

Analysis of the Draft law on Freedom of Press of Somaliland

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Abstract

Traditionally, Media is the fourth power of the state. Media raises the voice of the voiceless community to enjoy their fundamental rights. It is also double 'edge sword', because it can be an instrument of development or it can be a dangerous instrument of violence if it propagates messages of disinformation that manipulate and influence public sentiment. So, regulating it in a standard way without violating or hardly restricting freedom of expression is important. However, Somaliland Media took part the different stages of state-building such as peace-building, clannish rebels disarmament, and promoting of democracy. It has its bases on the constitution, but in the last decades there have been a debates about media regulation, particularly establishing a law which regulates media and press-family behaviors. There are different opposing argument between media plus Civil Society organizations (CSOs) and government, on the way of regulating media outlets. So, this brief paper will try to analyze the new project on the modification of the press act (Law no 27/2004). The paper will focus on the scope of the act, National Media Council's structure and independence, Type of the media proclaimed in the bill, Registration or licensing procedure, rights, duties and code of conduct in the bill and limitation of the media service. Lastly the paper will give recommendations to the concerning institution.

Keywords: Freedom of Expression, Free media, Legal Limitation and Penalties

Introduction

Freedom of expression is very important in the democratic and open society. It contains the right to access and obtain information and it is fundamental human rights, central to achieving all human rights both individual freedoms and collective rights. Human rights increase public awareness, knowledge and provides an ability to participate decision affecting their daily lives and it can secure checks on state accountability, transparency and thus helps to prevent the corruption that thrives on secrecy and closed political environment.¹

Freedom of expression plus freedom of media is protected under international and regional instrument of human rights. Both UDHR² and ICCPR³ protect freedom of expression under article 19; rights protected in this international instruments including the right to hold opinion without interference, to seek, receive and impart information and ideas through any media regardless of frontiers.

Regionally, The African Charter on Human Rights and Peoples' Rights also protects freedom of expression under article 9 which promulgates that every individual shall have the right to receive information and also shall have the right to express and disseminate his/her opinions within the law.

Thus, the question would come is 'Somaliland international recognition' in the application of international instruments, because they need the jure approach. Although, Somaliland is a de facto state, but article 10 (2) of its constitution states the it recognizes and shall act in conformity with the UN Charter and with international law such as the Universal Declaration of Human rights. So this constitutional clause imposes state responsibilities on the protection and promotion of fundamental human rights such as freedom of expression.

Apart from the international, regional and constitutional protection of freedom of the press, Somaliland media (after 1991) rapidly increases and pass through different progress and challenges.

¹ Callamard, A. (2010). Accountability, transparency, and freedom of expression in Africa. *Social Research: An International Quarterly*, 77(4), 1211-1240.

² Universal Declaration of Human Rights, 1948

³ International Covenant on Civil and Political Rights (ICCPR), 1976

After the stage of Somaliland constitutional designing and referendum (2001), the freedom of expression has its base in the constitution. Article 32 of the constitution protects freedom of demonstration, expression of opinion, press and other media, including that individual can express his/her opinion orally, visually, artistically or in writing or in any other way and people can organize in any peaceful assembly or demonstration. The constitution prohibits any act to subjugate freedom of expression⁴. We can argue that the constitution uniquely protects freedom of expression, because it does not limit only writing or broadcasting, but it also includes artistic expression such as drawing and peaceful demonstration.

Although, Somaliland media outlet progressively improves the technological aspect and a number, but there are a number of factors and challenges faced the media such as inadequate training programs plus legal and policies which are to some extent become the major problems that are currently facing the media.⁵ The issues of press law become political debate and it causes sensational arguments between government and media professionals plus CSOs. The main argument arises the independent regulatory body which unites all types of media, because the government wants to control and interfere the council, while the media itself wants to have the upper-hand of the council, but the fact is that there is a need to establish a competent press council that is effective and efficient and should establish under the press law in a clear language set of normative standards for the ethical and professional reporting.⁶

To come to the point, there are a concern and debates about the Somaliland press law (law no 72/2004), because the government and its proponents argue that this law have no any penalties and need different amendments, while media professionals and freedom of expression activists are lobbying law which decriminalize media professions. Recently, the government starts to initiate new media law, although it argues that the proposal is not to initiate new law, but is to amend and improve the previous press act. This paper is mainly about the doctrinal approach it examines press law and it also refers international related laws and academic article. The paper will analyze the new press law, particularly as it will focus on the scope of the law, press

⁴ Note 2, article 32

⁵ Ali, N. M & . (2016). Caught Between Two Challenges: The Somaliland Media. Institute for Peace and Conflict Studies. available at <http://instituteforpeace.org/wp-content/uploads/2016/06/Caught-Between-Two-Challenges-the-Somaliland-Media.pdf>

⁶ Ibid

council's independence, limitation of media and penalty provisions. The paper will also give recommendations about the legal annals.

Analaysis on Somaliland Press Law (Law no 27/2004)

Scope of the Application

The law clearly states that act will apply media institutions and journalists operate in Somaliland and also another personnel or intuitions stationed outside Somaliland jurisdiction, but registered or licensed in Somaliland. The first two paragraphs in article 3 are well formulated and provides reasonable scope of the application of the law, but the third paragraph is the problem and can cause many legal ambiguities; it says that this law can be apply everyone who use social media in Somaliland and post any statement or item should have the nature of media and the written is about public or part of the society⁷.

Legally, this can have many implications and ambiguity which can cause legal dispute; firstly, social networks or media are not part of traditional media and people use personally to express their own opinion and sometimes states applies its regulation a law called cyber law, while other countries like USA still have the debate about the regulating of social media like Google, Facebook or twitter. Website news is part of the media, but in this world, there is new media, which is called "Citizen media" and most of the time citizens post immediate events and it is fast and different from the traditional media like newspapers, TVs, radio or websites.

Secondly, drafters use ambiguous words which they try to make links between social media and traditional media, "*Social Media in Somaliland, which posts or release something deemed or similar to media which involves the public or part of the society,*⁸" this statement is more unclear, for example the question can be What post can be reasoned or deemed or similar to the media? How do we legally measure the word deemed or reasoned. In legal application or drafting it is principle to avoid ambiguity or unclear terms which can cause differences in the legal eye. In the definition part, the drafters didn't clearly define what they mean "Warbaahin Bulsho" (Social Media).

⁷ Somaliland Press law draft (Law no 27.204), article 3 (1) (2)

⁸ Ibid

Thirdly, social media spread everywhere in Somaliland and people use, share ideas which somehow offensive, and also communicate their relatives, families or friends, so the other question needs to consider is that does this law take the necessary steps or punish all Somaliland social media users if they post any critics which looks offensive on the eye of the government?

The Scope of the press draft is excessively broad and it includes any form of mass communication, regardless the means of transmission or the frequency of publication and this broad scope is problematic since different media operate in a different way. Although, the new digital communication, dominance has vital implications for journalism, politics and society, but it is undoubtedly clear in open and democratic societies require new legal and conceptual tools to regulate this digital domination⁹.

National Media Council: is it Independent Regulatory Body?

Independent regulatory body of media can initiate and improve the development and advancement of media and its personnel as well as it will also strength the protection of freedom of expression component such as freedom of press, access and receiving information which is necessary to the public.

According to article 6 of the new draft of press bill, it establishes a council which will be responsible for the monitoring and receiving complaints against or from the media. The law states that the council will be independent from all other governmental institutions and it will exercise its mandate independently and will be free from any political interference from government organs, political parties, CSOs and owners and managers of media outlets.¹⁰ The council also will have legal entity and it can file sue or be sued; it can enter agreements and will own the property.

It is vital and necessary to establish independence and competence, independent regulatory body as the article 6 stipulated, but the composition of the council can be problematic and hinders the responsibility and independence of the council. According to article 7 of the law, the council will consist of 9 members; 2 members will from different Leadership Assemblies of Somaliland

⁹ Moore, M., & Tambini, D. (Eds.). (2018). *Digital dominance: the power of Google, Amazon, Facebook, and Apple*. Oxford University Press.

¹⁰ Supra note 7, article 6

Media Organizations, 2 members from Women in journalists Organization (WIJA) and 5 members will be appointed by the Ministers of Information from the government owned media and legal professionals.

The press law stated “Leadership Assemblies of Media Organizations,” this sentence is provocative clause and will cause confusion and dispute among journalists, because there is only one Media Bar Association even women included this organization, so in the future, it will cause disputes, because the clause makes plurality and create more assemblies and this will weaken the unity of Somaliland journalists “Somaliland Journalism Association” (SOLJA). Inclusion or representation of women in the council is appreciable step, but to fragment media is not a good thing and the law should be constructive rather than destructive.

The other problem will be “Voting procedure” for example, if an issue brings before the council and members disagree the judgment or the solution and vote comes, the vote will favor of the members representing government and it would be unfair if the case is between the private media and public official; because 5 members are appointed by the minister and they will represent the policy of the executive organ.

Independent regulatory body of media is a vital step for the promotion and protection of the right to freedom of expression, but this body needs sufficient protection against government intervention, particularly of a political or economic nature in order to ensure free flow of information and ideas, but the Somaliland future regulatory body of media will experience government domination either politically or economically.

The new bill also mandated that the president should accept the list of the media council and then submit to the House of Representative for approval, but what if the president thinks that some members are against his policy or are critical to his government? This also needs to keep mind in order to balance the fairness and independence of the council.

To give clear reasoning on that the government has the majority in this council which is 5 members and this against *The Declaration of Principles on Freedom of Expression in Africa*¹¹ which clearly affirms?

- (1) *Any Public authority that exercises powers in the area of broadcast or telecommunication regulation should be independently and adequately protected against interference, particularly of a political or economic nature.*
- (2) *The appointment process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.*
- (3) *Any public authority that exercises powers in the area of broadcast or telecommunication should be formally accountable to the public through the multi - party body.*

As Raphael (2001) argued financial support is an essential prerequisite for independence of the [Press]. He added to that that the press should be funded by an independent body – a charity or a foundation – that cares about the press and understands its significant role in a democratic society. This body is required not to be a politician, and without any affiliation to the media to demonstrate kind of neutrality.¹²

So, the other obstacle which can affect the independence of Somaliland National Press Council is the source of the budget. According to article 14 of the new press law, the government will allocate the council's budget in the national budget plan. If the council is not financially independent this can cause that the government can easily manipulate the decisions of the council. In this case, it is better the council should free from the governmental, economic interference and has independent or multi-dimension budget.

The council will act like tribunal and their decision will become administration decision and it will subject judicial review in Supreme court, so the selected members should also know more about the freedom of expression, although the Minister of Information will select to lawyers from the public, but these members will represent the policy of the ministry not public, but if the

¹¹ Declaration of Principles on Freedom of Expression in Africa, available at <http://www.refworld.org/pdfid/4753d3a40.pdf>

¹² Raphael Cohen-Almagor (2001): *“Speech, Media and Ethics, the Limits of Free Expression: Critical Studies on Freedom of Expression, Freedom of the Press and the Public’s Right to Know”*, by Palgrave, New York.

House of Representative or House of Elders selects these members it will matter and they can represent the public and can operate independently, but not if government itself selects.

Types of the Media under the Press Law

The new bill categorizes media, which can operate in Somaliland into three different categories:

- **Public Media:** it is governmentally owned media, which its main responsibility is to freely propagate and broadcast government achievement to the public and also give the people the opportunity to express their opinion on cultural, economic, political and cultural issues.
- **Privately owned media:** These media are administered by private and it is profitable.
- **Media owned by the Society:** It is voluntary media, which is free and established by CSOs, LNGOs or INGOs and it stands for the broadcasting or publishing voluntary social issues such as education, women and children affairs, agricultural and livestock, fishery and environmental conservation issues.

The bill explained in details all these types in chapter 3, but the problem is that it also included the digital media, particularly social media and this will also cause legal inconsistency. The scope of the law is extensively broad without respecting the different medium which the various media outlet operates. For instance, Social media, which related digital world is irrelevant to regulate this law in my argument.

The other defect of this law is that it follows the other existed illegal policy about the restriction of private Radio institutions, because only government owned radio “Radio Hargiesa” is allowed to operate in Somaliland, except other international radio like VOA and BBC and this law also prohibited to set any radio wave in Somaliland.

“Everyone who intends to set a radio operation which have the objectives of radio media in the country and use technical or other tools which he/she equipped in the country, on a ship or on a plane or outside the country and broadcast or release news items for the public he/she violates this law.¹³”

¹³note 8,, article 21 (1)

The second paragraph of article 21 allows digital radio, radio waves, satellite or website radio with the requirement of a license, but first paragraph and second looks that they contradict each other in the way drafters put the sentence in according the legal reading.

Registration/Licensing Procedure

Ministry of Information is vested with the power to issue licenses for private media in according article 5 (5) (6) and article 26 (1) of the press law. In article 26 (License Application procedure) there is contradiction about the institution which received the application first or last. The article 26 (1) states that the applicants want to establish printing media should submit his/her applicant to the Ministry of Information which will issue registration certificate or operation license, while sub-article 2 points that the application of printing media should submit to the council. It is not clear that both ministry and council receive same application or different.

The other thing is that it is now generally recognized that the licensing requirement for the print media are not legitimate internationally. Substantive restrictions on operating a print media outlet crucially block the free flow of information and do not a traditionally rationale for licensing the print media unlike broadcasters where limited frequency availability justifies licensing¹⁴. However, the licensing of the printing media is unnecessary and cause to potential abuse and unfair restriction on freedom of expression and in democratic world it is not required to register printed media.

Somaliland law is onerous, because it sets to register even a small-scale publication with a small print run. The UN Human Rights Committee has held that such requirement on small print runs is disproportionately onerous. In order to protect freedom of information the committee stated;¹⁵

[P]ublishers of periodicals... are required to include certain publication data, including index and registration numbers, which, according to the author, can only be obtained from the administrative authorities. In the view of the Committee, by imposing these requirements on a leaflet with a print run as low as 200, the State party has established such obstacles as to restrict the author's freedom to impart information.

¹⁴ Supra note 7, Article 17

¹⁵ General Comment 10(1), in Report of the Human Rights Committee (1983) 38 GAOR.

The other restriction is that the renewal of the registration, because if the media is critical to the government it can reject to renew the license by planting any possible conditions which the media institution cannot obtain the renewal of a license. The government can impose taxes on a media institution like other companies or taxpayers by giving tax payment certification, not operational certification.

The provisions which indicates refusal, suspension and withdraw of the license is also offensive and have not enough or sufficient legal requirement and it can open the door to abuse and violate the freedom of expression, because it gives the minister a wide range and ambiguity power to do this procedure.

Ahmed, A – current Somaliland Chief of Justice- argued in his paper “*Media Industry in Somaliland: The Current Practice and Its Law and Other Regulatory Frameworks*” that licensing of print media is basically vary from the broadcasters and international principles and laws related to the freedom of expression expressly advocate to simplify or abolish the registration of print media to encourage media to have a self-regulatory framework¹⁶.

Article 25 of the draft law, listed individuals who are eligible to obtain media licenses, but the article also excluded the political parties to own a media institution and will contradict Somaliland Political Organization and Parties Act (Law no 14/2000), particularly article 18 (1),”*Political party or organization entitle to establish its own media according to another press law.*” Another since to prohibit political parties to own a media which they can release their political agenda or campaign would marginalize democratic process in the country.

Restriction under the Press Law

Article 47 of the press law provides limitation on media broadcasting or publishing a limitation in the following terms:

- Anything that can hurt or damage the dignity and reputation, and private life.
- Anything that damages unity and harmony of Somaliland people or encourages a tribalism like clannish conferences, clannish press statement, releasing even of election

¹⁶ Ahmed, A. H. A. Paper one: Media Industry in Somaliland: The Current Practice and Its Law and Other Regulatory Frameworks. *SOMALILAND PRESS FREEDOM: OPPORTUNITIES AND CHALLENGES*, 10.

candidates whose political parties are not select or his/her show up candidacy is illegal according to election laws; broadcasting or publishing events of claiming clan Suldan/chief/elder etc. which are not based on local laws.

- Anything violating the public morality, such as releasing naked photos or videos.
- Advertisement of *cigarette* and Khat, medicine and health issues which require to have medical prescription or other illegal things.
- Anything which terrorizes or encourage bad deeds to the youth.
- Hazardous or toxic substance to the environment.
- Obtaining information secretly such as hidden camera or recording or hiding in private meetings without the permission of concerning parties; if the information obtaining as such is not necessary for the public interest, security or stability.
- Can damage public interest like economic and social interest.
- Can damage security and national stability such issues relate national election processes which are not officially released by the National Election Commission.
- About classified document which law protects as national secrecy and prohibits to release.
- Defamation or slanders of Islamic religion and other holy religions.
- Encouraging and propaganda on internal or external wars.
- hate Speech and discrimination statements etc.
- Jeopardizing Somaliland Statehood and national border jurisdictions.
- Legal suits in the courts or other administrative tribunal agency.

The law provides 16 limitation of freedom of press and all of them seems reasonable and based on international limitation except the restriction on broadcasting or publishing clannish conferences or traditional leaders inauguration ceremonies, because there is no law which allows nor prohibited clan grant conferences or traditional leaders inauguration events unless they are against public order, brotherhood or harmony, while the press laws refer non-existing law when limiting the media to not publicize or broadcast clan grant conferences or traditional leaders selection ceremonies.¹⁷

¹⁷ Supra note 7, Article 47 (2)

It is international standard to have permissible limitations on freedom of expression. Without restriction is anarchy. Freedom of expression is not the only top to protect, but there are individual and collect values that need protection like dignity, reputation, private life and also harmony and brotherhood of the people. International human rights instrument also give certain limitation on this right in according ICCPR the exercise of freedom of expression carries special duties and responsibilities and it may therefore be subject to certain restrictions provided by law and are necessary such as¹⁸;

- a) For respect of the right or reputation of others;
- b) For the protection of national security or of public order (order public), or of public health or morals
- c) Any war propaganda
- d) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination hostility or violence.

Penalties under the law

The new press law has a section on penalties for failure to comply with the duties set out in the law. For the breach of requirement relating to registration or licensing; the penalty is fine starts from 5 million (Somaliland shilling) until 30 million shilling in according the circumstances of the case and also there is suspension or withdraw of license¹⁹.

The press law also imposes a penalty of fine up to 5 million shilling-25 million shilling for the media intrude the privacy rights such as dignity and reputation of a person. Both plaintiff and defendant also have the right to seek appeal if they see the decision is unfair²⁰.

The law also imposes a fine up to 10 million shilling-30 million shilling considering the nature of media, for the broadcast illegal advertisement like alcohol or other drugs, hazardous things and danger to the environment, medicine not prescribed by professional doctors, advertisements that can terrorize the children or violates public morality or Islamic religion and other holy religions; commercial advertisement which forces the parents to buy the advertised material for their

¹⁸Supra note 3, article 19-20

¹⁹ Supra note 7, Article 56

²⁰ Supra note 7, Article 57

children; violating pattern or trademarks or violating fair trade competition. This section violates the free market, particularly the fine imposed on “*The advertisement forced the parents to buy the advertised material for their children.*” The reason for the advertisement is to attract customers and payers and always it doesn’t stand for the interest of the customer, but it is for profit-making and companies take every necessary steps or strategies to attract their target audience. This clause is not fair and just commercially, because it is the responsibility of buyer to avoid things he/she can’t afford to buy. It can also discourage commercial advertisement which media can get profit and the government can profit tax.²¹

The other penalties included fine up to 20 million until 60 million shilling for the media violates unity and harmony of the society, public morality and judicial reputation. The disappointing thing is that this provision uses criminalization clauses; “*If the violation of the media causes visible hurt or damage the fine is doubled and the editor responsible will be imprisoned a sentence not less than 1 year and not more than 2 years and 30 million shillings*”²² The other clauses which criminalize media profession is under article 61 (Penalties on media violates national security); if the media broadcast news items which can damage or violate Somaliland border jurisdictions,; encourages organized crimes such as terrorism, piracy, illegal immigration, money laundering; encourage insecurity such as internal and external war propaganda or inter-clan conflicts; rumor news which can endanger trade market such as inflation and deflation of market price; rumor which can endanger public health or jeopardize national economic scale; issues relating military classified documents such as number of troops, weapon, military camps or their operations or all other national secret documents. The clauses contain fine up to 40 million-100 million shillings and imprisonments from 5 years up to 13 years. The unacceptable points is that this law refers to the National Intelligence act (Law no 59/2012) and also Military strategic act (Law no 60/2013²³).

There is no justification for criminalizing media profession. Criminalization of media activity implies a clear state interest in controlling the activity and imparts of certain social stigma to it. The penalty is excessively heavy and also the law refers other unconcerned laws which are very dangerous to freedom of expression as well as to obtain or access information which are

²¹ Supra note 7, article 58

²² Supra note 7, article 59

²³ Supra note 7, article 61

necessary to the public interest. The law uses at the same time both punitive and imprisonment penalty and it is disproportionation to the breaches to which they relate and they hence fail to conform to international standard.

Conclusion

Although the name of the law indicates that it is the previous press law (Law no 27/2004), but the content of the law is completely different and the drafters changed most of the articles in the law. In this case this press bill will become new law. It needs deep and effective legal analysis. To have regulatory media law is very important, but to initiate press law which its scope is extensively broad is very danger and can cause to oppress freedom of expression.

The other important thing is that the regulatory body of media in the press bill is not fully independent somehow and need to balance it composition, structure and as well as it source of funding. This independent regulatory body is vital to the protection and promotion of freedom of expression which is fundamental rights enshrines in the constitutions.

The registration procedures in the law is not clear, particular some provisions of the law vest with the Ministry of the Information the power of registration, while there is still confusion in the bill about which institution receives the application of the media license. Print media registration is not legitimate internationally, particularly the law even conditions to license small scale of print media.

The law also put fines and penalties, it contains both criminal and civil. To decriminalize media is vital in democratic society, but there is no justification for criminalizing media profession. Criminalization of media activity implies a clear state interest in controlling the activity and imparts of certain social stigma to it. The new press law uses imprisonment for the media or editor infringes secrecy of the state and also the law refers National Intelligence act and other military codes.

Recommendation

The following recommendation is for the government, Media outlets and its association and lawmakers;

- The scope of the draft law should be restricted to large-scale, periodical print media outlet and it should not apply to social media like Facebook, Twitter, YouTube etc.
- The licensing procedure in the law should be inconsistent and clearly stipulate and print media licensing should be abolished. If not, the registration should be administered an independent self-regulatory body.
- The draft law should not seek to regulate the working method or approach of the media.
- The press council composition should be allocated fairly. The council should be independent from the government as well as media owners. If the idea of a statutory Press Council is retained, it should benefit from effective guarantees against political interference, including in relation to the manner in which members are appointed.
- The criminal penalties for press offenses should be abolished and should be decriminalized by using fine or other civil issues. If not, these penalties should preferably be administered an independent self-regulatory body.

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