

## **FREEDOM OF EXPRESSION AND THE MEDIA**

### **Introduction**

The role of the media is vital in generating a democratic culture that extends beyond the political system and becomes engrained in the public consciousness over time. It is through the media that people generalise their experience, learn from others and become aware that government does not always tell them the truth. It is how a constructive political debate about options and policies develops. The media is crucial to the exercise of freedom of expression because it is only meaningful if the right is exercised in public; what a person says privately is important, but to have greater effect it needs public expression where others can hear or read it. The media acts as our voices by providing a vessel for information and ideas, a vessel through which we communicate with each other. In order for the media to fulfil this function, it must guarantee its objectivity; the journalist should always be a neutral observer, unengaged with events but faithfully recording them. The following information will outline the key requisites necessary for a robust and balanced media industry and highlight some of the issues that are facing working journalists today.

### **The Right to Freedom of Expression**

The starting point of any structural stability for the media is a law guaranteeing freedom of expression. The basis for any such law is clearly set out in a range of international standards.

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

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>1</sup>

The UDHR, as a declaration, was not intended to be binding on States. However, it is widely regarded as having acquired legal force since its adoption in 1948, as customary international law.

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<sup>1</sup> Article 19, UDHR, adopted by the UN General Assembly on 10 December 1948, Resolution 217A(III).

The International Covenant on Civil and Political Rights (ICCPR), a treaty, ratified by over 145 States, imposes formal legal obligations on States Parties to respect a number of the human rights set out in the UDHR.<sup>2</sup> Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in terms very similar to those found at Article 19 of the UDHR. Guarantees of freedom of expression are also found in all three major regional human rights systems, at Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>3</sup> Article 13 of the American Convention on Human Rights,<sup>4</sup> and Article 9 of the African Charter on Human and Peoples' Rights.<sup>5</sup>

Freedom of expression is among the most important of the rights guaranteed by the ICCPR and other international human rights treaties, in particular because of its fundamental role in underpinning democracy. In its very first session in 1946 the United Nations General Assembly adopted Resolution 59(I) which stated, "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated." The European Court of Human Rights has stated:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.<sup>6</sup>

These international standards provide the basis upon which laws guaranteeing freedom of expression can be drafted. Such laws are not just valuable in themselves – societies that are based upon the rule of law, in which the security of citizens is paramount, need to spell out the rights of the citizens in clear and unambiguous terms. Such laws have the advantage of making it clear to people what their rights are, and what the obligations of public administrators are in respect of those rights. It helps the watchdog function of the media – and of civil society – immensely by providing benchmarks to measure progress.

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<sup>2</sup> UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

<sup>3</sup> Adopted 4 November 1950, in force 3 September 1953.

<sup>4</sup> Adopted 22 November 1969, in force 18 July 1978.

<sup>5</sup> Adopted 26 June 1981, in force 21 October 1986.

<sup>6</sup> *Handyside v. United Kingdom*, 7 December 1976, 1 EHRR 737, Para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

## **Media Framework: Structural Stability**

### The Need for an Independent Regulator

Every society should have an independent regulator to allocate wavelengths and undertake the necessary licensing procedures. This body should be established by law and be independent of any government interference, either directly by appointing its membership, or indirectly by controlling its funding. Its members should be chosen through an open and public process and it should be accountable to the wider public through the legislative arm of the state<sup>7</sup>. The regulatory authority should produce a frequency plan showing how the airwaves will be shared between the public and private broadcasters and community broadcasters. In addition – where relevant - it should specify the regional and local allocations and how the status of minorities will be guaranteed.

### Public Service Broadcasting

The goals of public service broadcasting should be defined in law. These will include the provision of comprehensive and balanced news coverage, the promotion of local programme production – including through the use of quotas – guaranteed universal access and a commitment to serve all regions, cultures and linguistic groups. A public service broadcaster must be overseen by a fully independent governing body whose autonomy and independence is guaranteed by law. Specific guarantees should be given on editorial independence and on funding arrangements. The governing body should be accountable to a multi-party body of some kind – the legislative assembly if one exists - and its primary role will be to appoint the managers to run the broadcaster and to ensure subsequently that the public service mandate is being fulfilled. The governing body should not interfere in the day to day running of the broadcaster; appointments processes should be open and transparent and staff must be protected from unfair dismissal. Civil society has an important watchdog role to ensure that the public service remit of the broadcaster. The creation of media forums, which involve civil society groups, facilitates this relationship and permits a space in which the performance of the broadcaster is scrutinised and the policies of the governing body discussed. A consistent commitment to consultation with the public – either through civil society groups, political parties or other means – reaffirms the legitimacy and function of the broadcaster.

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<sup>7</sup> For a more detailed elaboration of these principles see ARTICLE 19's publication *Access to the Airwaves*

### Private Broadcasting

A crucial role for the governing authority and the regulator is to provide the ground rules that enable fair competition between the public broadcaster and the private broadcasters. The government's main responsibility is to ensure a level playing field economically. In particular there should no attempt to use the tax system to favour one broadcaster over another. The allocation of government advertising must be strictly monitored to ensure fair access by all media. License fees should not be set so high as to unfairly benefit the wealthiest and most powerful corporations; the ideal is to create relatively low entry costs. In general, while it is impossible to be prescriptive in the abstract, any economic measures that impinge upon the media should be fair, transparent and non-discriminatory.

The regulator has an important role to play in overseeing more complex issues that involve the fostering of a dual broadcasting system (public and private). It is unrealistic to think that modern Public Service Broadcasters can be created solely on the basis of public funds – they will nearly all require a degree of advertising. There is a role for a competition regulator in this field as well as the broadcast regulator – the mix of powers being dependent upon the general capacity of the state to support such institutions.

### **New Technologies**

Predictions that the phenomenon of globalisation will result in a lowering of human rights standards as the mobility of capital seeks out the markets least constrained by labour and human rights standards to maximise the highest returns need not be the case. The role of human rights organisations in this context must be to ensure that globalisation drives standards up not down, and to present the case that freedom of expression and access to official information are key to sustainable human and economic development and the prevention of corruption, which in turn support the conditions necessary for sustainable economic growth.

The task for those promoting free expression is to utilise new technologies to challenge censorship, and to harness the power and influence of new global actors to ensure that they not only take the arguments for free expression on board, but become vocal advocates for such rights. In recent years, the development of new technologies has opened up a new sphere of communication and their potential for improving education, participation and democratization is incalculable. The internet, satellite and digital broadcasting all offer new opportunities to promote freedom of expression and information, the global exchange of information and ideas and broadcasting diversity. Timely access to information can promote health, education, trade and

employment and one of the defining features of the information society – openness – is seen a crucial pillar of good governance.

The media framework outlined above should not inhibit the capacity of new technologies to promote diversity and to enhance access to information. Although it is necessary to apply measures to limit the spread of harmful or illegal content via these technologies, these should be cautiously designed to ensure they do not harness their positive potential. There should also be an effort made by governments to ensure all people have access to new technologies, particularly the internet, in an attempt to bridge the digital divide that has emerged both within individual countries but also on a global scale.

## **The Media and Access to Information**

Improving access to information is one of the most important ways of strengthening democratic governance. Governance embraces both the institutions of government and the behaviour of people within those institutions. Together they establish the culture of government and a constructive, healthy political culture depends upon an open society. Secretive government is nearly always inefficient and the free flow of information is therefore essential if problems are to be identified and resolved. Furthermore, a secretive governing culture fosters suspicion and encourages rumours and conspiracy theories. In such a culture, the public is likely to treat all government information with scepticism including public education campaigns, such as those dealing with important health issues like HIV/AIDS or those, which may be particularly sensitive, perhaps involving the status of women in society. People are more likely to be politically malleable, sceptical of government and its intentions, and resistant to change unless sanctioned by informal opinion leaders. The focus of any access to information programme is therefore on changing the culture of a government and society from one that is closed to one that is open. Cultural change of this kind is achieved by a mix of factors – a change to the institutions and practice of government, increased awareness among civil society and the general public and probably an effective law to promote and protect the right to information. There are clear cases where journalists have helped lead the campaign for the right to know, for example, in the Philippines.

In the Philippines mass support for openness grew out of concern about corruption. Under the dictatorship of Ferdinand Marcos, 1972-1986, there was a virtual information blackout, with almost all government documents classified as secret. As a reaction to such a repressive information policy, following the revolution in 1986, the framers of the new Constitution in 1987 took the unusual step of guaranteeing press freedom and information access within the

Constitution itself. Section 7 of the Constitution's Bill of Rights states that "the right of the people to information on matters of public concern shall be recognised." Article 2, Section 28 mandates the state to adopt "a policy of full disclosure of all transactions involving public interest." In addition, the Supreme Court has been a staunch defender of the right to information, holding the constitutional provision on the right to information as self-executing and consistently ruling against state agencies seeking to restrict the release of information deemed to be in the public interest.

The Philippines also has a strong journalistic tradition and, since 1987, a number of journalists have sought to challenge government departments, lodging complaints with the Civil Service Commission and the Office of the Ombudsman, and on several occasions resorting to litigation, usually successfully. A number of civil society groups (NGO's and Lawyers Associations) have played an active role in obtaining and disseminating official information, including forcing the publication of all of Marcos's unpublished presidential decrees and executive orders. In 2001, a coalition of opposition media groups, using information obtained through the constitutional guarantee, launched a vigorous and successful multi-media campaign exposing President Estrada's corrupt dealings, resulting in his overthrow. This brought home the importance of free access to information to prevent such corruption from occurring in the future.

However, in spite of the constitutional guarantee and judicial affirmation of the right to information, without an official Freedom of Information law, the denial of access to information in the Philippines remains widespread. Many government departments are reluctant to disclose information because of the added workload that ensues, or, more subversively, due to fear of causing controversy. In 2002, a number of NGO's, which had encountered difficulties accessing important official information, came together to form the Access to Information Network (ATIN). In late 2002, ATIN drafted a Freedom of Information Law, which is currently up before the Senate. Between 1998 and 2003, more than a dozen Freedom of Information Bills have been brought before the senate, but it has failed to ratify a single one. ATIN is working hard to increase public awareness of the right to information and is pressing for the act to be enshrined in law in the near future. Although The Philippines at present has not passed a Freedom of Information Bill, a 2001 Southeast Asian Press Alliance survey rated it as having the most liberal information regime in Southeast Asia. This shows that vigorous culture of openness and a strong civil society can produce real advances even without a law being in place.

## **The Media and Journalism**

### The importance of Journalism in a Democratic Society

Even the most effective democratic systems may be abused and experience shows that where wrongdoing does take place, investigative journalists are among those best placed to expose it and pursue justice. Because of the great public interest in the conduct of government, including corruption and other misuse of public office, international courts have frequently noted the important 'watchdog' role of the media. In order for the media to fulfil this role, a good regulatory structure must be in place and it is imperative that reporters are able to access information from a variety of sources in order to root out malpractice. Journalists should be free to publish stories in the public interest, without fear of censorship, recrimination or being sued.

### Establishing and preserving a Culture of Professional Journalism

Laws are the foundations of a democratic society and economic structures and realities determine the broad shape of the media. Neither however is any guarantee of independent, balanced, professional journalism. They can provide the conditions for independent professional journalism to flourish but no more than that. Journalists themselves have a responsibility to maintain and protect the culture of objectivity and to report accurately, fairly and in good faith at all times. It is only by adopting a professional approach to their work that journalists will be perceived to operate in the public interest and viewed as credible sources of information.

Much international and donor effort has gone into trying to build a culture of professional journalism around the world. Media centres, often in partnership with international organisations, continue to provide training programmes and support in order to create a professional base from which journalists can work. These generally concentrate upon building a general awareness of democracy and human rights, encouraging independent analysis and imparting techniques of investigative journalism.

### Practising Journalism in Conflict Situations

It must always be remembered that there are many areas around the world, particularly in conflict or post-conflict zones, where it is dangerous, even life threatening, to practice journalism. Conflict situations are clearly a source of intense public interest and it is vital that media workers are permitted full access to the affected areas in order to act as a conduit for information to the public. Conflict zones are breeding grounds for human rights abuses and it is therefore critical that

objective observers are able to record events so that public bodies can scrutinise rights abuses and promote accountability. Exclusion of journalists from these areas and from reporting on conflicts is a severe restriction on freedom of expression and the public's right to know and should not be permitted unless the presence of reporters would represent a genuine risk to the safety of others.

Instead, it is more practical to mitigate against the dangers presented to journalists working under unpredictable and threatening conditions by providing them with comprehensive security training. While international journalists are often heavily equipped and protected, particular attention should be given to guaranteeing the safety of local journalists who risk their lives everyday and not just in moments of extreme crisis. Above all, the international community should realise that the media – and journalist as individuals - are regarded by combatants in conflicts, not as neutral observers but as arenas to contest different positions. In the modern world, internal combatants are rarely powerful enough to win a war by themselves - they need external intervention to secure victory. Gaining favourable coverage for your side is therefore a prime objective and one that often overrides any more military purpose. Journalists will find all kinds of events arranged or staged for them, which is why they need sound investigative skills. They will be courted which is why they need a keen awareness of journalistic ethics. If all else fails they will be threatened and even killed. Training is an important means of endowing journalists with the attributes necessary to deal with this complex and fraught environment.

### Attacks against Journalists

Journalists also continue to be harassed and attacked around the world for reporting sensitive information such as details of particular corruption, arms or other political scandals that compromises the reputation or position of powerful figures. This treatment of journalists poses a significant threat to freedom of expression and the free flow of information. When governments and public officials abuse their power and become complicit in these events it is vital that domestic and international bodies press for full investigations to ensure that cover-ups cannot take place and a climate of impunity cannot persist. This requires states to devote sufficient time and resources to efforts to ensure that perpetrators are brought to justice.

### Self-Regulation

Most professionals are influenced by their peers; in fact peer pressure is the most likely means of improving skills and ethics. For this reason the establishment of an independent journalist association should be given a high priority, linked to a respected international association like the

International Federation of Journalists. Such an association can provide a direct advocacy on behalf of the profession, particularly on pay and conditions issues and on questions such as unfair dismissal cases between local staff and employers. In parallel to this, steps can be taken to foster, through civil society initiatives, the development of employers associations, linked in turn to the World Association of Newspapers or the International Press Union as appropriate.

The most important role for these associations is in creating a climate of self-regulation. Self-regulation is always better than imposed regulation because it is likely to be more effective and, of course, it respects the independence of the media. Such associations provide useful means of disseminating good practice, and can help create peer pressure to respect editorial independence, human rights norms and democratic values. In both cases financial support is vital for such ventures so that they can be genuinely cross-community and representative institutions and seek to uphold broad human rights and democratic values.

#### Protection of Sources

In order to maintain the free flow of information to the media and in turn the public, and in order to safeguard the security of journalists, reporters should be permitted to protect the confidentiality of their sources. Journalists should not be required to reveal their sources unless this is essential for a criminal investigation or for the defence of a person accused of a criminal offence and they are ordered to do so by a court. They should only be required to reveal their sources under these circumstances if the information cannot be obtained elsewhere and if the public interest in releasing the information outweighs the harm that would be caused by disclosure.

#### Gender Issues

Women make up more than one third of the world's journalists and in some regions, such as Central and Eastern Europe, women form the majority of working journalists, and yet only a negligible percentage occupy management or editorial positions. In fact, according to a survey published by the International Federation of Journalists, only 0.6% of women questioned worldwide were able to access decision making posts within the media. The percentage of women studying journalism across the globe is increasing year on year and yet the industry does not appear to be changing rapidly enough to accommodate them or allow them to realize their full potential. In order to achieve a fair and representative media industry, it is vital that women are able to enjoy equal pay and conditions, have full access to professional opportunities and participate in the highest levels of decision-making. It is the responsibility of public authorities to devise and implement anti-discrimination policies and to challenge discrimination wherever it may occur in order to make the media truly diverse.

It is hoped that by facilitating the passage of women into and within the industry that the media will become more well-rounded and address the non- and misrepresentation of women and its failure to reflect the differing perspectives, priorities and interests of women in the public sphere. Women's stories are still often absent from public policy debates and many are left unexplored and untold. Violence against women is often underreported, sexist language is sometimes used in the presentation of particular news items and female reporters continue to complain that journalists reporting on cases of rape and sexual abuse often present women as responsible for, and not the victim of, violent attacks. When women do feature in the media they frequently appear in stereotypical and narrowly defined roles which are left unchallenged due to the failure of journalists to use female experts or spokespersons as sources in their articles or broadcasts. This is a problematic issue to address; it is far easier for women to use official complaints mechanisms to correct factual inaccuracies or a violation of privacy than to prove that a journalist has presented only a male perspective on a particular story. Unions are, however, beginning to tackle these concerns by developing their ethics codes to include clauses on gender equity and by issuing guidelines to make journalists more aware when reporting on particular issues and editors more sensitive to the implications of their choices when selecting and presenting news.

## **RESOURCE SECTION**

### UK BASED ORGANISATIONS

The ***Campaign for Press and Broadcasting Freedom*** is an independent voice for media reform. The campaign works to promote policies for a diverse, democratic and accountable media. Membership includes national trade unions, local trade unions and Labour Party branches as well as media, cultural and educational organisations.

<http://keywords.dsvr.co.uk/freepress/index.html>

***Index on Censorship*** reports on censorship issues from all over the world. In addition to analysis, reportage and interviews, *Index* contains a country-by-country list of free speech violations. [www.indexonline.org](http://www.indexonline.org)

The ***Institute for War & Peace Reporting*** strengthens local journalism in areas of conflict. By training reporters, facilitating dialogue and providing reliable information, it supports peace, democracy and development in societies undergoing crisis and change. [www.iwpr.net](http://www.iwpr.net)

***The Media Trust*** helps charities communicate by imparting professional skills, information, resources and contacts. [www.mediatrust.org](http://www.mediatrust.org)

The **National Union of Journalists (NUJ)** was founded in 1907 and has fought for journalists, their pay and conditions, their working rights and their professional freedom ever since. The union currently has 34,000 members. [www.nuj.org.uk](http://www.nuj.org.uk)

**Panos Pictures** is a London-based independent photo agency representing photojournalists worldwide. Photographers document issues and geographical areas, which are under-reported, misrepresented or ignored. [www.panos.org.uk](http://www.panos.org.uk)

**The PressWise Trust** is an independent media ethics charity, set up in 1993 by 'victims of media abuse', supported by concerned journalists, media lawyers and politicians in the UK. The organisation's primary purpose is to provide advice, information, research and training on all aspects of media policy, practice and law. [www.presswise.org.uk](http://www.presswise.org.uk)

#### INTERNATIONAL ORGANISATIONS

**ARTICLE 19, the Global Campaign for Free Expression** takes its name from the corresponding article of the Universal Declaration of Human Rights, which guarantees the right to freedom of expression and to seek, receive and impart information and ideas. ARTICLE 19 undertakes regional freedom of expression activities in Central and Eastern Europe, Africa, the Middle East, Latin America and Asia. ARTICLE 19 has produced a series of international standard setting documents and an online freedom of expression handbook that are used by governments and civil society groups worldwide. These resources can be accessed via the website [www.article19.org](http://www.article19.org) .

The **Committee for the Protection of Journalists** promotes press freedom worldwide by defending the right of journalists to report news without fear of reprisal. [www.cpj.org](http://www.cpj.org)

**The Freedom Forum** is a nonpartisan foundation dedicated to free press, free speech and free spirit for all people. [www.freedomforum.org](http://www.freedomforum.org)

The **International Federation of Journalists (IFJ)** represents around 500,000 members in more than 100 countries and promotes international action to defend press freedom and social justice through strong, free and independent trade unions of journalists. [www.ifj.org](http://www.ifj.org)

The **International Press Institute** is a global network of editors, media executives and leading journalists, dedicated to freedom of the press and improving the standards and practices of journalism. <http://www.freemedia.at/index1.html>

The **Reporters Committee for Freedom of the Press** offers a resource on free speech issues and provides a quarterly legal review, a bi-weekly newsletter, a 24-hour hotline and various

handbooks on media law issues. The Committee has played a role in press freedom cases that have come before the United States Supreme Court. [www.rcfp.org](http://www.rcfp.org)

**Reporters Sans Frontieres** (Reporters Without Borders) challenges practices to restrict press freedom through public awareness raising campaigns. A new judicial arm to the organisation provides journalists with legal services and represents them before national and international courts. [www.rsf.org](http://www.rsf.org)

Founded in 1948, the **World Association of Newspapers** groups 72 national newspaper associations, individual newspaper executives in 100 nations, 13 news agencies, and nine regional press organisations. It is a non-profit, non-government organisation. [www.wan-press.org](http://www.wan-press.org)

The **World Press Freedom Committee** is an international umbrella organization that includes 44 journalistic groups -- print and broadcast, labor and management, journalists, editors, publishers and owners on six continents -- united in the defense and promotion of press freedom. [www.wpfc.org](http://www.wpfc.org)

#### NETWORKS AND RESOURCE MATERIALS

**The International Freedom of Expression Exchange (IFEX)** runs an Action Alert Network (AAN) which circulates information in relation to free expression abuses to members and interested organisations all over the world. [www.ifex.org/](http://www.ifex.org/)

The **Journal of Mass Media Ethics** is devoted to explorations of ethics problems and issues in the various fields of mass communication. The Journal is a quarterly, refereed publication serving academic and professional media ethics communities. <http://jmme.byu.edu>

**Media Watch** aims to challenge abusive stereotypes and other biased images commonly found in the media. Media Watch distributes educational videos, media literacy information and newsletters to help create more informed consumers of the mass media. [www.mediawatch.com](http://www.mediawatch.com)

The **UK Journalism Directory** offers a full information service for online journalists in Britain. The website includes current news, information on training events and links to other useful sites amongst other items. [www.journalism.co.uk](http://www.journalism.co.uk)

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Article 19 is an international human rights organisation which promotes access to information, freedom of expression and fights censorship all over the world. The organisation takes its name from Article 19 of the United Nations Universal Declaration of Human Rights

<http://www.article19.org>

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