

ARTICLE 19

# Egypt: 2018 Law on the Organisation of Press, Media and the Supreme Council of Media

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Legal analysis

## Executive summary

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In October 2018, ARTICLE 19 analysed the 2018 Law on the Organisation of Press, Media and the Supreme Council of Media (the Law) of the Arab Republic of Egypt for its compliance with international freedom of expression standards. The Law is part of a collection of new media and cybercrime measures which together serve to legalise the Egyptian government's existing restrictions on freedom of the media.

ARTICLE 19 finds the Law to be extremely problematic and fails to comply with international human rights standards. In particular, we highlight the following issues:

- The Law provides **sweeping powers to block journalistic and personal websites** to a body subordinated to the President. The Supreme Council of Media (Supreme Council), which is largely appointed by the President, is tasked with regulating media. This includes the power to block journalistic web pages, social media accounts, or any personal web page with over 5,000 followers for a wide variety of grounds that are impermissible grounds for restricting freedom of expression. We note that under international standards, measures such as mandatory blocking of access to websites are generally disproportionate interferences with the right of freedom of expression and should only be ordered by a court or independent adjudicatory bodies. The Law provides no such mechanism, allowing the Supreme Council to order blocking of websites at will. Finally, there is no transparency or public list as to the nature of blocking orders or what sites have been blocked; the lack of transparency effectively eliminates the ability of the public to challenge decisions in the courts.
- The Law fails to **distinguish between different forms of regulation for broadcast and print and Internet-based media**. We emphasise that self-regulation by the press and Internet-based media should always be preferred over a state-established regulator.
- The Law creates **numerous restrictions on journalists** which are fundamentally incompatible with international freedom of expression standards. These include onerous administrative and licensing requirements for individuals to disseminate information in Egypt, especially via the Internet, or even for journalists to attend conferences or interview citizens. It also places strict obligations on journalists to adopt specific regulatory policies, contracts, and to discipline their employees. We emphasise that licensing of journalists is never an acceptable restriction on freedom of expression under international law.
- The Law introduces **broad and ill-defined restrictions on content, censoring** content from abroad, and preventing journalists from reporting on matters of public interest like public trials. This includes broad prohibitions on 'pornography,' 'false news,' and 'defamation,' as well as published content that allows for 'activities hostile to the principles of democracy' or 'advocating indecency.' The Law also allows the Supreme Council to ban publications from abroad on grounds of 'national security'; and also prohibits journalists

from reporting on certain investigations and trials, as doing so would “affect the positions of those involved in the investigation or trial.”

ARTICLE 19 is gravely concerned that the Law will serve to further expand the already harshly restrictive actions taken by the Egyptian government against journalists, bloggers, and dissenting voices. The Law was passed in the context of hundreds of news sites and blogs being blocked in recent months in Egypt, and around a dozen individuals being arrested and charged with publishing false news, among them journalists or prominent government critics.

We believe the problematic aspects of the Law need to be addressed with grave urgency in order to guide press freedom in Egypt to a more positive direction. We urge the government to review the Law and bring all domestic legislation into full compliance with international human rights standards.

### Summary of key recommendations

- Any media related legislation should explicitly reference and safeguard rights to access and publish information, in accordance with international human rights standards;
- New criminal offenses, introduced in **Section VI** of the Law should be abolished;
- Website blocking powers granted to the Supreme Council - namely, **Articles 3 and 4** and the blocking power granted in **Article 6 para 2** - should be stricken entirely;
- The blocking powers in Article 19, which include vaguely-defined standards such as defamation or ‘false news’, should be stricken;
- **Articles 4, 19, 20 and 21** should be stricken in their entirety for the additional reasons that they introduce overbroad and content-based restrictions on content;
- Any media related legislation should distinguish between print and Internet-based media on the one hand, and broadcast media on the other, with regulation only specified in relation to broadcast media. The **Supreme Council’s** role as media regulator should not cover the press and the Internet-based media;
- To the extent that the Supreme Council is retained, it should be to fully independent and protected against any interference, in particular, by political forces or economic interest. The membership of the Board should ensure, at a minimum, an equal representation of members of the media profession, media owners, and the public. The Law should be amended to guarantee complete independence of the Supreme Council from the President, specifically by removing the ability of the President to appoint several members of the board including the Chair, NTRA representative, and public personality in Article 73;
- The limitation of the right to establish encrypted platforms in **Article 72** should be stricken;
- Instead of having statutory systems for dealing with content imposed on them, the Egyptian media should be given an opportunity to develop a self-regulatory complaints system that can also provide specific codes of ethics. Specifically, the broad restrictions on journalistic conduct in Article 17 should be stricken, the requirements of media outlets to discipline their employees in Article 18 should also be stricken;
- The mandatory duty to issue corrections upon any request in **Article 22** should be limited. Specifically, the duty to issue corrections should be protected by self-regulatory mechanisms, and only be available to respond to statements which breach a legal right of the person involved.

- The limitation of the right to establish encrypted platforms in **Article 72** should be stricken;
- **Articles 5, 6, 12, 35, 40, 41, 59, 95, and 106** should be stricken entirely as licensing requirements for journalists are never justified under international freedom of expression standards.

# Table of Contents

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- Introduction..... 6**
- International human rights standards..... 7**
  - The protection of freedom of expression under international law..... 7
  - Limitations on the right to freedom of expression..... 7
  - Media regulation ..... 8
  - Online content regulation ..... 10
  - Website blocking and filtering..... 11
  - Constitution of Egypt..... 13
- Analysis of the Law ..... 13**
  - General observations ..... 13
  - Service interruptions and suspensions without prior judicial authorization or exceptional circumstances..... 15
  - Content restrictions and censorship ..... 16
  - The Supreme Council and regulation of the media ..... 18
    - Failure to distinguish between different types of the media ..... 18
    - Lack of independence of the Supreme Council..... 19
    - Interference in the media independence ..... 19
  - Licensing of journalists ..... 21
- About ARTICLE 19..... 24**

# Introduction

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In October 2018, ARTICLE 19 analysed the 2018 Law on the Organisation of Press, Media and the Supreme Council of Media (the Law) of the Arab Republic of Egypt for its compliance with international freedom of expression standards. ARTICLE 19 is closely monitoring the state of freedom of expression in Egypt with deep concern and has actively participated in international procedures surrounding Egypt's compliance with international standards, including providing comments in Egypt's 2014 Universal Periodic Review.<sup>1</sup>

ARTICLE 19 notes that the current government in Egypt has severely limited freedoms of expression, association, and protest, and has implemented severe restrictions on dissent including through prosecution of dissenters and blocking of websites of media outlets and human rights organisations.<sup>2</sup> At the 39<sup>th</sup> Session of the Human Rights Council in September 2018, ARTICLE 19 called for the Human Rights Council to condemn recent actions of the Egyptian government in handing death sentences and terms of life imprisonment to dozens of protesters who attended assemblies in 2013.<sup>3</sup> The Law was passed in the context of hundreds of news sites and blogs being blocked in recent months in Egypt, and around a dozen individuals being arrested and charged with publishing false news, among them journalists or prominent government critics.<sup>4</sup> It has already been sharply criticised by journalists and legal groups for containing numerous provisions threatening basic press freedoms.<sup>5</sup>

In this analysis, ARTICLE 19 highlights its concerns and conflicts of the Law with international human rights standards; we also actively seek to offer constructive recommendations on how the Law can be amended. We explain the ways in which problematic provisions in the Law can be made compatible with international standards on freedom of expression and privacy and set out key recommendations.

ARTICLE 19 urges the Egyptian government and the Parliament to address the shortcomings identified in this analysis to ensure the compatibility of the Law with international standards of freedom of expression. We stand ready to provide further assistance in this process.

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<sup>1</sup> Human Rights Council Working Group on the Universal Periodic Review, Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, Egypt, A/HRC/WG.6/7/EGY/3, 25 November 2009.

<sup>2</sup> ARTICLE 19, information on [Egypt](#).

<sup>3</sup> ARTICLE 19, [HRC39: Oral statement on countries' violations to human rights](#), 18 September 2018.

<sup>4</sup> [Egypt targets social media with new law](#), Reuters, 17 July 2018.

<sup>5</sup> Mostafa Mohie and Rania al-Abd, [State Council, Journalists Syndicate condemn 'unconstitutional' media bill](#), Mada, 12 July 2018. Journalist and former Syndicate of Journalists chairman Yehia Qalash said that the law amounted to an "assassination of the journalism profession;" see [An assassination of journalism': Egypt passes controversial media laws](#), Middle East Eye, 17 July 2018.

# International human rights standards

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ARTICLE 19's comments on the Law are informed by international human rights law and standards. The Law should also comply with the guarantees of freedom of expression in the Egyptian Constitution.

## The protection of freedom of expression under international law

The right to freedom of expression is protected by a number of international human rights instruments, in particular Article 19 of the **Universal Declaration of Human Rights (UDHR)**<sup>6</sup> and Article 19 of the **International Covenant on Civil and Political Rights (ICCPR)**<sup>7</sup> as well as in Article 9 of the African Charter on Human and Peoples' Rights.<sup>8</sup> Additional guarantees to freedom of expression are provided in the 2002 Declaration of Principles on Freedom of Expression in Africa (African Declaration).<sup>9</sup>

Importantly, **General Comment No 34**<sup>10</sup> explicitly recognises that Article 19 of the ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.<sup>11</sup> State parties to the ICCPR are also required to consider the extent to which developments in information technology, such as Internet and mobile-based electronic information dissemination systems, have dramatically changed communication practices around the world.<sup>12</sup> The legal framework regulating mass media should take into account the differences between the print and broadcast media and the Internet, while also noting the ways in which media converge.<sup>13</sup>

Similarly, the four special mandates for the protection of freedom of expression have highlighted in their **Joint Declaration on Freedom of Expression and the Internet** of June 2011 that the development of tailored approaches for responding to illegal content online are unnecessary.<sup>1</sup> They also point out that specific restrictions for material disseminated over the Internet are also not required.<sup>14</sup>

## Limitations on the right to freedom of expression

Under international standards, restrictions on the right to freedom of expression must meet the

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<sup>6</sup> UN General Assembly Resolution 217A(III), adopted 10 December 1948.

<sup>7</sup> GA Resolution 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc.

<sup>8</sup> CAB/LEG/67/3 rev. 5 I.L.M. 58 (1982).

<sup>9</sup> Adopted at the 32<sup>nd</sup> Session of the African Commission on Human and Peoples' Rights, 17-23 October 2002, Article II.

<sup>10</sup> Human Rights Committee (HR Committee), [CCPR/C/GC/3](#), adopted on 12 September 2011.

<sup>11</sup> *Ibid*, para 12.

<sup>12</sup> *Ibid*, para 17.

<sup>13</sup> *Ibid*, para 39.

<sup>14</sup> [Joint Declaration on Freedom of Expression and the Internet](#), June 2011.

conditions of so called “three-part test” which mandates that restrictions must be:

- **Provided for by law**; any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly;
- **In pursuit of a legitimate aim**, listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (*ordre public*), or of public health or morals;
- **Necessary and proportionate in a democratic society**, i.e. if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied.<sup>15</sup>

The same principles apply to electronic forms of communication or expression disseminated over the Internet.<sup>16</sup>

Additionally, Article 20(2) ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law. At the same time, inciting violence is more than just expressing views that people disapprove of or find offensive.<sup>17</sup> At the international level, the UN has developed the Rabat Plan of Action which provides the closest definition of what constitutes incitement law under Article 20(2) ICCPR.<sup>18</sup>

## Media regulation

The guarantee of freedom of expression applies with particular force to the media. International human rights bodies have repeatedly emphasised the “pre-eminent role of the press in a State governed by the rule of law”<sup>19</sup> and the essential role of the press in a democratic society.<sup>20</sup>

Regulation of the media presents particular problems. On the one hand, the right to freedom of expression requires that the government refrain from interference, while on the other hand, Article 2 of the ICCPR places an obligation on states to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This means that states are required also to take positive steps to ensure that rights, including the right to freedom of expression, are respected.

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<sup>15</sup> HR Committee, *Velichkin v. Belarus*, Communication No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005).

<sup>16</sup> General Comment 34, *op. cit.*, para 43.

<sup>17</sup> *C.f.* the European Court for Human Rights (the European Court), *Handyside v the UK*, 6 July 1976, para 56.

<sup>18</sup> See [UN Rabat Plan of Action](#) (2012). In particular, it clarifies that regard should be had to six part test in assessing whether speech should be criminalised by states as incitement.

<sup>19</sup> See, e.g. the European Court, *Thorgeirson vs Iceland*, 25 June 1992, para 63 or *Castells vs Spain*, 24 April 1992, para 43.

<sup>20</sup> European Court, *Dichand and others vs Austria*, 26 February 2002, para 40.

In order to protect the right to freedom of expression, it is imperative that the media be permitted to operate independently of government control. This ensures the media's role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest. This has important implications for regulatory models of the media:

- Self-regulation is the preferred model of regulation for print and Internet-based media, which means that it should be left to the industry to develop and hold itself accountable for ethical media standards. This is often achieved through the establishment of Press Councils that are independent from the State, and open to all print media to join as members. The mandates of Press Councils vary, but they are generally tasked with formulating professional and ethical standards, and with receiving complaints regarding compliance with those standards.
- The regulation of broadcast media, i.e. radio and television, should be established separately. This is because the broadcasting spectrum is a limited public resource, and the state has an important, albeit limited, role to play in ensuring that the spectrum is used in the public interest for diverse and plural programming. Ensuring diverse and plural broadcast programming while safeguarding media independence is a complex task. It requires the state to establish an independent, transparent and accountable regulatory body to ensure broadcast frequencies are allocated fairly, according to a transparent broadcast policy designed to maximise media pluralism and diversity. Unlike the print and Internet media, this body is not self-regulatory but is independent from the industry, as well as the state and political parties.

The special mandates on the right to freedom of expression, appointed by mechanisms within the UN, the OSCE, and the OAS, have warned of the risk of interference in the work of regulatory bodies and emphasised the crucial importance of their independence.<sup>21</sup> Declarations on freedom of expression from intergovernmental regional bodies in other parts of the world, including in Africa, have stated explicitly that “effective self-regulation is the best system for promoting high standards in the media.”<sup>22</sup> It is accepted that, as a general rule:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.<sup>23</sup>

As for the broadcast media, the need for protection of regulatory bodies against political or commercial interference was specifically emphasised in the 2003 Joint Declaration of freedom of expression mandates, who considered:

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<sup>21</sup> The [2003 Joint Declaration](#), the UN Special Rapporteur on Freedom of Expression, the OAS Special Rapporteur on Freedom of Expression and the OSCE Special Representative on Freedom of the Media, 18 December 2003.

<sup>22</sup> 8 Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples' Rights, Banjul, October 2002, Principle IX.

<sup>23</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, [Joint Declaration on regulation of the media, restrictions on journalists and investigating corruption](#), 18 December 2013.

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.<sup>24</sup>

Guaranteeing the independence of a regulator in practice involves various aspects. For instance, **the Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation**<sup>25</sup> highlight that:

[The] institutional autonomy and independence of broadcast and/or telecommunications [regulatory bodies] should be guaranteed and protected by law, including in the following ways:

- specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
- by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body;
- through the rules relating to membership;
- by formal accountability to the public through a multi-party body;
- and in funding arrangements.

From a comparative perspective, it is worth mentioning the standards developed by the Council of Europe on the independence and functions of regulatory authorities for the broadcasting sector.<sup>26</sup> Although these are not binding on Egypt, we believe that the standard setting by regional human rights bodies, as well as non-binding standard-setting documents, such as authoritative international declarations and statements, illustrate the manner in which international and constitutional guarantees of freedom of expression have been interpreted globally. As such, they are authoritative evidence of generally accepted understandings of the scope and nature of all international guarantees of freedom of expression. They also provide strong guidance regarding the interpretation of the guarantees of freedom of expression found in the Egyptian Constitution.

## Online content regulation

In addition to the above outlined standards, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Special Rapporteur on FOE) in his September 2011 report, clarified the scope of legitimate restrictions on different types of

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<sup>24</sup> The 2003 Joint Declaration of special rapporteurs, *op.cit.*

<sup>25</sup> ARTICLE 19, [Access to the Airwaves Principles on Freedom of Expression and Broadcast Regulation](#), March 2002.

<sup>26</sup> Council of Europe, Committee of Ministers, [Recommendation \(2000\) 23](#) of the Committee of Ministers to the member states on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 20 December 2000, at the 735<sup>th</sup>; [Explanatory Memorandum](#) to Recommendation (2000) 23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector; and [Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector](#), adopted by the Committee of Ministers on 26 March 2008 at the 1022<sup>nd</sup> meeting of the Ministers' deputies.

expression online.<sup>27</sup> He identified three different types of expression for the purposes of online regulation:

- Expression that constitutes an offence under international law and can be prosecuted criminally.<sup>28</sup> He further made clear that even legislation criminalising these types of expression must be sufficiently precise, and there must be adequate and effective safeguards against abuse or misuse, including oversight and review by an independent and impartial tribunal or regulatory body;<sup>29</sup>
- Expression that is not criminally punishable but may justify a restriction and a civil suit; and
- Expression that does not give rise to criminal or civil sanctions, but still raises concerns in terms of tolerance, civility and respect for others.<sup>30</sup>

In his 2016 report on freedom of expression in the private sector, the Special Rapporteur on FOE reiterated the need in the communication technology context for any demands, requests, or similar measures related to the take down of content or accessing customer information to satisfy the three-part test under ICCPR Article 19(3).<sup>31</sup> He emphasised that states should set out to transparently implement regulations and policies. He also observed that service shutdowns are a “particularly pernicious means of enforcing content regulations.”<sup>32</sup>

## Website blocking and filtering

Four special mandates on freedom of expression called blocking “an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.”<sup>33</sup>

Additionally, in his report of 16 May 2011, the UN Special Rapporteur on freedom of expression summarised the key concerns as follows:

States’ use of blocking or filtering technologies is frequently in violation of their obligation to guarantee the right to freedom of expression... Firstly, the specific conditions that justify blocking are not established in law, or are provided by law but in an overly broad and vague manner, which risks content being blocked arbitrarily and excessively. Secondly, blocking is not justified to pursue aims which are listed under [Article 19 para 3 of the ICCPR], and

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<sup>27</sup> Report of the Special Rapporteur on FOE, A/66/290, 10 August 2011, para 18.

<sup>28</sup> *Ibid.*, in particular, the Special Rapporteur on FOE clarified that the only exceptional types of expression that States are required to prohibit under international law are child pornography, direct and public incitement to commit genocide, hate speech and incitement to terrorism.

<sup>29</sup> *Ibid.*, para 22.

<sup>30</sup> *Ibid.*

<sup>31</sup> Report of the Special Rapporteur on FOE, A/HRC/32/38, 11 May 2016, para 85.

<sup>32</sup> *Ibid.*, para 48.

<sup>33</sup> Joint Declaration on Freedom of Expression and the Internet, *op. cit.*

blocking lists are generally kept secret, which makes it difficult to assess whether access to content is being restricted for a legitimate purpose. Thirdly, even where justification is provided, blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal. Lastly, content is frequently blocked without the intervention of or possibility for review by a judicial or independent body. ...

[S]tates that currently block websites [should] provide lists of blocked websites and full details regarding the necessity and justification for blocking each individual website. An explanation should also be provided on the affected websites as to why they have been blocked. Any determination on what content should be blocked must be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences.<sup>34</sup>

Similarly, the OSCE concluded in the 2011 report on Freedom of Expression and the Internet that:

Blocking measures are not always provided by law nor are they always subject to due process principles. Furthermore, blocking decisions are not necessarily taken by the courts of law and often administrative bodies or Internet hotlines run by the private sector single handedly decide which content, website or platform should be blocked. Blocking policies often lack transparency and administrative bodies (including hotlines) lack accountability. Appeal procedures are either not in place or where they are in place, they are often not efficient. Therefore, increasingly, the compatibility of blocking with the fundamental right of freedom of expression must be questioned.

ARTICLE 19's policy brief on blocking and filtering summarises the relevant international standards, demonstrating that blocking can only ever be compatible with international standards on freedom of expression where it has been provided by law and a court has determined that a blocking measure is necessary in order to protect the rights of others.<sup>35</sup> The brief further stipulates that:

- Any determination on what content should be blocked must be undertaken by a competent judicial authority or body which is independent of any political, commercial, or other unwarranted influences;
- Blocking orders must be strictly limited in scope in line with the requirements of necessity and proportionality under Article 19 (3) ICCPR;
- Lists of blocked websites together with full details regarding the necessity and justification for blocking each individual website should be published;

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<sup>34</sup> The Special Rapporteur on FOE, [A/HRC/17/27](#), 16 May 2011.

<sup>35</sup> ARTICLE 19, [Freedom of Expression Unfiltered: How blocking and filtering affect free speech](#), 2016.

- An explanation as to why a page has been blocked should also be provided on a page that is substituted for the affected websites; and
- It should be possible to challenge blocking and filtering orders before an independent and impartial tribunal and seek clarification and remedies.<sup>36</sup>

## Constitution of Egypt

Finally, the 2014 Constitution of the Republic of Egypt guarantees fundamental rights in several provisions. Article 65 guarantees that “All individuals have the right to express their opinion through speech, writing, imagery, or any other means of expression and publication.” Article 70 guarantees freedom of the press; specifically:

Freedom of press and printing, along with paper, visual, audio and digital distribution is guaranteed. Egyptians—whether natural or legal persons, public or private—have the right to own and issue newspapers and establish visual, audio and digital media outlets.

Finally, Article 71 guarantees freedom of publication, and holds that “It is prohibited to censor, confiscate, suspend or shut down Egyptian newspapers and media outlets in any way. Exception may be made for limited censorship in time of war or general mobilization.”

# Analysis of the Law

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## General observations

At the outset, ARTICLE 19 highlights that democracies do not have a specific law on regulation of the press. These are viewed as ordinary commercial activities that should not be regulated separately; the procedure to establish them is the same as for any comparable business. This does not mean that there are no restrictions at all on what the press can publish. For example, prohibitions on content that incites to violence or discrimination, sexually exploits minors or infringes a trademark can be found in virtually every country. But in democracies, these rules are usually found in laws of general application, rather than in specific press legislation. Hence, although the adoption of the Law is not inherently problematic, legislation of this kind does raise the question whether its purpose and effect is to strengthen freedom of expression - such as defining rights of journalists or promoting diversity and pluralism of the media - or rather to create additional mechanisms to control the press, over and above the general laws applicable to any individual or business.

Generally, ARTICLE 19 notes that, frequently, press laws are vehicles by which governments attempt to over-regulate and control - improperly and impermissibly from the point of view of

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<sup>36</sup> *Ibid.*, p. 13-14.

the international law of freedom of expression – what newspapers and other periodicals may say, and who may practice journalism. Such improper controls may take such forms as broad and vague content restrictions directly applied to the press; registration requirements on newspapers and accreditation requirements on journalists, both of which may be open to serious abuse; and obligatory codes of conduct for journalists which potentially turn “independent” journalist associations into arms of government. At the same time, a good press law can, instead of regulating and constraining the press, work to ensure genuine press freedom. A good press law should, for instance, prohibit prior censorship, protect the confidentiality of sources, protect the independence of journalists’ associations and ensure access for the press to the workings of government and to the judicial process. It should not contain any press specific content restrictions, although it might provide for the rights of correction and reply.

ARTICLE 19 notes that the Law does not meet these criteria. Instead, as further analysis shows, it contains numerous provisions that violate international freedom of expression standards. Additionally, ARTICLE 19 observes the following key problems:

- The Law establishes a **number of criminal penalties**: Section VI establishes numerous criminal offenses and penalties, many of which concern administrative violations outside the scope of this analysis. However, we note that a media regulation measure is not an appropriate method for introducing criminal sanctions, and any criminal sanctions should be addressed in amendments to the criminal code or separate legislation. At the same time, we reiterate that any restrictions on freedom of expression – including in criminal law - should meet the three-part test of restrictions under the international freedom of expressions standards;
- The Law lacks procedural **safeguards for human rights protections**: There are few references to human rights protection - guarantee of freedom of the press and publishing (Article 2), the right of journalists to publish information (Article 9), and the right to obtain information (Article 10). However, the Law also explicitly limits these rights so long as the “law does not prohibit” their realisation, and on other grounds such as “national security and defence of the homeland.” While observing that these stipulations undermine the guarantees of the Law, we also note that the Law could go further in explicitly referencing Egypt’s obligations under international human rights law to protect the right to freedom of expression.

#### **Recommendations:**

- If the Law is to be retained, it should explicitly reference and safeguard rights to access and publish information, in accordance with international human rights standards;
- The Law should remove all new criminal offenses introduced in Section VI; criminal penalties are more appropriately addressed in separate legislation, not a media regulation law; however, any restrictions on freedom of expression should strictly meet the three-part test under the international human rights standards.

## **Service interruptions and suspensions without prior judicial authorization or exceptional circumstances**

ARTICLE19 is very concerned that the Law creates broad powers to interrupt or shut down websites and censor media without prior judicial authorisation or exceptional cause.

Numerous articles in the Law provide the Supreme Council with broad powers to block content based on sweeping and vague standards. In particular:

- **Article 3**, while claiming that it is “prohibited in any way to censor” newspapers or media outlets under the Law, continues to do just that — provide for censorship “in time of war or general mobilization.” The Supreme Council in those cases are empowered to seize copies of newspapers or “delete or block the content” in the case of digital content;
- **Article 4** allows the Supreme Council “for reasons of national security” to “prevent from entering Egypt” any newspapers or media from abroad. Article 4 also empowers the Council to prohibit circulation of pornographic content and other content on broad grounds;
- **Article 6** provides the ability to block any website that has not applied for and obtained a license prior to publication;
- **Article 19** allows any “site, blog or personal account” to be blocked on a wide range of grounds, including defamation, ‘false news,’ or other vaguely-defined terms (see below for more details on the content-based restrictions in the Law);
- **Article 106** orders courts to “block” any site that “is in violation of the nature of the licensed activity.”

ARTICLE 19 makes the following key observations on these provisions:

- The blocking orders can be issued based on provisions that are extremely vague and overbroad and incompatible with freedom of expression standards. In particular, we note that laws restricting freedom of expression to protect public order and national security are legitimate only if carefully tailored to prevent abuse. Such restrictions should be unambiguously worded and narrow in scope. They should be engaged only in the context of a clear and close nexus between the expression in question and the national security or public order risk.
- Under international standards, measures such as mandatory blocking of access to websites, IP addresses, ports, network protocols or types of uses should only be ordered by a court of law. We note that the censorship provisions of the Law do not require a court order. There is also no transparency as to when and how blocking occurs, or any requirements for publication of a list of entities that are blocked, hence removing any notice for the public to be able to challenge blocking decisions. Failure to obtain a license is not a valid restriction on freedom of expression under international law

In times of genuine emergency, there may be legitimate grounds for authorities to adopt exceptional measures, such as requiring broadcasters to carry emergency announcements. However, the provisions, as drafted, do not deal with such permissible and exceptional measures.

#### **Recommendations:**

- Website blocking powers granted to the Supreme Council should be stricken entirely; this means that **Articles 3, 4, 19 and 106** should be stricken entirely.

#### **Content restrictions and censorship**

As already noted above, ARTICLE 19 is concerned that the Law creates several content-based offenses that are vague and overbroad. These include:

- **Article 4** which prohibits *inter alia* any content “which contradicts the provisions of the Constitution, calls for violation of the law, violates the obligations of the Code of Professional Ethics [and] violates public order and morals.” It further prohibits circulation of content from outside of the country which is “pornographic” or “addresses religions or religious doctrines that are liable to disturb general peace”;
- **Article 19** prohibits newspapers or websites from publishing “false news” or engaging in “defamation of the reputation and honour of individuals” or to “disregard divine religions or religious beliefs.” The provisions apply broadly to “every personal website, blog or electronic account with 5,000 or more followers;”
- **Article 20** prohibits journalists from exposing “the private life of citizens, public servants, public prosecutors or public servants except in matters that are relevant to their work and that the exposure is aimed at the public interest;”
- **Article 21** prohibits journalists or media from “addressing ongoing investigations or trials in such a way as to affect the positions of those involved in the investigation or trial.” Furthermore, newspapers and websites are “prohibited from publishing on any of the above.”

ARTICLE 19 notes that these provisions do not meet international freedom of expression standards as they are vague and overbroad and do not meet a requirement of restriction being “provided by law” as they do not have the qualities of legal certainty or accessibility. Additionally, they do not follow legitimate aims as per Article 19 para 3 of the ICCPR.

In particular:

- The phrases “contradicts the provisions of the Constitution” and “religious doctrines that are liable to disturb peace” are not defined. In any case, we note that the right to freedom of expression has long been interpreted as being applicable not only to information or ideas

that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that “offend, shock or disturb.”<sup>37</sup> Importantly, the ICCPR does not support the notion that religions or beliefs as such can be the subject of a defamatory attack. The HR Committee has never recognised such a notion either or held that defamation of religions could be a legitimate ground for restrictions on the exercise of freedom of expression. It protects only the rights of individual persons and, in some instances, of groups of persons, but not religious doctrines, beliefs or ideas.

- As for the restrictions of content on the basis of **pornography**, ARTICLE 19 notes that one of the most controversial issues is how to balance the need to protect society against the potential harm that may flow from pornography and obscene materials, and the need to ensure respect for freedom of expression and to preserve a free flow of information and ideas. ARTICLE 19 recommends that any restrictions on freedom of expression should avoid using vague and subjective terms, such as ‘pornographic’, without providing further clarification. Definitions should provide as much clarity as possible by elaborating, in more detail, exactly what is prohibited. We also note that laws may only restrict material which can be shown to be harmful. Merely offensive material should not be prohibited. In particular, expressive depictions of legal acts should normally not be prohibited. In addition, restrictions on simple possession may be imposed only where this can be shown to make a practical contribution to a legitimate goal. The provisions of the Law do not provide such specific details and do not meet the test of restrictions.
- We also note that the **falsity of information** is not a legitimate basis for restricting expression under international human rights law. International and regional freedom of expression mandates have stated that “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including ‘false news’ or ‘non-objective information’, are incompatible with international standards for restrictions on freedom of expression.”<sup>38</sup> The freedom of expression mandates also reiterated, in the context of ‘false news,’ that blocking sites is an impermissible restriction on freedom of expression. Importantly, restrictions on publishing ‘false news’ have been ruled by constitutional courts around the world to be incompatible with the right to freedom of expression.<sup>39</sup> They fail to take into account the daily pressure that journalists face to report news under constant time-pressures, which will inevitably lead to mistakes being made, and are frequently abused to stifle critical reporting.
- Individuals possess a right to receive information, and this includes information about and a right to access judicial proceedings and public trials. The broadly-conceived provisions of Article 21 that prohibit reporting on ongoing investigations or trials necessarily discourage the flow of information to the public about judicial proceedings.<sup>40</sup>

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<sup>37</sup> *C.f.* European Court, *Handyside v the UK*, *op. cit.*

<sup>38</sup> [Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#), March 2017.

<sup>39</sup> E.g. *R v. Zundel*, [1992] 2 SCR 731 (Supreme Court of Canada); *Chavunduka and Choto v. Minister of Home Affairs & Attorney General*, 22 May 2000, Judgement No. S.C. 36/2000 (Supreme Court of Zimbabwe).

<sup>40</sup> For instance, Article 10 of the UDHR guarantees everyone access to a “fair and opened court.” The ICCPR in Article 14 para 1 states that “everyone should have the right to a fair and open” legal process. The European Court has also

- ARTICLE 19 notes that any defamation legislation should meet with international freedom of expression standards.<sup>41</sup> The provisions on defamation (Article 19 of the Law) lacks necessary safeguards such as intentionality requirements, consideration for statements about public figures, or a variety of defences. It is not clear how these link to defamation provisions in other legislation. This is concerning since defamation laws are inherently vulnerable to being exploited where they are left to government authorities to enforce.
- While individuals maintain a right of privacy and reputation, the right of privacy of individuals acting in public positions must be balanced against the right of the public to be made aware of activities about their government. A strict prohibition on reporting of the private life of public officials strikes this balance in a manner that undermines the public's right to know.

#### **Recommendations:**

- **Articles 4, 19, 20 and 21** of the Law should be stricken in their entirety, as they introduce overbroad and content-based restrictions on content.

### **The Supreme Council and regulation of the media**

The Law provides, in Section V, sweeping powers to the Supreme Council to regulate the media, which includes powers to block access to information and prevent individuals from publishing, as well as move for criminal penalties against individuals.<sup>42</sup> ARTICLE 19 makes the following comments on these provisions:

#### ***Failure to distinguish between different types of the media***

ARTICLE 19 observes that all types of media are placed under a single regulatory system under the Supreme Council. The Council has a broad regulatory control which covers not only broadcasting media but also print media and Internet media providers. As noted earlier, under international freedom of expression standards.

We reiterate that all media are subject to laws of general application, and it is therefore not necessary to develop specific regulation for print or Internet-based media.<sup>43</sup> Experience shows that State regulation of print and Internet-based media is invariably abused by the state to limit expression that it disagrees with or disapproves of, and undermines the ability of the media to

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stated that the "public character of proceedings before the judicial bodies. protects litigants against the administration of justice in secret with no public scrutiny;" *Pretto & Others v Italy*, 8 December 1983.

<sup>41</sup> ARTICLE 19, [Defining Defamation: Principles on Freedom of Expression and Protection of Reputation](#), 2017.

<sup>42</sup> The concerns with the extent of powers vested in the Supreme Council, such as its blocking powers, are addressed in other provisions of this analysis.

<sup>43</sup> *C.f.*, the 2011 Joint Declaration, *op. cit.*

effectively share information with the public. Self-regulation is the preferred model of regulation for the print and Internet-based media, which means that it should be left to the industry to develop and hold itself accountable for ethical media standards. It is concerning that the Law fails to take this important distinction into account.

The regulation of broadcast media should be established separately. The regulatory body, independent of the legislature, should also be tasked with creating a code of conduct to guide the ethical conduct of broadcast media. Enforcement of the code of conduct should not be punitive but should focus on remedies such as the broadcast of rulings by the regulatory body. ARTICLE 19 does not believe the Supreme Council is well suited to this function, and that the regulation of broadcasting should be set out in a separate law.

### ***Lack of independence of the Supreme Council***

While the law claims that the Supreme Council is “independent,” Article 73 explicitly makes its composition subject to the President, who appoints the Chair of the Board who also has the ability to break draws under Article 78. Several of the nine members are subsequently chosen by the President or by the Chair, including the NTRA representative and a “public personality with expertise.” Moreover, the President has the power to fill any vacancies based on parliamentary nomination, and the council cannot include members who have either been sentenced to a misdemeanour or any disciplinary penalty; council members can be expelled under Article 81 for “committing a deed that is contrary to the independence of the Council.”

As noted earlier, one vital requirement for media regulatory bodies is its independence from sources of power, whether it be from business power, political power or press power itself. The Law undermines this crucial principle by allowing for potential political interference in the appointment of its members. As the Law stands now, all the Council’s members would be political appointees, picked without parliamentary oversight. As such, the Council would very much be an extension of the government, rather than an independent regulator, and would probably use its powers to favor pro-government media (or at least be constantly suspected of doing so). In order to bring the Law in line with international standards, the appointments process and composition of the Council would need to be altered quite drastically. There would have to be an open nominations process, and Members would need to be chosen by Parliament through a procedure ensuring a measure of cross-party support. Persons holding concurrent positions in government or media should be ineligible to serve on the Council.

### ***Interference in the media independence***

The Law imposes unnecessary and stifling duties and obligations on journalists; several provisions in **Chapter 3** require journalists to adopt specific rules and policies, maintain internal discipline, and provide readers with a mandatory right of response. In particular:

- **Article 17** requires journalists to behave in a manner “that does not violate the rights of citizen[s] or infringes on their freedoms;”
- **Article 18** imposes mandatory discipline on journalists, and

- **Article 22** forces media outlets or any electronic site to publish corrections upon request.

ARTICLE 19 notes that in order to ensure that members of the media profession adhere to ethical standards, ethical codes should always be elaborated by media professionals and media owners. They should ultimately be adopted by the unions or associations of journalists and the owners/publishers themselves. On the other hand, many aspects of these codes are of direct importance to members of the public and constitute a key tool for building trust and accountability.

With respect to the right to correction and the right to reply, ARTICLE 19 points out that these are best protected through self-regulatory systems, and should be distinguished as follows:

- A right of correction is limited to pointing out erroneous information published earlier, with an obligation on the publication itself to correct the mistaken material.
- A right of reply, on the other hand, gives any person the right to have a mass media outlet disseminate his or her response where the publication of incorrect or misleading facts has infringed a recognised right of that person and where a correction cannot reasonably be expected to redress the wrong.<sup>44</sup>

#### **Recommendations:**

- Any media related legislation should distinguish between print and Internet-based media on the one hand, and broadcast media on the other, with regulation only specified in relation to broadcast media. The Supreme Council's role as media regulator should not cover the press and the Internet-based media;
- To the extent that the Supreme Council is retained, it should be to fully independent and protected against any interference, in particular, by political forces or economic interest. The membership of the Board should ensure, at a minimum, an equal representation of members of the media profession, media owners, and the public. The Law should be amended to guarantee complete independence of the Supreme Council from the President, specifically by removing the ability of the President to appoint several members of the board including the Chair, NTRA representative, and public personality in Article 73;
- Instead of having statutory systems for dealing with content imposed on them, the Egyptian media should be given an opportunity to develop a self-regulatory complaints system that can also provide specific codes of ethics. Specifically, the broad restrictions on journalistic conduct in Article 17 should be stricken, the requirements of media outlets to discipline their employees in Article 18 should be stricken;
- The mandatory duty to issue corrections upon any request in **Article 22** should be limited. Specifically, the duty to issue corrections should be protected by self-regulatory mechanisms, and only be available to respond to statements which breach a legal right of

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<sup>44</sup> See [Principle 7](#), the Camden Principles on Freedom of Expression and Equality, 2009.

the person involved.

### Regulation of encryption

ARTICLE 19 notes that the protection of anonymity is a vital component in protecting the right to freedom of expression as well as other human rights, in particular, the right to privacy. A fundamental feature that enables anonymity online is encryption. Thus, restrictions on encryption and anonymity must meet the three-part test of limitations to the right to freedom of expression under international law.

In May 2015, the Special Rapporteur on FOE published his report on encryption and anonymity in the digital age.<sup>45</sup> The report highlighted that:

Encryption and anonymity must be strongly protected and promoted because they provide the privacy and security necessary for the meaningful exercise of the right to freedom of expression and opinion in the digital age.<sup>46</sup>

However, Article 72 grants the right to establish “encrypted platforms” as an “exclusive right of the Supreme Council” and any further usage requiring government approval. This exclusive right fails the three-part test and is impermissible.

### Recommendations:

- The limitation of the right to establish encrypted platforms in **Article 72** should be stricken.

### Licensing of journalists

Various provisions of the Law create strict pre-requisites and licensing requirements for anyone wishing to publish information in Egypt:

- **Article 5** prevents any license for the creation of any press, media, or electronic outlet on grounds including “engaging in activities hostile to the principles of democracy, or underground activity, or advocating indecency” or calling for any of the above among other forms of conduct;
- **Article 6** requires a license from the Supreme Council in order for anyone to establish a website in Egypt. The penalties for failing to obtain a license are severe and can include “blocking it in the absence of a valid license.” As noted in this analysis, measures such as mandatory blocking of access to websites, IP addresses, ports, network protocols or other types of uses should only be ordered by a court of law. The Law, as written, only allows for

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<sup>45</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye A/HRC/29/32, 22 May 2015.

<sup>46</sup> *Ibid.*, paras 12,16 and 56.

an opportunity for judicial review, but it does not require any judicial authorisation for the Supreme Council to issue blocking orders;

- **Article 12** further contemplates that journalists and media professionals must possess a permit in order to attend conferences, attend public meetings, or even interview individuals in public.
- **Article 35** imposes hefty financial requirements on establishing a paper or electronic newspaper.<sup>47</sup> Newspapers must also maintain a copy of a server inside Egypt; this prohibits newspapers in Egypt from being hosted abroad.
- **Article 40** requires any person “wishing to issue a newspaper” or establish a website to notify the Supreme Council and provide a description of the type of content, editorial policy, sources of funding, and other detailed information. Under **Article 41**, it is “not permitted to issue a newspaper or establish a website before completing the notification data.” Furthermore, the editor-in-chief of any newspaper or website cannot have a criminal record.
- **Article 59** holds that “no media outlet or electronic site may be established or operated, or advertised, before obtaining a license from the Supreme Council, which will specify the licensing requirements.”
- **Article 95** allows the Supreme Council to revoke licenses if a licensee “violated one of [the Law’s] central provisions.”
- **Article 106** allows the Supreme Council to penalise a media institution with a fine of up to two million pounds for “violation of the nature of the licensed activity.”

These provisions create a framework under which any individual, whether a professional journalist or a blogger, must obtain prior approval from the government before publishing in print or online. Such a framework is fundamentally incompatible with freedom of expression. We note that licensing of journalists is never justified under international law. In practice, licensing schemes for journalists are virtually unheard of in established democracies.

In practice, the power to distribute licences can become a political tool, used to prevent critical or independent journalists from publishing. For this reason, and simply because the right to express oneself through the mass media belongs to everyone irrespective of qualifications or moral standing, licensing schemes for media workers are a breach of the right to freedom of expression. The Inter-American Court of Human Rights has explicitly recognised that licensing of journalists is a disproportionate restriction on freedom of expression.<sup>48</sup> Further, the three special mandates for protecting freedom of expression—the UN Special Rapporteur on Freedom

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<sup>47</sup> Specifically, six million pounds are required for a daily, two million for a weekly, one million for a monthly or regional daily, four hundred thousand pounds for a regional weekly and two hundred thousand pounds for a regional weekly. Electronic newspapers must possess one hundred thousand pounds.

<sup>48</sup> Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 of 13 November 1985, Series A. No. 5.

of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression—stated in their Joint Declaration that “Individual journalists should not be required to be licensed or to register.”<sup>49</sup> The special mandates went on to express that “Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided.”<sup>50</sup>

**Recommendations:**

- The licensing requirements and accompanying penalties introduced in **Articles 5, 6, 12, 35, 40, 41, 59, 95, and 106** should be stricken entirely as licensing requirements for journalists are never justified under international freedom of expression standards.

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<sup>49</sup> The [Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression](#), 18 December 2003.

<sup>50</sup> *Ibid.*

## About ARTICLE 19

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ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, freedom of expression and equality, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <https://www.article19.org/law-and-policy/>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at [legal@article19.org](mailto:legal@article19.org). For more information about ARTICLE 19 in MENA region, contact Saloua Ghazouani Oueslati, Director of ARTICLE 19 MENA Region at [Saloua@article19.org](mailto:Saloua@article19.org).