



# Political and Media Transitions in Egypt:

A Snapshot of Media Policy and Regulatory Environment

by Toby Mendel

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## **Political and Media Transitions in Egypt: A Snapshot of Media Policy and Regulatory Environment**

*Political and Media Transitions in Egypt* is a snapshot of the current media policy and regulatory environment in Egypt. The research for this paper was carried out in April, May and June of 2011 by Toby Mendel.

This, and a companion study on the media and transition challenges in Tunisia, was prepared for a three-day meeting, Informing the Dialogue and Creating a Roadmap: Workshop in Comparative Media Law, Policy, and Regulation in the MENA Region, organized by Internews in collaboration with the Center for Global Communication Studies at the University of Pennsylvania's Annenberg School for Communication, and the Center for Media and Communication Studies at the Central European University of Budapest, Hungary.

The meeting, the first in a multi-part series of workshops, brought together key stakeholders from the academic, law and policy and civil society communities interested in participating in a dialogue intended to aid the media transitions in the Middle East and North Africa. Various media stakeholder groups from the MENA region and several international experts attended the meeting and explored strategies and opportunities for media law reform in Tunisia and Egypt.

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### **ABOUT THE AUTHOR**

Toby Mendel is Executive Director of the Centre for Law and Democracy. Mendel was Senior Director for Law at ARTICLE19, a human rights organization focusing on freedom of expression and the right to information. Prior to that, he worked as a Senior Human Rights Consultant with Oxfam Canada and as a human rights policy analyst at the Canadian International Development Agency. He has consulted with the World Bank, various intergovernmental bodies, and numerous governments and non-governmental organizations around the world, and has helped draft legislation in the areas of the right to information and media regulation. He has published extensively on a range of freedom of expression issues, such as the right to information, communication rights, and refugee issues, including comparative legal and analytical studies on public service broadcasting, the right to information, and broadcast policy. Mendel has a B.A. degree in mathematics from McGill University and an L.L.B. from Dalhousie University.

### **CREDITS:**

**Writer/Researcher:** Toby Mendel

**Copy Editing:** Libby Morgan

**Design and Layout:** Laura Stein Lindamood

**Project Director:** Manisha Aryal, Director, Global Human Rights Program

**Special thanks to:** Marjorie Rouse, Senior Vice Presidents for Programs; Jamal Dajani, Vice President for Middle East and North Africa; and Susan Abbott, Deputy Director for Program Development.

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## Introduction

*“It is not enough to replace old faces and perhaps change some policies, to reach an independent media.”*

The “25 January Revolution” is the name popularly used to describe the demonstrations which began in Cairo’s Tahrir Square on January 25, 2011. The demonstrations led to President Hosni Mubarak’s resignation less than three weeks later, on February 11. Mubarak had ruled Egypt with an iron fist for 30 years, since first becoming President in 1981, following Anwar Sadat’s assassination.

These events have already brought about important changes to the democratic and human rights environment in Egypt. The current environment is one in which there is enormous potential for reform. At the same time, the process of reform is anything but smooth, with the demonstrators returning to Tahrir Square on July 8 to protest against the slow pace of change and the failure to prosecute those responsible for the human rights abuses perpetrated against the demonstrators.

During Mubarak’s presidency, the media faced substantial legal and regulatory challenges that limited their independence and ability to criticize and hold the government to account. These included criminal sanctions under the Penal Code, onerous licensing requirements and significant government control over state-owned media outlets. These controls remain largely in place today.

Despite the environment of government control, there are numerous state-owned and private daily newspapers and television stations, as well as other newspapers and magazines. Terrestrial private television has not been allowed to develop and private television is only disseminated by satellite.<sup>1</sup> The radio sector is almost entirely a state monopoly,

although there are two private FM radio stations in Cairo – Nogoom FM and Nile FM – along with a number of Internet radio stations.<sup>2</sup>

Although the legal framework remains in place, the manner in which laws are applied has already changed quite significantly, including in relation to the media. A number of key individuals associated with the repressive functions of the Mubarak regime have been forced to leave their positions. This includes the Minister of Information, who plays an important institutional role vis-à-vis the media. The removal of the Minister initially raised expectations that the Ministry would be abolished. These hopes were dashed, however, with the appointment in early July of Osama Heikal, former editor of the opposition party daily Al-Wafd, as Minister of Information.<sup>3</sup>

In practice, in the Egyptian context, informal measures have been closely intertwined with legal rules in a complex system of control. In many cases,

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elastic and all-pervasive legal rules meant that almost everyone working in the media was vulnerable to legal challenge at any time. Rather than instituting such challenges, however, the regime would use implicit threats to ensure most media workers toed the party line. This led to high levels of self-censorship, which has become deeply rooted in the culture at many media outlets.

These informal systems have been significantly transformed in the post-revolutionary environment. There has been a major pull back in terms of the presence of security officials and the role of the security forces, for example, and the volume and nature of official warnings and threats has diminished. However, official warnings have not disappeared and clear red lines remain, in particular in relation to reporting on the governing military authorities.

On May 3, 2011, World Press Freedom Day, the newly-formed National Coalition for Media Freedom (NCMF) issued a Media Freedom Declaration Cairo, setting out key minimum demands for media reform.<sup>4</sup> The declaration's preamble makes it clear that the changes undertaken so far are not enough, stating: "[I]t is not enough to replace old faces and perhaps change some policies, to reach an independent media." The declaration goes on to call for a number of substantive changes with respect to media freedom.

This report provides an initial analysis of the current legal and policy framework governing freedom of expression and the media in Egypt. The primary methodology used in preparing this report was an extensive literature and legal review, including online sources. These sources were supported by a series of unstructured interviews conducted during a mission by the author to Egypt, with support from the local UNESCO office, from April 9-15, 2011.

The legal and policy framework governing the media is repressive and allows for extensive govern-

ment control over almost every media sector.<sup>5</sup> We know from other experiences with democratic transition that the window of opportunity for reform, and for media law reform in particular, is limited. At the same time, it is not possible to achieve all reforms at once, so it is important to identify priorities and try to secure them as soon as possible.

To create a legal and regulatory framework that is in line with international standards, in particular for the right to freedom of expression, would require comprehensive review and amendment of almost every Egyptian law affecting this right. Some of the key areas for reform are as follows:

- The constitutional guarantees for freedom of expression, which are weak and limited in scope.
- The rules regarding the imposition of a state of emergency and the power to derogate from freedom of expression during states of emergency.
- Restrictions on the content of what may be published or broadcast, in particular the criminal restrictions found in the Penal Code and Press Law.
- The absence of a right to information law and the wide prohibitions on making public "secrets," found in a range of laws.
- The rules on who may work as a journalist, and the institutional structures for journalists, in particular the Journalist Syndicate, which is at present subject to an unacceptable level of government control and which has privileged access to public resources for its members.
- The system for regulating professionalism in both the print and broadcast media sectors, which is currently subject to government control and lacks any public complaints system.
- The institutional structure for regulating the print media, namely the Supreme Press Council,

which is subject to extensive government control.

- The rules on licensing of the print media, and other constraints on print media's ability to operate freely, including financial rules and the rules on the rights of correction and reply.
- The absence of any proper regulatory system for broadcasters, and the prohibition on private terrestrial broadcasting.
- The need to remove controls over Internet-based and related forms of communication, and the need to ensure that the Internet cannot be shut down for political purposes.
- The need to address government control over the state-owned media, both print and broadcast, and to either privatize them or transform them into independent public service media.

## The Process of Constitutional Change

When Mubarak resigned, power was handed over to the Supreme Council of the Armed Forces. Just two days after Mubarak's resignation, on February 13, the Supreme Council suspended the 1971 Constitution. Preparations for a constitutional referendum that would add nine new articles to the Constitution started almost immediately, and the referendum was held on March 19. Although the referendum was opposed by many civil society organizations as not going far enough, it passed decisively, garnering some 77 percent of the vote. The nine new articles focus primarily on governing structures, including who may run for president, the term of office of the president (which is now limited to two four-year terms), the holding of elections for the two houses of parliament (the Shura Council and the People's Assembly), and the process of preparing a new Constitution.

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*The legal framework that applied before the revolution continues in force.*

When the Constitutional Declaration, effectively the interim Constitution, was proclaimed by the Supreme Council of the Armed Forces on March 23, it included the 9 new articles passed by referendum,<sup>6</sup> 49 articles from the 1971 Constitution and 3 additional articles, namely Articles 56, 57 and 61. The 49 articles from the old Constitution mostly address human rights and the structures of the state, including the parliament, judiciary and armed forces. The three new articles deal with the respective powers of the Supreme Council of the Armed Forces and the Council of Ministers. They also provide that the Supreme Council will continue in force until such time as the "People's Assembly and Shura Councils assume their responsibilities and the president of the republic is elected and assumes his position" (Article 61). Most recent reports by Egyptian media indicate that the parliamentary elections will take place in November.

Pursuant to Article 60 of the Constitutional Declaration, within six months of the election, and at the invitation of the Supreme Council of the Armed Forces, the People's Assembly and elected members of the Shura Council will meet in a joint session to elect a 100-member provisional assembly. This assembly will be tasked with preparing a new constitution, within another six months, which must be put to a referendum within fifteen days of its preparation and which will come into force immediately upon being approved in the referendum.<sup>7</sup> A number of civil society groups have called for the Constitution to be drafted before the elections,<sup>8</sup> but it seems most unlikely that this will happen.

The legal framework that applied before the

revolution continues in force. Article 56(1) of the Constitutional Declaration grants the Supreme Council of the Armed Forces the power to adopt new legislation and to repeal or amend existing laws. Article 57(3) grants the Prime Minister and other members of the Cabinet the power to adopt internal decrees and subordinate legislation (regulations), within the scope of their authorities and as provided for by law. In practice, the Cabinet prepares most legislation, which is then approved (or not) by the Supreme Council of the Armed Forces.

## Egyptian Constitutional Guarantees of Freedom of Expression

Articles 12 and 13 of the Constitutional Declaration provide for the protection of freedom of expression and media freedom as follows:

### (Article 12)

Freedom of opinion is also guaranteed, and every person has the right to express his opinion and publish it in spoken, written, photographed, or other form within the confines of the law. Personal criticism and constructive criticism are a guarantee for the safety of national development.

### (Article 13)

Freedom of the press, printing, publication and media are guaranteed, and censorship is forbidden, as are giving ultimatums and stopping or canceling publication from an administrative channel. Exception may be made in the case of national emergency or time of war, allowing limited censorship of newspapers, publication, and media on

matters related to general safety or the purposes of national security, all according to the law. Article 12 is essentially a weak guarantee.

Freedom of expression is only guaranteed “within the law,” and no conditions are imposed on laws which limit the right. Thus, any law restricting freedom of expression that is validly passed by legislators will pass constitutional muster, largely negating the impact of the constitutional guarantee.

This weak guarantee stands in contrast to Article 19 of the International Covenant on Civil and Political Rights (ICCPR),<sup>9</sup> which Egypt ratified on January 14, 1982. This article only permits restrictions that serve one of a limited list of protected interests, namely the rights and reputations of others, national security, public order and public health and morals. Furthermore, Article 19 also only allows restrictions that are “necessary” to protect one of those interests. This limitation means that restrictions must be proportionate, in the sense that the benefits outweigh the harm to freedom of expression, be carefully designed to protect the interests of citizens, and not be overbroad, in the sense of going beyond prohibiting harmful speech.

International law also provides stronger protection for freedom of expression than Article 12 of the Constitutional Declaration by incorporating a number of key positive features. Importantly, under Article 19, the right protects not only the speaker, but also the listener, by defining freedom of expression as the right to “seek, receive and impart information and ideas.” This is an extremely important aspect of the guarantee, which protects citizens’ right to access a diversity of information and ideas.

The explicit prohibition of administrative censorship,<sup>10</sup> in Article 13, is positive. It is unclear, however, whether this prohibition applies only to

administrative censorship or to all forms of censorship. This lack of clarity is compounded by Article 5 of the Press Law,<sup>11</sup> which states:

No confiscation, suspension, and/or termination of a newspaper, using the administrative proceedings, may be permitted.

Furthermore, since Article 13 does not apply when a state of emergency is in place, it does not provide much practical protection for the media, since an Emergency Law was proclaimed in 1981, extended continuously throughout the whole of Mubarak's 30-year reign, and remains in place to this day. Article 4 of the Press Law, which allows news items that are "detrimental to the national integrity, independence or sovereignty" to be banned, appears to be in breach of Article 13, yet remains in force. In practice, however, the Mubarak regime rarely resorted to actually forcing newspapers to close, perhaps because other less blatant forms of control were sufficient to ensure that the government could achieve its objectives.

The extended state of emergency under Mubarak was one of the issues which was addressed in the constitutional referendum. This resulted in what is now Article 59 of the Constitutional Declaration, which requires the People's Assembly to ratify any declaration of an emergency and places a strict six-month time limit on any declaration of an emergency, with any extension beyond this allowed only after it has been approved in a popular referendum.

These procedural protections are not, however, accompanied by any substantive restrictions on when an emergency might be declared. International law only permits derogations from rights during an emergency "which threatens the life of the nation." Even then such restrictions must be "strictly required by the exigencies of the situation."<sup>12</sup> Article 59 does not reflect these key substantive protections.

Despite Article 59, the 1981 Emergency Law remains in force. Demands to repeal this law and

lift the state of emergency have been made repeatedly by various stakeholders since the revolution. The Supreme Council of the Armed Forces has promised that it will lift the state of emergency before the parliamentary elections due to take place in November 2011, but it has not set a firm time-frame for this; the current Prime Minister, Essam Sharaf, pledged in July to work towards ending the Emergency Law. Under the Emergency Law, cases against the media can be pursued in military courts, a procedure that is highly problematic from the perspective of media freedom, as well as other basic due process human rights.

How the new Constitution will protect freedom of expression, and in particular whether the new guarantees will be more closely in line with international law, is clearly a matter of great importance for the media and other stakeholders in Egypt. In addition to the main guarantee of this right, consideration needs to be given to the possible inclusion of specific protections for the media and the right to information (the right to access information held by public bodies).

Consideration might be given to whether the following issues, which can be found in different constitutions around the world, should be included in a future Egyptian Constitution:

- Protection for the independence of bodies with regulatory powers over the media.
- Protection for the right of journalists not to reveal their confidential sources of information.
- Prohibitions on licensing or registering journalists and/or print media outlets.
- A requirement to allocate the frequency spectrum in the public interest among all three types of broadcasters, namely public, commercial and community, and/or specifically reserving part of the frequency spectrum for community broadcasters.

## Content Restrictions

A number of different laws provide for criminal penalties and other restrictions on the content of what may be published or broadcast in Egypt, including the Penal Code<sup>13</sup> and the Press Law.

The Egyptian Penal Code includes several provisions on defamation. These include Article 179, making it a crime to insult the President; Article 184, protecting the *Majlis al-Shaab* (People's Assembly), the army, the courts and other public authorities; and Article 186, protecting the judiciary.

Article 185 also provides protection for public officials, although this protection is tempered by Article 302, which permits criticism of the work of an official relating to his or her duties, but only if this is done in good faith, and a 2006 law that removes imprisonment as a punishment for breach of Article 185.<sup>14</sup> Article 21 of the Press Law also deals with criticism of officials, prohibiting statements that address the “demeanor of a public servant, prosecution personnel, or public employees, unless such dealing is closely related to their duties and responsibilities, and is aimed at realizing the public interest.” Article 21 is thus inconsistent with Article 185, not only in substance, since good faith is not the same thing as realizing the public interest, but also inasmuch as imprisonment remains available for breach of Article 21.

These rules are in clear breach of international standards in this area, which call for defamation to be protected through the civil, rather than the criminal law, for public officials to tolerate a greater degree of criticism than ordinary citizens, and for public bodies not to be protected by defamation law at all. International standards also set clear standards for civil defamation laws, including that there should be a robust regime of defenses. Consideration needs to be given to how to bring these Egyptian defamation law provisions into line with international standards.

The Penal Code includes a number of provisions that make it a crime to disseminate various sorts of content, including Article 174, which prohibits advocacy of changes to the Constitution; Articles 188 and 305, prohibiting the publication of false news, and Articles 189 and 190, restricting the publication of information about ongoing court cases.<sup>15</sup>

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These are supplemented by a number of criminal restrictions on media content in the Press Law. Pursuant to Article 20, journalists may not publish information that is “contemptuous or disrespectful to caste, creed, nationality and religion of any individual or the community or the country” or that demonstrates “partiality in favor for, or against, a racial call instigating hatred or promoting intolerance and bigotry against certain segments in the Society.” Article 21 prohibits statements that interfere in the private life of citizens. Pursuant to Article 22, breach of these rules may lead to a term of imprisonment of up to one year and/or a fine of between 5,000 and 10,000 Egyptian pounds (approximately USD 840-1,680).

These are only a few of the content restrictions found in Egyptian law. They are all very problematic from the perspective of international law, in some cases because they are simply not legitimate reasons to restrict freedom of expression (for example, the rules on false news or advocating constitutional change), and in other cases because they are too broad (for example, the rules on discussion of ongoing court cases, interference with private life and

hate speech). As with the defamation rules, consideration needs to be given to how to bring these provisions into line with international standards.

## Regulation of the State-Owned Media

The state-owned media in Egypt, which includes both broadcasters and print media outlets, has historically dominated both sectors. As noted above, the state has a monopoly on terrestrial broadcasting, although the number of subscribers to pay television has increased significantly in recent years. The state print media have also seen their erstwhile dominance eroded and, during the revolutionary demonstrations, the historical market leader, *Al-Abram*, was overtaken in terms of distribution figures by *Al Masry-Al Youm*, a private newspaper. However, the importance of the state-owned media should not be underestimated.

Section Three of the Press Law sets out a number of rules governing the so-called “national newspapers” (i.e. the state newspapers). Pursuant to Chapter One,<sup>16</sup> these newspapers provide “a free national platform for all political voices and trends and key actors.” The law does not otherwise stipulate any mandate for these newspapers, although it is possible that one is provided for in their founding documents or editorial statutes.

The same provision states that the national newspapers are “free-standing and autonomous.” Despite this guarantee, in practice the national newspapers have, at least historically, been biased towards government, although some, such as the English language *Al-Abram Weekly*, were reportedly more balanced.

Formally, the national newspapers fall under the ownership of the Shura Council, which has in the past been largely controlled by the President. In any

case, as a largely elected body, the Council is clearly not free of political tendencies, as a body with power over the media should be in accordance with international standards.

The structural independence of the national newspapers is undermined legally in a number of ways. Each national newspaper has a general assembly, which is headed by the chair of the board. It also includes 15 members elected from among journalists, administrators and laborers, and another 20 members selected by the Shura Council (Article 62).

The key governing body for each of the national newspapers is the board of directors, which appoints most of the members of the editorial board and decides on the overall policy framework (Articles 65 and 66). The board chair, who also chairs the general assembly, is appointed by the Shura Council. The thirteen members of the board include six elected employees (two each of journalists, administrators and laborers), and six members appointed by the Shura Council, of whom at least four must “belong to” (presumably this means work for) the newspaper (Article 64).

Article 65 establishes an editorial board for the national newspapers consisting of five members. The chair of this board, who is also the editor-in-chief, is appointed by the Shura Council. The four other members are appointed by the board of directors. The influence of the Shura Council over the national newspapers is thus very significant.

The national newspapers appear to be funded primarily through advertising, although it is rumored that they also receive some direct government funding. Some people claim that these newspapers benefit from a sort of indirect government subsidy in the form of the discretionary allocation of large public advertising contracts. Reportedly, these newspapers also benefited in the past from congratulatory advertisements paid by businesses

as tributes to the government, and especially the President. It appears that this source of funding has now largely dried up.

The national newspapers are a very important part of the print media sector. This is reflected in their wide readership and vast workforces (*Al-Ahram* alone, which publishes many titles, reportedly has around 17,000 employees). It is clearly inappropriate to maintain them in their current form, subject to political control through the Shura Council. One option would be to transform them into public service media outlets, along the lines of public service broadcasters, run by independent governing boards. Such broadcasters exist in many democratic countries and while they are state-owned, they are run independently of government.<sup>17</sup> Another option would be to privatize them.

Egypt's state-owned broadcaster, the Egyptian Radio and Television Union (ERTU), is a massive organization, with some 43,000 employees and numerous television and radio stations falling under its umbrella. It was established in 1970, and its governing legislation is the 1979 ERTU Law.<sup>18</sup>

The overall mandate of ERTU, as described in Article 2 of ERTU Law, is to fulfill the "mission statement of the audio-visual media and broadcasting services ... in compliance with overall public policy and widely acknowledged professional standards and criteria."

Article 2 lists 13 more detailed purposes for ERTU. These include, among other things:

- Delivering broadcasting services in an effective and efficient manner, for the benefit of the nation, consistently with the values of Egyptian society and the Constitution;
- Promoting general social values – such as unity, peace, human rights and the rule of law – and knowledge;

- Developing broadcasting, including by improving technical standards;
- Presenting current trends in public opinion;
- Providing news coverage, including of the legislatures;
- Expanding its coverage; and
- Fostering creative Egyptian talent.

The ERTU Law does not spell out individual mandates for the various stations operating under ERTU, but it is possible that these are found in other documents, such as the founding documents of those stations.

It may be noted that the purposes of ERTU do not include providing balanced and impartial reporting during elections, an issue that will be of great importance during the upcoming parliamentary and presidential elections. In the past, including during the 2010 parliamentary elections, observers have noted that ERTU stations failed to provide independent and balanced coverage. During the 2005 elections, ERTU established a 17-member Media Monitoring Committee (members were primarily academic and professional media workers from the state-owned media, as well as some public figures and representatives of the private media). The Committee set guidelines for media coverage of the elections and its activities reportedly had some impact on election coverage by ERTU.<sup>19</sup> Something along those lines, but more robustly independent from ERTU, might be considered for the upcoming elections.

Structurally, ERTU is even less independent than the national newspapers, and, in practice, state-owned broadcasters (particularly television) are even more strongly biased towards government than the national newspapers. The only mention of independence in the ERTU Law is in relation to the budget, which shall be "independent," "as decreed

and mandated by the President” (Article 18).

The main bodies overseeing ERTU, as set out in its governing legislation, are the General Assembly, the Board of Trustees and the Board of Managing Directors (Article 4).

Pursuant to amendments to the ERTU law adopted in 1989,<sup>20</sup> the General Assembly is now chaired by the Minister of Information (previously, it was chaired by the Chair of the Board of Trustees). The General Assembly also includes representatives of around 12 other ministries; the members of the Board of Trustees; representatives of Al-Azhar, Egypt’s highest Islamic authority; the Supreme Council for Youth and Sports; and other experts appointed by the Minister of Information (Article 28). Pursuant to Article 29, the General Assembly approves the annual reports and financial reports, draft budgets and actual budgets, and a number of other financial documents of ERTU.

The Board of Trustees is the main governing body of ERTU. It is required to meet at least once a month and it sets key ERTU policies, approves activity plans, develops the code of ethics, approves the internal by-laws and statutes, including pay scales, and monitors and assesses performance (Articles 5-10). The 1989 amendments to the ERTU Law provide that decisions of the Board of Trustees must be sent to the Minister of Information for approval. Where the Minister has an objection, the matter shall be sent back to the Board for reconsideration (Article 8). Prior to these amendments, the Board did not need such ministerial approval.

The Chair of the Board of Trustees is appointed by a presidential decree, upon the recommendation of the cabinet, and the Deputy Chair is appointed by the Minister of Information. The Prime Minister appoints a number of public figures to the Board, to represent various sectors of society. The Board also includes the managing directors of the main “sectors” of ERTU (of which there are around ten,

including news television, radio and engineering), who are appointed by Presidential Decree; and the President of the General Authority for Information (Article 5).

The Board of Managing Directors falls under the chairmanship of the “President of the Board of Trustees” (who is presumably the chair of that Board, appointed by the President of the Republic) (Articles 11 and 12). Pursuant to Article 12, as amended, all “designations or appointments in the core functions” of ERTU shall be “mandated and decreed by the Minister of Information.” The governing structures of ERTU are thus firmly under government control.

The Board of Trustees presents a proposed budget for ERTU to the President, who then adopts it through a decree (Articles 16 and 18). ERTU may take advantage of several sources of funding, including charging statutory fees, business activities, government budget allocations and grants, and revenue generated by the companies it owns (Article 20). In practice, most of the funding for ERTU is provided directly from the state budget, although ERTU stations do lease out some broadcasting time. ERTU also has significant business interests, including major shares in Nilesat, which presumably generate some additional revenue.

The revolution has directly impacted ERTU’s governance systems, most significantly with the removal (at least temporarily) of the Minister of Information. Following Mubarak’s departure, the Chair of the ERTU Board of Trustees was replaced by Dr. Samy Sherif, formerly a media and communications professor. In early June, however, Dr. Sherif was replaced by Tarek El-Mahdy, a military general, and the organization has reportedly been put under the direction of a council appointed by the Supreme Council of the Armed Forces. As a result, it appears that ERTU is presently largely under the control of the governing military authorities.

Reform of ERTU has already been identified as a priority by several stakeholders and there is a clear need to make it more accountable to the public. Much thought needs to be given to an appropriate structure for ERTU, one which would be protected against political interference and yet sufficiently robust to embark on the very difficult task of transforming ERTU into a public service broadcaster.

## Regulation of the Print Media

The key oversight body for regulating the print media is the Supreme Press Council, which is established by Article 67 of the Press Law. Pursuant to Article 68, the Council is constituted by a decree of the President of the Republic, and the Speaker of the Shura Council serves as Chair.

Other members include:

- The Chairpersons of the board of directors of the “national press organizations” (the state print media outlets) who, in turn, are appointed by the Shura Council (Article 64).
- The editors-in-chief of the state newspapers (also selected by the Shura Council; see Article 65).
- The Chair of the Journalist Syndicate, along with four other Syndicate members appointed by the Shura Council.
- The Chair of the Labor Union that represents media workers, along with four other Union members appointed by the Shura Council.
- Two journalism professors appointed by the Shura Council.
- Two legal experts appointed by the Shura Council.
- A number of public figures appointed by the Shura Council.

The Supreme Press Council is thus firmly under the control of the Shura Council. Pursuant to Article 196 of the (now suspended) 1971 Constitution, two-thirds of the members of the Shura Council were elected and one-third were appointed by the President. This appointment process is set to continue under Article 35 of the Constitutional Declaration.

Following the departure of Mubarak, the Supreme Press Council was temporarily abolished. The longer-term question of what to do with the body is already being debated in some circles in Egypt and there have been calls for it simply to be abolished.<sup>21</sup> That will raise further questions about who might be tasked with taking on its functions, as described below. As a minimum, it seems clear that this body needs to be protected against government interference.

Anyone wishing to publish a newspaper must first obtain a license from the Supreme Press Council. The application for a license must include various types of information, including the title, language, periodicity, business sector, budget breakdown, sources of funding and editorial structure of the publication, nationality and place of residence of the proprietor, name of the editor-in-chief and address of the printing house that will print the publication (Article 46). Pursuant to Article 50, no one who is prohibited by law from exercising their political rights may own or publish a newspaper.

The Supreme Press Council is required to decide on an application for a newspaper license within 40 days (Article 47). Where an application is refused, the Council shall provide specific reasons for the refusal to the applicant, who may then appeal to the Court of Administrative Adjudication within 30 days. The law does not indicate what might justify a refusal to issue a license. However, Article 49 of the Press Law states that obtaining a license to publish a newspaper is a “special privilege.”

Before the revolution, applications for newspaper licenses reportedly had to be approved by the security forces; shortly after the revolution, the interim government announced that this practice would be stopped. In practice, it was extremely difficult to obtain a license to publish a newspaper. Despite the formal 40-day processing rule, delays in processing applications were common, sometimes to the point where this effectively constituted a refusal of the application.

The Press Law establishes stringent conditions for how newspapers must be structured and established. Newspapers may be owned by political parties, the state or private owners. Political party newspapers are quite common but there are strict conditions for the establishment of privately-owned newspapers. Such newspapers must take the form of co-operatives owned exclusively by Egyptians, with no one person owning more than ten percent of the overall capital (Article 52). It is unclear whether these rules are enforced in practice, as at least some major print media titles appear to be owned, or at least controlled, by individual businessmen.

There are no specific rules on concentration of media ownership or cross-ownership. Indeed, the country does not appear to have any anti-monopoly laws at all. Given the strict ten percent limit on ownership of newspapers, rules on concentration of newspaper ownership may not be necessary. It is not clear whether or not ownership structures are taken into account when applications are made for a private satellite broadcasting license (see below for a description of how this works), but in practice different actors own the main stations. Media ownership thus remains quite diverse at the moment, although some vertically integrated ownership structures are beginning to emerge, for example in the form of ownership of television, print media and online media. It may be noted that it is much easier to put in place rules limiting concentration of media ownership before concentrations start to emerge.

The Press Law includes some other rules relating to financial issues. Prior to publication, newspaper owners must deposit in full in an Egyptian bank a substantial sum of “paid-in or contributed capital.” This is set at a minimum of one million Egyptian pounds for dailies (approximately USD168,000), LE250,000 (approximately USD42,000) for weeklies and LE100,000 (approximately USD17,000) for monthlies (Article 52).

Pursuant to Articles 46 and 51, newspapers have to disclose their ownership structures to the Supreme Press Council when applying for a license, and inform the Council of any changes to this. Although this is not public information, pursuant to Article 33, newspapers must publish their budgets within the first six months of each fiscal year and again at its end. It is not clear whether or not this has actually been followed in the past.

This system of licensing and restrictions on the establishment of newspapers is in direct contradiction with international standards, pursuant to which licensing regimes for the print media are viewed as a restriction on freedom of expression. The various financial conditions, including those limiting ownership to ten percent of the overall capital and imposing capital deposit requirements, also cannot be justified under international law. The question thus arises as to how the system should be reformed in post-revolutionary Egypt.

There are few rules relating to advertising or other forms of fundraising, although Article 30 does prohibit newspapers from receiving any contributions or donations from foreign entities. Overcharging for advertising is deemed to be a benefit or subsidy, although it is not clear how this might be measured. Breach of the rule on foreign donations attracts a small fine, as well as an obligation to pay twice the amount of the donation.

Article 31 sets out some very general rules for newspaper advertisements, providing that they

may not contradict the shared values, ethics and ideals of society, or the “mission statement, goals and objectives of journalism.” These are extremely vague terms which could easily be abused. The same article also requires editorial content and news to be clearly distinguished from advertising. Consideration should be given to whether or not a proper system for regulating advertising, including a public complaints component, should be put in place and, if so, how it should be structured.

The Press Law establishes a regime for the rights of correction and reply, which, at least in translation, is variously and inconsistently referred to as a “corrigendum,” “correction” or “rejoinder.” Where requested, the editor-in-chief is required to publish a correction within three days, or in the next edition, on the same page and with similar characteristics to the original article. There are no rules regarding when these rights may be claimed, although presumably the right of correction only applies when the original information that was published was incorrect (Article 24).

The party requesting a correction or reply must do so by registered mail (Article 25). Such a request may be rejected if made more than 30 days after the original article was published or where the newspaper has already published a correction. A newspaper may also refuse to publish a correction that involves a criminal act or that contravenes public order or morality (Article 26).<sup>22</sup> These appear to be the only grounds for refusing a request for a correction or reply.

Where a request for a correction or reply is refused, the aggrieved party may complain to the Supreme Press Council. In this case, the law provides for a sentence of a mandatory term of imprisonment of three years or a fine of between LE1,000–4,000 (approximately USD170–675) (Articles 27 and 28).

Once again, these rules are not in line with international standards, pursuant to which limits need to

be imposed on when a reply, in particular, may be claimed. In particular, this remedy should be limited to circumstances where the rights of the claimant have been breached by the newspaper. Otherwise, the system could be abused to transform newspapers into platforms for anyone who claimed a right of reply.

## Regulation of the Broadcast Media

There is no dedicated regime for the regulation of private broadcasting in Egypt. As a result, many of the characteristics that are commonly associated with broadcast licensing and regulation – such as rules on diversity, public complaints systems, systems for allocating frequencies, rules on election coverage and so on – are simply not present in Egypt. There were proposals to introduce a broadcasting law in 2008, but these were never brought to fruition.

The main reason for this is probably that there are essentially no private terrestrial broadcasters in the country.<sup>23</sup> There are a number of private satellite television stations, all of which are based in the Free Zones in Egypt, and in particular in the Media Public Free Zone. These are special areas located inside of Egypt to which special rules, including tax-free status, apply.

The Free Zones fall under the jurisdiction of the General Authority for Investment (GAFI).<sup>24</sup> GAFI is an “autonomous” agency reporting to the Egyptian government and responsible for exercising regulatory control over investment. Although legally autonomous, it is not independent of the government. The Chair and other members of the Board, for example, are appointed by the Prime Minister. It thus lacks the independence that would normally be required of a body exercising regulatory powers over broadcasting.

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To set up a satellite broadcaster, one must make an application to GAFI for a business license, although it is not clear exactly what this involves. In the past, such applications reportedly had to be approved by the security services. Furthermore, strict controls were placed on the scope of activity of licensed broadcasters. It was, in particular, difficult to get permission to broadcast news directly, although some of these broadcasters appear to have found innovative ways to get around such restrictions.

A further layer of control over the private satellite television stations is exercised through their relationship with the satellite companies that distribute their signals, which are largely under government control. Some limited rules relating to content were at least sometimes built into contracts between these broadcasters and the satellite companies, and it is possible that these contracts were used to further other regulatory or control objectives.

In a new, democratic Egypt, serious thought will need to be given to the idea of licensing private terrestrial broadcasters. International courts have held that public broadcasting monopolies represent a breach of the right to freedom of expression.<sup>25</sup> There is a very near monopoly in the radio sector, and while the television sector is not quite a public

monopoly, it is for the large number of Egyptians that cannot afford or otherwise do not have access to pay TV.<sup>26</sup> This raises issues regarding access to terrestrial broadcasting frequencies.

The National Frequency Management Commission has developed a comprehensive plan for the allocation of the frequency spectrum, called the Egyptian Radio Spectrum Allocation Chart.<sup>27</sup> That plan was prepared in 2008 and is due to be updated in 2012. The Commission is composed of representatives of the National Telecommunications Regulatory Authority (NTRA), the Ministry of Telecommunications, the armed forces, the presidency and three independent experts.

The Chart allocates frequency bands to different types of uses, in line with International Telecommunication Union (ITU) rules. In terms of broadcasting, the plan allocates blocks of frequencies for broadcasting uses (such as the FM and medium wave radio spectrums), but it does not indicate sub-allocations to different types of broadcasters within those blocks (such as public or community broadcasters).

It seems unlikely that there is any specific broadcasting frequency plan that makes these sub-allocations, among other things because at the moment only stations under ERTU are able to use most of them. The ERTU has suggested that, at this point, no frequencies are available for private broadcasters.<sup>28</sup> This does not seem technically possible, as the ERTU cannot, for example, be using all of the FM radio spectrum throughout the country. Even if this were the case in some of the larger cities, such as Cairo and Alexandria, it seems extremely unlikely that such usage would extend to the smaller cities and towns, let alone less densely populated areas. In any case, if the ERTU really were occupying all available spectrum, the issue would be how to free up spectrum for private broadcasters. This may require ERTU to surrender some of its frequencies

or upgrade its equipment so that its stations use less spectrum per channel.

Another part of the solution may lie in the transition and switchover from analogue to digital broadcasting, which would free up spectrum. The NTRA claims that there is a plan for the digital transition, but it has not been made public. The development of such a plan should involve wide consultations with interested stakeholders,<sup>29</sup> which has not happened so far in the Egyptian context.

## Regulation of the Internet

The shutdown of both the Internet and mobile phone services during the revolution is now notorious. As early as January 25 or 26, three social websites – namely Facebook, Twitter and Bamboozle – were largely shut down in Egypt. On January 28, all but one of the six main ISPs in the country were shut down; the smallest provider, Noor, which apparently services the stock market and some other key financial institutions, was kept open. However, on January 31, Noor was also closed down, along with the three mobile phone providers. All of these services were restored on February 2.

Shutting down the Internet is an extreme measure which has only been done by a few of the most undemocratic states. There is currently a debate going on in Egypt regarding the conditions under which such a move could be taken. Many observers believe that it is never, or at least almost never, legitimate to shut down the whole Internet for a country.<sup>30</sup>

Prior to the revolution, there had been relative freedom of the Internet in Egypt, with only a few cases of blocking of Internet sites, mostly during elections. A Facebook page on someone who had been tortured was taken down, and an administrative court banned a site carrying sexually explicit material, although this was apparently never implemented. According to observers, during the

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2010 elections, some sites of the Muslim Brotherhood were blocked for a few days and one Twitter account was obstructed.

The main regulatory system governing the Internet is the Telecommunications Law,<sup>31</sup> which requires all ISPs and mobile phone providers to register with the NTRA. The Law prohibits any form of non-licensed telecommunications service, defined extremely broadly as: “Providing or operating telecommunication through whatsoever mean” (Article 1(4)). Telecommunication, for its part, is defined as: “Any mean for transmitting or receiving signs, signals, messages, texts, images or sounds of whatsoever nature whether through wired or wireless communication” (Article 1(3)). This covers an extremely wide range of services. For example, it covers voice over Internet protocols (VOIP), so that use of Skype is formally illegal in Egypt. It also renders the operation of a local Wi-Fi operation illegal, although these are extremely common in homes and businesses in the country.<sup>32</sup>

This is another system that needs to be reviewed in the post-revolutionary environment with a view to bringing it into line with both modern reality and a more human rights-compliant approach.

## Regulation of Journalists

The key institution with powers relating to the regulation of journalists in Egypt is the Journalist Syndicate. This is an historic body; the first meeting

with a view to establishing it took place in 1900 in Cairo, although the idea was effectively quashed by the British authorities.<sup>33</sup> When the Syndicate was finally created, in December of 1941, it was founded as an autonomous entity. It has, however, always had a difficult relationship with the Egyptian authorities, and it was finally brought under a statutory regime with the adoption of Law No 76 of 1970 (Journalist Syndicate Law).<sup>34</sup> An interesting historical recollection is that this was apparently the last law President Nasser signed before his sudden death on September 28, 1970.

The purposes of the Syndicate are set out at Article 3 of the Law. These include promoting socialist and patriotic concepts among its members, promoting professionalism, securing the freedom of its members, providing job opportunities and security, mediating disputes, and providing links with international bodies.

The General Assembly is formally the ruling body of the Syndicate, composed of all of its employed members. It meets once a year to decide on key issues, including the election of the president (known as the “Captain Journalist”) and other members of the Board (Articles 32, 33, 38 and 39).

Pursuant to Article 36, the Board consists of the Captain Journalist and 12 other members of the Syndicate. In practice, the Board is the key governing body of the Syndicate, and it must meet at least monthly (see Article 47, setting out the powers of the Board, and Article 50). The Captain Journalist must have been a member of the Syndicate for at least ten years, while other Board members must have been members for three years. All must, according to the law, be “active members of the Arab Socialist Union,” the political party founded in 1962 by Gamal Abdel Nasser. Presumably, as the Arab Socialist Union was disbanded in 1978, this rule has not been applied for some time.

The Syndicate is subject to extensive government

control through the Journalist Syndicate Law. Pursuant to Article 42, the Board must inform the Arab Socialist Union and the Minister of National Guidance (presumably now the Minister of Information, as the Ministry of Information succeeded the Ministry of National Guidance with its establishment in 1982) about the outcome of elections to the General Assembly, along with all of the other decisions of the General Assembly, within one week of their having been adopted. Pursuant to Article 62, the Minister of National Guidance may appeal against the membership of the Syndicate Board, or against any decisions or resolutions of the General Assembly.

Article 64 gives the Minister of National Guidance the power to petition the President to issue a decree dissolving the Board where he or she is of the view that it has failed to pursue its stipulated goals and objectives (set out in Article 33), to fulfill its terms of reference or roles and responsibilities (set out in Article 37), or to act in accordance with the required procedural rules (set out in Article 32). In this case, an interim committee is formed to run the Syndicate, comprised of the Chief Judge of the Cairo Court of Appeal, the Public Prosecutor, a legal representative of the Ministry of National Guidance and two representatives from the Syndicate, designated by the Minister of National Guidance.

In addition to these measures of control in relation to the General Assembly and Board, the Ministry of National Guidance also has representatives on the investigation and disciplinary committees (see Articles 80 and 81; these committees are described in more detail below). Furthermore, the committee that reviews complaints regarding employment issues includes numerous government and official representatives (Article 113).

The government thus exercises very important measures of control over the Syndicate. Although these are not as blatant as in some even more

repressive regimes, in practice in the past they provided the government with important influence over the Syndicate. It is significant, for example, that Makram Mohamed Ahmed, the former head of the Syndicate, was forced to vacate his position more or less immediately after Mubarak stepped down. At the same time, the Syndicate was not simply a government tool. It provided important services to its members and, on occasion, protested against proposed repressive government measures, in particular laws.

An important question for Egypt in the post-revolutionary period is what changes need to be made to ensure that the Syndicate can, in the future, operate free of government control. At a minimum, it will have to sever its institutional relations with the government. But it is hard to see how it could meet international standards of respect for freedom of expression while remaining a statutory body.

The Journalist Syndicate Law establishes four different categories of membership in Article 4: employed journalists, unemployed journalists, affiliated journalists and apprentice journalists. Article 5 sets out the conditions for membership, which include acting as a professional, not owning or holding shares in newspapers, being an Egyptian citizen, holding a university degree, being of good repute, not having been convicted of a “dishonorable or notorious criminal act” and not having had one’s membership revoked for reasons “compromising their integrity.”

Registration is by way of the Registration Committee, which is composed of the Deputy Captain Journalist, as president, and two other members of the Syndicate Board. The Committee is required to provide the names of prospective applicants to the Arab Socialist Union and the Ministry of National Guidance, for their “input and insight” (Article 13). The Arab Socialist Union and the Ministry of National Guidance must also be provided with

a copy of the list of members (Articles 4 and 16). Where a request for membership is denied, the concerned individual may lodge an appeal with a committee comprised of a judge of the court of appeal, a senior public prosecutor, the Director of the Information Authority, and two members of the Syndicate Board, chosen by the Board.

Article 6 deems journalists to be “employed” only if they are engaged in “regular paid employment” for which they receive “regular and fixed remuneration.” This definition would appear to exclude freelance journalists. To be registered as employed members, individuals also have to have completed the requisite apprenticeship program (Article 7). The law sets out detailed conditions for the apprenticeship program, including that it shall last for one year for graduates of journalism programs and two years for other graduates (see Articles 8 and 10). Employed members receive a number of important benefits, including the right to participate in the General Assembly. The Registration Committee may, at its discretion, register individuals who do not meet all of the conditions of Article 5 as affiliate members (Article 12).

Members may be removed from the Syndicate on various grounds. These include non-fulfillment of any of the conditions of membership (Article 18), non-payment of fees (Article 23), and as a form of disciplinary sanction (Article 77; this process is described in more detail below). Where members cease to be employed, they may be moved to the unemployed journalists roster, at the request of the Board, the Arab Socialist Union or the Ministry of National Guidance (Article 20).

In the past, it was difficult to gain membership of the Syndicate, even for individuals who met the conditions. The Syndicate has about 5,500 members, while there are reportedly some 14,000 eligible journalists in Egypt. At the same time, a number of individuals are reportedly members of the Syndicate,

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even though they are not “journalists” according to the definition.

A key question is whether, in law, one may practice journalism without being a member of the Syndicate. Article 65 of the Journalist Syndicate Law suggests that one must be a member of the Syndicate to work as a journalist, stating:

Regular individuals may not engage in professional practices or perform press-related functions unless they are registered in the Syndicate rosters and upon an approval by the Arab Socialist Union.

Article 103 of the Law prohibits newspaper owners from hiring individuals who are not members of the Syndicate to work as journalists, whether on a permanent or temporary basis. Pursuant to Article 115, breach of these articles may result in imprisonment for up to one year and/or a fine of up to 300 Egyptian pounds (approximately USD50). Furthermore, the Penal Code makes it a crime to impersonate a journalist.

These rather clear rules find support in certain provisions of the Press Law. For example, pursuant to Article 17, the employment contract of a journalist may not be terminated without notifying the Syndicate, implying that only members of the Syndicate may work as journalists (since one would

hardly contact the Syndicate regarding a non-member). However, pursuant to Article 54 of the Press Law, editors-in-chief and editors of newspapers must be registered as employed journalists with the Syndicate. This might be read as suggesting that ordinary working journalists do not need to be members.

In practice, it would appear that one might indeed work as a journalist without being a member of the Syndicate. As noted above, there are reportedly some 14,000 media workers in Egypt, of which only 5,500 are members of the Syndicate. There is no evidence of prosecutions under the Journalist Syndicate Law for working as a journalist without being a member, but there have been a number of prosecutions under the relevant Penal Code provisions for impersonating a journalist.

It is quite possible that the apparent inconsistency between the rules and the practice was simply part of the complex system of control put in place by the Egyptian authorities, which was designed to create legal uncertainty, with a view to ensuring that journalists, and particularly those who were not members of the Syndicate, were always in a vulnerable position.

Regardless of whether membership in the Syndicate was a necessary precondition for working as a journalist, members receive important benefits that are denied to their less fortunate brethren. These benefits often flow through the joint operation of the Journalist Syndicate Law and the Press Law.

For example, members benefit from certain protections against and during criminal investigations. Pursuant to Article 43 of the Press Law, the Chair of the Syndicate has the right to attend investigations against members, as well as to obtain copies of such investigations free of charge (see also Articles 69 and 71 of the Journalist Syndicate Law). Article 39 of the Press Law requires the Supreme Press Council to report the findings of any criminal

investigation against a journalist that discloses evidence of a crime to the Syndicate Board. Pursuant to Article 68 of the Journalist Syndicate Law, no investigation may be launched regarding a journalist without the permission of the public prosecutor.

The Syndicate is given extensive powers in relation to employment contracts involving members. Pursuant to Article 15 of the Press Law, it has the right to conclude collective agreements on behalf of members, and to enter into contracts with journalists as a direct party. Contracts may not, pursuant to Article 17 of the Press Law, be terminated without first contacting the Syndicate and giving it the opportunity to try to mediate a solution. Articles 104 and 105 of the Journalist Syndicate Law require employers to conclude contracts with Syndicate members, and these shall clearly identify the scope of work to be undertaken. Pursuant to Article 113, employers are required to report to the Syndicate on the terms of the contracts they conclude with journalists. There are also rules relating to termination of contracts (Article 108), severance pay (Articles 110 and 111), vacations (Article 106) and sick leave (Article 107).

The Syndicate also provides a number of direct benefits to its members. Pursuant to Article 70(15) of the Press Law, the Supreme Press Council is responsible for specifying a certain percentage of advertising revenue (reportedly one percent) which goes to the pension funds managed by the Syndicate and Labor Union. Articles 88-102 of the Journalist Syndicate Law set out detailed rules regarding the management and operation of this pension fund. There is also a provision for supporting journalists and their families in case of an emergency (Article 100). Perhaps most importantly, although this is not directly provided for in the law, the Syndicate pays its members a monthly stipend, apparently of LE600 (approximately USD100), which comes from the government.

It is thus clear that membership in the Journalist Syndicate brings with it very significant advantages. Looked at from another perspective, one could say that the system effectively establishes a two-tier structure for the journalism profession, members of the Syndicate and non-members. This is very problematic from the perspective of international law.

New journalists' associations have already been formed in Egypt in the post-revolutionary environment. The special status of the Syndicate, combined with its lack of independence from the government, was used in the past as a means of control over the profession. This special status, backed up by law, can no longer legitimately be maintained, and a major question is how to reform the system so that it is fair and does not create opportunities for government control, and yet still ensures a strong institutional environment for defending the rights of journalists.

Pursuant to Article 75 of the Syndicate Law, acts that breach the Journalist Syndicate Law, the internal statutes of the Syndicate, the code of ethics or "specified professional duties and responsibilities," or any act that "may compromise the integrity of the Syndicate," may be referred to the Syndicate's Disciplinary Board.

Prior to being referred to the Disciplinary Board, the matter should be investigated by an investigation panel. The Press Law and Journalist Syndicate Law differ slightly on the matter of who the members of this panel are. Pursuant to Article 36 of the Press Law, the investigation panel shall be made up of the Deputy Chair of the Syndicate, a judge from the State Council, selected by that Council, and the Secretary-General of the Syndicate (or a sub-syndicate, as appropriate). The Syndicate Law provides that the investigation panel shall be composed of the Deputy Captain Journalist, a legal advisor from the Ministry of National Guidance

and the Secretary of the Syndicate, or respective sub-syndicate (Article 80).

Following an investigation, and where this is warranted, a Disciplinary Board shall be constituted to adjudicate the matter. Once again, there is a slight difference between the composition of this body as described in the Press Law and the Journalist Syndicate Law. Article 37 of the former states that the Disciplinary Board shall comprise three members selected by the Syndicate Board from among its members, one member from the Supreme Press Council, also selected by the Syndicate Board, and one judge from the State Council. Article 81 of the Syndicate Law, on the other hand, describes the membership as being two members of the Syndicate Board and one representative from the Ministry of National Guidance.

If found to be in breach of the rules, a journalist may appeal the verdict of the Disciplinary Board to the Disciplinary Appeal Board, composed of the members of a judiciary circuit at the Cairo Appeal Court; a member of the Syndicate Board; and a representative chosen by the journalist under investigation (see Article 38 of the Press Law and Article 82 of the Syndicate Law).

Pursuant to Article 77 of the Syndicate Law, a journalist found to be in breach of the rules may be subjected to a range of disciplinary sanctions, including a warning letter, a fine of up to LE20 (approximately USD3), a one-year suspension from the profession, or removal or expulsion from the Syndicate. A suspended journalist may not work as a journalist (Article 78). Once removed, a journalist may apply for readmission to the Syndicate, but only after a period of five years (Article 88).

As noted above, disciplinary actions may be based on a number of grounds, some rather vague and others less so. These include breach of the code of ethics. This code is, according to the Journalist Syndicate Law, to be developed by the Syndicate

Board (Article 47) and approved by the General Assembly. Pursuant to Article 70(10) of the Press Law, the Supreme Press Council is tasked with “releasing the code of ethics developed by the Journalists Syndicate,” which presumably refers to it being formally adopted.

Decree 4/1988 of the Supreme Press Council issued the Press Code of Ethics (the Code). In some ways, the Code is a fairly typical example of its genre. It does, however, include some provisions that are unusual. For example, it incorporates a particular stress on moral issues. Thus, clause II(1) calls for respect for the truth, a very common ethical rule, but this is conditioned on the truth being respected “in a manner that best secures the virtues and moral of the society.” On the other hand, clause II(3) simply calls for the honest presentation of information, without distortion, which seems to contradict the earlier provision.

Another example of an area where the Code goes beyond the ordinary is in its calls for solidarity among journalists. For example, clause II(12) calls on journalists to “refrain from causing personal mutual harm.” The Code also seeks to establish journalists’ rights, for example to protect their sources (clause (1) under Rights) and not to be blackmailed (clause (2) under Rights). It is, however, not clear how this would work, since the Code only binds other journalists and these obligations would normally pertain to other actors.

Finally, unlike many sector-wide codes of conduct, the Press Code of Ethics does not function as a public complaints system. Instead, it is more of an administrative rule, with formal systems of adjudication and relatively onerous possible sanctions.

One of the issues that will need to be considered alongside the wider issue of reform of the Syndicate is the question of reforming this disciplinary system. The print media in Egypt may prefer to try to create a truly self-regulatory system of

complaints, such as is utilized by the print media sector in many democracies. Otherwise, the system will need to be reformed so that it applies to all journalists, not merely those who are members of the Syndicate.

With regards to broadcast, the Board of Trustees of the ERTU is responsible for developing a professional code of conduct for broadcasters.<sup>35</sup> This code does not form the basis of a public complaints system, but is rather used as internal guidance within ERTU. Private satellite television stations are sometimes required to respect basic content obligations, in particular to avoid sexual content or material insulting to Islam. These are imposed through their private contracts with satellite carriers, such as Nilesat, which are subject to extensive government control.

The right of journalists not to reveal their confidential sources of information is protected by Article 7 of the Press Law, which also prohibits anyone from coercing journalists to reveal these sources. However, these protections are subject to “relevant laws.” As a result, any law may override the right to protect confidential sources. Reportedly, protection for sources is weak in practice.

There is no self-regulatory system for either the print or broadcast media in Egypt. For journalists working for the print media,<sup>36</sup> the Press Law and Journalist Syndicate Law establish what is effectively an administrative system of disciplinary rules.

A typical self-regulatory system would normally allow for members of the public to lodge complaints against the media when they believe it has breached professional standards, as reflected in an established code of conduct. In contrast, Egypt’s Press Law stipulates that only the Journalist Syndicate may take disciplinary actions against journalists (Article 34).

## Access to Information

There is no right to information or access to information law in Egypt. There have been discussions about this – both within government and among civil society activists – for some time, but actual progress has been limited. There are now renewed calls for a right to information law and some indications that the interim government is moving forward on this. There have been some consultations with civil society on a draft law.

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*There is no right to information or access to information law in Egypt.*

Article 8 of the Press Law provides that journalists have the right to access information from “public and/or government sources,” although this is subject to “applicable laws.” Pursuant to Article 9, restrictions that impede the flow or accessibility of information are prohibited, along with restrictions that may undermine “citizens’ ability to gain knowledge and information.” These protections are, however, subject to “national security and supreme interests.” Article 10 of the Press Law also gives journalists the right to request information, without prejudice to the preceding two provisions, except where it is “deemed confidential or classified, by default, in compliance with the provisions of applicable laws.” In practice, these rules have done little to ensure that journalists can access information held by public bodies.

There are numerous secrecy provisions in different pieces of Egyptian legislation. Such provisions are found in at least the laws on the national archives, on intelligence, on auditing, on publishing military information, on publishing official documents, on

the civil service, on the Central Agency for Public Mobilization and Statistics (CAPMAS), and in the Penal Code. Together, these provisions give the Egyptian authorities wide discretion to refuse to disclose practically any information they wish to keep confidential.

International law protects the right to information and only allows restrictions on this right that meet the test for all restrictions on freedom of expression. Bringing Egypt's secrecy rules into line with these standards and adopting a right to information law to give effect to this right are both priorities and major challenges in the Egyptian context.

## Conclusion

The media law and policy reforms needed to bring the regulatory framework for the media in Egypt into line with international standards are daunting. A number of human rights organizations have been calling for media law reform for many years without success. However, the revolution has created an unprecedented opportunity to actually secure some of these much-needed reforms.

It is now reasonably clear from other democratic transitions that there is a window of opportunity during which it is relatively easier to secure human rights reforms. This is not to suggest that reforms cannot be achieved later on, just that this tends to require far more effort. If this is correct, reformers in Egypt face a major challenge in deciding which key reforms to prioritize.

This report does not purport to identify priority areas for reform, as this is a matter for local stakeholders. It does, however, outline the key areas where reform is needed to bring the system into line with international standards. In this way, it is hoped that the report will assist local stakeholders in the difficult process of identifying reforms and working to secure them.

## Endnotes

1. There are no reliable figures on access to these satellite channels, in part because of the high rates of black market subscriptions, which may account for up to 75 percent of all subscriptions. The rate is reportedly over 40 percent in urban areas. See <http://www.ameinfo.com/157522.html>.
2. There is strong penetration of television (92 percent) and radio (94 percent), and reasonably high telephone access (65 mobile or landline phones per 100 inhabitants). Internet usage, however, is still relatively low, at 16.6 percent, although it is increasing rapidly. (All of these figures are based on the 2010 UNDP Report and reflect the situation in 2008.)
3. See <http://ncmf.info/?p=223> and <http://www.google.com/hosted-news/afp/article/ALeqM5jfdUQu8DzC7nOnKdPxnFD9kqtpZw?docId=CNG.6c4645ce2c3aff875cec6a3515475b82.7f1>.
4. Available at <http://ncmf.info/?p=117>.
5. In some cases, laws are also out of date, for example referring to bodies and institutions that no longer exist, such as the Arab Socialist Union.
6. There is some suggestion that one of the nine articles was later subtly changed, with powers destined for the president given to the Supreme Council of the Armed Forces. See In the footsteps of the Tunisian revolution: A Constitution first. Available at <http://www.cihrs.org/English/NewsSystem/Articles/2891.aspx>.
7. The Constitutional Declaration is silent as to what would happen if the people rejected the proposed Constitution.
8. See In the footsteps of the Tunisian revolution: A Constitution first, note 6.
9. UN General Assembly Resolution 2200A (XXI), adopted on 16 December 1966, in force since 23 March 1976. Text available at <http://www2.ohchr.org/english/law/ccpr.htm>.
10. Administrative censorship is the application of acts of censorship by administrative bodies.
11. Law No 96 of Year 1996 Concerning the Regulation and Organization of Journalism and Press Functions.
12. Article 4 of the ICCPR.
13. We were not, unfortunately, able to get a full English translation of the Penal Code.
14. See Law No 147 of Year 2006.
15. See The Arabic Network for Human Rights Information (ANHRI), Freedom of Opinion & Expression in Egypt: Annual Report 2007. Available at <http://old.openarab.net/en/node/277>.
16. This provision does not seem to have its own article number, at least in the available translation.
17. For more information on public service broadcasting, please see Toby Mendel, Public Service Broadcasting: A Comparative Legal Survey, 2nd Edition. Paris: UNESCO, 2011. Available online at <http://unesdoc.unesco.org/ages/0019/001924/192459e.pdf>.
18. Law No 13 of Year 1979.
19. See Hussein Amin, Report on the State of the Media in Egypt, published by The Arab Center for the Development of the Rule of Law and Integrity. Available at: [http://www.arabruleoflaw.org/Files/PDF/Media/English/P2/Egypt\\_MediaReportP2\\_En.pdf](http://www.arabruleoflaw.org/Files/PDF/Media/English/P2/Egypt_MediaReportP2_En.pdf).
20. Law No 223 of 1989 Amending Certain Provisions of Law No (13) of 1979 regarding the Establishment of Egyptian Radio and Television Union.
21. See, for example, the May 3, 2011 Media Freedom Declaration Cairo. See note 4.
22. The law only refers at this point to a correction, although a reply is far more likely to breach these rules and it may be presumed that the rule does extend to replies.

23. Apart from two FM radio stations in Cairo.
24. See <http://www.gafinet.org/English/Pages/FreeZones.aspx>.
25. See Informationsverein Lentia and others v. Austria, 28 October 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90 (European Court of Human Rights).
26. The rate is reportedly quite high. See note 1.
27. This is available online at <http://www.tra.gov.eg/EgyAllocChart.pdf>.
28. See Anne Cooper-Chen, Global entertainment media: content, audiences, issues. New Jersey: Lawrence Erlbaum Associates, 2005, p. 88.
29. See, for example, the December 12, 2007 Joint Declaration by the special international mechanisms for promoting freedom of expression. Available at <http://www.osce.org/fom/29825>
30. This was the position taken by the special international mechanisms for freedom of expression in their Joint Declaration on Freedom of Expression and the Internet of June 1, 2011. See para. 6(b). The Joint Declaration is available at <http://www.law-democracy.org/?p=842>.
31. Law No 10 of Year 2003 on Telecommunication Regulation, available online in English at [http://www.tra.gov.eg/uploads/law/law\\_en.pdf](http://www.tra.gov.eg/uploads/law/law_en.pdf).
32. Many cafes, for example, offer free Internet to their customers and there are many Internet cafes, most of which presumably do not have a licence from NTRA.
33. See Anis, M. and Sakr, H., The six-decade balancing act, Special Issue No. 872 of Al-Ahram, November 22-28, 2007. Available at <http://weekly.ahram.org.eg/2007/872/special.htm>.
34. Law No. 76 of 1970 Regarding the Formation and Establishment of the Journalist Syndicate was published in the Official Gazette on September 17, 1970.
35. See Article 6(1) of Law No 13 of Year 1979 on the Egyptian Radio and Television Union (ERTU Law).
36. It is not clear from the laws whether these rules only apply to members of the Syndicate or everyone who is in fact working as a journalist.

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