



ASSESSMENT OF MEDIA LEGISLATION IN LEBANON

BY FRANCESCO SCIACCHITANO

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Lebanon enjoys a relatively free and pluralistic media, which publishes and broadcasts in Arabic, French, English and Armenian. There is an established, well-educated media elite but full freedom is still, arguably, hindered by sectarian divisions.



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Report completed: October 2014
Photography: Sophia Baraket
Library pictures from iStockPhoto

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I. EXECUTIVE SUMMARY

This report examines Lebanon's Constitution and its audio-visual legal framework, identifying the areas that do not meet international standards of best practice and recommending changes that would enhance the role of the media within the broader context of democratisation.

This report examines the Constitution and the audio-visual legal framework of Lebanon and identifies the areas that do not meet international standards of best practice and might benefit from review and harmonisation. To this end, it recommends changes to the legal framework aimed at enhancing the role of the media within a broader process of social advancement and democratisation.

All international human rights covenants and democratic conventions require the media to serve the public, rather than the reverse. Yet in Lebanon today the media reflects political or sectarian allegiances rather than serving citizens' interests and rights. There is an urgent need for effective checks and balances to guarantee access to the media for those who have no media representation. Moreover, the media cannot demand the freedom to report if their practices go against the public interest by hindering the right of the individual to obtain accurate information and play an active role in building an enlightened civil society. Public interest should be placed ahead of the private rights of journalists and the media. The state needs to legislate and facilitate the establishment of public

service broadcasting that can serve as a counterweight to the private media.

The key themes for consideration are summarised at 1.1–1.6 below.

1.1. CONFESSIONAL POLITICAL SYSTEM

One of the biggest challenges Lebanon faces is the continuance of a confessional system of politics based on sectarian representation, which dates from the country's independence. Political and religious divisions continue to inform and to undermine the development of a truly free and unified Lebanese media system, both public and private. The Lebanese Constitution requires that religious communities are represented in public office, ministerial posts and as members of the legislature. This system, referred to as the *al-nizam al-taeifi* (or sectarian system), has resulted in a media landscape shaped by the political and religious affiliations of the different sects in Lebanon.

1.2. PLURALITY OF THE MEDIA

Lebanon enjoys a relatively free and pluralistic media, which publishes and broadcasts in Arabic, French, English and

Armenian. There is an established, well-educated media elite but full freedom is still, arguably, hindered by sectarian divisions. Media owners in Lebanon tend to come from a political and business elite who have the funds and support to operate expensive broadcast networks. Thus, news content typically reflects the biases of the owners.

1.3. PROTECTIONS IN THE EYE OF THE LAW

Lebanon's Constitution (Article 13) makes provision for and seeks to guarantee the basic principles of freedom of the press. However, this general principle tends to be constrained by contradictions in other pieces of legislation, such as the Press Law of 1962 and the Broadcast Law of 1994, as well as the Penal Code. Lebanese academics have been highly critical of this confused legal landscape.

1.4. MEDIA REGULATION

The Electoral Law adopted in September 2008 contains no provisions relating to media coverage during electoral campaigns; political advertising; or media silence in the days immediately before an election. The Directorate of General Security (SG) is authorised to censor all foreign

magazines, books and films before they are distributed as well as pornography and political or religious material that is deemed a threat to the national security of either Lebanon or Syria.

1.5. SATELLITE AND NEW MEDIA

Access to satellite television has grown substantially over the last decade. In 2012, the Ministry of Information and the Telecommunications Ministry announced plans to launch a "smart media city" project that would improve the telecommunications infrastructure and allow additional satellite television stations and production studios to be established.

Although the diffusion of audio-visual content over cable and internet is not regulated, the two platforms are growing exponentially. In 2012, 61% of the population had access to the internet. The Telecommunications Ministry controls the international gateway for internet traffic. The country lacks the infrastructure for high-quality broadband connections and does not have a special network to transmit data, relying instead on existing landline telephone networks. Social media platforms such as Twitter and Facebook are popular among Lebanon's internet users.

1.6. ADVERTISING REVENUE

The advertising market in Lebanon is extremely limited, and is not able to sustain the breadth of media outlets operating in the country. The Choueiri Group, one of the largest media brokerage firms in the Middle East, has long dominated this small market. Since neither print nor audio-visual media outlets are financially self-sufficient, publishers and broadcasters are predisposed to accept financial assistance from outside sources, including foreign entities, in exchange for editorial support. This allows foreign and business interests to use the media to pursue their own agendas.

1.7. STRUCTURE OF THE REPORT

Section 2 offers a detailed overview of the historical context, the political system and the economic situation of the country, all of which are important factors in understanding the

development of the Lebanese media sector and its idiosyncrasies.

Section 3 describes the structure and the main provisions of the Lebanese Constitution, as well as the main principles (which originated within Article 13 of the Constitution) that govern the Lebanese media sector: freedom of expression and information, freedom of the press, freedom of association, and the right to access information and documents. This section also assesses the extent to which these principles are effectively implemented by the Lebanese authorities.

Section 4 presents existing Lebanese audio-visual media legislation (mainly the Press Law, the Broadcast Law, and the Satellite Law) and the other provisions dealing with the establishment of media outlets, pluralism, licensing, right of reply, censorship, defamation, electoral campaigns and so on. Particular attention is paid to analysing the competences and activities of the National Audio-visual Council (NAC). Each of these sectors will be analysed in depth and some recommendations will be made for a possible review of the Lebanese framework.

Section 5 provides an overview of the media landscape, treating print

media, radio, television, online and digital media individually. A small but important subsection is dedicated to the presence of foreign radio and television in Lebanon.

Section 6 presents the organisations, trade unions and other outlets of the media sector in Lebanon. This information is often absent from international reports and media literature, but it is very useful in the Lebanese case, because it helps better to describe the tensions between journalists, media outlets and government.

Section 7 describes briefly the Lebanese audio-visual market structure and specifically focuses on media ownership, pluralism and access to media.

Section 8 summarises the main findings of the report and provides a list of recommendations specifically designed to meet the needs of the Lebanese market and divided into topics, for ease of reference.

Section 9 offers a (not necessarily comprehensive) list of the most important newspapers, radio stations, TV channels, cinemas operators, telecommunications operators, online media, news agencies, trade unions, law, regulations and institutions.

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2. INTRODUCTION

Lebanese society, much like its media, has historically been noted for its diversity and inclusiveness. Yet, despite its apparent freedoms, this media often serves the interests of a political elite rather than working for the good of the general population.

The Lebanese media, like the country's political system, has long been regarded as unique in the Middle East. Reflecting the pluralism and diversity of Lebanese society, the media sector has historically enjoyed relative freedom of the press. It was privatised early in its history, with the introduction of the 1994 Audio-visual Law. Yet despite its apparent pluralism, "the disorientation and fragmentation" of the media system, as described by media scholar Nabil Dajani,¹ has often served the interests of the political elite rather than working for the good of the general population.

As we will see in sections 2 and 3, Lebanon's current media policy environment is a direct reflection of efforts to recover from the civil war in a country whose difficulties are compounded by the geopolitical complexities of its relationship with Syria and the rest of the Middle East, including Israel. In this and other respects the current media scene is not as free and varied as it might at first appear. Obstacles confront any aspiring newspaper publisher and, since its implementation in 1996, the 1994 Audio-visual Law has been applied, unevenly, to prune the chaotic proliferation of small broadcasting stations that mushroomed during the civil war while ensuring that the country's dominant political leaders have television channels and radio stations of their own.

The 1994 Audio-visual Law reduced this chaos by dramatically relicensing, reducing competition and rationalising the system, motivated in some part by the need to bring a greater degree of order to the airwaves. Although the cabinet allocated the licences according to law, it did so by means of a formula (unstated) that in practice reflected the distribution of power within the country: one station for the Christians, one for the moderate Shia Muslim Amal movement, another for the more militant Hizbullah and another for the Sunni Muslims, and so on.

Lebanese journalists are almost all fluent at least in both English and French; they are usually very familiar with European and North American media contexts and enjoy a long tradition of access to foreign media. However, the dearth of state policies to protect the profession renders journalists defenceless against the oligopoly of a few media tycoons. This seems likely to continue in the medium term because of the overwhelming sectarianism and the highly volatile situation in the regions. The so-called "security of the state" and "civil peace" will likely remain untouchable principles taking priority over real freedom of the press.²

During the recent years of harsh internal political confrontation, most of Lebanon's media seem to have become the first tools of conflict among the political, religious, military and financial forces

doing battle. The freedom and balanced coverage for which the Lebanese media – long considered trailblazers in the Arab world – were known has declined, with management now reluctant to reveal details about internal procedures and operations.

For the reasons mentioned above, more than most countries in the Middle East, the media situation in Lebanon today cannot be understood without taking into account the historical context in which it has evolved.

2.1. THE HISTORICAL CONTEXT

Lebanon's history since independence has been marked by alternating periods of political stability and turmoil against a background of prosperity built on Beirut's position as a regional centre for finance and trade. This dangerously unstable situation has had a profound impact on the development of the media (mainly press) sector in the country.

In 1975, following increasing sectarian tensions, a full-scale civil war broke out in Lebanon. The Lebanese civil war pitted a coalition of Christian groups against the joint forces of the Palestine Liberation Organisation (PLO), left-wing Druze and Muslim militia. In June 1976 Syria sent in its own troops, ostensibly to restore peace. In October 1976 the Arab League agreed to establish a predominantly Syrian Arab Deterrent Force, which was charged with restoring calm.

In September 1988, the Lebanese parliament agreed to the Taif Agreement, which included an outline timetable for Syrian withdrawal from Lebanon and a formula for the de-confessionalisation of the Lebanese political system. The war ended at the end of 1990, after massive loss of human life and property and having devastated the country's economy.

Emerging from the bloody chaos of the civil war (1975–1990), Lebanon enjoyed a period of relative stability in the following decade with increased Syrian political and military influence over its territory under a policy known as "Pax Syriana", which had the approval of the United States and the other main regional and international actors.

The internal political situation in Lebanon significantly changed in the early 2000s. After the Israeli withdrawal from southern Lebanon, the Syrian military presence faced criticism and resistance from the Lebanese population.

In 2004 the new French-American initiative against the Syrian presence in Lebanon along with its allies in the country was set in motion with UN Resolution 1559 and started one of the longest political crises that had ever occurred, not just between Beirut and Damascus, but also between the Syrian-Iranian and the Israeli-American axes.

On July 12th 2006 Hizbullah launched a series of rocket attacks and raids into Israeli territory, where they killed three Israeli soldiers and captured a further two. Israel responded with airstrikes and artillery fire on targets in Lebanon along with a ground invasion of southern Lebanon, resulting in the 2006 Lebanon War. The conflict was officially ended by UN Security Council Resolution 1701, which ordered a ceasefire, on August 14th 2006.

Four years later, after the death of more than 1,000 civilians in the Israeli–Hizbullah war (2006), internal armed clashes in Beirut and Mount Lebanon (2008) and several explosions and political assassinations (2004–2007), the Doha

Agreements formally put an end to the confrontation and paved the way for a fragile truce inside Lebanon.

In 2012 the Syrian revolution and war threatened to spill over into Lebanon, causing more incidents of sectarian violence and armed clashes between Sunnis and Alawites in Tripoli. In August 2013 more than 677,702 Syrian refugees were in Lebanon. At the time of writing, as the number of Syrian refugees increases, the Lebanese Forces Party, the Kataeb Party and the Free Patriotic Movement fear that the country's sectarian-based political system could be undermined.

The clashes culminated in the killing, on December 27th 2013 in a car bomb explosion in downtown Beirut, of the former minister of finance, Mohamad Chatah, a senior aide to the former prime minister of Lebanon, Saad Hariri.

Not only have the local media been deeply influenced by this dangerous polarisation but they have also gradually taken on the role of propagandists for opposing Lebanese political and sectarian groups.³ The Lebanese press corps has also suffered many casualties over recent years due to targeted attacks and armed conflicts. Today none of the newspapers

or TV and radio stations can be described as immune to the ongoing conflict – and very few even attempt to maintain a neutral stance.

It is for these reasons that – despite the formal guarantees declared by the Constitution and the media legal framework – the 2014 "Freedom of the Press" report by Freedom House, a US-based NGO, rated Lebanon as "Partly Free", with a score of 53 out of 100 (where a country enjoying a free press would be valued "0").⁴

2.2. POLITICAL SYSTEM

Lebanon is a parliamentary democracy, with a confessional structure. This system is designed to fairly represent the demographic distribution of the 18 recognised religious groups in the key positions in the government and in parliament.

Until 1975 Freedom House, which conducts research and advocacy on democracy, political freedom and human rights, considered Lebanon to be one of only two (together with Israel) politically free countries in the Middle East and North African region. The country lost this status with the outbreak of the civil war, and has never regained it (see 2.1 above).

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¹ Nabil Dajani is a professor of media studies at the Department of Sociology, Anthropology and Media Studies at the American University of Beirut in Lebanon. Among other articles, he has written "The Myth of Media Freedom in Lebanon". Available at: www.arabmediasociety.com/index.php?article=833&p=0.

² "The Myth of Media Freedom in Lebanon", by Nabil Dajani, op. cit.

³ "Freedom of the World 2014". Freedom House. Available at: www.freedomhouse.org/report/freedom-world/freedom-world-2014#U7sFtPnUaao.

⁴ "Freedom of the Press 2013: Lebanon". Freedom House. Available at: www.freedomhouse.org/report/freedom-press/2013/lebanon#U7sHuPnUaao.

3. PRINCIPLES GOVERNING MEDIA LEGISLATION

Lebanon's national legislature is a unicameral parliament. Its 128 seats are divided equally between Christians and Muslims, and proportionately between both the 18 different denominations and the 26 regions. Prior to 1990 the ratio stood at 6:5 in favour of Christians. However, the Taif Agreement, which put an end to the 1975–1990 civil war, adjusted the ratio to grant equal representation to followers of the two religions. Parliament is elected for a four-year term by popular vote on the basis of sectarian proportional representation.

The executive branch consists of the president, the head of state, and the prime minister, the head of government. The parliament elects the president for a non-renewable six-year term by a two-thirds majority. The president appoints the prime minister, following consultations with parliament. The president and the prime minister form the cabinet, which must also adhere to the sectarian distribution set out by confessionalism.

2.3. ECONOMIC OVERVIEW

Lebanon has a free market economy, to which banking, tourism and remittances from abroad make an important contribution. Lebanon enjoyed strong GDP growth between 2007 and 2010, averaging 7.5% a year. Due to the conflict in Syria and domestic political instability, Lebanon's GDP growth slowed to 3% in 2011 and slowed further to 1.4% in 2012. The World Bank projects that growth in 2013 and 2014 will continue to be muted, at approximately 1.5%.

Inflation, which had been steady at around 5% from 2008 to 2012, reached 10% between mid-2012 and mid-2013. This was in part due to the influx of Syrian refugees and the resulting flows of humanitarian assistance. Government debt levels remain high, at approximately 130–140% of GDP. Corruption significantly affects Lebanon's economic performance.

Lebanon is classified by the World Bank as an upper-middle income country, with average per capita gross national income of approximately US\$10,000 in 2014. However, nearly a third of the country's population is estimated to live below the

poverty line. Poverty is concentrated in the Beka'a Valley, Tripoli and Akkar, as well as in the country's 12 official Palestinian camps and numerous unofficial refugee communities (commonly referred to as "gatherings"). Overall, it would seem that the low levels of economic opportunity in certain areas of Lebanon act as a push factor for external migration.⁵

The conflict in Syria is likely to adversely affect Lebanon's economy for as long as it continues by raising inflation, increasing unemployment, discouraging foreign direct investment and reducing tourism.

Most of Lebanon's population has access to primary and secondary education, although a significant proportion relies on private facilities, particularly for secondary education. Lebanon has adequate health facilities, although again, there is widespread reliance on private health care and a substantial proportion of the population remains uninsured. The influx of Syrian refugees since 2011 has increased competition for access to educational and health facilities, affecting both Syrians and lower-income Lebanese.



“Lebanon's history since independence has been marked by alternating periods of political stability and turmoil... This dangerously unstable situation has had a profound impact on the development of the media.”

⁵ "DFAT Country Report: Lebanon". Department of Foreign Affairs and Trade, Australia. February 25th 2014.

Lebanon is a parliamentary democratic republic based on the respect of common liberties. This chapter examines the legislation, principles and agreements that form the country's Constitution.

3.1. CONSTITUTION

The introduction to the current Lebanese Constitution sets out that Lebanon is a parliamentary democratic republic based on the respect of common liberties, including freedom of expression and belief, as well as social fairness and equality in rights and duties among all citizens, with no preferences or favouritism shown to one group at the expense of another.

The following three rights are among those protected by the Constitution:

- The right against arbitrary arrest or detention. Article 8 states that personal freedom is protected and no one shall be apprehended, detained or imprisoned except in accordance with the provisions of the law. It also subscribes to the *nullum crimen sine lege* principle under which no crimes or punishments can be established except by law.
- The right to private ownership. Article 15 stipulates that ownership is protected by law and that no-one shall be deprived of their property except in the public interest as described by law and after receiving fair and just compensation.
- The right to equality. Article 7 unequivocally stipulates that: "All Lebanese are equal before the law. They enjoy equal civil and political rights and are subject to public duties

and obligation without any distinction between them." Article 12 further stipulates: "Every Lebanese has the right to hold public office without preference of one over another except in merit and competence in accordance with the terms stated by law."

The Constitution also guarantees the following freedoms:

- Religious freedom in all of its manifestations. Article 9 stipulates that the freedom of belief is absolute and the state shall respect all religions and denominations, ensure free exercise of religious rites and respect religious interests and personal status laws.
- Freedom of education. Article 10 specifically provides for the right of religious communities to have their own schools, subject to compliance with applicable governmental regulations.
- Freedom of speech, freedom of association and freedom of the press. Article 13 contains the only provision affecting the media: "The freedom to express one's opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association shall be guaranteed within the limits established by law." Although Article 13 seemingly celebrates civil liberties, the broadly worded edict and discriminatory provisions on media and press regulated

by the Penal Code, Press Law and Audio-visual Law, as well as the Military Justice Code, have enabled officials to trample on constitutional rights and curb freedoms of speech and expression.⁶

3.1.1. Separation of powers

The Constitution divides the powers of the state into three branches of government: the legislative; the executive; and the judicial.

3.1.1.1. Legislative branch

Article 16 of the Constitution originally vested the legislative power in a parliament composed of two separate bodies – a senate and a house of deputies. The Constitution gives every Lebanese citizen aged 21 and over the right to vote and thereby elect deputies to the house if he or she meets the conditions required by the electoral law in force. The house of deputies has the power to:

- legislate (Article 16);
- affirm or disapprove of the formation of the cabinet (Article 64);
- oversee the performance of the cabinet and its ministers and vote them out of office when necessary (Articles 37, 69);
- elect the president of the republic (Article 49);
- ratify certain categories of international treaties and agreements (Article 52);

⁶ "Lebanon in urgent need of new press law", by Rana Harbi. Available at: <http://english.al-akhbar.com/node/19037>.

- approve the annual budget of the state (Article 32).

3.1.1.2. Executive branch
In its original stipulation, Article 17 of the Constitution vested executive power in the president of the republic with the assistance of the ministers. The ministers are not members of parliament, although members of parliament can serve as ministers (Article 28).

3.1.1.3. Role of the president
Under the Constitution, the president has the power to:

- appoint and dismiss the prime minister and the ministers (Article 53);
- preside over meetings of the cabinet;
- make appointments to public office (Article 53);
- negotiate and conclude international treaties (Article 52);
- propose new legislation (Article 18);
- promulgate the laws as approved by parliament (Article 51);
- remit to parliament for reconsideration laws that it has already approved (Article 57);
- dissolve parliament (Article 55).

3.1.1.4. Roles of the prime minister and the cabinet
The roles of the prime minister and the cabinet are only briefly mentioned in the Constitution with just a few cursory references, such as those in Articles 53 and 66.

In its original version Article 53 stipulated that the president was to appoint the ministers and nominate one from among them to be prime minister. Article 66 gave the prime minister, or a minister acting on his behalf, the task of delivering to the house of deputies the ministerial declaration upon which the cabinet sought a vote of confidence confirming its appointment. However, the office of prime minister has evolved, through customary practices, to acquire a constitutional role that was not defined in the Constitution. Among the functions that the prime minister has assumed are the following:

- Presiding over ministerial meetings to discuss and review matters of governance. However, these meetings are not considered to be cabinet meetings representing the executive branch. A cabinet meeting could not be officially held without the president's attendance.
- Participating with the president in the formation of the cabinet. The practice is for the president to first nominate the prime minister, who in turn consults with the political groups in parliament and then reviews the results with the president. The president then issues a decree, countersigned by the prime minister, appointing the ministers and designating their portfolios.
- Countersigning all other presidential decrees along with the ministers concerned.
- Representing the cabinet before parliament.
- Overseeing the work of the ministries.

The role of the prime minister, however, does not significantly infringe upon the power of the president, who always retains the authority to dismiss the prime minister at will.

It is unclear whether the cabinet constitutes an organ of the executive branch separate from the president. Does the cabinet have, for example, the legal power to register its disapproval of a presidential decree? It is doubtful, and certainly there is no evidence of the cabinet ever exercising any such power against the president.

3.1.1.5. Judicial branch
The Constitution addresses the judicial branch in one single article. Article 20 stipulates that:

- Judicial power is exercised by the courts of all levels and jurisdictions within the framework prescribed by law that shall provide the necessary guarantees to both judges and litigants.
- The conditions and limits of judicial guarantees shall be determined by law. Judges are independent in the exercise of their duties and their decisions and

judgments are made in the name of the Lebanese people.

However, the laws enacted to organise the judiciary do not meet the goals of Article 20. The executive branch, through the Ministry of Justice, plays a role in the appointment, promotion and reassignment of judges, which brings the independence of the judiciary as a separate branch of government into question.⁷ Furthermore, neither the House of Deputies nor the cabinet has made any effort to establish a court with jurisdiction to decide on the constitutionality of laws or protect constitutional rights.

In a 1990 amendment, a constitutional court was established with limited jurisdiction. Under this amendment only the president, the speaker, the prime minister and a minimum of 10 deputies have the right to petition the court for a review of the constitutionality of laws and resolution of disputes arising out of presidential or parliamentary elections. In addition, the heads of the recognised religious communities were also given the right to petition the court on matters related specifically to personal status, freedom of belief, the exercise of religious rites and freedom of religious education.⁸ The law recognises 19 religious communities: 11 Christian, five Muslim and three Jewish communities.⁹

3.1.2. Rule of law, autonomous churches and religious representation
Historically the religious minorities enjoyed a great deal of autonomy and freedom under the protection of Sharia law, allowing Christians of various denominations and other groups to survive the persecution to which they were subjected from time to time by the rulers of the Islamic state.¹⁰ The drafters of the Lebanese Constitution could not ignore this, given that Lebanon had become a multi-denominational state, with Muslims losing their majority status for the first time. To ensure some level of equilibrium among all the components of the new state, Article 95 of the Constitution stipulated that: "As a temporary measure, and for the sake of justice and concord, the

religious communities shall be equitably represented in public employment and in the formation of the cabinet without causing harm to the interests of the state."

Although Article 95 contradicted the equality principle that Article 7 so strongly guaranteed (see 3.1 above), it was positive in that it left open the opportunity, at least theoretically, for any individual to be employed in any public position or ministerial post; in other words, it did not assign specific positions to specific communities.

Article 96 provided for the division of the senate seats among the religious communities by allocating five seats to the Maronites, three to the Sunnis, three to the Shias, two to the Greek Orthodox, one to the Greek Catholics, one to the Druze and one to the minority denominations (all those not otherwise assigned specific seats).

Furthermore, Decree No. 1307 of 1922 and all subsequent electoral laws to which Article 24 of the Constitution referred, allocated the seats of the members of the House of Deputies among the various religious denominations in numbers that varied over time.¹¹

Because of this apportionment on the basis of religious affiliation, for all practical purposes the deputies have come more to represent the religious communities whose seats they occupy than the whole nation or even the geographic districts that elect them.

3.1.3. The National Pact of 1943
In 1943 two political leaders, Bechara al-Khoury, the Maronite Christian president, and Riad al-Solh, the Sunni Muslim prime minister, verbally agreed to end the French mandate. Their agreement became known as al-mithaq al-watani or the National Pact.

The National Pact was, in essence, a political compromise between the two major religious communities to obtain independence and continue to govern the state on the basis of the religious representation provided for

“Without the protection of trades unions, journalists may be easily harassed and influenced by editors who are affiliated to one or another religious/ political group.”

in the Constitution. However, following independence, customary practices expanded religious representation to include assigning certain offices to certain religious communities both in administrative and political positions, including the offices of president, prime minister and speaker of the house.

3.1.4. The Taif Agreement
The National Pact succeeded in ending the mandate but failed to transform Lebanon into a cohesive functioning state. The political positions of the various groups continued to be divided mainly along religious lines. It was only a matter of time before the political divide between Christians and Muslims exploded into a full armed conflict. This occurred in 1975 and lasted until 1989, when the surviving deputies elected in 1972 met in Taif, Saudi Arabia and agreed on a modest restructuring of the confessional regime to placate the warring factions and end the fighting.¹²

The Taif Agreement required, and the house of deputies adopted, the following amendments to the Constitution:

- A provision stipulating that "any authority that contradicts the pact of co-existence" would have no legitimacy. However, there was no explanation as to what pact was being referred to or what legal consequences would result from contradicting this pact. (Preamble);

- The vesting of the executive power of the state in the Council of Ministers rather than in the president (Article 17);
- The necessity of a two-thirds vote by the cabinet on all major decisions (Article 65);
- The creation of a constitutional court (Article 19);
- The distribution of the seats of the house of deputies equally between Christians and Muslims and proportionally among each of them until such time as the house has enacted an electoral law which is not based on religious representation (Article 24);
- The creation of a senate where all religious communities are to be represented when the members of the house of deputies are no longer elected on a confessional basis (Article 22).

The Taif Agreement stripped the president of his constitutional powers and arguably left him with only one effective tool of governance – the authority to appoint the members of the cabinet as agreed with the prime minister.

3.1.5. The Doha Agreement
A new version of the 1975 war started when, on May 7th 2008, a cabinet meeting lacking Shia representation adopted two decrees considered hostile to the Shia organisation of Hizbullah that were summarily rejected by the majority of the Shia community. Within days fighters allied with Hizbullah took over the Sunni area of West Beirut and forced the cabinet

⁷ Law No. 150 of 1983.
⁸ Article 19 of the Lebanese Constitution, as amended.
⁹ Law No. 553 of 1996.
¹⁰ For a legal and historical discussion of this subject, see "La Constitution libanaise: origines, textes et commentaires", by Edmond Rabbath. Université Libanaise. 1982.

¹¹ The present electoral law in force is Law No. 25 of 2008. Available in English at: http://aceproject.org/ero-en/regions/mideast/LB/parliamentary-elections-law-no.-25/at_download/file
¹² For an account of the 1975 conflict, see "Background Note: Lebanon". U.S. Department of State. March 22nd 2010. Available at: www.state.gov/r/pa/ei/bgn/35833.htm.

4. LEBANESE MEDIA LEGISLATION

An analysis of the administration of the Press Laws and Audio-visual Law, particularly the licensing process, is crucial in order to understand the regulatory framework for media in Lebanon.

to retract its decrees. This was enough for all the parties involved to rethink their positions, meet in Doha in May 2008, and agree to:

- elect a consensus candidate to the post of president that had become vacant several months earlier;
- form a national unity government in which the opposition (Hizbullah and its allies) has veto power over major decisions;
- conduct a parliamentary election according to an earlier law thought to reflect a more accurate representation of the Christian religious communities.

In reality the Doha Agreement was an acknowledgement that no major decisions of the Lebanese government (or in fact no major decisions at the political level) can be effective without the consent of all major religious communities, regardless of how large the majority supporting the government in the house of deputies may be.¹³

3.2. THE PRINCIPLES GOVERNING THE MEDIA SECTOR IN THE CONSTITUTION

Article 13 of the current Lebanese Constitution contains the only provision affecting the media and it provides that “The freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly and the freedom of association shall be guaranteed within the limits established by law.”

This article would seem to guarantee the freedom of expression, the freedom of the press and the freedom of assembly and association, which are fundamental rights for any mature media environment. However, implementation is another matter, and in practice the Lebanese media landscape is complex and contradictory.¹⁴

3.2.1. Freedom of peaceful assembly and association

Freedom of association is enshrined in the Constitution of Lebanon, but its implementation remains a problem. For example, the law regarding labour unions and youth organisations remains very restrictive.¹⁵

This Law for Associations, which is often referred to by its critics as “the Ottoman Law” and dates back to August 3rd 1909, applies to those associations that are not covered by a separate law, i.e. it does not apply to trade unions, co-operatives and press unions which are separately regulated. Associations subject to this law include clubs, NGOs, centres and parties. According to Article 2, the setting up of an association does not require prior licensing. What is needed for a new association, instead, is simply the “notification of government after its founding” (Article 6). Though the law clearly states that an association comes into existence the moment its founders agree on setting it up and signing its internal regulations or bylaws, official practice has contravened the provisions of the law. The Ministry of the Interior, specifically, has consistently violated the terms of this law and the more general constitutional guarantee of freedom of expression and association, and has turned the process into a constraint that amounts to “quasi prior licensing”. This has been done by refusing to issue a registration number to new associations or simply by neglecting to respond to the notification sent by a new NGO or association seeking official status.

Public servants are prohibited from setting up and belonging to trade unions and federations and thus cannot enjoy freedom of association.

Moreover, although around 11% of the Lebanese population is Palestinian, Palestinians are not allowed to form any kind of civil society organisation or trade union. In addition, Lebanon has still not ratified the International Labour Organisation Convention No.87 (Freedom of Association and Protection of the Right to Organise) whose provisions could strengthen the normative framework.

This problem has an impact on the media sector as journalists are not allowed to practice unless they belong to the Union of Journalists. Without the protection of trade unions, journalists may be easily

harassed and influenced by editors who are affiliated to one or another religious/political group.

3.2.2. Freedom of expression

The Constitution also stipulates freedom of expression in speech and in writing. However, genuine implementation and monitoring of these practices in accordance with international standards are still lacking in Lebanon.

Significant current barriers to freedom of expression include:

- The prohibitive cost of establishing a newspaper or journal. This ensures it is almost impossible for individuals who are not backed by a powerful lobby to set up a new publication. This hinders the free expression of a range of opinions and views.
- The political practices of the media/continuous use of the media in the political power games compromise the independence of the sector. Such practices also hinder the individual citizen’s access to information.
- The censorship role played by the Sûreté Générale (General Security Police) – the institution has extensive and apparently elastic powers.¹⁶

3.2.3. Access to information

Unlike Article 19 of the Universal Declaration of Human Rights, which Lebanon signed in 1972, Lebanese laws on freedom of expression and of the press do not recognise the right to “seek information”. This is attested by the absence of any piece of legislation guaranteeing access to information and by the difficulty Lebanese journalists experience in obtaining information, even from those official sources, agencies and ministries with a responsibility to inform the public about aspects of their basic activities.

A draft law on access to information that was proposed in 2009 would allow citizens to request documents and data held by public bodies. It was debated in the parliament in October 2012 but is still awaiting approval.

The study of the implementation of the Press Laws and of the Audio-visual Law, particularly the licensing process, is crucial for understanding the regulatory framework for the media in Lebanon. Although the implementation of the 1994 Audio-visual Law constituted in and of itself the first serious attempt to introduce the rule of law in the country after the civil war, it led to the era’s first major crisis of political legitimacy.

4.1. THE PRESS LAWS

The Lebanese print media have been governed by a series of press laws, most of which promoted the organisation of journalists and publishers. These post-independence laws and regulations include:

1. the Press Law of 1948, which regulated the affairs of print media and organised the journalists into one union;
2. the Press Law of 1952, which organised journalists into two unions – one for publishers and one for editors – and set the stage for the granting of new newspaper licences;
3. the Press Law of 1962, which clearly defined the profession and the practice of journalism (this Law was amended by Legislative Decree 104/77 and then by Law 330/94).

Lebanese media are formally organised under the 1962 Press Law and the 1994 Audio-visual Law, but many aspects of these laws are respected only on paper. The 1962 law was officially enacted in order to “protect the press from random abusive interventions” and to shield the state and its citizens from biased campaigns in the press. As is the case with other Arab states’ press laws, the 1962 Press Law states vaguely that “nothing may be published that endangers national security... national unity... or that insults high-ranking Lebanese officials... or a foreign head of state.” It is possible, reading between the lines, to perceive behind these loaded and ambiguous expressions a subtle warning to reporters.

The law defines a journalist as being at least 21 years of age, having a bachelor’s degree and having been apprenticed for at least four years. Practising journalists do not require certification, although those with a degree in journalism must register with the trade union. Press cards, which must be renewed annually, are issued by the Ministry of Information. The 1962 law formally organises journalists into two syndicates: the Lebanese Press Syndicate (LPS), for owners and the Lebanese Press

Editors Syndicate (LPES), for editors and reporters.

The 1962 Press Law, which remains in force today, also requires that any newspaper or periodical that wants to publish news on political events must first obtain a legislative decree granting it a Category 1 licence. This stipulation was made in response to the number of new “political” publications established during the 1950s.

The 1962 Press Law was then amended by Legislative Decree 104/1977 and then by a new set of modifications incorporated in Law 330 of 1994. These modifications introduced new, more formidable controls over the print media that included the right to detain and impose fines on journalists and publishers for slandering the Lebanese president or other heads of state or inciting sectarian strife, prior to their actual conviction of any offence by a court. The Lebanese press objected to the changes, just as it had objected to the prior restraint provisions contained in Decree 104/1977. The government responded to the objections by eliminating both the pre-conviction penalties and the provisions that would have allowed the government to suspend a publication’s licence pending a court’s

¹³ An English translation of the Doha Agreement is available at: www.nowlebanon.com/NewsArchiveDetails.aspx?ID=44023.

¹⁴ “Ending the War? The Lebanese Broadcasting Act of 1994”, by Dima Dabbous-Sensenig. Unpublished doctoral dissertation. Sheffield Hallam University, UK.

¹⁵ “Insha’ wa Idarat al-Jam’iyyat al Khadi’a li Kanoon”, by Ghassan Moukheiber. Association for the Defense of Rights and Freedoms, Beirut. 2004

¹⁶ “Country Report: Lebanon”. SOLIDAR. Available at: www.solidar.org/IMG/pdf/lebanon_v23.10.13.pdf.

decision. The government also reduced the level of fines to be imposed on convicted violators from 500 million to 200 million Lebanese pounds (\$298,000–\$118,000 at the time of writing) and amended the legislation so that criminal penalties applied only to offences cited in the Penal Code.

4.2. THE AUDIO-VISUAL LAW

In October 1994, the Lebanese government, in an effort to gain control over the plethora of unlicensed stations that had begun broadcasting during the civil war, enacted Law 382/94, known as the 1994 Audio-visual Law. The law ended the state's theoretical monopoly over electronic broadcasting and made Lebanon the first country in the Middle East to establish a regulatory system that allowed private radio and television broadcasting to be both produced and distributed within its borders. And, as with the Press Law governing the print media, the 1994 Audio-visual Media Law distinguished between Category 1 licences, which allowed for the broadcast of news and political programmes, and Category 2 licences for television stations that did not intend to broadcast news. Different licensing fees were set for each category.

The 1994 Audio-visual Law establishes a “licensing board” known as the National Audio-visual Media Council, or AVMC. Its 10 members were politically selected along confessional lines, half by parliament and half by the cabinet, but they were also recognised for their intellectual, literary, scientific and technical backgrounds and experience. Their mission, according to the 1994 Law, was to 1) review licence applications submitted by the minister of information, 2) verify that the applications met the requirements of the law and 3) advise the cabinet on whether it should approve or reject the application. The cabinet was then to make the final decision. Actual implementation of the Audio-visual Law took several years, but by 2002 Lebanon had reduced the number of private radio stations broadcasting news to 16 – four on AM and 12 on FM – and the number of private television stations licensed for terrestrial broadcasting was down to six.

4.3. THE LAW ON SATELLITE BROADCASTING

In contrast to the Press Law of 1962 (Article 1) and the Broadcast Law of 1994 (Article 3), which clearly state that the press and broadcasting are free but “restricted” by (other) existing laws, Law No. 531 of July 24th 1996 makes no pretence of guaranteeing the freedom of satellite broadcasting. Rather, in its preamble Law 531/1996 states that Lebanese satellite broadcasters are “responsible for maintaining the good relations of their country with other countries”, aimed at “showing a stable picture of the country from a political and security perspective”, and at encouraging Lebanese immigrants “to have a stable and secure investment” in their country of origin.

In brief, this law, rather than expressly guaranteeing freedom of expression for satellite broadcasters transmitting from Lebanon, imposes on them positive content requirements that are meant to serve the image of the country, effectively entrusting them with a nationalistic, propaganda mission.

4.4. OTHER NON-REGULATED MEDIA SECTORS

4.4.1. Cinema and theatre

In contrast to the constitutional and other protections securing freedom of the press and of terrestrial broadcasting, cinema and theatre, along with leaflets, were (and continue to be) excluded from such guarantees.¹⁷ According to Legislative Decree No. 55/1967, all leaflets that are not published in periodicals, regardless of their content, require prior clearance by the General Directorate of the Sûreté Générale. A law regulating cinema, introduced on November 27th 1947, established prior restraint or censorship concerning the exhibition of both imported and locally made films.

4.4.2. Cable and internet

To date, cable distribution remains unregulated. According to some (outdated) estimates, up to 1,300 illegal satellite television distribution companies

are operating in the country, servicing up to 780,000 of the country's 800,000 subscribers, leaving the only two legal cable operators with only 20,000 subscribers.¹⁸ The illegal companies are engaged in the unauthorised re-transmission of broadcast programming and charge their customers as little as \$10 per month for these “pirate” pay-television services.¹⁹ This illicit industry is “so popular that the revenue from illegal cable distribution is estimated to be between 60 and 70 million dollars a year, and the government is faced with a dilemma with regard to regulating the sector: on the one hand there is a strong need to regulate cable TV, but on the other hand such regulation would deprive thousands of families of their main source of income.”²⁰

Cable piracy continues to be a thriving business in the country, much to the disappointment of local legal operators, international cable TV networks and organisations working for the protection of intellectual property rights.

The transmission of content (whether broadcasting or not) through the internet is not regulated.

4.5. MAIN PROVISIONS OF THE LEBANESE AUDIO-VISUAL LEGAL FRAMEWORK

4.5.1. Official permission for the establishment of media outlets

Official permission – whether by the Council of Ministers, the minister of information, or the General Directorate of the Sûreté Générale – is needed for the creation of practically every mass medium of expression. Thus, newspapers, periodicals, terrestrial television and radio stations, satellite channels and even leaflets cannot exist without prior licensing from official authorities. The only notable exception, which has made Lebanon a haven for publishers in the Arab world, is the printing of books. Any audio-visual material, whether locally produced or imported, intended for private use (e.g. video tapes, audio-cassettes, CDs, DVDs) is in theory excluded from these restrictions although the Sûreté Générale

reviews, for approval before distribution, all imported CDs and DVDs.

To date, both cable distribution and the internet remain unregulated. Illegal internet cafes, however, are all over the country and internet users are estimated at 300,000 (approximately 15% of the overall population), which is considered comparatively high for the region.²¹

4.5.2. Licensing requirements

4.5.2.1. Lebanese ownership requirement for press and TV

The Press Law of 1962 (as amended by Legislative Decree No. 104/1977) has a series of requirements regarding the nationality of those permitted to set up or run a political periodical in the country. For instance, in the case of a single owner, he or she must be a journalist and fulfil the requirements spelled out in Article 22 (see 4.1 above). More importantly, foreigners are forbidden from owning any share in the Lebanese press. Only Lebanese nationals or Lebanese companies (where all shareholders are Lebanese) are entitled to a licence (Articles 30 and 31).

This requirement is in sync with some other Lebanese commercial laws, such as Decree No. 11614/1969 of January 4th 1969 (commonly known as the “law of ownership by foreigners”), which regulates property ownership by foreigners in Lebanon.

According to Dr Nabil Dajani, specific historical considerations accounted for this “fear” of foreign ownership and for the resulting Lebanese ownership restriction. Since Nasser's coup d'état in 1952, Lebanon had successfully replaced Egypt as a haven for the Arab press, drawing the interest (and money) of Arab governments seeking an alternative outlet for their views and policies. The Lebanese press, with a very low circulation number for dailies (barely exceeding 60,000 during peak periods) could not sustain itself through advertising revenues alone, and is thus “predisposed to accept financial assistance from outside sources” in exchange for editorial support. Indeed, many critics denounced the situation

as one where the Lebanese periodicals were “mortgaged”, “in debt to those who possess money and can afford to rent them”, and catering to “their subsidisers and not for their readers”.²²

Terrestrial broadcasting shares with the print media the common requirement of Lebanese ownership. (Satellite broadcasting is not subject to the same restrictions.) The 1994 Broadcast Law, however, is even more restrictive than the Press Law on the matter, further requiring that any buying or selling of shares in a broadcast corporation in the future (i.e. after the initial granting of licences) be subject to prior approval by the Council of Ministers (Article 15).

4.5.2.2. Religious pluralism in ownership requirement

The nationality of the shareholders in private broadcasting was not a controversial issue during the licensing period (1996). Another restriction concerning the nature of ownership was far more contentious, and was used as a major reason for rejecting several applicants: the confession of the shareholders. Indeed, one of the important criteria for acceptance (or rejection) by the NAC during the licensing process, which was not mentioned in the text of the law itself or in the related Book of Specifications,

concerned the confessional character of shareholders in the same broadcast corporation. Shareholders had to be from different confessional and regional backgrounds and to reflect the societal make-up of Lebanon.

The implementation of this “rule” was quite dramatic for several applicants, whose applications were rejected primarily for not having passed the “religious-pluralism-in-ownership test”. What is more, a study of the confessional identity of the shareholders of successful applicants (i.e. LBC, MTV, FTV, and NBN) proves the extent to which the NAC applied double standards when enforcing the religious-pluralism-in-ownership requirement. Since the NAC recommended granting all four stations a licence, one must assume that not more than 50% of the shareholders in each of these broadcast companies belonged to the same political party or “religious family” – to use the terminology of the NAC as published in the Official Gazette. This “50% limit”, it should be noted, was derived from the Muslim–Christian aggregate proportion of the Lebanese population.

4.5.2.3. Anti-concentration of ownership requirement

The 1994 Broadcast Law seeks to control concentration of ownership by forbidding

“The 1994 Audio-visual Law ended the state's theoretical monopoly over electronic broadcasting and made Lebanon the first country in the Middle East to establish a regulatory system that allowed private radio and television broadcasting to be both produced and distributed within its borders.”

¹⁷ “Kanoon al il'am, part III”, by A. Boutros. Feghali, Beirut. 1995.

¹⁸ “Pirate's paradise: when stealing is the norm”, by Peter Speetjens. In *Journal of Middle East Broadcasters*, Issue 4, November–December 2005.

¹⁹ “2006 Report: Lebanon”. International Intellectual Property Alliance. Available at: www.iipa.com/2bc/2006/2006SPEC301LEBANON.pdf.

²⁰ Speetjens, op. cit.

²¹ “Shabaket al-internet wa awlamat wasa'el al-il'am wal-ittisal allubnaniyya”, by Y. Gonzalez-Kikhano. In “Al-fadaa al-arabi”, edited by Franck Mermier and translated by Frederick Maatuk. Kadmus Publishers, Damascus. 2003.

²² “As-Sahafa al-lubnaniyyah fil madi wa fil mustakbal”, by I. Salameh. Ath-thakafa al-arabiyah, Beirut. 1967.

any person or entity from owning, directly or indirectly, more than 10% of the total shares in a single broadcasting station. The husband or wife, their parents and their under-age children are all considered to be the equivalent of one person (Article 13). In other words, no fewer than 10 different shareholders are required to own a broadcasting corporation. This provision is a clear departure from its counterpart in the Press Law, where a person (a journalist, specifically), can own, individually, a newspaper (Article 31), and from Law No. 531/1996 for satellite broadcasting, which has no restrictions regarding the number of owners/shareholders.

The 1994 Broadcast Law seeks to prevent the broadcasting media from being controlled by a handful of players and to ensure pluralism in ownership within a single broadcasting corporation. Although the law requires at least 10 shareholders for each broadcasting station, it has no provisions concerning confessional pluralism among shareholders; this is particularly significant considering that the convention since the emergence of the Lebanese Republic after Second World War has been to include representatives from the existing confessions in all public administrations and elected bodies.

However, as discussed at 4.5.2.2. above, the NAC re-introduced confessionalism into ownership through its “interpretation” of a content requirement (Article 7): the NAC managed conveniently to disqualify several (but not all) applicants who were in infringement of this “interpretation” which, though it had no written basis in law, was in tune with the country’s “confessional” culture.

The implementation the 1994 Broadcast Law proved the extent to which the purpose of Article 13 was entirely defeated. In the case of licensed television stations, as with print media (see 4.5.2.1. above), “indirect ownership” was a major way of circumventing the concentration of ownership in one station without the NAC having to play a role in interpreting “indirect ownership” and diligently applying Article 13 when considering licence applications. For instance, several shareholders in Future

TV (or FTV) were either top managers at the station (e.g. FTV’s executive manager Ali Jaber), publicly known to be personal advisors to former Prime Minister Hariri, or Hariri’s lawyers. At Murr-TV (or MTV) roughly 70% of all MTV shareholders (totalling 43) were “small time” employees, 22 of them in their twenties at the time the application was submitted.²³ In the case of FTV, Hariri did not own a single share. However, if one were to count the shares of his wife, sister, and brother (an aggregate of 26%), in addition to the shares of his employees or advisors, we get a total of 56% of all shares.

As a result of the various types of “circumvention” practised during the implementation process, each of the four licensed television stations ended up being associated (directly or indirectly) with a single family that was also part of the confessional/political elite. The NAC did not seem to find such an outcome problematic – in strong contrast with its rigorous application of the religious pluralism ownership requirement.

4.5.2.4. Restrictions on cross-media ownership

The 1994 Broadcast Law deals with cross-media ownership in Article 12, where it states that once a corporation has been set up, this corporation is prohibited from owning “more than one television station and one radio station”. In other words, a corporation is allowed to own a maximum of two broadcast companies simultaneously.

Cross-ownership controls in the 1994 Broadcast Law can be seen as an improvement when compared to the Press Law, where there are no such restrictions, but the 1994 law seems to be concerned only with cross-ownership in the case of radio and television (cross-ownership with other national media such as cable and newspapers is not mentioned). More importantly, the Broadcast Law’s approach to limiting cross-ownership is extremely simplistic, particularly when compared to the more comprehensive rules based on market share that exist in European or North American legislatures.

In sum, not only is the 1994 Broadcast Law apparently blind to cross-ownership involving several media streams, it also includes no concept of market share with which to put the concentration of ownership into perspective. In other words, it is possible, theoretically, for a single corporation with a licence for one radio and one television station to be overwhelmingly dominant in terms of national audience share (up to 100% of market share) and to own as many national newspapers and cable operations as it wishes, again regardless of market share. Worse still, this possibility paves the way, legally, for a single corporation to own all newspapers and cable operators in the country and to control all broadcasting through ownership of one radio and television corporation, and to emerge and establish itself as a single media monopoly in the country. Moreover, knowing that this corporation can be exclusively owned by one parent and his/her adult children and siblings, one family could theoretically and legally dominate the entire radio/television/newspaper/cable media market in Lebanon.

4.5.2.5. Forced reduction of publishing licences

Perhaps the most stringent and legally dubious licensing requirement is the provision laid out in Legislative Decree No. 74 of April 13th 1953 regulating the licensing of political periodical publications. According to this decree, no new licence is to be given to a new political publication as long as Lebanon has more than 25 dailies and 20 weeklies (or other periodicals). However, the decree allows a publisher who holds two licences for a political periodical to obtain a new licence, provided that he/she stops publishing the two titles already licensed. In other words, if anyone wants to start a newspaper, one has to acquire or hold the licences for two existing newspapers and then cease their publication indefinitely in order to publish the new title.

One of the main negative consequences of this decree is that it artificially inflates the value of existing licences and has

made licence holders reluctant to stop publishing dailies or periodicals for which they have a licence. Indeed, some licensed newspapers are issued once or twice a year for the sole purpose of keeping the licence active, “in the hope that they will sell or rent their licence to an aspiring leader or political group”.²⁴

4.5.2.6. Cost of licensing

According to the Press Law of 1962, the only financial requirement from licence applicants is a minimum start-up capital of 500,000 Lebanese pounds in addition to a financial guarantee to cover various indemnities and retirement funds to be determined by the Ministry of Information after consultation with the Press Union (Article 33). In the case of starting a new political periodical, however, the major financial hurdle affecting freedom of expression, is the need to acquire two existing titles – these sell for up to \$800,000 for a daily – in order to open up a new periodical.²⁵

In the case of private terrestrial broadcasting, financial requirements include not only the cost of the licence itself (\$167,000 for television), but there is also an annual “rent” fee (\$67,000). Although many licensees consider the annual fee to be a heavy burden that affects the survival of mostly small stations in a limited market like Lebanon, the NAC-imposed financial requirement established during the 1996 licensing process is more problematic.

4.5.3. Right of reply

The Press Law of 1962, whose content requirements equally apply to the print and broadcast media, grants the public the “right of reply” (Articles 4–11 of Legislative Decree No. 104/1977). As Boutros notes, this “right of reply” is in itself the embodiment of a tension between two parties: the interest of the owner of the media outlet and his/her absolute control over his/her outlet on the one hand and the target of the “allegations” and his/her right to have access to the media in order to get a fair chance to respond on the other (Boutros 1991, part I, 128). The Lebanese Press Law thus allows the individual who wishes to respond to have

free access to the publication in so far as they can have their reply published on the same page in the same font size as the original. It is worth noting that the same law distinguishes between an individual’s and a minister’s right of reply. An individual has the right to “reply” (Article 6 of Legislative Decree No. 104/1977) whereas the minister of information who wishes to counter “untruthful” or “incorrect” information in the public interest can ask the managing editor to publish a “correction” or “refutation”. The law also discriminates with regard to the type of sanctions faced by a media outlet which refuses to publish the “reply” or “correction”: the penalty, as is also the case with libel, is significantly higher when a public servant or government official is involved.

4.6. CENSORSHIP

The Lebanese Constitution, in principle, offers the best guarantee against prior (or pre-publication) censorship (Article 13), but prior censorship of the press has been introduced on more than one occasion when the country was going through acute political or security crises.

In one such instance, on January 1st 1977, the government speedily issued a legislative decree (No. 104/1977) allowing the exercise of prior censorship, whereby:

- all periodicals without exception were subject to prior censorship;
- the General Directorate of the Sûreté Générale enforced Decree No. 1/1977, by being given the authority to censor partially or entirely material going into print;
- a periodical issued in contravention of the General Directorate’s orders may have all its issues confiscated, following a decision of the director general of the Sûreté Générale.

Decree No. 104/1977 also contained provisions related to fines and prison sentences of up to three years. It was repealed a decade later, by Law No. 14 of February 25th 1986.

While pre-publication censorship of the press has been the exception and

not the rule in the history of the young republic, the press and audio-visual media are subject to (post-publication) censorship by a variety of official bodies. These include the General Directorate of the Sûreté Générale, the minister of information, the public prosecutor, and the Council of Ministers. The role of the authority officially responsible for censorship depends on the medium and is clarified by Law 330 of 1994, amending the Legislative Decree No. 104/1977.²⁶

4.6.1. Government directives on inappropriate content

Print and broadcast media laws contain several directives concerning content, most of which overlap. Similarly, many content-related articles of the Penal Code apply to all “means of publication” (Article 209), so much so that all “press crimes” (this is the official legal term used to refer to infringements of content restrictions in the print media) also apply to the broadcast media, according to the Broadcast Law of 1994 (Article 35).

Content restrictions apply across all broadcast and print media regarding insults, libel, blackmail, threats to the national security of the country and its relationship with other countries, and incitement to confessional and racial strife (Articles 16, 17, 23 and 24 of Legislative Decree No. 104/1977 as amended by Law 330/1994). The Press Law also criminalises “untruthful news” and the incitement to crime (Articles 2 and 24 of Legislative Decree No. 104/1977). As far as the Penal Code is concerned, Articles 473 and 474 penalise whoever “blasphemes the name of God” and ridicules religious practices, while Articles 531 and 533 refer to punishments meted out against those who “infringe on public morals” and publish “indecent” material. Finally, the Penal Code (Article 297) covers restrictions concerning threats to public trust in the “authority of the country” or in its financial situation by spreading “false or exaggerated news” as these are not mentioned in the Press Law.

The Press Law and the Penal Code also list all the topics that the media

²³ “Ending the War? The Lebanese Broadcasting Act of 1994”, by Dima Dabbous-Sensenig, op. cit.

²⁴ “Disoriented Media in a Fragmented Society: The Lebanese Experience”, by Nabil Dajani. American University of Beirut, Beirut. See also the “Elections Reports” produced by the Lebanese Association for Democratic Elections. Available at: www.lade.org.lb/Publications/Elections-Reports.aspx#.VL4Eb3uMda4.

²⁵ “Walking a Tightrope: News Media & Freedom of Expression in the Arab Middle East”, by Layla Al-Zubaidi. Heinrich Boll Foundation. 2004.

²⁶ See Appendix 1.

are categorically prohibited from covering. These include ongoing criminal investigations, secret court hearings, court cases related to divorce and custody, and all closed ministerial and parliamentary sessions (Article 12 of Legislative Decree No. 104/1977).

All of these content restrictions, with the notable exception of libel, which is defined by law, are worded in vague terms and are therefore open to abuse by the authorities attempting to use the law to justify the muzzling of journalists. Indeed, one of the most commonly voiced complaints is that the government's policy is, at best, inconsistent: "although certain items are banned, many that are supposedly permitted are often given a red light by the SG [Sûreté Générale]".²⁷

Content directives are also often applied selectively. Many discriminatory media portrayals are neither censored nor prosecuted, and often generate little or no public discussion or public outrage. This is particularly significant considering that the Broadcast Law of 1994, for instance, clearly requires broadcasters to "respect human dignity and the freedoms and rights of others" (Article 7, paragraph 2). This discrimination mostly occurs when some ethnic or religious groups, usually weak or minority "others", are portrayed, such as Jehovah's Witnesses or other non-recognised minority sects, but mostly the South Asian or African female guest workers²⁸ and female Russian dancers in Lebanon.²⁹ In such cases, even blatantly racist portrayals fail to attract the attention of the censor or the general public and civil society.³⁰ By contrast, when the "other" is a member of a powerful and friendly country, even the slightest, legitimately critical portrayal can be easily censored.

Censorship sometimes takes place even when no legal texts exist to justify it. This is, for instance, the case when the representation of homosexual identity (which is not illegal in Lebanon) – and

not homosexual intercourse (which is condemned in the Penal Code) – is involved. In such cases, censorship is mostly "cultural" and is the most obvious expression of homophobic sentiments within Lebanese society in general, including within the police force and the judiciary.

4.6.2. Censorship of international media

Article 50 of the 1962 Press Law regulates the content and licensing terms of international publications. The minister of information can decide to stop the entry into the country of any publication whose content "threatens public safety", "hurts national feeling", "disrespects public manners" or "incites confessional strife". Any infringement of the ministerial ban is punishable with a prison sentence, a fine or both. According to the same article, any publication originally printed outside Lebanon cannot then be printed in the country without a licence respecting the terms of the 1962 Press Law and Legislative Decree No. 74/1953. However, the more recent Law No. 152/1999 allows international non-Arabic language periodicals that are in circulation outside Lebanon to be printed in the country. The licence to print in Lebanon is granted by decree, after consultation with the union of press owners. In order to obtain this licence the international publication has to be legal in its country of origin and to have a representative office in Lebanon. If the publisher wishes to distribute copies in Lebanon, the international publication is then subjected to the provisions of the Press Law of 1962.

As far as other imported international media are concerned, a broad range of products are checked before their local release by the Sûreté Générale (newspapers, books, CDs, DVDs, films, videos and magazines). The Sûreté Générale is charged with ensuring that no imported material infringes on public morals, discusses religion or controversial political issues or presents a pro-Israeli

(or even pro-Jewish) stance. The Sûreté Générale also monitors foreign films and television programmes (either shown in or broadcast in or from Lebanon) for material related to religion.

4.6.3. Self-censorship

The implementation of censorship laws and directives on content is mostly dependent on the prevailing political climate. As a consequence, not only do journalists generally practise self-censorship in order to avoid problems with the law, but the Lebanese press corps has helped institutionalise this by introducing an arguably over-zealous code of ethics on more than one occasion since the mid-twentieth century.

In such a precarious legal landscape, it is unsurprising that many media professionals resort to self-censorship in order to reduce the risk of unpredictable retribution by the authorities,³¹ particularly on sensitive issues such as those relating to gay men and lesbians.

4.7. LAWS ON DEFAMATION

4.7.1. Types of defamation

Defamation in general is defined in the Lebanese Penal Code and not in the Press Law of 1962 or the Broadcast Law of 1994. Of the three recognisable forms of defamation, two are defined in the Penal Code (*tham* and *kadeh*), while the meaning of the third one (*tahkeer*) is derived from the definition found in the repealed Press Law of 1948.³²

The Penal Code distinguishes between these three crimes of defamation, *tahkeer*, *kadeh*, and *tham* (Articles 383 and 385) as follows:

- **tham** (or libel) is the attribution of a fact to a person (factual allegation), resulting in injury to his or her honour and dignity, even if only in the course of casting doubt about or questioning the character of this person;
- **kadeh** is any verbal insult or utterance showing contempt, as well as any

expressions or drawings that are injurious, without referring to specific facts (about the person being insulted);

- **tahkeer** refers to any injurious or insulting words or gestures.

Given the vagueness of these definitions, the courts have played a significant role in determining cases where defamation has occurred. There have been instances where statements made about certain individuals, and attributing facts that hurt their reputation, were found defamatory even when these statements were cast in doubtful terms. Similarly, the courts have great powers in determining whether or not a specific word is an insult.

According to the Penal Code, defamation becomes a crime and is more severely punishable when "publicised" or made public, whether through the act of publication and/or broadcasting or simply by occurring in public (Article 209). When not publicised, defamation (especially *kadh* and *tham*) is not considered a criminal act; it attracts no prison sentence, only a fine (Articles 582 and 584 of the Penal Code).

4.7.2. Entities protected by defamation laws

Both the Penal Code and the Press Law of 1962 (whose provisions on defamation also apply to broadcasting) list the categories and groups of people protected by the defamation laws: in addition to private individuals, we find the president of the republic, the flag or any other national symbol, judges, all employees (including security officers) in the public sector, and the army. Lebanese laws also protect foreign countries from public defamation, their armies, their flags or national symbols, in addition to their presidents, ministers and political representatives in Lebanon (Article 292 of the Penal Code). Equally prohibited is the insulting (*tahkeer*) or incitement to contempt of "any of the officially accepted confessions" (or religious sects) (Article 25 of the Press Law)

and of public religious practices and rituals (Articles 474 of the Penal Code). In general, malicious intent or "actual malice" is a pre-requisite for establishing the crime of defamation, although malice is often presumed by the mere fact that the defendant has made the injurious and defamatory statements. However, it is possible for defendants to prove in court that "special circumstances" justified the (defamatory) statements they made.

Lebanese defamation laws significantly constrain freedom of expression in the country and have earned Lebanon very low scores in this respect when compared with other countries.³³ Two specific aspects of the Lebanese defamation laws demonstrate the extent to which such laws in Lebanon restrict the ability of both the general public and the media to criticise and scrutinise the government – a right that should be taken for granted in a democracy: first, the deferential treatment of individual citizens protected by these laws (see 4.7.3. below) and second, media defences against defamation charges (see 4.7.4. below).

4.7.3. "The law of the kings and heads of state"

The Lebanese Penal Code punishes those who are found guilty of defamation crimes with fines and prison sentences that are highest (up to two years imprisonment) when the reputation of the Lebanese president or of the heads of other states are harmed (Articles 383 to 389 in the Penal Code, 17 to 23 in the Press Law). The informal title "the law of the kings and heads of state" given to libel provisions related to presidents and other world leaders dates back to the early 1960s. At the time, Arab heads of state who resented being criticised in the Lebanese press consistently pressured the Lebanese president to introduce amendments to the Press Law in order to shield them from criticism. Eventually, an amendment to the Press Law was introduced in 1965 by a special decree by President Helou.³⁴

4.7.4. When truth is a defence in libel cases

The two key defences against libel charges in Western democracies are "truth" and (to a lesser extent) "the public interest". In the case of Lebanon, the public interest justification is non-existent, except in the case of lower-echelon public servants, while the truth defence applies selectively, depending on who is being defamed. When private individuals and heads of state are libelled, defendants "are not allowed to prove the truthful nature of their allegations" and thereby acquit themselves in a court of law (Articles 583 and 292 of the Penal Code). By contrast, Article 387 of the Penal Code allows the acquittal of the defendant on the basis of truth if the libelled party is a public servant. Court interpretations have extended this article to members of parliament as well.³⁵ According to Boutros, the fact that Article 387 allows truth as defence in libel cases involving public servants serves the public interest.³⁶ It makes it possible for journalists to scrutinise (some) public servants and to expose crimes committed by them while in the line of duty. However, the highest public servant in the country (i.e. the president of the republic), who wields the greatest power and therefore has the greatest potential to abuse his position, remains largely untouchable because of the nature of the Lebanese media laws.

4.7.5. Implementation of defamation laws

Given the high level of legal protection afforded to the Lebanese president against defamation, there has been no dearth of lawsuits against the media in Lebanon, and especially the print media, which have often been accused of defaming the president by casting him in a negative light.

The Lebanese military has also often used the legal protection provided to the army by libel laws in order to stifle freedom of expression and to ward off criticism. In a recent case it charged Muhammad Muhraby, a lawyer and human rights

²⁷ "For their eyes only", by M. Naaman and N. Tohme. *Executive Magazine*. March 2001. See also "*Kawaneen al Ilam al matbou' wal mar'i wal masmour' filoubnan*", by A. Nashif and F. Kerbage. Mokhtarat, Beirut. 2000.

²⁸ "Migrant Women Domestic Workers in Lebanon". International Labour Organization. Available at: www.ilo.org/public/english/region/arpro/beirut/infoservices/report/index.htm.

²⁹ "State of human rights in Lebanon". Foundation for Human and Humanitarian Rights. Available at: www.clhrf.com/humanrights/human.rights.in.lebanon.2002.htm.

³⁰ "The Power of Advertising: the Middle East", by Dima Dabbous-Sensenig. In *Media and Gender Monitor*, Issue No. 8, 2001.

³¹ "State of human rights in Lebanon", op. cit.

³² Boutros, op. cit.

³³ "Freedom of the Press 2003: A Global Survey of Media Independence". Freedom House. Available at: <https://freedomhouse.org/sites/default/files/FOTP%202003%20Full%20Report.pdf>.

³⁴ See "Disoriented Media in a Fragmented Society: The Lebanese Experience", by Nabil Djani, op. cit.

³⁵ Boutros, op. cit.

³⁶ ibid.



advocate, with the crime of “defaming the military establishment and its officers”. The prosecution of Mugarby followed testimony he had previously given at the European Parliament about human rights abuses (insults and torture) committed by the military against his clients.

4.7.5.1. Reasons for arresting journalists and the legality of implementation

The current Lebanese Press Law is a significant improvement in many respects when compared to previous amendments (i.e. Legislative Decree No. 104/1977), especially with regard to penalising and arresting journalists. The single most significant amendment enhancing freedom of expression concerns the total abrogation of the “preventive detention” of editors and journalists accused of infringing regulations dealing with content-related crimes (Article 28 of Legislative Decree No. 104/1977 as amended by Law No. 330/1994).

A second less comprehensive, yet still significant, improvement concerns the

cancellation of the prison sentence for some press crimes. Since the introduction of the 1994 amendments to Legislative Decree No. 104/1977, journalists and editors have been protected from prison sentences when infringing some of the content restrictions specified in the Press Law. These are: spreading false news (about persons and legal entities) that does not threaten public security (Article 3 paragraph 3 of Legislative Decree No. 104/1977), refusing to publish a correction by the minister of information (ibid., Article 11) or publishing content from secret hearings and parliamentary sessions (ibid., Article 12). Journalists can still be imprisoned in cases of libel, blackmail, threatening public safety by spreading false news, and inciting confessional and racial hatred (ibid., Articles 16, 20–23 and 25 respectively). However, the reduction of instances where prison sentences can be imposed should still be considered an important step forward, as the result of a long struggle by journalists and editors who regarded such a penalty as “an attack on their dignity, and an impediment to

carrying out their duty or mission to serve the truth”.³⁷ To compensate for the removal of the prison sentence, in some cases fines were increased, this with the approval of the journalism lobby.

4.7.5.2. Reasons for closing media outlets

The Press Law of 1962, before its 1994 amendment (Law 330/1994), contained several provisions related to fines, prison sentences and withdrawal of licences or the temporary closure of periodicals found to be in infringement of the law. Most of these harsh punishments, especially the withdrawal of a licence, were eventually removed, while prison sentences were reduced in the 1994 amendment. Currently, a periodical with a licence to publish exclusively non-political material can have its licence revoked if it repeatedly, within the same year, publishes political news, studies or cartoons (Article 13 of Legislative Decree No. 104/1977). In this case, the owner of the publication duly shut down cannot re-apply unless three full years have elapsed since the licence was revoked.

“

All audio-visual media, including private media, are required to respect freedom of expression, so that: ‘fairness, balance and impartiality among candidates and lists would be guaranteed’ (New Law, Article 68). This seems to set a similar standard for private media as Article 67 sets for public media, with the only discernible difference being that private media should distinguish factual reporting from opinion and comment (Article 68 paragraph 3). Presumably this means that they can express opinions that are not necessarily ‘impartial’.

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A licensed publication can be suspended temporarily because of other content-related infringements. For libelling a head of state, a first-time infringement leads to prison terms for the editor (a maximum of two years) and fines, whereas a second infringement leads to a doubling of the fines and another prison sentence, and to the suspension of the publication for two months (Article 23 of Legislative Decree No. 104/1977 as amended by Law No. 330/1994). In addition, a publication is threatened with a suspension or closure for six months, fines and a prison sentence of a maximum of six years if it is repeatedly found guilty of “inciting confessional strife and threatening the safety of the state” (Article 25 of Legislative Decree No. 104/1977 as amended by Law No. 330/1994).

Similarly, the Broadcast Law of 1994 specifies the penalties – mostly closure – incurred by a licensed broadcaster in infringement of any of the content- or licence-related provisions of Legislative Decree No. 104/1977 and related laws (namely the Penal Code and the Press

Law) (Article 35). For a first offence the minister of information can close the station for a maximum of three days. For a second offence committed within a year of the first, the Council of Ministers can close down the station for a minimum of three days and a maximum of one month (the NAC has only consultative powers in this respect). Article 35 makes it possible, however, to contest the decision in a specialised court of law.

The Broadcast Law of 1994, by making a member of the executive (i.e. the minister of information), and not the courts, the sole authority responsible for temporarily shutting down stations in infringement of the law (for administrative or content-related reasons specified in this law), opened the door to potential abuse of power. There is a clear conflict of interest when the target of media criticism (the government) is also the arbiter.

4.7.5.3. Implementation of closure laws

In contrast to the Press Law, the 1994

Broadcast Law gives the minister of information the prerogative to ensure that content requirements are being observed (Article 35). For a first infringement of disrespecting content requirements the minister of information can prevent a station from broadcasting for a maximum of three days. A second infringement can lead to closure for up to one month. In both cases, the ministerial decision can be contested with the relevant courts.

It is worth noting that the NAC is given only a “consultative” function in this respect, and has none of the monitoring and enforcement powers of the independent regulatory authorities in several Western democracies.

The only case in post-civil war Lebanon in which a licensed television station (Murr-TV or MTV) was permanently shut down was the result, not of implementing the 1994 Broadcast Law, the Press Law or the Penal Code; instead, the closure of MTV was based on a single article in Election Law No. 171 of 6/1/2000.

³⁷ Boutros, op. cit. Page 18.

Finally, whereas Law No. 531/1996 clearly states that interruption of satellite services is the prerogative of the Council of Ministers, it was the prime minister who, on January 1st 2006, made a personal decision to interrupt the satellite feed of the channel NTV and its “problematic” would-be-show about reform in Saudi Arabia. The interruption took place even before the Council of Ministers could convene as scheduled on January 9th to agree on such a decision, as mandated by Law No. 531/1996 (*Daily Star*, January 4th 2006).

4.7.6. Laws for the media in the Arabic language and in non-Arabic languages

Lebanese media laws address the issue of language in some of their provisions. The Press Law of 1962, indirectly, makes it possible to issue publications in Lebanon in languages other than Arabic as long as the managing editor is “proficient in the language of the publication” (Article 23, paragraph 5). Article 50 of the Press Law, which largely addresses issues of content control over “foreign publications” entering the country, is silent on the issue of language.

As far as the 1994 Broadcast Law is concerned, its related Book of Specifications makes it mandatory to broadcast at least 30 minutes of news in the Arabic language. In effect this means it is possible to broadcast almost entirely in another language, as long as the daily minimum requirement of news in Arabic is met (Decree No. 7997/1996, Chapter 3, paragraph 7) (see also 4.5.2.1 and 4.5.2.2. above and 7.2.1. below).

4.8. LEBANESE ELECTORAL LAW

According to the Taif Agreement a second chamber should be introduced allowing for a non-confessional lower house of parliament and an upper house, or senate, to represent confessional communities. The senate would only have competence in matters of major national interest. This reform was integrated into the Constitution (Article 22) but never implemented. The Taif Agreement also stipulates that the electoral districts should be “governorates” (*muhafazat*), although many consider that the

agreement left open the possibility of changing the borders of “governorates” and increasing their number.

The Taif Agreement also introduced the concept of “effective representation” but this concept is not mentioned in the Constitution. On the one hand, the vague expression of these fundamental concepts requires legal clarification yet, left as they are, they provide significant space for important political bargaining. Also open to debate is whether the Doha Agreement of May 2008 overruled aspects of the Taif Agreement.

The main changes now being made to the election law relate to the electoral system used, often reflecting attempts to ensure certain electoral outcomes. The 1960 election law based electoral districts on *qadas* – a small administrative unit – while the 2000 law (the “New Law”) established larger districts without any clear and consistent criteria being, in spite of a 1996 Constitutional Council decision (4/96) ruling that a single uniform criterion should be used in the delimitation of election districts.

4.8.1. Electoral system

The composition of the chamber, as provided by Article 24 of the Constitution, is based on the following principles:

- equal representation for Christians and Muslims;
- proportional representation among the confessional groups within each religious community;
- proportional representation among geographic regions.

“Equal representation for Christians and Muslims” is understood to mean that each should have the same number of MPs. The current distribution of the seats, when compared to the official figures of registered voters, privileges the principles that apply to religious/confessional groups over geographic regions.

Regions are not proportionally represented: areas with concentrations of Muslim voters are under-represented

(in particular in the south of the country). It is possible to respect all three criteria of Article 24, but not if Christian political players insist that most “Christian seats” are elected by majority Christian electorates. Such a demand, accepted by the New Law, violates Article 24 of the Constitution by creating inequalities in the value of the vote: a seat in a redrawn Christian district is elected by fewer voters than one in a Muslim area, making a Muslim vote worth less than a Christian vote.

4.8.2. Media/campaign

The Lebanese media landscape is as characterised by confessionalism as are the political institutions.

By convention the head of the Journalists’ Union is a Christian, while the head of the Publishers’ Union is a Muslim. Confessionalism and the power of political families also determined who gained licences for private TV stations under the 1994 Audio-visual Law.

The New Law contains detailed provisions on media conduct during elections. This is positive, given that the earlier law contained only one article on the issue, which was violated by almost all the media. Prior to 2000, 56 analysts had raised concerns about the strong bias of much of the private media: “In general, the TV channel owners were clearly promoting one candidate or party over another and did not provide all of the candidates with equal access or fair coverage.”³⁸

The New Law introduces regulation for paid media advertising by obliging all media companies intending to sell electoral advertising to report to the Supervisory Commission with specifics of the advertising space or time they will sell, and their price list. These submissions must be made “ten days before the beginning of the electoral campaign” (Article 66), although this highlights the current law’s failure to define the beginning of the campaign period, only mentioning the “starting date of application for candidacy” (Article 65). Even this is vague; it could refer to

the application by a specific candidate or the date from which applications are generally open. Given that one can apply for candidacy immediately after elections are called, the provision that the media should submit their intention to run electoral ads 10 days before the campaign would require outlets to act before elections are called, which is of course impossible. Either the law should be clarified or a government decree needs to fix the date when the campaign begins (Article 115).

The media is now also required to sell political advertising space to all candidates and at the same price. Electoral ads must be marked as such and indicate the advertising party. Requests for advertising and the relevant material (videotape or print ad) should be submitted not only to the media company but also to the Supervisory Commission at least three days before the desired publication. No candidate should spend more than 50% of their advertising budget with any single media company. This is an important provision, given that many candidates tend to be closely linked to certain media outlets.

The new advertising provisions are a novelty in Lebanese elections and would constitute significant progress if they were to be implemented. Some provisions may be too restrictive – for example, obliging candidates to submit any ad three days before publication to the Supervisory Commission. This might prevent advertising reacting quickly to developments. It should be sufficient for a copy of any advertising request to be shared with the commission without a specific deadline, particularly since the New Law does not task the commission with reviewing ads before they are published.

The New Law regulates election coverage as well as advertising, requiring public media to remain impartial. They may not “carry out any activity that might be considered to favour any candidate or list at the expense of another candidate or list” (Article 67). These provisions could stifle the work of the public media,

because any comment on political platforms could be considered as partial. In other countries the public media are only required to provide overall balance and fairness in their coverage of election campaigns. Such a standard allows the airing of critical or positive opinions, since it only requires overall balance in reporting.

All audio-visual media, including private media, are required to respect freedom of expression, so that: “fairness, balance and impartiality among candidates and lists would be guaranteed” (Article 68). This seems to set a similar standard for private media as Article 67 sets for public media, with the only discernible difference being that private media should distinguish factual reporting from opinion and comment (Article 68 paragraph 3). Presumably this means that they can express opinions that are not necessarily “impartial”.

Article 68 paragraph 4 obliges the media to refrain from libel, slander, defamation and from broadcasting “anything that might trigger religious, confessional or ethnic sensitivities or acts of violence”, as well as from “distorting, screening, falsifying, omitting, or misrepresenting information”.

This paragraph raises a number of concerns: it is unclear whether it also applies to public media (Article 68 appears to be aimed at private media, but paragraph 4 is not clear on this). The obligations are sweeping and vague. For example, “omitting” information is arguably unavoidable for journalists whose task it is to make editorial choices on what to report and what not. While the objective of preventing confessional violence is laudable, the notion of “triggering ethnic sensitivities” is unclear and could be applied to anything said on confessional issues. Furthermore, it obliges media to screen paid advertisements provided by political groups before broadcasting, leaving considerable scope for controversy.

Article 68, paragraph 5 indicates that the Supervisory Commission “shall

ensure balance in media access (...) among competing lists and candidates by binding media companies to host all competitors – list representatives or individual candidates – under the same conditions in terms of timing, duration and programme types.” This represents a significant degree of control over all audio-visual media, including private media. The Supervisory Commission should consult all audio-visual media before determining its guidelines.

Article 75 states that the Supervisory Commission can decide whether candidates’ access to foreign satellite media should be part of the “advertising and media spaces allocated by the commission to each list or candidate”. This is important, given the influence of Al Jazeera, for example. However, this provision raises a number of questions: the law gives no authority to the commission to “allocate” advertising space. The article could therefore only mean that the commission may decide that foreign channels have the same obligations as Lebanese media regarding paid advertising. This would be difficult to enforce, although the commission could try to negotiate such obligations with foreign channels. It is also unclear what the article means by allocation of “media spaces to each list”. Is each list to be given a maximum amount of media space during the campaign? However, Article 68, paragraph 5 says that media companies should be bound by the commission to host all competitors under the same conditions in terms of timing, duration and programme types. Thus the commission is tasked with predetermining the degree of access of competitors in each media outlet.

All the provisions discussed are prescriptive and give significant authority to the Supervisory Commission. Yet many of these provisions are vague or unclear; they risk deterring vigorous reporting and may prove too ambitious to be enforceable. The commission will have to clarify many issues left unclear by the law. The chapter on media conduct should also be reviewed and reformed after the next elections.

³⁸ Assaf, S., Comparative Report on the State of the Media in Egypt, Jordan, Lebanon and Morocco, Arab Center for the Development of Rule of Law and Integrity & IFES, May 2007.

Candidates or lists can file complaints with the Supervisory Commission. The commission must decide within 24 hours whether or not to raise the case with the Court of Publications. Where it finds a breach of the electoral law on media conduct, the commission can issue a warning to the media outlet, oblige it to publish an apology or require it to give an official response to the allegation. The commission can also take the case to the Court of Publications, which has the power to fine the media outlet, partially suspend it for up to three days or, in case of recurrent violation, completely suspend it for three days. As well as complaining to the commission, aggrieved parties may also file a request with the public prosecutor who can sue the outlet concerned at the Court of Publications. The Court of Publications normally renders its judgement within 24 hours. Its decisions can be challenged at the Court of Appeals.

4.8.3. System for complaints and appeals

The New Electoral Law of 2000 provides for only two specific instances where complaints or appeals may be made. First, complaints against decisions on voter registration by registration committees can be lodged with the higher election committees – but only until March 30th each year (Article 39). This leaves no possibility of making a later complaint should voters discover just before an election that they have been deleted from the voters' list. Second, refusals by the Ministry of the Interior to register a candidate can be appealed to the Council of State (Article 49).

4.8.4 Representation of women

Women are under-represented in Lebanon's political institutions. There is only one female minister, and in 2005 only six women were elected among the 128 MPs (4.7%), some of whom were uncontested and were elected largely thanks to their family backgrounds. This is far below the global average of 17.2%. The current election law contains no specific provisions to increase women's representation. Generally, electoral systems with large election districts are more

favourable to women's representation because the larger the district, the greater the possibility of a woman who is part of a bloc or list winning a seat. The new electoral system, therefore, with its greater number of small districts (2–10 seats) militates against the election of women to parliament. In addition, the cross-confessional set-up of most lists makes it even more difficult for women to be elected because political leaders may consider it advantageous to present men in cases where a particular confession only has one or two seats.

4.9. THE NATIONAL COUNCIL FOR AUDIO-VISUAL MEDIA (NAC)

The National Council for Audio-visual Media (NAC) was established by the 1994 Broadcast Law. The function of the NAC was to be similar to that of its French counterpart (the Conseil Supérieur de l'Audiovisuel or CSA). It should be noted that, initially, the government sought to control all phases of the licensing process, from studying applications to allocating frequencies, to granting or withdrawing licences. The NAC was absent from the government's initial draft of the 1994 Broadcast Law and was only introduced later under parliamentary pressure in order to check governmental control of broadcasting.³⁹

Articles 17 and 18 of the 1994 Broadcast Law specify that the NAC shall comprise 10 members, half of whom are to be appointed by the Council of Ministers and the other half by parliament, following the appointment procedure used when selecting the members of the Lebanese Constitutional Council. Since this law makes no mention whatsoever of who is to preside over the NAC, the possibility for the minister of information to be president of this council is not precluded. However, the minister is an unlikely candidate, especially because, according to Article 35 of Law No. 382/1994, the NAC "meets on its own initiative or upon the initiative of the minister of information".⁴⁰

Article 18 of the 1994 Broadcast Law seeks to secure the independence of the NAC members and to deal with

conflicts of interest by prohibiting them from being members of elected bodies or civil servants in public administration, or from conducting any activity "in contradiction with their function within the council". The same article specifies that these members are to be chosen among "Lebanese intellectuals, artists, scientists, and professionals". This very loose description of the qualifications of the NAC members is justified because it makes it easier to select a council "consisting of a wide selection of individuals who have the needed qualifications" for such a position.⁴¹ This same loose description, however, could be abused (by not requiring, for instance, the appointment of telecommunications engineers, or media scholars and lawyers, and so on), allowing the appointment of members who lack the qualifications necessary for undertaking a task that requires expertise in the field of communication.

In fact, the majority of the members of the first National Audio-visual Council come from backgrounds not directly related (technically, artistically or academically) to the field of communication.

Equally as important, if not more important, than the professional qualifications of the appointed members, was the extent of their political independence from the three major heads of state (i.e. former Maronite President Hrawi, Sunni Prime Minister Hariri, and Shia Speaker of Parliament Berri). Just a few weeks after the formation of the NAC there were serious doubts concerning the independence of the newly created regulatory body. The headline of a national newspaper accused the majority of the members of "belonging to Hariri". This same newspaper quoted a member of the NAC as saying "he was proud of his friendship with Prime Minister Hariri" (*As-Safir*, November 14th 1995). Another member of the NAC, Maher Baydoun, was known to be the vice-president of the board of directors of Solidere, the controversial property company associated with Hariri.

In order to avoid future criticisms, later amendments to the 1994 Broadcast Law included the need to have "objective criteria" applied when appointing members of the national council in order to avoid the mistakes that surfaced during the implementation of this law in 1996 (*As-Safir*, March 5th 1998).

Leaving aside the problem of the appointment and independence of the NAC members, although the Lebanese NAC was supposed to emulate the French CSA, with members of both councils appointed in the same way as were members of the Constitutional Council in their respective countries, the NAC and the CSA clearly differ when it comes to the powers conferred on them by law. The CSA, for instance, has a range of duties and powers that are not even closely matched by those of the NAC. In cases where there is failure to comply with media laws, it can impose fines, suspend the licence or even withdraw it.

The most important functions and powers of the NAC conferred by the 1994 Broadcast Law (Articles 17–23, 35 and 47), can be summarised as follows. The NAC's role is to:

- study the licence applications and ensure they meet the conditions set out in the 1994 Broadcast Law and the related Book of Specifications (or Decree No. 7997/1996);
- give an "advisory" or "consultative" (i.e. non-binding) opinion to the Council of Ministers regarding the rejection or the approval of licence applications, and to publish this opinion in the Official Gazette;
- give its (non-binding) opinion concerning the Book of Specifications (this guidebook is to be drafted by a committee set up and supervised by the Council of Ministers, the latter giving its final approval of the guidebook with a ministerial decree) (Article 25);
- give its opinion in case the minister of information decides to suspend a licensed station for infringement of the law;
- monitor the programming of broadcasting corporations.



“A decade after the 1994 Broadcast Law was introduced, the NAC still lacks the budget, personnel and facilities to carry out its monitoring duties... It is forced to carry out its monitoring of programme content with the ministry or the Lebanese Sûreté Générale.”

Although the NAC may seem to have some of the general powers of the CSA, especially concerning licensing and content control, a close reading of the 1994 Lebanese Broadcast Law and the details (or lack thereof) concerning these powers gives an entirely different picture. For instance, the NAC can only give a "consultative opinion" to the Council of Ministers concerning broadcasting applications, fines and the suspension of licences. In other words, this opinion is

not binding in any way on the Council of Ministers, which retains the final word concerning sanctions and the granting or withdrawing of licences.

The 1994 Broadcast Law does introduce some limits (albeit minor ones) to the licensing power of the ministry, first by requiring the NAC to publish its justified opinion in the Official Gazette and, second, by allowing rejected applicants to contest the government's decision

³⁹ "Ending the War? The Lebanese Broadcasting Act of 1994", by Dima Dabbous-Sensenig, op. cit.

⁴⁰ Ibid.

⁴¹ Boutros, op. cit.

5. THE MEDIA LANDSCAPE

with the State Advisory Council (Articles 19 and 24 of the Law). Apparently these limits (or “corrections”) to the licensing power of the ministry were introduced by the opposition during the parliamentary discussion in view of the approval of the Broadcast Law: unable to push for a stronger, more independent NAC that would have exclusive responsibility for granting licences, the opposition had to “compromise” by making the NAC more of a “partner” with the government. In any case, it is a small “power” compared with that of the ministry.⁴²

Both the 1994 Broadcast Law and the related guidebook for operating conditions (the Book of Specifications) reiterate that broadcasting companies are subject to the control of the NAC “in accordance with the provisions of Law No. 382/1994”. However, nothing is specified about the nature or extent of that control. According to Article 47 of the 1994 Broadcast Law, one must assume that the control referred to, in addition to studying the licence applications, is control of the general programming standards or quotas mentioned in the law and its guidebook. Such controls would probably include the monitoring of broadcast electoral campaigns, although this is not stated in the 1994 Broadcast Law.

More alarming than the fact that the NAC was left with a secondary, watered down, role in the licensing and monitoring process, is the practical absence of enforcement powers and facilities needed by the NAC to perform its content control duties. Only one short article (Article 47) explains how the NAC is to carry out its control function vis-à-vis the licensed broadcasting institutions: “Upon the request of the Ministry of Information and through its bodies, the National Audio-visual Council exercises control over television and radio corporations”. Indeed, every time Law No. 382/1994 mentions the technical, administrative or content controls to be exercised, the minister of information, along with the NAC, is specified as the controlling authority.

As such, the minister of information as the highest broadcasting authority seems to outweigh the NAC, especially since it is ultimately the minister, and not the NAC, who can authorise the suspension of operations of a broadcaster who is in infringement of the law. The NAC, once again, is left with a “consultative” role in which their opinion is non-binding (Book of Specifications, Chapter Five, Paragraph 9).

In 1998, two years after the implementation of the 1994 Broadcast Law and the allocation of broadcasting licences, the Hariri government admitted that the NAC was unable to carry out its functions as specified by law, and newspapers spoke of the NAC’s state of “paralysis” (*As-Safir*, January 9th 1998). A year later a parliamentary committee was set up in order to study the 1994 Broadcast Law and propose amendments to deal with weaknesses and loopholes, especially with regard to the monitoring role of the NAC. The committee recommended, among other things, reducing the powers of the minister of information in cases of infringement and simultaneously increasing the NAC’s powers, especially regarding the issuing of warnings, imposition of financial sanctions and the ability to initiate legal proceedings through a specialised audio-visual court (to be set up) against broadcasters who were in infringement of the law (*As-Safir*, March 31st 1999).

Unfortunately, the recommendations of the commission were never implemented; to date, a decade after the 1994 Broadcast Law was introduced, the NAC still lacks the budget, personnel and facilities to carry out its monitoring duties. The council is forced to carry out its monitoring of programme content with “the help and equipment” of the ministry or the Lebanese Sûreté Générale. It should be noted that the Sûreté Générale, legally responsible for pre-censoring films according to the law of 27/11/1947 (as discussed at 4.4.1. and 4.6.2. above), is also thought to be monitoring and pre-censoring non-political programming (namely dramas) on Lebanese television.

Law No. 531/96 for satellite broadcasting stipulates the Council of Ministers as the sole authority responsible for allocating licences by decree, based on recommendations from the minister of telecommunications (Article 2). Whereas the provisions of the 1994 Broadcast Law should also apply to licensed satellite broadcasters according to Article 3 (paragraph 4h) and Article 10 of Law No. 531/1996 for satellite broadcasting, the NAC is in fact deprived of any role whatsoever either in the licensing process or in the monitoring of the content of satellite channels. This becomes clearer when other articles of Law No. 531/1996 are examined. The last paragraph of Article 3 of this law directly entrusts the minister of information with content control, and based on his or her recommendation, the Council of Ministers enforces sanctions (e.g. immediate interruption of transmission for a full month) (Article 3) and may even revoke licences (Article 4).

In brief, whether in the area of licensing or content control, the Council of Ministers is the legal authority overseeing satellite broadcasting. Law No. 531/1996 for satellite broadcasting, moreover, makes no direct mention of how broadcasters deemed to be in infringement of the law by the Council of Ministers can challenge the Council’s decision.

Print, radio, television and digital media markets are diverse in Lebanon, with dozens of politically approved publications, radio stations and broadcast companies. A relatively high percentage of the population is also online.

5.1. PRINT MEDIA

The Lebanese press has about 60 licensed political publications, including around 10 dailies, almost 40 weeklies and four monthly magazines reporting a total circulation of 220,000 (2008). However, there are no accurate figures on the circulation and distribution of newspapers in Lebanon and each paper makes self-promoting claims. According to the Ministry of Information, *As-Safir* (The Messenger) and *An-Nahar* (The Day) are the most-read newspapers in the Arabic language, with, respectively, 50,000 and 45,000 issues daily. Whether these figures are accurate or not, the largest circulation dailies in Lebanon are certainly *An-Nahar*, *As-Safir* and *Al-Akhbar* (The News, founded in 2006). *Al-Balad* (The Country, 2003) also had a large circulation when first established but it has subsequently decreased.

The print media market is therefore “pluralistic enough”, in line with the tradition of the Lebanese press in the last few decades.

5.2. RADIO

Currently there are around 40 radio stations in the country (20 AM, 22 FM, and four short-wave) broadcasting to 85% of the Lebanese population (2.85 million receivers). Five stations account for the majority of listeners. They are all dedicated to news and, with the exception of the state-owned Idhaat Lubnan/Radio Liban (Radio Lebanon, one of the first radio stations in the Arab world, founded in 1939), reflect their different political and religious affiliations.

As with the print media market, the radio media market is also pluralistic enough.

5.3. TELEVISION

Although the application of the Audio-visual Law led to the closure of a number of TV channels, there are still nine television broadcast stations in Lebanon. These show the existence of a vibrant and pluralistic market, which reaches more than 97% of the adult Lebanese audience.

In addition, the country has two digital cable television companies, Cable Vision and Econet.

With the exception of the state-owned and scarcely viewed Télé-Liban (founded in 1959, it really came into its own in 1977 in a merger with La Compagnie Libanaise de Télévision and Télé-Orient), the other eight Lebanese TV stations are directly linked to the different political and religious factions of the country (the pro-Western parliamentary majority vs. the pro-Iranian opposition). The result is a generally low standard in reporting local, regional and international events, while the news agenda is deeply influenced by the different affiliations.

Access to satellite television has grown substantially over the last decade. In 2012 the Telecommunications Ministry said it was drawing up plans to launch a “smart media city” project, similar to the one already implemented in Egypt, which would improve the telecommunications infrastructure and allow additional satellite television stations and production studios to be set up.

5.4. ONLINE AND DIGITAL MEDIA

In 2012, 61% of the population had access to the internet.⁴³ Thanks to the relatively high penetration of internet services in urban areas, in the last decade almost all the newspapers have started to exploit the internet. At first the new sites appeared as electronic versions of their paper parents, but some of them have now been transformed into more useful sources of information with several updates per day.

In addition to the websites of the main local newspapers, more information about Lebanese political, economic and cultural events can be found on numerous websites such as Nahamet, owned by the *an-Nahar* editorial group; NowLebanon, close to the “pro-Western” parliamentary majority; and Tayyar, affiliated with Michel Aoun’s FPM party.

These websites are followed mostly for their “breaking news” services and their partisan political analysis. Even though it is not always a reliable source of information, LibanCall and other media outlets offer a SMS urgent-news service, valid only in Lebanon and available for \$10 a month. In addition, self-proclaimed independent sites such as Elnashra, LebanonWire, LebanonPress and AkhbarAlyawm may satisfy readers interested in broadening their knowledge of different Lebanese issues. Web television and video news in internet newspapers are still scarcely used. The dominant source of web TV is YouTube and the various social network platforms such as Facebook.

⁴² “Ending the War? The Lebanese Broadcasting Act of 1994”, by Dima Dabbous-Sensenig, op. cit.

⁴³ “Freedom of the Press 2013: Lebanon”, op. cit.

6. MEDIA ORGANISATIONS

There are a handful of state-owned and private news agencies operating in Lebanon, as well as international news services. The press trade unions are, however, regarded as inefficient and are swayed by their political and sectarian loyalties.

6.1. NEWS AGENCIES

The main Lebanese news agency is the state-owned National News Agency (NNA). Founded in 1961 and now located in the Ministry of Information building in central Hamra Street, the NNA has dozens of reporters in Beirut and across the regions. Recently a new NNA website has appeared, with pages in French and English along with Arabic, but the frequency of online news updates is still below international standards.

Another local news service is the smaller private Central News Agency which is based on the Hazmiye hill near Beirut. Created in 1983 and directed by the Christian Pierre Abi Aql, it aims to compete with the NNA in the local market, but does not seem to have the same penetration in the Lebanese territories.

International news agencies' political, economic, social and cultural features, for example from the Arabic services of Reuters, Agence France Press and Deutsche Presse-Agentur, usually find considerable space in Lebanese media outlets, as do their news bulletins, which are often quoted by the local TV and radio stations and news websites.

6.2. TRADES UNIONS

As established in its charter, the Lebanese Press Editors Syndicate (LPES) formally performs the functions of both a trade union protecting the interests of its members and an accountability body monitoring the conduct of journalists and providing guarantees for their professionalism and ethics. However, many reporters interviewed in Beirut in 2009 stated, on condition of anonymity, that both the Press Syndicate (LPS) and the LPES have, for decades, been ineffectual institutions in existence merely to give the impression that Lebanon respects international press organisation standards. Around 75% of Lebanese journalists accredited by the Ministry of Information are not listed as LPES members. The LPES in fact fulfils neither the role of a trade union nor that of an accountable professional association. Moreover, in Beirut, officials of neither the LPS nor the LPES, when contacted, was able clearly to describe the nature and the function of the Higher Press Council.

According to local observers, the LPS and LPES continue to be dominated by the political and sectarian carve-up: the Sunni Muslim Muhammad Baalbaki has been LPS president since 1989, while the LPES

has, for over 40 years, been presided over by the Christian Maronite Melhem Karam, a media tycoon who also owns one of the principal publishing houses in the Arab world.

6.3. OTHER MEDIA OUTLETS

In Lebanon there is no single authoritative source of media statistics, but a great deal of media news, reports and surveys can be found on the internet. The most reliable are published by SKeyes Media, Club de la Presse, the Maharat Foundation and the Institute for Professional Journalists (IPJ), and include the blog of Magda Abu-Fadil, former director of the Journalism Training Program at the American University of Beirut.

In the last decade some independent media associations have been created in Lebanon to help compensate for the lack of effective professional associations. One of the most active is the Maharat Foundation, a group of relatively young journalists who have experienced the obstacles to free journalism in Lebanon. Their aims are, among other things, to increase the professionalism of the media and to limit the effects of self- and government-imposed censorship.

7. MEDIA MARKET STRUCTURE

The Broadcast Law of 1994 is the only Lebanese legal text dealing with advertising, in a market dominated by a single media group. Subsidies and bribes paid by political and business interests leave the industry open to editorial bias.

7.1. FAIR ALLOCATION OF ADVERTISING

The Broadcast Law of 1994 is the only Lebanese legal text regulating the media that deals with advertising. It contains content-related provisions (Articles 36 and 37) in addition to a single anti-monopoly article (Article 39) that requires each advertising agency (or "regie", as agencies are commonly known in Lebanon) to service no more than one television and one radio station at a time.

In practice, however, it seems the advertising market is monopolised by a single media group led by the Lebanese advertising mogul Antoine Choueiri. It is estimated that Choueiri (or his group) has control of 92% of the national advertising market and 72% of the satellite market in the Gulf region.

The advertising market in Lebanon is extremely limited and is not able to sustain the breadth of media outlets operating in the country.⁴⁴ The total population of Lebanon (around four million) is too small to allow for the financial self-sufficiency of the many licensed political newspapers and a multitude of radio and television stations. Given the lack of financial self-sufficiency

and the low salaries of the average newspaper journalist, media professionals and institutions are forced to seek revenue and subsidies from elsewhere, including from foreign entities, in exchange for editorial support. This allows foreign and business interests to use the media to pursue their agendas and exert influence on internal and regional affairs. Indeed, handing out bribes to newspapers and journalists is commonly accepted as normal behaviour and is even justified by some on account of the poor salaries and lack of benefits available to journalists.

Subsidies for Lebanese papers come in a variety of forms. One consists of the patron government or group effectively hiring out the entire publication for a yearly or monthly fee. Under this arrangement, the patron pays all production costs as well as staff salaries during the period of the contract. Another form of subsidy is through payments to promote specific programmes or causes. The amount of these payments depends on the patron but can be significant, as was revealed during a 1967 press conference held by the former president of the Lebanese Publishers Association, Zuheir Osseiran. Osseiran was announcing his resignation

from the presidency because of a disagreement with his cabinet members over a payment of one million Lebanese pounds (at that time worth \$200,000) that he had received from the late King Saud of Saudi Arabia. Osseiran claimed that the money was paid to him personally in return for promoting the image of the deposed king in the Arab world and that he would not share it with other members of the association. Osseiran also revealed that he had earlier distributed to Lebanese publishers another payment – which he claimed he could document – of \$100,000 from the former king.⁴⁵

7.2. MEDIA OWNERSHIP

The Press Law contains two control mechanisms to secure the financial and the editorial independence of local newspapers: Lebanese ownership and control of income. Ownership must be exclusively Lebanese in order to prevent local media from becoming mouthpieces for foreign Arab governments. The second provision aims at securing and monitoring the financial independence of licensed newspapers. According to Article 48 of the Press Law, the minister of information has the power to control the income of licensed periodicals

⁴⁴ *ibid.*

⁴⁵ "The Myth of Media Freedom in Lebanon", by Nabil Dajani, *op. cit.*

and to take action against any licensed publication whose “profits cannot be accounted for legally”. Despite these “protective” provisions in the text of the law, implementation has proved mostly inadequate. As Dajani observes, the technical hurdle related to Lebanese ownership has been easily circumvented: foreigners wishing to own a Lebanese paper have registered their shares under the name of Lebanese citizens as a cover, having concluded secret agreements with them.⁴⁶ Similarly, the Press Law has been incapable of securing the financial independence of Lebanese newspapers.

7.2.1. Diverse ownership

Modern press legislation in Lebanon and the boom that took place in the press sector as a result of the liberal 1952 legislative decree introduced by President Chamoun to regulate the licensing of periodicals resulted in an increased number of privately owned political dailies. For a short period prior to the introduction of Legislative Decree No. 74/1953, which limited the number of print licences, Beirut alone boasted more than 50 dailies.⁴⁷ Many of these titles still exist today and some of them are leading newspapers with distinct ideological or political orientations (e.g. *An-Nahar*, *Ad-Diyar*, *As-Safir*, and so on).

The Press Law itself does not require diversity in ownership but could be said to encourage it, since it contains nothing to prevent the licensing of privately owned periodicals with divergent political affiliations and/or in a variety of languages – in the latter case requiring only that the managing editor be “proficient in the language of the publication” (Article 23 paragraph 5).

Although Legislative Decree No. 74 of 13/4/1953 limited the number of licences to 25 political dailies and 20 political periodicals (see 4.5.2.5. above), it allows for the existence of non-Arabic political publications: out of the 25 political dailies allowed, ten can be published in a language other than Arabic. As for the political periodicals, eight out of 20 can be in a language other than Arabic. This policy has resulted in a Lebanese

newspaper scene that is not only diverse politically and confessionally, but also linguistically/ethnically.

In contrast with the Press Law, where pluralism in ownership is not required, the stipulation for pluralism in the ownership of private audio-visual media is clearly spelled out in the 1994 Broadcast Law (Article 13). As discussed at 4.5.2.3. above, the implementation of this law for terrestrial broadcasting resulted in the licensing of four television stations. Despite the fact that these “diverse” stations obtained their licences without having to meet any professional criteria, as previously argued, they still to some extent reflect the confessional diversity of the Lebanese population – or at least the larger confessional groups.

In terms of language use, unlike the Press Law, the 1994 Broadcast Law has a clear provision concerning the mandatory use of the (standard) Arabic language for 30 minutes’ of news a day – beyond this there are no requirements to broadcast in Arabic (see also 4.7.6.).

7.2.2. Expression of pluralistic views

The Press Law, understandably, has no provisions relating to the expression of pluralistic views. The various rationales that have historically been used internationally to justify the regulation of broadcasting (as opposed to newspapers) and to enforce positive requirements, e.g. the (now repealed) “Fairness Doctrine” in the US (Francois 1994, 515) and other directives requiring that programming be diverse and pluralistic, do not apply to newspapers. Theoretically, any individual, political party or ethnic or linguistic group of people can voice their opinion and concerns through ownership of a newspaper. Indeed, it is the aggregate number of these diversely owned newspapers that supposedly guarantees pluralism of views in the country. However, with the current system of licensing the press, only rich and powerful individuals or corporations can actually afford to buy the necessary two existing titles/newspapers and to close them down in order to open up a new political daily. This restrictive

and undemocratic licensing system for publications constitutes a major barrier to the expression of truly pluralistic views, especially for new political parties or civil society groups try to access the media in order to express make their views known.

The 1994 Broadcast Law, in accordance with Western laws that require the inclusion of diverse views by licensed private broadcasters, duly recognises the need to have programming that reflects “the pluralistic character of expression and opinions” (Article 7). Its related Book of Specifications, or Decree No. 7997/1996, is more concrete in this respect, requiring licensees to “broadcast at least one political programme a week which is based on above objectivity and excludes the single opinion in the programme, whether it consists of one episode or more” (Chapter 3, part 7 on programming). It should be noted that pluralism in the Lebanese media laws is understood in its narrowest sense (see also 4.5.2.3.) and is not in line with the concepts of media pluralism and cultural diversity referred to in documents of the Council of Europe or European Union, such as the 1997 Amsterdam Treaty Protocol on Public Service Broadcasting. In conducting interviews with media experts and practitioners in Lebanon for this report, we noted a unanimous adherence to the same narrow understanding of diversity and pluralism – i.e. exclusively political or partisan pluralism. For example, the manager of news and political programming at Future TV defined pluralism as “hosting individuals from different political leanings and giving them the right to express themselves” (al-Fayed 2006).

This is not to say that television broadcasting in Lebanon is not, in practice, acting increasingly as an outlet for a diversity of views or is not allowing marginalised groups for the first time to air their opinions at length without being framed negatively. An episode of *Al hall bi idak* (“The solution is in your hands”) which aired on May 2nd and 9th 2006 on New TV dealt with homosexuality in a remarkably open way, confronting

the reluctant studio audience (who had just voted against the acceptance of homosexuality) with a group that continues to be alternately shunned by and ridiculed in the local media (see also 4.6.1. above).

7.2.3. Access to the media

On the one hand, the public has the right to receive national media outlets. This especially applies to terrestrial broadcasting, cable TV, phone lines, and so on, which require a proper infrastructure in order to reach the entire population and provide “universal access”. Lack of access is common, however, because private broadcasters and their advertisers have an interest in covering or targeting only major cities, where potential viewers/buyers are concentrated. Article 10 of the 1994 Broadcast Law attempts to counter this by requiring licensees of all categories to “cover all Lebanese regions”.

In theory, the public has the right not only to receive information from media outlets but also to be able to express ideas through them. This type of access is important for the healthy exchange of ideas in a democracy and is achieved by making the media “more hospitable as a routine and legal matter to diversity of viewpoint” (Jerome Barron cited in

“

In theory, the public has the right not only to receive information from media outlets but also to be able to express ideas through them. This type of access is important for the healthy exchange of ideas in a democracy.

”

Francois 1994, 547). This specific right of access, which provided the major justification for the Fairness Doctrine in the US and is echoed in a weaker form in the content rule on diversity in Decree No. 7997/1996 (see also 7.2.2. above), has predominantly been interpreted to mean the “right of reply”, which requires Lebanese newspapers (and also broadcasters) to provide free space to those who have been criticised in the media and who wish to respond to this criticism.

Cable distribution is not regulated so there is no legal provision for access. (The only law that has been used to sue and arrest cable operators on a variety of occasions is the Lebanese Copyright Law of 1999). The only two “legal” operators in Lebanon are operating at a loss, having to compete with some 600 illegal cable companies. The illegal operators offer very low subscription prices – often less than \$10 a month – and provide cable access to most Lebanese households.⁴⁸

⁴⁶ “Disoriented Media in a Fragmented Society”, by Nabil Dajani, op. cit. Page 39.

⁴⁷ ibid. Page 34.

⁴⁸ “Pirate’s paradise: when stealing is the norm”, by Peter Speetjens, op. cit.

8. CONCLUSIONS AND RECOMMENDATIONS

Although ostensibly free, the Lebanese media find themselves stifled by several legal, political, economic and cultural restrictions, which limit freedom of expression. This calls for an overhaul of the judiciary and electoral system, which must occur multilaterally.

Reform in Lebanon must be multilateral and carried out on several fronts simultaneously. Unless the judiciary and the electoral system are reformed in such a way as to implement the rule of law in the country, it is doubtful whether the mostly private commercial media could carry out reform themselves. Without a holistic approach to change, reforms of the media laws could well prove unenforceable.

8.1. CONCLUSIONS

Despite some superficial indications that the media in Lebanon are comparatively free, the sector finds itself in several difficult predicaments – legal, political, economic and cultural. These predicaments, in general, reduce both the scope for freedom of expression in the country and the ability of the media to act efficiently as a watchdog of government and to promote the rule of law. Critical, or potentially critical, media and members of civil society are at present held in check by politico-economic power elites who enjoy the support of a largely subservient judiciary and are generally untouched by the rule of law.

There are, of course, some general guarantees of freedom of expression in the Constitution and in the text of several media laws, but these guarantees are curbed by a plethora of often loosely worded restrictions that undermine constitutional and legal protections.

The power exerted by the politico-economic elites is often the result of provisions in the media laws that protect the interests of those in power rather than promoting the public interest. A good example of media laws that fail to operate in the public interest are the defamation laws that have turned legitimate targets of scrutiny and criticism (e.g. presidents, the military, judges, and so on) into untouchable figures.

Lebanon, although a pioneer in introducing the first law for regulating private broadcasting in the Arab world, is now lagging behind as it has proved unable, since 1994, to update either this law or the Press Law of 1962 in keeping with technological and other changes. Not a single amendment to the broadcast and press laws has been introduced since 1994. In addition, the legislative field is, in some cases, characterised by the total lack of a regulatory framework for the internet, the cable industry and for the practices of the media during election periods.

Finally, and most importantly, the judiciary has failed on several occasions to act as an independent arbiter to restore balance in the unequal power relationship between the public, civil society and the media on the one hand, and the government on the other.

As long as the executive and other powerful players cannot be safely criticised, and as long as the judiciary cannot consistently be relied upon to act independently (from government) and to fight corruption (and cannot be criticised itself when it fails to do so), the Lebanese media, even when willing to act in the public interest, cannot be expected to work freely and to promote the rule of law in the country.

8.2. POLICY RECOMMENDATIONS

8.2.1. Independence

- a) Fundamental guarantees of media independence:
 - i. Freedom of association should be guaranteed by freeing the media from bureaucratic hurdles.
 - ii. Freedom of access to information should be guaranteed, at minimum, by introducing a related provision in the text of media laws.

- b) The NAC should be granted independence and enforcement powers (see recommendations in the following section).

8.2.2. Regulatory system

- a) Periodicals should not be licensed (only registered) and the current restrictive system for licensing political periodicals should be removed.
- b) The current distinction between different

types of periodicals (political vs. non-political) should be removed.	and be able to issue warnings and penalties when stations infringe upon content requirements.	criticising public servants, officials in high positions, the military, all heads of state, and so on.
c) Similarly, the distinction between political (i.e. Category 1) and non-political (Category 2) broadcast licences should be removed.	k) Appropriate courts, and not the minister of information, should be responsible for deciding whether a station in infringement of content requirements should be closed down temporarily.	u) Truth should be a legitimate defence in all libel cases, not just in those involving public servants.
d) Foreign ownership should be allowed to some extent, for example, with a stipulation to keep the majority of the shares in Lebanese hands.	l) Satellite television stations should not be licensed by the Council of Ministers. The NAC should be given responsibility for regulating satellite broadcasting (in terms of licences and content control).	v) Blasphemy laws, if they cannot be repealed altogether, should be redefined in such a way as not to be equated with medieval heresy laws. In other words, people who do not believe in God should be able to express with impunity this “belief”, and blasphemy laws should, at best, become rules restricting the vilification of recognised religious groups.
e) More sophisticated cross-ownership rules should be introduced. These should be based on market share, for instance, and take into account other media such as cable and newspapers (currently they only deal with radio and television).	m) All licence applicants should be able to contest the decision of the appropriate licensing authority through the court system.	w) Sanctions for libel should be higher when the libelled party is a private person, and lighter when the libelled party is a public or official person, in order to increase the margin of freedom of expression and enrich political debate in the country.
f) Better and clearer anti-concentration rules should be introduced, including a clear definition of what is meant by “direct” and “indirect” ownership. These rules, to be more effective, should also prevent the adult children of the same shareholder from being counted as independent shareholders.	n) Official prior restraint on leaflets, theatre productions and films should be lifted entirely.	x) International publications should not be subjected to prior censorship upon entering Lebanon or when being issued via satellite in the country.
g) The cost of broadcasting licences should be reasonable and not used as a structural mechanism for excluding some qualified applicants.	o) A law for cable operation and distribution should be introduced.	y) Specialised courts should be exclusively responsible for dealing with cases related to the infringement of content requirements in all media (whether these require licences or not).
h) The National Audio-visual Council (NAC) should become more independent of the government and be responsible for allocating licences (i.e. the Council of Ministers should not be able to control the licensing process).	p) A law for internet regulation should be introduced.	z) Prison penalties for journalists and broadcasters found by the courts to be in infringement of content requirements should be abolished. Only financial fines should be allowed.
i) The NAC should also be more transparent and accountable in its functions as a regulatory body (i.e. by holding public hearings during the licensing process, by publishing quarterly or yearly studies about the output of the Lebanese broadcast media, and so on).	q) Laws for new media (e.g. cable and internet) should be in harmony with existing media laws (especially concerning content requirements), should take into consideration the specificity of each medium (e.g. content requirements on cable should be more lax than those of free terrestrial broadcasting). Ideally, this could be a law on convergence of the media.	8.2.3. Censorship a) Even during “exceptional circumstances”, the print media should be able to contest the Council of Ministers’ decision to introduce prior restraint.
j) The NAC should replace the minister of information when it comes to content control. It should be transparent, allow public hearings when allocating or reviewing licences, be provided with its own facilities and personnel in order to carry out its monitoring function,	r) Fair discussion and criticism of the situation of the economy and the Lebanese currency should be allowed and should not be punished.	b) Informal and illegal prior censorship of television drama by the Sûreté Générale should be abolished.
	s) Concepts related to content controls such as “decency” and “national security” should be precisely defined in order to prevent abuses in their application and a consequent decrease in the margin of freedom of expression in the country.	c) The Council of Ministers should not deal with satellite content (especially the issue of political programming) and should not
	t) Defamation laws should be amended in order to allow for more freedom when	

9. LIST OF MEDIA OUTLETS, ORGANISATIONS AND LAWS

impose positive requirements forcing companies to produce programming in order to “enhance” the image of the country abroad.

- d) Foreign publications should not be confiscated based on decisions made by the minister of information.
- e) Foreign newspapers sold in Lebanon should not be subjected to the local licensing system (as is currently the case).

8.2.4. Electoral framework

- a) The delimitation of electoral districts should be reviewed in order to ensure the equality of the vote and to seek ways to limit the role of confessionalism in political life, rather than enhancing it.

- b) Unreasonable restrictions on the right to vote should be abolished, namely: security forces should be allowed to vote and naturalised citizens should enjoy the same voting rights as other citizens.

- c) The equal right of anyone to stand for election is violated by the fact that all seats are allocated to specific confessions: by law, citizens with other, or no, beliefs cannot run for election. The implementation of the Taif Agreement’s provision to create a second chamber to represent confessional groups would solve this problem. This solution is foreseen in the Constitution (Article 22).

- d) Given historic mistrust of the electoral administration’s impartiality and in the interest of transparency, the Ministry of the Interior should consult stakeholders before important decisions are made and ensure the wide and prompt publication of all relevant decisions.

- e) The law should be changed so that voters who reach voting age after the end of the annual registration update but before election day should be allowed to vote.

- f) The right to stand in elections is a fundamental right and should not be subject to an administrative fee.

- g) The provisions on media conduct during elections need to be clarified. In the short

term the Supervisory Commission should issue guidelines. Complaints related to media conduct will have to be dealt with rapidly. It is, however, problematic that several public bodies can be involved in parallel when dealing with media-related cases. This can result in conflicting decisions. The law should be amended to clarify the complaints channels. In the short term the Supervisory Commission and the Public Prosecution should agree on close co-operation in these cases to avoid ‘forum-shopping’ by complainants and diverging decisions.

- h) It is unclear when the campaign period starts. This creates significant legal uncertainty and should be addressed in the short term by government decree, and in the long term by amending the law.

- i) While there are detailed rules on campaign financing, these provisions are inconsequential. Apart from penalties for intentional breaches of the rules there are no consequences for submitting incorrect accounting and no explicit requirement that candidates’ accounts be published. In the short term the Supervisory Commission should decide to publish these accounts. In the long term the law should be amended in these respects.

- j) Women’s representation in parliament should be increased. In the short term political groups should consider this issue. In the longer term, the negative effects of the electoral system and the electoral procedures for women’s representation should be addressed.

- k) A law regulating media coverage of elections should be introduced. This law should include the following provisions:

- i. A ceiling for spending on political advertising and campaigning.
- ii. Requirements for mandatory disclosure of candidates’ financial status.
- iii. Allowing all officially recognised candidates equitable and fair access to the media during election campaigns.
- iv. Private/commercial media should be required to apply the same conditions when it comes to electoral

advertising (with respect to fees, time of broadcast, facilities, and so on), and to provide free or paid airtime on an equal basis to all official candidates.

- v. A council should be set up for dealing with election-related complaints. The council or supervisory body should have auditing capacity and the power to impose sanctions when an outlet is in infringement of the legal requirements.
- vi. A period of “campaign silence” should be set for the media during the last few days before an election and on election day itself. The purpose of this period is to give voters time for reflection between the end of the campaign and the act of voting itself.

8.2.5. Media independence from external influences

- a) Proper checks on a station’s financial situation and independence from illegitimate sources of funding should be regularly carried out by the appropriate regulatory body (e.g. the NAC).

- b) Advertising monopolies should be prevented and indirect ownership of advertising agencies whose purpose is to circumvent the anti-monopoly law abolished.

- c) Content requirements (positive or negative) related to the “reputation” of Lebanon and other foreign countries should be removed in order to reduce the extent of foreign influence on local media content.

- d) A set of general anti-corruption laws should be introduced that apply to media practitioners and politicians as well.

- e) The concept of pluralism in the media should not be confined or restricted to ownership within a single broadcasting station that is diversified from a confessional point of view. Pluralism in the media should also mean ownership by linguistic/ethnic minorities. Content should be pluralist, not just by representing different opinions but in ensuring these opinions reflect the diversity of the country from a regional, confessional, ethnic, linguistic, socio-economic and any other relevant perspective.

9.1. NEWSPAPERS

al-Akhbar
al-Balad
al-Hayata
al-Hawadeth
al-Iktissad Wal-Aamal
al-Jaras
al-Masira/an-Najwa
al-Mustaqbal
al-Shiraa
al-Watan al-Arabi
an-Nahar
as-Safir
Concept-Mafhoum
Executive
L’Hebdo Magazine
L’Orient-Le Jour
La Revue du Liban
Le Commerce du Levant
Monday Morning
The Daily Star
The Middle East Reporter (MER)

9.2. RADIO

Idhaat an-Nur
Radio Liban
Radio Voix du Liban
Sawt al-Ghadd
Sawt al-Shaab

9.3. TELEVISION

al-Manar TV
Future News
FutureTV
LBC
MTV
NBN
New TV
OTV
Télé-Lumière

9.4. ONLINE MEDIA

AkhbarAlayawm
Elnashra
LebanonPress
LebanonWire
Naharnet
NowLebanon

9.5. NEWS AGENCIES

Agence France Press in Arabic (AFP)
Central News Agency
Deutsche Presse-Agentur in Arabic (DPA)
National News Agency (NNA)
Reuters in Arabic

9.6. TRADE UNIONS

Lebanese Press Syndicate
Magda Abu-Fadil’s blog on Lebanese Press Trade Unions
SKeyes Media

9.7. LAWS AND REGULATIONS

Lebanese Constitution
1962 Press Law
1994 Broadcast Law
1996 Satellite Law
2008 Electoral Law

9.8. INSTITUTIONS

Ministry of Telecommunication
National Audio-visual Council (NAC)
Reporters Without Borders on Lebanon
NGOs:

- *IREX*
- *Freedom House*
- *Solidar*
- *Internews*
- *Democracy Reporting International*

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II. APPENDIX

COMMENTARY ON LAW 330 OF 1994, AMENDING THE LEGISLATIVE DECREE NO. 104/1977

- In the case of print media, as stated in Article 25 of Law No. 330/1994, the Public Prosecutor is entitled to exercise post (-publication) censorship by confiscating those issues that contain material “insulting to one of the officially recognised religions in the country, or which might lead to confessional and racial strife or which might threaten public safety” and so on. The role of the courts is of additional significance, with the prerogative to impose prison sentences (of up to three years) and fines that can reach a maximum of 100 million Lebanese pounds. It is worth noting that Article 25 of Law No. 330/1994, although still quite restrictive, and especially so because it includes prison sentences for content-related “crimes”, is a significant improvement over its 1977 version. Prior to the 1994 amendment it was possible for the Public Prosecutor to stop the publication of a periodical for up to one month, before the case was even referred to the courts. The amended article does away with the temporary suspension (of a publication) prior to processing the case in court.
- When it comes to periodicals, prior restraint (prior or pre-publication censorship) is permissible under “exceptional circumstances” related to internal or external threats to national security (Article 39 of amended Legislative Decree No. 104/1977). In this case, the Council of Ministers is the official body responsible for introducing and lifting prior restraint through a ministerial decree. Worse even than giving the Council of Ministers broad powers to censor publications (and thus, providing limitless possibilities for abuse during times of crisis), the article precludes the possibility of contesting the government’s decision to impose prior restraint by resorting to the relevant courts. In other words, the media cannot even contest the government’s decision in a court of law.
- “Exceptional circumstances” aside, Article 3 of the 1994 Broadcast Law, similar

to the case of Article 1 of the Press Law, clearly states that “the audio-visual media are free”, and are therefore not subjected to prior censorship in the way films or plays are. However, although prior censorship is not legal as far as the terrestrial broadcast media are concerned, in practice all local television dramas require clearance from the Sûreté Générale before being produced and broadcast. Usually television scriptwriters send a copy of their script, which is then stamped, “page by page”, as a mark of official approval. In any case, Law No. 382/1994 for terrestrial broadcasting clearly states that any decision by the Council of Ministers concerning sanctions for not respecting content requirements can be taken to the State Advisory Council for review (Articles 24 and 35).

- In contrast with the Press Law of 1962 and the Broadcast Law of 1994 (Section 1.2.6.), Law No. 531/1996 for satellite transmission is highly restrictive concerning its (pre-) censorship rules. Article 3 paragraph 4 requires applicants not to air any directly or indirectly political programming without prior approval from the Council of Ministers (neither the Ministry of Information nor the NAC, but directly the prime minister), this being granted through a ministerial decree. Moreover, the same article requires getting the prior approval of the minister of information concerning the general programming grid. When a satellite station is in infringement of the listed content controls, the minister of information has the responsibility to report this to the Council of Ministers, which can decide to “immediately interrupt broadcasting for a maximum period of one month”, with no possibility of appealing the decision or asking for financial compensation. Indeed, Law No. 531/1996 for satellite broadcasting makes no direct mention of any judicial proceedings that might be resorted to by broadcasters who would like to challenge the Council of Ministers’ decision that they are in infringement of content requirements. It may be argued, however, that challenging the government’s decision concerning satellite broadcasting is still possible because Article 3 of Law

No. 531/1996 states that the provisions of Law No. 382/1994 are also applicable to satellite broadcasting.

- Because of the regulatory vacuum in which the cable distributors are operating, the scene is chaotic, with many citizens complaining to the authorities about pornographic material being distributed through cable. The only form of cable censorship which exists is informal or community-based and is practiced by the individual cable operator who has to cater to the needs and demands of its clientele in a specific geographical area. Thus, it is not unusual to receive some pornographic channels in some of the “liberal” and more affluent parts of the Lebanese cities, whereas in some of the more conservative neighbourhoods it is not even possible to receive Fashion TV with its scantily dressed models.
- Although Lebanon still lacks legislation that regulates the internet, the content of this new medium is nonetheless subjected to censorship by the Sûreté Générale, who apply the content-related provisions of existing restrictive print and broadcast laws, as well as the Penal Code, to the web. In the most well-known case to date, on April 3rd 2000 officers from the vice squad stormed the offices of Destination, a major Lebanese internet service provider. The raid followed the registration of a domain name, gaylebanon.com, for a website directed towards gay and lesbian Lebanese. Only after the owner of the ISP was arrested could his lawyer explain that ISPs do not “broadcast” any content and that it only provides the possibility to surf the internet, leaving the users free to navigate the web. Apparently, the prosecution of the owner of Destination and of Kamal el-Batal, the director of a Lebanese human rights organisation (MIRSAD) who publicised the case, took place in a military court. It was obvious that the authorities, while considering the dissemination of the problematic web content as “broadcasting”, were not willing to apply justice through the specialised court that deals with press and broadcasting issues (i.e. the Publications Court).





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