

Sudan: Draft Media laws fail to meet international free speech standards and raise concerns in the context of Covid-19 pandemic

Following the recent severe crack-down on the media and freedom of expression, ARTICLE 19 urges the Sudan authorities to ensure that media legislation meets international freedom of expression standards. The pending proposal for the reform of the press and radio and television laws fail to properly remedy several of the underlying flaws of the current legislation, by allowing for effective licensing, censorship and sanctioning of the press by a body that does not possess sufficient safeguards to be totally independent of the government. The Covid-19 pandemic showed the importance of free and independent media and their monitoring of responses to the pandemic and promoting transparency and accountability of public health responses. As Sudan embarks on a fragile transition based on the 21 November agreement, freedom of expression must be fully protected in law and in practice.

Background to the media law reforms

In the fall of 2021, the Sudan government started the process of reforming media regulation in the country, in particular the Draft Proposal on the Radio and Television Corporation Act (the Radio and Television Corporation Proposal), and the Draft Proposal on the Press Council Act (2021) (Press Act Proposal).

The reform of restrictive media legislation has been long overdue as media freedom in Sudan has been an issue of concern in recent years, even more so in the context of the COVID-19 pandemic. Following the military coup, the attacks on the media, human rights defenders, protesters and many others for their exercise of freedom of expression increased. As Sudan embarks on the fragile transition following the 21 November agreement, freedom of the media must be guaranteed.

The Press Act Proposal would repeal the Press and Publications Act of 2009 (the Press Act). Earlier this year ARTICLE 19 supported the reform of the Act, within our joint [submission to the Human Rights Council for Sudan's Universal Periodic Review](#) (UPR), which Sudan committed to achieving following its previous UPR cycle. The Act of 2009 placed restrictions on the press under the pretext of protecting "public order and morals," granted excessive powers to the Press and Publications National Council, allowed for sanctions on media houses, and prohibited reporters from covering security-related matters or topics "[inconsistent with religion, noble belief, customs, or science.](#)"

Sudan suffers from a lack of plurality in the media, as broadcasting has historically been dominated by government-controlled services and a [small number of media owners](#). To address this ARTICLE 19 has advocated that media self-regulation and industry-wide ethical standards are a better means of realising journalistic standards, rather than government mandates. ARTICLE 19 raises these concerns, in the context of the current urgency of the situation of freedom of expression in Sudan, and a long history of following developments in the country, in hopes that Sudan's government will take steps to properly promote and protect a pluralistic media.

We are especially also very concerned that these draft laws have been put forward in times where the response to the Covid-19 pandemic has added new challenges to the media to operate in a pluralistic and safe environment. This is also the case in Sudan where the media and journalists have been facing [a number of attacks](#) in relation to the pandemic reporting.

International freedom of expression standards applicable to Sudan

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) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The African Charter on Human and Peoples' Rights also guarantees freedom of expression in Article 9, and Additional guarantees to freedom of expression are provided in the 2002 Declaration of Principles on Freedom of Expression in Africa (African Declaration).

Restrictions on the right to freedom of expression must be strictly and narrowly tailored and satisfy a tri-partite test. Specifically, restrictions must:

- **Be prescribed by law:** this means that a norm must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly;
- **Pursue a legitimate aim:** this exhaustively includes respect of the rights or reputations of others, protection of national security, public order, public health or morals;
- **Be necessary and proportionate:** Necessity requires that there must be a pressing social need for the restriction. Proportionality requires that a restriction is specific and individual to attaining that protective outcome and is no more intrusive than its alternatives.

With respect to media regulation, self-regulation — as compared to broadcast media (where more regulation is permitted due to the need for regulation of spectrum) — is internationally acknowledged as the preferred means of print media regulation. The [special mandates on the right to freedom of expression](#) have warned of the risk of interference in the work of regulatory bodies. The African Commission on Human and Peoples' Rights has indicated that “effective self-regulation is the best system for promoting high standards in the media.”

Where self-regulation has demonstrably failed, a public authority may be entrusted with some limited aspects of media regulation, provided it does not function as a quasi-judicial organ. With regard to such bodies, it is accepted that, [as a general rule](#) that 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 appointment process for members which is transparent, which allows for public input and is not controlled by any particular political party.

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](#) highlights measures that must be adopted to protect broadcast media regulators against political and commercial interference and independence of funding.

We believe that these standards provide an effective framework for implementing media regulatory systems that appropriately protect and promote freedom of expression.

Draft Proposal on the Press Council Act (2021)

The Press Act Proposal 2021, sets out to define the rights and duties of journalists, and establishes a Press Council as an entity to implement and oversee the Press Act.

At the outset, it must be stated that ARTICLE 19 tends to view press laws with caution as they are often a tool for governments to overly restrict, rather than protect the right to freedom of expression and information. Given the importance of the press in a democratic society, it stands to reason that journalists and publications should not be subject to greater restrictions on the right to express themselves than ordinary people. Indeed, most advanced democracies have moved to abolish their press laws and regulate the print media through laws of general application, such as the civil code and business code, which apply without distinction to all citizens.

We note as a starting matter that it lays out a number of positive statements and principles that are protective of freedom of expression and acknowledge international norms. These include protection of sources, guaranteeing access of journalists to state institutions and meetings or prohibition of prior censorship. It also enumerates international instruments including the Universal Declaration of Human Rights, UNESCO protocols, and resolutions and declarations on protecting journalists.

However, the substance of the Press Act Proposal prevents several of these principles from being fully realised in practice. Self-regulation within the media industry, as opposed to government regulation, is internationally acknowledged as the preferred means of print media regulation. However, in instances where self-regulation demonstrably fails, a public authority may be vested with *limited* regulatory authority. This is only if the independence of the public authority is guaranteed both politically and economically. However, the Press Act Proposal suffers from flaws in both respects.

The main problems of the Proposal include:

- **Licensing of journalists in practice:** Under Section 4(k) of the Proposal, “any newspaper” from starting activities unless it has notified the Press Council. Additionally, the definitions of the Act provide that a newspaper is a publication that is “legally authorized,” and specifically define a journalist as a “qualified” person who is “registered” in the profession’s records and conducts their business as a “permanent job.” Further, Section 5(b) provides that the Press Council will issue work approvals for newspaper printing and news agencies. It is important to observe that the standards for qualification and permanence of journalists are undefined, and the repercussions for disseminating information without notifying the Press Council are unclear. Finally, Section 5(e) provides for “approving” of foreign correspondents before they can report in Sudan. In effect, these provisions all establish burdens and prerequisites to the practice of print journalism or the dissemination of information, which amounts to licensing.

ARTICLE 19 notes that licensing of journalists is never justified under international law. Licensing schemes for journalists are virtually unheard of in established democracies. The power to determine what qualifications are necessary can become a political tool, used to prevent critical or independent journalists from publishing. The Press Act Proposal imposes numerous burdens on the practice of journalism that contradict the provision guaranteeing no pre-publication controls on the press. Print media cannot be restricted to those who practice full-time or belong to any specific professional registry. As such the prior notification requirement should be stricken, along with the provisions defining the scope of who is a journalist.

- **Vague sanctions and restrictions on reporting:** The Press Act Proposal imposes several affirmative obligations on journalists, whom the Press Council has the authority, under Section 4(d), to “hold accountable” if they run astray of the requirements of the Act. The scope of this ‘accountability’ is not defined in the Act, but rather delegated to “internal regulations” which will ultimately

determine the professional penalties that can be imposed in the event of a violation of the press code of ethics.

We are concerned that a state regulatory body is empowered to impose penalties based on content and ethical standards, which should be instead covered by self-regulation. Further, individuals have no notice of either the rules that will apply to them under the Act, or of the scope of the penalties whether they be civil or criminal. Section 5(d) references the ability to exercise investigatory authority over facts and refer matters to accountability boards, suggesting that the Press Council may possess some degree of police power in practice as well.

- **Statutory duties of journalists:** Section 5a) grants the Press Council authority to determine professional standards, which are then subject to sanction as discussed above. There are no apparent limitations on the definitions of these standards, and they are thus subject to abuse. 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, not imposed by the law. Further, the Proposal also envisions the right of correction [without appropriate safeguards](#). The Press Act Proposal requires journalists to correct information that is “incorrect” within three days, in response to complaints. ARTICLE 19 observes that the right of correction should be limited to identifying erroneous information published earlier, with an obligation on the publication itself to correct the incorrect information. The ability to direct corrections must be limited by explicit safeguards to prevent their abuse. A right to correction should be implemented in a self-regulatory environment, rather than be mandated and subject to sanctions. As such sufficient safeguards are not present in the Press Act Proposal.
- **Statutory Press Council:** The Proposal provides for setting up the “independent” press council. However, this is a statutory body, organised under the Federal Legislative Council, not a self-regulatory body. The Press Council is comprised of eight members, which are required to consider the “representation” of youth, women, publishers, regions and those “interested” in human rights. However, the members of the Council must also be taken from the general assembly of registered journalists and approved by the Speaker of the Legislative Council. These requirements are, in practice, not representative of the media or society at large. Importantly, there are no explicit safeguards to prevent the Council from being subject to political or economic interference. Namely, members of the government could be present on the council and are even approved by an official of Parliament. There are also no clear standards as to how diversity is ensured, or how the Press Council receives funding. This approach to press regulation is problematic. As noted earlier, regulatory bodies for the press should be set through self-regulation. This is important to enhance not only freedom of the press but also strongly promotes professional and ethical standards.

Draft Proposal on the Radio and Television Corporation Act (2021)

Unlike with print media, regulation of traditional broadcast is informed by the scarcity of airwaves. However, international standards still apply to the regulation of broadcast, in particular the need for legislative clarity as to the powers and responsibilities of the regulatory body, clear rules relating to membership, formal accountability, and independence in activities and funding arrangements.

We see the key problems as follows:

- **The lack of political independence:** The Proposal falls short of establishing a body that is truly independent in either its composition, operations, or funding. A central concern with the composition of the Corporation is the lack of political independence in both layers of its governance structure. Without independence from interference from the government or political parties the Corporation cannot enjoy true independence and is subject to potential abuse.
- **Lack of independence of the Board of Governors:** Per Section 6, the composition of the Board of Governors of the Corporation is formed under direct government oversight of the Council of Ministers, and the only limitation is that the 21 members are chosen so that they have “experience and competence in the field of press, media, radio and television.” This limitation is vague and does not provide adequate criteria of the composition, instead leaving it to the subjective determination of the Council of Ministers which is opaque to the public. While Section 6(4) states that diversity is to be considered, there is no stipulation as to what this actually means in practice or whether actual diversity is required. Importantly, government or political party officials are not prohibited from comprising spots on the Board of Governors, or even from comprising the entire Board.
- **Lack of independence of the Director General:** The independence of the Corporation is further called into serious question considering the selection and powers surrounding the Director General. Section 9(1) provides that the appointment is done by the Board, which is not required to be independent of government, and the only explicit requirement is to be an “expert” and over forty years of age. The requirement of expertise is nowhere defined and does not seem to even require expertise in an area relevant to broadcast. The Director General’s term is unusually long, amounting to seven years, and renewable once, meaning a Director could hold their position for fourteen years.

Historically, the Director of the Radio and Television Corporation has been removed and replaced directly by the Prime Minister, indicating that ensuring the independence of the Corporation is particularly important due to [past susceptibility to political interference](#).

- **Excessive powers granted to the Director General:** Section 10 grants sweeping powers to the Director General, which are more alarming given the lack of independence safeguards built into the position. These powers include the ability to set and implement general editorial policies, formulate the functional structure of the Corporation, and appoint employees of the Corporation. It is not defined what is meant by implementing editorial policies (or the penalties for broadcasters failing to comply with the editorial policies set by the Director General). Perhaps the most problematic provision, however, is the catch-all allowance for the Director to conduct “any other competencies” assigned by the Board of Governors. This last provision allows for potentially limitless powers so long as they are approved by the Board. Not only are the Director General’s powers sweeping, but they may be expanded with no apparent limitation.

While several of the powers of the Director are subject to approval by the Board of Governors, this does not constitute meaningful oversight, given that the Director is appointed by the Board which is itself not truly independent in structure or funding.

- **Lack of independence in funding:** The Proposal wishes to set a body that relies on government approval of its funding sources. To start, the Corporation is able to receive government funding. Section 11 provides that appropriations may be allocated by the State. Grants and gifts may also

be received if approved by the Minister of Finance and Economic Planning. In fact, the bulk of the Corporation's financial resources must be approved by the Minister of Finance. These measures prevent meaningful independence.

In sum, the pending proposals for the reform of the press and radio and television laws fail to remedy several of the underlying flaws of the current legislative framework. If these proposals are adopted, they will enable licensing, censorship, and sanctioning of the press by a body that does not possess sufficient safeguards to be totally independent of the government. Following the transition of the 21 November agreement and recent attacks on protestors and the media, strong protection of freedom of expression in Sudan is urgently needed. ARTICLE 19 calls for a radical overhaul of these proposals to ensure that media legislation meets international freedom of expressions standards.

