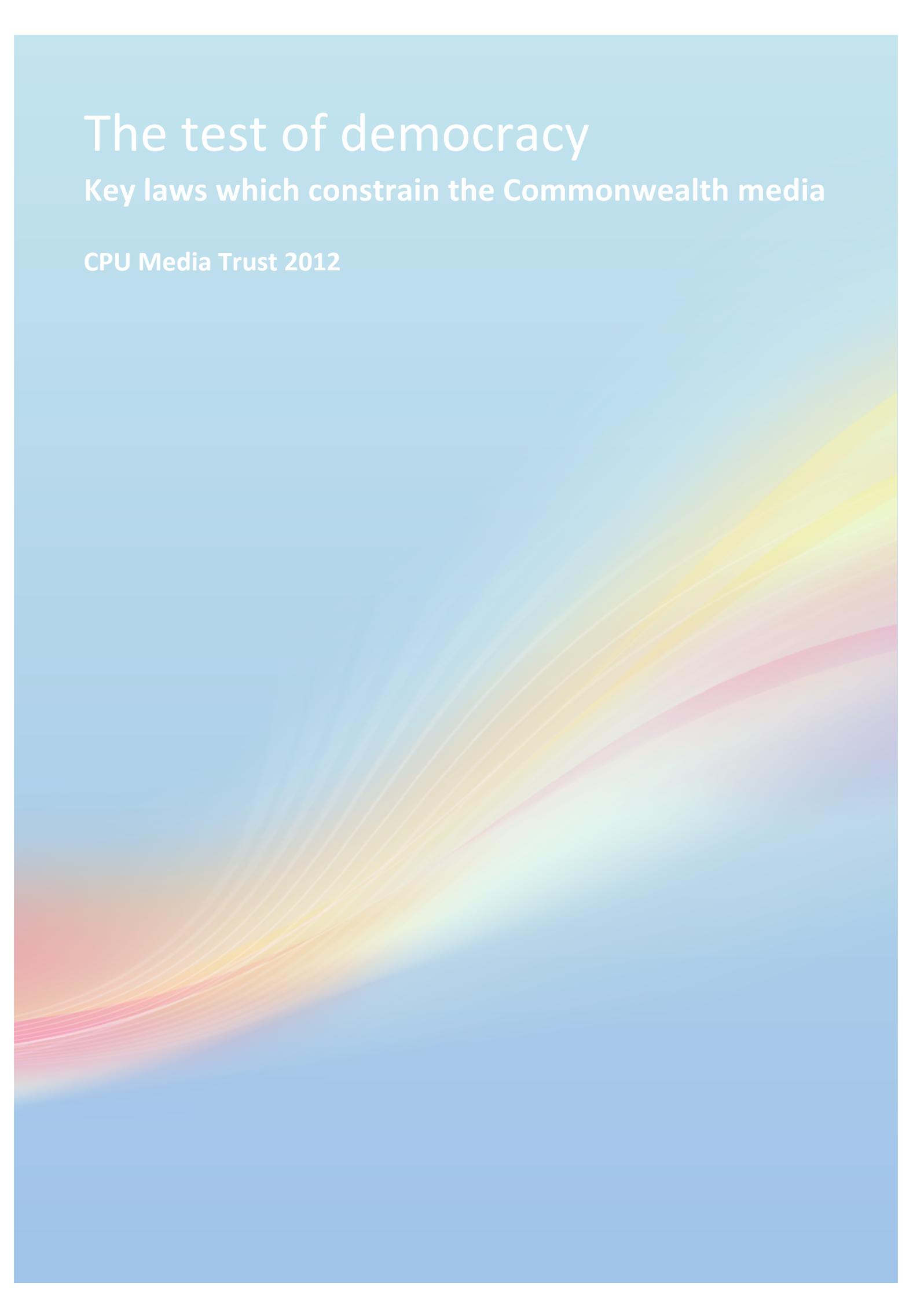


The test of democracy

Key laws which constrain the Commonwealth media

CPU Media Trust 2012

An abstract graphic consisting of numerous thin, curved lines that sweep across the page from the bottom left towards the top right. The lines are colored in a gradient, transitioning from light yellow and orange to a soft red and pink. The background is a solid, light blue color.

THE CPU MEDIA TRUST

The CPU Media Trust was established following the closure of the Commonwealth Press Union (CPU) in 2008.

The Trust is committed to a professional, ethical and effective media throughout the Commonwealth. Its primary concerns are supporting media freedom and media rights, the training of journalists in the skills necessary for them to enable their work and a thorough understanding of ethics, media law and the establishment and support of self-regulatory bodies throughout the Commonwealth.

The Trustees are:

Lord Black of Brentwood (Chair), Executive Director, Telegraph Media Group

Ian Beales, Secretary, Editors' Code Committee, UK

Robin Esser, Executive Managing Editor, The Daily Mail, UK

Phil Harding, former Director News & English Networks, BBC World Service

Patsy Roberston, former Director of Information, Commonwealth Secretariat

Bob Satchwell, Director, Society of Editors, UK

Derek Smail, CEO, Commonwealth Publishing

John Spencer, former Managing Editor, PA News, UK

CONTENTS

1. Acknowledgements	4
2. Introduction	5
3. Recommendations	7
4. Country Reports:	
a. Bermuda	8
b. The Gambia	9
c. Guyana	13
d. Malaysia	16
e. New Zealand	20
f. South Africa	21
g. Sri Lanka	23
h. Tonga	27
i. Uganda	29
j. United Kingdom	32
5. Conclusion	37
6. Appendices	38
7. Bibliography	43

ACKNOWLEDGEMENTS

This report could not have been achieved without the assistance of many people both in the UK and throughout the Commonwealth. Many lawyers, editors and journalists have given freely of their own experiences and willingly answered many questions and queries. For this generous assistance, the CPU Media Trust is enormously grateful.

In London, our consultant, Lindsay Ross, has worked closely with our tireless researcher, Alasdair Ambroziak, to produce a report which we believe is both timely and significant.

My fellow Trustees and I would like to thank everyone who has been involved.

Lord Black of Brentwood
Chairman, CPU Media Trust

November 2011

INTRODUCTION

The promotion of good governance, human rights and democracy are fundamental to the work of the Commonwealth. Since its foundation, the number of democratic nations within the Commonwealth has steadily increased, however media freedom is still being eroded. There is an inbuilt tension within the Commonwealth with the challenge to drive through an agenda of change in an organisation of independent states that have been brought together cooperatively.

The Commonwealth is an organisation of mutual values; these are embedded into the fabric of the Commonwealth family. These have been codified and strengthened through a number of agreements; Singapore 1971, Harare 1991, Milbrook 1995 and the Latimer House Principle 2005. With many members situated in Africa, the landmark Windhoek Declaration, 3rd May 1991, on developing a pluralistic and independent press in Africa has also had a profound effect. This declaration set out the fundamental principles on media freedom and a recognition that an independent media is vital to creating a vibrant and sustainable democratic ethos in a nation.

Throughout the colonial period there was a level of free expression but this was controlled and guided by the ruling authorities. In the post-colonial era, although there was initially much hope, many of the more repressive pieces of legislation remained or were incorporated into new acts. As the promise of the new democratic states fell away, one party states spawned their own unique brand of media repression, crushing opposition and creating a single channel as a mouthpiece of the regime.

The scale of the challenge facing media freedom advocates is vast, with many countries having no legislative framework to protect journalists. In a large number of countries journalists face violence and hostility from the state security apparatus, which is able to operate with near impunity. They also face politically motivated licensing regimes with ill-defined remits and sanctions. These

environments lead to direct and indirect self-censorship by journalists or publications that fear for their lives as well as their livelihoods.

Media freedom and the legislation governing the independent operation of the media vary across the Commonwealth with starkly contrasting national regimes. Broadly speaking they sit in three categories:

- a) democratic countries with a mature sense of freedom and plurality in the media;
- b) emerging democratic states where demands for democracy and the evolution of a free press are emerging challenges;
- c) undemocratic states which see an independent press as a major challenge to the government's power.

Although the primary focus of this report is to look at legislation imposed upon the media by governments, many situations in countries are much more complex than just citing the government as hostile to basic freedoms. In both Tonga and Guyana media outlets were responsible for creating social instability before key elections. It is vital that journalists maintain integrity with balanced, informative and where necessary critical coverage. As with the immense power that the media has, the right to freedom of speech should be tempered with a responsibility to respect ethnic, religious and personal rights. Assistance in achieving this is one of the main roles of the CPU Media Trust.

It is vitally important that the role of the independent media is strengthened in the fight against corruption, specifically encouraging investigative and financial journalism, strengthening the role of the press in the electoral process and ensuring that civil society is fully engaged in the democratic process through education and accurate information.

Media freedom is vital to developing countries, not

INTRODUCTION

purely as a key principle, but because it is a vital precursor to successful economic growth and greater social progress towards a democratic society. If there is no free media, there is no accountability and governments easily sacrifice the needs of the less powerful for their own political purposes.

A dictionary definition of democracy is “*a form of government in which the supreme power is vested in the people collectively*”. However a democratic society requires numerous enabling factors to support its growth and maintain its strength including (but not exclusively), a vibrant civil society, respect for human rights and freedom of expression. The media plays a key role in deepening and widening a democracy through providing independent scrutiny of the government, judiciary and the executive branch and, where necessary, holding them to account. Not least during elections, which are seen as a benchmark of a developing democracy. Free and fair elections conducted through transparent processes require a media sector that gives candidates equal access, and reports the relevant issues in a timely, objective manner.

The transition to democracy for any country will be a long and arduous process. The debate about the exact nature of the democratisation process is still subject to heated arguments, both in government and in academia. However it is clear that a free and vibrant media is an integral part of a modern democracy.

The relationship between the media, society and the state can be explained in a multitude of ways. The indisputable fact is that they are all interlinked and all impact upon each other. As the state attempts to expand its influence the reaction of the media and society at large is to push back. As highlighted in this report, it is often achieved through draconian legislation that creates statutory bodies to restrict media. This can be seen in an autocratic government as looking to impose unreasonable restrictions on human rights and freedom of speech.

The situation in the UK today illustrates what happens when there has been a perceived expansion of the sphere of influence of the media that has upset the delicate balance between the state and society. This process of expansion and contraction of spheres of influence will continue almost indefinitely, attempting to reach equilibrium.

Concept

The CPU Media Trust has selected a range of Commonwealth countries ranging from the UK, a permanent member of the UN Security Council, through to Tonga a Small Island Developing State, and examined the key laws that constrain a free and independent media.

The ten countries selected are:

- Bermuda
- The Gambia
- Guyana
- Malaysia
- New Zealand
- South Africa
- Sri Lanka
- Tonga
- Uganda
- United Kingdom

We have drawn up a set of ten recommendations that should act as a guide to Commonwealth leaders and the Secretariat. We have found that the media often initiate a process of reform and creating a system of self-regulation. Generally this is in response to the government trying to impose statutory press regulation on publishers and other media outlets. We are looking to Commonwealth governments to be working with the media to encourage self-regulation and establishing codes of conduct to reduce the need for reactionary legislation.

RECOMMENDATIONS

1. Given that a free and independent media is recognised as a pillar of democracy, Commonwealth member states must be seen to actively encourage the development of a free and independent media and be willing to work with the media to establish effective regulatory bodies.
2. There must be willingness by governments to examine and, where necessary, repeal or revise anachronistic or draconian laws that impinge on the right to freedom of expression and thus a free media, particularly when it is enshrined in the constitution of a country.
3. Criminal defamation laws should be repealed. It is still a major problem in many Commonwealth countries; the offence is now perceived as anachronistic and contrary to international human rights treaties. This law leads to self-censorship and an inability to act as an independent voice in a democratic society.
4. Licensing of journalists and publications by the state is unacceptable; it creates a chilling effect and leads to self-censorship over fear of the loss of livelihood and, often, liberty. It also undermines the journalistic independence that should be at the heart of responsible reporting.
5. Freedom of information, with access to government spokespersons, officials and politicians is one of the foundations of a strong media relationship with the governments. This ensures that the governments are able to promote their version of events and news, but also enables journalists to base their stories on verifiable facts.
6. The media have a unique role in society holding members of the government, state and society to account. However, the right to freedom of expression also brings also bring responsibilities. Ethical and responsible journalistic standards must be maintained and encouraged through codes of conduct and a willingness to adhere to self-regulation.
7. Self-regulation mechanisms should be seen as the only viable means of regulating the print media, with co-regulation of broadcasting and their establishment should be encouraged throughout the Commonwealth. These systems must have an integrated code of conduct that would insure a guide for journalists, the public and governments concerning acceptable standards.
8. The Commonwealth Secretariat should work with Commonwealth media organisations to encourage the development of a generic framework for self-regulation and the accompanying code of conduct using existing examples of best practice.
9. There should be an increased focus on appropriate training provided by independent non-governmental organisations, which should be supported by but not conducted by the Commonwealth Secretariat. Improved training should be seen as supporting efforts to increase the ethical standards, professionalism and quality of journalism throughout the Commonwealth.
10. The Commonwealth Secretariat should undertake a freedom of expression audit of member countries that includes issues surrounding the media. This would be then used as a baseline for improvement that can be monitored for advancement. The Commonwealth Ministerial Action Group can use the results to develop appropriate policy for countries that fall short of the high human rights standards expected by members of the Commonwealth.

BERMUDA

Introduction:

Bermuda is one of a number of British Overseas Territories that are self-governing autonomous entities with Britain through a Governor retaining responsibility for external affairs, defence, internal security and the police.¹ The country has a long tradition of democratic elections and elected representatives with the oldest parliament in the Commonwealth, outside the UK, which has been sitting continuously since 1620.² The 1968 constitution provides the basis for self-rule and an individual's freedom of expression, but does not specifically include a provision to protect the press.³

One of the major political issues in the territory is that of independence from the UK. A referendum in 1995 showed that only around one quarter of those who voted wanted to secede. The issue was revived against in 2004 but opinion polls show that the majority of respondents still want to remain part of the UK.⁴

The current Premier is Laura Cox the leader of the majority Progressive Labour Party. Ewart Brown the former Premier stepped down in October 2010 after a four-year term.⁵

Media Council of Bermuda:

The catalyst for developing the Media Council was the proposed introduction by former premier Ewart Brown of the Media Council Bill tabled in May 2010. The concept of a Press Council which had state appointed members was initially proposed in the 2008 Throne speech (the Bermudan equivalent of the Queen's speech at the State opening of Parliament).⁶

This proposal caused alarm amongst both journalists and free press advocates internationally. There was a fear that the state appointed members of the government proposed Media Council could be subject to undue political pressure in the future.

This forced the five main media outlets in Bermuda to come together and develop a genuinely independent self-

governing Media Council. The media not only put forward a system for dealing with complaints, but also generated a code of conduct that all media professionals would be held to. These are the key basic tenets for a successful self-regulatory system. In July 2010 after the media brought forward joint proposals for a self-regulatory system the government decided not to proceed with the Media Council Bill.⁷ This shows a maturity in media and governmental relations that is often missing from independent nations.

The Bermuda code of conduct is "based on the code used by the U.K.'s Press Complaints Commission".⁸ The code is designed as an ever-evolving document that will be reviewed annually by the Media Working Group that operates as an executive body for the umbrella organisation the Media Foundation of Bermuda. The two primary aims of the Foundation are to resolve complaints, through the Media Council and to protect freedom of expression.⁹

There have as yet only been a very small number of complaints to the Council. However, the Media Council's Executive Officer Meredith Ebbin has stated as part of this review that she believes the way in which the media conducts business has improved. Also complaints are now more likely to be dealt with by publications rather than resorting to legal action.

Conclusions:

The threat from government interference into the independent operation of the media in Bermuda has been dealt with in a mature and balanced way. The evolution of a fully functioning Media Council with an integrated Code of Conduct within a year demonstrates that with cooperation and determination from both politicians and the media progress in self-regulation at pace is possible.

However, as in other countries such as the UK,

¹ Foreign and Commonwealth Office, *Bermuda (Overseas Territory) Profile*, <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/north-central-america/bermuda/?profile=politics> (accessed 8 September)

² BBC News, *Regions and Territories: Bermuda*, http://news.bbc.co.uk/1/hi/world/americas/country_profiles/3552771.stm (accessed 9 September)

³ United States Department of State, *Background Note: Bermuda*, <http://www.state.gov/r/pa/ei/bgn/5375.htm> (accessed August 28)

⁴ Ibid.

⁵ BBC News, *Regions and Territories: Bermuda*,

⁶ Bermuda Sun Online, Full Text of the *Throne Speech 2008*, <http://bermudasun.bm/main.asp?FromHome=1&TypeID=1&ArticleID=36482&SectionID=24&SubSectionID=270> (accessed 16 September)

only when the media senses a threat to the status quo does it move to a self-regulatory system. In Bermuda the concept of a Press Council had been discussed in political statements and debates. This path of evolution can work within countries with a democratic ideal. It will however prove to be substantially more difficult to implement in nations where there is less of a democratic tradition.

⁷ Media Council of Bermuda, *Background to the formation of the Media Council of Bermuda*, February 2011, <http://www.mediacouncilofbermuda.org/media-council-background.html> (accessed 17 September)

⁸ Media Council of Bermuda, *Code of Practice FAQ's*, <http://www.mediacouncilofbermuda.org/media-council-code-of-practice-faqs.html> (accessed 10 September)

⁹ Ibid

Introduction:

The Gambia is one of Africa's smallest nations, located on the western coast of the continent. Becoming independent in 1965 under Prime Minister Dawda Jawara the country has few natural resources. The current President, Yahya Jammeh, came to power in a bloodless coup in 1994 following the toppling of the elected government.¹ He was re-elected in 2007 for another five-year term, the next election will be held on the 24 November 2011.²

The Government has been accused of being involved in numerous human rights violations, extrajudicial killings and repeatedly eroding Gambian's freedom of expression. Reporters Without Borders (RSF) highlights the killing of prominent journalist Deyda Hydara, in 2004, in which the regime was implicated, and which still causes friction between the government and the independent media. In March 2011 Jammeh stated that the government was not involved and that he would not "*sacrifice the interests, the peace and stability and well-being of the Gambian people at the altar of freedom of expression.*"³ This statement highlights the negative environment in which journalists and media organisations are currently operating in The Gambia.

Three years after the 1994 coup, The Gambia adopted a new constitution. Chapter IV of the constitution focuses on fundamental human rights, covering guarantees of a participatory democracy, the separation of powers, judicial independence and protection from torture and inhuman treatment.⁴ It also specifically commits the state to create a "*conducive environment for the media to operate freely and to ensure a free flow of information as provided for in the constitution.*"⁵ There are however serious concerns about the diminishing levels of freedom of expression in the country across a range of areas and the hostility of the regime to critical media coverage is highly visible.

¹ BBC Country Guide – The Gambia, http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1032156.stm

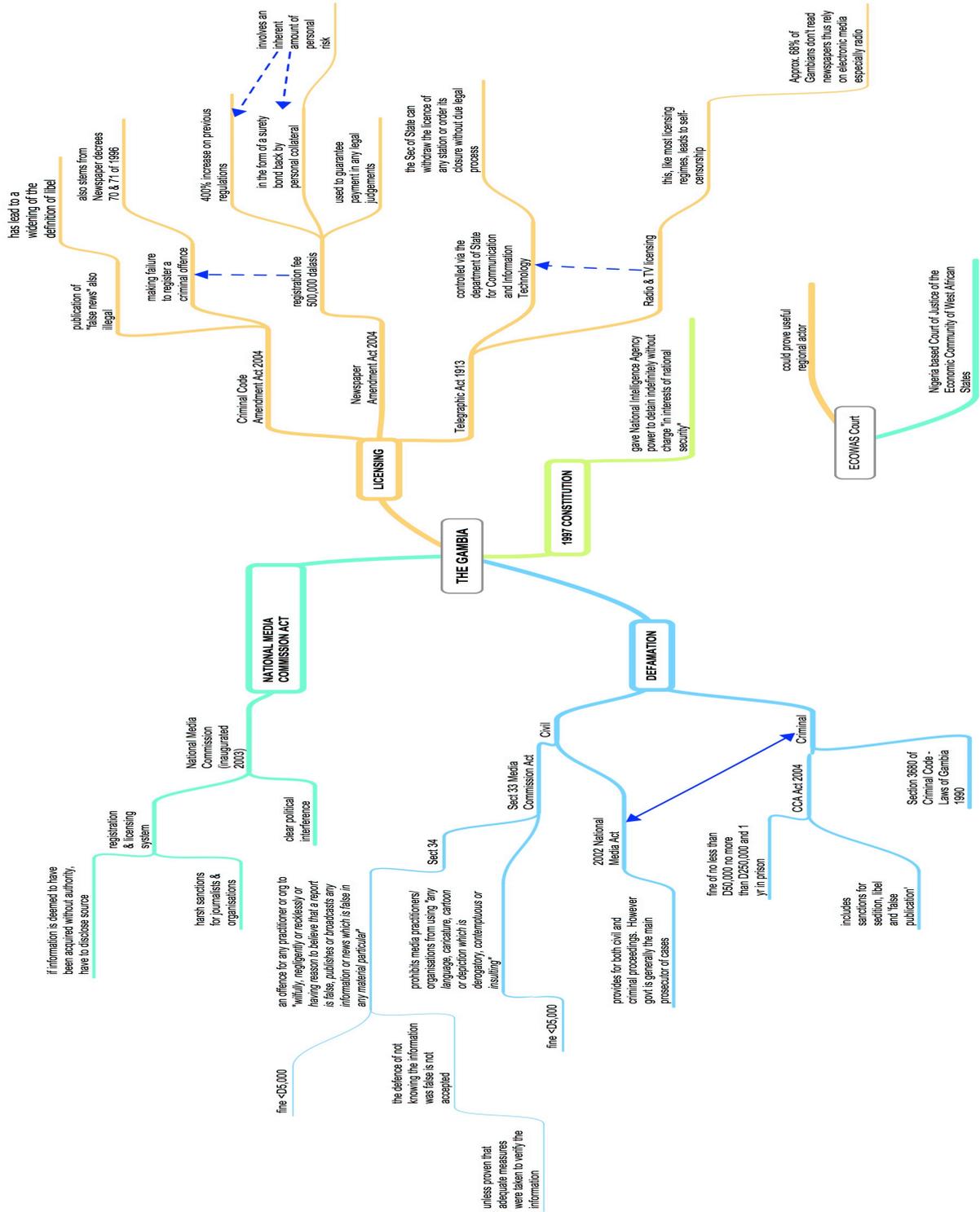
² ElectionGuide is provided by the International Foundation for Electoral Systems (IFES) with funding from USAID, <http://www.electionguide.org/country.php?ID=80>

³ Reporters Without Borders, Gambia – Yahya Jammeh Profile, <http://en.rsf.org/gambie-yahya-jammeh-28-04-2010,37195.html>

⁴ Human Rights Council, *Working Group on the Universal Periodic Review: Gambia*, UN General Assembly, p. 2

⁵ Ibid. p. 5

THE GAMBIA



The media has been under threat since 1994 and the primacy of the constitution and the rule of law have been eroded. There are several reasons for this. Primarily, it is through a determined effort by the government to maintain the current regime. Secondly, the judiciary is faced with “*enormous human, material and infrastructural resources constraints*”,⁶ reducing the effectiveness of maintaining the rule of law and their ability to contest unconstitutional legislation.

Newspaper Amendment Act 2004

This piece of legislation was introduced as a replacement for the previous national system of licensing for the press. It introduced two significant changes.

Primarily, there was a drastic increase in the fee charged to get a licence - up from 100,000 dalasis to 500,000 (approximately \$16,600). In a country that is ranked 191st in the world for GDP per capita⁷ this massive increase in the price of *applying* for a license effectively side-lined the vast majority of the population from establishing an independent media outlet. The fee acts as a surety to guarantee payment in the event of financial sanctions against the publication. The fee was often backed by personal collateral such as property, meaning a high level of inherent risk.

Furthermore, this legislation was introduced as an indirect replacement to the 2002 National Media Commission Act (NMCA). The NMCA established a code of conduct for the media and a registry for all journalists and publishers. This was to be regulated by a Commission with statutory powers to summon and compel witnesses through the ability to issue arrest warrants. However, as a result of a legal challenge to the Commission’s constitutionality by the Gambia Press Union and private newspapers, the NMCA was repealed. Thus all publications were required to reregister within two weeks of the introduction of the Newspaper Amendment Act.⁸

Criminal Code (Amendment Act) 2004

The Criminal Code (Amendment Act) is one of the primary instruments that enables the government to impose strict controls on the media and journalists. Placed on the statute book in 2004 this is effectively a partner to the Newspaper Amendment Act.

There are two main elements that are repeatedly highlighted by critics. These are: setting minimum sentences for criminal defamation and widening the scope of libel and, making it an offence for newspapers not to register with the Registrar General’s office.

Criminal defamation is slowly being recognised as antiquated and has been removed from the statute book in several countries in the Commonwealth including the UK, Sri Lanka and Ghana, but this new legislation not only reaffirms sanctioning criminal proceedings against journalists, it sets out a minimum of 6 months for a first offence and up to 3 years for repeat offending.⁹ The act also widens the definition of what can be considered defamatory. It now includes “false news” and any material that the government deems “seditious”. This extends to critical reporting of government policy and actions.¹⁰

Telegraphic Act

The Telegraphic Act covers the radio and TV licensing system. The Department of State for Communication and Information Technology is responsible for licensing. The Secretary of State can withdraw the license of any station or order closure without due legal process. This draconian measure creates a ‘chilling’ environment not dissimilar to the colonial era.

Radio is the main medium of communication, as approximately 68% of Gambians do not read newspapers and 60% are illiterate.¹¹ The Government exercises excessive control over this sector and has, through coercion, restricted the

⁶ Ibid. p. 20

⁷ CIA Fact Book, Gambia, <https://www.cia.gov/library/publications/the-world-factbook/geos/ga.html>, (accessed August 2)

⁸ Amnesty International, Gambia: Submission to the UN Universal Periodic Review, p. 3, February 2010, <http://tinyurl.com/3vhy93j>, (accessed July 4)

⁹ Ibid, p. 3

¹⁰ The Committee to Protect Journalists, *Six Journalists Released in the Gambia*, <http://www.cpj.org/2009/09/six-journalists-released-in-the-gambia.php> (accessed August 14)

¹¹ CIA Fact Book, Gambia (accessed August 2)

THE GAMBIA

news reporting to merely repeating news issued by the state broadcaster.

Conclusion:

In Gambia today anyone in the media who criticises government policy, officials or the president lives and works in a climate of fear regardless of the fact that the constitution provides for freedom of speech and freedom of expression for the media.

Gambia has also ratified many of the key international agreements outlining fundamental rights including the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR specifically highlights the responsibilities of government to ensuring ‘*everyone shall have the right to freedom of expression*’ and ‘*everyone shall have the right to hold opinions without interference*’.¹² Gambia is a member of the Economic Community of West African States (ECOWAS) and as such falls within the jurisdiction of the Court of Justice of the ECOWAS based in Nigeria. They have been involved in several landmark rulings relating to imprisoned journalists and the strengthening of the capacity of the court should be a priority.

The situation has become very difficult for many inside the country who feel that the international community has abandoned them. The Gambian government has been able to ignore, with near impunity, both their own constitutional and major international agreements.

The Newspaper Amendment Act and the Criminal Code (Amendment) Act place practically insurmountable barriers in the path of independent reporting. Increasing threats of criminal prosecution for publishing ‘seditious’ material and large fines lead to self-censorship by journalists. Large fees levied for licenses also mean that publishers are imposing strict levels of self-censorship to negate the risk of losing such large sums of money.

The National Intelligence Agency (NIA) is the

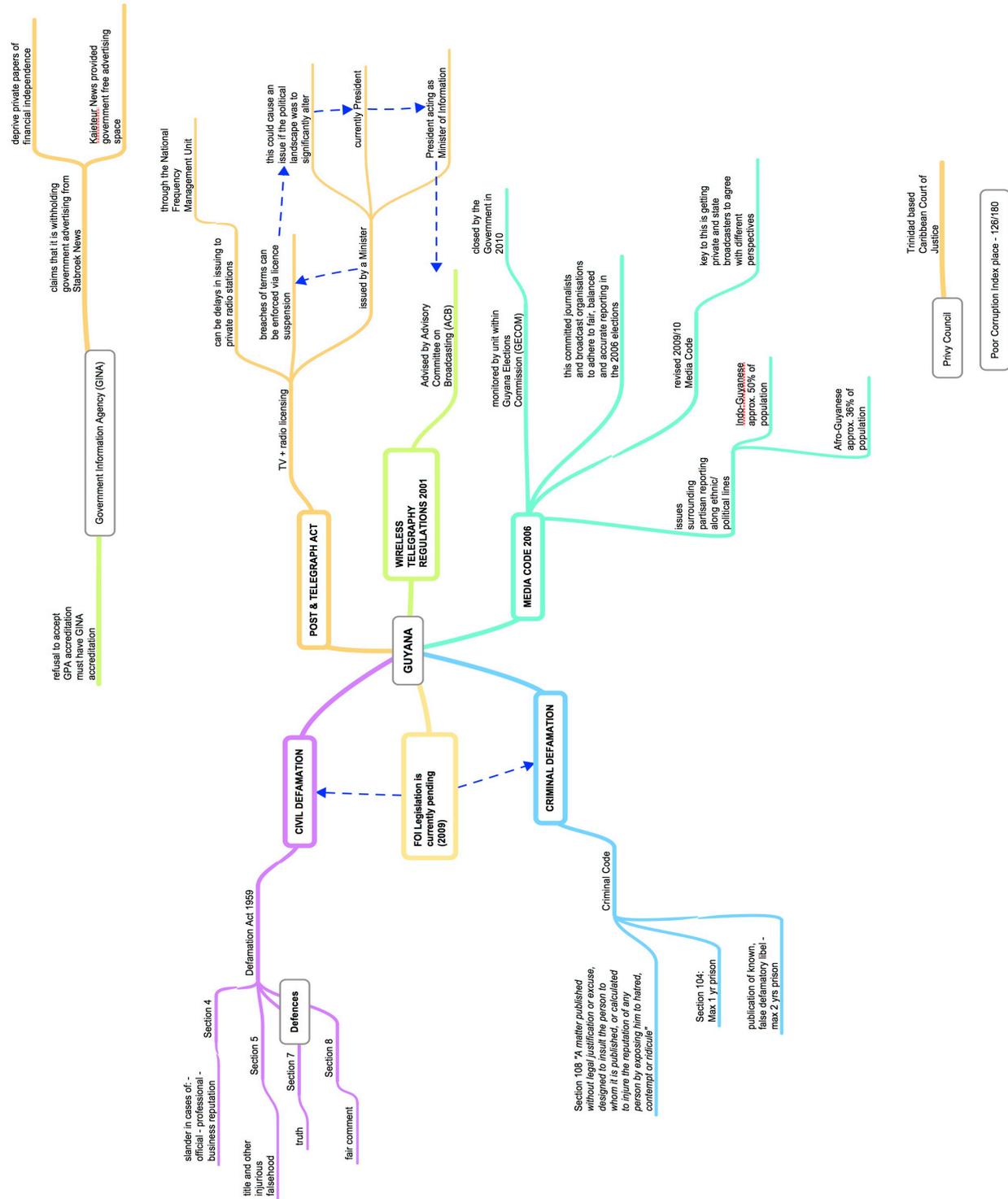
organisation most often associated with media repression. Through the constitution it was given the power to detain individuals indefinitely without charge in the “interest of national security”. In August 2011 the NIA were involved in the most recent example of government interference in the media: the management of Teranga FM was detained by the NIA and told that unless it stop broadcasting an independent news output it would be shut down.¹³

This threat came only days after a media forum and capacity-building event organised by the Commonwealth Secretariat in Gambia.

Unless robust action is taken to force change and an acceptance that the media should be free to report independent news, then there will be little progress towards a truly vibrant democracy in the Gambia.

¹² The Office of the United Nations High Commissioner for Human Rights (OHCHR), *International Covenant on Civil and Political Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 <http://www2.ohchr.org/english/law/ccpr.htm#art19> (accessed August 15)

¹³ Teranga FM Ordered to Stop News Review, <http://www.jollofnews.com/teranga-fm-ordered-to-stop-news-review.html> (accessed August 17)



GUYANA

Introduction:

Guyana gained independence from Britain in 1966, becoming a republic in 1970 but remaining within the Commonwealth. However, whilst it is ostensibly a multi-party democracy, the ethnic composition of the country parties representing different groups remaining in power for long periods. From independence the Afro-Guyanese People's National Congress party (PNC) was the majority party. The majority Indo-Guyanese People's Progressive Party (PPP) came to power ~~since~~ in the country's first multi-party elections in 1992. President Bharrat Jagdeo came to power in 2001 leading an alliance of the PPP and the Civic Party (PPP-C). He won a second five-year term in 2006.

After the establishment of a multi-party democracy in 1992 the then constitution, written in 1980, required a radical overhaul. The Parliamentary Constitutional Reform Commission was established in 1999 with all the major political and civil society groups represented. The commission ran until 2002. The revised constitution reduced the power of the president and has introduced many tenets including human rights and freedom of expression that are hallmarks of modern democracies.

Guyana is in a unique position being the only Commonwealth state on mainland South America. The capital, Georgetown, is also the location for the Secretariat of the Caribbean Community (CARICOM).

Although a relatively new democracy, which experienced some violence in the build up to, the 2006 elections progress towards a peaceful transition for the upcoming 2011 elections has been good. The country has experienced severe racially and ethnically motivated violence in the past. During the 1997 and 2001 elections this was in part incited by the media especially television stations.

To mitigate the risk of major violence in 2006 the Guyana Elections Commission (GECOM) invited the Commonwealth Secretariat and the United Nations Development Programme (UNDP) to develop a code of conduct. Prior to the introduction

of the code there was no framework to govern the actions of the media. With no self-regulatory system, defamation legislation is the primary method to control the media's reporting. With an encouraging drop in violence in 2006, the code was updated in 2010. The new agreement establishes the key journalistic principles of balanced reporting, journalistic integrity, professionalism, accuracy and maintaining a balanced society. This could be used as a stepping-stone towards a more permanent system of self-regulation.

The media code of conduct is in effect, but in 2010, the government closed the internationally funded Media Monitoring Unit, which was established in 2006 to oversee the media during the elections. This will in all likelihood weaken the strength of the agreement and may lead to problems in the 2011 elections. Controversy also surrounds the decision by the Government Information Agency (GINA) to use a web portal rather than placing the advertising in private newspapers. This tactic has been used before by governments in small states to reduce the revenue flows to private media organisations that rely upon a steady income received from government advertising.

The Post and Telegraph Act

The Minister of Information, currently the President, issues radio licenses. Licenses are administered through the National Frequency Management Unit (NFMU). This has led to claims of a conflict of interest with the awarding of licenses too closely linked to politicians.

Currently there is only one radio station operating in Guyana, which is government owned. The Court of Appeal declared that the government had an unlawful monopoly on the airwaves. They also stated that the NFMU was not "adequately considering radio license applications".¹ The government has expressed their view that the public must be kept informed about

the government. However they have publicly stated that they will be bringing forward new broadcasting legislation that will put in place a statutory framework so that licenses can be awarded transparently. Only once this aspiration has been incorporated into a bill can we be reassured that it represents concrete progress.

Criminal Defamation – Criminal Code, Section 108/104

Civil Defamation – Defamation Act 1959

The government and government officials bring defamation and libel charges against individuals and publishers. This is seen as a grave threat to the media's ability to publish robust and probing articles.

There are fears that politicians too easily use defamation legislation to prevent the repeated publication of pieces that criticise their suitability and character. Existing laws are now behind many other countries and do not recognise that individuals holding public office are naturally held to a higher standard. While protecting their privacy is important, the right to freedom of expression is at the heart of any progressive democracy.²

Conclusion

There is progress in Guyana with a renewed media code of conduct in place for the elections in December 2011. The original code was helpful in reducing the violence in 2006 and increased the balance of coverage during what can be a tense and ethnically charged atmosphere in the run up to elections.

A Freedom of Information Bill has recently been introduced to parliament, which will hopefully see great transparency and access within government. There have been criticisms of the bill, including the fact that the Information Commissioner will be appointed by the President and that this may lead to a conflict of interest. Also the commissioner will not have access to government archives and will only be able to order the release of information after

the legislation has become law.³ This may yet prove to be a major improvement in the relationship between the government and the media and the progress of the bill should be monitored closely.

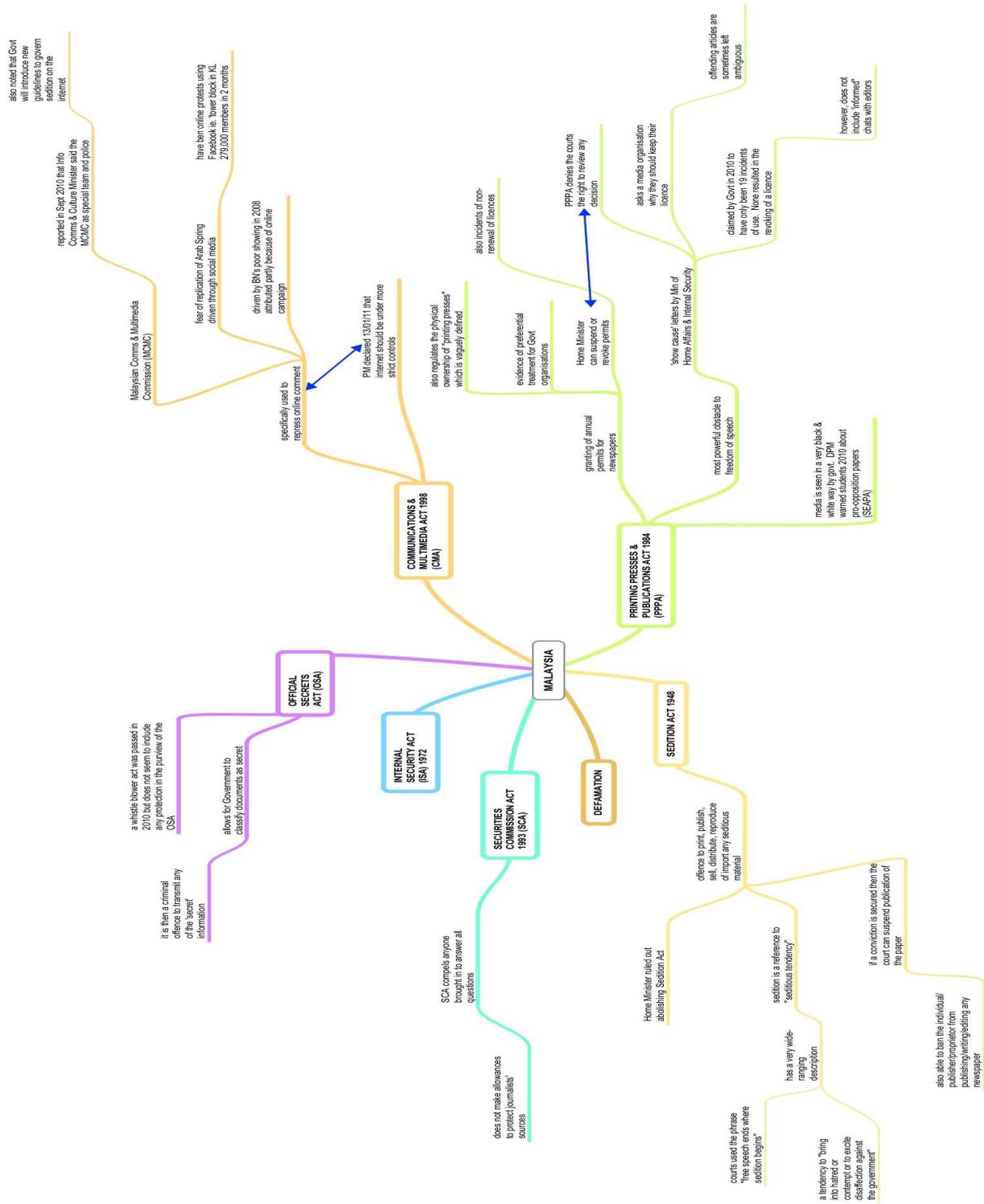
Guyana is a country still in transition developing the key tools that a democratic state has to ensure freedom and transparency. The country still suffers from major corruption problems being placed 116 in Transparency International's 2010 Corruption Perceptions Index. This is something that the media could help to change, through robust investigative reporting. But the media must be assured that the government will recognise their contribution to the development of the country and will not see it as a threat to the status quo.

¹ US State Department website, 2010 Human Rights Report – Guyana, April 8 2011, <http://www.state.gov/documents/organization/160167.pdf> (accessed August 22 2011)

² <http://www.stabroeknews.com/2009/archives/05/17/local-experts-call-for-reform-of-defamation-laws/>

³ <http://www.stabroeknews.com/2011/features/08/01/freedom-of-informationaccess-to-information-2/>

MALAYSIA



Introduction:

Malaysia has some of the tightest regulatory controls on the media and freedom of expression in the world. It has dropped ten places in the Reporters Without Borders Press Freedom Index, 2009-2010, and is now in the bottom 20%.¹

A substantial majority of the media is owned either directly by politicians or by prominent figures within political parties. There is very little editorial independence, with restrictive legislation combined with undue influence through owners.

There are two main political factions, the Barisan National (BN) a coalition lead by the Malay Party UMNO, forming the current government, and Pakatan Rakyat (PR) the official opposition.² The country is divided along both ethnic and religious lines. Defending the rights of ethnic Malays and upholding Muslim religious stances are important issues in national politics.

The right to free speech is enshrined Article 10 of the Federal Constitution. However this right is restricted by further clauses detailing that parliament is able to impose restrictions, as they “*may deem necessary or expedient to impose in the interest of the security of the Federation*”.³

The current administration has made it clear that they support increased restrictions and limitations on the media and what they publish. The Deputy Prime Minister Muhyiddin Yasin stated that, “*While it is in our best interest to further liberalise the media to increase our global awareness, we must not forget that freedom of the press is not a blank cheque to do whatever we want.*”⁴ This poses serious questions as to the willingness of the upper echelons of the government to make any progress towards a more free media environment.

**Communications and Multimedia Legislation:
Communications and Multimedia Act (CMA) 1998
Malaysian Communications and Multimedia
Commission Act (MCMC) (1998)**

This is the primary piece of legislation used by the Malaysian government to control the communication and multimedia industry, including broadcasting. It does this through a system of regulation and licensing. However in recent years with the increasing popularity and access to the internet in Malaysia the CMA has also been used to restrict telecommunications and online media and content.

Many of the countries analysed for this report that have aggressive media licensing policies demonstrate that this policy will inevitably lead to statutory overreach and in turn, self-censorship.

The main instrument used to enforce the CMA is the Malaysian Communications and Multimedia Commission (MCMC) created in parallel by the MCMC Act in 1998. The Commission is made up of, a chairman, three government representatives and two to five other members. As these members are all appointed by the responsible minister, the Commission has no political independence.

Many activists attribute the Barisan National’s (BN) poor performance in the 2008 general election to recent increased Government interest in the Internet. This was the worst ever result for BN, with the opposition utilising social media, blogging and other web applications to rally support. The trend for using social media to effect political change - from America, where the 2008 Obama campaign mobilised tens of thousands of young voters, to the current unrest in the Middle East and North Africa - has unnerved the ruling party.

In 1996 the Malaysian government stated that there would be no censorship online and this claim has been repeated since. Nonetheless, since then various legislation has been enacted and employed to dissuade and intimidate both professionals and amateur users of the internet.

¹ Reporters Without Borders, Press Freedom Index, http://en.rsf.org/spip.php?page=classement&id_rubrique=1001 (accessed 5 July 2011)

² South East Asian Press Alliance, *SEAPA Annual Report 2011*, <http://www.seapabkk.org/about-us/report.html>, (1 April 2011) p. 1

³ Addruse, R. ‘Malaysia’, in *Speaking Freely: Expression and the law in the Commonwealth*, edited by Robert Martin (Toronto, Irwin Law, 1999), p. 370

⁴ Jo-Ann, D. *Freedom of Expression in Malaysia*, Centre for Independent Journalism, 2010, http://cijmalaysia.org/wp-content/uploads/2011/02/CIJ-FOE_web_1602111.pdf (accessed 18 June 2011) p. 9

MALAYSIA

This initially took the form of action by the MCMC however government officials, including the Prime Minister have openly stated that the internet should be under more strict controls.

The CMA's section 233 is highlighted by several reports being used increasingly to muzzle critical comments online Home Minister Hishammuddin Hussein in September 2010 announced that a "special unit" has been created that will be primarily tasked with monitoring the internet. The Home Minister has also stated that the government is examining new guidance that will govern sedition in cyberspace. This is a dangerous move into controlling what could be the last forum in Malaysian life that is free from state control.

Print Media Legislation:

Printing Presses and Publications Act 1984 (PPPA):

This piece of legislation presents the single most powerful obstacle to free speech in Malaysia. The origins of this act are found in legislation dating from 1948 and introduced under British rule. This power was further extended, and the 1984 act granted the government major powers over the media.⁵ The act requires all newspapers to have an annual licence, which is granted by the Home Minister who has the power to suspend or remove it. Any system of aggressive licensing produces a restrictive and oppressive environment under which a country cannot declare itself a fully functioning democracy.

The PPPA gives the government absolute discretion to issue licences to the print media. Through this system, by only issuing them to political allies of BN, they maintain a grip on comment and debate in Malaysia. On occasions, the Home Ministry has used sanctions in the PPPA against even these supposedly pro-government papers. The Act also enables the Minister to confiscate presses and publications.

The Home Minister has the power to revoke licences at any time. The range of objections used

encompasses threats to public order, morality, security, public interest, national security or anything that is likely to alarm public opinion. The subjects on this list cover a wide range of areas and many controversial articles or campaigns are likely to touch on these. Thus through a fear of having their licence revoked there is a natural degradation in the rigorousness of reporting and investigative journalism and self-censorship becomes widespread. The decision to have a licence suspended is specifically exempted from judicial review by the PPPA and no individual "*shall be given an opportunity to be heard with regard to his application for a licence or the revocation or suspension of the licence granted to him under the Act*".⁶

The Home Minister's other major power is wielded through 'show cause' letters. These are sent to a publication asking them to give reasons as to why they should keep their licence. If the Home Minister is not satisfied with the answer the publications licence can be either revoked or suspended. The article or editorial stance that has precipitated the 'show cause' letter is not always mentioned and can be left ambiguous throughout the process.⁷

Sedition Act 1948:

The Sedition Act, like the PPPA, has its origins in the British colonial period and has a broad prelude. There are still a range of Commonwealth countries that have sedition, or an equivalent charge, on the statute books including Ghana, Uganda, Kenya and Swaziland.⁸ As in many countries the application of broad legislation is often questionable, being used to suppress individuals and organisations in the name of national security and national harmony.⁹ Whilst the importance of protecting national security is recognised in international agreements, including Article 19(b) of the International Covenant on Civil and Political Rights (ICCPR), these restrictions should be narrowly focused.¹⁰

⁵ Baseline Study on Seven South East Asian Countries, *Freedom of Expression and the Media in Malaysia* (Article 19, London, December 2005) p. 45

⁶ Addruse, R. 'Malaysia', in *Speaking Freely* p. 383

⁷ Jo-Ann, D. *Freedom of Expression in Malaysia* p. 10

⁸ Commonwealth Press Union, *The Independence of the Commonwealth Media and Those Working Within It* (CPU, London, June 1999) p. 16

⁹ Jo-Ann, D. *Freedom of Expression in Malaysia* p. 28

¹⁰ *Memorandum on the Malaysian Sedition Act 1948* (Article 19, London, July 2003) p. 5

This Act is frequently still used to suppress debate and comment on the three most contentious issues in Malaysia, namely the “‘3Rs’ race, religion and royalty”¹¹. Special interest groups and politicians often cite these subjects when they feel that their privileges or position in society are under threat.

It is an offence to print, publish, sell, distribute, reproduce or impart any ‘seditious material’. Individuals and organisations can be “*charged for seditious ‘tendencies’ of ‘affecting disaffection’ against the rulers, the government, questioning the administration of justice or raising ‘discontent’*”. Home Minister Hishemuddin Hussein has stated that sedition will remain on the statute book to maintain “racial harmony” in Malaysia.¹² The Act has wide ranging implications on debate both within the media but also extends to personal writings and overrides parliamentary privilege. This is a major barrier to the evolution of Malaysian society and a vibrant democratic ethos.

Conclusion:

One of the key problems facing the development of a free and unprejudiced media landscape is the emphasis placed upon race, rulers and religion by politicians. The public and the mainstream media often use this emphasis to mask efforts to silence critical debate.

The continued use of both the PPPA and the Sedition Act should be a source of embarrassment to Malaysia as a developed nation. Both of these pieces of legislation have their origins in the colonial era where their primary aim was the subjugation of the population. The CMA is the latest manifestation of this subjugation with the tragic reality being that politicians and officials are using it against their own population. The courts should be encouraged to strengthen their obligations in line with the constitution and the right to free speech which is enshrined in Malaysian law.

There are encouraging developments being spearheaded by media professionals who have developed a roadmap for the establishment of an

independent media council. The primary stakeholder in this is National Union of Journalists of Malaysia (NUJM), they are examining various systems of self-regulation from across the region.¹³

¹¹ *SEAPA Annual Report 2011* p. 1

¹² Jo-Ann, D. *Freedom of Expression in Malaysia* p. 28

¹³ International Federation of Journalists, *IFJ Welcomes move to establish media council in Malaysia*, <http://asiapacific.ifj.org/en/articles/ifj-welcomes-move-to-establish-media-council-in-malaysia> (accessed 10 July 2011)

NEW ZEALAND

Introduction

New Zealand represents an outstanding example within the Commonwealth for media freedom. Being placed eighth in the 2010 Reporters Without Borders, Press Freedom Index, and the freest country in the Commonwealth. However, there are several issues that currently represent areas of concern to the media.

Press freedom is enshrined in the New Zealand Bill of Rights Act 1990, which deals with freedom of expression. In section 14, “*Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form*”.¹ They have had a system of self-regulation with the Press Council since 1972. The Council has responsibility for resolving public complaints independently and also focuses on “*promoting press freedom and maintaining the press in accordance with the highest professional standards*”.²

Broadcasters are governed by the Broadcasting Act 1989, which is enforced by the Broadcasting Standards Authority. As in the UK each broadcaster operates a complaints system, which is encouraged to be the main forum for resolving complaints.

Coroners Act 1988/2006

A small area of law that can be argued to have an adverse impact on media reporting and wider social implications is the Coroners Act. The subject of suicide has for a long period now presented the media with a particular challenge. Under the Coroners Act 1988 the publication of the details apart from the name, address and the fact the death was self inflicted are strictly controlled unless authorised by the inquest. This was contained within ‘section 29’, the act was repealed and replaced in 2006 but retained the section 29 in section 71.

Section 71 states that:

If a coroner has found a death to be self-inflicted, no person may, without a coroner's authority or permission under section 72, make public a particular of the death other than:

(a) the name, address, and occupation of the person concerned; and

*(b) the fact that the coroner has found the death to be self-inflicted.*³

Currently a coroner will only authorise the publication of further details if they are “unlikely to be detrimental to public safety”.⁴

Human rights groups have long identified this as being detrimental to greater public debate surrounding the issue. However this standpoint is taken to reduce the possibility of ‘copycat’ suicides when the method is reported. These issues are seen in many countries; during a string of suicides centred on the Welsh town of Bridgend there was much discussion about the causes of the tragedies. There was much ill feeling towards the media by relatives of the victims and locally. The media must avoid sensationalising these types of events and refrain from gratuitous details surrounding the method of death.⁵

However it is disingenuous to blame the media as coverage also explores possible motives and can lead to the exposure of external pressures such as bullying. Most individuals now have wide spread access to the internet where unrestricted discussion of suicide is possible. There can be no doubt that the internet can have a much greater effect on vulnerable individuals than media reporting which on the whole is governed by strict codes of practice both in the UK and New Zealand.

Conclusion:

The Coroners Act highlights a small area of legislation that can be restrictive to reporting, although on the whole New Zealand has an enviable record on freedom of expression within the media and in wider society. The New Zealand

¹ The Guidelines on the New Zealand Bill of Rights Act 1990, <http://www.justice.govt.nz/pubs/reports/2004/billof-rights-guidelines/section12-15.html#section14> (accessed September 2 2011)

² New Zealand Press Council Principles, <http://www.presscouncil.org.nz/principles.php> (accessed September 20 2011)

³ New Zealand Legislation, *Coroners Act 2006 No 38 (as at 07 July 2010)*, Public Act Part 3 Inquiries into causes and circumstances of deaths Restrictions on making public of details of self-inflicted deaths <http://www.legislation.govt.nz/act/public/2006/0038/latest/DLM377809.html#DLM377809> (accessed September 7 2011)

⁴ Ibid

⁵ Laurance, J. ‘The Big Question: Should the media stop reporting the suicides in and around Bridgend?’ *The Independent* (London), 22 February 2008, <http://www.independent.co.uk/news/media/the-big-question-should-the-media-stop-reporting-the-suicides-in-and-around-bridgend-785551.html> (accessed September 20 2011)

Bill of Rights has widened and deepened discussion in the public sphere on a large range of topics.

There is increasing discussion about privacy and what this should mean with the ever-changing situation in the UK fuelling debate. New Zealand's reputation as the country in the Commonwealth with the greatest freedom for the media to operate in is richly deserved. The country's media and regulators should be now looking to expand their efforts in the Pacific to increase their levels of media freedom, particularly in the Commonwealth nations.

Introduction:

South Africa, more than many democratic countries, understands the importance of freedom of expression with the very essence of its democracy growing out of the draconian apartheid regime. Freedom of expression is guaranteed in section 16 of the 1996 constitution, including the freedom to receive and impart information and ideas, an area often neglected in other constitutions. The work of the Press Council of South Africa in furthering the cause of a self-governing, free and independent press must be highlighted as an example for other African countries.

Many African countries - even though independent - still carry the burden of colonial-era security and anti-media laws. Although independence has freed Africa from colonial powers, the legislation brought in to suppress the original calls for freedom have been retained by many post-independence governments. These laws are now regularly being used to stifle robust comment and debate.

South Africa has seen a marked decline in press freedom during the past year, dropping five places in the 2010 *Press Freedom Index* produced by Reporters Without Borders. Freedom House's *Freedom of the Press Index* shows from 2009-2010 South Africa moved from being free to partly free. The two primary factors cited for this change were government officials' hostile rhetoric towards the media and political pressure placed on the dominant state broadcaster SABC (South Africa Broadcasting Corporation).

There are increasing signs that there is an ever-widening gulf between the media and the political classes and Jimmy Manyi, the CEO of the Government Communication and Information Service, which directs the government's public message, has complained that the media is "*hostile towards the government*".¹ When an individual who should have a good relationship

¹ Media statement by the National Press Club, *National Press Club Slams Manyi's Attack on Media*, Tuesday, 21 June 2011, http://www.nationalpressclub.co.za/pdfs/statement_20110621.pdf (accessed 12 July 2011)

SOUTH AFRICA

with the press resorts to belligerent rhetoric, then there is clearly an increasing distance between the government and the media.

Media Appeals Tribunal:

This proposal emerged out of the 2008 ANC Congress and has gained significant levels of support within sections of the ANC, but there have been few details released about the scope and powers of any tribunal. However a National General Council discussion document from 2010 entitled 'Media Transformation, Ownership and Diversity' (MTOD), lays out the rationale for the establishment of a Tribunal.

The MTOD document outlines the ANC's view of the media as an integral part of National Democratic Revolution and that the media should contribute to the transformation of South Africa. Though MTOD highlights the role that the ANC believes the media should play in critiquing government policy and performance. However this is then qualified by stating that it should "*do so in a manner that adds value to the national endeavour*", raising the possibility that some critique could harm the 'national endeavour and thus not be welcome.

The Tribunal, in its current form, would provide a legal platform for anyone with an issue relating to the press and media. It would hand out as yet unspecified sanctions. The MTOD reinforces that Tribunal "*would strengthen, complement and support the current self-regulatory institutions*", although it is not clear how it would add to an already functioning self-regulatory system, which is free from political influence.

The Tribunal is not currently tabled for parliamentary business and it appears as though the proposals are being placed on hold for the time being. The Deputy President Kgalema Motlanthe has indicated that the ANC will wait until the Press Council's in depth review of the self-regulatory system is published.

It is hard to gauge the level of threat that the

Tribunal could have but it represents undue influence from politicians in the internal governing of the media. With the Protection of Information Bill currently making its way through parliament and facing strong opposition from the public politically it would seem expedient for the ANC to shelve another controversial media policy.

Protection of Information Bill:

This piece of legislation is in the final stages of drafting and represents a much more immediate threat to the free operation of the media and the ability of journalists to hold the government, politicians and officials to account. It aims to specify the process for classifying and distributing information relating to the state and the government. The bill is designed to replace a 1982 apartheid-era law.

There are some key problems within the legislation. The first is that the classification of information would be based upon a very broad interpretation of the 'national interest'. As with numerous other pieces of restrictive legislation around the world, the more broad and vague the definitions within, the more it brings out the worst interpretation by politicians and the judiciary. Secondly the penalty for distributing or possessing classified documents is up to 25 years in prison.

Above all, the general thrust of the bill places South Africa on a dangerous path towards increasing state secrecy. It has the potential to have a major effect on the ability of the public and the media to scrutinise government decisions. IFEX in an open letter to President Zuma in August 2010 highlighted that the bill placed the "*onus on journalists to establish 'public interest' to justify declassifying any information*". This with the vague 'national interest' definition and little need to give explanation represent a massive increase in state powers.

Conclusion:

The Media Appeals Tribunal and The Protection of Information Bill represent a clear and present danger to the progress that South Africa has made in the past two decades towards a free and open media and society.

The very fact that there are serious attempts to place at least one of these proposals on the statute book demonstrates the increasing distance of the ANC from the free press. Reporters Without Borders places this in clear relief highlighting the fraught relations between President Zuma and the media who “*criticise the way he governs, cover his private life and investigate such sensitive issues as corruption and crime*”.

Concerning issues of the law and the media, the hidden hand in the background is the ever changing political landscape and the personalities that drive it. With a leading light in the Media Tribunals being the ANC Youth movement president Julius Malema, the future looks uncertain.

South Africa is globally and continentally a leading nation rising out of apartheid and demonstrating real leadership in governance, democracy and freedom of expression. However this change of direction could have serious repercussions in Africa, with other leaders citing these proposals as an example and establishing their own Media Tribunals and Information Protection.

Introduction:

Sri Lanka gained independence from Britain in 1948, joining the Commonwealth in the same year. Since independence there have been periods of ethnic conflict between the majority Buddhist Sinhalese and the minority Hindu Tamils (mostly found in the north and east of the island).

The recent narrative of the island has been focused on the civil war that ravaged the country from 1983 with almost consecutive years of fighting until 2009. The key protagonists in the conflict were the Liberation Tigers of Tamil Eelam (LTTE) rebels and the government forces, which were dominated by Sinhalese. A ceasefire agreement in 2002 halted the violence briefly but in 2006 the fighting intensified as the decades long conflict entered its end game. The final defeat of the LTTE by government forces came in May 2009.¹

During the civil war there were many serious human rights violations and it became particularly dangerous for journalists in the latter phases of the war, with well-documented instances of “*murders, attacks, abductions, intimidations and harassment of the media*”.²

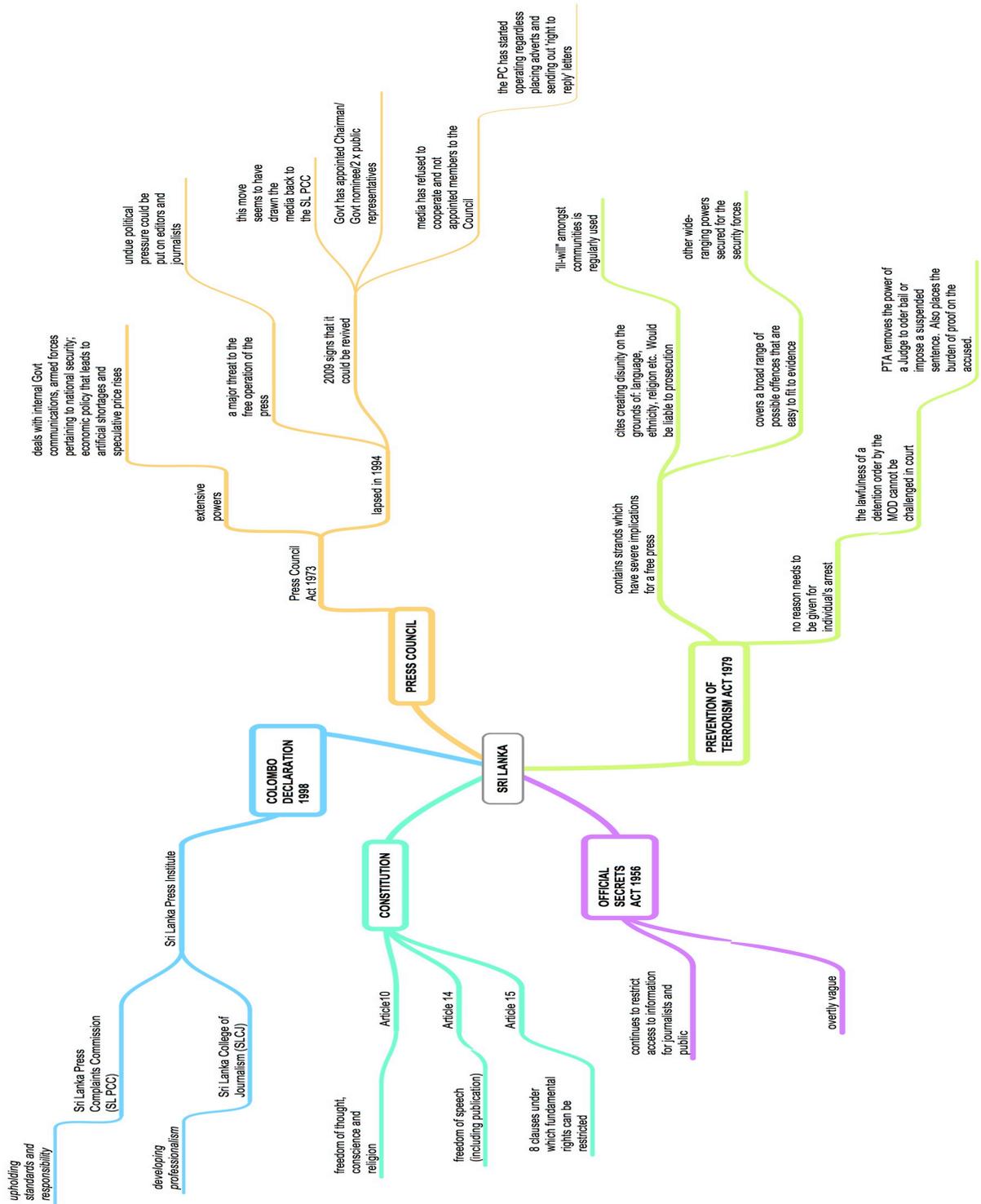
Nonetheless, the country has a long and distinguished history of excellent newspaper journalism and today there is a vibrant and outspoken independent media that effectively represents the views of the Sinhalese, Tamil and English language sectors in the face of increasing Government intervention. Notably, Sri Lanka is one of the few Commonwealth countries that retain state-owned/controlled newspapers.

Regardless of ethnic tensions over the years, the media has always worked together to maintain their independence. It was this sentiment that, in 1998, led to the Colombo Declaration on Media Freedom & Social Responsibility. This landmark document laid out the aims and aspirations of the independent media and outlined the framework

¹ CIA The World Factbook, *Country Profile: Sri Lanka*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html> (accessed May 22)

² BBC Country Profile, *Sri Lanka*, <http://www.bbc.co.uk/news/world-south-asia-11999611> (accessed June 24)

SRI LANKA



for the genesis of the Sri Lanka Press Institute. This body was formally instituted in 2004 and continues to this day, also incorporating the Sri Lanka College of Journalism and the Press Complaints Commission of Sri Lanka.

The country continues to come to terms with the legacy of the civil war although there are many unanswered questions about the final stages of the conflict. Despite considerable effort by journalists and media freedom organisations to establish transparent media governance there has been reluctance from the government to support such steps. The Asian Human Rights Commission identifies the very construction of state institutions in Sri Lanka as a major failing and challenge to recognising human rights violations. The constitution places the president outside the “jurisdiction of the courts”.³ This creates a complicated imbalance between the executive, legislature and the judiciary. Additionally, the recent scrapping of presidential term limits has underlined the Government’s sense of impunity and indifference to rights violations.

The long-standing independence and plurality of ownership are vital in maintaining a vibrant and effective press in Sri Lanka as in any democracy. Although violence against publications and individuals in the press is of great concern, there is also concern over the indication that certain media groups are coming under increasing political control.

The creeping influence of government control by proxy will have a serious medium and long-term effect upon the progress of media freedom. It will reduce critical reporting of the government and cause a reduction in the robust debate required to invigorate a developing democracy. Sunil Jayasekara, the convenor of the Free Media Movement, succinctly states, “*this is a hidden threat many fail to see when they say [the] media freedom situation in Sri Lanka has improved*”.⁴

Print Media Legislation:

Press Council Act 1973:

The government of Sri Lanka announced in 2009 that they would unilaterally revive the Press Council. This caused alarm both in Sri Lanka and in the UK with the Guardian highlighting the outcry from campaigners. In 1994 there was an informal agreement between the media and the government that a self-regulatory system would be established and that the statutory powers and the council would be suspended.

The Press Council had previously been in existence for many years but had proved ineffectual and moribund. It had wide ranging quasi-judicial powers to sanction the media including the power to jail journalists. The Act covers a huge variety of areas many impinging on the freedom of information including:

- Cabinet papers and internal government communications,
- Information relating to the armed forces that the council sees as being detrimental to national security,
- Information covering economic policy that could lead to artificial shortages and speculative price rises.⁵

The revived council consists of five government appointees, “*one working journalist and one employee nominated by the industry and representative media organisations*”⁶ Currently only the five government positions have been filled as the media industry and the journalists’ organisations are refusing to cooperate.⁷ It was thought that this would stall the operation of the council however it is “*functioning, placing advertisements in newspapers and requesting readers to send in their complaints*”.⁸

The council’s remit also extends to cover complaints by the public and politicians who have a dispute with the media and their coverage of an event. With such a large government

³ Asian Human Rights Commission, *The State of Human Rights in Sri Lanka 2010*, (Dec 2010) p. 1 <http://www.humanrights.asia/resources/hrreport/2010> (accessed May 12)

⁴ International Federation of Journalists on behalf of the South Asia Media Solidarity Network, *Free Speech in Peril: Press Freedom in South Asia 2010-2011*, (May 2011) p. 41 <http://asiapacific.ifj.org/assets/docs/043/219/7bb382b-82afadb.pdf> (accessed July 12)

⁵ International Federation of Journalists on behalf of the International Press freedom Mission to Sri Lanka, *Key Challenges for Media at War’s End*, (Jan 2010) p. 20 asiapacific.ifj.org/assets/docs/236/115/1d464ec-8892c73.pdf (accessed July 22)

⁶ *Free Speech in Peril*, p. 41

⁷ *Key Challenges for Media at War’s End*, p. 20

⁸ *Free Speech in Peril*, p. 41

SRI LANKA

appointed component to the membership it is hard not to see this as a cynical attempt to legitimise the persecution of the press. This threatens the work of the Press Complaints Commission of Sri Lanka (PCCSL), which was established to occupy the space left when the Press Council was originally dissolved. In addition to this, due to its quasi-judicial powers, there is a fear that although criminal defamation is no longer an offence (NB: Sri Lanka became only the second Commonwealth country to abolish Criminal Defamation in 2001) the council has the power to imprison journalists for what they publish; thus leaving an ambiguous space, which threatens the very existence of Sri Lanka's self-regulatory system.

Crosscutting Legislation:

Prevention of Terrorism Act (PTA) 1981:

This piece of legislation has been associated with numerous serious human rights violations including restrictions on freedom of speech. It increases the powers of the security forces and the police impinging on the basic rights of individuals in the criminal justice system.

A trait of many pieces of legislation across the world is that they are too broad and are open to a wide range of interpretation. One of the fundamental issues with the PTA is that it is "*unduly broad and vague and creating the pre-conditions for self-censorship as well as a chilling effect on the freedom of the press*".⁹

There is a need, in a country that suffers from the extremes of terrorism and is faced with a high threat to its people, to enact legislation that will protect them. However there must be safeguards to protect people's basic human rights and the right to freedom of expression. The Act contains wide-ranging powers covering "*detention without charge for extended periods of time at irregular places of detentions, the admissibility of confessions in the juridical proceedings with limited procedural safeguards, the shifting of the eventual burden of proof to the defendant*",¹⁰ this is not an exhaustive account. During the civil war the Act was used to

stifle debate and criticism of military operations and other controversial issues.¹¹ It is now being used to reduce the levels of public debate around reconciliation and legitimate concerns about abuses of power by the state.

The powers set out in this Act were envisaged as temporary but are still in operation today. There must be a clear understanding in the Sri Lankan Government, that to move forward and leave the legacy of the civil war behind, they must accept that the country is no longer faced by the emergency that these powers were enacted to counter.

Conclusion:

On the surface the situation in Sri Lanka does appear to have improved – there is certainly less direct violence against journalists. However this improvement could be seen as superficial because many of the laws that have been of concern in the past are still in operation and there is a marked lack of willingness from the government to reform them.

Legislation is a major obstacle to progress, but there is a general sense that the government is in denial about the lack of adherence to the rule of law. There is little effort to bring to justice the perpetrators of violence against journalists and human rights activists.

The cumulative effect of these impediments to freedom of expression is the "*active restriction of space for critical reportage*".¹² There is a danger that this could create an atmosphere of self-censorship amongst journalists. Although this is a failure of the mainstream media to reflect issues that are of concern to the public, it would be irresponsible for external arbiters to criticise their choices given the hostile conditions they continue to experience.

⁹ International Bar Association, *Justice in Retreat: A Report on the independence of the legal profession and the rule of law in Sri Lanka* (May 2009), p. 60 <http://www.ibanet.org/Document/Default.aspx?DocumentUid=C7793247-1498-409F-83D0-75B3DFD107C7> (accessed July 1)

¹⁰ Ibid p. 58

¹¹ Ibid p. 52

¹² *Free Speech in Peril*, p. 44

Introduction:

Tonga is one of the 24, out of a total of 54, Commonwealth nations that are classified as small island developing states. It is unique in being the only functioning monarchy left in the Pacific. Recent years have seen profound changes in the system of government, with a reduced role being played by the King and his advisers and more power being transferred to directly elected representatives.

The nation of Tonga was first established as a constitutional monarchy in 1875, becoming a British protectorate in 1900. It gained independence in 1970 and became a member of the Commonwealth.

Since 2002 pro-democracy campaigners have had several major victories. The King approved a major constitutional review after there were serious disturbances in 2006. The riots were in response to the slow pace of reform by the monarchy, with many seeing the proposed changes as being too conservative.¹ In 2009 the review recommended a wholly elected parliament and a drastic reduction in the power of the monarchy.² This led to parliamentary elections in November 2010, which represented a watershed moment in Tonga, with a majority of new members being popularly elected. However 9 seats in the 27-member parliament are still reserved for nobles appointed by the King. The new Prime Minister, Lord Tu'ivakano, is the first to be elected by the parliament and not appointed by the monarch.

Freedom of press and press are enshrined in the nation's constitution, however governments have been known to ignore this. There have been cases of individuals and publishers being restricted from certain political events. Pro-democracy media representatives have claimed they were barred from parliamentary sessions during the election of the current Prime Minister.³

During 2003 the government attempted to bring in two controversial pieces of legislation, the

Media Operators Act and the Newspaper Act, which will be covered in more detail. These acts represented a direct attack on media publishers and led to them forming the Media Council Inc., Tonga, colloquially known as the Tonga Media Council.

Although Tonga has a surprisingly diverse media the new democratic environment that they are operating in presents new challenges and responsibilities. One of these is to follow clear unambiguous guidelines that will protect both the ordinary citizen and high profile figures from rumour and hearsay. The increasing professionalism of the media with a greater number of trained journalists guided by a code of conduct will greatly improve matters. In early 2011 the Pacific Media Forum stated that they would like to see the Council take a more prominent role in acting as an arbitrator in disputes between the government and the media. This would help reduce the need for defamation actions, which have for a long time been used by the government to answer critical reporting. Both the industry and government should promote The Media Council's Complaints Committee as the primary arena for dealing with complaints about media coverage.⁴

Legislation:

There have been two key instances where the media came under direct attack through attempts by government to legislate against their independence, both in 2003. During this process to enable the laws to be passed an amendment to Clause 7 of the constitution, which deals with freedom of the press, was enacted.

Media Operators Act and Newspaper Act:

The Media Operators Act was enacted in July 2003 and designed to limit foreign ownership of media organisations to no more than 20 percent.⁵ It was viewed as an attack on the *Taimi 'o Tonga* which was published in New Zealand by a native

¹ Freedom House, *Freedom in the World 2011 - Tonga*, 8 August 2011, <http://www.unhcr.org/refworld/docid/4e3fa9462.html> (accessed 2 September)

² BBC News, *Tonga contemplates historic shift*, 11 November 2009, <http://news.bbc.co.uk/1/hi/world/asia-pacific/8353919.stm> (accessed 1 September)

³ United States Department of State, *2010 Country Reports on Human Rights Practices - Tonga*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56d7eb.html> (accessed 5 September)

⁴ International Freedom of Expression Exchange, *Stronger complaints process will keep media out of court, says PFF*, 3 February 2011, http://www.ifex.org/tonga/2011/02/03/feedback_process/ (accessed 8 September)

⁵ Committee to Protect Journalists, *CPJ concerned about government's use of new media laws*, 17 February 2004, <http://www.cpj.org/2004/02/cpj-concerned-about-governments-use-of-new-media-l.php> (accessed 15 September)

TONGA

Tongan holding US citizenship. The paper was accused of publishing articles that were designed to overthrow the government. This combined with the amendment of Clause 7 in October 2003 sparked an unusual reaction with thousands of Tongans protesting against what they saw as government interference.⁶

The Newspaper Act stated that all papers would have to register with the government to get a license to publish. All further publishing was banned until a license was obtained.⁷

However the Supreme Court declared the Media Operators Act and the Newspaper Act void in 2004. Further to this, the amendment to Clause 7 was declared unconstitutional, as it contradicted other areas of the constitution. Chief Justice Gordon Ward declared that he felt this represented increasing attempts by the government to control the media.⁸

Conclusions:

Since 2003 there have been no major attempts to severely restrict the media's independence, though defamation and libel actions are still used. There should be an increasing emphasis on the use of the Media Councils Complaints Committee to reduce the need for libel and defamation actions.

Tonga's multi-party democracy is in the early stages of development. Parliament still has reserved seats for the nobility and the power of the monarchy, although clearly diminished in the last decade, still remains in the background. The evolution of a free and unhindered press must be seen in parallel with the development of democracy on the islands.

Increasing professionalism in the media and an evolving political class will see the mutual benefits that can be gained from cooperation. The media can act as an intermediary between the state and politicians and the people. The media is also able to help hold the state to account on behalf of the

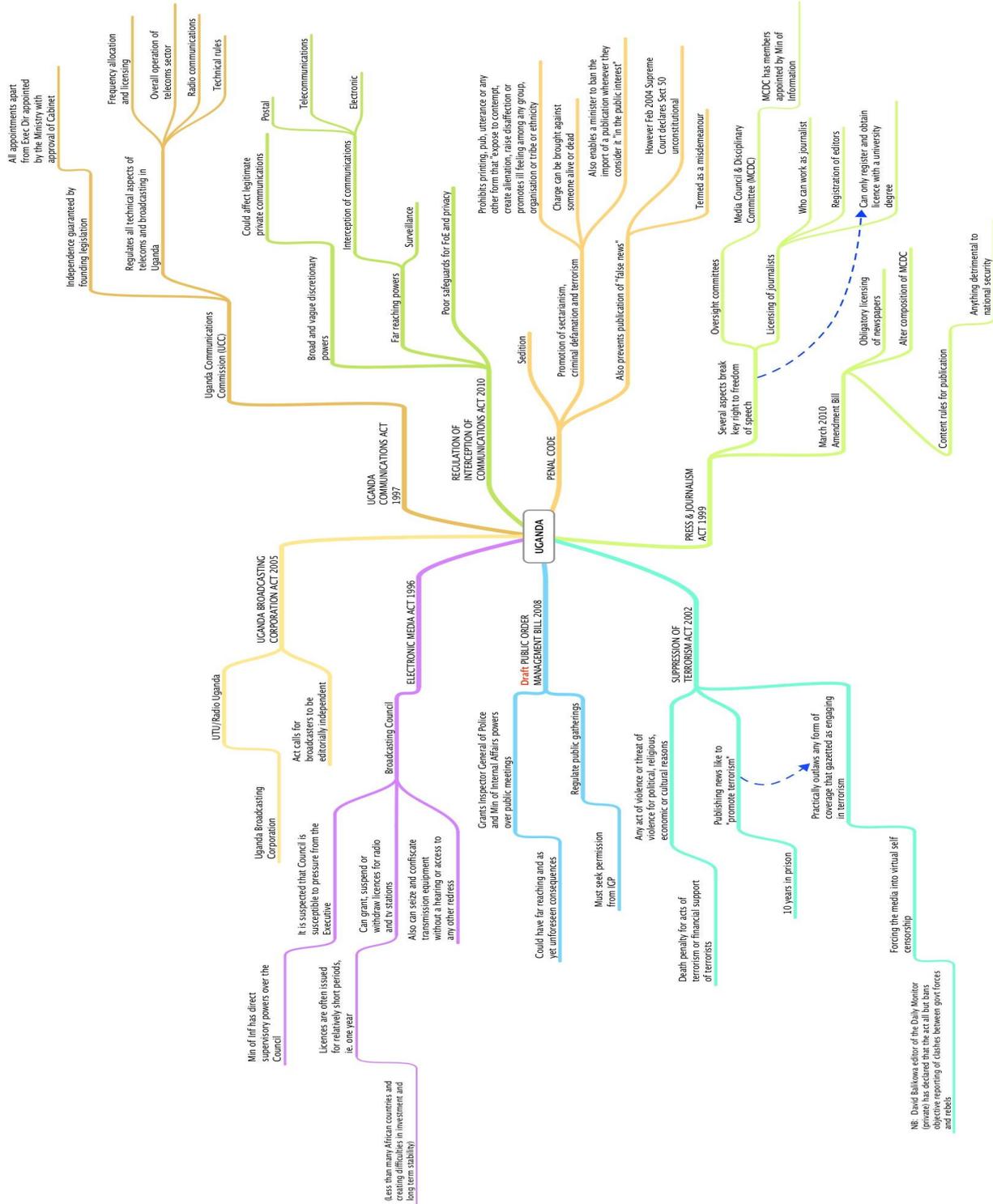
people, through probing investigative reporting and asking challenging questions of officials and politicians. The media must continue to evolve and maintain a high standard of reporting with unbiased coverage of events. However politicians must make a concerted effort to increase transparency by way of a Freedom of Information act and increasing use of press officers, spokesmen and press conferences.

Tonga has made dramatic progress in the past decade towards a democratic future, with a press free from legislative impediment and official harassment. It is important that the people of Tonga, its media, politicians and the wider international community maintain the pressure for progress.

⁶ Committee to Protect Journalists, Attacks on the Press 2003: Tonga, 11 March 2004, <http://www.cpj.org/2004/03/attacks-on-the-press-2003-tonga.php> (accessed 15 September)

⁷ CPJ concerned about government's use of new media laws, <http://www.cpj.org/2004/02/cpj-concerned-about-governments-use-of-new-media-l.php>

⁸ Commonwealth Human Rights Institute, *Status of the Right to Information in the Pacific Islands of the Commonwealth*, 2009, p. 58



UGANDA

Introduction:

Uganda has had a turbulent history since it gained independence from Britain in October 1962. Its early years saw rapid development and one of the highest standards of living in Africa but this was destroyed by over a decade of civil unrest. President Yoweri Museveni has now been in power for almost 25 years following a coup in 1986. His National Resistance Movement (NRM) controlled the country as a one-party state until the re-introduction of multi-party democracy in 2006. In the early years of his tenure there were some improvements politically and economically. Progress towards the Millennium Development Goals particularly in the reduction of Aids in the population should be highlighted.¹ Museveni was once lauded a model leader for Africa, but recent politically motivated violence and his determination to consolidate his power have degraded his image in the eyes of the world.

At independence, Uganda had a model media comprising state-owned and independent newspapers, and the first television station in sub-Saharan Africa. The 70s and 80s saw a sharp decline during years of political turmoil and war. The early 1990's saw an increase in plurality within the Ugandan media leading to greater numbers of private radio and TV stations.² However since 2005 there has been a marked surge in legislation that impacts negatively on the freedom of the media. It has been accompanied by greater politicisation of the regulatory institutions. There have been several other undemocratic trends; one of the most alarming being the 2006 constitutional amendment removing the presidential term limit. The latest *Press Freedom Index 2010* shows Uganda dropping ten places to 96 in the world. Although higher than many other sub-Saharan countries the decline is extremely worrying.

The run up to the 2011 presidential elections was marred by several incidents of violence towards journalists. This period also saw an expansion of sanctions against journalists and the media by legislative bodies.

The widely publicised 'Walk to Work' protests led by the opposition provoked a hostile reaction from the security forces. The protests were due to rises in living costs and the underlying dissatisfaction of the opposition about the outcome of the election. The media coverage of the protests was severely curtailed, with live coverage being banned by the Ugandan Communications Commission (UCC) by way of a 'verbal instruction'.³ This was the result of images of police violence and brutality towards the public and journalists who were attempting to cover the protests. There was criticism from the President and evidence that the UCC ordered Facebook and Twitter services be suspended.⁴

These actions by the state and state institutions highlight the complex situation in Uganda for the media. They face violence from security forces combined with overtly political directives from independent regulators and broad ill-defined legislation. The situation does not appear likely to improve in the near future and raises concerns over the future of the independent media in Uganda.

Print Media Legislation:

Press and Journalist Act 1995:

This is the primary legislation to regulate the print media and was put in place to ensure freedom of the press through the repeal of the Newspaper and Publications Act and the Press Censorship and Correction Act.⁵ The instrument for regulation that arbitrates on complaints by the public or the state is the Media Council. The Council has a wide remit and has the power to discipline journalists, editors and publishers. There is no requirement for political independence, with the Minister of Information having control over the membership of the Council and the ability to write 'Regulations for the Statute'.⁶

The Act also states that to work as a journalist in

¹ European Commission Election Observation, *Uganda Country Profile and Political Background*, <http://www.eueom.eu/uganda2011/home/profile> (accessed 16 July 2011)

² BBC Country Profile, *Uganda*, http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1069166.stm#leaders (accessed 10 July 2011)

³ Daily Monitor Website, *Government bans live broadcast of events*, <http://www.monitor.co.ug/News/National/-/688334/1144974/-/c2q28yz/-/index.html> (accessed 9 July 2011)

⁴ Echwalu, E. Committee to Protect Journalist, *Ugandan media censored over Walk to Work protests*, <http://www.cpj.org/blog/2011/04/ugandan-media-censored-over-walk-to-work-protests.php> (accessed 18 July 2011)

⁵ Khamalwa, J. *African Media Development Initiative: Uganda Research Finding and Conclusions* (London, BBC World Service Trust, 2006) p. 7

⁶ Human Rights Watch, *A Media Minefield: Increased Threat to Freedom of Expression in Uganda*, (May 2010) p. 51 <http://www.hrw.org/en/reports/2010/05/02/media-minefield-0> (accessed 15 June 2011)

Uganda, the Media Council must issue a licence and it is illegal to operate as a journalist without one. Furthermore licences will only be granted to individuals that have a university degree. Other practising journalists that do not possess a degree are not considered journalists in law.⁷ The Council must renew licences annually;⁸ this inevitably leads to self-censorship by journalists for fear that they will be banned from working.

Oversight is also the responsibility of the Disciplinary Committee, which is a sub-group of the Media Council. They can force a journalist to apologise or publicly rebuke them.⁹ There is very little accountability in its operation and the regulations and standards regarding what is appropriate are unsuitable and not transparent.¹⁰

Amendment Bill to the Press and Journalist Act March 2010:

This is still currently a proposal that is being reviewed by the Ugandan cabinet. Although the government has not released an official version of the Bill details about its contents have started to emerge.

The aim of the bill is to strengthen the Media Council's role in regulating the print media through arbitrary licensing of newspapers and publishers. Other proposed changes include altering the composition of the Media Council and the Disciplinary Committee and establish content rules.¹¹ The Minister for Information stated to Human Rights Watch that the government felt that they needed to address the 'legislative gap' that "*is the lack of legal requirements for newspapers to be registered and licensed, and for government to have the power to hold newspapers to specific terms and conditions, or lose those licences*".¹²

These proposals show a worrying disregard for the Ugandan Government's international obligations under numerous declarations including Freedom of Expression in Africa, which explicitly states that any form of registration should not impinge on

freedom of expression.¹³ It shows a continuing desire for ever greater control over the media and this would represent a drastic step backwards in terms of media and wider freedom of expression.

Communications and Multimedia Legislation: Electronic Media Act 1996:

Uganda Communications Act 1997:

The Act is one of two that deals with broadcast and communications; the Electronic Media Act is the enabling legislation creating the Broadcasting Council. The Council has the power to grant and withhold licenses for radio and television stations using vague and inadequately defined conditions. Unlike many other more progressive countries across Africa, these licences have to be renewed annually. Due to the significant investment in procuring and operating equipment and maintaining staff, the broadcast sector may be applying self-censorship as to not incur financial ruin.¹⁴

The Council has 12 members all either government officials or directly appointed by the Minister of Information, and is required to take "*directions from the Minister*".¹⁵ Thus there are serious issues relating to the undue influence of politicians and officials in the regulation and management of this sector. With the support of ministers, the Council is starting to expand its remit beyond the scope envisaged in its original legislation without further parliamentary oversight. The Information Minister stated in April 2010 that the Uganda Communications Commission would be merged with the Broadcasting Council. The Council will now undertake regulation of both broadcasting and communications.¹⁶

The Uganda Communications Commission established by the Uganda Communications Act 1997 regulates all technical aspects of communications and telecoms technology. The Commission has been under pressure from security agencies to block and restrict social media. In a direct response to the 'Walk to Work' protests and the fear of an Arab Spring style

⁷ Khamalwa, J. *African Media Development Initiative: Uganda* p. 7

⁸ Human Rights Watch, *A Media Minefield* p. 52

⁹ *Ibid.*, p.52

¹⁰ Article 19, *Submission to the UN Universal Periodic Review: The Republic of Uganda*, UPR Working Group October 2011, (March 2011) p. 2 <http://www.article19.org/data/files/pdfs/submissions/uganda-upr-submission.pdf> (accessed 17 May 2011)

¹¹ *Ibid.*, p. 2

¹² Human Rights Watch, *A Media Minefield* p. 53

¹³ *Ibid.*, p.54

¹⁴ Article 19, *Submission to the UN Universal Periodic Review* p. 3

¹⁵ Human Rights Watch, *A Media Minefield* p. 13

¹⁶ Human Rights Network for Journalists – Uganda, *Unwanted Witness: Press Freedom Index Report*, (April 2011) p. 12-13 http://www.hrnjuganda.org/press_index_report_April_2011.pdf (accessed 1 July 2011)

movement utilising social media.¹⁷

Crosscutting Legislation:

Penal Code of Uganda:

A major issue in many countries around the world is that journalists are threatened by charges of criminal defamation or sedition. The constitutionality of sedition was challenged and on 25th August 2010 the Constitutional Court abolished sections 39 and 40 of the Penal code. They contravened Article 29 of the Ugandan Constitution that guarantees the “*protection of freedom of conscience, expression, movement, religion, assembly and association*”.¹⁸

Conclusion:

Uganda has had a turbulent recent history. While exercising one-party rule President Museveni has been responsible for increasing socio-economic standards across health, education and the national economy; but since the reintroduction of multi-party democracy there has been a drastic decline in the freedom of expression and a constriction of the legal space in which the media can operate.

The nature of this constriction has utilised both judicial and extra-judicial practices. Much of the increasing restriction has been centred on existing institutions, primarily the Media Council and the Broadcasting Council. Both bodies are expanding their remit far beyond the original legislation intended, increasing powers and areas in which they can regulate. One of the most worrying developments is the Press and Journalist Amendment Act, which will bring in a strict licensing system that will further increase the pressure for self-regulation.

Introduction:

The United Kingdom is often regarded as the home of parliamentary democracy and many of the standards surrounding human rights have been established by the UK.

Politicians often sideline the status of the UK within the Commonwealth family and many ordinary citizens are either indifferent to or ignorant of it and its continuing importance. However events in the UK still have a massive effect on countries across the world but especially in the Commonwealth with its shared values, culture and history. Any punitive action taken against the press, new restrictions imposed or statutory body and licensing system introduced in the UK could have far-reaching and damaging consequences in the wider Commonwealth.

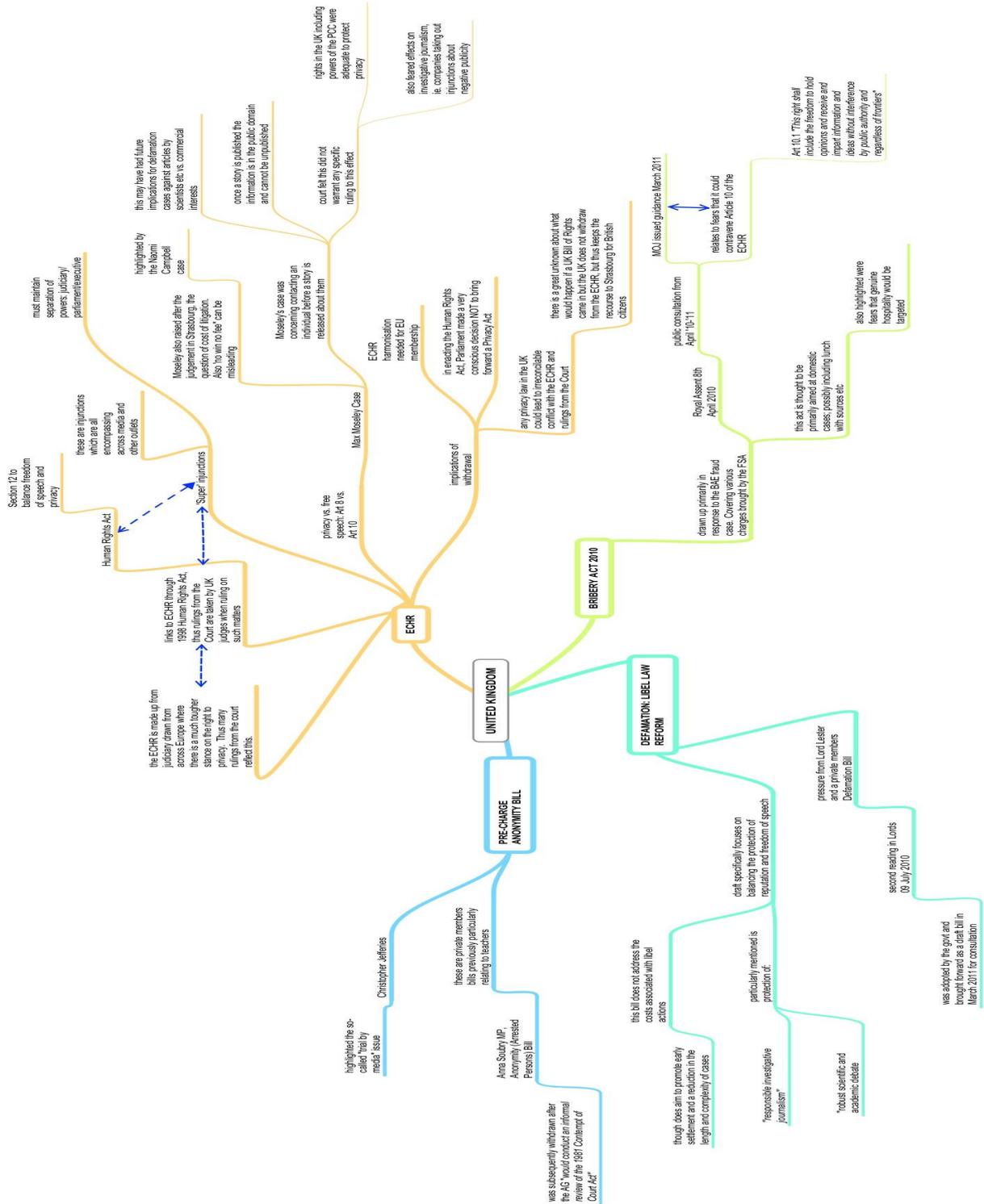
Although the hacking scandal is currently dominating the discourse about the UK media there are still serious unresolved issues relating to all encompassing injunctions, which require examination.

Coined ‘super injunctions’ by the press many of the most high profile examples focused on celebrities and their private lives and whether these were private or whether it was in the public interest to have them exposed by the press. It now would appear that the targeting of celebrities by newspapers using phone hacking played a major part in gathering information for stories in the past decade. This revelation brings into stark relief the issues surrounding privacy, where information has been obtained using possible criminal acts. However there are as yet no new legal sanctions relating to the phone hacking scandal. Current legislation has been used to arrest and charge individuals. There are ethical rather than legislative challenges for the media in the short to medium term.

The UK has a system of self-regulation governed by

¹⁷ Ibid., p. 15

¹⁸ Constitution of Uganda, 1995, Article 29



UNITED KINGDOM

the Press Complaints Commission (PCC). This has been the model for similar systems throughout the Commonwealth, from Bermuda to Sri Lanka.

However the current scandal surrounding phone hacking has reignited a debate over the future shape of self-regulation, and whether a statutory system might replace it. A lengthy judicial inquiry is under way, and it may be some time before a satisfactory solution is found.

It would be impossible to discuss the media in the UK without touching upon the investigations surrounding phone hacking, both the police and independent inquiries.

The current problems stemmed from the illegal activities of some staff at the News of the World, a Sunday tabloid newspaper, which has now closed. It has exposed an unpleasant side of journalism where high ethical standards are apparently compromised in the pursuit of the biggest story. Traditional detailed investigative journalism exposing abusers of power and position - which shape not just public debate but the national and international landscape - have been eclipsed by celebrity exposures that critics claim have little substance. This change in style it has been argued, has many driving factors including; the decline in profits from the traditional print media; the appetite from the public for celebrity-focused stories and the need to maintain pace with emerging alternative sources of information. The press remains a business, driven by the demands of its customers and will continue to reflect their particular desire for stories.

Much of the legislation that is detailed in this section and examined for this report relates to crosscutting laws. These laws are not directly related to the media and restrictions upon it but span a cross section of the media. This situation is juxtaposed with restrictive legal environments in less democratic regimes, where laws often target specific areas of the media. In this report we

highlight regimes that actively restrict press freedom and the freedom of expression for their own political purposes. However in the UK the majority of the discourse centres upon the balance of the freedom of the press and the right to privacy, or protection from the media spotlight for individuals.

Crosscutting Legislation:

The Human Rights Act 1998:

The United Kingdom has a history of fundamental rights, protecting the individual against power, stretching back to Magna Carta. The Human Rights Act 1998 that incorporates the European Convention on Human Rights (ECHR) into UK law establishes the fundamental rights and freedoms expected across Europe today. This brings the right for individuals to take cases to the European Court of Human Rights as the final arbiter on the ECHR.

The ECHR contains Article 8, the right to privacy and family life and Article 10, the right to freedom of expression. These two articles create the balance that many high profile cases rest on; between the public's right to know and an individual's right to protection from exposure. From this core argument there are several other issues that have developed but still rest on this core principle.

The most publicised case recently has been the phone hacking scandal where individuals working for, or employed by, the press targeted phones to extract personal information from voice mail. Unless there was a valid public interest justification, this would constitute a serious breach of privacy, but the case has not centred on the balance between privacy and free expression. It has been accepted that this was a crime under the Regulation of Investigatory Powers Act 2000. There are now both police investigations and a wide-ranging public inquiry to be led by Lord Justice Leveson. The Leveson Inquiry has a very wide remit including the

‘culture, practices, and ethics of the press’, looking at future regulation and powers for a future body and the relationship between the press, the police and politicians.¹

However, it must be recognised that the PCC is a private, independently funded organisation that cannot be arbitrarily closed down by the state. There is every chance that in the light of any recommendations made by this inquiry that this section of the report will require updating. With such a broad and all encompassing brief, including rewriting press regulation in the UK any recommendations would require careful review.

Another area of concern, mentioned earlier, are the so called ‘super injunctions’, the colloquial term used for all encompassing injunctions that prevent both details within the case and the existence of an injunction being published. Through leveraging the protection given in Human Rights Act celebrities and individuals are able to prevent the release of embarrassing information about them.

The issues surrounding ‘super injunctions’ came to a head in early 2011 with a case centred upon the footballer Ryan Giggs who took out an injunction to prevent information about an extramarital affair he had from becoming public. However the release of information via social media and other sources made the identity of Ryan Giggs and the fact he had an affair public knowledge. This led to the *Sunday Herald*, a Scottish newspaper, printing a picture of Giggs with his eyes blacked out citing that their opinion was that the injunction had no force in Scottish law. This also led to the naming of Giggs by John Hemming MP using Parliamentary privilege to protect him from prosecution. The situation precipitated a moment of farce, where many members of the public knew the details of the affair and information was available online, but the press were still prevented from reporting the facts.

The Bribery Act 2010:

This piece of legislation was drawn up to address specific issues surrounding individuals, multi-

national companies and their corporate governance relating to payments to foreign officials during contract processes. It directly targets companies that fail to put in place procedures to prevent bribery. This legislation was developed after several high profile British companies were implicated in bribery overseas and the previous incarnations of the Bribery Act were felt to be inadequate.

It was felt there was a genuine risk to media organisations and the way they obtained information through payments. This related to possible infringements of Article 10 of the ECHR, which states:

“This right shall include the freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers”.

Following consultation, the Ministry of Justice has issued guidance that has addressed these fears.

Defamation and Libel Law reform:

UK libel law in recent years has attracted both national and international criticism, with London referred to as the libel ‘capital of the world’ due to the high fees available to legal teams and high award figures.

Lord Lester’s private members Defamation Bill drove a renewed push for reform. This has now been adopted by the government and was published as a draft in March 2011 for consultation. The draft specifically focuses on balancing the protection of reputation better with the freedom of speech. It particularly includes provisions for the protection of responsible investigative journalism and robust scientific and academic debate.

There is a determination to prevent trivial and unfounded actions by setting the test as showing substantial harm was caused. The area of cost has

¹ Prime Ministers Office, PM announces panel for judge-led inquiry and publishes terms of reference <http://www.number10.gov.uk/news/leveson-inquiry-panel-terms-of-reference/> (access August 1)

UNITED KINGDOM

not directly been addressed however the bill does aim to promote early settlement and a reduction in the length and complexity of cases.

Conclusion:

Many of the UK's issues surround privacy and an individual's right to privacy from the media and the press. The current issues surrounding phone hacking have magnified this problem. 'Super injunctions' and the arising issues of privacy potentially could have a greater longer-term effect than the phone hacking scandal. Injunctions that have an all-encompassing scope have caused profound unease both in society at large and within Parliament.

The Human Rights Act section 2 includes a margin of appreciation clause meaning that decisions on the Human Rights Act in the UK must take account of European case law in relation to the ECHR. The European Court of Human Rights combines a cross section of European judiciary, all with different jurisprudence with regards to privacy. Many jurisdictions in Europe have much tougher rules surrounding what constitutes privacy and a much lower tolerance to what is deemed intrusive reporting. Thus rulings that emanate from the court reflect this tradition.

However talk of a withdrawal from the ECHR is problematic at best. Adoption of the ECHR is now a key part of any application to be a member of the EU. It is unlikely that the UK will leave the EU especially in this current period of economic uncertainty. Any UK bill of rights will therefore still need to be compliant with the convention and the European Court will still be the highest court for human rights issues. Any bill of rights and any privacy law that may codify privacy on the statute book will be set on a collision course with the European Court. There is a great unknown about the implications of this and it would be unwise for any government to take anything like this forward.

The climate within which the UK media operates is

complex. On the one hand the public thirsts for stories about their best-loved celebrities, but when some of the methods used to obtain these stories are exposed, there is widespread revulsion. However self-regulation of the press must remain at the heart of our governing of the media. A key element that has emerged from the phone hacking scandal is that the PCC does not and should not have powers of investigation similar to the police. What constitutes privacy, and how far freedom of speech should extend is an ever-evolving issue that is shaped by events.

CONCLUSION

For many members of the press and media the contents of this report will paint an all too familiar picture. Major problems surrounding criminal defamation, licensing and state imposed direct and indirect censorship through statutory press councils are not new. These represent the key challenges faced by media freedom advocates in the past several decades.

The challenges of governance, economic growth and a prosperous civil society have come particularly into focus with changes in governments in the Middle East and North Africa. A free and vibrant press will help ensure that these countries new democratic institutions will be critiqued, supported and strengthened. Governments across the world and especially members of the Commonwealth, because of their commitment to human rights and democracy, should take note of the progress that can be made, and the important role a free media plays in a democratic and prosperous society.

The Commonwealth and its members face a similar crossroads in their future direction and progress in 2011. To become relevant to their populations and live up to their global commitments to advancing human rights and democracy they must commit to a free press and embrace the strengthening effect that journalism has on a country and its society. The Eminent Persons Group (EPG) report, “*A Commonwealth of the People: Time for Urgent Reform*”, highlights the need to respect freedom of expression across all areas of society including the media.

The EPG is only the latest declaration or report in the long history of the Commonwealth to include specific reference to freedom of expression.

The Affirmation of Commonwealth Values and Principles, published following the Port of Spain Commonwealth Heads of Government Meeting (CHOGM) in 2009 - which set up the EPG - states:

“Freedom of expression: emphasising that peaceful, open dialogue and the free flow of information, including through a free, vibrant and professional media, enhance democratic traditions and strengthen democratic processes”¹

The freedom of its citizens to express themselves through thought, speech and action should be at the core of a revived, more relevant and stronger Commonwealth. This will enable it to focus on the major emerging challenges facing the global community in the 21st century.

¹ Commonwealth Secretariat, *Affirmation of Commonwealth Values and Principles*, Port of Spain, Republic of Trinidad and Tobago, 29 November 2009
http://www.thecommonwealth.org/document/181889/34293/35468/216908/commonwealth_values_and_principles.htm (accessed October 20 2011)

APPENDIX 1

WORLD PRESS FREEDOM RANKINGS 2010 (Commonwealth Countries in Blue)

Rank	Country	Rank	Country
1	Finland	48	Taiwan
-	Iceland	49	Burkina Faso
-	Norway	-	Italy
-	Netherlands	51	El Salvador
-	Sweden	52	Maldives
-	Switzerland	-	Romania
7	Austria	54	Paraguay
8	New Zealand	55	Argentina
9	Estonia	56	Haiti
-	Ireland	57	Organization of Eastern Caribbean States
11	Denmark	58	Brazil
-	Japan	59	Guyana
-	Lithuania	60	Togo
14	Belgium	61	Cyprus (North)
-	Luxembourg	62	Botswana
-	Malta	-	Croatia
17	Germany	64	Bhutan
18	Australia	65	Mauritius
19	United Kingdom	-	Seychelles
20	United States of America	67	Guinea-Bissau
21	Canada	68	Macedonia
-	Namibia	69	Central African Republic
23	Hungary	70	Benin
-	Czech Republic	-	Bulgaria
25	Jamaica	-	Comoros
26	Cape Verde	-	Greece
-	Ghana	-	Kenya
-	Mali	75	Moldova
29	Costa Rica	76	Mongolia
30	Latvia	77	Guatemala
-	Trinidad and Tobago	78	Lebanon
32	Poland	79	Malawi
33	Chile	80	Albania
34	Hong-Kong	81	Panama
35	Slovakia	82	Zambia
-	Surinam	83	Nicaragua
37	Uruguay	84	Liberia
38	South Africa	85	Serbia
39	Spain	86	Israel (Israeli territory)
40	Portugal	87	United Arab Emirates
41	Tanzania	-	Kuwait
42	South Korea	-	Tonga
-	Papua New Guinea	90	Lesotho
44	France	91	Sierra Leone
45	Cyprus	92	Kosovo
46	Slovenia	93	Senegal
47	Bosnia and Herzegovina	-	Timor-Leste

WORLD PRESS FREEDOM RANKINGS 2010 (Commonwealth Countries in Blue)

Rank	Country	Rank	Country
96	Uganda	143	Honduras
97	Dominican Republic	144	Bahrein
98	Mozambique	145	Colombia
99	United States of America (extra-territorial)	-	Nigeria
-	Georgia	147	Afghanistan
101	Armenia	148	Democratic Republic of Congo
-	Ecuador	149	Fiji
103	Bolivia	150	Palestinian Territories
104	Angola	151	Pakistan
-	Montenegro	152	Azerbaijan
-	Niger	153	Thailand
107	Gabon	154	Belarus
108	Burundi	155	Swaziland
109	Peru	156	Philippines
110	Djibouti	157	Saudi Arabia
111	Samoa	158	Sri Lanka
112	Chad	159	Kyrgyzstan
113	Guinea	160	Libya
114	Congo	161	Somalia
115	Tajikistan	162	Kazakhstan
116	Madagascar	163	Uzbekistan
117	Indonesia	164	Tunisia
118	Côte d'Ivoire	165	Vietnam
119	Nepal	166	Cuba
120	Jordan	167	Equatorial Guinea
121	Qatar	168	Laos
122	India	169	Rwanda
123	Zimbabwe	170	Yemen
124	Oman	171	China
125	Gambia	172	Sudan
126	Bangladesh	173	Syria
127	Egypt	174	Burma
128	Cambodia	175	Iran
129	Cameroon	176	Turkmenistan
130	Iraq	177	North Korea
131	Ukraine	178	Eritrea
132	Israel (extra-territorial)		
133	Algeria		
-	Venezuela		
135	Morocco		
136	Mexico		
-	Singapore		
138	Turkey		
139	Ethiopia		
140	Russia		
141	Malaysia		

APPENDIX 2

Windhoek Declaration on Promoting Independent and Pluralistic Media - 3 May 1991

Endorsed by the General Conference at its twenty-sixth session - 1991

We the participants in the United Nations/ United Nations Educational, Scientific and Cultural Organization Seminar on Promoting an Independent and Pluralistic African Press, held in Windhoek, Namibia, from 29 April to 3 May 1991,

Recalling the Universal Declaration of Human Rights,

Recalling General Assembly resolution 59(I) of 14 December 1946 stating that freedom of information is a fundamental human right, and General Assembly resolution 45/76 A of 11 December 1990 on information in the service of humanity,

Recalling resolution 25C/104 of the General Conference of UNESCO of 1989 in which the main focus is the promotion of "the free flow of ideas by word and image at international as well as national levels",

Noting with appreciation the statements made by the United Nations Under-Secretary-General for Public Information and the Assistant Director-General for Communication, Information and Informatics of UNESCO at the opening of the Seminar,

Expressing our sincere appreciation to the United Nations and UNESCO for organizing the Seminar,

Expressing also our sincere appreciation to all the intergovernmental, governmental and non-governmental bodies and organizations, in particular the United Nations Development Programme (UNDP), which contributed to the United Nations/UNESCO effort to organize the Seminar,

Expressing our gratitude to the Government and people of the Republic of Namibia for their kind hospitality which facilitated the success of the Seminar,

Declare that:

1. Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.
2. By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.
3. By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community.
4. The welcome changes that an increasing number of African States are now undergoing towards multi-party democracies provide the climate in which an independent and pluralistic press can emerge.
5. The world-wide trend towards democracy and freedom of information and expression is a fundamental contribution to the fulfilment of human aspirations.

APPENDIX 2

6. In Africa today, despite the positive developments in some countries, in many countries journalists, editors and publishers are victims of repression—they are murdered, arrested, detained and censored, and are restricted by economic and political pressures such as restrictions on newsprint, licensing systems which restrict the opportunity to publish, visa restrictions which prevent the free movement of journalists, restrictions on the exchange of news and information, and limitations on the circulation of newspapers within countries and across national borders. In some countries, one-party States control the totality of information.

7. Today, at least 17 journalists, editors or publishers are in African prisons, and 48 African journalists were killed in the exercise of their profession between 1969 and 1990.

8. The General Assembly of the United Nations should include in the agenda of its next session an item on the declaration of censorship as a grave violation of human rights falling within the purview of the Commission on Human Rights.

9. African States should be encouraged to provide constitutional guarantees of freedom of the press and freedom of association.

10. To encourage and consolidate the positive changes taking place in Africa, and to counter the negative ones, the international community—specifically, international organizations (governmental as well as non-governmental), development agencies and professional associations—should as a matter of priority direct funding support towards the development and establishment of non-governmental newspapers, magazines and periodicals that reflect the society as a whole and the different points of view within the communities they serve.

11. All funding should aim to encourage pluralism as well as independence. As a consequence, the public media should be funded only where authorities guarantee a constitutional and effective freedom of information and expression and the independence of the press.

12. To assist in the preservation of the freedoms enumerated above, the establishment of truly independent, representative associations, syndicates or trade unions of journalists, and associations of editors and publishers, is a matter of priority in all the countries of Africa where such bodies do not now exist.

13. The national media and labour relations laws of African countries should be drafted in such a way as to ensure that such representative associations can exist and fulfil their important tasks in defence of press freedom.

14. As a sign of good faith, African Governments that have jailed journalists for their professional activities should free them immediately. Journalists who have had to leave their countries should be free to return to resume their professional activities.

15. Cooperation between publishers within Africa, and between publishers of the North and South (for example through the principle of twinning), should be encouraged and supported.

16. As a matter of urgency, the United Nations and UNESCO, and particularly the International Programme for the Development of Communication (IPDC), should initiate detailed research, in cooperation with governmental (especially UNDP) and non-governmental donor agencies, relevant non-governmental organizations and professional associations, into the following specific areas:

- (i) identification of economic barriers to the establishment of news media outlets, including restrictive import duties, tariffs and quotas for such things as newsprint, printing

APPENDIX 2

- equipment, and typesetting and word processing machinery, and taxes on the sale of newspapers, as a prelude to their removal;
- (ii) training of journalists and managers and the availability of professional training institutions and courses;
 - (iii) legal barriers to the recognition and effective operation of trade unions or associations of journalists, editors and publishers;
 - (iv) a register of available funding from development and other agencies, the conditions attaching to the release of such funds, and the methods of applying for them;
 - (v) the state of press freedom, country by country, in Africa.

17. In view of the importance of radio and television in the field of news and information, the United Nations and UNESCO are invited to recommend to the General Assembly and the General Conference the convening of a similar seminar of journalists and managers of radio and television services in Africa, to explore the possibility of applying similar concepts of independence and pluralism to those media.

18. The international community should contribute to the achievement and implementation of the initiatives and projects set out in the annex to this Declaration.

19. This Declaration should be presented by the Secretary-General of the United Nations to the United Nations General Assembly, and by the Director-General of UNESCO to the General Conference of UNESCO.

BIBLIOGRAPHY

Addruse, R. 'Malaysia', in *Speaking Freely: Expression and the law in the Commonwealth*, edited by Robert Martin (Toronto, Irwin Law, 1999)

Amnesty International, Gambia: Submission to the UN Universal Periodic Review, February 2010, <http://tinyurl.com/3vhy93j>

Article 19, *Memorandum on the Malaysian Sedition Act 1948* (Article 19, London, July 2003)

Article 19, *Submission to the UN Universal Periodic Review: The Republic of Uganda*, UPR Working Group

Asian Human Rights Commission, *The State of Human Rights in Sri Lanka 2010*, (Dec 2010) <http://www.humanrights.asia/resources/hrreport/2010>

Baseline Study on Seven South East Asian Countries, *Freedom of Expression and the Media in Malaysia* (Article 19, London, December 2005)

BBC Country Profile – The Gambia, http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1032156.stm

BBC Country Profile, *Sri Lanka*, <http://www.bbc.co.uk/news/world-south-asia-11999611>

BBC News, *Regions and Territories: Bermuda*, http://news.bbc.co.uk/1/hi/world/americas/country_profiles/3552771.stm

BBC News, *Tonga contemplates historic shift*, 11 November 2009, <http://news.bbc.co.uk/1/hi/world/asiapacific/8353919.stm>

BBC Country Profile, *Uganda*, http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1069166.stm#leaders

Bermuda Sun Online, Full Text of the *Throne Speech 2008*, <http://bermudasun.bm/main.asp?FromHome=1&TypeID=1&ArticleID=36482&SectionID=24&SubSectionID=270>

CIA Fact Book, Gambia, <https://www.cia.gov/library/publications/the-world-factbook/geos/ga.html>

CIA The World Factbook, *Country Profile: Sri Lanka*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html>

Committee to Protect Journalists, *Attacks on the Press 2003: Tonga*, 11 March 2004, <http://www.cpj.org/2004/03/attacks-on-the-press-2003-tonga.php>

Committee to Protect Journalists, *CPJ concerned about government's use of new media laws*, 17 February 2004, <http://www.cpj.org/2004/02/cpj-concerned-about-governments-use-of-new-media-l.php>

Committee to Protect Journalists, *Six Journalists Released in the Gambia*, <http://www.cpj.org/2009/09/sixjournalists-released-in-the-gambia.php>

Commonwealth Human Rights Institute, *Status of the Right to Information in the Pacific Islands of the Commonwealth*, 2009,

Commonwealth Press Union, *The Independence of the Commonwealth Media and Those Working Within It* (CPU, London, June 1999)

Commonwealth Secretariat, *Affirmation of Commonwealth Values and Principles*, Port of Spain, Republic of Trinidad and Tobago, 29 November 2009 http://www.thecommonwealth.org/document/181889/34293/35468/216908/commonwealth_values_and_principles.htm

Constitution of Uganda, 1995, Article 29

BIBLIOGRAPHY

Daily Monitor Website, *Government bans live broadcast of events*, <http://www.monitor.co.ug/News/National/-/688334/1144974/-/c2q28yz/-/index.html>

Echwalu, E. Committee to Protect Journalist, *Ugandan media censored over Walk to Work protests*, <http://www.cpj.org/blog/2011/04/ugandan-media-censored-over-walk-to-work-protests.php>

ElectionGuide is provided by the International Foundation for Electoral Systems (IFES) with funding from USAID, <http://www.electionguide.org/country.php?ID=80>

European Commission Election Observation, *Uganda Country Profile and Political Background*, <http://www.eueom.eu/uganda2011/home/profile>

Foreign and Commonwealth Office, *Bermuda (Overseas Territory) Profile*, <http://www.fco.gov.uk/en/travel-and-livingabroad/travel-advice-by-country/country-profile/north-central-america/bermuda/?profile=politics>

Freedom House, *Freedom in the World 2011 - Tonga*, 8 August 2011, <http://www.unhcr.org/refworld/docid/4e3fa9462.html>

Human Rights Network for Journalists – Uganda, *Unwanted Witness: Press Freedom Index Report*, (April 2011) http://www.hrnjuganda.org/press_index_report_April_2011.pdf

Human Rights Watch, *A Media Minefield: Increased Threat to Freedom of Expression in Uganda*, (May 2010) <http://www.hrw.org/en/reports/2010/05/02/media-minefield-0>

International Bar Association, *Justice in Retreat: A Report on the independence of the legal profession and the rule of law in Sri Lanka* (May 2009), <http://www.ibanet.org/Document/Default.aspx?DocumentUid=C7793247-1498-409F-83D0-75B3DFD107C7>

International Federation of Journalists, *IFJ Welcomes move to establish media council in Malaysia*, <http://asiapacific.ifj.org/en/articles/ifj-welcomes-move-to-establish-media-council-in-malaysia>

International Federation of Journalists on behalf of the International Press freedom Mission to Sri Lanka, *Key Challenges for Media at War's End*, (Jan 2010) asiapacific.ifj.org/assets/docs/236/115/1d464ec-8892c73.pdf

International Federation of Journalists on behalf of the South Asia Media Solidarity Network, *Free Speech in Peril: Press Freedom in South Asia 2010-2011*, (May 2011) <http://asiapacific.ifj.org/assets/docs/043/219/7bb382b-82afadb.pdf>

International Freedom of Expression Exchange, *Stronger complaints process will keep media out of court, says PFF*, 3 February 2011, http://www.ifex.org/tonga/2011/02/03/feedback_process/

Jo-Ann, D. *Freedom of Expression in Malaysia*, Centre for Independent Journalism, 2010, http://cijmalaysia.org/wp-content/uploads/2011/02/CIJ-FOE_web_1602111.pdf

Jollo of News Online, *Teranga FM Ordered to Stop News Review*, <http://www.jollofnews.com/teranga-fm-ordered-to-stopnews-review.html>

Khamalwa, J. *African Media Development Initiative: Uganda Research Finding and Conclusions* (London, BBC World Service Trust, 2006)

Laurance, J. 'The Big Question: Should the media stop reporting the suicides in and around Bridgend?' *The Independent* (London), 22 February 2008, <http://www.independent.co.uk/news/media/the-big-question-should-the-media-stop-reporting-the-suicides-in-and-around-bridgend-785551.html>

Media Council of Bermuda, *Background to the formation of the Media Council of Bermuda*, February 2011, <http://www.mediacouncilofbermuda.org/media-councilbackground.html>

BIBLIOGRAPHY

- Media Council of Bermuda, *Code of Practise FAQ's*,
<http://www.mediacouncilofbermuda.org/media-council-codeof-practice-faqs.html>
- Media statement by the National Press Club, *National Press Club Slams Manyi's Attack on Media*, Tuesday, 21 June 2011, http://www.nationalpressclub.co.za/pdfs/statement_20110621.pdf
- Ministry of Justice, *The Guidelines on the New Zealand Bill of Rights Act 1990*,
<http://www.justice.govt.nz/pubs/reports/2004/billof-rights-guidelines/section12-15.html#section14>
- New Zealand Legislation, *Coroners Act 2006 No 38 (as at 07 July 2010)*, Public Act Part 3 Inquiries into causes and circumstances of deaths Restrictions on making public of details of self-inflicted deaths
<http://www.legislation.govt.nz/act/public/2006/0038/latest/DLM377809.html#DLM377809>
- New Zealand Press Council Principles, <http://www.presscouncil.org.nz/principles.php>
- Prime Ministers Office, PM announces panel for judge-led inquiry and publishes terms of reference
<http://www.number10.gov.uk/news/leveson-inquiry-panel-terms-of-reference/>
- Reporters Without Borders, Gambia – Yahya Jammeh Profile, <http://en.rsf.org/gambie-yahya-jammeh-28-04-2010,37195.html>
- Reporters Without Borders, Press Freedom Index, http://en.rsf.org/spip.php?page=classement&id_rubrique=1001
- South East Asian Press Alliance, *SEAPA Annual Report 2011*, <http://www.seapabkk.org/aboutus/report.html>
- Stabroek News online, *Local Experts Call for Reform of Defamation Laws*,
<http://www.stabroeknews.com/2009/archives/05/17/localexperts-call-for-reform-of-defamation-laws/>
- Stabroek News online, *Freedom of Information and Access to Information*,
<http://www.stabroeknews.com/2011/features/08/01/freedomof-informationaccess-to-information-2/>
- The Office of the United Nations High Commissioner for Human Rights (OHCHR), *International Covenant on Civil and Political Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 <http://www2.ohchr.org/english/law/ccpr.htm#art19>
- UN Human Rights Council, *Working Group on the Universal Periodic Review: Gambia*, UN General Assembly
- United States Department of State, *Background Note: Bermuda*, <http://www.state.gov/r/pa/ei/bgn/5375.htm>
- United States Department of State, *Human Rights Report 2010 – Guyana*, April 8 2011,
<http://www.state.gov/documents/organization/160167.pdf>
- United States Department of State, *2010 Country Reports on Human Rights Practices - Tonga*, 8 April 2011,
<http://www.unhcr.org/refworld/docid/4da56d7eb.html>