

The Cabinet Building  
105 Front Street  
Hamilton  
Bermuda HM 12

17 May 2010

**Re. Open Letter to Bermuda MPs**

To Whom It May Concern:

I am writing to you on behalf of the Centre for Law and Democracy (CLD), an international human rights NGO that promotes foundational rights for democracy. Specifically, I am writing in relation to the Media Council Bill which has recently been released by the Government of Bermuda.

CLD believes that individuals should have an opportunity to complain to an oversight body when they believe that the media have not behaved in accordance with established professional standards. However, we also believe that self-regulation is the most appropriate manner to satisfy this need. We are aware that the media in Bermuda have not, to date, established a self-regulatory system. I urge you to give the media an opportunity – say for a period of six to nine months – to set up a self-regulatory complaints system.

CLD would also like to point to a number of concerns we have with the Media Council Bill as it now stands. First, and most importantly, the Council lacks independence from government, as required under international law for bodies which exercise regulatory powers over the media. As the three special international mandates on freedom of expression at the UN, OSCE and OAS stated in a Joint Declaration adopted on 18 December 2003:

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

Section 5 of the Media Council Bill provides for a twelve member Council, of which seven members are appointed by

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the Governor, six after consultation with the Premier, who shall in turn have consulted with the Opposition Leader, and one, the Chairperson, in the Governor's discretion. The other five members are appointed by the media. This leaves the government with very significant control over the composition of the Council, contrary to the standards set out by the special international mandates.

I urge you to amend these provisions so as to reduce the extent of government control. One option might be for various independent bodies – such as the bar society, a business association and an association of NGOs – to nominate members of the Council.

A second concern relates to the funding of the Council. Section 9(2) of the Bill provides that the media shall fund the Council. This is not necessarily inappropriate, given that the Council's function is to address complaints against the media. At the same time, if the media are funding the Council, they must also have control over, or at least very significant input into, decisions regarding the Council's budget. Unfortunately, the Bill is silent as to how the budget for the Council will be agreed, stating simply that the Council will prepare an annual budget. It is obvious that the Council cannot simply determine its own budget. The lack of clarity on this in the Bill is a receipt for future problems. Either the government should approve the budget of the Council and fund it, or some system for setting the budget which involves the media should be established.

Third, section 15(3) of the Media Council Bill sets out three sanctions that may be imposed by the Council where there has been a breach of the Code of Practice. These are that the offending media outlet shall publish an apology, retraction or correction, that the outlet shall publish a notice of censure, and that the media outlet may be prohibited from publishing or broadcasting any comment or news on a complaint. The latter is highly problematical and essentially constitutes a form of prior censorship, a type of restriction on freedom of expression which is highly suspect under international law and ruled out altogether under the Inter-American Convention on Human Rights, except as necessary to protect children. I urge you to remove this power from the Bill.

Appropriate regulation of the media is a complex task in a modern democracy and, for the most part, Bermuda has approached this in a manner that conforms to international standards. It would be a sign of the strength of your democracy if the local media were given an opportunity to form their own self-regulatory body. I urge you to do this by refraining from adopting this legislation.

Yours truly,



Toby Mendel  
Executive Director