



LICENSE TO CENSOR:

THE USE OF MEDIA
REGULATION
TO RESTRICT PRESS
FREEDOM



A FREEDOM HOUSE SPECIAL REPORT

License to Censor

**THE USE OF MEDIA REGULATION TO
RESTRICT PRESS FREEDOM**

SEPTEMBER 2011



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ABOUT FREEDOM HOUSE

Freedom House is an independent watchdog organization that supports the expansion of freedom around the world. Freedom House supports democratic change, monitors freedom, and advocates for democracy and human rights. Since its founding in 1941 by prominent Americans concerned with the mounting threats to peace and democracy, Freedom House has been a vigorous proponent of democratic values and a steadfast opponent of dictatorships of the far left and the far right. Eleanor Roosevelt and Wendell Willkie served as Freedom House's first honorary co-chairpersons. Today, the organization's diverse Board of Trustees is composed of a bipartisan mix of business and labor leaders, former senior government officials, scholars, and journalists who agree that the promotion of democracy and human rights abroad is vital to America's interests.

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LICENSE TO CENSOR:

The Use of Regulation to Restrict Media Freedom

INTRODUCTION

In some parts of the world, the threats to press freedom are explicit and often violent. Journalists are murdered or imprisoned, states maintain strict media monopolies, and domestic audiences are cut off from foreign news sources. Such unambiguously hostile conditions typically elicit strong responses from international advocacy groups and democracies that are committed to defending freedom of expression. However, in a much broader range of countries, governments are using the more subtle tools of media regulation to restrict press freedom, maintaining a veneer of legality and pluralism that is less likely to draw attention or criticism from abroad. Manipulation of the regulatory framework allows leaders to either tolerate or rein in influential news outlets depending on the political situation, and permits even democratically elected governments to fortify themselves against future electoral competition.

This special report describes the primary types of media regulation that are used to restrict press freedom, including:

- statutory controls on licensing and registration;
- the creation of nominally independent regulatory bodies with built-in avenues for political influence;
- legal imposition of vague or burdensome content requirements

Official actions sometimes represent the normal application of highly restrictive laws, while in other cases executive or judicial authorities act arbitrarily, outside the bounds of the law, or in an overtly politicized manner. Government efforts to promote statutory regulation can be particularly effective when self-regulatory mechanisms like media councils or ombudsmen are nonexistent or perceived as weak or underutilized.

Through a detailed examination of such threats in eight different national media environments—Ecuador, Georgia, Indonesia, Lebanon, Pakistan, South Africa, Uganda, and Zimbabwe—this study assesses the growing danger they pose to media freedom worldwide and provides recommendations on how to counter the negative trend.

BACKGROUND

Historically, some degree of regulation has been imposed on all types of media, but broadcast media have usually been subject to a wider range of government controls, including more stringent licensing rules, tighter restrictions on content, and limitations on private or foreign

ownership. This discrepancy can be attributed in part to the argument that while the number and character of print outlets are limited only by demand and financing, broadcast media rely on the airwaves, a finite public resource, meaning access must be parceled out and regulated by the state.

One must distinguish between regulation that is minimal—for example, a pro forma requirement to simply register a new outlet—and regulation that entails extensive, broadly worded, or onerous licensing requirements, which can be enforced selectively as a method of control. In freer countries, the predominantly private print media are generally unregulated or self-regulated, and both private and public-service broadcast media have traditionally been subject to limited state regulation. In less free media environments, print media outlets are often subject to state-imposed statutory regulation, while the broadcast sector in many cases remains mostly or entirely under state control.

In addition to the technical differences between print and broadcast media that have led to greater regulation of the latter, many governments have regarded broadcast outlets as a greater potential threat, largely because of their ability to overcome literacy barriers and reach larger audiences. Broadcast media can also transmit live events, leaving little opportunity for the authorities to censor information after the fact. Such concerns have led incoming or maturing authoritarian regimes to make dominance of the national broadcast sector a high priority.

For example, after taking office as president of Russia in 2000, Vladimir Putin moved to assert control over broadcast media through coerced buyouts, a campaign of intimidation against billionaire businessmen with media assets, and concerted efforts to purge foreign-produced content from many radio stations. More recently, the government of President Hugo Chávez in Venezuela refused to renew the terrestrial broadcast license of the popular Radio Caracas Television (RCTV), accusing the outlet of supporting a failed coup attempt and thus breaching broadcast regulations. The closure of RCTV has been followed by the withdrawal of dozens of private radio licenses. Similar approaches have prevailed in other parts of the former Soviet Union and in the Middle East, with governments maintaining a firmer regulatory grip on broadcasting than on print.

The increased manipulation of regulatory controls in recent years is in many ways a response to a longer-term trend of diversification of broadcast media, which has been reflected in successive editions of Freedom House's annual *Freedom of the Press* report. In some cases, as part of broader democratic openings or economic privatization programs over the last two decades, governments have introduced new laws allowing the establishment of private outlets where previously only state-run broadcasters were permitted. Other factors include the spread of international or regional satellite broadcasters, as well as nationally focused satellite stations that operate outside the target country's borders. No longer inclined or able to engage in direct, across-the-board censorship, the authorities in many countries have turned to more selective controls, using licensing and regulatory frameworks in a politicized way to cripple only those outlets that are seen as a threat to the government.

METHODS OF CONTROL

The use of regulatory mechanisms to restrict media freedom can take a number of forms. Official control over the regulatory process can be built into the legal framework from the outset, through either restrictive licensing laws or the processes for appointing the leadership of a regulatory body. However, even in countries with a relatively well-constructed legal framework, the laws can be selectively applied or misused to close critical outlets, and political leaders can exert informal, extralegal influence over nominally independent regulators.

Licensing Rules

The most overt form of media restriction entails outright state monopolies. While these still exist in a number of highly repressive media environments, the majority of countries now permit some form of private ownership of broadcast media. In most cases, private outlets exist alongside state-run counterparts, although the private-public ratio varies by country and region.¹ It is important to note that state ownership does not necessarily lead to politicized control over content and the loss of editorial independence. In practice, however, truly independent public-service broadcasting has been difficult to achieve except in democratic countries with a long history of such institutions. In Eastern Europe and Southern Africa, for instance, nominally independent public broadcasters that were formed in the 1990s following major democratic openings remain subject to pressure from government officials and political parties. A case in point is the South African Broadcasting Corporation (SABC), a state-owned entity that is broadly perceived as presenting viewpoints that align with those of the ruling African National Congress (ANC) party. In more restrictive media environments, state-run media dominate the landscape and serve as mouthpieces for the government.

Licensing is the primary method by which the initial establishment of private media outlets can be regulated. International best-practice standards call for minimal notification or registration requirements, which should not be used as a basis for denying an outlet permission to function or for governing content. Licensing of print media is rare in more open environments, while in more restrictive media environments print media are subject to licensing procedures that range from the simple, as in Pakistan, to the extremely onerous, as in Zimbabwe.

Licensing systems are also sometimes imposed on journalists themselves. Best practice calls for open access to the profession, with no licensing process or other criteria—such as membership in a particular professional body or educational credentials—for aspiring journalists.² Again, such requirements are less common in more open and democratic media environments, but they exist to varying degrees in transitional or authoritarian media systems, and in some cases they are used as an overt method of control over the media. A recent report for

¹ Steve Buckley et al., *Broadcasting, Voice, and Accountability: A Public Interest Approach to Policy, Law, and Regulation* (Ann Arbor: University of Michigan Press, 2008), p.50.

² Buckley et al., *Broadcasting, Voice, and Accountability*, p. 141–44.

the Center for International Media Assistance found that in over quarter of the more than 100 countries examined, the state plays some role in licensing journalists.³

By contrast, most countries, including democratic states, have traditionally featured significant regulation of private broadcast outlets, typically including licensing and frequency allocations by an official regulatory body. Ideally, an independent, nonpartisan entity adjudicates requests for licenses and spectrum according to a clearly defined legal process, and in a transparent and unbiased manner, so that media diversity is not compromised.⁴ Regulatory bodies following this model are common in North America and Western Europe, as well as in a number of other democratic settings. For example, in Mali, while the law requires broadcasters to be licensed in order to receive a frequency and operate, the rules are straightforward, bureaucratic procedures and financial hurdles are minimal, and the regulatory body in charge functions independently.⁵

However, in less open systems, laws regulating broadcast licensing can provide ample opportunities to restrict the dissemination of news and information. Exorbitant licensing fees can bar new entrants to the market, perpetuating the dominance of state media. In Jordan, a new licensing system that took effect in 2003 required high fees only for channels that intended to broadcast political news; as a result, most new outlets air only music and other entertainment programming.⁶

Licenses may also be denied to outlets with foreign ownership, and such rules are sometimes enacted to target certain troublesome news sources. As part of a sweeping “media industry development” decree issued in Fiji in June 2010, foreign ownership in any outlet—whether print or broadcast—was capped at 10 percent, leading to the forced sale of the *Fiji Times*, one of the country’s oldest independent newspapers and a strong voice for democratic values.⁷

Geographical restrictions similarly serve to limit the reach and influence of private outlets. A government may retain for itself the right to operate outlets with a national reach, allowing smaller private outlets to operate only in certain geographic areas or with a limited reach because of the equipment or technology available to them.

Additional burdensome measures could include requirements that force an outlet to reregister every year, or to provide excessive personal information about the owners or staff when applying for a license or registration.

³ Steven Strasser, *Registering Reporters: How Licensing of Journalists Threatens Independent News Media* (Washington, DC: Center for International Media Assistance, National Endowment for Democracy, 23 November 2010).

⁴ Buckley et al., *Broadcasting, Voice, and Accountability*, p. 156.

⁵ “Practice Note: Rural Community Radios in Mali,” ICT Regulation Toolkit, <http://www.ictregulationtoolkit.org/en/PracticeNote.3153.html>.

⁶ Committee to Protect Journalists (CPJ), “Jordan,” in *Attacks on the Press 2004* (New York: CPJ, 14 March 2005), <http://cpj.org/2005/03/attacks-on-the-press-2004-jordan.php>.

⁷ Pacific Freedom Forum, “New Controls over Media Industry and Journalists Deepen Loss of Free Speech, Says PFF,” International Freedom of Expression Exchange (IFEX), 30 June 2010, http://www.ifex.org/fiji/2010/06/30/media_decree/.

Licensing restrictions that focus on content, as with the Jordanian system described above or Lebanon's restrictions on political news content, allow governments to foster a commercially vibrant private media sector while curtailing critical news coverage. In the most extreme cases, outlets might be legally required to submit planned programming for preapproval and possible censorship by the state. In Syria, for instance, the Ministry of Information closely monitors content to ensure adherence to government policies and directives.

In other settings, content restrictions may feature a prohibition on broadcasting news, or conversely, a requirement to broadcast government-produced news material. In India, private FM radio stations are not allowed to broadcast news content, while in neighboring Bangladesh, private outlets are required to air selected government-produced news segments (in addition to their own programming) as a condition of their operation. In Venezuela, all registered broadcast outlets are required to carry the president's speeches simultaneously and whenever they occur. The cable arm of RCTV in Venezuela was suspended for more than a year and allowed back on the air in early 2010 only after it agreed to this condition.⁸

Legal restrictions on broadcast content can also contain provisions that are overly vague, giving the regulator wide discretion in its enforcement decisions. In recent years, a number of countries—including India, Pakistan, and Turkey—have tried to regulate coverage of terrorism, particularly material that could be seen as assisting or glorifying terrorist acts. However, industry groups in the countries involved have raised concerns that broadly worded strictures could be misapplied.

One such measure already in force is Venezuela's 2004 Law for Social Responsibility in Radio, Television, and Electronic Media, which prohibits broadcast stations from airing content that could "promote, defend, or incite breaches of public order" or is "contrary to the security of the nation."⁹ A December 2010 amendment to the Organic Law of Telecommunications extended the authority of the country's National Telecommunications Commission (CONATEL) to withdraw the license of any broadcaster that violated the law more than once, and shortened license terms from 20 to 15 years; however, a controversial provision that would have required owners of outlets to reregister with CONATEL in person was withdrawn from the final bill.

Laws on Regulatory Bodies

Legislation establishing an official regulatory body would ideally ensure its independence from the political branches of government, political parties, and economic interests. This means insulating the regulator from improper influence over its membership, appointments, financing, and decision-making process.¹⁰ However, these laws can also be crafted in a way that both limits the regulatory body's autonomy from the outset and grants it such authority that the government can use it to ensure official control over important parts of the media landscape.

⁸ Reporters Without Borders, "RCTVI Agrees to Carry President's Speeches, Allowed Back on Air," IFEX, 26 February 2010, http://ifex.org/venezuela/2010/02/26/rctv_national_broadcaster/.

⁹ CPJ, "CPJ Condemns Two Media Laws," IFEX, 22 December 2010, http://www.ifex.org/venezuela/2010/12/22/two_reforms_approved/.

¹⁰ Buckley et al., *Broadcasting, Voice, and Accountability*, p. 156.

A number of recent laws demonstrate various governments' intent to control the broadcast sector, either directly or through an obedient regulatory body. For example, the Kenya Communications (Amendment) Act of 2009 gave the minister of information the power to exercise editorial control over broadcast content and to seize broadcast stations and equipment. It also established a communications commission appointed by the minister, including four sitting government officials, plus a chairman appointed by the president. The commission would have the power to issue broadcast licenses and impose heavy fines and prison sentences for various offenses.¹¹ The law was heavily criticized, and may be ameliorated by draft legislation intended to bring existing statutes into compliance with the new 2010 constitution by strengthening the independence of Kenya's regulatory bodies.¹²

Botswana's December 2008 Media Practitioners Act established a nominally independent Media Council tasked with upholding ethical standards and ensuring media freedom. However, the legislation did not contain supporting provisions to ensure the council's independence; in fact, it is financially dependent on the government, and its members are all appointed by the minister of communication. This compromised body was nevertheless granted broad powers over the accreditation of journalists and the supervision of media conduct.

Such moves to ensure control over the regulator through legislation can occur even in a relatively well-established democracy. In the second half of 2010, as part of a wide-ranging package of changes to the media laws, Hungary enacted legislation that merged two existing entities into a new National Media and Infocommunications Authority (NMHH). The prime minister was granted the power to appoint the president of the NMHH for a nine-year term, without limits on reappointment. The NMHH president also chairs a new, ostensibly autonomous Media Council, whose four other members are appointed by the parliament; the ruling party currently holds a two-thirds legislative majority. The Media Council has the authority to censure and impose high fines on media outlets for broadly worded content violations, including failure to provide "balanced coverage."¹³ All types of media, including online outlets, will be required to register with the NMHH. These changes were criticized by the opposition, press freedom groups, and the Organization for Security and Cooperation in Europe (OSCE). Some provisions were softened by amendments passed in March 2011 after an outcry from the European Union, but press freedom groups and the OSCE representative on media freedom continued to express concerns that the laws had the potential to curb diverse and critical views.¹⁴

¹¹ Media Institute, "Government Proposes Draconian Law for Regulating Media Content," IFEX, 2 December 2008, <http://www.ifex.org/en/content/view/full/98985>.

¹² Article 19, "New Media Laws Must Meet International Standard," IFEX, 18 February 2011, http://www.ifex.org/kenya/2011/02/18/new_media_laws/.

¹³ International Federation of Journalists, "Journalists Question Hungary's Leadership of Europe as Media Law Provokes Outrage," IFEX, December 23, 2010, http://ifex.org/hungary/2010/12/28/media_law_passed/.

¹⁴ International Press Institute (IPI), "IPI Renews Objections to Media Law Following Amendments," IFEX, 11 March 2011, http://www.ifex.org/hungary/2011/03/11/renewed_objections/.

It is important to note that even when good laws have been passed, implementation may lag severely, creating a vacuum of power and responsibilities. In Zambia, legislation to establish an Independent Broadcasting Authority (IBA) was passed in 2002, but the regulator has not yet been set up, and the Ministry of Information has apparently taken an ad hoc approach to both granting and threatening to suspend or withdraw broadcast licenses.¹⁵ In Georgia, gaps between the law and practice have led to the regulatory body's independence being compromised and it becoming unduly subject to political influence. And in Indonesia, the government has reclaimed powers granted by law to nominally independent regulatory bodies for both print and broadcast, creating a situation where the government has de facto control over the regulatory process.

Arbitrary or Extralegal Regulation

While governments often restrict press freedom using regulatory and licensing procedures that are clearly defined by law, they can also act on an arbitrary or extralegal basis. Common tactics include bureaucratic obstruction, threatened or actual suspensions without a firm legal justification, sudden bans on certain types of content, and circumvention of established regulatory systems by other arms of the government.

Bureaucratic foot-dragging can be an effective method of state control over the media space, and is often used to withhold licenses from private outlets. This tactic has been employed against print outlets; the *Daily News* in Zimbabwe, which had been shut down in 2003, was forced to wait until 2010 to reopen despite court rulings in its favor. But more examples can be found in the broadcast sector. In Ethiopia, for instance, the 1999 Broadcasting Proclamation provided for the licensing of private radio broadcasters, but the government did not open the licensing authority until 2002, and it had only awarded licenses to two private FM stations by 2006.¹⁶ A third station licensed in 2009 limits its content to music and other entertainment, avoiding any political topics, according to IREX's 2009 Media Sustainability Index.

Similarly, in the decade prior to Tunisia's recent revolution, the country's National Frequencies Agency licensed just one television station and three radio broadcasters, all of which were owned by business interests close to the government, while repeatedly ignoring applications from independent outlets.¹⁷ And in December 2010 in Armenia, the presidentially appointed regulator denied a 13th consecutive license request from A1+, an independent television station whose license was rescinded in 2002, despite a 2008 ruling in its favor by the European Court of Human Rights.¹⁸ In these cases, as in a number of other countries, favoritism was shown to progovernment applicants, while requests by independent outlets were rejected or pointedly ignored.

¹⁵ IPI, "IPI Urges Government to Stop Stalling on Self-Regulation," IFEX, 25 May 2011, http://www.ifex.org/zambia/2011/05/25/self_regulation_stalled/.

¹⁶ CPJ, "Ethiopia," in *Attacks on the Press 2003* (New York: CPJ, 11 March 2004), <http://cpj.org/2004/03/attacks-on-the-press-2003-ethiopia.php>.

¹⁷ CPJ, "Tunisia," in *Attacks on the Press 2008* (New York: CPJ, 10 February 2009), <http://cpj.org/2009/02/attacks-on-the-press-in-2008-tunisia.php>.

¹⁸ Human Rights Watch, "Authorities Deny License for Critical Voice Despite Court Judgment," IFEX, 21 December 2010, http://ifex.org/armenia/2010/12/21/licence_denied/.

The threat of license revocation or suspension is another tactic that has been used frequently to harass critical media. An outlet may be threatened with the loss of its license if it is deemed to have contravened vaguely written laws on content, or if it simply crosses the government's unofficial redlines on acceptable coverage. In some cases the reason for the suspension or withdrawal of the license is never made clear. One recent example comes from Ukraine, where in August 2010 two independent television companies had a number of their licenses withdrawn due to alleged irregularities in their initial allocation. However, Valeriy Khoroshkovsky, the owner of a rival media group and the head of the Ukrainian Security Service, was accused by one of the stations of influencing the decision.¹⁹ License renewals have also been denied for political reasons in Ecuador and Bangladesh. Even stations that are not directly affected by such decisions may engage in self-censorship to avoid similar repercussions for critical coverage, damaging the diversity and vibrancy of the media sector as a whole.

Actual shutdowns of media outlets are sometimes processed through legal channels but more commonly occur as the result of an extralegal executive decision. While they are often temporary, the closures occasionally become permanent. They are frequently imposed in periods of political or social tension, such as during election campaigns, protest movements, or outbreaks of ethnic or religious violence.

For example, in November and December 2010, regulators in Egypt shut down or otherwise censored a number of television stations based on complaints filed by the minister of information or alleged violations of election guidelines.²⁰ Four satellite television stations were also closed in October for breaches of unspecified license terms.²¹ The Rwandan government employed similar tactics prior to elections held in August 2010. In late July, the regulator published a list of several dozen print and broadcast outlets that would be "recognized" by the government, rendering approximately 30 others illegal, including several leading print outlets. The banned publications and stations were then ordered to reapply for licenses, and those that attempted to continue operating were seized.²² Two leading newspapers had already been suspended in April for a six-month period—an extralegal decision that also seemed aimed at curtailing independent coverage of the August election.

With the dramatic increase in broadcast media diversity and the growth of private outlets in recent years, there has been a particular focus on obstructing live television news coverage and live radio and television call-in shows in which hosts, guest commentators, and ordinary citizens are able to express their views freely. Bans on or interference with such programming occurred amid political tension and rioting in Uganda in September 2009, and during ethnic violence in

¹⁹ IPI, "Two TV Stations Have Licenses Revoked, Could Face Criminal Charges," IFEX, 31 August 2010, http://ifex.org/ukraine/2010/08/31/tv_stations_under_threat/; IPI, "TV Station Decides to Defy Court Ruling and Continues to Broadcast," IFEX, 27 September 2010, http://ifex.org/ukraine/2010/09/27/tvi_defies_court_order/.

²⁰ Arabic Network for Human Rights Information (ANHRI), "Television Station Ordered to Stop Broadcasting; Complaint Filed against Another Station," IFEX, 6 December 2010, http://ifex.org/egypt/2010/12/06/alfaraeen_shut/.

²¹ ANHRI, "Four TV Stations Closed in Rising Crackdown on Free Expression," IFEX, 15 October 2010, http://ifex.org/egypt/2010/10/15/tv_channels_closed/.

²² Reporters Without Borders, "Around 30 News Media Outlets Closed ahead of Presidential Election," IFEX, 4 August 2010, http://ifex.org/rwanda/2010/08/04/media_outlets_suspended/.

Kyrgyzstan in June 2010.²³ A radio station in Zambia, which had already been banned from hosting live call-in programs since 2007, was threatened with revocation of its license in November 2010 due to allegations that it intended to host an opposition leader and discuss a controversial topic. In January 2011, the station was raided and closed down after airing an advertisement for a meeting on the same topic.²⁴ In the majority of such incidents, the authorities cite technical “irregularities” or violations of license terms, but the true aim appears to be halting criticism of the government or unflattering live news coverage.

Arbitrary directives on content have been also been employed by regulators in certain situations. For example, in June 2010, the High Authority for Broadcasting and Communication (HAAC) in Benin issued a blanket ban on all media coverage that could be described as “premature” election campaigning until 15 days prior to the elections, which were not scheduled to take place until 2011.²⁵ The HAAC threatened to shut down or withdraw the license of any outlet that violated this directive, despite protests from industry groups that the regulator was overstepping its legal authority. A similar directive concerning coverage of campaigning activities was announced by Côte d’Ivoire’s National Audiovisual Communication Council in October 2010.

The state sometimes bypasses the legally mandated regulatory bodies entirely, with executive or law enforcement agencies forcibly closing outlets on national security or some other grounds. Authorities in Thailand used an emergency decree to shutter several dozen community radio stations in July 2010, accusing presenters of fomenting political tension. The move circumvented the National Broadcasting and Telecommunications Commission (NBTC), which supervises broadcast outlets.²⁶ However, NBTC officials were involved in a court-ordered raid on 13 stations that was orchestrated by the Internal Security Operations Command in April 2011. The raid, in which 12 stations were shut down and several media personnel were arrested, was prompted by the airing of a speech by an opposition political leader that was considered to be defamatory toward the king.²⁷

Other such instances have occurred in countries including Uganda and Pakistan. In The Gambia, a radio station that was arbitrarily closed in January 2011 was able to reopen in February after being offered a “second chance” by the president, whose office noted in a letter to the station that it should desist from citing opposition newspapers in its popular news review and

²³ CPJ, “TV Stations Shut Down in Kyrgyzstan; Prominent Journalist Held in Uzbekistan,” IFEX, 15 June 2010, http://ifex.org/kyrgyzstan/2010/06/15/tv_stations_closed/.

²⁴ MISA, “Authorities Threaten to Revoke Radio Station’s License,” IFEX, 29 November 2010, http://ifex.org/zambia/2010/11/29/radio_lyambai_threatened/; IPI, “Radio Station Effectively Closed; ‘Post’ Newspaper Journalist Detained,” IFEX, 19 January 2011, http://ifex.org/zambia/2011/01/19/radio_lyambai_closed/.

²⁵ Media Foundation for West Africa (MFWA), “Media Regulator Restricts Media Coverage of Elections,” IFEX, 23 June 2010, http://ifex.org/benin/2010/06/23/haac_directive/.

²⁶ Southeast Asian Press Alliance (SEAPA), “Government Shuts Down 26 Community Radio Stations,” IFEX, 19 July 2010, http://ifex.org/thailand/2010/07/19/radio_stations_closed/.

²⁷ SEAPA, “Thirteen Community Radio Stations Ordered Closed, Three Media Workers Arrested, for Airing Lese Majeste Speech,” IFEX, 27 April 2011, http://www.ifex.org/thailand/2011/04/27/community_radio_stations/.

current affairs program, and should only review news from government-controlled outlets.²⁸ A local judge in Argentina ordered the closure of a radio station in Santa Fe Province in April in what appeared to be a politicized decision stemming from the station's criticism of the local mayor; the ruling bypassed the federal regulator and an established process for making complaints.²⁹ Arbitrary decisions by a mayor were also apparently behind the shutdowns of a television and a radio station in western Venezuela in May 2011.

Self-Regulation

Self-regulation, as an alternative to statutory regulation, is acknowledged as the best-practice model and is already used in dozens of countries, particularly those with freer media environments. In a self-regulatory system, the media industry essentially polices itself through bodies such as a nongovernmental media council or an ombudsman, which monitor compliance with agreed-upon codes of conduct. Most self-regulatory bodies apply to print media, but in some countries there are separate entities for broadcast media. Councils that cover all forms of media are less common, but given the growth of media houses that encompass print, broadcast, and internet outlets, this all-media format may expand in the future.

Ideally, self-regulatory bodies should enjoy broad acceptance and participation by the media sector, and their leaders should for the most part be members of the profession who were elected by their peers, supplemented by members of the public, retired judges, or other independent actors. The entity would be empowered to hear cases brought against media outlets or journalists by members of the public or government figures, and to adjudicate and direct remedial action, which frequently takes the form of a published retraction or correction.³⁰ Examples of such bodies include the Peruvian Press Council and the Media Council of Tanzania.

In some cases, the state tries to co-opt an existing self-regulatory process. A subtle bill proposed in Panama in early 2010, for instance, would establish a national agency to “oversee” self-regulatory agreements by setting norms, a move that regional press freedom watchdogs decried as a distortion of the idea of self-regulation.³¹ Alternatively, the state may claim that an existing system is ineffective and try to replace or eclipse it with some form of statutory regulation, as with a government-proposed media tribunal currently under consideration in South Africa. Most commonly, the reason given for such a course of action is that the existing mechanism does not have sufficient teeth (in terms of punishments for violators) or is unable to police irresponsible media outlets effectively.

²⁸ MFWA, “Authorities Shut Down Radio Station,” IFEX, 18 January 2011, http://ifex.org/the_gambia/2011/01/18/taranga_fm_closed/; MFWA, “Taranga FM Resumes Broadcasting after 32 Days Off Air,” IFEX, 23 February 2011, http://ifex.org/the_gambia/2011/02/23/taranga_back_on_air/.

²⁹ Argentine Journalism Forum (FOPEA), “Radio Station Closed in Roldán,” IFEX, 14 April 2011, http://www.ifex.org/argentina/2011/04/18/radio_total_closed/.

³⁰ For further detail on self-regulatory structures, see Office of the Representative on Freedom of the Media, *The Media Self-Regulation Guidebook* (Vienna: Organization for Security and Cooperation in Europe, 2008), <http://www.osce.org/fom/31497>.

³¹ Inter American Press Association (IAPA), “IAPA Concerned at Bill That Would ‘Legalize’ Media Self-Regulation,” IFEX, 5 February 2010, http://www.ifex.org/panama/2010/02/05/self_regulation_bill/.

In a number of other countries, self-regulatory mechanisms are undeveloped or extremely weak, and the state is able to use this as an excuse to continue or introduce statutory regulation. In Zambia, for instance, the media have made attempts to develop a self-regulatory mechanism that encompasses both the entire private sector and the state-run outlets, but the effort faces an ongoing threat from the government, which has sought to impose statutory regulation.³² In 2010, a consortium of industry groups agreed to establish a self-regulatory body, the Zambia Media Council (ZAMEC), and drafted a code of ethics that the council would help enforce. However, due to a lack of official support—which would limit the participation of state media—the launching of ZAMEC was repeatedly postponed. In early 2011, ZAMEC announced further measures to strengthen its enforcement mechanisms amid continuing discussions with the government on whether the public media would be involved in the process.³³

Threats to self-regulatory mechanisms appear to be on the rise, according to a recent report by the Center for International Media Assistance; media in a number of countries, particularly in Africa, are facing stronger attempts to impose state-controlled regulation.³⁴ However, in some cases this has spurred private media to adopt preemptive measures. In Pakistan, the government's moves to impose additional regulatory controls have led to concerted action by the media industry to develop its own codes of conduct, for example on the topic of broadcast coverage of terrorist events or violence. Looming threats of state-led regulation also prompted the establishment of independent media councils in Britain in 1991 and Ireland in 2007.³⁵

Regulation of Networked and Foreign Media

As a result of the internationalization of the media space, national regulatory systems are affecting not just domestic outlets, but also international and regional broadcasters. For example, in the wake of the disputed 2010 presidential election in Côte d'Ivoire, the regulator—on orders from the government, led then by President Laurent Gbagbo—suspended local transmission of all international radio and television news services, citing the potential for unrest. France's Radio France Internationale was also shut down in the Democratic Republic of the Congo for more than a year in 2009, after the government accused it of demoralizing the army. The pan-Arab satellite television station Al-Jazeera has fallen afoul of a number of governments in the Middle East and North Africa, which have on various occasions withdrawn licenses and accreditation from its correspondents and bureaus.³⁶

However, a more globalized and diverse media environment, in which cable and satellite stations compete with terrestrial broadcasters, has also allowed national outlets to evade

³² Naomi Hunt, *Report on Press Freedom and Media Regulation in Zambia: October 2010* (Vienna: IPI, 2010), http://www.freemedia.at/fileadmin/media/Documents/ZAMBIA_MISSION_REPORT_2010.pdf.

³³ IPI, "IPI Welcomes Progress Towards Self-Regulation," IFEX, 11 April 2011, http://www.ifex.org/zambia/2011/04/11/self_regulation/.

³⁴ Bill Ristow, *Sword and Shield: Self-Regulation and International Media* (Washington, DC: Center for International Media Assistance, National Endowment for Democracy, 5 May 2009), p.18, <http://cima.ned.org/publications/research-reports/sword-and-shield-self-regulation-and-international-media>.

³⁵ Ristow, *Sword and Shield*, p.20.

³⁶ CPJ, "Authorities Suspend Al-Jazeera Operations Indefinitely," IFEX, 1 November 2010, http://preview.ifex.org/nmsrv.com/morocco/2010/11/01/al_jazeera_closed/.

restrictive regulations by, for example, establishing their headquarters and transmission facilities outside the home country, as some Pakistani stations have done in Dubai.

The proliferation of networked media platforms like the internet and mobile telephones presents an added challenge for regulators. In some countries, regulatory laws and bodies cover the media as well as telecommunications, while in others there are separate regulatory frameworks for each. Moreover, legislation on broadcasting in a number of countries, particularly those that transitioned to more open democratic systems in the 1990s and enacted the relevant laws more than a decade ago, seem increasingly inadequate to handle the phenomenon of convergence, in which media content is disseminated across multiple delivery systems. Best practice concerning internet regulation is still evolving, with many advocates arguing that online outlets, like newspapers, should be largely free of state-imposed restrictions.

Nevertheless, some governments have responded by simply extending the rules for broadcast media—which tend to be more restrictive than those for print and other media—to cover the internet. A December 2010 amendment to Venezuela's the 2004 Law for Social Responsibility in Radio, Television, and Electronic Media extended its restrictions to online outlets, banning messages that incite or promote hatred, foment citizens' anxiety, or disrespect authorities, among other loosely written provisions. The amendment also placed internet media under the purview of CONATEL, the government regulator, which now has the power to block online content and issue fines to media outlets or internet-service providers that violate the law. In May 2010, Azerbaijani authorities also expressed their intent to extend licensing controls over the internet, and particularly over internet-based television channels, although such controls have yet to come into force.

CONCLUSION AND RECOMMENDATIONS

The state-run national media monopolies that prevailed in many parts of the world during the 20th century have become increasingly rare, as democratization, privatization processes, and new technologies multiply the conduits for news and information. However, governments have found ways to adapt their legal and regulatory systems to the new environment, allowing them to maintain a measure of control over the dissemination of news on sensitive topics.

In countries that have fallen under authoritarian rule, such as Venezuela or Zimbabwe, legal restrictions are widespread, regulatory bodies are under government control, and private outlets face the threat of closure for airing opposition views. In a range of partly free media environments, authorities use regulation more selectively, punishing certain outlets or restricting content during crucial periods. Often there is a gap between the laws on the books and their application in practice. Unfortunately, even the governments in very open countries have displayed an impulse to improperly control information through regulation. Hungary recently enacted its most severe licensing and content controls since the end of communist rule, and in South Africa, which has been held up as an example of best practice in terms of its legal framework and self-regulatory system, a government-proposed media tribunal threatens to erode the country's hard-won press freedom.

In response, advocates need to maintain monitoring efforts, report violations of international standards, and continue to push for both the reform of restrictive laws and full adherence to well-crafted ones. Particular attention should be paid to the licensing regime and the legal underpinnings of a given regulatory body, to ensure that the regulator has the capacity to operate independently and make transparent decisions based on clearly defined and reasonable criteria. Drastic steps such as the suspension of a license or the closure of an outlet should be considered within this framework, and should not come as the result of arbitrary actions by security forces or the executive branch.

Supporters of media freedom must also work to develop or strengthen truly independent self-regulatory mechanisms that have the backing of both private and public outlets. These systems should address concerns about ethical lapses and professional standards so as to prevent the enactment of excessively harsh statutory regulation on the same grounds.

Finally, advocates should encourage a comprehensive approach to the changing and converging media environment that nevertheless recognizes the necessity of applying different levels of regulation to different types of media.

ECUADOR

POPULATION: 13,625,000
PRESS FREEDOM STATUS: Partly Free
LICENSING FOR PRINT OUTLETS: No
LICENSING OF JOURNALISTS: Yes
INDEPENDENT REGULATORY BODY(S): No

INTRODUCTION

Ecuador has a diverse media scene, with hundreds of print and broadcast outlets, the vast majority of which are privately owned. However, press freedom has come under increased threat in recent years, following the election of Rafael Correa as president in 2007. In 2010, press freedom groups recorded an unprecedented number of cases of judicial harassment, intimidation, and physical attacks throughout Ecuador.³⁷ Additionally, harsh rhetoric has been employed by high-level officials, particularly the president, against media outlets, contributing to an overtly polarized political and media environment. A range of pressure tactics has been used against private and perceived anti-government news outlets, including advertising boycotts as well as restrictive regulatory policies that led to the shutdown of several outlets and the resignations of individual journalists. Correa has also attempted to counter criticism from private outlets by bolstering the growth and reach of state media outlets. As a result of this strategy, by 2010 the number of such outlets had increased to 20, a large number for a relatively small country.

Cases of judicial harassment against the news media by public officials have also increased, and are made possible by a legal framework that can be used to restrict media freedom. While the 2008 constitution does provide strong protections for freedoms of speech, expression, information, and the press, as well as the right to keep sources confidential, these protections are weakened by a range of provisions, codes, and regulations that keep Ecuadorian

³⁷ Local media freedom watchdog group Fundamedios recorded 22 attacks on the press (including physical and judicial cases) in 2008. In 2010, that number skyrocketed to 150, including 4 assassinations or disappearances, 21 cases of physical aggression, 1 kidnapping and 21 cases of direct intimidation. Fundamedios, "Fundamedios Annual Report Ecuador 2010," accessed at: <http://www.fundamedios.org/home/contenidos.php?id=215&identificaArticulo=996>.

journalists on the defensive.³⁸ For example, the 1983 Code of Penal Procedure RO 511 establishes an exception to the universal principle of equality under the law by making alleged “crimes” by journalists worthy of special consideration and sanction.³⁹ Moreover, Ecuador’s criminal code contains a number of provisions, including insult and defamation laws, which directly impact the practice of journalism.⁴⁰ Three articles of the code are dedicated to punishing the crime of insult—in Spanish, *desacato*—a criminal feature inherited from either autocratic regimes or a colonial power specifically designed to shield public officials from scrutiny by the rest of society.⁴¹ In all, there are 13 articles in the criminal code dedicated to punishing the crime of defamation. Applied in conjunction with the Law on the Professional Practice of Journalism, the code is an effective weapon for censoring journalists. In several of the recent cases brought against journalists, Correa, showing his disregard for the principle of separation of powers, was the main cheerleader behind the plaintiffs and judges whose actions helped silence both the news media and individual journalists. The likelihood of legal action has helped to spur an increase in self-censorship and a decrease in diversity of viewpoints presented on various outlets, particularly television.

LAWS RELATING TO THE REGULATORY FRAMEWORK

A number of laws regulate the behavior of the Ecuadorian news media to varying degrees. The country’s constitution contains several articles that explicitly deal with media regulation, particularly of the broadcast sector. For example, with regard to the regulation of broadcast frequencies, Article 17 notes that:

“The state shall guarantee, through a transparent and equitable process, the concession of the frequencies of the broadcasting spectrum for the administration of public, private and community radio and television stations [...] and shall ascertain that the common good shall prevail in the assignment of these resources.”⁴²

Additional paragraphs note that the state has the responsibility to “guarantee the creation and strengthening of the news media, be it public, private, or community, as well as the universal access to information and communication technologies, especially for those people and communities who lack such access or enjoy it in a limited fashion,” and protects media diversity by forbidding any media “oligopolies or monopolies, direct or indirect, of the ownership of the news media and the use of radio frequencies.”

³⁸ *El Universo*, “Título I, Elementos Constitutivos Del Estado,” 24 July 2008, accessed at:

<http://www.eluniverso.com/2008/07/24/1212/1217/3372B66B41C14CE9A9168E8C913A8F2E.html>.

³⁹ Inter-American Press Association (IAPA), “Freedom of the Press and the Law: Laws That Affect Journalism in the Americas,” Chapultepec Collection, 1999, p.258.

⁴⁰ IAPA, “Freedom of the Press and the Law,” p.262.

⁴¹ IAPA, “Freedom of the Press and the Law,” p.268, and World Press Freedom Committee, “Insult Laws: What are they? Why are they bad?,” accessed at: <http://www.wpfc.org/index.php?q=node/39>.

⁴² *El Universo*, “Título I, Elementos Constitutivos Del Estado.”

Print outlets in Ecuador are not required to possess a license, nor are they required to be registered.⁴³ However, individual journalists in Ecuador do face strict regulation, as detailed in the 1975 Law on the Professional Practice of Journalism.⁴⁴ Article 1 of this law requires any person working as a journalist to hold the appropriate college degree, while other articles specify what positions in a newsroom are exempt from the mandate of Article 1, such as publishers, columnists, commentators, or experts in arts, sciences, literature, or religion. Article 27 mandates that for a person to be considered a professional journalist, he or she must also belong to a “provincial association.” Article 37 specifies that all media outlets must issue a personal identification card to all employed professional journalists.⁴⁵ Such laws do not adhere to recommendations and rulings on best practices established by both regional and international bodies. For several decades, mandatory licensing of journalists (*colegiatura*) has been rejected by both the jurisprudence and the recommendations of the inter-American justice system. The Inter-American Court of Human Rights ruled in 1985 that the practice of journalism is a “fundamental human right,” and that any government interference in this respect is incompatible with Article 10 of the American Convention on Human Rights.

The 1975 law also provides detailed instructions for the formation of a National Federation of Journalists (FENAPE), a statutory public entity under the authority of the National Assembly, and for the creation of a Code of Professional Ethics to establish the standards of behavior for the country’s journalists.⁴⁶ By law, the code and all its bylaws must be approved by the Ministry of Public Education, thus granting considerable official control over the code itself. Also, the National Assembly is in charge of electing the members of FENAPE’s Executive Committee, of establishing the membership fees, and of auditing the finances of the Executive Committee. The Executive Committee is made up of a president, three vice presidents, two secretaries, a treasurer, a trustee, and eight committee members. Their duties include enforcing the Law of Professional Practice of Journalism, submitting an annual report to the National Assembly, supervising the regional committees, maintaining a national registry of professional journalists, and formulating a code of ethics for all members. The existence of this government-supervised entity also contradicts internationally accepted tenets of media independence and preference given to self-regulatory mechanisms for print media.

Broadcast media are legally regulated by the 1975 Radio and Television Broadcasting Law, which was amended in 1995.⁴⁷ In addition to the regulation of private broadcasters and the protection of proprietary rights pertaining to production, transmission, and programming referred to in this law, the state is also empowered to establish public service radio or television stations. Provisions of the law warn that “liabilities for performances, programs or expressions...that are subject to criminal infractions shall be handled by a criminal judge...subject to the Common Code of Criminal Procedure”—in other words, Ecuadorian broadcasters risk incarceration should their programming be deemed “criminal.” Issues such as age-appropriate content and the rebroadcasting of content by other networks on copyright grounds are also included in the law.

⁴³ Inter American Press Association, “Press Laws Database,” 1999, accessed at: <http://www.sipiapa.org/projects/laws-ecu17.cfm>.

⁴⁴ IAPA, “Freedom of the Press and the Law,” p.256.

⁴⁵ IAPA, “Freedom of the Press and the Law,” p.260.

⁴⁶ IAPA, “Freedom of the Press and the Law,” p.256.

⁴⁷ IAPA, “Freedom of the Press and the Law,” p.257-8.

Article 3 of the act states that radio and television stations that operate without proper authorization will be “closed down and their equipment seized immediately,” and that those responsible for unauthorized broadcasting can face two to four years in prison.⁴⁸ The law also outlines other grounds for shutting down media outlets, such as repeated technical problems for broadcast media that have already been assessed to two fines or suspensions. Article 44 of the law established the National Radio and Television Broadcasting Council (CONARTEL) and gave this body the power to “regulate and control the artistic, cultural, and moral standards of performances and programs” that are broadcasted on radio or television. In the absence of specific regulations, the law gives CONARTEL the power to apply those contained in the codes of ethics of the Ecuadorian Association of Radio and Television and the Association of Television Channels of Ecuador.⁴⁹ Currently, as with many other Latin American countries, every Ecuadorian broadcaster (except cable stations) is required by law to air official announcements called *cadenas*, which can emanate from any ministry, as well as to provide space for official programming for up to one hour each day.

The Broadcasting Law does not contain provisions that would guard against concentration of ownership or extensive cross-ownership. It also discriminates against community radio in many ways, making it extremely difficult to operate such a station. For example, due to a stipulation in the law, frequencies cannot be given to community radio stations; they can only be given to “community service” organizations.⁵⁰ Community radio stations are also required to receive a favorable report by the Joint Chiefs of Staff of the Armed Forces in order to ensure that the station is not hindering national security, and these stations must be for public service, meaning that they cannot have advertising devoted to “social, educational, or cultural purposes.” Community radio stations must also complete additional requirements that go beyond what is expected of a commercial station.

The administrative oversight of the broadcast media was restructured in 2009 to give the executive branch more control over the regulatory process. In August, an executive order created three state agencies that would control telecommunications: the National Telecommunications Council (CONATEL), the National Telecommunications Secretariat (SENATEL), and the Superintendency of Telecommunications (SUPATEL).⁵¹ This order also combined CONATEL and the aforementioned CONARTEL, and put CONATEL under the control of the newly created Ministry of Telecommunications, whose head is appointed directly by the president.

The statutory CONATEL agency now regulates the broadcast media, formulating the state’s telecommunications policy, approving the plan and use of the radio frequencies, and collecting the revenues from the use of such frequencies, among other duties. It also provides the necessary licenses and makes decisions regarding suspensions or withdrawals, as was the case on

⁴⁸ UNESCO, *Assessment of Media Development in Ecuador–2011* (MDI Ecuador), 2011, p.61, accessed at: <http://unesdoc.unesco.org/images/0019/001925/192563e.pdf>.

⁴⁹ IAPA, “Freedom of the Press and the Law,” p.258.

⁵⁰ MDI Ecuador, p.47.

⁵¹ MDI Ecuador, p.40.

four occasions in 2010.⁵² Although Article 120 says that members of all three of these bodies should have “no direct or indirect employment relationship with anyone holding an authorization to provide telecommunications services,” CONATEL is considered to be highly dependent on the government, with four of six members answering directly to the president.⁵³ CONATEL’s members include a chair, who serves as a representative of the president, the head of the Joint Chiefs of Staff of the Armed Forces, the secretary general of the National Development Council, the national telecommunications secretary, the superintendent of telecommunications, a representative from the chambers of production, and a legal representative. There is no provision for mechanisms that would enable accountability for decision-making or for participation of citizens and civil society groups in the formulation of the regulatory structure.

SENATEL, which reports directly to the president, is CONATEL’s executive arm. Its duties include legally representing CONATEL, enforcing its resolutions, drafting radio frequency contracts with broadcasters, and providing the necessary authorization for the interconnection on the country’s networks. After CONARTEL merged with CONATEL, the “rights and obligations of CONARTEL” were assumed by SENATEL.⁵⁴ The leader of SENATEL is appointed by the president for a four-year term. The Superintendency of Telecommunications functions as the eyes and ears of SENATEL by controlling and monitoring the use of the radio frequencies, supervising the fulfillment of the contracts with broadcasters, and judging those who violate those contracts and applying corrective action, among other responsibilities. These actions can include withdrawing or denying licenses.

Press freedom in Ecuador was further threatened by the introduction in 2009 of the Organic Law of Communication, Freedom of Expression, and Access to Public Information—known as the Communications Bill—a compendium of laws and regulations that would threaten the viability of independent media.⁵⁵ The bill, which is being debated in congress and is already known as a “gag law,” would introduce prior censorship by the state; an even stricter mandatory licensing of journalists; the obligatory registration of all outlets with a new statutory Communication and Information Council; and the editorial control of the media by such a council. It could also lead to the deterioration of the safeguards that guarantee the anonymity of sources. The Organization of American States’ special rapporteur for freedom of expression, Catalina Botero, sent a letter to the Ecuadorian National Assembly with a list of recommendations, in an extraordinary attempt to reduce the severity of a bill that is likely to become the law of the land. Botero’s recommendations to lawmakers included: create a set of media obligations according to the provisions of the American Convention on Human Rights; eliminate provisions mandating the registering of all media outlets with a state entity and the licensing of journalists; establish the complete political independence of the proposed Communication and Information Council; remove a provision mandating that the council

⁵² IAPA, “Freedom of the Press and the Law,” p.258. See also Fundamedios, “CONATEL determines that radio station critical of the government should be shut down,” 29 December 2010, accessed at: http://www.ifex.org/ecuador/2010/12/29/radio_station_ordered_closed/.

⁵³ MDI Ecuador, p.40.

⁵⁴ MDI Ecuador, p.40.

⁵⁵ IAPA, “IAPA concerned at press freedom restrictions in proposed communications law,” 21 October 2009, accessed at: http://www.ifex.org/ecuador/2009/10/21/communications_law/.

monitor ethical conduct by the media; structure the right of reply according to the provisions of the American Convention on Human Rights; and eliminate provisions for prior censorship.

IMPACT OF REGULATION ON MEDIA FREEDOM

With a range of codes, statutes, and laws at their disposal, public officials and regulators, with the blessing of Correa, have increasingly used the regulatory framework as a key method of restricting media freedom, with an uptick noted in 2010. In addition, the agencies regulating the media—such as CONATEL and FENAPE—have been influenced by the government’s hostility toward the media and have let politics influence their decisions. Though FENAPE could be used to restrict media freedom, in practice FENAPE does not play a role in the regulation or self-regulation of the media or of journalists, as it is not a public institution. CONATEL has a mechanism that regulates complaints on its website, but it allows for only two types of complaints: complaints about the telephone operator and complaints about media content. Also, the functionality of the website appears to be disabled.⁵⁶

The distribution of broadcast licenses has been noted as an area of concern, particularly in regard to contraventions of existing laws pertaining to conflict of interest. Also, current legislation does not set a clear and fair procedure for access to radio and television frequencies. The Radio and Television Frequency Audit Commission, in a 2009 report, found several ways CONATEL had illegally distributed radio and television frequencies. From 2003–08, nine business groups were granted 134 frequencies. The report also alleged that Jorge Yunda, the president of CONATEL and the owner of several radio broadcasting licenses, was in violation of Article 232 of the constitution, which “prohibits media owners from being part of the body that regulates the media.”⁵⁷

In Ecuador, the denial of licenses and the closure of media outlets have in recent years been the key methods employed to constrain the freedom of independent media. In terms of regulatory harassment, CONATEL has played the crucial role in silencing or intimidating stations or networks that have been critical of public officials, despite the fact that, as chartered by the Special Law of Telecommunications, it is not empowered to exercise a censoring role. This trend, that started shortly after Correa took office in 2007 worsened in 2009, when, according to local advocacy group Fundamedios, at least five media outlets were shut down by government regulators.⁵⁸

There have been several recent cases of government regulators trying to or successfully shutting down media outlets in Ecuador. In August 2009, Correa attempted to shut down independent television network Teleamazonas because of the station’s broadcast of an opposition

⁵⁶ MDI Ecuador, p.107.

⁵⁷ World Association of Community Radio Broadcasters, “Investigation reveals irregularities in the granting of broadcasting frequencies,” 9 January 2009, accessed at: http://ifex.org/ecuador/2009/01/09/investigation_reveals_irregularities/.

⁵⁸ Fundamedios, “La Palabra Rota: Seis Investigaciones sobre Periodismo Ecuatoriano,” p.112.

Socialist Party legislator who was talking about concerns regarding the country's constitution.⁵⁹ Correa claimed that the recording violated the Broadcasting Law. In September of that year, Correa requested that the network be given a 90-day suspension. In December, Teleamazonas was suspended for three days on the charge of reporting false information. In March 2010, an administrative court ruled in favor of Teleamazonas in a case that could have cost it the renewal of its license.⁶⁰ Showing his contempt for the fundamental democratic concept of separation of powers, Correa, on his weekly Saturday television show, called the decision "an outrage." Then, CONATEL Chairman Jorge Glas chimed in by pressuring the magistrates to appeal their decision. Weeks earlier, Jorge Ortiz, anchor of two Teleamazonas political shows, had resigned because of "government pressure," according to Fundamedios.⁶¹

Radio station La Voz de la Esmeralda Oriental Canela, known for its criticism of local officials, was not as fortunate as Teleamazonas. It was finally shut down in April 2011 after CONATEL denied the renewal of its license based on "bogus administrative violations," as termed by the Committee to Protect Journalists.⁶² The shutdown came after months of struggle to maintain the station. In September 2010, CONATEL had refused to renew its broadcasting license, and in December, SUPATEL was ordered to shut down the station.⁶³ Station owner Wilson Cabrera told Fundamedios that the refusal was triggered by pressure applied by a local legislator unhappy with the station's coverage of his political performance.⁶⁴ International and national press freedom organizations have denounced the closure of media outlets and the attempt to shut down others as politically motivated and the result of a climate of permanent confrontation between public officials and the news media.

Perhaps the most notorious incident of an official attempt to regulate media content took place in the wake of the September 30, 2010 attempted coup against Correa by police officers unhappy with a reduction in their salaries and benefits. The government declared a state of emergency and arbitrarily ordered all television and radio stations to broadcast the signal of the official state channel, Ecuador TV. The virtual seizure of the country's broadcast media assured that Ecuadorians received only Correa's version of what transpired during that historic event. Additional efforts by officials to interfere with broadcasts include the case of Radio Mega, in which the station's owner suspended its news programming in May 2010 following a telephone call from an unidentified CONATEL official who also suggested that the station hand over its recordings for examination.⁶⁵ Officials also overtly interfered with a program hosted by María Josefa Coronel on Teleamazonas TV in January 2011. Coronel's program was replaced by an

⁵⁹ Instituto Prensa y Sociedad (IPYS), "President calls for television station's definitive closure," 17 September 2009, accessed at: http://ifex.org/ecuador/2009/09/17/new_suit_against_teleamazonas/.

⁶⁰ Fundamedios, "Annual Report Ecuador 2010."

⁶¹ Fundamedios, "Annual Report Ecuador 2010."

⁶² Committee to Protect Journalists, "Ecuadoran radio denied license renewal on bogus charges," 5 January 2011, accessed at: <http://cpj.org/2011/01/ecuadoran-radio-denied-license-renewal-on-bogus-al.php>.

⁶³ Fundamedios, "Amazon based radio station closed by police," 3 April 2011, accessed at: http://ifex.org/ecuador/2011/04/07/la_esmeralda_closed/.

⁶⁴ Fundamedios, "Annual Report Ecuador 2010."

⁶⁵ IPYS, "Radio program suspended," 3 June 2010, accessed at: http://ifex.org/ecuador/2010/06/04/programme_suspended/.

official announcement in which a government presenter and three other people criticized the journalist and her alleged antigovernment bias.⁶⁶

Self-regulatory bodies or frameworks for both print and broadcast media outlets are underdeveloped and weak. There are no laws in Ecuador that guarantee editorial independence for the public media, and these media outlets are often structurally and financially dependent on the executive branch. Individual print outlets often have a code of conduct, though very few have an ombudsman, and these codes are not always well known or utilized by employees. In addition, there is little public awareness of them. A vast majority of individual radio and television stations have mechanisms to report ethics or content complaints, although it is unclear how often these are utilized.⁶⁷ There is no industry-wide complaints body for print media. Broadcasters have their own associations, the Ecuadorian Association of Radio and Television and the Association of Television Channels of Ecuador, which have issued their own codes of ethics. These codes include “provisions against misleading advertising.”⁶⁸ There have been no reported recent cases of either one of these entities enforcing their ethics regulations.

CONCLUSION AND RECOMMENDATIONS

Ecuador’s news media regulatory framework, influenced by political pressure from Correa’s government along with a complex set of laws and statutes, has compromised the true essence of a free and independent press and its role in a democratic society. CONATEL and the regulating bodies under its hierarchy, SENATEL and SUPERTEL, are chartered to function as apolitical, impartial entities, but their membership and reporting structure places them firmly under the control of the executive. Independent networks and stations such as Teleamazonas TV, Radio La Voz de la Esmeralda Oriental Canela, and the rest of the country’s broadcasting system during the September 30 coup attempt have experienced firsthand what can happen to a media outlet that is critical of the actions of the Correa administration or other public officials.

This restrictive media environment must be transformed to better allow for freedom of expression in Ecuador, which can be achieved by amending outdated laws such as the Radio and Television Broadcasting Law and its 1995 amendments. In this light, it is vital that the most restrictive provisions in the proposed Communication Bill (intended to replace this outdated legislation)—particularly concerning licensing for both journalists and media outlets, the independence of the regulatory body, and proposed controls over content—be either softened or eliminated. The media environment in Ecuador could be further improved by better publicizing in-house ethical guidelines, as well as developing industry-wide independent self-regulatory bodies for both print and broadcast media (such as a press or media council) with mechanisms to handle complaints fairly.

⁶⁶ Fundamedios, “Journalist’s program interrupted by official telecast,” 28 January 2011, accessed at: http://ifex.org/ecuador/2011/01/28/coronel_interrupted/.

⁶⁷ MDI Ecuador, p.102-3.

⁶⁸ MDI Ecuador, p.88.

Overall, the regulatory climate in Ecuador would be improved if public officials, especially within the Correa administration, acknowledge that a free and independent media play a fundamental role in the development of a democratic society and refrain from politicized actions designed to restrict media outlets' freedom to operate. Periodic confrontation between the media and a public bureaucracy is inevitable. The media's role is to keep the public informed, whereas that of a bureaucracy is to keep the public trust. This tug-of-war is not only natural but also healthy for good governance and transparency.

GEORGIA

POPULATION: 4,611,000
PRESS FREEDOM STATUS: Partly Free
LICENSING FOR PRINT OUTLETS: No
LICENSING OF JOURNALISTS: No
INDEPENDENT REGULATORY BODY(S): No

INTRODUCTION

Ongoing political power struggles continue to color the environment for media freedom. While Georgia has the freest and most diverse media landscape in the region—with numerous private newspapers and dozens of private broadcast outlets that operate alongside the public broadcaster—its opaque ownership structure is a concern and the industry as a whole has become polarized politically, stifling independent news and shrinking the space for balanced views and opinion. As television is the medium with the broadest reach and audience within the country, efforts to influence these outlets have been a particular focus of the authorities. Because it is unclear who is in control—most importantly, of Imedi and Rustavi-2, the two private television outlets with national reach—authorities and the ruling party are able to leverage influence over content and staff, minimizing unflattering stories and discouraging investigative journalism.

Georgia enjoys a solid legal framework for freedom of expression. Article 19 of the 1995 constitution, as well as the Law on Freedom of Speech and Expression, explicitly protect freedom of speech, freedom of expression, and freedom from persecution. The constitution also contains provisions for free access to information, and protection against censorship. The government decriminalized libel in 2004 in an effort to bring Georgian media law in line with European standards. Furthermore, the country boasts one of the most progressive freedom of information laws in the former Soviet Union. Legal pressure is not commonly used to intimidate journalists. However, the regulatory framework is considerably more restrictive and is a primary method of influencing media content and operations. In particular, the 2004 Law on Broadcasting provides for sweeping regulations over the broadcast industry, and as interpreted by the Georgian National Communications Commission, is seen to operate in a biased manner.

LAWS RELATING TO THE REGULATORY FRAMEWORK

Licensing requirements are nonexistent for internet-based media and are a formality for print media. While all print outlets need to be officially registered with the Ministry of Justice, this process is not overly onerous and is not used selectively to control the types of newspapers and periodicals that can publish. Print media are therefore free in terms of ability to operate, but face constraints because of poor distribution networks, which limit their geographic reach and readership and therefore, their influence. No licensing or government authorization is required to enter the profession of journalism.

In contrast, the licensing regime for broadcast outlets, while not inherently excessively restrictive, is unevenly implemented and is subject to greater potential government influence. The primary piece of relevant legislation is the 2004 Law on Broadcasting, which sets out a broad array of details regarding licensing procedures as well as the role of the main regulatory body, the Georgian National Communications Commission (GNCC), which has overseen telecommunications and broadcasting since its establishment in 2000. According to the law, the GNCC is empowered to set license conditions; issue, suspend, renew, or revoke licenses; supervise licensees and recommend sanctions for those that breach the terms of their license; allocate radio frequencies; consider complaints and disputes between licensees and between a license holder and members of the public; and issue legally binding decisions as well as a code of conduct, among other duties.⁶⁹ Broadcast licenses are valid for 10 years, can be either for community or private outlets, and are designated for either general or specialized broadcasting. According to the framework, this could allow for suspension of broadcasts or withdrawal of a license, as well as decisions regarding licensing based on content of the proposed outlet. However, Article 44 of the law states that the commission's refusal to issue a license may be appealed through the court system.

Regarding media concentration and transparency—which are two key ongoing concerns in the overall broadcast media landscape—the broadcasting law does attempt to address these issues, with Article 60 stipulating that individuals or entities are prohibited from owning more than one television or radio license in any one area. However, a report by Transparency International–Georgia points out that the law does not prevent individuals from owning shares in companies that ostensibly own the licenses, thus allowing for potential loopholes in the spirit of the article.⁷⁰ Meanwhile, Article 61 requires that license holders disclose to the commission, on an annual basis, information regarding their partners, investors, shareholders with a greater than 5 percent stake, and managers, including information on any other print or broadcast media ownership. However, the GNCC does not have a sufficient mandate to investigate the validity of the information provided, or to investigate higher levels of ownership (for example, the

⁶⁹ Georgian National Communications Commission (GNCC), “Georgian Law on Broadcasting,” December 2004, accessed at: http://www.gncc.ge/files/7050_3380_492233_mauwyebloba-eng.pdf.

⁷⁰ Transparency International–Georgia (TI), “Television in Georgia—Ownership, Control and Regulation,” p.11, 20 November 2009, accessed at: <http://transparency.ge/sites/default/files/Media%20Ownership%20November%202009%20Eng.pdf>.

ownership of shell companies that are listed as having stakes in media companies in official documents). There are no restrictions on foreign ownership.

The broadcasting law also details the membership and appointments structure of the GNCC, which is made up of five commissioners who are supposed to be appointed through open competition. However, the potential for some measure of built-in political influence is likely, given the president's role in the selection of nominees (he must offer a list of at least three nominees for each open position), coupled with a parliamentary vote to select the legislature's chosen appointees (the minority group in parliament nominated one member to the commission in 2009). There is no provision for civil society representation. On paper, the law does attempt to guard against potential conflict of interest by commissioners, by stipulating that commissioners may not hold administrative positions or be a member of a political party, and that they and their family members may not hold a financial interest or position in any entity that is subject to the regulator.⁷¹ In terms of financing, the GNCC garners the majority of its operating revenue from the licensing fees paid by outlets. The operations of the commission are also supposed to be free of political influence and it is stipulated that procedures and decisions be conducted with transparency. In 2007, the GNCC became a member of the European Conference of Postal and Telecommunications Administrations, and as such, its operations are required to be public and its decisions eligible for appeal.

After four years of deliberation, in March 2009, the GNCC issued a code of conduct for broadcasters, including editorial guidelines on balance, sourcing, privacy, and confidentiality. The code was drafted over several years with input from broadcast entities as well as interest groups including church officials, journalists, and civil society organizations; in addition, representatives from the Council of Europe were brought in to review and assist with the drafting of the code in 2008.⁷² Transparency International termed the effort an "obligatory system of self-regulation," as companies were supposed to enforce the code themselves by establishing in-house self-regulatory mechanisms, including systems to handle complaints, by September 2009 in the case of national broadcasters (the deadline was extended an additional year for local and regional broadcasters).⁷³ However, the GNCC reserved the right to take measures should an outlet fail to address violations or complaints in a timely or effective manner.⁷⁴

Positively, in 2010 efforts emerged—both on the part of civil society as well as within Parliament—to develop and introduce draft laws that would reform certain aspects of the broadcasting law, particularly those concerning improving transparency and reducing concentration of ownership, severely limiting offshore ownership, reducing potential conflict of interest among GNCC members, and improving access to official information. The civil society recommendations would ban offshore ownership altogether, and by December some legislators

⁷¹ GNCC, Georgian Law on Broadcasting Article 11, accessed at: http://www.gncc.ge/files/7050_3380_492233_mauwyebloba-eng.pdf.

⁷² GNCC, "Code of Conduct for Broadcasters," 12 March 2009, accessed at: http://www.gncc.ge/index.php?lang_id=ENG&sec_id=7200&info_id=7176.

⁷³ TI 2009, p.14.

⁷⁴ IREX, "Media Sustainability Index (MSI) 2010," p.145, accessed at: http://www.irex.org/system/files/EE_MSI_2010_Georgia.pdf.

seem to have come around to this viewpoint during their discussions on the proposals.⁷⁵ A first reading of the draft bill, which contains provisions for a total ban on offshore ownership, was passed by Parliament on December 7, 2010, but voting was postponed until February 2011 to allow for additional time to examine recommendations submitted by civil society groups and media watchdogs.⁷⁶ The law was passed in April 2011, and requires broadcasting companies to “make public information about their owners and sources of finance and prohibits the offshore ownership of television stations.”⁷⁷

The broadcasting law also covers the Georgian Public Broadcaster (GPB), which was transformed from state television into a publicly funded national broadcaster in 2004. By law, the GPB is supposed to provide accurate and diverse information free from political or commercial bias.⁷⁸ Amendments to the law in late 2008 required the GPB to air weekly political talk shows with officials, as well as to provide at least a quarter of its programming that was related to the enclaves of Abkhazia and South Ossetia.⁷⁹ Until 2009, the GPB was overseen by nine trustees (all political appointments), but in September, Parliament approved an increase in the board to 15 members, with seven nominated by the ruling party, seven by the opposition, and one by civil society. Although this measure provided for balance between political factions and does allow for input by civil society into its nominee, it still has the potential to leave the board membership heavily politicized. Though it is not fully evident that the board is politicized, there was a protest against its perceived bias in May 2011 in front of the GPB building. In an official GPB statement, the body declared that it resisted manipulation by any force that accused it of being prejudiced or biased, and reiterated its conviction that its coverage was balanced and that opposition parties were able to represent their views without being subject to editorial interference.⁸⁰

IMPACT OF REGULATION ON MEDIA FREEDOM

As noted above, laws concerning media regulation are not excessively restrictive on paper and some articles of the broadcasting law do attempt to provide for the regulatory body’s independence and transparency of decision making. However, there is a considerable gap between law and practice, and most knowledgeable analysts and reports note that the GNCC is considered to be prone to political influence (particularly from the executive) and not apt to act

⁷⁵ Civil.ge, “Ruling Party Agrees on Ban of Offshore Ownership of Broadcasters,” 3 December 2010, accessed at: <http://www.media.ge/en/node/39549>.

⁷⁶ Civil.ge, “Second Reading Discussion of Draft on Media Ownership Postponed,” 17 December 2010, accessed at: <http://www.civil.ge/eng/article.php?id=22969>.

⁷⁷ Doha Centre for Media Freedom, “Georgia passes law to make media ownership more transparent,” 10 April 2011, accessed at: <http://www.dc4mf.org/en/content/georgia-passes-law-make-media-ownership-more-transparent?page=11>.

⁷⁸ European Journalism Centre, “Media Landscape: Georgia,” 5 November 2010, accessed at: http://www.ejc.net/media_landscapes/article/georgia/.

⁷⁹ IREX, MSI 2009, p.139.

⁸⁰ Georgian Public Broadcaster, “Statement of the Georgian Public Broadcaster on recent protest actions,” 23 May 2011, accessed at: <http://www.gpb.ge/NewsView.aspx?Location=78&LangID=2>.

in the public interest, with effective implementation of the broadcasting law lacking in a number of respects.⁸¹ Language intended to guard against potential conflicts of interest of commissioners does not seem to be adhered to. For example, the current chair of the GNCC was formerly a director and shareholder at Rustavi-2; although he sold his 30 percent stake in the television station several weeks before assuming his position, the appointment was seen by some as an inherent conflict of interest. Similarly, the provisions intended to promote transparency and guard against monopoly and conflict of interest in terms of license holders are not applied effectively. Particularly in the regions, a number of licenses are held by administrative authorities or individuals with direct connections to politics.⁸² Media ownership remains opaque, with shadowy holding companies registered overseas owning majority shares in several television outlets.

In addition to application of specific provisions of the broadcasting law, the decisions of the GNCC with regard to licensing and punitive action for violations are also seen to be biased. While GNCC representatives posit that they treat all applicants and license holders equally and that they follow their own procedures by issuing warnings before taking more drastic action, a number of reports allege that in practice, the body overlooks violations by progovernment stations while penalizing the more independent ones aggressively. One case cited in 2009 was that of Channel 25, a small independent television station in the Ajara Autonomous Republic, which was ordered to pay a \$160,000 fine; the owners of the station claimed the penalty was part of an effort to close it down ahead of local elections. Some stations seen as being under government influence have even been able to broadcast without a license, in clear violation of the rules, while those seen as being pro-opposition have faced hurdles in being accredited.⁸³ While the GNCC's decisions can legally be appealed within 30 days either to the GNCC itself or to the Tbilisi city court, in practice its decisions are never overruled by the court. However, some politically sensitive cases, such as that of Maestro (detailed below), are decided by behind-the-scenes intervention rather than legal redress.⁸⁴ Most decisions or rulings of the GNCC regarding specific cases are not easily available to the public, though some information can be accessed through freedom of information requests.

In May 2008, the GNCC decided to delay issuing any new broadcast licenses, claiming that it needed to survey the existing media landscape and also set national broadcasting priorities given an extremely competitive application process. However, the review process seems to have stalled, with no further decisive action taken since then. Existing licenses can be bought or change hands, but no new ones have been issued. For instance, license requests from two community radio stations have been held up indefinitely. An effect of this decision is that there have been no new entrants in the broadcast market. A GNCC-commissioned public opinion poll (which is required by the Law on Broadcasting) was released in April 2011 and seemingly showed that the public wanted more entertainment programs. The local branch of Transparency International registered concern that these findings would be used to justify the exclusion of

⁸¹ MSI 2010, p.143, and TI 2009, p.10.

⁸² TI 2009, p.7.

⁸³ TI 2009, p.15-16.

⁸⁴ TI Georgia, "Television in Georgia," p.17.

license applicants who intended to focus on news, current affairs, and public interest broadcasting.⁸⁵

With the taming of Imedi and Rustavi-2, the television station that has faced the most pressure from the regulator over the past two years has been Maestro TV, a pro-opposition channel that features talk shows critical of the government and the president. Maestro, which now operates as a satellite station, had been granted access in late 2008 to rebroadcast content via local cable affiliates, thus expanding its audience beyond the small number of Georgians who have access to satellite dishes. However, in early 2009, the GNCC reportedly pressured several of these affiliates to halt their rebroadcasts of Maestro programs, and then temporarily closed some of the stations for unspecified “technical reasons” when they did not comply.⁸⁶ In addition, unknown assailants attacked the station’s offices with a grenade in May. However, after repeated delays, in July 2009 the GNCC issued a 10-year general satellite broadcast license to Maestro, which enabled it to continue broadcasting news programs. In 2010, Maestro dropped its satellite broadcasting capabilities, but resumed broadcasting in March 2011. This was seemingly a result of internal financial issues rather than outside pressure to shut down.⁸⁷

Adherence to the GNCC’s code of conduct, through which broadcast outlets were obliged to set up internal self-regulatory mechanisms, has progressed, with all outlets submitting codes and mechanisms for redress. Several of these mechanisms have been tested; for example, the Georgian Young Lawyers’ Association filed a complaint in December 2009 with Rustavi 2’s complaints commission.⁸⁸ In March 2010, several complaints were made against the Imedi station regarding the broadcast of a simulated news report that depicted an outbreak of war with Russia; the GNCC ruled on March 15, 2010, that Imedi should make a public apology and also broadcast the commission’s decision on air.⁸⁹ An apology was made, but no further action was taken against government-backed Imedi.⁹⁰

Efforts to transform the GPB into a truly neutral public broadcaster have also been less effective in practice. There is widespread belief that the GPB does not ultimately serve the public interest, and instead “operates more like a state broadcaster.”⁹¹ Political disputes spilled over into a fight during 2009 for control over the GPB, which was seen by the opposition as biased toward the government.⁹² Opposition pressure led to the resignation of the GPB’s general director in

⁸⁵ Transparency International Georgia, “TI Georgia Calls on Government to Ensure Diverse Media Market,” 7 April 2011, accessed at: <http://www.transparency.ge/en/post/press-release/ti-georgia-calls-government-ensure-diverse-media-market>.

⁸⁶ CPJ, “Attacks on the Press 2009: Georgia,” 16 February 2010, accessed at: <http://cpj.org/2010/02/attacks-on-the-press-2009-georgia.php>.

⁸⁷ Civil.ge, “Maestro TV Suspends Broadcast over ‘Technical Problems’,” 24 December 2010, accessed at: <http://www.civil.ge/eng/article.php?id=22989>.

⁸⁸ Georgian Young Lawyers Association, “GYLA Filed Complaint at Self Regulation Commission of Rustavi 2 TV Company,” 22 December 2009, accessed at: http://www.gyla.ge/index.php?option=com_content&view=article&catid=45%3Anews-eng&id=667%3Agylla-filed-complaint-at-self-regulation-commission-of-rustavi-2-tv-company-&Itemid=1&lang=en.

⁸⁹ Molly Corso, “Georgia: Alleged Telephone Tapes Stir Controversy over Fake Russian Invasion Report,” 15 March 2010, accessed at: <http://www.eurasianet.org/departments/insightb/articles/eav031510b.shtml>.

⁹⁰ IREX, MSI 2011, p.148, accessed at: http://www.irex.org/sites/default/files/EE_MSI_2011_Georgia.pdf.

⁹¹ TI Georgia, “Television in Georgia.”

⁹² EJC, “Media Landscape: Georgia.”

July, and to the expansion of the board in September. In August, a group of civil society and media members formed the Media Club, which together with the Open Society Georgia Foundation and other nongovernmental organizations was able to push through three nominations for the expanded board. Improvements in GPB programming, specifically coverage of opposition parties, came in February 2010, following the development of a new political channel featuring live coverage of the Georgian Parliament as well as daily opportunities for a wide range of political parties to air their viewpoints free from editorial interference.⁹³ Positively, a report issued by the UN Development Programme (UNDP) on media coverage prior to local government elections held in May 2010 noted that the GPB presented “more or less neutral and balanced” coverage of candidates prior to the elections.⁹⁴

Self-regulation has been a weak link in the Georgian media sector, due in part to the lack of strong tradition of local media freedom or professional journalists’ organizations that could take a lead in organizing the sector to engage in self-regulatory efforts. Efforts by media houses to establish a Media Council in 2005 and an alternative press council were unsuccessful; the bodies were established but did not function effectively in practice. The GPB does have an internal code of conduct, and until the end of 2009 had an ombudsman to enforce it.⁹⁵ However, in December 2009, a nine-member press council was established. The council’s primary responsibility was tracking adherence to a new Georgian Charter of Journalistic Ethics, a voluntary self-regulatory code written by journalists and lawyers with support from the Council of Europe and the European Commission that was initially signed by 137 journalists (more have signed since its introduction).⁹⁶ The industry-wide council does not have punitive powers, but hears cases and can issue public reprimands for breaches of the charter. The council operated in a promising fashion in 2010, hearing several cases concerning signatories to the charter.⁹⁷ However, its effectiveness in the longer term may be compromised by the fact that many of the less ethical media outlets are simply not interested in signing the charter, thus hindering its efficacy over the sector as a whole.

⁹³ Georgia Public Broadcasting Press Release, 23 February 2010, accessed at: http://www.google.com/url?sa=t&source=web&cd=5&ved=0CDQQFjAE&url=http%3A%2F%2Fwww.gpb.ge%2Fuploads%2Fdocuments%2F4e5d95e2-8938-4ab1-b702-7367e0ce15ccGPB_Pressrelease.doc&rct=j&q=GPB%20georgia%202010%20bias&ei=ulEGTYCMGtKjnQeD6p3lDQ&usg=AFQjCNEv5sd34t1NUDKWN6S9qCmTaA67XQ&cad=rja.

⁹⁴ UN Development Programme, “Pre-election Media Monitoring in Georgia,” p.4, July 2010, accessed at: http://www.undp.org/ge/files/24_975_639258_MM-CRRC-report-201007.pdf

⁹⁵ EJC, “Media Landscape: Georgia.”

⁹⁶ IREX, MSI 2010, p.145, and Nata Dzvelishvili, “Working Meeting on Media Ethics held in Tbilisi,” 18 July 2010, accessed at: <http://www.media.ge/en/node/38222>, and European Instrument for Democracy and Human Rights, “European Union-Georgia Civil Society Human Rights Seminar on Media Freedom,” p.28, November 2009, accessed at: http://ec.europa.eu/delegations/georgia/documents/news/10_11dec2009_en.pdf. The charter is available at: <http://cdi.org.ge/eng/library/publications?info=165>.

⁹⁷ Its first case, concerning Imedi journalist Natia Koberidze, can be found here: <http://mediasabcho.blogspot.com/2010/05/decision-001.html>.

CONCLUSION AND RECOMMENDATIONS

The legal framework for broadcast regulation in Georgia is ostensibly fairly progressive, but many aspects are not adhered to in practice and more stringent mechanisms need to be introduced to guarantee the implementation of existing laws. As a result, both the GNCC and the GPB are seen to be politicized and subject to influence from the government. GNCC decisions need to be more transparent, more information is required on media ownership structures—which remain extremely opaque—and rules that ban offshore companies need to be developed in order to close this loophole in terms of media ownership. The recent passage of an amended law in April 2011 is a very positive step in this regard, although efforts should be taken to ensure effective compliance. While self-regulatory structures have traditionally been weak, the recently constituted media council and charter of ethics is a promising development and further efforts should be taken to encourage more journalists to sign the charter and for cases to be brought to the council. Likewise, improvements in balance and opposition coverage at the GPB are a positive development, and should be strengthened.

INDONESIA

POPULATION: 243,306,000
PRESS FREEDOM STATUS: Partly Free
LICENSING FOR PRINT OUTLETS: No
LICENSING OF JOURNALISTS: No
INDEPENDENT REGULATORY BODY(S): No

INTRODUCTION

Since the end of the authoritarian New Order regime of President Soeharto in 1998, Indonesian media have experienced a dramatic expansion of freedom and diversity. Once under near-total control of the Ministry of Information, journalists today receive a certain level of protection from government interference. By 2008, approximately 1,000 publications were in print, a dramatic increase from prior years. The number of radio stations increased from 750 in 1998 to approximately 2,600 in 2010, the vast majority of which are privately owned or community operated. The greatest change in media ownership occurred in the television sector. Under Soeharto, there were only six stations: the state-owned Televisi Republik Indonesia (TVRI) and five private stations, each owned by relatives or close associates of the president. Today, Indonesia's television market includes more than 100 stations of diverse ownership. However, even with the growth of private media outlets and legislation aimed at protecting freedom of expression, journalists continue to face intimidation, most commonly through defamation charges. These are frequently filed under the criminal or civil code, rather than the more lenient Press Law. Reporters also face some level of physical attacks and harassment. Environmental journalists and those who report on the abuse of power by public officials have faced the most intimidation, with little to no protection from law enforcement.⁹⁸ The consequent fear of upsetting the government and other powerful societal actors has led some media outlets to practice self-censorship.

Press freedom is protected through a number of legal instruments, including the 1945 constitution, which guarantees the right to communicate and obtain information, as well as Article 14(2) of Law No. 39, passed in 1999, which ensures the right to "seek, obtain, own, store,

⁹⁸ The Alliance of Independent Journalists (AJI), "AJI documents 40 cases of violence against media workers in 12 months," 11 August 2010, accessed at: http://www.ifex.org/indonesia/2010/08/11/2010_press_freedom_enemy/.

process, and impart information using all available facilities.”⁹⁹ In September 1999, President B. J. Habibie signed Press Law 40, which eliminated press licensing and publication bans by the government. It provides for “freedom of the media, [and] the right freely to form journalists’ associations,” and allowed for punitive measures against those who attempted to restrict press freedom.¹⁰⁰ However, the retention of criminal defamation legislation has posed an ongoing restriction to media freedom. In 2008, parliament enacted the Information and Electronic Transactions (ITE) Law, which further limits freedom of expression by imposing jail sentences of up to six years or fines of as much as one billion rupiah (\$106,000) for defamation that appears online. In May 2011, the Indonesian House of Representatives introduced a draft of a controversial Intelligence Law. The law has not been passed, but journalist groups are concerned about the impact the bill could have on press freedom, due to provisions authorizing the interception of private communications and restricting the right to information.¹⁰¹

LAWS RELATING TO THE REGULATORY FRAMEWORK

Article 15 of Press Law 40 established an independent Press Council (Dewan Pers) as a regulator for print media. Press licenses became obsolete, but according to Article 15(2)(g), press organizations must be registered with the Press Council. Members of the nine-member council represent the journalism and media industry as well as the general public. To strengthen its independence, new members are selected by the media sector.¹⁰² Under the Press Law, it is the responsibility of the council to play the role of mediator in disputes involving the media, which often involves offering alternatives to defamation charges to settle disputes. In February 2006, the Supreme Court ruled that defamation matters must be referred to the Press Council first. However, many defamation charges against journalists continue to be prosecuted under the criminal code. Public officials can file defamation charges against journalists for factual mistakes, potentially leading to seven years of prison under the criminal code or an unlimited amount of compensation under the civil code.¹⁰³ As a result, the Press Council—which was intended to become the main vehicle for hearing complaints and issuing binding recommendations to resolve disputes involving public officials—has not been fully effective. However, the Press Council has been more successful in dealing with public complaints against the press. In February 2010, the council published the Competency Standard for Journalists (Standar Kompetensi Wartawan), in which it outlined 11 key competencies that journalists should possess to gain credibility and recognition. Although individual journalists need to score

⁹⁹ Asian Legal Resource Center, “Republic of Indonesia Legislation Number 30 of 1999 Concerning Human Rights,” 23 September 1999, accessed at: <http://hrli.alrc.net/mainfile.php/indonleg/133/>.

¹⁰⁰ Press Reference, <http://www.pressreference.com/Gu-Ku/Indonesia.html>.

¹⁰¹ AJI, “Journalists denounce draft Intelligence Law as threat to press freedom,” 17 May 2011, accessed at: http://www.ifex.org/indonesia/2011/05/17/draft_intelligence_law/.

¹⁰² Article 19, “Freedom of Expression and the Media in Indonesia-Baseline Study,” December 2005, accessed at: <http://www.article19.org/data/files/pdfs/publications/indonesia-baseline-study.pdf>.

¹⁰³ Tessa Piper, “Don’t Shoot the Messenger: Policy Challenges Facing the Indonesian Media,” 5 November 2009, p. 12 of English version, accessed at: http://www.ajiindonesia.org/index.php?option=com_docman&task=doc_view&gid=28&tmpl=component&format=raw&Itemid=28.

between 70 and 100 on the competency test to be publicly declared “competent journalists,” this is not a licensing requirement for entry into the profession per se, but rather a badge of quality that is publicly listed on the council’s website.¹⁰⁴

Unlike print media, television and radio stations are required to possess a license. Broadcast media are regulated through Broadcast Act No. 32, adopted in 2002. This law established broadcasting as a matter of public interest, subject to government regulation. The Broadcast Act also established the Indonesian Broadcasting Commission (Komisi Penyiaran Indonesia or KPI), an independent body whose responsibility is to “regulate and provide recommendations in the area of broadcasting.”¹⁰⁵ KPI is made up of national and regional bodies, and its decisions cannot be appealed.

Although the government lost much of its overt powers through the establishment of an independent broadcast regulator, it gradually began to reclaim regulatory power and today much of the power over broadcasting is in government hands. In 2005 alone, seven regulations were passed to weaken the authority of KPI by limiting the scope of its work. For example, the Ministry of Communication and Information Technology now has the authority to issue licenses and extensions, and to impose criminal sanctions on broadcast agencies.¹⁰⁶ Operation licenses for radio broadcasting are valid for 5 years, and television broadcasting licenses are valid for 10. Broadcast licenses are used to ensure that broadcasting institutions do not deviate from their mission to inform the public. Requirements in the licensing system include technical specifications, content, and ownership. Licenses are granted in stages and after a temporary testing period (6 months for radio and 12 months for television), the station can apply for a permanent broadcasting license. Reasons for not successfully completing the testing period include violating the use of radio frequency spectrum, failure to broadcast for three months without providing advance notice, transferring the license to another party, and violating technical requirements. As a result of such regulations, licenses continue to be bought and sold rather than new entrants to the sector applying for a license outright.

In 2005, radio operators in West Sumatra asked to have the government’s regulation No. 51/2005 on Community Broadcasters revised. Specifically, they challenged the articles regarding licensing policies, maximum broadcast radius policies, and the rule requiring Indonesian to be the main language of all broadcasts. They felt that these rules were in violation of the Broadcast Act, which established KPI, and not the government, as the supervisory body over broadcasting.¹⁰⁷ Also in 2005, KPI unsuccessfully submitted a judicial review request to the Supreme Court regarding regulations No. 11/2005 on Local Public Broadcasting Agency, No. 12/2005 on Radio Republik Indonesia, and No. 13/2005 on TV Republik Indonesia. KPI felt these regulations granted the Ministry of Communication and Information too much authority over public broadcasting, which, it argued, should fall under KPI’s authority. Another example

¹⁰⁴ Warief Djajanto Basorie, “How to be a competent journalist,” *The Jakarta Post*, 12 March 2010, accessed at: <http://www.thejakartapost.com/news/2010/03/12/how-be-a-competent-journalist.html>.

¹⁰⁵ Article 19, “Freedom of Expression and the Media in Indonesia.”

¹⁰⁶ Article 19, “Article 19 Submission on Freedom of Expression in Indonesia: Universal Periodic Review Process,” November 2007, accessed at: <http://www.article19.org/pdfs/publications/indonesia-unhrc-sub.pdf>.

¹⁰⁷ Syofiardi Bachyul Jb, “Indonesia: Community stations call for new radio rule to be revised,” 20 December 2005, accessed at: <http://www.international.ucla.edu/article.asp?parentid=35922>.

of the government's supreme authority over broadcasting is its regulation of foreign broadcasting and ownership. Local stations are prohibited from relaying foreign broadcasts, and foreign ownership of broadcast media is prohibited.

Since its establishment, the Broadcast Act has drawn significant criticism for its broadly worded restrictions on content and its harsh penalties for violations, both of which exceed international norms. For example, Article 36(6) contains a number of prohibitions, such as "belittling, harassing and/or ignoring religious values and the dignity of the Indonesian people, or damaging international relations."¹⁰⁸ According to Article 57(d) and (e), a violation of these provisions can lead to imprisonment for up to five years. Many analysts feel that these vague provisions are intentional in order to ensure continued government control of the media.

The transformation of the broadcast sector, which started in 1998, received a boost when public broadcasting was formally launched in 2005 with regulation 11/2005 of Public-Service Broadcast, which introduced Radio Republik Indonesia (RRI) and Televisi Republik Indonesia (TVRI) as public institutions rather than government bodies.¹⁰⁹ In their original roles under the Ministry of Information, RRI and TVRI worked under strict regulations. Not only were all their employees, budget, and equipment needs provided by the government, but they were prohibited from reporting criticism of government policies. All broadcasters in the country were required to air news reports by RRI and TVRI to help meet the ministry's goal of favorably reshaping the public's opinion of the Soeharto regime. Today, as public services, neither RRI nor TVRI are obliged to relay news by the government. In the current Broadcast Act, public broadcasting is mentioned only twice. Article 14 states that the responsibility for appointing directors and boards for public broadcasters falls on the president upon recommendations from the House of Representatives. Consequently, public broadcasters report to the House of Representatives. Article 15 outlines funding options for public broadcasters. Such options include community contributions, broadcasting fees, and other "legitimate businesses" related to broadcasting.¹¹⁰ Other funding options include advertising profits and government subsidies.¹¹¹

IMPACT OF REGULATION ON MEDIA FREEDOM

Media freedom, especially in broadcast media, is somewhat limited due to a regulatory framework that allows government involvement in appointments to the KPI as well as in the licensing process. Although KPI was established as an independent regulatory body, the overlap in authority exercised by KPI and the government has raised doubts over its scope of power. KPI

¹⁰⁸ "Undang-Undang Republik Indonesia- Nomor 32 Tahun 2002," accessed at:

<http://www.kpi.go.id/download/regulasi/UU%20No.%2032%20Tahun%202002%20tentang%20%20Penyiaran.pdf>.

¹⁰⁹ JAMCO, "Public Broadcasting in Indonesia," 2009, accessed at:

http://www.jamco.or.jp/2009_symposium/en/004/index.html.

¹¹⁰ "Undang-Undang Republik Indonesia- Nomor 32 Tahun 2002," accessed at:

<http://www.kpi.go.id/download/regulasi/UU%20No.%2032%20Tahun%202002%20tentang%20%20Penyiaran.pdf>.

¹¹¹ Asia-Pacific Institute for Broadcasting Development, "The Administrative and Financial Aspects of PSB: The TVRI Experiences," 30 November 2010, accessed at: <http://www.aibd.org.my/node/228>.

refers to itself as a “quasi-state body” or “auxiliary state institution.”¹¹² Following input from the public, in which names of candidates are sent to the People’s Representative Council (DPR) (sometimes referred to as the House of Representatives), KPI members are nominated by the DPR and the Regional Representative Council (DPD). Provided that candidates have no business interest in the mass media and no political ties, and that they pass a “fit and proper” test gauging their knowledge of the licensing and broadcasting regulations as well as their general capabilities to do the job, they are then appointed by the president and provincial governors.¹¹³ The current board, appointed in 2010 and headed by Dadang Rahmat Hidayat of the University of Padjadjaran, will serve until 2013.

The funding for KPI’s Central Indonesian Broadcasting Commission comes from the national government’s budget, while funding for the Regional Indonesian Broadcasting Commissions comes from the local governments’ budgets. As the government controls the amount of funding and administrative support KPI receives, KPI’s central and regional commissions have been unable to perform their functions effectively. Local governments are often unclear about the commissions’ roles and are consequently reluctant to fund local branches of KPI out of the provincial budgets. KPI is also facing funding difficulties due to severe restrictions put in place by the government. According to Article 23 of the Broadcasting Act, although community broadcasting is now recognized, “they must not receive start-up funds from foreign sources and cannot run commercials other than public service announcements,” making community broadcasting quite challenging in terms of financial sustainability.

In 2010, KPI received almost 20,000 complaints on television content, up 200 percent from the previous year. Only 4 percent of the complaints were related to news, whereas 80 percent were regarding “infotainment” programs, a mixture of news and entertainment features that critics claim violate the journalistic code of ethics.¹¹⁴ In July 2010, KPI announced its plans to censor the programs for violating “ethical, religious, moral, social, and cultural values in Indonesia.”¹¹⁵ In some cases, the Press Council and KPI are both involved in resolving disputes. For example, in 2009 both groups gave attention to complaints that the media was being used to “campaign” for political positions. Specifically, two candidates had used the media to campaign for the Golkar political party’s general chairman position. KPI later advised “not to use television stations as a medium in the competition to win the position as General Chairman of Golkar.”¹¹⁶

Although KPI has the authority to hear and adjudicate complaints regarding content, it is still the government that has the authority to shut down stations completely. In 2007, the

¹¹² Accessed at: <http://www.kpi.go.id/index.php?lang=eng&etats=detailmenu&nid=23>

¹¹³ “Candidates for KPI undergo fit and proper test,” *The Jakarta Post*, 28 April 2010, accessed at: <http://bataviase.co.id/node/188027>.

¹¹⁴ “KPI receives 20,000 complaints on TV content,” *The Jakarta Post*, 13 December 2010, accessed at: <http://www.allvoices.com/s/event-7602926/aHR0cDovL3d3dy50aGVqYWthcnRhcG9zdC5jb20vbmV3cy8yMDEwLzEyLzEzL2twaS1yZWNLlXZlcy0yMDAwMCIjb21wbGFpbnRzLXR2LWNvbnRlbnQuaHRtbA==>

¹¹⁵ “Tifatal supports KPI to censor infotainment programs,” *The Jakarta Post*, 20 July 2010, accessed at: <http://www.thejakartapost.com/news/2010/07/20/tifatal-supports-kpi-censor-infotainment-programs.html>.

¹¹⁶ AJI, “The Threat from Within: 2010 Annual Report,” accessed at: http://www.ajiindonesia.org/index.php?option=com_docman&task=doc_details&gid=33&Itemid=285.

Ministry of Communications and Information Technology denied the Era Baru station a permanent broadcasting license. Era Baru claimed the decision was in response to a request from the Chinese Embassy in Jakarta due to the station's link to the Falun Gong movement, which has been banned by the Chinese government.¹¹⁷ In March 2010, before the Supreme Court's ruling on the case, local police entered Era Baru's studio in Batu Ampar and confiscated its transmission equipment after repeated warnings to cease broadcasting were ignored. On October 5, 2010, the Supreme Court overturned the lower court's decision and temporarily gave an airwave frequency back to Era Baru. However, it was reported in March 2011 that the station's manager, Gatot Machali, was facing a possible six-year jail sentence for broadcasting without a license.¹¹⁸ There have been no other recent reports of shutdowns or license denials.

Attempts at self-regulation of the media industry exist, but their impact is limited. During the Soeharto period, the main press organization was the Association of Indonesian Journalists (Persatuan Wartawan Indonesia or PWI). At that time, newspapers had to obtain a Press Publishing License (SIUPP) and journalists were required by law to belong to PWI. Many saw the PWI as a New Order government-controlled body. This was exemplified by its decision to ban three influential weekly publications: *Tempo* magazine, *Editor* magazine, and the *Detik* tabloid. In 1994, journalists from these three publications joined forces to establish an independent journalists' organization, the Alliance of Independent Journalists (AJI). AJI is now the country's second-largest journalists' union, consisting of representatives from numerous press organizations. AJI encourages self-regulation by individual media houses according to their own code of ethics, which includes the prohibition of information that is "untrue, slanderous, sadistic, or pornographic."¹¹⁹ PWI is no longer a government tool, and it continues to function as a journalists' organization today, with its own code of ethics.

The Press Council has also faced difficulty in regulating the print media industry, as its authority remains unclear in a court of law. It is also limited in its efficacy due to its small size and lack of resources. The nine-member council does not receive salaries and instead must rely on other means of income, limiting the amount of time some members can invest in their responsibilities.¹²⁰ Some argue that its effectiveness would increase if members were compensated and therefore able to allocate more time to Press Council business. Others feel that allowing members to continue their work within the media industry provides valuable perspective that will contribute to their roles on the Press Council. The council receives its funding through the Ministry of Information and Communication, as well as some support from international donors, instead of being funded through a separate line-item in the national budget.

In spite of its funding challenges, the Press Council has continued to gain public confidence. During its first eight years of operation, it received almost 2,000 submissions requesting its involvement in resolving disputes. In 2009, 222 of the 353 complaints were made

¹¹⁷ Ismira Lutfia, "Batam Radio Station Has Broadcast Equipment Seized," *The Jakarta Globe*, 29 March 2010, accessed at: <http://www.thejakartaglobe.com/indonesia/batam-radio-station-has-broadcast-equipment-seized/365671>.

¹¹⁸ Reporters Without Borders, "Local radio station manager facing possible six-year jail term," 28 March 2011, accessed at: http://ifex.org/indonesia/2011/03/28/machali_facing_imprisonment/.

¹¹⁹ Press Reference Indonesia, <http://www.pressreference.com/Gu-Ku/Indonesia.html>.

¹²⁰ Piper, p.16 in English version.

by the government, but many public officials still opt to go to the police or the courts directly rather than to the Press Council. For example, in July 2010, the Indonesian National Police first chose a legal process to handle a dispute with *Tempo* regarding an offensive cover on the magazine's June 28–July 4 issue that portrayed a policeman holding three piggy banks (pigs are considered impure in Islam). However, they later approached the Press Council for mediation, during which *Tempo* agreed that the cover was offensive and offered an apology.¹²¹ Other recent cases adjudicated by the council can be accessed through its official website, www.dewanpers.org. Currently, the council seeks to reach an agreement on a memorandum of understanding regarding options officials should consider when dealing with the media.

Another area in which the Press Council has attempted to effect change relates to individuals' right of response (more commonly known as right to reply). Article 1(11) of the Press Law establishes one's right to respond to reports that are unfavorable to his reputation. Article 5(3) establishes the media's right to issue corrections of inaccurate reports. Criticisms of the right to respond included the lack of discrimination between true and false reports. Reports only needed to be factual and unfavorable for individuals to exercise their right to reply. In 2008, the Press Council issued Press Council Regulation No. 9, in which it provided a 17-point Right of Reply Guide in an effort to reach a common agreement among all parties involved.

CONCLUSION AND RECOMMENDATIONS

The Indonesian media has made huge strides in the 12 years since the end of the New Order regime. Laws such as Press Law 40 and the establishment of regulatory bodies such as KPI and the Press Council have started a progressive movement toward a freer media environment. However, in order to push Indonesian media toward a more democratic future, KPI and the Press Council must have unequivocal authority over media issues and disputes in order to be truly self-regulating. In regard to broadcast licenses, KPI should have sole authority and the government should remove itself from the license-granting procedure completely. In print media, the government should legitimize the authority of the Press Council by mandating that all civil charges brought against media outlets first be mediated by the council, while in appropriate cases and under limited conditions, charges can be brought under the criminal courts. Finally, laws regarding defamation charges need to be more specific. They should clearly discriminate expressions of opinion from expressions of fact and ensure protection for the former. When defamation charges are made, defendants should not be tried under the criminal code. Further education and training for public officials and judges regarding defamation law and existing recommendations of the Supreme Court can also be useful in strengthening the Press Council as an initial mechanism for redress. The potential reform and updating of the Broadcasting Act, while necessary to adapt to a changing media environment, should be undertaken alongside the strengthening of an independent regulatory framework for broadcast media. Likewise, current proposals to start regulating internet-based content should take account of international best practice, which calls for minimal regulation of this developing medium.

¹²¹ AJI, "The Threat from Within."

LEBANON

POPULATION: 3,876,000
PRESS FREEDOM STATUS: Partly Free
LICENSING FOR PRINT OUTLETS: YES
LICENSING OF JOURNALISTS: NO
INDEPENDENT REGULATORY BODY(S): NO

INTRODUCTION

Lebanon has enjoyed a rather unique experience regarding freedom of expression and the press compared with other countries in the Middle East and North Africa region, with a diverse, privatized media landscape. With about 10 privately owned daily newspapers in four languages, and more than 1,500 weekly and monthly periodicals, Lebanon produces about half of the region's print publications.¹²² The country of four million people has nine television stations, two digital cable companies, and about 40 radio stations—five of which account for the majority of the 85 percent of the population reached by radio.¹²³ Also, access to satellite television has grown substantially over the last decade. Lebanese media workers continue to have more freedom than their Arab counterparts, though intimidation and self-censorship—which stem from local sectarian dynamics and interference by Syria and Israel, rather than actions by the Lebanese state—have led to some violations of, and restrictions on, media freedom.

Article 13 of the Lebanese constitution contains the standard rhetoric of freedom of expression and guarantees for free media.¹²⁴ But they are not absolute freedoms; rather, they are circumscribed by the interests of public order, national unity and security. Article 75 prohibits publishing news that “contradicts public ethics or is inimical to national or religious feelings or national duty,” and violators face fines if found guilty. Journalists are also prohibited from insulting the head of state or foreign leaders, and those charged with press offenses may be prosecuted in a special publications court. In November 2009, for example, a reporter with *Al-Kalima* newspaper was charged with insulting President Michel Suleiman in an appearance on

¹²² “Questions & Answers: Press, Audiovisual and Advertising,” accessed at: http://www.lebaneselaws.com/FAQ_PressAudioIol.htm.

¹²³ European Journalism Centre, “Media Landscape: Lebanon,” 8 November 2010, accessed at: http://www.ejc.net/media_landscapes/article/lebanon/.

¹²⁴ “Lebanon Constitution,” Article 13, accessed at: http://www.servat.unibe.ch/icl/le00000_.html.

Murr Television, widely known as MTV. The penal code contains provisions related to content and journalists, and these provisions permit prison sentences for some transgressions, such as blasphemy, which can result in up to a year in prison under Article 473, though this article is rarely used. In general, legal restrictions are invoked far less often in Lebanon than in other Arab states, and the security services play a much smaller role in regulation and enforcement. Nevertheless, the Lebanese media watchdog SKeyes counted 50 cases of legal action, typically libel or slander accusations, against journalists in 2010 alone.

The impetus for institutionalizing legal and regulatory structures for the Lebanese media was the civil war, during which the completely unregulated media became an additional weapon in sectarian arsenals. The 1989 Taif Agreement ended the civil war and restructured the political system of Lebanon. The hybrid sectarian model of media regulation in Lebanon reflects the country's unique confessional system,¹²⁵ its liberal market leanings, and its reliance on cultural requirements for content and ownership. Reference to the Taif Agreement makes it clear how these limits should be conceived. It specifies that "information media" enjoy "responsible liberties" and that organization of the media must "serve the cautious tendencies and objective of ending the state of war."¹²⁶ While the second clause no longer holds today, the cautious tendencies are reflected in the current Audiovisual Media Law, which took more than a decade to pass because of disagreements about representation and preserving the confessional balance. New legislation enacted in the lead-up to the June 2009 parliamentary elections required news outlets to "ensure equity, balance, and objectivity between all candidates and abstain from supporting or promoting any candidate." Blogs emerged in 2006 as a critical news source and communication tool during the Israeli invasion of Lebanon. Blogs are unregulated and rarely censored, and although bloggers have been targeted by the state, such incidents are relatively uncommon.

LAWS RELATING TO THE REGULATORY FRAMEWORK

The law governing the press dates back to 1962, when there were more than 400 newspapers. The licensing of newspapers is governed by this law, which differentiates licensing for political and nonpolitical publications and imposed a moratorium on new licenses. These licenses must be used within six months of issue or they will be revoked. The licenses, however, permit publishing only up to six days a week, so publications that wish to publish every day must obtain two licenses. But this can be difficult because the moratorium on the number of new political licenses increase the expense of obtaining this type of license. Foreign publications must be imported or else printed and sold in the country through a partnership with a Lebanese subsidiary that has the proper licenses, although foreign political publications also face difficulty obtaining licenses. A 1953 Decree (No. 74) stipulated that as long as Lebanon had more than 25 dailies and

¹²⁵ In a confessional system, political opportunities in the national government and other spheres, including the media, are allocated among the various religious and ethnic groups in the country.

¹²⁶ "The Taif Accord," Part III, Section G, November 1989, accessed at: <http://www.al-bab.com/arab/docs/lebanon/taif.htm>.

20 weeklies, no new political newspaper license would be issued.¹²⁷ At that time Lebanon had 45 licensed political papers, while today there are 110 licensed political papers.

Syndicates for journalists and editors, and for publishers, were established by the 1953 decree, with the cabinets of each syndicate joining to form the Lebanese Press Union (Itihad as-Sahafa al-Lubnaniah) that claimed to represent all Lebanese media workers. The Lebanese Press Syndicate (Nakabit as-Sahafa), for print owners and publishers, is traditionally headed by a Sunni Muslim, and for the past decade, Mohammad Baalbak has been the leader, with five Maronite Christians sitting on the council.¹²⁸ There is also the Editors' Syndicate (Nakabat-al-Muharireen) for journalists and editors, which was founded in 1941 and is typically headed by a Maronite Christian. Melhem Karam was the leader for 50 years until his death in June 2010. Although technically there are elections, both men led their respective syndicates for decades, resulting in allegations of nepotism and cronyism and a lawsuit in 2010 that barred elections for a new president until the bylaws were revised. Furthermore, Karam owned print publications, causing debate over whether press owners should be allowed to join the journalists' syndicate. According to journalism professor Magda Abu-Fadil, both Karam and Baalbak "had obstructed changes in their extremely exclusionary organizations and had barred many qualified journalists from membership."¹²⁹ There is no union or syndicate for broadcast journalists.

The Press Law created a Higher Press Council charged with drafting the Lebanese Press Union bylaws and handling "all problems of common interest to journalism and journalists in general."¹³⁰ The council includes executives of the two main syndicates, an elected member from each syndicate, and two representatives of the Ministry of Information. The Press Law also defines the requirements for becoming a journalist, which include being least 21 years of age, holding the equivalent of a Lebanese baccalaureate degree, having practiced the profession for at least four years after applying for apprenticeship or holding a journalism degree, having no criminal record, and practicing journalism as one's only profession.¹³¹ Although the law defines who is considered a journalist, it is vague as to whether journalists must register in order to practice journalism in the country, though in any case these requirements are not enforced.

Lebanon's Audiovisual Media Law (n.382 of 1994) was passed in 1994, after challenging three successive governments to deal with the problems of liberalizing an arena that is especially contentious given the fractious sectarianism of Lebanese politics.¹³² The impetus for the law was the end of the civil war, during which more than 50 television and 100 radio stations—most

¹²⁷ Nabil H. Dajani, *Disoriented Media in a Fragmented Society: The Lebanese Experience*, Beirut: American University of Beirut, 1992, p.15.

¹²⁸ Magda Abu-Fadil, "Tug of War over Lebanese Journalists Union Leadership," *The Huffington Post*, 3 October 2010, accessed at: http://www.huffingtonpost.com/magda-abufadil/tug-of-war-over-lebanese_b_748349.html.

¹²⁹ Magda Abu-Fadil, "Lebanese Information Minister Urges Self-Censorship as Draft Media Law Languishes in Parliament," *The Huffington Post*, 1 August 2011, accessed at: http://www.huffingtonpost.com/magda-abufadil/lebanese-information-mini_b_914432.html.

¹³⁰ Dajani, *Disoriented Media*, p.15.

¹³¹ Article 19, "Memorandum on the draft law amending the press law of Lebanon," 2009.

¹³² Law no. 382, the Audiovisual Law, was signed 4 November 1994 by President Elias Harawi and Prime Minister Rafiq Hariri. A presidential Decree, No. 7997, issued two years later on 29 February 2006 more clearly laid out the requirements for those seeking licenses. Human Rights Watch, *Restrictions on broadcasting: In whose interest?* Vol. 9, No. 1 (E), 1997.

unlicensed—bloomed the spectrum as each political faction vied for political advantage.¹³³ During the war, “political factions believed a radio voice to be almost as important as guns,” and thus a station was necessary both to be considered a powerful organization and to triumph over one’s enemies.¹³⁴ They were also targets in the war. But just as the balkanization of radio demonstrated the breakdown of government authority, in today’s era of global media the government is once again in crisis and the airwaves are once again an important front in the battle for public opinion. The proliferation of satellite news channels controlled by factional heads echoes the use of broadcast media during the civil war.

The Audiovisual Media Law was implemented in 1996, making Lebanon the first Arab state to authorize private radio and TV stations to operate within its borders. The law is an ideologically convoluted document that seeks to create a liberal model of broadcast regulation but is held captive by sectarian political interests and nationalist imperatives. The law created four categories of licenses, detailed the requirements for obtaining a license, and set up the National Council of Audio Visual Media (Conseil National de l’Audiovisuel or CNA) under the purview of the executive branch, with an advisory committee of nongovernmental experts. A presidential decree stipulated some disturbing requirements and restrictions for content that proved highly contentious among professionals and the public. These include requirements that some content be produced locally, limits on controversial programming, and obligatory public service announcements to be provided by the government. The decree that clarified some of the law’s provisions limits newscasts to 280 hours per year, with no more than 15 minutes of news at a time.

Furthermore, the law divides the media (both radio and television) into two categories with different purposes and rights: Category One stations are allowed to broadcast news and political programming, while Category Two are not. Those granted Category One licenses pay significantly more and are subject to limits on newscasts, prohibitions on coverage of live political content, and restrictions on religious programming. Such policies infringe on the rights of citizens “to receive and impart information” and to participate in their government as guaranteed by the Universal Declaration of Human Rights, which Lebanon added specific reference to in a 1990 addition to its constitution. Limited access to information about the government makes it difficult for the people to fully participate in it. Such strictures also seem to go against the spirit of the constitutional provision requiring that meetings of the National Assembly, Lebanon’s legislative body, be public, since the public most often gains access to the government indirectly via the media’s coverage of legislative sessions rather than directly by attending them.¹³⁵ The law is preoccupied with foreign interference, reflecting Lebanon’s concerns about the nationality of owners and content producers stemming from its experience as an occupied country under Syrian influence. Thus the law requires that owners and shareholders be Lebanese citizens and mandates that news programs be produced locally. Such cultural protections and interference by the state conflict with liberal market imperatives, putting the

¹³³ Douglas A. Boyd, “Lebanese broadcasting: Unofficial electronic media during a prolonged civil war,” *Journal of Broadcasting & Electronic Media* 35, no. 3: 269-287, 1991, and Marwan Kraidy, “Broadcasting regulation and civil society in postwar Lebanon,” *Journal of Broadcasting & Electronic Media* 42, no. 3: 387-400, 1998.

¹³⁴ Boyd, p. 282, 273-74.

¹³⁵ Lebanese Constitution, Article 35.

Audiovisual Media Law at odds with the major thrust of the Telecommunications Law, described below.

The government made a stumbling effort to ban satellite television until 1998, by which time LBCI (the satellite version of the Lebanese Broadcasting Corporation, or LBC) and Qatari-based Al-Jazeera had already shown that this medium was going to become popular quickly. But there was no regulatory framework for the telecom sector at a time when competitiveness was becoming ever more important. Thus in 2002 Lebanon enacted its Telecommunications Law as part of an attempt to liberalize and privatize the telecommunications industry, including radio and television. The defining principle in the law is competition, revealing a public sphere conceived of as a marketplace. Both private and public providers of services are required to adhere to competitive behavior or the government can intervene to facilitate or impose competitiveness. It prevents geographic discrimination and requires that all nationals and districts be served by the telecom sector, a requirement that is especially important given the sectarian nature of Lebanese society. Sectarian groups tend to live in geographically distinct areas, and thus this comprehensive service obligation can be seen as a legacy of Lebanon's sectarian history. Although many other countries also have similar provisions, it is useful to understand how Lebanon's sectarianism makes equal provision especially sensitive.

The law lays out the competitive design for the telecom sector, describing how competitiveness is to be ensured through preventing monopolies and cartels, and set up the Telecommunications Regulatory Authority (TRA). The TRA monitors noncompetitive behavior and transparency and prevents the nonuse of licensed frequencies or their resale without specific approval. Furthermore, the law adopts a central proposition of competitiveness and accountability—the principle of publicity, or transparency, although the lack of an access to information law means that often times information is difficult to obtain. What is most striking about this law, however, is what is not in it. Most significant is the absence of a national security imperative. Although Article 47 directs telecom providers to give first priority to the security corps and civil organizations under their purview “upon occurrence of events touching on national security,” this access is not exclusive. There are no other mentions of national security, unity, or other tropes commonly deployed in the region to restrict information freedom.

The Telecommunications Law also created the Telecom Regulatory Authority as a financially and administratively autonomous body, although the minister of telecommunications recommends the chair and its four full-time members, who are then appointed to five-year terms by a decree of the Council of Ministers. The TRA Administrative and Financial Regulations of 2005 sets out the requirements for composition of the board and the rules to reduce conflicts of interest, and sets up four administrative units and their purviews. In order to ensure their impartiality, appointees must disclose their own financial interests as well as those of their immediate family, and cannot hold paid or unpaid work during their tenure or work in specific industries for two years following the end of their term. The TRA is required to develop the regulations to govern the successful and competitive functioning of the telecom sector, and is also required to organize public meetings and consultations. Throughout the law, various provisions call for the TRA to publish decisions, appeals, and applications in the official Gazette and two newspapers so that the public may be informed. It also mandates the dissemination of information by the authority to the public, a requirement that is rather rare in this part of the

world.¹³⁶ But although the law mandated the body become financially independent within two years of its establishment, this has not occurred and thus its ability to grant licenses has been stymied, especially with respect to the internet.

The 2008 Electoral Law also contains provisions regulating media content, specifically requiring that broadcasters ensure balanced and impartial coverage that avoids incitement of violence or divisions. It also requires that political advertising space be clearly delineated and indicate the sponsor, that the same conditions apply to all ads, and prohibits the publication or broadcast of such ads or opinion polls in the 24 hours preceding election day through the close of polls.¹³⁷ The law created the Supervisory Commission on the Electoral Campaign (SCEC), which monitors media coverage and campaign spending. The SCEC received several complaints from parties and candidates about media coverage, particularly related to inflammatory and possibly defamatory language by candidates, but was regarded as ineffective and unable to prevent violations, according to a study by the European Union.

Currently, efforts are underway to reform Lebanon's media laws and regulatory structure. The Commission for the Modernization of Laws has begun reviewing legislation and some draft bills have emerged, but have not yet been adopted. Two drafts are before the Media and Communications Committee of the National Assembly, which includes members of most of the country's political factions, while a separate draft information technology sector law also under consideration has been widely condemned by journalists, bloggers, and internet users.¹³⁸ One of the draft bills, sponsored by legislator Ghassan Moukheiber and originally drafted by Maharat, a local press freedom organization, would loosen restrictions on media ownership and annul statutes related to the prosecution of journalists, but amendments would also include additional punitive actions and punishments against journalists.

IMPACT OF REGULATION ON MEDIA FREEDOM

The Ministry of Information, the syndicates, and the courts enforce media laws and regulations, which are widely perceived as outdated and in need of revision. Maharat has said the "current licensing of media outlets is inconsistent with the guarantees set out in the constitution."¹³⁹ For example, current regulations make it very difficult in practice for new print media outlets to obtain licenses. David Munir Nabti, the founder of the youth-driven newspaper and website *Hibr*, said that obtaining a political license was nearly impossible because of the difficulties and costs surrounding the process, explaining that such a license costs hundreds of thousands of dollars because it would have to be bought from an existing licensee and that two licenses would

¹³⁶ Article 12 "Disclosure of Information" of the TRA Administrative and Financial Regulations of 2005.

¹³⁷ European Union Election Observation Mission, Lebanon Final Report, 7 June 2009, accessed at: http://www.eucomlebanon.org/en/files/doc/1253861855_Rapport%20final%20EN%20OK.pdf.

¹³⁸ Magda Abu-Fadil, "Lebanese Information Minister Urges Self-Censorship."

¹³⁹ "Lebanon in dire need of a new media law," 12 August 2011, accessed at: http://www.zawya.com/story.cfm/sidDS12082011_dsart-146069/Lebanon_in_dire_need_of_a_new_media_law.

be needed to change the name of the publication.¹⁴⁰ Foreign publications, meanwhile, are subject to review by the Directorate of General Security (SG), which is authorized to censor foreign books and movies in addition to periodicals that threaten national security prior to distribution. In 2010 the SG banned screenings of Degaulle Eid's documentary *Chou Sar? (What happened?)* at two film festivals without providing justification or written notice; the film chronicled one man's experience with a village massacre in 1980. The SG also banned *Persepolis*, the award-winning film based on a graphic novel about the Iranian revolution.

The Audiovisual Media Law set up a regulatory council, the CNA, under the purview of the executive branch, with an advisory committee of nongovernmental experts. The CNA is charged with monitoring the media, ensuring the law is followed, and reviewing license applications prior to making recommendations to the cabinet within 45 days of submission. It is not clear whether the requirements and restrictions regarding limits on political and news coverage are indeed adhered to, although it appears that they are not, since there are numerous 24-hour news stations as well as half-hour newscasts several times per day on other channels. Licenses are granted for 16 years and must be renewed three years prior to expiration. Law 531 specifically regulates satellite channels, placing responsibility for granting and revoking licenses with the cabinet rather than the council, and without reference to the National Assembly. While both the CNA and the TRA have the right to grant licenses, the TRA has the capacity to grant the right to use radio frequencies based on their availability and the technical capacities of the applicant, rather than issuing licenses based on the political and nonpolitical categories. The TRA also issues licenses for other telecommunications services, such as telephone and the internet. In practice, it appears that these two bodies have overlapping mandates, and that the law does not specify which types of licensing fall under each body's purview.

According to a study by Internews, the 10 members of the CNA "were politically selected along confessional lines, half by the National Assembly and half by the cabinet, but they also were recognized for their intellectual, literary, scientific, and technical backgrounds and experience."¹⁴¹ This enables the government to use licensing for political remuneration since it holds all the decision-making power, which appears to be exactly what happened following passage of the law, when only four television stations were granted licenses, including one that did not even exist yet. All of these stations belonged to powerful political leaders and seemed to fall short of the requirements for the financial viability of license holders.¹⁴² Nonetheless, more than a decade after the law was enacted, the spectrum has filled out, though stations continue to be affiliated with political parties or sectarian leaders as opposed to being independent or autonomous. There are no recent reports of station closures by the government; however, no independent companies or organizations have recently been granted licenses either.

As part of the implementation of the Audiovisual Media Law, several small radio and TV stations were subsequently declared "illegal" and thus closed, with the new licenses being given to corporate conglomerates linked to influential politicians that served to reinforce sectarian

¹⁴⁰ IREX, "Media Sustainability Index (MSI) Lebanon 2009," p.74, accessed at: http://www.irex.org/sites/default/files/MSIMENA09_Lebanon.pdf.

¹⁴¹ Internews Country Report, "Lebanon," p.9, accessed at: <http://www.internews.org/regions/mena/amr/lebanon.pdf>.

¹⁴² Boyd 1991; Kraidy 1998; Human Rights Watch, *Restrictions on broadcasting*.

divisions. One of the main objectives of the law was to prevent political parties from controlling stations by limiting any individual or family from owning more than 10 percent in a television company, though this has not been enforced. The Future TV 24-hour news station—owned by the family of assassinated former prime minister Rafik al-Hariri—as well as Christian leader and MP Michel Aoun’s Orange TV and businessman Tahsin Khayat’s NTV (New TV) made political compromises so they could join the ranks of other political factions with satellite media. Other such stations include LBC, owned by Saudi Prince Walid bin-Talal and head of the Lebanese Forces Sameer Geagea, the Shiite movement Hezbollah’s Al-Manar, parliament speaker and leader of the *Ama!* movement Nabih Berri’s National Broadcasting Network (NBN) and MP Gabriel Murr’s MTV. The anti-Syrian MTV was permitted to resume broadcasting in 2009 in time for the elections, following its 2002 closure after it promoted Murr as a parliamentary candidate.

The Audiovisual Media Law contains the stipulation that if a station does not abide by the law, the CNA can recommend that the minister of information order a three-day suspension of its operations for a first infraction.¹⁴³ A second violation can result in a recommendation by the minister to the government that the alleged violator’s transmissions be terminated for up to one month. Although the law does not specify how a station can present evidence to counter the council or minister’s recommendations or appeal such decisions, Article 24 notes that any government-issued decision can be reviewed before the State Jury. Article 35 specifies that the journalist syndicates, councils and court system are responsible for enforcing media laws and decrees. Appeal cases are sent to a special court that must review the legalities of the case within one year and determine its constitutionality. If the court finds that the penalties imposed by the information minister were unconstitutional, a television station can claim up to 10 million Lebanese pounds (\$6,660) for every day of non-transmission, and a radio station, up to 3 million Lebanese pounds (\$2,000) per day. However, no cases of suspension or termination under these procedures have recently been reported.

Efforts by the profession to provide a measure of self-regulation fall under the purview of the journalists’ syndicate, which is governed by a Charter of Professional Honor adopted in 1974. In 2008, of an estimated 3,000 working journalists in the country, only 1,086 were registered with the syndicate, according to the *Monthly*. In previous years, some journalists reported that they had tried to register and were unable to, with some of them being told their applications had been lost.¹⁴⁴ There was a case in 2000 in which a journalist was accused of libel, and because he was not a member of the press syndicate, was also accused of impersonating a journalist. Karam interceded on his behalf, arguing that only the syndicate had the right to file such charges, and the impersonation charge was dropped. Maharat criticized the syndicates for failing to react to the dismissal of dozens of media personnel in 2009, asserting that their failure to take any initiative in response to a round of firings across the media spectrum confirmed the weakness of the syndicates.

¹⁴³ Audiovisual Media Law Chapter 7, Article 35

¹⁴⁴ Rasha al-Atrash, “Struggle over the press syndicate,” 14 June 2010, *Now Lebanon*, accessed at: <http://www.nowlebanon.com/NewsArchiveDetails.aspx?ID=177308>.

Although the charter refers to members of the press and specifically those working at newspapers—as it was written prior to the proliferation of broadcasting technologies and news programming—it nonetheless should be considered to govern all types of journalists. The audiovisual and telecommunications laws specifically apply the laws governing the press to other communication technologies, and thus the code of ethics contained in the charter could be extended to these areas as well. This code of ethics lays out the role and responsibilities of the press, namely its role as both an institution of public service and a commercial industry. It strikes a balance between the liberal model of communications, based on private commercial interests, and the cultural model of nationalist interests that serve the public by mobilizing “public opinion in defense of the country.”¹⁴⁵ The tension between the two models, however, is resolved in the last point of the charter, point 15, where public service is identified as paramount, superseding a newspaper’s “success or continuation.” The document lays out standard guidelines of professionalism, including the responsibility to be truthful and accurate, to protect one’s sources, and not to publish unconfirmed news without explanation. The boundaries of press intrusion lie at the private life of individuals. Publications are urged to avoid slander, insult, “character assassination,” and incitement, harkening to Lebanon’s long experience with professional journalism, which bears upon current practices.¹⁴⁶ There does not appear to be a clear process or mechanism for making complaints against the print media under the charter, however.

The Audiovisual Media Law gives individuals and entities the ability to defend themselves “against any allegations transmitted by any TV or radio institution” through the right to proportional response, although the law does not specify how such a response should be made or to whom. With issues related to the public interest or administration, the minister of information can request a correction or retraction. Thus complaints against broadcast media can ostensibly be made to the Ministry of Information, although the mechanism for doing so is not specified in the law.

CONCLUSION AND RECOMMENDATIONS

Lebanon’s regulatory structures replicate sectarian political structures, politicizing the media and impeding the development of a robust independent media. The media’s partisanship during the 2009 elections, for example, resulted in media outlets becoming tools of political factions and taking sides rather than remaining impartial observers. The sectarian approach to licensing discourages independent, unaffiliated media from developing, and reinforces divisions rather than building a sense of community and national identity. The ensuing ownership structures in turn impact the balance and objectivity of news media and create barriers to professionalization of journalists.

Although Lebanon’s media industry enjoys relatively more freedom than its regional counterparts, the country’s media regulation is antiquated and needs to be updated for the 21st

¹⁴⁵ Charter of Professional Honor, 1974, Point 5; see also Kaarle Nordenstreng, ed., *Journalist: Status, Rights and Responsibility*, Prague: International Organization of Journalists, 1989, p.174-175.

¹⁴⁶ Charter of Professional Honor, 1974, Points 6 and 13.

century. The regulatory structures limiting licenses for news coverage are an undue restriction on free speech, and mean that political connections are needed to obtain a news license. In light of the increasing popularity of the internet—which has about a 25 percent penetration rate in Lebanon—as a news publishing and broadcasting platform, it makes little sense to restrict who can broadcast news. The syndicates are sclerotic and do not play much of an advocacy or protection role. Given the ambiguity over membership requirements, it is recommended that the Press Law be amended to clarify that membership in a syndicate is not required to practice journalism in the country. It is also recommended that traditions of sectarian leadership be replaced with democratic processes in the election of syndicate heads.

PAKISTAN

POPULATION: 180,808,000
PRESS FREEDOM STATUS: Not Free
LICENSING FOR PRINT OUTLETS: No
LICENSING OF JOURNALISTS: No
INDEPENDENT REGULATORY BODY(S): No

INTRODUCTION

In the past decade, the broadcast landscape in Pakistan has changed considerably, with a dramatic expansion in private ownership of television stations and satellite broadcasting. While the government continues to control the only free terrestrial broadcast outlets with a national reach, several dozen private satellite television channels offer live domestic news coverage, commentary, and call-in talk shows, providing a range of information and opinion in English and several vernacular languages. These stations—which mostly broadcast from inside the country with a few operating from bases overseas—have played a key role, particularly over the past several years, in covering political turmoil and other events of national importance, starting with the unfolding judicial crisis in March 2007 that pitted an activist judiciary against then president Pervez Musharraf.¹⁴⁷ More than 200 FM radio licenses have been approved, of which around 115 are operational; of these, over half provide news and information.¹⁴⁸ Nevertheless, despite these openings, the overall media environment in Pakistan remains fraught with dangers. While violence against journalists is a major and well-publicized issue, outlets face additional pressures from both official and societal forces to self-censor or curb critical reporting, including intimidation from intelligence forces and the denial of advertising to certain outlets.

Media freedom is also constrained by the legal and regulatory framework, which despite promises has not yet been reformed by the new civilian government. A number of laws—including the constitution itself, harsh blasphemy laws, criminal defamation laws, and the colonial-era Official Secrets Act—allow for curbs on freedom of expression on subjects including the armed forces, the judiciary, the government, religion, and national security issues.

¹⁴⁷ Pakistan Press Foundation (PPF), “Pakistan Media Comes of Age Despite Rising Violence,” May 2007, accessed at: <http://www.pakistanpressfoundation.org/userRAndDDetails.asp?uid=230>.

¹⁴⁸ Asian Media Barometer (AMB) Pakistan 2009, p.6, accessed at: http://www.intermedia.org.pk/pdf/Media_Barometer_Pakistan_2009_English.pdf.

However, most are rarely invoked to prosecute individual journalists or curb media freedom. In 2010, restrictions on online content increased following a May court decision to block the social networking site Facebook (it was lifted later in the month) and a June order for the Pakistan Telecommunications Authority to monitor websites; both actions were taken with the ostensible aim of blocking “blasphemous” content.¹⁴⁹ Further development of internet regulations is currently under consideration.¹⁵⁰

LAWS RELATING TO THE REGULATORY FRAMEWORK

Print media are regulated by four ordinances adopted in 2002, including the Press, Newspapers, News Agencies and Books Registration Ordinance and the Press Council of Pakistan Ordinance. According to the registration ordinance, all newspapers, periodicals, and other small-circulation publications such as pamphlets or newsletters, as well as news agencies and printing presses, must register with either the local or provincial authorities (including providing ownership and bank details in the case of newspapers) and provide copies of the publication to the relevant authorities; failure to do so can be punishable by a fine or a prison term of up to six months. Foreign ownership of print media is limited to not more than 25 percent of the total, and ownership, printing, or publication is also limited to those above the age of 18. Registration can be denied if the individual has been convicted of a criminal offense or of an offense involving “moral turpitude,” if the title of the newspaper is similar to that of another paper, or if the outlet otherwise contravenes the ordinance. However, those who have been denied have an opportunity to appeal, and can also bring their case to the high court. There is no licensing mechanism or legal requirement for individuals to practice journalism.

The Press Council of Pakistan Ordinance established a statutory press council with the broad mandate to maintain professional standards and media independence in the print sector. The council’s role is also to uphold an appended Ethical Code of Practice through hearing complaints. In terms of the adjudication of complaints, the council is empowered to hold hearings and call witnesses, and to recommend various forms of punitive actions against an offending individual or news outlet, including reprimands, apologies, or requesting that the publication be suspended or withdrawn. Complaints brought to the council cannot be simultaneously pursued through the court system. It was envisaged that the council be an independent entity, funded both by a government grant as well as by registration fees collected from media outlets. Its 19 members (appointed to serve three-year terms) would be a mix of those nominated from different sectors of the print media as well as sectors of civil society (educators, lawyers, human rights advocates, and representatives of women’s groups) and the government; however, its chair would be nominated by Pakistan’s president. The language of the code has been critiqued by freedom of expression watchdog Article 19 as being too imprecise

¹⁴⁹ Reporters Without Borders, “Authorities step up surveillance of online content,” 30 June 2010, accessed at: http://www.ifex.org/pakistan/2010/06/30/online_content_surveillance.

¹⁵⁰ Association for Progressive Communications, “Confidential Pakistani document reveals plans for stricter control of the internet and freedom of expression,” 23 June 2010, accessed at: <http://www.apc.org/en/news/confidential-pakistani-document-reveals-plans-strict>.

and ambiguous. The group also raised concerns regarding the provisions for the council's independence in terms of membership, appointments, and financing, as well as noting that penalties such as suspension were overly harsh.¹⁵¹ Despite numerous changes in government since 2002, these ordinances remain in force.

The primary body responsible for regulating broadcast media is the Pakistan Electronic Media Regulatory Authority (PEMRA), which was established by an ordinance issued by the military government headed by President Pervez Musharraf in 2002. PEMRA is responsible for issuing broadcast licenses for both radio and television outlets; video content relayed over mobile phones and the internet is also covered under its mandate. Although PEMRA was originally intended to be a separate body under supervision of the cabinet, it was transferred to fall under the purview of the Information Ministry, thus weakening its independence from government.¹⁵² In June 2007, amendments to the 2002 ordinance gave authorities broad powers to revoke licenses, suspend broadcasts, confiscate equipment, and seal the premises of media outlets. Although the outcry over the amendments prompted Musharraf to promise to withdraw them on the condition that the media develop a code of conduct, they remained in force. In late 2007, ordinances passed as part of the November 3 imposition of martial law barred the media from publishing or broadcasting “anything which defames or brings into ridicule the head of state, or members of the armed forces, or executive, legislative or judicial organs of the state,” as well as any broadcasts deemed to be “false or baseless.” Government officials were empowered to suspend publication of a newspaper or to confiscate broadcast equipment for up to 30 days. Owners of outlets considered to be in breach of the ordinances could face jail terms of up to three years, fines of up to 10 million rupees (\$165,000), and cancellation of their broadcaster's license. Cable operators also faced potential fines and jail terms for noncompliance. Television networks were taken off the air and required to sign a 14-page code of conduct put forth by PEMRA—in which they agreed to discontinue specific types of programming, such as election-related content, talk shows, and live phone-in segments—in order to resume broadcasting.¹⁵³

The new civilian government initially promised to reform the ordinances as part of a more open media policy, and in April 2008 then information minister Sherry Rehman (a former journalist) introduced legislation to reform restrictive aspects of the PEMRA regulations, including the ban on live broadcasts and critical news, and punishments for defamation. However, this promise was not adhered to, and Rehman herself resigned in March 2009 in protest over government attempts to control unfavorable coverage by two popular television stations.¹⁵⁴ By October 2009, the National Assembly's Standing Committee on Information had unanimously approved the proposed PEMRA (Amendment) Bill, which was remarkably similar to the 2007 ordinances.¹⁵⁵ The bill would allow significant restrictions on media, including a ban

¹⁵¹ Article 19, “Memorandum on Press Council of Pakistan Ordinance, 2002, and Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, and Defamation Ordinance 2002,” September 2002, p.7-11, accessed at: <http://www.article19.org/pdfs/analysis/pakistan.prs.02.pdf>.

¹⁵² Article 19, “Pakistan: 20th Anniversary,” 2010, accessed at: <http://www.article19.org/speaking-out/pakistan>.

¹⁵³ PPF Annual Report 2009, p.1, accessed at: <http://www.pakistanpressfoundation.org/data/uploaded/ppf%20report%202009.pdf>.

¹⁵⁴ Committee to Protect Journalists (CPJ), “Attacks on the Press 2009: Pakistan,” 16 February 2010, accessed at: <http://www.cpj.org/2010/02/attacks-on-the-press-2009-pakistan.php>.

¹⁵⁵ PPF, “National Assembly Standing Committee recommends curb on electronic media coverage,” 3 November 2009, accessed at: http://www.ifex.org/pakistan/2009/11/03/pemra_law_amendments/.

on live coverage of events that the government did not want to be broadcast, such as footage related to terrorist attacks or statements of extremist groups; anything prejudicial to the ideology of Pakistan or to the security of the state; or anything considered defamatory to the president, armed forces, or executive, legislative, or judicial branches of government. Violators would face steep fines or jail terms of up to three years.¹⁵⁶ In August 2010, in the upper house of parliament, the Senate Standing Committee on Information and Broadcasting supported the adoption of a media code of conduct, including a ban on graphic footage related to terrorism or the airing of any statements put out by extremist groups; however, an additional clause warned against broadcasting “anything defamatory against the organs of the state.”¹⁵⁷ Local rights groups and some journalists have called the proposed legislation overly broad and restrictive.¹⁵⁸ However, the proposals—which in order to become law would have to be approved by both houses of parliament and then signed by the president—have not yet been put to a vote in either the National Assembly or the Senate. Meanwhile, the repressive June 2007 amendments to PEMRA were formally nullified with parliament’s passage of the 18th amendment to the constitution in April 2010. Other PEMRA regulations remain in place, including a code of conduct and the 2009 PEMRA rules.

Although in several instances the focus of proposed legislation has been to regulate coverage of terrorism (including the attacks themselves as well as the ideology behind them), “national security” issues have tended to be defined broadly, and in the instances noted above the bills proposed have included clauses that regulate any coverage that is perceived as critical of the government or other organs of the state. A similar impetus appears to be behind the July 2010 announcement of the resuscitation of an additional body, the Media Coordination Committee on Defence Planning. The purpose of the body was ostensibly “to define guidelines for electronic and print media covering terrorist incidents and national security issues.”¹⁵⁹ Also in July, the Punjab Provincial Assembly passed a nonbinding resolution that criticized journalists and media groups for promoting “propaganda” and challenging democracy and the rule of law, and called on the government to appoint a committee to address its concerns. However, the resolution was withdrawn within a few days after protests by journalists and other media organizations. Finally, a proposed Anti-Terrorism (Amendment) Bill 2010 tabled in the Senate in July could provide for the seizure or sanction of FM radio stations that promote terrorism.¹⁶⁰

¹⁵⁶ CPJ, “Media rules could bring back the bad old days in Pakistan,” 30 October 2009, accessed at: <http://cpj.org/blog/2009/10/media-rules-could-bring-back-the-bad-old-days-in-p.php>.

¹⁵⁷ Council on Foreign Relations, “Daily Star: Pakistani Media Regulation Borders on Censorship,” 11 August 2010, accessed at: http://www.cfr.org/publication/22796/daily_star.html.

¹⁵⁸ Declan Walsh, “Pakistan proposes law to curb the media,” *The Guardian*, 1 July 2010, accessed at: <http://www.guardian.co.uk/world/2010/jul/01/pakistan-law-curb-media>.

¹⁵⁹ Hasan Khan, “Pakistani journalists vow to resist media regulation,” 7 July 2010, accessed at: http://centralasiaonline.com/cocoon/caii/xhtml/en_GB/features/caii/features/pakistan/2010/07/07/feature-01. The committee, which had been formed in 1971 in order to “counter enemy propaganda,” had last met in 2008 shortly before the resignation of then President Musharraf. See also PPF, “Military-Civil media panel revisits its mandate,” 2 July 2010, accessed at: <http://www.pakistanpressfoundation.org/userMediaFilesDetails.asp?uid=22247>.

¹⁶⁰ “Govt looks to toughen up with new anti-terror law,” *The Express Tribune*, 28 July 2010, accessed at: <http://tribune.com.pk/story/31892/govt-looks-to-toughen-up-with-new-anti-terror-law/>.

IMPACT OF REGULATION ON MEDIA FREEDOM

Statutory regulatory bodies are either nonfunctioning or are not independent. Although a statutory Press Council is provided for in law, it has not been implemented and the council remains nonfunctional. Some of the relevant groups have nominated members, but the process has not been completed and two chairmen appointed by the government served short terms before leaving their posts.¹⁶¹ In October 2009, the information minister noted that the ministry was under increased pressure to enforce broadcasting laws, and that it was considering establishing provincial councils to address complaints directed at the media by civil society. Councils would have five members who would be private citizens appointed by the federal government. Another committee composed of eminent journalists and legal experts would work on drafting a media code of conduct.¹⁶² However, this idea of provincial statutory councils has not yet been implemented. Although PEMRA was supposed to be an independent body with a majority of board members representing civil society, this has not been the case, and currently a majority of the 13 board members are government officials, while even the 5 representatives from civil society are nominated by the federal government.¹⁶³ Thus in practice the membership and appointments process severely compromises its independence. The PEMRA “council of complaints” mechanism has been in operation for a number of years and currently has seven branches in each provincial capital. Each council is composed of experts in media or legal issues, and no PEMRA officials or other individual affiliated with the government sits on the council, thus ensuring that they have some measure of independence.¹⁶⁴

Denial of registration for print media is not used to restrict print outlets from publishing, although those that do not secure the required declaration are in violation of the regulations. In terms of the broadcast licensing process, standard procedure is that before issuing a license, PEMRA will evaluate a number of factors, including financial (past record and credibility, financial sustainability of the applicant, share of Pakistanis in ownership rights, and the ability of the applicant to compete in the market) as well as technical (current availability of technology as well as chances of technical advancement and introduction of new technologies). This process is somewhat opaque and allows PEMRA to make arbitrary decisions regarding licensing. In addition, the high cost of licenses favors those applicants with greater means, as they are able to use their assets as well as other inducements to secure their license. There are some restrictions on content. Under the PEMRA Act, a local broadcaster must seek prior permission before airing foreign content, can broadcast foreign content for only 10 percent of its total airtime, and should also inform PEMRA about the nature of content before receiving clearance.¹⁶⁵ Initially, private radio stations were not allowed to broadcast news, but these rules have been relaxed and currently a number of the stations in operation do broadcast both news and current affairs

¹⁶¹ Pakistan Media Watch, “Is it time for Press Council?,” 29 June 2010, accessed at: <http://pakistanmediawatch.com/2010/06/29/is-it-time-for-press-council/>.

¹⁶² PPF, “National Assembly Standing Committee recommends curb on electronic media coverage,” 3 November 2009, accessed at: http://www.ifex.org/pakistan/2009/11/03/pemra_law_amendments/.

¹⁶³ AMB, p.45.

¹⁶⁴ PEMRA Council of Complaints, <http://www.pemra.gov.pk/councilofcomplaints.html>.

¹⁶⁵ PPF, “Twenty-four FM radio stations prevented from broadcasting BBC news,” 3 May 2010, accessed at: http://www.ifex.org/pakistan/2010/05/03/bbc_bulletins/.

programs; some also broadcast news content from the British Broadcasting Corporation (BBC).¹⁶⁶ Provisions that 10 percent of airtime on private channels be dedicated toward public interest broadcasting, as well as provisions regarding local language content and fair coverage during elections, are routinely ignored in practice.

PEMRA has issued licenses to approximately 200 FM radio stations and 100 television channels—of which roughly 115 and 80, respectively, are operational—thus dramatically opening up the broadcast space.¹⁶⁷ There is no stated provision in the licensing process for community radio, and thus far the government has given licenses only to commercial companies and mass communication departments of universities to set up FM stations.¹⁶⁸ Television is similarly dominated by commercial privately owned companies. In the wake of amendments allowing cross-ownership in 2007, a number of television stations that initially operated from abroad moved their operations to within Pakistan.¹⁶⁹ In general, there have been few cases of denial of licenses on politicized grounds. The Dawn media group faced difficulties and delays in securing a television license in 2006 and 2007—a decision that the chief executive officer termed as being part of an overall pattern of harassment and intimidation in retaliation for the newspaper's coverage of several sensitive topics; the license was finally awarded in June 2007. According to Article 19, in 2007 Aaj TV was served notice that its license was to be revoked, although this was later withdrawn. There have also been allegations that broadcast licenses have in the past not been awarded to those with known antigovernment leanings, although no cases have been reported in the past several years. However, authorities do remain more sensitive to separatist issues. Efforts to establish both Baluchi-oriented TV and newspapers have been curbed with arrests and shutdowns, according to the Asia Media Barometer report on Pakistan.¹⁷⁰ PEMRA also maintains responsibility for shutting down stations that operate illegally as well as for withdrawing licenses from transmitters that relay illegal content or channels; hundreds of such stations operating, mostly in the northwest Khyber Pakhtunkhwa province, had been closed as of September 2010.¹⁷¹

Since coming to power in early 2008, the new civilian government has continued the trend of sporadically interfering with broadcasting by temporarily disrupting or pulling off the air certain television stations or programs. Most of the incidents have occurred during periods of political infighting or tension, either between different political parties or during clashes between the executive and the judiciary. For example, during the March 2009 demonstrations demanding the reinstatement of Chief Justice Iftikhar Chaudhry, authorities temporarily shut down the cable service of Geo TV and Aaj Television in several cities around the country—a development that

¹⁶⁶ PPF, “FM Radio Broadcasting in Pakistan,” 2009, p.19, accessed at:

<http://pakistanpressfoundation.org/data/uploaded/radio%20in%20pakistan%20english.pdf>.

¹⁶⁷ PPF, “Pakistan Media Comes of Age.” See also AMB 2009, p.28.

¹⁶⁸ PPF, “FM Radio Broadcasting,” accessed at:

<http://pakistanpressfoundation.org/data/uploaded/radio%20in%20pakistan%20english.pdf>.

¹⁶⁹ Muhammad Aftab Alam, “Broadcast Regulation in Pakistan: The Need for an Enabling Regulatory Regime,” 2010, accessed at: http://eastbound.eu/site_media/pdf/EB2010_Alam.pdf.

¹⁷⁰ AMB, p.28.

¹⁷¹ PEMRA, “PEMRA Resolves to Uphold Rule of Law in Media,” 30 September 2010, accessed at: http://www.pemra.gov.pk/press_releases/Uphold_Rule_Of_Law_In_Media.pdf.

prompted the resignation of then information minister Rehman in protest.¹⁷² A number of television stations were also blocked for several hours in the wake of a terrorist attack on the Army headquarters in October 2009. Coverage seen as portraying the government, and particularly President Asif Ali Zardari, in a bad light has also been blocked. In August 2010, news outlets covering the story of a protestor who had hurled a shoe at the president during a political rally in the United Kingdom had their broadcasts blocked on the orders of the government, and when cable operators refused to stop the broadcasts, their facilities were attacked by progovernment and party activists.¹⁷³ Positively, after the stations made an emergency appeal to the judiciary, the Lahore High Court and later the Supreme Court issued orders that the stations be immediately reopened.¹⁷⁴ In April 2011, the Jang media group, which owns Geo TV, claimed that PEMRA ordered it to stop transmitting its sports channel, and then later in the month shut down the group's music television channel after it began to televise cricket matches on that channel instead. While the government claimed that the channel was violating the terms of its license, the Jang group claimed that the actions were part of a larger pattern of harassment aimed at denting the group's financial viability.¹⁷⁵

The international dimension to Pakistan's media market has come to the forefront several times, with Pakistani authorities attempting to pressure foreign governments to exert pressure on privately owned satellite channels aimed at the Pakistani market. Currently, two of the major television channels, Geo and ARY, broadcast via satellite from the United Arab Emirates (UAE), where Dubai's Media City hosts a number of internationally focused channels. In June 2008, pressure from the UAE host government was brought to bear on Geo, when it told Geo to halt broadcasts of two popular talk shows or face removal from their Media City premises. In November 2009, Geo alleged that following a phone call from the Pakistani government, UAE authorities prevented a popular program from being broadcast from the station's Dubai studios.¹⁷⁶ An official ban on cable operators relaying India-based news channels remains in force, and authorities do attempt to enforce these laws. In May 2011, in the wake of the killing of Osama bin Laden, PEMRA asked nine foreign channels to stop their unauthorized illegal uplinking of live news coverage, by which local news is relayed to foreign stations via satellite, and then suspended the uplinking rights of these channels, arguing that they were required to apply for permission to cover specific events on a temporary basis.¹⁷⁷

¹⁷² CPI, "Government orders cable carriers to drop independent news broadcasters, some services restored," 16 March 2009, accessed at: http://www.ifex.org/pakistan/2009/03/16/government_orders_cable_carriers/.

¹⁷³ PPF, "Media face retaliation over critical coverage of president's European visit," 9 August 2010, accessed at: http://www.ifex.org/pakistan/2010/08/09/news_channels_blocked/.

¹⁷⁴ A. Khokar, "TV Channels Reopening: Supreme Court fails to apprehend the Culprit-PEMRA," 13 August 2010, accessed at: <http://www.pakspectator.com/tv-channels-reopening-supreme-court-fails-to-apprehend-the-culprit-pemra/>.

¹⁷⁵ PPF, "Television network claims sports channel targeted by media regulatory authority," 12 April 2011, accessed at: http://www.ifex.org/pakistan/2011/04/12/geo_tv_harassed/, and PPF, "Private TV station's broadcasts suspended by media regulatory authority," 14 April 2011, accessed at: http://www.ifex.org/pakistan/2011/04/14/aag_tv_closed/.

¹⁷⁶ PPF, "Pakistani government pressures UAE to block television program," 25 November 2009, accessed at: http://www.ifex.org/pakistan/2009/11/25/meray_mutabiq_censored/.

¹⁷⁷ PPF, "Media regulatory authority warns foreign channels over unauthorized satellite uplinking," 12 May 2011, accessed at: http://www.ifex.org/pakistan/2011/05/12/foreign_channels_issued_warning/.

PEMRA has also targeted BBC Pakistan, a local service that is a key source of relatively unbiased news in Pakistan. An earlier ban on BBC Pakistan imposed under the November 2007 state of emergency was overturned in May 2008 by an order of the Sindh High Court.¹⁷⁸ In October 2009, PEMRA ordered the halt of BBC broadcasts on half of the FM radio stations that had agreements with the BBC to carry their content, citing the failure of the stations concerned to submit the proper documents of agreement.¹⁷⁹ Again in March 2010, PEMRA ordered 24 local radio stations—mostly those located in Khyber Pakhtunkhwa province—to stop broadcasting BBC news bulletins on the basis that they did not have permission from PEMRA to do so. However, the BBC maintained that it believed that its local affiliates had submitted the required paperwork to PEMRA when the issue first arose in late 2009, and that it intended to challenge the ban in court.¹⁸⁰ PEMRA and other ministries issued contradictory advice and said they were acting on government orders; however, some sources have alleged that the army was behind the ban, as military officials were unhappy about the BBC's coverage of army operations against the militants, and human rights violations and displacement that took place in the context of these operations.¹⁸¹ In May, stations were requested to cut their coverage to 3 BBC broadcasts daily, from 11.

In addition to overt interference with broadcasts, PEMRA has also attempted to impose guidelines or restrictions on certain types of coverage, but with limited effectiveness. For example, prior to and during the crucial February 2008 elections, which returned a civilian government to power, PEMRA issued directives intended to limit election coverage, but these were routinely ignored by television broadcasters, who provided real-time unconfirmed election results that pointed to an overwhelming win for an opposition coalition. Although television networks regularly flouted the November 2007 PEMRA guidelines, on dozens of occasions in 2008 and 2009 the Information Ministry served legal notices to broadcasters accusing them of violating the code of conduct. Specific channels and operators also receive directives, phone calls, or guidance from state governments and other authorities regarding coverage. For example, in December 2009, the chief justice of the Supreme Court issued a directive to media outlets (particularly talk shows broadcast on private television channels) to refrain from discussing a controversial case before the court on amnesties for top politicians.¹⁸² The banning orders also come from a variety of sources. The PEMRA code of conduct contains several restrictions for broadcasters, including provisions that programs may not be aired if they have derogatory remarks about any religion, are likely to incite violence, are disrespectful to elders, and are directed against the sanctity of home and family. The code of conduct also has many restrictions regarding advertising. It states that advertising must not be “offensive to morality, decency and

¹⁷⁸ BBC, “BBC Urdu bulletins return to Pakistan FM stations after six-month ban,” 5 May 2008, accessed at: http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/05_may/05/urdu.shtml.

¹⁷⁹ PPF, “Media regulatory authority orders FM radio stations to stop broadcasting BBC news bulletins,” 4 November 2009, accessed at: http://www.ifex.org/pakistan/2009/11/04/bbc_ban/.

¹⁸⁰ PPF, “Twenty-four FM radio stations prevented from broadcasting BBC news,” 3 May 2010, accessed at: http://www.ifex.org/pakistan/2010/05/03/bbc_bulletins/, and Afnan Khan, “BBC to move court against ban on bulletins,” June 7, 2010, accessed at: http://www.dailytimes.com.pk/default.asp?page=2010%5C06%5C07%5Cstory_7-6-2010_pg7_19.

¹⁸¹ Asian Human Rights Commission, “BBC Pakistan news is censored by the Pakistani authorities, on the instructions of the Army,” 4 June 2010, accessed at: <http://www.ahrchk.net/ua/mainfile.php/2010/3470/>.

¹⁸² PPF, “Chief justice directs media not to comment on controversial amnesty ordinance,” 14 December 2009, accessed at: http://www.ifex.org/pakistan/2009/12/14/nro_censorship/.

religious sects of the people of Pakistan,” as well as avoiding the promotion of violence and distortion of historical facts.¹⁸³

Efforts to strengthen self-regulation as a viable alternative for the Pakistani media sector have been ongoing for many years, but it has proved difficult for the numerous stakeholder groups in the industry to reach agreement with various governments, particularly over such issues as the formulation of an effective complaints commission. Many media houses have internal ethics codes and/or advisory boards, and efforts to draft voluntary industry-wide codes date back to the 1970s. In August 2008, the Pakistan Federal Union of Journalists (PFUJ) drafted a code of ethics that included a system of self-regulation that “promotes editorial independence and high standards of accuracy, reliability, and quality in media”; the draft was then circulated to journalists, editors, and media owners for comment. The code envisioned enforcement via a complaints commission mechanism that would cover both print and broadcast media, but movement on putting such a body into practice has stalled.¹⁸⁴ One primary concern is that groups representing media owners and working journalists find it difficult to agree on the specific aspects of self-regulation.

Following the proposed parliamentary legislation, in November 2009, eight prominent broadcast media houses banded together to draft a voluntary code of conduct for depictions of violence. The code compels journalists to refrain from showing graphic violence (including badly injured people) and talking to emotionally distraught victims. It also allows news managers to use a time-delay mechanism in live transmissions so questionable content can be edited out.¹⁸⁵ Another draft code of ethics, published by the Pakistan Broadcasters Association (PBA) in April 2009, specifically defines how to cover terrorist incidents and matters related to national security. In general, these efforts suggest that the media is reactive rather than proactive with regard to self-regulation. In addition, insufficient efforts have been made toward establishing an industry-wide ombudsman or educating the public that they have a right to complain about media coverage or content.

CONCLUSION AND RECOMMENDATIONS

The regulatory framework for print media, while not adhering to international standards in some respects, has not been used as a primary tool to control print media content, apart from the period just after the imposition of emergency powers in late 2007. Likewise, the fact that the proposed statutory press council remains nonfunctional suggests that print media in Pakistan do not face significant restrictions in terms of regulation. However, the situation for broadcast media is markedly different. The main regulatory body, PEMRA, is effectively under government control and has a legal mandate to restrict certain types of content, which are broadly defined. While the

¹⁸³ “Code of Conduct for Media Broadcasters/Cable TV Operators,” accessed at: http://115.186.57.67/images/docs/legislation/Code_of_Conduct.pdf.

¹⁸⁴ AMB, p.58.

¹⁸⁵ Hasan Khan, “Pakistani journalists vow to resist media regulation,” Central Asia Online, 7 July 2010, accessed at: http://centralasiaonline.com/cocoon/caii/xhtml/en_GB/features/caii/features/pakistan/2010/07/07/feature-01.

licensing process itself is not used extensively as a tool of control, it remains somewhat closed, and a more liberal policy on establishment of community radio would broaden the media landscape considerably. Shutdowns of television channels, particularly during times of political tension, are used selectively to block the media from showing live coverage of key events and sensitive issues. The attempts to regulate content on radio—particularly the recent attempts to block BBC Pakistan broadcasts—also hint at official unease with the spread of independent news and information. The fact that the shutdowns, as well as PEMRA rulings, are subject to reactive decisions and pressure from various quarters—including political parties, the executive branch, and the military and intelligence services—leads to an unstable situation for broadcast media as they try to constantly negotiate the boundaries of their coverage. Reinforcing the independence and autonomy of the regulator, as well as strengthening complaints councils and self-regulatory mechanisms, would serve to enhance the regulatory framework in Pakistan. Finally, the regulatory framework thus far does not make adequate provision for online media, and currently a number of issues concerning the internet and news websites are being handled on an ad hoc basis through the courts. Establishing a clear procedure for dealing with complaints regarding online content, in line with best international practice, should be a priority.

SOUTH AFRICA

POPULATION: 49,900,000
PRESS FREEDOM STATUS: Partly Free
LICENSING FOR PRINT OUTLETS: No
LICENSING OF JOURNALISTS: No
INDEPENDENT REGULATORY BODY(S): Yes

INTRODUCTION

South Africa has one of the freest and most vibrant media environments on the continent. Though print media ownership is highly concentrated, a range of private and independent print outlets provide some diversity of views. The broadcast sector is dominated by the state-owned South African Broadcasting Corporation (SABC), which operates a network of radio stations through which most South Africans receive their news, as well as three television stations that claim most of the television market. Concerns regarding official encroachments on the editorial independence of the SABC have been a key factor limiting media freedom in recent years, as has hostile rhetoric on the part of top government officials against critical media outlets. There have also been serious incidents of intimidation of journalists by police and ruling party politicians, as well as cases of the arrest and overnight detention of journalists at crime scenes.

The legal environment for media freedom is generally robust. The 1996 constitution provides for freedoms of expression and of the press, as well as for access to information and independence of broadcast regulation. It states that “national legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views.”¹⁸⁶ However, it also allows for restrictions on “propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender, or religion and that constitutes incitement to cause harm.”¹⁸⁷ In addition, several apartheid-era laws that remain in effect—as well as a 2004 Law on Antiterrorism—permit authorities to restrict the publication of information about the police, national defense forces, prisons, and mental institutions, and to compel journalists to reveal sources. These are rarely used in practice.

¹⁸⁶ Steve Buckley, Kreszentia Duer, Toby Mendel, and Sean O Siochru, *Broadcasting, Voice, and Accountability: A Public Interest Approach to Policy, Law, and Regulation*, 2008, p.161.

¹⁸⁷ IREX, “Media Sustainability Index (MSI) 2008–South Africa,” p.346, accessed at: http://www.irex.org/system/files/2-Africa_08_sou-afr.pdf.

The Film and Publications Act, introduced in 2006 and subject to much debate before being signed into law in September 2009, legitimizes some forms of pre-publication censorship (on the grounds of protecting against child pornography, propaganda for war, descriptions of sexual conduct, and hate speech), and creates a legal dichotomy between government-recognized publications and others.¹⁸⁸ High Court gag orders are used to prevent the media from reporting on sensitive stories, and civil defamation suits are also occasionally filed against journalists. The most remarkable of these were a series of defamation claims filed by President Jacob Zuma of the ruling African National Congress (ANC) party against newspapers, a broadcaster, and even a cartoonist originally for amounts totaling R64 million (\$9 million), two of which were settled in his favor out of court.

Another cause for concern is the growing tendency in government departments and other arms of government to restrict access to information. In addition, in a worrying development, the Protection of Information Bill, currently under discussion in parliament, would replace an apartheid-era secrecy law and grant broad power to government officials to classify information if doing so is “in the national interest.”¹⁸⁹ In October 2010, the administration agreed to make revisions to the bill, including the removal of the concept of “national interest,” which would be replaced by clearly defined national security concerns; discussions on these proposals are ongoing. Journalists accept that it is appropriate for governments to maintain control over limited “official secrets,” but object to the extremely wide ambit of this legislation, the provision for jail sentences of up to 25 years, and the lack of a public interest defense.

LAWS RELATING TO THE REGULATORY FRAMEWORK

There are no legal requirements or any sort of licensing or registration process for print media, which are allowed to commence operations at will; nor are there any for websites or blogs. Likewise, individual journalists do not need any sort of formal licensing in order to practice their profession.

Broadcast media fall under the legal purview of the 1999 Broadcasting Act and the 2006 Electronic Communications Act (ECA), which provide for a three-tier structure of public, commercial, and community broadcasting that is diverse and serves the needs of the public. However, the laws are broadly worded and critics have noted that their definitions, particularly regarding community media, have become inadequate. The ECA attempted to prevent broadcast concentration by prohibiting a single entity from owning more than one commercial television station or more than two AM or FM commercial radio stations. Cross-ownership of print and

¹⁸⁸ Media Institute of Southern Africa (MISA), “Controversial Films and Publications Amendment Bill signed into law,” 2 September 2009, accessed at:

http://www.ifex.org/south_africa/2009/09/02/films_and_publications_amendment_bill/.

¹⁸⁹ Committee to Protect Journalists, “South Africans rally against ‘secrecy bill,’” 1 September 2010, accessed at: <http://cpj.org/blog/2010/09/south-africans-rally-against-secrecy-bill.php>.

broadcast outlets is also limited.¹⁹⁰ However, concern that this law is potentially stifling growth in the broadcast sector prompted the regulator to issue a discussion paper in April 2010 suggesting that these rules be relaxed. An additional piece of legislation, the 2009 Films and Publications Act, created the Film and Publication Board “with the objective of regulating the creation, production, possession, and distribution of certain publications and films through classification, imposition of age restrictions, and giving of consumer advice.”

The statutory body responsible for broadcast regulation is the Independent Communication Authority of South Africa (ICASA), which serves as a licensing authority and is also mandated to monitor license conditions regarding local content and other issues. ICASA is mandated by the constitution to regulate broadcasting in the national interest and to ensure fairness and a diversity of views, and was established by the Independent Communications Authority of South Africa Act of 2000 (amended in 2006). ICASA also runs a statutory Complaints and Compliance Committee (CCC), which is empowered to hear complaints regarding both broadcasting and telecommunications. It is supposed to be independent; its eight members are appointed by ICASA following a public nominations process.

By law, the ICASA council is selected by parliament in a process that is intended to be open and provide transparency. Following the 2006 amendments, the process has been overseen by the parliamentary committee on communications, which calls for nominations by the public, holds open interviews of short-listed nominees, and submits a list of nominees to the minister of communications. The minister then selects proposed appointees from this list, but the final choices are subject to parliamentary approval and parliament can ask for a review of the minister’s selections. Although there is some scope for political influence—given the minister’s enhanced involvement in the process and the fact that the ANC holds a comfortable majority in parliament—the process is open and transparent and civil society has been able to play an effective role in the selections process.¹⁹¹ A further measure to guarantee the independence of ICASA mandates that those serving as public or political party officials, as well as those with a financial stake in a broadcast entity, are not allowed to become councilors. In terms of decision making, the minister is legally enabled to issue directives to ICASA, but these are also subject to public scrutiny and review. Following the 2006 amendments to the ECA, ICASA became state funded under the umbrella of the department of communications. A draft bill proposed by the minister published in 2010 would increase government control over ICASA, but the draft remains under discussion. Communications Minister Roy Padayachie is currently looking at the controversial aspects of the bill and is expected to send it back for redrafting.

The process for granting commercial broadcast licenses is fair and open. In terms of procedure, ICASA periodically issues a call for license applications in the *Gazette*, although applications can also be sent in at other times. When an application is received, ICASA takes into account the demand and need for the proposed service, the applicant’s financial and technological ability to provide the service, and the applicant’s ownership and control structure.¹⁹² If a license is granted, there is a strong presumption that it will continue to be

¹⁹⁰ African Media Barometer (AMB), South Africa 2010, p.32, accessed at: http://fesmedia.org/uploads/media/2010_AMB_RSA_web_version.pdf.

¹⁹¹ AMB, p.43-44.

¹⁹² *Broadcasting, Voice, and Accountability*, p.233.

renewed. ICASA can deny a license renewal only if the applicant has violated the license conditions or the broadcasting law.

South Africa's public broadcaster, the SABC, is a wholly government-owned company that is accountable to parliament and to ICASA, and it is constitutionally mandated to be editorially independent. However, as a corporatized entity, it has articles of association and a "shareholder's compact" that require consultation with the ministry of communications in regard to the appointment of executive members by the board as well as the financial health of the broadcaster. Thus, the minister is legally able to exercise veto power over the chief executive officer (CEO) and chief financial officer (CFO) positions, which also gives the government potential influence over editorial policy because the CEO also serves as editor in chief and has final say over politically sensitive editorial decisions. The SABC board is composed of 3 executive staff as well as 12 non-executive members. The Broadcasting Act mandates that these appointees be selected by an open process under the supervision of the parliamentary committee on communications, which advertises its calls for nominations in major media outlets; shortlists candidates for public interviews on the basis of diversity, skills, and commitment to freedom of expression; and selects a final list to be ratified by parliament and appointed by the president. Although the process provides for transparency in the selections, there are few specific provisions in the Broadcasting Act limiting potential conflict of interest with regard to board membership.

Worryingly, proposed legal changes made during the past few years suggest that the government would like to extend its control over the SABC. For example, in February 2009, then president Kgalema Motlanthe refused to sign a version of a proposed Broadcasting Amendment Bill due to a clause allowing parliament to fire board members of the SABC or to dismiss the entire board. The amended bill required "proper inquiry by parliament" before such dismissals and was adopted on February 17 and signed into law on September 1.¹⁹³ Upon enacting the bill, parliament recommended the removal of the SABC board for failure to perform their fiduciary duties although by that time, the majority of board members had already resigned.¹⁹⁴ In October 2009, a draft Public Service Broadcasting bill was published that would give the minister of communications enhanced powers over the SABC, including allowing the minister to issue directives to the board in a range of areas. This bill stirred outrage among concerned groups, who felt the bill needed further revision. In November 2010, Padayachie withdrew the bill pending further consultation.¹⁹⁵

¹⁹³ MISA, "Parliament adopts amended broadcasting bill," 23 February 2009, accessed at: http://www.ifex.org/south_africa/2009/02/23/parliament_adopts_amended_broadcasting/.

¹⁹⁴ AfriMAP, "Public Broadcasting in Africa Series: South Africa," 2010, accessed at: http://www.afriMAP.org/english/images/report/OSI_Public-Broadcasting-in-SA_2010.pdf.

¹⁹⁵ "Padayachie pulls plug on broadcasting bill," 21 November 2010, accessed at: <http://marketing.bizcommunity.com/Article/196/15/54558.html>.

IMPACT OF REGULATION ON MEDIA FREEDOM

Although the regulatory framework for broadcast media in South Africa operates in a fairly independent manner, there are some concerns in practice. Regarding the appointments process to ICASA, during the last call for nominations for board members in 2010, civil society groups were able to have sufficient input into the process for filling the empty positions, and one of their nominees was elected to the board.¹⁹⁶ Issues concerning potential conflicts of interest among board members have occurred, but in general have been resolved positively. For example, in November 2009, Communications Minister Sphiwe Nyanda appointed William Stucke as a councilor following recommendations by parliament's portfolio committee on communications. During his interview for the position, Stucke declared his intent to sell his shares in the internet service provider QPOP so as to avoid violating section six of the ICASA Act, which prohibited those with financial interests in the communications sector from being appointed as a councilor. However, by May 2010, he had yet to follow through on his promise, causing concern over the validity of his appointment. As a result, he received a full salary from ICASA but was not able to perform his duties until the issue was resolved. Finally, on June 28, he relinquished his shareholding in QPOP and QPOP's licenses were transferred to another company.

ICASA does remain state funded, instead of relying primarily on directly collecting license fees. Critics have alleged that the body is underfunded, compromising its ability to fulfill its role in monitoring conditions for licensees, conducting research, or successfully defending legal challenges brought by industry groups. Concern also remains about the relationship between ICASA and the minister of communications, particularly the minister's frequent attempts to influence or interfere with ICASA operations and decision making.

Likewise, the licensing process is largely conducted in a transparent and fair manner, despite some accusations of bias. Several dozen commercial radio stations and SABC-run radio stations have been licensed to operate. However, in terms of television, apart from the three SABC stations, there is only one free-to-air commercial TV station. ICASA has also taken an active role in efforts to expand the number and broadcasting range of community radio stations, licensing almost 100 community radio stations as well as three community television stations. Some critics allege that this process has been inadequate and has been slowed by lack of bandwidth and bureaucratic delays. The Media Sustainability Index published in 2008 noted that "panelists said that there is a perception that preferential treatment [in the granting of licenses] does occur, but they did not offer examples."¹⁹⁷ On the positive side, overt interference in broadcasting is not known to occur, with no reported cases of closure of stations or suspension of licenses on politically motivated grounds.

Given its dominance over the broadcasting sector due to its reach and number of affiliated radio and television stations, the operations of the SABC have also been given particular scrutiny. While officially editorially independent, the SABC has come under fire for displaying a pro-ANC bias, for reflecting internal ANC rifts in management struggles, and for

¹⁹⁶ AMB, p.7.

¹⁹⁷ MSI 2008, p.347.

practicing self-censorship. The television stations in particular have been singled out for carrying generally progovernment coverage and being hesitant to cover negative news, as well as discriminating against smaller or opposition political parties. Some commentators deemed critical of the ANC were allegedly “blacklisted” for a period during 2005–06 while in other cases, scheduled programs have been axed.¹⁹⁸ In addition, the SABC, already inadequately funded, faced allegations of financial mismanagement leading to significant losses for the 2008–09 fiscal year, causing the dissolution of the entire board. When parliament decided to reconstitute the board in late 2009, civil society groups such as the SOS coalition persuaded the committee to advertise for nominees in a much wider variety of both print and broadcast media, and the hearings were attended by hundreds of interested parties, thus ensuring that the process was much more transparent.¹⁹⁹ In December, a new 12-member board—headed by former minister of arts, culture, science, and technology Ben Ngubane—was appointed, in consultation with opposition parties. However, some board members elected did have ties to political parties. Indeed, three were members of the ANC—retired ANC diplomat Barbara Masekela; Clifford Motsepe, who was nominated by the ANC Youth League; and Desmond Golding, economic adviser to the Minister of Public Works—and one, David Niddrie, was nominated by the SA Communist Party, an ANC ally. The ANC members did not seem to appreciate the conflict of interest between their political party membership and their independence as SABC board members. In 2011, one of the shortlisted nominees for a board vacancy, Lumko Mtimde, was nominated by the ANC. Due to lack of sufficient funding, the SABC has been forced to make cutbacks in the quality of its programming, and the fact that more than 75 percent of its funding comes from commercial activities raises issues of it being susceptible to commercial pressure as well as pressure from the government and the ANC.²⁰⁰

The concept of self-regulation is well developed in South Africa, with separate mechanisms to cover both print and broadcast media. A system consisting of a press ombudsman was replaced in 2007 by a Press Council, under which the ombudsman now operates.²⁰¹ The council is composed of five members of the public and six press representatives, plus a public representative who acts as an alternate for one of the five public members. Maintaining a majority of six press representatives was a deliberate decision to prevent self-regulation transforming into public regulation. Decisions are based on a code of conduct that was developed by press industry representatives, and although the system is voluntary it is subscribed to by more than 1,200 publications, including all major print outlets. Several media houses do have in-house mechanisms to deal with complaints as well. Although the mechanism is seen by those within the industry to be broadly effective, an increase in cases means that resolution of complaints sometimes does not take place in a timely manner, although the appointment of a deputy has helped to streamline the processing of complaints. In addition, the ombudsman is not empowered to hear cases brought against online publications.²⁰²

¹⁹⁸ MSI 2008, p.345.

¹⁹⁹ AMB, p.46.

²⁰⁰ AMB, p.50.

²⁰¹ Franz Krüger, “Media Courts of Honour: Self-regulatory Councils in Southern Africa and elsewhere,” Fesmedia Africa series, November 2009, p.30, accessed at: http://fesmedia.org/fileadmin/files-fesmedia.org/Krueger_MediaCourtsOfHonour_2009.pdf.

²⁰² AMB, p.59-60.

All complaints brought to the Press Council, along with the council's rulings, can be accessed through its website.²⁰³ The website also clearly lists the guidelines for the complaint process, including the official definition of a complaint as well as the time frame allowed to make a complaint after publication (14 days in most cases). The adjudication procedure is overseen by the ombudsman, who receives complaints and attempts to resolve the matter informally between the parties. If a complaint cannot be settled informally, the ombudsman will hold a hearing with two other council members (one a member of the press and one representing the public) in which decisions are reached by a majority vote. Either one of the parties may then appeal to the chairperson of the South African Press Appeals Panel (SAPAP), a retired Supreme Court of Appeal judge, within seven days of receipt of the decision. If the chairperson feels it is reasonable that the SAPAP may reach a decision different from that of the ombudsman, he or she can grant leave to appeal. Appeals to SAPAP are final, and those bringing a complaint must also waive their right to litigation through the court system, though should they disagree with the findings of the ombudsman and Press Appeals Panel process, complainants can take the proceedings for review to the High Court. Apologies as well as the judgments of these two groups are supposed to be publicized by the paper concerned in a manner prescribed by the ombudsman or the judge. More than 60 complaints were heard over 2008–10, with more than half of these during 2010, and two-thirds of the complaints have been upheld, providing evidence that the system operates independently of the press.

First introduced in 2007 by the ANC, the idea of a Media Appeals Tribunal was re-tabled at party meetings in mid-2010. The party, which has stated that this body is aimed at the press, envisions a statutory body, nominally independent yet accountable to parliament, that would strengthen and complement existing mechanisms “in the public interest.”²⁰⁴ Crucially, the tribunal would be able to take punitive measures against journalists and press outlets, including heavy fines on newspapers and prison sentences, though recently it appears to have backtracked on jailing journalists. While the ANC justified the proposal by arguing that the ombudsman system was expensive and ineffectual, the proposals have met with a significant pushback from industry representatives as well as from both local and international press freedom advocates, who argue that the proposed tribunal would hamper media freedom and is unnecessary given the mechanisms already in place, which they would prefer to strengthen if necessary. Toward the end of 2010, the South African National Editors' Forum (SANEF) and an ANC delegation led by Deputy President Kgalema Motlanthe met to discuss media-government relationships and the Media Appeals Tribunal. After the meeting, Motlanthe announced the ANC wanted to suspend its call for a media tribunal while awaiting the outcome of a public appeal by the Press Council for the public and institutions to put forward proposals for “the strengthening” of or amendment to the Press Council system.²⁰⁵ In January 2011, the ANC acknowledged the Press Council's own review and said it would wait and see whether fines would be adopted for violators of the code.

²⁰³ The Press Council's website can be accessed at: <http://www.presscouncil.org.za/>.

²⁰⁴ Jackie Bischof, “In South Africa, a new struggle for press freedom,” 17 September 2010, accessed at: <http://cpj.org/blog/2010/08/in-south-africa-a-new-struggle-for-press-freedom.php>.

²⁰⁵ Gill Moodie, “Media battle royale looms,” 11 January 2011, accessed at: <http://www.bizcommunity.com/Article/196/466/55670.html>.

Unusually, broadcast media houses are able to decide if they want to be bound by the decisions of the statutory CCC, or by the Broadcasting Complaints Commission of South Africa (BCCSA), which falls under the purview of the National Association of Broadcasters (NAB), an industry membership group. The BCCSA is a legally recognized voluntary self-regulatory body for broadcasting that operates according to the same code of conduct as the CCC, and its members do not fall under CCC jurisdiction. Most broadcasters, including the SABC and large commercial media owners, are members of the NAB. BCCSA proceedings and rulings are held in public and its rulings are made public. The BCCSA actively encourages complaints and also monitors compliance by errant broadcasters. The BCCSA complaint procedure is similar to that of the Press Council. In addition to adjudication, the complaint can be settled at a hearing, and rulings can include fines of up to R50,000 (\$7,150) as well as orders to broadcasters to air the findings of a hearing or any other BCCSA directives. Hearings are held in a boardroom and are open to the public. Neither of the parties is required to attend but can if they choose, and they can address the committee. Parties are not entitled to legal representation when appearing before the committee (though they can have advisers present), but they are entitled to legal representation at hearings. The chairperson can require a complainant to waive his or her rights to legal recourse in the interest of fairness.²⁰⁶ Similar to the Press Council, the process in practice also appears to be active and credible.

CONCLUSION AND RECOMMENDATIONS

Journalism has flourished since the end of apartheid in 1994. However, in recent years, the government has attempted to place additional limits on press freedom through the introduction of legislation such as the Films and Publications Act (which provides for certain publications to submit to pre-publication censorship and which the media is waiting to challenge in the constitutional court), the proposed Protection of Information Bill, and suggested amendments to legislation that would extend government control over bodies such as ICASA, the SABC, and the public service broadcasting framework. A serious deficiency in the progress of potentially restrictive legislation is the lack of consultation with the parties most likely to be affected. There is little consultation during the framing of a bill or before its presentation to parliament. “Consultation” is then squeezed into limited public hearings in parliament. In order to ensure continued freedom for South African media, journalists must be able to report without political interference. Before enacting new bills that have provisions intruding on media freedom, the ministries and parliament must allow more time for consultation with civil society—which, encouragingly, has been quite outspoken in their opposition to a number of the proposals—as well as proper consideration of the policy implications and adherence to international and regional best practice.

Similarly, existing self-regulatory mechanisms should be reformed where appropriate in alignment with input from all stakeholders, rather than attempting to introduce statutory regulation of the complaints process in the form of the proposed Media Appeals Tribunal. The

²⁰⁶ Broadcasting Complaints Commission of South Africa, “BCCSA Procedure,” accessed at: http://bccsa.co.za/index.php?option=com_content&task=view&id=13&Itemid=27.

current Press Council complaints system is largely seen by media practitioners and industry experts as in keeping with international best practice standards and is also considered broadly effective. Improvements can be made within this framework rather than imposing an alternate—and potentially more draconian—mechanism that can be more easily manipulated to restrict media freedom.

UGANDA

POPULATION: 33,800,000
PRESS FREEDOM STATUS: Partly Free
LICENSING FOR PRINT OUTLETS: No
LICENSING OF JOURNALISTS: Yes
INDEPENDENT REGULATORY BODY(S): No

INTRODUCTION

Since the mid-1990s, Uganda has boasted a diverse and vibrant media sector, with dozens of print and broadcast outlets in operation. Most print outlets are privately owned, and the widely circulated *New Vision* newspaper, in which the state holds a majority ownership stake, contains generally balanced coverage. Ownership in the radio sector, which has the widest reach, particularly in the rural areas, is more opaque, with a significant proportion of outlets controlled by political actors or their close associates. Physical and verbal harassment of individual journalists occurs occasionally. However, the primary threat to media freedom in recent years has been the use of restrictive laws and regulatory frameworks to harass individual journalists and shutter media outlets. Although the 1995 constitution contains provisions protecting freedom of expression and of the press, several clauses of the penal code—particularly those covering sedition, criminal libel, and “promoting sectarianism”—as well as the 2002 Anti-Terrorism Act limit these rights in practice. In 2010, following the July bombings by suspected Somali terrorists that killed dozens of civilians in the capital, Kampala, the Regulation of Interception of Communications Act was passed hastily by parliament and entered into law shortly thereafter. Though the law weakens journalists’ ability to protect sources, its final version does stipulate that officials are allowed to intercept communications only after receiving consent from a high court judge. In August 2010, a district court issued an injunction prohibiting all print and broadcast media outlets from discussing the police investigation into the July bombings.²⁰⁷ This attempt to stifle reporting was ignored by many major media outlets, but, combined with other laws and legal restrictions, it has served to provide a chilling effect on unfettered coverage of key

²⁰⁷ Human Rights Network for Journalists–Uganda (HRNJ–U), “Court blocks media from publicizing information about investigation into bomb blasts,” 24 August 2010, accessed at: http://www.ifex.org/uganda/2010/08/24/terrorism_act/.

political and security issues. Meanwhile, other aspects of the legal framework serve to regulate the sector as a whole and to punish media outlets.

Individual journalists who engage in critical or investigative reporting, particularly concerning the government, have been questioned and investigated, and in the past few years, several dozen have been charged under many of these various laws. Some, such as Andrew Mwenda, a leading journalist, faced a number of separate charges.²⁰⁸ In other instances, interrogation and the threat of potential legal action has served to foster self-censorship. The resolution of many legal cases had stalled due to a challenge to the sedition law brought by Mwenda and the East African Media Institute; they jointly filed a constitutional review petition in 2005. In a positive step, the Constitutional Court in August 2010 ruled in the Mwenda case that the sedition provisions—which criminalize statements that aim to bring “hatred, contempt, or disaffection against the president, the government, or the judiciary”—were unconstitutional and nullified the relevant provisions of the penal code.²⁰⁹ Other legal challenges to the constitutionality of criminal libel and of the powers of the Broadcasting Council are pending. Meanwhile, in June 2011 the Kampala Magistrate Court charged online editor Timothy Kalyegira with criminal libel against the president.²¹⁰ The relative independence shown by the higher judiciary in cases concerning the constitutionality of restrictions on freedom of expression is encouraging—for example, in a 2004 judgment, the Supreme Court annulled the provision in the penal code concerning publishing “false news” as unconstitutional. However, the government has announced its intention to challenge the court’s decision on sedition, and a number of other cases against journalists have remained open pending a final resolution of the sedition case. In May 2011, President Yoweri Museveni announced a proposed amendment to the constitution that could potentially threaten journalists who cover protests because of its “economic sabotage” provision. Press freedom organizations are concerned that this amendment could be used against journalists based on the argument that they are “scaring off tourists and investors.”²¹¹ The amendment has not passed as of mid-2011.

LAWS RELATING TO THE REGULATORY FRAMEWORK

Currently, regulation of the media sector is governed by several pieces of legislation enacted during the mid-1990s. The Press and Journalist Act (PJA)—first passed in 1995 and updated in 2000—created the National Institute of Journalists of Uganda (NIJU), a government-affiliated body where all individual journalists must be registered. The PJA also established a statutory

²⁰⁸ Committee to Protect Journalists (CPJ), “Attacks on the Press 2009: Uganda,” 16 February 2010, accessed at: <http://cpj.org/2010/02/attacks-on-the-press-2009-uganda.php>, and Human Rights Watch (HRW), “A Media Minefield: Increased Threats to Freedom of Expression in Uganda,” May 2010, accessed at: <http://www.hrw.org/reports/2010/05/02/media-minefield-0>.

²⁰⁹ HRNJ-U, “Constitutional Court nullifies law on sedition,” 25 August 2010, accessed at: http://www.ifex.org/uganda/2010/08/25/sedition_law_null/.

²¹⁰ CPJ, “Ugandan online editor arrested for publishing op-eds,” 1 June 2011, accessed at: <http://www.cpj.org/2011/06/online-news-editor-arrested-for-publishing-op-eds.php>.

²¹¹ Reporters Without Borders (RSF), “President identifies news media as ‘enemies’ of the state,” 24 May 2011, accessed at: http://www.ifex.org/uganda/2011/05/24/museveni_letter/.

Media Council that is responsible for licensing journalists; addressing complaints against the media and arbitrating disputes, including recommending disciplinary action against journalists or publishers (such as admonishing or suspending journalists, or requiring a media company to pay damages); and censoring audio-visual material. Journalists are required to have a university degree in journalism, or a university degree in any other field plus a professional qualification in journalism or mass communication in order to be full members of the NIJU. Journalists enrolled with the NIJU as either full or associate (who may not necessarily have a degree) members are supposed to renew their licenses annually in order to operate without fear of criminal charges, although this stipulation is often overlooked in practice. The Media Council is also empowered to handle the accreditation of foreign journalists and local freelancers who work for foreign media outlets.²¹² Currently, apart from a simple registration process, licensing for print outlets is not legally required.

Amendments to the PJA proposed in January 2010 would require annual licensing for all print media outlets; give broader authority to the Media Council to withdraw or refuse licenses on broadly defined conditions of undermining “national security, stability, or unity,” or Uganda’s foreign relations or economy; and increase the powers of the minister of information over the Media Council. The proposals have met with criticism from both local and international press freedom watchdogs due to the onerous licensing process, as well as the broadly worded nature of the conditions attached to license renewals.²¹³ The amendments have not yet been presented in parliament.

Broadcast media are subject to regulation by the Electronic Media Act (originally passed in 1996 and updated in 2000), under which a 12-member Broadcasting Council (BC) grants licenses, which must be renewed annually; arbitrates disputes arising from complaints brought by the public; and enforces broadly defined “minimum broadcasting standards” concerning public morality or the promotion of violence or ethnic hatred. By law, the BC has broad powers to grant or withhold licenses on the basis of an opaque set of conditions, as well as the power to seize and confiscate transmissions equipment without a hearing or other form of due process. The council operates under the explicit direction of the minister of information, and all council members are appointed directly by the minister. While some represent the government, others represent constituencies such as broadcasters, the law society, or the general public, and the minister is supposed to consult with these industry and civic associations when making appointments. In 1997, the Uganda Communications Act established the Uganda Communications Commission (UCC), another regulatory body primarily tasked with allocating and licensing radio frequencies. In April 2010, it was announced that the UCC would merge with the BC; the current chairperson of the BC would lead the process.²¹⁴ This merger created a body to oversee all types of communication and broadcasting in Uganda.

²¹² Media Council, “Press Accreditation,” 2007, accessed at: <http://www.mediacouncil.ug/accreditation.php>.

²¹³ International Press Institute, “IPI says media bill fails to live up to international press freedom standards,” 23 March 2010, accessed at: http://www.ifex.org/uganda/2010/03/25/media_bill_amendment/, and Freedom House, “Thirty-one IFEX members and global partners demand retraction of proposed amendment to Press and Journalists Act,” 7 September 2010, accessed at: http://www.ifex.org/uganda/2010/09/07/press_journalist_act/.

²¹⁴ HRW, “A Media Minefield,” accessed at: <http://www.hrw.org/node/90062/section/6>.

Other bodies that are involved in media regulation include the Media Centre, established in 2005, which ostensibly provides official information to the press. However, in recent years the Media Centre has occasionally taken on some duties of the Media Council, including accrediting journalists prior to the 2006 elections, as well as restricting the movements of some journalists.²¹⁵ As a result, a number of journalists, particularly foreign ones, found it harder to get accreditation during the election period. In the longer term, the establishment of the centre further weakened the role of the Media Council. In addition, a Media Crimes Department within the police force investigates alleged crimes committed via the media by summoning and questioning journalists and forwarding selected cases to the public prosecutor.

IMPACT OF REGULATION ON MEDIA FREEDOM

The regulatory framework in Uganda impedes media freedom due to outright government control over the appointments and licensing process, as well as decisions by officials to shut down outlets without regard for due process. At the outset, the independence of such regulatory bodies is neither provided for by the relevant laws, nor adhered to in practice. With regard to appointments, Media Council members are formally appointed by the minister of information on the recommendation of different groups of stakeholders, including the government but also civil society, journalists, and the print and electronic media sectors. Some appointees are seen as more progovernment while some have a relatively more independent stance. However, the Media Council Secretariat is housed within the Prime Minister's Office and its sources of funding are inadequate, leaving it scant resources to perform its mandate effectively.²¹⁶ The council is seen as weak and not entirely functional by civil society and industry groups, who also note that at least some of its functions, such as accrediting foreign journalists, seem to have been usurped by the aforementioned Media Centre. At the BC, council members are directly appointed by the information minister after consulting with the relevant industry and civic groups, ensuring a high level of official control over the body. Apart from government officials, members include representatives of radio and television stations, cinema operators, the general public, and a lawyer. The BC is funded by government grants and a percentage of the permit and license fees.²¹⁷

As a result of the government's control over the appointments process, decisions regarding licensing are seen to be biased. Particularly in the countryside, a majority of the newer radio stations are owned by politicians and others close to the ruling party.²¹⁸ Participants in the panel for the 2008 IREX Media Sustainability Index noted that in the area of Kinkinzi, an

²¹⁵ HRW, "A Media Minefield," accessed at: <http://www.hrw.org/node/90062/section/6>.

²¹⁶ Interview with Secretary of Media Council, Kampala, September 2010; Annual Report of the Media Council, May 2009. The majority of its revenues come from collecting accreditation fees from foreign journalists; most local media outlets do not pay the required registration fees.

²¹⁷ Uganda Legal Information Institute, "Uganda: Laws of Uganda," accessed at: http://www.ulii.org/ug/legis/consol_act/ema1996104151/.

²¹⁸ IREX, "Media Sustainability Index (MSI)–Uganda 2008," accessed at: http://www.irex.org/system/files/2-Africa_08_uganda.pdf. According to the IREX MSI 2008, 75 percent of stations are owned by politicians and 75 percent of them belong to the ruling party.

opposition politician was denied a license to open a radio station, while his rival, a cabinet minister, was granted one.²¹⁹ Representatives of one major print outlet noted that they had applied for a radio license several times, but had yet to receive a response from the BC. Other aspects of the licensing process place additional administrative and financial burdens on media owners. The requirement for annual renewals of the license is very short given the paperwork involved, and high licensing fees—three million shillings (\$1,275) for a radio station and five million shillings (\$2,125) for a television station in Kampala, and slightly less for stations located upcountry depending on their distance from an urban center—place undue financial constraints on broadcast media outlets, many of which need to invest significant capital in order to operate.

In addition to concerns regarding the licensing process, the regulatory bodies also actively interfere in the operation of private radio broadcasting. For example, during the February 2006 elections, which were the first multiparty elections in recent Ugandan history, the website and KFM radio station belonging to the private Monitor group were threatened with closure for their attempts to provide independent election results. Other stations have been threatened with closure for coverage of sensitive events, such as the trial of opposition leader Kizza Besigye in 2006. In terms of the BC, it is standard procedure after receiving a complaint regarding content for the council to request a copy of the relevant recordings from the station involved and then to hold a hearing to determine if the complaint has merit before taking further action. However, as noted below, these procedures are not always followed, and in certain cases decisions are taken based on pressures from the administration rather than an active complaint. On occasion, the BC will itself issue informal guidance on coverage, for example on the broadcast of certain key events that the government would like publicized. At the local level, pressure from local-level politicians and administrators such as the resident district commissioners (RDCs)—whose actions are sanctioned at a higher level—can lead to informal regulation of content. For example, in September 2010, the minister of information commented that RDCs are allowed to “vet” guests on radio talk shows, ostensibly for security purposes.²²⁰ In June 2011, two radio journalists were questioned by the Special Investigation Unit for hosting an opposition leader on their show.

In recent years, a number of broadcast licenses have been suspended, often on vague grounds such as failure to comply with “minimum broadcasting standards.” One of the widest crackdowns on broadcast stations occurred in mid-September 2009, when the government closed four radio stations and banned live debate programs after violent clashes broke out in Kampala between supporters of the king of Buganda, Uganda’s most populous region, and central government security forces. The BC accused the Buganda kingdom–owned Central Broadcasting Service (CBS), Ssuubi FM, Radio Two, and the Catholic Church’s Radio Sapientia of promoting sectarianism and inciting violence in which around 30 people were killed, most of them by security forces. However, the closures took place without warning on the basis of an “emergency” decision by the chair of the BC, and letters sent to some stations after the seizure of equipment did not provide specific examples of the stations’ alleged violations but mentioned

²¹⁹ MSI 2008, p.386.

²²⁰ Emmanuel Mulondo, “RDCs Can Vet Radio Talk Show Guests, Says Minister,” *The Monitor*, 24 September 2010, accessed at: <http://allafrica.com/stories/201009240528.html>.

broadly worded breaches of “minimum broadcast standards.”²²¹ The BC also suspended the popular *ebimeeza*, live open-air talk shows that are broadcasted by radio stations, on the grounds that speakers and content could not be sufficiently regulated. The ban on live debate programs has remained in place indefinitely, and two of the radio stations, Radio Sapientia and Radio Two, reopened under instructions to practice “self-constraint.” They had also been forced to dismiss certain staff and refrain from inviting certain guests to appear on political or talk shows. Ssuubi FM decided of its own accord to change its programming and approach in order to be allowed to reopen in January 2010, including removing overtly political shows from its lineup and terminating several staff.²²² CBS, which had previously been sanctioned on other occasions by the BC, had its license permanently withdrawn and remained closed for more than a year. Government officials, including the president, made comments indicating that CBS had been closed because of its antigovernment stance and would have to meet certain stringent conditions in order to reopen.²²³ In August 2010, the High Court issued a decision in favor of CBS in a countersuit brought by the government in response to a case brought by more than 100 station employees, who had sued to get the station reopened on the grounds that they had been put out of work; they were also seeking compensation for their loss of employment.²²⁴ In late October 2010, the two CBS stations reopened “on political grounds” after receiving their impounded transmitter from the Information and Communication Technology Ministry, but without receiving a formal license; discussions to renegotiate the terms of their license with the BC are ongoing.²²⁵ Less than two months later, in December 2010, the BC blocked CBS radio from broadcasting speeches at a conference organized by the Buganda kingdom, arguing that the content violated the ban on *ebimeeza* programs and that the station had failed to inform the council in advance regarding the content and the speakers at the conference.²²⁶

Outside the broadcasting realm, the UCC also blocked SMS services for election monitoring during the February 2011 elections because of their likelihood to “promote hatred and create discomfort among the public.”²²⁷ The focus on controlling newer forms of information dissemination continued in 2011, particularly during political disturbances and civic action that was ongoing in the spring. For example, in April, after being pressured by the security services, the UCC requested that internet service providers (ISPs) block social networking websites Facebook and Twitter for 24 hours in order to “eliminate the connection and sharing of information that incites the public.”²²⁸

²²¹ Interview with Chair of the Broadcasting Council, Kampala, September 2010.

²²² Interview with staff at Ssuubi FM, Kampala, September 2010, and Robert Mwanje, “Ssuubi FM Back on Air,” 12 January 2010, accessed at: <http://allafrica.com/stories/201001120844.html>.

²²³ FES Media, “Africa Media Barometer (AMB)–Uganda 2010,” p.16, accessed at: http://fesmedia.org/uploads/media/AMB_Uganda_2010_English_final.pdf and CPJ, “Ugandan station still closed, an ill omen for election,” 1 October 2010, accessed at: <http://cpj.org/blog/2010/10/ugandan-station-still-closed-an-ill-omen-for-elect.php#more>.

²²⁴ Lydia Mukisa, “CBS floors government in court battle,” 22 August 2010, accessed at: <http://www.monitor.co.ug/News/National/-/688334/994198/-/x4hxx4/-/index.html>.

²²⁵ HRNJ–U, “Uganda Alert: Two CBS radio stations re-open without a license,” 25 October 2010, accessed at: <http://hrnjuganda.blogspot.com/2010/10/hrnj-uganda-alert-two-cbs-radio.html>.

²²⁶ HRNJ–U, “Government blocks radio stations from live broadcasting Buganda Kingdom conference,” 4 January 2011, accessed at: http://www.ifex.org/uganda/2011/01/04/conference_broadcasts_banned/.

²²⁷ HRNJ–U, “Unwanted Witness, Press Freedom Index Report,” April 2011, p.13, accessed at: http://www.ifex.org/uganda/2011/05/05/press_index_report_april_2011.pdf.

²²⁸ HRNJ–U, “Unwanted Witness,” p.15.

Mechanisms to resolve disputes regarding media content are currently weak. Most cases brought against journalists by private individuals or government representatives are taken to the courts—and are frequently brought under criminal provisions in the penal code—because damages can be awarded in the case of a favorable verdict.²²⁹ In 2008 and 2009 a number of complaints were brought to the Media Council on the basis of cases filed by the police; while many were dismissed on procedural grounds, some were adjudicated by the council and settlements were reached out of court. The majority of cases concern Uganda's leading tabloid, *Red Pepper*, which is known for its sensationalist and exaggerated style of reporting, rather than quality news outlets. However, the Media Council mechanism remains underutilized.

Development of self-regulation by the media sector has been relatively weak, despite some nascent efforts. Major media houses and conglomerates do have in-house codes of ethics that are displayed prominently and staff members receive training on these codes; outlets such as the *New Vision* and *Monitor* have also provided notices in print that provide contact information for members of the public who wish to complain about corrupt journalists.²³⁰ Management at several newspapers spoke of disciplinary action where those individuals found guilty of breaching the codes had been penalized or dismissed from their positions.²³¹ The sector as a whole does have a journalism code of ethics that was developed by the Independent Media Council of Uganda (IMCU) and agreed to by all of its members, comprising several dozen media houses and associations, and was launched in December 2008.²³² In practice, some journalists do violate the code, predominantly by engaging in corrupt behavior and accepting money to either publish or kill stories, as well as by sensationalist or knowingly inaccurate reporting.²³³ Those who are caught may face suspension of their association membership or be dismissed from their positions. Thus far, the IMCU complaints mechanism has not yet been used, primarily due to a lack of public awareness regarding the mechanism. The IMCU is also facing a legal challenge from the Media Council regarding its name, which has affected its ability to operate and promote its activities. Additionally, it is hampered by a lack of funding, which limits its ability to raise public awareness about its complaints mechanism and conduct training for council members.²³⁴

CONCLUSION AND RECOMMENDATIONS

Although Ugandan law provides for licensing of journalists, as well as statutory regulation of print media through the Media Council, these provisions are either weakly enforced or nonoperational. However, the proposed amendments to the PJA, if adopted, would impose onerous registration requirements on print outlets as well as expand the powers of the statutory body. The primary broadcasting regulatory body is not independent of the government and has

²²⁹ AMB–Uganda 2010, p.58.

²³⁰ AMB–Uganda 2010, p.66.

²³¹ Interviews with executive staff at the *Monitor* and *New Vision*, Kampala, September 2010.

²³² AMB–Uganda 2010, p.58. The IMCU was formed in 2006 by 42 media associations and outlets. The board's seven-member ethics committee is supposed to handle complaints against the media.

²³³ MSI 2008, p.387.

²³⁴ Interview with head of IMCU, Kampala, September 2010.

broad powers with regard to licensing and adjudication, and—as seen particularly in the case of the September 2009 shutdowns and the failure to resolve the cases of the closed stations in a timely manner—sometimes makes decisions without due regard for its own procedures. In general, closure of outlets is not used often as a method of control, but the appearance of politicized decision-making regarding such cases is an ongoing concern. More robust efforts toward establishing a viable system of self-regulation for both print and broadcast media could help to counteract the current framework, in which the roles of the various regulatory bodies are not clearly defined and in which established mechanisms do not work effectively in practice.

ZIMBABWE

POPULATION: 12,600,000
PRESS FREEDOM STATUS: Not Free
LICENSING FOR PRINT OUTLETS: Yes
LICENSING OF JOURNALISTS: Yes
INDEPENDENT REGULATORY BODY(S): No

INTRODUCTION

In recent years, Zimbabwe's media environment has been among the most restrictive in the world, although there have been limited openings following the formation of a government of national unity in February 2009. A range of laws restrict media freedom, and laws concerning licensing and ownership are a key method of exerting government dominance over the media sector. Despite repeated calls for reform, the broadcast sector remains under complete state control. The government-controlled Zimbabwe Broadcasting Corporation (ZBC) runs all locally based radio and television stations, and these outlets are subject to considerable political interference and censorship, displaying a clear bias toward the ruling Zimbabwe African National Union–Patriotic Front (ZANU–PF) party. While a number of private print outlets do operate, and several additional newspaper licenses were granted in 2010, licensing of both the print media sector as well as of individual journalists remains governed by stringent laws. While their reach is limited, short-wave foreign-based radio stations (many run by Zimbabwean exiles), international news channels available via satellite, and internet-based publications, news portals, and blogs do provide a small measure of independent news and opinion.

Despite constitutional provisions for freedom of expression, most aspects of the legal framework are equally restrictive regarding media freedom, and have not yet been reformed despite promises by the new government to do so. The Access to Information and Protection of Privacy Act, Broadcasting Services Act, Official Secrets Act, and the 2005 Criminal Law (Codification and Reform) Act severely limit what journalists may publish and mandate harsh penalties—including long prison sentences—for violators. Although the number of cases brought against journalists is relatively low, and the number that proceeds to trial and conviction is even lower, the threat of legal repercussions leads many journalists to practice self-censorship. While some instances of extralegal intimidation and violence against members of the press do occur,

restrictive laws and the continued dominance of the state over media ownership and news content are the primary methods of ensuring government control in Zimbabwe.

LAWS RELATING TO THE REGULATORY FRAMEWORK

Regulation of both print and broadcast media in Zimbabwe has been significantly tightened in the past decade as part of a larger official strategy to stifle and control dissent from political opponents as well as civil society and the media. All media are regulated through the 2002 Access to Information and Protection of Privacy Act (AIPPA), which requires all journalists and media companies to be licensed, imposes strict content restrictions, and grants broad powers to a government-controlled regulator. Licenses for outlets must be renewed every two years. Foreign ownership of media outlets is forbidden by AIPPA (although non-citizens may own minority shares in companies that own media outlets), and in addition outlets may only hire Zimbabwean citizens or permanent residents.²³⁵

Strict licensing rules for journalists were marginally relaxed following a December 2007 amendment to AIPPA, under which accreditation of journalists is no longer compulsory, but is required to cover parliament or other public bodies, or to attend “national or public events.” Journalists can apply as individuals for a license, and media companies are also able to make block submissions to cover a number of staff. The regulatory body is empowered to suspend accreditation for up to three months if journalists “abuse their privileges.” Discussions to reform AIPPA and replace it with other legislation have been discussed, but the draft laws (a Media Practitioners Act and a Freedom of Information Act) have not been widely shared, and signals from President Robert Mugabe and other officials indicate that the reforms would not fundamentally alter the restrictive nature of the legislation, but would rather be largely cosmetic in nature.²³⁶

Since 2009, the licensing process for print outlets has been placed under the purview of the newly created Zimbabwe Media Commission (ZMC). Previously, the Media and Information Commission (MIC) and the information minister were in control of licensing and had sweeping powers to decide which publications could operate legally. The ZMC, which replaced the state-controlled MIC, was created as part of the September 2008 Global Political Agreement (GPA) between the ZANU-PF and two factions of the longtime opposition Movement for Democratic Change (MDC) party, under which a unity government was formed. The ZMC was given constitutional status by a February 2009 amendment to the constitution, which created implementing language for the GPA. Its stated functions are to uphold freedom of the press, to promote and enforce good practice and ethics in the print and broadcast media, and to ensure equitable and wide access to information. The ZMC inherited the MIC’s structure and

²³⁵ Article 19 and Media Institute of Southern Africa (MISA)–Zimbabwe, “The Access to Information and Protection of Privacy Act: Two Years On,” September 2004, p.4, accessed at: <http://www.article19.org/data/files/pdfs/publications/zimbabwe-aippa-report.pdf>.

²³⁶ Interview with Zimbabwe Media Commission (ZMC) commissioner and with Director, MISA–Zimbabwe, Harare, June 2010.

secretariat, as well as some staff, and the Ministry of Information is still empowered by AIPPA to be involved in the statutory regulator, so a large degree of political control remains built in to the new system.²³⁷ Funding for the ZMC is provided by the Finance Ministry. An amendment to AIPPA that took effect on January 1, 2011, effectively targeted international news outlets in Zimbabwe by imposing a new fee structure for such organizations and their local staff whereby applications and licenses for both outlets and journalists would cost several times their previous rates.²³⁸ The amendment was reportedly initiated by the information minister rather than the ZMC, which by law has the sole authority to amend such fees.

The ZMC is supposed to be independent, and encouragingly, the appointments process for its members is somewhat more open and transparent than the process for the MIC, under which the minister had total control over its leadership. After a slow start, advertisements were made for nominations, and then public interviews for the nominees were conducted. In August 2009, a parliamentary committee submitted to the president a short list of 12 applicants to serve as ZMC commissioners, from which a total of 9 were to be selected. After some political wrangling, representatives of all three main parties were involved in the selection process.²³⁹ Somewhat opaquely, the announcement of the final selections was made through the state media, without notifying the nominees directly. In addition, although the ZMC was envisaged as a temporary statutory body that would regulate the sector while a new constitution was being prepared, the commissioners were appointed for five-year terms, until 2015. The commission was constituted in February 2010, and in its first meetings decided upon a fee structure for media licenses. In early May, the ZMC issued guidelines for print media registration that required applicants to provide a code of ethics, projected balance sheet, editorial charter, code of conduct for employees, market analysis, mission statement, house style book, and projected three-year cash flow statement, as well as attach a dummy copy of their proposed publication.²⁴⁰ Thus far, the ZMC has not yet developed an industry-wide statutory code of conduct and has no mechanism to handle content-related complaints. However, in March 2011 it began the process of developing a statutory media council due to the number of complaints regarding media professionalism.²⁴¹

The broadcast sector in Zimbabwe was a legal state monopoly until 2000, when Capital Radio, which was trying to obtain a license to broadcast at the time, challenged the relevant legislation. Broadcast media are currently regulated through the 2001 Broadcasting Services Act (BSA), which provides for public, commercial, and community broadcasting and created the Broadcasting Authority of Zimbabwe (BAZ) as the body to regulate media and issue broadcast licenses. Applications must be solicited by the BAZ based on its own assessment of the need for

²³⁷ Interview with ZMC commissioner, Harare, June 2010.

²³⁸ Committee to Protect Journalists, "Zimbabwe hikes media fees under draconian media law," 13 January 2010, accessed at: <http://www.cpj.org/2011/01/zimbabwe-hikes-media-fees-under-draconian-media-la.php#more>.

²³⁹ African Media Barometer (AMB) Zimbabwe 2010, p.19, accessed at: http://fesmedia.org/uploads/media/AMB_Zimbabwe_2010_English.pdf; see also interview with ZMC commissioner, Harare, June 2010.

²⁴⁰ AMB, p.20.

²⁴¹ International Press Institute, "Zimbabwe Media Commission announces intention to form statutory media complaints body," 10 March 2011, accessed at: http://www.ifex.org/zimbabwe/2011/03/10/media_complaint_body/.

broadcasting services, and cannot be submitted without a call for applications.²⁴² Provisions of the BSA allow foreign ownership only at the discretion of the minister of information, mandate that broadcasters allocate one hour of broadcasting per day to be filled by the government, impose strict limits on origin and language of content, and set high licensing fees.²⁴³ A maximum of nine BAZ board members are meant to be appointed by the president with some input by the minister in charge of broadcasting, and to a lesser extent, by Parliament's Committee on Standing Rules and Orders, and the body is under the purview of the Ministry of Media, Information, and Publicity.²⁴⁴

The only broadcaster in the country, the Zimbabwe Broadcasting Corporation (ZBC), is state controlled. There is no provision or expectation of independence of the ZBC, whose mandate explicitly states that it should support the interests of the government in power. Mechanisms to ensure political control start with the appointments process; according to the 2001 ZBC Act, a government minister unilaterally appoints all members of the ZBC board, thus ensuring that ZBC content can be influenced to favor the ruling party. The mandated funding structure is ostensibly more independent: ZBC depends on income from license fees as well as advertisements, and does not receive public subsidies.

IMPACT OF REGULATION ON MEDIA FREEDOM

In recent years, print media licensing in Zimbabwe has been tightly controlled and highly politicized. The country's only independent daily, the *Daily News*, was banned in 2003, and attempts to obtain a new license for the publication under the MIC had been repeatedly denied. While media outlets and local advocacy groups are opposed in principle to the current legal and regulatory framework that permits statutory regulation of print media, they also view the ZMC as an improvement on the MIC and have worked within its ambit and guidelines to legally license additional print outlets. The ZMC finalized registration requirements in early May 2010, and gave mass media outlets and journalists a month to re-register or renew their accreditation without incurring a fine. A number of applications for new outlets were also received, and in late May, the ZMC approved licenses for three new daily publications—*Newsday* (published by the owners of the weekly *Zimbabwe Independent*), the *Daily Mail* (published by a ZANU-PF affiliated youth group), and the *Daily Gazette* (owned by the central bank governor)—and also re-registered the previously banned *Daily News*, as well as *The Worker*, a weekly paper.²⁴⁵ While *Newsday* began publishing the following week, some of the other papers, including the *Daily News*, have not yet begun print publication (although the paper does have an internet edition).

²⁴² Human Rights Watch, "Sleight of Hand: Repression of the Media and the Illusion of Reform in Zimbabwe," 20 April 2010, p.10, accessed at: <http://www.hrw.org/node/89685>.

²⁴³ MISA–Zimbabwe, "MISA welcomes information minister's comments on ensuring greater access to information in marginalized areas," 13 October 2010, accessed at:

http://www.ifex.org/zimbabwe/2010/10/13/access_to_information/. Restrictions on foreign ownership, which limited ownership to 10 percent of the shares of the outlet, were repealed in the 2007 amendments to the BSA.

²⁴⁴ AMB, p.44-45.

²⁴⁵ Reporters Without Borders, "Three independent dailies allowed to resume publishing after almost seven years of censorship," 28 May 2010, accessed at: http://www.ifex.org/zimbabwe/2010/05/28/licences_granted/.

The failure of other newspapers to publish probably indicates the primacy of economic challenges as a hindrance to the growth of media diversity in Zimbabwe; in the current climate, the ability to mobilize the financial and manpower resources necessary to publish is proving to be extremely difficult.

Tight regulations concerning the licensing of individual journalists under AIPPA continue to be cited in cases concerning the arrest and prosecution of journalists. In September 2010, *Chronicle* editor Innocent Gore was charged with contravening AIPPA by reporting “false news.”²⁴⁶ However, in a greater number of cases, journalists are charged under the Criminal Law (Codification and Reform) Act; this was the case with several journalists—including the editor of the *Standard*, as well as several other reporters and freelance journalists—arrested and charged at the end of 2010.

Improvements in the situation for print licensing have not been matched by an opening in the broadcast sector. Broadcast media remain completely state controlled, and thus the government has a stranglehold on the medium that serves as the primary source of news and information in the rural areas, though broadcast media transmissions are estimated to reach only 30 percent of the population due to inadequate and crumbling infrastructure and a lack of transmission sites. Amendments to the BSA passed in 2007 made provisions for the BAZ to issue additional broadcast licenses; a number of applications for radio and television licenses have been submitted to BAZ, but none of these have yet been processed.²⁴⁷

Since the formation of the unity government, additional complications have crept in. While the GPA contained language regarding improving the licensing regimen for both print and broadcast media, and local activists such as MISA have undertaken a concerted campaign to liberalize the broadcast sector, different sections of the government have been sending mixed signals as to their commitment to reform, with some officials speaking in favor of licensing for broadcast, and others stating that the government will not license any outlets until it has the technical capacity to better monitor and regulate the sector.²⁴⁸ In addition, the issue of appointments has muddied the waters. Instead of following the required process (laid out above) for selecting board members, the relevant parliamentary committee took the list of nominations to the ZMC and then drew up a list of potential candidates for BAZ from this same list, ignoring protests that the two bodies were meant to be selected independently. The ZANU-PF minister of information, Webster Shamu, then appointed a board in September 2009 with limited input, appointing former MIC head (and Mugabe ally) Tafataona Mahoso as chairman of the BAZ board. After the appointments were challenged by the MDC deputy minister as well as media and civil society groups, the issue reached an impasse and BAZ has not yet become fully

²⁴⁶ “Panic grips Zimbabwe as military move in to seize State media,” *The Zimbabwe Mail*, 2 December 2010, accessed at: <http://www.thezimbabweemail.com/zimbabwe/6761.html>.

²⁴⁷ IREX, Media Sustainability Index Zimbabwe, 2009, p.407, accessed at: http://www.irex.org/system/files/3-Africa_09_Zimbabwe.pdf.

²⁴⁸ MISA–Zimbabwe, “New broadcasting licenses not coming soon,” accessed at: http://www.misazim.co.zw/index.php?option=com_content&task=view&id=738&Itemid=1.

operational due to the protracted standoff.²⁴⁹ In May 2011, BAZ did issue a call for applications for two commercial radio licenses, to which 15 applicants responded, but this move was criticized as being outside the bounds of proper procedure (on the grounds that the board had not been properly constituted), as well as inadequate as it did not include community radio.²⁵⁰

In the absence of any operational private broadcasting, and also any progress on licensing new applicants for broadcasting licenses, shutdowns or closures of broadcast media are not an issue in Zimbabwe. However, some nonprofit and community initiatives have attempted to circumvent the lack of formal licensing and distribute news and information in innovative ways. For example, community radio initiatives have packaged information or content taped live at open air meetings or shows which they disseminate through CDs or DVDs. Some have been denied permission to hold such public events by the police. Other nongovernmental organizations (NGO) have developed services which transmit news via SMS services on mobile phones. The Freedom Fone service provided by Kubatana faced pressure from BAZ, which complained to Kubatana's wireless provider, Econet, that the NGO was "broadcasting" without a license. Econet did suspend the service but then reinstated it after a month of extended negotiations with Kubatana, and also notified BAZ that as a mobile provider, it was not regulated by BAZ and thus not subject to its licensing regimen.²⁵¹

As part of the GPA signed by all factions of the unity government in February 2009, pledges were made to restore professionalism and adhere to a modicum of balanced coverage at state-owned media outlets, including ZBC. While balance did improve initially, coverage was still lopsided and the ZANU-PF part of the government did continue to exert its control over state media outlets. New appointments to the ZBC board were made in September 2009 by a ZANU-PF aligned minister without consultation with the MDC. In 2010, with the increased jockeying for power prior to elections that seem likely to happen in 2012, state media have returned to slavishly supporting the ZANU-PF while attacking the MDC, and calls for reforms at ZBC seem unlikely to occur in the near future.

Self-regulation of the media sector in Zimbabwe has traditionally been weak, but concerted efforts have been made over the past several years to improve industry-wide mechanisms for effective self-regulation. The Voluntary Media Council of Zimbabwe (VMCZ), intended to provide a self-regulatory framework for the sector, was launched in 2007 by the Media Alliance of Zimbabwe (MAZ), an umbrella group of industry and media freedom organizations. However, the VMCZ only started operations in February 2009 due to insufficient funding. Its board is made up of 14 members (7 are members of the public and 7 represent media outlets). The council has formulated a code of ethics to which private media outlets subscribe, but enforcement mechanisms are currently weak and the council's main focus is on educating the

²⁴⁹ MISA–Zimbabwe, "MISA welcomes information minister's comments on ensuring greater access to information in marginalized areas," 13 October 2010, accessed at:

http://www.ifex.org/zimbabwe/2010/10/13/access_to_information/, and AMB, p.8, 45-6.

²⁵⁰ SW Radio Africa, Tererai Karimakwenda, "MDC-T say call for radio licenses 'bogus' and a diversion," 27 May 2011, accessed at: <http://www.swradioafrica.com/news270511/mdctsay270511.htm>, and Tichaona Sibanda, "BAZ taken to task over delays to free airwaves," 7 July 2011, accessed at:

<http://www.swradioafrica.com/news080711/baz080711.htm>.

²⁵¹ AMB, p.32.

media and public about the standards and the existence of the council's complaints mechanism.²⁵² Complaints may either be settled amicably or taken to a Media Complaints Committee which has the power to demand that an offending outlet publish a correction or a retraction. Although the number of complaints being brought to the council rose from 2009 to 2010, many of these involved the state media, which do not formally subscribe to the VMCZ's code.²⁵³ The absence of state media participation in the self-regulatory system remains a significant gap, as is the lack of sustainable funding for the organization.

CONCLUSION AND RECOMMENDATIONS

Despite some improvements in the environment for press freedom since the formation of the unity government, media regulation in Zimbabwe remains extremely restrictive, with onerous licensing requirements for print outlets and journalists that are not in line with international best practices and a non-functional system in place to regulate broadcast media. Repressive laws such as AIPPA remain on the books and have not been reformed, and recent moves in this direction have not been encouraging. Due to political infighting regarding appointments to its board, the BAZ continues to be unable to even operate, and there is no immediate prospect for the broadcast sector to be liberalized through the granting of licenses to independent radio and television stations. Small steps in 2010, such as the formation of the ZMC, the licensing of several newspapers, and a more active effort within the sector to promote self-regulation, have represented movements in the right direction. But without widespread reform of the legal framework and a commitment to open up the broadcast sector to private outlets, broader improvements in the regulatory environment will remain ephemeral. The government should therefore move to implement the provisions of the GPA, which explicitly call for the liberalizing of the airwaves.

²⁵² Voluntary Media Council of Zimbabwe (VMCZ), "Constitution of the Voluntary Media Council of Zimbabwe," accessed at: http://www.vmcz.co.zw/index.php?option=com_content&view=article&id=50&Itemid=82, and AMB, p.58.

²⁵³ Interview with Director of VMCZ, Harare, June 2010. See also the VMCZ website for examples on complaints and how they were resolved, at: http://www.vmcz.co.zw/index.php?option=com_content&view=article&id=52:about-media-complaints-committee&catid=34:code-of-conduct.



Freedom House is an independent nongovernmental organization that supports the expansion of freedom worldwide.

At key moments, Pakistanis can't watch sensitive political events on TV because authorities cut satellite transmission signals to prevent inconvenient footage from being aired. In Venezuela, media outlets that don't toe the line are stripped of their licenses while those able to remain on the air are forced to carry the president's speeches. And in South Africa, authorities are considering introducing a media tribunal with the power to censor press content and impose punishments on journalists.

Regulation has become one of the most common and pernicious tools used to restrict media freedom around the world, even as the broadcast sector has opened dramatically in recent years in a number of countries and regions. Striking the balance between the public's right to freedom of expression and the state's obligation to protect their citizens from violence continues to be a serious challenge amid the explosive growth of terrestrial, satellite and digital media. This report explores issues of government oversight, self-regulatory bodies, and licensing that continue to plague governments and free speech advocates whose interests often seem diametrically opposed.

Through in-depth country studies and an examination of recent cases in a range of media environments where media regulation poses a threat to media diversity and freedom, this report offers several cautionary examples as well as recommendations for reform.



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