



NOTE

on

the Indonesian Press Law

ARTICLE 19
Global Campaign for Free Expression

February 2004

I. Introduction

This Note analyses the Indonesian Press Law, No. 40 of 1999. ARTICLE 19 has been asked for comments on this law by Internews, East Timor, in the context of proposals to prepare a new, home-grown press law for East Timor. At present, the Indonesian Law is formally applicable in East Timor, outside of any inconsistencies with international law or the Constitution.¹

We welcome moves to introduce an indigenous press law in East Timor, as long as these are geared towards promoting and protecting press freedom rather than imposing restrictions on the media. We note that the Indonesian Press Law was widely seen in Indonesia as heralding a new period of respect for press freedom after the repressive Suharto years, and that it includes a number of positive protections for freedom of expression. At the same time, it contains a number of either unnecessary or potentially harmful provisions which may be open to abuse. Furthermore, it provides for an administrative structure, the Press Council, which may not be appropriate for or applicable to East Timor.

This Note is intended as a contribution to the debate in East Timor regarding a new press law. The analysis contained herein is based on international and comparative standards of

¹ See Regulation, No. 1999/1 of 27 November 1999, Special Representative of the Secretary-General of the UN and section 165 of the Constitution of the Democratic Republic of East Timor.

respect for freedom of expression as reflected in authoritative statements and judicial decisions from around the world. While some of these are not formally binding on East Timor, at the same time they provide a clear indication of the content of the right to freedom of expression. The next section of this Note contains an overview of the standards in question, while the final section provides an analysis of the Press Law. Our comments are based on an unofficial English translation of the Press Law.²

II. International and Constitutional Obligations

II.1 The Importance of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.³

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.⁴

The *International Covenant on Civil and Political Rights* (ICCPR),⁵ a treaty ratified by over 145 States, imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

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

Freedom of expression is also protected in all three regional human rights instruments, at Article 10 of the *European Convention on Human Rights*,⁶ Article 13 of the *American Convention on Human Rights*⁷ and Article 9 of the *African Charter on Human and Peoples' Rights*.⁸ The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although not directly binding on East Timor, as noted above, judgments and decisions issued by courts under these regional mechanisms offer

² ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments based on mistaken or misleading translation.

³ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

⁴ See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

⁵ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

⁶ Adopted 4 November 1950, in force 3 September 1953.

⁷ Adopted 22 November 1969, in force 18 July 1978.

⁸ Adopted 26 June 1981, in force 21 October 1986.

an authoritative interpretation of freedom of expression principles in various different contexts.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”⁹ As the UN Human Rights Committee has said:

The right to freedom of expression is of paramount importance in any democratic society.¹⁰

II.2 Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law”.¹¹ It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.¹²

As the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.¹³

The Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”¹⁴ media as a whole merit special protection, in part because of their role in making public “information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’.”¹⁵

⁹ 14 December 1946.

¹⁰ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

¹¹ *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

¹² *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

¹³ UN Human Rights Committee General Comment 25, issued 12 July 1996.

¹⁴ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

¹⁵ *Thorgeirson v. Iceland*, note 11, para. 63.

It may be noted that the obligation to respect freedom of expression lies with States, not with the media *per se*. However, this obligation does apply to publicly-funded broadcasters. Because of their link to the State, these broadcasters are directly bound by international guarantees of human rights. In addition, publicly-funded broadcasters are in a special position to satisfy the public's right to know and to guarantee pluralism and access, and it is therefore particularly important that they promote these rights.

II.3 Restrictions on Freedom of Expression

The right to freedom of expression is not absolute: both international law and most national constitutions recognise that it may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

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

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

A similar formulation can be found in the European, American and African regional human rights treaties. These have been interpreted as requiring restrictions to meet a strict three-part test.¹⁶ International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court of Human Rights has stated:

Freedom of expression ... is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.¹⁷

First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”¹⁸ Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the restriction. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.¹⁹

¹⁶ See, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

¹⁷ See, for example, *Thorgeirson v. Iceland*, note 11, para. 63.

¹⁸ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

¹⁹ *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

II.4 Pluralism

Article 2 of the ICCPR places an obligation on States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This means that States are required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public’s right to know.

An important aspect of States’ positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and ensure equal access of all to, the media. As the European Court of Human Rights has stated: “[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism”.²⁰ The Inter-American Court has held that freedom of expression requires that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media”.²¹

The UN Human Rights Committee has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance ‘national unity’ violate freedom of expression:

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.²²

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practise journalism²³ and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression. In a Joint Declaration issued in December 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression state:

Individual journalists should not be required to be licensed or to register.

...

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance.²⁴

²⁰ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

²¹ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 14, para. 34.

²² *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

²³ See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 14.

²⁴ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18

II.5 Public Service Broadcasting

The advancement of pluralism in the media is also an important rationale for public service broadcasting. A number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.²⁵ ARTICLE 19 has adopted a set of principles on broadcast regulation, *Access to the Airwaves: Principles on Freedom of Expression and Broadcasting*,²⁶ which set out standards in this area based on international and comparative law. In addition, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the Guarantee of the Independence of Public Service Broadcasting.²⁷

A key aspect of the international standards relating to public broadcasting is that State broadcasters should be transformed into independent public service broadcasters with a mandate to serve the public interest.²⁸ The Council of Europe Recommendation stresses the need for public broadcasters to be fully independent of government and commercial interests, stating that the “legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy” in all key areas, including “the editing and presentation of news and current affairs programmes”.²⁹ Members of the supervisory bodies of publicly-funded broadcasters should be appointed in an open and pluralistic manner and the rules governing the supervisory bodies should be defined so as to ensure they are not at risk of political or other interference.³⁰

Furthermore, the public service remit of these broadcasters must be clearly set out in law, and must include the requirements that they:

1. provide quality, independent programming which contributes to a plurality of opinions and an informed public;
2. provide comprehensive news and current affairs programming which is impartial, accurate and balanced;
3. provide a wide range of broadcast material which strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;

December 2003, online at:

<http://www.unhchr.ch/huricane/huricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument>.

²⁵ See, for example, the Declaration of Alma Ata, 9 October 1992 (endorsed by the General Conference of UNESCO at its 28th session in 1995) and the Protocol on the system of public broadcasting in the Member States, Annexed to the Treaty of Amsterdam, Official Journal C 340, 10 November 1997.

²⁶ (London: March 2002).

²⁷ Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996.

²⁸ See *Access to the Airwaves*, note 26, Principle 34. See also the Declaration of Sofia, adopted under the auspices of UNESCO by the European Seminar on Promoting Independent and Pluralistic Media (with special focus on Central and Eastern Europe), 13 September 1997, which states: “State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted status of journalistic and editorial independence as open public service institutions.”

²⁹ Recommendation No. R (96) 10, note 27, Guideline I.

³⁰ *Ibid.*, Guideline III.

4. be universally accessible and serve all the people and regions of the country, including minority groups;
5. provide educational programmes and programmes directed towards children; and
6. promote local programme production, including through minimum quotas for original productions and material produced by independent producers.³¹

Finally, the funding of public service broadcasters must be “based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions”.³² Importantly, the Council of Europe Recommendation stresses that “the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation”.³³

II.6 Independence of Media Bodies

In order to protect the right to freedom of expression, it is imperative that the media be permitted to operate independently from government control. This ensures the media’s role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest.

Under international law, it is well established that bodies with regulatory or administrative powers over both public and private broadcasters should be independent and be protected against political interference. In the Joint Declaration noted above, the UN, OSCE and OAS special mandates protecting freedom of expression state:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.³⁴

Regional bodies, including the Council of Europe and the African Commission on Human and Peoples’ Rights, have also made it clear that the independence of regulatory authorities is fundamentally important. The latter recently adopted a Declaration of Principles on Freedom of Expression in Africa, which states

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.³⁵

³¹ ARTICLE 19 Principles, note 26, Principle 37.

³² Recommendation No. R (96) 10, note 27, Principle V.

³³ *Ibid.*

³⁴ Note 24.

³⁵ Adopted by the African Commission on Human and Peoples’ Rights at its 32nd Session, 17-23 October 2002.

The Committee of Ministers of the Council of Europe has adopted a Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, which states in a pre-ambular paragraph:

[T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector...specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.³⁶

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities and which clearly affirms and protects their independence.³⁷ The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.³⁸

II.7 Constitutional Obligations

The Constitution of the Democratic Republic of East Timor guarantees both freedom of expression/information and specifically freedom of the media as follows:

Section 40 (Freedom of speech and information)

1. Every person has the right to freedom of speech and the right to inform and be informed impartially.
2. The exercise of freedom of speech and information shall not be limited by any sort of censorship.
3. The exercise of rights and freedoms referred to in this Section shall be regulated by law based on the imperative of respect for the Constitution and the dignity of the human person.

Section 41 (Freedom of the press and mass media)

1. Freedom of the press and other mass media is guaranteed.
2. Freedom of the press shall comprise, namely, the freedom of speech and creativity for journalists, the access to information sources, editorial freedom, protection of independence and professional confidentiality, and the right to create newspapers, publications and other means of broadcasting.
3. The monopoly on the mass media shall be prohibited.
4. The State shall guarantee the freedom and independence of the public mass media from political and economic powers.

³⁶ Recommendation No. R(2000) 23, adopted 20 December 2000.

³⁷ *Ibid.*, Guideline 1.

³⁸ *Ibid.*, Guideline 5.

5. The State shall guarantee the existence of a public radio and television service that is impartial in order to, *inter-alia*, protect and disseminate the culture and the traditional values of the Democratic Republic of East Timor and guarantee opportunities for the expression of different lines of opinion.
6. Radio and television stations shall operate only under a licence, in accordance with the law.

III. Analysis of the Press Law

III.1 Positive Features

The Press Law contains a number of very positive features which any new press law for East Timor would probably want to retain. One such feature is the right of journalists to protect the confidentiality of their sources of information, referred to in the English version of the Law as the Right to Refuse (the definitions and Article 4(4)). The Clarification notes that this may be overridden where the overall public interest is served for reasons of State safety or public order. It would be preferable if the power of override were set out more clearly in the law itself, and subject to conditions, such as that the information cannot be found elsewhere and that any order for source disclosure is in the overall public interest.

The Press Law provides for protection for press freedom at several places, basing this on the sovereignty of the people, as well as on democracy, justice and human rights (the preamble and Articles 2 and 4(1)). Such protection is clearly important and provides a basis for progressive interpretation of the Law.

The specific implications of press freedom are spelt out throughout the Press Law, and this is one of its most positive features. Article 4(2) provides that there shall be no prior censorship for either the print or broadcast media, while Article 4(3) provides that the press has the right to seek, acquire and disseminate ideas and information. Significantly, breach of these provisions is a crime, punishable by up to two years' imprisonment or a fine of up to Rupiah 500,000,000 (approximately USD60,000).

The Press Law also protects journalists, providing that they are free to join journalists' associations (Article 7(1)) and that they are protected by the law (Article 8).

Also protected is the right of Indonesian citizens to establish press companies (Article 9(1)) and news agencies (Article 13(c)). (The issue of foreigners and foreign media is dealt with below.)

Recommendation:

- Any new press law for East Timor should seek to ensure that these positive features are retained.

III.2 Concerns

Alongside the very positive features noted above, the Press Law also contains a number of other provisions which give rise to concern, some of which have already proved problematic in practice. Our concerns with the Press law are outlined below.

Content Restrictions

The Press Law contains a number of restrictions on the content of what may be published or broadcast. Article 5, for example, provides that the media – defined to include the broadcast as well as the print media – has an obligation to report events with respect for religious and moral norms, and in accordance with the presumption of innocence. Article 13 prohibits the media from degrading the dignity of religion or from creating disorder between religions, contrary to the public sense of morality. Breach of these provisions may lead to a fine of up to Rupiah 500,000,000.

There are a number of problems with these provisions. First, they are in no way specific to the media and so should not be set out in a media-specific law. This is particularly true given that the general criminal law provides ample protection for these interests (namely religious harmony and public order). Furthermore, a dual system of restrictions may lead, in practice, to different legal regimes for different actors. Second, the provisions are cast in excessively vague terms, leaving them open to abuse or to unduly wide interpretation. It is, for example, quite unclear what constitutes reporting of events with respect for religious or moral norms and the latter, in particular, is a highly subjective notion and hence inappropriate as a subject of legal obligation. Third, the provisions are unduly broad. For example, international law recognises the need for prohibitions on incitement to racial discrimination, hatred or violence but this is a much narrower, and precise, notion than the notion of degrading the dignity of a religion. The latter phrase may make it almost impossible to articulate even very legitimate criticism of religious bodies.

Recommendation:

- Any new press law for East Timor should seek to avoid imposing criminal or quasi-criminal content restrictions on the media. If content restrictions are included in any press law, they should be clear and narrow, consistent with international standards in this area.

Right of Reply

Article 1(11) of the Press Law defines the Right to Response (referred to herein by its more common name, the right of reply) as the right of any individual or group to respond to or deny any factual news that is unfavourable to his/her/their good reputation. Article 5(2) provides that the media are obliged to respect the right of reply and, pursuant to Article 18(2), breach of this obligation can lead to a fine of up to Rupiah 500,000,000. The Press Law also provides, at Article 5(3), for a right of correction in relation to inaccurate information.

A mandatory right of reply is a highly disputed area of media law. In the United States, it is seen as unconstitutional on the grounds that it represents an interference with editorial

independence.³⁹ In Europe, in contrast, the right of reply is seen as an effective remedy and is the subject of a resolution of the Committee of Ministers of the Council of Europe.⁴⁰ In many Western European democracies, the right of reply is provided by law and these laws are effective to a varying extent. The purpose of a right of reply is to provide an individual with an opportunity to correct inaccurate facts or other statements which affect his or her legal rights, for example to privacy or reputation. Advocates of media freedom, including ARTICLE 19, generally suggest that a right of reply should be voluntary rather than prescribed by law.

In any case, certain conditions should apply:

- the reply should only be available to respond to statements which breach a legal right of the person involved, not to comment on opinions which the reader or viewer doesn't like;
- it should receive similar prominence to the original article or broadcast;
- it should be proportionate in length to the original article or broadcast;
- it should be restricted to addressing the impugned statements in the original text; and
- it should not be taken as an opportunity to introduce new issues or to comment on other correct facts.

The right of reply in the Press Law fails to conform to these standards in important aspects. Although it is restricted to factual statements, the only other condition is that the statement be unfavourable to the reputation of the person claiming the right. It is not even necessary that the statement be false. Clearly this is much broader in scope than a right to reply to statements which breach one's legal rights. Indeed, it is unclear why a right of reply was deemed necessary at all, given that the Press Law already provides for a right of correction.

Recommendation:

- Any new press law for East Timor should either refrain altogether from providing for a right of reply or ensure that any such right meets the conditions noted above.

General Obligations

Article 6 of the Press Law places a number of general obligations on the media as follows:

- the media must fulfil the public's right to know (Article 6(a));
- the media must enforce democratic principles such as the rule of law and the supremacy of human rights, and also respect diversity (Article 6(b));
- the media must develop public opinion based on factual, valid information (Article 6(c));

³⁹ *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

⁴⁰ Resolution (74) 26 on the right of reply, adopted on 2 July 1974. See also the Advisory Opinion of the Inter American Court of Human Rights, *Enforceability of the Right to Reply or Correction*, 7 HRLJ 238 (1986).

- the media must exercise social control – through criticism and suggestion – in relation to matters of public concern (Article 6(d)); and
- the media must fight for justice and truth (Article 6(e)).

Furthermore, journalists must adhere to the Ethic Code for Journalists, which they also own (Article 7(2)).

These apparent obligations are not, however, subject to sanction for breach under the Press Law so their exact status is unclear. It would appear that they are simply general exhortations to the media and journalists to operate in the fashion stipulated. If, however, they are intended to impose specific legal obligations on the media, they are certainly inappropriate for many of the same criticisms directed at the content restrictions, noted above. Regardless, their inclusion in the Press Law might be misconstrued or might be abused as a basis for attacking the media. It is, on the other hand, hard to see how they contribute in any way to either a free or responsible media.

Recommendation:

- Any new press law for East Timor should avoid including vague, general exhortations to the media to behave in certain socially useful ways.

Foreigners

The Press Law contains a number of rules relating to foreigners. Article 9(2) provides that media companies must be in the form of Indonesian legal entities. Breach of this rule may lead to a fine of up to Rupiah 100,000,000 (approximately USD12,000). Article 11 provides that re-capitalisation of media companies by foreign enterprises may be conducted through the stock exchange. This is further elaborated in the Clarification, which provides that foreigners may not be majority shareholders in a media company. Finally, Article 16 provides that the circulation of foreign media, as well as the placement of foreign media representatives in Indonesia, must be in accordance with the law.

Although these provisions cannot be said to be highly objectionable, ARTICLE 19 questions whether they are necessary. For example, it is perfectly legitimate to produce a small-scale newspaper which is not formally a legal entity. This might be the case, for example, for a small school newspaper. Also, Article 11 implies that foreigners may not be involved in the setting up of a media enterprise, but only in re-capitalising it. Such a stringent prohibition is not warranted and other countries do not impose such limitations on foreigners. Furthermore, the main effect of this provision may be to deny Indonesian media of much-needed foreign capital and expertise. While restrictions on foreign ownership may be warranted in the broadcast media sector, they are far more difficult to justify in the print media sector. There is no reason why foreigners should not own and run small media outlets, for example directed exclusively at other foreigners. Article 16, while formally unobjectionable on its terms, is also unnecessary since there is no need to repeat in a press law that other laws must be obeyed.

Recommendation:

- Consideration should be given to amending or omitting these restrictions on

foreigners, in accordance with the comments above, in any new press law for East Timor.

Miscellaneous

Article 10 of the Press Law provides that media outlets must “provide welfare towards its journalists as well as its employees with shareholdings and/or net distribution and other fringe benefits”. It is unclear what the purpose of this provision might be but it is inappropriate and may well undermine the competitiveness and viability of Indonesian media. These matters are far more appropriately left to employment contracts and negotiations between media companies and their employees.

Recommendation:

- Any new press law for East Timor should avoid imposing an obligation on media outlets to provide employees with particular forms of benefits.

III.3 Other Considerations

Press Council

Article 15 of the Press Law establishes a Press Council. Its members include the following, in equal measure:

- Journalists, nominated by journalists’ associations;
- media managers, nominated by press company associations; and
- public figures and media experts, nominated by journalists’ and press company associations.

Members are formally appointed by the President.

The Press Council has a number of functions, including:

- protecting press freedom;
- ensuring compliance with the code of ethics, including by receiving complaints;
- mediating relations between the media, the government and society;
- promoting higher standards of journalism; and
- registering press companies.

This model has been successful in Indonesia, in the senses both that the media generally support the role of the Press Council and that it has managed, at least in some cases, to resolve media-related disputes. It has a wide mandate, including the promotion of media freedom, which is seen as one of its advantages. At the same time, there are complaints that it is not effective, and a lack of funds remains a serious problem.

There are a number of points to be considered when assessing this model for East Timor. The first is whether it is necessary to have a statutory press council at all. In many other countries, the press is self-regulating and these systems can be just as effective as the Indonesian Press Council. A second question is what formula would be appropriate for nominating members. The Indonesian Press Council is completely independent of government but, on the other hand, it is perhaps open to the criticism that it is dominated by the media. Consideration could be given to providing for nominations of public figures by civil society, professional organisations or some other bodies.

Recommendations:

- Consideration should be given, when assessing any new press law for East Timor, to the following:
 - whether it is necessary to provide for a statutory press council;
 - what the membership of such a press council should be and who should nominate members;
 - how it will be funded; and
 - whether it will have the necessary authority to ensure that media outlets respect its decisions.

Other Laws

Some consideration should be given to the issue of the relationship between the Press Law and other laws affecting the media and, in particular, to the risk of incompatibilities between them. Ideally, provision should be made for the press law to take precedence where any incompatibilities cannot be resolved through interpretation.

A particular issue here is that of defamation law, currently a matter of some concern in Indonesia. The existing Indonesian defamation law is clearly at odds with the principles set out in the Press Law. On the other hand, the Press Law does not specifically deal with defamation and so courts have tended simply to apply the pre-existing, highly restrictive, defamation laws. Consideration should therefore be given to including within the Press Law a regime of defamation which would, in case of conflict, override other related laws.

Recommendations:

- Consideration should be given to the relationship between any new press law for East Timor and other laws and, in particular, to the idea of providing that, in case of conflict, the press law should prevail.
- Consideration should be given to including within any new press law for East Timor a complete defamation regime which would effectively replace the existing defamation laws.