

Media Law Assistance: Establishing an Enabling Environment for Free and Independent Media to Flourish

Working Group Report

May 18, 2007



**National Endowment
for Democracy**
Supporting freedom around the world

The Center for International Media Assistance (CIMA), a project of the National Endowment for Democracy, aims to strengthen the support, raise the visibility, and improve the effectiveness of media assistance programs by providing information, building networks, conducting research, and highlighting the indispensable role independent media play in the creation and development of sustainable democracies around the world. An important aspect of CIMA's work is to research ways to attract additional U.S. private sector interest in and support for international media development.

CIMA convenes working groups, discussions, and panels on a variety of topics in the field of media development and assistance. The center also issues reports and recommendations based on working group discussions and other investigations. These reports aim to provide policymakers, as well as donors and practitioners, with ideas for bolstering the effectiveness of media assistance.

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Table of Contents

Preface	3
Executive Summary	4
Background	6
Challenges and Opportunities for a Legal Enabling Environment	8
Strategies for Donors and Implementers	12
Recommendations	16
Appendix I: What Constitutes a Legal Enabling Environment	18
Appendix II: Working Group Participants	22

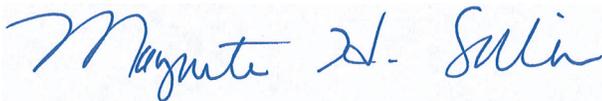
Preface

On May 18, 2007, the Center for International Media Assistance (CIMA) at the National Endowment for Democracy organized a working group to discuss key issues in ensuring a legal enabling environment for free and independent media, as well as relevant strategies for donors and implementers.

CIMA is grateful for the valuable contributions of the working group participants. We extend our particular thanks to Kurt Wimmer, Senior Vice President and General Counsel of Gannett Co., Inc., for his skillful moderation of this important discussion and to veteran journalist Ann McFeatters for helping to organize the discussion into a comprehensive report.

We would also like to acknowledge Peter Krug, Richard McClear, Darian Pavli, and Richard Winfield for insightful presentations that framed the group's discussion and fostered much debate.

We hope that this report will become an important reference for international media assistance efforts.



Marguerite Sullivan
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Executive Summary

The Center for International Media Assistance (CIMA) at the National Endowment for Democracy aims to strengthen the support, raise the visibility, and improve the effectiveness of media assistance programs by providing information, building networks, conducting research, and highlighting the indispensable role independent media play in the creation and development of sustainable democracies around the world. An important aspect of CIMA's work is to research ways to create a legal environment that will allow independent and free media to thrive.

On May 18, 2007, CIMA hosted a working group to stimulate a candid dialogue about the role of international media assistance in fostering a legal enabling environment in which free and independent media can thrive. The working group consisted of nineteen participants drawn from media institutions and government, nongovernmental, and international organizations, as well as lawyers, academics, and donors. (See Appendix II for list of participants.) The working group's ultimate goal was to form recommendations for policymakers on how to improve U.S. foreign assistance with respect to the legal enabling environment for free and independent media. They defined "free and independent media" as a system that autonomously gathers and disseminates information to the general public via any medium of communication and a "legal enabling environment" as one in which respect for the rule of law, media-specific laws, and institutional structures supporting free and independent media operate.

Creating a legal enabling environment for free and independent media should be

understood to be one of the essential and equally important pillars of a coherent program for development of the media sector. Other pillars include media sustainability, business and operational aspects of the media, and professional training and support of journalists. These pillars are both co-dependent and mutually supporting.

The working group considered how international media development programs—particularly those that are U.S.-supported—have succeeded or failed, discussed best practices, and made recommendations. Journalist Ann McFeatters served as the rapporteur for the meeting.

The discussion focused on several questions:

- What has succeeded in international media law development? What has not performed as planned and why?
- What is needed for success?
- What should be the role of the U.S. government and private donors?
- What new strategies should be tried?

This report highlights working group's main recommendations and points of discussion. Among the group's major findings were:

The Importance of Media and Media Law Development: Free and independent media underlie all elements of a democratic society. As such, free and independent media should be recognized by private and public decision makers and donors as a distinct sector in need of development and not just a tool for achieving other develop-

ment goals. Within this sector, establishing a legal enabling environment in which free media can flourish should be regarded as a top priority. Its importance needs to be stressed at all levels of dialogue—bilaterally and multilaterally—that U.S. government officials conduct with their counterparts in other countries. European Union accession was an incentive in reforming punitive media laws in many Central and Eastern European countries formerly under Communist rule; however, such incentives may not be shared in other parts of the world. Instead, international agreements and loans could be used as incentives to promote free and independent media.

Information and Resources: The media law profession needs to be built up in countries where there are few experts and where there is a need for information and networking. Donors and implementers need to come together to develop a globally-accessible Web site that provides information and analyses of media-related laws, cases, articles, and international conventions, as well as a database of leading media law nongovernmental organizations (NGOs) and experts. A pooled international legal defense fund for journalists and media organizations, along with a network of media defense attorneys willing to help journalists and media or-

ganizations whose legal rights are being challenged, is also needed.

Coordination: Private and public donors, as well as implementing organizations, both American and European, need to coordinate their activities on a much more formal and regular basis. There also needs to be coordination among those engaged in the media law development sector—lawyers, journalists, judges, and civil society.

Donors and Implementers: Development strategies need to incorporate longer timelines for media law activities to be fully established and implemented. Too many donors end programs early, jeopardizing success. Implementers and others in the field need to make a better case for why sustained support by the private sector is crucial.

Criteria: Media developers need to create a minimal framework of principles and indicators for creating, nurturing, and sustaining a legal enabling environment. Media law experts need to establish basic criteria that can be used by practitioners to determine when a program should be supported or terminated. Donors and implementers need to understand that implementation of programs can be as critical to the success of a project as the passing of media-friendly laws.

Background

While more newspapers, magazines, television and radio stations, and news Web sites exist than ever before, legal barriers to their free and independent operation remain or continue to be erected. A country's legal system, both its laws and their enforcement, is a significant factor in determining the level of freedom enjoyed by the media. According to Freedom House's *Freedom of the Press 2007* survey, only 18 percent of the world's population lives in countries with a "free" press, while 39 percent live in countries with a "partly free" press and 43 percent in countries whose press is characterized as "not free."

Estimates compiled by CIMA indicate that the U.S. government spends at least \$64 million per year supporting independent media development, including journalism training and education, media business development, media law advocacy and institutional development, and programs using communications for other development purposes, such as health education. This figure does not include public diplomacy or Department of Defense expenditures, which would raise the amount significantly.

Typically, U.S. government support of independent media development is part of broader democracy and governance strategies, which include developing political parties, civil society, rule of law, and local government. In the field of legal reform, more attention has been placed on developing overall rule of law and judicial reform

and less on media law reform. Media law also receives less emphasis in media development programs, where more attention has been given to journalists' professional development than the legal environment in which reporters operate.

Free and independent media are necessary for the functioning of many institutions in democratic societies. Media not only facilitate communication, but also expose corruption and hold public officials accountable. Democratic governance depends on the ability of citizens to make informed decisions, which requires the dissemination

of accurate information through free and independent media. Media are also crucial for economic growth, because they are responsible for disseminating information, aiding

communication, and promoting transparency. Media cannot perform these functions, however, when journalists are unable to exercise their rights or the regulatory environment in which they operate discourages independence and plurality.

Without a legal enabling environment free and independent media cannot succeed.

Defining a Legal Enabling Environment

The key premise of the CIMA media law working group was that without a legal enabling environment free and independent media cannot succeed. Prior to the meeting participants reached a consensus on several principles. They defined "free and independent media" as a system that autonomously gathers and disseminates information to the

general public via any medium of communication and a “legal enabling environment” as one in which respect for the rule of law, media-specific laws, and institutional structures supporting free and independent media operate. The ultimate test of a supportive legal environment is whether it enables the creation and survival of national newsgathering and news-disseminating institutions with a high degree of independence and professionalism. The goal of international legal media assistance, they concluded, should be development and maintenance of such an environment.

A free media environment requires more than a set of laws guaranteeing freedom of expression, although such laws are a necessary first step. Journalists have a professional duty to inform the public. Therefore, they must be granted the right to access information and protect their sources and themselves against intimidation and attack. Media independence and pluralism should be ensured through a fair, apolitical, and transparent system of frequency allocation and license renewals. Citizens also must have the right to own and operate independent media outlets free from government censorship and control. Media outlets should be granted legal status and guaranteed treatment on par with that of other private businesses in terms of tax law, import duties, legal incorporation pro-

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cedures, banking rules, and other aspects of business law.

Institutions that support free and independent media are also critical. Civil society organizations, such as a group of specialized lawyers working on behalf of media interests, provide the backbone of efforts to garner new freedoms and ensure fair implementation of existing laws. The impact of a well-trained cadre of media law specialists in almost any national context, however, depends heavily on the ability of civil society—especially journalism associations and other free expression and human rights

groups—to organize and advocate publicly for press freedom and legal reforms. Journalists need to be aware of their legal rights and their role within society. Law enforcement agencies also must be committed to the fair and equal implementation of laws and the protection of journalists’ rights.

How can the rights of journalists be protected?

The participants agreed that assistance drafting legislation, international pressure and advocacy, and monitoring of laws are all necessary to affect change within a legal system. Institutionally, international organizations can help establish programs and organizations committed to promoting the role of journalists and improving the current media laws of a system.

Challenges and Opportunities for a Legal Enabling Environment

Lack of Internal Political Will

Demand for change must come from within, participants said. They highlighted how in Central and Eastern Europe, the political will for the transformation of institutions—including reforming punitive media laws—existed in part because of a desire to join the European Union. Such a powerful political incentive does not exist in other parts of the world, one participant noted. In certain settings, governments, as well as citizens, “willingly choose economic security and greater wealth over greater freedom.” Another participant suggested creating incentives for media law reform through global institutions, such as the World Bank, the International Monetary Fund, and the World Trade Organization. Making legal media reform a criterion for loan and organization membership would promote the establishment of environments in which free and independent media can thrive.

The lack of political will for change can be a major obstacle for even the best designed and implemented assistance programs. As one media assistance specialist noted, to understand what will work in a country, donors and implementers must first understand “what works in terms of overcoming the resistance to change on the national level.” Several participants said implementers, donors, and scholars need to make a

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stronger case for the positive effects free and independent media have on all aspects of society—political, economic, social, and cultural. Unless civil society and governments understand the role of the media in a democracy, they will not push for the

creation of a legal enabling environment in which it can operate effectively.

The Judiciary

A strong, independent judiciary that respects the rule of law and seeks to protect media rights is essential for a legal enabling environment for journalists. All judicial training should have an anti-corruption component, several participants said. Judges also need to be educated about their role in creating precedents in media law. The most notable accomplishment of the USAID media assistance program in Slovakia in the late 1990s, one participant said, was the Constitutional Court’s overturning of a vague election law that could have been interpreted to allow the government to inhibit media coverage of elections. A workshop on European Court of Human Rights case law organized for Constitutional Court judges influenced the court’s decision on this issue, the participant said.

Participants also advocated hosting workshops to bring together judges, lawyers, and journalism professionals. Structured, yet informal, dialogue among various

constituencies helps build relationships and creates a better understanding of each others' roles.

Media Law Literacy

Media literacy is important. Citizens and government officials need to understand the role free and independent media, including the legal enabling environment, play in a democracy. They must understand, participants said, how laws, such as freedom of information laws, should be implemented.

A government official suggested supporting programs via television and the Internet to foster greater public understanding of the relationship between the media and reporters' basic rights and responsibilities. Another official recalled a series of television programs produced by Internews and broadcast in different parts of Russia examining independent media issues throughout the world. The series raised citizens' awareness of legal issues facing the media.

Local Capacity Building

Institutions that will fight for the repeal of pernicious media laws and the passage and implementation of beneficial ones, such as freedom of information laws, are essential. These institutions may be built from the ground up. Existing associations and interest groups can also take up the challenge. Local media law advocacy groups must be empowered so they remain actively involved in lobbying and monitoring media law reforms after external assis-

tance has ended. One implementer noted that local, multi-purpose organizations are better at functioning as support organizations for local media professionals than groups mobilized around a single issue, such as decriminalization of libel, since these groups are prone to dissolution after the issue has been solved. For example, professional associations established in one Central European country remain engaged in many aspects of media assistance, including

lobbying for legislation, conducting research, and organizing professional training and seminars. After undergoing training sessions together, a diverse group of professionals, which included parliamentarians, lawyers, NGO representatives, and

broadcasters, later worked together to draft laws related to the protection of independent media.

Local, self-sustaining civil society institutions are important legacies for donors to leave behind once a media development program has ended, participants said. The strong institutional base created by the USAID media assistance program in Slovakia led to a number of successes after the funders had pulled out. These successes included the adoption of a broadcast law, passage of a freedom of information act, revocation of an outdated 1966 Czechoslovak media law, and decriminalization of libel.

In Russia, despite major rollbacks in human rights and democratic efforts, including a crackdown on independent media, there have been a few achievements, according to a participant who has done significant legal

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work in the country. He cited the Moscow Media Law and Policy Institute and the Glasnost Defense Foundation as examples of civil society organizations that have endured. Their leaders, who have been in place for more than a decade, have pushed a variety of media law-related activities, ranging from monitoring and reporting of press freedom violations to providing education programs and legal assistance to journalists and news organizations. In the area of civil defamation law, NGO lawyers trained by the organizations have used European Court of Human Rights case law to defend media clients in litigation and influenced the Russian Supreme Court's 2005 decree on civil defamation, according to the participant.

Training

Participants were concerned that in a number of countries lawyers who specialize in or are skilled at media law do not exist, are few in number, or receive poor training. They agreed that their ranks need to be built and their skills improved. Additionally, media law assistance programs often prioritize the training of judges in media-related case law over the training of media lawyers. In Central and Eastern Europe, much effort has been placed on the training of judges in the media case law of the European Court of Human Rights. In countries where the practice of media law is not well developed, training and workshops for lawyers in media law is as important as that of judges. One participant suggested increasing international mentoring programs in which senior foreign lawyers help indigenous lawyers build

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their professional skills, giving particular emphasis to lawyers practicing in countries where skilled media lawyers are few.

Reporters, editors, and news executives also need to be informed of their legal rights. In several countries, organizations have produced legal handbooks—in both print and online versions—that can be regularly updated. These have been helpful not only to lawyers, but also to journalists, particularly those doing investigative reporting, by clearly spelling out their rights. In one Central European country, a legal handbook created as a loose-leaf notebook eventually became a textbook for both journalism and law faculties at four universities. Thanks to the handbook, journalists became more aware of their rights not only under

the European Convention of Human Rights, but also under domestic laws.

Media Defense Lawyers and Other Measures to Protect Journalists

Journalists and media organizations are under attack and have little or no legal protection in many societies. “There are too many countries where a culture of impunity for crimes against journalists is in the eyes of most reporters and editors the single biggest impediment to the independence and effectiveness of local news media,” a representative of an international organization noted. He referred in particular to Russia, Mexico, Colombia, Iraq, and the Philippines. To address the issue of violence against journalists, which ranges from

threats and physical attacks to assassination, a participant pointed to the need for police and prosecutors with the training, resources, and mandate to investigate and prosecute the crimes of violence against journalists and news organizations.

Participants also agreed that support for media legal defense is needed. One legal defense specialist elaborated on how many journalists and media organizations around the world lack funds to cover their legal defense costs when sued, harassed, shut down, or imprisoned. Participants applauded a proposal by the Open Society Justice Initiative (OSJI) made at a recent donors' meeting. The proposal calls for the establishment of a pooled fund to support a global network of media defense lawyers. The fund could support a secretariat that would strengthen existing legal defense groups and help create new ones where such groups are nonexistent.

A Media Law Web Site

A number of participants acknowledged the lack of easily accessible and com-

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prehensive information and analysis of media laws around the world. "We don't understand how difficult it is for lawyers practicing in developing countries to get information and precedents in international courts," one lawyer said. Participants pointed to the need for a Web site that not only compiles media laws from various countries, but also provides legal analyses, amicus briefs, and case law developments. Such a Web site could include interpretation of landmark media cases, scholarly publications, articles of regional and international conventions, and related case law. It could also host a database of media law NGOs and legal experts willing to assist in media cases, particularly *pro bono*. This Web site could be translated into key languages and become a handy tool for lawyers, judges, journalists and NGO activists around the world.

Participants called for the creation of a Web site that would be hosted and maintained by an adequately-funded NGO noted for its independence, credibility, and international stature in media.

Strategies for Donors and Implementers

Long-Term Commitment Required

There was a strong consensus among the participants that creating an operative legal enabling environment for media requires a long-term commitment on the part of donors. Too often they have withdrawn support prematurely, leaving projects uncompleted. Several participants pointed out that donors, particularly governmental ones, often underestimate the time required for substantive accomplishments or, more likely, terminate funding as political priorities shift. Frequently, projects conclude when laws are passed, but before they have been fully implemented.

Several participants pointed to Georgia as an example of a country where a strong media assistance program was terminated prematurely after laws were passed, but not fully implemented. The bulk of U.S. assistance for Georgia's independent media came just after Mikheil Saakashvili became president. It was a pivotal time when media law was being re-examined. One participant suggested establishing criteria to determine when minimum media development goals have been met and program assistance should be withdrawn. Donors and implementers could use these criteria to decide the optimal points in a program's life to terminate funding.

Several participants suggested that having a variety of funding sources could counter problems created when one donor withdraws support before a project reaches its goals. Most legal initiatives have been government funded and, as several partici-

pants observed, government-funded projects are particularly vulnerable to policy shifts and competing priorities. The Open Society Institute, they noted, is one of few private funders that has not shied away from supporting media law reform initiatives. Most private donors have taken more interest in training programs, focusing on developing journalistic skills over developing law-focused programs.

Coordination

Coordination among and between donors and among implementers is often seriously lacking, despite being crucial for media law reform. The lack of coordination leads to duplication, unnecessary competition, and conflicting priorities. While recognizing the importance of coordination, a participant nevertheless expressed concern about the feasibility of formal coordination, especially in large countries where multiple donors and other development actors are present.

In Slovakia, there were both effective and ineffective attempts at coordination, according to an implementer who coordinated a U.S. government-funded project there. Productive international cooperation, such as existed among the National Democratic Institute, Transparency International, the American Bar Association Central and Eastern European Law Initiative, and the Council of Europe, greatly facilitated media law assistance efforts. This coordination fell apart, however, when it came to the

The lack of coordination leads to duplication, unnecessary competition, and conflicting priorities.

issue of establishing a press council, a self-regulatory body that ensures adherence to journalistic ethics and professionalism and examines public complaints about media coverage. Western European donors generally supported the use of press councils as self-regulating instruments, but many American journalists and journalism organizations involved in independent media development disapproved. After articles in the American press criticized U.S. involvement in promulgating press councils, the USAID media assistance program stopped helping Slovak organizations form a press council and halted assistance in drafting a media law that used a press council as part of the regulatory scheme. This had an indirect effect on other U.S. government-supported activities and ultimately delayed the passage of a media law in which the program had been actively involved, said the implementer.

Monitoring and Reporting

Participants agreed that the basic elements of a legal enabling environment needed to be agreed on and understood. One participant strongly advocated developing a monitoring framework that would assess the effectiveness of legal systems and ensure an enabling environment that protects and promotes the rights of journalists, including criteria for systemic monitoring and reporting of media threats ranging from physical violence to censorship and self-censorship. Although a number of frameworks already exist, the absence of a consensus on the minimum elements of a legal enabling environment makes comprehensive monitoring and reporting difficult, the group concurred.

Media law reform does not conclude when laws are passed, participants agreed. Implementation is crucial.

Better monitoring would be useful to regional, national, and international leaders as well as human rights activists. Participants also stressed the importance of exerting international pressure on leaders of offending governments to ensure the proper implementation of laws promoting free and independent media.

Implementation

Monitoring and reporting are crucial to implementation of media law reform legislation. Media law reform does not conclude when laws are passed, participants agreed. Implementation is crucial, and the failure to carry proposed reforms through the action phase is a serious shortcoming of assistance programs.

In Montenegro, for example, a media assistance program contributed to the passage of key legislation. Through a USAID-sponsored program,

the International Research & Exchanges Board (IREX) worked with a local NGO to tailor model legislation provided by the Council of Europe to Montenegro. The laws covering freedom of information, a transparent licensing process, reform of public broadcasting, and decriminalization of libel did not face major obstacles and were passed fairly quickly. USAID terminated funding, however, before the program could monitor implementation of these laws. A former program manager claimed that this was a major inhibitor to the enforcement of the laws, and, even today, Montenegrin media freedom falls short of what might have been expected from the laws on the books.

Regional Lessons

Participants addressed the potential benefits of regional cooperation and integration. The prospect of joining the European Union provided motivation for reform in former communist countries of Central and Eastern Europe. The impact of the European Court of Human Rights case law on legal reform in Council of Europe member countries is also widely recognized. In light of the Council of Europe model, as well as the attention to media law issues in the Organization of American States system for human rights protection, a media law scholar raised the possibility of promoting the development of similar systems in other regional organizations, such as the African Union, the League of Arab States, and the Association of Southeast Asian Nations.

Participants emphasized the need to explore strategies that would be effective beyond Central and Eastern Europe. In some areas of the world, regional bodies have more credibility than international ones, a representative of an international organization said. He pointed to the African Peer Review Mechanism as one model that could be effective in media law reform, although thus far media issues have appeared only in the context of general human rights law, anti-corruption problems, and rule of law issues. Under the process, participating governments conduct public reviews of policies and legislation submitted to their attention. Governments then produce public documents, which in essence are

self-critiques based on the criticism of their peers. Through this process, Ghana, Rwanda, and Kenya, which the representative described as having “problematic relationships with media,” have self-identified the need for more investigative journalism in their quest for more transparency and accountability. This mechanism allows the donor community to tailor their assistance efforts to the needs identified by recipient governments.

Lessons learned from media assistance projects in one region, a participant concluded, may not necessarily be applicable in other regions... The design and impact of an assistance program should depend on political, cultural, and socioeconomic circumstances.

Lessons learned from media assistance projects in one region, a participant concluded, may not necessarily be applicable in other regions. Creating a cadre of lawyers well-versed in media law may be the appropriate approach in a fairly developed rule-of-law environment, where courts are reasonably independent and professionally staffed, statutes and contracts are understood and enforced with

some consistency, legislatures can enact binding reforms, and news organizations can report on all of this to the citizenry. In many countries, however, such an environment remains nonexistent, and international assistance should begin with addressing much more basic needs, such as the establishment of a functioning legal system. The design and impact of an assistance program should, thus, depend on political, cultural and socioeconomic circumstances. Objective local needs—including the ability to utilize a particular type of assistance at the country’s current stage of development—should be

evaluated before the final design of any project for assistance with independent media development.

Questions for the Future

In communication subsequent to the working group meeting, Monroe Price, Director for Global Communication Studies at the Annenberg School for Communication, put forward the following challenge to the group:

One of the functions of this paper was to point in the direction of “what works.” We realize that the question of “what works” raises difficult notions of goals of the United States and the societies involved. Success is more than or perhaps different from only improving Freedom House assessments making

more societies more free. Increasingly, issues of national security (including for the U.S.), the difficulties of functioning in failed states, the problems of working for stability in volatile regions, raise questions about measures for success and techniques for achieving goals. Furthermore, problems of assaults on journalists, especially indigenous journalists trying to define or redefine their profession, makes the task of striking out and establishing free and independent media more complex. And, in the last few years, the whole structure of assistance has come under assault, with NGOs becoming the subject of systematic obloquy and sanction. All this points to the possibility that the analyses honed and proved over the last decade or fifteen years may have to be recalibrated and strengthened to be effective.

Recommendations

Participants developed several recommendations:

The Importance of Media and Media Law Development

- Media development must be recognized by policymakers and donors as a distinct sector rather than simply as a tool for other development goals. Within media development, support for media law reform must be recognized as an essential component.
- Top-level government officials in bilateral or multilateral meetings must deliver forceful messages about the importance of free and independent media, human rights, and the need for rule of law to officials of countries that do not meet international standards.

Coordination

- Donors and implementing organizations must coordinate their efforts. European and American donors and implementers must bridge conflicting traditions and focus on local and regional needs.

Donors and Implementers

- Implementers and others interested in media development must do more to engage nongovernmental funders, who are less susceptible to shifts in governmental political priorities and have a better chance of continuing projects through the implementation, monitoring, and evaluation stages of media law projects. Private funders, implementers,

and government officials active in media assistance should also be encouraged to form public-private partnerships.

- Donors must acknowledge the importance of long-term and sustained assistance in order to foster a legal enabling environment for free and independent media both on paper and in practice.
- Donors and implementers must have exit strategies when they design projects. They must focus on building capacities of local entities to sustain projects and to find support after external assistance ends.

Criteria

- Democratic governments, donors, implementers, academics, and NGOs should reach a consensus on a legal enabling environment framework and promote it within the media law assistance community. This could be an effective tool in multilateral and bilateral contexts and help governments design successful programs.
- Donor and implementing organizations should develop appropriate strategies that will be effective for media law reform in various regions, including Africa, Asia, Central and Eastern Europe, Eurasia, Latin America, and the Middle East. One size does not fit all.
- Media assistance programs that target the judiciary should have anti-corruption elements integral to the projects. International assistance

programs should also put greater emphasis on press-freedom protections and advocacy within the context of programs on constitution drafting, penal code reform (for example, elimination of criminal libel laws), and the professional training of judges, state prosecutors, and legislators.

Information and Resources

- Donors should engage in efforts to advance the development of local media law specialists.
 - Donors should foster the creation of local, regional, and international networks of judges, lawyers, and media law experts for the purpose of information exchange. In-country programs should bring together experts across different disciplines to foster understanding of each others' roles.
 - Implementers must educate not only the legal community, but also broader civil society and the public sector on the need for the rule of law and freedom of information laws to sustain free and independent media. How to implement the laws and monitor their effectiveness in establishing a legal enabling environment for journalists should also be an important part of assistance efforts. Donors should also invest in the development and maintenance of professional self-governing support organizations.
- Donors should support creation of networks of media defense lawyers who will provide *pro bono* assistance to journalism practitioners facing legal problems.
 - Donors should support the creation of a globally-accessible Web site that provides information and analysis of media-related laws, excerpts from and interpretation of landmark cases, important scholarly articles and monographs, relevant provisions of regional and international conventions and related case law, and a database of key media law NGOs and media law experts.

Appendix I

What Constitutes a Legal Enabling Environment

Professor Peter Krug
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May 15, 2007

Revised Outline Based on Participants' Comments

INTRODUCTION

This outline, which revises the original outline distributed to participants on May 7, 2007, and attempts to take into account participants' comments on that document, seeks to identify the necessary media-specific elements of legal systems supportive of free and independent media as well as categories of possible actions to advance the development and maintenance of such systems. An Explanatory Note accompanied the May 7th outline as an Appendix.

Recognizing the need for agreement among the international development community on fundamental criteria for free and independent media;

Seeking to identify priorities and categories of possible (non-exhaustive) action steps suitable for a broad range of states or societies, with the understanding that assistance strategies for particular target locales will need to be refined considerably in order to tailor them to local circumstances and requirements;

The outline is grounded in the following propositions:

1. That the phrase “free and independent” media encompasses those journalists – broadly defined – and entities that function autonomously to gather information and disseminate information and ideas to the general public via any medium of communication;

2. That a legal enabling environment supportive of free and independent media requires the existence and effective functioning of a political, legal, and cultural setting respecting the rule of law (assuming that many elements of the rule of law do not exist in many countries), as well as a core set of media-specific substantive legal rules and principles (the “Normative Base”) and institutional structures (the “Institutional Base”). For purposes of this outline, we will call the components of the Normative and Institutional Bases the “Media Law Elements” of a legal enabling environment. The Media Law Elements are set forth in the outline’s “Priorities” section; and

3. That while assistance efforts commendably devote considerable attention and resources to programs for development of the rule of law, as well as those supporting journalists' professional development and the economic viability of media entities, relatively less attention is paid to the specific Media Law Elements of legal enabling environments.

II. **GOAL AND PRIORITIES**

A. **The Goal**: Development and maintenance of Media Law Elements, which when found in a political, cultural, and legal environment respecting the rule of law, are supportive of the just and effective functioning of free, fair, and independent media.

B. **Priorities**: Essential Media Law Elements consist of:

1. Legal system recognition of a normative base of substantive rules and principles:
 - a. As to news gathering:
 - i. Rights of access to information, legislative proceedings, other deliberative public meetings, and judicial proceedings; and
 - ii. Protection of journalists' confidential sources and information, as well as protection of sources themselves.
 - b. As to editorial content:
 - i. Freedom of expression, including freedom from indirect interferences and manipulation (soft censorship);
 - ii. The public interest dimension in freedom of expression; and
 - iii. The inherently detrimental nature of pre-publication censorship.
 - c. Rights of natural and legal persons to own and control mass media outlets operating in a diverse media marketplace undistorted by manipulative governmental financial intervention or monopolistic private structures or conduct, as well as of public media entities to operate independent of state control.
 - d. Where licensing for participation in the media marketplace is required, the necessity of transparent and objective licensing criteria, independence of licensing authorities, and procedural fairness guarantees.
 - e. The inherently detrimental nature of licensing requirements for journalists.
 - f. The right to distribute information and ideas to the public.
 - g. The right of the public to receive information and ideas via any medium of communication, including the right to receive information and ideas from foreign sources.
 - h. Protection of journalists against intimidation and physical attacks.
 - i. Freedom of association: the right of professional and civil society organizations to form and to operate freely.
2. An institutional base:
 - a. A critical mass of indigenous lawyers, knowledgeable and specializing in the field of mass media law, representing journalists' and media interests.
 - b. Journalists aware of their legal rights and professional responsibilities, including

journalistic integrity and recognition of the incompatibility of corruptive practices with the exercise of rights and responsibilities.

- c. Indigenous professional organizations actively supportive of press freedoms and committed to professional self-governance.
- d. Civil society organizations supportive of application of the normative base of substantive media law rules and principles.
- e. State-based and professional links with regional and international organizations.
- f. Law enforcement and prosecution agencies committed to effective investigation and prosecution of acts of intimidation and violence against journalists.

Generally: Development of public knowledge about, and respect for, freedom of the press and the rule of law.

III. POSSIBLE CATEGORIES OF ACTION STEPS TO ADVANCE THE ABOVE GOAL AND PRIORITIES

1. As to the normative base:

- a. Legislative action (for example, repeal or favorable amendment of criminal defamation and insult laws) encompassing (1) executive branch regulations and policies, as well as acts by the legislative branch; and (2) development of international treaties or declarations of principles, including:
 - i. Advocacy; and
 - ii. Drafting assistance.
- b. Implementation and monitoring (by professional and civil society organizations) of legislation.
- c. Strategic legal representation of journalists and media entities in litigation and other settings—for example, in executive branch agencies or in relations with prosecutorial agencies—presenting opportunities for development of favorable substantive rules, principles, and practice.
- d. Development of journalists’ codes of ethics and non-judicial complaint mechanisms.

2. As to the institutional base:

- a. Programs promoting development of a corps of indigenous media lawyers, including:
 - i. Increased educational opportunities for lawyers specializing in media law;
 - ii. Seeking ways to enhance employment opportunities for lawyers specializing in media law;
 - iii. Assistance in “retail” litigation;
 - iv. Assistance in developing expertise in business transactions; and
 - v. Promotion of domestic professional associations and participation in international professional associations.
- b. Programs promoting understanding of media law among legal system actors—legislators, regulators, judges, prosecutors, and criminal investigators, including:
 - i. Educational programs on media law topics; and

- ii. Promotion of dialogue between judges, lawyers, prosecutors, and journalists concerning media law subjects and reporting of judicial proceedings.
- c. Programs promoting enhancement of the work and status of journalists and media entities, including:
 - i. Development of expanded knowledge base among journalists as to legal rights and duties;
 - ii. Increased educational opportunities for journalists specializing in reporting of legal affairs to improve perceptions of journalists by legal actors, as well as to enhance development of a legal culture by improving public understanding of the operation of the legal systems.
- d. Programs promoting development and support of indigenous professional associations, including systems of journalists' professional self-governance, and international professional networks.
- e. Support for civil society organizations, particularly those engaged in monitoring and watchdog activities.
- f. Development of an institutional international framework for monitoring and reporting of developments in individual countries.

Generally: Support for objective, effective public opinion polling to assess public attitudes.

Appendix II

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