



ASSESSMENT OF MEDIA LEGISLATION IN PALESTINE*

**This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the EU Member States on this issue*

BY JAUME SUAU AND ÁNGEL GARCÍA

MED MEDIA

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While the conflict with Israel is a threat to press freedom and the development of media law, the media landscape remains vibrant – and the recently formed unity government may help create an environment that encourages reform.



THE AUTHORS

JAUME SUAU is currently working as a researcher at Blanquerna School of Communications and International Relations. Between 2012 and 2014, he was a researcher at Goldsmiths College, London University, where he focused on media legislation, regulation, online new media and online participation in Spain and the United Kingdom.

ÁNGEL GARCÍA was formerly the Director and Board Member for the Comision del Mercado de las Telecomunicaciones, Spain's regulatory body. Since 2013, he has been teaching law and communications at three Spanish universities: Universidad Carlos III de Madrid, Universidad Nacional de Educación a Distancia (UNED) and the Blanquerna School of Communications and International Relations.

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I. EXECUTIVE SUMMARY

Palestine has fewer provisions for media legislation than any other country in the Southern Mediterranean region, and the occupation by and conflict with Israel represents an ongoing threat to press freedom and media development. Steps are being taken, though, that show how civil society might lead reform processes in the future.

Palestine has fewer provisions for media legislation than any other country in the Southern Mediterranean region. Any review of media law in Palestine should take two main points into account.

First, the occupation by and conflict with Israel, which represents, among other issues, a threat to press freedom and the free movement of Palestinian journalists. The occupation also poses a threat to media development, as Israel controls the Palestinian spectrum and restricts the bringing in of equipment to the different Palestinian territories.

Second, the division in Palestine since 2007 is of crucial importance, with Hamas in control of the Gaza Strip and Fatah of the West Bank. This situation has led to the suspension of the Palestinian Authority Legislative Council (PLC) and, consequently, no media law has existed since 2007.

The Palestinian Authority (PA) areas have come to be governed by presidential decrees and decisions taken by the Council of Ministers. Moreover, this political division has also led to an increase in censorship of the politically divergent media outlets.

Media law in Palestine has failed to protect journalists against institutionalised and self-censorship. Although Law No.

9 Concerning Printed Materials and Publications (the Press Law), passed in 1995, contains several provisions that defend freedom of expression and press freedom, the provisions are not fully developed and it also includes several limits to these freedoms.

The restrictions are normally in the name of national security, due to the conflict with Israel, but could also be (and have been) used to prosecute ideologically or politically divergent media and journalists, especially after 2007.

In other aspects of media law such as licensing, ownership and financing, legislation is scarce or non-existent. However, the recent agreement to form a unity government between Hamas and Fatah may lead to change. Thanks to the activity of national and international associations, universities and research centres, steps have been taken to approve a draft law on access to information. This shows how civil society might play a leading role in reform, together with the public authorities, which are conscious of the need to reform media law in Palestine.

“ The Press Law contains provisions that defend freedom of expression and press freedom, but these are not fully developed. In other aspects of media law, such as licensing, ownership and financing, legislation is scarce or non-existent. ”

I.1. GENERAL SWOT ANALYSIS

Strengths	Weaknesses
A significant number of associations, universities and research centres (national and international) are working to reform media legislation	The political division between the West Bank and the Gaza Strip has blocked the PLC since 2007
Public authorities recognise the need to reform media law	There is a general lack of media law, especially with regard to financing, advertising and media ownership
Despite the political context, the media landscape in Palestine is vibrant	Existing media law contributes to the creation of a partisan press
Journalism is generally perceived as necessary to develop a healthy public sphere and contribute to political accountability	Licensing of broadcasters is strongly dependent on the Ministry of Information
	No independent body regulates licensing and spectrum
	Current legislation cannot guarantee freedom of expression
	The Election Law does not guarantee balanced coverage during electoral periods
Opportunities	Threats
The recently formed unity government might create a new scenario that facilitates the necessary reforms in media legislation	The conflict with Israel represents a threat to press freedom in Palestine and also to the development of media law, since Israel controls the Palestinian spectrum
	The internal political division between Fatah and Hamas has damaged press freedoms in recent years



2. INTRODUCTION

The control of the Gaza Strip and the West Bank by different political factions since 2007 adds to the difficulties faced by Palestinian journalists. But the recent formation of a unity government is likely to change the picture.

2.1. BACKGROUND

The Oslo Accords (1993–1995) introduced a period of Palestinian “state-building” with the creation of the Palestinian Authority (PA), which enjoyed restricted political powers over limited areas of the occupied territories. This necessitated the creation of a body of indigenous legislation, including laws regulating the media. Prior to the accords, newspapers, radio and television stations in Palestine, including East Jerusalem,¹ were strictly controlled by Israel. The PA followed Israel in incorporating the Defence (Emergency) Regulations of 1945 into its domestic law. The regulations themselves – introduced during the British Mandate – enable the use of extraordinary measures to restore civil authority, such as prohibitions on the publication of books and newspapers, administrative detention and limits to citizens’ rights, as well as the establishment of military tribunals.

The period after the Oslo Accords was characterised by an increase in the number of newspapers – previously banned under the occupation – and the emergence of new broadcast channels. The media landscape was transformed following a change in the information policies of the Palestine Liberation Organisation (PLO). The publications *Filastin Al-Thawra* and *Shu’un Filistiniyya*, key elements in the PLO’s efforts to mobilise Palestinian society against Israeli occupation, were closed.² The process

of state-building was dominated by continuous political tensions with Israel and periodical uprisings against the occupation. Moreover, the new state had to deal with the problem of territorial separation, with its two parts, the West Bank and Gaza Strip, having no physical connection.

The control of the Gaza Strip and the West Bank by different political factions since 2007 adds to the difficulties faced by Palestinian journalists. This division has strongly affected media freedom in Palestine and has made the even-handed application of existing media legislation challenging. Both factions have established partisan media outlets and frequently ban and prosecute journalists. However, the recent formation of a unity government between Fatah and Hamas is likely to change this picture. At the time of writing, according to interviewees in the region,³ elections in both territories were due to take place before the end of 2014 but, since that time, they have been postponed indefinitely.

2.2. MEDIA LANDSCAPE

There are three main daily newspapers in the West Bank: *Al-Hayat al-Jadidah* (funded by the PA), *Al-Ayyam* (partially funded by the PA) and *Al-Quds* (privately owned and based in Jerusalem). In Gaza the main newspapers, closer to Hamas, are *Filasteen* and *Al-Resaleh*. Both group of newspapers have been banned outside of their areas of influence. However,

due to the recent unification agreement between Hamas and Fatah, these political groups are starting to allow the presence of non-favourable press in the areas under their control. Consequently, after seven years, newspapers like *Filasteen* can be published in the West Bank and *Al-Quds* is to be found in the Gaza Strip.

The Palestinian Broadcast Corporation (PBC) is the public service broadcaster, controlled by the PA. The PBC broadcasts two channels, Palestine General and Palestine Live, and is in the process of launching a sports channel. The PBC was first blocked in Gaza after 2007 but was then allowed to broadcast, though with restrictions on the political content of programmes. The PA has also closed down Al-Aqsa television offices in the West Bank towns of Ramallah, Jenin and Tulkarm. In the West Bank and Gaza Strip there are more than 40 privately owned television stations (including local TV channels) and an undetermined number of radio stations. Apart from the political controls exercised by Hamas and Fatah in their areas of influence, radio and TV stations are also facing Israeli military control.⁴ There is also a strong satellite TV presence, with Al Jazeera, Jordanian TV and al-Arabiya being the most popular among the foreign broadcasters.⁵ Six satellite channels broadcast from Palestine: three from the West Bank (Palestine, Alfalasteenia and Mix); and three from the Gaza Strip (Hona Al-Quds, Al-Aqsa and Al-Kitab).

¹ Although acknowledging the fact that East Jerusalem is internationally considered as an integral part of Palestinian territories, this report does not cover media regulation in the territory, focusing instead on the regions where Palestinian media law can be effective (the West Bank and Gaza).

² “Media Politics and Democracy in Palestine: Political Culture, Pluralism and The Palestinian Authority”, by Amal Jamal. Sussex Academic Press. 2005.

³ See 5.2. below for a list of the interviews conducted for this report.

⁴ This is the case, for example, of Radio Bethlehem 2000, which had its equipment confiscated by Israel after being accused of advocating terrorism.

⁵ Internet adoption is around 50% of all households, according to sources interviewed in the region, although this has not been confirmed by official data.



3. ANALYSIS OF MEDIA LEGISLATION: STRUCTURE

The consensus among those interviewed for this report is that Palestinian media legislation, developed at the time of the Oslo Accords, is no longer fit for purpose. Extensive reform is needed to create a legal framework that reflects the highly developed media landscape that exists in the country today.

3.1. MARKET ENTRY

3.1.1. Current situation

The Palestinian media in the occupied territories are regulated by the Palestinian Authorities' Ministry of Information and the Ministry of Telecommunications and Information Technology. The Ministry of Information is responsible for the licensing of all media outlets. The Ministry of the Interior is also involved, in so far as it deals with security clearance for the people who register a media outlet or organisation.

The press is licensed under the Law Concerning Printed Materials and Publications (also known as the Press Law) (1995), which was one of the first laws approved by the new Palestinian Legislative Council. Article 19 empowers the Ministry of Information to issue, approve or deny licences on the recommendation of the Director General of Printed Materials and Publications. The decision must be based on reasonable grounds and made within 30 days of application. It can be contested in the High Court of Justice.

Article 17a of the Press Law states that the licence to issue printed material may be granted to a:

- journalist as defined under this law and who meets the criteria prescribed;⁶
- press company, which has been incorporated and registered for the purposes of issuing press printed materials;
- political party.

Article 21 defines the minimum amount of capital needed to start a daily press publication (25,000 Jordanian dinars) or a non-daily press publication (10,000 Jordanian dinars). This applies to all printed publications except those published by a political party. Political parties are also exempt from Article 23, which states that the licence to publish can be annulled if the printed material is not issued within six months of the day the licence was granted. Moreover, the licence can also be removed if the publication is not issued for a period of three consecutive months (dailies), 12 consecutive issues (weeklies) or four consecutive issues for those publications that are normally issued in periods longer than a week.

Article 11 stipulates that each publication must have an editor-in-chief who is responsible for what is published. This figure must fulfil a series of requirements. Among other things, he or she must:

- be a licensed journalist;⁷
- master the language of the publication;
- not be in charge of another printed publication;
- never have been convicted of a criminal offence;
- be resident in Palestine.

Again, these regulations are not applied to party-issued publications.

The Decision of the Council of Ministers No. 6 of 2009 relates to the licensing of radio, television, satellite and wireless stations. It amends Law No. 3 of 1996 Concerning Wired and Wireless Telecommunications as well as the Decision of the Council of Ministers No. 182 of 2004 Concerning the Regulation on the Licensing of Radio, Television, Satellite and Wireless Stations.

Article 4 of the Decision of 2009 sets out the duties of each ministry. The Ministry of Information is generally responsible for the licensing, regulation and monitoring of stations. It is also in charge of issuing broadcast licences and has a mandate to promote media development. The Ministry of Telecommunications and Information Technology is responsible for managing, regulating and licensing the use of frequencies, renewing relevant licences

in co-ordination with the Ministry of Information and granting the licences "necessary to import the technical devices and equipment in accordance with respective laws" (Article 4.2). The Ministry of the Interior monitors the "sources of capital of the station as well as the security aspects" (Article 4.3).

The process of applying for a licence is covered in Article 5. First, the application should be submitted to the General Directorate of Printed Materials and Affairs of Media Means at the Ministry of Information. The application must include information about the applicant, their capital (bank statement), proof of competence, the nature of the services that are required to be delivered and any other documents requested by the ministry. The General Director of the Publications and Media Department will then submit the application to the Ministry of Telecommunications and Information Technology and the Ministry of the Interior. These bodies will notify, within two weeks, their approval or refusal of the licence. The final decision remains in the hands of the Ministry of Information and must be based on reasonable grounds. The applicant has the right to question the decision with the ministry, but not the right to appeal in the courts of law.

It should be noted that Decision of the Council of Ministers No. 6 of 2009 differs from its predecessor (the Decision of the Council of Ministers No. 182 of 2004) mainly in terms of the role of each ministry in the licensing process. While the 2004 decision established a "Tripartite Committee" in which the Ministry of Telecommunications and Information Technology, the Ministry of Information and the Ministry of the Interior shared decisions equally, the 2009 Decision established a clear hierarchy whereby the Ministry of Information is subordinate to the Ministry of Telecommunications and Information Technology, and the role of the Ministry of the Interior is limited to security issues.

3.1.2. Ongoing reforms

The Draft Law Concerning the Press, Printed Materials, Publication and

Broadcast (2010), which would update the Press Law and the legal prescriptions regarding broadcasting, introduces regulations for broadcasting. This draft law was discussed by representatives of the media sector, academia and research centres and was presented to the Presidential Office in 2010, but the draft was never taken into consideration and is no longer under discussion.

According to interviews conducted in Palestine,⁸ the different ministries involved in regulating the media are currently working on a Palestine Media Law. A national media strategy is also being established and is sponsored by UNESCO and Birzeit University to formulate and develop the media sector in Palestine. There is a common belief among media practitioners and government representatives that media law needs to be improved, as it does not meet the requirements of the 21st century.

The common belief among the stakeholders interviewed is that Palestinian media legislation is in need of exhaustive reform. This should be aimed at structuring the media landscape and adapting the actual legislation to fit a more highly developed media environment, very different from the one that existed at the time of the Oslo Accords.

3.1.3. SWOT analysis

3.1.3.1. Strengths

No clear strengths can be identified in the current laws. We did, however, observe significant efforts to develop improved media laws by the Palestinian parliament and the government – unfortunately the political situation in Palestine means it is very difficult for their work to be put into practice.

3.1.3.2. Weaknesses

- The original (and not yet superseded) Law Concerning Printed Materials and Publications (the Press Law) (1995) clearly reflects the political context in which it was approved. It establishes a series of legal prescriptions for printed publications created by political parties. The effect is to favour the development

of a strong partisan press and diminish the likelihood of impartial and objective journalism.

- Accordingly, despite the decision of 2009, licensing in broadcasting remains highly dependent on the Ministry of Information, with no independent bodies involved in the process.

3.1.3.3. Opportunities

- The recent unity government between Fatah and Hamas could create a new scenario with less political tension, in which legislative rules on licensing and spectrum management may be possible.
- The unity government could also initiate media legislation reforms such as the Palestine Media Law or a new law that combines the Press Law with the overall body of laws, Council of Ministers' laws and presidential decrees.

3.1.3.4. Threats

- The ongoing Israeli occupation and the conflict with Israel create a standby market situation, as the Israeli authorities control and manage the Palestinian spectrum. The Israeli Army has also repeatedly destroyed Palestinian public broadcasting transmitters.
- The government of Israel retains control of relations with the International Telecommunications Union (ITU) and therefore administers and manages the radio spectrum in Palestine.
- The 2007 political division between Fatah and Hamas established different authorities ruling in the West Bank and Gaza Strip, with both sides banning ideologically opposing publications. Despite some recent improvements, this situation remains unstable.
- The division also creates uncertainty regarding media legislation. With the dissolution of the Legislative Council, it seems that freedom of information and the rule of the law will not be achieved.

3.1.4. Recommendations

- The civil society campaign for an access to information law should be supported.
- Representations should be made to the unity government seeking the creation of an enhanced framework of media law, which would provide journalists with greater clarity about what may be reported, thus protecting them from

⁶ According to Article 1, a journalist is "Each person who takes the press as a profession or a means of living in accordance with the provisions of this law". These provisions are extended in Article 8, which specifies that journalists must adhere to the "ethics and morals of the profession", including "the respect of the constitutional rights and freedoms of individuals". They must present the press material in an objective manner, with accuracy, impartiality and objectivity, avoid publishing material that could enhance violence or intolerance, and not use the press to promote commercial products.

⁷ Article 13 allows non-journalists to be the editors-in-chief of specialised publications if the subject of the publication falls within their area of specialisation.

⁸ See 5.2. below for a list of the interviews conducted for this report.

4. ANALYSIS OF MEDIA LEGISLATION: LIMITATIONS AND PROTECTION

arbitrary arrest and detention.

- The law should set out in some detail the procedure whereby licence applications will be processed. This should be clear, fair and transparent, and also efficient. The law should state clearly the criteria by which licence applications will be assessed. These should include the proposed contribution of the broadcaster to diversity, financial viability, technical capacity and ownership (to avoid the undue concentration of media ownership).

3.1.4.1. The case for broadcast media licensing in Palestine

It is universally accepted that broadcasting, unlike the print sector, must be regulated, if only to ensure order in the airwaves. An overriding international principle is that broadcast regulators should be independent of both political and commercial interests, as it is not appropriate for these interests to exert influence over the media. Promoting independence is a complex matter and there are several models for achieving this. Central to the idea of independence is the involvement of a range of actors in the process of making appointments to the governing bodies of regulatory bodies, so as to avoid domination by any particular interest or political party. This may be achieved by involving multi-party bodies such as parliament and/or by giving civil society organisations, which normally represent a wide range of social interests, a role in appointments. Other means of promoting independence include ensuring that the appointments process is fair and transparent, putting in place clear conflict-of-interest rules. These should aim to prohibit senior members of political parties from being members, to prohibit those with vested commercial interests from sitting as members, and to provide members with security of tenure.

The licensing of broadcasters is necessary also simply to keep the airwaves manageable. Indeed, in the early history of the United States, no licensing system was in place and this quickly led to chaos. Another reason for licensing broadcasters is to promote the overall public interest in broadcasting, particularly by promoting

the diversity of sources. International law protects the listener's right to "seek and receive" information and ideas. This right is the reason for the importance of promoting diversity in broadcasting. This is not necessarily about quantity but, rather, about quality. It may well be less satisfactory, from the perspective of the listener, to receive 10 FM music stations providing the same fare than to receive three stations that offer a range of information choices.

A further, and vitally important, goal of licensing is to ensure that the media is financially viable – a challenge anywhere but perhaps particularly so in Palestine, given the weak economic base. Advertising is the primary source of income for the vast majority of broadcasters, but the market for advertising, as well as other sources of revenue, such as donor funds, is essentially limited in size. If you license 40 broadcasters then this "pie" must be shared between them, so that the average share is one-fortieth of the whole. If you license fewer broadcasters they will each get a larger share. The implications of media under-funding are serious: it has a tendency to lead to low-quality, low-cost programming (e.g. music radio); journalists are underpaid, leading to complications such as producing "news" stories for cash; and many media outlets seek out a rich "patron", which can skew output based on the interests of the patron rather than those of the public.

3.2. MEDIA OWNERSHIP⁹

3.2.1. Current situation

There is a lack of comprehensive legislative guidance, not just for regulating the private broadcasting sector in Palestine, but also regarding the general rules for financing and advertising that have to be applied to private media. However, according to sources in the country, an independent institution responsible for organising all the audio-visual ventures is to be established in Palestine over the next few years. This will help to clarify issues of media ownership

and should also aid the development of Palestine's media law regarding financing and advertising.

3.2.2. Ongoing reforms

The possible ongoing reforms are mentioned at 3.1.2. above. As yet there is no Palestine Media Law that might start to regulate issues of media ownership, and any first draft that could indicate in which direction reforms might go would be useful.

3.2.3. Recommendations

Recommendations are in line with work that has been conducted by several organisations during recent years (see 3.1.2. above). Approving a Palestine Media Law will be an important step but there is also a need to improve the legal regulations related to media.

Recommendations are as follows:

- A Palestinian Media Law should be approved.
- A new law should be drafted that takes into consideration monopoly ownership limits, media cross-ownership and transparency of media ownership (audio-visual and new media) in order to clarify regulation of the sector.
- Issues of financing and advertising should also be taken into account in future legislation in order to avoid excessive control of the media by public authorities.

While censorship is forbidden by law, in practice there remain a number of significant barriers to freedom of expression. There is an urgent need both for clarification of existing legislation, and for the approval of the new Access to Information Law, imminent at the time of writing.

4.1. INSTITUTIONALISED CENSORSHIP

4.1.1. Current situation

Current Palestinian media law does not, by itself, constitute a threat to freedom of expression. Indeed, censorship is forbidden under both the Basic Law (2003) and Law No. 9 of 1995 Concerning Printed Materials and Publications (the Press Law). However, these laws are open to interpretation, unclear or vague descriptions of key concepts like "national security", which allow the public authorities to restrict freedom of information on very broad grounds. This is particularly dangerous in an environment where there is a tendency for secrecy to take priority over freedom of expression.

The Press Law was one of the first laws issued by the Palestinian Authority. This reflected the priority given to media law reform at the beginning of the process of state-building following the Oslo Accords. The Press Law was intended to replace earlier Israeli legislation. However, as mentioned at 3.1.3.2., it still allows for systems of direct and/or indirect censorship. Some of its articles defend freedom of speech, as does the Palestinian Basic Law (2003), but restrictions in other articles that have been introduced subsequently limit this right.

The Press Law establishes some degree of freedom of expression in Articles 2, 3 and 4.

Article 2: "The press and printing shall be free and freedom of opinion shall be safeguarded for each Palestinian, who shall be entitled to express his opinion freely in speech, writing, photography and drawing in the means of expression and media."

Article 3: "The press shall exercise its mission freely in the presentation of news, information and comment, and shall contribute to disseminating thoughts, culture and sciences within the bounds of the law and within the framework of safeguarding public freedoms, rights and duties as well as respect of the freedom and sanctity of the private lives of others."

Article 4 provides a framework for "freedom of the press". A free press must:

- a) inform the citizen of facts, thoughts, trends and information on the local, Arab, Islamic and international levels;
- b) allow room for citizens to disseminate their opinions;
- c) search for information, news, and statistics that are of interest to the citizens from their various sources, as well as analyse, circulate, publish and comment on them within

the limits of the law; d) grant the right, regarding press printed material, of news agencies, editors and journalists to keep the sources of information or news that are obtained secret unless the court decides otherwise during the hearings of penal actions for the protection of state security, prevention of crime or realisation of justice; and e) grant the right of citizens, political parties, cultural and social institutions and unions to express opinions, thoughts and achievements in their various fields of activity by means of printed material.

These legal prescriptions are also supported by the Palestinian Amended Basic Law of 2003 (slightly modified in 2005). The Basic Law recognises freedom of expression in Article 19: "Freedom of opinion may not be violated. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of law."

Furthermore, the Basic Law, in Article 27.3, bans any kind of censorship, establishing that "censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by the law and pursuant to a judicial decision."

⁹ In other reports on legislation conducted within the MedMedia Project, "financing" and "advertising" are analysed in separate sections. In the case of Palestine, however, there is a general lack of media legislation and therefore we have grouped these issues in one section in order to better identify those aspects of media law in Palestine in need of further legal development.

Despite this general framework, the Press Law establishes in Articles 3 and 4 that freedom of expression can be limited “within the bounds of the law” with the aim of safeguarding “public freedoms, rights and duties” as well as the rights of other individuals. Some of these limits are set out in Articles 7 and 8.

Article 7a: “The press must refrain from publishing anything that contradicts the principles of freedom, national responsibility, human rights and respect for the truth. They must deem that the freedom of thought, opinion, expression and access to information be the right of citizens as much as it is a right of their own.”¹⁰

Article 8: “The journalist and each person who works in the press must fully adhere to the ethics and morals of the profession, including the following: a) to respect constitutional rights and the freedom of individuals and not to prejudice the freedom of their private lives; b) to present the press material in an objective, integrated and balanced manner; c) to maintain accuracy, impartiality and objectivity in commenting on news and events; d) to refrain from publishing anything that may incite violence, intolerance and hatred or that may induce racism and sectarianism; and e) not to exploit press material for the promotion of a commercial product or to depreciate its value.”

These basic limits to the right to freedom of information, especially those proscribed in Article 7a of the Press Law are further developed in Article 37a, which contains a list of eight topics “the press shall be prohibited from publishing”. Without safeguards, the first three restrictions can be interpreted broadly as facilitating political censorship. They are the banning of:

- “the printing of any confidential information about the police or public security forces, or about their weapons, equipment, locations, movements or training activities”;
- “any article or material that expresses contempt for any religion or doctrine, the freedom of expression of which is safeguarded by law”;
- “any article which may jeopardise national unity, instigate the committing of crime, or disseminate grudges, dissension and aversion, arousing sectarianism amongst individuals in society”.

Furthermore, Article 37b is specifically aimed at banning any printed material imported from abroad that contains any content prohibited by the Press Law.

The Press Law, approved during a period of Palestinian state-building (1995), was not harmonised with the Basic Law, approved a decade later, or with other international examples or charters that effectively guarantee freedom of expression. Moreover, the Press Law includes some clear conflicts between certain of its articles. Although Articles 2, 3 and 4 recognise freedom of expression and articulate it, this right is limited in Articles 7a, 8 and especially in Article 37a.

These articles limit freedom of expression and publication where such freedom might affect “national responsibility” or “national unity”. With no further legislation developing the proscriptions established in Article 37a, it is left to the authorities’ discretion to define the limits of freedom of expression. In a political context dominated by tension with Israel as well as internal Palestinian political conflict, with two different governments claiming legitimacy in the Gaza Strip and the West Bank, these legal proscriptions have done nothing to further freedom of

information and reduce limits to political censorship in recent years.

Under the Basic Law, freedom of expression is guaranteed and censorship is prohibited. However, there is a gap between what the legislation sets out and the real restrictions faced by media practitioners. According to Freedom House,¹¹ Human Rights Watch¹² and the Independent Commission for Human Rights (ICHR),¹³ freedom of the media and freedom of expression were severely affected after the political division between the West Bank and Gaza in 2007. Moreover, in their annual report of 2012 (published in 2013),¹⁴ the ICHR found an increase in the number of journalists assaulted and illegally detained by public officials over the previous years. There was also an increase in the number of publications banned without judicial sanction. The trend was the same in both Gaza and the West Bank.

Journalists were also hampered in their work by the presence of Israeli security forces in the region. Reporters Without Borders and the Palestinian Centre for Development and Media Freedoms (MADA) have repeatedly drawn attention to this problem.¹⁵ According to MADA, in 2013, out of a total of 129 media freedom violations monitored in Palestine, 51 were attributed to Israeli security forces and 78 to Palestinian parties.¹⁶ The MADA annual report argues that media freedoms in the West Bank registered a gradual improvement during 2013 compared with 2012, but that they are declining in Gaza.

Media legislation is not enough to resolve the situation. The ambiguity of the Press Law allows it to be used to limit journalists’ rights in the name of national interest or other broad concepts that have not been developed more precisely in further legislation. This lack of clarity

about the limits to freedom of expression affects day-to-day coverage of political issues by journalists and encourages self-censorship in order to avoid detention, intimidation or harassment. Under the guise of such concepts as “national unity” and “national responsibility”, the legal framework permits the direct censorship of publications. Newspaper licences can be revoked or distribution restricted in cases where the printed publication publishes material that contravenes Article 37 (Article 47). Furthermore, Article 33 of the Press Law establishes the requirement to deposit four copies of each printed publication (except periodicals) before distribution. This requirement clearly facilitates censorship and governmental control, in contradiction of Article 27.3 of the Basic Law.

Blocking or restricting access to government data is another means by which public powers may exercise control over journalists and the media. Neither the Basic Law nor the Press and Publications Law includes any explicit guarantee related to the right to information. This right is not protected by the Palestinian Constitution or in any other legislation. Palestinian courts find it difficult to support journalists on the basis of the prevailing legislation. Article 4c of the Press Law states that journalists have a right to “search for information, news and statistics”, while Article 6 establishes that “official bodies shall work towards facilitating the mission of the journalist and research in relation to viewing their programmes and projects”. These provisions have proved insufficient to guarantee access to information in the absence of more detailed prescriptions.

More positively, other legal developments have strengthened the right to access information in specific areas: the Environment Law (7/1999) in Article 3 states that any individual can obtain the necessary official information related to the environmental impact of industrial,

agricultural or construction activities. The Public Statistics Law (4/2000), which created a statistics bureau, recognises in Article 4 the right of any citizen to obtain the data created within the bureau. The Law on the Regulation of the Public Budget (7/1998) establishes some prescriptions that force the Public Budget Directorate to disseminate the public budget to media institutions and practitioners. Nevertheless, these developments do not guarantee journalists access to information in the course of their work. In fact, some of the legislation approved after the Press Law further restricts this right. Article 67 of the Law of Civil Service (4/1998), for example, requires that public servants protect information acquired during their work. The Law of General Intelligence (17/2005) and the Decree Law Concerning Preventive Security (11/2007) actively promote secrecy and prohibit the reporting of the activities of certain bodies.

4.1.2. Ongoing reforms

The most important ongoing reform is the apparently imminent (at the time of writing) approval of the Access to Information Law¹⁷ (or presidential decree¹⁸), which follows a sustained campaign by civil society. In 2012 MADA launched a public campaign, entitled “Information is power”, that has re-started the project of seeking approval for a law on access to information. Workshops and public events were held in some Palestinian universities, including an event at Birzeit University that was televised on Palestine TV. The campaign even included ads in newspapers and on radio and TV advocating progressive access-to-information legislation.

The Palestinian Authority (West Bank) published the draft created by MADA on the Prime Minister’s website and organised a national committee to discuss the draft law. The committee included representatives from the Anti-Corruption Commission, the General

Secretariat of the Council of Ministers, the Ministry of the Interior, the Ministry of Finance, the Ministry of Information, the Office of the Fatwa and Legislation, the Ministry of Justice, the Independent Commission for Human Rights, MADA and the civil commission set up to strengthen the independence of the judiciary. The committee produced a draft law based on MADA’s previous draft. It was published in February 2014 on the General Secretariat of the Council of Ministers and the Anti-Corruption Commission web pages for public discussion and at the time of writing is available to view on official websites.¹⁹

This draft law includes several positive developments in line with international standards that could increase journalists’ freedom and enhance their right to access information. Article 2 acknowledges the right of any person to access information held by public bodies. Furthermore, Article 3 requires an “absolute disclosure of information”, establishing that “all information shall be deemed accessible unless exempt in the provisions of this law”. The draft law also requires public institutions to appoint “competent staff”, appropriately trained to deal with requests for information (Article 4). Institutions have a duty to publish annual reports (Article 6), to open general meetings to the public (Article 8) and to answer requests within a maximum of 14 days (Article 14). Finally, the draft law establishes the post of commissioner general of information (Article 27) who is charged with examining denials of requests, unreasonable fees to access information and failures to provide information within the prescribed period (Article 29).

Chapter 4 of the law deals with exceptions. These largely relate to “national security and public order” (defined as “information whose disclosure risks endangering the defence capabilities and national security of the state”, Article 19, or “economic security”, Article

¹⁰ Section b of Article 7 provides a basic legal framework for protecting minorities in press materials, establishing that “the periodical printed materials which address children or adolescents must not contain any pictures or stories or news that violate Palestinian morals, values and traditions”.

¹¹ “Israeli Occupied Territories and Palestinian Authority: Freedom of the Press 2011”. Freedom House. Available at: www.freedomhouse.org/report/freedom-press/2011/israeli-occupied-territories-and-palestinian-authority/#.U5Xb3twVduY.

¹² “No News is Good News: Abuses Against Journalists by Palestinian Security Forces”. Human Rights Watch. April 2011. Available at: www.hrw.org/sites/default/files/reports/iropt0411webcover.pdf.

¹³ “ICHR 18th Annual Report: The Status of Human Rights in Palestine 2012”. 2013. Available at: <http://www.ichrps/en/2/6/1041/ICHR-18th-Annual-Report.ht#>.

¹⁴ *ibid.*

¹⁵ See for example, report on the IFEX website from Reporters Without Borders dated 20 May 2014: www.ifex.org/israel/2014/05/20/increase_in_violence/.

¹⁶ “MADA Annual Report 2013: Media Freedoms Violations in Palestine”. Palestinian Centre for Development and Media Freedoms. Available at: www.madacenter.org/images/text_editor/MADA-annual-Report2013.pdf.

¹⁷ In addition, there exist several drafts of the Higher Media Council Law and the Audio-visual Law. However, these are not as developed as the Access to Information Draft Law, which seems as though it will be the next law to be approved regarding the media.

¹⁸ At the time of writing this report, the new Palestinian government, which comprises both Fatah and Hamas, had just been formed. Although the new draft was published in February 2014 on both the General Secretariat of the Council of Ministers’ and the Anti-Corruption Commission web pages for public discussion, it is not yet clear when it is going to be approved. Before the formation of the unity government the West Bank was ruled through presidential decrees. As the new government has declared its intention to hold elections before the end of 2014, it is uncertain if it will approve the law through Presidential Decree or wait for it to be approved by the new parliament.

¹⁹ The draft can be consulted (in Arabic) at the following official link: <http://pmo.gov.ps/ar/Views/PageView.aspx?pid=1358>.

23) issues. Other exceptions include “information concerning a foreign state or organisation” which the public institution has received confidentially (Article 20), information related to the internal affairs of the institution (Article 25) or privacy issues (Article 26). Information cannot be withheld under Articles 19 and 20 for more than 20 years unless the commissioner general fixes a special time period.

However, according to a report published by the Centre for Law and Democracy (CLD),²⁰ the final draft of the Access to Information Law presented by the committee is not as ambitious in defending access to information as the one initially proposed by MADA. Although the law is an improvement on what went before, certain terms remain ambiguous. For example, it is unclear whether “persons” who seek to access information will be limited to Palestinian nationals or whether institutions can also exercise this right. Exceptions on the grounds of “national security”, “information about contracts” or the “internal affairs of public authorities” could, in theory, allow any institution to withhold all its information, since the terms used are so broad and vaguely worded. Articles 9 and 10 offer

protection to informants only if they have acted in good faith and did not acquire information contrary to the law.²¹

4.1.3. SWOT analysis

4.1.3.1. Strengths

- The campaign by civil society around the Access to Information Law suggests that citizens, in mobilising, can effect change. This campaign, together with initiatives conducted by civil society and research institutions (see for example the work of the Media Development Centre in Birzeit University), facilitates the creation of a vibrant public sphere that may result in future improvement of media law in Palestine.

4.1.3.2. Weaknesses

- Current legislation, mainly the Basic Law and the Press Law, cannot guarantee freedom of expression, nor can it avoid institutionalised and self-censorship – even without taking into account the effects of the particular political context.
- There is a need not just for an Access to Information Law but for further legislation that regulates audio-visual media and new media. Incomplete legislation leaves journalists unclear as to what they can say or cover in safety.

4.1.3.3. Opportunities

- The recent unity between Fatah and Hamas might ease the tense political climate and reduce the aggression faced by journalists.²²
- A unity government is more likely to pass an Access to Information Law. Transparency and freedom of information are essential for fighting corruption.

4.1.3.4. Threats

- Each year the conflict with Israel results in a high number of incidents between Israeli security forces and journalists. These situations are completely out of the control of the PA and, consequently, cannot be solved by media legislation.
- Moreover, the 2007 political division between Fatah and Hamas has split the Palestinian leadership, with both sides banning critical publications. A failure to resolve the conflict between the West Bank and Gaza will undermine both the rule of law and freedom of expression.

4.1.4. Recommendations

- The Access to Information Law should be approved, as this is seen as an important step by many organisations.
- There is also a need to revise the Press Law to take into account new media, to provide clarity and to ensure that media freedoms and journalists are protected and there is no censorship by the back door. This may take the form of a “Media Law” that includes all kinds of media, with a clear aim of improving, not restricting, freedom of information and fighting against censorship, whether institutionalised or self-imposed.

4.2. SPECIAL LEGISLATION DURING ELECTION PERIODS

4.2.1. Current situation

There is little legislation in Palestine specifically covering media activity during election periods. However, the Electoral Law by Decree of 2007 includes sound basic provisions. It establishes at Article 61.1 that all candidates have the right to conduct the activities that they consider to be the most appropriate in order to be in contact with and/or explain

their electoral programs to the electors, excepting any activities considered to be outside the law. Article 70.1 defends the stipulation that the electoral process has to be conducted publicly and transparently by the public powers, so that its coverage by both the local and international media is facilitated in an appropriate way. Article 61.2 states that official media must maintain an impartial position during the electoral process, without favouring one candidate above another. This prescription only affects the official media. Private media outlets are not included in the law and therefore are not limited in their coverage of the election process.

The Electoral Law also requires the Electoral Commission to prepare, in co-ordination with the official media, a schedule for free and unpaid advertising for all candidates and electoral lists, with equal opportunities for all of them (Article 65). The Commission is also in charge of accrediting the local and international “observers and media representatives” (Article 70). This accreditation affords the right to request help and facilitation from “all persons and bodies implementing the provisions of this law, and the police force”. The preliminary results of the elections must be published within 24 hours of the ballot. The final results must be published in the Palestinian Official Gazette and in the daily press (Article 103).

In theory, elections in the West Bank are governed according to the tenets of the Electoral Law by Decree of 2007. This decree replaced the previous Election Law No. 9 of 2005, changing the electoral system from a mixed to a fully proportional one. However, the Electoral Law has never been properly adopted in either the Gaza Strip or in the West Bank due to political tension between the two territories, where the last elections were held in 2006. Hamas refused to accept the Electoral Law of 2007 and claimed that the decree by which it was approved was an illegal and unilateral move by the President of the PA, Mahmoud Abbas,

arguing that the Palestinian Legislative Council should approve the Electoral Law rather than it being changed by a presidential decree.

4.2.2. Ongoing reforms

Due the fact that Hamas refused to accept the 2007 decree in which the Electoral Law was approved, it is very likely that the new unity government will approve a new decree before the next elections, due before the end of 2014. Hamas’s rejection of the decree was not just about formal issues (the presidential decree replaced a parliamentary law). In the 2007 decree the electoral system was changed from half proportional representation (in a “first past the post”-based system) to full proportional representation, which was considered by Hamas to be to Fatah’s advantage. There is likely to be intense discussion between the two factions about which electoral system is best.

4.2.3. SWOT analysis

4.2.3.1. Strengths

- The Electoral Law establishes that public bodies and security forces have to facilitate the job of journalists during the elections in all issues that are connected to the correct development of the electoral process. Even if it is not developed any further, the Electoral Law makes clear that public media must be impartial during the election period.

4.2.3.2. Weaknesses

- The law merely establishes basic principles, giving too much discretion to public authorities.²³
- The law does not establish any regulation for private media reporting during election periods. Accordingly, there is no obligation on private media to broadcast balanced coverage.

4.2.3.3. Opportunities

- The political situation offers the chance to approve a new electoral law. As with the process that led to the approval of the Access to Information Law, public powers have the opportunity to work together with civil society and

approve law that overcomes previous shortcomings regarding media coverage.

4.2.3.4. Threats

- The greatest threat lies in the political situation rather than with the media legislation itself. In a situation of increased polarisation between Hamas and Fatah it would be hard to approve a new electoral law that ensures public media impartiality and also places limits on private media coverage. However, if political tension diminishes then a new law could be approved and, even if it is similar to the 2007 decree, reduced political tension will ensure more pluralistic coverage from state media.

4.2.4. Recommendations

- The 2007 decree should be replaced by a new decree, developed with input from both Fatah and Hamas that regulates future elections after the unity government is formed.
- This new decree should take into account both public and private media. For the private media it should ensure fair coverage of the elections, without disregarding their freedom of opinion and editorial line. For the public media, the decree should establish greater clarity around what is considered an “impartial position” by monitoring how the public media cover the elections, establishing how candidates’ time is distributed, paying attention to the advertising and debates and checking how news programmes report the elections.

“There is a need to revive the Press Law to take into account new media, provide clarity and ensure that media freedoms and journalists are protected...with a clear aim of improving, not restricting, freedom of information and fighting against censorship”

²⁰ “Comments on the draft ‘Access to Information Law’”. Centre for Law and Democracy, March 2014.

²¹ See “Palestine: Draft Access to Information Law”. Article 19, December 2013, for a further analysis of these issues. Although based on a previous draft of the law, some of the conclusions are perfectly applicable to the present draft.

²² The present report was written before the last conflict between Israel and Hamas in Gaza (summer 2014). Before this series of attacks, there was a feeling of optimism about the new unity government in the West Bank, according to interviews conducted in the region. At the time this text was last reviewed (October 2014), it was still unclear how this latest conflict in Gaza would affect the unity government and some of the most advanced projects concerning media legislation.

²³ According to International Media Support (“Evaluating the Media” report), the Legislative Council Elections (2006) and the Presidential Elections (2005) have suffered from public media bias in favour of Fatah, which controls these institutions.

5. SOURCES

5.1. LEGAL RESOURCES

The main sources of media law in Palestine are the Basic Law, 2003 and the Law Concerning Printed Materials and Publications, 1995 (the Press Law). The following laws deal more specifically with telecommunications and licensing:

- The Law Concerning Telecommunications of 1996;
- Decree No. 15 of 2009;
- The Law Concerning the Palestinian Telecommunications Sector Regulatory Commission;
- Decision of the Council of Ministers No. 182 of 2004;
- The Law Concerning the Regulation on the Licensing of Radio, Television, Satellite and Wireless Stations;
- Decision of the Council of Ministers No. 6 of 2009;
- The Law Concerning the Amending Regulation of the Regulation in the Licensing of Radio, Television, Satellite and Wireless Stations of 2004;
- Decree No. 2 of 2010;
- The Law Concerning the Palestinian Public Radio and Television Corporation.

It should be noted that after the elections of 2006 Palestine failed to agree on a government, resulting in Hamas taking control of the Gaza Strip in 2007. Fatah remained in control of the West Bank. Consequently, parliament was frozen in 2007 and the West Bank was ruled by presidential decrees.

5.2. INTERVIEWS

- Palestinian Broadcast Corporation – **HANADI MASSOUD**
- EUDEL Gaza and West Bank – **SHADI OTHAM** and **OLGA BAUS GIBER**
- Media Development Centre, Birzeit University – **BUTHAYNA ALSEMEIRI**
- Palestinian Centre for Development and Media Freedoms – **MOUSA AL-RIMAWI** and **ELODIE FARGE**
- Palestinian National Authority, Ministry of Telecommunications and Information Technology – **HASAN ABU AL-ELLAH**





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