



ASSESSMENT OF MEDIA LEGISLATION IN LIBYA

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MEDMEDIA

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A large number of private media outlets were founded after the revolution and, in the absence of legislation, there are few restrictions regarding ownership, funding, ethical standards, transparency and so on.



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I. EXECUTIVE SUMMARY

Libya has no history of free and independent media, and this has not changed post-revolution. As it is therefore not possible to conduct a proper analysis of media legislation in the country, this report focuses on the subject in more general terms.

The ongoing crisis in Libya means that media legislation may not have much effect in reality. It is often unclear whether pre-revolutionary legislation still applies and new laws may disregard international best practice. It has been difficult to get access to official, current versions of legislation and impossible to interview lawmakers. For these reasons, this report covers the actual current conditions for the media as well as the legal situation.

The Qaddafi regime allowed the media very little freedom and prohibited them from criticising the regime, although limited debate on some issues was allowed. After Qaddafi was toppled in 2011, a provisional Constitutional Declaration was adopted which outlined a limited number of civil, political, social and economic rights: freedom of opinion and expression is guaranteed (Article 14); private life is inviolable and protected by statute (Article 12); and correspondence, telephone conversations and other communications are inviolable and confidential (Article 13). Certain earlier laws and rules were repealed (Article 34), but much existing legislation was to remain in force until amended or repealed (Article 35). The authorities have not, generally, enforced restrictive legislation from

the Qaddafi era, but these laws could potentially be brought back into use.

There remains no overarching media law in Libya; nor are there any comprehensive broadcasting or communications laws. In May 2012, the National Transitional Council (NTC) issued Decree 44/2012 – the main legal act regulating the media – and established the Media High Council. The Decree was met with such heavy criticism (particularly with regard to the appointment of Council members) that it was repealed and the Council never became operational. Instead, the media was put under more direct state control via the Ministry of Information, formed at the end of 2012.

A large number of private media outlets were founded after the revolution and, in the absence of legislation, there are few restrictions regarding ownership, funding, ethical standards, transparency and so on. In addition, the process for reforming state media remains unclear and there is no regulatory system in place. However, the Constitutional Declaration does offer some protection for minority languages and the media in general is more diverse than it was previously.

Social media are important in Libya, although infrastructure is poor and internet penetration low. Blogging sites

and Facebook are gaining popularity, but there is a high degree of self-censorship, not least for fear of reprisals from armed militias. A new telecommunications law was drafted in 2013 but has not yet come into force.

Recent proposals for amendments to the Penal Code include new articles that limit freedom of expression by proposing restrictions similar to those in place under the Qaddafi regime. There are already a number of restrictive articles in the Code that carry serious penalties. Offences include: insulting the nation and its customs, promoting acts against the State, offending religion, etc. Decree 15/2012 includes a ban on the discussion of fatwas (interpretations of Islamic law). A further alarming development is the recent ban on certain types of satellite broadcasting by Decree 05/2014.

Libya is now in a de facto state of civil war and, following the ruling of the Constitutional Court in October 2014, there is no internationally recognised government. It is neither feasible nor relevant to carry out a proper SWOT analysis of the current legislative situation. In comparison with most other countries in the region, the media in Libya is both practically and legally at a very early stage of development.



2. BACKGROUND

Ongoing civil war in Libya has resulted in profound challenges on a number of levels. Until the country establishes itself as a viable, peaceful state, a free and effective media remains elusive.

2.1. INTRODUCTION TO THE SITUATION IN LIBYA

Libya has no legacy of free and independent media, and the turbulent situation since the fall of the Qaddafi regime has not allowed such media to develop. The situation is complicated by regional and/or tribal tensions.¹ During the Qaddafi regime violence and threats against media professionals were common. There was no media freedom and no independent media; consequently the culture was one of self-censorship. Government influence (ownership, control and/or interference) extended to print and broadcast media. The internet was freer, but towards the end of the Qaddafi regime there were more attempts to control this too. Predictably, the media landscape in Libya is not promising.

After the fall of Qaddafi, the National Transitional Council (NTC) was formed in Benghazi on March 5th 2011 but failed to gain full control of the country. In consequence rebel groups were not disarmed when the fighting ceased and the situation remained unstable. After elections in July 2012² the NTC handed power to the General National Congress, which acted as a temporary

parliament until elections of the Constitutional Assembly in February 2014. Between these elections there were several prime ministers, none of whom succeeded in forming a government. An interim government was finally inaugurated in November 2012.³ It included a mixture of liberals and Islamists, and representatives of Libya's various regions.

Stable government has proved elusive and several prime ministers have resigned since 2012, the latest in May 2014 due to threats to his family. Meanwhile, public figures, including foreign diplomats, have been subject to threats, violence and kidnapping. The Constitutional Assembly elections in February 2014 were disrupted, with additional elections held for some seats in April and May. On May 18th 2014 the parliament was attacked by armed militia.

It remains unclear how much control Libya's central government can exert. Growing tribal tension is an important factor hindering national reconciliation and regions of the country are to a large extent operating independently from the governing structures of the state, despite there being no legal basis for this.

Any report on the media situation in Libya will inevitably cover violent attacks on journalists and media outlets. This report concentrates on the legal situation and will not detail such attacks. However, it must be stressed that there is a climate of self-censorship extending well beyond what is covered by current legislation. Authorities are often unable (and sometimes unwilling) to offer protection. There have been some efforts to establish a dialogue between the media and security-related ministries⁴ but at present the precarious security situation dominates, and this restricts media reporting above and beyond the effect of any legislation.

2.2. THE PRE-REVOLUTIONARY SITUATION

Qaddafi seized power in Libya through a coup in 1969, soon after which media content became highly politicised in support of the new regime. Eventually most media fell under direct state control. According to Qaddafi's *Green Book* on political philosophy (published in 1975), all public organisations, including the media, should be linked to People's Committees, which were seen as a form of direct popular democracy. This left no

place for independent organisations or independent media, which would pose a threat to the relationship between government and society relationship. Fundamental legal provisions were set out in proclamations and various laws deemed to have constitutional weight, including a 1998 Green Charter for Human Rights.⁵ The People's Committees and, through them, the media, were run by Qaddafi loyalists who were frequently linked to the security apparatus and were part of the complex system of patronage designed to ensure loyalty to Qaddafi and his family that was a hallmark of the regime.

During the 1970s broadcasting was organised by the state-run Libyan Jamahiriya Broadcasting (LJB). The LJB was solely government funded and had an explicitly political mandate to "stand against defamation campaigns and refute all fabrications about the LAR [Libyan Arab Jamahiriya]".⁶

There were some reforms in the 1980s, partly due to the fact that less money was allocated to the media so it had to become more efficient, but there was no movement towards greater freedom or independence. State control remained firmly in place.⁷ A modest process of liberalisation in the media, albeit a top-down one, took place in the early 2000s.⁸

Before the revolution there was one experiment with a somewhat freer media group operated under conditions that resembled those of independent media. This was the al-Ghad Media Group, launched by Qaddafi's son, Saif al-Islam, in the mid-2000s. The group consisted of a main TV channel (al-Libiyya), two newspapers (*Oea* (oelibya.com) and *Quryna* (quryna.com)) and a news agency (Libya Press). The link to the Qaddafi family suggests that the venture was unlikely to be a genuine move towards free and independent

media – more probably an attempt to defuse the opposition and project a more positive image to the outside world. However, commentators state that the project did offer journalists greater freedom – their only censor was Qaddafi himself.⁹ When these media outlets became too independent after a few years, they were closed down or incorporated into other state media following power struggles in the Qaddafi family.¹⁰

Economic sanctions imposed by the UN on Libya in 1992, following the 1988 Lockerbie bombing, had consequences for the media. The sanctions prevented the import of technology, led to shortages of paper for newspapers and generally contributed to slowing down Libya's technological progress. At about the same time Al Jazeera was launched and, unsurprisingly, given the poor quality of Libyan media, soon became the country's most popular channel.¹¹

Libya launched its own satellite channel, Al Jamahiriya, in 1996 but could not compete with the professionalism of Al Jazeera. The popularity of Al Jazeera (and to a lesser extent some other pan-Arab satellite television channels) meant that many Libyans had access to a variety of foreign broadcasters, although the regime invested heavily in equipment to monitor satellite content and jam satellite broadcasts.

2.3. ANALYSIS OF MEDIA LEGISLATION IN LIBYA

For all the reasons listed below, it is not possible or appropriate to attempt a proper analysis of current media legislation in Libya. Instead this report focuses on more general comments on the subject.

The major challenge when compiling this report has been the difficulty of accessing up-to-date Libyan legislation in official and properly verified versions. There appears to be no comprehensive

current database or other easily accessible source. The various official, semi-official or unofficial websites that exist are either outdated – citing pre-revolutionary legislation with no information on whether it is still in use – or inaccessible. Some sources state that previous laws and regulations remain in force to a large extent until they are replaced – which in the main has not happened. However, the key problem is simply one of access, even to old legislation.¹² As a result, much of the legislation used in compiling this report has been accessed through indirect and/or non-verified sources.

A lack of official translations combined with the complex transitional situation in the country means it is difficult even to find correct translations of the various types of legal acts passed. They are interchangeably called "decrees", "resolutions", "decisions" and so on, depending on the translation. We have attempted to make clear by context what type of rule is being discussed throughout this report.

Poor access to legislation is not simply a logistical problem for the writer of this report; it is also an issue of wider importance as it means that the legal situation in Libya is not transparent. This is true for Libyan nationals and is especially the case when Libya is viewed from abroad. Such a situation is a great hindrance to Libya in attracting foreign investment and fostering international co-operation.

For a list of media outlets, see Appendix I.

¹ "Libya Media Transition: Heading to the Unknown", by Fatima el Issawi. Department of Media and Communications, London School of Economics. Page 9.

² The elections were praised as having been largely in conformity with international standards. Liberal and secular as well as independent candidates performed better than religious parties. See "Freedom of the Press 2013: Libya". Freedom House. Page 2.

³ El Issawi, op. cit. Pages 7–8.

⁴ See: www.libya-businessnews.com/2014/04/28/facilitating-dialogue-between-media-and-security/.

⁵ "Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya". Human Rights Watch, USA. Pages 4–5.

⁶ El Issawi, op. cit. Page 12.

⁷ *ibid.* Page 13.

⁸ "Rebels with a pen: observations on the newly emerging media landscape in Libya", by Anja Wollenberg and Jason Pack. *The Journal of North African Studies*, Volume 18, Issue 2, 2013.

⁹ *ibid.* Page 20.

¹⁰ *ibid.* Page 194.

¹¹ It was in connection with the Libyan revolution that Al Jazeera most clearly showed its political colours and sided openly with the revolutionaries. See Wollenberg and Pack, op. cit. Page 196.

¹² "Freedom of the Press 2013", op. cit.

3. CONSTITUTIONAL GUARANTEES AND LICENSING LAWS

2011's provisional Constitutional Declaration is muddled and old restrictive laws have not yet formally been repealed, leaving the Libyan legal system in chaos. A clear regulatory framework for the media may not be a priority for the authorities, but it will need to be addressed eventually.

3.1. CONSTITUTIONAL GUARANTEES FOR MEDIA FREEDOM

3.1.1. Current situation

In August 2011, during a period when there was still fighting, the NTC issued a provisional Constitutional Declaration.^{13,14} The process of drawing up the Declaration was not transparent due to the circumstances in which it was created. The preamble states that the Declaration is temporary and is to be replaced by a permanent constitution adopted through a referendum. It is brief (comprising 37 short articles) and is unclear on several issues, including its relationship to international standards¹⁵ – it expresses a desire to join international bodies but says nothing about their relationship with Libyan national law (Article 7). The Declaration includes only limited concrete rights but briefly mentions a range of civil and political as well as social and economic rights.

The Constitutional Declaration contains short articles on basic issues of the state, including a statement that Libya is to be a democratic Islamic country governed by

Sharia law, but with religious freedom for other groups (Article 1). It also states that the country will endeavour to establish a democratic system based on political pluralism (Article 4), acknowledging that such a system does not yet exist. A large part of the Declaration consists of provisions relating to government during the transitional period (Articles 17–30), giving a legal basis for the role of the NTC as the highest state authority. It also states that a General National Congress is to be elected within a period of 240 days (Article 30). Equality before the law is stipulated (Article 6) and legal principles such as independence of the judiciary and presumption of innocence are set out in Articles 31–33.

Articles 12–14 relate most closely to the media:

- Article 12 states that private life is inviolable and shall be protected by statute.
- Article 13 sets out that correspondence, telephone conversations and other forms of communication shall be inviolable and confidential.
- Article 14 translates as: "The State shall guarantee freedom of opinion, individual and collective expression,

research, communication, press, media, printing and editing, movement, assembly, demonstration and peaceful sit-in in accordance with the statute."

However, the final provisions of the Constitutional Declaration are less clear. Article 34 states that "Documents and laws of a constitutional character which were in force before this Declaration shall be repealed" whereas Article 35 maintains "All provisions established in the existing legislation shall remain in force in so far as they are not inconsistent with the provisions of this Declaration until they are amended or repealed." Given the unclear legislative situation in the Qaddafi era, when there was no permanent constitution, this distinction between what stays in force and what is repealed is problematic. Commentators say that the Constitutional Declaration did repeal laws restricting freedom of the press, speech and expression,¹⁶ and a reading of Article 14 would indeed support this. In practice, however, this would be open to interpretation, depending whether or not the law in question could be seen as inconsistent with the wording of Article 14.

The Libyan authorities have largely refrained from implementing restrictive old laws, but such laws have not been formally repealed, which means that they could potentially be brought back into use.¹⁷

It has not been possible to find any case law or other material detailing which old laws have stayed in force, but there is a case from the Supreme Court from June 14th 2012 regarding Decree 37/2012, passed by the NTC in May 2012, which imposed restrictions on freedom of expression such as the prohibition of the glorification of Qaddafi or any speech which damages the February 17 Revolution or insults Libyan institutions. The Decree was ruled unconstitutional by the Supreme Court. The case was brought by several Libyan lawyers and the National Council for Public Freedom and Human Rights, which is an official body. They challenged the Decree under the Constitutional Declaration as well as through international law. In the ruling the presiding judge stated that the decision did not affect other laws restricting speech, including those prohibiting insults to Islam.¹⁸

The Supreme Court ruling is a sign that the constitutional oversight of legislation works at least to some extent in post-revolutionary Libya and that freedom of expression is given some weight. At the same time, the judge made clear that the extent of the ruling was limited. It is impossible to say whether this case was a one-off or part of a consistent programme to protect the constitutional right of freedom of expression. However, given the volatile nature of the Libyan state it is significant that the authorities accepted the Supreme Court ruling and did not apply the Decree in question.

3.1.2. Ongoing reforms

The Constitutional Declaration was intended to be temporary and a new constitution was to be drawn up and put

to referendum as soon as possible. The situation in Libya since 2011 has been such that this process has been marred by difficulties and delays, which has led to protests.

The system of drafting a constitution envisioned in the Constitutional Declaration (i.e. with an appointed body, Article 30) was changed due to protests and pressure from regions in Libya that felt they would not be properly represented. In July 2012, shortly before the general elections, Amendment 3/2012 to the Constitutional Declaration was passed, according to which the Drafting Committee of the Constitution shall be elected in a general election.¹⁹ The election to the Constitutional Assembly was held in February 2014, but it could not be completed everywhere and some districts voted in April and May. The Constitutional Drafting Assembly started working in April 2014 and the drafting work still continues. The absence of a draft constitution was cited as one of the factors behind the armed attacks on the Libyan parliament in May 2014.

3.2. MEDIA LEGISLATION

3.2.1. Current media laws²⁰

There is no overarching media law in Libya, nor any comprehensive broadcasting or communications law. As mentioned, it has been very difficult to identify the relevant legal acts, due both to logistical difficulties in getting access to texts and to the confusion about which laws (from pre-revolutionary acts) are still in force and which have been repealed or lack force because they contravene the Constitutional Declaration. As the NTC and related municipal councils were set up explicitly as transitional bodies, they have not in the main enacted laws and regulations or set up institutions pending the implementation of more permanent political structures.

In May 2012 the NTC issued Decree 44/2012, which is the main legal act regulating the media. The Decree established a Media High Council with responsibility for overseeing the sector, which would report directly to the NTC. A Temporary Media High Council was to be created at first.²¹ The Council was granted such significant functions such as formulating regulations and laws for the media, adopting a code of ethics, granting licences to media of all types and dealing with complaints. It was given authority over the assets of state print and broadcast media and all Libyan-owned media centres in and outside the country. The Temporary Council was to determine the procedures for electing members and a president for the future High Council.

The Decree was met with heavy criticism over the proposed means of appointing the members of the Temporary High Media Council – by official nomination – and other aspects of the reorganisation of the media landscape that the Decree would entail. This led to the suspension of decisions related to the Media High Council until after the elections of the General National Congress.²² However, the High Media Council was never formed and the legislation needed to create it has not been passed. Instead, the media was put under more direct state control by the establishment of a Ministry of Information (sometimes called "the Ministry of Media") via Decision 13/2012.

The chairman of the Media Committee of the General National Congress, in an interview on Al Jazeera in April 2014, complained about incitement through the media in Libya coupled with the fact that there is no legal way for the government to monitor the media or react to such incitement. The lack of a proper legal framework means media outlets can be

¹³ The English text of the Constitutional Declaration is available at: www.constituteproject.org/constitution/Libya_2011.pdf.

¹⁴ "Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya", op. cit. Pages 7–8.

¹⁵ *ibid.*

¹⁶ El Issawi, op. cit. Page 27.

¹⁷ "Annual Report 2013: Libya". Cairo Institute for Human Rights Studies. Available at: www.cihrs.org/wp-content/uploads/2013/09/Libya.pdf.

¹⁸ "Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya", op. cit. Pages 7–8.

¹⁹ *ibid.* Page 6.

²⁰ Regulatory authorities and other questions directly related to regulation are dealt with in other parts of the main report, and consequently are only referred to here to the extent that they are directly linked to the issues being analysed.

²¹ "Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya", op. cit. Page 15.

²² El Issawi, op. cit. Page 28; Wollenberg and Pack, op. cit. Page 206.

opened extremely easily in Libya. It also makes it very difficult to hold the media to account.²³

3.2.2. Internet and social media

Libya, like other Arab Spring countries, is an example of how important social media have become as a means of mobilising people, offering alternative news and information, and creating communities. Social media have filled many information gaps left by the traditional media, helped people to agitate for reform and kept them informed. Al Jazeera in particular has been influential in broadcasting, for example, eye-witness accounts filmed on mobile phones throughout the revolution, thus highlighting the relevance of such citizens' reporting.²⁴ Internet penetration in Libya is, however, not high. The 2013 Freedom House report estimates penetration to be only about 20%, although various types of unregistered access may mean that the real rate is higher. There has been little investment in infrastructure and what existed previously was extensively damaged in the civil war. Mobile phone penetration is, by contrast, very high, well over 100%, but smartphones make up only a small proportion of the total and are prohibitively expensive for many, which means that mobile phones are not widely used for internet access or participation in social media.²⁵

In the Qaddafi era Libya was in the unique situation of having three government-owned mobile networks that were supposed to compete with each other. Plans were made in 2014 after the revolution to privatise one of the networks through an initial public offering²⁶ and to issue a tender for the country's first private mobile network operator. Since the downfall of the old regime in

2011, 25 internet service providers (ISPs) have been licensed to compete with the government-owned former monopoly, as well as 23 very-small-aperture terminal (VSAT) satellite operators.²⁷ A new Telecommunications Law drafted in 2013 has not yet come into force, nor has an independent regulatory authority been established.

Debates conducted on the internet and social media in Libya reach only a limited proportion of the population. Literacy rates are high, but computer literacy is not, and for many, internet access at home is prohibitively expensive. Nevertheless, blogging and use of social media, and especially Facebook, are gaining in popularity all the time, and thus growing in importance, albeit with a high degree of self-censorship due to fear of militia and similar groups. Freedom House, in its 2013 report, said that social media were not blocked and bloggers not arrested or otherwise restricted in Libya. However, the report also mentioned that political content is, on occasion, blocked.²⁸

The internet first became available to a small elite in Libya in 1998, and slightly more widely in 2001. Only small clandestine media operations in the eastern part of Libya were able to bypass the state monopoly on ISPs (there was just one, Libya Telecom and Technology – LTT). After 2001 a number of internet cafés were opened and investments made in infrastructure, and the use of new media increased rapidly, especially in eastern Libya.²⁹ Many journalists and others, feeling restricted by or disappointed with the regular media, turned to social media as their main outlet. This has had the same consequences in Libya as in other countries; while the internet may allow

for greater freedom of expression it also means that sources are not being verified, there is a lack of journalistic standards, and so on.³⁰

During the revolution there was little control of internet content, but in recent years there have been instances of the state blocking content for political reasons. The Ministry of Communications and Information Technology (see 3.2.3.) has, in some instances, blocked web content. However, non-governmental groups have also blocked content. For example, a temporary steering group of rebel fighters has blocked material it deems indecent. Generally, however, there is not much blocking of web content in Libya. Some instances of downtime for websites including Facebook have been due to technical problems rather than official action.³¹ Freedom House states that "There is little transparency and no legal framework related to the blocking of websites in Libya, as the regulations have not yet been formulated. Technically, all regulations of the Qaddafi era remain valid."³² The veracity of this statement and what it means in practice are not clear, as has already been pointed out in this report.

Freedom House mentions that Qaddafi's extensive surveillance apparatus on the internet is still thought to be largely operational.³³ This assertion is, by its nature, difficult to verify. Freedom House refers to media reports on the matter but concludes that the absence of transparency and checks and balances in the current system mean that such allegations can be neither checked nor refuted. However, the fear of such surveillance easily leads to self-censorship, so, regardless of whether the surveillance is in fact operational,



it may have an inhibiting effect on the online debate, especially when the general security situation in the country is deteriorating.

The poor state of the infrastructure, low speed, congestion and other problems relating to internet use are exacerbated by the lack of regulation of communications in Libya. The fully government-owned Libya Post Telecommunications and Information Technology Company (LIPTC), formerly the General Post and Telecommunications Company (GPTC), is the main telecommunications operator. Its subsidiary LTT was the first internet service provider to be licensed, in 1999, and remains the only gateway to the internet, although a number of other providers have since been licensed.³⁴ There is no independent regulator for communications matters.

3.2.3. Institutional structures

As has already been mentioned, the Media High Council has not been formed and nor has any other independent regulatory authority. Responsibility for matters such as licensing and

monitoring remains with the Ministry of Communications and Information Technology, but with no published regulations or strategies the details remain unclear. There is continued interest in forming an independent regulator and Libyan authorities have had contact with, for example, the European Platform for Regulatory Agencies (EPRA) to discuss the matter and get professional input. There does not appear to be a specific time-frame, however.

The regulatory situation for (tele) communications, including the internet, has also been unclear since the revolution. There is a Ministry of Communications and Information Technology but no independent regulator. The ministry has no published strategies or policies. During the Qaddafi era decisions on licensing were made by the government-controlled GPTC, but there were plans (dating from about 2006) for the creation of a regulatory authority, the General Telecommunications Authority (GTA). The GTA has a web address but nothing more and appears never to have come into existence. Media speculation

was that the GTA had been formed to oversee the monitoring of online activities.³⁵ Currently the Ministry of Communications and Information Technology is officially responsible for all areas of activity listed under the International Telecommunications Union (ITU) communications regulatory tasks. The NTC created a Media Commission as part of the transitional administration and at this time the Ministry of Information was abolished.³⁶ The interim head of the Media Commission, Mahmoud Shammam,³⁷ in a public presentation in November 2011, stated that a body like a media ministry or similar would be necessary only during a time of transition and that there would be no need for government media control in the future. Instead, he suggested, there should be an independent and representative media regulatory body. He stated his strong support for changing the state broadcaster into a public service broadcaster and generally stressed the need for media freedom and development of the media sector by means of training for those working in the sector.³⁸

²³ See: www.aljazeera.com/video/middleeast/2014/04/04/libya-media-accused-incitement-2014418143420845709.html.

²⁴ Wollenberg and Pack, op. cit. Pages 196–197.

²⁵ "Freedom of the Press 2013", op. cit. Page 3.

²⁶ See: www.libya-businessnews.com/2013/09/18/mobile-operator-libyana-to-be-floated/.

²⁷ "Libya – Telecoms Mobile and Broadband Report – Market Insights and Statistics", by Peter Lange. Available at: www.budde.com.au/Research/Libya-Telecoms-Mobile-and-Broadband.html.

²⁸ "Freedom of the Press 2013", op. cit. Page 6.

²⁹ *ibid.* Pages 3–5.

³⁰ El Issawi, op. cit. Pages 34–35.

³¹ "Freedom of the Press 2013", op. cit. Page 6.

³² *ibid.* Page 7.

³³ *ibid.* Page 10.

³⁴ *ibid.*

³⁵ *ibid.* Page 5.

³⁶ Wollenberg and Pack, op. cit. Page 201.

³⁷ Mahmoud Shammam founded the opposition TV station Al Ahrar in Doha in March 2011. He was well known as the editor of the Arabic edition of Newsweek and as a former board member of Al Jazeera – and, therefore, as a person with credentials as far as media independence and pluralism were concerned. See Wollenberg and Pack, op. cit. Page 196.

³⁸ Voice of Free Libya, November 5th 2011.

4. MEDIA OWNERSHIP

The new government subsequently abolished the Media Commission in November 2011 and gave its mandate to the Ministry of Culture.³⁹ At this time the Ministry of Communications and Information Technology was set up. Its tasks were to include laws and regulations in all communications-related areas: spectrum management and allocation of frequencies, organising links between communications networks and service providers, determining types of licences and granting approvals, controlling provision of communication services to remote areas, and other tasks relevant to converged communications.⁴⁰ Since December 2012 the ministry has issued frequencies to broadcasters, starting with radio.⁴¹

The NTC examined the legal situation of the media and explored the possibility of setting up an independent regulatory authority but made no suggestions, leaving this to its permanent successors, who were still to be elected. When the first government was finally sworn in after the elections to the General National Congress in 2012, they dismissed the idea of an independent media authority and voted for the re-creation of a Ministry of Information (or Media).⁴² There was opposition to this idea.⁴³ Accounts differ as to when a minister of information was appointed⁴⁴ and when the ministry, which was formed in early 2013, started operating. The Ministry is intended to take over control of the state broadcasters and of licensing processes from the Ministry of Culture and Civil Society, and thus to perform regulatory functions.

Difficulties related to the operation of the public broadcasters, and the absence of proper funding for the ministry and its tasks, mean that it cannot possibly be fully effective.⁴⁵

Other institutional changes include the re-branding of the state news agency JANA into the Libyan News Agency (LANA), with a view to modernising it and transforming it into a professional news provider – a process which has not been completed.⁴⁶

Qaddafi-era bodies such as the General Press Corporation have been abolished and replaced. In the case of the press, the new organ is the National Press Foundation or Agency for Support and Encouragement of the Press.⁴⁷ It is not possible to evaluate what role this body will play as it has hardly been able to operate and, in any event, it has no regulatory function and nor does it have responsibility for implementing legislation or contributing to the legislative process, so its role falls outside the main scope of this report. Its aim is to support new newspapers, including encouraging state-funded publications in remote regions in place of the dismantled state papers of the Qaddafi regime, and thus to provide new jobs for former state media employees (of whom there are around 1,200, mostly technical and administrative staff).⁴⁸

One factor complicating institutional developments is that there is special legislation as well as a special body, the High Commission for the Application of

the Standards of Integrity and Patriotism, to monitor appointments to official positions and thus ensure that no one linked to the former regime can be appointed. This has been controversial and has meant that some media officials have been banned from returning to office in former state media bodies.⁴⁹

3.2.4. Ongoing reforms

It is difficult to analyse any ongoing reforms to general media legislation or institutional structures in terms of their implementation, not because of any lack of new ideas but because these things are often uncoordinated and proposed changes may never come about or, if they do, may rapidly be replaced by further changes. As most publications as well as those policy-makers we were able to contact confirm, the laws in any case have a limited effect as they are not implemented properly. There is, however, movement towards creating an independent regulator. Such a body would need a proper legal basis and delimitation of its mandate. Although it has not been possible for this reviewer to get access to or confirmation of any drafts or plans for media (broadcasting) legislation, there is anecdotal evidence to suggest at the very least an acknowledged need for such a law.

A number of new media outlets were created after the revolution in 2011, but many closed soon after as the security situation deteriorated. There is no transparency about funding or ownership which leaves outlets open to corruption and bias.

4.1. THE MEDIA MARKET

4.1.1. The post-revolutionary situation

After the revolutionary changes in Libya in August 2011 a large number of new media outlets were created. The media situation was very free for a while, if rather chaotic, as no new legislation was brought in and the old laws were neither implemented nor, in many cases, formally rescinded. As there had been no free media before, there were no ethical guidelines or codes of conduct so the media operated in a system without constraints or legal limits. Internet use went up, with a large increase in the use of Facebook, Twitter and other social media. People took an interest in the media and a market started to develop.⁵⁰ The honeymoon period was short-lived, however, as violence and the deteriorating security situation in Libya affected the media very negatively. There are also signs that more recent legislation does not support freedom of expression.

The post-revolution explosion of new private media left what remained of the old state media apparatus struggling to cope. The issue of what should be done with the public media is a complex one. An early idea was to reform it where possible and thereby develop a public

service broadcaster. However, many feel that in many ways the old state media are unusable – for example, journalists continue to get a salary but do not work and are unwilling or unable to work under new conditions. The legal situation remains unclear. According to Legatum Institute's Libya Media Wiki there are currently at least 200 registered newspapers, 20 TV channels and 200 radio stations in Libya, although the volatile transitional phase during which there were no (properly implemented) requirements for licensing or registration makes it very hard to assess the number with accuracy.⁵¹

One change to the media scene in the post-Qaddafi era is that media outlets began to be created in parts of the country other than Tripoli, whereas previously the sector had been highly centralised. After the revolution TV stations and new printed publications appeared, for example, in Benghazi.⁵²

This development of a new media market of sorts has not taken place in an environment of legal certainty, however. At the time of writing, some years after the revolution, it is still difficult to clarify which rules apply when creating a media outlet. For this reason, those who do set up media outlets may manage – by

accident or design – to ignore some or all of the rules.

There is a real concern that any media outlet is vulnerable to being threatened and closed down, but not purely on legal grounds; the risk is greatest from the militia and other irregular groups, who have no legal basis for their actions.

4.1.2. Media funding

Media funding is one area where a clear and effective legal framework is essential – without it, media organisations lack the freedoms that constitutional protection and other legislation confer. In Libya, as has been stressed many times, there is no clear legal background and the result is a lack of transparency with no reliable way of assessing the legality of funding.

The many media outlets created after the revolution were set up often with minimal funding through donations and similar payments, and with staff working for free, based on community support and enthusiasm. These were real grassroots media inspired by the ideal of pluralism. There was no regulation of the media by the NTC during this period (2011).⁵³ However, it remains to be seen whether such media can survive in the long run.

³⁹ Wollenberg and Pack, op. cit. Page 202.

⁴⁰ "Libya Media Assessment, May 17th – June 4th, 2011". Internews. Available at: www.internews.org/sites/default/files/resources/InternewsLIBYAMediaAssessment_2011-06.pdf.

⁴¹ "Libya Media Assessment – One Year Later". Altai Consulting (for the Foreign and Commonwealth Office). June 2013. Page 19.

⁴² Wollenberg and Pack, op. cit. Page 202.

⁴³ El Issawi, op. cit. Page 22; Wollenberg and Pack, op. cit. Page 206.

⁴⁴ Wollenberg and Pack, op. cit. Page 206; "Libya Media Assessment – One Year Later", op. cit. Page 18.

⁴⁵ "Libya Media Assessment – One Year Later", op. cit. Page 18.

⁴⁶ El Issawi, op. cit. Page 38.

⁴⁷ In some translations, this body is called "Committee" rather than "Agency", and is also referred to as the "Public Press Foundation". It was reportedly given this latter name (along with some changes to its structure) by the NTC in May 2012, through Decree 43/2012. See "Handbook on International Standards and Media Law in the Arab World". Centre for Law and Democracy/International Federation of Journalists, Halifax/Brussels. May 2013. Page 15. See also the "Libya Media Wiki" developed by the Legatum Institute. Available at: www.libyamediawiki.com. "Decree No. 43 of 2012 on the Establishment of the National Press Foundation" is available in Arabic at: <http://bit.ly/TYkaa0>.

⁴⁸ El Issawi, op. cit. Page 23.

⁴⁹ *ibid.* Pages 60–61.

⁵⁰ "Public Service Broadcasting in the MENA Region". Panos Paris Institute and Mediterranean Observatory of Communication, Paris. 2012. Page 29.

⁵¹ El Issawi, op. cit. Page 11.

⁵² See: <http://mediavisionlibya.northwestern.edu/the-state-of-libyan-media/>.

⁵³ Wollenberg and Pack, op. cit. Page 198.

5. LEGISLATION RELATING TO MEDIA CONTENT

During the Qaddafi era there were Libyan media outlets in exile, some of them quite important, that went on to play a role in the country during the revolutionary period.⁵⁴ There are also unconfirmed reports of Libyan exiles supportive of the former regime funding certain media outlets (which also reportedly received foreign, e.g. Qatari, funding) more or less secretly.⁵⁵ Without transparency this kind of speculation – particularly about ownership – is rife. State media are still not privatised and while private media claim to be funded by private capital or by advertising, without transparency this cannot be verified. New broadcast media outlets are not required to reveal their sources of funding but must obtain from the Ministry of Culture a minimum six-month temporary licence with the possibility for renewal. In practice they do not always fully follow the requirements for a licence and, even when they do, the information they are asked to provide is extremely limited. For print media it is unclear whether new private publications are obliged even to adhere to a licensing system.⁵⁶

4.1.3. Public broadcasting

One special feature of media funding is the existence of public broadcasters, funded in some way by the public sector. In Europe and many other countries these would be public service, rather than state, broadcasters, with a mandate to provide objective and diverse content. Libya has received consultation and support on bringing about this change but, as is the case for many countries in transition, the reform of the state broadcaster in Libya is complicated due to the large number of employees and the otherwise cumbersome and unsuitable infrastructure of the broadcaster. The Qaddafi-era state broadcasters had more than 5,000 employees, mainly non-journalists. The broadcasters were re-branded as Libya Radio and Television (LRT) after the revolution (in 2011) but the exact restructuring and what would happen with the staff remained unclear, and broadcasts were suspended for some time.⁵⁷ The

Ministry of Culture eventually issued a Decision (Decision No. 7) through which it took control of state media assets and announced that one TV station, one radio station, and one newspaper would be opened.⁵⁸ This did not resolve the situation and a power struggle between public stations has ensued.⁵⁹ Several state media outlets continue to operate and it is unclear whether Decision No. 7 is in force, even nominally.

When the former LJB corporation was reorganised as the LRT, most of the staff, including journalists, remained. After a brief period of downtime, limited broadcasts were resumed. The staff who had worked under Qaddafi now worked for a new regime, with some antipathy on both sides between old staff and new management. The tension is unsurprising; but rather more surprising is that, rather than trying quietly to adapt to the changes, the staff of the LRT took action against what they perceived as discrimination by management. Staff members wrote a letter of complaint to the NTC. This letter led to the dismissal of the LRT director, with a consortium

of LRT staff taking over management. This development also precipitated some more thorough reforms of the broadcaster.⁶⁰

A more detailed analysis of public broadcasting in Libya is beyond the remit of this report. Suffice it to say that at present there is no comprehensive legislation relating to public broadcasting. The transition from state to public service broadcaster would require legislation that sets out the mandate for the broadcaster, the principles it should follow in its work, how it is to be funded so as to preserve its independence and how its governing organs are to be selected and appointed – again with special focus on how to preserve its independence. The legislation should also set out the way the public (service) broadcasters compete with private broadcasters, e.g. for advertising. As public broadcasters are also guaranteed funding by other means, many countries (including all EU member states) place restrictions on the advertising that can be carried by the public service broadcaster. Such legislation is lacking in Libya.

“The post-revolution explosion of new private media left what remained of the old state media apparatus struggling to cope. The issue of what should be done with the public media is a complex one. An early idea was to reform it where possible... However, many feel that in many ways the old state media are unusable.”

⁵⁴ *ibid.* Page 197.

⁵⁵ El Issawi, *op. cit.* Page 55.

⁵⁶ *ibid.*

⁵⁷ See: <http://en.libyamediawiki.com>.

⁵⁸ *ibid.*

⁵⁹ El Issawi, *op. cit.* Pages 25–26.

⁶⁰ Wollenberg and Pack, *op. cit.* Pages 200–201.

Media under the Qaddafi regime were heavily censored, and since then, lack of legislation and regulation, the banning of satellite stations and general threats to freedom of expression, have not furthered the media's cause.

5.1. LEGAL RESTRICTIONS ON THE MEDIA

5.1.1. The legacy of the pre-revolutionary period

During the Qaddafi era there were legal restrictions on media content, but the general political climate and the fear of repression if the content was not to the liking of the regime were the decisive factors in whether content was permitted or not, rather than the law itself.

There were, however, laws that specified some conditions for the media. The 1972 Publications Act imposed fines and up to two years in prison for a variety of violations including libel, slander, and “doubting the aims of the revolution”. The definitions used in this and other laws were broad or vague enough to cover different forms of speech, whether transmitted via the internet, mobile phone or traditional media. Legal sanctions were extended by the possibility of collective punishment, through which entire families, towns or even districts could be held responsible. A law from 2006 specifically addressed internet content and stated that websites registered under the national Libyan domain “.ly” must carry no content deemed to be “obscene, scandalous,

indecent or contrary to Libyan law or Islamic morality.”⁶¹

The main limitation on media content in the Qaddafi era was, however, to be found in the Penal Code. This Code prohibited any criticism of the regime, through the media or otherwise. Article 195 of the Penal Code stated:

Any person making what could be regarded as an attack on the Great Al-Fateh Revolution or its leader is liable to be punished with imprisonment. The same sentence will be applied to any person who insults the people's authority or a judicial, defence or security body.⁶²

The penalty for contravening these provisions was 3–15 years' imprisonment. The provisions were not abolished after the revolution but stayed in force until February 2014 when they were replaced (see 5.1.3 below). Thus, the provision was also used by the new authorities as, for example, in the case against the editor of *Al-Umma*, arrested in December 2012 and held for five months for publishing a list of judges and prosecutors suspected of corruption.⁶³ As will be discussed below, even after reform of the Penal Code, the limitations

to freedom of expression have not been abolished.

5.1.2. Decree 37/2012

There have been a number of worrying developments in the area of media law since the ousting of Qaddafi. One of the most explicit threats to freedom of expression through the law was Decree 37/2012 from May 2012. Decree 37/2012 was adopted by the NTC.⁶⁴ Among other things, it prohibits the glorification of Qaddafi or anything that damaged the February 17 Revolution or insulted Libya's institutions. Such prescriptions on what can and cannot be said in the media undermine freedom of expression, not least because the general terms in which the decree is expressed are open to various interpretations.

Wollenberg and Pack state that Decree 37/2012 was passed just as the Libyan media were beginning to look critically at the NTC and the post-revolutionary government of the country in general. At first, those in the media saw themselves largely as being part of the revolution and were therefore reluctant to criticise the new authorities or act as a watchdog, since they regarded the authorities as “their people”.⁶⁵

⁶¹ “Freedom of the Press 2013”, *op. cit.*

⁶² The translation of the articles in the Code is taken from: <http://en.rsf.org/libya-libya-extends-draconian-gaddafi-19-02-2014,45893.html>.

⁶³ *ibid.* See also the Amnesty International press statement “Libya: Three years on, Gaddafi-era laws used to clamp down on free expression”, issued on February 12th 2014; and “Freedom of Expression in Post-Revolution Libya”, by Ali Khadija. Posted on May 14th 2013 at: <http://fikraforum.org/?p=3296>.

⁶⁴ Cairo Institute for Human Rights Studies, *op. cit.* Page 178. “Decree” is sometimes called “Law” but, according to most sources, the NTC did not pass such a law.

⁶⁵ Wollenberg and Pack, *op. cit.* Page 200.

As mentioned at 3.1.1, it was positive to see the Libyan Supreme Court, on June 14th 2012, declare Decree 37/2012 to be unconstitutional because it restricted free speech and therefore ran contrary to the Constitutional Declaration. One of the regime's more explicit attempts to use legislation against freedom of expression was thus thwarted. However, even as he was defending the right to freedom of expression enshrined in the Constitution, the judge declared that the court's decision did not affect other laws restricting speech, including those prohibiting insults to Islam.⁶⁶ Unfortunately, recent amendments to the Penal Code (see 5.1.3. below) show that the ideas reflected in Decree 37/2012 have not disappeared.

5.1.3. The Penal Code

On February 5th 2014 a proposal for amendments to the Penal Code, including amendments to the Article 195 (see 1.1.1. above), were adopted. Amendment (5) 2014 to Article 195 sets out a new article as follows:

Without prejudice to any severer penalty, any person stating something that is detrimental to the February 17 Revolution is liable to be punished with imprisonment... The same penalty will be applied to any person who publicly insults the legislative, executive or judicial authorities or any of their members during or in connection with the execution of their duties, or who insults the emblem of the state or its flag.

This amendment simply changed the content of the restriction on free expression to reflect changes to the governing structure. It was not an annulment and does not in effect allow greater freedom.⁶⁷

Regrettably, there is a series of articles in the Penal Code that restricts freedom of expression to a large extent, with serious consequences for the perpetrators.

There is Article 195, of course, but Articles 205 (Insulting the Nation and its Customs) and 207 (Promoting and Acting against the State) also stipulate prison terms. Article 207 even allows for the possibility of the death penalty for promoting theories or principles that aim to overthrow the political, social or economic system.⁶⁸ Articles 290–291 cover religion.⁶⁹ Article 178 deals with Libyan activity abroad and allows for life imprisonment for anyone found to be disseminating information intended to tarnish Libya's reputation or undermine international confidence in the country.

Each of these articles is worded so as to leave a great deal of room for interpretation. This is not in line with international best practice. Any state has the right to protect itself against genuine danger; but when such protection leads to the restriction of fundamental freedoms, the restrictions must be both proportional and necessary and, crucially, be set out clearly in law.

While the Libyan Penal Code offers many and varied opportunities to impose restrictions on free speech, there are inadequate rules, or inadequate means of implementing the rules, to deal with such threats as incitement to hatred and violence. Incitement to violence through the media is far from rare in Libya but there is no effective system for dealing with it.⁷⁰

5.1.4. Prohibition on the discussion of fatwas: Decree 15/2012

The issue of the protection of religion has led to further restrictions on freedom of expression, most notably through Decree 15/2012,⁷¹ passed by the NTC, which includes a ban on the discussion of fatwas (interpretations of Islamic law). This decree stipulates that all members of society must respect fatwas issued by Dar al-Ifta (the Office for Islamic Legal Opinion) and that fatwas may not be discussed in the media.

Discussing such orders in any way whatsoever is punishable by life imprisonment. Article 13, NTC Decree 15/2012 states:

All individuals of the society must respect all fatwas issued by the office [of Islamic Legal Opinions], its board, or council. Any person who wishes to object to a fatwa may submit such a request to the office board for consideration and review. Fatwas may not be debated in the media. The Dar al-Ifta, with the Ministry of Awqaf and Islamic Affairs, may establish regulations and rules for fatwas.⁷²

In a society with freedom of expression there is no reason to impose bans on discussion in the media. It is not incompatible with *Sharia* to permit discussion on any subject and yet religion can be used to restrict freedom of expression to a significant degree. In Libya at the time of writing the religious influence over society appears to be strengthening.⁷³ This tendency is the subject of much controversy and differing opinions among the various groups that were involved in the revolution. (In the first post-revolution elections liberal and more secular-minded groups fared relatively well.) In any event, there is a danger that a ban such as the one set out in Decree 15/2012 will be used to suppress legitimate debate.

5.1.5. Banning of satellite stations

A further alarming development as far as legislation related to freedom of expression and freedom of the media is concerned is the recent ban on certain satellite broadcasters.

At the end of January 2014 the General National Congress issued Decree 05/2014 on stopping and banning the broadcasting of certain satellite TV stations. This Decree ordered the Foreign, Communications and Information Ministries to "take the necessary measures" to prohibit the

broadcasting of any satellite TV station whose programmes criticise or are hostile to the February 17 Revolution or that destabilise the country or promote internal dissent or discord. The Decree is vaguely worded and thus can be seen as a possible tool for repression and the hindrance of free debate.⁷⁴

5.1.6. Libel, slander and defamation

Legislation on libel, slander and defamation is designed to protect individuals' private lives. Article 12 of the Constitutional Declaration states that private life is inviolable and shall be protected by statute, giving a constitutional foundation for protection against libel, for example. But the lack of clear media law or other modern legislation together with the absence of any code of ethics (and general unfamiliarity with media ethics) means that libel, slander and unfounded accusations are common in the media.⁷⁵

Defamation is included as a crime in the Penal Code (Article 439) and carries punishment ranging from a fine up to two years' imprisonment. Defamation through the press carries more severe sentences of not less than six months' imprisonment or a higher fine.

5.2. SELF-REGULATION AND MEDIA CODE OF ETHICS

In many European countries and also elsewhere, systems of self-regulation set up by journalists' organisations or similar to administer codes of ethics, often supplement the official regulation of the media. For the print media these are often the only regulatory system.

In the Libyan media landscape there is no functioning system of self-regulation. Nor is the history of the country such that it favours the development of high ethical standards among journalists. Nevertheless, there have been some attempts to initiate a discussion on ethical principles for the media.

The first major conference, with some 400 participants, took place in Benghazi in May 2012, following a smaller conference held a few months earlier in Tripoli. There was discussion about creation of a journalists' union and a code of ethics. A month later a second major conference was held in Jadu. At this conference the journalists expressed outrage at the plan (outlined in Decree 44/2012) to create a Media High Council, which had been decided in the meantime.⁷⁶ In the event this plan was never fully realised (see 3.2.1. above). A side-effect of Decree 44/2012 was that it may have pushed journalists to form their own council.⁷⁷ However, the current situation is hardly conducive to effective self-regulation, which in practice does not take place. The organisation was immediately criticised for the fact that it consisted mostly of citizen journalists and technicians rather than professional journalists. A competing council was created soon afterwards⁷⁸ but was dogged by credibility issues.

The NTC, however, did endorse the council set up in Jadu and gave it an official role as a media organ through Decree 62/2012 of July 2012. This same decree also confirmed the council's transitional role – that it would exist until the General National Congress assumed its duties and responsibilities.⁷⁹ This did not end the struggle between competing groups as to which body should represent journalists. The media community remains divided and there are calls for an official body such as a ministry to clean up the mess⁸⁰ – a move that is unlikely to be conducive to a free media environment. Consequently, there is at the time of writing no other type of regulation to fill the gap left by insufficient legislation.

5.3. MINORITIES AND MEDIA

Article 1 of the Constitutional Declaration stipulates that while Arabic shall be the official language, the linguistic and cultural rights of the Amazigh, the

Tabous, the Touareg and the other component groups of Libyan society shall be guaranteed.

There were some positive developments for minorities after the fall of Qaddafi. The Berber language of Tamazight was allowed in broadcasting from the summer of 2011 in areas of Libya where it is spoken, after having been banned under the previous regime.⁸¹ As noted earlier (see 4.1.1. above), the media has also become less centralised, with more outlets across the country.⁸² In the early post-revolutionary period, when many new media outlets were created in a short time and there was real pluralism, there was also a genuine interest in representing minorities of various kinds. Media were launched for previously "invisible" groups such as the Amazigh (Berbers) in the Tamazigh language, something that had not existed previously.⁸³ Such efforts have not led to legislative protection of minority rights in broadcasting, however. There is no specific legislation guaranteeing media in minority languages nor any other rights in media law specifically for minorities. This is in line with the generally muddled legal situation described in this report.

5.4. MEDIA IN ELECTIONS

There have been several elections in Libya since the revolution in 2011. Libya was praised internationally for conducting the July 7th 2012 elections to the General National Congress in an organised and peaceful manner, which largely met international standards for elections, including the role of the media.⁸⁴ However, at the time of writing the conditions for conducting the elections are hardly favourable and are becoming even less so. There is no special legislation concerning the media in elections.

⁶⁶ "Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya", op. cit. Page 8; Amnesty International press statement, op. cit.

⁶⁷ Amnesty International press statement, op. cit.

⁶⁸ "Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya", op. cit. Page 19. This is an informal translation of the Arabic text of the law.

⁶⁹ *ibid.* Page 12.

⁷⁰ El Issawi, op. cit. Page 58.

⁷¹ This is also called "Law" in some sources.

⁷² "Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya", op. cit. Page 17.

⁷³ In January 2014 the minister of justice issued Resolution No. 1958/2013 (available in Arabic at: www.aladel.gov.ly/main/modules/sections/item.php?itemid=460). This establishes a commission comprising legal and religious scholars to ensure that Libyan legislation adheres to Islamic law. The commission first met on March 27th 2014; a report on this meeting is available (in Arabic) at: www.aladel.gov.ly/main/modules/news/article.php?storyid=672.

⁷⁴ Unofficial translation of the Decree. See also: <http://en.rsf.org/libya-freedom-of-information-in-jeopardy-30-01-201445805.html>.

⁷⁵ El Issawi, op. cit. Page 11.

⁷⁶ See "Libya Media Wiki", op. cit. Page 3. Available at: http://en.libyamediawiki.com/index.php?title=Letter_Ref_497/2012.

⁷⁷ *ibid.*

⁷⁸ El Issawi, op. cit. Pages 28–29.

⁷⁹ Wollenberg and Pack, op. cit. Page 206.

⁸⁰ El Issawi, op. cit. Pages 28–29.

⁸¹ Public Service Broadcasting in the MENA Region, op. cit. Page 33.

⁸² See: <http://mediavisionlibya.northwestern.edu/the-state-of-libyan-media/>.

⁸³ Wollenberg and Pack, op. cit. Pages 198–199.

⁸⁴ *ibid.* Page 202.

6. SWOT ANALYSIS

	POSITIVE ELEMENTS	NEGATIVE ELEMENTS
INTERNAL	<p>Strengths</p> <ul style="list-style-type: none"> The 2011 revolution led to an opening up of freedom of expression in Libya with a pent-up demand for news, information and debate A number of new media outlets have been created Social media is relatively free Some decentralisation of the media scene with new regional and minority outlets Freedom of expression is protected in the Constitutional Declaration The Constitutional Court ruled to protect freedom of expression 	<p>Weaknesses</p> <ul style="list-style-type: none"> The political situation in Libya is very volatile Regional and tribal strife represent a risk of disintegration of the country Laws are often not properly applied Recent laws are restrictive in nature Lack of regulation has led to a rather chaotic situation for media Lack of high-quality journalism No proper media markets No independent regulators Low penetration rates of the internet and other modern media
	<p>Opportunities</p> <ul style="list-style-type: none"> Possibility of international help for Libyan media International media market is interested in Libya Libyans are active in social media (including important international platforms) Population is interested in accessing different/broader media content, debate and news Libya is in a period of reform and legal drafting with new institutions being created 	<p>Risks</p> <ul style="list-style-type: none"> Little sense of national ownership of reforms supported by international organisations Exploitation for political purposes of different types of foreign assistance Mistrust of foreign media Division among the population due to uneven use of social media Recent legal changes are not beneficial for freedom of the media Lack of competition law or other market-related legislation
EXTERNAL		



7. COMPARISON WITH THE EU AND THE WIDER REGION

In theory, the 2011 revolution opened up freedom of expression and people's demand for news, as in the EU. However, the country's extreme instability means the media fall way short of EU and international best practice.

NOTA BENE

The methodology for the MedMedia assessment reports included an analysis of the key differences and similarities between media laws in the partner countries and those in the MENA region or the EU. The object of this exercise was to highlight instances in which the application of international best practice had been successful and those in which a culturally specific approach had achieved the desired results.

To an extent, the freedoms that the Libyan media now enjoy appear to be the same as those available to the media in the EU as part of their right to freedom of expression. However, the situation in Libya does not follow EU/international best practice. Best practice dictates that freedom of expression – through the media or otherwise – is not an absolute freedom and therefore rules exist to ensure that this freedom does not violate the freedom of others. For this reason, incitement to hatred and violence is illegal in most European countries and this ban is enforced through the courts. For broadcast media there is normally, in addition, an independent regulatory agency that licenses broadcasters and can hold them accountable, e.g. for incitement as well as for violation of other standards set out as conditions of the licence, such as fair and impartial news broadcasts. Under best human rights practice any limitations on freedom of expression – to protect against incitement or for other reasons – necessitate a proper legal framework, because such limitations should be proportional, necessary and clearly set out.⁸⁵ In Libya, the absence of a proper legal framework means it is not possible to make such legitimate demands on media content. This carries a double risk: that unsuitable content

could be spread unhindered and that disproportionate measures could be taken against media outlets without clear legal grounds.

Currently the media in Libya are in a much worse situation both practically and legally than media in the EU and also in most other countries in the Arab region. Libya shares some common features with its Arab neighbours such as, for example, in the way the Arab Spring developed, not least through the use of social media. However, Libya has been unable to build

a stable society in the aftermath of the revolution, unlike Tunisia, for example.

Libya is interested in European examples of best practice, as demonstrated by its approach to the European Platform of Regulatory Agencies to learn about setting up an independent regulatory agency for broadcasting and/or other communications. There is also anecdotal evidence that Libya is studying various EU legal texts on communications, particularly the more technical aspects of communications regulation.



Currently the media in Libya are in a much worse situation both practically and legally than media in the EU and also in most other countries in the Arab region.



⁸⁵ As expressed in the European Convention on Human Rights.

8. RECOMMENDATIONS

Libya faces significant challenges, and its media is in vital need of reform if it is to play a foundational role in rebuilding the country. However, the ongoing crisis and lack of legal structure means the recommendations contained in this report are unlikely to be implemented in the near future.

Media legislation in Libya is much in need of reform. The ongoing crisis and lack of stability in the country are the main relevant factors and these same factors also mean it is futile to make detailed legal recommendations since it is unlikely they could be followed. Thus, the recommendations of this report are of a more general nature and in some ways resemble a wish-list for a better development generally in Libya.

- Regulatory decisions should be published and there should be a right to appeal to a neutral body concerning any negative decision.
- Any regulator must have its mandate, composition and working methods set out in law to ensure it can operate independently and forcefully.
- The proposed articles of the Libyan Penal Code that violate freedom of expression by prohibiting criticism of the regime or the revolution should be abolished.
- Articles on insulting religion should be abolished or carefully reformulated so as not to unduly limit freedom of expression.
- The law banning discussion of fatwas should be abolished. Any restrictions to freedom of expression must be proportionate, necessary in a democratic society and clearly set out in law. (Every country can and should reflect its own cultural and religious sensitivities in its legislation, but freedom of expression is not incompatible with any religion or culture.)
- Defamation should be decriminalised. (The media should be self-regulated through its own code of ethics to the greatest possible extent.)

While it would be unrealistic to draw up a more detailed list of recommendations for Libya, the current instability and lack of legal clarity is not a reason to delay tackling media reform and other communications legislation. These areas of law are vital for the creation of a stable and inclusive society. The absence of proper laws and/or lack of clarity about their implementation means there is a risk of the media starting a downward spiral of incitement to hatred and violence, opaque ownership structures hiding political influence, and poor-quality media content. This could in turn lead to excessively restrictive legislation. Timely and proper legal reform can prevent such a situation from developing.

9. APPENDIX

9.1. MEDIA OUTLETS

9.1.1. Television

- State national television channel Al Wataniyah
- Public national television channel Qanat Libya Al Rasmiyah
- Private national TV channel Al Asemah (initially from Tunis, later Tripoli)
- Private national TV channel Libya Al Ahrar (from Doha)
- Private national TV channel Libya Al Hurra
- Private national TV channel Libya Awal (from Cairo)
- Private national TV channel Libya TV (from Egypt)
- Private national TV channel Libya One
- Public regional TV channel Misrata TV
- Private regional (Misrata) TV channel Tobactes TV (from Tunisia)
- Public regional TV channel BBN TV (Benghazi)
- Public regional TV channel BTV (Benghazi)
- Private regional TV channel Fezzan TV (Sabha)

Source: Altai Consulting

9.1.2. Radio

- Shababiyah FM (public, Tripoli, for youth)
- Radio Libya (public, Tripoli)
- Al Iman (public, Tripoli)
- Al Wataniyah (public, national broadcaster)
- Sawt Tarablus (Tripoli, local council)
- Libya FM (news and music, associated to Libya TV, from Cairo)
- Radiozone (private, Tripoli, entertainment)
- Lebda FM (private, Tripoli, interactive – also Amazigh language)
- Al Jahwara (private, Tripoli, social, political, entertainment)
- Tripoli FM (private, Tripoli, music, entertainment, largely in English)
- Tribute FM (private, Tripoli, music, entertainment, largely in English)
- Sawt Tarablus (public, Tripoli)
- Al Aan (private, Tripoli, foreign)
- Tripolitana (private, Tripoli)
- Al Madina (private, Tripoli)

- Radio Qanat Al-Imam (private, Tripoli)
- Sawt Libya Al Hurra (public, Benghazi, weak links with central government, mixed programming)
- Benghazi FM (public, Benghazi, local news)
- Sanabil FM (public, Benghazi, children)
- BBN FM (public, Benghazi, cultural-religious)
- Al Manara (private, Benghazi)
- Shabab Libya FM (private, Benghazi)
- Libya Al Hurra (private, Benghazi)
- Minhaj (private, Benghazi)
- Tribute (private, Benghazi)
- Libiyana (private, Benghazi)
- Shabaab (private, Benghazi)
- Quran Al Kareem (private, Benghazi)
- Al Aan (TV on FM, private, Benghazi, foreign)
- Libya FM (private, Benghazi)
- Al Aan (TV on FM, private Misrata, foreign)
- Flash (private, Misrata)
- Quran Al Kareem (public, Misrata)
- Tubaktes Quran (private, Misrata)
- Tubaktes (private, Misrata)
- Atfal FM (private, Misrata)
- Medina FM (private, Misrata)
- Libya Al Hurra Misrata (nominally public, Misrata)
- Libya Al Wataniyah Min Sabha (public, Misrata)
- Libya FM (public, Sabha)
- Al Quran Al Karim (public, Sabha)
- Sawt Sabha Al Hurra (public, Sabha)
- Zuwarah Kasas FM (public, Sabha)
- BBC World Service Arabic 91.1 FM (public, foreign)
- Al Jazeera (TV on FM) 99.9 FM (private, foreign)

Source: Altai Consulting

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