

Ururka Qaranka Suxufiyiinta Soomaaliyeed
National Union of Somali Journalists



NUSOJ's
Observations
on Media
Law

March 11, 2008

Report

The National Union of Somali Journalists (NUSOJ), leading press freedom advocacy organization in Somalia, produces this report on the newly passed Media Law. Inside the report are observations, concerns and recommendations on recently passed media legislation

SPECIAL REPORT

Media Law Observations and Recommendations

The Transitional Federal Parliament of Somalia approved on 8 December 2007 a new Media Law, the second regulatory law for media passed since Somalia's military government collapsed in 1991. The new law is less harsh than the one approved by former Transitional National Government in 2002 but it has several articles which are either opaque or unfair.

1. Article 1, section c, which says "Disseminating correct information and ideology" is vague phrased. This law does not state who decides what is considered "Disseminating correct information and ideology". It invites several misinterpretations which could stifle free media.
2. Article 2 refers to freedom of the media and articles in the Transitional Federal Charter and the Universal Declaration of Human Rights but it also says that the media is free to disseminate information and data "while abiding by the laws regulating it and the state laws." It is unclear because it does not state which "state laws" it is referring to. These laws may be included Somalia's Penal Code or other restrictive laws that may be passed. The inclusion of this phrase could override the principle of media freedom stipulated in the law and allow censorship.
3. When establishing privately owned media organisation, the new law requires Somali citizens, organisations and companies to specify their capacity, power and quality. This is very ambiguous requirement. For instance, when specifying its capacity, what it is required to do? To describe its power, what type of power is required or talked about? And its quality, what type of quality is obliged? More clarification and parameters are needed in terms of defining capacity, power and quality for this to be an effective article. If it is not accurately described and reassessed, this legal requirement will not allow the independent media to flourish. It moreover complicates the process of establishing private media and will diminish the independence and plurality in the press.
4. Article 4, section c, which says "That the technology utilised should not harm the environment or jeopardise the efficiency of the media" is vaguely worded section and could easily be misconstrued and manipulated by authorities to suppress the independent press.
5. Article 5, section 2, stipulates that foreign media institutions that want to establish media organisations in the country or cooperate with local media should contact the Ministry of Information "to harmonise their requirements with state laws." This gives the government control over foreign media operating in the country. The government might use its power to restrict the ability of foreign media to gather and disseminate news and information that may be critical of public officials or government policies under "state laws." Somali journalists working with foreign media will be incapable of exercising their rights freely and fearlessly.
6. In addition, Article 5, section 3 is replete with advisory clauses and vague language that is open to misappropriation by authorities. The National Media Council should be the body to decide any contravention to the media law and

religious doctrines by foreign journalists. It does not rule out, for instance, that a government authority could arbitrarily interpret an article written by a foreign journalist as “controversial to unity and stability”. Such open clauses will induce self-censorship and curtail independent reporting.

7. In addition, Article 5, section 4 does not stipulate who maintains the authority to suspend foreign journalists from practicing their occupation for violating the media law. Nor does it stipulate who may accuse the foreign journalists in the first place. As it is currently worded, it would appear any citizen can accuse a foreign journalist of defying the media law and can order their suspension.
8. In Article 6, the National Media Council comprises 15 members, of which 10 are members from “private media” and 5 members from “public media.” This Article contradicts the current composition of the National Media Council as it excludes non-governmental press freedom organisations and civil society groups from roles in the Council. It also gives the Minister of Information the power to approve or deny any member joining the council. This provision plainly undermines the self-regulation mechanism, which the Somali media has been looking for. The law could make the council a body used by the government to curb independent media. Groups that will be represented in the council are not stated in the law, thus membership could be confined to selected organisations or individuals who always support the government or suit government interests.
9. In Article 7, the new law states that all media organisations such as radio stations, TV stations, newspapers, print companies, media training institutions, advertising companies, internet companies, cinemas, telecommunications organisations and others, whether existing organisations or newly establishing ones, are obliged to register with the Ministry of Information. This Article does not describe the degree of the power of the Ministry of Information to register any medium of communication. Registration of print media in a manner similar to broadcast media is objectionable. Furthermore, the law outwardly imposes restrictions on all forms of freedom of expression, speech, press and opinion. Legal rights of news media organisations and press freedom non-governmental organisations could be challenged in this article. Public parameters and guidelines must be set up in order for the registration process to work. There is no stipulation that guarantees apolitical, independent, just and transparent arrangements of registration.
10. According to Article 7, section 2, foreign journalists operating in the country will work under media regulations issued by the Ministry of Information in consultation with the Revenue Authority. This section gives the Ministry of Information the power to issue media regulations which may be used to restrain the freedoms and rights of foreign journalists. This article stipulates that foreign journalists will be subject to government control and censorship. There is no reason why foreign journalists should be placed under special scrutiny by the minister of information except, perhaps, in relation to fiscal registration charges.
11. In Article 10, the law states that if any change occurs in the appearance, the capacity or the efficacy of a media organisation that has received authorisation and has been registered previously, the owner or the person responsible for that organisation concerned is required to submit a report on the changes

encountered within 7 days, but it does not state where to submit the report. Furthermore, there is no reason why internal changes in terms of capacity and appearance should be reported publicly. Such stipulations are designed simply to provide more control over the press by public authorities.

12. Article 12 refers to media ethics. It, however, describes only what the media has to avoid instead of describing its standard of professional conduct. This Article may create confusion among the media community as to whether it comprises a professional code of ethics that they have to follow or just guidelines for what to avoid. This article declines the protection of Somali journalists' rights. There are no stipulations guaranteeing that journalists have the right to access information or will be protected themselves from attacks and intimidation. The article does not indicate how, if at all, these media suggestions should be enforced or whether it operates like a code of conduct for the media.
13. Article 13, section 1, states that "any person establishing an unauthorised and unregistered media organisation or disseminating information will be brought to justice and the media organisation will be immediately closed" but this section does not explain what kind of information would have to be disseminated to warrant such a response.
14. Article 14, section 3, the law states that "any media organisation that undertakes an alteration in its publication or other organ and broadcasts information will pay a fine amounting to US\$1,000, but only if the actions do not constitute a more serious offence." This section does not define what type of broadcasted information would be considered an alteration. It is a vague clause – what forms of alterations are considered illegal? This could cause various authorities to make their own decision in these matters. As there is no designated body to handle these types of cases, it could be decided by Ministry of Information, the National Media Council or the Competent Court of Law.
15. Article 17 states that "any person or organisation suffering defamation or wrongdoing from a media organisation will have the right to register a complaint and ask for compensation equal to the loss incurred resulting from the defamation" but it does not state where to register the complaint(s) nor does it set a limit to the compensation at the risk of crippling a media organization with incommensurate claim for compensation. This article gives public officials and private individuals the right to complain to the offices they favour instead of being channelled through an independent media body.
16. Article 21 implies that a journalist must, by law, have preliminary training before accreditation despite the fact that Somalia has limited training opportunities available for journalists. This article puts conditions on individuals willing to join journalistic profession, who always go through on-job training and other training activities.
17. Article 23, section 4, states that "journalists and owners of media organisations have the right to private and separate unions in order to defend their interests." The Article doesn't state if the journalist or the media owner has the right to join the union of his/her choice.

18. Article 26 states that the media law may be altered by the media council and the minister of information but fails to mention the parliament. The article may leave the law open to abuse and manipulation by either the Minister of Information or individuals within the council.

OBSERVATIONS

The National Union of Somali Journalists, which spearheaded media law development process and advocated publicly for democratic media law development, is very concerned the law's vague and excessive measures could lead to restrictive actions.

In March 2007, NUSOJ organised with the Ministry of Information a National Conference on Media Law Development, which brought together more than fifty journalists, media executives, parliamentarians, ministers, civil society members and human rights activists. In this meeting a ambitious of plan of action was set and taskforce, later named National Media Council was chosen. NUSOJ three activities on media law development process.

Somali journalists and media have been facing gross violations and abuses of freedom of expression and of the press. Apart from attacks, different authorities in the country frequently issued decrees or declarations to restrict the media. As the Somalis are heading to the bath of peace, stability and democratic governance, it became indispensable to develop a legal system to end restrictions on free expression and media, and to create a legal environment in which free expression and media can flourish.

Following efforts made by National Media Council, the National Union of Somali Journalists and the international free expression community, inputs adhering this law into internationally accepted standards were inadequately integrated into the law, and the parliament passed it.

As a result NUSOJ's principle concerns are that the new law:

1. On the basis of the above-mentioned Articles, the law does not create a legal environment supporting the just and effective functioning of independent, free and fair media;
2. Gives the Ministry of Information powers to control both local and foreign media, inducing the media vulnerable to all sorts of interferences and restrictions;
3. Enforces repressive measures that plainly curtail freedom of expression, freedom of the press, freedom of speech and freedom of opinion through any medium of communication;
4. Increases governmental interferences and soft censorship in the news media and does not guarantee journalists' protection against physical attacks and harassments, despite all sorts of attacks they have endured to this date;
5. Diminishes the role of independent, professional, free and strong media as a watchdog over public institutions based on the claim that this could damage "the stability and unity of the nation or ...jeopardise public peace, order and stability";
6. Destroys the autonomy of the National Media Council and disregards the importance of establishing a successful and genuine self-regulatory body;
7. Doe not adequately promote the legal rights and responsibilities of journalists and the journalists' professional self-governance;
8. Deprives the public of information it needs to make informed decisions.

RECOMMENDATIONS

The Transitional Federal Government (TFG) must be aware of its duty to respect, promote and protect international protocols upholding freedom of expression and media independence. NUSOJ calls on the TFG, as a matter of urgency, to make radical revisions on the current media law and remove the restrictive articles/clauses.

The international community should press officials of the Transitional Federal Government of Somalia on the need of honest review of this law with an aim of creating legal environment in which free media can operate. Before its implementation, this media law should meet the international test of the legitimacy of restrictions on free expression and media in a democratic society.

All members of the parliament and government ministers should show political determination to make serious reassessment of the media law, incorporating the contributions of the local media community and the international press freedom community.

Journalism professionals, judges, lawyers and civil society members should be urged to build their capacity by becoming familiar with international standards of media-friendly law as there are no local lawyers or experts that specialise media law.

The Somalia's Transitional Federal Government should eliminate most of laws that restrict free expression and for their replacement with laws and legal practices that encourage and protect openness.

The International Community, the Somali media community and the Somali civil society should join forces against this new law and advocate for the development of media law which does not contravene international legal standards on free expression.

End of Report

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