

**The Legal
Framework for
Freedom of
Expression in
Sudan**



JANUARY 2005

The Legal Framework for Freedom of Expression in Sudan

ARTICLE 19
The Global Campaign for Free Expression

January 2005
©ARTICLE 19

Acknowledgements

This report was prepared by Omer Sumena for ARTICLE 19 with Toby Mendel Law Programme Director and John Barker Africa Programme Director.

ARTICLE 19 would like to thank the British Embassy in Khartoum for its financial support for the research and publication of this report.

January 2005

ARTICLE 19
Africa Programme
6-8 Amwell Street
London EC1R 1UQ
United Kingdom
Tel. +44 20 728 9292
Fax. +44 20 7278 7660
Email. info@article19.org
website. www.article19.org

All rights reserved. no part of this publication may be photocopied, recorded or otherwise reproduced, stored in a retrieval system or transmitted in any form by any electronic or technical means without the prior permission of the copyright owner and publisher.

CONTENTS

I.	Introduction	1
II.	Key Recommendations	3
	Constitutional Provisions	3
	The Press Act.....	3
	Broadcasting.....	4
	Access to Information Legislation.....	4
	Other Content Restrictions.....	4
III.	International Standards	5
	III.1 <i>The Guarantee of Freedom of Expression</i>	5
	III.2 <i>Freedom of Expression and the Media</i>	7
	III.3 <i>Pluralism</i>	8
	III.4 <i>Public Service Broadcasting</i>	9
	III.5 <i>Independence of Media Bodies</i>	10
	III.6 <i>Freedom of Information</i>	11
	III.7 <i>Restrictions on Freedom of Expression</i>	15
IV.	Context.....	17
	IV.1 <i>Sudan Timeline</i>	17
	IV.2 <i>Country Background</i>	19
	IV.3 <i>The Peace Process</i>	21
	IV.2.1 IGAD Forum.....	22
	IV.2.2 Implementation of the Interim Protocols.....	25
	IV.4 <i>Development of the Media Sector</i>	27
	IV.3.1 The Press.....	27
	IV.3.2 The Broadcast Media.....	33
V.	Key Issues	36
	V.1 <i>The Constitution</i>	36
	IV.1.1 States of Emergency.....	39
	V.2 <i>The Press Act</i>	43
	V.2.1 The Press Council: Powers and Independence	43
	V.2.2 Licensing/registration Regime	46
	V.2.3 Journalists' Duties.....	49
	V.2.4 Right of Correction.....	52
	V.3 <i>Freedom of Information</i>	53
	V.3.1 The Importance of Freedom of Information.....	53
	V.3.2 International Standards	55
	V.3.3 Principles for Legislation.....	58
	V.3.4 Secrecy Laws in the Sudan	60
	V.4 <i>Broadcasting</i>	60
	V.5 <i>Provisions in Other Laws Restricting Expression</i>	61
	V.6 <i>Role of Sharia Law</i>	62
	V.7 <i>Government Relations with the Media Sector</i>	63

The Legal Framework for Freedom of Expression in Sudan

I. Introduction

The final peace agreement, ending Sudan's civil war was signed on the 9th January 2005. This will be followed by a six-month pre-interim phase and then a six-year interim period, during which a referendum will be held to decide whether national unity should be preserved or whether Southern Sudan will opt for self-determination.

The media will be a decisive factor in the post-conflict era. It can take on a strong, supportive role vis-à-vis the peace process; helping to inform the public of the peace agreement and its implications, facilitate public participation and reconciliation and help diffuse the many threats to the peace process through professional media activity. On the other hand, it can fail to do this, cater for divisive elements within the main warring camps, fuel remaining tensions and further deepen dangerous divisions within Sudan.

In the short term, the existing media and the media community will be crucial for communicating the peace accords to the Sudanese population in a credible and inclusive way. This in itself will be a mountainous task, given the territorial vastness, lack of infrastructure, the linguistic diversity and the lack of credibility within some groups of the only national broadcaster, the Sudan Radio and Television Corporation.

The issue of freedom of expression and media law – who has access to the airwaves, who may publish what, where and when – also represent potentially serious controversy within the context of the internal conflicts in Sudan. Experience from other war-torn societies indicate that when the guns are no longer the preferred or accepted option for conflict resolution, the media often become a seriously contested means of control and power and therefore a potential new source of conflict. This issue is not presently dealt with in any meaningful way in the Sudan.

The government, the SPLM/A, several donors and the UN have all signalled that they will prioritise media development in the post-conflict era. Still, none of these actors are presently prioritising systematic civil society involvement in media development. There is a very real risk that Sudanese decision-makers, while partially responding to the international community when setting new standards for the media, will ignore their own constituents in their media development efforts.

The Sudanese constitution guarantees a series of rights, including freedom of expression and press freedom, but these rights have largely been negated by the continued prolongation of a state of emergency and the National Security Act, which gives the security services wide powers. It is not clear how or if this state of affairs will change in the post-conflict era, what conditions will be allowed for freedom of Expression or if

independent media will be allowed greater scope for operation. The recent Press Act appears to signal that the government of Sudan does not intend to bring the legislative controls over the media up to even the minimum of international standards.

At the International Roundtable on Media Law Reform in the Horn of Africa, held in Addis Ababa, 21-23 October 2003 the first priority identified by the Sudanese group was the need to develop a media policy framework for both north and south Sudan. According to the group, this required the formation of a policy forum made up of representatives of media and civil society organizations from both north and south Sudan. Such a forum should come up with a set of principles that should be presented to the parties involved in the peace negotiations for adoption in the final peace accord, the Sudanese delegates agreed.

This underlines the urgent need for substantive input to the constitutional process on the issue of freedom of expression and media rights. ARTICLE 19 and its partners International Media Support (IMS) and Norwegian Peoples Aid (NPA) aim to make all possible efforts to ensure that significant, coherent and qualitative input from the Sudanese media community and civil society will be forthcoming to influence these developments.

There is now a need for substantial and continuous external input in the field of media law if any constitutional provisions are to be expressed in relevant, subsequent legislation, reviews of existing legislation and other changes necessary to promote democratic media practices.

In this context, it is particularly important to note that very few Sudanese presently commands any expert knowledge of the somewhat complicated legal and technical issues pertaining to media law and regulation, to international standards and norms in this field and to international practices and experience with media law and regulation in transitional and war-torn society.

Outside of the Sudan, a body of constructive experience, analysis and factual knowledge on these issues has been accumulated in later years. In particular, international involvement with media reconstruction and development in conflict-ridden environments, including media legislation and regulation in Afghanistan, Serbia and Bosnia, in East Timor, in CIS states and in several war-torn African republics has created a broad body of experience, which is presently not available to the Sudan.

This body of knowledge and experience now available to international actors represents insight into constitutional processes, legislative processes and practices regarding basic media law and issues of media regulation. It spans the spectre of issues that must be stringently dealt within creating constructive parameters for democratic media practices, including such issues as:

- media registration in post-conflict situations,
- licensing of journalists

- allocation of frequencies for radio and TV broadcasting in transitional societies with no existing institutions empowered to deal with this
- restructuring of state broadcasting enterprises
- access to information (including bylaws and statutes for state, regional and local authorities) in societies that have traditionally been ‘closed societies’
- review of existing bylaws to ensure correspondence with new constitutional provision for freedom of speech, including laws on blasphemy and religion, national security, official secrecy, race, public decency, court proceedings, privacy, libel and defamation, electoral processes, incitement to violence, public order etc.
- media self-regulation (codes of ethics, professional associations, Media Councils)
- internet regulation, access and registration

It goes without saying that several of these issues are bound to be not only complicated in a still-divided, post-conflict Sudan, but that they may also present serious grounds for controversy in the context of the persisting, internal conflicts over wealth, territory, power sharing and political representation in the Sudan.

II. Key Recommendations

Constitutional Provisions

- The locus of responsibility for media regulation under the Power Sharing Protocol of 2004 should be clarified as a matter of urgency.
- The state of emergency should be lifted immediately. At a very minimum, restrictions on freedom of expression imposed by regulations adopted pursuant to the current state of emergency should be repealed.

The Press Act

- The Press Act 2004 should be repealed. Consideration should be given to leaving the media and journalists free to regulate themselves.
- The a new Press Act is adopted, it should differ from the present law in the following key regards:
 - Any press council or other regulatory body should be fully independent of government and should be granted only limited regulatory powers, analogous to those that would be wielded by a self-regulatory body.
 - There should be no licensing of media outlets and any registration system should be limited in scope to technical registration, automatic upon the provision of limited information.
 - The law should not impose any restrictions on the content of what may be published or broadcast over and above restrictions found in laws of general application.

- There should be no licensing or registration of individual journalists.

Broadcasting

- A broadcasting law should be adopted with a view to establishing an independent system for the regulation of broadcasting. The law should, among other things:
 - establish an independent broadcast regulator, protected against government or commercial interference by, *inter alia*, explicit guarantees of independence, the appointments process for members, rules on conflict of interest (commercial and political) and adequate and protected sources of funding;
 - grant the independent regulator the power to award licenses, along with appropriate frequencies, and to develop and enforce a code of conduct for broadcasters;
 - provide for a fair and transparent system for the allocation of broadcasting licences; and
 - provide for the development, in a consultative manner, of a code of conduct for broadcasters, as well as the implementation of that code, including through a regime of graduated sanctions for breach.

Access to Information Legislation

- Comprehensive legislation providing for the right to access information held by public bodies should be adopted as a matter of urgency.
- Such legislation should, among other things:
 - establish a presumption in favour of disclosure of all information held by public bodies, subject only to the regime of exceptions;
 - place an obligation on public bodies to publish proactively a wide range of information about their activities and the information they hold;
 - provide for clear and transparent procedures for the processing of requests for information;
 - set out clearly and narrowly the exceptions to the right of access, based on the idea that access may only be refused where disclosure poses a risk of harm to a legitimate protected interest and the overall public good is served by secrecy; and
 - allocate the power to hear appeals from any refusal to provide access to information to an independent body.
- Secrecy laws should be reviewed and amended as necessary to bring them into line with international standards in this area, as well as the new access to information legislation.

Other Content Restrictions

- The rules relating to defamation should be completely revised to bring them into line with international standards. In particular:
 - defamation should be decriminalised;
 - truth should be a complete defence to a charge of defamation;

- defendants should benefit from a defence of reasonable publication;
- public officials should not receive special protection against defamation; and
- sanctions should be strictly proportionate to the harm caused.
- Other laws imposing restrictions on freedom of expression – including the Criminal Act and the National Security Forces Act – should be reviewed and amended as necessary to bring them into line with international and constitutional standards.

III. International Standards

III.1 *The Guarantee of Freedom of Expression*

Article 19 of the *Universal Declaration on Human Rights* (UDHR) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.²

The *International Covenant on Civil and Political Rights* (ICCPR),³ a treaty ratified by over 152 States, including Sudan,⁴ imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Freedom of expression is also protected in all regional human rights instruments, at Article 10 of the *European Convention on Human Rights*,⁵ Article 13 of the *American Convention on Human Rights*⁶ and Article 9 of the *African Charter on Human and Peoples' Rights*.⁷ Sudan ratified the *African Charter on Human and Peoples' Rights* on 18 February 1986. The right to freedom of expression enjoys a prominent status in each

¹ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

² See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

³ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

⁴ Sudan acceded to the ICCPR on 18 June 1986.

⁵ Adopted 4 November 1950, in force 3 September 1953.

⁶ Adopted 22 November 1969, in force 18 July 1978.

⁷ Adopted 26 June 1981, in force 21 October 1986.

of these regional conventions and, although not all are directly binding on Sudan, judgments and decisions issued by courts under these regional mechanisms offer an authoritative interpretation of freedom of expression principles in various different contexts.

In addition to these formally binding rules, there are a number of so-called soft law elaborations of the guarantee of freedom of expression. Important among the, particularly for countries in Africa, is the *Declaration of Principles on Freedom of Expression in Africa*⁸ (the African Declaration), a standard-setting document developed by the African Commission on Human and Peoples' Rights to elaborate on the guarantee of freedom of expression found in the African Charter.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."⁹ As the UN Human Rights Committee has said:

The right to freedom of expression is of paramount importance in any democratic society.¹⁰

Similarly, the African Commission on Human and Peoples' Rights has reaffirmed,

... the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms ... laws and customs that repress freedom of expression are a disservice to society.¹¹

The African Commission has also noted, specifically in respect of Article 9 of the African Convention and in the context of an individual communication:

This Article reflects the fact that freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of the public affairs of his country.¹²

The European Court of Human Rights has also elaborated on the importance of freedom of expression:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is 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 the State or any sector of the population. Such are the

⁸ Adopted at the 32nd Session, 17-23 October 2002: Banjul, The Gambia.

⁹ 14 December 1946.

¹⁰ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

¹¹ Declaration of Principles on Freedom of Expression, note 8, preamble.

¹² *Media Rights Agenda and Others v. Nigeria*, 31 October 1998, Communication Nos. 105/93, 130/94, 128/94 and 152/96, para. 52.

demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.¹³

III.2 Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law.”¹⁴ It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.¹⁵

And, as the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.¹⁶

The Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”¹⁷ The media as a whole merit special protection, in part because of their role in making public “information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’.”¹⁸

The European Court of Human Rights has also stated that it is incumbent on the media to impart information and ideas in all areas of public interest:

Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] ... it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog.”¹⁹

¹³ *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

¹⁴ *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

¹⁵ *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

¹⁶ UN Human Rights Committee General Comment 25, issued 12 July 1996.

¹⁷ *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, para. 34.

¹⁸ *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

¹⁹ See *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65.

It may be noted that the obligation to respect freedom of expression lies with States, not with the media *per se*. However, these obligations do apply to publicly-funded broadcasters. Because of their link to the State, these broadcasters are directly bound by international guarantees of human rights. In addition, publicly-funded broadcasters are in a special position to satisfy the public's right to know and to guarantee pluralism and access, and it is therefore particularly important that they promote these rights.

III.3 Pluralism

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 not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know.

An important aspect of States' positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and ensure equal access of all to, the media. As the European Court of Human Rights stated: “[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism.”²⁰ The Inter-American Court has held that freedom of expression requires that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.”²¹

The UN Human Rights Committee has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance ‘national unity’ violate freedom of expression:

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.²²

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practise journalism²³ and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression. In a Joint Declaration issued in December 2003, 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 state:

²⁰ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

²¹ *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, para. 34.

²² *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

²³ See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 21.

Individual journalists should not be required to be licensed or to register.

...

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance.²⁴

III.4 Public Service Broadcasting

The advancement of pluralism in the media is also an important rationale for public service broadcasting. A number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.²⁵ ARTICLE 19 has adopted a set of principles on broadcast regulation, *Access to the Airwaves: Principles on Freedom of Expression and Broadcasting*, which set out standards in this area based on international and comparative law.²⁶ In addition, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the Guarantee of the Independence of Public Service Broadcasting.²⁷

A key aspect of the international standards relating to public broadcasting is that State broadcasters should be transformed into independent public service broadcasters with a mandate to serve the public interest.²⁸ The Council of Europe Recommendation stresses the need for public broadcasters to be fully independent of government and commercial interests, stating that the “legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy” in all key areas, including “the editing and presentation of news and current affairs programmes.”²⁹ Members of the supervisory bodies of publicly-funded broadcasters should be appointed in an open and pluralistic manner and the rules governing the supervisory bodies should be defined so as to ensure they are not at risk of political or other interference.³⁰

²⁴ Joint Declaration by 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, online at:

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument>.

²⁵ See, for example, the Declaration of Alma Ata, 9 October 1992 (endorsed by the General Conference of UNESCO at its 28th session in 1995) and the Protocol on the system of public broadcasting in the Member States, Annexed to the Treaty of Amsterdam, Official Journal C 340, 10 November 1997.

²⁶ (London: March 2002).

²⁷ Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996.

²⁸ See *Access to the Airwaves*, (ARTICLE 19: London, March 2002), Principle 34. See also the Declaration of Sofia, adopted under the auspices of UNESCO by the European Seminar on Promoting Independent and Pluralistic Media (with special focus on Central and Eastern Europe), 13 September 1997, which states: “State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted status of journalistic and editorial independence as open public service institutions.”

²⁹ Recommendation No. R (96) 10, on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996, Guideline I.

³⁰ *Ibid.*, Guideline III.

Furthermore, the public service remit of these broadcasters must be clearly set out in law, and include the following requirements:

1. to provide quality, independent programming that contributes to a plurality of opinions and an informed public;
2. to provide comprehensive news and current affairs programming, which is impartial, accurate and balanced;
3. to provide a wide range of broadcast material that strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
4. to be universally accessible and serve all the people and regions of the country, including minority groups;
5. to provide educational programmes and programmes directed towards children; and
6. to promote local programme production, including through minimum quotas for original productions and material produced by independent producers.³¹

Finally, the funding of public service broadcasters must be “based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions.”³² Importantly, the Council of Europe Recommendation stresses that “the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation.”³³

III.5 Independence of Media Bodies

In order to protect the right to freedom of expression, it is imperative that the media is permitted to operate independently from 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.

Under international law, it is well established that bodies with regulatory or administrative powers over both public and private broadcasters should be independent and be protected against political interference. In the Joint Declaration noted above, the UN, OSCE and OAS special mandates protecting freedom of expression state:

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.³⁴

³¹ ARTICLE 19 Principles, note 28, Principle 37.

³² Recommendation No. R (96) 10, note 29, Principle V.

³³ *Ibid.*

³⁴ Note 24.

Regional bodies, including the Council of Europe and the African Commission on Human and Peoples' Rights, have also made it clear that the independence of regulatory authorities is fundamentally important. The latter recently adopted a *Declaration of Principles on Freedom of Expression in Africa*, which states

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.³⁵

The Committee of Ministers of the Council of Europe has adopted a Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, which states in a pre-ambular paragraph:

[T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector...specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.³⁶

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities and which clearly affirms and protects their independence.³⁷ The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.³⁸

III.6 Freedom of Information

In the international human rights instruments noted above, freedom of information was not set out separately but was instead included as part of the fundamental right to freedom of expression. Freedom of expression, as noted above, includes the right to seek, receive and impart information. Freedom of information, including the right to access information held by public authorities, is a core element of the broader right to freedom of expression. This has been attested to by numerous authoritative international statements.

The UN Special Rapporteur on Freedom of Opinion and Expression has provided extensive commentary on this right in his Annual Reports to the UN Commission on Human Rights. In 1997, he stated: "The Special Rapporteur, therefore, underscores once again that the tendency of many Governments to withhold information from the people at large ... is to be strongly checked."³⁹ His commentary on this subject was welcomed by the UN Commission on Human Rights, which called on the Special Rapporteur to

³⁵ Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002.

³⁶ Recommendation No. R(2000) 23, adopted 20 December 2000.

³⁷ *Ibid.*, Guideline 1.

³⁸ *Ibid.*, Guideline 5.

³⁹ Report of the Special Rapporteur, 4 February 1997, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1997/31.

“develop further his commentary on the right to seek and receive information and to expand on his observations and recommendations arising from communications.”⁴⁰ In his 1998 Annual Report, the Special Rapporteur declared that freedom of information includes the right to access information held by the State:

[T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems....⁴¹

In 2000, the Special Rapporteur provided extensive commentary on the content of the right to information as follows:

- Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; “information” includes all records held by a public body, regardless of the form in which it is stored;
- Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;
- As a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information; the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;
- A refusal to disclose information may not be based on the aim to protect Governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;
- All public bodies should be required to establish open, accessible internal systems for ensuring the public’s right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s);
- The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;
- The law should establish a presumption that all meetings of governing bodies are open to the public;
- The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;

⁴⁰ Resolution 1997/27, 11 April 1997, para. 12(d).

⁴¹ Report of the Special Rapporteur, 28 January 1998, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40, para. 14.

- Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body.⁴²

Once again, his views were welcomed by the Commission on Human Rights.⁴³

In November 1999, the three special mandates on freedom of expression – 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 – came together for the first time in November 1999 under the auspices of ARTICLE 19. They adopted a Joint Declaration which included the following statement:

Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.⁴⁴

The right to freedom of information has also explicitly been recognised in all three regional systems for the protection of human rights.

The African Commission on Human and Peoples' Rights recently adopted a *Declaration of Principles on Freedom of Expression in Africa*,⁴⁵ Principle IV of which states, in part:

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - everyone has the right to access information held by public bodies;
 - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
 - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
 - secrecy laws shall be amended as necessary to comply with freedom of information principles.

Within the Inter-American system, the Inter-American Commission on Human Rights approved the Inter-American Declaration of Principles on Freedom of Expression in

Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, para. 44.

⁴³ Resolution 2000/38, 20 April 2000, para. 2.

⁴⁴ 26 November 1999.

⁴⁵ Adopted at the 32nd Session, 17-23 October 2002.

October 2000.⁴⁶ The Principles unequivocally recognise freedom of information, including the right to access information held by the State, as both an aspect of freedom of expression and as a fundamental right on its own:

3. Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.

4. Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

Within Europe, the Committee of Ministers of the Council of Europe adopted a Recommendation on Access to Official Documents in 2002.⁴⁷ Principle III provides generally:

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

The rest of the Recommendation goes on to elaborate in some detail the principles which should apply to this right. Of particular interest is Principle IV, which states:

IV. Possible limitations to access to official documents

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

- i. national security, defence and international relations;
- ii. public safety;
- iii. the prevention, investigation and prosecution of criminal activities;
- iv. privacy and other legitimate private interests;
- v. commercial and other economic interests, be they private or public;
- vi. the equality of parties concerning court proceedings;
- vii. nature;
- viii. inspection, control and supervision by public authorities;
- ix. the economic, monetary and exchange rate policies of the state;
- x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.⁴⁸

⁴⁶ 108th Regular Session, 19 October 2000.

⁴⁷ Recommendation No. R(2002)2, adopted 21 February 2002.

⁴⁸ *Ibid.*

III.7 Restrictions on Freedom of Expression

The right to freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

A similar formulation can be found in the European, American and African regional human rights treaties. These have been interpreted as requiring restrictions to meet a strict three-part test.⁴⁹ International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court of Human Rights has stated:

Freedom of expression ... is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.⁵⁰

First, the interference must be provided by law. This implies not only that the restriction is based in law, but also that the relevant law meets certain standards of clarity and accessibility, sometimes referred to as the “void for vagueness” doctrine. The European Court of Human Rights has elaborated on the requirement of “prescribed by law” under the ECHR:

[A] norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given situation may entail.⁵¹

Second, the interference must pursue a legitimate aim. The ICCPR provides a full list of the aims that may justify a restriction on freedom of expression. It is quite clear from the wording of Article 19(3) of the ICCPR, as well as from the jurisprudence, that restrictions on freedom of expression that do not serve one of the legitimate aims listed in Article 19(3) are not valid. This is also the position under the *American Convention on Human Rights* and the *European Convention on Human Rights*.⁵²

⁴⁹ See, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

⁵⁰ See, for example, *Thorgeirson v. Iceland*, note 14, para. 63.

⁵¹ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

⁵² The African Charter takes a different approach, simply protecting freedom of expression, “within the law.”

It is not sufficient, to satisfy this second part of the test for restrictions on freedom of expression, that the restriction in question has a merely incidental effect on the legitimate aim. The restriction must be primarily directed at that aim, as the Indian Supreme Court has noted:

So long as the possibility [of a restriction] being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void.⁵³

Third, the restriction must be necessary to secure one of those aims. This part of the test presents a high standard to be overcome by the State seeking to justify the restriction, apparent from the following quotation, cited repeatedly by the European Court:

Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.⁵⁴

The European Court has noted that necessity involves an analysis of whether:

[There is a] “pressing social need” [whether] the inference at issue was “proportionate to the legitimate aim pursued” and whether the reasons adduced...to justify it are “relevant and sufficient.”⁵⁵

Courts around the world have elaborated on the specific requirements of the necessity part of the test for restrictions on freedom of expression. The Canadian Supreme Court, for example, has held that it includes a three-part inquiry, as follows:

First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair, or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance.”⁵⁶

The first factor noted by the Canadian Supreme Court means that while States may, perhaps even should, protect various public and private interests, in doing so they must carefully design the measures taken so that they focus specifically on the objective. This is uncontroversial. It is a very serious matter to restrict a fundamental right and, when considering imposing such a measure, States are bound to reflect carefully on the various options open to them.

⁵³ *Thappan v. State of Madras*, (1950) SCR 594, p.603.

⁵⁴ See, for example, *Thorgeirson v. Iceland*, note 14, para. 63.

⁵⁵ See *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, EHRR 407, paras. 39-40.

⁵⁶ *R. v. Oakes* (1986), 1 SCR 103, pp.138-139.

The second factor is also uncontroversial. Any restriction which does not impair the right as little as possible clearly goes beyond what is necessary to achieve its objectives. In applying this factor, courts have recognised that there may be practical limits on how finely honed and precise a legal measure may be. But subject only to such practical limits, restrictions must not be overbroad.

Other courts have also stressed the importance of restrictions not being overbroad. For example, the US Supreme Court has noted:

Even though the Government's purpose be legitimate and substantial, that purpose cannot be pursued by means that stifle fundamental personal liberties when the end can be more narrowly achieved.⁵⁷

Finally, the impact of restrictions must be proportionate in the sense that the harm to freedom of expression must not outweigh the benefits in terms of the interest protected. For example, a restriction which provided limited protection to reputation but which seriously undermined freedom of expression would not pass muster. This again is uncontroversial. A democratic society depends on the free flow of information and ideas and it is only when the overall public interest is served by limiting that flow that such a limitation can be justified. This implies that the benefits of any restriction must outweigh the costs for it to be justified.

IV. Context

IV.1 Sudan Timeline⁵⁸

1881	Revolt against the Turco-Egyptian administration.
1882	British invade Sudan
1885	Islamic state founded in Sudan
1899	Sudan governed by British-Egyptian rule
1955	Revolt and start of civil war
1956	Sudan becomes independent.
1958	General Abbud leads military coup against the civilian government elected earlier in the year
1962	Civil war begins in the south, led by the Anya Nya movement.
1964	The "October Revolution" overthrows Abbud and a national government is established
1969	Ja'far Numayri leads the "May Revolution" military coup.
1971	Sudanese Communist Party leaders executed after short-lived coup against Numayri
1972	Under the Addis Ababa peace agreement between the government and the Anya Nya, the south becomes a self-governing region.
1978	Oil discovered in Bentiu in southern Sudan.
1983	Civil war breaks out again in the south involving government forces and the Sudan People's Liberation Movement/Army (SPLM/A), led by John Garang. President Numayri declares the introduction of shariah (Islamic law).
1985	After widespread popular unrest, Numayri is deposed by a group of officers and a Transitional Military Council is set up to rule the country.
1986	Coalition government formed after general elections, with Sadiq al-Mahdi as prime minister.

⁵⁷ *Shelton v. Tucker*, 364 US 479 (1960), p. 488.

⁵⁸ Main sources for the current timeline, [Politiken](#), April 24th 2004. Sudan articles by Peter Wulff Kâri, Jesper Strudsholm and Anders Jerichow - and [BBC: Sudan timeline](#)

1988	Coalition partner the Democratic Unionist Party drafts cease-fire agreement with the SPLM/A, but it is not implemented.
1989	National Salvation Revolution takes over in military coup.
1993	Revolution Command Council dissolved after Umar al-Bashir is appointed president.
1995	Egyptian President Mubarak accuses Sudan of being involved in attempt to assassinate him in Addis Ababa.
1998	USA launches missile attack on a pharmaceutical plant in Khartoum, alleging that it was making materials for chemical weapons. New constitution endorsed by over 96% of voters in referendum
1999	President Bashir dissolves the National Assembly and declares a state of emergency following a power struggle with parliamentary speaker, Hassan al-Turabi. Sudan begins to export oil.
2000	September - Governor of Khartoum issues decree barring women from working in public places. September - President Bashir meets for the first time ever leaders of opposition National Democratic Alliance in the Eritrean capital, Asmara. December - Bashir re-elected for another five years in elections boycotted by main opposition parties.
2001	February - Islamist leader Hassan al-Turabi arrested a day after his party, the Popular National Congress, signed a memorandum of understanding with the southern rebel SPLM/A). March - UN's World Food Programme struggles to raise funds to feed 3 million facing famine. April - SPLM/A rebels threaten to attack international oil workers brought in to help exploit vast new oil reserves. Government troops accused of trying to drive civilians and rebels from oilfields. April/May - Police continue arrests of members of Turabi's Popular National Congress party (PNC). May - Police use tear gas to disperse thousands of demonstrators at funeral of Ali Ahmed El-Bashir from opposition Islamist Popular National Congress party, who died from wounds sustained while being arrested. June - Failure of Nairobi peace talks attended by President al-Bashir and rebel leader John Garang. July - Government says it accepts a Libyan/Egyptian initiative to end the civil war. The plan includes a national reconciliation conference and reforms. July - Bambo oil field inaugurated in Unity State, producing 15,000 barrels per day. September - UN lifts largely symbolic sanctions against Sudan. They were imposed in 1996 over accusations that Sudan harboured suspects who attempted to kill Egyptian President Hosni Mubarak. October - US President Bush names Senator John Danforth as special envoy to try help end Sudanese conflict. November - US extends unilateral sanctions against Sudan for another year, citing its record on terrorism and rights violations. December - More than 14,550 slaves - mainly blacks from the south - are said freed, following campaigning by rights activists.
2002	January - SPLM/A joins forces with rival militia group, Sudan People's Defence Force, to pool resources in campaign against government in Khartoum. January - Government and SPLM/A sign landmark ceasefire agreement providing for six-month renewable ceasefire in central Nuba Mountains - a key rebel stronghold. July - After talks in Kenya, government and SPLM/A sign Machakos Protocol on ending 19-year civil war. Government accepts right of south to seek self-determination after six-year interim period. Southern rebels accept application of Shariah law in north. July - President al-Bashir and SPLM/A leader John Garang meet face-to-face for the first time, through the mediation of Ugandan President Yoweri Museveni. October - Government and SPLM/A agree to ceasefire for duration of negotiations. Despite this, hostilities continue. November - Negotiations stall over allocation of government and civil service posts, but both sides agree to observe ceasefire.
2003	February - Rebels in western region of Darfur rise up against government, claiming the region is being neglected by Khartoum. September - President Bashir and John Garang meet for second time in 20 years of conflict at peace talks brokered by Kenyan president. October - PNC leader Turabi released after nearly three years in detention and ban on his party is lifted.
2004	January - Army moves to quell rebel uprising in western region of Darfur; more than 100,000 people seek refuge in neighbouring Chad. March - UN official says pro-government Arab "Janjaweed" militias are carrying out systematic killings of African villagers in Darfur.

	<p>March - Army officers and opposition politicians, including Islamist leader Hassan al-Turabi, arrested over alleged coup plot.</p> <p>May - Fighting in Darfur spills into neighbouring Chad, where Chadian soldiers clash with Sudanese Arab militias.</p> <p>May - Government and SPLM/A rebel leaders agree on power-sharing protocols as part of a peace deal to end their long-running conflict. The deal follows earlier breakthroughs on the division of oil and non-oil wealth.</p> <p>September - UN envoy says Sudan has not met targets for disarming pro-government Darfur militias and must accept outside help to protect civilians. US Secretary of State Colin Powell describes Darfur killings as genocide.</p> <p>September - Government says it has foiled coup plot by supporters of Islamist leader Hassan al-Turabi.</p> <p>December - Government and southern rebels sign accords on the final elements of a peace deal to end their long-running conflict. The agreement paves the way for an anticipated comprehensive peace deal.</p>
2005	<p>January: In Nairobi the government and rebels signs the last parts of the peace treaty for Southern Sudan. All fighting in Africa's longest civil war is expected to end in January 2005, but the peace agreement still doesn't cover the Darfur region. More than 1.5 million people lost their homes since the conflict in Darfur broke out early 2003.</p>

IV.2 Country Background

Sudan is the largest country in Africa and is dominated by the Nile and its tributaries. It has borders with Egypt, Libya, Chad, the Central African Republic, the Democratic Republic of the Congo, Uganda, Kenya, Ethiopia and Eritrea. Sudan has over 800km of coastline along its north eastern border which provides access to the Red Sea. Sudan has a tropical south and arid desert in the north. It is generally flat with mountains in east and west.

Sudan hosts Africa's longest-running conflict, the latest period of which has lasted 20 years, resulting in some 2 million deaths, hundreds of thousands of refugees and internally displaced people, and widespread famine. A cessation of hostilities agreement between the Sudan People's Liberation Movement/Army (SPLM/A) and the Government of Sudan (GoS) came into force on 17 October 2002. Despite this agreement, fighting has continued intermittently; primarily around the oil fields in the Upper Nile region of south-central Sudan, usually involving proxy militias. The war was thought to have been costing the Government US\$1-million a day with no estimate available for the cost to the SPLM/A and smaller factions and militias.

In January 2005 The GOS and SPLM/A signed a comprehensive peace agreement and the hope is that this will bring peace, stability and an end to the conflicts elsewhere in the country. A final resolution of Sudan's civil war could greatly help the country's economy, lead to the lifting of various sanctions against the country, and encourage investment by foreign companies

Sudan gained its independence from Egypt and the United Kingdom in 1956. The current government, led by General Umar Hassan Ahmad al-Bashir, came to power in 1989 after overthrowing a transitional coalition government.

On 30 June 1989, the army overthrew the democratically-elected government of Sadiq al-Mahdi and installed a Revolutionary Command Council, chaired by General Omar al-Bashir. Bashir ruled by decree at the head of the Revolutionary Command Council and banned all political parties except his own National Islamic Front (NIF) (renamed the National Congress Party in 1998). In 1996, Bashir was elected President and a National Assembly was elected in a flawed election that was boycotted by the opposition. Bashir was re-elected in 2000, again in the absence of significant opposition.

Despite considerable natural resources, Sudan is among the world's poorest countries. Traditionally, Sudan's economy has been mainly agricultural - a mix of subsistence farming and production of cash crops such as cotton and gum arabic. With the start of significant oil production and exports in late 1999, Sudan's economy is changing dramatically, with oil export revenues now accounting for around 73% of Sudan's total export earnings. Sudan no longer relies on expensive imported oil products, which has helped the country's trade balance, while foreign investment has started to flow into the country.

One of the many consequences of the world's longest current civil war is that statistics are not precise either because of the inability to conduct any kind of comprehensive nationwide survey or because those in power in the north and south are reluctant to share key information. It is estimated that the current population is between 28 and 33 million. There are more than 500 ethnic groups speaking over 130 languages and dialects. Approximately two-thirds of the people live in the north.

The largest cultural group is African, estimated a slightly more than half the population with those of Arab culture making up just under 40%. With regard to religion, 70% are Muslims and the rest hold traditional African beliefs or are Christian.

International aid organizations estimate that more than 2-million people have been killed in this conflict, most of them civilians from south Sudan, the Nuba Mountains, Abyei and the southern Blue Nile. The recurrent humanitarian crises caused by war and famine prompted formation of Operation Lifeline Sudan (OLS) in 1989. It is primarily a humanitarian aid airlift operation for UN agencies and major NGOs.

There are about 490,000 refugees and an estimated 3 to 4 million Internally Displaced People (IDPs), the largest number of IDPs in the world. Most of them are southerners living in the north, the large majority in camps near Khartoum.

A new crisis in the western Sudanese region of Darfur has killed 10,000-30,000 people created nearly a million refugees. Pro-government militia groups have launched attacks against civilians, mainly non-Arab tribes, in the region, prompting the United States to call for a U.N. Security Council resolution and possible sanctions. The conflict in Darfur has complicated attempts at ending the country's larger civil war and does not form part of the comprehensive peace agreement.

IV.3 The Peace Process

The civil war between the GoS and the SPLM/A broke out in 1983, during the rule of President Numayri. Although attempts were made under Numayri to resolve the problem, these were undermined by the full implementation of Sharia law in North and South Sudan.

After the overthrow of Numayri's regime in 1985, the Transitional Military Council (TMC) attempted to resolve the conflict. The SPLM/A and its leader Dr John Garang, was approached to join the government, but it thought that the TMC was not willing to agree to the movement's demands to remove Sharia laws and hold a constitutional conference.

Further internal efforts at peace-building were made in March 1986 at a meeting between the National Salvation Alliance (the umbrella organisation of the parties that overthrew Numayri) and the SPLM/A in Koka Dam in Ethiopia. Agreement was reached on the SPLM/A's demands and after national elections in July of that year, Prime Minister EL Saggi EL Mahadi (leader of the Umma Party) met Dr John Garang in Addis Ababa. However, the agreement was never realised due to the refusal of the Democratic Unionist Party (DUP) and the National Islamic Front (NIF) to take part in the discussions.

The DUP did reach agreement with the SPLM/A in November 1988. This agreement reaffirmed all the SPLM/A's demands, including the holding of a constitutional conference. However, by then there was dissent within the Umma Party and the NIF, which was part of the coalition government, so the accord could not be implemented. In April 1989 a Umma-DUP coalition government endorsed the agreement. Before a constitutional conference could be held, a group of army officers tied to the NIF seized power. The coup was led by Lt-General Omar Al-Bashir, the now current president of Sudan and effectively ended internal Sudanese efforts at bringing peace.

In 1991 the regime of Mengistu Hailemariam in Ethiopia, a prime foreign supporter of the SPLM/A, was overthrown. Additionally, three senior SPLM/A leaders, namely Dr. Riek Machar, Dr Lam Akol and Gordon Kong Chuol, split from the movement leaving it in a weakened state. This influenced the GoS to increasingly look for a military solution to the conflict.

Subsequent peace initiatives were to be dominated by regional and international efforts. In May/June 1992, the Nigerian government hosted the first of two rounds of talks between Government of Sudan and SPLM/A in Abuja. The GoS delegation was led by Mohamed EL Amin Khalifa and the SPLM/A delegation was led by Commander William Nyuon. A delegation of SPLM-United joined the meeting, led by Dr Lam Akol.

An increasingly confident GoS delegation pushed for majority rule and a constitution based on Sharia. Both factions of the SPLM/A pressed for a secular democratic system, including the right for the south to hold a referendum on self-determination. A declaration was signed by the three delegations affirming that the conflict must be settled

through peaceful negotiation based on the sharing of wealth and power. Nevertheless, effectively the talks had stalled.

In late April/May 1993 the second round of talks were held in Abuja. The GoS rejected secession outright and proposed power and wealth sharing based on a constitution that did not refer to Islam as the state religion and exempted the south from certain provisions of Sharia. The SPLM/A rejected this approach and called for a secular, democratic “New Sudan. If this was not possible the SPLM/A stated that the south should be able to vote on separation. At this time the SPLM/A was weak militarily and the talks ended without resolution.

In the wake of the failed Nigerian initiative, the GoS proposed that the Inter-Governmental Authority on Drought and Desertification (IGADD, the forerunner of IGAD) take up the peace process. Some observers claim that this move was out of fear that the US who had deployed troops in Somalia could do the same in Sudan.

IV.2.1 IGAD Forum

The members of the Inter-Governmental Authority for Development (IGAD), are seven states in the Horn of Africa, namely, Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda. These countries had a clear interest in containing Sudan’s civil war and established a Standing Committee on Peace in Sudan in early 1994.

The committee is composed of states of Kenya, Ethiopia, Uganda and Eritrea. The chairperson of the sub-committee is the President of Kenya. A ministerial sub-committee on Sudan was also constituted. The chairperson of the ministerial sub-committee of (IGAD) on Sudan is the Minister of Foreign Affairs for Kenya. The four countries have permanent envoys (ambassadors) who together with the Special Envoy of the Kenyan’s President, mediate between the two negotiating parties (GoS and SPLM/A).

Under the guidance of this committee peace negotiations were officially launched in March 1994. One again, however, the issue of self-determination brought the first round of talks to a rapid end.

During a second set of negotiations held a few weeks later, this issue again threatened to cause the collapse of talks. To try and break the deadlock the IGADD mediators presented a Declaration of Principles (DoP), outlining six principles to form the basis of negotiation. The principles reflected the previous peace talks between the two parties, but further held that the unity of Sudan be given priority, that the social and political system be secular and democratic, and resources be equitably shared. In the absence of agreement on these principles, the south would have a right to self-determination through referendum. While the SPLM/A fully endorsed the DoP, the GoS could not accept the south’s right to self-determination and the talks had effectively collapsed and were adjourned.

Both sides then turned their attentions to internal political and military battles. The GoS focused on negotiating with the South Sudan Independence Movement led by Dr. Riek Machar and defeating the SPLM/A militarily. The SPLM/A built up its relations with the National Democratic Alliance (NDA), a loose grouping of northern opposition forces. Meanwhile, IGAD turned its attention to gaining material and political support from the international community, which eventually took the form of the IGAD Partners' forum (IPF), comprising Canada, Italy, The Netherlands, Norway, UK and USA. Ethiopia, Eritrea and Uganda in turn stepped up their military assistance to the SPLM/A as a response to a perceived threat to their sovereignty.

In July 1997, faced by regional isolation, military engagement of neighbouring countries and SPLM/A victories in the field, the GoS decided to return to the bargaining table and accept the DoP, as the basis of ongoing talks. However, the outbreak of the Ethiopian-Eritrean war in May 1998 decreased regional pressure on the GoS and the IGAD initiative again began to falter.

During 1999 and 2000, it was becoming clear that despite financial and technical support from IPF, sustained military pressure or outside support and pressure from countries such as the US would be necessary to stop the peace process coming to a complete halt. A number of other peace efforts were also emerging.

A joint Egyptian and Libyan initiative (JLEI) concerned itself with the lack of northern opposition participation in the IGAD process. They were also uneasy with an apparent African domination at the talks and the lack of a formalised role for the North African states. The JLEI opposed the concept of self-determination that was seen as a threat. The GoS accepted the DoP of this initiative, but the SPLM/A made it clear that the DoP needed to be revised to include self-determination, secularism and coordination with the IGAD process. The initiative failed but it made clear the interest of Sudan's northern neighbours in the future of Sudan and the problematic of excluding northern opposition forces namely the NDA in the talks.

The NDA based in Eritrea, assisted by the Asmara government, repeatedly attempted to open negotiations directly with the GoS. However, the weakness of the non-SPLM/A forces and the international legitimacy of the IGAD process meant that these efforts made little progress. Nonetheless, any comprehensive peace agreement must at some point include the opposition northern-armed groups.

Against this background, with the increased support of UK, Norway and Italy and the US (post 9.11), breathed life into a faltering IGAD process. This led to breakthrough of the Machakos Protocol in July 2002. The Protocol is a broad framework, which sets the principles of governance, the general procedures to be followed during the transitional process and the structures of government to be created under legal and constitutional arrangements. The Machakos Protocol stipulates that it, along with subsequent Protocols and Agreements, shall be incorporated into the Comprehensive Peace Agreement, which

shall in turn form the basis for the legal and constitutional framework to govern the Interim Period.

The two parties have also reached a specific agreement on the Right of Self determination for the people of South Sudan, State Religion. The Machakos Protocol provides for a representative National Constitutional Review Commission to be established during the pre-interim period with the obligation to draft a legal and constitutional framework to govern the interim period and to develop the peace agreement into an Interim National Constitution.

On 25 September 2003, in Naivasha Kenya, GoS and SPLM/A reached specific agreement on security arrangements to be established during the Interim Period. The agreement spelt out the status of the two armed forces of GOS and SPLM/A and their redeployment, and agreed to an internationally monitored ceasefire which shall come in effect from a specified date. The agreement established a Joint Integrated Force and put the modalities for the command and control of the forces.

In January 2004, GoS and SPLM/A signed a Framework Agreement on Wealth sharing during the Pre-Interim and Interim Periods. The parties agreed on certain guiding principles in respect of equitable sharing of common wealth, ownership and land resources, management and development of the petroleum sector. The Agreement established a petroleum and land commissions and agreed principles and modalities for sharing oil revenue.

On 26 May 2004, again in Naivasha, Kenya, two Protocols were signed between GoS and SPLM/A.

The first on the resolution of conflict in a number of ‘disputed areas’, namely Abyei Southern Kordofan, Nuba Mountains and Blue Nile. Abyei has given a special administrative structure. Nuba Mountains and Blue Nile areas have been given regional autonomy with regard to structure of the state government, legislature and judiciary together with a share in national wealth. It has been agreed that the solution of the problems of both areas shall serve as an example for solving problems throughout the country.

The second on Power Sharing establishing an institution of Presidency and a partnership and collegial decision-making process within the institution of the Presidency to safeguard the Peace Agreement. This Protocol also sets out, among other things, the rules relating to the National Assembly, elections and the development of an Interim National Constitution. The Presidency shall include the President and a Vice President from South Sudan.

The Power Sharing Protocol establishes institutions at the national level, including the legislature, executive and judiciary, as well as other institutions and commissions as specified by the Protocol, including the National Constitutional Review Commission, which is required to establish seven further commissions, as well as institutions at the

level of the government of Southern Sudan, again including the legislature, executive and judiciary. A series of Schedules allocate powers between the National Government, the Government of South Sudan and the states.

Schedule A provides for the exclusive competencies of the National Government;
Schedule B specifies the competencies of the Government of Southern Sudan;
Schedule C sets out the powers of the individual states of Sudan;
Schedule D specifies concurrent powers;
Schedule E specifies residual powers; and
Schedule F outlines a set of criteria for resolving conflicts regarding these powers.

Schedule A, Paragraph 34 lists, as one of the exclusive legislative and executive powers of the National Government:

“National information, publications, telecommunications regulations”.

On the other hand, Schedule B, paragraph 17 allocates the following to the Government of Southern Sudan as an exclusive area of competence:

“GOSS information, publications, media and telecommunications utilities.”

Finally, Schedule D provides that the following shall be an area of concurrent power:

“Information, Publications, Media, Broadcasting and Telecommunications”.

It is difficult to understand these apparently contradictory statements but one possible interpretation, consistent with constitutional jurisprudence from other federal arrangements, suggests that it might mean that the National Government has jurisdiction over media and telecommunications which operate in both the North and the South, and that the Government of Southern Sudan has jurisdiction over those that operate exclusively, or at least primarily, in the South.

IV.2.2 Implementation of the Interim Protocols

Machakos Protocol, concluded and signed on 20 July 2002, as stated earlier, was the first breakthrough in the peace process negotiations between GoS and SPLM/A. The protocol resolved major disputed issues: the structure of government, self-determination and state and religion. The parties also agreed on the preamble, on general principles and the transition process.

Part B of the Protocol stipulates that the parties agree to the implementation of the Peace Agreement with certain sequence, time period and process. The time period is divided between a Pre-Interim Period (6 months) and an Interim period (6 years). The Interim period shall commence at the end of the Pre Interim period. During the Pre-Interim period, certain institutions and mechanisms provided for in the Peace Agreement must be established and an agreement for a comprehensive ceasefire shall be concluded.

During the Interim Period the institutions and mechanism established during the Pre-Interim Period shall be operating. The first and major task to be carried out during the

Pre-Interim Period shall be the establishment of an Independent Assessment and Evaluation Commission to monitor the implementation of the Peace Agreement and to conduct an evaluation of the unity arrangement established under the Peace Agreement.

The commission shall be composed of GoS and SPLM/A and IGAD sub-Committee and observer States (IPF) and other regional and international bodies (equal representation of GoS and the SPLM/A and not more than two (2) representatives, respectively, from each of the said categories). At the end of the Interim Period, there shall be an internationally monitored referendum.

A representative National Constitutional Review Commission shall be established during the Pre-Interim period. During the Interim Period, an inclusive Constitutional Review Process shall be undertaken. A national constitution of the Sudan shall be issued. The constitution shall be the Supreme law of the land. The Constitution shall guarantee freedom of belief and worship.

The Power Sharing Protocol provides in strong terms that GoS shall fully carry out its obligations under international human rights treaties and mentioned in particular a number of human rights covenants. A Bill of Rights and Freedoms will be made to include a catalogue of rights including freedom of expression.

There shall be established during the interim period the Institution of The Presidency and a government of national unity, reflecting need for inclusiveness, The Civil Service and the National Security Service shall be established accordingly to certain principles spelt out in detail in the protocols.

The Constitutional Court and the national Supreme Court shall also be established with powers and jurisdiction different from the powers and Jurisdiction provided for in the law in force. Further, other independent national institutions shall be established, during the Interim Period, in accordance with the Peace Agreement. These institutions include the Election commission, the Human Rights Commission, the National Judicial Service and a National Civil Commissions, and specialized commissions- Petroleum commission together with National and Southern Sudan Land commissions.

An urgent task will be to resettle refugees and displaced persons for it will not be acceptable to run election before that.

Moreover, it is important to include all political forces in consolidating peace. This may be achieved by including them in drafting the national constitution, elections laws and fixing the date for general election. All forces should work to make unity of the country attractive.

IV.4 Development of the Media Sector

IV.3.1 The Press

The press appeared in Sudan during the colonial era and those who initiated the press industry were either foreigners who came over to Sudan or members of foreign communities that resided in the country following its conquest by the British. The British Army issued two publications in English in 1899. Those were *Dongola News* and *Halfa Journal*. The main aim behind them was to follow up news of the invading army. However, they did not persist for long after the fall of Khartoum under British control. The British governor-General issued in 1899 a bulletin titled *Sudan Gazette*, an official periodical that was dedicated to publishing of government laws, orders and notices, in addition to commercial advertisements. Though *Sudan Gazette* did not have the specifications of a newspaper, several researchers have treated it as the first in the history of Sudanese press.

In 1903, with British assistance in the early years of dual Anglo-Egyptian control, the twice-weekly, *Al Sudan*, started publication in Sudan. It was spearheaded by the *Al-Mugattam* group of newspapers, established in Cairo in 1889 by three Syrians. *Al Sudan* pursued a pro-establishment editorial policy. During the early 1900s, two new newspapers appeared but both survived only for a short period of time. *Raid Al Sudan* (Sudan Vanguard) was first published in 1909 as a supplement to an English bi-weekly newspaper (*Sudan Herald*), but stopped publishing in 1918.

A year later, in 1919, the first Sudanese owned newspaper, *Hidarat Al Sudan* (The civilisation of Sudan), was established, with encouragement from the British, by three religious leaders among them Sayyid Ali Al-Mirghani. The Governor General of Sudan was a Patron of the newspaper and in its first issue; the newspaper called upon Sudan to distance itself completely from the Egyptian nationalist movement (The Egyptian revolution had taken place in 1919) and expressed its hopes to see an entirely British administration in Sudan.

In 1930, the first Press Act was promulgated, which granted the Governor General and the Civil Secretary of Sudan Government wide discretionary powers, including in relation to licensing, and suspension and closure of newspapers. Government officials were banned from writing to the press. The policy of the 1930 Press Act was to some extent informed by the military uprising of 1924 against the Anglo–Egyptian condominium rule.

A weekly newspaper, *Al-Nahda Al-Sudania* (Sudanese Renaissance), owned by Mohamed Abbas Abu El-Reish, was licensed under the new Press Act and its first issue was on 4 October 1931. *Al-Nahda Al-Sudania* dealt mainly with social, cultural and moral issues. The paper survived for only fourteen months but signalled a milestone in the history of journalism in Sudan since, after its demise, the period of cautious involvement in politics came to an end. Newspapers and magazines published afterwards were more involved in politics and public affairs.

Al Fager (The Dawn) magazine was founded in July 1934 by Arafat Mohamed Abdalla, one of the leaders of Al-Liwa Al-Abyad (the White Brigade Society, a secret revolutionary society). The main objective of the magazine was to resist foreign rule in Sudan. The editor, Arafat, was assisted by a number of young intellectuals who subsequently became successfully involved in party politics and government. The first Sudanese daily newspaper, *Al-Nil* (The Nile), was founded in 1935 by a Sudanese group of the Ansar sect, under the leadership of Sayyid Abdel-Rahaman Al-Mahadi, the spiritual leader of the sect.

The 1940s witnessed the establishment of a number of political parties, along with the appearance of both partisan and independent newspapers. *Al-Umma*, owned by Sayyid Abdel Rahman, was the newspaper of the Umma political party. *Al-Sudan-Al-Gedid* (The New Sudan) was an independent daily newspaper, highly critical of the colonial policies, owned by Ahmed Yousuf Hashim. Hashim played an important role in the development and promotion of journalism in Sudan. *Al-Rai Al-Am* (Public Opinion) was another independent newspaper which started in the early 1940s. *Sawt Al-Sudan* (Voice of Sudan), a partisan newspaper representing the Khatmtya sect, was first issued in 1940.

By the 1960s, however, with the exception of two newspapers – *Al-Sudan-Al-Gedid* and *Al-Rai Al-Am* – all the newspapers issued during the Anglo-Egyptian condominium rule had disappeared or had been closed down.

Al-Ayyam (The Days), an independent newspaper, was first issued in mid-1953, on the eve of independence. Around the same time, a number of independent newspapers, including *Al-Saraha* (Frankness), *Al-Zaman* (The Times) and *Al Sabah Al Gedid* (The new Morning), were founded but they did not survive for long. In 1954, the communist party founded *Al-Midan* (The Battle Field). In 1961, *Al Sahafa* (The Press), an independent newspaper, was founded.

In November 1958, shortly after independence, the army took power in a *coup d'etat*, overthrowing the newly democratic government. The Constitution, which enshrined freedom of expression, was repealed. Privately-owned newspapers were allowed to publish, but only according to strict guidelines dictated by the military junta. The regime issued its own newspaper *Al-Thawra* (The Revolution).

The period of the first military rule was characterised by unprecedented harassment of newspaper editors and censorship. Many newspapers resisted this harassment, directly or indirectly. *Al-Ayyam* newspaper suffered frequently and was actually closed for more than three years between 1958-1964. However, in October 1964, after a popular uprising, a second period of democratic rule started.

Unfortunately, democracy did not stay for long as Numayri came to power in a *coup d'etat* in May 1969, a regime that continued in power for sixteen years. Under Numayri, the government took control of the newspapers. The Numayri regime justified its press policy by arguing that the role of the press in developing countries like Sudan was not only to inform, educate and entertain, but must also help to forge and promote national

unity and stimulate development. They also argued that they needed to educate their people about their revolutionary plans although in fact the goal was to mould public opinion to promote support for the regime.

Cultural and commercial considerations aside, the press enjoyed considerable freedom in the brief period between dictatorships, from the Popular Uprising of 6th April 1985 to the overthrow of the Sadiq al-Mahdi government on 30th June 1989. After sixteen years of increasingly stale, government-controlled journalism under the Numayri regime, there was scope for a range of new and revived publications, which could begin to express the diversity of opinion in the country.

At least 30 new titles appeared on the newsstands. Two long-established newspapers, *Al-Ayam* and *Al-Sahafa*, which had been taken over by the Numayri regime, regained their independence. Voluntary organisations, professional associations and trades unions published dozens of journals, and titles devoted to arts and sport proliferated. Imported magazines were no longer censored when articles critical of Sudan appeared, and even government publications such as *Sudanow* seemed to gain in confidence.

Some titles were independent, but many others were financed or backed by one or other of the political parties that were now able to operate openly. More or less independent were weekly journals including: *Al-Adwa'a*, *Al-Jaridah*, *Halamantish*, *Akhir al-Anba'a*, *Al-Telegraf*, *Al-Akhbar*, *Al-Nihar* and *Al-Ashiqa*. Two regional newspapers, *Kordofan* and *Al-Gezira*, were also launched. The newspapers and journals claiming to be independent but with known political backing were *Al-Siyassa* (Umma, from 1985 onwards), *Al-Khartoum* (Democratic Unionist Party, 1988), *Al-Sudani*, *Al-Ussbu'* and *Al-Wan* (all National Islamic Front, 1986).

Openly published by the parties were: *Al-Ittihad* (DUP), *Sawt al-Umma* (Umma), *Al-Medan* (Communist), *Al-Rayah* and *Al-Massirah* (NIF), *Al-Hadaf* (pro-Iraqi Ba'athist), *Badil* (Nasserist Socialist), *Al-Monadil* (pro-Syria Ba'athist), and *Al-Ishtraki* (Islamic Socialist).

The bulk of the journals represented Northern Muslim opinion, but the English language dailies *Sudan Times* and *Horizon* had a largely Southern Sudanese voice, and two weeklies, including *Sabah Al-Ahad* (Sunday Morning) were published by the Christian Brotherhood.

In the absence of outright censorship, other factors became important in the struggle for dominance of the newspaper market. In the strained economic climate the supply of newsprint, the raw material for making newspapers, was limited, and it was frequently under the control of pro-NIF businessmen. Pressure from right wing politicians for new Press laws continued, even under civilian rule, and Sadiq al-Mahdi made several unsuccessful efforts to introduce a Press and Publications Act necessitating - among other things - the government registration of all journalists.

Journalists themselves responded by forming the Sudanese Journalists' Union, and 731 assembled on 15 March 1989 to elect 15 members to the Journalists' Council. Over 1,500 joined the union, and a further 700 joined the League of Sports Reporters.

Principal independent and partisan newspaper in 1989

Publication	Estimated circulation	Frequency	Established	Political affiliation/publisher
<i>Sawt Al-Umma</i>	3,000	daily	1944	Umma Party
<i>Al-Medan</i>	7,000	daily	1954	Communist Party
<i>Al-Ayyam</i>	24,000	daily	1953	Independent
<i>Al-Watan</i>	15,00	tri-weekly	1987	Independent
<i>Al-Adwa</i>	13,000	bi-weekly	1986	Independent
<i>Al-Wan</i>	unknown	tri-weekly	1984	Published by an NIF member
<i>Al-Khartoum</i>	18,000	daily	1987	Pro-DUP
<i>Al-Telegraf</i>	12,000	weekly	1954	Independent
<i>Sudan Times*</i>	12,000	daily	1987	Independent
<i>Al-Sudani</i>	20,000	daily	1986	Pro-NIF
<i>Al-Usbu</i>	unknown	daily	1986	Prof-NIF
<i>Al-Raya</i>	unknown	daily	1986	NIF
<i>Al-Ittihadi</i>	4,300	daily	1986	DUP
<i>Al-Shammasha</i>	7,300	daily	1986	Independent
<i>Al-Hadaf</i>	unknown	daily	1986	Sudan Arab Ba'ath Socialist Party
<i>Al-Shiqaa</i>	5,000	weekly	1987	Pro-Dup

* Published in English

Source: The Central Distribution House (CDH) and journalists

When the NIF, frustrated by the limits on its influence in the democratic parliament, seized power in the 30 June 1989 coup d'etat, it took immediate action against the press. The Sudanese Journalists' Union and most publications were banned. Tight restrictions were placed on those that remained, and the properties of party press operations were confiscated. More than 1,200 journalists lost their jobs without compensation. The foreign press was subjected to censorship and its reporters given little or no access to the country.

At first, the Armed Forces daily, *Al-Quwwat al-Musallaha* was the only newspaper allowed to publish. Later, two government-sponsored newspapers were issued. *Al-Sudan al-Hadith* and *Al-Inqaz al-Watani* promulgated the views of the "National Salvation Revolution," staffed by NIF loyalists or journalists too timid to cause trouble. The use of non-NIF staff helped, for a while, to maintain the pretence that this was a purely military regime, and to obscure the NIF's key role in its political ideology.

Less compliant journalists found that they had been blacklisted, and were subjected to arbitrary arrest, harassment and sometimes torture. The security forces were quick to

detain journalists such as Tijani al-Tayeb, editor-in-chief of *Al-Medan*; Yousif al-Shanbali, Secretary-General of the Sudanese Journalists' Union; Mohamed Osman Abu Shok; Osman Abu Shamma, Al-Fatih al-Mardi, Mahjoub Osman, Abu Bakr al-Amin, Samir Girgis, Abdallah al-Safi, Abdel-Moneim Awad al-Rayah, Alfred Taban, Faisal Mohamed Salih, Ibrahim Ali Ibrahim, Abdel-Gadir al-Samani, Mohamed Sidahmed Atiq, Sharaf al-Din Yassin, Mohamed Ali Bagadi, Nur al-Din Medani and Mohamed Abdel-Seed. Once they were set free, they were obliged to either curtail their activities or leave the country.

Human rights organisations including ARTICLE 19 have detailed the frequent detentions and relayed the first-hand accounts of Sharaf al-Din Yassin and Mohamed Osman Abu Shok, who were tortured in the regime's "ghost houses."⁵⁹ The initial policy of long-term detention eventually changed to one of repeated arrest and interrogation for short periods, making it more difficult for outside organisations to keep track of who was being held at any one time.

Not all those arrested were initially anti-NIF. As disillusion with the corruption of the new regime set in, even apparent Islamist sympathisers who dared to criticise it were arrested, including the editor of *Al-Sudani al-Dawliyya*, Mahjoub Irwa, and reporter Mohamed Taha Mohamed Ahmed. The newspaper had obtained a licence because it was politically aligned with the views of the NIF, but touched a nerve by referring - albeit in veiled terms - to apparent abuses of privilege by individuals close to the leadership. This case, ironically, was taken up internationally by the human rights organisations, which the NIF has attacked as "anti-Islamic."

Mahjoub Irwa had been involved with the NIF since his university days, and had been publisher of the original pro-NIF *Al-Sudani* newspaper from 1985 to 1986. He had even been arrested near the end of the Numayri era, in March 1985, for his loyalty to the NIF. Re-launched under the Bashir regime, *Al-Sudani al-Dawliyya* was banned in 1993, only 2 months after the Press and Publications Act. Mahjoub Irwa and Mohamed Taha Mohamed Ahmed were arrested by the security forces (without the knowledge of the newly formed Press and Publications Council) and accused of intelligence activities against the state. The editor's property was confiscated, and both men were held without due process of law. When Mahjoub Irwa - a relative of security adviser al-Fatih Irwa - was eventually released, he was given 120 million Sudanese pounds (about US\$200,000) in compensation. When the NIF Students Union published this fact in their bulletin *Al-Massirah*, it too was banned.

Principal government-owned and controlled newspapers and magazines in 1990

Publication	Estimated circulation	Frequency	Established
<i>Al-QuwatAl-Musallaha</i>	28,000	daily	1970

⁵⁹ SUDAN: TORTURE AS CENSORSHIP, Censorship News No. 13, 2 April 1992
<http://www.article19.org/docimages/567.htm>

<i>Al-Sudan Al-Hadith</i>	30,000	daily	1989
<i>New Horizon</i> *	35,000	daily	1990
<i>Al-Ingas Al-watani</i>	unknown	weekly	1990
<i>Al-Multaga</i> **	9,000	bi-monthly	1990
<i>Sudanow</i> ***	3,000	monthly	1976

* English- Language newspaper

** Arabic-Language magazine

*** English-Language magazine

Source: The Central Distribution House (CDH)

Under pressure to regularise and justify its treatment of the media, the Bashir regime introduced the 1993 Press and Publications Act. Its 40 sections set out the overall control of the press by the Council of Press and Publications, whose 21 members, representatives of the press and government information bodies, were approved by the head of state, who appointed its Secretary-General. The Council issued licences on a year-by-year basis for all publications, information agencies and printing houses, on payment of a fee and presentation of details of financing and ownership. It was empowered to punish contraventions of the Act's provisions by suspension or cancellation of the licence. Section 5 stipulated that press institutions must be formed as incorporations or companies with minimal capital of 5 million dinars (about US\$100,000). The tasks to be performed by journalists were closely defined, and each journalist had to register with the Council and obtain a special identity card.

Under this law and the Press Act of 1999 a total of 16 'political', 6 sports and 4 social newspapers have been licensed.⁶⁰ Newspaper owners, editors and journalists are now in the forefront of efforts to end censorship and are still often victims of it. There is however a reasonable degree of political diversification in the print media. Papers have a 'margin of liberty'. Most newspapers are financially weak; they have interns for working staff and have limited news sources.

Three newspapers, *Al-Sahafa* (centre), *Al-Horriyya* (left), and *Al-Sahafi Al-Dowali* (Islamic) have just amalgamated to create a new company called *Al-Wassaet Al-Mutaadida* (Multimedia Group.) It is publishing an Arabic and an English daily plus a weekly. Dr. Mohammed Mahjoub Haroun of *Al-Sahafi Al-Dowali*, which has stopped publishing in Arabic and is coming out as the English daily, said the reason for the amalgamation is that, "Sudan is about to go through a transformation from a military to a political struggle. The (print) media are now too weak and so cannot play the role they should play in this process. Only big companies with funds, a vision and strong management can help invigorate the processes of democracy, development and sustaining the peace."⁶¹ The papers will share a printing press and a distribution company (under law, newspapers must have separate distribution companies).

Unfortunately, newspapers reach only a tiny segment of the population. The National Press Council, which oversees the print media, estimates that total circulation of all

⁶⁰ Figures provided by *the National Press Council*

⁶¹ Dr Mohammed Mahjoub Haroun, Director General of *Al-sahafi, Al-Dowali*

newspapers is less than 80,000, in a country of 28-33 million people. Even the more optimistic estimates of publishers' only places the circulation between 100,000 and 130,000. The number of readers is considerably greater than circulation figures suggest because most papers are read by more than one person. Even so, there is a very low readership relative to the population. Two core reasons are given for the low circulation: the high illiteracy rate in Sudan and the huge problems of distribution.

In the south, distribution not only of newspapers but also of publications of all types relies largely on military and humanitarian aid transport networks. Even the churches, that are said to have a presence in most villages in south Sudan, struggle to distribute their publications. This necessitates local production of printed material, as seen with the printing of school textbooks by the UNICEF-sponsored Rumbek press.

All newspapers in Sudan are published in Khartoum, even the one paper that is southern oriented, the *Khartoum Monitor*, an English language daily. When papers arrive, with some irregularity, in Juba and other GoS-controlled cities in the south on flights from Khartoum, they are sold out within minutes, regardless of the newspaper. This strongly suggests that an effective distribution system would substantially increase readership. Still, it should be noted that even with a substantial increase in sales and the resulting multiplier in readership, newspapers would reach only a very small proportion of the population.

IV.3.2 The Broadcast Media

Radio and television are controlled directly by the government and are required to reflect government policies. Sudan TV has a permanent military censor to ensure that the news reflects official views.

There are no privately-owned TV broadcasters, apart from a cable service jointly owned by the government and private investors. Satellite dishes are becoming common in affluent areas and pan-Arab TV stations are popular among viewers.

The government operates Sudan's domestic radio services, which broadcast a mixture of news, music and cultural programmes. Private stations are not permitted. Foreign radio stations are also heard in Sudan, including the BBC World Service and Paris-based Radio Monte Carlo, which operate on FM in Khartoum. Several opposition and clandestine radio stations broadcast to Sudan.

In 1990 there were an estimated 250,000 television sets in the country and about 6 million radio receivers. Sudan Television operated three stations located in Omdurman, Al Jazirah, and Atbarah. The major radio station of the Sudan National Broadcasting Corporation was in Omdurman, with a regional station in Juba for the south. Following the 1989 coup, the RCC-NS dismissed several broadcasters from Sudan Television because their loyalty to the new government and its policies was considered suspect.

In opposition to the official broadcast network a number of clandestine broadcasters were established. The SPLM/A operated its own clandestine radio station, *Radio SPLA* (1984-1993), from secret transmitters within the country and facilities in Ethiopia. SPLA broadcasts were in Arabic, English, and various languages of the south. To counteract these broadcasts the 'moral Guidance Branch' of the Sudanese Armed Forces broadcasted *National Unity Radio* (1986-1993) from Omdurman. In 1991 the National Democratic Alliance began broadcasts of *Voice of Sudan* (1990 to 1991, 1995 to 2000 and 2003 to present), initially from Ethiopia and then from Eritrea. The Sudanese Alliance Forces, supportive of the NDA, broadcast *Voice of Liberty and Renewal* (1998 to Present) from East Sudan. *Radio Voice of Hope* (RVoH), a station broadcasting into Sudan from Kenya began broadcasting in late 2001. This station is funded by the Dutch Ministry for Development Cooperation, the Catholic grouping Pax Christi, the Dutch national radio world service and the Dutch Christian broadcasting company NCRV. Effective day-to-day-control of the radio was vested in the New Sudan Council of Churches.

The State-owned Sudan Radio and Television Corporation, SRTC, is the only broadcaster with transmission facilities inside Sudan. The government maintains it is open to private broadcasting but, as yet, has not issued any private broadcasting licences. *Radio Omdurman*, the State radio, and the State TV were officially integrated two years ago to create SRTC. The State-owned Sudan Radio and Television Corporation, SRTC, is the only broadcaster with official transmission facilities inside Sudan. It also operates Blue Nile TV, a satellite channel that broadcasts 5 hours a day and which can be down linked throughout the Middle East and Europe, and which will soon be available in parts of the US.

Sudan State TV became fully digital in June 2003. The network provides eighteen hours a day of programming, although repeats fill four of those hours. SRTC broadcasts throughout Sudan, including in the South. It transmits via repeater transmitters and via satellite to regional stations that rebroadcast via terrestrial transmission. In addition, some communities have direct downlink capacity. Two hours per day are available for regional stations to insert local programming.

Radio Omdurman broadcasts 24 hours a day. Like TV, radio is under-going a technical revolution; new computer-integrated studio mixing boards have been installed and digital desktop editing is in place. It broadcasts 22 medium wave (MW or AM) stations, including regional stations. The regional stations vary greatly in the quality of their facilities and equipment, including transmitters. Stations in major urban areas and in key GoS-controlled cities in the South tend to be better equipped. The transmitters, and a good deal of the production equipment, still belong to SRTC network.

The regional stations are supposed to be self-financing, but SRTC continues to pay some staff salaries. In theory, the regional stations may pre-empt the main network at any time except when there is news or political programming, or when sports or an Egyptian drama series are playing on TV. In fact, however, a number of regional stations do not have the financial resources to do much programming. These stations obtain most of their revenue from the State governments and some cannot even maintain their facilities

or equipment. As a result, not only is there a preponderance of network programming on many regional stations and more fundamentally, a number of the stations can only afford to broadcast a few hours a day at most. Some stations are asking humanitarian and development organizations to pay for airtime for public service broadcasts, in an effort to raise funds.

International satellite channels are available for those who can afford to pay the prescribed fees. In Khartoum, people can subscribe to a government-operated service, Khartoum International Channel, which provides 17 channels including Al-Jazeera, CNN and Sudan TV. For considerably more money, people can purchase a dish, a reception licence and a satellite package (a variety of options are available ranging in terms of the type and number of channels) from Orbit Satellite Television and Radio Network, a network broadcasting in North Africa and the Middle East in Arabic and English.

Omdurman Radio can be received throughout almost all of Sudan although there are some areas where reception is poor. Radio Juba, which broadcasts in the colloquial “Juba Arabic” as well as for very short periods in some of the south’s indigenous languages, can just be received in Rumbek, which is about 250km northeast of Juba. In Kadugli, in the Nuba Mountains, the regional station’s footprint (when it is operating) is not what it could be because of transmitter problems and, quite possibly transmitter placement.

Radio is by far the most accessible medium in most of Sudan. It is estimated that in the south at least one person in every village has a transistor radio. UNICEF in Nyal estimates that two out of every three households in this small settlement on the edge of the swamps in Upper Nile have a radio. Other research done in West Darfur, the Nuba Mountains and some other areas of Upper Nile substantiates that there are radios in most villages. Batteries – although at the time of the IMS assessment,⁶² no radio sets – are available in the markets in Rumbek, Nyal, Malakal and Kadugli.

Sudan State TV is received in all larger urban areas under GoS control, including ‘garrison’ towns in the south. It is also received in some smaller communities via downlinks where it is watched by ‘Viewing Clubs’. Agencies of the GoS have arranged for satellite receivers, TVs and generators or other power systems and have organized communities to meet in a common place at certain times to watch various programmes. In the Nuba Mountains, these are called ‘peace clubs’ and besides State TV, some international stations are made available. This allegedly is part of the government’s efforts to lure various Nuba tribes out of the mountains and into GoS controlled areas.

The two big problems for SRTC radio and TV are languages and credibility. SRTC is reluctant to do much programming in languages other than classic Arabic and, in a few regional stations, some colloquial Arabic. Dr. Tayeb Haj Ateya, an eminent academic and an authority on media said, “In the north as well as the south, people do not like the news and some of the other programming on state broadcasting. But overall, they like to listen to it; love to listen to it. So it could be a strong tool for peace.”

⁶² Media and peace in Sudan – options for immediate action, International Media Support, August 2003, <http://www.i-m-s.dk/pic/IMS%20Sudan%20Media%20Assessment.pdf>

Another academic and a journalist, Dr. Murtada El Ghali Aljaali said, “People do not believe the news bulletins. But they like the drama and the music and so on. But even in the villages, for news people listen to the BBC.” These are northerners speaking. So, not surprisingly, the view of every southerner who offered us an opinion can be summed up in the comment of journalist Atem Yaak Atem who said, “The state broadcaster has been a propaganda tool.” Even so, people who speak Arabic tune in SRTC not only in the north but everywhere in Sudan. The IMS assessment⁶³ indicated that among those in the south, admittedly an elite, who understands Arabic and/or English, the BBC is the first choice with the second being Radio Omdurman.

One of the first priorities in peace-building will be engaging the people of Sudan in the peace process. Radio Listening Groups (RLGs) are one tool for engagement. UNICEF, working with SRTC, ran a program in 2002 in Upper Nile, South Kordofan (Nuba Mountains) and West Darfur). RLGs were formed through women’s and youth groups, communities and schools and provided with windup/solar radios. Assistance was provided to state radio stations and producers were trained. Programmes were produced dealing with such subjects as peace-building, landmines, child and human rights, and health concerns. The programmes were broadcast in a combination of up to 11 dialects and languages, including three local Arabic dialects, depending on location.

The two-way communications comes through providing the producers with bicycles or a motorcycle and tape recorders. They go out to the listening groups, stimulate discussion about issues covered in the radio programmes and monitor responses and the programme’s effectiveness. They also record opinions, stories and comments. These inputs from communities factor in to the production of new programmes. UNICEF, in collaboration with SRTC, has contracted SudMedia (a training programme based in Khartoum) to implement plans to create a further 300 RLGs and to train 60 producers at 6 more regional stations in community-based radio techniques.

Similarly, the NSCC’s Radio Voice of Hope (has tried to establish RLGs in south Sudan. The NSCC distributed two thousand wind-up radios to local church leaders and chiefs who, it was envisaged, would convene the listener clubs. However, overall, the clubs have not functioned well. This is partly because RVoH programmes are broadcast early in the morning, which is not a popular listening time, but also because not enough attention was paid to training group members in the use of the somewhat delicate radios and a number of them are now broken.

V. Key Issues

V.1 The Constitution

The present Constitution of the Republic of Sudan, adopted in 1998 (1998 Constitution), specifies the structure of the principal organs of government, their principal functions

⁶³ ibid

and their relationship to each other. It also addresses the question of the political relationship between citizens and the State. Part I is devoted to guiding or directive principles of the State, based on recognition of certain specific characteristics of Sudan and its major problems.

The very first article of the Constitution, one of the guiding principles, states:

The State of Sudan is a country of racial and cultural harmony and religious tolerance. Islam is the religion of the majority of the population and Christianity and traditional religions have a large following.

Article 4 provides:

God, the creator of all people, is supreme over the State and sovereignty is delegated to the people of Sudan by succession, to be practiced as worship to God, performing his trust, developing the homeland, and spreading justice, freedom and shura in accordance with the Constitution and laws.

The last article in this part, Article 19, states:

The directive principles are the general goals that the institutions and employees of government shall observe in all their undertakings and in the desire to achieve a government directed by them. No court or law can limit or enforce these principles. They are to be observed in all projects and policies of the executive branch of government and to be developed by the legislative branch in its laws, advice, investigations. All servants of the State shall work to implement them.

Part II, titled “Freedoms, Rights and Responsibilities”, consisting of some 15 articles, sets out a number of key rights, including, *inter alia*, freedom of movement, equality and freedom of thought and expression. Article 25 reads:

Every citizen has the right to seek any knowledge or adopt any faith, in opinion or thought, without being coerced by the authorities. Everyone shall have the right to freedom of expression, to receive information, to publish and there shall be freedom of the press, subject to restrictions necessary to security, public order, public safety, public morals and in accordance with law.

Under the Constitution, legislative power is reserved to the National Assembly. However, there is a constitutional limitation upon the legislative power of the National Assembly as Article 65:

The Islamic Sharia and the national consent through voting, the Constitution and custom are the source of law and no law shall be enacted contrary to these sources, or without taking into account the nation's public opinion, the efforts of the nation's scientists, intellectuals and leaders.

Furthermore, the Constitution provides for the enforceability of rights in Article 34:

Every injured or harmed person who has exhausted all his executive and administrative remedies has the right to appeal to the Constitutional Court to protect the sacred liberties and rights contained in this Part. The Constitutional Court in

exercise of its authority may annul any law or order that is not in accordance with the Constitution and order compensation for damages.

In Sudan, international treaties are ratified by the President after they have been approved by the National Assembly, pursuant to Article 73(1)(d) of the Constitution.

The rules for amending the Constitution are set out in Article 139. Amendments must be passed by a two-thirds majority of the National Assembly and amendments not approved by a majority of the people via a referendum must be in accordance with certain basic principles, which include the following: “All individuals have freedom of conscience and religion and all citizens have the freedom of expression and to organize political succession in accordance with the Constitution”.

As has been noted, the Machakos Protocol provides that a National Constitutional Review Commission shall prepare a National Interim Constitution for Sudan. It remains to be seen whether this will build upon the 1998 Constitution or will replace this altogether.

Regardless of this, the Power Sharing Protocol agreed on 26 May 2004 is effectively a quasi-constitutional document governing the situation at present. Section 1.4.3 of that Protocol includes the following as a principle to guide the distribution of power and the establishment of structures:

Acknowledgement of the need to promote the welfare of the people and protect their human rights and fundamental freedoms....

Section 1.6 of the Protocol deals with human rights. The parties agree to comply fully with their treaty obligations under international treaties, including the ICCPR and the *African Charter on Human and Peoples’ Rights*. The Protocol specifically recognises a long list of rights, including the following:

1.6.2.7 Freedom of Thought, Conscience and Religion

Everyone shall have the right to freedom of thought, conscience and religion;

1.6.2.8 Freedom of Expression

Everyone shall have the right to freedom of expression...

The Protocol does not actually specify whether or under what conditions the right to freedom of expression, or any other right, may be restricted. However, section 1.6.2.16(b) of the Protocol provides:

No derogation from these rights and freedoms shall be made under the Constitution or under the ICCPR except in accordance with the provisions thereof and only with the approval of the Presidency and the National Legislature....

It may, therefore, be presumed that restrictions in accordance with the ICCPR are permissible.

The National Constitutional Review Commission has a mandate to appoint seven commissions, including a Human Rights Commission, with a mandate to monitor the rights set out in the Protocol.

IV.1.1 States of Emergency

Article 42(d) gives the President the power to declare a state of emergency, in accordance with the Constitution. The rules relating to states of emergency are set out in Articles 131, 132, 133 and 134 of the Constitution, which read:

Article 131. Declaration of the state of emergency

(1) Whenever there is an event that poses a threat to the state or any part of it, whether by war, invasion, siege, catastrophe or epidemic, or any other event threatening the public safety or the economy, the President of the Republic may declare a state of emergency throughout the country or in any part of it in accordance with the Constitution and the law.

(2) A declaration of a state of emergency shall be presented to the National Assembly within fifteen days of its date of issue and if the National Assembly is not in session it shall be called for an extraordinary session to consider the declaration.

(3) If the National Assembly approves the declaration of the state of emergency any law or exceptional order constituting a part of the declaration shall remain in force.

Article 132. Power of the President of the Republic

The President of the Republic may take any of the following measures by law or exceptional order, during a state of emergency:

(a) Suspend some or all of the provisions in the Chapter on individual rights and liberties, except the following: the prohibition of torture, the prohibition of slavery, the prohibition of discrimination based on race, sex or religion, freedom of thought, the right of access to a court, the presumption of innocence, or the right to defense.

(b) Suspend the laws or powers of states according to the Constitution and vest in himself the powers and authorities provided for by these laws and the practice of these powers or decide the manner in which the affairs of a concerned state shall be administered.

(c) Issue any measures, which shall have the force of law, that is necessary to deal with the state of emergency.

Article 133. Powers of the National Assembly

(1) The National Assembly may agree to extend a state of emergency.

(2) The President of the Republic shall submit all exceptional measures taken during a state of emergency to the National Assembly. The National Assembly may amend, approve or cancel them.

Article 134. Duration of the state of emergency

A declaration of state of emergency shall expire in any of the following cases:

(a) Thirty days from the date of issue if not approved by the National Assembly.

(b) At the end of a period of time decided upon by the National Assembly.

(c) By the issuance of another declaration by the President of the Republic or a resolution by the National Assembly lifting the state of emergency.

Independent Sudan, outside of very short periods, has been in a state of emergency since its inception. In Northern Sudan, a state of emergency has been in force for more than half the 48 years of independence. Southern Sudan has been ruled either under a state of emergency or under the Sudan Defence Act for most of the period of independence. Furthermore, emergency rule has been declared by both civilian and military

governments. Only the first democratically elected government, during its three-year rule from 1955 to 1958, managed to avoid declaring a state of emergency or resorting to exceptional security measures.

On 17 November 1958, the first day of the *coup d'etat*, the first military government (1958-1964) annulled the Constitution. The regime enacted the Sudan Defence Act 1958 and, under section 2 of this Act, declared a state of emergency. The emergency continued in force until the regime was removed from power in 1964. The Act imposed measures which were in flagrant violation of the right to free speech.

The second Parliamentary democracy – in place from 1964 to 1969 – lifted the state of emergency in the North though it remained in force in the South. During the second military regime, from 1969 to 1985, the state of emergency continued in force in the South. In April 1984, President Numayri declared a state of emergency for the whole country, allegedly to protect the faith. The third Parliamentary government, from 1986 to 1989, enacted the Emergency Power Act on 25 July 1987 and then issued regulations under that Act. These specified emergency zones which included South Sudan, Darfur, Southern Kordofan and parts of the Blue Nile Region.

The present government came to power by a military *coup d'etat* and declared a state of emergency on the very first day of the coup via Constitutional Order No. 2. That state of emergency was lifted only in April 1998. However, two years later, another state of emergency was declared and has been renewed yearly until the present. At present, the whole of Sudan is under a state of emergency.

Emergency regulations are in place which restricts freedom of expression. They prohibit, in certain circumstances, the taking or the publication of photographs and the right to publish certain materials. Furthermore, the regulations empower the government to censor newspapers and to seize all copies of publications as the government sees fit. The regulation was declared on 25th July 1997. It is legally considered to be in force and applicable to the state of emergency now in force.

Under these regulations, the following freedoms are restricted:

Clause 16

The competent authority may appoint a person or persons for surveillance and listening to telecommunications apparatus and to report to the competent authority.

Clause 17

The competent authority may suspend issue of any newspaper if such a newspaper published any material violating these regulations. The newspaper may appeal against such an order.

Analysis

The guarantee of freedom of expression found in the Constitution is very close to that provided for in the ICCPR, providing that the right may be restricted only by law, and where necessary to protect a small range of recognised interests. Indeed, it may be that the list of interests that might justify a restriction on freedom of expression is

unrealistically narrow. All of the interests listed – security, public order, public safety, public morals – are public interests. This would appear to leave no room for restrictions relating to personal interests, such as protection of reputation or privacy, despite the near universal recognition of the need to protect these interests.

The specific recognition of the right to freedom of expression as a limiting principle for constitutional amendments is an interesting and commendable innovation. This effectively prevents the National Assembly from limiting this key right, although it could presumably do so pursuant to this formula if the amendment were approved by a majority of the people in a referendum.

The constitutional provisions on states of emergency are seriously out of line with international standards in this area in a number of ways. International human rights law does recognise that during emergencies States may need to derogate from rights for the greater common good. In recognition of this, Article 4 of the ICCPR provides for emergency derogations in the following terms:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 4 places a number of conditions, both substantive and procedural, on the imposition of emergency derogations, as follows:

- derogations may only be entertained in times of emergency which threaten the life of the nation;
- derogations must be officially proclaimed;
- derogations may only limit rights to the extent strictly required and may never lead to discrimination;
- no derogation is possible from certain key rights, including the rights to life, to be free of torture and slavery, not to be imprisoned for a contractual obligation, not to be tried or sentenced for something which was not a crime at the time of commission, to recognition as a person before the law, and to freedom of thought, conscience and religion;
- States imposing derogations must inform other States Parties of the rights to be limited and the reasons for such limitation; and
- derogating States must inform other States Parties of the termination of any derogations.

The case-law of the Human Rights Committee indicates a great reluctance to recognise as legitimate states of emergency which are declared in peacetime.⁶⁴ As the Committee noted in its General Comment on Article 4:

If States parties consider invoking article 4 in other situations than an armed conflict, they should carefully consider the justification and why such a measure is necessary and legitimate in the circumstances.⁶⁵

Among other things, it is clear that any application of emergency laws derogating from rights must be limited in time. The Human Rights Committee specifically stressed this in its General Comment on Article 4 stating:

Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature.⁶⁶

The *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, adopted by a group of legal experts in 1984, elaborate on these standards.⁶⁷ Principle 48 provides that States shall “terminate such derogation in the shortest time required to bring to an end the public emergency....” Principles 55 and 56 provide that derogations shall be subject to independent legislative review and that individuals who question the need for derogation measures shall have an effective remedy.

It is quite clear that the provisions of the 1998 Constitution do not conform to these conditions. First, they allow for states of emergency in far more general contexts than contemplated under international law. In particular, Article 131 allows for the declaration of a state of emergency whenever there is an event that “poses a threat to the state or any part of it, whether by war, invasion, siege, catastrophe or epidemic, or any other event threatening the public safety or the economy.” This is a far lower standard than an emergency threatening the life of the nation.

Second, the longevity of the various states of emergency that have been declared in Sudan are very seriously at odds with the clear position of the UN Human Rights Committee and others, namely that emergencies must be strictly limited in duration.

Third, the Constitution appears to place few substantive or procedural limits on the derogations that may be imposed during a state of emergency. Certainly there is no need for derogations to be “strictly required by the exigencies of the situation,” as required under the ICCPR. The restrictions that have in fact been imposed, furthermore, cannot be

⁶⁴ See, for example, *Ramirez v. Uruguay*, UN Doc. CCPR/C/10/D/4/1997, *Silva v. Uruguay*, UN Doc. CCPR/C/12/D/34/1978 and *Montejo v. Colombia*, UN Doc. CCPR/C/15/D/64/1979.

⁶⁵ General Comment No. 29: States of Emergency (Article 4), 24 July 2001, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 3.

⁶⁶ *Ibid.*, para. 2.

⁶⁷ Reproduced in 7 *Human Rights Quarterly* 3.

justified on this standard. There is no apparent need for the government to be empowered to censor or seize newspapers, for example.

V.2 The Press Act

On 20 March 2004, the Press and Publication Act 2004 was promulgated by a Provisional Order. The Provisional Order is considered by many to be unconstitutional since Article 90(2) of the Constitution prohibits rights or freedoms from being subject to restrictions pursuant to provisional presidential decrees. The National Assembly introduced six amendments to the Provisional Order and, on 2 June 2004, passed the Press and Printed Materials Act, 2004 (the Press Act).

The Press Act is considered by journalists, human right activists and the public to be a setback in many respects when compared with the Press Act 1999, which it repeals without improving legal protection for freedom of expression and without paying regard to recommendations made by the UN Human Rights Committee. In 1997, commenting on an earlier press law, the Committee questioned the independence of the Press Council and expressed strong concern at the licensing and registration system for the press, recommending: “Current laws and decrees should be revised so as to remove all disproportionate limitations on the media, which have the effect of jeopardizing freedom of expression itself.”⁶⁸

Instead of implementing these recommendations, the new Act imposes such harsh restrictions on the right to express oneself through the media as to render independent and critical journalism virtually impossible. It introduces a harsh regime of sanctions and strengthens the existing control by the executive branch of the government, especially the President of the Republic. Under the Act, media practitioners and institutions have to apply for a licence on an annual basis with the Press and Printed Press Materials National Council (Press Council), whose independence is inadequately guaranteed. Applicants for a licence are required to have professional qualifications and journalists and media institutions may have their licences revoked when they have been convicted of press offences more than once or when they breach standards of professional journalism, including a vague requirement to ‘respect chastity’. The Act also prohibits the free distribution of foreign publications. On the whole, it imposes an unacceptable form of quasi-criminal control over the media in Sudan.

V.2.1 The Press Council: Powers and Independence

Chapter II of the Press Act establishes the Press and Printed Press Materials National Council (the Press Council) as a body under the supervision of the Minister of Information and Communications,⁶⁹ and under the patronage of the President of the Republic.⁷⁰ The Act provides for the establishment of the Press Council as a body corporate with 21 members. Of the 21 members, 12 come from sources that are government-controlled or political in nature, namely 7 appointed by the President of the

⁶⁸ Concluding Observations on Sudan’s Second Periodic Report, 19 November 1997, UN Doc. CCPR/C/79/Add.85, para. 18.

⁶⁹ Section 6.

⁷⁰ Section 7.

Republic and 5 by the National Assembly. Furthermore, the 7 elected members representing the print media have to be approved by the Work Organisations Registrar General.⁷¹

The Press Council is to have several broad functions, including setting general policies in the field of journalism, promoting professionalism, supervising the performance of publications, providing training and helping to secure minimum wages for journalists.⁷² To perform these functions, it is given a number of powers. Chief amongst these are powers to licence newspapers and other print media, administer a central register for journalists and hold professional examinations.⁷³ It also has the power to suspend newspapers “in case of its contravention of any of the conditions of granting the licence”, to “discipline” journalists, together with the Journalists’ Union, to “ascertain abidance, by the press institutions and companies, by the safeguards provided for in this Act”, to grant media subsidies, to accredit foreign media, to consider complaints against the print media – along with the power to suspend the publication pending consideration of the complaint – to “contribute to settle ... disputes inside the press community” and to “verify the extent of spreading of newspaper and printed press materials”.⁷⁴ It may delegate any of these powers to “any competent body, in any of the states.”

Analysis

The functions and powers of the Press Council cannot be described as other than sweeping. Under sections 8 and 9, the Press Council will set media policy, grant licences for print publications – which may apparently include almost unlimited conditions – and suspend print publications for violations of the law or the licence. It will also act as a gatekeeper for the journalistic profession, holding professional examinations and administering a national register of journalists. The Press Council has several potentially very intrusive functions and powers, for example to interfere in disputes between print media publications, to “ascertain abidance” by print media publications by the standards laid down in the Act and to “participate in the discipline of journalists.” Finally, the Press Council has quasi-judicial powers to hear complaints and administer sanctions.

Self-regulation is a far more appropriate model for the print media. It has proven effective in many countries and provides far more protection against the threat of official interference in the media than statutory systems. Regardless, this approach to media regulation is fundamentally flawed. As envisaged by the Act, the Press Council will be an excessively powerful and coercive body. Not only will it licence the print media, control entry into the journalistic profession and consider complaints made against the media, but it has the power to impose fines and impose suspension even pending the investigation of a complaint. This represents an excessively heavy-handed approach to media regulation. Read as a whole, it appears that the chief aim of the Act is to control the print media, not promote freedom of expression and freedom of the press. The excessively regulatory approach of the Act is further highlighted by the fact that it nowhere mentions the

⁷¹ Section 10.

⁷² Section 8.

⁷³ Section 9.

⁷⁴ *Ibid.*

constitutional right to freedom of expression and the duty incumbent on the media to report on matters of public interest, even if this means criticising the government, government departments or individual government representatives. It is well-established that it is not appropriate for media regulatory bodies to ‘police’ the media. Rather, they should ensure that the sector functions smoothly by establishing a climate of dialogue, openness and trust in dealings with media practitioners. If a Press Council is to be set up, it should not have the powers to impose punitive sanctions. Any action taken by the Press Council should aim to promote redress, not to punish the media.⁷⁵

The sweeping powers and functions of the Press Council are particularly problematic given that it is established under the supervision of the Minister for Information and Communications, under the Patronage of the President, with a government-controlled budget and political appointees as a majority of its members. The Act signally fails to guarantee the independence of the Press Council or of its members: its independence is not formally stated; there is no provision for public participation in the selection of the members of the Press Council; there is no requirement that the members possess relevant expertise or experience; and there are no rules of incompatibility, for example prohibiting individuals with strong political connections from becoming members. This is contrary to established international standards, discussed in Section III.5 above, whereby public bodies with regulatory powers over the media should be protected against political or governmental interference.

Should a statutory system be retained, we note that guidance on a more positive approach towards ensuring the independence of media bodies, albeit in the broadcasting sector, may be found by looking at the Independent Communications Authority of South Africa (ICASA).⁷⁶ There, the President exercises final power of appointment, but on the recommendation of the National Assembly, which in turn is required to allow for public participation in the nomination process, to ensure that the selection process is open and transparent, and to publish a shortlist of candidates prior to appointment. Members must represent a broad cross-section of the population of South Africa and individuals must be committed to fairness, freedom of expression and openness. Members must also be suitably qualified persons with experience and expertise in various relevant fields, such as broadcasting or telecommunications policy, engineering, marketing, journalism or law. Government employees, Parliamentarians, local legislators, employees or political party office holders or officers of movements/organizations of a political party nature, as well as certain ex-convicts, may not be members. There are strict rules to prevent conflicts of interest. The South African legislation establishing ICASA also sets out the narrow circumstances and procedure under which members can be removed from office.

The Sudanese Press Act fails to provide any of these guarantees, with the result that the Press Council is likely in practice to function effectively as an extension of the Ministry of Information and Communications, with political appointees as its members and a

⁷⁵ This is the case, for example, with an appropriately applied directive to publish a statement as a form of redress, currently envisaged in section 20(i).

⁷⁶ See The Independent Communications Authority of South Africa, Act No 13 of 2000, and the Independent Broadcasting Authority Act, No. 153 of 1993, as amended.

mandate to execute government policy and directions. As stated above, we consider this situation to be similar to the one criticised by the UN Human Rights Committee in its 1997 Concluding Observations on the implementation in Sudan of the ICCPR.⁷⁷

V.2.2 Licensing/registration Regime

Chapter III of the Press Act sets out the licensing and registration regime for both media practitioners and print publications. Section 23 to 25 elaborate on the requirements for print publications while sections 26 to 29 set out the regime for media practitioners.

Under section 24 of the Act, all print publications in Sudan are licensed by the Press Council. Section 23 limits the right to publish print media to registered companies, legally registered political or social associations with a registered editor in chief, scientific institutions and government units. Section 23(2) specifies that foreign nationals resident in Sudan may only publish print publications after obtaining a licence from the Press Council. Under section 25, the Press Council ‘shall’ grant the licence if the applicant:

- publishes a newspaper or print media as its ‘main activity’;
- deposits a sum of money, to be determined by the Press Council, in an ‘independent bank account’;
- contracts a “sufficient number of journalists possessed of competence and experience”;
- has “quarters for practice of the press activity, and regulations shall specify the conditions and specifications of the same”;
- has an “approved information centre”; and
- has an approved specialization.

It is assumed that the last condition means that an applicant publisher will be licensed to publish material in a specific category, for example, sports, entertainment or current affairs.

Under section 26 of the Act, all individual journalists must be registered with the Press Council. Section 26(2) prohibits someone being appointed editor-in-chief of a newspaper unless they are Sudanese, are at least 40 years old, have worked in the profession for at least 15 years, possess a university degree and have not been convicted of any offence “inconsistent with honour, honesty” or any offence under the Press Act. The requirements relating to experience and possession of a university degree may be waived if the applicant “satisfies the quality characteristics.”

Analysis

The licensing and registration systems established under the Act place significant restrictions on the right to freedom of expression through the media, both for media organisations and for individual media practitioners. In order to obtain a licence to start a print publication, applicant organisations or companies must fulfil numerous conditions, including to have an ‘approved information centre’ and to deposit an unspecified sum of money into an ‘independent bank’ account. Only certain categories of organisations can

⁷⁷ Note 68.

apply for a licence and applicants have to stick to their stated ‘specialisation’. Non-nationals may obtain a licence under conditions to be specified in further regulations.

The licensing regime for applicant publications places a number of undue restrictions on the right to publish through the media. It imposes a form of organisation upon the applicant, making it impossible for an individual to start a publication, however small. Additionally, the requirement that publishing is the organisation’s main activity makes it impossible for religious groups, for example, to print a newsletter for members of their community. The requirement that publications should have an ‘approved information centre’ will unnecessarily discriminate against small publications who may not be able to afford this.

There is no warrant for requiring print publications to deposit money into a bank account. As the African Commission has stated: “Excessively high [registration] fees are essentially a restriction on the publication of news media.”⁷⁸ The Act should therefore clearly state that the amount that may be charged for registration shall be limited to that necessary to administer the scheme.

The requirement that all print media employ a ‘sufficient’ number of journalists ‘possessed of competence and experience’ is also highly problematic, both in the vague nature of this requirement and in the effect it will have on small publications.

Many of these requirements are cast in flexible terms, effectively allowing the Press Council wide discretion to refuse to register a particular applicant. Restrictions such as these effectively exclude large segments of Sudanese society from the right to express themselves through the media. This cannot be considered a ‘necessary’ restriction under either international law or the Sudanese Constitution. Further restrictions on the organisation of a publication’s headquarters may be imposed by regulation.⁷⁹

Similar illegitimate restrictions are imposed on individuals who wish to become editor of a print publication. Under section 26, a person who is not registered with the Press Council may not be employed as a journalist, and editors must be at least 40 years old and have Sudanese nationality, as well as a university degree and extensive experience as a journalist. These are arbitrary requirements of the kind that have been taken to be illegitimate by international human rights courts. For example, the Inter-American Court of Human Rights has denounced the requirement that journalists should have a university degree:

Such a law would contain restrictions to freedom of expression that are not authorized by Article 13(2) of the Convention and would consequently be in violation not only the right of each individual to seek and impart information and ideas through any means of his choice, but also the right of the public at large to receive information without any interference.⁸⁰

⁷⁸ *Media Rights Agenda and Others v. Nigeria*, 31 October 1998, Nos. 105/93, 128/94 and 152/96 (African Commission on Human and Peoples’ Rights), para. 56.

⁷⁹ Section 25(1)(d).

⁸⁰ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory

The African Commission has similarly stated:

The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.⁸¹

The restrictions imposed under sections 23, 26 or 31 cannot be described as other than “undue.” For example, it would be impossible for a youth movement to publish a newsletter, unless they appoint someone who is over 40 as their chief editor. A journalist must have worked in the industry for 15 years before being able to rise to the position of editor-in-chief, regardless of his or her journalistic abilities.

Finally, the requirement that every individual journalist must register with the Press Council is contrary to international standards. In their 2003 Joint Declaration, the UN, OSCE and OAS special mandates on freedom of expression state, unambiguously:

- Individual journalists should not be required to be licensed or to register.⁸²

National courts have also held that registration of journalists is a breach of the right to freedom of expression. An attempt to establish a statutory body to regulate journalists was struck down by the High Court of Zambia in a decision released in August 1997.⁸³ On 17 June 1995, the Information Minister, Keli Walubita, announced that the Cabinet had given him 60 days to draft legislation to establish a statutory Media Association of Zambia (MAZ). Individuals would be required to register with MAZ before they could work as journalists. The Press Association of Zambia (PAZA) filed an application for judicial review, claiming that the fact that they had not been consulted was a breach of the rules of natural justice and that the proposed legislation was, in any case, unconstitutional.

In its decision in that case, the High Court of Zambia held that the “principles of procedural fairness demand that the Applicants be given adequate notice of the impending decision and be heard or allowed to make representation on its own behalf to defend its interest.” The Court therefore ordered the Government, should it decide to reintroduce the bill, to consult with the applicants.

Importantly, the Court also stressed that statutory licensing of journalists, as proposed in the legislation, would breach the rights to freedom of expression and association:

Exercise of [the power of Ministers pursuant to the Constitution to draft legislation] is not unfettered. They must be exercised within the framework of the Constitution.... [I]t cannot seriously be argued that the creation of the Media Association or any other regulatory body by the Government would be in furtherance

Opinion OC-5/85, November 13 1985, Series A, No.5.

⁸¹ Note 8, Principle X.

⁸² Joint Declaration by 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, December 2003.

⁸³ *Kasoma v. Attorney General*, 22 August 1997, 95/HP/29/59.

of the ideals embodied in the Constitution, vis-à-vis freedom of expression and association.

The decision is particularly noteworthy for its extremely wide application. In effect, the Court ruled that any statutory attempt to license journalists would breach the right to freedom of expression, regardless of the form that attempt took. In this respect, it reflects the decision of the Inter-American Court of Human Rights.

Taken as a whole, it is obvious that the primary purpose of the registration system established by the Act is to provide the Sudanese Government with a significant means of control over the media. The registration and licensing system imposed by the Act does not serve a legitimate aim as required under international law and cannot be considered as necessary in a democratic society.

V.2.3 Journalists' Duties

Section 29 places journalists under a number of duties and obligations:

- to promote truthfulness and chastity in the performance of their profession;
- to abide by “such principles and values, as may be contained in the Constitution and the law” as well as in the professional ethics agreed by the Journalists General Union;
- not to publish any secret information relating to national security or the armed forces, unless the information has been officially released by the official spokesman of the relevant body of the armed forces;
- not to publish any information known to be classified.

Under section 29(2), these duties extend to anyone “who assumes, or participates in the editing, or publishing, of any printed material.”

Under section 32, a publisher has the following duties, amongst others:

- to allocate a specified proportion of the organisation’s funds to training;
- to approve salaries in line with the law;
- to publish, on the first or last page of every publication, the name and address of both the printer and the publisher, as well as the date of publication;
- to “prepare an appropriate press environment”;
- to deposit a number of copies of every publication with the General Secretariat of the Press Council; and
- to have their accounts audited by the General Audit Chambers.

Any person, organisation or company failing to comply with any of the above requirements may be sanctioned by the Pres Council, which can impose a reprimand or warning, or suspend the publication’s licence for a period of seven days. Moreover, under section 37, any contravention of the Act constitutes an offence punishable by a fine, suspension or cancellation of the publisher’s licence and, for repeat violations of sections 23, 32 and 33, confiscation of the printing press and all printed materials.

Analysis

The various duties and restrictions imposed by the Act are highly problematic from the point of view of the guarantee of freedom of expression. An overriding concern with all

of them is that a violation may result in a criminal sanction. Sections 36 and 37 render any person who violates any provision of the Act liable to sanctions imposed by the Press Council or criminal prosecution. Given the vague nature of many of the duties and restrictions (as discussed in further detail, below), we do not believe that this can be considered ‘necessary’ as defined in Article 19(3) ICCPR. Indeed, none of these duties should be subject to criminal sanction. International courts have called for restraint in the use of criminal sanctions to restrict expression. For example, the European Court of Human Rights has stated:

...the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings.⁸⁴

Any sanctions imposed should, therefore, be strictly proportionate. It is not appropriate to use the criminal law to enforce what should be, at most, a purely administrative registration regime for the print media (and no form of registration for individual journalists). Violations of a code of ethics can be adequately dealt with through sanctions such as requiring the publication of the findings of the oversight body. It is necessary to bear in mind that there are rules of general application, for example in the civil law, relating to matters such as defamation or undue invasion of privacy. As a result, all criminal sanctions should be removed from the Act and the Press Council – reconstituted as a fully independent body – should only be empowered to require publication of its findings, to administer a reprimand or to take other similar sanction.

Sections 29 and 32 also place journalists and the media under a number of vaguely defined duties. For example, a publisher must ensure an “appropriate press environment” for his or her staff; and journalists must at all times “intend truthfulness and chastity”, and abide by unspecified ‘principles and values’ continued in the Press Council’s Code of Ethics, the Sudanese constitution and other laws. Vague provisions such as these fail the requirement under Article 19(3) ICCPR that a law restricting freedom of expression must be precise and restricted to such measures as are necessary and proportionate to achieve a legitimate aim.

In principle, a press law should not impose specific content restrictions on media outlets, over and above those found in laws of general application. If it is legitimate to prohibit the print media from publishing something, presumably the same would apply to any other form of dissemination.

In addition, many of the particular restrictions go beyond what can be considered ‘necessary’ under international law. This is the case, for example, with the requirement that journalists should not report on any secret matters related to the military unless they obtain their information from an official army spokesperson. This will have the effect of stifling any independent reporting on the current unrest, for example, effectively giving the military a veto over what is written about them. Any restrictions in the name of national security must be shown to be absolutely necessary⁸⁵ In addition, there should

⁸⁴ *Okçuoglu v. Turkey*, 8 July 1999, Application No. 24246/94, para. 46.

⁸⁵ As recommended in Principle XIII of the *Declaration of Principles on Freedom of Expression in Africa*,

always be a ‘public interest override’, allowing for the publication of classified information where this is a public interest to do so.⁸⁶ For example, a journalist may come into the possession of classified documents that prove corruption or gross human rights violations within the highest ranks of government. While it would clearly be in the public interest to reveal this, section 29 of the Act would prevent its publication.

The direction to abide by principles and values contained in the Constitution, the Act and codes of professional ethics is similarly inappropriate. By definition, values and professional ethics are personal matters, whose observance should not be required by law. Giving legal force to professional codes of ethics effectively undermines their self-regulatory nature.

The requirement to promote truthfulness and chastity is unjustifiable. A number of courts have held that a simple requirement to carry only accurate news is an undue limitation on freedom of expression. It is not always possible to establish the veracity of some information beyond all reasonable doubt – either because there is no time, or because verification is exceedingly difficult. In such cases, journalists have to make a professional decision whether, taking into account the importance of the information, it should nevertheless be published. It has been widely recognised that laws prohibiting the publication of false statements *per se* are illegitimate.⁸⁷ Even in the context of a defamation case, the European Court of Human Rights has held that, so long as journalists act in good faith in order to provide accurate and reliable information, they should not be liable for publishing inaccurate information.⁸⁸

Finally, a number of the duties on publishers detailed under section 31 are unnecessary and may be abused to sanction critical media. This is the case for the requirement to allocate a specified proportion of the organisation’s funds to training, to approve salaries in line with the law, to deposit a number of copies of every publication with the General Secretariat of the Press Council and to have all accounts audited by the General Audit Chambers. It is a matter for individual press outlets to determine what training is necessary to promote their goals. Official promotion of professional journalists should be by way of incentives and the direct provision of training opportunities, not by coercion. It should also be borne in mind that not every publication will be as professional as, for example, a leading national newspaper would be. It would not be appropriate to require a school newsletter, for example to spend funds on training or to have a salaried staff. If a publication does employ paid staff, it would appear self-evident that they need to comply with the labour law. This renders the stipulation in section 32(b) superfluous. It is unclear why the Press Council would need copies of every publication, unless this is for purposes of exercising control over these publications. Matters such as which auditing firm to use should be decided by the media organisation itself.

note 8.

⁸⁶ See, for example, Recommendation No. R (2002) 2 on access to official documents of the Committee of Ministers of the Council of Europe, adopted 21 February 2002, Principle IV.2.

⁸⁷ See, for example, *R v. Zundel*, [1992] 2 SCR 731 (Supreme Court of Canada), *Hector v. Attorney-General of Antigua and Barbuda* [1990] 2 AC 312 (Privy Council) and *Chavunduka and Choto v. Minister of Home Affairs & Attorney General*, 22 May 2000, Judgement No. S.C. 36/2000 (Supreme Court of Zimbabwe).

⁸⁸ *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999, Application No. 21980/93.

V.2.4 Right of Correction

Under section 30(1), any person who is “aggrieved by the publication of any facts, or statements” may require that the editor-in-chief of the publication concerned publishes a correction within three days. Publication of the correction may be refused only if the reply is requested more than 60 days after the publication, if the correction has previously been published, if the correction appears to be more of an advertisement than a correction or if the correction itself contravenes the law (for example, by being defamatory). A refusal to publish a correction may be taken to the Press Council who “may take the appropriate sanction.”

Analysis

The right of reply or correction is a highly disputed area of media law. Some see it as a low-cost, low-threshold alternative to expensive lawsuits for defamation for individuals whose rights have been harmed by the publication of incorrect factual statements about them; others regard it as an impermissible interference with editorial independence.

The right of correction should be clearly distinguished from a right of reply. 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, requires the publication to grant space to an individual whose rights have been harmed by a publication based on erroneous facts, to ‘set the record straight’. As such, it is a clear interference with editorial freedom.

The Act also fails to make clear whether the correction is to be limited to a correction of the facts, and written by the publisher, or whether the aggrieved person can formulate a correction in his/her own words which the publisher is required to publish.

Because of its intrusive nature, in the United States a mandatory right of reply governing the print media has been struck down on the grounds that it is an unconstitutional interference with the First Amendment right to free speech.⁸⁹ On the other hand, the American Convention on Human Rights,⁹⁰ covering the entire continent, requires States to introduce a right of reply,⁹¹ while in Europe the right of reply is the subject of a resolution of the Committee of Ministers of the Council of Europe.⁹² In many Western European democracies, the right of reply is provided for by law and these laws are effective to varying degrees.

Regardless, a legally enforceable right of reply or correction constitutes a restriction on freedom of expression as it interferes with editorial decision-making.⁹³ As such, it must

⁸⁹ See *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), p. 258.

⁹⁰ OAS Treaty Series No. 36, adopted 22 November 1969, entered into force 18 July 1978.

⁹¹ *Ibid.*, Article 14.

⁹² Resolution (74) 26 on the right of reply, adopted on 2 July 1974. See also the Advisory Opinion of the Inter American Court of Human Rights, *Enforceability of the Right to Reply or Correction*, 7 HRLJ 238 (1986).

⁹³ See *Ediciones Tiempo S.A. v. Spain*, 12 July 1989, Application No. 13010/87 (European Commission of Human Rights).

meet the strict three-part test set out above and a number of minimum requirements should apply.

Advocates of media freedom suggest that a right of reply should be voluntary rather than prescribed by law. In either case, certain conditions should apply:

- A reply should only be mandatory in case of the publication of statements which are false or misleading and which breach a legal right of the claimant; it should not be permitted to be used to comment on opinions that the reader or viewer doesn't like.
- The reply should receive similar, but not necessarily identical, prominence to the original article or broadcast.
- The media should not be required to carry a correction unless it is proportionate in length to the original article.
- A reply should be restricted to addressing the incorrect or misleading facts in the original text and not be taken as an opportunity to introduce new issues or comment on correct facts.
- The media should not be required to carry a reply which is abusive or illegal, or where it would be considered contrary to the legally protected interests of third parties.⁹⁴

The Act fails to meet a number of these conditions. Crucially, the Act grants a 'right to correction' for any person who is "aggrieved by the publication of any facts, or statements." This is disproportionately broad and would grant a right to correction to any reader who disagrees with a particular article. This could be claimed even where all of the facts stated were true and where the original article did not breach any legal right of the claimant. The Act furthermore fails to limit the correction to a proportionate length and does not make clear that it should not introduce any new issues or comment on correct facts. Finally, the Act fails to provide for the refusal to carry a correction which is abusive or illegal.

V.3 Freedom of Information

V.3.1 The Importance of Freedom of Information

Freedom of information is a foundational right in a democracy. Information is the oxygen in which a democracy breathes; without it, formal legislative or constitutional guarantees of a democratic society are worthless. Despite this, most governments prefer to operate in secret. One of the Kiswahili terms for government translates into English as "fierce secret." Information, in a secretive society, is regarded as the property of the government and the ruling elite, only to be made available to the wider population when it suits their interests.

⁹⁴ See also the conditions elaborated in Resolution (74) 26 of Council of Europe, Committee of Ministers, "On the Right of Reply – Position of the Individual in Relation to the Press" (CoE Resolution), Appendix at para. 4. It should also be noted emerging international practice rules out granting a right of reply to State and other public authorities. See para. 4(i) of this Resolution.

But if a society wishes to be democratic, to win the trust of its people and to run in an efficient and fair manner, it is necessary that it is open and transparent in the way it functions. There are a number of reasons why the right to receive information, the right to access information held by public authorities, and the requirement that a government is open and transparent in its dealings are important.

First, it is a fundamental aspect of democracy that people have the right to know what is going on in the society in which they live and to participate in decision-making within that society. Unless they know what is happening they cannot make wise judgements about the conduct of their society. They cannot judge their rulers, assess the quality of their government and public administration. They will not be able to have an informed debate about the issues that affect their lives. They will not be able to vote in an informed way from among the choices they have. If information flows freely, people are able to express their own views on policy issues and participate meaningfully in the affairs of the world around them. Some governments consult regularly with their people about a wide range of issues – even the annual programme of taxation and expenditure. A functioning democratic society is one that allows people to express their democratic choice between different points of view, and this depends upon the free flow of information.

Moreover, closed and secretive societies bring with them a legacy that is hard to shift, namely deep public distrust of official administration and statements. A characteristic of all secretive societies is the reluctance of people to believe anything they are told by their rulers. In such a climate conspiracy theories thrive; every event has a secret meaning that is spread by rumour and gossip. It is almost impossible for rational political discussion to take place in such an atmosphere and difficult for a healthy “public” realm of debate to operate. Disillusionment sets in and people become prey to all kinds of irrational beliefs, many of which are potentially dangerous to society. Real progress on social, economic and political concerns becomes hampered by such a culture. Once engrained, it is hard to change. Only rigorous transparency and openness can begin to change such a state of affairs.

Second, corruption, a huge fetter on development in much of the world, thrives in a secretive environment. Aid programmes, arms deals, construction projects, private investment – all essential parts of international activity – are distorted by the kick-backs, pay offs and bribes that distort much of the economic activity of a country like Egypt. But the cure for secrecy is openness. If a public administration has to publish regular accounts, including the accounts of specific deals that have been negotiated, if companies are forced to set out their side of the arrangement, if business is negotiated in the expectation that the details will one day come to light, then the fight against corruption can be won.

Third, information is crucial to the development of a society. For centuries people believed that they caught diseases because someone had put a spell on them or because there were strange vapours in the air. We now know that the provision of basic hygiene – clean water and sanitation – does more to eliminate disease than all the doctors put together. We know that AIDS is not a mystery but is a disease communicated through

sexual behaviour and that safe sexual practices can prevent it from spreading. We know that ensuring women have access to information on reproductive health is the most effective way of ensuring that children are born safely and survive childhood. All of this requires that a government positively promote the free flow of information and ideas and encourage people to share information and experiences.

Fourth, information is critical to citizens being able to hold their government to account. Governments promote openness for accountability in different ways, including by publishing annual reports or creating independent auditing and information bodies that report regularly on their activities. Access to information held by the government is an essential part of creating a system where government is accountable to its people. Accountability is not just an empty slogan. The very fact that a government knows it may, in future, be held to account for its actions, leads it to operate in a more responsive and productive way than if it assumes it is immune to popular displeasure. It will be forced to consider its actions in a different light, imagining how they might look if held up to public scrutiny. Accountability is also fundamental to rebuilding public trust in government. Trust is not a one way contract where the government is allowed to carry on as it wishes. Trust is based on a mutual relationship, where government is entrusted with power by the people but the people retain the power to vote governments out if necessary. Such a relationship can only develop in a society that practises openness.

For these reasons, governments are increasingly recognising this right by introducing freedom of information laws. Even powerful governments, such as the ANC government in South Africa, have introduced such laws, not out of weakness but out of a recognition that openness is a necessary prerequisite to good governance. Following the unimaginable levels of corruption that marked the Abacha era, there is now a draft Access to Public Records and Information Act in the Nigerian parliament. These national moves are replicated in numerous other countries around the world. At the same time, intergovernmental bodies are increasingly recognising the need for openness. The World Bank has recently completed a review of its Policy on the Disclosure of Information, and is now providing access to an ever greater range of documents. The European Union recently adopted a regulation promoting greater transparency both internally and among its member States. This will inevitably be seen as an element of the Euromed agreements between the EU and the South Mediterranean countries which, as noted above, include human rights as a key element. Egypt should not – and probably cannot – ignore the trend, in the region, in the continent, and around the world, to adopt binding policies and laws giving effect to the right to freedom of information.

V.3.2 International Standards

Numerous official statements have been made to the effect that the right to freedom of expression includes a right to access information held by public authorities. The right to information has also been proposed as an independent human right. Some of the key standard setting statements on this issue follow.

The UN Special Rapporteur on Freedom of Opinion and Expression has frequently noted that the right to freedom of expression includes the right to access information held by

public authorities. He first broached this topic in 1995 and has included commentary on it in all of his annual reports since 1997. For example, in his 1998 Annual Report, the UN Special Rapporteur stated:

[T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems....⁹⁵

In November 1999, the three special mandates on freedom of expression – 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 – came together for the first time under the auspices of ARTICLE 19. They adopted a Joint Declaration which included the following statement:

Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.⁹⁶

In October 2000, the Inter-American Commission on Human Rights approved the Inter-American Declaration of Principles on Freedom of Expression,⁹⁷ which is the most comprehensive official document to date on freedom of information in the Inter-American system.

The Principles unequivocally recognise freedom of information, including the right to access information held by the State, as both an aspect of freedom of expression and a fundamental right on its own:

4. Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
5. Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

In March 1999, a Commonwealth Expert Group Meeting in London adopted a document setting out a number of principles and guidelines on the right to know and freedom of information as a human right, including the following:

Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive,

⁹⁵ Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 14. These views were welcomed by the Commission. See Resolution 1998/42, 17 April 1998, para. 2.

⁹⁶ 26 November 1999.

⁹⁷ 108th Regular Session, 19 October 2000.

the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.⁹⁸

These principles and guidelines were endorsed by the Commonwealth Law Ministers at their May 1999 Meeting⁹⁹ and recognised by the Commonwealth Heads of Government Meeting in November 1999.¹⁰⁰

Within Europe, the Steering Committee for Human Rights of the Council of Europe has set up a Group of Specialists on access to official information, which is expected to finalise a draft recommendation on access to information shortly. The draft will then be forwarded via the Steering Committee to the Committee of Ministers for adoption.¹⁰¹ The European Union has also recently taken steps to give practical legal effect to the right to information. The European Parliament and the Council adopted a regulation on access to European Parliament, Council and Commission documents in May 2001.¹⁰² The preamble, which provides the rationale for the Regulation, states in part:

Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights....

The purpose of the Regulation is “to ensure the widest possible access to documents.”¹⁰³

Within Africa, the African Commission on Human Peoples’ Rights recently adopted the *Declaration of Principles on Freedom of Expression in Africa*.¹⁰⁴ Principle IV states:

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - everyone has the right to access information held by public bodies;
 - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
 - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of

⁹⁸ Quoted in *Communiqué*, Meeting of Commonwealth Law Ministers, Port of Spain, 10 May 1999.

⁹⁹ *Ibid.*, para. 21.

¹⁰⁰ The *Durban Communiqué*, Commonwealth Heads of Government Meeting, Durban, 15 November 1999, para. 57.

¹⁰¹ Draft Recommendation No R (...)... of the Committee of Ministers to member States on access to official information, elaborated by the DH-S-AC at its 7th meeting, 28-30 March 2001.

¹⁰² Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

¹⁰³ *Ibid.*, Article 1(a).

¹⁰⁴ Adopted at the 32nd Session, 17-23 October 2002.

- sanctions serves a legitimate interest and is necessary in a democratic society; and
 - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

These international developments find their parallel in the passage or preparation of freedom of information legislation in countries in every region of the world. Most States in Europe now have freedom of information legislation on the books with the passage by the United Kingdom, in November 2000, of the Freedom of Information Act, 2000. In Asia, a Freedom of Information Bill is currently before the Indian Parliament and draft legislation has been or is being prepared in Pakistan and Nepal. Freedom of Information laws or codes have been passed in Hong Kong, Japan, the Philippines, South Korea and Thailand and bills are being presented in Taiwan and Indonesia. These developments are now starting to take root in Africa and South America, where a number of draft freedom of information laws have been tabled recently.

V.3.3 Principles for Legislation

The specific content of the right to freedom of expression, of the right to access to information held by public authorities, has been elaborated by a number of authoritative sources, including the UN Special Rapporteur on Freedom of Opinion and Expression¹⁰⁵ the Council of Europe's Group of Specialists on Access to Official Information and the *Declaration of Principles on Freedom of Expression in Africa* adopted by the African Commission on Human and Peoples' Rights. The content can also be derived from the many national laws on freedom of information and the policies and guidelines of IGOs.

ARTICLE 19 has set out the international standards and best practice for access to information regimes in *The Public's Right to Know: Principles on Freedom of Expression Legislation*.¹⁰⁶ These standards were endorsed by the UN Special Rapporteur in his 2000 Annual Report.¹⁰⁷ The OAS Special Rapporteur has also endorsed them, describing them as "the fundamental basis and criteria to secure effective access to information."¹⁰⁸

The exceptions section is often the most controversial aspect of a freedom of information law or policy. In particular, a notional guarantee of access to publicly held information can be largely undermined by an excessively broad or subjective exceptions regime. A table setting out the exceptions regime in access to information systems of different countries and bodies – the UK, Japan, South Africa, the World Bank Australia, Canada, Ireland, New Zealand, the USA – is found in Annex II. If some countries manage

¹⁰⁵ Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 44.

¹⁰⁶ (London: ARTICLE 19, June 1999). Online at www.article19.org/docimages/512.htm

¹⁰⁷ *Report of the Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression*, 18 January 2000, para. 43.

¹⁰⁸ *Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/Ser.L/V/II.106, Doc. 3 rev., 13 April 2000, p. 27.

effectively without a given exception, the legitimacy or necessity of it in other countries needs to be questioned.

NINE PRINCIPLES UNDERPINNING FREEDOM OF INFORMATION LEGISLATION

PRINCIPLE 1: MAXIMUM DISCLOSURE – FOI legislation should be guided by the principle of maximum disclosure, which involves a presumption that all information held by public bodies is subject to disclosure and that exceptions apply only in very limited circumstances. Exercising the right to access information should not require undue effort and the onus should be on the public authority to justify any denials.

PRINCIPLE 2: OBLIGATION TO PUBLISH – Freedom of information requires public bodies to do more than accede to requests for information. They must also actively publish and disseminate key categories of information of significant public interest. This obligation covers information about the public body, including operational information, finances, information on complaints, procedures for public input and any decisions affecting the public.

PRINCIPLE 3: PROMOTION OF OPEN GOVERNMENT – FOI legislation needs to make provision for informing the public about their access rights and promoting a culture of openness within the government. At minimum, the law should make provisions for public education and dissemination of information regarding the right to access information, the scope of information available and the manner in which rights can be exercised. In addition, to overcome the culture of secrecy in government, the law should require training for public employees and encourage the adoption of internal codes on access and openness.

PRINCIPLE 4: LIMITED SCOPE OF EXCEPTIONS – Requests for information should be met unless the public body shows that the information falls within a narrow category of exceptions. The exceptions regime should conform to the following three-part test:

- The information must relate to a *legitimate aim* listed in the law;
- Disclosure must threaten *substantial harm* to that aim; and
- The harm must be *greater than* the public interest in disclosure.

PRINCIPLE 5: PROCESSES TO FACILITATE ACCESS – All requests for information should be processed quickly and fairly by individuals within the public bodies responsible for handling requests. In the case of denial, a procedure for appeal to an independent administrative body, and from there to the courts, should be established.

PRINCIPLE 6: COSTS – The cost of access to information should never be so high that it deters requests. Public interest requests should be subject to lower fees, while higher fees may be charged for commercial requests.

PRINCIPLE 7: OPEN MEETINGS – FOI legislation should establish the presumption that all meetings of governing bodies are open to the public, so that the public is aware of what

the authorities are doing and is able to participate in decision-making processes. Meetings may be closed, but only where this can be justified and adequate reasons are provided. To facilitate attendance, adequate notice of meetings should be provided.

PRINCIPLE 8: DISCLOSURE TAKES PRECEDENCE – Other legislation should be interpreted in a manner that renders it consistent with the disclosure requirements of the FOI legislation. In particular, in case of a conflict between the FOI law and a secrecy law, the former should prevail.

PRINCIPLE 9: PROTECTION FOR WHISTLEBLOWERS – FOI legislation should include provisions protecting individuals from legal, administrative or employment-related sanctions for releasing information on wrongdoing.

V.3.4 Secrecy Laws in the Sudan

In Britain, for example, the legislation forbidding disclosure of such information is the Official Secrets Acts. The case in Sudan is different. The criminal Act 1991 is the law which encompasses a number of provisions that forbids disclosure of information relating to security matters.

Section 166 of the Criminal Act 1991

Whoever, obtains by whatever manner secret matters, information or documents relating to the government affairs, without permission, and discloses or attempts to disclose such matters or information to any person without lawful permission or excuse shall be punished with imprisonment for a term not to exceed two years or with a fine or with both. The punishment shall be for a term of five years if the convicted person was a public servant.

Section 56 of the Criminal Act 1991

Whoever, being in possession of information as to the military affairs of the state and discloses such information at any time to any person to whom he knows that it ought not in the interest of the country be communicated at that time shall be punished with imprisonment for a term not to exceed five years and may be punished with a fine.

Section 29 (b) of the Press and Publications Act 2004

A journalist shall not publish any secret information, relating to security of the country, or the disciplined forces.

V.4 Broadcasting

The only legislation currently in place that concerns broadcasting is the Telecommunications Authority Act 2003. The Authority is the only body empowered to allocate broadcasting frequency in the Sudan in accordance to the modalities prescribed by the international Telecommunications Union (ITU). There have been no regulations made under the Act, but a working committee has been formed to make recommendations on regulations that would allow the granting of private broadcasting licenses. The committee is made up of government appointees and has not undertaken any public consultations.

V.5 Provisions in Other Laws Restricting Expression

The Criminal Act 1991 contains provisions restricting press publications. Section (66) of the Criminal Act 1991 makes it a criminal offence to publish “any news rumour or report knowing that the same incorrect, intending thereby to cause apprehension or panic to the public or threat to the public peace or diminution of the prestige of the state...”

In addition, Section 64 of the criminal Act makes it an offence to provoke hatred. It provides:

Whoever arouses feeling of hatred or contempt against any sect or between sects by reason of ethnic, colour, or language differences in a manner that threatens peace shall commit a crime.

Section 56 reads:

“Whoever has in his possession information relating to the military force and discloses such information at any time knowing that it causes harm to the interest of the country commits an offence.”

Further, section 159 of the Criminal Act makes it a crime to publish facts concerning any person or assessing his behaviour intending to harm the reputation of such person (defamation):

A person commits an offence of defamation if by words disseminates or speaks or reproduces to another person facts related to a certain person or censors his behaviour intending to harm his reputation.

The media, including television and broadcasting may encounter difficulties with respect to section 153 of the Criminal Act 1991. This section provides:

- (1) Whoever manufactures, photographs or handles any material contrary to public morality, shall be punished ...
- (2) Whoever deals with material contrary to public morality or manages an exhibition or theatre, or entertainment club or present therein material or display contrary to public morality or allows the display there of, shall be punished....

One would ask who defines the concept of public morality and public order. The government, no doubt, monopolizes the definition.

The National Security Force Act 1999 (amended 2001) empowers members of the NS Force to search individuals and detain them for 3 days for inquiry and this period may be extended to 30 days after notifying the Ministry of Justice. NS Force may avoid judicial review for more than two months, as stated earlier The NS Force Act violates article 9 of the ICCPR.

V.6 Role of Sharia Law¹⁰⁹

The Sudanese government and SPLM/A recognized in Machakos Protocol that Sudan is a multi cultural, multi racial, multi ethnic and multi religious country. Further, religion, custom and belief are source of moral strength to the Sudanese people. For these and other reasons, they agreed that application of two legal systems in the North and South would be apt and reasonable.

Nationally enacted legislation having effect only in respect of the states outside Southern Sudan shall have as its source of legislation Sharia and the consensus of the people. On the other hand, nationally enacted legislation applicable to the southern states and /or the Southern Region shall have as its source of legislation popular consensus, the values and customs of the people of Sudan (including their traditions and religious beliefs), having regard to Sudanese diversity.

Classical Islamic jurisprudence recognizes six major offences, each of which has a penalty prescribed in fixed terms in Qu'ran or the Sunna. These are offences of "hudud" or the fixed punishments. The offences are: theft, armed robbery (al-Hiraba), illicit sexual relations (al Zina), false accusation of non-chastity (al Qadhf), apostasy and drinking wine or alcohol.

All these offences (hudud) are included in the Criminal Act 1991 (Sections 78(1),79,85,126,139(1),146(1) (2) (3), 157, 168(1) and 171). But section 5(3) of the Act provides that person residing in South Sudan shall not be tried and be liable to punishment for offences committed under these offences (hudud), unless the regional or state assembly in the South permits application of Sharia (hudud) in the South or the accused person asks the court to apply the said offences to the case.

The Criminal Act provides for punishment including flogging, amputation and crucifixion. These are punishments for the six offences of (hudud).

Sharia and Islamic Teaching, with the exception of personal law and hudud, contains general principles and it is for the Islamic jurist to draft detailed laws. Islam does not refuse adoption of laws if they are not repugnant to Sharia. Jurists, during the early days of Islam, were flexible and could challenge changing circumstances. To promote unity of Sudan, the national government in the north should be aware that rigid interpretation of principles of Islam on the face of the telecommunication revolution would not help promote national unity. For example, section 153 of the Criminal Act as stated, makes it an offence to manufacture photographs or handles any material repugnant to public morality. Rigid interpretation of morality and public order on the basic of Islamic principles, may affect freedom of electronic media and restrict ownership of satellite.

¹⁰⁹ ARTICLE 19 is planning to work on a more comprehensive analysis of Sharia and freedom of expression as part of its ongoing work in Sudan and the MENA region.

V.7 Government Relations with the Media Sector

In June 1989, the military government took harsh security measures against almost all sectors of the society. In Khartoum alone, in March 1990, it detained 15 journalist one of them Alfred Taban correspondent of the BBC, local Journalists working for foreign news organizations, like Moyiga Nduvu, a freelance Journalist, was ordered to stop working for the BBC. Journalists from South Sudan, were accused of being enemies of the revolution, and were forced to leave their profession, others from South and North fled the country.

After the promulgation of the Press Act 1993, the relationship between the government and journalist changed: Under that law, the names and addresses of editors in chief reporters and printers were registered with the Press council. The council refused to register those whose politics do not conform to government's line. The government applied an invisible red line, if crossed by the paper or the journalist, harsh measure are taken. Journalists were arrested interrogated and even detained. The government censored newspapers in order that the red line was not crossed.

In December 2001, the government lifted censorship against all newspapers. The sector came under the control of the National Press Council which was considered a supervisory body and the majority of whose members are appointed by the government. Under section 29 of the Press Act 2004, certain matters are considered duties of the Journalist. Under section 36 of the Act, the Press Council may reprimand, warn, or publish a reprimand if a Journalist contravenes the provision of the law.

Nevertheless, despite all this, there are omnibus clauses in the National Security Forces Act that empower the security to summon and interrogate a newspaper editor in chief or an editor about any remark or report made. The same law empowers the security to detain him for more than two months without judicial review. These powers ultimately negate the guarantees protecting journalist. *Al- Ayyam*, *Khartoum Monitor* and *Sahafa* newspapers were often summoned and interrogated under the said provisions of the law. On 3 September 2002, security forces detained Osman Mirghani, a Columnist for *Al Ray-Al Am* following an interview he gave to Al-Jazeera Television on 1 September. He was detained for two days and was interrogated during that period. This practice is continuing, but it remains to be seen whether the same will continue after the peace agreement is implemented.