

Commonwealth
principles on
freedom of
expression and
the role of the
media in good
governance

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Introduction

In 2013 member states of the Commonwealth acknowledged the 'surge in popular demand for democracy and human rights' when they adopted the Commonwealth Charter in the name of the people of the Commonwealth. The Charter commits member states to democracy, human rights, freedom of expression, the rule of law and good governance, and recognises the important role of civil society in promoting and supporting Commonwealth values.

The Commonwealth (Latimer House) Principles on the separation of powers and the constitutional functions of the three branches of government, which were embraced in 2003 as integral to the Commonwealth's fundamental political values, attribute particular importance to the role of the media, stating that *"Government transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment on public affairs"*.

However, journalists and media workers in Commonwealth countries, as elsewhere, have suffered a marked increase in the number of threats and violent assaults, including murders, as well as arrests and imprisonment in the course of their work. The international community has responded by adopting several United Nations Resolutions on the Safety of Journalists and the issue of Impunity. They urge member states to take a range of actions to strengthen the protections provided to journalists and others who exercise their right to freedom of expression and opinion.

In 2016 the Commonwealth Journalists Association, at its biennial conference in London, acted on the acute concerns of its members at the erosion of legal protections for freedom of expression and the shrinking of civil society space in their countries by setting up a Media Freedom Committee to develop a set of principles, drawn from existing Commonwealth commitments in the Charter and other declarations, for the role of media in good governance. The initiative was welcomed by the Commonwealth Secretary-General, Patricia Scotland, who spoke in a lecture at the Institute of Commonwealth Studies in April 2017 of *'hoping to move towards adopting distinctive Commonwealth principles on the media in line with the normative framework of international human rights law...'*

Wishing to build a broad consensus of Commonwealth opinion in support of the initiative, in 2017 the Commonwealth Journalists Association and the Institute of Commonwealth Studies jointly set up a Working Group on 'Media and Good Governance' with the participation of four other Associations: the Commonwealth Lawyers Association, the Commonwealth Legal Education Association, the Commonwealth Human Rights Initiative and the Commonwealth Parliamentary Association UK. The Commonwealth Secretariat participated in meetings of the Working Group in an advisory capacity.

These *Commonwealth Principles on freedom of expression and the role of the media in good governance* are the result of their deliberations, aided by additional advice from sources of expertise across the Commonwealth. They have been formally endorsed by the six Commonwealth organisations. The Principles are intended to serve as a set of guidelines to assist member states and their agencies, as well as Commonwealth legislatures and judiciaries, civil society and media, to make appropriate contributions to promoting and developing democratic, accountable and open societies, in accordance with Commonwealth values, international norms and standards, and the United Nations' 2030 Sustainable Development Goals.

The development of these principles has been inspired by the example of the Latimer House Principles, which, as the Secretary-General has said *'emerged from a small informal ginger group of experts within Commonwealth professional associations'*. It also follows the Latimer House approach by placing the role of the media as the fourth estate within the context of democratic governance. There is a reciprocal relationship between freedom of expression and the making of a safe and enabling environment for journalists and the proper democratic functioning of the three branches of government. Accordingly, the principles include guidelines concerning relationships between the media and the judiciary, parliament and the executive. It is hoped that in due course they will be adopted by the Commonwealth as a 'manual of good practice' in matters related to the role and status of the media in a way which complements the Commonwealth (Latimer House) Principles.

Commonwealth principles on freedom of expression and the role of the media in good governance

The following Commonwealth partner organisations: the Commonwealth Journalists Association, the Institute of Commonwealth Studies, the Commonwealth Lawyers Association, the Commonwealth Legal Education Association, the Commonwealth Human Rights Initiative and the Commonwealth Parliamentary Association (UK),

Recognising that the right to freedom of opinion and expression is a human right guaranteed to the people of the Commonwealth by the Universal Declaration of Human Rights and other international instruments; and that it is an essential foundation of democratic society which gives effect to the rights of freedom of association and assembly and other rights,

Re-affirming the Commonwealth's commitment in its Charter and in declarations by Heads of Government to democracy, human rights, freedom of expression, the rule of law, the separation of powers, good governance, sustainable development and partnership with civil society in promoting and supporting Commonwealth values and principles,

Taking account of the Commonwealth (Latimer House) principles, endorsed at the Heads of Government Meeting in Abuja in 2003, which state that '...Government's transparency and accountability is promoted by an independent and vibrant media, which is responsible, objective and impartial and which is protected by law in its freedom to report and comment on public affairs,'

Taking note also of the responsibilities of journalists' associations to uphold freedom of expression and the professionalism and integrity of their members, to respect accuracy and fairness and to correct harmful inaccuracies in accordance with voluntary codes of conduct,

Fully aware that, while traditional print and broadcast news media continue to make an essential contribution to informing the public, the Internet and social media have become principal means by which individuals exercise their right to freedom of expression and participate in debate on matters of public interest,

Welcoming the commitment of Commonwealth leaders at their 2015 Heads of Government Meeting in Malta to support a strong role for the Commonwealth in championing the implementation of the UN's 2030 Agenda for Sustainable Development, whose goals include effective, accountable and transparent institutions, access to justice for all, the protection of fundamental freedoms and public access to information,

Acknowledging the commitments made by Commonwealth member states as members of the United Nations on issues of human rights and journalists' safety through numerous resolutions adopted in the major UN bodies (the Human Rights Council, General Assembly and Security Council) and the UN Plan of Action on the Safety of Journalists and the Issue of Impunity,

Expressing deep concern at the increased numbers of journalists and media workers who have been killed, tortured, abducted, harmed, arbitrarily detained or have disappeared in recent years globally and in Commonwealth countries as a result of practising their profession; and at the growing threats to the independence of the media and to its essential role in informing the public and strengthening the accountability and transparency of government,

RESOLVE to adopt the following principles relating to the role of the media in good governance; to propose them for consideration by the Commonwealth Heads of Government and for effective implementation by Commonwealth member states; and to engage with the Commonwealth Secretariat and member states and their relevant agencies for that purpose;

The objective of these Principles is to provide, in accordance with the Commonwealth's fundamental values and the laws and customs of each Commonwealth country, a set of clear guidelines, reflecting relevant legal and ethical considerations, for the role of the media in strengthening democracy and good governance and in contributing to the creation of open, equal, fair, inclusive and prosperous societies;

Their successful implementation calls for a commitment, made in good faith, by the relevant national institutions, in particular the executive, parliament, the judiciary, law enforcement agencies and security forces, to uphold the role of the media in good governance and to create a safe and enabling environment in which freedom of expression and information are safeguarded and journalists and media workers can do their work safely and without undue interference:

1. Freedom of expression

Freedom of expression is a cornerstone of democracy and underpins good governance, public accountability and respect for all human rights. Everyone has the right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds through any media and regardless of frontiers. Member states are urged to respect the right to freedom of expression and promote the free flow of information and ideas.

2. Restrictions on freedom of expression

Any restrictions on freedom of expression should be in accordance with standards established in international human rights law, such as those set out in the International Covenant on Civil and Political Rights. Restrictions such as those which are essential to prevent incitement to violence, hatred or discrimination, should be prescribed by law, and necessary and proportionate in pursuit of a legitimate aim.

Member states are urged to repeal or amend laws which unduly restrict the right to freedom of expression, such as laws on sedition which criminalise speech. Public insult and defamation laws should exclude criminal sanctions, including custodial sentences, and in civil cases there should not be excessive or disproportionate awards of damages. Truth and public interest defences should be recognised by law and journalists' sources should always be protected unless an independent judicial authority has accepted an exceptional overriding public interest in disclosure. The rights of whistle-blowers should be protected by appropriate legislation.

3. Access to Information

Access to information held by public authorities is key to promoting transparency, good governance and the full participation of citizens in the democratic process. Member states are urged to enact and implement Right to Information legislation in line with international standards, taking account of the Commonwealth Freedom of Information Principles which were endorsed by Commonwealth Law Ministers and noted by Heads of Government in Durban in 1999. Official Secrets Acts and other laws and measures which provide for secrecy should be construed narrowly and apply only where disclosure poses a demonstrable risk of harm to national security, subject to a public interest test.

4. Parliaments and the Media

Open, two-way flows of information between Parliaments or legislatures and the media and the public are essential to enfranchise the public and ensure that legislators are informed about public opinion. Parliaments and Members of Parliaments should protect the right to freedom of expression and respect the role of the media in informing the public and holding elected governments to account. Parliaments and elected bodies should facilitate media coverage of their proceedings and provide journalists with information without unreasonable restrictions. Parliaments should respect the right of individuals and of the media to comment on their actions and performance. Criminal and defamation laws should not be used to restrict legitimate criticism of parliament.

5. Judiciaries and the Media

The rule of law, including the independence of the judiciary, is essential in order to uphold the right to freedom of expression, other human rights and the democratic process. The judiciary should promote open justice and facilitate media access to the courts for the reporting of proceedings. The media have a responsibility not to undermine the authority or independence of the judiciary and to communicate judicial decisions to the public fairly and accurately. The criminal law and contempt proceedings should not be used to restrict legitimate discussion of matters concerning the judiciary and the courts. Judges and lawyers should not be threatened or abused for upholding judicial independence or defending freedom of expression.

6. The role of media in elections

The essential role of the media in the democratic process, especially during times of elections and referenda, should be promoted and protected by all relevant public bodies. Election Commissions and other official bodies responsible for regulating the media during elections should operate under rules that ensure their independence, the independence and impartiality of election processes and equitable access to the media for all parties and candidates. The public should have ready access to reliable information from diverse sources concerning electoral processes and members of the media should be afforded protection from threats or acts of violence at election times.

7. The safety of journalists

Member states are urged to put in place effective laws and measures to establish a safe and enabling environment for journalists to work without fear of attack, intimidation or interference, and to take prompt measures to protect them when they face a serious threat of harm or are subject to attack. Protection should extend not only to professional journalists and media personnel but also to bloggers and others who engage in forms of self-publication in print, on the Internet or other media. Governments should ensure that the judiciary, law enforcement officers and military personnel are cognisant of international human rights and humanitarian law obligations relating to the safety of journalists and their protection as civilians in situations of conflict. Media owners should provide their employees with adequate training, equipment and support to operate in dangerous environments and appropriate assistance in emergencies.

8. Ending impunity

Member states are urged to act decisively to end impunity through impartial, prompt and effective investigations into all alleged cases of killings, attacks and ill-treatment of journalists and media workers, by prosecutions to bring the instigators and perpetrators of such crimes to justice and by the provision of effective redress for the victims. Member states are urged to uphold United Nations Resolutions on the safety of journalists and the issue of impunity, to implement the UN Plan of Action and to cooperate with the annual requests by UNESCO's Director General for information on judicial follow-up to the killing of journalists.

9. Media Self-Regulation and Complaints

Media organisations and journalists should set and supervise their professional standards and codes of practice. Journalistic ethics require that the media should report accurately and fairly, issue corrections, allow a fair opportunity to reply when appropriate and, subject to legitimate public interest, respect the right to privacy, particularly of minors.

Media owners are urged to recognise that ownership entails a commitment to inform citizens about matters of public interest and not merely to advance partisan or personal interests. It is part of the media's responsibility to ensure that journalists are adequately trained and that their private interests do not distort their reporting of public issues. Media and journalists' organisations should establish credible complaints systems to adjudicate on alleged breaches of professional codes of practice and to provide members of the public with effective redress for unprofessional behaviour.

10. Media regulation

Any system of media regulation should be the least restrictive necessary for a well-functioning democratic society. It should uphold the media's independence and its role in informing people about matters of public interest. It should promote media plurality and access to the media for all, including those belonging to linguistic and cultural minorities, without discrimination on the basis of race, colour, religion, gender or other grounds. It should include mechanisms to prevent undue concentration of media ownership and to make ownership transparent.

Member states are urged to promote universal and affordable access to the Internet and refrain from arbitrary shutdowns, blocking, filtering and other measures preventing or restricting access to it. People should enjoy the same rights online that they have off-line. Legal and regulatory frameworks for internet development should promote openness and transparency. Internet service providers and social media platforms should do their utmost to protect users from harm and to uphold freedom of expression and access to information. Restrictions on the operations of websites and other online media services should only be imposed when prescribed by law and should be narrowly drawn, proportionate, and content-specific. The actions of member states in response to the proliferation and convergence of digital media should not diminish existing safeguards for freedom of expression and privacy.

Any system of registration for the print or online news media, or for journalists, should not restrict the right to freedom of expression and should only be applied for such necessary purposes as accreditation.

For broadcasting, member states are encouraged to set up independent regulatory bodies to issue licences in a fair and equitable way and to ensure the observance of broadcasting rules and licence conditions. Licensing should be used to promote a diverse, independent private broadcasting sector comprising commercial and community broadcasters. Public broadcast services should operate under governance frameworks which guarantee their editorial independence.

Data protection laws and other measures to protect the right to privacy should be applied with appropriate safeguards for freedom of expression.

11. Observance of these Principles

Member states are urged to promote the widest possible awareness of these principles and to ensure their observance by setting up and supporting independent and accountable oversight bodies free from political and commercial interference, such as Information Commissions, Human Rights Commissions, Election Commissions, Independent Broadcasting Authorities, Telecommunication Regulators, Ombudsman's offices and appeals procedures in accordance with international norms and appropriate domestic legislation. Member states are encouraged to cooperate fully with international mechanisms, such as international and regional rapporteurs, the UN Human Rights Council's Universal Periodic Review and UN Agencies advancing the achievement of the Sustainable Development Goals.

12. Upholding Commonwealth values

As Commonwealth partner organisations concerned with the media, the law and human rights, we put forward these principles in order to strengthen the role of the Commonwealth as a champion of democracy and freedom of expression. Member states are urged to endorse these principles as being consistent with Commonwealth values as set out in the Commonwealth Charter and other relevant declarations.

