, purportedly to protect the overall public interest but presumably in practice more as another vehicle for influence over the media.

The idea of binding professional standards in the form of codes of practice or conduct, linked to a complaints system, is not well established in the region. A few journalists' associations have developed professional standards, and some also have disciplinary bodies, but established and active complaints systems are largely unknown for both the print and broadcast media sectors.

Even in those countries which have dedicated broadcasting laws, systems for licensing broadcasters tend to be relatively underdeveloped. Few of these laws set out clear rules on the criteria for deciding between competing licence applications or the procedural rules regarding applications for licences. Similarly, few include comprehensive sets of rules for broadcasters as to their responsibilities, whether in

terms of positive content obligations (e.g. minimum quotas for children's programming or nationally produced content), requirements to keep master recordings for a set period of time or rules on respect for intellectual property rights. Finally, almost no countries have recognised community broadcasting as a special broadcasting sector, or put in place rules to promote the development of this sector.

This report has not systematically reviewed the rules governing regulation of the internet, which are often linked to wider telecommunications regulation. A few countries in the region have put in place specific regulatory rules governing online sources of information – most notably Jordan, where such rules are embedded in the Press and Publications Law. This is particularly problematic given the potential of the internet to break down traditional patterns of excessive governmental control over the media.

12.1. RECOMMENDATIONS

- Clear constraints should be placed on the power of ordinary laws to limit

constitutional guarantees of freedom of expression and of the media.

- The practice of providing for independent media regulatory bodies (which serve various human rights objectives) in a country's constitution should be promoted.
- Print media should not be required to obtain a licence to operate, and regulatory powers over print media should be exercised by independent bodies.
- Similarly, fully independent bodies with plenary powers should be responsible for regulation in the broadcasting sector.
- Extreme care should be exercised to ensure that any regulatory rules governing online media respect international and constitutional guarantees of freedom of expression.
- There should be no statutory conditions on who may practise as (or be considered to be) a journalist.
- Any statutory rules establishing journalists' associations or syndicates should be repealed, and journalists should be free to establish such associations or unions as they wish.
- Rules prohibiting the undue concentration of media ownership should be put in place

in countries across the region.

- Diversity should be introduced as a criterion to be taken into account when licensing broadcasters.
- Countries in the region should consider introducing tax or other commercial benefits to support the development of the media sector.
- Rules on the protection of journalists' confidential sources of information should be applied robustly.
- Rigid and unnecessary constraints on the structure or other operations of print media outlets should not be imposed.
- Rights of reply should be limited to cases where a media report undermines the legal rights of the claimant, and public authorities should not be able to claim special rights of reply.
- Effective complaints systems for both the print and broadcast sector should be put in place across the region, based on published codes of conduct and fair procedures for dealing with complaints.
- Properly developed systems should be put in place regarding broadcast regulation, including systems for the criteria and procedures for deciding on licence applications.



In many countries, the primary guarantees of freedom of expression and of the media may be overridden by ordinary laws. This fails to reflect more robust constitutional guarantees, as well as international guarantees, which recognise the possibility of restricting media freedom by law but place strict conditions on those laws.





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