

Freedom of Expression in the Commonwealth: Rights and Responsibilities

A joint paper by the Commonwealth Lawyers Association (CLA); Commonwealth Journalists Association (CJA); Commonwealth Magistrates' and Judges' Association (CMJA); and the Commonwealth Organisation for Social Workers (COSW),

*For presentation to the meeting of
the Committee of the Whole (COW) 20th October, 2015*

Introduction

Freedom of Expression is recognised by the United Nations as a fundamental Human Right. A strong, well-trained, independent, and responsible media, supported by civil society is essential to human development and democratic societies.

The Commonwealth Charter enshrines freedom of expression as one of the core values and principles of the Commonwealth and commits the people of the Commonwealth *'to peaceful, open dialogue and the free flow of information, including through a free and responsible media.'* <http://thecommonwealth.org/our-charter>

In upholding the commitment by Heads of State to the Charter, we request that the committee consider the current concerns, and the future, for freedom of expression in the Commonwealth under the following headings:

1. The current state of media: the pace of change and potential risks;
2. Commonwealth pledges to professional media workers: the law and support systems;
3. Accessibility to all in a secure environment.
4. Recommendations.

1. The Current State of Media: the Pace of Change and Potential Risks

Regrettably the pledges by Heads of Government are often forgotten between summits. At this year's heads of government meeting in Malta, we urge the Commonwealth leaders to demonstrate that they recognise the importance of their previous commitment to freedom of expression as enshrined in the Commonwealth Charter.

We urge them to support the work of drawing up guidelines for "good practice" to be shared with the governments of the Commonwealth with the goal of achieving an enabling environment for all forms of media for the benefit of all citizens of the Commonwealth.

We ask the committee to acknowledge, in keeping with the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, that freedom of expression applies not only to professional journalists but also to the wider community of those who use and disseminate information available from all sources for informed decision making; it should also be upheld, in the workings of the legal systems and for civil society groups which support citizens who use modern media tools such as the internet and social media channels.

A balance needs to be found to ensure that both professional media persons and private individuals are able to provide free commentary and to exchange ideas and information with an underlying system of law and civil society which supports freedom of expression rather than constraining it.

We request that the committee considers giving active support for the further education programmes required for the use of social media, for both youth and adults, to address the increasing risk to vulnerable citizens (particularly young people) who may be “groomed” or enticed into acts of terrorism or other illegal activities through pressure exerted on social media and the internet and noting the increased risk posed by all forms of cybercrime.

We urge COW to consider the rapid growth of social media in the Commonwealth community, and the ability of a professional, free, media to inform, empower, and educate for the positive good*.

Examples

*to inform and disseminate real-time information: *Nigerian Elections*
<https://twitter.com/search?q=Nigeria%20Electgions&src=typd>

2. Commonwealth pledges to professional media workers.

Heads of Government have often pledged to promote freedom of expression. Thus, in their 2013 communique they stated:

“Heads of Government reaffirmed their commitment to peaceful, open dialogue and the free flow of information, including through a free and responsible media, and to enhancing democratic traditions and strengthening democratic processes... Heads noted that social media had introduced a new dimension and agreed to share best practices within the Commonwealth to respond to the resultant opportunities and challenges. They also affirmed that the same rights and responsibilities that people have offline must also be protected online, in particular freedom of expression, in accordance with Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.”

Reference: Commonwealth Heads of Government meeting 2013: Final Communique
http://thecommonwealth.org/sites/default/files/events/documents/CHOGM%202013%20Communique_0.pdf

For good governance, transparency and accountability, central planks of the Commonwealth Charter, freedom of expression is essential. Unfortunately, in many Commonwealth countries, media workers are still threatened, arrested, and killed by forces that fear exposure of crimes and malpractice. The existing legal frameworks in which freedom of expression is exercised* may now be outdated or unsuitable for the modern environment but remain the only laws available to many Commonwealth states.

We believe further work is necessary in this area by reviewing laws pertaining to the freedom of expression and considering appropriate reforms for the improvement of relevance to the modern day tools available to both professional journalists and the wider public. We propose an extended joint study (subject to the availability of funding) by the undersigned groups and in further consultation with additional civil society groups, for completion prior to the Law Minister’s meeting in 2016.

**Examples: Scandalising the Court - Dooharika v The Director of Public Prosecutions*
<https://www.jcpc.uk/cases/docs/jcpc-2012-0058-judgment.pdf>

Human Rights Lawyer Karpal Singh [deceased] prosecuted under the Sedition Act
<http://www.themalaysianinsider.com/malaysia/article/karpal-found-guilty-of-sedition>

3. Accessibility to all in a safe environment

If the Commonwealth is to be seen as a credible international organisation taking the lead on global issues it needs to demonstrate that it gives priority to freedom of expression as a basic human rights. The threats to freedom of expression have intensified with the expansion of digital journalism and social media.

****For example, lawyers who defend their clients accused under laws related to free speech are regularly threatened, or killed in the course of the work.**

****Example:**

“Lawyer defending academic in blasphemy case is killed”

<http://www.universityworldnews.com/article.php?story=20140510074716863>

Free speech is widely undermined through the use of anti-terrorism, blasphemy and other laws, as an expedient way to stifle dissent. As a result of this pressure many journalists are resorting to self-censorship in order to protect their families and livelihoods, pushing the dissemination of information and dissenting opinions into underground channels. Controlled licensing of newspapers and publishers often further inhibits the ability of a free press. We believe that the proposal contained in the Trans-Pacific Partnership https://en.wikipedia.org/wiki/Trans-Pacific_Partnership and the Trans-Atlantic Trade and Investment Partnership (TTIP) <http://ec.europa.eu/trade/policy/in-focus/ttip/> negotiations, for a significant increase in the power of private corporations and for limitations on the ability of national and local governments to pursue appropriate social policies pose a threat to freedom of expression, democracy, accountability and human rights.

4. Recommendations

1. We request that Heads of Government mandate law ministers to consider the preparation of model laws and to devise a set of good practices to be adopted by Commonwealth Member States for the protection of freedom of expression, in consultation with civil society stakeholders. This mandate should include the introduction of measures to protect professional journalists from unjust prosecution in respect of their legitimate professional activities;
2. The reform of existing laws which unnecessarily curb freedom of expression in the context of the relevance of such laws in a rapidly changing technical and security environment;
3. Consider additional measures to counter the increasing problem of the risk (with emphasis on youth) of “grooming” through social media and the internet for the purpose of inciting acts of hatred, acts of terrorism, and abuse and to assist civil society to combat this through increased education programmes;



4. Recognise the contribution of a free and professional media, to assist and promote informed decision-making through the provision to the public of fair and high-quality news and information in an professional and unbiased manner;
5. Recognise and strengthen the support provided by civil society groups dealing with legal and social issues surrounding freedom of information.

In Summary

We urge Commonwealth leaders in Malta to set an example by announcing measures to strengthen and promote freedom of expression. A bold and free press and electronic media serve to bolster good governance and a healthy democracy – values shared by all Commonwealth governments and peoples. The Committee is urged to endorse and progress the commitment to freedom of expression embodied in 2013 communique and to support the implementation of the recommendations contained in this paper.

We would like to thank the Commonwealth Secretariat for hosting this meeting and we thank the Committee for their time and attention.

The following organisations support this paper with thanks to those who contributed to it *[in alphabetical order]*:

Commonwealth Journalists Association: Rita Payne, Chris Cobb, William Horsley;

Commonwealth Lawyers Association: Dr Peter Slinn; Katherine Eden-Haig;

Commonwealth Magistrates' and Judges' Association: Dr Karen Brewer;

Commonwealth Organisation for Social Workers: David N Jones.