



Media Policy For A New Sudan

April 2005

Introduction

The present Sudanese legal regime includes legislation and practices governing the media that run counter to democratic values and fundamental freedoms. Given the fundamental importance of media freedom as an essential component of peace building and democratic development, the present situation breaches the rights, and undermines the achievement of the goals and aspirations of the people of Sudan.

There is, therefore, an urgent need for fundamental institutional, legal and policy reforms to ensure that freedom of expression and media rights are respected in accordance with constitutional and international guarantees during the interim phase of the Sudanese peace process. The exclusion of large segments of the Sudanese population from communication processes further highlights the importance of reform in this area. The reforms should provide for a holistic and inclusive enabling framework for the media that takes into account the multifaceted nature of the Sudanese society.

The Press and Publication Act 2004 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 annually from the Press and Printed Press Materials National Council (National Press Council), a body which lacks adequate independence from government. Applicants for a licence are required to have professional qualifications and individual journalists and media outlets 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. Overall, it imposes an unacceptable form of quasi-criminal control over the media in Sudan.

In addition, there is no independent broadcasting media in Sudan. Sudanese radio and television remains firmly under the control of the national government. There is no room for plurality of views either on television or radio, particularly on government policies and on conflict in the country. The same criticism applies to the stations of

the national broadcaster based in the South and other regions of the country, which observe the same operational rules.

The Peace Protocols

The Power Sharing Protocol agreed on 26 May 2004 is effectively a quasi-constitutional document governing the present situation. The 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....

The Protocol also deals directly with human rights. The parties agree to comply fully with their treaty obligations under international law, including the *International Covenant on Civil and Political Rights* (ICCPR) and the *African Charter on Human and Peoples' Rights* (ACHPR). The Protocol specifically recognises a long list of rights, including the following:

Freedom of Thought, Conscience and Religion

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

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, 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.

Any transitional strategy should have as its overriding goal the development of a framework that creates the necessary space for the fullest exercise of freedom of expression as defined in the ICCPR, the African Commission for Peoples' and Human Rights *Declaration of Principles on Freedom of Expression in Africa*, and other international human rights instruments. It must empower independent and professional journalism rather than restrain it and it must encourage pluralism and diverse political debate.

The transitional strategy should:

- Suspend current laws restricting freedom of expression, including the Press and Publication Act 2004;

- Abolish or transform the current National Press Council into a truly independent institution with only those powers recognised as legitimate under international law; and
- Provide for the establishment of independent broadcast regulation, including the licencing of private broadcasters, in Sudan.

At the same time, new legislation and independent institutions to promote and protect freedom of expression need to be developed both nationally and in Southern Sudan.

Constitutional Framework

In order to protect the right to freedom of expression, it is imperative that the media be permitted to operate independently from government control. This is necessary to enable the media to perform its role as public watchdog and to ensure that the public has access to a wide range of opinions, especially on matters of public interest

The Interim National Constitution, individual State Constitutions and the Constitution for South Sudan and other legal frameworks should contain a clear statement of principles underpinning, among other things, respect for freedom of expression, the free flow of information and ideas, media pluralism and diversity, and the transformation of State media into public service media. To give effect to this, these constitutions should also provide for the establishment of independent bodies to regulate the broadcasting sector fairly and in the public interest, and to ensure that broadcasting reflects a diversity of views broadly representing Sudanese society.

Principles which Underpin the Media Policy

The aim of this policy is to promote and ensure a free, independent, dynamic and public-spirited media that will provide access for all, and not only some, of the Sudanese people. It seeks to ensure for all Sudanese people the right to participate freely, fully and creatively at the community, national and global levels in the expression, exchange and discussion of knowledge, information and ideas, as well as in the management and operations of institutions governing the media. It thereby seeks to build a just, prosperous and equitable Sudan, enriched by its diversity and informed by its values, with its people able to interact as equals and to their mutual benefit with other citizens of the world.

Building on the principles expressed in international human rights instruments, the following principles serve as the foundation of this policy:

- Free media representing all groups and divisions of society, giving independent scrutiny to and comment on the workings of the National, State and South Sudan Governments and institutions, serving as the public's watchdog and advocate, and providing a free flow of information and diverse opinion, are essential to democracy.
- The media shall be protected from censorship, government interference and interference by non-governmental authorities.
- Respect for religious, ethnic and cultural diversity shall be guaranteed in accordance with the principles set out in international human rights instruments.

- No restrictions shall be imposed on freedom of expression and of the media other than those that are set out in law, that are specifically and narrowly defined, and that are subject to tests of necessity, proportionality and pressing social need, as required by international human rights law.
- Journalists shall not be forced to reveal the identity of sources of information to whom they have promised confidentiality.
- No one shall require a government license in order to practice journalism as a profession.
- There shall be no licensing or registration requirement for newspapers, news agencies, magazines, periodicals or other print media, other than pursuant to general rules governing all bodies seeking to engage in commercial or non-profit activities.
- Broadcast operators shall be required to obtain licences for the purposes of frequency allocation. Such licences shall be issued by an independent authority, and shall include only limited rules to give effect to the fact that the airwaves are a limited public resource which must serve the public interest.
- Broadcast frequencies shall be allocated in an equitable way by independent authorities established at the National, Southern and State levels.
- All national and regional government broadcasters shall be transformed into public service broadcasters, whose editorial independence shall be guaranteed. An independent body, such as a Board of Governors, shall be responsible for protecting editorial independence and for ensuring accountability to the public, in accordance with modern democratic standards.
- Until a new criminal law is in place, laws that prescribe criminal penalties for media or journalistic offences shall be suspended.
- Truth shall be an absolute defence to an allegation of defamation. A defence of reporting in the public interest in good faith and in a fair and balanced manner shall also be recognised as a defence in a defamation action.
- Journalists shall be allowed to form associations to promote professional standards through training, education and the development of codes of ethics, and to advocate for editorial independence, the rights of journalists and the rights of an independent media.
- Old laws and legislation shall be applied only to the extent that they do not contradict these principles.
- The National Ministry of Information shall be abolished and no information ministries shall be set up by the State or Southern Governments.
- The establishment of independent news agencies shall be encouraged.
- Open government laws shall be adopted providing for a right to access information held by public authorities and ensuring that decision-making processes and the business of government are open to public scrutiny.

Detailed Policy Statement

Interim Legal Framework

As an interim measure, an Interim Media Law shall be drafted in accordance with current international best practice, as well as the principles set out above. References below to the Law shall be understood as references to this Interim Media Law.

The Print Media

- There shall be no licensing of media outlets and any registration system shall be limited in scope to technical registration, automatic upon the provision of limited information.
- The print media shall not be subject to special restrictions on the content of what may be published, over and above restrictions found in laws of general application. No such restrictions shall be included in the Law.
- The print media shall not be subject to regulation of any type by governmental authorities. A system of self-regulation by media practitioners shall be recognised as the legitimate means of governing the profession.

Broadcasting

A National Independent Broadcasting Authority shall be established and shall, in accordance with the principles set out below, oversee the creation of a public broadcasting system alongside a genuine private one, including a plan for the management of the frequency spectrum and the issuance of broadcasting licences. At the same time, the South Sudan and State level authorities shall be allowed to establish independent broadcasting authorities of their own.

The National Independent Broadcasting Authority shall exercise jurisdiction over broadcasters only until such time as independent broadcasting authorities are in place in the South Sudan and/or in each State. At that time, each authority will assume responsibility for broadcasters falling within its remit, and the national authority will assume responsibility only for national media and/or regional media not covered by another authority. The setting up of independent broadcasting authorities and the regulation of broadcasting generally shall be governed by current international best practice and in accordance with the following:

- The independent broadcasting authorities shall be protected against government or commercial interference by, among other things, explicit guarantees of independence, the appointments process for members, rules on conflict of interest (commercial and political) and adequate and protected sources of funding.
- The frequency spectrum management plan shall take into account the need for equitable access to frequencies by national, regional and state broadcasters, as well as the need for equitable allocation of frequencies among all levels and tiers of broadcasting.
- The independent broadcasting authorities shall have the power to allocate licenses, along with appropriate frequencies, to private broadcasters. Licensing processes shall be fair and transparent and shall be based on the need to promote pluralism in the broadcasting sector, as well as the need for equitable allocation of licences to all levels and tiers of broadcasting
- The broadcasting system shall 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

- The Law shall establish a presumption in favour of disclosure of all information held by public bodies, subject only to a limited regime of exceptions.

- Public bodies shall be under an obligation to publish proactively a wide range of information about their activities and the information they hold.
- Clear and transparent procedures for the processing of requests for information, which may be lodged by anyone, shall be established.
- A clear and narrowly defined set of exceptions to the right of access shall be set out in law, so that access may be refused only where disclosure poses a risk of harm to a legitimate protected interest and the overall public good is served by non-disclosure of the information.
- Individuals shall have the right to appeal to an independent body against any refusal by a public body to provide access to information.
- All secrecy laws shall be reviewed and amended as necessary to bring them into line with international standards in this area, as well as the above principles.

Defamation and Other Content Restrictions

- The rules relating to defamation shall be revised to bring them into line with international standards. In particular:
 - defamation shall be decriminalised;
 - truth shall be a complete defence to a charge of defamation;
 - defendants shall benefit from a defence of reasonable publication;
 - public officials shall not benefit from special protection against defamation;
 - sanctions for defamation shall be strictly proportionate to the harm caused; and
- other laws imposing restrictions on freedom of expression – including the Criminal Act and the National Security Forces Act – shall be reviewed and amended as necessary to bring them into line with international and constitutional standards.

Journalists

- There shall be no licensing or registration of individual journalists.
- Media practitioners in the print and broadcast media shall have the right to organise themselves into an association or associations with a leadership elected from amongst themselves.
- The various professional associations shall have the right to establish their own internal accreditation systems for their members.