

# **FREEDOM OF EXPRESSION IN YEMEN**

## **A CRITICAL STATE OF AFFAIRS**



### **INTERNATIONAL PARTNERSHIP FOR YEMEN**

#### **MISSION REPORT**

**7 – 11 NOVEMBER 2010**

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## EXECUTIVE SUMMARY

**F**our international non-governmental organisations conducted a joint press freedom mission to Yemen between 7 and 11 November 2010 to make a comprehensive assessment of the freedom of expression situation in the country. The mission included delegates from ARTICLE 19: Global Campaign for Free Expression, The International Federation of Journalists (IFJ), International Media Support (IMS), and The World Association of Newspapers and News Publishers (WAN-IFRA). The delegation travelled to the capital city Sana'a and the southern city of Aden to meet with media professionals, media experts, government and opposition parliamentarians, civil society representatives, legal advisors, and press and communications spokespeople from US, UK and EU diplomatic representations.

The meetings and interviews revealed that Yemeni media professionals live and work in an extremely hostile environment. The delegation was deeply concerned to uncover that the government uses a powerful set of draconian laws to stifle freedom of expression and deploys various tools to restrict the media. Widespread violence is directed against journalists, while reports of abductions, kidnappings, arbitrary arrests, beatings and torture are commonplace. The delegation noted that through its control over broadcast and print institutions, distribution outlets and advertising, the government seriously undermines the development of a strong independent media in Yemen. Journalists feel inadequately protected by the country's legal system and a culture of fear surrounds editorial coverage of a wide range of issues. The mission was informed that self-censorship is common practice.

The delegation bore witness to the ongoing struggle to regulate the media, with three separate legal proposals from different sectors of society under discussion as a replacement for existing legislation. It also perceived a pressing need for engagement in the broader field of media development, including the professional training of journalists and effective media management.

Finally, professionals from across the Yemeni media community addressed an urgent distress call to the international community for greater support.

## INTRODUCTION

Yemen sits at the base of the Arabian Peninsula, a region defined by ancient culture and Islamic piety yet increasingly beset with modern contradictions. A thousand kilometres of rugged mountains and stepped desert separate its ancient capital Sana'a from the oil-rich modern Saudi metropolis Riyadh, but in economic terms the two states are worlds apart. While the petrodollar has made the Saudi Kingdom one of the world's richest countries, its poor southern relation has seen limited resources all but expended and revenues frittered away through years of internal conflict, corruption and political mendacity. The region hosts perhaps one of the greatest discrepancies in the Arab world, a modern-day tragedy of the haves and have-nots that is evidenced most keenly in the desperate poverty endured by the Yemeni people.

The media's ability to report on this harsh reality has become increasingly limited as President Ali Abdullah Saleh continues to restrict the space for freedom of expression. There are only a handful of independent newspapers in Yemen, while the country's four TV channels and 12 radio stations are broadcast exclusively by the government-controlled Yemen General Corporation for Radio and Television (YGCR). The government and main opposition parties, whose newspapers dominate the market with partisan coverage of political achievements, control printing presses and distribution networks. Independent journalists struggle to make a living compared to those who work for the official press; restrictions on advertising and a resultant lack of investment in the independent media confound the disparity.

*"President Saleh once said that ruling Yemen is like dancing on the heads of snakes because of how dangerous and tricky the country is. I can tell you that being a journalist in Yemen is also like dancing on the heads of snakes! Self-censorship is everywhere: we can't report on the President, on the heads of opposition... so we consult amongst colleagues and write in ambiguous ways."*

The sentiments expressed by this Sana'a-based journalist were echoed repeatedly to the international delegation as it met with media professionals from across the spectrum - government, opposition and independent. They all revealed growing frustration at government restrictions on covering stories of real concern.

The country's ongoing social, political and economic challenges have influenced the development of the Yemeni media since the north and south of the country were unified in 1990. Most of these issues are off limits to the media, with frequent reports of the government taking swift action against any publication that crosses such red lines. As a result information is largely suppressed, making conditions inside Yemen incredibly difficult to judge from the outside.

Yemen is often viewed by the international community as a haven for terrorist group Al-Qaeda in the Arabian Peninsula (AQAP). A few days before the mission, the country was in the international spotlight after parcel bombs made and sent from Sana'a were discovered aboard US-bound cargo planes. Under serious pressure from its Saudi neighbours (who for many years have complained of Yemeni-based insurgents running weapons and bomb-making equipment over the border<sup>1</sup>), and an American Administration that has been conducting covert drone attacks on behalf of the Sana'a regime<sup>2</sup>, the government has been forced to play a more active role in controlling the lawless hinterlands and border regions where AQAP has remained largely unchallenged. By claiming that Yemen is at the mercy of international terrorism and calling for financial and military support, President Saleh has largely succeeded in diverting the world's attention from the many other pressing issues that threaten his country and its people.

Ongoing peace talks with Zaydi Shia rebels, known as Houthis, in the northern region of Saada remain fragile, with the Houthis accusing the central government of discriminating against and marginalising the Zaydi Shia community in what is a predominantly Sunni Muslim country. In parallel, the government faces growing discontent from a southern population that feels economically and socially marginalised by northern Sana'a elites. This led to the creation in 2008 of an increasingly active Southern Movement that regularly organises peaceful marches and protests. The government's heavy-handed response to the demonstrations has resulted in a radicalisation of the movement in recent months.

In addition, the Yemeni state must deal with the country's traditional tribal system. Each tribal leader exerts political power over their particular territory, forcing the state into perpetual negotiation to ensure as much control as possible over the national territory. It is

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<sup>1</sup> CIA World Factbook, Saudi Arabia Country Report, 'Trans-national Issues, <https://www.cia.gov/library/publications/the-world-factbook/geos/sa.html>; Brian Whitaker, The Guardian, 'Saudi security barrier stirs anger in Yemen', 17/02/2004, <http://www.guardian.co.uk/world/2004/feb/17/saudi-arabia.yemen>

<sup>2</sup> WikiLeaks cable 10SANAA4, 04/01/2010, 'General Petraeus' meeting with Saleh on security', <http://www.wikileaks.ch/cable/2010/01/10SANAA4.html>

widely alleged that President Saleh regularly pays out huge amounts to keep the more powerful and influential tribal leaders from bringing down his government, effectively creating his own personal fiefdom in the capital. As the coffers are emptied faster than they can be replenished, the unlikely sustainability of this approach seriously questions the future stability of President Saleh's regime, its institutions, and the country as a whole.

These ongoing political power struggles are being played out against a backdrop of crippling social problems that have devastated Yemeni society for decades. The unemployment rate stands at an estimated 35%<sup>3</sup>, while over 40% of the population lives below the national poverty line<sup>4</sup>. Widespread corruption throughout President Saleh's 33-year rule is believed to have kept Yemen in a state of poverty, with the country's limited oil wealth siphoned away from essential long-term public investment. The oil wells, however, are predicted to run dry by the end of this decade<sup>5</sup>. Most alarmingly, in the next 20 years Sana'a could become the first world capital to run out of water unless drastic solutions are found to keep the urban area's 1.9 million residents protected from drought<sup>6</sup>. Of primary importance is the management of the country's large-scale cultivation of khat (a plant chewed by an estimated 90% of men and 50% of women that produces amphetamine-like effects), which occupies nearly 60% of the land set aside for cash crops and uses up to 30% of the country's ground water supply<sup>7</sup>. This is forgetting for an instant the enormous implications for public health and the heavy welfare burden that mass drug consumption has created.

The Yemeni media has been powerless to break the silence surrounding these issues with any regularity. The government has introduced mechanisms that fall outside of the regular court system to deal with undesirable elements within the media, building a parallel system of special courts through which it legitimises acts of intimidation and harassment against those it deems too critical of the regime. This system is based on the existence of two

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<sup>3</sup> CIA World Factbook, Yemen Country Report, Economy, <https://www.cia.gov/library/publications/the-world-factbook/geos/ym.html>

<sup>4</sup> United Nations Development Programme, Yemen Country Profile, <http://www.undp.org/ye/y-profile.php>

<sup>5</sup> World Bank, 'Yemen Economic Update', summer 2007: [http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&theSitePK=523679&entityID=000020439\\_20070830163859&searchMenuPK=64187283&theSitePK=523679](http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&theSitePK=523679&entityID=000020439_20070830163859&searchMenuPK=64187283&theSitePK=523679)

<sup>6</sup> Science and Development Network, 'Yemen's capital will run out of water by 2025', October 2010 (from a draft report by McKinsey & Company commissioned by the Yemeni government): <http://www.scidev.net/en/news/yemen-s-capital-will-run-out-of-water-by-2025-.html>

<sup>7</sup> Bulletin of the World Health Organization, vol.86 no.10 Geneva Oct.2008: 'Khat chewing in Yemen: turning over a new leaf', online version [http://www.scielosp.org/scielo.php?script=sci\\_arttext&pid=S0042-96862008001000005&lng=en&nrm=iso](http://www.scielosp.org/scielo.php?script=sci_arttext&pid=S0042-96862008001000005&lng=en&nrm=iso)



specialised courts and a press law, currently in review, that too often criminalises free expression and deters investigative inquiry.

Repercussions from both the Tunisian revolution at the beginning of January and the fall of Egyptian President Hosni Mubarak in mid-February reached Yemen with thousands of demonstrators taking to the streets to demand President Saleh step down. Pervasive corruption among public officials and the lack of a plural and free political system were two of the main catalysts, with students, opposition parties and activist movements uniting in a rare show of joint protest. As governments across the Arab region adjust to the newly emerging political reality created by this wave of public anger, it is hoped that regimes adept at raising an iron fist towards popular demands for greater freedoms and political change will on this occasion take heed of the voices coming from the streets. With seasoned and typical wariness, it is a situation that has left many Yemeni journalists looking for a miracle, not just a revolution, to provide the answer.

## I. MECHANISMS OF REPRESSION

Reports of a crackdown against the Yemeni media denounce a systematic attempt to install a framework of special measures that permit the government to operate outside the jurisdiction of regular Yemeni courts when it comes to targeting journalists and media professionals.

The delegation met with journalists, editors and publishers, as well as with members of the Yemeni Journalists' Syndicate in both Sana'a and Aden, who provided first-hand testimonies of the hardships and challenges faced by media professionals in their every-day working lives. Discussions with a selection of key interlocutors shed light on how the government exerts a suffocating control over the media in Yemen. Such a tight grip on media outlets, whether TV, radio or the written press, prevents the emergence of a healthy independent media and materialises through a set of special mechanisms that are regularly deployed.

The Yemeni government has built a parallel court system through which it legitimises acts of intimidation and harassment against those it deems too critical. The system is based on the existence of two specialised courts:

- The Specialised Criminal Court, established by presidential decree in 1999 to handle crimes against national security such as terrorism, hostage taking and piracy. In 2004, the court's purview extended to "crimes against state security and serious economic and social crimes"<sup>8</sup> allowing the government to prosecute political opponents and journalists through an exceptional tribunal.
- The Specialised Press and Publications Court, created on 11 May 2009 by the High Judicial Council to try all cases related to media and publications.

The creation of such exceptional courts goes against the Yemeni constitution that explicitly specifies: "(...) Exceptional courts may not be established under any conditions."<sup>9</sup>

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<sup>8</sup> Republican Decision on Law no. 391 for the year 1999 regarding the Specialised Criminal Court, art.3, and Republican Decision on Law no. 8 for the year 2004 Regarding the Specialised Criminal Court, art.1.

<sup>9</sup> The Constitution of the Republic of Yemen, Chapter III, art. 150.

The institutionalisation of such an unconstitutional process has not prevented the government from physically attacking and mistreating independent or opposition journalists, acting in complete violation of international human rights standards. In discussions with media professionals about this repressive legal structure, it became clear the government has effectively stifled critical voices. When describing the situation, journalists and human rights activists made reference to several major cases<sup>10</sup> that have deeply marked the Yemeni media community and that remind them there are clear limits to their freedom of expression. These include cases of journalists who report being physically attacked, abducted and tortured, and who were brought to trial before the exceptional courts. Although eventually pardoned by presidential decree, it is often unclear whether the charges against them have been dismissed. The journalists in question covered stories ranging from the role of the authorities in handling Yemen's different internal conflicts, President Saleh himself, government corruption, tribal leaders, and other sensitive subjects.

In one of the most recent cases, on 16 August 2010 a group of security agents stormed the house of Saba news agency journalist Abdul Ilah Haider Shaea and arrested him. They confiscated his notes as well as his laptop. He was held incommunicado for 29 days before his first hearing in front of the Specialised Criminal Court on 16 September. He was reportedly beaten and tortured during long hours of interrogation. The charges against him include planning to carry out terrorist acts, providing media support to Al-Qaeda, and conspiring to overthrow the government. Mr Shaea's journalistic work happened to focus on Al-Qaeda, the military and the government. He had been critical of the government's policies towards terrorism and had various contacts amongst Islamist groups. He was first

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<sup>10</sup> Outspoken critical journalist Abdulkarem Al-Khewani has been repeatedly targeted by the government for his work. In 2004, he was sentenced to one year in prison while his weekly newspaper *Al-Shoura* was suspended for six months for allegedly libeling President Saleh and supporting northern Houthi rebels. He benefited from a presidential pardon in March 2005 for this case. In June 2007, while working as editor of *Al-Shoura* news website, Yemeni security forces raided his home and arrested him. According to reports, Mr Al-Khewani was severely beaten and subjected to humiliating treatment. He was brought before the Specialised Criminal Court for alleged links to a terrorist cell associated with the northern Houthi rebels. After being released on bail in late July, he was abducted in late August and claims to have been severely beaten by gunmen who threatened to kill him and his family if he continued his critical writing about the President and the country's national unity. The case concluded in a six-year prison sentence in June 2008. Although he was released under presidential pardon in September of the same year, the Specialised Criminal Court upheld the jail sentence in late January 2009. In March of the same year, the President pardoned the journalist once more. Journalist Mohamed Al Maqaleh, editor of opposition Socialist Party website *Al Eshteraki*, was abducted by security forces on 18 September 2009 after his website reported the killing of 87 civilians by Yemeni military air strikes in the northern region of Sa'ada. It wasn't until the end of January 2010 that his family heard from him. During his four-month abduction he was held without charge and was reportedly tortured, beaten and subjected to fake executions. In May 2009, the authorities suspended judicial proceedings against him in line with the pardon announced by the government to coincide with the 20<sup>th</sup> anniversary of the country's unification. He faced charges from both the Specialised Criminal Court and the Press and Publications Court.

abducted in July 2010 when a group of unidentified individuals interrogated him for several hours over his networks and his reporting of Al-Qaeda.

The delegation attended his 9 November hearing and directly witnessed treatment that was in clear violation of international human rights standards. Mr Shaea was transported to the court in a military truck accompanied by two heavily armed jeeps and various other military vehicles. Once in the courtroom he was kept inside a cage for the duration of the hearing. He was not legally represented: his lawyers have boycotted the trial since it began, considering it to be unconstitutional. During the hearing Mr Shaea denounced the poor detention conditions at the military prison in which he was being held, and requested a transfer to a civilian prison.

Information seized during his arrest has been used to build a case against him. Information regarding Anwar Al-Awlaqi, a US-Yemeni citizen, radical cleric and Al-Qaeda recruiter whom Mr Shaea had interviewed in October 2009, was found on his laptop computer. At the time of the interview Mr Al-Awlaqi was not wanted by the Yemeni security forces, however in April 2010 he was placed on the CIA target list after being linked to both a Nigerian man who attempted to blow up a Detroit-bound aeroplane in December 2009, and to a US Army psychiatrist who killed 13 people in Texas in November of the same year. On 18 January 2011, the Specialised Criminal Court in Sana'a sentenced Mr Shaea to five years in jail followed by a two-year ban on leaving the capital for "belonging to an illegal armed organisation" and "recruiting young people, including foreigners, to [Al-Qaeda] by communicating with them via the Internet." He was also accused of photographing security agency buildings and embassies, of being an advisor to Anwar Al-Awlaqi, and writing for Al-Qaeda's online magazine. Mr Shaea has rejected the legality of the Specialised Criminal Court and has refused to file an appeal. The delegation is seriously concerned that Mr Shaea may have been convicted as a result of his critical reporting.

When discussing Mr Shaea, media professionals made it clear that such treatment and process is becoming increasingly the norm in Yemen. In the cases of Abdulkarem Al-Khewani and Mohamed Al Maqaleh, President Saleh pardoned both journalists. On 1 February 2011 Mr Shaea was also granted a pardon, but a phone conversation 24 hours later between President Saleh and US President Barack Obama, in which the US leader made

clear his administration's concerns over the release of Mr Shaea<sup>11</sup>, resulted in the journalist remaining in custody.

The *modus operandi* of coupling special courts and violence has had a devastating effect on media freedoms in the country. The delegation was most concerned to hear journalists openly admit they frequently resort to self-censorship. "Yes, we have changed our editorial line, they leave us no choice. The mounting harassment and different types of pressure the government exerts on us leave us with no choice but to change our editorial line," said a prominent independent newspaper editor. Journalists described how they work in constant fear and have the feeling of living under siege, never knowing when or where armed commandos could attack them, and admitted to having no choice but to carefully choose their words and avoid covering certain sensitive subjects.

Journalists working as correspondents for foreign media emphasised a clear increase in physical attacks by police and security forces. The authorities appear to want to prevent the reporting of events inside Yemen to the outside world: "The government treats us as traitors and spies," admitted a correspondent, "and soldiers see us as a potential threat, as a menace; they accuse us of giving a negative image of Yemen to the outside world." Aside from being the target for physical attacks, reporters often have their equipment confiscated or destroyed. "By day, access to information is becoming more and more difficult, and every single journalist lives in a growing state of fear," reported the same correspondent. The delegation was told that the Ministry of Information has provided a list of requirements for foreign correspondents to be able to work in the country, which includes the following paperwork: proof of experience in journalism, ID, copies of past press articles and reports, a letter from the employer accredited by the Minister of Information, and a university diploma. These requirements are illustrative of the government's desire to control the information sent outside of the country.

Outside of the capital and other major cities, the tribal system represents a serious threat to editors and journalists from across the media spectrum. Certain tribes exert effective control over vast parts of the territory and, heavily armed, are often systematically engaged

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<sup>11</sup> The White House Official Press Secretary, 'Readout of President's Call with President Saleh of Yemen', 3 February 2011. <http://www.whitehouse.gov/the-press-office/2011/02/03/readout-presidents-call-president-saleh-yemen>

in fighting either for or against the state, other tribes or AQAP. Their level of engagement makes them sensitive to what is published by newspapers. “The tribal system is a major obstacle to our work,” said Gamel Amer, editor of *Al-Wasat* weekly newspaper. “They can become a serious threat to our everyday lives.” Journalists explained that tribes rarely hesitate in resorting to physical threats and attacks, targeting their media facilities or confiscating issues.

The government, however, uses a far broader range of aggressive tactics to deter critical reporting. Confiscation of newspapers and suspension of licences are frequent. May 2009 marked the starting point for an ongoing crackdown on Yemeni media. On 4 May, the Ministry of Information announced a sales ban against eight daily and weekly newspapers<sup>12</sup> as punishment for their coverage of events in the south of the country. They were accused by the Ministry of Information of publicising articles “against national unity and the country’s highest interests,” and of “inciting violations of law and order, spreading hatred and enmity among the united people of Yemen.” The delegation visited the premises of what was once the country’s highest circulation independent newspaper, Aden-based *Al-Ayyam*, to speak with its editor Hisham Bashraheel. The newspaper owned its own printing presses and controlled a nationwide distribution network, and its treatment epitomises the extent to which government pressure can silence a critical outlet. *Al-Ayyam* was targeted with confiscations, suspensions and armed attacks on its premises in May 2009 and January 2010, and to this day remains suspended. *Al-Ayyam* gave wide coverage to the Southern Movement and of the different issues faced by the poorer southern provinces of the country.

Special courts, violence, confiscations and suspensions are used against an industry that has no legal recourse on which to fall back upon to defend itself. *AFP* and *Al-Arabiya* correspondent Hamud Monassar said that journalists face dangers from all fronts: “We are not protected by the law,” added Gamel Amer.

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<sup>12</sup> *Al-Ayyam, Al-Masdar, Al-Watani, Al-Diyar, Al-Mustaqelah, Al-Nida, Al-Shari’* and *Al-Ahali*.

## II. THE LEGAL FRAMEWORK AND ITS DEFICIENCIES

Major violations of international freedom of expression standards exist in Yemen's media laws. The constitution, the Penal Code and the Press and Publications Law all fail to adequately provide for the legal protection for journalists, leaving them to walk a judicial tightrope that is filled with uncertainty. This situation has resulted in competing proposals to revise the legal framework surrounding media legislation

Yemen is party to the International Covenant on Civil and Political Rights (ICCPR), to which it acceded in 1987. The country is obliged to implement its provisions and is therefore bound to respect the right to freedom of expression as guaranteed by Article 19 of the ICCPR. The ICCPR is not merely a statement of principle, but reflects the common minimum standard of rights which all States Parties are legally required to respect, regardless of differences in history, culture or economic circumstances. Article 19 of the ICCPR guarantees the right to freedom of expression in the following terms:

- Everyone shall have the right to freedom of opinion.
- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

As part of the Arab League, Yemen should also respect the Arab Charter on Human Rights, which under Article 32 guarantees the right to information and free expression, the main human rights instrument at regional level.

Yemen has committed itself to respect the Universal Declaration of Human Rights through Article 6 of its Constitution, adopted in 1994:

“The Republic of Yemen confirms its adherence to the UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and dogma of international law which are generally recognised.”

In addition to Article 6, Yemen's constitution contains an explicit guarantee of the right to freedom of expression in Article 41:

“Every citizen has the right to participate in the political, economic, social and cultural life of the country. The state shall guarantee freedom of thought and expression of opinion in speech, writing and photography within the limits of the law.”

Although Article 41 recognises that this right should be guaranteed, by stating “within the limits of the law” it allows freedom of expression to be limited by law for any reason. Given the importance of free media, any restrictions imposed must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the general conditions that any limitation on freedom of expression and information must meet:

“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (order public), or of public health or morals.”

The Yemeni government reaffirmed its commitment to the protection of human rights through the commitments clearly set out in the National Reform Agenda, adopted by the government in 2006.

Yemeni law violates international freedom of expression standards in establishing far-reaching limitations on freedom of the media that have been used to hinder journalistic investigations. For instance, the Press and Publications Law (1990) contains wide-ranging restrictions on the practice of journalism and the operation of newspapers and printing presses. Of particular concern are the following:

- *The large number of restrictions on the content of what may be published.* Many of these restrictions are vaguely worded, creating uncertainty about which expressions are illegal and which can be subjected to diverse and potentially arbitrary interpretations. Of particular concern are those provisions under Article 103 which prescribe that media professionals shall bound to abstain from printing, publishing, circulating or broadcasting:



- Anything which prejudices the Islamic faith and its lofty principles or belittles religions or humanitarian creeds;
  - Anything which leads to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudicial to national unity or distorting the image of the Yemeni, Arab or Islamic heritage;
  - To criticise the person of the head of state, or to attribute to him declarations or pictures unless the declarations were made or the picture taken during a public speech. These provisions do not necessarily apply to constructive criticism.
- *The extensive use of licensing regimes.* A licence from the Ministry of Information or Culture is required for the establishment of virtually any kind of print media enterprise, as well as for the practice of journalism<sup>13</sup>. In effect, Yemenis need permission from the government to exercise their right to freedom of expression through the print media. The use of licensing regimes for the print media is unnecessary and contravenes well-established rules of international law.
  - *The imposition of deposit and registration requirements.* Printing houses have to maintain a register of all printed materials and require publishers of various types of printed matter to submit copies to the Ministries of Information and Culture. These provisions serve no apparent purpose other than to enable the authorities to exercise illegitimate control over published content.
  - *The continued existence of penal provisions.* The Press and Publications Law should not contain any penal provisions. The inclusion of such provisions sends a message that the press, when exercising the right to freedom of expression, is subject to special controls over and above those that apply to the general population.

Furthermore, the Press and Publications Law provides for the imprisonment of journalists. Any person who contravenes its provisions is subjected to a fine or a period of imprisonment of up to a maximum of one year “without prejudice to any more severe

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<sup>13</sup> For more information of licensing requirements, see chapter III.

penalty under another law.”<sup>14</sup> Even those restrictions that might be aligned to the limits permitted by the ICCPR foresee sanctions of imprisonment in cases of infringement. These sanctions are considered disproportionate under international standards, for example when balancing individual reputations against freedom of expression. Penalties provided by the Law include the closure or suspension of newspapers, the confiscation of copies, and the prohibition to practice journalism.<sup>15</sup>

As mentioned, the Press and Publications Law reserves the right to prosecute media workers without the prejudice to any penalty under another law. The Penal Code may also be applicable, and in itself limits the right to freedom of expression with imprisonment and even the death penalty for such cases as the crime of apostasy. The Penal Code also uses vague terms under which journalists may be charged such as “in the interest of national security.”<sup>16</sup> The existence of the Specialised Press and Publications Court together with these provisions adds to the chilling effect of legislation for media professionals.

Contrary to international standards, the far-reaching restrictions on freedom of expression that are contained in Yemeni law have been used by officials to hinder journalistic investigations. During the delegation’s mission, media professionals expressed concerns over the lack of legal protection and consequently an increased fear of practicing their profession. As a result, media professionals openly revealed a growing practice of self-censorship when reporting the news as being the only sure means of protection.

Parliament is currently considering amending the Press and Publications Law, and three drafts are under discussion:

- A Government draft.<sup>17</sup>
- The Yemeni Journalists’ Syndicate proposal.
- A civil society proposal drafted by NGO Forum for Development and Renewal (FDR).<sup>18</sup>

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<sup>14</sup> Law No. 25 (1990) on Press and Publications, 22 December 1990. Art. 104.

<sup>15</sup> *Ibid.*, Art.105, 106, 107.

<sup>16</sup> Article 259 of the Penal Code provides for the death penalty in case of "apostasy."

<sup>17</sup> Comments on the government proposal are based on a draft presented by the Ministry of Information, which was made public in 2005, and a subsequent draft prepared by an ad hoc committee chaired by the Minister of Justice. We refer to both in a general manner as the Government proposal or draft. More information is available at: [www.article19.org/pdfs/analysis/draft-yemen-press-and-publications-law.pdf](http://www.article19.org/pdfs/analysis/draft-yemen-press-and-publications-law.pdf)

Certain parliamentarians expressed uncertainty over exactly when the proposals would be adopted, or even whether any of them would be adopted at all. Over the course of the mission it became clear that only the draft supported by the Journalists' Syndicate had been presented. By February 2011, all three drafts were before parliament. The mission also met with the Minister of Information, who revealed that the Government's proposal - released in 2005 - was being reviewed and improved, but that a new draft was yet to be made public.

The following comments seek to make a constructive contribution to the analysis of the replacement of the Press and Publications Law, with particular emphasis on provisions not in line with international standards on freedom of expression. These comments are based on the government draft and the draft prepared by FDR, both drafts to which the mission had access.

The mission welcomes the decision to introduce the reforms and notes some very positive provisions in both drafts. These include a guarantee of the right to freedom of knowledge, thought, practice of journalism, expression and communication; assurances of the right to maintain the confidentiality of sources; provisions that prevent journalists from facing any adverse consequences for their writing other than those prescribed by law; and permanent licenses for media organisations.

Regrettably, a large number of provisions in both drafts seem intended to restrict or control the press. International law stipulates that freedom of expression should be the rule, and limitations the exception. Nevertheless, the two drafts reverse this logic and mandate government interference in virtually every aspect of the print media. Many of these provisions are unnecessary and present the authorities with opportunities to stifle critical and independent voices.

The government has so far accused a number of media professionals under the Press and Publications Law, particularly during 2008 and 2009, punishing editorial lines and thus generating self-censorship among journalists as a means of protection. In this sense, the

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<sup>18</sup>The introduction states that the draft law was reviewed and corrected based on the discussions that took place during a symposium held by the Forum. The mission takes no responsibility for the accuracy of this translation or for comments based on mistaken or misleading translation.

media community has expressed serious concern over the possible approval of reforms to the Press and Publications Law if the intention is to continue with restrictions, or even increase limitations on the exercise of the right to freedom of expression.

The delegation's most serious concerns regarding both drafts, some of which are referred to also under the current law, are the following:

- The large number of provisions intended to restrict, or that could impose restrictions on the content of what may be published.

A small number of content restrictions are, in principle, permissible insofar as they comply with international standards. There are vague concepts that could be subjected to potentially arbitrary interpretation, such as "moral rights of journalists", "ethics and traditions of the Yemeni people", "basic social foundations", the goals of the Yemeni Revolution" and "national unity". The Government draft also prescribes restrictions for the protection of "national security" which fail to define sufficiently precisely the risks against which they are directed.

Both drafts establish provisions to ensure balanced reporting by journalists, to report honestly and prevent the publication of false or unreliable information. Proposals also suggest that journalists be governed by principles of ethics. The government draft states that journalists are bound to the Syndicate's journalistic convention of honour, meaning they "are subject to penal questioning in case of violating such convention or threatening citizens in any manner using the profession of journalism." The Government should not enforce self-regulation as it exposes the system to the risk of politically motivated prosecutions. Where an effective self-regulatory body is in place, an administrative system should not be imposed.

The government draft presents a particular problem as it prohibits expressions that criticise or could offend or show contempt to the person of the head of state. This provision runs directly counter to well-established principles of international law. Public officials are required to tolerate more criticism than ordinary people as a basic

tenet of democracy. All restrictions of content should be removed and those strictly necessary to protect a legitimate interest should be clearly defined.

- Imposition of qualification requirements to exercise journalism.

The drafts consider qualification requirements such as having a college or press institute or academic degree in another specialisation in addition to journalistic experience in order to be active in the print media sector. Provisions also exclude those who have been found guilty by a court of an offence against honour and integrity from exercising journalism. Restrictions are even more severe for editors-in-chief of newspapers or magazines or executive managers in the radio or television sector. These restrictions have long been considered a breach of international standards of freedom of expression. Under Article 19 of the ICCPR, the right to freedom of expression belongs to everyone and none of these restrictions are necessary under the recognised legitimate purpose described above. On the contrary, they might exclude excellent journalists who may have been wrongly convicted, or young journalists in the process of learning the profession.

- Both drafts continue to envisage a large number of licensing, registration, accreditation and membership requirements for both media organisations and journalists, as contained within the current Press and Publications Law. They also state that regulation is needed for providers of electronic communication networks and electronic newspapers. Contemporary international law holds that any type of licensing requirement for the media is incompatible with the right to freedom of expression, except when applied to broadcast media. Licence requirements should be distinguished from technical registration requirements. Furthermore, individual journalists should not be required to register or be under the obligation to be granted a license<sup>19</sup>. Related to this problem is the requirement of registering before the Journalists' Syndicate, as provided in the Government proposal. Although the Syndicate undoubtedly fulfils a useful function and journalists may join voluntarily, compulsory membership is incompatible under international law.

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<sup>19</sup> Joint Declaration of Special Mandates on Freedom of Expression of the United Nations, the Organisation of the American States and the Organisation for Security and Cooperation in Europe, adopted 18 December 2003.

- There is serious concern over the lack of independence of the regulatory administrative body foreseen in the FDR proposal. Indeed, its members are either to be appointed by ministers or are to be active employees in ministries. Such a body is meant to effectively promote pluralism and diversity and should therefore be independent from any political or commercial influence, which in this instance, would clearly not be the case.
- A particular cause for concern is the fact that both drafts continue to threaten journalists and publications with a range of criminal sanctions. Both drafts currently leave the penalties blank in contravention of the foundational principle of criminal law, which states that criminal sanctions must be clearly set out in law. Furthermore, the draft does not establish clear bylaws or legal procedures, leaving the door open to discretionary criteria and legal uncertainty. In addition to this, it is important to note that although restrictions on freedom of expression can be legitimised by international law in clearly defined cases, specific criminal sanctions aimed at one particular sector of society are at odds with the universal right to freedom of expression.

Furthermore, neither of the drafts calls into question the existence of the two Specialised Courts. The establishment of such courts along with the Press and Publications Prosecutors Office<sup>20</sup> to deal with the media are problematic as they have a chilling effect on the exercise of the right to freedom of expression.

The same concerns raised by the present law over financial supervision, deposits and registry requirements, and advertising regulation persist on both drafts. The delegation is concerned by fears that both drafts will fail to foster diversity and pluralism in the media sector. Indeed, the drafts oblige media organisations to present a business plan guaranteeing one-year financial sustainability. This risks favouring large media companies and making it harder for small independent media to develop.

Any reform of the Press and Publications Law will be incomplete and unsatisfactory if a similar reform of the Penal Code is not simultaneously undertaken.

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<sup>20</sup> Established since 1993

### **III. VULNERABLE INDEPENDENT MEDIA, STATE-OWNERSHIP, AND INCONSISTENT PROFESSIONAL STANDARDS**

Independent media in Yemen struggles to assert itself as a viable alternative to official sources of information largely because of government restrictions that cover the entire sector. A lack of access to effective training both in terms of editorial production and business management has led to a raft of financially precarious publications with inconsistent professional standards flooding the market. The few relatively successful quality independent publications that survive do so despite severe restrictions on advertising revenue, printing and distribution, suffering a chronic lack of private investment due to persistent market instabilities and dissuasive government pressure.

The delegation found independent media in Yemen to be very weak, with high levels of state-ownership and widespread government control severely undermining the sector. During the meetings it also became apparent that the difficulty in implementing and maintaining professional journalistic standards presents another serious obstacle to media development.

In Yemen, TV and radio broadcasters are state-owned through the Yemen General Corporation for Radio and Television (YGCRT). The YGCRT has the exclusive right to broadcast TV and radio. There are four TV channels and 12 radio stations, of which two are national and 10 are local. In a country with a literacy rate of 54.1%, state controlled TV and radio has become the main source of information, leaving the population with marginal access to truly independent news.

Furthermore, the printing and distribution of newspapers is mostly government-controlled. Subsidised printing costs and the state's widespread ownership of the media explain why there is a higher quantity of print media than there is actual demand. If the state were to give up its share of media ownership this would create a much healthier business environment throughout the sector. Government-owned *Al-Thawra* and *26 September* newspapers, as well as Saba news agency, have access to their own printing presses and their own distribution networks. The large majority of newspapers depend on *Al-Thawra's* facilities for both publication and distribution.

Access to advertising is also a major problem. The majority of advertising falls into one of two categories: government and official tenders that mostly go to government-owned media outlets (mainly *Al-Thawra*); and social advertising, which includes congratulations from the government, condolences, celebratory announcements, etc. Large companies such as the Hayel Saeed Anam Group, MTN mobile telephone company, and Saba news agency also place advertisements in newspapers, but in general the private sector is reluctant to advertise with the independent media for fear of being targeted by the government and considered “disloyal”. These businesses also strategically target the largest circulation newspapers that are mostly state-owned dailies and often ignore the lower circulation independent weeklies. *Al-Thawra*’s circulation is estimated at 30,000-40,000, while tabloid newspaper *Al-Mustaqelah* reportedly reaches 40,000. Independent weekly newspapers such as *Al-Nida*, *Al-Masdar*, *Al-Wasat* and the English-language newspapers do not surpass 15,000. The independent media market has been severely hit by the global economic crisis. “Newsprint and printing costs have increased and the government has cut advertisements to independent media, but not to the government media,” said one media expert. The business sector has also cut advertisements in the independent media. “Several independent journalists are now unemployed and many of them have moved to government titles, as these offer good salaries and more stability.”

The newspaper and magazine licensing system hinders the development of professional independent publications. Government or party newspapers simply inform the government of their creation and are automatically registered. Non-affiliated newspapers have to make a formal request in order to obtain a licence. In order to obtain a licence, a newspaper needs to guarantee an operating capital of 700,000 rials (2,450€) on a yearly basis and is required to maintain headquarters. The editor-in-chief needs to have eight years of experience in journalism and give the names of three future employees.

The government also controls the Internet through ownership of the country’s two Internet Service Providers (ISPs), TeleYemen and YemenNET. Although individuals can create their own websites, the government is preparing measures to further control the new media sector, both through mobile and Internet technology. There is growing concern in relation to the Audiovisual and Electronic Media Draft Law that foresees the creation of a 20,000,000 rial (681,796€) licence for “media services provided by mobile phones and



Internet.”<sup>21</sup> According to the Yemeni Journalists’ Syndicate, blocking of websites has taken place in the course of 2010. *Al-Masdar Online* was blocked, while websites based outside the country serving the Southern Movement have also been interrupted.

There is no specialised education for Web journalists or managers. Most independent Yemeni websites survive only through the dedication of their owners and staff. Major news websites include *Al-Masdar Online*, *News Yemen* (independent), *Al-Mutamar*, *September-Net*, *Maret-Press* and *As-Sahua*. Revenue generation is extremely limited, with stakeholders often supporting their operations through other jobs and ventures, the income from which they put towards their websites’ running costs. There are no known media agencies in Yemen offering to sell online advertising inventory on behalf of media owners: such agencies exist only for print advertising sales and Web media owners suffer from both a lack of expertise and time to sell their inventory effectively. Regional networking is also yet to develop that would otherwise help connect Yemeni Web media with their peers across the Middle East. These connections could be valuable both in a commercial and technical sense. Until recently, Internet development in the country has been slow and access to services is limited, especially outside the major cities. Daily power outages also make working online difficult, as interruptions cause work to be lost and article uploads to be delayed. Most connections are very slow between 6 pm and 11 pm each evening, as Yemenis return home and the network becomes congested. Slow upload speeds increasingly present obstacles for media owners when it comes to uploading audio and video content, while slow download speeds result in a poor user experience.

Inconsistent professional standards are more noticeable in party and private publications as the official press obeys strict reporting rules linked to the ruling party’s political agenda. Good journalism practises should be at the foundation of any basic education for media professionals. While restricted access to information is a significant obstruction to accurate reporting, a deficit in high journalistic standards works against the argument for greater freedom of expression and risks playing into the hands of the government when it comes to introducing repressive measures. The recent appearance of poor quality yellow news titles has already shown evidence of this.

University media studies courses provided by the faculty of Mass Communication at Sana’a

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<sup>21</sup> Article No. (53), item No.( 11)

University and by the Media Department of the Humanities Faculty at Aden University are characterised by an emphasis on theoretical knowledge and classroom-based teaching, with a distinct lack of training in modern journalistic and technical skills. Links with the industry are weak - if existent at all - and there is evidence that working journalists hold little esteem for academic staff. In short, recent graduates as well as in-career media professionals lack sufficient preparation or exposure to the technological revolution to inform the role that the non-state press should play in shaping a better and more democratic country.

Poor university skill levels currently go uncompensated by further professional training, but journalists in Yemen are certainly keen to receive the tools required to introduce higher quality to the profession. Some media outlets – mainly state owned – do provide journalists with on-the-job training, but this is insufficient to guarantee or maintain high professional standards across the board and is not available to all media employees.

The only institution currently present in Yemen that addresses professional journalism training is the state-run Mass Communication Training and Qualifying Institute (MCTQI). It is fully dependent on a budget allocated by the Ministry of Finance and, in terms of training personnel, the Institute mostly relies on foreign trainers (both from the Arab region and further a-field). The creation and institutionalisation of a national pool of trainers, able to satisfy in quality and quantity the needs of the sector, is one of the very top priorities.

The Yemeni media still has a long way to go in terms of presenting stories in a professional and ethical format. This deficiency paves the way for state repression that takes advantage of every opportunity to condemn an alleged breach of professional standards as a threat to state unity and security. The Yemeni media community is still working without an agreed code of ethics. Without it, and because of a weak tradition in journalistic culture, state media withholds its criticism of the government and ruling elites. Allegations of reporting outside the facts are often levied at opposition and independent media. Educational institutions as well as the Yemeni Journalists' Syndicate should take a leading role in fostering ethical journalism in the country.

It is important that the Universities change their curricula without delay to respond to the needs of modern journalism. This will require additional training for academic staff to be able cope with the new requirements, while it is also urgent to organise mid-career training in a professional manner to ensure it is made available to all practising journalists.

## RECOMMENDATIONS

- To immediately and unconditionally release Abdul Ilah Haider Shaea.
- To abolish the Specialised Press and Publications Court. All cases against media professionals should be tried by regular courts.
- To repeal 'insult' laws, criminal defamation, and all legislation that imposes criminal sanctions on journalists in relation to their work.
- To immediately end harassment of independent newspapers, including *Al-Ayyam*, by dropping criminal charges and allowing publication.
- To guarantee the safety and security of all media professionals by ending extrajudicial abductions and detentions.
- To bring the perpetrators of attacks and violence against media professionals to justice.
- To immediately amend the legal framework to allow for a progressive and enabling environment for media and civil society. In particular:
  - To remove all restrictions from the Press and Publications Law on content. Any content restrictions should be assessed to determine whether they are consistent with international law and should be clearly defined.
  - To abolish all additional burdens on media and bring media regulation into line with international standards.
  - Licensing requirements should not deter the establishment or operation of independent media.
  - The placing of public advertising should be made by a transparent process. All media that has requested the opportunity to carry such advertisements should be invited to tender.
  - Owners of newspapers, magazines or other print media should not be required to make any payment to the government in exchange for the right to publish.
  - The Press and Publications Law should not impose upon owners of newspapers or magazines the requirement to make a capital deposit or maintain a particular balance in their private accounts,.
  - The Ministry of Information should not be granted the power to inspect the accounts of media enterprises.
- To transform the Yemen General Corporation for Radio and Television (YGCRTV) into a

genuine public service broadcaster and bring the state's large media ownership to an end.

- The government should not interfere with the mechanisms of media self-regulation and any code of conduct for journalists should be adopted within the fully independent self-regulatory system; such a code should also meet international freedom of expression standards.
- To reform journalism education in the country's universities and provide Yemeni media professionals with a practical, up-to-date and flexible educational offer.

## CONCLUSION

The Yemeni government has developed sophisticated judicial machinery that stifles critical and independent reporting. The Specialised Criminal Court and the Specialised Press and Publications Court embody the government's repressive stance towards the press. According to reports, authorities continuously resort to violence, abductions, torture, beatings and the illegal detention of journalists in blatant violation of international human rights and freedom of expression standards. Such practices have led to an increasing sense of insecurity and a high incidence of self-censorship within the media community.

Yemen's current media laws fail to adequately protect journalists and do not reflect the country's international commitments in terms of freedom of expression and human rights. Competing proposals to revise the legal framework surrounding the media fall short of providing the necessary conditions for the development of a stronger independent press.

The government's tight control over print, broadcast and Internet media severely restricts the growth of the independent media as a critical source of information. Restrictions on advertising revenue, printing and distribution, as well as an acute lack of private investment, suffocate the handful of relatively successful independent publications. The scarcity of high-quality journalism training has shown an open door to an array of financially precarious and editorially weak publications that have flooded the newspaper market.

The overall environment in which the Yemeni media currently operates prevents it from holding those in power to account; nor does it provide citizens with quality independent news reporting. When the media is unable to fulfill such intrinsic functions, society cannot properly voice its concerns or canalise its discontent through peaceful, institutionalised means. Until this fundamental right is guaranteed, a more democratic Yemen remains a distant prospect.

**This document was compiled and edited by Rodrigo Bonilla and Andrew Heslop.**



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