



Background Note on Establishing a Media Lawyers' Network

June 2021

Centre for Law and Democracy

info@law-democracy.org | +1 902 431-3688 | www.law-democracy.org

Introduction¹

The Centre for Law and Democracy's (CLD) extensive experience of providing various forms of legal support to bolster respect for the right to freedom of expression has highlighted the importance of professional legal networks dedicated to promoting this right. In countries where such networks exist, they can substantially enhance the quality of dedicated legal support available to promote media freedom. In particular, formal professional media lawyers' networks can fill a crucial need by offering a platform for professional exchange on media freedom, for coordinating media defence activities, for building the capacity of their members and for engaging directly in media law reform work.

¹ This work is licensed under the Creative Commons Attribution-Non Commercial-ShareAlike 3.0 Unported Licence. You are free to copy, distribute and display this work and to make derivative works, provided you give credit to Centre for Law and Democracy, do not use this work for commercial purposes and distribute any works derived from this publication under a licence identical to this one. To view a copy of this licence, visit: <http://creativecommons.org/licenses/by-nc-sa/3.0/>.

This Note discusses the role and value of such networks and outlines the main issues lawyers who wish to establish them will need to consider. It also provides a set of recommended initial steps to be taken when forming a network. It is part of CLD's work under its project Promoting the Establishment of Networks of Media Lawyers Globally. That project is supported by the Global Media Defence Fund which is being run by UNESCO. The goal of the project is to support the establishment and capacity building of media lawyers' networks in different countries around the world.

Overall Contribution of Media Lawyers' Networks

In the most general terms, media lawyers' networks can play a transformative role in terms of engaging lawyers in contributing to strengthening guarantees of freedom of expression and media freedom in a country. They do this by providing an institutional vehicle for lawyers with an interest in contributing to these vitally important social goals to collaborate, communicate and engage in joint activities. Most countries already have lawyers who have some sort of specialisation in taking media cases but, absent a formal vehicle for coordinating and communicating, it will be difficult for them to collaborate effectively together. A formal media lawyers' network can change this, enabling members to identify trends and recurring challenges, set advocacy priorities and adopt strategies, and then work together to achieve common goals.

A key benefit of media lawyers' networks is to mobilise the profession to take action in defence of media freedom. The specifics of that action can take many different forms – such as via strategic litigation, the provision of legal advice, advocacy for law reform, professional legal support to other civil society groups working on these issues and so on – but the exchange and collaboration which networks facilitate boost the effectiveness of all of them. By pooling expertise, skills and voices, and by concentrating efforts on the defence of media freedom, networks can have a significant positive impact on efforts to promote media freedom. This is not to minimise the very important work of lawyers who provide legal defence in individual cases, but a network can support strategic collective action, taking into account the overall legal environment, what changes are needed to improve that environment and how the legal profession can be strategic in providing support.

As part of overall mobilisation, one of the most important roles of many media lawyers' networks is to support the development of media law which is in line with international human rights guarantees. In some countries, the media law framework is underdeveloped while in many others it does not respect international human rights standards, most particularly in the area of freedom of expression. Every country is also facing the challenge of modernising media laws and regulations to accommodate the rapidly changing digital communications landscape. Media lawyers' networks can provide a forum for discussing and agreeing collective positions on difficult issues, advocating for law reform and providing legal expertise to civil society, government, business and legislators, all with a view to ensuring a robust legal environment for the media in a rapidly changing world.

Related to the above, but somehow distinct from it, is the role media lawyers' networks can play in helping to professionalise media law as a legal specialisation within a country. This, in turn, can help media lawyers to develop a common identity, build their knowledge and share their expertise. In many countries, there is not a strong sense of media law as a category of legal specialisation, let alone formal recognition of it as such. Media lawyers' networks can change this by profiling the importance of this area of legal work, offering a forum for the exchange of specialised knowledge and capacity building, and elevating the profile of media law as a professional career path. This, in turn, can encourage lawyers to specialise in this area, inspire new lawyers to focus on this in their practices, build professional media law knowledge among members and elevate the reputation of media law as a speciality.

EXAMPLES

Professional networks focusing on other issues highlight the potential benefits of this sort of network, especially for issues like media law which have strong elements of public interest law and human rights. For example, in many countries, professional networks of environmental lawyers have been very influential in advocating for law reform, serving as an opportunity for professional growth and exchange, and generally providing leadership in their areas of work. For example, the Bangladesh Environmental Lawyers Association brought the first ever public interest litigation before the Supreme Court of Bangladesh in 1994, obtaining a key victory by establishing that members of the public had standing to sue to address public wrongs.²

Similarly, in the area of immigration and refugee law, the American Immigration Lawyers Association, based in the United States, offers training, resources and professional development opportunities to its members. It also has a strong advocacy focus, engaging in activities such as producing issue briefs on immigration developments, preparing public awareness materials, hosting a tracker of pending legislation and list of advocacy actions members can take, and supporting a campaign to scale up the provision of pro bono immigration legal services.³ In Europe, the European Legal Network on Asylum operates as a regional network but also includes National Coordinators which act as national networks of immigration lawyers. The Network provides a weekly legal update, training courses, research and a discussion forum which supports legal practitioners pursuing strategic litigation.⁴

2 Md. Saiful Karim, Okechukwu Benjamin Vinvents and Mia Mahmudur Rahim, "Legal Activism for Ensuring Environmental Justice", (2012) 13 Asian Journal of Comparative Law, p. 2, <https://eprints.qut.edu.au/61471/4/61471.pdf> (discussing Dr. Mohiuddin Farooque v. Government of Bangladesh and others, WP 998 of 1994, <https://www.elaw.org/bd.farooque.FAP.1996>).

3 American Immigration Lawyers Association, The Immigration Justice Campaign, <https://www.aila.org/about/immigration-justice-campaign>; and American Immigration Lawyers Association, Advocacy and Media, <https://www.aila.org/advo-media>.

4 ELENA Network, About ELENA, <https://elenaforum.org/about-elena/>; and ELENA Network and European Committee on Refugees and Exiles, ELENA Network, March 2019, <https://elenaforum.org/wp-content/uploads/2020/02/ELENA-leaflet-March-2019.pdf>.

Considerations for Establishing a Network

Governance Structure

It is important to think carefully about the governance structure of a media lawyers' network to help ensure its long-term success. A good governance structure can help ensure fairness, efficiency, strong engagement of members, transparency and accountability for an organisation, which will attract a diversity of members, encourage their active participation and protect against mismanagement of the organisation. This can also help strengthen the organisation's reputation among key stakeholders such as donors, officials, civil society and the general public. It is therefore important for networks to have clear and appropriate oversight structures in place. Leadership must be able to make decisions effectively to support the work of the organisation. Clear guidance on structure, roles and powers of different bodies in constitutional documents can help ensure all of this.

As a starting point for governance, it can be useful to define the organisation's vision (longer-term changes which the organisation is committed to working towards, often expressed in rather general terms) and mission statement (what the organisation will actually do, albeit again in fairly general terms, to work towards achieving the vision). Sitting underneath these statements, it can also be useful to set out the main types of strategies or approaches that the organisation will use to deliver its mission. While these sorts of statements are, strictly speaking, not part of the governance structure *per se*, they define the values of the organisation and are important in guiding governing bodies and indeed all of the work of the organisation. As such, they also establish guidance on the direction of the organisation's work and provide direction for potential future members as to what the organisation stands for and does. We suggest that media lawyers' networks include strong and explicit public interest values in their vision and mission statements, including to promote freedom of expression and media freedom as protected under the constitution and international human rights.

Membership organisations, especially those operating in public interest areas, should operate according to democratic principles. This means that leadership should be elected by the general membership on a periodic basis, normally at general meetings. The periodicity of general meetings will depend on a number of factors. Best practice is to hold such meetings annually but this can be expensive and absorb a lot of human resources. It might also be disruptive to replace leadership positions as frequently as that.

The precise structure of any organisation should be driven by a number of considerations such as its size, budget, role and activities, degree of establishment and so on. It is useful to include two separate components in the leadership structure: a general oversight or governing board and an executive, which might be a committee or just an individual executive director (for example for smaller organisations). The executive will normally handle more operational matters while the board normally has a more oversight role, including adopting policies for the organisation, approving budgets and major financial decisions, and generally overseeing the work of the executive. Organisations vary considerably in the precise allocations of responsibilities between the board and the executive, with some envisaging a more active role

for the board and others limiting it to higher-level oversight. However, having a basic two-part leadership structure along these lines can help ensure accountability and transparency, limiting the risk of financial impropriety, whether intentional or negligent, and providing avenues for addressing problems before they become more serious.

In many organisations, board positions are voluntary and members receive no compensation other than, perhaps, compensation for funds spent, such as for travel to meetings. Time commitments are often not very intensive, typically consisting of attending periodic board meetings and undertaking other activities on a non-mandatory basis. Larger organisations may also provide for various board committees, such as to deal with nominations, finances or other organisational priorities.

A range of options exist when it comes to the executive. More established or well-funded organisations may wish to hire a full- or part-time paid executive director while other organisations may opt for a far more part-time executive committee, either voluntary or paid (often by way of set honorarium). Whatever option it is, the executive will normally need to run the day-to-day activities of the organisation. Where there is an executive committee, it is common for this to involve specific positions such as a president, vice president, treasurer, secretary and/or other specialised roles. In this case, executive members commonly also serve as board members, although it is also possible to keep the two entities separate.

EXAMPLES

Freedom of expression non-profit MISA Tanzania's structure includes a General Congress, consisting of the organisation's membership, the powers of which include amending the organisation's constitution, approving policies and programmes, and setting membership fees. The General Congress elects a five-member National Governing Council, consisting of a chairperson, vice chairperson, treasurer and two other members. The organisation is supported by a secretariat, which handles monitoring and evaluation of activities, programmatic freedom of expression and right to information work, membership fee administration and communications with members.⁵

ICJ Kenya is affiliated with the International Commission of Jurists but exists as an independent local entity. It is managed by a seven-member Governing Council, which is elected by the membership for two-year terms at the Annual General Meeting. It also has a secretariat, headed by an executive director, which handles the ordinary business of the organisation and administers projects. Members of the secretariat are hired through a competitive recruitment process.

5 MISA Tanzania, Our Structure, <https://tanzania.misa.org/what-we-do/our-people>.

Constitutional documents will need to address a number of procedural questions around the selection, role and functioning of both the board and the executive. For example, they should address:

- Nomination and selection procedures for board members and the executive. Typically, the general assembly does the final selection of board members, while the executive may be elected directly by the general assembly or selected by the board. However, alternative structures are possible, such as having a nominating committee forward a shortlist of candidates for the board for selection by the general assembly.
- Tenure of executive and board members and any term limits. It is important to set clear tenure for board members, which may range from as short as one year to four or five years or even longer. This ensures leadership renewal and helps avoid a situation where the same people remain in place for long periods of time. On the other hand, overly short tenure can lead to high rates of turnover and a loss of institutional knowledge. Creating emeritus or honorary positions can be one way to keep past leadership involved in an advisory role while still ensuring fresh leadership. Many organisations also have term limits, so that a board member may be re-elected only one time. Where the executive is drawn from the board, the same rules will obviously apply. Executive directors may be hired on term contracts or on rolling employment contracts.
- Procedures and conditions for removing board or executive members. It is always better to have clear and precise procedures in place for removing members ahead of time, should something go wrong, than attempt to develop rules after a problem arises. The constitutional documents should describe what conditions could trigger an early termination of a position. For example, failure to attend a certain number of meetings without cause or acting in ways that are incompatible with the position could be a ground for removal. The rules should also clarify how, procedurally, this works (who has the power to initiate the procedure, the steps that must be taken and so on).
- Any qualifications or expertise necessary to hold board or executive membership. The rules should set any such requirements out clearly. For example, the treasurer may need to have financial expertise. Some organisations require executive directors or others to have a certain number of years of experience, including as a practising lawyer for some legal professional organisations.
- Diversity and gender balance. Organisations may wish to require put in place rules to ensure appropriate representation of women or members of minority groups on the board or in other positions, in an effort to ensure diversity within the organisation. For example, the Canadian Media Lawyers Association allocates the five nonofficer positions on their eight-person board on a regional basis.⁶ The Council of the Commonwealth

6 Canadian Media Lawyers Association, About Us, <https://canadianmedialawyers.com/about/>.

Lawyers Association has four Vice Presidents from four global regions, with additional seats allocated on a geographic basis.⁷ The United Kingdom's Human Rights Law Association has a Young Lawyers' Committee and two members of that committee attend and vote at meetings of the primary governing Committee.⁸

The general membership may also directly vote on some decisions of the organisation. While this is not practical for everyday decisions, the membership, acting as a general assembly, may have decision-making power over fundamental decisions such as amending constitutional documents, dissolving the organisation or approving organisational policies. They may also approve annual reports, strategic plans or financial plans/reports. Typically, such votes are held at general membership meetings, which are also an occasion for holding elections. Annual meetings can also be an opportunity to review past activities and discuss future plans, as well as to provide an opportunity for socialising, bonding and networking among members.

Many professional networks also have a secretariat or core office staff which manage certain organisational functions such as collecting and managing membership fees, running programmes and supporting publications. Media lawyers' networks tend to be small and have a limited range of activities, and thus have correspondingly modest staffing complements, although this is certainly not set in stone. Whether a network can support such staff, which are normally salaried, will depend on its size and resources. Where an organisation aims to engage in major programme work, long-term planning to ensure appropriate secretariat support for this is prudent, even if this is not immediately possible in the early stages of the development of the organisation. Raising core funds is challenging for many non-profit organisations. There are a number of strategies to reduce the expenses of supporting a secretariat. For example, staff at the United Kingdom Environmental Lawyers Association operate virtually and part-time to avoid incurring office expenses.⁹ The Secretariat of South Africa's Environmental Law Association is hosted by the faculty of law at North-West University.¹⁰

Beyond building accountability into the structure of the organisation, media lawyers' networks can also put in place specific transparency measures. For example, constitutive documents, by-laws or policies can require annual reports and other basic documents to be made available to the public. Networks may want to commit to making their publications – such as policy briefs, newsletters or journals – freely available to the public with a view to raising public awareness, engaging new members and generally behaving as responsible corporate citizens.

It is good practice for organisations to have a code of conduct or code of ethics which might apply to members of the board, leadership, members and or staff. This can articulate clear

7 Commonwealth Lawyers Association, Organisation and Secretariat, https://www.commonwealthlawyers.com/about/#organisation_secretariat.

8 Human Rights Lawyers Association, Constitution, adopted February 2003 and as amended though January 2020, <https://www.hrla.org.uk/constitution>.

9 UKELA, Our Team, https://www.ukela.org/UKELA/About_Us/Our_Team/UKELA/About-Us/Our%20Team.aspx?hkey=5e7cf3f7-3d24-4e53-acce-de4c2e7b296b#.

10 ELA, About the ELA, <https://elasa.co.za/about-us/>.

expectations in terms of behaviour and provide an indication of what kinds of behaviour may result in loss of membership or a position. Dedicated policies on different topics – such as financial matters, corruption, harassment or abusive conduct, including of a sexual nature, diversity and inclusion, privacy and confidentiality – may also be appropriate. It may be challenging to put in place all of these systems at the very outset of creating an organisation, and this can be done later as the organisation develops.

EXAMPLES

The Serbian-based Lawyers' Committee for Human Rights (YUCOM) has an Ethics Code which was adopted unanimously by its Assembly in 2018. The Ethics Code addresses topics such as conflicts of interest, recruitment, gifts, travel, private activities of members and employees, confidentiality and financial transparency. For example, it specifies that business travel funded by the organisation must be directly linked to the organisation's work and that family members shall not receive preferential treatment in hiring practices.¹¹

Some thought should also be given to the precise legal form, if any, which a media lawyers' network should take. In many countries, there are different options for this with different implications. For example, most countries place certain restrictions on what sorts of organisations can benefit from tax advantages, including issuing tax receipts to individual donors (which registered charities can do in many countries). There may also be other limits on what activities certain types of legal organisations can undertake, whether direct or indirect. For example, the rules on lobbying may impose certain requirements on organisations which engage in advocacy which is deemed to constitute lobbying or organisations which engage in advocacy may have not have the same eligibility for tax benefits. Where this is the case, aspirant networks should consider the local rules carefully and select a legal form that allows them to conduct the activities they wish to.

In some countries, there are rules on obtaining international funding support, while some funding streams (grants) are only available to organisations with a certain structure, usually non-profit, or sometimes mandate. Some grants may also have certain conditions as to governance arrangements or financial or other reporting. There is a growing tendency globally to limit access to or at least regulate more closely foreign funding received by local organisations, especially where foreign funding is to be used for advocacy activities. It may be possible to get around these restrictions by using an alternative legal format, such as a (non-profit) corporate structure rather than a more traditional civil society structure.

11 YUCOM, The Ethics Code of the Lawyers' Committee for Human Rights, adopted 22 November 2018, <https://en.yucom.org.rs/the-ethics-code>.

Membership

The membership is at the heart of most professional organisations. Eligibility for membership should therefore reflect the organisation's values and goals. Because the membership typically elects the leadership, eligibility for membership will have important consequences for the direction of the organisation. Ultimately, it is the members that define a membership organisation.

Media lawyers' networks will need to consider carefully what approach they wish to take towards membership. Some limit membership to licensed lawyers while others extend membership to legal professionals more broadly, to include legal academics, paralegals, students and so on. Accepting law students as members can be a good way to involve young, future lawyers at an early stage. It is also possible to admit members beyond the legal profession. For example, Australia's Communications and Media Law Association includes lawyers, journalists, broadcasters, telecommunications professionals, academics, publishers, politicians and public servants.¹²

Membership should never involve discriminatory criteria, whether direct or systemic in nature. However, it is appropriate to limit membership to citizenship of a certain country, although some legal professional associations accept international members, sometimes on a non-voting basis. For example, the American Society for International Law accepts members from around the world,¹³ while the African Network of Constitutional Lawyers accepts non-Africans as associate members.¹⁴ Although this Note focuses on national networks, in some instances, especially for lawyers in small countries or where the legal profession is very small, regional networks may be a sensible strategy.

Otherwise, lawyers' networks may also want to exclude certain persons from eligibility for membership, if they are engaged in activities contrary to the mission of the organisation or, if, by virtue of their position, they will inevitably face conflicts of interest. For example, some organisations do not allow officials to become members, on the basis that their work often involves advocacy directed at official actors.

¹² CAMLA, Membership, <https://www.camla.org.au/membership>.

¹³ American Society of International Law, ASIL Membership, <https://www.asil.org/membership/asil-membership>.

¹⁴ African Network of Constitutional Lawyers, Constitution, Article 4(3), <https://ancl-radc.org.za/sites/default/files/ANCL%20CONSTITUTION%20WITH%20PROPOSED%20AMENDMENTS.pdf>.

EXAMPLES

The United States-based Media Law Resource Center, originally founded by publishers and broadcasters, has a membership base which includes a mix of media outlets and their defence lawyers. However, the organisation includes a specific Defense Council Section which has its own Executive Committee, own membership roster and own issue committees. The Defense Counsel Section is made of lawyers who pledge not to act against the media and journalists facing defamation, privacy or related claims. Violating this condition results in suspension of membership or “in extreme circumstances” termination of membership.¹⁵

The Canadian Media Lawyers Association asks full members, when applying for membership, to certify that in their media law practice they act “primarily for rather than against publishers, broadcasters and other media outlets” and that they support the goals and objectives of the organisation. Associate members are not asked to do this but also do not have voting rights.¹⁶

The Canadian Association of Refugee Lawyers does not admit federal government employees as members. Members are asked to commit to a code of conduct which affirms they are not federal government employees, says they will relinquish membership if they become one or if any other conflict of interest arises, commits to maintaining confidentiality of the organisation’s proceedings and commits to paying annual dues.¹⁷

It is also possible to have different classes of membership. A non-voting membership category, such as associate membership, can enable the engagement of a broader range of people while ensuring that those with voting privileges align with the nature and vision of the organisation. While most members will be individuals, some organisations provide for organisational/institutional membership. For example, ICJ Kenya’s Governing Council can invite groups of persons, such as professional societies, to be members.¹⁸ Another possible type of membership is honorary memberships, bestowed on individuals who have made outstanding contributions to the objectives of the organisation or within the field. Some organisations have a special category for student members, with different rights and obligations.

A media lawyers’ network will need to establish clear procedures to become a member. The nature of this needs to link back to any conditions for members. Where these are quite limited,

15 Media Law Resource Center, DCS Executive Committee, <https://www.medialaw.org/about-mlrc/dcs-executive-committee>; and Media Law Resource Center, About MRLC, <https://www.medialaw.org/about-mlrc>.

16 Canadian Media Lawyers Association, Register, <https://canadianmedialawyers.com/register>.

17 CARL-ACAADR, CARL Membership, <https://carl-acaadr.ca/get-involved/carl-membership>.

18 ICJ Kenya, *Membership*, <https://www.icj-kenya.org/membership/becoming-a-member>.

the application process can be very simple, involving the completion of an online or paper form and, once accepted, paying any membership fees. Where there are more stringent conditions, procedures which allow for these to be assessed properly will be needed (for examples of this, see the box below). And some professional organisations operate on a more exclusive basis, for example accepting new members only pursuant to an invitation. We do not recommend this approach for media lawyers' networks as it can serve to limit membership and also membership diversity.

Careful consideration needs to be given to the issue of fees. These can be an invaluable source of funding and ensure that only individuals who have at least some minimum level of commitment are members. However, it can also be administratively time-consuming and may in some cases present a barrier for those who cannot afford the fee.

Organisations should consider what circumstances, if any, may result in a loss of membership. Where this is possible, clear procedures for how this may happen should be elaborated in constitutive documents. Better practice is to allow some opportunity for the member in question to make representations regarding their case.

Many organisations require members to renew their membership annually, along with payment of any annual membership fees, with a failure to do so resulting in a loss of membership. This can promote more active engagement of members, prune out inactive members and maintain contact information up-to-date. But it can also result in higher rates of membership dropout.

In some circumstances, networks may want to reserve the power to end a person's membership on other grounds, such as misconduct or taking action which is inconsistent with the values or aims of the organisation. Similarly, networks may want to terminate membership for lawyers who are disbarred or individuals who have been criminally convicted (perhaps of crimes of a certain level of seriousness). In both cases, consideration should be given, where relevant, to making allowances for cases where these measures represent retaliation for human rights or democratic advocacy rather than any true misconduct.

EXAMPLES

Australia's Communications and Media Law Association has a simple membership application form, consisting of payment of the appropriate fee and providing basic contact information (name, organisation, address, phone and email).

However, other organisations have more complex rules for joining, including voting to admit new members. ICJ Kenya's membership application form, for example, is more detailed, requiring educational history, an indication of membership in the professional society, expectations on joining the organisation and expected contributions to the organisation. Applicants must also give the names of two current members who proposed him or her for membership. The Governing Council then decides on the application. The Georgian Young Lawyers Association also asks applicants for membership to submit written references from two members of the Association.

The United Kingdom's Human Rights Lawyers Association (HRLA) and Serbia's Lawyers' Committee for Human Rights (YUCOM) both have relatively open membership eligibility, but grant decision-making power over admissions to their respective executive organs. HRLA explicitly gives their Executive Committee the power to deny membership at their discretion. It also permits the Committee to terminate membership with a two-thirds vote of the Committee, if those votes constitute at least half of the members of the Committee. The member can appeal the termination to the organisation's general meeting. YUCOM also allows their executive to expel a member who violates the organisation's Statute or commits an act which damages the reputation of the organisation. This expulsion can also be appealed to the general assembly.

Mandate and Activities

When founding a media lawyers' network, it is important to consider carefully in advance the scope of activities envisioned for the network. This may need to be reflected in constitutional documents or have implications for the primary legal format for the organisation, as discussed above under Governance Structure.

Such networks commonly undertake a wide range of activities. In thinking this through, you should consider what the main needs are in the country in terms of the development of media law, support for media law professionals and the general environment for media freedom, as well as what the main value added of a media lawyers' network could be in terms of responding to those needs. Below, we list some of the main areas of work that such networks undertake, although additional possibilities also exist.

Most media lawyers' networks engage in some sort of professional development and capacity building activities for their members, in line with the practice in most legal professional networks. Within this, there is a range of possibilities including formal workshops and training programmes, serving generally as a hub for networking and discussion, mentorship programmes, scholarships or prizes, and hosting conferences and other speaking engagements (such as lectures from experts). Some of these activities can also be linked to continuing education requirements which are needed in many countries to maintain a licence to practise as a lawyer. Educational activities can also be directed at young lawyers, and collaboration with law schools and academic institutions can be a way to boost such activities.

A key objective of many media lawyers' networks is to advocate for greater media freedom and respect for freedom of expression, something they are often uniquely positioned to do. Advocacy initiatives can therefore be a major component of their work. This can cover a wide range of different specific activities, depending on what the needs are at any given time and taking into account the local context. Direct advocacy work can involve issuing or signing onto statements on recent threats to freedom of expression, offering legal commentary on and/or alternative proposals for draft laws or policies, participating in official consultations or hearings on law reform, and undertaking public-facing advocacy work (such as social media campaigns or awareness raising around law reform). In many countries, lawyers' networks provide professional legal expertise to other civil society advocates, such as media or digital rights organisations. Some lawyers' networks also advocate at the international level. For example, Zimbabwe Lawyers for Human Rights and ICJ Kenya both have observer status with the African Commission on Human and Peoples' Rights.¹⁹

Many networks also play a role in publishing research or regular publications on new media law developments, conducting relevant research and serving as a source of media law resources. This can include publishing articles and newsletters, for example profiling important cases, whether national or international, providing access to key laws, regulations and decisions, and maintaining thematically-focused resource libraries. Networks can also translate international human rights documents and share information on relevant international standards. Many lawyers' networks support regular newsletters or periodic publications which provide updates on recent developments, or journals which serve as a platform for developing new ideas and research. For example, Australia's Communications and Media Law Association publishes a quarterly Communications Law Bulletin which covers a variety of media law issues; old editions are freely available on the organisation's website.²⁰

Public education and awareness raising can be another core activity of lawyers' networks. Clear and accurate explanations of existing or proposed media laws and their impact on the public are something these networks are often well positioned to provide. Public educational material can include blogs, videos, social media posts, simple explainers and other easy

19 Zimbabwe Lawyers for Human Rights, *Work*, https://www.zlhr.org.zw/?page_id=65; and ICJ Kenya, *Organization Profile*, <https://www.icj-kenya.org/2016-03-08-13-28-30/profile>.

20 CAMLA, *Communications Law Bulletin*, <https://www.camla.org.au/communications-law-bulletin/>.

explanations of laws, as well as the importance of freedom of expression and how it is protected under international law. These outreach efforts can also target specific groups, such as parliamentarians or policy makers. Providing capacity building programmes for relevant sectors, such as for law enforcement officials (i.e. police and prosecutors) and judges, can also be part of this.

Many media lawyers' networks also engage in casework. One option here is to undertake or support public interest litigation. Depending on national rules regarding standing, they may be able to bring lawsuits in their own capacity to national courts (or even international human rights bodies where national remedies have been exhausted). They may also provide *amicus curiae* briefs in relevant cases or provide legal support to other organisations or individual lawyers bringing such cases. They can also serve as a forum for discussion about possible future litigation, adding a more strategic element to this work.

Networks can also facilitate the provision of *pro bono* (free) legal services in cases involving media freedom. This can be via the direct provision of *pro bono* services if the network has the resources and capacity to establish an independent legal aid clinic or other *pro bono* services programme. Alternatively, they can provide referral or matching programmes to match prospective clients with lawyers who are willing to provide *pro bono* or reduced rate legal representation, for example by providing basic intake services and linking clients with available volunteer lawyers. They can also facilitate the provision of *pro bono* work by their members through offering training and other forms of support, such as by covering legal fees in these cases.

EXAMPLE

One example of a *pro bono* referral system is the Online Media Legal Network, which ran as a non-profit based at Harvard University from 2007 to 2014. It acted as a free referral service to link online journalists and media with lawyers. The programme handled initial client intake, assessed the client's needs and ability to pay, and then referred the client to a lawyer in the network based on the expertise needed for the case in question.²¹

Media lawyers' networks may want to establish dedicated committees, teams or programmes to facilitate the provision of certain types of activities. More formal programmes may be supported by secretariat staff, while members can also be encouraged to engage, volunteer for or lead on specific initiatives. Member committees or interest groups can provide an opportunity for members to engage more actively in the work of the network and to liaise with other lawyers on specific issues or advocacy. For example, the Media Law Resource Center has committees dedicated to topics such as anti-SLAPP (Strategic Litigation against Public Policy), privacy, international media law, Internet law and litigation.²² Committees which focus on certain types of members, such as women, young lawyers or underrepresented minorities, can also foster diversity among the membership.

Funding

A number of different funding options are available to media lawyers' networks. Many professional organisations rely on membership fees to defray basic expenses. Such fees can ensure that members are serious about the network and allow organisations to provide better and more diverse services for members. But, if they are significant, they can also deter potential members, especially those with lower incomes. The basic framework of rules on fees should be set out in networks' foundational documents, including the basic structure of fees, who is responsible for setting fees and so on. A key goal should be to balance meeting organisational costs while ensuring that membership is broadly accessible for those who are eligible and interested. Besides fees, members can also be asked to contribute non-monetary assistance, essentially by volunteering their time.

Graduated fee scales can be considered, with lower fees for lawyers who earn less, for example because they are employed by not-for-profit organisations, or are students, recently licensed lawyers, or seniors. For example, Australia's Communications and Media Law Association

21 Jeffrey P. Hermes and Andrew F. Sellars, *The Legal Needs of Emerging Online Media: The Online Media Legal Network After 500 Referrals*, Digital Media Law Project, April 2014, <http://www.dmlp.org/sites/dmlp.org/files/OMLN%20at%20500.pdf>; and Digital Media Law Project, *Core Initiatives*, 6 December 2020, <http://www.dmlp.org/about/initiatives>.

22 MLRC, *Committees*, <https://www.medialaw.org/committees>.

sets differential fee rates for standard membership, corporate membership, new lawyer membership (lawyers in their first five years of practice) and student membership.²³ Graduated fee structures can be important to ensure fairness and attract diverse membership. Another option is to offer group rate fees, for example for law firms, non-profit organisations, academic institutions or others who wish to purchase collective memberships.

Another potential source of funding is from the sale of publications, subscriptions to periodic newsletters or journals, or fees for accessing resource libraries. However, such fees sometimes cost more to collect and manage than they generate and they also have a strong tendency to limit access and use of publications. One option is to make digital versions available for free but to charge for printed versions. Many organisations charge fees to attend annual conferences or other events, such as fund-raising dinners, although again this can negatively impact on the diversity of participation. Scholarships, fee waivers or reduced fee structures can help counter this.

A very important source of funding for many media lawyers' networks is grants and donations. These may come from international or domestic sources, from governments, intergovernmental organisations, foundations or corporate sources, and may take different forms such as project funding, core funding or gifts. Most international funding is awarded on a project basis, rather than as core funding, and it can be difficult to rely on this as a source for covering core costs such as office expenses, non-project related salaries and administrative expenses.

Networks which are located in countries which receive a lot of international development funding, and have a strong human rights focus, are likely to be able to receive donor funding from the international community. However, it can be quite difficult for new organisations to become sufficiently established to be able to access such funds, which is always competitive. One strategy may be to seek joint funding in partnership with more established organisations which have a track record in accessing donor funding.

Local donors should not be overlooked as a potential source of support. While this is a better option for networks located in higher- or middle-income countries, support from law firms, legal professionals or local philanthropists is at least possible in most countries. National governments may also provide funding in different ways, although this can pose some risk to organisational independence. If this source is being considered, it may make sense to have internal rules or policies on the circumstances or conditions in which such funding will be accepted.

Grants and donations will, for most networks, be a precondition for engaging in more substantial activities in the areas of advocacy, *pro bono* services, litigation and research and publications. At the same time, accessing such funding will require dedicated time to identify funding opportunities, liaise with potential donors, prepare applications and then manage funded projects, once received.

23 Communications and Media Law Association, Membership, <https://www.camla.org.au/membership/>.

EXAMPLES

Some lawyers' associations with a public interest focus receive funding from a broad array of international funders. Some examples include the following:

The Bangladesh Environmental Lawyers Association reported, in its 2020 annual report, receiving funds from Oxfam Great Britain, the Swedish International Development Cooperation Agency, the German Embassy, Friends of Earth International (with funds coming from the European Union), Bangladesh's Department of Environment and another non-profit coalition (with funds from the United States State Department).²⁴

Zimbabwe Lawyers for Human Rights has received funds from numerous sources, such as the British Embassy, Canadian Fund for Local Initiatives, Comic Relief, European Union, Ford Foundation, HIVOS, Open Society Initiative of Southern Africa, Sigrid Rausing Trust, Trocaire and others.²⁵

Some lawyers' associations also take corporate sponsorships. For example, the Commonwealth Lawyers Association has sponsorship from legal research software company LexisNexis. This model is probably less applicable to the media law context or for organisations with a public interest mandate. However, nascent media lawyers' networks may want to discuss whether they are open to corporate sponsorships and, if so, what safeguards would be necessary to prevent them from negatively impacting on the independence of the organisation or its mandate to promote freedom of expression.

24 Bangladesh Environmental Lawyers Association, Annual Report July 2018 – June 2019, p. 6, https://belabangla.org/wp-content/uploads/2020/04/Annual-Report-of-BELA_July18-to-June19.pdf.

25 Zimbabwe Lawyers for Human Rights, 2016 Annual Report, p. 46, https://www.zlhr.org.zw/?page_id=73# (this is the last annual report posted).

Initial Steps

During the early stages of forming a media lawyers' network, we recommend that those involved consider the following:

- Form an exploratory or steering committee or other informal group that meets regularly to plan the formation of a network.
- Consult with a range of media lawyers to gauge the level of their interest in creating, joining and supporting the network.
- Begin drafting constitutive documents. While ultimately these will need to be discussed and agreed by all members, it is useful to start with a small group to prepare initial drafts. Developing a task force or team to do this is a good first step.
- Explore any potential legal challenges to registering a formal legal association and identify any legal requirements which will need to be met in order to establish and operate legally. If necessary, identify a lawyer with relevant expertise in not-for-profit law to advise on this.
- Brainstorm initial sources of funding and what funds, if any, will be needed in the start-up phase and begin preliminary conversations with potential donors.
- Consider how to recruit and organise volunteers to undertake necessary tasks in the early stages of the creation of the organisation, before formal structures are in place.
- Explore options for incubating the organisation or partners which can provide support while the organisation is in its infancy. For example, in some cases, it may make sense to build the organisation out of an existing structure, such as by starting a media law committee within a bar association or other legal professional organisation. These can often provide administrative and other forms of support, such as meeting rooms or office space which can be used.
- Identify existing coalitions or networks which could serve as possible future partners or provide immediate advice, support and resources. This could, for example, include networks of human rights lawyers, journalists and media networks, and the local bar association.
- Explore possible international connections which can provide support, such as media lawyers' networks in other countries which might provide mentorship and advice and international organisations supporting media freedom which might provide information, networking and even possibly financial or other forms of support. In very small countries or countries with few legal professionals, consider reaching out to media lawyers in neighbouring countries, as a regional network may be more viable.



Centre for Law and Democracy

info@law-democracy.org | +1 902 431-3688 | www.law-democracy.org

For more information on this project and resources on building a media lawyers' network, visit our resources page:

www.law-democracy.org/live/projects/media-lawyers-networks