

Policy Paper

**Road Map for Reforming the regulatory environment of
Journalism and the Media, Protecting the Public's Right
to Know and Encourage Media Self-regulation in their
Relations with the Public**

Center for Defending Freedom of Journalists

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1. Introduction

This policy paper aims to illustrate the position adopted by civil society organizations and activists in the defense of freedom of the media and a range of parliamentarians, academics and researchers; regarding the development of policies that protect the public's right to know, empower society to access information, and ensure the freedom of action of the media and journalists within the framework of the law, legislation and practices that ensure and enhance this.

This policy paper, referred hereinafter as the 'paper', is based on a series of revisions conducted over an extended period of time, of laws and legislation [particularly] those related to the practices and actual implementation by the executive authorities and those acting on their behalf, carried out by a number of Jordanian civil society organizations, in the area of freedom of the media, the right of access to information, the independence of the media, protecting privacy, and rights of individuals in the context of media coverage.

In the context of illustrating the situation, the paper is based on a number of references, mainly:

- Internationally well-established legal standards in protecting human rights.
- Jordan's international obligations, including its treaty and contractual commitments.
- Obligations of the executive authorities under national charters and covenants, some of which include reviews and recommendations in force, related to laws, legislation and enforcement frameworks.
- International standards of best practice in the areas above, on the grounds that they contain beneficial guiding directives and rules.

The paper is also based primarily on intensive reviews carried out recently by a group of journalists and workers in civil society organizations, judges, parliamentarians, representatives of public organizations, and lawyers, on the invitation of the Center for Defending Freedom of Journalists (CDFJ) on 15th - 16th March 2014, and as part of the activities of CDFJ's 'The Law and the Media Dialogue Forum'. These reviews resulted in the adoption of recommendations which form a basis on which this paper is built.

2. Framework of policies and practices under examination

2.1. Legislation

Participants in the Law and the Media Dialogue Forum identified a number of priorities for action in the context of studying legislation that governs and/ or relates to the work of the media in Jordan. These priorities included five laws:

- Press and Publications Law
- Right of Access to Information Law
- State Security Court Law
- Audio Visual Law
- Press Association Law

Problems in the legislative framework, which are highlighted by these laws, manifest themselves in a number of forms and practices, which can be summarized as follows:

2.1.1. Press and publications and the practice of journalism

- 2.1.1.1. The goal of enactment of the law. The punitive rather than regulatory approach predominates in the law.
- 2.1.1.2. The requirement of licensing instead of registration is an obstacle to the normal growth of the media, and it puts an arbitrary tool in the hands of the executive authorities.
- 2.1.1.3. The law uses largely elastic, not specific, well defined, and legally defined formulations.
- 2.1.1.4. The law does not distinguish between different types of press and media arts.
- 2.1.1.5. The provisions of the law require close examination by judges, which means drain and fatigue, and sometimes [these provisions] are difficult to interpret even by jurists.
- 2.1.1.6. The law overlaps with other laws that criminalize the same alleged offense by journalists in publication cases.

2.1.2. Right of Access to Information

- 2.1.2.1. Lack of clarity regarding the degree to which resolutions by the main body entrusted with enforcement of the law are binding to officials of the executive authority or its representatives in state organizations.
- 2.1.2.2. Lack of consistency and conflict between procedures set forth in the law for gaining access to information, with the principle of the 'right' of access to information.
- 2.1.2.3. The absence of mechanisms for classifying information as confidential or accessible according to law.
- 2.1.2.4. The law does not contain a mechanism for appeal against withholding information in case of classification, or refraining from making information accessible.
- 2.1.2.5. Continuation of work on the basis of the State Documents and Secrets Law annuls the effect of the Right of Access to

Information Law, and the rights provided therein, because the Right of Access to Information Law provides for respecting the legislation in force.

2.1.2.6. The law in its present form conflicts with international standards on the right of access to information.

2.1.3. The Audiovisual Commission

2.1.3.1. Lack of independence of the Commission and its administrative and financial subordination to the executive authority.

2.1.3.2. Conflict between the Commission's licensing powers and powers vested in the Council of Ministers.

2.1.4. The Press Association Law

2.1.4.1. The law does not include all journalists working in Jordan.

2.1.4.2. The law imposes a monopoly in the face of diversity of trade unions and associations representing journalists.

2.1.5. State Security Court Law

2.1.5.1. Lack of clarity in the text of the law. The Constitution states that judges are civilian, and it does not specify that the court is civil, given that there are no courts whose members are all civilian except civil courts.

2.1.5.2. The Law in its present form gives the [State Security] Court the mandate to examine some publishing offenses.

2.1.5.3. Provisions of the law do not grant the State Security Prosecutor the right to conduct an inquiry, which is being violated in practice.

2.2. Society and the media

2.2.1. The essence of the relationship between the media and society in Jordan is based on concepts such as protecting privacy, permissible criticism, the inadmissibility of libel, illicit defamation, or criticism of public figures, and freedom of expression.

2.2.2. In this context, maintaining and consolidating the essence of this relationship between the media and the public does not come from severe legal provisions, especially where the law only provides

a description of violations and abuses which it addresses by imposing penalties.

- 2.2.3. The main problems in regulating the media's relations with the public is the lack of tools that allow it in Jordan.
- 2.2.4. The idea of disciplinary councils for journalists cannot be considered a principle or a general framework adequate to address the public's grievance regarding the performance of the media.
- 2.2.5. Moreover, criminal responsibility in cases related to the media hinders the creation by the media of mechanisms for addressing the media's excesses.
- 2.2.6. The media's failure to hold themselves accountable before they were questioned by the public or the authorities, detracted from the role mandated to the media by society to protect its rights by providing it with the knowledge that enables it to exercise freedom of choice and knowledge.
- 2.2.7. Intervention by the executive authority in regulating the work of the media restricts their work.

2.3. Mechanisms for compliance, enforcement, and oversight

- 2.3.1. There are several levels of obligations: the first are international commitments, particularly those of a legal, contractual, and treaty-based nature. Legal obligations embrace Jordan's commitments arising from its endorsement of agreements within international human rights law, including those related to freedom of expression and freedom of media work, as well as Jordan's treaty-based undertakings which it pledged to observe, such as the recommendations of the Universal Periodic Review of Human Rights in 2013, of which Jordan accepted 15 recommendations related to freedom of the media and expression.
- 2.3.2. Another level of commitment is the executive authority's obligations under international charters, conventions, and revisions at the national level, which carry operative recommendations by virtue of their source. These commitments include the outputs of the national dialogue of 2011, the media strategy 2011 to 2015, and the Charter of the National Code of Integrity of 2013.
- 2.3.3. The third level of commitments is reflected in Jordan's membership of a number of regional and international partnerships, including its membership of the Open Government Partnership.
- 2.3.4. With regard to enforcement, there is a degree of uncertainty in determining how to implement the numerous commitments on freedom of expression and the media and the right of access to information.

- 2.3.5. In the same context, there emerges the failure to implement certain obligations at all levels, such as the incompatibility between operative national legislation and the requirements of applicable international legal obligations in the area of allowing freedom to organize and form trade unions.
- 2.3.6. And in the same context there arises the lack of clarity regarding the organizations or authorities responsible for enforcement, although the responsibility for this rests entirely with the executive authority.
- 2.3.7. With regard to oversight; there are no mechanisms for questioning the authorities entrusted with enforcing it over their deficiency in this regard.
- 2.3.8. Mechanisms of monitoring and follow-up that exist in the framework of the executive authority, where and if they exist, are not institution-based, have no defined parameters, are not measurable, and not available to the public; in addition, the results of monitoring activities are not transparent and not usable by independent bodies, the public or civil society.
- 2.3.9. Also, in the current situation, there is not a mechanism for monitoring enforcement in a participatory manner that involves a framework of stakeholders.

3. The framework of international standards and related best practice

3.1. Standards governing the work and practices of the media

- 3.1.1. Most countries with established democracies do not enact special laws to govern the print media.
- 3.1.2. In the absence of special legislation on the print media in general on the international level, the print media are treated as ordinary companies whose affairs are regulated by general laws (labor law, companies law...etc.)
- 3.1.3. The licensing requirement of the print media (which implies the possibility of denying the license) is considered incompatible with and in violation of international guarantees related to freedom of expression. The principle is that all is permissible, and restrictions happen in the narrowest circumstances on the basis of requirements imposed by considerations of public safety in times of war or such.
- 3.1.4. Moreover, general government regulations on registering and licensing journalists are inconsistent with Paragraph 3 which states that 'Freedom of expression is a necessary condition for the establishment of the principles of transparency and accountability,

which in turn represent a key factor for promoting and protecting human rights'. Restrictive accreditation regulations are not allowed except when there is a necessity to grant journalists a privilege to access certain places and/ or occasions (UN Human Rights Commission, General Comment No. 34, Paragraph 44).

3.1.5. Compulsory membership or the requirement to have a university degree to practice journalism is considered an illegal infringement on the right to freedom of expression.

3.1.6. Protecting journalists' sources: 'a component of the right to freedom of expression includes the privilege guaranteed to journalists not to disclose their sources of information'. (UN Human Rights Commission, General Comment No. 34, Paragraph 45).

3.1.7. Protecting diversity and pluralism, which means a genuine and systematic approach by the state to encourage the development of media that enrich existing pluralism in society and reflect the diversity of views, opinions, and cultures in the context of maintaining its independence and not being subject to the control of official bodies.

3.1.8. Guaranteeing the right of reply and correction in material published in newspapers and magazines, according to criteria that ensure expeditious publication of the reply so as to guarantee correction to the content of the published news item, as well as placement and highlighting to ensure [that the response/ correction] reaches the broadest section of readers.

3.2. Standards regulating the work of audiovisual media

3.2.1. Licensing: 'Member states should avoid imposing difficult conditions and exorbitant fees for licensing broadcast media, including community and commercial stations. Criteria for implementing these terms and license fees should be reasonable, objective, clear, transparent, non-discriminatory, and otherwise in conformity with the Covenant. Regulations related to licensing broadcast media with limited capacity, such as audio-visual, terrestrial, and satellite stations should provide a fair allocation of opportunities and frequencies between public, commercial and community broadcasting organizations.' (UN Human Rights Commission, General Comment 34, Paragraph 39).

3.2.2. Licensing Authority: 'Member States that do not already have a broadcast licensing authority are advised to establish an independent broadcast licensing public authority with the power to

examine requests and grant licenses'. (UN Human Rights Commission, General Comment 34, Paragraph 39).

- 3.2.3. The integrity and transparency of the licensing process is enhanced by providing a clear and specific description of the evaluation process of license applications, in a specific law, including the overall legislative framework, provided specific related details are addressed in additional laws.
 - 3.2.4. It is customary in democracies not to grant audiovisual licenses to political parties.
 - 3.2.5. Issues of content-regulation should be addressed by independent regulatory bodies that are not government-controlled. The party concerned with regulating content may itself be the licensing body, but the basic requirement of its work should be complete independence from the government.
- 3.3. Standards regulating the right of access to information
- 3.3.1. The right of access to information that is held by public authorities is an inherent human right, which should be respected at the national level through comprehensive laws (for instance, freedom of information laws) based on the principle of maximum disclosure and the assumption that all information is accessible, except that which is subject to a narrow system of exceptions. (Joint Declaration of 2004 on access to information).
 - 3.3.2. To realize the right of access to information, Member States of the International Covenant on Civil and Political Rights should proactively give the public access to government information of public importance. Member States should exert every effort to ensure access to this information in an easy, expeditious, effective and practical manner. They should also adopt the necessary measures to enable individuals to access information, through means that include enactment of legislation that guarantees freedom of access to information. Procedures should allow processing requests for access to information in a timely manner and in accordance with clear rules that are consistent with the Covenant. Fees collected on requests for information should not be an unreasonable obstacle to acquiring this information. Authorities should provide reasons for refusing to allow access to information and they should provide the necessary arrangements to challenge refusals to allow access to information as well as cases of failure to respond to requests (General Comment No. 34, Paragraph 19).

- 3.4. Standards governing media self-regulation and relations with the public
- 3.4.1. In some states, complete self-regulation mechanisms developed, which are not based on any legal framework. They are managed entirely by the media on a voluntary basis.
- 3.4.2. Media organization base their efforts to regulate their work and subject their performance to accountability on codes of conduct, some of which develop in the context of a single media organization, others cover a sector of media organizations with similar ways of work, and others cover all the media operating in the country.
- 3.4.3. Means of self-regulation also include journalists' codes of ethics based on social principles and values, to regulate media coverage.
- 3.4.4. Self-regulation mechanisms also include complaints councils, whose membership is not limited to journalists but include representatives of other groups. Complaints councils do not replace or supplant the courts or litigation; they provide an alternative for dispute resolution and reparation, and they set the founding principles of a process to upgrade the media's performance for the public good.
- 3.4.5. Other regulatory mechanisms include multilateral or mixed regulatory mechanisms, whereby councils or authorities are formed in accordance with the law, and representatives of the media take the lead role in their management.

4. Recommendations

The CDFJ's **The Law and the Media Dialogue Forum** was held at the Dead Sea in the period March 15th – 16th, 2014 with the participation of a range of journalists, lawyers, human rights activists, representatives of civil society organizations, parliamentarians and jurists, in order to discuss a range of topics related to media reform as well as the accompanying and ensuing review and development of related legislation, policies and practices. The Forum provided a holistic umbrella to address the themes contained in the second part of this paper.

Participants made several recommendations, the overall aim of which was to provide structure to the process of a critical, analytical, and reform-oriented review of the environment governing the media, protect the public's right to know, and promote the emergence of means of self-regulation in the broad media sector.

- 4.1. In the context of general recommendations provided by this paper, based on the review which took place in the Law and the Media

Dialogue Forum, the following recommendations, directed to the executive authority, represent the main lines of the position that emerged from the review:

- 4.1.1. To initiate the call for a dialogue among stakeholders who include:
 - Owners of media outlets and their employees
 - Human rights organizations, NGOs and civil society organizations
 - Unions, including the Jordan Press Association and the Bar Association
 - Parliament
 - The judiciary
- 4.1.2. To launch, in partnership with stakeholders, a comprehensive review of the following:
 - Laws and legislation that affect the media or relate to them
 - Related systems and instructions
 - Related applications and practices
 - An inventory of past efforts in these areas in order to benefit from them and build on them
- 4.1.3. To prepare and adopt a position statement that includes a reform-oriented treatment and a structure that aims to build consensus on conformity with international standards and obligations.
- 4.1.4. To develop policies, in partnership with stakeholders, aimed at developing frameworks for effective implementation of the proposed reforms and identifying programs that strengthen their implementation.
- 4.1.5. To design a participatory oversight mechanism for implementation of proposed programs and policies, with time schedules.
- 4.2. In the context of special recommendations provided by this paper, based on the review which took place in the Law and the Media Dialogue Forum, the following recommendations, directed to the executive authority, represent t models for urgent interventions to be conducted pending completion of the comprehensive review with the participation of stakeholders:
 - 4.2.1. With regard to the Press and Publications Law

- 4.2.1.1. Introducing a provision specifically stating the inadmissibility of blocking websites except by means of a judicial decision
- 4.2.1.2. Introducing a special provision in the Press and Publications Law that recognizes news websites as soon as they are incorporated before the Controller of Companies as companies or individually-owned organizations, provided that their registration certificate identifies the names of the chief editor and publisher as well as the address of the publication.
- 4.2.1.3. Replacing criminal liability of news websites with civil liability such that criminal prosecution on the basis of provisions in other laws would stop upon relinquishing private rights. With regard to comments posted on material published in news websites, the responsibility of the site is the civil liability of the author of the story or feature, and the publisher and chief editor of the site, unless criminal intent is proven, whereupon criminal liability stands.
- 4.2.1.4. Cancelling Paragraph g of Article 49 of the Press and Publications Law for violating the provisions of Article 15/3 of the Jordanian Constitution, which does not authorize preventing a publication from coming out except by means of a judicial order, in order to protect freedom of opinion and expression and not give the executive authority, represented by the Director of Press and Publication, the power to block publications.
- 4.2.2. With regard to the law guaranteeing the right of access to information
 - 4.2.2.1. Modifying the composition of the Special Information Council by including civil society organizations
 - 4.2.2.2. Modifying the deadlines for appeals against Information Council decisions
 - 4.2.2.3. Reducing the duration of approvals issued by the Council to 15 days
 - 4.2.2.4. Providing information to journalists expeditiously to enable them to do their work, and encourage them to resort to the law. The 15-day period stipulated by the current law does not agree with the nature of journalism
 - 4.2.2.5. Allowing information to be provided to non-Jordanians on condition of reciprocity

- 4.2.2.6. Information Council resolutions should be considered binding [for the official commission]
- 4.2.3. With respect to the Audiovisual Law
 - 4.2.3.1. Amending Article 18 so that the Council of Ministers should explain the reasons for rejecting the [application for a] license within 30 days, and allowing appeal against this decision
 - 4.2.3.2. Cancelling any censorship prior to or post broadcast
 - 4.2.3.3. Determine rules for entry into public service
 - 4.2.3.4. Reducing fees on broadcast and re-broadcast on television and community and/ or local radio to allow these stations to turn to the principle of public service in place in most countries of the world
- 4.2.4. With respect to the Press Association Law
 - 4.2.4.1. Involving all employees in the media sector and some participants on condition of joining the Jordan Press Association (JPA) after having an experience of not less than ten years if currently not eligible for JPA membership, and the possibility of requesting three years of experience by introducing a requirement of a certain number of years of experience
 - 4.2.4.2. Modifying this law, or reviewing it to allow diversity in trade union work, according to the free choice of journalists, to ensure compliance and compatibility with the requirements of the International Covenant on Civil and Political Rights, which explicitly states the need to protect freedom of association
- 4.3. In the context of special recommendations provided by this paper, based on the review which took place in the Law and the Media Dialogue Forum, the following recommendations, directed to media and civil society organizations, represent models for urgent interventions to be conducted pending completion of the comprehensive review with the participation of stakeholders and taking effective steps in this regard:
 - 4.3.1. The formation of a national coalition that includes parliament, civil society organizations, and the media, which aims to determine the appropriate mechanisms for implementing the recommendations of the Universal Periodic Review of human rights related to the media, and oversight on the implementation of these recommendations.

- 4.3.2. Inviting CDFJ to organize extended dialogues with the participation of the widest range of journalists and opinion leaders about the idea of forming a Complaints Council
- 4.3.3. Implementing an extensive campaign to gain support for the idea of establishing a Complaints Council
- 4.3.4. Preparing a draft Complaints Council Law and submitting it for discussion among all stakeholders
- 4.3.5. Lobbying a group of lawmakers to adopt the draft Complaints Council Law and push it through the constitutional mechanisms for enactment