



## **ACRLI 2007 Country Report: Media in Lebanon**

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## CHAPTER ONE CONTEXTUAL BACKGROUND

In order to better understand the nature of Lebanon’s media sector, it is necessary to first understand the nature of the Lebanese state, and the cultural, historical, and geographical specificity that led to the formation of a political system and culture quite “unique” in the region. I am specifically referring here to the dominant national ideology or political culture of confessionalism, an ideology institutionalized in the country’s political system since the establishment of “Greater Lebanon”. This is so despite the provisions of the new constitution of the Second Republic which calls for the abolition of confessionalism as part of a general plan to bring lasting peace to the country.

To the external observer, this system may reflect, to some extent, a democratic principle of equity and pluralism that differentiates Lebanon from its neighbors. To the average Lebanese citizen, however, this system does not mean democratization or equal chances for *all*. Indeed, confessionalism in Lebanon means a Lebanese citizen has democratic rights only in as far as this citizen belongs to a specific, *recognized* confession (1); not only that, but also that those rights are directly proportional to the numerical size of the religious or confessional community he or she belongs to: i.e., the bigger the community, the more rights and privileges. When such a “formula” is applied to the media, it comes as no surprise that the television stations which were licensed after the war (according to the 1994 Lebanese Broadcast Law) do indeed represent the five major confessional groups in the country. By the same token, it is not surprising either that all other applicants, whether they fulfilled the legal requirements or not, were not licensed.

Another consideration needed in order to better understand the media sector in Lebanon today is the traditional role played by the three major communication media (print, radio, and television) as of the formation of the state. The oldest of these media is the newspaper. Although printing was introduced in Lebanon as early as 1610 by a group of Maronite priests, the first popular, non-religious Arabic weekly newspaper in Lebanon did not appear until 1857. It was soon followed by other weekly papers, most of which were edited by Lebanese intellectuals “who sought to educate and guide members of their community” in times of crisis (2).

These early Lebanese newspapers came under strict Ottoman political control. Over the years, the severe restrictions imposed on the print media served as a unifying factor, bringing together



journalists and political activists and creating a nationalistic outlook. Thus, with the increasing pressure on the press, Lebanese journalists began calling for independence and for the political freedom of the Arabs from the Ottoman regime:

This historical link between journalism and politics does much to explain the extremely political character of the contemporary Arab press... Today it is a tradition, which is just as 'right' in the minds of Arab editors as is the not-very-old American tradition of objective reporting (McFadden 1953, 4).

Unlike the print media, radio remained the only mass medium under complete government control from its inception. *Radio Levant* was first established by the French mandate government in 1938, with the declared aim of bringing "closer together the French and Arab cultures in both Syria and Lebanon" (Khoury 1976, 14). In 1946, three years after independence, *Radio Levant* was handed over to the first national government and was dubbed *Radio Lebanon* to be financed by government funds, and operated under the auspices of the Ministry of Information. Not only was *Radio Lebanon* the only station legally authorized to transmit inside Lebanon (the monopoly was challenged after the outbreak of the Civil War in 1975 as we will see later), it championed exclusively the cause of whatever government happened to be in power. Rather than complement the relatively independent Lebanese press, *Radio Lebanon* disseminated government views and policies solely, and reflected throughout a zealous attempt to maintain an uncompromising status quo, failing, even before the outbreak of the Civil War, to cater to the Lebanese public interest. As Dajani sums it up,

All through its long history, the official Lebanese radio broadcasting system has failed to develop into a genuine popular channel of information and entertainment accessible to the various religious communities as well as to the different socio-economic groupings... Aside from music programs and certain live broadcasts, the Lebanese radio did not signify very much for the people (1992, 69).

The development of the third major communication medium in the country followed an entirely different path. Whereas the print media developed as a reaction to social and political needs (fighting Ottoman imperialism, fostering Arab nationalism, etc.), and while radio was the government's only available medium for propaganda and a reaction to the existing critical press, television in Lebanon was a purely commercial venture from the very beginning. In October 1954, two Lebanese businessmen (Wissam Izzedine and Alex Arida) submitted an application for a television broadcasting company. Two years later, in August 1956, a 21-article agreement was signed with the government, and *La Compagnie Libanaise de Television (CLT)* was granted



a license for television broadcasting to be re-negotiated 15 years later. Starting transmission in May 1959, *CLT* was thus the first non-government-operated, commercial or advertisement-supported television station in the entire Arab world. In July 1959, another company (*Tele Orient*) signed a similar agreement with the government and began transmission in May 1962.

The most important terms of the agreement concerned transmission channels, monopoly issues, and government control. The companies - to which the government denied monopoly rights - were allowed to broadcast television signals on two channels each: channels 7 and 9 for *CLT* and channels 5 and 11 for *Tele Orient*. Moreover, since no laws regulating broadcasting existed at the time, television was to be subjected to the laws and regulations that governed the Lebanese printed press as well as to all national and international laws and regulations on wireless communications and broadcast institutions (3). More importantly, the companies faced severe restrictions with regard to the kind of programs they could broadcast: they were not allowed to broadcast any programming that might threaten public security, morals, and religious groups, or favor a political personality or party (4). Whereas general programming was restricted to education or entertainment, news programs were to remain the prerogative of the government: the licensed companies had to broadcast, free of charge, news programs and official bulletins prepared by the Ministry of Guidance and News (5). Though the case of television reflected a hybrid situation (i.e., half commercial/half government-controlled), the government's approach to television echoed its approach to radio. Broadcast media were seen as important tools of political control, and both radio and television were expected, though differently to some extent, to operate as a mouthpiece for those in power, especially in their news content.

From their inception, and despite efforts to increase their revenue, including an agreement to join efforts and co-ordinate policy and programming in 1968, both television companies continued to face serious financial problems. The situation became worse in 1974 when the *CLT* agreement was up for renewal. In the new agreement, the government went further in attempting to institutionalize its political control over the company: the agreement stipulated that two government censors must be present at the station at all times and required that *CLT* broadcast an evening one-hour program prepared by the government. *CLT* was also to give 6.5 % of its net advertising revenue to the government and to limit the number of minutes of advertising during the news bulletin to a maximum of three.



The situation of both companies continued to deteriorate during the first two years of the Civil War (1975-76), especially with the serious reduction in advertising revenue, their main source of income. In 1977, in an attempt to save the country's two existing television companies from looming economic disaster (6), and in order to keep those stations (which had become the only significant source of entertainment left for the Lebanese population during wartime) afloat, the government intervened, creating *Tele Liban*, which was to absorb both *CLT* and *Tele Orient*. *Tele Liban* was licensed for a period of 25 years and given a monopoly over television broadcasting in Lebanon.

Although the government's intervention was a step towards the creation of a national television system, the ultimate results fell far short of using its potential to create an important and popular medium which could serve the public interest. The government, on the one hand, succeeded in keeping afloat a service that was on the verge of collapse, and allowed the replacement or repair of transmission equipment and facilities damaged during the war. On the other hand, *Tele Liban* did not have a mandate to serve the public interest. Little or no attention was paid to improving the quality of programming and audience appeal. *Tele Liban*, it seems, was merely to be at first controlled, and later to be completely owned, by the government (7).

As we have seen, the various Lebanese factions did not lack outlets for political expression in the press. The same could not be said about the government-controlled broadcast media, with political groups systematically being denied access to the airwaves since independence in 1943. Criticisms of and challenges to the government-controlled media were especially strong in times of crisis (i.e., the civil strife of 1958) and reached unprecedented proportions during the 1975-1991 Civil War. State broadcasting (especially radio) was unresponsive to the needs of a factionalized society, divided mainly along confessional lines. Consequently, new outlets of expression and information were sought. These outlets were of special significance since the official radio news on the Civil War attempted to remain neutral, "avoiding the embarrassment of having to report about worsening local conditions" (Dajani 1992, 82). This neutrality often meant not covering the war at all. At times, Boyd wrote, "one would not know from radio programs that the country was in the midst of a devastating war" (Boyd 1993, 75; Dajani 1992, 83). The fate of the two existing commercial television stations was somehow different, as they were unable to maintain a policy of neutrality, having been very early on involved in the Civil War through their occupation by the two main warring factions at the time (8).



From the onset, polarized listeners, increasingly suspicious of the government's one-sided coverage of the crises in the country, sought alternative sources of information. The warring factions and various political groups, whose views were until then excluded from the broadcast media, were ready to satisfy that need, and started establishing their own private stations, a task facilitated by the absence of the rule of law during the war (9).

In sum, between 1975 and 1991, rebel or clandestine broadcast stations proliferated, reaching incredible proportions for a country the size of Lebanon. Several of these media outlets functioned as the mouthpiece of the party, faction, or religious group which financed or supported them, and generally appealed to a narrow segment of the population, mostly to an audience adhering to the same ideology or simply belonging to the same confession (or religious group). Others, bound by their geographical location, and for fear of reprisal, were forced to reflect the opinion of the faction controlling the area where their offices or printing presses were located. In the case of the print media, this situation often created a selected readership of a different type, determined by its geographical location: polarization of opinions in this case corresponded to the geographical and military division of the country. In any case, few papers were able to maintain a moderate stance towards the War. Instead, there was an increasing "tendency to manipulate news for purposes of political or sectarian mobilization" (Dajani 1992, 65).

With the Taef Agreement of 1989 ushering the end of the Civil War, the official point of view on the "war media" was made clear: dismantling the illegal stations and regulating the media landscape was believed to be as crucial a step in ending the war as disbanding and disarming the militias themselves. Indeed, one of the stipulations of the Taef Agreement was to "reorganize all the information media under the canopy of the law and within the framework of responsible liberties in order to serve reconciliation efforts and to end the state of war".

Closing down unlicensed stations, however, was going to be one of the most difficult tasks facing the post-War governments: these increasingly popular operations had become a fixture of the national electronic media landscape, and provided an alternative to the Ministry of Information's radio service for both entertainment and information (10). Listeners, grown accustomed to them, resisted closing the stations, seeing in the government action an attack against their civil, or more exactly confessional, liberties. Moreover, the time factor was on the side of the unlicensed stations. On the one hand, the protracted Civil War had allowed the more



competitive stations (they were either the most competent or professional in their work or the most heavily subsidized) to grow in size. Indeed, some of these stations became institutions with equipment, work practices, and operations similar to those found in stations servicing medium-sized markets in the United States (Boyd 1993, 78). On the other hand, the various (divided) governments during the Civil War were, for about 16 long years, unable to deal with broadcasting problems and to establish a unified policy concerning broadcast information. As a result, the illegal stations gained “a kind of de facto recognition which was slowly being routinized” (Dajani 1992, 88).

Between 1989 and 1994, several attempts to pass a broadcast law in accordance with the media-related stipulations of the Taef Agreement (also known as the Document of National Reconciliation) failed. This endeavor proved to be much harder than the various post-Taef governments had anticipated it to be. Indeed, any new broadcast legislation was not only going to be “big-ticket” (11) legislation that could significantly affect the commercial interests of the major financial (and political) players involved; much more importantly, at stake were serious political considerations that could alter the very delicate political balance itself and consequently the future of peace, democracy, and pluralism in post-Civil War Lebanon.

In October 1994, after several parliamentary sessions marked by heated deliberations, Parliament finally voted for law no. 382/1994, referred to in following as the 1994 Broadcast Law. It is interesting to note that all of the recommendations suggested by civil society, during the rare instances where it was actually invited to participate in the legislative process in the early 1990s, were indeed incorporated in one way or another into the final version of the 1994 Broadcast Law. The most important of these recommendations concerned the safeguarding of freedom of expression and pluralism, the possibility for private and regional broadcasting to exist, the introduction of a new regulatory body to supervise the media, restrictions on monopoly and cross-ownership, the protection of national cultural production, giving priority in employment to media graduates, and even the protection of the environment from the hazards of broadcasting and relay equipment (Dabbous-Sensenig 2003).

In general terms, the text of the 1994 Broadcast Law can thus be considered a political “success”, especially for post-War civil society. Moreover, the (difficult) subsequent process through which this piece of legislation went, the often contradictory pulls exercised on it by powerful, antagonistic players, and the final compromise reflected in its text, were all an



indication of the existence of a pluralistic, democratic environment in Lebanon. It was, however, the implementation phase of the 1994 Lebanese Broadcast Law which cancelled out the earlier, relative successes of civil society during the drafting process (Dabbous-Sensenig 2003). The Hariri government's discretionary implementation of the Broadcast Law in 1996 (mainly by licensing those broadcast stations affiliated with politicians from the major confessional groups in the country, regardless of technical qualifications) was vehemently criticized by a large number of politicians, academics, and activists. The perceived government partiality, compounded by a general democratic crisis of legitimacy (e.g., the contested 1996 elections) and worsening economic conditions, led to a series of demonstrations and protests that threatened the (newly regained) stability of post-Civil War Lebanon.

It is against this general background of the media sector, with its relationship to the Lebanese culture of confessionalism and the lack of the rule of law, that media law and practice in Lebanon will be assessed.

### **Endnotes chapter 1: contextual background**

1. Only monotheistic religions are officially recognized in Lebanon (i.e., Judaism, Christianity, and Islam). Hinduism or Buddhism, for instance, are not only not recognized, a Lebanese citizen cannot enjoy certain civil rights unless he or she adheres, at least on paper, to one of the monotheistic creeds.
2. The first daily appeared as late as 1894 (Dajani 1992, 22-23).
3. Indeed, the broadcast media – which proliferated during the 1975 Civil War – continued to be regulated in the same way (e.g., by the Press Law of 1962), until a Broadcast Law was passed in 1994.
4. Television programming was very much affected by its socio-political context. One of its main dictates was to preserve religious balance, even neutrality, in its commercial programming. Certain guidelines to that effect governed Lebanese dramatic productions, assuring respect for the multi-confessional make-up of Lebanese society. One of these guidelines was giving TV characters names that did not reflect their religious identities: names like Mohammad or Joseph, for instance, were shunned altogether. This neutrality, however, is strongly criticized by Dajani who sees it as a failure to use television to seriously address the task of bringing the warring factions together. He deplores the total absence of local productions that feature a Muslim and a Christian working together (Dajani 1992, 103).
5. Television news-films used in newscasts were sealed upon arrival at the Beirut airport. They were then delivered to each station where government censors broke the seals in special viewing rooms (Boyd 1993, 72).
6. It should be remembered here that there was no state-controlled television during this period.
7. Only later on, in 1994, would the Lebanese government (through a ministerial decree) be able to buy up all private shares in *Tele Liban*, making it the sole owner of the company. As for the 1994 Broadcast Law, no provision was included in it in order to deal with *Tele Liban's* general mandate, much less with its content requirements.



8. Brigadier Aziz Al-Ahdab occupied the studios of *CLT*'s channel 7, located in the Western, Muslim sector of Beirut, followed by a swift retaliation on the Christian side: Christian factions immediately took control of *Tele Orient* and the official radio transmitters in the Christian-controlled area, marking the beginning of a fierce media war between the two sides.

9. This practice was not restricted to the broadcast media. The same War saw the proliferation of dozens of unlicensed newspapers and political publications.

10. Several audience surveys have demonstrated the popularity and appeal, especially during news hours, of some of the most established unlicensed broadcast stations (Dajani 1992).

11. This was the term used by Patricia Aufderheide when describing the economic forces that shaped the writing of the 1996 Telecommunications Act in the USA (Aufderheide 1999, 41).



## CHAPTER TWO ANALYSIS OF THE PRINCIPLES

This chapter will examine the current media landscape in Lebanon in terms of the three general principles outlined for the present research project: independence, integrity, and competence. Though an attempt will be made to cover all types of media when dealing with each principle (i.e., print, broadcast, and cyber-based media), some media will be dealt with more extensively than others, depending on their ubiquity in Lebanese society, and the availability of legislation and decrees regulating them. For instance, television (both terrestrial and satellite) will take up the lion's share of this study; this for various reasons. To start with, it has been at the center of two major controversies (i.e., the closure of *NTV* and *MTV*) since the 1994 Broadcast Law, which regulates private television, was introduced (this law is referred to by some as the Audiovisual Law). Television is also the main source of information and entertainment for Lebanese audiences. Indeed, according to a recent May 2006 public opinion survey commissioned by the Arab Center for the Rule of Law and Integrity (ACRLI) and carried out by Information International for the benefit of the present study, 87.3% of Lebanese respondents said that television was their most reliable source of information, while newspapers came in a close second with 72.1% (the full details of the public opinion and media experts surveys are available on the ACRLI website, at <http://www.arabrulEOFlaw.org/Templates/ListActivities.aspx?PostingId=297&id=1>, forthcoming). It should be noted that although newspapers ranked high in the opinion poll (with radio and the internet lagging behind comparatively), newspaper circulation itself is very low and has reached critical proportions, with the aggregate number of issues published in Lebanon barely exceeding 80 000 for a population of 4 million (i.e., 2% average national readership), according to some estimates by the industry itself (Dajani 2001). As for the internet and cable TV, which to date lack a regulatory framework and the proper infrastructure capable of developing them, they will be dedicated the least space in this study, mainly due to the near absence of data concerning their licensing (by the state) and use (by residents).



## **1. INDEPENDENCE**

### **1.1. Fundamental guarantees of the independence of the media**

#### **1.1.1. Freedom of expression**

Article 13 of the Lebanese Constitution states that “freedom of expression, oral or written, and publishing...are protected within the limits fixed by law”. Though these media freedoms are clearly consecrated in the constitution, it is worth noting that they are enunciated as a general principle and are actually limited by the constraints found in various laws enacted by Parliament, namely the Press Law of 1962, the Broadcast Law of 1994, and the Penal Code (details of most of these constraints will be dealt with later on).

#### **1.1.2. Freedom of the press**

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 531 of 24 July 1996 makes no pretence of guaranteeing the freedom of satellite broadcasting. Rather, in its preamble or rationale, law no. 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 aimed 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 and entrusts them with a nationalistic, propagandistic mission (these and other content requirements are also mentioned in Article 3, Paragraph 4; see also section 1.3.2.).

Also, by contrast to the constitutional and other protections securing freedom of the press and of terrestrial broadcasting, cinema and theater, in addition to leaflets, were (and continue to be) excluded from such guarantees. According to legislative decree no. 55 /1967, all leaflets which are not published in periodicals, regardless of their content, require prior clearance by the General Directorate of the *Sûreté Générale* (or General Security police). A law regulating cinema, introduced in 27 November 1947, established prior restraint or censorship concerning



the exhibition of both imported and locally made films. This censorship is also to be carried out by the *Sûreté Générale*, in order to safeguard the following principles (article 4):

- Respect of public order, decency, and good morals.
- Respect for the feelings and emotions of the viewers and avoiding the awakening of racial and confessional strife.
- Upholding the respectability of public authorities.
- Resistance to (or rejection of) all calls inimical to the interest of Lebanon.

This law also establishes a committee made up of several public officials in order to deliberate and vote on whether to exhibit, ban, or partially censor any film to be exhibited in Lebanon.

Interestingly, no legal text enforces prior censorship on films available on video (in specialized stores) or broadcast on local television (Boutros 1991).

As for theater, it was not subjected to any prior restraint between 1926 (date of the establishment of the constitution of the Lebanese Republic) and 1977, when legislative decree no. 2 of 1/1/1977 was introduced in order to allow the General Directorate of the *Sûreté Générale* to exercise prior censorship. Here, as in the case of cinema, any infringement of these prior censorship laws entails banning the show, closing down the theater, and imposing fines and prison sentences (for those involved in the production) as handed down by the courts. A similar decree (legislative decree no. 1 of 1/1/1977) was introduced on the same day in 1977 in order to enforce prior restraint on the print media as well, but was later repealed by law no. 14/1986 of 25 February 1986. Meanwhile, theater and cinema continue to be subjected to prior restraint, though the current Minister of Culture, Tarek Mitri, has on more than one occasion announced his desire to abolish the prior censorship applied to both (1).

### 1.1.3. Freedom of association

Freedom of association for all Lebanese (including journalists), just like freedom of expression and freedom of the press, is guaranteed by article 13 of the constitution. According to the same article, however, this freedom is not absolute, and is “guaranteed within the framework of the law”. It is this provision of article 13 which has historically and repeatedly undermined freedom of expression and association in Lebanon. For instance, demonstrations require prior approval by the Lebanese authorities and have been occasionally banned in the name of national security.



Similarly, the setting up of associations in Lebanon requires prior ‘approval’ by administrative authorities – an approval which has, in practice, become synonymous with a license, contrary to the stipulations of Article 2 of the Law for Associations and its amendments (see details below). This law, which is often referred to by its critics as “the Ottoman Law” and dates back to 3 August 1909, applies to those associations which do not have a separate law regulating them: i.e., it does not apply to trade unions, cooperatives, and press unions which are regulated by separate laws. Associations subjected to the Law for Associations include clubs, NGOs, centers, and parties. According to Article 2 of this law, the setting up of an association does not require prior licensing. What is needed for a new association, instead, is 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, in specific, has consistently violated the terms of this law and the more general constitutional guarantee of freedom of expression and association, and turned the process into a constraint that amounts to “quasi prior licensing” (Mukhaiber 2004). This has been done by refusing to issue a registration number to new associations, simply by neglecting to respond to the notification sent by a new NGO or association seeking official status. One example of how the Ministry of the Interior has administratively (and illegally) denied some NGOs official status is that of *Helem*. This Lebanese NGO (set up about a year prior to the research phase carried out for this report) whose name is an acronym for *Himaya Lubnaniyya lil-Mithliyyin* (‘Lebanese Protection for Homosexuals’), is the only openly functioning gay and lesbian organization in the Arab world (Azzi 2006; see also Whitaker 2006). However, for the ‘bureaucratic reasons’ explained above (reasons that most probably mask homophobic feelings or attitudes among government bureaucrats), it continues to be denied an officially recognized status in the country.

#### **1.1.4. 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 recognize the right to ‘seek information’, a fact attested to by the absence of any piece of legislation guaranteeing access to information (similar to the American Freedom of Information Act, for instance), and by the hardships that Lebanese journalists have to go through in order to obtain information, even from



official sources, agencies, and ministries responsible for informing the public about aspects of their basic activities (Mkalled 2006). Moreover, according to Mariam Al-Bassam, news editor at *NTV*, access to information by journalists is often carried out using non-professional means. While some journalists are kept completely in the dark, others are favored by some politicians and therefore “know what is happening because of intentional leaks” by these politicians (Al-Bassam 2006). Indeed, the recent survey conducted by Information International among 150 media experts from the greater Beirut area found that these experts’ most negative evaluation concerned the lack of access to government documents which are of interest to the public. For instance, 69.7% of respondents said that the documents cannot be received in a timely manner, while 44.9% believed that these documents cannot be made available to journalists without favoritism (i.e., government sources favor some journalists over others when it comes to accessing information).

I have so far reviewed existing constitutional and legal measures/texts guaranteeing freedom of expression, freedom of the press, and freedom of association in Lebanon. It should be noted that while, in principle, constitutional guarantees of freedom of expression and of the press and terrestrial broadcasting exist, it is probably a truism to say that implementation remains a different ballgame altogether. Legal protections on the books, no matter how inadequate, as we will see later on, are often just that: ink on paper. It is indeed in the implementation phase of these protections, the ‘missing link’ of policy analysis in the case of Lebanon, that the more complete and contradictory picture of the Lebanese media landscape can be found (Dabbous-Sensenig 2003). Indeed, the study of the implementation of the 1994 Broadcast Law, particularly the licensing process, is crucial for understanding the regulatory framework for media in Lebanon. Although the implementation of the 1994 Broadcast Law constituted in and of itself the first serious post-War attempt to introduce the rule of law in the country, it led to the first major political crisis of legitimacy in post-Civil War Lebanon. Therefore, a more detailed account of the process for licensing private television stations will be offered in the present study (see section 1.2.2.). It is hoped that the relatively detailed analysis of how this process was carried out, which cannot be extended to the licensing of other media (e.g., satellite) for lack of space, will shed light on the ways in which legal guarantees on the books can be distorted, if not utterly subverted, during the implementation phase of policymaking in general in the country.



## **1.2. Explicit and fair regulatory framework for media activity**

### **1.2.1. 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 available. 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. According to Article 27 of the Press Law of 1962, it is “totally forbidden” to issue a “press publication” without obtaining a license first. The same law defines “press publication” as all types of published material that appears periodically or on a regular basis (i.e., daily, weekly, monthly, or other) (Article 4), and offers two categories of licenses: one for political periodicals and another for non-political ones (Article 7). It should be noted that the Press Law definition of “periodical” or “print publication” clearly exempts books, in addition to all audiovisual material locally produced or imported and intended for private use or broadcasting (e.g., video tapes and audio-cassettes) (Boutros 1991, 47). In practice, however, the *Sûreté Générale* reviews, for approval before distribution, all imported CDs and DVDs (see section on ‘Regulation of international media’ in 1.3.2.2.).

In the case of the private broadcast media, the 1994 Broadcast Law also requires the licensing of these media, and creates two basic licensing categories for radio or television: Category One licenses for media seeking to broadcast political programming, and Category Two for non-political broadcasting (Article 10). This law also introduced an innovative aspect to licensing which was meant to ensure that neither the executive branch nor the General Security services retained a monopoly over the allocation of licenses. Consequently, the National Audiovisual Council (or NAC) was created, with several provisions (Articles 16 to 21) included in order to ensure that it functions at arm’s length from the government, but which eventually failed to do so, creating instead a licensing authority which was neither independent nor capable of enforcing its decisions (for details see section 1.2.2.).

Perhaps, the implementation process of the 1994 Broadcast Law offers the best explanation for this (*intentional?*) weakness of the watchdog role of the NAC as specified by law, and the most flagrant example of how the NAC was not able to function independently of the will of the



government of the day (i.e., the Hariri government). Indeed, on 17 September 1996, with the exception of *Radio Mont-Liban*'s application, the Hariri government, without taking the time to study any of the application files, readily accepted the NAC's opinion concerning a grand total of 63 applications - an opinion which was only officially made public on the previous day. The licensing/implementation process was thus completed overnight, without debate, suggesting that the NAC's regulatory function was most probably "orchestrated" in advance by the government. This process led to four television and three radio stations (also belonging to the same companies which owned the licensed television stations) officially being allowed to operate with a Category One license (which allows political programming). The four private television stations were Prime Minister Hariri's *FTV*; Speaker of Parliament Berri's *NBN*, Gabriel Murr's *MTV* (Gabriel is the brother of then Minister of Interior Michel Murr), and Lebanese Forces' *LBC* (Dajani 2005; Stanhope Center for Communications Policy Research 2003). As for radio, three stations with political programming (i.e., Category One) and eight with non-political programming (i.e., Category Two) were licensed. On 5 November 1998, a few more licenses were awarded by ministerial decree (in this case totally bypassing the opinion of the NAC), the most important of which went to *Al-Manar TV*, which promoted Hizbullah's agenda and resistance activities in the south of Lebanon, and whose application had been rejected by the NAC in 1996 (Al-Nashef 2003, 165).

By not giving itself the time to examine any of the detailed application files or the National Audiovisual Council's (non-binding) justifications and decisions, and by issuing licensing decrees in less than one day after the NAC made its opinion public on 16 September 1996, the Hariri government raised serious doubts about the legality of the entire process, proving to all skeptics that, indeed, it was "a mixture of power and confessional politics [which] determined the beneficiaries of the licenses" (Az-Zubaidi 2004, 65). For the many critics of the licensing process, both the number of licenses to be allocated and the recipients of licenses were pre-decided by the Hariri government, irrespective of any objective or technical criteria (Samaha 1999; Shalak 2001). Interestingly, some public officials, including Speaker of the House Nabih Berri - himself owner of one of the stations licensed in 1996 - later on openly and blatantly acknowledged that the licensing process was indeed illegal and discretionary and should be "corrected" (*As-Safir*, 8 January 1998). In sum, the NAC, the first supposedly independent regulatory body for the media to exist in Lebanon and the Arab world, which was introduced by



law no. 382/1994 (or the 1994 Broadcast Law) in order to check government discretionary powers, proved, in the final analysis, to be nothing more than a ‘front’, ‘cover’, or ‘excuse’ - an attempt to confer legitimacy on what was essentially a government pre-made decision to license a handful of stations associated with the most powerful confessional members in the Hariri government.

To date, both cable distribution and the internet remain unregulated. Illegal internet cafes, however, are spread all over the country, and internet users are estimated at 300 000 (c. 15% of the overall population), a percentage which is considered to be comparatively high for the region (Zubeidi 2004; Gonzalez-Kikhano 2003). Moreover, despite the lack of legislation to regulate the internet, and considering that the Telecommunications Regulatory Authority which was introduced by law no. 431/2002 was still not formed by the end of 2006, a handful of ISPs are allowed to operate by obtaining a ‘license’ by decree from the Council of Ministers. This is done following the submission of a number of official documents to the Ministry of Telecommunications (for more details concerning criticism of the licensing of ISPs, see section 1.2.3.3. about the ‘religious pluralism in ownership requirement’).

According to the website of the Ministry, the documents required from ISP license applicants include: the company’s commercial registration, a power of attorney to the person authorized to sign on behalf of the company, an address in Beirut and abroad for the link, signing an agreement pledging not to use the Internet license for other purposes, and a bank guarantee for an amount equal to a two months connection fee. Interestingly, though the Ministry’s website announces that the Internet sector is liberalized, it warns that “it does not provide direct internet services to end users”, that it retains the monopoly of international and national connectivity, and that Voice Over IP and videoconferencing are illegal in Lebanon.

Though Lebanon was the first Arab country and one of the few countries in the world to introduce private sector Internet services, as early as 1994, the sector in reality is not liberalized. The general manager of one data-service provider (DSP) adequately summarized the ambiguous state of internet regulation in Lebanon:

We’re living in a kind of funny situation between a state monopoly and a fully deregulated market, but there are still no laws yet for deregulation, so for all practical purposes it’s still a state monopoly. Even if you have four different data service providers (DSPs) and ISPs, if we all are buying the commodities from the government and reselling [them], we could end up being resellers for the local ministry and that would be worse than a clearly stated monopoly as that would be a disguised monopoly (*The Daily Star*, 16 April 2007).



Indeed, though the Internet, as a business, is being promoted by the government as being one of free market activity, the fact remains that, from the beginning, the state has held a monopoly on the sale of international bandwidth or access to the uplink. The repercussions for the private sector and the public have been enormous. The former, for instance, repeatedly complains about overpricing and delays caused by bureaucracy as well as the proliferation of illegal private sector activity. Illegal providers, whose cables are on occasion cut by the government, remain undeterred, and basically get their bandwidth directly, and illegally, through satellite dishes. In April 2006, the Ministry of Telecommunications finally decreased the cost of international bandwidth by 70%, and promised to introduce DSL very soon. If this happens, some argue, illegal internet activity will be seriously reduced, since it will make Internet available at low sign up fees and it will make little commercial sense for illegal providers to continue their activity (*The Daily Star*, 16 April 2007). Another positive step taken by the Ministry of Telecommunications involves the application process for bandwidth. According to the director general of the ministry, it currently takes an average of one month to approve international bandwidth applications. Legal owners of ISPs, however, believe the one month period is still the exception, and that even one month is too long considering that it takes 24 hours or less to do so in Jordan and Saudi Arabia (Ibid).

As for cable TV distribution, in the absence of official statistics, estimates can vary dramatically with regard to operators. According to some estimates, up to 1300 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 (Speetjens 2005). The illegal companies are engaged in the unauthorized re-transmission of broadcast programming, and charge their customers as low as \$10 per month for these "pirate" pay television services (International Intellectual Property 2006; Dajani 2005). According to one lawyer, this illicit industry is "so entrenched that it is almost seen as a legitimate economic sector in the relatively small Lebanese economy, creating hundreds of jobs" (Speetjens 2005, 29). Indeed, Information Minister Aridi admitted that the revenue from illegal cable distribution is estimated to be between 60 and 70 million dollars a year, and that 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, on the other hand such regulation would deprive thousands of families of their main source of income (Aridi 2006). It should be noted that, in 2003, under



intense international pressure to enforce copyright laws, the Lebanese government finally cracked down on cable pirates and arrested and fined some 40 operators.

However, cable piracy continues to be a thriving business in the country, much to the disappointment of local legal operators, international cable TV networks, and organizations working for the protection of intellectual property rights: not only were the fines paid by the illegal operators arrested in 2003 negligible (\$ 8000 per operator), the majority of the pirate operations (which, in many cases, enjoy political backing) were left untouched. According to Nasser, representative of the *Arab Radio and Television* network, *Showtime*, *Star TV*, and the *Motion Picture Association*, “Lebanon’s piracy quagmire” will continue as long as there is a “lack of political will” to put an end to it (Speetjens 2005, 30).

### 1.2.2. Media oversight authorities

Although both the print and broadcast (terrestrial and satellite) media in Lebanon require prior licensing, the laws governing each type of media differ in terms of specifying the regulatory authority responsible for allocating licenses. To start with, as far as newspapers, magazines, and other periodicals are concerned, the Minister of Information is the sole authority responsible for allocating licenses, “after consulting with the Press Union” (i.e., the union of *owners* of licensed newspapers) (Press Law, article 27).

Licensing according to the more recent Broadcast Law of 1994, by contrast, is not the prerogative of a single minister but is instead the result of a decision made by the Council of Ministers. More importantly, the 1994 Broadcast Law was, according to then Prime Minister Hariri, to be modeled after the broadcast laws of major European democracies, specifically after the French audiovisual law of 1986 (*As-Safir* of 24 May 1996 and 19 September 1996). As such, unlike the Press Law of 1962, the 1994 Broadcast Law attempted to keep licensing and control of broadcasting at arm’s length from the government, and indeed did so by mandating the creation of an independent regulatory body, the National Audiovisual Council (NAC) (Article 17). The function of this newly created 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 single-handedly all phases of the licensing process, from studying applications to allocating frequencies, to granting or withdrawing licenses. The National Audiovisual Council (or NAC), the new regulatory body set up by the 1994 Broadcast Law, was



actually totally absent from the government’s initial draft and was only introduced later on under parliamentary pressure in order to check governmental control of broadcasting (Dabbous-Sensenig 2003).

Articles 17 and 18 of the 1994 Broadcast Law specify the make-up of the NAC. According to these articles, the NAC shall consist of 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 regarding who is to preside over the NAC, the possibility for the Minister of Information to be president of this council is not precluded. However, according to one legal scholar’s opinion, 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” (2).

Moreover, Article 18 of the 1994 Broadcast Law seeks to secure the independence of the NAC members and to deal with conflict 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, according to Boutros, 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 (Boutros 1995, 80). This same loose description, however, can be abused, allowing the appointment of members who lack the qualifications necessary for undertaking a task that requires expertise in the field of communication (by not requiring, for instance, the appointment of telecommunications engineers, or media scholars and lawyers, etc.). Indeed, upon implementation of the provisions of the 1994 Broadcast Law related to the NAC, it was obvious that at least half of the appointed members did not have any experience whatsoever in the media field: these included a philosophy high school teacher, two lawyers and two businessmen. One such member, Maher Baydoun, a successful businessman and son of a prominent politician, was reported to “love the field of communication with all his heart even though he never studied communication or practiced in the field” (*As-Safir*, 14 November 1995).



Not only did the majority of the members of the first National Audiovisual Council come from backgrounds not directly related to the field of communication (neither technically, artistically, or academically), the President of the NAC himself was introduced in *As-Safir*, a leading national daily, as someone “who never studied or practiced in the field of communication” (*As-Safir*, 14 November 1995). In his defense, the NAC President, did declare that he had “dealt with media issues” during his term as president of the Alumni Association of the Al-Makassed educational institution (3).

Equally, if not more important than the professional qualifications and suitability of the appointed members, was the extent of their political independence from the three major heads of state (i.e., Maronite President Hrawi, Sunni Prime Minister Hariri, and Shi’ite 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”. That same newspaper quoted a member of the NAC as saying “he was proud of his friendship with Prime Minister Hariri” (*As-Safir*, 14 November 1995).

Another member of the NAC, Maher Baydoun, was known as being the Vice-President of the board of directors of Solidere, the controversial (giant) real estate company associated with Hariri (Wakeem 1998). One opposition MP was quoted elsewhere as saying that 8 out of the 10 NAC members were pro-Hariri (*As-Safir*, 24 May 1996). Indeed, two years later, suggested 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*, 5 March 1998).

Though 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. For instance, the CSA is entrusted with the preservation of pluralism both in content (i.e., opinions and ideas) and in ownership, by ensuring, for instance, that the commercial operator is not in breach of the detailed anti-concentration provisions of the 1986 French law regulating the audiovisual sector (Article 17 of law no. 1067 of 30 September 1986). The CSA is also entrusted with the control of advertising and sponsorship. It appoints the



chief executives of public service broadcasting organizations, it can impose a “must carry” rule on cable networks to force them to transmit the programs of the terrestrial channels, and it issues licenses to operate radio stations, private television stations (terrestrial or relayed by satellite), and cable networks (law no. 1067/1986 as amended by the Lang-Tasca Law of 1989). Especially when it comes to enforcing program standards, the CSA has wide responsibilities. Among these we find the protection of pluralism, of children and youth, and the laying down of general rules concerning the right of reply, access rights, and election broadcasts (i.e., the conditions of production and the scheduling and broadcasting of programs related to electoral campaigns) (Articles 13, 15, 16, 54, and 55 of law no. 1067/86). More importantly, it is provided with a wide range of facilities in order to “accomplish the missions it is entrusted with by the (...) law” (Article 19 of the amended law no. 1067/1986). For instance, the CSA has strong enforcement powers over private broadcasters: it can issue an order requiring them to abide by their program obligations, and in the case of a failure to comply, it can impose fines, suspend the license, or even withdraw it.

As for the major functions and powers of the NAC, conferred by the 1994 Broadcast Law (Articles 17-23, 35, and 47), they can be summed up as follows;

The NAC is:

1. To study the license applications and to ensure that they meet the conditions set up by the 1994 Broadcast Law and the related Book of Specifications (or decree no. 7997/1996).
2. To give an “advisory” or “consultative” (i.e., non-binding) opinion to the Council of Ministers regarding the rejection or the approval of license applications, and to publish this opinion in the *Official Gazette*.
3. To 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 Council of Ministers gives its final approval concerning this guidebook with a ministerial decree (Article 25).
4. To give its opinion in case the Minister of Information decides to suspend a licensed station for infringement of the law.
5. To monitor the programming of broadcast corporations.



Though the NAC may seem to have some of the general powers of the CSA, especially concerning licensing and content control, a closer look at the wording of the text of the 1994 Lebanese Broadcast Law and the details (or lack thereof) concerning these powers shows an entirely different picture. For instance, the NAC can only give a “consultative opinion” to the Council of Ministers concerning broadcast applications, fines, and the suspension of licenses. 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 licenses. It should be noted here that, nevertheless, *some* limits on the government’s absolute licensing power exist in the 1994 Broadcast Law; 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 with the State Advisory Council or *Majles Shura ad-Dawla* (Articles 19 and 24). These limits were introduced during the discussion of the bill by the joint parliamentary committee: opposition MPs, unable to push for a stronger, more independent NAC that would be exclusively responsible for granting licenses, had to “compromise” by making the NAC more of a “partner” with the government. However, by insisting that the NAC publish its opinion in the *Official Gazette*, they hoped this requirement would act as an indirect pressure mechanism, or to put it more bluntly, that it would embarrass the government when and if it decided to apply its discretionary powers when granting licenses (Dabbous-Sensenig 2003, 152).

Though both the 1994 Broadcast Law and the related guidebook for operating conditions (or Book of Specifications) reiterate that broadcast companies are subject to the control of the NAC in “accordance with the provisions of law no. 382/1994”, nothing is clear or specified about the *nature* or extent of this control. According to Article 47 of the 1994 Broadcast Law, one must assume that the controls referred to, in addition to studying the license applications, are controls of the general programming standards or quotas mentioned in the law and its related guidebook. Such controls would probably include the monitoring of broadcast electoral campaigns, though this is not stated in the 1994 Broadcast Law. More importantly, the NAC is unable to exercise control over licensees *except through* the Ministry of Information and whatever facilities the Ministry is willing to put at its disposal (i.e., the NAC). Indeed, every time law no. 382/1994 mentions 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 importance of the Minister of Information as the highest broadcast authority seems to precede



that of the NAC, especially since it is ultimately the Minister, and not the NAC, who can authorize the suspension of the operations of a broadcaster in infringement of the law. The NAC, once again, is left with a “consultative”, non-binding opinion (Book of Specifications, Chapter Five, Paragraph 9).

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 broadcast institutions: “*Upon the request of the Ministry of Information and through its bodies, the National Audiovisual Council exercises control over television and radio corporations*” (emphasis mine). In 1998, two years after the implementation of the 1994 Broadcast Law and the allocation of broadcasting licenses, the Hariri government admitted the inability of the NAC to carry out its functions as specified by law, and newspapers spoke of the NAC’s state of “paralysis” (*As-Safir*, 9 January 1998). A year later, a parliamentary committee was set up in order to study and propose amendments to deal with weaknesses and loopholes in the 1994 Broadcast Law, especially with regard to the monitoring role of the NAC. The committee, among other things, recommended 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, imposing financial sanctions, and the ability to initiate legal proceedings through a specialized audiovisual court (to be set up) against broadcasters in infringement of the law (*As-Safir*, 31 March 1999).

To date, a decade after the implementation of 1994 Broadcast Law, the NAC still lacks the budget, personnel, and facilities to carry out its monitoring duties. According to one former member of the NAC, the council is forced to carry out its monitoring of program content with “the help and equipment” of the Lebanese *Sûreté Générale* (Tirk 2005). It should be noted that the *Sûreté Générale*, legally responsible for pre-censoring films according to the law of 27/11/1947 as we have already seen in section 1.1.2., is also illegally monitoring and pre-censoring non-political programming (namely dramas) on Lebanese television (Marshalian 2006) (see section 1.3.1. for details)

In sum, not only does the NAC have very limited powers of regulation and an unclear “mandate” to control broadcasting, it has no power of enforcement according to the 1994



Broadcast Law. This is particularly significant considering that it is “virtually useless to lay down program standards, unless there is some mechanism for their enforcement” (Barendt 1995). It is interesting to note here that enforcement of the operating conditions and other existing general laws remains the prerogative of the Minister of Information or the Council of Ministers, and not of the regulatory or controlling agency (the NAC). Just as in the case of licensing, the NAC can exercise its power only indirectly in cases of infringement by giving “suggestions” to the Minister (or the Council of Ministers) who subsequently imposes the penalties mentioned in the law. Finally, even these suggestions (by the NAC) can be disregarded if they are not provided to the Minister of Information within 48 hours of his/her “request” to confer with the NAC (Article 35).

In light of this brief analysis of the mandate of the NAC (especially when compared with the French CSA), it would seem difficult, if not ludicrous, to speak of the “powers” and “independence” of the NAC as spelled out in the 1994 Broadcast Law.

As for law no. 531/96 for satellite broadcasting, the Council of Ministers is the sole authority responsible for allocating licenses by decree, based on recommendations by the Minister of Telecommunications (Article 2). Whereas the provisions of the 1994 Broadcast Law should, by law, 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 (and practice) deprived of playing 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 considered. The last paragraph of Article 3 of law no. 531/1996 directly entrusts the Minister of Information with content control, and based on his/her recommendation, the Council of Ministers enforces sanctions (e.g., immediate interruption of transmission for a full month) (Article 3) and may even revoke licenses (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 any judiciary proceedings that might be resorted to by broadcasters who are deemed in infringement of the law by the Council of Ministers, and who would like to challenge the Council’s decision. By contrast, law no. 382/1994 for terrestrial broadcasting clearly states that any decision by the Council of Ministers concerning the allocation of licenses and fines and sanctions for not respecting content requirements can be taken to the State Advisory Council for review (Articles



24 and 35). It may be argued though that challenging the government's decision concerning satellite broadcasting is still possible considering that Article 3 of law no. 531/1996 states that the provisions of law no. 382/1994 are also applicable to satellite broadcasting.

As an example of how implementation of the satellite law can be highly problematic, I will examine a case of prior censorship as exercised in 2003 on one talk show episode about Saudi Arabia that was to be aired on *NTV* (or *New TV*). This case is worth examining for a variety of reasons, but mostly because it exemplifies the arbitrariness of decisions regarding the media when government, and not any independent authority or court, is responsible for dealing with infringements of content rules. The *NTV* episode about Saudi Arabia, which was prevented from being aired, should have been judged, *after* being broadcast, based on its content (ideally by a specialized court of law or regulatory authority). Instead, it was banned upon the orders of Prime Minister Hariri based solely on the show's promotional ad. Hariri was supported in his decision by State Prosecutor Addoum who cited Article 211 of the Penal Code which allows taking *preventive* measures when there is proof of threat to national security (*The Daily Star*, 3 January 2003). Thus, on Wednesday 1 January 2003, the government ordered the cutting of the satellite link for *NTV*, in order to prevent it from airing *Bila Raqib* (or *Without A Censor*) about Saudi-American relations, which was going to host oppositional, as well as pro-regime, Saudi guests. The government's justification for this prior restraint was that the show, if it were aired, would harm ties with this Arab country, and the assessment was "based on the advertisement of the program" (*The Daily Star*, 3 January 2003). The interruption of the satellite transmission on *Arabsat* and *Nilesat* was carried out by the Telecommunications Ministry, based on a memorandum from Prime Minister Hariri's office (*The Daily Star*, 3 January 2003). Later that day, a delegation from the Internal Security Forces stormed into *NTV*'s main studios in Beirut, in order to make sure that the station was also abiding by the ban locally or terrestrially (*The Daily Star*, 3 January 2003). The next day, Hariri appeared in a live interview on his own station *FTV* and on Saudi-owned *MBC*, and accused the *NTV* promotional spot of wanting to discuss "the situation of women, the state of the budget, and other issues (in Saudi Arabia)" which made it "obvious" that the station was violating the terms of its license (*The Daily Star*, 3 January 2003). On January 4<sup>th</sup>, Telecommunications Minister Qordahi, supported by President Lahoud (a political opponent of Hariri), ordered the resumption of *NTV*'s satellite broadcast, based on the justification that *NTV* had pledged not to air the controversial program (*The Daily Star*, 6 January



2003). The decision angered then Prime Minister Hariri, who was out of the country at the time and was not consulted about it (*The Daily Star*, 6 January 2003).

Finally, it should be noted that the excuse that the show might have harmed relations with Saudi Arabia - which would have legalized banning it according to law no. 531/1996 - was not convincing to some, especially that Prime Minister Hariri himself went on television a few days later and “offered scathing criticism of conditions in the Arab world” while praising democracy in Lebanon and the lack thereof in Arab countries which remain “divided” and incapable of stopping what is happening in Iraq (*As-Safir*, 4 January 2006) (see also section 1.3.2.).

This abuse of authority by the Hariri government prompted legal experts, including the Beirut Bar Association, to denounce the ban, seeing in it “a breach of the Constitution, the audiovisual law, and the international acts that have been ratified by Lebanon” (*The Daily Star*, 4 January 2006). Constitutional expert Hassan Rifai, for instance, commented that “there is no more law in this country”, accused Hariri of ignoring the laws and the Constitution since he came to power, and explained the illegal ban as a way of settling scores between Prime Minister Hariri and his political and business rival - *NTV*'s CEO Khayat (Ibid). It should be noted here that *NTV* was initially (and unfairly) denied a license by the Hariri government in 1996 and was later vindicated by the State Advisory Council in 1999 (Dabbous-Sensenig 2003).

This ‘settling of scores’ perspective on the *NTV* case was confirmed to some extent by Hariri’s reaction shortly after re-allowing *NTV* to broadcast. Upset by the reversal of his decision concerning taking *NTV* off the air, Hariri demanded that *MTV*, which was also taken off the air a year earlier, be allowed to re-broadcast. In what seems to be a “tit for tat” scenario, he expected President Lahoud, whom he supported when the President wanted *MTV* shut down, to return the favor by backing him in his attempt to end *NTV*'s satellite broadcasting (*The Daily Star*, 6 January 2006). Thus, not only does the *NTV* case provide an example of the inability (or unwillingness) to introduce legislation that is equitable in both its text and its application, it illustrates the extent to which legal procedures or the rule of law can be superceded by personal interests when it comes to media regulation in Lebanon.



### 1.2.3. Licensing requirements

**1.2.3.1. Discriminatory or excessive requirements:** Perhaps the most stringent and legally unjustified licensing requirement is the provision laid out in legislative decree no. 74 of 13 April 1953 which regulates the licensing of political periodical publications. According to this decree, no new license 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 licenses for a political periodical to obtain a new license, 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 licenses for two existing newspapers and then cease their publication indefinitely in order to publish the new title.

Once the specified number of political publications is reached through this ‘reduction’ mechanism, a license for a new political publication could be issued, provided that the license for one similar, existing publication is cancelled. The purpose of this piece of legislation was to decrease the large number of existing political publications in Lebanon (there were about 50 dailies in Beirut alone in the early 1950s), and to limit it to 25 dailies and 20 political weeklies or periodicals. It is worth noting that this law was passed in consultation with and with the blessing of the Press Union consisting of newspaper *owners* who have an obvious stake in limiting competition over the advertising pie.

One of the main negative consequences of legislative decree no. 74/1953, however, was turning existing licenses into a hot property, leading to a significant increase in their price (Ghorayeb 1982, 147). It made license holders reluctant to relinquish publishing dailies or periodicals for which they had a license. Indeed, some licensed newspapers are issued once or twice a year for the sole purpose of formally keeping the license active, "in the hope that [they] will sell or rent [their] license to an aspiring leader or political group" (Dajani 1992, 46).

Historically, in democratic societies advocating and protecting freedom of expression and of the press, restrictive technical regulations imposed on the broadcast media, especially the licensing requirement, would be considered unconstitutional if also extended and imposed on the print media. Indeed, one of the main rationales for regulating broadcasting, as opposed to the press, has been the spectrum scarcity concept (Francois 1994). Since the airwaves are not only a valuable publicly-owned resource but are also limited, not all those who wanted to start a



broadcast station could be accommodated. The government had to interfere and subject the medium to regulation, especially to prevent chaos and interference on the airwaves.

Theoretically, this rationale for broadcast regulation does not apply to printing presses, since there is no *physical* limit to the number of presses or periodicals that a country can have (Ibid). Seen from that perspective, the Lebanese licensing requirement for the press is, technically, a non-justified move to limit the number of political periodicals that can exist in the country, and is a serious hindrance to freedom of expression for Lebanese citizens, except for those rich enough to buy two existing titles in order to start a new one.

**1.2.3.2. Lebanese ownership requirement** 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 start or run a political periodical in the country. For instance, in the case of a single owner, he/she must be a journalist, and fulfill the requirements spelled out in Article 22 (i.e., be over 21, hold at least a high school degree, have no other occupation, etc). 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 license (Articles 30 and 31). This requirement is in sync with some other Lebanese commercial laws, such as decree no. 11614/1969 of 4 January 1969 (commonly known as the “law of ownership by foreigners”) which regulates real estate ownership by foreigners in Lebanon.

According to Dajani, specific historical (and at some point personal) considerations accounted for this “fear” of foreign ownership, and for the resulting introduction of the Lebanese ownership restriction. Since Nasser’s *coup d’etat* 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) which could not sustain them through advertising revenues alone, were thus “predisposed...to accept financial assistance from outside sources” in exchange for editorial support (Dajani 1992, 45-56). 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 subsidizers and not for their readers” (Salameh 1967, 173-175).



On 15 November 1971, during the term of President Franjeh, decree no. 2143 was thus introduced. This decree, which amended Paragraph b of Article 31 of the Press Law, required, among other things, that press owners be exclusively Lebanese. Ideally, this new restriction should have worked to prevent local papers from acting as mouthpieces for the highest (in this case also foreign) bidder.

Dajani, however, offers another explanation (albeit without evidence) for the introduction of the Lebanese ownership restriction – one that has very little to do with the need to preserve the editorial independence of Lebanese papers. In his view, the Lebanese ownership restriction was introduced by President Franjeh in order to punish a magazine which was critical of the President and his family, and which accused them of illegal financial activities. The magazine was believed to be primarily financed by non-Lebanese Arabs (Dajani 1992). By preventing non-Lebanese ownership of Lebanese periodicals, the President was actually seeking to protect his own reputation if not seeking retribution for published material critical of his business activities (Ibid).

Terrestrial broadcasting, unlike satellite broadcasting which is not restricted to Lebanese broadcasters, shares with the print media the common requirement of Lebanese ownership. 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 licenses) be subject to prior approval by the Council of Ministers (Article 15). The Hariri government justified this measure by evoking the oft-repeated need to prevent “this public sector from falling into foreign hands” (Nashef 1995, 166).

**1.2.3.3. Religious pluralism in ownership requirement** The nationality of the shareholders in private broadcasting, though a basic requirement for would-be owners, was not a controversial issue during the licensing period (i.e., 1996). Another restriction concerning the ‘nature’ of ownership was far more contentious, and was used as a major reason for rejecting several applicants: i.e., 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.



According to then NAC Vice-President Shalak, this requirement was actually an “interpretation” put forth by the NAC, based on Article 7, paragraph 2, which stipulates that licensed stations, through their output, should ensure “respect for human dignity, the freedom of others and their rights, and the pluralism of ideas and opinions...” (Shalak 2001). By forcing private broadcast corporations to have shareholders from different confessions, the NAC was hoping that media content would consequently be free from confessional and political bias. This is, however, a highly problematic, far-fetched interpretation of law no. 382/94 and an ineffective content control mechanism. It directly relates the quality and pluralism of programming to the confessional identity of the shareholders, instead of laying down clear criteria for program content and an appropriate monitoring system in order to make sure that shareholders, any shareholders, abide by the content requirements as expressed in the law. Predictably, this NAC “rule” or “strategy” for ensuring diversity in content failed, with Shalak admitting years after the licensing process was over that the pluralist confessional identity of the shareholders “did not have a bearing on (...) content”, and that “all television stations have a clear-cut confessional character” (Ibid).

Having discussed this problematic ‘unwritten rule’ applied by the NAC to ensure pluralism in content through requiring pluralism in the confessional identity of shareholders, it remains to be said that the implementation of this ‘rule’ was quite dramatic for several applicants, whose application was rejected primarily for not having passed the ‘religious-pluralism-in-ownership test’. One such applicant was the *Al-Manar* television station. In its opinion published in the *Official Gazette* (issue No. 47, 16 September 1996), the NAC gave two justifications for the rejection, noting first that “more than 50% of the shares are owned by shareholders who belong to the same political party, in contradiction with the pluralist character stipulated by Article 7 of law 382/94 which constitutes one of the *basic criteria for granting licenses* to the audio-visual media” (emphasis mine). The other justification given by the NAC concerned the insufficient paid up capital of the applicant; this is particularly significant considering that another applicant (the *National Broadcasting Network* or *NBN*) was licensed even though it had not even started operating in 1996 or paid up the required capital (Dabbous-Sensenig 2003) (see also 1.2.3.6.).

The implementation phase of the 1994 Broadcast Law was not only marred by the introduction of a problematic, NAC-concocted license requirement related to ownership. A study of the confessional identity of the shareholders of successful applicants (i.e., *LBC*, *MTV*, *FTV*, and



*NBN*) proved the extent to which the NAC indeed applied double standards when enforcing the religious-pluralism-in-ownership requirement. Since the NAC recommended granting all four above-mentioned stations a license, 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 (estimated) aggregate proportion of the Lebanese population.

The study of the confessional make-up of shareholders in the four licensed stations showed *LBC* to have been the station which has infringed the most on the NAC’s confessional pluralism requirement in 1996: not only did it have the highest percentage of shareholders belonging to one and the same confession (i.e., 69% of all shareholders were Maronite), but it was almost exclusively owned by Christians (91.9% of all shareholders were Christians) (Dabbous-Sensenig 2003). *MTV*, which was also licensed, came next with a majority of Christian shareholders (82%) (Ibid). In fact, if the NAC criterion concerning religious pluralism were to be equally applied to all broadcast stations, not only *Al-Manar* television station, but practically all applicants should have been denied a license. Interestingly, the only four private television stations to be licensed were associated with the five largest and most powerful confessional groups in the country (Maronites, Sunnis, Greek Orthodox, Shi’ites, and Druze). In that respect, it is quite difficult to counter the critics’ claim, leveled throughout the licensing process, that the granting of licenses was discriminatory and done on a political/confessional and not a professional basis.

Gonzalez-Kikhano reached a similar conclusion with respect to licensing ISPs in Lebanon; this is particularly significant considering that, to date, no laws for regulating the internet have been introduced (see section 1.2.1.):

“The horizons opened up by the internet have been allocated in the same way that the audiovisual landscape was regulated in the early 90s. The interference by the state apparatuses was keen on maintaining the delicate economic-confessional balance between competitors in the field” (Gonzalez-Kikhano 2003, 320, author’s translation from Arabic).

As a result of this interference, he adds, “some financial powers, with obvious political connections”, forged alliances with international companies grouping mobile telephony operators, internet service providers, and audiovisual institutions. He provides examples of such synergies which reflect the major economic-confessional players in the country: Prime Minister Hariri’s ISP *Cyberia*, *Future TV*, and “financial empire” Oger-Liban; Audi Bank’s alliance with



the local ISPs *Data Management* and *Inconet* (now merged as *IDM* or *Inconet Data Management*), in addition to *Yalla* portal; and Nizar Dalloul's (a relative and a business partner of Hariri) shares in *LibanCell* (one of the two mobile operators in Lebanon) and the ISP *Terranet* (Gonzalez-Kikhano 2003, 321).

The situation seems to be equally bleak if not more so with regard to Lebanese data service providers or DSPs. According to the general manager of the Lebanese DSP Pesco Telecom, "it is much easier to acquire an ISP license today than a DSP license...because if you are a DSP you need to acquire spectra [channels] from the government, and this is a very scarce resource" (*The Daily Star*, 16 April 2007). As such, it is to be expected that the licensing of DSPs will be more prone to abuse. Indeed, many industry players are raising questions concerning the fairness of the allocation/licensing process, suspecting it to be controlled by political interests keen on "limiting the carving up of the financial bounty of such resources" (Ibid). If those fears are corroborated by empirical research, we might be witnessing a replay of the same abuse that marred the regulatory process with regard to broadcast licensing in 1996.

**1.2.3.4. Anti-concentration of ownership requirement** The 1994 Broadcast Law seeks to control concentration of ownership by forbidding any person or entity from owning, directly or indirectly, more than 10% of the total shares in a single broadcast 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 less than *ten different* shareholders are required in order to own a broadcasting corporation. This provision clearly departs from its counterpart in the Press Law where a person (a journalist in specific), 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. It is also quite excessive in its attempt to limit concentration of ownership, preventing a shareholder from owning more than 10% of shares in a single broadcast corporation. Other European broadcast laws are usually satisfied with limiting individual ownership to 49% - a restriction that is normally sufficient to prevent one shareholder from having a majority of voting rights in a single national television station (e.g., amended French audio-visual law no. 719/2000, Article 39).

Clearly, the 1994 Broadcast Law seeks to prevent the broadcast media from being controlled by a handful of players, and to ensure pluralism *in ownership* within a single broadcast



corporation. Though the law requires at least ten shareholders for each broadcast station, it has no provisions concerning *confessional pluralism* among shareholders; this is particularly significant considering that the dominant *practice* or *convention* since the emergence of the Lebanese Republic after World War II has been to include representatives from the existing confessions in all public administrations and elected bodies. This “silence” regarding the religious identity of the owners, while emphasizing their Lebanese identity, is not surprising in and of itself, if one were to consider first that the media in question are *private*, and second that one of the major (future) goals of the Taef Agreement is to eventually abolish confessionalism from Lebanese political and administrative life. Thus, according to the text of the 1994 Broadcast Law, a station can, theoretically, and contrary to the established practice of the confessional distribution of power, be entirely and *legally* owned by several shareholders from a single Muslim or Christian confessional group. However, as we have already seen in section 1.2.3.3., the NAC re-introduced confessionalism in ownership through its “interpretation” of a content requirement (Article 7), by making an “aberrant” reading of this content requirement, and consequently managed to disqualify several applicants (but not all) who were in infringement of this “interpretation” that is not founded in the law but nevertheless is quite in tune with the confessional culture of the country.

Article 13 is vague as well, even contradictory, in its attempt to limit concentration of ownership, e.g. through Paragraph 3, which stipulates that “under age” children are counted as one with the owner. This actually means that the “adult” children of some shareholder are legally allowed to own shares (10% each) in one and the same station where one of their parents is a shareholder (4). In other words, theoretically, it is possible for one owner, along with his/her 9 *adult* children, to own a television or radio station. In the same Paragraph 3, however, the law mentions that no one can own, “directly or indirectly”, more than 10% of the shares, without ever specifying what constitutes “direct” or “indirect” ownership. If adult children and members of the extended family - except parents, spouses, and under age children who are specifically excluded from ownership in Article 13 - could also own shares, what would then be possibly meant by “direct” or “indirect” ownership? Would friends, business partners or employees, for instance, constitute “indirect” ownership? The other problematic, even paradoxical aspect of this limitation on the concentration provision concerns the “parents” of a shareholder: if not just the minor children, but also the parents and spouse of a shareholder are “considered as one person”,



how will this provision apply when a shareholder's "minor" child becomes an adult and is therefore eligible to own 10% of the shares on his/her own, and has a parent who already owns another 10% of the share? Is that parent, who was a shareholder *before* the child became an adult, forced then to divest him/herself of the 10% of shares?

The implementation the 1994 Broadcast Law proved the extent to which the purpose of Article 13 was entirely defeated. In the case of the licensed television stations, as is the case in the print media (see above section 1.2.3.2. on 'Lebanese ownership requirement'), "indirect ownership" was indeed a major way for circumventing concentration of ownership in one station, without the NAC playing a role in interpreting "indirect ownership" and diligently applying Article 13 when considering license 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 Hariri (e.g., Ghaleb Al-Shammah, Moustapha Razyan, and Nouhad Machnouk), or Hariri lawyers (e.g., Youssef Takla). At *Murr TV* (or *MTV*), roughly 70% of all *MTV* shareholders (totaling 43) were "small time" employees, twenty two of them in their twenties at the time the application was submitted (Dabbous-Sensenig 2003). According to then NAC Vice-President Shalak, the NAC was aware of this "circumvention" of Article 13, and that the Murr family used its own employees as a "front" in order to own a bigger share than is allowed by law. However, he added that the NAC was unable to do anything about it because all submitted documents were "official...even if we know they are not true" (Shalak 2001).

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. Can it be said, in this case, that Hariri owned "indirectly" (through his family members, employees, and advisors) the majority shares of *FTV*? The NAC in its published opinion did not seem to think so.

As a result of the various types of "circumvention" during the implementation process, the four licensed television stations ended up being those stations associated (directly or indirectly) with a single family which was also part of the confessional/political elite. The NAC did not seem to find such an outcome problematic; this is particularly significant considering that, by contrast, it did act very strictly when applying the religious pluralism ownership requirement, as we have already seen in section 1.2.3.3. Moreover, the fact that bureaucratic corruption and bribery are rampant in Lebanon - and that this could have explained how so many low-level employees at



*MTV*, for instance, were able to have shares in the station they worked for - does not fully exonerate the NAC. It still remains unclear why the NAC did not consider the fact that a large number of employees owning shares at *MTV* was a flagrant case of “indirect ownership,” and thus prohibited by law. Had it done so, *MTV* and *FTV*, to name only two of the most prominent cases, would have been found in infringement of the law and would not have been granted a license in 1996. Eventually, two years after the allocation of licenses, the issue of “shares by proxy” or “fictitious shares” (*ashum wahmyya*) was on the media reform agenda of the Council of Ministers (*As-Safir*, 9 January 1998). No reform of the 1994 Broadcast Law has been undertaken to date, though Minister of Information Aridi has already started forming committees whose task is to revise the “antiquated” media laws. His boldest reform project is to eventually abolish his Ministry and to reconsider the make up and mandate of the National Audiovisual Council in order to render it more efficient and independent (Aridi 2006).

**1.2.3.5. Restrictions on cross media ownership** The 1994 Broadcast Law deals with cross ownership, in Article 12, as follows: 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, this corporation is allowed to own a maximum of two broadcast companies simultaneously.

Though cross-ownership controls in the 1994 Broadcast Law can be seen as an improvement or as a “novelty” when compared to the Press Law where no such restrictions exist at all, the 1994 law seems to be only concerned with cross ownership in the case of radio and television (cross-ownership with other national media, such as cable and newspapers, is surprisingly not mentioned). More importantly, the Broadcast Law’s approach to limiting cross-ownership is glaringly simplistic, especially when compared to the more sophisticated and comprehensive rules based on market-share which exist in several European or North American broadcast laws.

The French audiovisual law, for instance, even in its most recent restrictive amendment of 15 May 2001, allows a certain measure of cross-ownership, *depending on market share*, both within and across all the different media (analogue or digital television, radio, cable, satellite channels, newspapers, etc.). The law details, for example, how a person or entity that owns more than 15% of the shares of an analogue national television station cannot own more than 15% of the shares of another similar station. The amendment then fixes the percentage of shares to be owned to a maximum of 5% in each station if the person or entity has shares in 3 different analogue national



television stations (Article 39). In the US, the FCC had similar rules based on market share (e.g., a rule that barred a company from owning television stations which reached more than 35% of households), in addition to broadcast/cable cross ownership rules that prevented one company from owning both television stations and cable franchises in a single market (5).

In sum, not only is the 1994 Broadcast Law completely oblivious of cross-ownership with several other media (newspapers, cable, satellite, etc.), but no concept of market share has been introduced to put the concentration of ownership in perspective. In other words, in the absence of any such limitations on cross-ownership, it is possible, in a worst case scenario, to imagine a single corporation with a license for one radio and one television station being dominant in terms of national audience share (theoretically up to 100% of market share), and to own as many national newspapers and cable operations (there is no cable law to date) as it wishes to, again regardless of market share (in terms of percentage of readership or cable subscriptions). 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* market shares for broadcasting on a nation-wide level 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.

It is worth noting here that the NAC, once again, applied double standards related to the cross-ownership rules when processing application files in 1996. According to its published opinion in the *Official Gazette* of 16 September 1996, the NAC recommended that several applicants be denied a license because they infringed Article 12 of the 1994 Broadcast Law, while recommending that *MTV* and *LBC*, who were also listed as being in infringement of the cross-ownership rule, be granted a license.

**1.2.3.6. Cost for licensing** According to the Press Law of 1962, the only financial requirement from license applicants is a minimum startup capital of L.L. 500 000, 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, as we



have seen under ‘Discriminatory or excessive requirements’ in section 1.2.3., is the need to acquire two existing titles, which are sold for exorbitant prices that can be as high as \$800 000 for a daily, in order to open up a new periodical (Az-Zubaidi 2004).

In the case of the private terrestrial broadcasting, financial requirements do not only include the cost of the license itself (e.g., L.L. 250 000 000 or \$167 000 for television), there is also an annual “rent” fee (e.g., L.L. 100 000 000 or \$ 67 000). Though 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, it is the NAC-imposed financial requirement during the 1996 licensing process which was most problematic. Indeed, the NAC required each television applicant to have start up capital totaling 20 billion Lebanese pounds (or \$ 13 500 000). This large amount, it should be noted, was not based on the text of the 1994 Broadcast Law nor is it found in the related Book of Specifications (or decree no. 7997/1996). Rather, it was based on an interpretation by the NAC of part two of Chapter One of decree no. 7997/96, where it is stated that the application file should include “evidence that the corporation is capable of covering the full costs of at least the first year following its licensing”. The NAC-imposed financial requirement was effective in eliminating several applicants - including a fully operational and thriving station like *NTV*, whose paid up capital at the time was 16 billion Lebanese pounds. *NTV*, in accordance with Article 24 of the 1994 Broadcast Law, took its case to the State Advisory Council and was vindicated three years later (in June 1999) when the Council, in its decision no. 609/1998, rejected the Hariri government’s decision not to grant a license to *NTV*. Concerning the specific issue of capital required, the Advisory Council ruled that the NAC made a mistake in considering the 20 billion Lebanese pounds a precondition for licensing. In reality, it wrote, this is a post-license requirement, as stipulated by article 32 of the 1994 Broadcast Law (6). More importantly, the NAC did not have the prerogative to decide on the amount of money an applicant needed to meet the financial requirements. In any case, the Advisory Council argued, *NTV* - which had been in operation for more than 7 years at the time - had already proved its financial capacity to conduct business and had invested more than L.L. 20 billion by 1996.

Not only does the *NTV* case raise serious doubts about the NAC prerogative concerning the capital required from applicants, it is additional proof of the double standards applied by the NAC during the implementation process. *NBN*, the station which is associated (directly and indirectly) with speaker of Parliament Berri, had a declared capital stock of L.L. 25 000 000 000



which was only minimally deposited by the time it submitted its application for a license in 1996 (Dabbous-Sensenig 2003). Yet, *NBN* was found to have a flawless file according to the NAC published opinion (*Official Gazette*, 16 September 1996); this is particularly significant considering that it was still not in existence at the time it applied for and received its license (*As-Safir*, 19 September 1996).

As for the licensing costs for satellite broadcasters, according to (previous) Minister of Telecommunications Issam Naaman, the fees fixed by Article 8 of law 531/1996 were so “exorbitant” that they caused many companies to avoid investing in satellite broadcasting from Lebanon altogether, and forced Parliament to later cancel Article 8 and to allow government to fix prices by ministerial decree, “in order to ensure the competitiveness of Lebanon in the market of audiovisual services” (*As-Safir*, 7 January 2000).

#### 1.2.4. Laws on defamation

**1.2.4.1. 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 3 recognizable 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 (Boutros 1993, 35).

The Penal Code distinguishes between three crimes of defamation: *tahkeer*, *kadeh*, and *tham* (Articles 383 and 385) (7):

1. *Tham*: (or libel): is the *attribution of a fact* to a person (factual allegation), resulting in injury to his/her honor and dignity, even if only in the course of casting doubt about or questioning the character of this person.
2. *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).
3. *Tahkeer*: 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 were instances where statements made about certain individuals, 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 a specific word is an insult or not (Nashef & Kerbage 2000, 60).

According to the Penal Code, defamation becomes a crime and is more severely punishable when ‘publicized’ or made public, whether through the act of publication (print or broadcasting) or simply by occurring in public (Article 209). When not publicized, defamation (especially as *kadh* and *tham*) is not considered a criminal act: no prison sentence entails and only fines are applicable (Articles 582 and 584 of the Penal Code).

**1.2.4.2. 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, with malice 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 (Nashef & Kerbage 2000, 61).

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 (*Freedom House* 2003). Two specific aspects of the Lebanese defamation laws are worth noting because they demonstrate the extent to which defamation laws in Lebanon restrict the ability of both the general public and the media to criticize and scrutinize the government, i.e., the way it is done in thriving democracies: first, the differential treatment of individual citizens protected by these laws; and second, media defenses against defamation charges.



**1.2.4.3. “The law of the kings and heads of state”** To start with, the Lebanese Penal Code punishes those who are found guilty of any of the above mentioned defamation crimes with fines and prison sentences that are the highest (i.e., two years) when the reputation of the president or that of other presidents is harmed (Articles 383 to 389 in the Penal Code, 17 to 23 in the Press Law). According to Rafik Khoury, editor-in-chief of the *Al-Anwar* daily, 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 60s. At the time, Arab heads of state who resented being criticized in the Lebanese press consistently pressured the Lebanese president of the republic to introduce amendments to the Press Law in order to shield them from criticism (Khoury 2006). Eventually, an amendment to the Press Law was introduced in 1965 by a special decree by President Helou (Dajani 1992, 39). It is worth noting that the sentence for the same defamatory act (e.g., *kadeh*) is lowest when individuals and ordinary citizens are libeled in the media. In this case, the prison sentence for the insulting party is a minimum of one month (and a maximum of six) (Article 21 of legislative decree no. 104/1977). As for judges, public officials, administrators, and the army, defamation directed at them entails a prison sentence that can reach a maximum of 1 year (Articles 386 and 388 of the Penal Code). The highest penalty is reserved for defaming heads of state (a maximum of two years) (Ibid). In other words, the punishment for the same act of defamation is harsher the higher the office of the defamed person or entity. This is the opposite of what we find in many Western democracies concerning libel laws. Sweden, for instance, abolished, in the mid 1970s, laws protecting government institutions from insults or libelous statements, “on the grounds that, in a democratic society, government institutions should be open and responsive to all criticisms, even when based on lies” (*Legal Provisions* 2003, 59). Even when legal provisions (similar to Lebanon’s) exist in order to protect presidents, civil servants, flags and national emblems, as is the case in several countries of North America and Western Europe, the application (or practice) and interpretation of these provisions by the courts have favored the public’s need to criticize, even when this criticism is “sharp and obviously unfair” because “criticism of public officials is an acceptable and necessary part of democracy” (Ibid, 27; Francois 1994). In the case of Lebanon and several other Arab countries, existing defamation laws can be regarded as a major impediment to freedom of the press, preventing it from effectively functioning as a watchdog of governments in the Arab world (Dabbous-Sensenig 2005 a). They give higher protection from press criticism to those public officials and



civil servants who would need to be scrutinized the most, and contribute to the muffling of debate and the possibility of holding people in power accountable to the public. Recently, an opinion poll conducted by the Center for Strategic Studies at the University of Jordan showed that 77% of the Jordanian respondents felt they could not “criticize the government without fearing punishment” (*Middle East Broadcasters* 2006). Indeed, a cursory look at media legislation in the Arab world, including the latest ‘modernized’ versions, show that protecting the interests of the government continues to have priority over the public interest (Dabbous-Sensenig 2005 a).

**1.2.4.4. When truth is a defense in libel cases** Since libel laws in general entail the disclosure of specific factual allegations that are harmful to the reputation of individuals and groups, a logical question is whether defendants are still punished in those cases in which their defamatory allegations turn out to be true. In the US and several European countries, *truth* is a complete defense: one cannot be accused of libel if he or she is disclosing truthful information about some individual (excluding privacy-related issues), even if this information is defamatory (Francois 1994; *Legal Provisions* 2003). Another defense found in several of these countries relates to the ‘public interest’: factual allegations about an individual, especially a civil servant, may be shown to be wrong at the trial, but as long as the media defendant is not found to be negligent or malicious when the offensive and insulting statements were made, he/she is likely to be acquitted “because of the weight given to the public’s right to information about matters of public interest” (*Legal Provisions* 2003, 26).

In sum, two of the most prevalent media defenses against libel charges in several Western democracies are “truth” and (to a lesser extent) “the public interest”. In the case of Lebanon, the “public interest justification” is nonexistent except in the case of lower echelon public servants, while the truth value of defamatory statements only applies selectively, *depending on who is being defamed*. When private individuals and heads of state are libeled, defendants “are not allowed to prove the truthful nature of their allegations” and to 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 libeled party is a public servant. Court interpretations have extended this article to members of parliament as well (Boutros 1993, 52). According to Boutros, the fact that Article 387 allows truth as defense in libel cases involving



public servants serves the public interest (Boutros 1993, 52). It makes it possible for journalists to scrutinize (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 is the one wielding the most power (and therefore prone to abuse it the most), remains largely untouchable because of the nature of the Lebanese media laws.

**1.2.4.5. Implementation of defamation laws** Given the high legal protection provided to the Lebanese president against defamation, there has been no dearth of lawsuits against the media in Lebanon, especially the print media, which are often accused of defaming the president by casting him in a negative light.

Within a period of 10 days in 1996, 3 dailies and 2 weeklies were charged with defaming President Hrawi and Prime Minister Hariri (The State of Human Rights in Lebanon 2002). In 2002, one of Lebanon's private television stations (i.e., *Murr TV*) was shut down indefinitely by being charged, among other things, with harming the dignity of the head of state (Lahoud) and relations with Syria (see section 1.2.6.2). The decision was eventually reversed by Parliament in 2005, following the withdrawal of Syrian troops. In 2004, an off-shore Arab newspaper was taken to court and its editor convicted of tarnishing the reputation of Lebanese president Lahoud by reporting that he had escaped an assassination attempt while vacationing in Monte Carlo. The court ruled that such reporting was false (since no other news medium reported on it), "harmed the president's dignity", and was therefore libelous (*The Daily Star*, 24 December 2004). More recently, a famous talk show host from *Future TV* (or *FTV*), Zahi Wehbe, was taken to court for defaming president Lahoud based on an editorial he had written for the *Al-Mustakbal* daily, in which he vehemently criticized the unwillingness of the president to resign (Wehbe 2006) and ostensibly went as far as accusing him of being a murderer.

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 Mugarby, a lawyer and human rights advocate, with the crime of "defaming the military establishment and its officers" (Mugarby 2006). The prosecution of Mugarby followed testimony he previously had given at the European Parliament about human rights abuses (e.g., insults and torture) committed by the military against his clients (see also 1.4.1.).



### 1.2.5. Reasons for suspension and seizing of press cards

**1.2.5.1. 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 penalizing 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). As one legal expert noted, “a page in the long history of struggle for freedom of expression in the print media is thus turned over”, granting those guilty of “crimes of opinion” a special status compatible with the nature of their job and responsibilities (Boutros 1995, 16).

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 to confessional and racial hatred (Ibid, Articles 16; 20 to 23; and 25 respectively). However, the reduction of instances where the prison sentence can be imposed should still be considered an important step forward, having been indeed 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 carry out their duty or mission to serve the truth” (Boutros 1995, 18). To compensate for the removal of the prison sentence in some cases, fines were increased, this with the approval of the journalism lobby (Boutros 1994, 96).



## 1.2.6. Laws on closure and seizure

**1.2.6.1. 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 licenses or temporary closure of periodicals found to be in infringement of the law. Most of these harsh punishments, especially the withdrawal of a license, were eventually removed, while prison sentences were reduced in the 1994 amendment. Currently, a periodical with a license to publish exclusively non-political material can have its license 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 3 full years have elapsed as of the date that the license was revoked (Ibid).

Moreover, a licensed publication can be suspended temporarily because of other content-related infringements. Concerning the libeling of heads 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 the 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 6 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 license-related provisions of the above-mentioned law and related laws (namely the Penal Code and the Press Law) (Article 35). For a first time offence, the Minister of Information can close the station for a maximum of 3 days. For a second time offence committed within a year after the first one, the Council of Ministers can close down the station for a minimum of 3 days and a maximum of one month (the National Audiovisual Council has only consultative powers in this respect). Article 35 makes it possible, however, to contest the decision in a specialized court of law.

When compared with the Press Law, not only the imminent threat of closure, but also the choice of the body authorized to impose sanctions according to the 1994 Broadcast Law (i.e., the Minister of Information) are a clear set back. The 1994 amendment of the Press Law, for instance, replaced some of the harsh provisions related to completely shutting down a newspaper



in infringement of the law with increased fines and prison sentences for a first time offence, and added a temporary “suspension” of 2 months for a second time offence (e.g., Article 23 of legislative decree no. 104/1977 as amended by law no. 330/1994). It also entrusted the relevant courts with the task of dealing with content infringements. Moreover, one of the positive amendments to legislative decree no. 104/1977 regarding freedom of the press also concerned Articles 23 (paragraph 2) about libeling heads of state and Article 25 related to threatening public security or inciting confessional hatred. Prior to law 330/1994, which amended legislative decree no. 104/1977, a publication in infringement of these articles could be stopped for several days by the General Prosecutor, without the need for a ruling by the appropriate court (e.g., Publications Court). This was indeed, as many journalists argued, a case of conflict of interest and lack of separation of powers, where an “opponent” (in this case the prosecution) is also the “judge” (Boutros 1995, 17). As a result of the 1994 amendments of Articles 23 and 25, the General Prosecutor is no longer allowed by law to stop publication, can only seize the problematic edition, and should refer the case to the relevant court whose prerogative it is to issue a prison sentence of up to 3 years (for infringing Article 25).

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 ultimately responsible for temporarily shutting down stations in infringement of the law (for administrative or content-related reasons specified in this law), is actually opening the door for arbitrariness and abuse of power. The result is a clear case of conflict of interest, especially when the target of media criticism (i.e., the government) is also the arbiter.

**1.2.6.2. 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 time infringement, the Minister of Information can prevent a station disrespecting content requirements from broadcasting for a maximum of 3 days (see also section 1.3.2.). 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 National Audiovisual Council is given only a “consultative” function in this respect, and has none of the monitoring and enforcement powers of the (relatively) independent regulatory authorities in several Western democracies. The American Federal Communications Commission (or FCC),



for instance, has the power to make rules and regulations within the framework of the 1934 Telecommunications Act, and “these regulations carry the force of the law” (Pember 2004, 555). The commission has broad powers when dealing with US broadcasters, with some of its key powers (in addition to licensing) being related to program content control. These powers are such that, although censorship is strictly forbidden by the Telecommunications Act (section 326) for First Amendment considerations, the FCC, with the help of the courts, was able to interpret section 326 in ways that allowed it to censor racist or indecent programming (Pember 2004, 556).

Interestingly, the only case in post-Civil War Lebanon in which a licensed television station (*Murr TV*) was permanently shut down was not the result 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. According to Article 68 of this law, “it is strictly forbidden for all audiovisual media, as well as for non-political print media, to engage in political advertising during the election campaign period”. The same article warns that failure to abide by this ban on all types of political advertising will lead to “total closure based on a decision by the Publications Court”. In September 2002, following the summer by-elections in the Metn region, *Murr TV* (or *MTV*) was convicted for infringing Article 68 by airing political ads promoting (indirectly) Gabriel Murr (one of the major shareholders at *MTV*), as well as a political program (*Sajjel Mawkaf* or *Take a Stand*) that exclusively hosted guests and prominent politicians who were explicitly pro-Gabriel Murr. The conviction, based on Article 68, ordered the “shutting down and total closure of *Murr TV* and *Mount Lebanon Radio*”, which is owned by the same corporation that owns *MTV* (*Decision of the Publications Court*, 4 September 2002). The decision was based on a majority vote, with only one judge, Ghada Aoun, dissenting. As Aoun wrote in her dissenting opinion, though the talk show was in infringement of Article 68, the political ads were not. Rather than “include a clear and certain promotion of a specific candidate, they [i.e., the political ads] include general principles calling for freedom and urging citizens to exercise their right to vote” (Ghada Aoun, 4 September 2002). Indeed, all the political ads aired by *MTV* avoided naming specific candidates. Examples of these ads include the following: “Your voice is free, mobilize your voice for freedom”, and “they want your silence, freedom wants your voice”. Dissenting Judge Aoun also added that she clearly disagreed with the punishment inflicted on *MTV*, given that the infringement the station was found to be guilty of was not



“threatening enough to justify extreme procedures consisting of the closure of both stations” (Ibid).

*Murr TV*'s legal woes, however, did not start with the Metn by-elections. Almost a year earlier, in a letter sent by the National Audiovisual Council (NAC) to the Council of Ministers, the NAC condemned *MTV* for “spreading an atmosphere of panic, fear, and anxiety about the possibility of negative changes taking place in the essence of the democratic system in Lebanon at the hands of security services and armed forces and with the tacit approval by the President of the Republic” (i.e., Emile Lahoud). The NAC also accused the station of inciting confessional strife, for libeling the president by accusing him of squandering public funds, and for airing slogans and ads that are “inimical to the sister Arabic Republic of Syria” (NAC letter to the Council of Ministers, 9 August 2001). All these practices, the NAC concluded, made *MTV* lose the objectivity, balance, and diversity of opinion required by law.

The decision to close *MTV*, similar to the government's decision in September 1996 to award Category One licenses to just 4 television stations (see section 1.2.1.), created an uproar, bringing to the fore once again the issue of freedom of expression and the political climate that was responsible for muzzling it, while at the same time disregarding the rule of law. Even before the court reached a decision concerning *MTV*, then Minister of Information, Ghazi Aridi, was quoted as saying that the decision to prosecute *MTV* was “a political decision” (*L'Orient Le Jour*, 29 May 2002). Aridi, who more recently was reappointed to the same position in the government of Prime Minister Siniora, reiterated his total opposition to the unfair handling of the *MTV* case (8). Not only was the prosecution of *MTV* challenged by opposition forces and civil society, which accused the government of following illegal procedures (*An-Nahar*, 5 January 2003), Prime Minister Hariri himself admitted later in a television interview (albeit not in relation to the *MTV* case) that politics was indeed compromising the activities of the judiciary in the country (*An-Nahar*, 4 January 2003).

The *MTV* case, just like the *NTV* case prior to it (see 1.2.2.), can be considered as yet another example of individual political interests preventing the exercise of the rule of law and fair implementation when it comes to the Lebanese media. To start with, *MTV*, though arguably guilty of (direct or indirect) political campaigning during election time, was not the only television station in infringement of Article 68 of election law 171/2000, yet it was singled out and eventually permanently shut down. Indeed, on 3 January 2003, the Court of Appeals (*An-*



*nyaba al-amma al-tamyizyya*) received a notification from MP Butros Harb (among others), which accused all other operating television stations (i.e., state broadcaster *Tele Liban*, and privately-owned *LBC*, *NBN*, and *FTV*) of infringing Article 68 of election law no. 171/2000. The notification included as evidence a CD ROM which contained all political ads that the above-mentioned stations aired, which were in contravention of Article 68 (*An-Nahar*, 4 January 2003). According to the notification, the political ads aired, unlike *MTV*'s, were explicit in their promotion of specific candidates, prompting the Minister of Interior to issue an official complaint against all the TV stations in infringement of Article 68 (see also *The Daily Star*, 30 May 2002).

Finally, whereas law no. 531/1996 clearly states that interruption of satellite services is the prerogative of the Council of Ministers, in the case of *NTV* and its “problematic” would-be-show about reform in Saudi Arabia, this was not even the case (see section 1.2.2 for details). The satellite feed was interrupted on the 1<sup>st</sup> of January 2006 based on a personal decision by the Prime Minister, even before the Council of Ministers could convene as scheduled on the 9<sup>th</sup> of January in order to agree on such a decision, as mandated by Law 531/1996 (*The Daily Star*, 4 January 2006).

### **1.2.7. Laws for media in Arabic language and in non Arabic language**

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 which use languages other than Arabic, as long as the managing editor him/herself is “proficient in the language of the publication” (Article 23 paragraph 5). Moreover, 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. According to the Press Law, a “foreign publication” is one that is issued outside of Lebanon. This means that a publication is considered “foreign” even if it is published in Arabic, and by the same token periodicals published in languages other than Arabic are not considered to be “foreign” when published in Lebanon. Indeed, “the criterion is the place of publication and not the language of the publication” (Nashef and Kerbage 2000, 49). Legislative decree no. 74/1953, which regulates the number of periodicals permitted to be published in Lebanon, addresses explicitly the issue of language, by allowing the licensing of non-Arabic



language political periodicals, though it limits their number in comparison with the number of Arabic language periodicals (for more details, see section 2.2.1).

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. This also makes it possible, indirectly, to broadcast fully in a language other than Arabic, as long as the daily minimum requirement of news in Arabic is met (decree no. 7997/1996, chapter 3, paragraph 7) (see also section 2.2.1. on ‘Diverse ownership’).

### **1.2.8. Clear and reasonable grounds for sanctions**

As already discussed in section 1.2.5., the Press Law of 1962 underwent significant amendments that reduced the harshness of penalties against journalists and editors when they infringe content restrictions. Despite these amendments, however, carrying out journalistic duties in Lebanon remains fraught with danger, with disgruntled authorities capable of sending journalists to prison for disrespecting what are still broad and vague content restrictions (see section 1.3.2.).

Interestingly, since the end of the Civil War and the return of “normalcy” to the country, there has not been a single documented case of a journalist or editor serving a prison sentence for infringing content rules (*The State of Human Rights in Lebanon* 2002). This ‘improved’ situation (with respect to prison sentences for journalists based on what they write) was confirmed in the recent Information International survey results, in which a (slight) majority of media professionals (53%) reported that sanctions against journalists and media organizations are not arbitrarily imposed, and 46% said they did not believe that journalists are subjected to arbitrary criminal prosecution. According to the same survey, however, a significant number of media professionals (47%) fear reprisal when they express their views freely. Indeed, although no journalist has gone to prison in the last few years, many have received threats of physical harm (and were eventually killed) (see section 1.5.3.), others have faced libel charges by disgruntled government officials and have had to pay fines, while still others were victims of acts of intimidation by security forces (see section 1.5.2.). Indeed, prior to the Syrian withdrawal in 2005, numerous cases of harassment of critical journalists were documented, the most famous of which concerned the late *An-Nahar* journalist Samir Kassir, who was eventually killed in June 2005 in a bomb planted in his car shortly after the Syrian withdrawal. Though no press card was withheld or accusations based on the Press Law were leveled against him, he was harassed by the



Lebanese security officials who confiscated his passport at the airport upon his return from a job-related trip. According to Kassir himself, the security officials who supposedly were investigating the validity of his passport were actually (and illegally) getting back at him for having written an editorial critical of the Lebanese armed forces and the security services (*Middle East and North Africa* 2001, 2).

Another Lebanese journalist whose passport was confiscated is Raghida Dergham. On 19 June 2000, upon arriving at Beirut Airport while accompanying the then UN secretary-general Kofi Annan on his Middle East tour, Dergham's passport was withheld then returned with a cancellation stamp in it specifying that her passport cannot be renewed without the approval of the General Directorate of the Internal Security. At the time, security officials gave no legal justification for their action. Later, she was told that she had violated a Lebanese law prohibiting contact between Lebanese citizens and Israelis (Dergham had, a month earlier, attended a panel discussion in Washington that included an Israeli official, Uri Lubrani). More specifically, Article 278 of the Penal Code was evoked to justify the military indictment of Dergham (*Ibid*, 3). The article states that any Lebanese who provides food or shelter or establishes contact with a spy or enemy soldier is to be punished with temporary hard labor. The charges were eventually dismissed on 30 November 2000, but the case is another example of the type of harassment that journalists in Lebanon face because of writing that is critical of authorities. Indeed, it is believed that, as is the case with Kassir, Dergham was actually (and indirectly) punished in response to her earlier, critical coverage of the border dispute between Lebanon and Israel. What is noteworthy about the harassment of Kassir and Dergham is that, in both cases, the charges were not based on any provisions of the Press Law or any articles of the Penal Code related to freedom of expression or media content. It could be argued that for lack of being able to use those laws and articles that could indict a journalist, or perhaps even out of willingness to circumvent the appropriate judicial process (in case of infringement of the Press Law, for instance), the Lebanese authorities - specifically the security services - resorted to indirect and extra-judicial means to "get back" at critical journalists.



### 1.3. Censorship

#### 1.3.1. Official censorship

The Lebanese Constitution, in principle, offers the best guarantee against prior censorship, based on Article 13 which guarantees freedom of expression and freedom of the press. However, prior censorship of the press was introduced on more than one occasion, in cases when the country was going through acute political or security crises. In one such instance, on 1 January 1977, the government speedily issued a legislative decree allowing the exercise of prior censorship on all publications.

This was indeed a milestone in the history of the Lebanese press, whereby the following was to be enforced:

- a. All periodicals without exception are to be subjected to prior censorship.
- b. The General Directorate of the *Sûreté Générale* was to enforce decree no. 1/1977, by being given the authority to censor partially or entirely material going into print.
- c. If a periodical is issued in contravention to the orders issued by the General Directorate, all its issues can be confiscated, following a decision of the director general of the *Sûreté Générale*.

Decree no. 1/1977 also contained provisions related to fines and prison sentences up to 3 years. It was repealed a decade later, by law no. 14 of 25 February 1986.

While pre-censorship of the press is the exception and not the rule in the history of the young republic, the press and audiovisual media are subjected to (post) censorship by a variety of official bodies. These include: the General Directorate of the *Sûreté Générale*, the Minister of Information, the Public Prosecutor (*An-na'ib al-aam al-isti'nafi*), and the Council of Ministers. The role of the authority officially responsible for censorship depends on the medium itself (i.e., whether it is a newspaper, a terrestrial broadcaster, or a satellite channel).

In the case of print media, the Public Prosecutor is entitled to exercise post censorship by confiscating those issues which contain material which is “insulting to one of the officially recognized religions in the country, or which might lead to confessional and racial strife or which might threaten public safety” and so on (Article 25 of law no. 330/1994 amending legislative decree no. 104/1977). The role of the courts is of additional significance, with the prerogative to



impose prison sentences (up to 3 years) and fines that can reach a maximum of 100 million Lebanese pounds (c. \$ 67 000).

It is worth noting that Article 25 in the 1994 amendment of legislative decree no. 104/1977, although still quite restrictive, especially 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 is even referred to the courts. The amended article does away with the temporary suspension (of a publication) prior to processing the case in court.

Prior restraint (or prior censorship) when it comes to periodicals *and* broadcasting 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 the limitless possibilities for abuse during times of crisis), the article precludes the possibility for contesting the government’s decision to impose prior restraint by resorting to the relevant courts. It should be noted here that governments in Western democracies also exercise prior restraint during times of war, despite strongly protected press freedoms. Though there are arguably legitimate reasons to do so (e.g., denying the enemy strategic information), these governments have sometimes abused their power to enforce prior restraint, and have often used it as an excuse to shield the public from important information about the government’s “serious military blunders and questionable policies” (Pember 2004, 81). However, even in such ‘exceptional circumstances’, the media is able to contest the government’s decision in a court of law (for more details, see Pember 2004). The same cannot be said about the press in Lebanon when facing similar circumstances.

‘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 audiovisual media are free”, and are therefore not subjected to prior censorship the way films or plays are.

It should be noted here that the issue of prior-censorship of audiovisual programming was pushed for by Prime Minister Hariri, during the discussion of the audiovisual bill in Parliament in 1994. However, under immense opposition from some MPs, the suggestion was quickly dropped, with Hariri having to explain away his controversial position by attributing it to a



misunderstanding, and that “what was meant instead was post-censorship” (Dabbous-Sensenig 2003, 132).

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 General Security police before being produced and broadcast. Television scriptwriters send a copy of their script, which is then stamped, “page by page”, as a mark of official approval (Marshalian 2006). Scriptwriter Marshalian thus saw several parts of her episodes entirely crossed out, and had to either rewrite some of her scripts or drop the idea altogether when it was unacceptable for the censors (for more details see also section 1.3.2.). Interestingly, Marshalian was not aware that prior-censorship of television programs has no basis in legal texts, unlike the case with movies (Ibid).

In contrast to 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 by the Council of Ministers, which is granted through a ministerial decree. With regard to controlling the content of satellite transmission, the role of the Minister of Information is reduced to a “consultative” one, while the National Audiovisual Council is simply absent. Indeed, the Council of Ministers headed by Prime Minister Hariri used this prerogative more than once to forbid satellite service from transmitting Lebanese political programs (including news) (see 1.2.2.).

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 for appealing the decision or asking for financial compensation. Indeed, law no. 531/1996 for satellite broadcasting makes no direct mention of any judiciary proceedings that might be resorted to by broadcasters who would like to challenge the Council of Ministers decision deeming that they are in infringement of content requirements by the Council of Ministers. By contrast, 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). It may be argued though that challenging the government’s decision concerning satellite broadcasting is



still possible considering that Article 3 of law no. 531/96 states that the provisions of law no. 382/1994 are also applicable to satellite broadcasting.

It should be noted that soon after the ratification of law no. 531/1996 in Parliament in 1996, the Hariri government imposed prior censorship of news on both operating Lebanese satellite channels (*FTV* and *LBC*), by assigning a special “censorship team” to each station. *LBC* successfully challenged the decision by seeking a ruling against prior censorship from the State Advisory Council (Dajani 2001). On 8 January 1998, a blanket ban on news and political programs was introduced, again affecting the two Lebanese satellite broadcasters operating at the time (*LBC* and *FTV*) (the ban was eventually lifted) (see also section 1.4.1).

Because of the regulatory vacuum in which the cable distributors are operating, the scene is “chaotic”, with many citizens complaining to the authorities (in vain) about pornographic material distributed through cable (Aridi 2006). The only form of cable censorship which exists is informal or community-based and is practiced by the individual (illegal) 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 neighborhoods it is not even possible to receive *Fashion TV* with its scantily dressed models.

Though Lebanon still lacks legislation that regulates the internet, the content of this new medium is nonetheless subjected to censorship by the *Sûreté Générale*, by applying 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 3 April 2000, officers from the vice squad stormed the offices of *Destination*, a major Lebanese Internet Service Provider, and harassed the staff into revealing the identity and location of the owners of the ISP. The raid followed the registration of a domain name, *gaylebanon.com*, for a web site directed toward gay and lesbian Lebanese (International Gay 2000). It is worth noting that the officers, by making such a request, demonstrated little knowledge about the workings of this new technology, “initially believing that *Destination* had produced the website when in fact it was only hosting it” (Whitaker 2006, 137-138). Indeed, the colonel who led the vice squad in the *Destination* ‘raid’ believed the ISP was “broadcasting” immoral films, and *Destination*’s lawyer had to explain to him “that ISPs do not ‘broadcast’ and that users are able to navigate the Web freely” (Lebanon: Internet 2000).



Not only does the raid (and the subsequent arrest of Ziad Mugarby, *Destination's* owner) provide an example of the inapplicability of broadcast laws to the internet and the need for technology-specific legislation for this new medium, it is problematic in other respects as well. To start with, the prosecution of the owner of *Destination* and of Kamal el-Batal, the director of a Lebanese human rights organization (MIRSAD) who publicized 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 specialized court that deals with press and broadcasting issues (i.e., the Publications Court).

Second, while Lebanese laws (specifically Article 534 of the Lebanese Penal Code) explicitly forbid "acts against nature," a clause widely interpreted to mean homosexuality, neither homosexual identity per se is illegal, nor is it illegal to set up or maintain web sites with gay and lesbian themes, provided that they do not contain pornographic or obscene content (Gambill 2000). However, the Lebanese justice system, along with the censors of the *Sûreté Générale*, are generally homophobic and have often used Article 534 to prosecute homosexuals and to ban homosexual identity from the media in general (Marshalian 2006). Eventually, both the owner of *Destination*, along with the director of MIRSAD, narrowly escaped a prison sentence and ended up paying a fine of 300 000 Lebanese pounds (about \$200) each (Whitaker 2006, 138). It is probably this illegal and awkward handling of the entire *Destination* case which prompted el-Batal to refuse to see this incident as a simple case of censorship. In his opinion and in that of some other commentators, the case was part of an attempt by Syria, when it was still controlling the country, to close down Lebanese internet service providers, and reroute all internet traffic through Damascus (International Gay 2000).

### **1.3.2. Government directives on inappropriate content**

Print and broadcast media laws contain several directives concerning content, with most of these directives overlapping. Moreover, content related articles of the Penal Code apply to all “means of publication” (Article 209), especially 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).

Starting with the content restrictions common to all broadcast and print media, we find: insults, libel, blackmail, threatening 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 criminalizes “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 penalize 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, whereas the Press Law does not mention any restrictions concerning threatening public trust in the “authority of the country” or in its financial situation by spreading “false or exaggerated news”, the Penal Code does (Article 297). Legal expert Adel Boutros questions the applicability of Article 297 of the Penal Code to the print media, especially if the problematic financial news are not untruthful (Article 297 speaks of “untruthful or exaggerated news”) (Boutros 1993, 63). However, considering that a similar provision about reporting financial news was clearly introduced in the Book of Specifications or legislative decree no. 7997/1996 appended to the relatively recent Broadcast Law of 1994, a strong case can be made that legislators are keen on preventing the media from “broadcasting any economic topic or commentary capable of influencing directly or indirectly the soundness of the economy and the national currency” (legislative decree no. 7997/1996, Chapter 1, General Provisions, paragraph 8).

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

Looking at these content controls, one is struck both by the breadth and vagueness of these restrictions. It could be theoretically argued that not a single topic that is usually covered by the media (whether fiction or news) is not dealt with by one or more of the above-mentioned content related provisions, be it politics, religion, or any form of “indecent” behavior or talk. Worse yet, the 1994 Broadcast Law’s provision concerning covering the economic status of the country and its currency is highly problematic, and seems to amount to an outright censorship of *any* negative news about the economy of the country, *even if it is true*. Indeed, the editor-in-chief of one of the major Lebanese dailies was himself charged with destabilizing the Lebanese economy by publishing a report prepared by the Central Bank of Lebanon, in which it was foretold that the



Lebanese Lira (or Pound) was going to be significantly devalued because of the Civil War (which eventually happened) (Khoury 2006).

Finally, all these content restrictions, with the notable exception of libel, which is defined by law (see section 1.2.4.), are worded in vague terms and can be easily abused by the authorities in their attempt to use the law to justify muzzling freedom of expression (see the case of ISP *Destination* in section 1.3.1). 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*)" (Naaman and Tohme 2001).

Though, from a legal perspective, directives on inappropriate content are very broad and vague, not all topics are considered equally "taboo" or are "equally censored". Some topics, for reasons mostly related to the cultural and political make-up of the country, are more sensitive than others, and are therefore more closely monitored, censored, or prosecuted by the authorities. According to the Information International survey of experts, the majority of media professionals believe that the media can report openly on political issues (71%), social issues (69.2%), in addition to economics, culture, and sports (an aggregate of 42%). However, they consider two issues to be entirely off limits when it comes to reporting: corruption and religion (60.4% and 56.2% respectively). These findings are generally corroborated by the results of the qualitative interviews with media professionals conducted for this study, though many of those interviewed also added that sex and elections were part of the list of big taboos, whereas open criticism of Syria became possible (even pervasive) after the latter's official withdrawal from Lebanon. For instance, Diana Mkalled, a journalist and documentary filmmaker at *Future TV*, believes there are still many political taboos that no one dares to discuss (e.g., the war crimes committed by politicians currently in power; and sensitive issues related to women, such as honor crimes) (Mkalled 2006). Mkalled mentioned several news reports/documentaries she worked on which were never aired, and cited "politics" and the "political climate", and not the law or any specific content directives, as the main justification for these acts of prior-censorship. In only one instance was she able to find out why one of her episodes was pre-censored (by the management in her own station). When the Hariri government prevented the broadcasting of the *NTV* satellite show about Saudi Arabia (see details of the *NTV* case in section 1.2.2), Mkalled saw her episode about Kurds in northern Iraq (completed prior to the 2003 war) also being prevented from being



aired on *FTV*. As she explained, since Hariri himself had taken the decision to ban the *NTV* episode deemed critical of Saudi Arabia, he did not want to be accused of allowing a show critical of another country (i.e., Iraq in this case) to be aired on his own station (*FTV*). He thus banned her own investigative report about Kurds in Iraq, “in an attempt to apply the same criteria to himself”; this is particularly significant considering that nothing in the texts of the law justified banning her show based on its content (Mkalled 2006).

Marshallian, a television scriptwriter, related a different experience with prior censorship in an interview for this study. In her account, her woes with the Lebanese censors were not restricted to issues of religion, sex, and politics. These censors also intervened whenever they found evidence of “inappropriate social behavior” by one of her fictive characters. In one instance, the censor struck out a statement in which a female character, addressing her mean and senile mother-in-law, tells her to “get lost!” The censor justified his act by telling Marshallian that “this is an old woman and one cannot talk to her this way” (Marshallian 2006). Needless to add, nothing in the texts of the existing laws which deal with media content justifies such censorship, unless “public morals” is interpreted so broadly as to include the very tone and attitude with which fictive characters in conflict address each other. Marshallian also suffers consistently from prior-censorship relating to religion. For instance, she is not allowed to give her television characters names that clearly indicate their religion or confession (e.g., Mohammad or Rita). In one episode, she saw her entire script rejected, because it dealt with both the issues of religion and racism. Her episode sought to portray the racism rampant in Lebanese society, through the story of a Lebanese woman who goes to an agency providing Sri Lankan housemaids. Marshallian wanted to show how Lebanese women picked these maids at the agencies “as if they were buying cucumbers”. She even made one of these women comment with disgust about one of the maid’s appearance by saying that “she will scare the kids”. In that same episode, Marshallian had the Sri Lankan maid, who is a Buddhist, and was being prevented by her employers from practicing her religion, pray in secret after hanging a picture of Buddha in her bathroom (Marshallian 2006).

Marshallian tried in vain to save her story from being censored by arguing that she often witnessed herself the racism practiced against female guest workers in Lebanon. The censor, however, rejected the entire episode because, in his opinion, neither do Lebanese women treat their foreign maids badly nor is it acceptable to post a picture of Buddha, who is “neither



Christian nor Muslim” (Marshalian 2006). Considering the vast number of issues that the censor can reject or interfere with, it is no wonder, according to Marshalian, that the Lebanese viewers find local drama “so bland and boring” (Marshalian 2006).

What is particularly revealing about many of the censorship cases occurring with regard to the Lebanese media is that they often reflect the biases of the Lebanese society, and are not just an expression of written directives related to content. To start with, it is clear that some topics are *legally* and *explicitly* off limits, especially when they threaten the existing power structures. One such topic is criticism of the power elites and authority in general – the legal row and street riots over *LBC*’s parody of Hizbollah’s secretary general Hassan Nasrallah being the latest case in point (*An-Nahar*, 3 June 2006). Moreover, one cannot question the deeply rooted confessional system and “coexistence” among the various confessional groups, or the related (mandatory) belief in the monotheistic God. A few years ago, one Christian Lebanese poet, Akl Aweet, was accused of blasphemy by Muslim clerics and came close to prosecution for publishing an editorial piece in the *An-Nahar* daily in which he had expressed his anger at God for failing to stop injustice in Iraq and Palestine, and in which he doubted, in a Job-like fashion, the existence of a just God (Attacks on the Press 2003). In 1996, similar (yet unsuccessful) blasphemy charges were leveled against singer Marcel Khalife who had angered Muslim authorities by singing verses from the Koran (The State of Human Rights in Lebanon 2002).

Second, content directives are often applied selectively. Many discriminatory media portrayals are neither censored nor prosecuted, and often do not even generate 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 is mostly the case when some ethnic or religious groups, usually weak “Others”, are portrayed, such as members of Jehovah’s Witnesses and other non-recognized minority sects, but mostly the South Asian or African female guest workers, and more recently, female Russian dancers in Lebanon (see also The State of Human Rights in Lebanon 2002; Marshalian 2006 ). In such cases, even blatantly racist portrayals fail to attract the attention of the censor or the general public and civil society (Mkalled 2006; Dabbous-Sensenig 2001). By contrast, when the “Other” is a member of a powerful and friendly country, even the slightest, legitimately critical portrayal can be easily censored. This was the case in a recent script submitted by Marshalian about the period of Ottoman rule over Lebanon. She was



strictly instructed by the *Sûreté Générale* censor not to use the word “Turk” in her script, in order not to offend Turkey. Instead, she had to stick to the less problematic and more historically distant word “Ottoman” (Marshalian 2006).

Thirdly, censorship sometimes takes place in order to muzzle freedom of expression, even when no legal texts exist to justify it. This is, for instance, the case when 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, such 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. It should be noted that only recently was *NTV* able to break a major taboo in this respect, openly discussing, without any legal repercussions, the issue of homosexuality in Lebanese society in one of its most popular shows. The show, titled *Al-Hall bi Idak*, hosted a member of *Helem* (a Lebanese organization fighting for the human rights of homosexuals), a homosexual guest, and a journalist and a psychotherapist who both defended homosexuality (episodes of 2 and 9 May 2006) (see also section 1.3.3. on ‘Self-censorship’, and 2.2.2. on ‘Expression of pluralistic views’).

**1.3.2.1. Ability to cover good governance issues** As already mentioned in the above section, the majority of media experts surveyed felt media freedom was least developed when it came to reporting on the topic of corruption in the country. More importantly, this percentage was highest on the list of topics that the Lebanese media could not discuss freely, followed closely by religion (56%). Indeed, as argued in the Lebanese Center for Policy Studies report on ‘The Print Media and Corruption in Lebanon’, there have been some attempts by two major Lebanese dailies (*The Daily Star* and *An-Nahar*) to report on bribes. Both newspapers even published a ‘Rough Guide to Bribery’ which listed bribery prices in various public sector offices. However, the same report added that these attempts remain an exception, and that the Lebanese media in general are characterized by a lack of “aggressive” reporting on the issue of corruption in public administration and among politicians (Safa n.d.).

Though there are no documented cases of prosecution of newspapers reporting on good governance, the situation seems to be markedly different when it comes to reporting on the issue on local television. In one case, the Lebanese government forcefully interfered and prevented the broadcasting of a satellite show discussing governance in Saudi Arabia. The Hariri government



banned, before it even had the chance to be broadcast, a political program on *NTV* (or *New TV*) - the television station associated with businessman and Hariri business rival Tahseen Khayat (see details in section 1.2.2.). The argument put forth by the government was based on a content restriction in Article 3 of law 531/1996 which bans satellite programming that might hurt the good relations of Lebanon with Arab and other neighboring countries. As long as such a provision exists, needless to add, it is very risky for satellite media to cover boldly, and without fear of retribution, issues of good governance in the entire Arab world, and not just in Lebanon.

Another more recent *NTV* show covering good governance in Lebanon was also at the center of another legal controversy. This time, the ‘problematic’ episode of *Al-Fasad* (literally ‘Corruption’), broadcast on 10 March 2006, targeted the Lebanese judiciary, accusing it of corruption. As evidence against the corrupt courts, the episode used live testimonies in addition to actual documents containing court verdicts which granted a former Lebanese minister two million dollars in compensation for closing down the illegal quarries he owned. The episode followed no less than 50 others which dealt with various aspects and sources of corruption in the country. According to its presenter Ghada Eid, after dozens of shows on corruption in Lebanon, she realized that “the root of the problem lies in our judicial system, and that I had to deal with it” (*Allo Magazine* 2006). In a personal interview with her, Eid stated that she was convinced that “the judiciary during the (Syrian) custodianship was not free and it still isn’t”, and what is needed is for politicians to stop interfering in the work of the judiciary (Eid 2006).

It was following the broadcasting of this specific episode on judicial corruption that Eid was arrested and summoned to court, on charges of libeling the judiciary. *NTV* was also prevented from airing the same episode again the following day, as scheduled. A few days later, Eid was interrogated during long hours in a criminal (and not publications) court, and was asked to promise, in writing, not to “harm the judiciary” in the future; knowing that she was scheduled to broadcast the second part of the episode the following week (Eid 2006). As for the libel charges leveled against her, they were based on phrases such as “the judiciary is not in good shape”, “we have to discuss the corrupt judiciary”, “10 murders have been committed since the 14<sup>th</sup> of March [2005] and we still know nothing about them”, and “the umbrella of protection over the heads of the thieves and those who are corrupt still exists” (Eid 2006). ). In her defense, Eid argued that she was not harming the judiciary, that her “goal was to reform it instead”, and that although the law contains provisions dealing with libel, it does not prevent journalists from scrutinizing the



performance of the state powers (i.e., the legislative, executive, and judiciary branches) (Eid 2006). At the time of the interview, her hearing was scheduled to take place on 6 June 2006, but Eid believed she would not receive a prison sentence, but (quite expectedly) will have to pay a fine instead (Eid 2006).

**1.3.2.2. Regulation of international media** Article 50 of the 1962 Press Law regulates the content and licensing terms of international publications. To start with, 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” and “incites to confessional strife.” Any infringement of the ministerial ban is punishable with a prison sentence, a fine, or both. Moreover, according to the same article, any publication originally printed outside of Lebanon cannot start being printed in the country without a license respecting the terms of the 1962 Press Law and legislative decree no. 74/1953. However, the more recent law no. 152/1999 allows non-Arabic language international periodicals which are in circulation outside of Lebanon to be printed in the country. The license to print in Lebanon is granted by decree, after consultation with the union of press owners. In order to obtain the license, the international publication has to be legal in its country of origin and has to have a representative office in Lebanon. If its publisher wishes to distribute copies in Lebanon, the international publication is then subjected to the provisions of the Press Law of 1962. A year after law no. 152/1999 was passed; the local English speaking newspaper (*The Daily Star*) signed an exclusive marketing representation, printing, and distribution agreement with the *International Herald Tribune (IHT)*. This agreement made it possible to distribute both papers as a single product to subscribers in Lebanon. However, since then, there were several instances when subscribers in the country did not receive their *IHT* copy because of censorship. One such censorship case occurred following the distribution in Lebanon of the *IHT* issue of 5 April 2002, which featured an advertisement by the (pro-Israeli) Anti-Defamation League (or ADL). The advertisement expressed support for Israel, referring to it as “a nation under terrorist attack”. Charges were consequently pressed against the *IHT*, through its Lebanese representative Jamil Mroue, publisher and editor-in-chief of *The Daily Star*. The charges were based on Article 295 of the Penal Code and Article 50 of the Press Law, which “prohibit views aimed at ‘undermining national feeling’ and ‘stirring up racism’” (*The Daily Star*, 12 April 2002). When a similar pro-



Israeli ad ran again in the *IHT* issue of 11 April 2002, a note from *The Daily Star* publisher explained that “a decision [was] taken jointly by *The Daily Star* and the *IHT* that the latter not be printed so as not to break the law” (*The Daily Star*, 15 April 2002). Another note from the publisher warned two weeks later that local subscribers were not going to receive their copy of the *IHT* “because of advertising content” (*The Daily Star*, 30 April 2002).

The above *IHT* censorship case is far from unique. International periodicals imported into Lebanon are often censored for a variety of reasons. In one instance, the *Newsweek* issue of 11 February 2002 was banned because it featured a Turkish portrayal of the Prophet Mohammad along with the angel Gabriel, even though the article illustrated by this historical drawing was itself a very positive comparative study of Islam and Christianity. *Le Monde*, *Courrier International*, *The Herald Tribune*, *The Financial Times*, and several other international publications which featured articles about Syria following the death of its president Assad were prevented from entering the country in June 2000, because they “gave less than glorious accounts of the Syrian leader’s life” (Naaman and Tohme 2001; *Courrier International* 2001).

As far as other imported international media are concerned, a broad range of products are checked before their local release by the *Sûreté Générale* (for internet censorship see section 1.3.1). Thus, in addition to newspapers, we find books, CDs, DVDs, films, videos, and magazines. The *Sûreté Générale* is mostly keen on making sure that none of this imported material infringes on public morals, discusses religion or controversial political issues, or presents a pro-Israeli (or even pro-Jewish) stance (see also section 1.3.2. on directives related to content).

Examples of books banned include but are not limited to Rushdie’s *The Satanic Verses*, Brown’s *The Da Vinci Code*, Fiske’s *Pity the Nation*, and Haeri’s *Law of Desire*. Ironically, some of these books may be available in their translated Arabic version, because, according to a *Sûreté Générale* source, “censorship does not apply to books published locally unless they’re for export” (Naaman and Tohme 2001, 7; *The State of Human Rights in Lebanon* 2002).

CDs, for instance, are either banned for featuring Jewish or pro-Israeli artists, or because they feature rock music by supposedly ‘satanic’ groups such as Motley Crue, Kiss, Hole, Pink Floyd, and Guns ‘n’ Roses. As for films, they are banned if they, their director, or one of their actors are on the *Sûreté Générale* blacklist, or “if the film contains themes that harm Lebanon’s



relationship with other Arab states, Israeli propaganda or encourages devil worship” (Naaman and Tohme 2001).

According to a *Sûreté Générale* officer who was interviewed by the author in March 2002 and who wished to speak on conditions of anonymity, there are no clear, written guidelines for censorship, and the censor has instead to use his/her commonsense, and follow some “general principles”. In his opinion, for instance, “Israeli propaganda” can be interpreted as anything that depicts Jews, Zionists, or Israel in a positive light, such as being “strong” or “clever”. Moreover, Arabic subtitles of Western films are also closely monitored, and are not allowed to refer in the translation to the Jewish identity of a character. By way of example, Lebanese audiences who relied on subtitles when watching the Hollywood feature *Meet the Parents* never knew that the character played by Ben Stiller was Jewish – an omission which clearly affects the dramatic/comic effect of the storyline. It is worth noting that, by contrast to films shown in Lebanese movie theaters, films that feature explicitly positive Jewish characters (e.g., *Keep the Faith*) are shown uncensored on cable television in Lebanon. This is probably so because cable content and distribution is still unregulated in Lebanon. There is, by contrast, censorship by individual (illegal) cable distributors, who, mostly under pressure from their local conservative subscribers, remove problematic material from their offering (see also 1.3.1.).

Other taboos related to foreign films and television programs (either shown or broadcast in or from Lebanon) that the *Sûreté Générale* censors keeps an eye on relate to religion. In *Bruce Almighty*, for instance, the subtitles refer to the character of ‘God’ played by Morgan Freeman as ‘destiny’ instead, considering that it is taboo to play the role of God (or the monotheistic prophets) according to Muslim tradition. According to the same anonymous *Sûreté Générale* officer interviewed, when the censor is in doubt as to what might offend one of the recognized monotheistic confessions in Lebanon - Judaism is officially recognized in Lebanon but it does not count for obvious political reasons – the highest Christian or Muslim religious authorities in Lebanon are contacted for their advice.

As for intimate sex scenes, there are no clear guidelines either, and these are prone to change with time. At the time of the interview, the same anonymous officer seemed to follow instructions from superiors who allowed female breasts to show for 10 seconds, a vagina for 2 seconds, bottoms for 5 seconds, and a French kiss for 15 seconds. By contrast, no male genitalia or gay and lesbian sexual acts were allowed whatsoever.



Finally, it should be noted that film importers are taking a risk when buying and importing films into the country. Although they are aware of the existence of (unwritten) censorship guidelines and a blacklist for audiovisual products, none of them has a clear idea about their content. As such, they are forced to use their own judgment when importing movies (Naaman and Tohme 2001).

Not only is the ‘screening’ process conducted by the *Sûreté Générale* based on unwritten, very hazy, and often arbitrary guidelines (the personality of the individual censor or of his/her superiors play a role here), it is also both lengthy and costly: local dealers are charged for the cost of having every imported item reviewed by the *Sûreté Générale* (e.g., \$33 for each DVD), and they have to pay the fee all over again if the already reviewed item is imported again. Such a policy, many believe, “appears to be devised to get the maximum amount from Lebanon’s already cash-strapped businesspeople,” especially considering that old-style censorship is inefficient or obsolete in the satellite and internet age (Naaman and Tohme 2001, 7).

### 1.3.3 Self-censorship

Section 1.3.2. dealt rather extensively with the issue of official censorship, and the various problems relating to government directives on inappropriate media content. The problem is complicated by the fact that implementation of censorship laws and directives on content is, in the final analysis, mostly dependent on the prevailing political climate and the political power configuration at any given time. Minister of Information Aridi himself very recently complained about “politicians exerting pressure on media institutions and misleading public opinion” (*The Daily Star*, 20 June 2006). Consequently, not only do journalists generally resort to self-censorship in order to avoid problems with the law, the Lebanese press corps has introduced an overly zealous code of ethics on more than one occasion since the mid-20<sup>th</sup> century. Among others, the following codes of ethics were introduced: on 4 November 1958, following the political crisis in that same year; on 26 February 1965, following press campaigns against the policies of some Arab countries; on 4 February 1974 (for details about the 1974 code see also section 2.1.1.); and on 16 May 2005, in order to regulate media coverage during the upcoming elections. Moreover, on 20 November 1978, 3 years into the Civil War, a statement issued by the Lebanese union of press owners urged owners and editors-in-chief to exercise self-censorship. The justification for this decision was the sense of duty felt by practitioners in the field in



response to the call for restraint made during a meeting of Arab ministers in Beit-el-deen, Lebanon (*As-Safir*, 21 November 1978).

Personal interviews conducted with media professionals for the purpose of the present research showed that one of the most troubling issues for them, and one that might lead to excessive self-censorship, is their incapability of figuring out whether a given problematic media portrayal will lead to official censorship and sanctions or not. According to Kassem Soueid, director of political programming at *NBN*, “there is a great problem in the current legal framework (...), political circumstances determine our fate: one time they decide to apply the law and another they simply forego it. There are no clear guidelines...there is legislation, but there is moodiness in the implementation of the law” (Soueid 2006). Several media professionals interviewed for this study also vehemently complained about the lack of clear guidelines related to content, and believed that implementation and interpretation of content directives were mostly the result of “politics”, and not of any clearly identifiable legal text or legislative process (Kouyoumjian 2006; Mkalled 2006; Marshalian 2006; Omar 2006; Eid 2006). The Information International survey of experts corroborated these findings by showing that whereas 52% of media professionals believed that media laws clearly state what constitutes an act of defamation, 54% of respondents said that defamation laws are misused in practice by the authorities who wish to threaten the media and to keep them in check whenever necessary.

In such a legally precarious climate, it is no wonder that many media professionals tend to resort to self-censorship as a safety mechanism to avoid unpredictable retribution by the authorities (*The State of Human Rights in Lebanon* 2002). A *Daily Star* journalist who preferred to remain anonymous complained that self-censorship was sometimes exercised by the editorial staff at the newspaper. As the journalist explained, on sensitive issues such as those relating to gays and lesbians:

Many times the stories were blocked. Sometimes they had already been written, but were taken off the page. On other occasions, especially when a reporter who had the confidence of the chief editors wrote something, we were able to print an article on gays – those were usually positive and written against discrimination.

In the views of scriptwriter Marshalian, since the guidelines followed by the censor of the *Sûreté Générale* are often “irrational”, “nonsensical”, and difficult to fathom or anticipate, both self-censorship and prior-censorship become a necessity: On the one hand, producers can avoid legal expenses related to material that will get them in trouble with the authorities once it is



broadcast, on the other hand scriptwriters prefer to write coherent scripts that they know will be “approved of” in advance, rather than have key scenes removed after production is over - an omission which often deeply affects the meaning and flow of the entire cultural product (Marshalian 2006).

To sum up, whereas in recent years no media professionals were prosecuted or imprisoned because of what they wrote or broadcast, self-censorship has increased (*The State of Human Rights in Lebanon* 2002). According to the Information International national survey, however, opinion among media experts seems to be divided concerning the pervasiveness of self-censorship (42% disagree that it is hindering the independence of the media, while 40% agree). In any case, self-censorship seems to be less pervasive than in any other Arab country included in the survey. Moreover, the only major positive change detected with regard to self-censorship relates to the coverage of Syrian issues. According to *FTV* journalist Mkalled, the department of political programming (except for the news bulletin) was eventually cancelled during the Syrian occupation because of the myriad of problems that the political shows were causing the station (Mkalled 2006). “Now”, she adds, “the margin for political expression is significantly greater”, and *FTV* is in the process of reintroducing more political programming into its grid (Mkalled 2006). Indeed, the freedom to express anti-Syrian sentiment has reached such great proportions that some of the media professionals interviewed for this study even complained that the boldness with which Syria can now be criticized often borders on insult and is done without evidence, steering the media away from professionalism (Soueid 2006; Mkalled 2006).

#### **1.4. Independence from governmental and non-governmental influences**

##### **1.4.1. Media independence**

The recent Information International expert survey is quite revealing and detailed in its gauging of factors that influence the independence of media outlets. According to the survey, major influences (on media content) cited by media experts included advertisers (72.1%), political groups (71.3%), the Lebanese government (66.9%), foreign governments (60.4%), religious/sectarian groups (58.9%), and the military/security services (53.3%). By contrast, the majority of experts surveyed (73%) found that the media was influenced the least by civil society organizations. The fact the advertisers’ influence topped the list is not surprising, considering



that, with the exception of the state-owned radio and television, all other broadcast media are privately-owned commercial ventures which rely on advertising for income. Celebrity journalist and talk show host at *FTV*, Zaven Koyoumjian, who was interviewed by the author for the purpose of the present research, recounts an incident involving a show on smoking he intended to produce, but which was eventually cancelled for fear of losing the client/advertiser:

When I decided to make the show about smoking, we were called by the Marlboro agents in Lebanon who told us that they would cancel their advertising budget if we went ahead with the show. They did not tell us to cancel the show. At *FTV*, we were left with two choices: either make an episode about smoking which will be aired once and will probably not change the smoking habits of viewers...or lose a million dollars in advertising money for Marlboro. Finally they decided that smokers will be smokers and that they did not want to lose Marlboro (Kouyoumjian 2006).

The Information International expert survey also showed that various forms of political pressure (local and foreign) closely follow advertising as a major influence on media content. Indeed, as already demonstrated in the present study, when the Hariri government decided to enforce a blanket ban on satellite news broadcast by Lebanese TV stations in 1998 (see section 1.3.1.), President Hrawi backed the government's decision. Referring to the two political talk shows broadcast on *LBC*'s satellite channel, which prompted the blanket ban, Hrawi stated that that these shows caused some diplomatic sources to complain that the political interviews broadcast on Lebanese satellite channels "have an impact on Lebanon's reputation and have led a great number of businessmen to have doubts about investing in the country" (*As-Safir*, 9 January 1998). It is worth noting that Hariri and some other members of his government had initially preferred prior censorship of satellite news over banning it outright, having realized that a blanket ban on political programming would itself hurt the image of Lebanon as a country with a reputation for having free media. However, short of being able to do that, due to an earlier decision by the Advisory Council against prior censorship, the Hariri government had to resort to a ministerial decision to ban satellite news and political programming altogether (*As-Safir*, 8 January 1998).

The closure of *Murr TV* (or *MTV*) not only exemplifies the selectivity involved in implementing the law, it also shows the extent to which the fate of a media institution, which is singled out and penalized for infringing the laws, is closely dependent on its influence and status with the respective power elite which can provide it with local political backing. This case also exemplifies the external influence – e.g. the so-called "custodianship" - of countries like Syria



(and to some extent Saudi Arabia) on domestic politics and the implementation of laws in Lebanon (9). *MTV* was owned by Gabriel Murr, a political opponent of pro-Syrian President Lahoud and the then pro-Syrian Minister of Interior, Elias El Murr (nephew of Gabriel Murr and then son-in-law of President Lahoud). During the Syrian military ‘presence’ in Lebanon, *MTV* lacked the appropriate political backing to keep it open after having antagonized the local pro-Syrian power elites. *NTV*, by contrast, had the support of President Lahoud, while at the same time consistently being critical of Prime Minister Hariri. Its relentless criticism of Hariri led to its closure in December 2003, because a show about reform in Saudi Arabia was about to air. However, the backing of pro-Syrian Lahoud, who intervened against the will of Hariri through Minister of Telecommunications Qordahi, helped to re-open *NTV*. This decision by Qordahi and Lahoud prompted Hariri’s “tit-for tat” response that *MTV* should, in turn, be re-opened on a reciprocal basis (see section 1.2.2. for details).

Parliament eventually introduced an amendment to Article 68 of the election law of 2000 shortly after the Syrian withdrawal on 26 April 2005 and *MTV* was indeed allowed to resume operation, although broadcasting has not begun to date. Both of these cases (i.e., *NTV* and *MTV*) exemplify, among other things, the extent to which (often personal) political interests and external factors influence (and hamper) the rule of law in the country (10).

The Mugarby defamation case discussed in section 1.2.4.5. brings to the fore a different set of external (sometimes positive) factors affecting the independence of the media in particular and the practice of free speech in the country in general. The lawsuit against Mugarby, which drew wide publicity and indignation (even intervention from the European Parliament), was dropped on 15 April 2006, just two days before the set date of the trial. According to Mugarby, this was the consequence of mounting international pressure both by the EU and major international human rights organizations (11). Though this case illustrates the positive role that can be played by external international pressure in order to secure freedom of expression and the possibility of criticizing powerful state agents in the country, it does bring up the issue of continuing restrictions on freedom, even after the Syrian withdrawal. Mugarby duly notes that the military abuses and the curbing of freedom of expression were dominant practices during the Syrian ‘presence’ in the country (the first such case against him was filed in 1992); and that these practices did not stop or decrease after the Syrian withdrawal (12). In this respect, Mugarby’s



views echo Eid's criticism of the judiciary in Lebanon after the Syrian withdrawal (see section 1.3.2.1. on *NTV*'s show on corruption, under 'Ability to cover good governance issues').

#### 1.4.2. Financial viability

The Press Law contains two control mechanisms in order to secure the financial and the editorial independence of local newspapers: Lebanese ownership and control of income. Section 1.2.3.2. has already dealt with the provision that 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, and to punish 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 still wishing to own a Lebanese paper were registering their shares under the name of Lebanese citizens as a cover, after having concluded secret agreements with them (Dajani 1992, 39). Similarly, the Press Law has been incapable of securing the financial independence of Lebanese newspapers: a very recent interview with one of the journalists/editors in a leading Lebanese newspaper, who wished to remain anonymous, confirmed that the practice of getting subsidies is still common among Lebanese newspapers, including the newspaper he works for which relies heavily on illegal foreign funding for survival.

According to *LBC*'s CEO Pierre Daher, the reasons for the 1998 ban on satellite news and political programming were more economic than political in nature. His station, being one of the most popular Arab satellite stations, was a fierce competitor to Saudi backed *MBC* (or *Middle East Broadcasting Center*) and because of this the Saudi-backed Prime Minister Hariri attempted to sideline it (Sakr 2001, 54). If this can indeed be assumed to be the case, then big business interests, and not just personal/family and confessional power interests, could be seen as some of the major external, extra-legal factors that negatively affect the rule of law in post-Civil War Lebanon.

Another example of how economic interests can affect the rule of law in Lebanon relates to the state-owned broadcaster, *Tele Liban* (*TL*). One main reason accounting for the continuing neglect



of *TL* lies in the fact that the very political elites responsible for regulating it and revamping it were also the ones who would suffer the most if *TL* became successful and capable of competing with their own private stations over the dwindling advertising pie (Dabbous-Sensenig 2005).

**1.4.2.1. Fair allocation of advertising** The Broadcast Law of 1994 is the only legal text regulating the media which deals with advertising. It contains content-related provisions (Articles 36 and 37), in addition to a single article (Article 39) that forbids monopoly in the advertising business by requiring each advertising agency (commonly referred to in Lebanon and the 1994 Broadcast Law as ‘Regie’) to service no more than one television and one radio station at a time. In practice, however, it is believed that the advertising market is monopolized by a single media group led by the Lebanese advertising mogul Antoine Choueiri. Allegedly, he controls several small agencies through fictitious shares registered in the name of other individuals, similar to the way the Murr family ended up controlling indirectly most of the shares at *Murr TV* in 1996 (see section 1.2.3.4). 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 (*Parliamentary Elections Lebanon 2005*, 52). Choueiri is also accused of channeling most advertisements to *LBC* at the expense of other local television stations, because of his own stake in it (*The Daily Star*, 21 October 1999).

## **1.5. Personal Independence of journalists**

### **1.5.1. Reasonable control over content**

Considering what has already been documented in terms of broad and selective/arbitrary official control over content, and that journalists have to exercise, as a precautionary mechanism, self censorship in order to avoid rows with the authorities, it is difficult to speak of the ‘personal independence of journalists’ (see section 1.3. on censorship). As some media experts interviewed for this study acknowledged, one has to take into consideration not only official control over content, but also administrative control from within the media outlets themselves by the editors and the owners of these organizations (Soueid 2006; Koyoumjian 2006; Mkalled 2006). The weakness of the personal independence of journalists is fairly well documented in the expert survey conducted by Information International, where results show that only a slight majority of



media experts (57%) believed they could decide freely on the content of their work in broadcasting or in the printed media. As further evidence of the kind of pressures exercised on media experts *within their workplace* in order to control their media output, the survey lists ‘threats of termination of work’ (69%), and ‘economic sanctions’ (63%).

### 1.5.2. Free movement of journalists

With the exception of the restrictive rule included in the Press Law which forbids journalists who are not members of the union of journalists to practice journalism (see sections 3.1.1. and 3.2.1), journalists in Lebanon enjoy a considerable amount of freedom of movement, though some locations, for military reasons or other, are barred to the general public, including journalists. However, there were instances where the Lebanese authorities did restrict the freedom of movement of some Lebanese journalists. This was the case with Raghida Dergham and the late Samir Kassir, because of their critical stances taken towards the Lebanese authorities (for details see section 1.2.8.). In these two cases, the confiscation of passports and other control measures were not based on any court ruling following an infringement of the media laws. Rather, they were illegal or extra-legal measures used by the secret services to intimidate and curb the freedom of expression of critical journalists and reporters. Journalist and presenter Dalia Ahmad from *NTV* was another example of how the Lebanese authorities (in this case the *Sûreté Générale*) had to rely on measures unrelated to media regulation in order to get back at stations which are critical of Syria or the Lebanese secret services. Instead of using the 1994 Broadcast Law and the court system to prosecute *NTV* for its “subjective” editorial policy in its news bulletins, the Lebanese *Sûreté Générale* (then headed by Jamil Sayyed) denied Ahmad, a Sudanese national, a work permit or residence visa. This decision forced her to leave the country, having been deprived of her legal right to stay (‘Reporters Without Borders brands...’ 2003).

### 1.5.3. Physical and economic safety of journalists

It is worth noting that cases of harassment, as discussed in section 1.2.8., have ceased since the withdrawal, in April 2005, of the Syrian troops which were acting in coordination with the Lebanese security services. What has been happening since then is a more radical form of intimidation of (mostly anti-Syrian) journalists: physical elimination using booby-trapped bombs. As a result, a series of prominent journalists (but also politicians), who were known for



being critical of Syria, have been individually targeted within a year after the Syrian withdrawal, many of whom did not survive the attacks against them. The journalists targeted were: Gibran Tueini, a member of parliament and publisher of the prominent *An-Nahar* newspaper, university professor and *An-Nahar* journalist Samir Kassar, and *LBC* newscaster May Chidiac, who narrowly escaped death but was maimed in the process (McCarthy 2005; Battah 2006; Journalist maimed 2005)

Despite these gruesome attacks on journalists, many continued their work undeterred. This is not to say that the (continued) physical threat is taken lightly by either media organizations or the individuals working in them. At *FTV*, for instance, a political program exclusively dedicated to investigating the Hariri murder case (*Al-Tahkeek* or “The Investigation”) was interrupted following death threats received by its presenter, Fares Khashan, who fled to Paris (Al-Fayed 2006). Indeed, the Information International expert survey showed that physical harm to journalists ranked high among the reasons which affect the personal independence of journalists (51%), though interestingly enough it was not as high as the threat of termination of employment which journalists say they are faced with in the workplace due to their own political views (69%).

#### **1.5.4. Role of civil society in protecting journalists**

According to the Information International survey of experts, of all political, economic, and social groups capable of pressuring the media, civil society organizations ranked lowest at 9.8%, while advertisers were considered to be the most influential at 72.1%. Though the survey does not ask respondents to assess the extent to which civil society groups can protect those who work in the media, it does reflect a reality that is prevalent in most Arab and other fledgling democracies: i.e., the weakness of civil society in influencing decision-making and public policy agendas in general, and in the media field in particular (Dabbous-Sensenig 2003).

One example already discussed concerns the arrest of the owner of the Internet Service Provider (ISP) *Destination*. When Kamal el-Batal, the director of a well-known Lebanese human rights organization, came to the rescue, he too was arrested and charged (see section 1.3.1.). The case of human rights lawyer Muhamad Mugarby, by contrast, probably illustrates the more effective role of the international community and thus “global civil society” in defending journalists and human rights activists in general (see section 1.4.1.).



### 1.5.5. No discrimination at all levels

Studying the existence of discrimination (or lack thereof) in the Lebanese context depends entirely on which human rights Lebanese laws and Lebanese society and its major politico-confessional groups recognize. To start with, Lebanon is signatory to several international agreements that guarantee a broad range of human rights. Indeed, the commitment to the Universal Declaration of Human Rights (UDHR) is enshrined in the preamble to the Lebanese constitution. Article 2 of the UDHR proscribes all types of discriminatory acts, including those based on “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The Lebanese constitution guarantees equality among all citizens (Article 7), the absolute freedom of belief (Article 9), and the freedom to express one’s opinion in public or through publications (Article 13). The Broadcast Law of 1994, as already mentioned, contains positive content requirements that guarantee the respect of human dignity and the plurality of opinions (Article 7) while the Book of Specifications (decree no. 7997/1996) appended to it requires media outlets to “avoid broadcasting whatever material that might lead to...discrimination based on *religion* or *ethnicity*” (Chapter One, General Conditions). What is most striking as far as the protection of diversity and pluralism in the Lebanese laws is concerned is that, unlike the broad range of human rights protected by the UDHR, diversity is strictly understood as religious and political pluralism.

Not only that, the limited number of human rights explicitly mentioned in the Lebanese laws are far from being protected: whether one looks at the country’s legislation in general or media representations in particular, it is quite obvious that discrimination based on sex, ethnicity, and religion is pervasive. To start with, freedom of belief is very partial, considering that the civic and religious rights of Lebanese citizens are exclusively tied to one of the recognized monotheistic confessions the individual citizen belongs to. For instance, Buddhist, Hindus, Baha’is, Sufis, and atheists have no legal/civic rights in Lebanon. The previously discussed case of Awit, who was accused of blasphemy (because of his angry “Letter to God”) and Marshalian whose episode on Sri Lankan maids was censored for featuring Buddhism, are illustrations of the type of discrimination based on religion that exists in the country. Second, Lebanese women do not enjoy the same equal rights as men, and some Lebanese women (depending on their confession) have more rights than others (Dabbous-Sensenig 2005 b). Finally, both Lebanese



men and women have more rights, especially in the area of employment, than guest workers (especially females), whose slave-like working conditions continue to be denounced by international human rights organizations, including the ILO (Migrant Women Domestic workers in Lebanon, ILO, n.d.; *The Daily Star*, 21 May 2007) .

Having briefly examined the legal/cultural background with respect to discrimination in the country, it is interesting to measure the extent to which discrimination (based on any of the above mentioned, internationally based criteria) exists in the Lebanese media. In this section, I will deal exclusively with diversity in media representations (diversity in employment will be dealt with in section 2.1.3).

In the Information International expert and public opinion surveys, no questions directly address the issue of discrimination. Instead, the issue is framed as one related to the existence of “diversity”. According to the public opinion survey, the Lebanese media greatly reflect diversity (82.3%). According to the experts surveyed, political diversity (72.6%) and religious/sectarian diversity (66.4%) are the types of diversity that are most accurately represented in the media. The lowest percentage went to representation of ethnic diversity (45.3%). These results should be carefully examined and read in context, considering that “diversity” in Lebanon does not mean the all inclusive categories of the UDHR (mentioned above) or those of Article 13 of the Treaty of Amsterdam of the EU (which prohibits discrimination based on racial or ethnic origin, religion or belief, disability, age, or sexual orientation). Within the Lebanese confessional context, the dominant cultural perception is that diversity is first and foremost related to sectarian politics. In other words, diversity is considered to be guaranteed when the various politico-confessional groups are represented or have access to the media. Indeed, several of the qualitative interviews conducted by the author with media professionals reflected a similar ‘limited’ understanding of diversity, despite the fact that Lebanon has comparatively sizeable ethnic and linguistic minority groups (e.g. Armenian-Lebanese and guest workers from South Asia, East Asia, and East Africa). The following views, expressed by the director of news and political programming at *FTV*, exemplify perhaps best the culturally-specific, narrow understanding of ‘diversity’ in Lebanon. As Rashed al-Fayed explained, “at *FTV*, the existence of diversity (or pluralism) in programming means there is diversity in hosting guests from different political leanings... We are keen on having all political views expressed, and this right to expression is dependent on the *strength of the political base* of these views, as manifested in



public political life at large” (al-Fayed 2006). Interestingly, the two interviewees who had a wider understanding of diversity are human rights activist Ammar Abboud and Armenian-Lebanese actress and scriptwriter Claudia Marshalian. Abboud mentioned the blatant discrimination practiced against homosexuals in the media (Abboud 2006). Marshalian brought up the issue of discrimination based on ethnicity/color and denounced the racist media portrayal of Sri Lankan nationals, including tourists and diplomats, who are invariably stereotyped as servants or maids. She also explained how this racism is embedded in the language itself, giving, as one example, the common colloquial Lebanese word used to refer to black people in general (i.e., ‘*abed*’, literally ‘slave’ in Arabic) (Marshalian 2006). Sateh Nour Ed-Deen, editing manager of the *As-Safir* daily, also acknowledged the pervasive racism in the media, and related it to the dominant culture in the country: “there is discrimination between the various Lebanese confessions, between Lebanese and non-Lebanese, and I refer here particularly to the Syrians, Palestinians, and Kurds. This ethnic discrimination is the result of the societal make up. But it is also the result of a lack of education and awareness among Lebanese” (Nour Ed-Deen 2006).



## 2. INTEGRITY

### 2.1. Journalistic ethics

#### **2.1.1. Lebanese code of ethics**

The existing Lebanese code of ethics, better known as the Charter of Professional Honor (*Mithak Sharaf al-Mihna*), goes back to 4 February 1974, date of its adoption by the Lebanese Press Union (comprised of *owners* of periodicals as specified in Article 79 of the Press Law). An examination of this code, mostly by comparing it to international codes of ethics (namely the code of the renowned American Society of Professional Journalists or SPJ), reveals some similarities, but also several striking differences and some serious omissions (on the part of Lebanese code), all of which highlight the urgent need to reform what is basically a vague, incomplete, obsolete, exclusively print-oriented, and to some extent even problematic code of ethics for journalism.

To start with, the Lebanese code of ethics (comprised of 15 articles) mostly reiterates some basic content-related provisions already found in the Press Law of 1962. For instance, in addition to requiring the publication of truthful and reliable information (Articles 7, 8, and 9), the code urges journalists to avoid incitement to hatred, libel and insults (Article 6); vice and crime (Article 10); and blackmail (Article 12).

**2.1.1.1. Vagueness of the code** Not only does the Lebanese code of ethics reiterate several of the Press Law's content requirements, it does so very briefly, without elaboration or clarification. For instance, the Lebanese code is too general when it comes to invasion of privacy (Article 11) and protection of sources (Article 3). When it comes to respecting the privacy of individuals, it simply states that the press should not invade an individual's private life. The American Society of Professional Journalists' code of ethics, by way of contrast, recognizing the difficulty of respecting this provision, deals with it in a more elaborate manner. It mentions, for instance, the need to balance competing rights when trying to respect an individual's privacy: i.e., "the overriding public need to know" vs. "the intrusion into anyone's privacy" (Article 21 of the SPJ code). Not only that, the SPJ code differentiates between private individuals' right to privacy and that of public officials. This distinction is crucial when it comes to privacy: by the very public



nature of their position, public figures are either seeking power and therefore have to be scrutinized in a democracy (e.g., politicians and public servants), or are seeking attention and publicity (e.g., celebrities and movie stars) and are therefore less entitled to having their privacy protected the way other (non-public) individuals are. This SPJ distinction (i.e., private individual vs. public official) is, in this respect, in stark contrast to the Lebanese Press Law, for instance, where protection (mostly from libelous statements) is greater the higher the public office is situated in the hierarchy of power (see section 1.2.4.3).

As for Article 3 of the Lebanese press code, the same generality applies to the “principle of not disclosing sources”. While the inclusion of this principle (not found in the Press Law) is to be lauded, especially because it recognizes the fact that journalists may not be able to uncover certain types of information unless they promise their sources anonymity, it falls short of dealing with the complexity of a reporter’s decision to keep his/her sources anonymous, when compared to Western examples. The SPJ code, for instance, starts off by urging reporters to identify their sources “whenever feasible”, rather than keeping them anonymous (Article 3, SPJ code). The code indeed recognizes that the truth value of reported information and the possibility to verify it are part and parcel of truthful and accurate news writing, and that identifying sources serves to increase the credibility and relevance of the information reported. Article 4 of the SPJ code, while acknowledging that reporters may have to promise their sources anonymity in exchange for information they may not have access to otherwise, cautions them against readily and naively promising anonymity. Not only are reporters asked to “always question sources’ motives”, they are also required to “clarify conditions attached to any promise made in exchange for information”. The reason for the second cautionary statement in Article 4 of the SPJ code is that, in the US, this “reporter’s privilege” to protect one’s sources, although protected by law (as opposed to the Lebanese case), is not uniform. The source and the scope of the privilege can vary from jurisdiction to jurisdiction, and reporters and their sources should be made aware of those differences before any promises of anonymity (which *have to be kept*) are made (Pember 2004, 353).

**2.1.1.2. Inability to deal with the complexity of journalistic work** Indeed, the major weakness of the Lebanese code of ethics lies in its inability to address the structural, organizational, financial, cultural, and ideological reasons that might affect journalistic integrity when reporting



news. By not dealing with the specificities and intricacies of ethical journalistic work, the code is rather useless as a guide for practicing journalists facing day to day dilemmas and problems. For instance, the code of ethics of the Society of Professional Journalists (SPJ) warns against the dangers of “hybrids” that are increasingly blurring the lines between information and advertising (e.g., ‘advertorials’ or ads that look like news). Consequently, reporters are urged to differentiate between news and advertising and avoid formats that collapse the two (Article 16). This warning reflects an awareness of the unhealthy influence that major sources of funding can have on the content of information, especially when it comes to commercial media. For instance, advertisers, whether directly or indirectly, have often caused “staffs to eliminate controversial topics from editorial content”, and have pushed them to create “a favorable media environment for certain advertisers”, by mentioning a product or its advertisers positively in their articles (Patterson and Wilkins 1994). To maintain independence, Article 31 of the SPJ code urges journalists to “deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage”. The Lebanese code, by contrast to the SPJ code, is completely silent on this issue.

**2.1.1.3. Omissions** In addition to replicating, without elaboration, several of the content-related requirements of the Lebanese Press Law and to dealing with important ethical issues in such general terms as to render them ineffective as guidelines, the Lebanese code of ethics has serious omissions. It does not deal with several issues that are pertinent to journalistic practice and the integrity and independence of the profession. Among these serious omissions we find: avoiding plagiarism; making sure that headlines and promotional material do not de-contextualize or misrepresent (either through oversimplification or exaggeration) the incidents covered; avoid stereotyping of people (based on ethnicity, gender, age, religion, geography, and so on); refusing gifts, favors and any situation which might lead to a conflict of interest; and giving voice to the marginalized people who are as valid a source of information as any other “official” source of information.

**2.1.1.4. An obsolete and word-oriented code** Another striking weakness of the Lebanese code of ethics concerns its inapplicability to television journalism. The code, which was developed and approved by the Lebanese union of owners of licensed publications, more than three decades ago, is understandably print-oriented. However, in the absence of a more comprehensive code



that equally applies to broadcast journalism, and knowing that the first private television station in the country (i.e., *LBC* prior to its licensing) was introduced a quarter of a century ago, it is de facto *the* code of ethics for all types of media in the country. As an example of the ‘print-centric’ nature of the code, one notices the lack of reference to any ethical issues related to the use of video images or staging of news events, such as the need to identify re-enactments as such when their use is necessary. The code also fails to address the issue of manipulating photos and video recordings digitally, probably due to the fact that the code antedates the commercial introduction of computer generated imaging devices (CGI). Not only is the code print-oriented in that respect, it even fails to address the ethical issues involved in using photos in print, despite the important role that photos and related captions (through ‘anchorage’) play in shaping the readers’ perception or ‘reading’ of an event (O’Sullivan et al. 1994, 41).

**2.1.1.5. *Telling the truth and serving one’s country: an oxymoron?*** Perhaps the most problematic aspect of the Lebanese code of ethics is its definition of the role of a newspaper as one of “mobilizing public opinion in defense of the country, of right and justice, and resisting aggression and unjust forces” (Article 5). No similar overtly “patriotic mission” for the print media can be found in any of the internationally recognized Western codes of ethics. Interestingly, this *positive*, normative requirement (i.e., what newspapers *should* do) is not reiterated in the Lebanese media laws (with the exception of law no. 531/1996 for satellites, as seen in section 1.1.2.). The Broadcast Law of 1994, for instance, requires licensed stations to respect the “pluralism of opinion” and the “objectivity” of news. Although it has some content provisions concerning what *not* to do (e.g., not to promote relations with the Zionist enemy), it does not entrust them with the mission of promoting patriotism (see Article 7 for content requirements). By contrast, Western codes of ethics require journalists to “seek the truth and report it” (this is actually the title of the first section of the SPJ code of ethics), in addition to defending freedom of expression, serving the public, and holding those in power accountable. Indeed, these codes of ethics, rather than require journalists to promote nationalist/patriotic causes, seek to increase awareness among journalists about their own cultural/ethnocentric values which might color their own reporting of events. The SPJ code of ethics, for example, goes as far as asking journalists to be bold, even at the risk of being unpopular, when telling



stories about the diversity of human experience (Article 10). It also urges journalists to support the open exchange of views, even if they find such views to be “repugnant” (Article 13).

Though Western journalists and the organizations for which they work have failed on occasion, for a variety of reasons, to uphold the ethical requirement to tell the truth, and have instead allowed patriotism to taint their coverage of international wars (Berenger 2004; Kellner 1992), the codes of ethics themselves are unanimous in their call for journalists to tell the (often unpopular) truth (see Article 10 of the SPJ code of ethics). By contrast, Arab codes of ethics are replete with positive requirements. These can range from calls to promote Arab unity and nationalism (e.g., The Arab Information Charter of Honor of 1978), to the commitment among Arab journalists to the “propagation of Da’wah [i.e., spreading Islam]”, to the elucidation of “Islamic issues and to the defense of the Islamic point of view”, and to the re-establishment of “the dominion of *Shariah*, in lieu of man-made laws and principles” as stipulated by the Islamic Mass Media Charter of 1980 (Az-Zubaidi 2004, 31-32).

As Naomi Sakr notes, “understandably, strictures against helping imperialists or foreign monopolies” are staples of several Arab codes of ethics. This is the result of a long history of Western imperialism in the region, which has made “advocacy journalism seem more important than timely or balanced news reporting” (Sakr 2004; see also Dajani 1992, 25). Understanding the historical specificity of the Arab world (and in Lebanon’s case the long history of Ottoman and French imperialist presence in the country) does shed light on and may justify the patriotic drive in the existing code of ethics. However, what Arab codes of ethics (including Lebanon’s code) fail to address is the oxymoronic nature of the double duty to tell the truth and the mission to be patriotic. Often, practical circumstances and economic imperatives (e.g., fierce competition among stations keen on establishing their credibility when covering the news) make journalists and editors realize the extent to which truth and patriotism can be at loggerheads. Indeed, as Sakr adds, due to changing awareness among journalists and increasing commercial pressures, Arab media have either disregarded the national prescription or reinterpreted the existing codes of ethics in ways that brought them closer to international/universal ethical principles (Sakr 2004).

In sum, the Lebanese code of ethics, which was adopted in 1974, has several shortcomings and has never been amended in order to adapt it to changing circumstances and technologies. It is the only code of ethics existing in Lebanon, it is too succinct to be of any value to practicing journalists, and it is specific to the written press.



The Lebanese broadcast and cyber media have no codes of ethics of their own, and even if they did rely on the existing print-oriented code, they would probably find it of little relevance to their own work, considering the fact that it does not address ethical issues specific to the broadcast media. Two of the most prominent television journalists in Lebanon, Shada Omar from *LBC* and Diana Mkalled from *FTV* (interviewed on 23 and 20 February 2006, respectively), voiced their concern, in this respect, about the lack of a national or even station-specific code of ethics for broadcasters. Moreover, while Mkalled decried the lack of will among the broadcast journalists themselves to discuss a code of ethics for their institutions, Omar explained the inexistence of a code of ethics for broadcasting by noting that journalistic work in the country throughout the “Syrian presence” was first and foremost a question of “surviving a variety of hurdles”, be it pressure from owners, or secret services, and so on – a pre-occupation which put the need for a code of ethics for broadcasting on the back burner.

### **2.1.2. Anti-corruption rules**

To date, Lebanon does not have anti-corruption rules in general, much less rules dealing with corruption in the media. However, bribery among journalists is rampant – a practice encouraged by the very low pay of journalists in most Arab countries. In Lebanon, for instance, stringers and reporters can be paid as low as \$ 200 per month, making them not only susceptible to bribes, but also lacking in motivation to do an honest and accurate job in reporting events. One critical journalist recounted the experience of having personally witnessed two such underpaid reporters literally make up the news when covering an armed conflict in the south of Lebanon in order to make money (Media Ethics & Journalism 2004). On several occasions, indeed, journalists and editors have pointed at the difficulty of following the Lebanese code of ethics, specifically with regard to rejecting gifts and bribes, considering the legal, political, and economical environment within which journalists operate. Faysal Salman, the editor-in-chief of *As-Safir*, one of the leading dailies in Lebanon, voiced the urgent need, among other things, to “discuss the pay scales for journalists, their purchasing power and inflation”, before having the luxury to discuss a code of ethics that can actually work for journalists in Lebanon (quoted in Az-Zubaidi 2004, 29).



### **2.1.3. Anti-discrimination rules when employing journalists**

Lebanese employment laws in the private sector in general, including media laws, do not have any anti-discrimination rules when it comes to employment. In other words, these laws do not ensure equal opportunity in the hiring of employees, and do not protect them from discrimination based on their ethnicity, gender, religion, sexual orientation, and so on. Actually, it can be argued that the Broadcast Law of 1994 contains some discriminatory provisions related to hiring in its related Book of Specifications (decree no. 7997/1996). To start with, Chapter One, part 3, requires that all directors and heads of departments be Lebanese for at least 10 years. In addition, decree no. 7997/1996 requires that all hired directors and heads of departments, including the director of general programming and the director of news and political programming, be “holders of recognized university degrees each in his/her area of specialization and that their years of experience in the field be no less than 3 years”. Finally, at least half of all employees in each licensed station should be holders of university degrees or high school technical degrees (i.e., the Lebanese technical baccalaureate).

Gender diversity in the media was a category addressed in the Information International survey of experts. The results show that 55.6% of respondents believe that the media hiring practices accurately reflect the gender diversity of Lebanese society. This percentage, though on the positive side, suggests that there is room for significant improvement. What is misleading about it, however, is that it quantifies, rather than qualifies, gender diversity in the media. This distinction is more clearly acknowledged by the media experts interviewed by the author. Several indeed were aware that although an increasing number of women work in the media, their presence is more related to their visual appeal than to any professional qualifications they might possess (Omar 2006, Koyoumjian 2006). More importantly, gender-disaggregated research about Lebanese women in the media has consistently shown that, despite the large number of women working in the field, there is indeed a glass ceiling at work, with far more women being hired in the lower echelons and only a handful reaching senior level positions (*Second Periodic Report* 2005; Dabbous-Sensenig 2000).

### **2.1.4. Criteria for selection and promotion of journalists**

It is doubtful that there exist specific and clear criteria for the selection and promotion of journalists in the Lebanese private media. Rather, it is a fact of Lebanese political and economic



life in general that clientelism is the rule and meritocracy is the exception, this including the parliamentary level (Khalaf 1987). Indeed, the licensing process for broadcast media itself is one of the most glaring examples of how qualifications, merit, or any other objective criteria can be quite insignificant when compared to the role played by clientelism, influence peddling, and other informal means for ‘achieving results’ in Lebanon. In a conference on media ethics and journalism in the Arab world which was held in Beirut in 2004, participants, many of whom are practicing journalists, voiced their concern over the lack of opportunities for media practitioners, especially in the print sector. Considering that there is “no money in the newspaper business”, not only are newspapers and affiliated journalists “on someone’s payroll”, the possibility for print journalists “to move forward” is nonexistent, with many journalists “want[ing] to leave” (*Media Ethics & Journalism* 2004, 75). Moreover, journalists, who are mostly “underpaid and overloaded”, often cannot develop “vertically or horizontally” within their organization, and end up “in the same job and at the same desk for 10 years” (Ibid, 110).

## **2.2. Diversity of the media**

### **2.2.1. Diverse ownership**

The modern history of press legislation in the country and the boom that took place in the press sector as a result of the liberal 1952 legislative decree introduced by president Chamoun in order to regulate the licensing of periodicals, resulted in an increased number of privately-owned political dailies. For a short period, and prior to the introduction of legislative decree no. 74/1953 which limited the number of print licenses, the capital Beirut alone boasted more than 50 dailies (Dajani 1992, 34). 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. On the other hand, it does not have stipulations that prevent the licensing of privately-owned periodicals with divergent political affiliations or which come out in a variety of languages. The Press Law indeed indirectly recognizes the right to publish in *any* language, by requiring that the managing editor be “proficient in the language of the publication” (Article 23 paragraph 5). In the case of a publication which appears in several languages, he/she has to be at least “proficient in the basic language of the publication” (Ibid). This ‘laxity’ concerning the language of publication, as we



will see below, has benefited Lebanon's Armenian community - comparatively the largest ethnolinguistic minority in the country –allowing it to find an outlet for expression both through ownership of the print media and the choice of Armenian as the language of publication.

Although legislative decree no. 74 of 13/4/1953 limited the number of licenses to 25 political dailies and 20 political periodicals (see section 1.2.3.1.), it contained stipulations that allowed for the existence of non-Arabic speaking political publications: out of the 25 political dailies allowed, 10 can be published in a language other than Arabic. As for the political periodicals (i.e., weekly, monthly, or quarterly), 8 out of 20 can be in a language other than Arabic. By not forbidding outright non-Arabic local publications, the result was a Lebanese newspaper scene not only diverse politically and confessionally, but also linguistically/ethnically. Among the most prominent of the non-Arabic periodicals we find the English *The Daily Star* newspaper and the *Monday Morning* weekly magazine; the French *L'Orient Le Jour* (daily) and the weekly *La Revue du Liban*; and, quite significantly, a mix of Armenian dailies (*Aztag* and *Zartonk*) and weeklies (*Ararat*). The Armenian publications in Lebanon cover a wide range of topics (cultural, literary, religious, sports, and so on). The 3 main political periodicals published in Armenian (i.e., *Aztag*, *Zartonk*, and *Ararat*), although owned by private individuals or companies, are actually the official mouthpieces of the three main Armenian political parties that exist in Lebanon (Tashnak, Ramkavar, and the Social Democrat Hintchakian respectively). Despite their low circulation numbers (6500 for *Aztag*, 3000 for *Zartonk*, and 2800 for *Ararat*), they cater to their Armenian Lebanese readership in addition to Armenian communities in the Diaspora (Kandaharian 2006; Shekherdemian 2006; and Aghbashian 2006).

In contrast to the Press Law where pluralism in ownership is not required by law, the stipulation for pluralism in the ownership of private audiovisual media is clearly spelled out in the 1994 Broadcast Law (Article 13). As we have already seen in section 1.2.2., the implementation of this law for terrestrial broadcasting resulted in the licensing of four television stations. Despite the fact that these 'diverse' broadcast stations obtained their licenses regardless of any professional criteria as previously argued, they still reflect *to some extent* the confessional diversity of the Lebanese population (at least this is true for the *largest* confessional groups in the country).

In the area of language use, unlike the Press Law, the 1994 Broadcast Law has a clear provision concerning the mandatory use of the (standard) Arabic language, though only in the



daily news bulletins (decree no. 7997/1996, chapter 3 on programming, paragraph 7). According to the same provision, news bulletins in languages other than Arabic are allowed, as long as the minimum required of news in Arabic (i.e., 30 minutes a day) is respected. Indirectly, decree no. 7997/1996, by not requiring Arabic to be the language of all programming, makes it possible to have private broadcasting in any language, as long as the 30 minutes a day of news in Arabic is provided. Indeed, Lebanon's only state-owned radio has a weekly program for Armenian culture (mostly songs); while privately-owned *Future TV (FTV)* broadcasts a short afternoon news bulletin in Armenian.

Today, only one radio station (*Radio Voice of Van*) owned by Armenian/Lebanese and broadcasting in Armenian is officially licensed. Although the station was denied a license, based on the NAC recommendation, during the first round of licensing in 1996, the station was granted a license in 1999 and is currently operating (Abdalian 2006). The Armenian-owned television station known as *Armenian Television Network (ATN)*, which had been in operation since 1990, by contrast, was not licensed in 1996 and was eventually shut down. No other Armenian television stations have operated in Lebanon ever since, forcing the Armenian Lebanese community to stay up to date with news from Armenia and the Diaspora through cable subscription to the two Armenia-based satellite television stations. These stations are so popular among the Armenian-Lebanese viewers that they have their own journalists in Lebanon covering most of the events organized by the Armenian community in here.

### 2.2.2. Expression of pluralistic views

The Press Law, understandably, does not have provisions for the expression of pluralistic views. As already discussed in section 1.2.3., the various rationales which 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 which is supposed to guarantee the pluralism of views in the country. With the current system of licensing in the Lebanese press, only rich and powerful individuals or corporations can actually afford to buy two existing



titles/newspapers, and to close them down in order to open up a new political daily. This restrictive, undemocratic licensing system for publications seriously limits the expression of truly pluralistic views, especially for new political parties or civil society groups in need of accessing and expressing themselves through the print media. The publication put out by *Helem*, the Lebanese organization defending the rights of gays and lesbians, is a case in point. According to its national coordinator Georges Azzi, the organization is unable to get an official license for its newly launched publication *Barra* - the Arabic translation for “Out” (of the closet). Though the organization does not even have aspirations to apply for a political license (which would be unthinkable in this case considering the amount of money required for that purpose), it is not even able to get the (much easier to obtain) license for a non-political periodical. The reasons for this are not legal or administrative, but cultural: in a country where homosexuality, as an *interpretation* of “sex against nature” (Penal Code, Article 534) is punishable by law, *Helem* is unable, out of fear of homophobic attack, to find someone who would accept the position of managing editor of a publication which voices the concerns of gays and lesbians in Lebanon (Azzi 2006).

The 1994 Broadcast Law, in accordance with Western laws that require the inclusion of diverse views by licensed private broadcasters, duly recognizes 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 program a week which is based on objectivity and *excludes the single opinion* in the program 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 section 1.5.5.), and is a far cry from 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. Interestingly, the interviews with media experts and practitioners conducted for this project reflected a unanimous adherence to the same, narrow understanding of diversity and pluralism: i.e., exclusively political or partisan pluralism. By way of 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 marginalized, even ‘illegal’ groups to air their opinion at length for the first time, without being framed negatively. An episode of *Al hall bi idak* (or ‘The solution (to the problem) is in your hands’) which aired on 2 and 9 May 2006 on *New TV* dealt with homosexuality in a remarkably open and daring way, confronting the reluctant viewers (who insisted on voting against the acceptance of homosexuals) with an issue that continues to be shunned by and ridiculed in the local media (see also section 1.3.2.).

### 2.2.3. Access to the media

The issue of access can be looked at from at least two perspectives. On the one hand, the public has the right to receive national media outlets to start with. This especially applies to terrestrial broadcasting, cable TV, phone lines, and so on, which have to be structurally and technically extended throughout a country in order to reach the entire population. In other words, without the existence of this ‘universal coverage’ or ‘universal access’ usually secured in broadcasting through appropriately distributed relay antennas across the country, a significant portion of the population (usually scattered small towns and villages) would not have access to free-to-air radio or television programming. Lack of access, however, is often the case because private broadcasters and their advertisers have an interest in covering or targeting major cities exclusively, where potential viewers/buyers are concentrated. Article 10 of the 1994 Broadcast Law thus seeks to secure universal access by requiring licensees of all categories to “cover all Lebanese regions”.

Another issue related to access has to do with the right of the public not only to receive information from media outlets, but to have access to these outlets by being able to express ideas through them. This type of access is very much needed for a 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 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 milder form in the above-mentioned content rule on diversity in decree no. 7997/1996 (see section 2.2.2.), has predominantly been interpreted to mean the “right of reply”, which requires Lebanese newspapers (but also broadcasters) to provide free space to persons who have been criticized in the media and who wish to respond to this criticism.



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 (Boutros 1991, part I, 128). The Lebanese Press Law thus allows the individual who wishes to respond or to reply to have free access to the publication, by having his/her reply published on the same page, with the same font size as the original article where he/she was mentioned, whether directly or indirectly. 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 concerning the public interest can request 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 the “correction”: the penalty, as is the case with libel, is significantly higher when a public servant or government official (the Minister of Information in this case) is involved.

Finally, cable distribution is carried out in the absence of a law that regulates it (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 operators. These illegal operators, by offering very low subscription prices that often do not exceed \$10 a month, are providing almost total access to cable to most Lebanese households (Speetjens 2005).



### **3. COMPETENCE**

#### **3.1. Qualifications for working journalists**

##### **3.1.1. Criteria for becoming a journalist**

The Press Law of 1962 defines a journalist as someone who makes a living by working exclusively in the field of journalism (Article 10), and who has fulfilled the following conditions: he/she must be Lebanese, over 21 years of age, holding at least the Lebanese equivalent of a high-school degree (i.e., Lebanese baccalaureate) or a degree in journalism, and has practiced journalism for one to four years following his/her admission to the union of journalists, depending on the type of degree the applicant holds (Article 22). Although there are merits to requiring degrees of journalists who would like to join the press corps and a specialized union regulating their affairs, the requirement to hold at least a Lebanese baccalaureate discriminates against Armenian journalists whose Arabic is poor and are working for an Armenian language publication. If not schooled and tested fully in the Lebanese system – Lebanon allows the various confessional communities, including the Armenians, to run their own schools - their admission to the union of journalists, referred to as the ‘Union of Press Editors’ in the Press Law of 1962, will obviously be denied. This is indeed the case for many Armenian journalists who are practicing without being able to join the union. For instance, the editor-in-chief of the *Zartonk Daily*, the second most important Armenian daily in Lebanon, is the only staff member of this newspaper to be admitted in the Lebanese Union of Press Editors (Aghbashian 2006).

While the above criteria apply to print journalists and help define the profession, there is not an equivalent definition for broadcast journalists. The 1994 Broadcast Law, as already mentioned in section 2.1.3., forces licensed broadcasters to hire mostly individuals holding university degrees, especially in mid-level managerial positions (e.g., directors of programming, heads of departments, senior technicians, etc.). It is completely silent on the issue of what defines a broadcast journalist. The fact that many broadcast journalists continue to decry the lack of a union similar to the union of print journalists (which is set up by law) is evidence of the fact that the provisions of the Press Law concerning print journalists, the nature of their job, and their membership in a specialized union, do not apply to broadcast journalists.



### **3.1.2. Training**

Perhaps the one factor that is most detrimental to the development of a qualified and responsible press corps in Lebanon is the almost complete absence of training for journalists. Considering the significance of proper training for journalists in order for them to cover specialized topics in fields as diverse as economics, politics (especially elections), culture, or simply to incorporate diversity, in its broadest sense, into their news work (see section 2.2.2.), it is indeed problematic that training in Lebanon (and "Third World" countries in general) is still practically nonexistent. One major reason given for this absence is the lack of funding (*Media Ethics & Journalism* 2004, 71). Another is the lack of interest in such training on the part of both media managers and journalists, who either do not see the necessity for such training (Ibid, 111), or are disgruntled by the quality of training offered to media professionals (Zaraket 2006) in the Arab world. Finally, even when both of these problems are circumvented by having foreign agencies and organizations provide the funding and the experts for these workshops, journalists are faced with the inability to implement what they learn. A journalist at *Tele Liban* (or *TL*), the country's state broadcaster, explained how *TL* management encouraged reporters and editors to take time off to participate in courses provided by foreign organizations such as the Thomson Foundation, Reuters, and others. However, when these staff members completed the workshops, they realized that they were neither given credit for the training, nor that "everything they had learned on these courses could be implemented in their places of work", mostly due to "cultural differences" (Ibid, 111).

## **3.2. Access to the profession**

### **3.2.1. Legal restrictions as to who can become a journalist**

According to the Press Law of 1962, a journalist is someone who fulfils the criteria enunciated in Articles 10 and 22 (see section 3.1.1.). He or she is then entitled to join the journalists' union, referred to as the 'Union of Press Editors' in Article 89 of the Press Law. Though nowhere in the law is it stated clearly that it is mandatory for a journalist to fulfill the criteria enumerated in Article 10 in order to be allowed to join this union, the second paragraph of the same article seems to assert, however indirectly, that the law requires journalists to be "officially" recognized as such. According to Article 10, fines and a prison sentence are to be inflicted on anyone who



“pretends to be a journalist for whatever reason”. In other words, the Press Law seems to indicate that journalism as a profession is similar to medicine, engineering, or pharmacy, and considers journalists who are not members of their union to be “impostors” who should be arrested (Al-Atrash 2004).

A court case dating back to the year 2000 brought to the fore the ambiguity of the law concerning the need for an ‘official’ status for practicing journalists. On 22 February 2000, Youssef Bazzi, a columnist for the *Al-Mustaqbal* daily, was summoned for questioning by the police, and handcuffed and arrested for 3 hours at the Ministry of Justice building, following a libel suit filed against him by Defense Minister Ghazi Zaiter (*Al-Mustaqbal* daily, 22 February 2000). The libel suit was triggered by a column Bazzi wrote, in which he accused Minister Zaiter of dereliction of duty by failing to return to the country in order to deal with ongoing clashes between Islamic militants and the Lebanese army. Though the arrest itself was, according to many, precisely the kind of ‘provisional detention’ that was abolished by law no. 330/1994, what was noteworthy about Bazzi’s case was the nature of the charge leveled against him. Judge Abu Ghadi had issued an arrest warrant against him for “impersonating a journalist by practicing the profession without being a member of the Union of Press Editors”; this is particularly significant considering that Bazzi had been a practicing journalist for 13 years at the time of his arrest (*Middle East & North Africa* 2001). In addition to sparking discussions in newspaper articles about the difference between libel and legitimate political criticism of the performance of a public official, the nature of the charge sparked another type of debate: i.e., whether practicing journalists need to join the union or not (*Al-Mustaqbal*, 22 February 2000). Legal experts differed on the issue. While some argued that the Press Law does not require a journalist to join the union, others argued to the contrary, insisting that the preventive detention of Bazzi was legal, since he was not a member of the Union of Press Editors and therefore had no claim to the immunity granted officially to recognized journalists when they are in infringement of the Press Law (Ibid). Charges against Bazzi were eventually dropped, thanks to public pressure and the personal intervention of Melhem Karam, the President of the Union of Press Editors, who insisted that Bazzi was indeed a journalist, even if he was not a member of the union (Ibid). What remains unchanged to date, however, is the restrictive legal requirement that journalists be members of the Union of Press Editors if they hope to be protected by the Press Law when infringing upon its content requirements. According to some, this restriction also means that



freedom of expression is denied civil society in general, and all citizens who are not members of the Union of Press Editors, but who wish to access the media in order to express their opinions on matters of public interest; i.e., that they run the risk of being arrested like common criminals if they are ever deemed in infringement of the Press Law.

### 3.2.2 Discrimination and access

Another major issue brought to the fore by the Bazzi case was the discriminatory practices of the Union of Press Editors with regard to applicants, and the non-transparency of the union when it came to processing applications. In the wake of the Bazzi case, the late journalist, MP and CEO of the *An-Nahar* daily, Gibran Tueini, who was recently assassinated and who himself had been a practicing journalist since 1979 without holding a press card, urged the Union of Press Editors to process all pending applications. The case also made thousands of non-unionized, practicing journalists suddenly aware of the precarious nature of their status: they realized that, based on a clause that goes back to the “Ottoman press law” (i.e., Article 10 of the 1962 Press Law), they had been practicing “illegally” for many years, that they could not benefit from the special status afforded journalists in infringement of content requirements, and that they could easily fall prey to “preventive detention,” which only legal (or unionized) journalists are spared (*Al-Mustaqbal*, 22 February 2000). It should be noted here that the *personal* intervention, on more than one occasion, of the President of this Union on behalf of arrested and/or detained journalists has led to positive results (Khoury 2006). However, this same president - who has kept his position to date by being repeatedly re-elected since 1960 – continues to be accused of abusing his position, and of consistently and unjustifiably rejecting or “losing” the applications of thousands of university graduates and practicing journalists who wish to formalize their status and join the union (*Al-Atrash* 2004; *Al-Mustaqbal* 22 February 2000). Indeed, it is estimated, in the absence of statistics about the number of journalists in Lebanon, that more than half of the practicing Lebanese editors and journalists are not members of the Lebanese union for journalists (or Union of Press Editors) (*Al-Atrash* 2004). By way of example, the editor-in-chief of the Armenian weekly *Ararat*, who has been in his position for the last 17 years, has been repeatedly denied membership in this Union (*Shekherdemian* 2006).

In sum, Lebanese journalists are at the mercy of a union and its president who holds discretionary powers when it comes to declaring who is a journalist and who is not. This problem



is compounded by accusations that the union, like several of its Arab counterparts, is not independent. Rather, it is closely tied to the country's power elites, "issuing membership cards akin to a political party" (Battah 2005, 20). Moreover, the high fee imposed on applicants wishing to join the Union of Press Editors serves as a structural mechanism for excluding many applicants, especially fresh graduates. Indeed, the application fee is exorbitant when one considers that many journalists are paid as little as \$ 200 a month (see section 2.1.2.) and that the average monthly pay is \$ 500 (Al-Atrash 2004). The union requires an entrance fee of three million Lebanese pounds (c. \$ 2 000), and an additional annual subscription of seven hundred thousand pounds (c. \$ 500); this is comparatively high considering that the fees for engineers and doctors who wish to apply to their relevant professional association pay one million two hundred sixty thousand (c. \$ 840) and five hundred thirty thousand Lebanese pounds (c. \$ 350) respectively (Al-Atrash 2004).

## **Endnotes Chapter 2: Analysis of principles**

1. Lina Khoury's very recent adaptation of the *Vagina Monologues* is just one of the latest and most glaring examples of prior censorship exercised by the *Sûreté Générale* (see interview with director Khoury in *Allo Magazine*, No. 48, March 2006, 70-71).
2. See Boutros, 1995, p. 81, emphasis added. The statutes of the NAC ratified on 15 November 1995 make this point clear: "within a maximum of 10 days as of the date on which the Cabinet ratifies the Statutes, the Minister shall convene the members to a meeting he shall preside, in order to elect a chairman, a vice-chairman as well as a secretary" ( Article 4 of the NAC Statutes).
3. *As-Safir*, 14 November 1995. Almost two years later, when the first NAC term was over, NAC President Shaar was quoted as saying that "several members were neither experienced nor professionals in the field". He added, however, that "experience taught us a lot" (*As- Safir*, 20 November 1998).
4. The interpretation of this paragraph of the 1994 Broadcast Law as allowing adult children to own shares in a broadcast corporation along with a parent was found to be very plausible, even normal, by then Vice-President of the NAC Shalak, since, as he explained, adult children are *legally* independent from their parents (Fadel Shalak, personal interview, 22 August 2001).
5. These cross-ownership rules were challenged in 2002 in US courts by major US media corporations (Media Giants, 2002).
6. Article 32 stipulates that the company with a right to a license has one year (*after* being notified by the Council of Ministers) to start operating according to the requirements of the 1994 Broadcast Law.
7. These definitions are initially based on the repealed Press Law of 1948 (Boutros 1993, 35). Only *tahkeer* is not defined in the Penal Code.



8. Aridi made these statements on a political talk show titled *Hada Yesma'na* (*Will Someone Listen to Us?*), *New TV*, 2 May 2006.
9. Before the Syrian withdrawal in 2005, this euphemistic term was used by the Lebanese anti-Syrian groups to refer to the Syrian occupation of Lebanon (see *An-Nahar*, 4 January 2003).
10. The amendment was passed unanimously by parliament on 16 August 2005. It excludes the possibility of paying damages to the station which was shut down since 4 September 2002. See “Lebanese parliament amends law, allowing anti-Syrian TV channel back on air”, <http://www.tbsjournal.com/chronicles.html> accessed on 29 May 2006.
11. Muhamad Mugarby, press conference, 23 March 2003, Beirut.
12. Ibid.



## CHAPTER THREE IN-DEPTH PROFILE – ELECTION COVERAGE

One of the biggest challenges that media organizations face when trying to prove the extent of their professionalism, independence, integrity, and dedication to act in the public interest and serve as a watchdog of government is their performance during election times. Not only are the media then supposed to play an important role by acting with impartiality and giving equal access and equal time to the various candidates in order to introduce them to voters, they also have the equally crucial function of monitoring the electoral process itself, drawing attention to potential abuses, and ensuring that the rule of law is applied with regard to one basic pillar of democracy: a fair electoral process.

The present chapter will examine the dual role of the Lebanese media during elections, using two different approaches in order to reach a better appraisal of the role played by these media in promoting the rule of law in the country. The emphasis, as already mentioned, will be on media coverage of elections. In the first part of this chapter, the views of several media practitioners from a variety of outlets will be gauged in order to show both their personal understanding of the role of Lebanese media and their evaluation of their performance during election times (1). The second part of the chapter will draw on the results of actual studies of the media - mostly content analyses of major newspapers and television stations - conducted following the 2005 parliamentary elections in order to assess the actual performance of these media and the extent to which they upheld the rule of law in the country.

### **1. Professionals' perception of the role of the media during elections**

In-depth interviews conducted with journalists and editors from the print and broadcast media revealed, to a large extent, an awareness among these professionals about the shortcomings or biases in their own or other institutions' coverage of elections in Lebanon. Though some of them were convinced of their outlet's relative impartiality when covering elections, several others did not mince words when describing the blatant (and professionally unacceptable) biases of all Lebanese media outlets (including their own) during elections. Others, while acknowledging these biases, were less critical of them, finding excuses in the absence of legislation for media and elections, in the lack of law enforcement, or in the selectivity of the judiciary when applying



existing laws. These openly acknowledged biases were, moreover, often attributed to the ownership patterns of each media outlet, and to the fact that journalists and editors were, either *willingly* or *out of self-censorship*, largely beholden to their bosses.

To start with, at one end of the spectrum, we find the owner and editor-in-chief of the *As-Safir* daily, Talal Salman, who explained how his newspaper managed to cover all candidates fairly. He attributed the fairness of his own newspaper to an internal policy that clearly seeks to distinguish between news reports and editorials: “I am not allowed to include my emotions in headlines. I have to give primacy to facts. If I have an opinion, I relegate it to the side (i.e., side column)” (Salman 2006). Salman, however, was generally critical of the Lebanese media’s handling of elections, citing the “payments” that some outlets received in return for favorable coverage, and the “blurring of lines” between what constitutes a regular news appearance (e.g., in a bona fide newscast) and a paid for appearance which is part of political advertising (Salman 2006). Sateh Nour Ed-Deen, managing editor at the same daily, was openly critical of the “propagandistic role” recently played by both *Future TV* (or *FTV*) and *An-Nahar* newspaper during elections, and attributed this role to the “sudden emotional reaction” to the assassination of their owners (PM Rafik Hariri and MP Gebran Tueini respectively) (Nour Ed-Deen 2006). Rami Khouri, former editor at the *Daily Star* newspaper, concurred, noting how both of these media outlets “deliberately” became “tools for political mobilization” (Khouri 2006).

Referring to the same editorial change on *Future TV*, Rashed Al-Fayed, news and political editor at this television station, offered, understandably, a more sympathetic explanation for *FTV*’s pro-Hariri bias during elections. As he put it, *FTV* has an “emotional tie with a great person called Rafik Hariri”, and therefore it could not deal with elections as if they were strictly “a democratic exercise” (or practice). In his opinion, *FTV*, faced with the “horrendous assassination” (of Hariri), was involved in a “national battle”, and became a “warrior TV” (Al-Fayed 2006):

I believe that *Future TV* is required to reflect daily, in all its program offerings, the point of view of the martyr Rafik Hariri, which is based on a belief in national unity, that Lebanon is Arab, that it should establish good, even special relations with Syria...and that a human being is valuable regardless of class and of his religious, confessional, and racial identity...it is exaggerated to think one can separate between the identity of the television owner and the content of programs, be they political or otherwise...In Lebanon, just like everywhere else in the Arab world or in other Third World countries, the owner of a newspaper colors the newspaper with his own preferences, political stance, and opinion, and a large number of his employees follow him...but it should be recorded that *Future TV* with its owner Saad Hariri and before that his father Rafik Hariri has not prevented access to other political parties. Now the question is whether we are



giving other parties access time equal to that given to the owner [of *Future TV*] or to the political movement he represents. I say of course not (Al-Fayed 2006, author's translation).

Zaven Kouyoumedjian, a celebrity talk show host on *FTV*, was more pragmatic when explaining the reasons that account for the prevalence of pro-Hariri sentiments and views on *FTV* programming. As much as he would have liked, out of professionalism, to see programming on *FTV* with views critical of the station's owner, he said that neither the administration nor the political climate and current public sentiment would have allowed it or would have been ready for such criticism. As he explained, even if he dared to do it himself, he would have been attacked for not being "loyal", rather than for being courageous to express such criticism, considering the fact that Hariri had been recently assassinated. Concerning elections, he blamed the lack of balance in covering different candidates on the absence of an election law for the media, adding that such law is one of the most sensitive topics in the country. But he also believed that this absence was "intentional", allowing the government to "intervene whenever convenient" to muzzle unwanted views. In other words, a law with clear provisions as to what is and what is not allowed is simply not considered desirable by a government that prefers to retain discretionary powers in that respect (Kouyoumedjian 2006).

Kassem Soueid, the news editor and director of political programming at *NBN* television (*National Broadcasting Network*), had a distinctly negative blanket judgment concerning the performance of all Lebanese television stations during the 2005 elections. He spoke of "total chaos", where "each station, according to its political leaning, was marketing its own candidates". As he explained, some stations tried to circumvent or "outsmart" Article 68 of election law no. 171/2000 which forbids all types of political campaigning in the broadcast media, by indirectly promoting their candidates. In conclusion, he said:

"I assert that all Lebanese television stations disregarded what I call the transparency of elections. We all acted wrong, all of us. Not a single station can be absolved from the accusation that it did wrong when it came to covering elections. This might be because of the stations' political cover. They are all known for having a political cover. Maybe the political and legal (or judicial) reality of the country was incapable of facing up to the media. Here we have to bring up the issue of the legal structure. As long as there are no clear and effective laws that are applied equally to all, we will continue to make mistakes when covering elections." (Soueid 2006, author's translation)

The news editor at *NTV* (*New TV*), Mariam Al-Bassam, though acknowledging that the Lebanese media in general are biased, reflect their owners views, and are neither pluralistic nor representative of diversity in society, explained that *NTV* was trying to break out of the mold by being a station for "all", even if it was "often accused of having a leftist touch (or inclination)".



When discussing television coverage of elections, she mentioned the unfair closure of *MTV* (*Murr TV*) which was accused of infringing Article 68 of election law no. 171/2000, but also blamed the station for “giving them [i.e., the authorities] an excuse to shut it down”. She then blamed the inability of some stations to equally represent candidates from different political leanings on the refusal of the candidates themselves to appear on certain stations. She gave the example of a (pro-Hariri) candidate (Atef Majdalani) who was invited to appear on a show on *NTV* opposite a political opponent (Najah Wakeem) but declined, because he “considered another station to be more in tune with his political persuasion”. She also added that, in order to protect her station legally from accusations of bias, she had to inform the National Audiovisual Council, in writing, about her inability to introduce balance in her show by hosting political opponents. The letter was sent with a recording of Majdalani’s rejection as evidence. In conclusion, Al-Bassam criticized the political environment in which Lebanese television stations are operating. It is an environment that prevents local stations from being “media for all”, even when they want to, as the above-mentioned example she gave seems to demonstrate (Al-Bassam 2006).

Almost all media professionals interviewed for the present study, for one reason or another, agreed to what is basically ‘common knowledge’ in the country: i.e., that the privately-owned media in Lebanon are generally beholden to their bosses, who are part of the politico-economic elite, and that their coverage of elections was clearly biased, depending on each station’s ownership pattern. Indeed, shortly after the 2005 parliamentary elections, MP Talal Arslan filed a complaint with the Publications Court against *Future TV*, requesting the “total closure of the station for airing political campaigns, in application of Article 68 of election law no. 171/2000” (*An-Nahar*, 7 June 2005). Later, the Lebanese Democratic Party issued a press release condemning the “passive attitude of the National Audiovisual Council towards the complaint that the party filed regarding the media campaign that *Future TV* is launching against the party, and which is...in infringement of the broadcast law and Article 68 [of election law no. 171/2000]” (*An-Nahar*, 7 June 2005). No lawsuit against *FTV* ever resulted from that complaint.

Indeed, Minister of Information Ghazi Aridi himself summarized the situation quite forcefully when he stated the following about the media coverage of the 2005 elections: “There were infringements indeed, but if I were to apply the law to all (stations), I would have had to shut down all operating media organizations. Not just for their politics, but also for infringing upon



the required financial and technical considerations” (Aridi, 2006). However, as Aridi added, enforcing the election law (no. 171/2000) on all private stations is not an option as long as the government “is not respecting its own laws”, citing the example of government-controlled *Tele Liban*: “How can I blame *Future TV* for crusading on behalf of Prime Minister Hariri when the state-owned *Tele Liban*, at the order of the President of the Republic, was used (during the previous elections) to insult Rafik Hariri?” (Aridi 2006).

## **2. Content analyses of Lebanese media coverage of elections**

In the present section, I will summarize the main results of two major studies about media performance during the 2005 parliamentary elections in Lebanon. It should be noted that such detailed content analyses were conducted for the first time in the country, and were motivated by previous problematic election coverage (i.e., the 2000 parliamentary elections; the 2002 Metn by-elections, and the 2004 municipal elections) which perverted democracy and the rule of law in the country (*Media Electoral Campaigns* 2006) (2).

Two studies monitoring media coverage of the 2005 electoral campaign were independently conducted last year. The first was an initiative of the European Union Election Observation Mission (EU EOM), and the second was a joint venture between the Lebanese NGO LADE (Lebanese Association for Democratic Elections) and the Middle Eastern office of the German Heinrich Boell Foundation. Starting with the LADE study, the authors started off by explaining the difficulties they faced when conducting the study itself, such as differentiating between bona fide news and political advertisement (*Monitoring Media Electoral Campaigns* n.d, 4; *Media Electoral Campaigns* 2006). Another major difficulty when conducting the study was a “phenomenon” found in each operating television station in Lebanon but “not found in any of the existing free media in the world”, i.e., introductory editorials (*Media Electoral Campaigns* 2006, 17). They described how the news bulletins routinely start with an “editorial...which casts its shadow on all subsequent news items by framing negatively whatever it (i.e., the station) deems unacceptable and enhances whatever conforms to its policies” (*Media Electoral Campaigns* 2006, 12). The net result is turning the news bulletin into “a propaganda tool with direct influence on the voters’ choice” (Ibid, 17).



The authors, who performed a content analysis of major newspapers and television stations in the country, then summarized their results, dividing them up into two major sections: the macro- and micro levels of analysis (*Monitoring Media Electoral Campaigns* n.d, 13). At the macro or global level, when observing media coverage as a whole, it appeared that all political alliances and leanings were widely covered. This finding negates any allegations that a specific group was denied media coverage. In other words, “overall, the media scene was in harmony with the electoral scene itself” (Ibid, 17). Interestingly, the study noted that this scene changed completely when each television station was studied separately. The micro level of analysis revealed that the majority of the Lebanese media lacked objectivity and “expressed most of the times the opinions of their owners and financial backers” (Ibid, 17).

In the final analysis, the study noted, though individual media outlets supported openly and covered extensively specific candidates while attacking others, not a single major candidate was eventually excluded: “whoever could not have access to a specific media outlet eventually found access in another media outlet” (Ibid, 18). As such, the authors noted, it is arguable whether it is the duty of each media outlet, separately, to act with impartiality towards all candidates, or whether it is sufficient to have a global media scene where all candidates are covered in one outlet or another (Ibid, 18).

The other study of media coverage of the 2005 elections was conducted by the European Union Election Observation Mission (EU EOM), following an agreement between the EU and the Lebanese Government (*Parliamentary Elections Lebanon 2005*, 4). The two main objectives/concerns of the EU-led monitoring project were to observe the extent to which political parties and candidates gained fair access to the media, and whether “it was possible for the public to gather sufficient information via the media to assist them in decision-making on election day” (*The Daily Star*, 18 May 2005).

Before presenting the results, the EU report noted the existence of a code of ethics for the Lebanese broadcast media during election times, introduced at the initiative of the Ministry of Information and adopted on 16 May 2005 (*Parliamentary Elections Lebanon 2005*, 54). However, the EU report also noted how the media “virtually ignored it”, in the absence of a “reliable procedure to adjudicate media related complaints” (Ibid, 54). The report also noted that coordination meetings between the media outlets and relevant official institutions “were suspended before the end of the electoral process” (Ibid, 54).



The study used a combination of quantitative and qualitative methods in order to measure the “time, space and tone devoted to the political parties and candidates” in a cross section of both the print and broadcast media which represent the existing political spectrum (*The Daily Star*, 18 May 2005). Concerning the broadcast media, the EU EOM results echoed the LADE results. The study showed evidence of “a markedly partisan coverage...that clearly reflected their [i.e., the TV stations’] natural bias towards their patrons”. Interestingly enough, the study noted that the state broadcaster or *Tele Liban* was less biased in its coverage than the private media, but still fell short of ensuring equal coverage for all candidates (*Parliamentary Elections Lebanon 2005*, 58). Contrasting these results with those related to the print media, the EOM study found that the newspapers analyzed were not only less biased than the broadcast media in general, they also distinguished themselves by offering deeper and more critical analyses of the election campaign (Ibid, 58).

Similar to the conclusion of the LADE study, the EU report noted that although the media, as a whole, were able to cover many viewpoints, their coverage of elections was biased. The fact that no legislation was in place to regulate media performance during elections was one of the main reasons “contributing to the creation of an uneven playing field” (Ibid, 59).

In its report issued following the 2005 elections, the National Audiovisual Council also denounced the biased coverage of the broadcast media during elections. It noted how some television stations openly backed specific candidates and voting lists, and aired political advertising that could have been found by the courts to be in infringement of Article 68 of election law no. 171/2000. It also noted how these stations violated the code of ethics (for elections) by both airing interviews with candidates just one day before elections, and by hosting candidates in non-political shows.

### **Endnotes chapter 3: In-depth profile**

1. These views are based on the 26 qualitative interviews conducted by the author in 2006 for the purpose of this study. All translations are by the author.

2. All quotes from the LADE study are translated by the author from the original Arabic version. The study, which came out in 2006, is available in two slightly different versions, first as a publication titled *Muraqabat Al-I'lam Al-Intikhabi* (or *Monitoring Media Electoral Campaigns*) and as a non-published document titled *Al-I'lam Al-Intikhabi* (or *Media Electoral Campaigns*) available at LADE's Beirut office.



## CHAPTER IV POLICY RECOMMENDATIONS

### Introduction

The present study of media regulation and practice in Lebanon has shown that the sector, despite some indicators that seem to suggest that the media in Lebanon are comparatively free, suffers from a variety of predicaments: legal, political, economic, and cultural. These predicaments in general work to reduce the margin of 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 in the country. In many instances, it may be more accurate to speak of politico-economic power elites who, enjoying the support of a largely subservient judiciary, and operating in a general environment characterized by the lack of the rule of law, seem to hold critical media and members of civil society in check. To start with, despite some general guarantees of freedom of expression found in the constitution and in the text of several media laws, these guarantees are curbed by a plethora of concomitant and often loosely worded restrictions that ultimately serve to void the meaning of constitutional and legal protections that exist on paper. Second, the control of the politico-economic elites is often the result of provisions in the media laws that are conceived primarily in order to protect the interests of people in power rather than the public interest. A good example illustrating the inability to use existing media laws in the public interest concerns defamation laws that have turned legitimate targets of scrutiny and criticism (e.g., presidents, the military, judges, etc) into untouchables. Third, Lebanon, though a pioneer in introducing the first law for regulating private broadcasting in the Arab world, has lost its leadership position due to its inability, since 1994, to update this law or the Press Law of 1962, in keeping with technological and other political and societal changes. Indeed, not a single amendment to the broadcast and press laws has been introduced since 1994. Not only that, the legislative field is in some cases characterized by the total lack of a regulatory framework for the internet, the cable industry, and the media during elections – a lack that is especially critical when it comes to monitoring media performance during elections. Indeed, aware of all these shortcomings, the current Minister of Information, Ghazi Aridi, has recently set up a parliamentary sub-committee whose mandate is to revise the existing Broadcast Law by identifying loopholes in the text as well as in its implementation. Another task of the sub-committee is to reorganize the National News Agency in order to increase its efficiency and



independence, and to study the possibility of regulating cable distribution and advertising which remain unregulated to date (1). Aridi has also asked the committee to consider his proposal to disband the Ministry of Information and to simultaneously change the role and membership rules of the National Audiovisual Council in order to create a truly independent body with enforcement powers (Aridi 2006).

Finally, and most importantly, the judiciary has failed on several occasions to act as an independent arbiter in order 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. For instance, both the *NTV* and *MTV* cases (in 1996 and 2002 respectively) demonstrate the arbitrariness of legal actions against these stations and the inability of the judiciary, when resorted to, to act independently of the government of the day. Though both stations were eventually vindicated (*NTV* by being licensed in 1999 and *MTV* by being formally allowed to re-open in 2005), it is doubtful that it can be said that the judiciary was behind this 'restoration of justice'. The State Advisory Council in 1999 indeed rejected the 1996 government decision to deny *NTV* a license. However, it took a change of government for *NTV* to obtain a favorable ruling: i.e., it was licensed only after Hariri - whose government denied it a license in 1996 - was replaced by the Hoss government in 1999. In this respect, one cannot but wonder whether the same decision of the State Advisory Council would have been made had Hariri still been in power in 1999.

Concerning allowing the re-opening of *MTV*, it is worth noting that this was due to a parliamentary act, and not a reversal of the 2002 court decision. One also wonders here if the 2005 parliamentary pro-*MTV* intervention, which happened in the wake of the Syrian withdrawal, was not simply a political statement, as opposed to a legal ruling, *against* the unfair court decision against the station in 2002. The *MTV* case indeed exemplifies the role played by a subservient judiciary and a Syrian 'presence' that seriously affected the rule of law in the country. One should not, however, make the mistake of blaming the Syrians exclusively for the lack of the rule of law or the inability to criticize powerful players (e.g., the president or the military in Lebanon). The Mugraby case took place after the Syrian withdrawal in April 2005. He was tried for defaming the Lebanese military in a manner consistent with the problematic Lebanese defamation laws. His case was dismissed due to international pressure (mostly from the EU), and this case should be a reminder, along with the case of *NTV*'s Ghada Eid (charged



with defaming the judiciary in a recent *Corruption* episode), that there are serious problems with the existing media laws, and that these problems are compounded by the failure of the judiciary to act fairly.

This failure of the judiciary, especially in litigation cases involving the media, as the present study has documented, was strongly criticized in the public opinion survey conducted in the spring of 2006 by Information International for the benefit of the Arab Center for the Rule of Law and Integrity (ACRLI). Not only was the need to “enhance the independence” and “integrity” of the judiciary highest on the Lebanese public’s reform agenda, the public’s negative perception of the judiciary was mostly related to the latter’s inability to fight corruption and to act freely of external interference or pressure. Indeed, bribery was a major complaint as far as the judiciary was involved: 38.5% of those respondents who had to deal with the court system in Lebanon reported having been asked to pay bribes to court staff, while 23.1% of them were asked to bribe the judges who presided over the case.

In sum, as long as the executive and other powerful players cannot be safely criticized, and as long as the judiciary cannot *consistently* be relied upon to act independently (from government) and to fight corruption, and cannot be criticized itself when it fails to do so, 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.

## **Policy recommendations**

Based on the present assessment of the state of the media and freedom of expression in Lebanon, the following policy recommendations can be made, keeping in mind the three basic pillars of independence, integrity, and competence:

### **1. INDEPENDENCE**

#### **1.1. Fundamental guarantees of media independence**

**1.1.1.** Freedom of association should be guaranteed by freeing it from bureaucratic hurdles.

**1.1.2.** Freedom of access to information should be guaranteed, at minimum, by introducing a related provision in the text of media laws.



## 1.2. Regulatory system

**1.2.1.** Periodicals should not be licensed (only registered), and the current restrictive system for licensing political periodicals should be removed.

**1.2.2.** The current distinction between different types of periodicals (political vs. non-political) should be removed.

**1.2.3.** Similarly, the distinction between political (i.e., Category 1) and non-political (or Category 2) broadcast licenses should be removed.

**1.2.4.** Foreign ownership should be allowed to some extent, for example, by keeping the majority of the shares in Lebanese hands.

**1.2.5.** 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).

**1.2.6.** 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.

**1.2.7.** The cost of broadcasting licenses should be reasonable, and not used as a structural mechanism for excluding some qualified applicants.

**1.2.8.** The National Audiovisual Council (NAC) should become more independent of the government and be responsible for allocating licensing (i.e., Council of Ministers should not be able to control the licensing process).

**1.2.9.** 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, etc.).

**1.2.10.** 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 licenses, be provided with its own facilities and personnel in order to carry out its monitoring function, and be able to issue warnings when stations infringe upon content requirements.

**1.2.11.** 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.



**1.2.12.** Satellite television stations should not be licensed by the Council of Ministers. Either the NAC or a similar regulatory body should be created and be given the responsibility of regulating satellite broadcasting (in terms of licenses and content control).

**1.2.13.** All license applicants should be able to contest the decision of the appropriate licensing authority through the court system.

**1.2.14.** Official prior restraint on leaflets, theater productions, and films should be lifted entirely.

**1.2.15.** A law for cable operation and distribution should be introduced.

**1.2.16.** A law for internet regulation should be introduced.

**1.2.17.** 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), and should not have the weaknesses of existing laws (e.g., defamation laws that mostly protect people in power).

**1.2.18.** Fair discussion and criticism of the situation of the economy and the Lebanese currency should be allowed and should not be punished.

**1.2.19.** Concepts related to content controls such as “decency” and “national security” should be defined tightly in order to prevent abuses in their application and a consequent decrease in the margin of freedom of expression in the country.

**1.2.20.** Defamation laws should be amended in order to allow for more freedom when criticizing public servants, officials in high positions, the military, all heads of state, etc.

**1.2.21.** Truth should be a legitimate defense in all libel cases, not just in those involving public servants.

**1.2.22.** 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 recognized religious groups.

**1.2.23.** Sanctions for libel should be higher when the libeled party is a private person, and lighter when the libeled party is a public or official person, in order to increase the margin of freedom of expression and enrich political debate in the country.

**1.2.24.** International publications should not be subjected to prior censorship upon entering Lebanon, or when being issued via satellite in the country (e.g., IHT).



**1.2.25.** A law regulating media coverage of elections should be introduced. This law should include at least the following provisions:

- a. A ceiling for spending on political advertising and campaigning.
- b. Requirements for mandatory disclosure of candidates' financial status.
- c. Allowing all officially recognized candidates equitable and fair access to the media during election campaigns.
- d. 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, etc.), and to provide free or paid airtime on an equal basis to official candidates.
- e. Setting up a council 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 provisions.
- f. A provision setting a period of “campaign silence” for the media during the last few days before 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.

**1.2.26.** Specialized courts should be exclusively responsible for dealing with cases related to infringements of content requirements in all media (whether these require licenses or not).

**1.2.27.** Prison penalties for journalists and broadcasters found by the courts to be in infringement of content requirements should be abolished. Only moderate financial fines should be allowed.

**1.2.28.** Definitive closure should not be an option when a licensed media outlet infringes content requirements.

### **1.3. Censorship**

**1.3.1.** Even during “exceptional circumstances”, the print media should be able to contest the Council of Ministers' decision to introduce prior restraint.

**1.3.2.** Informal and illegal prior censorship of television drama by the *Sûreté Générale* should be abolished.

**1.3.3.** The Council of Ministers should not deal with satellite content (especially the issue of political programming), and should not impose positive requirements forcing licensees to produce programming in order to ‘enhance’ the image of the country abroad.



**1.3.4.** Foreign publications should not be confiscated based on a decision by the Minister of Information.

**1.3.5.** Foreign newspapers sold in Lebanon should not be subjected to the local licensing system (as is currently the case).

#### **1.4. Media independence from external influences**

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

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

**1.4.3.** 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.

#### **1.5. Personal independence of journalists**

**1.5.1.** Journalists working for recognized publications or media organizations should not be detained, in cases of content infringement, for not holding a press card (in the case of foreign journalists) and for not being members of the Union of Press Editors (in the case of Lebanese journalists).

## **2. INTEGRITY**

**2.1.** An updated, *elaborate* code of ethics that is suitable for *both* print and broadcast journalism in the 21<sup>st</sup> century is needed. This code should include, among other things, the following points:

- a.** A strong commitment to seeking and telling the truth as accurately and as fairly as possible in its preamble, rather than a nationalistic and propagandistic commitment to “mobilize public opinion in defense of the country” (*Lebanese Charter* 1974, Article 5).
- b.** An elaboration of situations involving invasion of privacy, disclosing sources, and using illegal methods for obtaining information.



- c. Recommendations concerning important ethical issues that are totally absent from the code, such as plagiarism; stereotyping and discrimination based on gender, ethnicity, religion, and so on; conflict of interest and bribes; and confusion between advocacy/advertising and news.
- d. Recommendations that expand the application of the code beyond the printed word and allow it to apply to photography and broadcast journalism as well. Such recommendations would relate to the nature of photography and the possibility of digitally manipulating both its content and context, and to the staging of video footage.
- 2.2.** Introduction of a set of general anti-corruption laws that apply to media practitioners and politicians as well.
- 2.3.** The concept of pluralism in the media should not be confined or restricted to ownership within a single broadcast station that is diversified from a confessional point of view. Pluralism in the media should also mean ownership by linguistic/ethnic minorities. As for content, it should be pluralist not just by having different opinions, but opinions that respect the diversity of the country from a regional, confessional, ethnic, linguistic, socio-economic, as well as other relevant perspectives.

### 3. COMPETENCE

- 3.1.** Requirements for admission into the union of journalists should not be dependent on any official degree obtained by the journalist. Competence or prolific journalistic writing are fairer and better criteria for admission.
- 3.2.** Admission into the journalists' union (referred to as Union of Press Editors in the Press Law) or acquisition of a press card cannot be delayed administratively once the union's requirements are fulfilled.
- 3.3.** Journalists should be able to have another profession, as long as it does not create a conflict of interest with the profession of journalism.
- 3.4.** Media organizations should provide their staff members with regular training in order to keep them abreast of technological changes and increase their competence in the field. This



training is especially crucial for covering sensitive or complicated issues such as election campaigns.

**3.5.** Membership rules and by-laws of the Union of Press Editors should be transparent and accountable to the members of the union.

**3.6.** Independence of the Union of Press Editors from the Minister of Information should be guaranteed, mostly by abolishing his/her role in approving the bylaws and other administrative matters related to the union.

**3.7.** The Union of Press Editors should protect the journalists' interest in accordance with labor laws, and not simply seek to defend journalists who are detained for infringing the provisions of the Press Law. It should, for instance, deal with issues such as health care, social security, the pension fund, arbitrary redundancy, and so on.

**3.8.** The Union's membership fee should be reduced to a rate that is commensurate with the average salary of a journalist.

### **Concluding remarks**

The problems of the media identified in the present study and the policy recommendations offered in this chapter in order to increase the independence, integrity, and competence of the media cannot be dealt with in isolation from other problems plaguing governance in the country. Indeed, it is ridiculous to speak of most of the above-mentioned criteria for media reform in the absence of an independent judiciary. The current judiciary's ability and willingness to uphold the rule of law has to date been less than credible. Courts should act as a buffer and fair arbiter between the executive and civil society; otherwise media reform is highly questionable. This 'crisis of justice' in the country is compounded by the existence of an equally inefficient and mostly unrepresentative parliament, whose members are perceived as highly incompetent in fighting corruption. Without serious judicial *and* parliamentary reforms (e.g., through a new election law), to suggest that power should be taken away from individual ministers or the council of ministers and be invested with the courts or with media councils or unions is ineffective reform to say the least, if not wishful thinking on the part of any reformist.

In sum, reform must be multi-lateral, 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 that the mostly private, commercial media can ever be expected to



carry out the task themselves. Without this holistic approach to change, even the most drastic reforms of the media laws, when successfully introduced, risk remaining little more than ink on paper.

#### **Endnotes chapter 4: policy recommendations**

1. The 1994 Broadcast Law stipulates, in Article 40, that all matters pertaining to advertising which are not dealt with in the same law (very few are) are to be subsequently regulated. The advertising industry remains unregulated to date. The same can be said about *Tele Liban* as foreseen in article 41, paragraph 3.

2. The Institute for Professional Journalists at the Lebanese American University, following a seminar organized in Beirut in May 9-11, 2001, in coordination with the International Press Institute, issued its “Proposed Guidelines for a Code of Good Journalistic Practice”. The Guidelines, which draw on a variety of local, regional, and international codes of ethics, are useful and quite comprehensive, and can be easily used as a template for a new Lebanese code of ethics.



## WORKS CITED

Al-Atrash, R. (2004). ‘The Lebanese Journalists Trade Union: a story not recommended before bedtime’, paper presented at the Arab Press Freedom Watch Annual Conference, Rabat, 3-6 May 2004. Available at [www.apfw.org/data/annualreports/2004/english/2004annualreport.pdf](http://www.apfw.org/data/annualreports/2004/english/2004annualreport.pdf) accessed on 25 May 2006.

*Allo Magazine* (2006). ‘Ghada Eid a fait de la corruption un combat’, No. 48, May 2006.

An-Nashef, A. (2003). *Al-Bath al-Televisiuni wal Iza’i wal Bath al Fada’i*. Beirut: Al-Halabi publishers.

Attacks on the Press 2003, CPJ Middle East and North Africa, available at <http://www.cpj.org/attacks03/mideast03/lebanon.html>, Accessed on 25 September 2006.

Aufderheide, P. (1999). *Communications policy and the public interest: The Telecommunications Act of 1996*. New York: Guilford.

Az-Zubaidi, L. (1994). *Walking a Tightrope: News Media & Freedom of Expression in the Arab Middle East*. Middle East Office: Heinrich Boll Foundation.

Barendt, E.M. (1995). *Broadcasting Law: A comparative study*. Oxford: Clarendon.

Bates, D. and A. Rassam (n.d.). ‘Communal Identities and Ethnic Groups: the Armenians’, [http://arabworld.nitle.org/texts.php?module\\_id=6&reading\\_id=59&sequence=11](http://arabworld.nitle.org/texts.php?module_id=6&reading_id=59&sequence=11), accessed 7 June 2006.

Battah, H. (2006) “Your guide to the frontlines of Arab television”, in *Middle East Broadcasters Journal*, Issue 5, February-March 2006.

Battah, H. (2005) “A life of terror: the Arab press is constantly under the gun”, in *Middle East Broadcasters Journal*, Issue 4, November-December 2005.

Berenger, R. (2004) *Global Media Go to War: Role of News and Entertainment Media during the 2003 Iraq War*. Spokane: Marquette Books.

Boutros, A. (1995). *Kanoon al I’lam*, part III. Beirut: Feghali.

Boyd, D.A. (1993). *Broadcasting in the Arab world: a survey of the electronic media in the Middle East*. Iowa: Iowa State University.

“‘Courrier International’ censure au Liban” (2001) available at [wysiwig://showmsg.13/http://www.courrierin...ational.com/dossiers/geo/syrie/syrie00.htm](http://www.courrierinternational.com/dossiers/geo/syrie/syrie00.htm), accessed on 28 June 2001.



Dabbous-Sensenig, D. (2005 a). “Incorporating an Arab-Muslim perspective in the re-assessment of the implementation of the Beijing Platform for Action”, paper presented at the UN Division for the Advancement of Women (DAW), conference titled: *Priorities in follow-up to the ten-year review and appraisal of implementation of the Beijing Declaration and Platform for Action*, New York City, October 31-November 3.

Dabbous-Sensenig, D. (2005 b). “ ‘Lost in Translation’ dans le Monde Arabe”(English original: “Lost in translation? The concept of public service broadcasting in the Arab World”), in *Une Television Sans Service Public?*, edited by Jerome Bourdon, a MediaMorphoses ‘Hors Serie’ publication by the National Audiovisual Institute (INA), France, pp. 135-143.

Dabbous-Sensenig, D. (2003). *Ending the War? The Lebanese Broadcasting Act of 1994*, unpublished doctoral dissertation, Sheffield Hallam University, UK.

Dabbous-Sensenig, D. (2001). “The Power of Advertising: the Middle East”, in *Media and Gender Monitor*, issue No. 8, London.

Dabbous-Sensenig, D. (2000). “Media vs. Society: Schizophrenia in an Age of Globalization. Towards an Effective Gender and Communication Policy for the Middle East”, in *Media Development*, Vol. XLVII, No. 3/2000. World Association for Christian Development (WACC), London.

Dajani, N. (2005). ‘Television in the Arab East’ in *A Companion to Television*, ed. by Janet Wasko, Malden, MA: Blackwell Publishing.

Dajani, N. (2001). ‘The Changing Scene of Lebanese Television’, in *Transnational Broadcasting Studies*, No. 7, Fall/Winter 2001.

Dajani, N. (1992). *Disoriented Media in a Fragmented Society: The Lebanese Experience*. Beirut: American University of Beirut.

*Electoral Campaigns* (2006). Report of the Lebanese Association for Democratic Elections (LADE), Beirut.

Freedom House (2003). *Freedom of the Press 2003: A Global Survey of Media Independence*, Freedom House.

Gambill, G. (2000). ‘Trial of Mugraby, Batal May Presage Renewed Assault on Public Liberties’, available at [http://www.meib.org/articles/0010\\_13.htm](http://www.meib.org/articles/0010_13.htm) Accessed on 24 September 2006.

Gonzalez-Kikhano, Y. (2003). ‘Shabaket al-internet wa awlamat wasa’el al-I’lam wal-ittisal allubnanyya’, in *Al-fadaa al-arabi*, edited by Franck Mermier, translated by Frederick Maatuk. Damascus: Kadmus Publishers.

International Intellectual Property Alliance 2006 Report Lebanon, available at <http://www.iipa.com/2bc/2006/2006SPEC301LEBANON.pdf>, accessed on 6 June 2006.



International Gay and Lesbian Human Rights Commission (IGLHRC) (2000). ‘Lebanese police threaten to close internet service provider’, available at <http://groups.yahoo.com/group/wecan/message/196?viscount=100>, accessed on 5 June 2006.

Internet Services in Lebanon, Ministry of Telecommunications website, available at <http://www.mpt.gov.lb/internet.htm> , accessed on 2 May 2006.

“Journalist maimed in Lebanon blast”, *Al-Jazeera net*, 26 September 2005, available at <http://english.aljazeera.net/NRexeres/44174BBE-6737-4ACF-AEEC-0E214AE2EE5A.htm>, accessed on 29 December 2005.

Kellner, Douglas (1992). *The Persian Gulf TV War*. Boulder, Colorado: Westview Press.

Khalaf, Samir (1987). *Lebanon’s Predicament*. New York: Columbia University Press.

Khoury, D. (1976). The Lebanese radio and television stations present: The reluctant Partisans. *Monday Morning*, March 28, pp. 40-44.

*Legal Provisions Concerning Defamation, Libel, and Insult: Brief overview of related legislation in selected European countries* (2003), Media Division, Strasbourg: Council of Europe.

McCarthy, Rory (2005). “Car bomb kills Lebanese journalist as UN attacks Syria over Hariri murder inquiry”, the *Guardian*, 13 December 2005. Available at <http://www.guardian.co.uk/print/0.3858.5354268-111416.00.html>, accessed on 20 December 2005.

McFedden, T.J. (1953). *Daily journalism in the Arab states*. Columbus: Ohio State University

*Media Electoral Campaigns* (2006), booklet published in Arabic by the Lebanese Association for Democratic Elections (LADE), Beirut.

*Media Ethics & Journalism in the Arab World: Theory, Practice & Challenges Ahead*, conference proceedings, conference organized by the Institute for Professional Journalists, Lebanese American University, Beirut, June 9-11, 2004.

‘Media Giants Cast Aside Regulatory “Chains”’ (2002). *FAIR Action Alert*, list-serve mail received on 3 March 2002.

Middle East and North Africa 2001: Lebanon country report, *Committee to Protect Journalists (CPJ)* homepage, <http://www.cpj.org/attacks00/mideast00/Lebanon.html>, accessed on 1 June 2006.

*Middle East Broadcasters Journal*, February-March 2006, issue 5, Beirut.



Middle East Intelligence Bulletin (2000). 'Lebanon: Internet, Gay Rights Targeted'; Free Expression at Risk', available at [http://www.meib.org/articles/0010\\_idoc0923.htm](http://www.meib.org/articles/0010_idoc0923.htm) Accessed on 3 June 2006.

Migrant Women Domestic Workers in Lebanon, ILO , available at <http://www.ilo.org/public/english/region/arpro/beirut/infoservices/report/index.htm>, accessed on 6 October 2006.

*Monitoring Media Electoral Campaigns* (n.d.). Study about the 2005 Lebanese parliamentary elections, available in Arabic, distributed by the Lebanese Association for Democratic Elections (LADE), Beirut, Lebanon. E-mail: [info@ladeleb.org](mailto:info@ladeleb.org).

Mukhaiber, G. (2004). *Insha' wa Idarat al-Jam'iyyat al Khadi'a li Kanoon 1909*, Beirut: ADDL.

Naaman, M. and N. Tohme (2001). 'For their eyes only', *Executive magazine*, March 2001.

Nashef, A. & F. Kerbage (2000). *Kawaneen al I'lam al matbou' wal mar'i wal masnou' fi loubnan*. Beirut: Mokhtarat.

O'Sullivan T., B. Dutton & P. Rayner (1994). *Studying the Media*, 2<sup>nd</sup> ed., London: Arnold.

*Parliamentary Elections Lebanon* (2005). Study by the European Union Election Observation Mission, available at [www.dellbn.cec.eu.int/en/whatsnew/elect05rpt.htm](http://www.dellbn.cec.eu.int/en/whatsnew/elect05rpt.htm), accessed on 25 February 2006.

Patterson, P. & L. Wilkins (1994). *Media Ethics: Issues and Cases*, 2<sup>nd</sup> ed. Madison, Wisconsin: Brown & Benchmark Publishers.

Pember, D. (2004). *Mass Media Law*. New York: Mc Graw Hill.

'Reporters Without Borders brands as harassment a 48-hour ban', Reporters Without Borders, 17 December 2003. Available at [http://www.rsf.org/article.php3?id\\_article=8809](http://www.rsf.org/article.php3?id_article=8809), accessed on 11 January 2006.

Safa, O. (n.d.). *The Print Media and Corruption in Lebanon*, The Lebanese Center for Policy Studies. Available at <http://www.ids.ac.uk/ids/civsoc/final/lebanon/leb6.doc>, accessed on 17 June 2006.

Sakr, N. (2001). *Satellite Realms: Transnational Television, Globalization & the Middle East*. London: I.B. Tauris.

Sakr, N. (2004). 'Competing Codes of Ethics and Evolving Journalistic Practice in Arab Satellite TV', paper presented at the conference titled *Media Ethics & Journalism in the Arab World: Theory, Practice & challenges Ahead*, Institute for Professional Journalists, Lebanese American University, Beirut, June 9-11, 2004.



Salameh, I. (1967). *As-Sahafa al-lubnaniyyah fil madi wa fil mustakbal*. Beirut: Ath-thakafa al-arabiyah.

Shukair, Y. (2004). 'Jordan: liberation of the media from government hegemony', paper presented at the Arab Press Freedom Watch Annual Conference, Rabat, 3-6 May 2004.

Speetjens, P. (2005). 'Pirate's paradise: when stealing is the norm', *Middle East Broadcasters Journal*, Issue 4, November-December 2005.

Stanhope Center for Communications Policy Research, country report Lebanon (2003), available at [http://www.internews.org/arab\\_media\\_research/default.htm](http://www.internews.org/arab_media_research/default.htm), accessed on 5 January 2006.

*State of human rights in Lebanon* (2002). Foundation for Human and Humanitarian Rights, available at <http://www.clhrf.com/humanrights/human.rights.in.lebanon.2002htm.htm>, accessed on 6 July 2002.

Whitaker, B. (2006). *Unspeakable Love: Gay and Lesbian Life in the Middle East*. Lebanon: Saqi Books.

## **INTERVIEWS**

Abboud, A. (2006). Coordinator of the electoral reform project, Lebanese Association for Democratic Elections (LADE), personal interview, 10 February 2006.

Abdalian, A. (2006). Manager of *Radio Voice of Van*, personal interview, 14 January 2006.

Aghbashian, B. (2006). Editor-in-chief of *Zartonk* newspaper, personal interview, 27 January 2006.

Al-Bassam, M. (2006). News editor, *New TV*, personal interview, 7 March 2006.

Al-Fayed, R. (2006). Director of news and political programming at *Future TV*, personal interview, 9 March 2006.

Aridi, G. (2006). Lebanese Minister of Information, personal interview, 18 March 2006.

Azzi, G. (2006). National coordinator of *Helem* (a Lebanese organization for gay and lesbian rights), personal interview, 7 June 2006.

Eid, G. (2006). *New TV* presenter of *Al-Fasad* (or 'Corruption') show, personal interview, 25 May 2006.



- Kandaharian, S. (2006). Editor-in-chief of *Azyag* daily, personal interview, 17 January 2006.
- Khoury, R. (2006). Editor-in-chief of *Al-Anwar* daily, personal interview, 25 February 2006.
- Khoury, R. (2006). Former editor at the *Daily Star*, personal interview, 13 February 2006.
- Kouyoumedjian, Z. (2006). Celebrity talk show host at *Future TV*, personal interview, 15 February 2006.
- Marshallian, C. (2006). *An-Nahar* journalist and TV scriptwriter, personal interview, 20 February 2006.
- Mkalled, D. (2006). Investigative reporter at *Future TV*, personal interview, 20 February 2006.
- Mugraby, M. (2006). Lawyer and human rights activist, personal interview, 27 March 2006.
- Nour Ed-Deen, S. (2006). Managing editor and columnist at *As-Safir* daily, personal interview, 9 March 2006.
- Omar, S. (2006). *LBC* talk show host, personal interview, 23 February 2006.
- Samaha, M. (1999). Former Minister of Information, personal interview, 14 January 1999.
- Shalak, M. (2001). Vice-President of the National Audiovisual Council in 1996, personal interview, 22 August 2001.
- Shekherdemian, A. (2006), editor-in-chief of the *Ararat* weekly, personal interview, 28 January 2006.
- Soueid, K. (2006). News editor and director of political programming at *NBN* television, personal interview, 10 February 2006.
- Talal S. (2006). Editor-in-chief of *As-Safir* daily, personal interview, 15 February 2006.
- Tirk, I. (2005). Member of the National Audiovisual Council in 1996, personal interview, 16 May 2005.
- Wehbe, Z. (2006). Celebrity talk show host at *Future TV*, personal interview, 25 February 2006.
- Zaraket, M. (2006). Journalist in *Al-Akhbar* daily, personal interview, 30 June 2006.
- Zughaib, A. (2006). ISP *Cyberia* manager, personal interview, 16 May 2006.