

# Parliament and the Media

## *Building an Informed Society*

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*Part 1. Report of a Commonwealth Parliamentary Association Study Group on Parliament and the Media, Perth, 17-21 February 2003, at the Parliament of Western Australia*

*and*

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*Part 2. A report on the proceedings of the Indian Ocean Rim Conference on Parliament and the Media, 14-18 April 2002, at the Parliament of South Africa, Cape Town*

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For more information on the World Bank Institute’s media and parliamentary programme, please visit:

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[www.worldbank/wbi/governance/parliaments](http://www.worldbank/wbi/governance/parliaments)

For information about the Commonwealth Parliamentary Association and its work on Parliament and the Media, please visit:

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## Foreword

As part of their respective missions, the World Bank Institute (WBI) and the Commonwealth Parliamentary Association (CPA) have sought to urge Parliaments and their Members to champion the protection of the media in support of good governance and democracy.

As part of its governance programme, the Poverty Reduction and Economic Reform Division of the World Bank Institute initially concentrated its efforts on providing training for journalists. More recently, it has included a focus on improving the environment in which the media operate. The CPA has also recognized the need for such an approach, given that great variations still exist from one jurisdiction to another in the degree of freedom and protection afforded the media and that Parliamentarians play a leading role in ensuring that progress made in many countries in recent years is emulated throughout the international community.

Two conferences (one Commonwealth-wide in 2000 and one for Indian Ocean Rim Commonwealth countries in 2002) were organized by the World Bank Institute and the CPA, in collaboration with the Commonwealth Press Union, the Commonwealth Broadcasting Association and the Commonwealth Journalists Association (with support from the Lok Sabha of India, the Parliament of South Africa and the United Kingdom Foreign and Commonwealth Office).

The conferences resulted in proposals to improve the flow of information between citizens and their elected representatives and governments. These contain fundamental principles and specific programmes of action that the participating Parliamentarians and media representatives agreed are necessary for informed societies and fully functional democracies.

The CPA and the World Bank Institute continued their work in this field by organizing a Study Group on Parliament and the Media in February 2003, with support from the Parliament of Western Australia. Composed of 10 Members of Parliament representing all eight CPA regions, the Study Group made a series of recommendations for an informed society, based on their conclusion that freedom of the media should not be regarded simply as the freedom of journalists, editors or proprietors alone to report and comment; but rather that it must be regarded as the embodiment of the public's right to know and to participate in the free flow of information.

This publication contains, first, the conclusions reached by the Study Group on Parliament and the Media and a report of its discussions and the input of resource persons with parliamentary, legal and media expertise. The various recommendations of the Study Group provide Parliamentarians and media practitioners in all jurisdictions with ideas and arguments that can improve their relationship and the flow of information in their societies.

The second part of this publication consists of a summary of the discussions during the Indian Ocean Rim Conference on "Parliament and the Media: Securing an Effective Relationship", held in 2002, at which participants representing both Parliaments and the media agreed "Principles for an Informed Democracy".

It is hoped that the outputs of these activities organized by the World Bank Institute and the Commonwealth Parliamentary Association will help Members of Parliament, the media and civil society in general work toward the development of a better legal and political environment in which the public is provided with all the information it requires to make informed democratic choices and decisions.

The views expressed herein are entirely those of the Study Group and of the Conference participants and do not necessarily reflect the views of the World Bank Institute or of the Commonwealth Parliamentary Association.

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# **Part 1. For An Informed Democracy**

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Report of a CPA Study Group on Parliament and the Media, Perth, 17-21 February 2003, at the  
Parliament of Western Australia

Organized by  
Commonwealth Parliamentary Association  
World Bank Institute

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## **RECOMMENDATIONS FOR AN INFORMED DEMOCRACY**

### **(1) The Right to Know**

(1.1) The public's right to know must be balanced against the individual's right to privacy, which must sometimes be sacrificed by public figures to the extent that their private lives impinge on their public roles. The responsible determination of the balance between the public's legitimate right to know and public curiosity is a matter for the media initially but ultimately for the public itself, and if necessary, for the independent judiciary.

(1.2) While it is clear that "the government's interest" and "the majority interest" are not synonymous with "the public interest", neither a more precise nor a justiciable definition of "the public interest" can or should be made as this must always be an evolving definition determined on the merits of each situation and contemporary standards. In the first instance, this determination must remain the duty of responsible media, which should use stringent tests to establish that a private matter does in fact impact upon a person's public position.

(1.3) When "the public interest" is claimed by government to be in conflict with the demand for secrecy in "the national interest", the determination of what constitutes "the national interest" and when it should take precedence over "the public interest" should be assigned by law to the courts.

### **(2) Freedom of Expression**

(2.1) Any restrictions on free expression should be justified only in the context of international obligations such as those contained in Article 19 of the United Nations' Declaration on Human Rights, the African Charter on Human and Peoples' Rights and Article 10 of the European Convention on Human Rights, and interpretations thereof by such institutions as, for example, the United Nations Human Rights Commission and the Inter-American Court of Human Rights.

(2.2) Accordingly, the media's right to criticize and express opinion, as well as to report, must be guaranteed and no legislation should be passed which impinges on that right.

(2.3) Excessive or disproportionate levels of damages in legal actions have a chilling effect on free speech and should be discouraged.

### **(3) Regulation**

(3.1) The Group notes the Council of Europe recommendation on broadcasting which says the rules and procedures of regulatory authorities should clearly affirm their independence and stipulate their need to be protected from political and economic interference, including by public authorities.

(3.2) The regulation of the media therefore should be left to independent bodies that are:

(3.2.i) Possibly government funded but which operate totally independently from the funder in the same way as the courts or electoral commissions are independent from government,

(3.2.ii) Composed of strong and independently minded people of integrity and sensitivity who are committed to the concept of the duty of the media to inform the public accurately and responsibly, and

(3.2.iii) Appointed through an independent and transparent process that ensures those selected are free of associations with any interest that might interfere with their ability to adjudicate fairly and impartially.

(3.3) Governments are free to make commercial decisions but should not misuse their financial power to seek to influence or intimidate the media.

(3.4) It is the responsibility of the media, not Parliament, to set and supervise their highest professional and ethical standards.

(3.5) Governments and Parliaments should not use examples of inaccurate reporting to legislate controls on the media. The media are held to account for their inaccuracies by the court of public opinion through loss of reputation and loss of market share or by courts of law.

#### **(3.6) Infrastructure Regulation**

Regulations on electronic networks and infrastructures based on technical capacity should not be used as a tool for any form of censorship. Regulations put in place at time when such capacity was limited should be reviewed in light of recent technological advances that have greatly increased communications capacity.

#### **(3.7) Broadcast Content Regulation**

The regulation of broadcasting should be completely independent of commercial or politically partisan influences. Indicators of independence can be found in the standards agreed by this Group for the appointment of regulators, their funding and their operations.

#### **(3.8) Internet Regulation**

The Group called for greater international clarity and harmony in the regulation of and policies toward the Internet.

### **(4) Licensing**

(4.1) Government should not use licensing of media organizations as a tool by government to influence or censor the media.

(4.2) Licensing authorities should not demand excessive financial guarantees or conditionalities from existing or prospective media owners.



(4.3) Governments should not licence individual journalists since licensing can be misused to impede the free flow of information.

#### **(5) Ownership**

(5.1) Owners of media outlets must recognize that ownership entails a commitment to inform which is at least equal to the need to earn a profit.

(5.2) Foreign investment in the media can be beneficial but should not jeopardize plurality of content, particularly local content.

(5.3) Local regulators should set appropriate levels of local content for both news and entertainment to balance the benefits of foreign investment with the need to preserve and develop the local community and culture.

(5.4) Cross-media ownership can have an adverse effect on the dissemination of a plurality of views, so local regulators should consider whether safeguards are appropriate.

#### **(6) Contempt of Parliament**

(6.1) As the democratic embodiment of the public's political views, each Parliament must respect the right of individuals and particularly the media to criticize its role, integrity and performance. It must properly react to such criticism with argument and through its own conduct rather than with punishment.

(6.2) Parliaments should repeal legislation, rescind Standing Orders and/or publicly abandon their traditional authority to punish the media and others for offending the dignity of Parliament simply by criticism of the institution or its Members.

(6.3) Inaccurate reporting by the media should not be considered as a contempt of Parliament. Contempt should be reserved for serious cases of interference with Parliament's ability to perform its functions.

(6.4) Where confidential parliamentary documents are leaked in breach of Standing Orders, the Group believes it is a matter for Parliament to deal with Members who commit the breach but not journalists who are recipients of the information. However, it notes that leaks would become less relevant if parliamentary procedures, especially committee proceedings, were more open to the media.

#### **(7) Privilege and the Right of Reply**

(7.1) Privilege belongs to Parliament, not to Members as individuals but as trustees of the people. This ancient parliamentary privilege, especially where there is no easy way to seek redress, places Members in a uniquely powerful position in society, which they must use responsibly and with the utmost care to ensure the truth of any allegations made under the protection of privilege. The protection of privilege should be continued to enable Members to represent their constituents fully and openly without fear of being silenced or punished by legal action against the expression of that representation.

(7.2) The fair and accurate reporting by the media of parliamentary proceedings should be protected by law.

(7.3) If a Member, or a witness appearing in a parliamentary proceeding, under the protection of privilege, defames or makes allegedly false statements, either intentionally or unintentionally, about a person who is outside Parliament, that person should have the right to apply to the Parliament to have a reply placed on the public parliamentary record. The Study Group commended to other jurisdictions the Commonwealth of Australia's Senate Privilege Resolutions of 1988 (Resolution 5) for right of reply.

(7.4) In order to ensure that a reply is published in the parliamentary record as close as possible to the initial allegation, a request from a member of the public to rebut a statement made in Parliament about them should be referred to the relevant House's Privileges Committee, which must rule on the matter fairly and expeditiously.

(7.5) The media should report the rebuttal if they have reported the original allegation.

### **(8) Parliamentary Access**

(8.1) Parliaments should provide as a matter of administrative routine all necessary access and services to the media to facilitate their coverage of proceedings. Parliament should not use lack of resources as an excuse to limit media access and should use its best endeavours to provide the best facilities possible.

(8.2) Questions of eligibility for media access should be determined by the media itself. Parliaments should retain the right to suspend access for media representatives who violate Standing Orders or otherwise disrupt parliamentary proceedings.

(8.3) Parliaments should employ public relations officers to publicize their activities, especially to the media that do not cover Parliament, and education staff to run outreach programmes to stimulate interest in parliamentary democracy. Both services should operate in an apolitical way under guidelines set by the House.

(8.4) Parliaments should provide the media with as much information as possible. Attendance and voting records, registers of Members' interests and other similar documents should be made readily available. Members have an obligation to update their entries in the register of interests and registers should be kept in such a way as to give a clear and current picture of both a Member's full interests and changes to those interests.

(8.5) Parliaments should consider the extent to which disclosure of Members' interests should be applied to their families and, if so, how this should be done while protecting their family members' individual rights to privacy.

(8.6) The development of professional and ethical standards for journalists is a matter for the media. Integral to this is the media's responsibility to ensure that a journalist's private interests do not influence reporting.

(8.7) To assist in the information flow, Parliaments should publish as much of their material as possible on online.

(8.8) Electronic media in Parliament

(8.8.i) Given the importance of broadcast and other electronic access to the proceedings of Parliament both in Chambers and committees, Parliament should either provide an uninterrupted feed or access for broadcasters to originate their own feed, if appropriate on a pool basis. Guidelines for electronic coverage should be as flexible as possible.

(8.8.ii) Guidelines for electronic coverage should ordinarily be put in place in consultation with broadcasters. Terms of availability should not be discriminatory between different media outlets and access to such feeds should not be used for censorship or sanctioning.

(8.8.iii) Parliaments should be encouraged to provide live coverage of their proceedings on a dedicated channel and/or online.

**(8.9) Access to Committees**

Committee meetings should be open to the public except in cases where it is determined in public that it is necessary to hold parts of a committee's proceedings in private. The Group notes that this is the practice, for example, in South Africa and commends this to other Parliaments.

**(9) Archaic Legislation and Standing Orders Affecting Free Speech**

(9.1) The Study Group recognizes that the role of Parliament is to facilitate the free flow of information and it looks to international standards applied in conventions, treaties, charters and covenants on human, civil and political rights.

(9.2) In light of the above international agreements, criminal laws inhibiting free speech, such as incitement to disaffection, treason felony, criminal libel (including defamatory, seditious, blasphemous and obscene libel), scandalizing the courts, "insult" laws and laws against injuring the economic interests of the state should be revoked.

(9.3) Legislation or standing orders that deal with insulting or offending the dignity of Parliament or Parliamentarians should be repealed.

(9.4) Prohibitions against note-taking in parliamentary galleries should be lifted except when it can be shown that it genuinely disrupts the proceedings of the House.

**(10) Conclusion**

The Group acknowledges that its recommendations constitute a significant body of work that no Parliament or Legislature will be able to undertake all at once and that some recommendations may not be immediately appropriate for all jurisdictions due to constitutional, legal, procedural and cultural differences. But the Group believes its recommendations offer Parliaments and Legislatures a range of ideas to stimulate consideration of ways to improve their relations with their media and the flow of information to their societies, other Parliaments and the world at large.

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**INTRODUCTION**

Freedom of the press should not be regarded simply as the freedom of journalists, editors or proprietors alone to report and comment. Rather, it should be regarded as the embodiment of the public's right to know and to participate in the free flow of information.

A Commonwealth Parliamentary Association Study Group of MPs on Parliament and the Media, which met in February 2003 in Perth, Australia, in partnership with the World Bank Institute and the Parliament of Western Australia, recognized that the media are at the cutting edge of civic engagement. It recommended reforms to remove legal and institutional obstacles and other measures to develop a fully informed society through an open and accountable Parliament and a free and responsible media.

The Study Group urged Commonwealth Parliaments and Parliamentarians to protect the media as a necessary adjunct to democracy and good governance. An avowed goal of all Parliaments should be the establishment of a culture and practices, if necessary through legislation, that protect and facilitate the operation of the media based on the fundamental rights of freedom of expression and the freedom of the press. Parliaments should seek to remove obstacles to the dissemination of information and a plurality of opinions.

A strong and efficient statutory framework is a prerequisite for creating an environment that protects the rights of the media while also ensuring that the public interest and individual rights are not breached by their activities. The challenge faced by all jurisdictions is to strike the right balance between freedom of speech and fundamental standards of responsibility, decency and quality. The interplay between legislation, regulation, consumer choice, the interests of citizens and the promotion of quality in the media lies at the heart of the challenge facing all countries today, regardless of their level of development.

But while Commonwealth countries generally recognize the right of the media to a fundamental level of freedom, in practice this right is constrained as well as protected to varying degrees by constitutional provisions, statutes, legal precedents and licensing conditions. In recent years there has been progress on freedom of expression and of information with several Commonwealth countries enacting substantial media and freedom of information legislation, or being in the process of doing so.<sup>1</sup> Yet in many jurisdictions the statutory framework remains a hindrance to the free operation of the media, as can be seen by examples provided by members of the Study Group from their own jurisdictions.

Since the U.K. Parliament passed the Human Rights Act 1998 to bring legislation in line with the European Convention on Human Rights and with other European Union countries, the media have been concerned by calls, especially from politicians, to legislate a right to privacy, which could be used by public figures to challenge their right to investigate. In 2003, a House of Commons standing committee suggested moving away from self-regulation to statutory legislation for the media. Furthermore, the British media have expressed worries also about the far-reaching impact of the Communications Act 2003 on the media environment, especially through the creation of the new umbrella regulatory body, the Office of Communications.

In Malaysia, under the Printing Presses and Publications Act 1984, media organizations need to apply to the Information Ministry for a new permit every year, and broadcasters when they begin operations have to apply for a licence under the Communications and Multimedia Act 1998 (a provision retained from the Broadcasting Act 1988, which this act repealed.) Licences for the print and broadcast media can be revoked at any time without judicial review. The country's Official

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<sup>1</sup> For example, Trinidad and Tobago passed a Freedom of Information Act in 1999, the United Kingdom in 2000 (though implementation is delayed until 2005) and India in 2003, while South Africa passed a Promotion of Access to Information Act in 2000.

Secrets Act 1972, Internal Security Act 1960 and Sedition Act 1948 also place a number of restrictions on the operation of the media.

In the Fiji Islands, all newspapers must be registered with the government before they can publish. The law gives the Minister of Information and Media Relations sole discretionary power to order publication of a correcting statement if the Minister judges an article to be false or malicious. A newspaper refusing to publish such a statement can be prosecuted and fined while journalists may face a prison sentence. The law allows the government to arrest anyone who publishes malicious material, i.e. any news the government considers false or that could create or foster public alarm or result in injury to the public. The Fijian Broadcasting Act also gives the Minister the power to prohibit broadcasting of certain subject matter, while a Television Decree allows the government to influence content. The Fijian media have also been resisting a proposed Media Bill that would change the regulatory environment and give the Minister of Information the authority to make appointments to the Fiji Media Council, which is at present an industry-based body with its own code of ethics. There have been complaints, however, about the difficulty in enforcing the council's decisions.

The role of Parliament and the media in communicating parliamentary activities to citizens is also essential in enfranchising the public, and the media provides a conduit through which public opinion is communicated to Members of Parliament. Throughout the Commonwealth, Parliaments recognize the right of the media to have access to the institution and to parliamentary processes, and to report on them. Consequently they grant certain facilities to the media to assist this activity. Several issues remain to be resolved in many countries, however, including whether to allow live broadcasts of parliamentary proceedings, what conditions to place on live broadcasts or film recordings of proceedings, and whether to open parliamentary committees to the media and the public.

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## **THE MEDIA ENVIRONMENT TODAY**

Broad social, technological and economic trends and developments that can be observed in most Commonwealth countries indicate the media are in transition as they try to adapt to a rapidly changing environment.

One cause for concern, perhaps particularly relevant to more developed countries, is the parallel trends towards convergence (the ability of similar services – including news – to be distributed through different types of media platforms) and towards concentration of media ownership, which leads some to fear that the public's right to be informed from different perspectives is being challenged.<sup>2</sup> In countries like Canada or the U.K., there is a great diversity of media outlets yet people choose to receive their news from a narrow range of sources, especially television. Diversity is also challenged by a declining number of corporate entities controlling most of the market leaders.

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<sup>2</sup> In Australia, two major conglomerates own 10 out of 12 of the main daily newspapers. South Africa's Media Diversity and Development Act 2002 addresses the need to support community/grassroots media. Parliament has also held hearings on the advertising and marketing industry, looking at the need to reform the media economy and its dependency on advertising, since even the public broadcaster is 80 per cent funded by advertising. The Study Group was told that the country's advertising industry recognizes the need for a change and a new attitude toward supporting media diversity.

The process of concentration of ownership feeds directly into the related issue of preserving media diversity. Many countries worry that relaxing cross-media ownership rules would only strengthen the trend toward editorial uniformity between different media sources belonging to the same owners.

In developed and developing countries alike, there is a pressing debate on the benefits and risks involved in foreign ownership of media outlets, raising issues of editorial independence and national interest. On the other hand, some argue that, in certain jurisdictions, allowing foreign ownership would help break domestic monopolies or near-monopolies in the media or may be the only viable financial option.

Despite the sensitive nature of the debate on foreign ownership of the media, a trend toward liberalization has been seen in recent years. The U.K. Communications Act removed the ban on non-European ownership of British broadcasters, while introducing a “plurality test” to ensure any acquisition or merger is not against public interest. In Australia, an attempt by the government to ease limits on foreign ownership in 2003 was met with much political opposition. In New Zealand, on the other hand, the authorities liberalized the electronic media sector in the late 1980s and all special restrictions on overseas ownership of broadcasters were removed in 1991. In recent months, the Indian government has allowed foreign direct investment up to 26 per cent ownership in the print media in 2002 and in the electronic news media in 2003.<sup>3</sup>

Another area seen as potentially dangerous is the trend in some countries toward ownership of media companies, especially newspapers, by politicians and political parties. For example, in Bangladesh several media owners are directly involved in active politics, while in Malaysia some political parties in the ruling National Front coalition have bought controlling interests in media companies.

Observers express similar concerns with regard to state-owned broadcasters and publications, and the possible detrimental impact this may have for freedom of expression and freedom of information in some countries. The role of the state (or the government) as media proprietor is often debated with regard to the issue of editorial independence for journalists working for state-owned broadcasters or publications. Where there is government ownership, there should always be strong guarantees of editorial independence. This issue is particularly sensitive in smaller or less economically developed jurisdictions where the state has often traditionally been seen as the main or only actor capable of meeting the financial costs of running a national media organization.<sup>4</sup>

A study published by the World Bank<sup>5</sup> found that state ownership of newspapers and television stations was particularly high in African countries, with two-thirds of them having a state television

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<sup>3</sup> Foreign investment up to 49 per cent is permitted in cable TV while for FM radio the limit is 20 per cent. Meanwhile South Africa’s Independent Communications Authority has been considering issues of cross-media and foreign ownership, and changes in regulations and possibly also in law are being envisaged.

<sup>4</sup> In Bangladesh all terrestrial television stations are now state-owned as the first licence for a private terrestrial network was withdrawn in 2002, after less than two years of it having been granted under a previous government. In Trinidad and Tobago the state owns two television stations and four radio stations, despite proliferation of other outlets.

<sup>5</sup> For the full study, see *The Right to Tell: The Role of Mass Media in Economic Development*. World Bank Institute Development Studies. Washington, 2002. Chapter 8, *Media Ownership and Prosperity*, by Simeon Djankov, Caralee McLiesh, Tatiana Nenova and Andrei Shleifer. On average, African governments control 61 per cent of the top five daily newspapers and reach 85 per cent of the audience for the top five television stations. Two-thirds of African countries have state monopolies in television broadcasting.

broadcasting monopoly. The researchers further argue that greater state ownership of the media is linked to greater poverty and hampers social, economic and political development, whereas governments tend to justify state ownership with the argument that it serves to protect the more disadvantaged sections of society.

In this context, it must be recognized, however, that in many countries constraints posed by geography, ethnicity and language or economics affect the nature of the media sector and therefore hinder the prospects of private media organizations that do not have the material and financial resources of the state, e.g. in the case of the spread of the Fiji islands or of the challenge of reaching the more remote rural areas in countries such as Cameroon or Bangladesh. However, the state having a role at all in media ownership is not really questioned since it has a duty in ensuring that national linguistic, ethnic or religious diversity is not neglected.

Another worrying trend is the disconnection or disaffection between the general public and the national media. For example, it has been pointed out that in the U.K. people tend to trust local media more. The local press, however, does not cover national politics much or at all and if local voters do not get national news, they might not find out therefore what their MP has said or done.

A similar potential problem lies in the fact that in many jurisdictions an increasing majority of people receive all or most of their news through the television (or the radio in less developed countries), while it is generally felt that television and radio stations devote less and less time to coverage of politics and Parliaments, or that what coverage they provide is superficial. In many countries the number of people buying newspapers is falling, while newspapers have tried to remain attractive to the public in the face of competition from other media by cutting down on “serious” political and parliamentary reporting.

There is a real danger that such trends will only aggravate the often conflictual relationship between Parliamentarians and journalists. Many Parliamentarians and members of the public fear that the media are sometimes guilty of abusing their freedom to report. Governments and MPs have therefore often felt the need to call for more responsible behaviour from the media.

This is reinforced by the assigning of inadequately trained journalists and commentators (a complaint frequently made by MPs), especially when they are not familiar with parliamentary procedures, by media outlets that have downgraded parliamentary reporting. The media, including the Parliamentary Press Gallery, have the ability to promote or destroy the careers of politicians, a power that in some countries is reinforced either by media convergence or arrangements for pooling reporters, which means the opinions – or prejudices – of a few journalists can form public opinion when spread through a large number of outlets. This only adds to the natural tension in the relationship between MPs and journalists.

Another problem is that in many countries governments and political parties have developed highly successful strategies for managing news, which can lead to restriction of access and to pressure on the media to bow to government demands in returns for access to stories. This in return can lead to a backlash from the media and a deepening of mistrust and cynicism between the two sides. Ultimately, a taut relationship of mutual mistrust between politicians and the media can sometimes

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prove counter-productive by making it harder to agree on reforms even though both sides think it is necessary.<sup>6</sup>

In general, separate but related developments in recent years, such as globalization, technological innovation or the end of dictatorships, have led most countries to re-evaluate the legal environment in which the media operate. Confronted with a number of new trends, some of which have been outlined above, they have responded by considering an overhaul of the statutory and regulatory environment. In jurisdictions that until recently had a very small or monopolistic media sector, this has been driven by the need to adapt the environment to the demand for a greater diversity of media outlets, especially privately owned. In more developed countries with a long established diversity of media organizations, this has taken the form of adapting existing laws and regulations to an ever more complex environment.

Economic pressures, social change and technological innovation constantly challenge the legal environment in which the media operate, forcing legislators to address whether laws must be updated or replaced wholesale. Outdated and archaic laws that are sometimes used to oppress the media are being challenged. The spread of the Internet has increased the democratization of information but also thrown up complex issues in areas such as libel. In general there is a growing call to look anew at laws concerning such offences as sedition and defamation in the context of new standards of freedom of expression.

The trend in recent years has also been toward discussion of self-regulation of the media and a number of Media Councils (or similar institutions) have been created or discussed, with varying degrees of success. Typically, these institutions are intended to bring together representatives of media organizations as well as to a lesser extent members of the journalistic profession or the general public.

There is a growing feeling that self-confident governments and societies that believe in the strength of their institutions and constitutional arrangements do not need an environment in which the media are unduly restrained and controlled. Ruling politicians must not confuse people being offensive to the government or to office-holders with being offensive to institutions or undermining them. While it may be understandably harder to recognize in societies that have recently undergone a transition to democracy or where there has been a change of government after a long period, tolerance of a healthy measure of disrespect towards those in power is a sign of the strength of a democracy and complaining about criticism from the media is not a sign of a strong government.

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## **PUBLIC INTEREST AND THE RIGHT TO KNOW**

The concept of public interest lies at the heart of the debate surrounding the relationship between Parliament and the media, be it over legislating for the media sector or over the sometimes conflictual relationship between the two institutions or those individuals belonging to them.

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<sup>6</sup> In Trinidad and Tobago, a confrontation between the government and the *Guardian* newspaper a few years ago led to the resignation of its Editor and 16 journalists, following what was perceived as the newspaper Board of Director yielding to government pressure. This incident led to an attempt by the government at reforming media legislation. The controversy between the two sides had reached such a level of intensity in the contemporary political context that this was seen by the media and part of the public as an attempt to restrain the media and the tentative reform was ultimately abandoned. There still seems to be, however, a consensus that the country's media laws need to be updated.



Public interest, though a much used concept, is not always easily defined. Often, as a result, there is a crucial tension between a loosely defined public interest and an equally ill-defined concept of privacy. The ways in which public interest and privacy are understood and defined are usually driven by the circumstances of any society at any given time, further muddying the waters between Parliament and the media. It is argued that people will disagree on what constitutes the public interest because it is in the eye of the beholder, making it often unclear how this can be judicable. The challenge in defining terms like public interest and privacy (and also national interest) lies in doing so in a way that they become universally accepted.

A democratic society should be one in which citizens are exposed to all shades of opinion, regardless of whether this offends the sensibilities of some. In this argument, the public interest is served by a citizenry that is consequently able to make informed choices and it is therefore crucial that conflicting or minority opinions are heard and protected.<sup>7</sup>

### **Public v/s National Interest**

Governments regularly use the public interest or the national interest as justification for imposing statutory constraints on the media – or in more extreme cases censorship and repression. Blurring the distinction between public and national interest can be dangerously conducive to abuses of power by governments in their relationship with the media. While it is generally agreed that sometimes the freedoms and rights of the media must give way to the national interest (e.g. in matters of protecting national security or public order and preventing racial and religious hatred), this should only be in genuine cases and crisis situations on a clearly defined legal and constitutional basis. Above all, governments should not regularly attempt to dictate to the media under the guise of national interest.

There is also a debate in some jurisdictions over the extent to which the national interest should reflect the majority interest in a democracy and how to strike a balance with minority interests without compromising the wishes of the majority.

More crucially, the question is: who decides not only what the public interest is in any given instance, but also when does that public interest take precedence over what the government claims to be the national interest? The best answer to this is that the public and national interests should be defined by the constitution and decided by the courts rather than governments.<sup>8</sup> For instance, there is no privacy law in India but its Supreme Court has deduced such a right from its interpretation of other constitutional rights. The Study Group heard that the Indian judiciary has generally sought to protect the rights of the media and that the Supreme Court has been very generous to the media when they have challenged government measures they perceived to be threats to the media and the rights to expression and information.

In the U.K. there is controversy over the use of Public Interest Immunity Certificates, based in common law, to keep confidential any information deemed to be damaging to the public interest.

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<sup>7</sup> The Study Group also heard arguments to the effect that, when defining public interest, special consideration may also be given to the interests of the poorest and most deprived in society, particularly in many developing countries, since they have even less of a voice in promoting their interests in society at large.

<sup>8</sup> In a presentation to the Study Group, Mr Edward Garnier, MP, argued that in the U.K. it seemed that national interest is something through which government through the Attorney-General and litigation tries to stop publication of news whereas the public interest is something to which the media appeal to defend publication.

This conditional exception from the presumption of disclosure, e.g. of government documents, in the principle of freedom of information must be decided by the courts.

Courts and judges, however, can also be influenced by topical or emotional factors in ruling on what constitutes the public interest, which can lead to subjective interpretations of the law or constitution.

It must be the role of Parliament, especially in its legislative capacity, to guard against governments that claim to act in the public or national interest in their dealings with the media when what they are actually doing is protecting their own partisan interests. This is particularly important in situations where the state has a constitutional or statutory role as a media owner and where therefore the executive has direct powers over the operations of a section of the media. For example, South Africa's Broadcasting Bill 2002 received a lot of media attention and was the cause of much debate in that country because of its clause on the relationship between the executive and the public broadcaster and whether it should be required to advance national or public interest. Eventually, after referring to practice in other Commonwealth jurisdictions, it was decided that this should not be the case.

### **Appropriate Levels of Privacy**

Possibly one of the greatest areas of disagreement between Parliamentarians and the media is the privacy of MPs and their families. While MPs acknowledge that the media have the freedom to publish a great deal of information about them based on the public's right to know, the problem is over where to draw the line between what is "fair game" for journalists and what is not, or to put it differently where public interest is different from what interests the public.

Balancing individual rights and public interest is a difficult exercise. Journalists agree that public figures such as Parliamentarians, government Ministers and public officials have a right to privacy; however, the level of privacy may not be the same as that for members of the general public. Ultimately, arguments over the privacy of Parliamentarians do not come down to truth and falsehood but to whether the public needs to know receive certain information.

Accountability is of the foremost importance in democratic government and part of that accountability for politicians is achieved through the media's reporting. But the media and journalists must ultimately be accountable to the public too and they, like politicians, must live up to standards that ensure that they are so. For example, journalists should be required to disclose any interests that might influence their reports, just as Parliamentarians are required to disclose any interests.

### **The Relationship between MPs and Journalists**

On a personal level, striking the right balance in the relationship between Members of Parliament and journalists often proves a difficult act. Though some argue in favour of a total separation between the two, or for the relationship to be limited to MPs and journalists accredited to the Press Gallery, most would agree that a good working relationship between them is essential if they are to be able to fulfil their duties to their respective constituencies. Nothing is gained by a systematic adversarial relationship between them, just as the interest of the public is not served when the two sides become too close or friendly. In many instances in different countries, an overly close relationship between some members of the media and politicians has led to feelings of the relationship being used for political gain and consequently to a swing toward mutual hostility.

If the problem of disaffection between the public and the political world is to be addressed, then a crucial step is to reduce the mistrust between politicians and those who convey their actions to the public. Both sides have a responsibility in this. Journalists must be aware that trying to dupe and trick politicians in order to get news stories creates mistrust, and MPs must accept that criticism and a degree of cynicism are part of the media's duty to the public.

Ultimately the relationship between MPs and journalists cannot be legislated. Instead a good co-operative relationship can only come from responsible and fair behaviour in their dealings with each other. The challenge for MPs is how best to react to errors of reporting or to what they see as excessive criticism, as opposed to trying to prevent them from occurring at all. In many countries where there is a competitive media sector, Parliamentarians must also be aware of the commercial imperatives faced by the media and recognize that loss of credibility and sales is also a serious penalty for false or biased reporting. Politicians must understand that there are different categories of newspapers and that the public probably knows the difference between reputable and disreputable ones.

One aspect of media activity that concerns Parliamentarians is the mixing by journalists of factual reporting and comment or opinion with no clear demarcation between the two, which leaves the public in the dark as to where one stops and the other begins. The other side of this argument is that restrictions on freedom of information leave the media with little else to communicate but opinions since their access to factual material is limited.

Parliamentarians also worry that what the media reports is necessarily biased in favour of the interests of their owners, whether individuals or large corporations. However, journalists themselves say that fear of editorial interference by proprietors can be exaggerated. Often, journalists work for proprietors whose views reflect their own. The possibility, therefore, of being pressured to share the proprietors' outlook does not arise.

What constitutes fair reporting is to a great extent a matter of opinion and people need to be fair-minded in this. Both parties must be willing to accept that usually the other side is trying to do an honest job. Parliamentarians complain, however, of selective reporting and instances in which journalists only seek out opinions and quotes that would fit their preconceived ideas of what a news story is about. Although instances of selective reporting would not meet the fairness criterion that provides privilege to parliamentary reporting, television can be particularly guilty of this because channels allocate less time to reporting individual news items.

The newsworthiness of any piece of information can often be debatable. Ultimately, media organizations have always determined what is newsworthy and should always retain the right to decide what they report. This is the definition of a free media and Parliaments must not only accept this right, but they must also act to protect it and support it by providing the media with as much accurate and timely parliamentary information as possible.

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## **STATUTORY CONSTRAINTS AND FREEDOM OF EXPRESSION**

In recent years, statutory constraints on the media have evolved to reflect the belief that existing legislative frameworks were failing to cope with a rapidly changing media environment or with wider political and constitutional developments. In some Commonwealth countries this has meant that statutory constraints have increasingly superceded the – mainly British – common law legacy. This can have positive effects for freedom of expression by bringing to bear on legislation the

growing acceptance of human rights legal thinking that restrictions on this right, like any other, must be construed as narrowly as possible.

This is happening in the U.K. itself following the incorporation of the European Convention on Human Rights into law through the Human Rights Act 1998. The Convention, along with the United Nations Human Rights Committee, sets a three-pronged test to be met by any statutory restriction on freedom of expression: (1) The restriction must be prescribed by law. (2) It must pursue a legitimate public interest aim. (3) The restriction must be necessary to achieve that aim in a democratic society. Furthermore, there is a growing international body of legal opinion to support the importance of the third test in arguing that a restriction in law on freedom of expression must not only pursue a valid public need, but also be necessary to achieve it and be proportionate to it.

In many more jurisdictions, such international standards have been adopted in constitutions and law. After the collapse of the apartheid regime in South Africa, the country embarked on a complete constitutional overhaul in which freedom of expression and some rights of the media were enshrined in the new constitution of 1997. Article 16 of the constitution guarantees freedom of expression, including for the press and other media, with restrictions clearly set out concerning propaganda for war, incitement of imminent violence and “hate” speech that constitutes incitement to cause harm. Article 59 guarantees access to Parliament and its committees for the public and the media, while article 192 calls for the creation of a broadcasting authority to ensure the public interest and fairness and diversity.

Archaic laws that remain on the statute books can be and have been used to stifle the media. They can be abused by the authorities in cases that reach further than the original intention behind the legislation or where the circumstances in which the law was drafted no longer apply. Many of these laws were hastily passed to deal with transitory crises and, as a consequence, are poorly drafted and overly broad. Most Commonwealth countries inherited colonial laws (including draconian public order or national security provisions) that have often been used against the media long after independence. Even where such laws are hardly ever invoked, there is always a danger that governments might resurrect them for political ends. Such laws should be expurgated so that they no longer provide a cover for governments who would wish to impinge upon freedom of expression or the rights of the media.<sup>9</sup>

It is often suggested that political debate should be granted special legal protection beyond any existing general provisions covering freedom of expression. This is a controversial area, however, even if some Commonwealth jurisdictions (e.g. Australia, India, New Zealand, South Africa and the U.K.) seem to be moving in that direction in varying ways and to varying degrees.

### **Decriminalizing Libel**

The most stringent constraints on the media often stem from the broadest interpretation of laws in respect of defaming or insulting individuals. Where criminal defamation laws apply, this sometimes has been used to punish by imprisonment those journalists convicted of slander and libel. Such a threat, or even that of punitive financial damages, can act as a serious deterrent to the media’s enjoyment of their right to report and express opinions, even if only through self-censorship. It is therefore imperative that democratic societies recognize that they must not tilt the judicial balance too far in favour of the rights of individuals to protect their reputation when this is

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<sup>9</sup> Two examples of such laws from the U.K. are the Treason Felony Act 1848 and the Incitement to Disaffection Act 1934.

to the detriment of the media's legitimate right to report freely on individuals' public actions or to criticize those actions.

The original intent of defamation laws was to protect individuals from having their reputation impugned by falsehoods spoken or written about them. Over time, however, it has been found that poorly drafted laws and vague definitions of what constitutes a defamatory statement have extended this protection to attempts to shield individuals (especially politicians or public officials) from criticism of their public activities. In practice criminal defamation laws tend to be so broadly worded that it is very easy to prosecute people for insults or causing offence as opposed to real defamation. It is also difficult to apply principles in these matters across jurisdictions because they rely greatly on local values and norms.

In the common law tradition covering criminal libel, the truth of what has been asserted cannot be a defence unless the defendant can prove a public interest. The balance is heavily tipped in favour of plaintiffs since they do not need to prove malice or negligence and benefit from a presumption of damage to their reputation, whereas defendants must prove the truth of their statements and falsity is presumed.

Since it is regularly argued that the burden of proof in criminal libel on media defendants has too chilling an effect on their right to free expression, some jurisdictions are moving toward a standard where libel plaintiffs should have to prove malice on the part of the media, i.e. if the media had knowingly published a falsehood or had acted recklessly. In this way the burden of proof should be more evenly shared between plaintiffs and defendants in order to restrain the chilling effect of libel laws on free speech.

In some jurisdictions the constitutional defence on free speech grounds against libel actions could eventually be supplemented by courts applying principles of qualified privilege. This could be extended by courts to cover all political speech, whereas this is traditionally reserved for highly restricted communications between individuals who have an interest in the information circulated, and therefore thought difficult to apply to the media because of the difficulty of proving that all the recipients of information would have an interest in it. This would also move the burden of proof more toward plaintiffs.<sup>10</sup>

Where criminal libel laws require the defendant to prove a truth rather than the claimant proving a falsehood, they can be used repressively. They can also be used to bring criminal charges against those who have expressed opinions that cause offence and who have little ground for a truth defence since by definition opinions and value judgements cannot be proven true.

In many jurisdictions, libel laws – which cover defamatory libel, seditious libel, blasphemous libel and obscene libel – are so favourable to claimants that they can easily be used to stifle expressions of dissent or criticism of public figures.<sup>11</sup> The decriminalization of libel should therefore be central to efforts to foster a freer environment for the media. Because criminal libel laws have a

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<sup>10</sup> For a fuller discussion of this argument, see *Free Speech, Public Interest and Defamation: Recent International Trends*, by Ross Duncan, in *Australian Rationalist*, Number 57, Autumn 2001. The author notes that the New Zealand Court of Appeal held in a 1998 ruling that the qualified privilege defence can be only defeated by proving malice, not carelessness.

<sup>11</sup> In Cameroon, for example, journalists and media organizations have a mandatory five-day period to put together any defence against a claim of libel or defamation, which means in effect that libel suits are thought to have a 95 per cent chance of success and the accused face a presumption of guilt.

disproportionate or inappropriate effect, they should be revoked wherever they still exist and replaced by civil libel laws.

Libel is one area in which it has been pointed out that keeping the legacy of a former colonial power is not advisable since the U.K. libel laws are very claimant friendly, too much so according to critics who argue that Parliament should reconsider whether retaining criminal libel is in the public interest.<sup>12</sup> Where such laws remain on the statute books of older and more established democracies, they are especially pernicious for their capacity to inspire emulation in less entrenched democracies where there are fewer counterweights to their abuse by those in power.

In jurisdictions where truth can be used as a defence in libel cases, libel laws tend to be more akin to insult laws, which are different from defamation laws because they aim to protect honour and dignity rather than reputation. Claimants can therefore use them in the face of true statements or even of opinions or derision. The great potential for vagueness and subjectivity in what constitutes an insult, even when defined in legislation, means that such laws can easily be abused.

The protection provided by insult laws has been also dangerously extended from private individuals to individuals in their capacity as public figures who use it to protect themselves from criticism of their public actions. Public officials should not have greater rights to such protection – in fact their public capacity should imply that they be more open to scrutiny and that standards of acceptable criticism should be wider for them.

Similarly, governments and institutions should not be able to sue for defamation. Furthermore, it would be even more unacceptable in a democracy that politicians and civil servants should be able to appropriate this particular legal weapon (especially if it is based in criminal law) to suppress criticism of them.<sup>13</sup>

### **Sedition, Incitement, and Hate Speech**

Some restrictions on free expression are justifiable where they seek to prevent genuine instances of incitement to violence, or to inflame racial or religious feelings, and there is a legitimate cause for concern when it is advocated that these restrictions be eased or repealed in societies which may be particularly vulnerable to such incitements.

Where such offences are criminalized, however, it is vital that this is along very strict guidelines with no scope for abuse, e.g. where highly virulent criticism is repressed even if it does not incite violence or violent disruptions to the public order.

The offence of seditious libel is aimed at preventing forms of expression that seek to undermine the government or the state. The crime of treason through sedition has been part of the British common law as a type of libel since the 17<sup>th</sup> century. Historically, it has meant essentially any criticism of the government or the state that inspires disaffection against them. Seditious libel remains on the

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<sup>12</sup> In 1982, a U.K. Law Commission Working Paper suggested replacing criminal libel with a new statutory offence of criminal defamation that would penalize those who publish a statement about another, which they know to be untrue and intend to defame. In its 1991 Report, the U.K. Working Group of the Supreme Court Procedure Committee also suggested that any prosecution should only be brought via the intervention of the Attorney General.

<sup>13</sup> In 1990 the U.K. House of Lords ruled that a public body could not sue for libel because the threat of action would be detrimental to the democratic need for governments to be open to criticism.

statute books of the oldest and largest democracies of the Commonwealth, such as Australia, Canada, India, South Africa and the U.K. In New Zealand, on the other hand, it was removed with the adoption of the Crimes Act 1989.

Although charges of sedition or seditious libel have fallen into disuse or been expurgated in many democracies, the presence of the offence on the statute books still gives governments the opportunity to use it against their critics and opponents in several countries. In practice, it can be – and has been – used to prevent many forms of criticism of governments, state institutions and public officials, and to block media inquiries into their actions. As such criminal seditious libel laws cannot be said to be compatible with freedom of expression and free media.

Such criminal offences should not be kept except perhaps for the most grievous cases. Various legal rulings in the Commonwealth have effectively narrowed the definition of seditious libel to statements explicitly intending to incite to violence or public disorder with the aim to overthrow or interfere with democratic government and the democratic process. For example, as far back as 1951, the Supreme Court of Canada ruled that: “An intention to bring the administration of justice into hatred and contempt or exert disaffection against it is not sedition unless there is also the intention to incite people to violence against it.” In the post-apartheid constitution of South Africa, one of the few grounds for restricting freedom of expression is “the incitement of imminent violence”, suggesting an even stricter test since the potential incitement would also have to be judged to have a great degree of urgency.<sup>14</sup>

Hate speech inciting violence against individuals on the basis of their race, religion or gender should be prosecuted but this is preferable under their own legislation rather than under broad insult laws.

### **National Security**

Restrictions on the media on the grounds of national security are also justifiable but not when they are so broadly defined – in Official Secrets Acts and similar pieces of legislation – as to stifle reporting of matters that are in the public interest.

In 1995, experts in international law, national security and human rights met in Johannesburg and adopted a set of principles on national security, freedom of expression and access to information. Principle 2 states: “A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government. In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the

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<sup>14</sup> For a full discussion and more examples of these points, see Article 19, the Global Campaign for Free Expression, *Memorandum on the Malaysian Sedition Act 1948*. In this paper, it is argued that “the crime of sedition has its roots in an era when statesmen and political leaders were considered to be largely above reproach by the common man, and when the institutions of government were far more parlous than at present. Coups and revolutions were a constant threat, and the resort to political violence a common phenomenon. Sedition as a concept is largely antithetical to the underlying premises of modern democracy.”

functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.”<sup>15</sup>

If necessary, jurisdictions should develop systems to help the authorities and the media co-operate in dealing with issues of reporting national security matters in a responsible way. In the U.K., the Defence Press and Broadcasting Advisory Committee, a body that consists of representatives of the armed forces, senior civil servants and the media, is responsible for issuing Defence Advisory Notices. These have no legal force and compliance by the media is entirely voluntary.

In some instances, Parliamentarians have also asked whether they should criminalize offences that can be described as “injuring the economic interests of the state”, especially where impact of such injuries as a result of media reports is greater in smaller, more vulnerable economies. However several factors militate against using laws to punish the media for reports or comments that might be said to have a negative effect on the national economy. Such laws can easily be used to repress the expression of criticism of a government’s policies and of the activities of public bodies or individual companies. On balance, such legislation where it exists should be expurgated from the statute books and genuine instances of malicious or false reporting on matters concerning the national economy, should be dealt with under general legal provisions for such offences.

### **Contempt**

The offence of contempt is another archaic legal inheritance that needs to be addressed. The law of contempt evolved in order for the courts to protect the operations of the justice system from obstructions. With particular reference to the activities of the media, this means imposing limits on what – and when – they can report about criminal investigations and judicial proceedings so as not to deny individuals of a fair trial. The penalty for contempt of court can be harsh. For example, in the U.K. contempt of court is punishable by up to two years imprisonment and is not tried by jury.

Similarly, Parliaments have resorted to the offence of contempt to prevent individuals – including Members – from disrupting or interfering with the activities of the House and Parliamentarians in the pursuit of their duties.

This puts both institutions, and those individuals belonging to them, in a position of great power over members of the public, not least because they effectively act as party, judge and jury in contempt cases. Even if in many jurisdictions the abuse of prosecutions for the offence of contempt is not likely by those in power, the fact that it remains on the statute books – especially where over broadly defined – or in the standing orders raises the possibility of future abuse. Though doing so may change little in practice because they have mostly fallen into disuse, in expurgating such archaic laws or standing orders, Parliaments would send a strong message to the public about their commitment to furthering freedom of expression, accountability and transparency.

Criticism, however robust, should not be treated as contempt as long as it is not malicious. Since the main problem with the law of contempt is that one cannot plead truth as a defence in a contempt case, a commission in India recommended a constitutional amendment to replace contempt with a *bona fide* “truth” article.

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<sup>15</sup> Quoted in *The Right to Tell: The Role of Mass Media in Economic Development*. World Bank Institute Development Studies. Washington, 2002. Chapter 10, *The Legal Environment for News Media*, by Peter Krug and Monroe E. Price, p.197



Similarly, an offence such as scandalizing the court should not be a crime. Judges can use their right as citizens to sue; but they should not use their judicial powers to arbitrarily call people before the court to sanction them.

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## **MEDIA REGULATION AND FREEDOM OF EXPRESSION**

The independence of the media from state control or government interference is intrinsic in a democratic society that values freedom of expression and freedom of information. This is not to say that the media should not be regulated. As well as for the protection of the rights of individuals, a regulatory framework is needed to ensure that the rights of the media are also shielded. In particular, a clear violation of democratic principles would occur wherever a government uses the resources of the state to control or interfere with the state-owned media in an attempt to promote its own partisan interests. This makes even more necessary a strong regulatory regime that protects the independence of the private and state-owned media.

It follows that regulatory authorities for the media should be protected by strong guarantees of independence. These guarantees must be evident both in statute and in practice since in some jurisdictions the independence of regulatory authorities has been legislated yet the political culture means that the law is not obeyed and political influence is the real determinant of how the media is regulated.

In 2001, the Council of Europe adopted a recommendation on the independence and functions of broadcasting regulatory authorities, aimed at protecting them against interference by political forces or economic interests. Member states' governments are thus asked to set up independent broadcasting regulatory authorities if they have not done so and to include provisions in their legislation and measures in their policies empowering them to carry out their duties in an effective, independent and transparent manner. Particular emphasis is laid on transparent procedures for appointing members of these bodies, on precise rules to prevent them from holding interests in businesses or other media organizations, and on protecting the members from dismissal through political pressure.

### **Independent Regulatory Authorities: State Regulation or Self-Regulation?**

Given that the need for regulation of the media sector is widely accepted, the debate must be how to best achieve this, especially with regard to the vital question of independence for the regulatory authorities.

The question of whether having free and independent media means they should regulate their own activities or whether the state should impose regulations through legislation and statutes remains controversial – highly so in many countries. Since the debate over self-regulation is essentially about independence, there is a strong consensus among media practitioners and also many NGOs that it offers the best guarantee of protection from interference.

Self-regulation has worked in some countries, arguably not in others, however. More often than not, it has provided mixed results where adopted, sometimes failing to achieve its aims while at other times doing so.

It is argued that whichever way it is set up, a media regulatory authority should be independent from anything that might interfere with its work, including government nominees. In many of the

Commonwealth jurisdictions where press councils are in operation, for example, their composition is mixed and includes non-media representatives (e.g. in the U.K., Australia, Cyprus, Malta, New Zealand, India, Tanzania and Canada). In one instance, India, the press council also includes Parliamentarians, whereas the press council in Papua New Guinea contains only media representatives.

A constitutional guarantee of independence for the regulatory authority would be a good thing but a fair and transparent appointment process to it is perhaps more important. In South Africa, for instance, the constitutional court has ruled that independence of the media regulatory authority lies in the appointment and dismissal mechanisms, the funding mechanisms and the actual functioning of the body. At the authority's creation, the South African Parliament's Media Committee advertised for members and interviewed the candidates. The recommendations it presented in a report were debated and adopted by the National Assembly, before the Head of State was advised on the appointments. Though the possibility of the Head of State refusing to appoint someone following Parliament's recommendation has not been tested yet, legal opinion indicates that he or she could only then return the choice to the Media Committee.

Funding from government or Parliaments should not undermine the independence of the regulatory authority. Government funding will not threaten it if there are adequate legal provisions to protect this independence and to "ring-fence" the regulatory authority's budget. It should be recognized, however, that media organizations are increasingly in favour of industry financing (or donor financing) as the most desirable solution for avoiding charges of pro-government bias. On the other hand, critics argue that industry financing leads to a situation where private individuals are at a disadvantage when complaining about media abuses.

Whether in jurisdictions where the media are self-regulated or where regulation is statutory, the question remains of how to punish, if at all, violations of the regulations. The process of adjudication of complaints against the media needs to be as transparent and simple as possible so as not to deter those who feel aggrieved or to create a feeling that the process is biased in favour of the media. This is why it is also important to define the appropriateness of penalties. The concept of what is an appropriate statutory penalty when the media are found to have acted illegally or in breach of self-imposed rules is often complex.<sup>16</sup>

As far as the publication or broadcasting by the offending media of the adjudication by the regulatory authority is concerned, there is real concern on the part of individuals that when their complaints have been upheld there is no correction or retraction proportionate to the initial reporting by the media outlet concerned. Just as they must report a reply if they have reported an original allegation made in parliamentary proceedings, the media must publish or broadcast any correction or retraction adjudicated by the regulatory authority in an adequate way.

The regulatory authority must, of course, be accountable. Different countries have adopted different solutions to this, but ultimately accountability must be to the laws (and the constitution in places like South Africa where constitutional provisions require the creation of independent media regulatory authorities). The Council of Europe's broadcasting recommendation argues that regulatory authorities must be accountable to the public and should publish reports about their work. Their decisions and regulations should be in accordance with national law, open to review by

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<sup>16</sup> In the U.K. it is argued by lawyers that it is no longer cheap and quick to get a decision from the Press Complaints Commission and members of the public are discouraged from having recourse to it unless the issue they wish to complain about is very simple.

the competent jurisdictions, and made available to the public. The regulations on responsibility and supervision of the regulatory authorities should be clearly defined in the laws applying to them.

Even where attempts at self-regulation have not been entirely successful, Parliaments should be careful when considering whether to move toward statutory regulation. They could also limit themselves to considering restricted statutory instruments covering specific instances.<sup>17</sup> Much consideration should be given to why self-regulation is not working and countries should seek to emulate jurisdictions where it is seen as effective. Even if dissatisfaction with self-regulation is justified, great care should be taken to establish what all the alternatives to statutory regulation are. A situation where a perceived failure of self-regulation leads to hurried legislation would almost certainly yield an even less desirable situation than that which it sought to remedy.

Research carried out by the World Bank indicates that self-regulation works best where the media themselves take the lead in setting it up, where they feel it is needed and are prepared to work genuinely to improve things, where the ethical guidelines drawn correctly balance media freedom with responsibility and where standards are applied consistently. Above all, what is determinant in the success of self-regulation is the presence of a real consensus among the media about the need for an ethical code of conduct and its contents.

The Commonwealth Press Union argues that ideally self-regulation of the press should: not be controlled by the state or statute, be industry funded, be voluntary with universal commitment from the industry and provide a quick and simple process for complaints. It also argues that the regulatory authority should be independently appointed and should include lay members.

### **Forms of Regulation**

Regardless of the exact nature of the regulatory authority in place in any country, the forms that media regulations take matter greatly for the public's right to know. Where regulation of the media is legislated, the legal environment may differ between jurisdictions with some having overall laws covering the entire scope of the media while others have individual laws that cover the different sectors that form the media. Regulation or laws for the media can be broadly divided into three categories: infrastructure, content and competition.

Governments and Parliaments should place consumer choice rather than regulation at the heart of media law, ensuring the widest possible access to a true diversity of quality services whilst still safeguarding the interests of citizens and customers.

### **Infrastructure Regulation**

Especially in the area of broadcasting, there is an obvious need for the use of limited physical facilities (such as frequencies, transmitters or aerials) to be regulated and controlled. The regulation of physical networks and infrastructure should be done in such a way, however, that decisions over the allocation of these resources are not used to silence voices critical of the government or to put pressure on the media in any way.

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<sup>17</sup> In a submission to the Study Group, India's Attorney-General, Shri Solee Sorabjee, suggested that during election campaigns, an independent statutory body could oversee allocation of time and space in the media, or even advertising spending.

It should be noted also that the pace of technological change in recent years has considerably altered the terms of the debate in the area of infrastructure regulation. Physical restrictions and limitations on capacity in the electronic media especially have greatly diminished and this makes a strong case for even the best existing provisions for infrastructure regulation to be reviewed in the light of recent changes.

### **Content Regulation**

Just as the need to regulate infrastructure should be apparent to all, including the media, regulating the content of what is conveyed by the media is necessary in the public interest. The most widespread forms of content regulation are: registration of media outlets, prepublication review, and postpublication sanctions.

Where the state requires that media outlets should be registered, the best practice would be that this should not involve giving the government powers to deny registration, and therefore the right to operate, on the basis of editorial content, past or anticipated.

In some countries regulating media content also takes the form of pre-publication or pre-broadcast review. This does not match the basic criteria for freedom of expression that defines a democratic society and systems of regulation by content preview or pre-emptive censorship should be abolished.

Even where there are no systems or attempts to control editorial content before publication or broadcast, the state usually regulates media content through a system of subsequent sanctions. Parliamentarians need to address the question of whether a sanctions regime should be based in civil or criminal law. Where media practitioners still face criminal charges for having been found guilty of abusing their freedoms, it is imperative that they should be treated in accordance to international standards in criminal law and procedure, above all with regard to the presumption of innocence.

### **Competition Regulation**

In some countries, general competition laws are effectively used as a form of regulation of the media by controlling their ownership, on the basis that promoting competition between media organizations should ensure choice and diversity for the public. This argument is supported by that which says that technological progress has made it easier and cheaper to offer diversity. There are many examples, however, of countries where it is felt that the public interest is better served through legislation and rules that deal specifically with the media, in order to reflect what some see as the special nature of the media compared to other industries.

In virtually all jurisdictions, foreign ownership of media outlets throws up concerns about the protection of local content and the standardization of content. Foreign investment in media organizations can be beneficial, especially in developing countries, but how to safeguard a plurality of content, especially local content in local languages<sup>18</sup>, should be decided by the local regulatory authority.

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<sup>18</sup> The importance of this point is illustrated by the findings of the Pan-South African Language Board, a constitutional body, which estimates that 75 per cent of the country's population does not understand news broadcast in English.

Cross-media ownership is often an issue of concern in its own right but might become even more urgent where restrictions on foreign ownership are lifted. The issue should be left to the local regulator and be reviewed regularly.

### **Internet Regulation**

The advent of the Internet has thrown up challenging questions about how to best regulate – or even about whether it should be regulated at all. For example, the U.K. authorities have felt so far that regulating the Internet was almost impossible and have only attempted to do so in the most extreme and important areas such as security and the protection of children. The development of the Internet as a conduit for the mass media has been too recent and too unpredictable for governments to be able to do much thus far to regulate it; but Parliamentarians need to at least try to clarify the legislative and regulatory options and issues involved.

### **Licensing of Media Organizations and Journalists**

The question of whether the state should license journalists and media practitioners is far more controversial than the licensing of media companies. Increasingly, legal opinion is upholding the principle that licensing journalists is not compatible with the fundamental right of freedom of expression. Parliaments should recognize this and refrain from attempting to legislate in this area. This would not be tantamount to allowing journalists to act with impunity, but rather would accept that it is not possible for Parliaments to legislate morality or integrity – either personal or professional – or to adjudicate on such matters.<sup>19</sup>

An extension of this principle would be that accepting the right of the media to operate freely means that governments, state institutions or the courts should not attempt to guide the media in how they go about their legitimate activities as far as ethical behaviour is concerned.

In granting operating licences to media companies, government should not seek to impose prohibitive conditionalities in the form of financial guarantees.

### **Setting Professional and Ethical Standards**

Parliaments and governments must accept that an essential role of the media is to criticize them, but criticizing the media is not essential to the role of Parliamentarians or politicians. While Members of Parliament or of government can legitimately complain about any wrongful treatment they receive at the hands of the media, this should not be construed as legitimizing attempts by such state institutions to censure the media to dictate how the media can properly criticize them. A balance between the two rights is best struck through a good judiciary and an independent regulatory authority.

Parliamentarians and journalists have to acknowledge that there will always be examples of wrong behaviour on both sides; but what matters most is reaching a media-driven consensus on the proper role of the media in society, rather than being deflected by narrow issues like individual errors of reporting. The debate should move toward how best to improve the quality of reporting and how to

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<sup>19</sup> The Study Group heard that, in Cameroon, for example, once an operating licence has been granted to a media company, the commission in charge of control of the media is vested with powers to ascertain and approve the qualifications of journalists and auxiliaries employed, evaluate their performance and recommend the granting of professional cards, regulate the use of photographs of individuals and public places, and update the journalistic code of ethics. The commission also reviews complaints from the public and can withdraw licenses as a result of professional misconduct.

create the right environment for media practitioners to achieve high professional and ethical standards.

Just as Parliamentarians benefit from the creation of parliamentary standards bodies, the media needs codes of practice and conduct. It is important, however, that the state should not seek to impose such codes since this would open the door to the possibility of abuse by governments that want to censor the media. Media organizations and international institutions such as the World Bank have also argued strongly that raising professional standards can be done most efficiently through self-regulation.

The Commonwealth Press Union advocates that any code of conduct should originate from within the industry, reflect national culture and protect the individual. It should also uphold freedom of expression, the public's right to know and the press's right to publish without prior restraint.

### **Financial Influences of the Media**

In a good regulatory regime, just as state funding of the media regulatory authority should not in any way be allowed to interfere with its independence, government should not be able use its expenditure in certain areas to influence or intimidate the media. This is sometimes attempted by governments through their decisions to direct state advertising expenditure on the basis of rewarding or punishing media organizations for their coverage of the government. India's Supreme Court has found that government threats to withdraw advertising from newspapers were unconstitutional.

In developing countries especially, the economic weight of the state can be an obstacle to the free operation of the media. In some instances, it is reported, not only government decisions on advertising can be used to influence the media, but also the private sector may be reluctant to invest in the private media and advertise in them for fear of government reprisals.

Legislators should ensure that the broad financial and fiscal powers of the state cannot be abused by governments in their dealings with the media. The legal framework within which a free media can thrive must proscribe explicitly fiscal provisions that can have a punitive effect on the media and must prevent government officials from using whatever powers they have in dealing with companies to influence the media. This can be in a variety of areas such as state subsidies, customs regulations, copyright, newsprint availability, costs of doing business with state entities, general anticompetition laws, public access requirements, and election campaign requirements.

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## **PARLIAMENTS AND THE RIGHT TO KNOW**

Parliaments and Legislatures, as the ultimate democratic institutions, must be in the forefront of efforts to increase the public's right to access to information. They should therefore give as much access as possible to the media who act as a conduit for information about Parliament and the legislative process to the public. So that the media can do their job properly, Parliaments should give them support in terms of space, access to staff and resources in Parliament, and access to places where MPs and journalists can meet.

Freedom of information laws should cover legislative bodies and allow the greatest access to parliamentary documents and activities such as plenary sittings and committee meetings. It is essential that freedom of information legislation should be based on a general presumption of

openness and that exceptions must be clearly and narrowly defined so that there is little or no possibility of abuse by classifying as confidential parliamentary documents that should rightly be made public.

### **Contempt of Parliament**

Parliaments, like courts of justice, have long recognized the need to prevent impediments to their rightful function. Contempt of Parliament is an offence that can be broadly described as any action that obstructs or impedes a House or its Members from performing their duties. It is broader than a more specific breach of privilege and it is so broad that it is not limited by precedent. It is therefore virtually impossible to fully describe, define, list or categorize what constitutes contempt of Parliament, or even how severe a contempt any action might constitute. In some instances, contempt charges can be levelled against those only accused of offending the dignity of Parliament or its Members in words or acts, including through libels.

That such an offence is vaguely and over broadly defined, coupled with the discretionary power of Parliament to punish offenders up to imprisonment, poses a serious challenge to the freedom of expression that the media should enjoy in their reporting on Parliament. In the U.K. and in many other jurisdictions, this is a residual power that is not now used. The last occasion when an editor was brought before the bar of the U.K. House and made to apologize for offending Parliament or a Member was in 1948.

Reporting Parliament has changed considerably in the last century, in which long verbatim reports of proceedings in the press were gradually replaced with shorter pieces and more opinionated articles, which tend to pay more attention to the unusual or sometimes the outrageous. Increasingly, the media seem to have become less inhibited in what some see as their role in deflating politicians' self-importance. As a result Parliamentarians complain that the media do not show sufficient respect for the dignity of Parliament and Members. In many jurisdictions, unfortunately, there remains the possibility that politicians may use the offence of contempt of Parliament as a weapon or threat to discourage criticism from the media.

The offence of contempt of Parliament should only be kept for serious cases, such as where someone seeks to suborn a Member in the conduct of his or her duties. Parliamentarians should refrain from using contempt charges and accept that they cannot and should not try to prevent criticism in that fashion. Members should recognize that Parliament needs to earn public respect and this is best done through their own best practices. Parliament as an institution is only as good as its Members and they should act on the basis that the dignity of the House is not the same thing as the individual dignity of Members. Therefore offending the sensibilities of its Members should not be confused with contempt of the institution.

In many countries where parliamentary democracy has not been entrenched for very long, the problem faced by Parliament is lack of knowledge and information about it and how it works. This is often accompanied by a general public feeling that Parliament is a corrupt institution. This can in some cases lead journalists to behave or report in ways that leave them exposed to a charge of contempt of Parliament through lack of understanding or through a failure to realize that they must be able to substantiate accusations.

In all jurisdictions, the media finds themselves most likely to face a charge of contempt of Parliament when information from parliamentary committees is leaked. This can be highly controversial since many Parliaments do not allow public access to committee proceedings, but to

many the simplest remedy would be to open committees to the media. Furthermore, while Parliament has the power to charge with contempt a Member who leaks information to the media, this power should not extend to the media who are the recipient of leaked information. As an interested party in such instances, Parliaments should let the courts decide whether the media acted reprehensibly in securing or publishing leaked information.

### **Privilege and the Right to Reply**

The legal defence of parliamentary privilege that Members enjoy gives them enormous freedom of expression where it applies and effectively gives them a great advantage of power over the rest of the citizenry. It is therefore very important that Parliamentarians should not abuse this freedom to cause reckless or intentional harm to the reputation of those who are not protected by a similar privilege and in most jurisdictions have little or no right of redress against it. Parliamentarians should always remember that privilege belongs not to them, but to Parliament, which extends it to them as Members of the institution and as trustees of the people.

Parliaments should adopt formal procedures that allow members of the public to seek redress in Parliament if they have a grievance about something that has been said about them under parliamentary privilege. Where this has been introduced, for example, it has usually been through application to the Speaker (in New Zealand) or through the Committee of Privileges (in Australia), which can then decide whether a response should be incorporated in the parliamentary record. In some countries, it has been suggested that the Speaker could simply read out a reply so as to place it on the record.

The first Legislature in the world to introduce a procedure by which a member of the public can seek a right of reply to something said about them under the protection of privilege was the Australian Senate in 1988. The individual concerned may write to the President of the Senate to ask for their response to be incorporated in the parliamentary record. The President can then decide whether to submit the request to the Committee of Privileges, which can choose to consider the matter. If it does consider the request, the Committee of Privileges is not asked to judge the truth of what has been said in the Senate, but only whether to allow a response to be made or not and whether the response submitted by the individual should be amended or edited. Once the Committee of Privileges' report is tabled, the response, if allowed, is incorporated in the *Hansard* and immediately published. Since the introduction of this right of reply procedure, it has been felt that it has not been misused and has generally been quick, simple and effective, and has inspired most Australasian Legislatures to adopt some similar procedure. In fact, the Senate Committee of Privileges has gone as far as suggesting this procedure should be considered wherever defamation laws are being amended.

Whichever procedure is adopted by Commonwealth Parliaments, what matters most is that it should be as speedy as possible so as not to harm an individual's reputation further through delay and it should be available to all by being affordable. Perhaps Parliaments should also consider extending the right of reply to instances when third parties make a defamatory or accusatory statement under temporary privilege, e.g. when giving evidence to committees.

Parliament should clarify for journalists to what and where privilege applies so that the media can be in no doubt when they are reporting on something said under parliamentary privilege and when they are not. For example, when a Member distributes to journalists copies of a planned



parliamentary speech that may not have actually been made in the House, are the contents covered by privilege?<sup>20</sup>

### **Parliamentary Access for Journalists**

In some countries, such as South Africa, there is a constitutional requirement that the public must have reasonable access to Parliament. In others, the public's right to access is implicit in other legal or constitutional rights. It is important to recognize that the right of the public to have access to Parliament is synonymous with that of the media to report from Parliaments since journalists must have access not only as citizens, but also as representatives of the majority of members of the public for whom attendance is not feasible.

There are administrative and practical constraints in the relationship between Parliament and the Press Gallery. The size of the accredited Press Gallery will vary with local logistics and administrative constraints but a selection may have to be made. Therefore a risk exists that logistics could be used as an excuse to restrict access or keep out certain journalists. Parliaments should not use the excuse of limited resources to limit the size of the Press Gallery and they should make an effort to provide the best facilities possible.

The provisions for accrediting journalists should also not be used to restrict access or to punish individuals or organizations. Accreditation systems vary across Commonwealth Parliaments; but the ultimate decision regarding access for journalist will reside with the sovereign Parliaments, which may delegate it to the Speaker, the secretariat, a committee created for that purpose or to an existing committee. Parliaments should delegate decisions on accreditation to a press body such as the Press Gallery or the Media Council while perhaps retaining a consultative role. Whichever system is adopted, the rules and guidelines should reflect the right of the media to have the necessary access to the Legislature and its proceedings, and should not be unduly limiting, even where there are real logistic factors to overcome.<sup>21</sup> A properly functioning functioning Press Gallery should be trusted to take responsible decisions over such matters as seating allocation for reporters where space is limited.

Even though accredited journalists can claim to be present in Parliament by right, they should not forget that it remains a sovereign institution and that their right to attend and report does not justify behaviour that is disruptive or that breaches any parliamentary privileges. Parliaments retain the power to maintain order and can censure journalists in such cases, either through the Speaker or an appropriate committee such as a Committee on Standards and Privileges. In their dealings with MPs within Parliament, journalists should always show self-restraint and be aware that they cannot act in ways that disrupt or stop MPs in the performance of their duties. Such behaviour could lead to accreditation being withdrawn from journalists.

Many Commonwealth Parliaments still retain many ancient residual powers to impose order within their confines. Since these could be used unreasonably to restrict access to journalists and since, here again, removing them would send a positive message to the media and the public, such powers

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<sup>20</sup> In one case in Australia, a Senator had to apologize to the House for making a speech repeating allegations, later found to be unproven, against a named High Court Judge. Furthermore, the Senator had distributed advance copies of his speech in the Press Gallery, meaning that until that until the speech had been delivered his allegations were public but were not covered by privilege.

<sup>21</sup> In the Australian Parlliment, access for individual journalists is decided by the Presiding Officer and the Committee of the Press Gallery if he or she belongs to an organization that is accredited to the Press Gallery. In the Parliament of Trinidad, accreditation is by a press body, with Parliament acting as facilitator.

should be expurgated. For example, any ban on taking notes in the Chamber or in committees should be lifted unless there is a real issue of orderliness.

### **Disclosure**

Access to parliamentary information is particularly important for the media with regard to disclosure of Members' interests. This can be a serious source of controversy between Parliamentarians and the media when they cannot agree on where to draw the line between privacy and public interest.

This becomes even more controversial where there are calls for disclosure of the interests of the families of MPs. Disclosure for spouses and children poses constitutional issues, however. If disclosure is not agreed for them, perhaps there should be a ban on MPs deliberately divesting their assets to their relatives. Maybe families could disclose their interests through a separate channel or register than that used by MPs.

The exact nature of the procedure for disclosure can also be controversial, but where there is a register of interests, it should be made public. Full disclosure should be annual, not just an update, since an updated Members' register of interests would be too complex and confusing, leaving opportunities to obscure or conceal interests. It is more transparent to have a new disclosure each year. Some Parliamentarians, meanwhile, have suggested that disclosure should be when MPs take office and when their mandate expires, and others favour a mixed system where MPs can choose what to disclose on a restricted or confidential basis or on a public basis. Where the registration of Members' interests has a confidential component, there should be a clear and accessible procedure through which complaints and queries can be handled, either through a parliamentary committee, an ombudsman or an independent commissioner.

Some Parliamentarians confronted with demands from the media for greater disclosure have argued that journalists, especially those covering Parliament, should equally have to disclose any interests that might be construed as influencing their work. If parliamentary reporters have to disclose interests, the question has to be on which basis and to whom? The Speaker or the body running the Press Gallery would be the more obvious choices, although this could also conceivably be done through the press or media regulatory authority. (In a similar fashion, for example, the U.K. Press Complaints Commission requires a disclosure of personal and family financial interests by a journalist to their editor in cases of financial reporting.)

### **Opening Committees**

Since parliamentary committees are increasingly where much of parliamentary work is done, the norms of democracy and good governance demand that committee meetings be open to the media. Where the media, as representatives of the public, are not allowed to report on the proceedings of committees, this can leave a doubt in the mind of people that meetings behind closed doors could be censoring information about the government that should be exposed in the public interest. In many Commonwealth jurisdictions, parliamentary committees still hold their sessions *in camera*; some of them have considered changing this state of affairs but ultimately decided that there were overriding reasons for maintaining the status quo.<sup>22</sup>

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<sup>22</sup> The Parliament of Trinidad has recently considered opening committees to the press but decided against it. In the Parliament of Fiji Islands, committee deliberations are held *in camera*, although opinion among Members is reportedly evenly split on whether this should change. The Parliament of Cameroon only has standing committees to examine Bills and they are not open to the public or the media.

One reason given for not opening committees is because civil servants, among other witnesses, may not want to give evidence freely if they are to be exposed to the public gaze. Another reason behind the secrecy in some jurisdiction is that the political situation dictates that some MPs are only outspoken or critical of the government in closed settings. In some countries, Parliamentarians argue that opening committees to the media might adversely affect a healthy working atmosphere and lead to politicization of issues. They argue that not opening committees allows for the consideration of issues in a non-partisan way and that accommodation of different points of view is easier at this level in comparison to the whole House.

In the case of the South African Parliament, committees are open to the public and the media, except in rare cases where evidence has to be taken *in camera*. But this must be only on such grounds as the discussion of highly sensitive information or national security. First the issue is discussed in the open, then a request to close the committee is made to the Speaker, who is at liberty to refuse it.

Where committees are not open to the press and the public, reporting on their activities can prove to be a grey area for journalists. Parliaments must deal with MPs when they breach confidentiality and leak the deliberations of a committee to the media. Journalists publishing information obtained through such leaks face a threat of contempt of Parliament. When journalists have only been the recipients of a leak rather than its instigators, the matter should be the committee's – or the House's – to fix, not the media's. Reports of parliamentary committees can also prove a difficult story for the media to handle because the contents of a report may be leaked to the media before it is tabled in the House. Some MPs feel that unless the report is tabled in Parliament it should not be reported as an official document if leaked.

Sometimes journalists will report stories with the full foreknowledge that they will breach privilege and risk a contempt charge, especially with regard to the *in camera* proceedings of parliamentary committees. In dealing with such instances, Parliaments should only take disciplinary action against journalists if what has been reported is false or incorrect and should not seek to deal with the media in terms of determining whether a report is newsworthy or in the public interest, since these considerations are best left to the media and their self-regulatory bodies.

### **Broadcasting Parliament**

The recording and broadcasting of parliamentary proceedings is an accepted practice in most countries today. A joint survey, carried out in 2003 by the Commonwealth Parliamentary Association and the Commonwealth Broadcasters Association, with support from UNESCO, found that the majority of Commonwealth national Legislatures allow cameras and microphones to record their proceedings. Although allowing live, uninterrupted and unedited broadcasts remains more controversial and requires more extensive broadcasting capacity, Commonwealth countries seem to be moving in that direction, with authorities in Kenya and Uganda, for example, recently announcing their intent to move to live radio and television broadcasts from Parliament.

In some countries, like Australia, New Zealand and the U.K., the state broadcaster has a statutory or constitutional duty to broadcast parliamentary proceedings. Elsewhere, the media regulatory authority grants an exclusive licence to do so to the state broadcaster (Canada, initially), to a company (India) or to a consortium of media companies.

Where recording and broadcasting is allowed, Parliaments have retained the powers to regulate how this is done so as to protect the institution from potential disruptions and interferences. Though the rules set for the conduct of broadcasting parliamentary proceedings tend to be quite strict in what they proscribe, there is some variation between Parliaments. This depends, at least in part, on the general media and economic context and whether there is a capacity for broadcasting proceedings at length, as opposed to edited packages of varying lengths in dedicated programmes or in news broadcasts.

Broadcasting live and uninterrupted proceedings pose an even greater challenge in terms of capacity. Where live broadcasts are not allowed or not in use, the majority of countries will still have them for major events (presidential, Throne or budget speeches, Prime Minister's question time etc.) or on *ad hoc* basis depending on the topical importance of what is being debated in the Chamber.

In the past, MPs have been wary of allowing television cameras in Chambers, fearing they would disrupt the conduct of business and prove a negative influence in general. Hence, when they were introduced, many criteria were set for how to film. Rules for broadcasting and recording in Parliament tend to concentrate on ensuring that disorder and disturbances are not shown (and thus presumably not encouraged by not giving publicity to potential protesters or Members "playing to the gallery"), on what footage is permissible (usually fixed shots of the Speaker or the MP called to speak, who can only be filmed in a strictly limited way) and on what use will be made of the footage (with special emphasis on preventing it from being used to make Parliaments and MPs objects of ridicule or for commercial or political advertising). In many Parliaments, the rules extend also to not filming what are deemed "unbecoming" activities of Members, such as reading newspapers, fighting or sleeping in the Chamber.

Despite the initial reservations MPs might have had, they have proved adept at arranging the conduct of business so that it matches the requirements of broadcasters, which indicates that both sides can collaborate fruitfully. This should allow for further developments that would bring Parliament closer to the public at large. In many places, sitting times have been altered to fit in with the schedules of broadcast news, while Members have learned to adapt their behaviour so that their performance comes across best, particularly on television, with shorter speeches being the most obvious example of this.

The experience of broadcasting Parliament, where it has been tried to varying degrees, indicates that restrictions on how much is broadcast, what is shown and how it is shown should be eased. While Parliaments should retain the ultimate authority in these matters, as befits their sovereign status, Members should recognize that technology has advanced to the point where broadcasting live and uninterrupted is unlikely to be obtrusive. Technological advances also mean that even in developing countries, the barriers to having a dedicated television or radio channel for broadcasting parliamentary proceedings have been significantly lowered. This should therefore be a priority for Parliaments.

Where live and uninterrupted broadcasts are still not possible except for special occasions, Parliaments must ensure that there are clear and fair guidelines for decisions as to which events are broadcast live and unedited. Broadcast rules should contain guarantees for balanced coverage of the spectrum of political opinion represented in Parliament. They must ensure that the system does not favour the government party and that opposition voices in Parliament get a fair chance to be heard, e.g. in replies to budget speeches. In the Australian Parliament, for example, radio

broadcasting is regulated by the Joint Committee on the Broadcasting of Parliamentary Proceedings, established under the Parliamentary Proceedings Broadcasting Act 1946 and consisting of nine Members, including the Speaker of the House of Representatives and the President of the Senate; while guidance on the televising of parliamentary proceedings is provided separately by the House of Representatives and the Senate.

There is a strong case to be made for more flexible rules for filming in Parliament, especially where strict rules have been in place for some time. Commonwealth experience indicates that there is little likelihood of media abuses or of a deterioration of Members' conduct as a result of a relaxation of rules. Some Members now even call for this so that broadcasters can convey more fully the substance and flavour of parliamentary proceedings (in the same way that *Hansard* does, since the Speaker or House usually reserves far greater control over the editorial process for broadcasting, compared to the relatively free hand enjoyed by *Hansard* editors). In South Africa, for example, the rules state that cameras can film more widely to capture the mood in the House, including in the public gallery. House and committee proceedings are broadcast live, with the possibility of increasing the number of cameras if needed. There are also monitoring cameras, even in the absence of journalists, to provide a constant feed.

Relaxing rules for broadcasting does not mean that Parliaments should give up their power to regulate and supervise the process, nor that there should be no arrangements for controlling and editing any output and deciding what usage can be made of filmed or recorded material.

There should also be a code of conduct for the media and journalists with regard to broadcast operations. Guidelines should aim to ensure editorial objectivity and balance and fair representation of the spectrum of opinion in broadcasting.

### **Facilitating the Flow of Information**

In view of the feared disconnection between the public and the democratic process in Parliament, it is imperative that Parliaments employ staff to promote their work and the message of what they stand for as institutions of democratic governance. Inasmuch as resources allow it, Parliaments should have a press office and public affairs staff to carry out this important function.

How such structures are put in place must take into account the need for them to operate impartially and free of partisan political influences so that they represent Parliament as a whole rather than the ruling party or parties. This raises the questions of which authority should run such a public affairs unit and who should set the guidelines for its operations. It is likely that the best way to achieve this would be within the Secretariat of Parliament under the ultimate authority of the Presiding Officer and of the House.

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## **CONCLUSION**

Commonwealth states are signatories to many international covenants that strongly protect the fundamental human rights of freedom of expression and freedom of information. These include the Universal Declaration on Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the African Charter on Human and Peoples' Rights (Article 9), the American Convention on Human Rights (Article 13) and the European Convention on Human Rights (Article 10). These covenants – and a growing body of international human rights

jurisprudence – clearly state that any legitimate exceptions to freedom of expression must be construed as narrowly as possible.

In 1999, the European Court of Human Rights stated in a ruling that freedom of expression “is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.”<sup>23</sup>

In another ruling that same year, the Court said it was “mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.”<sup>24</sup>

In the course of its deliberations, the CPA Study Group on Parliament and the Media considered how various laws and regulations – such as contempt, sedition, criminal libel, industry regulations, financial requirements, licensing of media and journalists – across the Commonwealth may not always be in themselves a threat to the fundamental rights of freedom of expression and freedom of information. Too often, however, these are used by governments and ruling politicians to deter the media from their role as provider of information to the public in a democratic society.

It is essential for Parliaments and the media to acknowledge and fully subscribe to the growing international consensus that a democratic society requires both institutions to play their role responsibly to create a conducive environment in which the central planks are self-regulation, freedom of private ownership and a strong and efficient ethical regime.

What is perhaps even more dangerous than governments using media laws and regulations as a deterrent against the media is an environment in which the legal, regulatory and political environment effectively drive the media to self-censorship and to abandon most forms of criticism of the government or the state.

National and international courts have regularly upheld the primary importance of freedom of expression as a human right without which all other rights cannot be fully enjoyed, not least because it enables the exposure of violations of all human rights. This is why the role of the media in society is deemed to deserve particular protection under law – since, as the Inter-American Court of Human Rights has argued, “It is the mass media that make the exercise of freedom of expression a reality.”<sup>25</sup>

Increasingly, democratic societies recognize the role of a free, professional and ethical media in promoting good governance, not least when it comes to investigating the activities of governments and state agencies, and exposing abuses of power and corruption.

In this context, it is crucial the relationship between politicians – and particularly Parliamentarians – and the media is one of mutual respect and trust, or at least it should be free of excessive mistrust. A good relationship between them is essential to the good functioning of their institutions. Both sides stand to gain from working towards improving this relationship.

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<sup>23</sup> *Nilsen and Johnsen v. Norway*, paragraph 43, 25 November 1999, quoted in Krug and Price, *op cit.*, p.193.

<sup>24</sup> *Fressoz and Roire v. France*, 21 January 1999. European Court of Human Rights. Quoted in Article 19, the Global Campaign for Free Expression, *Memorandum on the Malaysian Sedition Act 1948*.

<sup>25</sup> Quoted in Article 19, the Global Campaign for Free Expression, *Memorandum on the Malaysian Sedition Act 1948*.

In many cases in the Commonwealth, this relationship exists within a political context where one party, coalition or government is strongly dominant, either holding a large majority in Parliament or having been in office for a long period while faced with a weak political opposition. In this context, it may be inevitable that the media come to be seen as filling the role of the opposition, if only because being critical of those in power is inherent in their role.

Governments, especially those that heavily dominate on the political scene, should not react to the criticism of the media by confusing them with a partisan political opposition. Governments should avoid developing a sense of insecurity with regard to the media's behaviour or being too sensitive to their criticism or reporting of negative stories. Where legal and constitutional measures exist to protect the media, governments should not seek to change them because they perceive that the media is acting as a political opposition. Where such protective measures are lacking, governments should see introducing them as a sign of strength and self-confidence.

In a political situation where opposing forces are more closely balanced, governments and political parties in general should refrain from restricting the flow of information to the media or trying to manipulate them into a favourable attitude towards their political interests. If the bond between politicians and the media is a symbiotic relationship, it is one that contains an inevitable degree of mistrust and attempts at manipulation will only worsen the relationship.

The media for their part should have an obligation to create a bond of honesty in this relationship. It is therefore imperative that they do not abuse their rights and behave responsibly in the public interest, rather than only be motivated by profit or political partisanship. The media must assume the responsibilities that come with their rights and be at the forefront of efforts to develop ethical and professional standards for their industry. If the media's repeated calls for self-regulation are heeded, it is up to them to ensure that the system works and that breaches of professional codes of ethics are properly dealt with.

The Study Group acknowledges that its recommendations constitute a significant body of work that no Parliament or Legislature will be able to undertake all at once and that some recommendations may not be immediately appropriate for all jurisdictions due to constitutional, legal, procedural and cultural differences. But it believes its recommendations offer Parliaments and Legislatures a range of ideas to stimulate consideration of ways to improve their relations with their media and the flow of information to their societies, other Parliaments and the world at large.

Commonwealth Parliaments should be exponents of the protection of the media as a necessary adjunct to democracy and good governance. Legislation that secures the operation of the media based on the fundamental rights of freedom of expression and the free dissemination of opinions and information without any intervention from the state and without censorship should be the goal of all Commonwealth Parliaments and Legislatures.

## **Part 2. Parliament and the Media: Securing an Effective Relationship**

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A report on the proceedings of the Indian Ocean Rim Conference on Parliament and the Media,  
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Organized by  
Commonwealth Broadcasting Association  
Commonwealth Journalists Association  
Commonwealth Parliamentary Association  
Commonwealth Press Union  
The World Bank Institute

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### **PROLOGUE: PARLIAMENT AND THE MEDIA: BUILDING AN EFFECTIVE RELATIONSHIP**

*A conference supported by the Commonwealth Parliamentary Association, the World Bank Institute, the United Kingdom Foreign and Commonwealth Office and the Lok Sabha of India, 15-18 February 2000, New Delhi, India.*

Representatives of Commonwealth Parliamentarians and journalists meeting in New Delhi have identified for the first time ways to improve the relationship between Parliament and the media.

The aim has been to determine how their complementary roles in the democratic process can be enhanced to better inform the electorate.

To perform their respective duties Parliament and the media must work together, but it was accepted that a degree of mutual suspicion will always be an essential part of the relationship.

Concern was expressed that in almost every Commonwealth country the trend towards governments making statements outside Parliament draws media attention away from Parliament and tends to detract from the role and the importance of business conducted in the House.

This in turn means that the media is informing the electorate inadequately of the work of its representatives.

Representatives of the Commonwealth Parliamentary Association, Commonwealth Press Union, Commonwealth Broadcasting Association and Commonwealth Journalists Association suggested these possible lines of action to make Parliament the “main game” in the politics of each Commonwealth country:



**What Parliaments and Parliamentarians Can Do:**

1. Encourage Commonwealth governments to include freedom of expression in the revision of the Harare Declaration envisaged as an outcome of the 2001 Commonwealth Heads of Government Meeting.
2. Encourage Commonwealth governments to support right to information laws according to the principles recommended by Commonwealth Law Ministers in 1999. [See appendix]
3. Recognize the value of an independent media in contributing toward the development of a well informed society through its exposure to a wide range of well-articulated views.
4. Appreciate that the media are also responsive to the people, serving as their watchdog in reporting the actions of Parliaments and governments.
5. Develop more imaginative and attractive ways to enhance parliamentary coverage so that the people are encouraged to take greater interest in their society's principal democratic forum.
6. Develop new procedures to ensure that the vital issues of the day are discussed in Parliament promptly.
7. Accept that a lack of some privacy is a necessary price which public office holders must pay if a free media is to remain a bedrock of democracy.
8. Explain policies fully to the news media but avoid manipulating the way the story is told.
9. Urge Ministers, Shadow Ministers and Members to deliver important statements and reports in, rather than outside, Parliament.
10. Facilitate more coverage of Parliament by opening the proceedings of select and other committees to the media.
11. Take steps to raise the standard of parliamentary debate by: striving to elect high-calibre candidates, enhancing research support, encouraging a better awareness of what the media needs, and discouraging unruly behaviour, abusive language and personal attacks in the Chamber which inevitably lead to adverse media coverage.
12. Respect the media as a legitimate reflection of public opinion, public concerns and social problems and reactions to policies and programmes.
13. Provide more training opportunities and information for journalists on parliamentary practice and procedure.
14. Be accessible and honest in all dealings with the media rather than remaining aloof and secretive, or attempting to manipulate or overly influence media coverage.
15. Avoid conducting relations with the media in an adversarial manner or attempting to shield themselves, their parties or governments from media investigations which are in the public interest.
16. Provide the media with full access to basic information and documents produced by the parliamentary process, such as access to parliamentary libraries, the provision of on-line information and the distribution of parliamentary speeches promptly after delivery in the House.
17. Take full advantage of new information technology to provide authoritative information to the media and the public.
18. Preserve the independence of the journalist by encouraging newspapers to establish, support and respect a voluntary self-regulating body which is allowed to function effectively, and which suits local circumstances.
19. Some technical regulation of the broadcast media may still be required due to the limitation of available space in the television and radio signal spectrum; and broadcasters should be encouraged to set and respect their own independent and self-regulating codes of professional practice.
20. Public broadcasting should be allowed to be politically impartial.

21. Make reports of parliamentary proceedings in other Commonwealth jurisdictions much more accessible to Parliamentarians and the media, especially by use of new information technology.
22. Ensure diversity within media ownership to prevent private monopoly and state control.
23. Advocate measures to protect journalists and journalism during times of civil strife.

**What the Media and Journalists Can Do:**

1. Gain a comprehensive knowledge of, and respect for, the role and position of Parliament and Parliamentarians.
2. Provide fair and factually accurate coverage of Parliament as the duly elected voice of the people.
3. Develop more imaginative and attractive ways to enhance parliamentary coverage so that the people are encouraged to take greater interest in their society's principal democratic forum.
4. Expose the public more to the battle of ideas by providing balanced coverage of Parliament and paying attention to views expressed by opposition and all MPs.
5. Monitor more closely the activities of parliamentary committees and analyse their reports and other documents in more detail.
6. Respect the right of public figures and their families to a degree of personal privacy consistent with a responsible definition of the public's need to know.
7. Ensure that parliamentary and political news coverage and analysis are clear, factual, objective and differentiated from opinion.
8. Put greater emphasis on inquiring more deeply and objectively into public policy issues, focusing less on trivialities and not relying solely on news releases.
9. Assign to cover Parliament the most competent journalists available to ensure that the broad range of often complex issues in Parliament is adequately covered.
10. Avoid conducting relations with Parliaments in an adversarial manner or in a way which unfairly denigrates Parliaments and their Members.
11. Provide constructive criticism and informed and fearless coverage of political issues so that an increasingly aware electorate has the information it needs to participate in the democratic process.
12. Refrain from fabricating controversies and overplaying internal differences of opinion within political parties, which may often be no more than honest disagreements over policy.
13. Avoid calls for legislation or threats of legislation to control the media by maintaining high standards of coverage of Parliament, politics and society.
14. In formulating standards, consider codes already in place elsewhere in the Commonwealth; but standards set for each country must reflect local circumstances.

**Commonwealth Freedom of Information Principles**

*Agreed by the 11<sup>th</sup> Commonwealth Law Ministers Meeting, Trinidad and Tobago, May 1999*

1. Member countries should be encouraged to regard Freedom of Information as a legal and enforceable right;
2. There should be a presumption in favour of disclosure and governments should promote a culture of openness;
3. The right of access to information may be subject to limited exemptions, but these should be drawn narrowly;
4. Governments should maintain and preserve records;
5. In principle, decisions to refuse access to records and information should be subject to independent review.

## **CAPE TOWN PRINCIPLES FOR AN INFORMED DEMOCRACY**

A set of principles to guide societies in developing fully informed democracies has been proposed by Commonwealth Parliamentarians and media professionals meeting in April in Cape Town, South Africa.

The principles carry forward the Programmes of Action, developed by a similar meeting in 2000 in New Delhi, which Parliaments and the media could take to build an effective relationship. Both the New Delhi and Cape Town meetings were organized by the Commonwealth Parliamentary Association, the Commonwealth Press Union, the Commonwealth Broadcasting Association and the Commonwealth Journalists Association in conjunction with the World Bank Institute.

The Cape Town meeting brought together more than 70 Parliamentarians and media professionals from Indian Ocean rim Commonwealth countries in a conference on “Parliament and the Media: Securing an Effective Relationship”. It was hosted by the Parliament of South Africa from 14 to 18 April 2002.

The principles, including further proposals for specific actions by Parliaments and the media, covered crucial information issues facing Commonwealth and other global societies.

### **The Advancement of Society**

Parliament and the media in a well-established civil society share a responsibility to contribute to political, economic and social development in ways consistent with democratic principles. Both must be aware that economic development in particular is best achieved and sustained in societies that are democratic and well informed.

While respecting the right of individual societies to determine how best to apply democratic principles, Parliament should involve the media, and through them the public, in forming public policy. Parliament should empower civil society by opening up decision-making to enable the media to report on and participate in the debate over policy.

Political leaders must not seek to stifle the airing of opposing views and must pay attention to diverse opinions as expressed through the media.

The media should provide balanced coverage of public policy debates without trivialising or denigrating the parliamentary and governmental decision-making processes. Journalists should be free to criticize policies, policy makers and the effectiveness of the democratic process.

### **Respecting Social Roles**

Parliament and the media should respect the other’s role in serving their community so that people in turn respect both institutions as providers of accurate information and informed opinion.

Parliamentarians should recognize the value of fair and accurate reporting as a channel for public feedback to assist them to legislate, formulate policy and scrutinize government performance.

Journalists need to understand the issues crucial to all segments of the population and play their full part in informing the public about the challenges facing their society.

### **Professional and Public Capacity-Building**

Journalists and Parliamentarians should be given greater access to professional development programmes to prepare them to participate more effectively in the democratic process.

Of particular benefit are orientation courses for Members and journalists on parliamentary practices and procedures, and adequate research support for Members.

Governments should in turn ensure that education systems encourage the development of citizens who can understand and assess for themselves the policy issues debated in Parliament and in the media.

### **Encouraging a Multiplicity of Information Sources**

Parliamentarians, journalists and the public should have access to a variety of print, broadcast and Internet-based media to end reliance on government information or party-run information sources.

Investment in all forms of independent media should be encouraged. The media should pool their often-limited resources to improve the coverage of Parliament and other institutions.

### **Professional Behaviour**

Parliamentarians should conduct debate in a respectful and well-informed manner.

The media should establish self-regulatory codes of professional conduct and should pursue fact-based, fully substantiated reporting.

Societies must accept that periodic abuses by individual Parliamentarians and journalists of their rights and freedoms, and of their special positions in society, must not be used as reasons to curb the legitimate performance of their roles. The freedoms accorded to Parliamentarians and the media reflect the supremacy of the ultimate right of the public to be informed.

### **Making Parliament Newsworthy**

To advance a more participatory democracy, Parliament should open all their processes to media coverage, including the work of parliamentary committees.

Parliaments should provide schedules of committee meetings to the media and journalists should in turn cover this important parliamentary process.

Media coverage of committees will better involve the public in the formulation of public policy and prevent collusion in cases where committees are investigating wrongdoing.

Broadcasting of parliamentary proceedings and greater media coverage will raise the quality of debate.

Vital issues should be addressed in a timely fashion in Parliament, and ministerial announcements should whenever possible be made first in Parliament rather than in the media.

### **Raising Media Standards**

Media organizations should retain more experienced reporters and should assign such reporters to cover Parliament.

The media's responsibility is to inform the electorate of the conduct and performance of the representatives they have elected.

Journalists should be encouraged to report on public policy issues that are relevant to everyone and not just the economic elite.

### **Providing a Legislative Framework**

To enable Parliament, MPs and journalists to play a full role in disseminating information to the people and from the people to the government, Commonwealth Heads of Government should secure a supportive environment for the free flow of information. In pursuing this goal, governments and Parliaments should:

- Pass freedom of information legislation.
- Resist privacy legislation that could be used to suppress freedom of speech and freedom of the media.
- Apply parliamentary privilege fully to all fair and accurate reports of parliamentary proceedings, including committees.
- Reject or repeal legislation to licence media, journalists and presses.
- Repeal criminal defamation laws so that the media are no longer subjected to punitive controls that curb freedom of expression.
- Exercise caution in the passage of anti-terrorism legislation which may limit society's freedoms or make the state less accountable.
- Reject or repeal laws that empower the state to censure or punish political opponents and the media for partisan reasons.

### **Follow up**

Sponsor organizations are prepared to consider further collaborative and individual programmes to advance the goals embraced by the two "Parliament and the Media" conferences which reinforce the Coolum Declaration's Commonwealth commitment to "democracy, the rule of law, good governance, freedom of expression and the protection of human rights".

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## **OPENING SPEAKERS**

### **Dr Essop Pahad, Minister in the Presidency, South Africa**

The relationship between the Legislature of any democracy and the media has engaged much attention down the years.

It can, at best, be a relationship of healthy tension. It should never be bland or, on either side, subservient. At worst, it can be mutually destructive – and therefore destructive of democracy.

All of the Legislators present here today will have experience of good and bad media relations, in one way or another. And all the media people here today will have experience of good and bad

contact with Legislators and the institution of Parliament. The subject is one that leads to lively debate in any free country.

It is therefore commendable to note that this Cape Town initiative has been taken, enabling senior Parliamentarians and media representatives from Commonwealth Indian Ocean Rim countries to identify ways ahead in improving relations between Parliaments and the media. In particular, the role of the Commonwealth Parliamentary Association, the World Bank Institute, the Commonwealth Press Union, the Commonwealth Journalists Association and the Commonwealth Broadcasting Association in co-operation with the South African Parliament in arranging this Indian Ocean Rim conference is highly commendable.

This, too, is part of a broader process. The conference's aim is to refine and expand the "Points of Agreement" produced in New Delhi at the previous Commonwealth conference on the same subject in February 2000. It is a credit to this world organization, the Commonwealth, which is without doubt showing its relevance in world affairs despite the scepticism expressed in some quarters in the past, that it is able and willing to give sustained attention to such matters, in the interests of global enlightenment.

The two institutions, Parliament and the media, though independent in any democracy, are complementary in their activities and effects. Neither can do without the other. They are, in this sense, collaborators in the same cause – the cause of enlightenment and good governance of citizens. The relationship between these two institutions, and their interaction with those other great institutions found in any democracy, the executive and the judiciary, are crucial to the cause of good governance. And we in South Africa must not lose sight of the fact that good governance is central to the success of the New Partnership for Africa's Development, on which so much in our continent and country depends as the 21<sup>st</sup> century unfolds.

The Members of the Legislature are the chief generators of news in the context of Parliament. They make laws and they make speeches; and the media are free to report and comment accordingly. As members of the renowned fourth estate, journalists are free to use their wit, conviction and humour to make their points. They easily get under the skin of Members of Parliament. But they can just as easily indulge them with praise. Politicians are acutely conscious of the media, whose members can hand out bouquets or brickbats at random – and indeed be absolutely charming or terribly tiresome depending on how they view things. That is how it is, and democratic governments and Legislatures should not expect anything different.

It is seldom the media that generate the news in Parliament, except for the odd recorded case of fracas in the press gallery or the lobby, or celebrated budget leaks leading to inquiry and even summoning of journalists as has happened in years gone by in South Africa, Britain and elsewhere.

In a democracy it is the free choice of the media to report and comment as they wish, within the bounds of good taste and parliamentary and legal rules. But it is up to the Legislature to ensure that its own activities are newsworthy and properly communicated if it wishes to have an effective public profile. And there is little value in just blaming the media (or, might I suggest, the executive?) when the Legislature gets critical or scant public attention, as does happen in some countries. This situation, if it exists, should be seen not as a matter of complaint but as a spur to legislators to sharpen their performance, to look closely at their relationship with the media with a view to improvement. They must become good communicators and get their message across

effectively. They must foster a culture not of secrecy but of disclosure. They must work intimately with the media to sort out the myriad administrative and other problems that inevitably exist in the parliamentary environment. That done, they might then look around for others to blame, if this can be justified.

On the other hand, any media with any pretensions to seriousness should seek to report honestly and fairly on events in Parliament, and they have a special responsibility to maintain the highest standards of reporting and comment. Editors, and editors alone in law and in practice, are the upholders of these norms, and, when journalists depart from them, it is the editors who should be bold enough to curb the excesses, and to make amends in public through adequate and spontaneous correction and, where warranted, frank apology. (Those newspapers that run regular services correcting facts are to be complimented, and I notice that a South African business daily has recently extended this concept, and now commits itself to correct errors where they occur and not in an omnibus, and sometimes rather obscure, correction box.) On the other hand, people in public life should recognize the legitimate place of the media in doing their job in the public interest, and should avoid making generalizations and *ad hominem* attacks on journalists as a group. When people in public life commit errors – and it is human to err – they should be prepared to offer adequate correction and due apology.

It is not really the province of MPs or Ministers to give lectures on media ethics. So I tread very warily for the media are understandably highly sensitive to criticism from public figures. But we are entitled to ask some questions and make some observations. Editors, in order to edit, should, surely, have intimate knowledge of their journalists' sources, and exercise some judgement about their veracity. Do they? Do they all? They should surely insist on sound professional standards, as, for instance, marked the *Washington Post* coverage of Watergate in such exemplary fashion, always relying on more than just one source for important disclosure. They might also take note of the groundswell of public opinion – reflected also in some recent court judgments abroad – against gratuitous invasion of privacy in blatant cases where the public interest clearly does not justify intrusion. And so on.

Editors should, moreover, boost the status of their parliamentary journalists if they wish to have a sound relationship with the institution of Parliament. They should pay due heed to what their parliamentary reporters say and write. They should appreciate the special position press gallery journalists occupy among those elected by citizens to serve the country in Parliament. The journalists are the eyes and ears of editors at the coalface of legislation. If editors do not do all they can to elevate the status of this particular corps of journalists, they will see them regularly playing second fiddle to the versatile and convincing new breeds of reporters who compete increasingly for space and time in the media – e.g. the financial and environmental journalists, to name but two groups, not to mention those who now so extensively and interestingly cover the fields of leisure and information technology. And in this country there could be imminent new competition ahead, in the form of journalists currently being accredited to the presidency and who will compete for the public's eye and ear when this press corps, proposed by the media and acceded to by government, gets under way in the very near future. We in the presidency certainly do not want a good, indeed essential, scheme like this to eclipse vital coverage of the Legislature, or in any way to cause friction between the reporting of the Legislature and the executive.

At the end of the day, Parliament and the media need one another. The relationship should, however, not be over-close. They should stand at arm's length, not in one another's pockets. But there is no reason why they should not, in seeking to serve the public in their respective ways,

show mutual respect for one another. They should seek to break down the frosty relationships that can so easily result from an environment where egos tend to be large and criticism fierce. They should seek regular opportunities for briefings and interactions to raise mutual appreciation of one another's problems and knowledge of what is going on.

I would urge the media to show their good faith towards Parliament by extending rather than reducing coverage of this institution. They should consider chronicling and diarizing parliamentary happenings more precisely, and in time to alert the public properly, and reporting the speeches of Members more extensively. In South Africa, speeches by MPs seldom receive extensive coverage, if any at all. This becomes a vicious circle, and can impact on the quality of speeches, because of neglect by the media. And there is, I believe, a dearth of parliamentary sketch writing, which is so effectively done in some other countries. Some papers do run sketches and services on the week ahead in Parliament; but these efforts could be widened and extended so that they hold centre stage in parliamentary reporting and impact on the public's attention. And they should be made as accurate and comprehensive as possible.

It is appreciated that the role of the "newspaper of record" has largely, in the era of tight news holes and rocketing paper costs, becoming difficult to fulfil. But there are newspapers of note in the world that have managed to give consistent and effective coverage to parliamentary debates, and some of those present here today would attest to this.

In general, it would be a welcome development were editors over a wide front, and solidly backed by their managements and proprietors, to give more serious and sustained attention to the law-making process. This is essential to good governance and service to the public.

No one should expect the media to take the "bite" out of their reporting. The satire, the humour and the sharp criticism are what Parliament is all about. And I might mention, in passing, that the greatest test of media freedom comes not when times are good but when times are bad. It is in times when war or peace is in the balance that the real strains come. We have seen in the months since the 11 September attacks on the United States severe pressures on a world media seeking to cover the aftermath, which has now overflowed into a most ugly and dangerous situation in the Middle East.

It is worth noting, at an occasion such as this, that the combined and most influential bodies of the media world – the Foreign Press Association (of Jerusalem), the Committee to Protect Journalists (based in New York), the International Federation of Journalists (Brussels), the International Press Institute (Vienna), *Reporters sans frontières* (Paris) and the World Association of Newspapers (Paris) – have issued an unprecedented statement attacking the action of the Israeli government in seeking to seal off entire cities in Palestine as "excessive, unjustifiable and utterly counterproductive". These bodies have urged Israel to allow the foreign media access to the cities of the West Bank, and asked Israeli officials "to desist from public attacks on the foreign press" through "irresponsible generalizations". They have made a "fervent call" on Israel to accredit Palestinian journalists working for the foreign press out of the Palestinian territories. This call is not a moment too soon.

It illustrates, in graphic fashion, the dangers to the media of conflict, particularly when there are implacable belligerents. But it shows more than this. One would be failing in one's public duty if one did not note the degree to which a form of selective morality frequently glosses over invasions



of media freedom perpetrated by countries such as Israel, when there is a vociferous howl to high heaven about steps against the media in other countries, not the least in Africa.

So, as I close, I should like to urge that more serious attention be given to Parliament as an institution by the media. It is most ironic that the South African Parliament enjoyed much more space and time in the media in the days when it was merely a rubberstamp for the repressive apartheid rulers. Now that Parliament is a creative, meaningful and democratic force in the land, it should attract more attention. It has a myriad of activities, numbers of fully reportable committees (except intelligence, which is acceptable in a democratic environment) and many “newsy” full-dress occasions to attract journalistic attention. The South African Parliament has never before had closer links with the people, nor with visiting dignitaries. The Speaker regularly greets people in the galleries from all corners of the earth. Schools are seen visiting the parliamentary precincts almost daily during the session. Our Parliament is newsworthy by its very nature. May it be treated as such.

And may democratic Legislatures throughout the Commonwealth and the world be given the attention they deserve, too.

I note from the agenda that, in seeking better relationships in the spirit of the “Points of Agreement” of New Delhi, this conference will benefit from inputs on important matters such as ethics and combating corruption, economic and political questions, legal and policy matters, freedom of information and human rights, parliamentary committees, the role of opposition, disclosure of information by Parliament including registers of Members’ assets and interests.

May this conference contribute substantially to the cause of good governance, which is so essential in the new global dispensation in which we live.

**Hon. Naledi Pandor, MP, Chairperson, National Council of Provinces, South Africa**

The media and Parliament have different yet sometimes complementary roles in strengthening democracy. The democratic values of openness, accountability and free expression are vital to both Parliament and the media. South Africa’s constitution enshrines these values and thus establishes the formal conditions in which Parliament and the media can act without unnecessary hindrance and prohibition.

Parliament is the national institution that a people elect to represent their ideals and interests. The media consists of appointed professionals, owners and administrators who provide information through a range of types of media. Public representatives pursue political and national agendas in their work, while the media is ostensibly able to provide news and information rendered “purely in the public interest”. Whether or not this is the case is a matter that is rarely put to the test.

An important development in Commonwealth Parliaments in the late 1990s has been the interest in strengthening parliamentary oversight and executive accountability. Public representatives have developed tools and procedures for ensuring that they are able to play their oversight role and have from time to time found media reporting very useful in carrying out their oversight obligations. Mechanisms and strategies developed in South Africa’s Parliament have also ensured that Parliament does not rely purely on the media. A range of means of accountability has been developed; these include committee hearings, investigations, questions, debates and the monitoring of government expenditure.

An important challenge confronting South Africa is the creation of a diverse media and the development of media workers conversant with parliamentary democracy and familiar with the challenges of and barriers to transformation in South Africa.

The media in democratic South Africa have freedom of expression, as do public representatives. The Parliament and the Media Conference will explore how these two important institutions of society work in the promotion of good governance. The legal framework for free expression will be looked at, as well as the issue of developing codes of practice that reject and expose corruption and abuse in public and private institutions.

The rights of citizens and their privacy in open societies will also be explored. The likely outcome of the deliberations will probably confirm the view that Parliament and the media on their own cannot sustain a democracy. Institutions supporting transparency and accountability as well as a responsive legislative framework are essential attributes in the task of creating democratic Commonwealth countries.

**Hon. Denis Marshall, QSO, Secretary-General, Commonwealth Parliamentary Association**

The Commonwealth Parliamentary Association is pleased to join with the World Bank Institute, the Parliament of South Africa and our three Commonwealth media organization partners in this second conference organized by us on Parliament and the Media. For us in the Commonwealth parliamentary community, it is the bringing together of these two key players that we find particularly intriguing.

In the great majority of the 172 active Parliaments and Legislatures of the Commonwealth, Parliamentarians do not often enough sit down with their media commentators and critics and confront the sensitivities that exist between these two vocations vital to a successfully functioning democracy.

Normally, Parliamentarians must look up from the Floors of their Chambers to the media in Press Galleries high above them. While we appreciate the valid practical reasons for these relative positions, we sometimes think this relationship contributes to several unfortunate philosophical undertones.

Politicians of course believe the performance of the media in their coverage of Parliament and politics is seldom worth looking up to; but the media look down and note from their perspective that the performance of some politicians should indeed be looked down on.

Politicians question the legitimacy of the media's views about Parliament when for much of its work their seats in our House's Press Galleries are empty. At the same time, Parliamentarians must acknowledge that their own performance does not always merit looking up to, that the worth of their opinions and policies is sometimes inflated, and that they often do not entirely understand the operations – or even the full role – of the media.

And of course for their part the media note the Chambers are all too frequently empty – except when there is some feeling among politicians that by being there their presence might just get mentioned in the press.

It is clear both parties are somewhat suspicious not to mention cynical of the role each other plays.

But Parliamentarians and the CPA do clearly understand the battle of ideas, and this is one of the common areas of understanding we share with the media. We understand that this confrontation can be most productive for all concerned and that it is infinitely preferable to some other forms of confrontation that we have seen, thanks to the efforts of the world's media, played out with tragic consequences in various parts of the world. It is in fact the specific role of both Parliament and the CPA to bring together viewpoints that are opposing, or even just different. And it is one of the specific roles of the media to expose the public to these opposing or different views. The challenge of ideas in the Chambers of Commonwealth Parliaments and Legislatures and in the conferences, seminars and publications of the CPA and of our Commonwealth media partners helps parliamentary democracy to develop and to refine the many ways in which governments influence the societies in which we live.

Parliamentarians and the media both play vital roles in shaping our societies and their governments, although the two groups do not, and probably should not, totally agree on what those roles are and how they should be played out. When those opposing perspectives were aired in New Delhi two years ago, Parliamentarians and journalists found that they actually agreed more than they disagreed on how they could each play their roles better. Some Members and journalists found themselves lining up together on one side of an argument, such as the debate over how to regulate the media or over the right of Members to privacy, and they found themselves facing Members and journalists who were equally united together on the other side.

Representatives of the Commonwealth's Parliaments and media in New Delhi were able to discuss their differences and reach an impressive degree of consensus on how both institutions could relate to each other in a more effective way, a way which would be more effective not simply for Members and journalists but, more importantly, more effective for the people we all serve. The "Points of Agreement" developed in New Delhi provide all Parliaments and all media with constructive proposals to improve their performance and their inter-relationship, and with it to improve the esteem with which both are held in our societies.

Thanks to the facilities which the World Bank generously made available to us, a small number of Parliamentarians and journalists in Bangladesh, India, Tanzania and Zambia were able to continue the discussions a year later in a videoconference that advanced the debate a little further, particularly in the area of opening parliamentary committees to media coverage. We in the CPA hope the meeting here in Cape Town this week will be equally fruitful and constructive.

There have recently been conflicts between political leaders and the media, which have scarred politics around the Indian Ocean Rim. But I hasten to add that the relationship between Parliaments and the media is far from perfect in other Commonwealth regions as well. After the New Delhi "Points of Agreement" were circulated among our Members and debated at a Commonwealth Parliamentary Conference in September 2000 in Edinburgh, Scotland, a Member of our Executive Committee sent them to all newspapers and broadcasters in his small country and asked if they were interested in meeting to discuss the ideas. He received not one reply.

There is therefore obviously still a lot of work to do; we hope more progress is made in the next few days.

**Mr Tim Carrington, Programme Officer, Governance Programme, World Bank Institute**

Economists and international financial institutions have come to the painful realization that externally imposed solutions are not really solutions but new sorts of problems. Countries need to

be formulating their own development strategies, and amending and changing those strategies when they do not contribute to economic growth and poverty alleviation.

What is it that enables countries to generate their own solutions, through a process of participation and debate?

Certainly the media have a role to play. Certainly the Parliaments have a role to play. Indeed, the focus on institutions, such as these two, is increasing in the development discussions. We have moved from a focus on physical infrastructure, to a focus on macroeconomic adjustments to a focus on institutions for open markets, and for accountable government. Physical infrastructure and macroeconomic stability have not ceased to be important for countries' economic performance, but you might not see either functioning infrastructures or stable economies without the institutions to build and preserve these features.

Such institutions must be built on the values of openness and accountability and a culture of dialogue and truth-telling. These are built over time, and they depend on the continuous generation of information – information that enables societies to take stock of their accomplishments and their failures, their opportunities and their challenges.

Joe Stiglitz, the former World Bank chief economist, said, “ It is now generally recognized that better, more timely information results in better, more efficient resource allocations.”

Thus economists have come to talk more often of information flows, and the role of the media.

Let us work together during this conference to better understand the challenges of building more informed economies, and the role that media and Parliaments play in that, and let us leave to go on working as champions for constructive change in these arenas after we return to our countries.

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## **BUILDING ON THE NEW DELHI CONFERENCE ON PARLIAMENT AND THE MEDIA**

The first session of the conference concentrated on the progress made in different countries since the first Parliament and the Media meeting in New Delhi in 2000.

One of the participants in that initial event, Dr Sudha Ramachandran, an independent journalist from India, said that the first thing she recalled was the free exchange of ideas that took place between Parliamentarians and media practitioners, with each side pointing out problems that it had with the other. She said that there had been willingness to accept that reform had to take place among both MPs and media personnel and, as a result, important recommendations were passed. Dr Ramachandran drew attention to three recommendations in particular. The first recommendation was aimed at facilitating more coverage of Parliament by opening up committee proceedings to the media. The second was to raise the standards of parliamentary debate so that the media did not feel that House proceedings were not newsworthy or interesting. Indeed, many MPs accused the media of generally reporting the negative aspects of parliamentary proceedings. However, media representatives retorted that MPs were unruly and misbehaved in Parliament. The third recommendation was that the media deserved respect, as they comprised a legitimate reflection of public opinion and social issues. Consequently, MPs agreed to respect the media.

But looking at what had happened since the New Delhi conference, Dr Ramachandran said she was afraid that at least on some of these recommendations – the standard of parliamentary debate in

particular – the relationship had continued to decline. Coverage of National Assemblies is still dominated by news of unruly behaviour among MPs, she claimed, which had undermined Parliament. Governments have also undermined parliamentary proceedings because they often bypass Parliament and announce decisions in other fora. In addition, access to parliamentary committees in India and some other countries remains restricted or closed to the media; yet it is here that one really sees serious debate and democracy at work, she said.

Finally, in many countries Dr Ramachandran said she found that when the debate on issues was completely opened up to all, governments attempted to use such opportunities to win political mileage or votes. According to her, this suggested that the governments allowed these important issues to be debated only because they hoped to reap a benefit during elections. Otherwise, parliamentary proceedings were restricted. For instance, she said, although India had introduced a code of ethics for MPs, the punishment for misbehaviour was hardly something that would deter them from what they usually did in order to make news in the media.

Mr Hassan Shariar, the executive editor of Bangladesh's *Daily Ittefaq*, argued that politicians and journalists may be friends or enemies, but knew that they needed each other. However, their relationship was a subject of intense debate. MPs wanted the media to report everything said in the House; but journalists said they do not find much substance in parliamentary speeches. Mr Shariar pointed out that the newspapers were commercial entities and could not print everything said in the House because not all of it was newsworthy.

Mr Shariar added that, unfortunately, the recommendations drawn up in New Delhi were never implemented; the media having done their best, but Parliaments having seemingly ignored their side of things. For example, he argued, the Delhi conference resolved to encourage Commonwealth governments to support right to information legislation, in accordance with the principles adopted by the Commonwealth Law Ministers in 1999, yet this had not happened. Many journalists still do not have the right to information, and are in fact lucky if government Ministers or public officials talk to them.

Mr Shariar said it should be appreciated that the media are the watchdog of society in reporting the activities of Parliaments and governments, and yet the media can hardly fulfil this role because there are no effective procedures to ensure that vital issues of the day are discussed promptly in Parliament. He pointed out that Ministers often found it convenient to discuss important issues outside Parliament rather than in the House. The Delhi conference recommended that new policies be enacted requiring that important national issues must be discussed in Parliament, and Ministers, committee chairs and MPs should deliver important statements in Parliament rather than outside.

In concluding, Mr Shariar said that greater coverage of Parliament could only happen with the opening up of committee proceedings to the media, something that is still to happen in many countries. Most newspapers hesitate to expand parliamentary coverage, he claimed, because editors consider much of the proceedings insubstantial. In fact, newspapers give more coverage to opposition Members because they are the more vocal MPs. The Delhi conference also recommended that newspapers should assign senior, competent journalists to cover Parliament, Mr Shariar said; but in many countries junior journalists are still the ones covering Parliament since editors' felt that very little happens in Parliament and did not want to waste their senior personnel there.

Shri Bhim Prasad Dahal, MP, (India) said that Parliament and the media are two major institutions in a democracy. As a representative and law-making body, Parliament holds a pivotal position in any democratic system. The mass media inform people about their rights and duties, and on the functioning of democratic institutions. The media are as much the people's representative as the individuals elected to Parliament, Shri Dahal argued, adding that both institutions are essentially involved in the process of nation-building and engendering social change.

The media provide powerful channels of information and communication between the MPs and the electorate, said Shri Dahal, while he added that they also help the public to make political choices during elections. In democratic societies, it is imperative that the media are free from overt or covert government restrictions and censorship. As such, an adequate legal framework should be created to define what the media should and should not do, he continued. The media on their part should be conscious of issues such as national security, unity and national development, and should work towards strengthening democratic functioning and good governance.

Similarly, the Member of the Lok Sabha argued, Parliamentarians can contribute towards maintaining media freedom and making the media more responsive to society. The New Delhi conference on "Parliament and the Media" was a significant step in building an effective relationship between these two vital components of democracy and advancing the social relevance of the two institutions. In New Delhi, there had been a consensus that Parliament and the media must talk to each other and strengthen their relationship in the public interest, he said. One initiative taken was to identify ways to improve the coverage of Parliament and Parliaments' treatment of the media, in order to ensure that Parliament and society were properly informed.

As a follow-up to the New Delhi conference, a videoconference organized by the CPA in 2001 was a major success, said Shri Dahal. Participants had emphasized the need for better planning of House coverage, parliamentary seminars for journalists and the need for responsible parliamentary reporting. On their part, MPs discussed how to reduce government influence in media operations.

Shri Dahal said that many of these issues could be taken care of. In India, the media review policies formulated by the government. Moreover, the media help government in meeting the needs and aspirations of the people, he argued, because communication between the media, government and the public is essential for the betterment of society. In a parliamentary democracy, Shri Dahal said there is a critical need the media, especially in a highly diverse society like India. The media should play a positive role in highlighting the achievements of the political system, while at the same time enlightening people about the dangers of political inequality.

India had recently introduced a Freedom of Information Bill in Parliament and Shri Dahal said the Bill aimed to provide freedom to every citizen to secure access to information to bolster public interest, order and accountability. It was hoped that when enacted, the Bill would give Indians access to information on all political, social and economic institutions.

Another piece of legislation, the Communication Convergence Bill, was also due to be tabled in the Lok Sabha, he added, with the objective of facilitating the development of a national infrastructure for an information-based society. The Bill would seek to provide a choice of services to the people with a view to promoting news and information, and establishing a regular framework for communications in view of convergence of telecommunications, broadcasting, data communication, multimedia and other related technologies and services.

The media should present a clear set of facts to the people, who in turn assess the performance of MPs, said Shri Dahal. MPs must appreciate the value of the independent media, especially the media's ability to contribute towards the development of a well-informed society. The media must be responsive to the needs of the people and should act as watchdogs when reporting the failures by Parliaments and governments. The media must objectively examine public policies and develop rational analyses. Senior journalists should be assigned to cover parliamentary proceedings so that the wide range of issues in Parliament is covered properly. Concluding his remarks, Shri Dahal said that in India there was not much of a problem between the media and the Parliament because journalists covering Parliaments and state Legislatures were senior and experienced. He also noted that Parliamentarians and the media in Commonwealth countries should have access to the reports and proceedings of each other's Legislatures so that they could interact and share their experiences, which could successfully be done using modern information technology.

One Parliamentarian attending the conference, Hon. Phillip Pental, MLA, (Western Australia) was a journalist for nearly three decades before entering his Legislature. He said that he therefore knew what journalists were doing and could do, and what MPs could do to improve media coverage. He felt that there were many things remaining to be done to cement or develop the relationship between the two sides. The prerequisite for a successful democratic dispensation is media that are capable of making independent assessments and taking appropriate positions on issues. As such, the media are political communicators that supply knowledge and shape people's understanding of the political spectrum. The media also serve as vital links between people and Parliament, he said, and it was his experience that the media provide vital material for MPs, such as issues for deliberations and critiques of the government and its values.

Mr Pental said that, when participants spoke about an ideal relationship at the New Delhi conference, some had expressed the view that there was some kind of hostility between the media and Parliament. He did not think this relationship of mistrust should be blown out of proportion. However, there should be room for suspicion between MPs and the media. They should function as independent institutions.

Much has been said about the responsibility of the press and how the media exercise their freedom, said Mr Pental. The media should understand their responsibility to society. Before taking a fresh look at the avenues to foster a closer and more effective relationship between Parliament and the media, he stressed the need to look into the point about the changing perceptions or the preferences of the two institutions. In most cases, MPs are pre-occupied with problems from their constituencies and need more time to perform the legislative aspects of their parliamentary activities. That is why the level of debate is not good, claimed Mr Pental, because MPs do not have time to conduct in-depth studies of proposed Bills.

There is also a growing complaint that politicians are now playing the role of headline writers, Mr Pental said. He said he defended the media in certain issues when often they institute constructive criticism on debate and discussion; but some politicians raise certain issues to attract the attention of the press. This means playing to sensationalism. Unfortunately, he added, journalists are not particularly interested in long debates, not having the patience to read long debates nor to give detailed reports of what happened in Parliament.

In the 1950s to 1970s, concluded Mr Pental, a lot of media space was devoted to parliamentary issues, and senior reporters with at least 15 to 20 years of service used to be sent to cover the House. Under new practices most newspapers now send young journalists who are not trained in

parliamentary affairs and whose minds are not well attuned to lengthy debates. Consequently the coverage in newspapers does not reflect what happens in the Parliament.

Sri P. Ramaiah, MLC, (Karnataka) concurred that many leading newspapers used to devote a lot of space every day to Parliament but that this parliamentary coverage was disappearing, being limited now to perhaps ministerial responses during question time or a burning issue raised by political parties to grab headlines.

Speaking about the right to information, Sri Ramaiah said that certain Indian states would have to change their laws to accommodate a right to information because under new legislation the rules were about to be framed so that people could get information within about 15 days.

Sri Ramaiah said that the proceedings of Indian parliamentary committees are normally *in camera*. No information should be divulged until the committee finalized and submitted its report, he said, because it was the privilege of the Legislature to get the report before its contents were divulged. He pointed out, however, that India was rewriting the rules so that committee reports could be debated on the Floor of the House. Unfortunately, he added, media organizations often did not go through reports even though they contained valuable recommendations. Another recent development highlighted by the Member from Karnataka was the allowing of TV coverage of House proceedings, which could help take Parliament to rural populations and increase the number of people seeing what actually happened in Parliament.

Mr Anurag Misra, from the news services division of All-India Radio, agreed that parliamentary and legislative proceedings were not getting due coverage. But it should be realized that content is the key and if parliamentary debate has no content it will not get reported, irrespective of recommendations or resolutions passed. How much time has each Parliament given to population, environment, women's issues, empowerment, illiteracy, unemployment, or trade issues, he asked. If the only content generated by Parliament is unruly behaviour, how else could it get noticed? Mr Misra said we should get out of the mindset that a positive picture must be presented in the media, and realize that these so-called positive representations were no longer valid. He wondered if anybody realized the economic loss to the public when MPs became unruly since in many sessions it became impossible to complete the transaction of business, which was a major loss to the public.

Mr Misra asked whether the New Delhi recommendations included any mechanisms to observe how they would be implemented. For example, when the Speaker of Parliament died in a helicopter crash, media organizations pledged to abide by a code of ethics but the code had been broken within two days and again after a fracas in the House in 2001.

Hon. Mike Sebalu, MP, (Uganda) said that the recommendations that came out of the New Delhi conference captured the gist of why we should look at this issue on a continuing basis. The media and Parliament could act together so the welfare of the people is improved. He said wanted to encourage Commonwealth governments to support the right to information, a crucial recommendation that should be embraced because it puts in place the legal framework under which the two institutions could work for their mutual benefit and for the enhancement of good governance. On the level of debate, Mr Sebalu said that the impression should not be given that the problem is only with Parliament since it could equally be with the media and therefore there was a need to look at both sides and assess the quality of work each is doing.



Uganda's right to information is enshrined in the country's constitution, he said, which gives the media a defined and level playing field. In Uganda Parliamentarians are not elected along party lines and candidates go to the electorate as individuals, spell out their policies, explain their capabilities and get elected on their own merit. This system has considerably improved the quality of debate in Parliament and the majority of MPs are young intellectuals who have come from academia and the business community, he said. All MPs have a stake in their work and want to prove their worth because they are elected on individual merit. The media are also working to raise the level of reportage, with many journalists enrolling in postgraduate programmes in journalism and media studies.

But the most important thing, according to Mr Sebalu, is that Ugandan parliamentary committees are fully accessible to the media. The place where the real policy issues are handled, committees see a high level of debate: there is ample time for discussion and issues are better articulated. The committees get regular media coverage, so that the key arguments in a report and their justification are well known and appreciated before the final committee report gets to the Floor. Mr Sebalu argued this was better because reserving all debate until the report gets to the Floor of the House would mean there could not be enough time for all MPs to intervene.

Finally, the Member from Uganda said, the media should not just look at political issues alone or tend to take political issues as the ones that make news; rather, they should look at other areas that may not make constitute "hot" news but are important to society. Issues such as illiteracy and poverty are more vital than a political statement, he said, and the media should take advantage of their role to educate people to appreciate issues that may not be exciting but are crucial for society's survival. Mr Sebalu said he believes there should be a redefinition of what is newsworthy because some of what the media fail to "sell" may be vital for society.

Mr Nadarajen Pillai, a senior news editor at the Mauritius Broadcasting Corporation, said that his country had a lively democratic process and that Parliament met every Tuesday, even on holidays so long as there were important issues. The relationship between the media, the state and Parliament is cordial, he claimed, and whenever there is a burning issue that leaves the opposition and the government disagreeing with the coverage they received from the media, it makes journalists feel that they are doing their work well. He said there is little one can do about the quality of parliamentary debates as this depends on MPs' qualifications. If MPs themselves are poorly educated, this would reflect heavily on the level of the debate and eventually in what gets reported in the media.

Mr Pillai disagree with the suggestion that the media should assign senior journalists to cover Parliament, saying that sending to Parliament a senior journalist who was not trained in the parliamentary process would not be a success. In Mauritius, both senior and junior journalists receive training before being assigned to cover Parliament. He added that whenever a burning issue arose, the Minister concerned was invited by the national TV or radio stations to outline the issues.

The Chief Executive of the Media Institute of Southern Africa (MISA), Mr Luckson Chipare, said that there had been important developments in Southern Africa since the New Delhi conference. In 2000, South Africa passed legislation on right to information that he felt was progressive and consistent with discussions held in New Delhi. He referred to unfortunate difficulties in Zimbabwe where Parliament had passed legislation on "access to information and protection of privacy" that was totally against what was advocated in New Delhi. Mr Chipare said it would be interesting to

see to what extent this action had gone against the grain of what was discussed in New Delhi, and also what should be done following that kind of activity.

The media also had difficulties implementing what was proposed in New Delhi and Mr Chipare said he thought the media should be assisted to ensure that they could play a meaningful role in reporting parliamentary proceedings. The media must be accorded a conducive environment otherwise it would become very difficult to report and for the public to get the information that they require. Unfortunately, he said, a number of countries in southern Africa are trying to impose statutory regulatory mechanisms, such as Zimbabwe's Access to Information Act that set up a statutory media commission to register journalists and decide what qualifications journalists should have to be allowed to practice their profession. In Botswana, the government has attempted to set up a statutory council, something that Mr Chipare argued does not conform with the New Delhi recommendations. He said he hoped to find ways of working with Parliaments to ensure that the recommendations could be built upon and that relations between the media and Parliament should not be allowed to deteriorate.

A second media representative from Mauritius, Mr Jean-Marc Poché, a reporter with *Le Mauricien*, said he could confirm that the relations between Parliament and the press in the country are good. Parliamentary proceedings are extensively covered, maybe, he said, because the media operated in a context where politicians knew how to raise specific issues concerning the population. It could also be because Parliament is usually covered by experienced journalists.

Recognizing the need for freedom of expression and right to information, Mr Poché said that even though freedom of opinion is enshrined in the Mauritian constitution, it does not actually mean freedom of expression or right to information. The Mauritian media have been campaigning for a long time to have freedom of the press mentioned in the constitution. He concluded by asking what the Mauritian media could do to force the government or Parliament to change this when there did not seem to be any appropriate mechanism to do this or to implement other recommendations from the New Delhi conference.

Mr Syed Mohammed Fazal, the editor of Pakistan's *Daily News*, said that given political events in his country in recent years, it may come as a surprise that, comparatively speaking, relations between the media and the government in Pakistan had been cordial since General Pervez Musharraf had come to power. He said there was little friction and few complaints, and that there was almost total freedom to criticize the government and individual leaders including the head of state.

Mr Fazal said that there had been intense negotiations between Pakistani press associations and the government. The Pakistan Newspaper Society, representing the media owners, the Pakistan Council of Newspaper Editors and the Federal Union of Journalists were negotiating a new package for the media, including freedom of information legislation. A draft Freedom of Information Bill had already been published for comments. He said that for the first time, the government had agreed to allow self-regulation by the media through a press council, which would include representatives from newspapers proprietors, working journalists and government nominees, probably under the a Supreme Court Judge. He added that the proposed council would implement a press code, something that had generally been accepted, even if there had been a delay mostly due to disagreements between journalists and proprietors. Media owners were reluctant to give journalists the same status in the council, he said, but the government had agreed to allow journalists proper representation.

Now, Mr Fazal claimed, the problem was that the press orders enforced previously in Pakistan had become rather obsolete because of changes in government processes in recent years. The new regime had abolished the posts of District Officers who, as the main officials in district administration, had also received the declarations required of the press. Now that they had been replaced with elected District Administrators, he said, what the government did not realize was that the operations of the press orders have become convoluted. After the changes, some newspapers had refused to file mandatory declarations, saying the office of District Officer no longer existed, and they filed petitions in the High Court seeking an end to the press orders. Mr Fazal pointed out that the High Court had temporarily suspended the orders as a new press law was being promulgated, and he said that the new legislation would be quite liberal compared to the previous one.

Mr Fazal also noted that the electronic media were not included in the new press law and that the government had recently created a regulatory authority that would license journalists and regulate broadcasting activities. Almost all big newspaper groups have applied for private broadcasting licenses, he indicated, while one private broadcasting station was already operational, having recently been allowed to broadcast news and interview politicians. The station was located in London, but all programmes are produced inside Pakistan in local languages.

#### **Securing an effective relationship by Hon. Sarat Kumar Kar, MLA, Speaker of the Orissa Legislative Assembly, India**

The modern media have gained great recognition due to the advancement of information technology. In simple terms, “media” means communication. The pertinent questions here are whom to communicate with and what to communicate? A derivative of communication is flow of information. In a representative democracy, communication between Parliament and the people forms a major part for deliverance of “good governance”.

Parliament, which is the rule-making body, has to be sufficiently aware about the needs, requirements, aspirations and expectations of the people. Communication by the print media or the electronic media becomes a necessity for effective functioning of the government as it sustains and nourishes the system, and gives it dynamism. Communication includes not only oral speech but all human behaviour. Communication also means awareness and this is most urgently required for the underprivileged and the downtrodden who cast their votes but, unlike the elites, are not in proximity to the power-holders. It is, therefore, a “holistic concept”.

Good communication provides proper feed-back that facilitates the governmental process. In the absence of an effective communication system, the entire governmental machinery is seriously hampered and tampered with, which may result in open resistance and rebellion. Representative democracy would be a sham if there were no communication between the electorate and its representatives, and it could end up in autocracy or dictatorship. Suppression of information always accompanies authoritarian regimes. Yet even under the strictest of conditions, people find ways to get the information flowing.

An effective media system can bring an end to the politics of exclusion and can provide equal opportunity to all. Better communication can lead to better sharing of power in a democracy. In the era of decentralization and globalization and increasing interdependence, the media assume a higher position everywhere. In other words an effective media system facilitates the healthy growth of democracy, development and more importantly the establishment of human rights.

The media also have a role in enhancing the representatives' responsibility towards their constituencies, thereby bringing greater benefits to the people. Better communication from Parliament can also lead to more responsive administration and ensure fairness in implementation of development and welfare policies. It can bring awareness to people and play the role of an "educator".

India is a democratic welfare state. It has experienced a vibrant democracy for more than half a century, barring the exception of the emergency rule imposed between 1975 and 1977. The preamble to the constitution of India states: "We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic".

The Indian people have the ultimate sovereign power and they, through democracy, decide by whom they are to be governed, thereby establishing an authority, i.e. a government, that enjoys the legitimate power of the people. As India has a parliamentary form of government there is a fusion of the legislative and the executive, the latter being drawn from the former. In this way one can say that a chain is formed between Parliament and the people with the media acting as a vital link between the two, helping the decision-makers understand the pulse of the society. In a democratic country, the media always try to focus on issues and to scrutinize the actions of the government. As long as the media are unbiased, they reflect the sentiments and the feelings of the people more correctly and convey the government and parliamentary measures more efficiently.

Democratization of information is another big factor in the growth and success of citizens' movements. Although the ownership and modes for using information continue to be monopolized by a few, modern communication technologies have made information more accessible to a large number of people and thereby made citizens more conscious of their legitimate rights.

The value and impact of the media may be difficult to determine, but it is safe to say that television, radio, newspapers and other forms of media have been important in shaping mass behaviour and in deciding the outcomes of dramatic social changes. When properly conducted, democratic politics involves public deliberation focused on the common good, requires some form of manifest equality among citizens and shapes the identity and interests of citizens in ways that contribute to the formation of a public concept of common good. Parliament and the media are complementary institutions in a democracy and they reinforce each other. An aspiring and ambitious democratic polity needs them both in equal measure. The independent media have a role in building and even moulding public opinion, which can positively influence the decision-making process.

In the first conference on Parliament and the Media, held in New Delhi in 2000, Mr Rick Stapenhurst, of the World Bank Institute, observed:

In 1997, the World Bank published its findings on the role of the state in the changing world, which showed that governance does matter as a crucial factor in national development. The study showed that those countries with democratic governance, with a free press and impartial judiciary achieve higher levels of growth and development than others.

With the passing of time, the role of the media also assumes greater proportion to match the increasing demand for the right to information and transparency in governance. People have a right to know about governmental affairs and the government also has an obligation to provide them

with the required information. At the Commonwealth Law Ministers' meeting held in Trinidad and Tobago in 1999, the "Commonwealth Freedom of Information Principles" were agreed.

Accordingly, member countries:

- i.) should be encouraged to regard freedom of information as a legal and enforceable right;
- ii.) there should be a presumption in favour of disclosure and governments should promote a culture of openness;
- iii.) the right of access to information may be subject to limited exemption but these should be drawn narrowly;
- iv.) governments should maintain and preserve records, and,
- v.) in principle, decisions to refuse access to records and information should be subject to independent review.

These principles were also reaffirmed in the "Parliament and the Media" conference in New Delhi. Recently, in Zimbabwe, the Parliament voted to approve a law limiting the freedoms of independent and foreign journalists. Under this law, a new media regulatory commission is charged with awarding long-term accreditation only to Zimbabwean citizens and permanent residents, while foreign journalists will be allowed to work in the country for "limited periods". The law also criminalizes reporting on the deliberations of the cabinet and other government bodies.

In a democracy, Parliament and the media are just like two sides of a coin and should work hand in hand; but they should not compromise their ideology and principles in doing so either. The relationship between the two should neither be too co-operative, nor too adversarial. There should be a little distance between them so as to maintain a healthy democracy. The media can also play the role of opposition to an extent in the absence of an effective opposition in the by contributing to accountability in government and thereby contributing to sustainable development.

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## CONSTRAINTS AND OBSTACLES TO BUILDING AN INFORMED ECONOMY

### The Main Economic Constraints

Mr Anurag Misra, of All-India Radio's news services division, opened the discussion by emphasizing the importance of funding for media organizations. Increased dependence on a particular source of funding implies a lessening of independence. In the developing countries, most print media were originally government monopolies, which meant there was little problem with funding. Now there is a closer link between economic development and the free flow of information. How do the smaller newspapers survive, Mr Misra asked? How can they have enough in the way of financial and human resources, especially qualified human resources, to carry out effective newsgathering? The electronic media are more expensive, though radio somewhat less so, and in that area there is a more pronounced lack of technically and professionally qualified human resources. Mr Misra argued that there is a need for more technical and academic media courses.

Mr Govan Reddy, the chief executive of South Africa's *Mail & Guardian*, pointed out that economic constraints would lead to capacity constraints, two areas that were to be discussed separately at the conference. Funding relates to the question of ownership, he said, and therefore a useful discussion required an exact definition of what was meant by "economic constraints". The issue is: to what extent do economic constraints circumscribe the media's ability to cover parliamentary affairs adequately? South Africa's Independent Group, the largest newspaper

company in the country, is part of a multinational group backed by a multimillionaire. Yet, Mr Reddy said, because its profits dropped, owing to the depreciation of the South African currency, there had been a cutback in its resources. The smaller newspapers are heavily constrained economically and struggle to survive. Mr Reddy's own *Mail & Guardian*, which is critical of the government, now receives little advertising revenue from the government. It has had to cut expenses, and therefore now has one parliamentary reporter instead of two, resulting in inadequate coverage of Parliament, Mr Reddy conceded. The South African public broadcaster's funding comes largely from TV licences and although it is constituted as an independent body, it is beholden to the government to some extent.

Mr Mark Metherell, of Australia's *Sydney Morning Herald*, said there were similarities with his country regarding measures to enhance profitability. The company owning the two biggest Australian newspapers is considering merging their staff in Canberra. Pressure is on them to improve the financial bottom line, he said, in the face of a long-term decline in advertising revenue and the impact of the Internet on advertising revenue.

Mr Metherell asked if Parliament is news any more? In Australia's federal Parliament true debate is dead, he claimed, because the bipartisan system means that the outcome of a vote is always known in advance. He further wondered to what extent globalization affects whether people want to hear about Parliament?

Ms Maria de Piedade João (Media Institute of Southern Africa, Mozambique) referred to the lack of finance for the media in Mozambique. Only the two newspapers supported by the government have full-time adequately paid journalists in Parliament. She also noted the practice by which politicians bribed journalists, especially those working for the smaller, more impoverished newspapers, to report favourably on their activities.

Mr Wilf Mbanga, the Managing Director of Activate Communications in Zimbabwe, outlined the history of print media ownership in his country. At independence, all the newspapers were owned by the South African Argus Group (predecessor to the Independent Group). The Zimbabwean government found this unacceptable, as the then apartheid government of South Africa was hostile to the new black government in Zimbabwe. With the help of a grant from Nigeria, the Mass Media Trust was formed by the government and bought out the Argus Group, taking control of the five main newspapers. At that time all newspapers were dependent on the national news agency for parliamentary coverage. Since then several independent newspapers have appeared. The daily press, however, remained totally in the hands of the government until the *Daily News* was launched in 1998 by Zimbabwean and British investors. The new independents wanted nothing to do with the national news agency in their parliamentary coverage, Mr Mbanga said, and its coverage ultimately became irrelevant. Now that the parliamentary opposition is playing a larger role, the government papers tend to ignore Parliament as they do not want to cover the opposition, according to him, and the government now makes major announcements outside Parliament. It is now very difficult to start a newspaper in Zimbabwe, which has only one independent daily and three or four independent weeklies. Many Zimbabweans are frightened of the government, said Mr Mbanga, and new legislation makes it impossible for non-Zimbabweans to invest in the Zimbabwe media. The Zimbabwean independent media need funding from outside, whether in the form of grants or low-interest loans. Life is going to get even more difficult for them, and Mr Mbanga said he feared for the *Daily News*, which he helped launch. The new annual licence fee, payable in U.S. dollars, is so high that it might force the independent newspapers to close.

The Chairperson of the Media Institute of Southern Africa (MISA), Mr Simphiwe Mdlalose, pointed to a number of challenges, including the growing trend of governments using their power to control the media. The withdrawal of government advertising revenue mentioned by Mr Reddy is an example of this type of economic constraint. Parliament tends to be seen as an institution that is financially better resourced than the media, said Mr Mdlalose, and because the relationship is not balanced, it becomes more difficult for the media. There is increasing conflict between what governments call the national interest and what the media calls the public interest; yet somewhere a common interest has to be found. Reporting on Parliament is seen as something that is not of interest to the public, he said, wondering whether this is because of what Parliaments are doing or whether it is due to an inadequate reporting style?

Mr Syed Mohammad Fazal, the editor of Pakistan's *Daily News*, saw the issue of economic constraints as twofold: the overall economic position of the country and that of the individual media organizations. In Pakistan the cost of newspaper publishing, and hence the price of newspapers, is high because all inputs such as newsprint have to be imported. Therefore the country cannot afford many newspapers, he said. Given that there is competition between papers (and between television channels) for shares in a relatively small market, the media concentrate on material that sells and boosts circulation, which does not include reporting on Parliament.

Mr Alhaj Shafi Ahmed Choudhury, MP, (Bangladesh) focused on the financial situation of his country's newspapers, which are losing a great deal of money. Of the approximately 50 newspapers, four or five are profitable, he said. The low income and education levels of the population limit readership. As a result, although there is freedom to report Parliament, there is less coverage of Parliament than there ought to be.

The Commonwealth Press Union's Executive Director, Mr Mark Robinson, noted the variety of economic constraints in different countries and listed more examples, such as in The Gambia where the government controls the supply of newsprint. It should not be assumed that there will not be hindrances to press freedom in the older democracies either, he said. In Canada, the Southam Group, which owns 70 per cent of the newspapers, now has all editorials written centrally, so all its papers carry the same editorial every day, which goes to the heart of press freedom. Governments sometimes use the civil law against the press, as in the case of the *Jamaica Gleaner*, which was successfully sued by the Jamaican government for inaccuracies in an Associated Press piece that it carried. In the U.K., those who manage government news tend not to favour announcements through Parliament, Mr Robinson said, but rather time the release of information so as to optimize news coverage. Budget leaks used to be considered a serious breach, but now decisions contained in the budget are often heralded well in advance. The agenda appears to have moved beyond Parliament, which has led MPs to question whether they need Parliament when they can easily make their views and arguments heard in television studios. Mr Robinson added that bad legislation, or misused legislation, can be seen as attacking press freedom, as in the case of an attempt by New Zealand's Department of Agriculture to use a privacy law to withhold information regarding an outbreak of moth disease.

Mr Misra said the debate reflected the fact that all developing countries faced problems of limited resources and that one of the first things a newspaper does when experiencing financial problems is to withdraw its parliamentary reporters. The most important factor regarding economic constraints is therefore funding. Government funding is acceptable as long as there is monitoring to ensure an absence of government bias in reporting, he said, and perhaps Parliament should consider

sponsoring the coverage of its activities. Mr Misra wondered how one solved the funding problem while protecting independence, especially with respect to the smaller media organizations.

According to Mr Tim Carrington of the World Bank Institute, studies on ownership of news organizations and the economic environment have not been very comprehensive. The level of state media ownership is higher in broadcast than in print. Economic constraints are frequently the direct result of political acts or problems, he said, such as in the case of the Zimbabwean licence fee.

Mr Metherell wondered how the relationship between Parliament and the media would evolve. While there is lower media interest in Parliament, both organizations retain important roles.

Mr Reddy pointed out that Parliament needs maximum coverage from the media. While Parliament would like every word uttered to be covered, the media are selective and newsworthiness determines coverage. There are differences between high-budget and low-budget media – between, for example, large public broadcasters and smaller independent channels. Advertising revenue fell worldwide after the terrorist attacks of 11 September 2001 in the United States, he said, and media organizations had to do their best for parliamentary coverage within limited budgets.

Mr Fazal suggested that newspapers should collectively enhance the role of news agencies. There is currently a great deal of duplication in the work done by parliamentary correspondents, and proceedings not involving major policy matters would suit shared reporting resources. In the past, he argued, 80 per cent of the Pakistani media relied on the government-controlled news agency. The proprietors of small newspapers could consider pooling their resources to finance news agencies.

Mr Mbanga said he would like to see a fund created to assist media organizations, perhaps in Africa and Asia, because of the great difficulty in establishing themselves in the developing world where governments are feared and there are high levels of poverty. The Commonwealth could have an organization that offers low-interest loans.

Mr Misra added that the Commonwealth could offer training programmes to upgrade the skills of journalists.

Mr Choudhury explained that state-owned television and radio in Bangladesh give Parliament 100 per cent coverage while newspapers share the same reports.

Mr Misra pointed to the tensions that could occur when Parliament made demands of the public broadcaster, such as when the Indian Parliament demanded full coverage of a two-day debate on the occasion of the 50<sup>th</sup> anniversary of independence. This demand was difficult to reconcile with the need for revenue. MPs wish to have their parliamentary contributions publicized, he said, so All India Radio has a daily 10-minute programme of parliamentary news that consists almost entirely of lists of MPs participating in debates.

Mr Carrington indicated that a discussion in Washington among donors involved in African media had concluded that recognition needs to be given to the fact that there are struggling independent media organizations in Africa whose main problem is affordable credit, not access to grants. The Soros Media Loan Viability Fund gives low-interest loans to assist viable media organizations temporarily threatened by government action (such as the new Zimbabwe licensing requirement).



Mr Metherell suggested that a way could be found of helping media organizations in countries such as Zimbabwe to use the good offices of the CPA to secure loans. Mr Mbanga pointed out that the Zimbabwean authorities had already thought of that, and loans from abroad required the permission of the reserve bank, which could easily be withheld.

Mr Misra suggested that a fund was what was needed, not bilateral arrangements.

Mr Robinson said that where governments were determined to create obstacles, the focus should rather be on issues where specific help could be provided, rather than on fighting the governments as such. For example, the World Press Freedom Committee helped reduce the prison sentence of an editor in Cameroon who had been jailed for criticizing the President. The problem is that deciding on assistance in such cases means that the assisting bodies would play the role of judge and jury. Parliament and the media need each other, he said, so their relationship is very important. At the New Delhi conference, the two institutions had started on opposite sides but had begun to see what they had in common. Part of the role of both Parliament and the media is that of a watchdog, calling the executive to account. The media could help Parliament, he said, but Parliament must never assume that the media will not criticize it.

One proposal the CPU could make, Mr Robinson said, is the organization of induction courses for MPs, involving members of the press, to discuss the relationship between Parliament and the media.

He also suggested that special thought should be given to what assistance could be offered to small newspapers and radio stations, which are sometimes staffed by a handful of people, especially in small island states and in some African cases.

Mr Misra concluded that the three main recommendations to come out of the discussion were: the establishment of a media fund to assist in cases such as Zimbabwe's; the enhancement of media skills in developing countries, and a survey on funding issues to be done by the World Bank Institute or the CPU. Mr Carrington added to these Mr Fazal's proposal that media organizations that had been forced by financial considerations to cut back on parliamentary coverage should pool their resources to enhance coverage.

### **The Main Political Obstacles**

The news editor of Zimbabwe's independent *Daily News*, Mr John Gambanga, launched the discussion by saying that his country's government has full control over much of the media. Some media are owned by the government. When the government discusses an issue such as the budget, for instance, those media only give positive information and other media are not allowed to be objective or criticize the government. The privately owned media have no access to information, he said, although it is critical that there should be private ownership of the media as well as government ownership.

Mr Pule Malefane, MPL, (Gauteng) added that the issue of ownership has a negative effect as far as powers are concerned. Sometimes the manner in which the media distributes information does not help the community, yet he said he felt the media should act independently of the government but be accountable to the community. He compared the relationship between Parliament and the media to a marriage in which one party feels dominated by the other, and there was therefore a need to focus on co-operation between them.

Hon. Sarah Mangena, MPL, (Northern Province) said that information should be published freely and that she totally disapproved of Parliaments that do not allow media to be present at committee meetings. The media should be allowed to attend such meetings and to get necessary information from the committee secretary. She pointed out also that journalists sometimes take sides and become hostile when interviewing Members from the ruling party, while being fair or polite to those belonging to the opposition party.

Hon. Fluksman Samuehl, MP, (Namibia) agreed that reporters who support a certain party do not cover issues relating to other parties properly. Journalists need to be trained to be able to report what is helpful to the community, he added, and they should specialize in various issues, such as labour and the economy, because lack of knowledge of certain subjects prevents the flow of in-depth information.

Mr Gambanga indicated that, as an editor, he makes sure that journalists do not write as if they belong to a certain party. They should always rise above politics and they need to be guided by their ethics. It is wrong to reveal their affiliation in their reporting. Members from opposition parties are more open to journalists, however, Mr Gambanga argued, so the media end up getting more information from the opposition than from the ruling party.

Ms Padmaja Padman, an independent journalist from Malaysia, mentioned two Acts purporting to give Malaysian journalists freedom to publish while, in practice, doing the opposite. In terms of these two Acts one cannot report anything without going through the government, she said. When looking into the political constraints facing the media, it was necessary to look at the laws of a country and the constitutional provisions in order for them to be able to be reviewed.

Another independent journalist, Dr Sudha Ramachandran from India, commented that there are sections of the Indian media on which the government is putting pressure. For instance online magazines, newspapers and websites are being pressured by the government, making it difficult for them to function properly.

Mr Samuehl indicated that there is freedom of the press in Namibia and that parliamentary proceedings there are covered. Certain journalists display patriotism in that they report constructively instead of criticizing all the time – they offer alternatives. He also said that overcritical journalism deprives the country of investment and that journalists, as citizens of the country, must form a good relationship with the government.

The Director-General of Bangladesh Betar, Mr Shafiqul Amin Ferdausi, commented on the limitations on access to information about political issues in Bangladesh. On an important issue such as the budget, he said, the ruling party tries to hide information such as what has happened in the last three months of the budget year. Journalists accept whatever information they are given by the government, whether it is right or wrong, because they do not have access to anything more reliable. Therefore it is difficult for the media to keep people informed about the economy of the country.

Mr Ravindra Randeniya, MP, (Sri Lanka) said that that the private press in Sri Lanka is always balanced. Legislation on press freedom has been passed by Parliament but not implemented yet.

Ms Mithleshni Gurdayal, a journalist from Fiji's *Daily Post*, said that one of the political constraints in her country is the racial and ethnic issue that faces journalists. The government claims there is a free press, she said, but always controls it or interferes in media issues.

In the South African Parliament, Mr Malefane observed, journalists are allowed to attend committee meetings, but they prefer to go Parliament and report the final statements on whatever is being discussed.

The President Emeritus of the Commonwealth Journalists' Association, Mr Derek Ingram, asked in which countries journalists are barred from attending committee meetings. The response from the delegates was: Fiji, India, Malaysia, Bangladesh and Zimbabwe (in some instances).

### **The Legal and Policy Barriers**

The Chief Executive of the Media Institute of Southern Africa (MISA), Mr Luckson Chipare, suggested that the group define what was meant by legal and policy barriers. Mr Mark Stephens, of the London law firm Finers Stephens Innocent and the Oxford University Programme in Comparative Media Law and Policy, suggested identifying what an enabling environment for free and independent media would be.

Hon. M.L. Mangcotywa, MPL, (Eastern Cape) suggested not only looking at the inhibiting environment but also at the legal framework that disturbed the relationship between the media and Parliament.

Mr Chipare said that a starting point would be to look at what had been done to implement the recommendations that came out of the "Parliament and the Media" conference in New Delhi in 2000. He said that he was aware of the legislation on access to information that had been passed in South Africa and asked what the situation was in other countries.

Mr Jean-Marc Poché, a reporter on *Le Mauricien* of Mauritius, said that in the Indian Ocean country journalists are considered visitors in Parliament. If they reported on matters that were raised in Parliament but which could be considered defamatory the newspaper could be sued. Because of parliamentary privilege, journalists were impeded in gathering news.

The situation as regards parliamentary privilege in the U.K. was highlighted as well as the situation in Kenya. Hon. Stephen Ndicho, MP, (Kenya) explained that if a Kenyan newspaper had incorrectly reported on something that was said in Parliament and refused to apologize, then the Speaker could punish that newspaper by banning it from covering any parliamentary proceedings for a period of one week or more.

Mr Chipare said that banning a newspaper raised the concern that Parliament was acting as plaintiff, judge and executioner in such instances.

On the issue of the protection of journalistic sources, it was noted that in several countries legislation had been passed ensuring that journalists did not have to reveal their sources. Mr Poché said that Mauritius had passed legislation following the terrorist attacks of 11 September in the U.S. and that in cases where terrorism was involved, journalists were required to reveal their sources.

Mr Stephens said that the question of protection of sources had two parts, namely the physical protection of journalists and the wider issue of dissemination of information.

Concerns were raised over the difficulties of defining a terrorist and the whole notion of terrorism. Mr Mangcotywa said that while he agreed that there should be a level of protection of sources, it was also necessary to put mechanisms in place to put a check on that protection.

Mr Stephens said that he could sympathize with this point but only in specific situations, such as in the U.K. where there had been a court ruling to the effect that it was in the public interest to put truthful and accurate information in the public domain, but there was no public policy to prevent false information from being put in the public domain.

Mr Chipare moved the discussion on to the issue of the licensing or accreditation of journalists. He referred to the situation in Zimbabwe, where a law has been passed that sets up a commission responsible for determining the qualifications of journalists and only once the criteria set in the legislation have been satisfied will journalists receive the necessary accreditation.

Mr Ndicho said that there was a problem in Kenya with certain persons entering the country in the guise of being journalists and the government had therefore demanded that journalists have a letter of introduction from their country as well as proof of the necessary qualifications.

Dr Gideon Shoo, a director and production editor of the Habari Corporation Ltd of Tanzania, raised the issue of persons such as economists or lawyers who had written articles for newspapers as opposed to persons specifically trained in journalism. He said that one could not have a situation where a lawyer could be an editor without first having acquired the relevant journalistic skills.

Mr Chipare concluded the discussion by considering the issue of ownership of the media and content regulation. The various interventions focused on the difficulties faced when there was a monopoly of ownership of the television stations, radio stations and the print media and on the problems of foreign and cross-media ownership.

### **The Capacity Constraints**

Mr Nixon Kariithi, the Chair of Economics Journalism at the School of Journalism at South Africa's Rhodes University, began the discussion by referring to the skills lacked by MPs and the media to achieve their objectives. The major issue was how to examine economic policy because many people think that economic questions are everyday questions. He gave as an example the debate on deregulation that is currently taking place in most countries and asked how the media and Parliament are questioning related policies to establish whether they are compatible with some of the existing policies. He also wondered if deregulation is compatible with a free and independent press, something all democratic societies hold as important?

Mr Kariithi said another capacity constraint emanates from Parliament's nature as a news source. Parliament is not always a good source of information for the media; in the case of the economy, for example, Parliament is mainly a consumer of information rather than a producer. In such a case, the Legislature feeds off the media rather than furnishing it with information. In fact, he said, a great amount of economic information does not come through Parliament, but instead from quasi-public sources or the private sector, because it is often about private sector development.

Parliament then lags behind in collecting information and has to learn about some issues from the media first. If the media lacks capacity and Parliament is waiting to learn from the media, the implications are immense, said Mr Kariithi, because when the media does not cover issues well, Parliament never gets to deal with the real substantive information.

Mr Walter Hamilton, the head of national coverage for news and current affairs at the Australian Broadcasting Corporation, noted that in his country there is a political consensus on issues such as social welfare. There is free discussion of economic issues, including analysis and interpretation by the media.

Hon. P. Ramaiah, MLC, (Karnataka) said the lack of expertise among Parliamentarians results in Members being unable to participate effectively in economic debates. In addition, Parliament and the media are not able to concentrate on economic issues alone or give serious attention to inputs from society. He noted that it is the duty of the media to keep consumers informed about projects, most of which depend on borrowed capital, and the progress of expenditures and repayments.

Hon. Mike Sebalu, MP, (Uganda) set out a view of politics as the management of society in terms of economics and resources. He said that Parliament in its role in passing economic legislation is responsible for ensuring that the laws passed are good, and it is responsible for oversight in monitoring implementation. He highlighted the need for capacity-building to help MPs acquire skills that would enable them to analyze economic issues. He called for MPs serving on the relevant committees, even if they have no background in economics, to be able to pick up quickly on the issues debated, to analyze them and to follow matters up. Uganda has a portfolio committee on economics that is responsible for all issues relating to the economy, he said, and its importance is reflected in the fact that it has well-trained economists as researchers to assist Members.

Mr Sebalu then noted two of the constraints faced by the media in Uganda: first, experiencing difficulties in dealing with complex economic issues, and secondly, seeing greater newsworthiness in political issues rather than economic ones. He made the following recommendations:

- MPs should be trained in analysis and interpretation of economic issues;
- MPs should have access to trained technical people in their offices;
- There should be a legal framework to allow Members to play a major role in the allocation of budget funds, continuously receive feedback and monitor implementation;
- The media should employ people with expertise in the required field, and
- The media should simplify complex economic issues to convey understandable information to society as well as to Parliament.

Hon. Elisha A. Namangale, MP, (Malawi) described his country as being in a transition period. The media organizations are owned by political parties, which leads to the problem of the media reporting issues only in a partisan way. There are few independent newspapers and the media are not interested in economic issues. He recommended that the media should be independent and free.

Miss Ellen Wanjiru, a parliamentary reporter from the Kenya Broadcasting Corporation, referred to the problem of media ownership in her country, claiming that media owners decide what is to be published. What the media publishes affects public opinion.

Mr Conrad Burke of the South African Broadcasting Corporation highlighted the lack of expertise among journalists in translating economics and budget matters in such a way as to make them understandable and relevant to consumers and Parliamentarians. The television airtime available to broadcast economic programmes is not enough, he said, and it is necessary to depend on radio to broadcast information to the public.

Smt. Roshan Warjri, MLA, (Meghalaya) explained that the allocation of funds for departments in India was considered by a departmental committee system. She pointed out that the media and Members of Parliament need professional skills to improve their interaction and relationship. There was also need for capacity-building. There should be an ongoing discussion of public spending between the media and Members of Parliament, and more time needed to be allocated on TV for economic programmes.

Hon. Kanika Ganguly, MLA, (West Bengal) added that India has a pre-budget subcommittee responsible for economic issues, to which the media has no access. The problem with economic policies is that consumers cannot influence these policies, therefore she recommended that the media and society at large should have inputs in economic policies and programmes, which would require in part that more economic programmes should be broadcast.

Hon. M.C. Mokitlane, MPL, (Free State) explained that the party list system of voting in South Africa encouraged professional people to be elected. But the Chairs of Finance Committees at the provincial level lack skills to interpret and translate economic data and their researchers are not well trained, indicating the need for measures to enhance capacity-building in provincial and local government, and for recruitment procedures to be revisited.

Mr Hamilton recommended the development of a bureau of statistics and more interaction between government and the private sector in public debate. Through the media, useful and meaningful information should reach the consumers, he said, and market experts can help communicate information on the economy.

Ms Phule Mthala, a media liaison officer from Gauteng's Provincial Legislature, recommended the employment of such market experts by the media. She highlighted the problem of employing junior people in media newsrooms who left for other employment once they had gained skills. She recommended that media owners offer training for journalists and invest in them.

Mr Sebalu recommended capacity-building training for media researchers and Members of Parliament, and the creation of media programmes that will empower people by popularizing issues such as production, investment, the market and employment. Parliamentarians should consider obtaining additional information and analysis from non-governmental sources. Journalists should have competencies that will help them engage in economic debates.

The group agreed that both the media and Parliament needed capacity-building and greater skills development. MPs need training to be able to engage fully in policy debates, just as journalists need training to write about and analyze them. In Uganda, it was noted, Parliament has founded the Office of the Parliamentary Professional Development where Parliamentarians can get training in many areas of interest to them as lawmakers.

There was a feeling that the media tend to deal with whichever issue they wish, justifying it by claiming this is what interests the public. Thus entertainment dominates television programming

and there is little substantive information and news being disseminated. Economic coverage by most of the media is poor and erratic. Information circulating in Parliament often relates to economic issues – data about national income, national debt, price indicators, production statistics etc – but it is poorly understood by the media and the public and hence poorly covered. Just as MPs must take the initiative to learn about matters such as line items in budgets, loan repayments and interest rates, the media need to be able to interpret them too.

Parliaments should look into ways to assist MPs with research, for example by setting up technical support teams that MPs can approach for assistance with data interpretation. The media must look for journalists who understand economics and other technical subjects. While big media companies may be able to hire more and better qualified people as journalists, it was also felt that training for journalists is needed to improve public understanding of topical issues.

### **The Media and Parliament in Uganda by Hon. Mike Sebalu, MP, Uganda**

In saying something about the role of the media and how it influences and relates to certain decisions of Parliament, I am simply sharing experiences to compare notes and see areas where some of Uganda's lessons could be useful to the rest of the world.

Uganda's case is special in that for a long time the country was politically unstable. Governance was highly unpredictable until the present government came to power in 1986. Upon taking over, the government found that the media were almost nonexistent because previous political systems never allowed them to play their role in society. At the time, there was only one radio station, one television station and one newspaper, all government-owned.

Between 1981 and 1986, Uganda went through a series of liberation struggles and coups. Whenever a new force took over, they first fought to take over the radio station, announce themselves as the new leaders and that was all. Since Radio Uganda was the only station available, once captured, the new junta would have the seat of power. Most battles were about seizing the radio station, getting the announcer's microphone and declaring a change of government. After 1986, when President Yoweri Museveni came to power, Uganda embarked on a liberalization programme that allowed the setting up of private media entities. We then started getting a vibrant media both in terms of numbers and quality.

When President Museveni took office, he often joked at press conferences that the media were for people who had failed in life, had poor grades, or had dropped out of school and ended up in the newsroom only because they could read and write. He also joked that whenever he looked during press conferences and saw someone looked hungry, had worn out clothes, but had a notebook and pen, he was a journalist.

But the situation has changed. Today, journalists dress and walk like media executives, so you keep wondering whether they are part of the delegation you are addressing or they are covering the event. The media is now liberalized; many media organizations have been launched, leading to intense competition in the local media market. Media people have begun being looked at as serious professionals. A major undertaking was the creation of a degree in journalism and mass communication by Makerere University in Kampala. Previously, there was no such thing. As such, the professionalization of media institutions is underway in Uganda and growing strong.

The media have influence on policies and move things in society. Parliament cannot perform its legislative, appropriation and oversight functions without the help of the media. The executive

initiates legislation by creating Bills, Parliament passes the Bills into law. When Acts of Parliament are enacted, they have to be implemented by the executive. At the implementation level, Parliament has a responsibility to oversee whether the implementation is being fulfilled, in the right direction and for the right purpose. Alongside this oversight function of Parliament, the media have a big role to play because they get out the relevant information to the public and later make sure that funds are spent on projects as per parliamentary appropriations.

The Parliament of Uganda works very well with our national media. They are provided for as in most Parliaments in the world with:

- a Press Gallery overlooking the main Chamber of Parliament;
- a parliamentary public relations officer who accredits parliamentary reporters and editors to observe parliamentary proceedings from the Press Gallery, and
- accredited access to committees of Parliament.

Uganda took the path of opening the doors of Parliament to the media. We have allowed the media access to most of the committees, be it sessional committees, standing committees, select committees and *ad hoc* committees.

What does all this imply? This is a challenge to the Ugandan media. They have all the access they need, so they have no reason to say: “Look we are not allowed in”. You may find that in a given day, we have five committees sitting and reporters from different media organizations covering each of them. This leads to a form of “quality control” because everyone is present and if you report badly you will be isolated. This has forced the media to look for quality stories. The idea of picking trivialities may not be helpful because your colleague will come up with a better analysis that makes better sense to the audience. Hence it becomes a challenge to the media to make sure that they use the freedom to report responsibly and objectively, and to have a professional touch in their reporting. The committees also allow radio recordings, so you find that some people come with recorders and tape committee proceedings. Then they go and play them on air, making it very interesting. The challenge is for them to analyze debates properly and to make sure that they inform the public responsibly.

Therefore, Parliament has made it easy for the members of the media to do their job. This is a partnership because we feel that when the media get access, they are able to report responsibly. Even where certain aspects of the meetings are sensitive and it is required that proceedings be *in camera*, the Chair of the committee has an obligation to brief the press. If we deny the press access, then we give them the right to speculate. And when they speculate they have a right to say whatever they want.

However, give the media the information and see how responsible they become. Over time, boys will be separated from men. Already, some media organizations have dropped out because they cannot manage to keep the standards that have been set for the whole process. Those that want to highlight trivialities get knocked out along the way.

In this partnership, you will find that some issues raised by the media catch Parliament’s interest, especially if they have something to do with enhancing people’s lives. We have had a major campaign against corruption and created institutions to fight it, including an Inspector General’s Office whose work is to monitor and to inspect operations of all government departments. We also have a ministry in charge of ethics and integrity, whose work is to oversee public officers as they



perform their duties. These institutions are constantly in the news and the media are supposed to assist them. The press is supposed to assist Parliament.

We have a leadership code of conduct that is supposed to spell out how leaders should behave. People are supposed to declare what they own before they attain power or before they take office. They are also judged when leaving office, and must explain how they amassed any wealth. The media are supposed to follow that and, for instance, if a Member has unexplained wealth, the press may bring it to the attention of the public and Parliament must investigate.

I will give an example of how the relationship operates in Uganda. Due to liberalization, even the government newspapers have had to become increasingly independent in order to survive, so they do not always report in favour of government. *New Vision*, a government daily, has taken an independent stance and in one of its investigations it came up with a story that implicated the Minister of Education, accusing him of conflict of interest. The story claimed the Minister was doing business with people with dubious backgrounds. It further claimed that the Minister had undeclared interests in a building being rented out to the government. This article was picked up by Parliament and investigations were instituted. At the end of the day Parliament found the Minister indeed had a conflict of interest.

Within our constitution, we have a provision that should your character or mode of operation as a public officer be found wanting, then Parliament can invoke the powers of article 118. This is a very popular article in our Parliament. When a Member does something wrong, the House can invoke article 118 to force the Member to behave. The article is feared, and when it gets mentioned everyone shivers; Ministers do not want to hear anything about article 118 because they could be relieved of their duties. When the *New Vision* investigation was completed, a recommendation was made by Parliament that the Minister be relieved of his duties. MPs voted to censure him and he lost his ministerial post.

Indeed Parliament and the media have been able to score successes along those lines because when an article is published, Parliament has a right to investigate using its rules and procedures. Should an article be published that is unfair, then the concerned MP also has a right to make what we call a statement of public explanation. When the statement is made and it is found that the Member has done nothing wrong, the matter is put to rest. But a legal framework exists to ensure that leaders are made accountable. Parliamentarians are the people's representatives and they should play that role with the assistance of the media.

We have other institutions within Parliament, e.g. the Public Accounts Committee, that also work closely with the media. Should a report appear in the media that funds were misappropriated by some government department, the Public Accounts Committee takes this seriously and it summons all involved parties. Our parliamentary committees have the powers of a High Court, hence people are under obligation to appear if summoned and testimony is given under oath. Perjury is punishable with prosecution, and article 118 is the ultimate arbiter.

Because of the above, the media have really taken a special interest in parliamentary matters and debates. Even with highly sensitive matters debated in Parliament, media people needing details only have to call MPs or the committee Chairperson for interviews. We have about 70 FM radio stations in the country and they have taken great interest in matters of public affairs that relate to Parliament.

Parliamentary proceedings reach even to the most remote areas because these radio stations broadcast across the entire country. We have an additional 70 to 100 stations awaiting licenses, and they are all looking at educating the public on what Parliament does. Should Parliament go wrong, the media are the first to point it out. If there is a lack of a quorum in the House, they will make it known to everybody. So the next time Members visit their respective constituencies, people will criticize them by saying: “You people are not attending meetings; our money is being wasted.”

We have found the media wanting in some aspects, however. Although the media claim some things Parliament did or discussed were not newsworthy, at times what they write or air is not newsworthy either. We are working with the media in mutual respect. We are not working in such a way that you will find one institution applying double standards, blackmail, hypocrisy and gossip. We are working for mutual respect and for the benefit of society.

There is also a good partnership between the media and Parliament with regard to national and local elections. Uganda has a direct electoral system for all offices, including the presidency. There is universal suffrage and a no-party democracy. Voters cast their ballot for people based on their individual merit and even village leaders are elected through adult suffrage. We recently had local and national elections and the media covered various aspects of the campaigns and electioneering. During these elections, Parliament took very seriously one newspaper report and constituted a select committee to investigate. From this investigation, an electoral officer and other individuals found themselves being investigated by a parliamentary select committee. The government wanted to put in place a judicial committee, but Parliament using its powers voted against that idea.

The Ugandan media enjoy freedom of expression and have a right of access to information because this provision is in our constitution. For us, the right to information is not provided by an Act of Parliament but is a constitutional matter.

So if someone is denied information – regardless of whether it is likely to jeopardize security or not – the constitution is being violated. This shows how far the right to information is entrenched in the constitution. The media can seek an audience with government Ministers, access the Hansard or attend parliamentary committee deliberations. The challenge is for them to ensure that the abundant information they have is used responsibly for the benefit of everyone.

But this is not to say the situation is perfect. There is room for improvement, but so far we are getting on well. Parliament is performing and the media are assisting. In return, Parliament ensures that the media are given a chance to do their work. Even with the President – who meets them quite regularly – they ask difficult questions on any matter. The challenge is for them to do the right thing. They should follow all issues and apply their expertise to investigate before they engage in speculation.

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## **THE ETHICS OF THE RELATIONSHIP BETWEEN PARLIAMENT AND THE MEDIA**

### **Freedom of Information Legislation and Human Rights**

Mr John Gambanga, the news editor of *Zimbabwe's Daily News*, referred to the arrest of the paper's editor under the new and controversial Access to Information and Protection of Privacy Act, which he said reverses the media's access to information. Section 14(1) of the Act, regarding the protection of deliberations of the cabinet and local government bodies, provides that no information relating to the deliberations of cabinet or any of its committees shall be revealed or

disclosed to any person who is not authorized to have access to such information. The Act further empowers the government, through the Minister of Information, to restrict information. Mr Gambanga said the Act targets and emasculates the private press, which is viewed by the government as part of the opposition party.

Mr Anurag Misra, from All-India Radio, reported that his country had moved into a dispensation favouring freedom of information. He explained that an ordinary citizen of Rajasthan had initially been refused information about the use of funds for local projects, but her right to that information was subsequently upheld. The central government of India has decided that every government department should have a facilitation counter to serve as the public's point of access to information. The counter must always be up to date on relevant information. A Freedom of Information Bill has been drafted and will soon be adopted, largely thanks to the work of an organization called Common Cause. Some of the Indian states have adopted it, but it has not yet been passed by the union Parliament. Mr Misra noted the important link between the free flow of information and economic development. He also referred to the importance of a free information flow at the level of the junior public officers with whom the public most frequently come into contact. For instance, the public perception of the police is more likely to be defined by the conduct of a constable on the beat than by that of a senior officer. It is often at this level of information that there are mental blocks that need to be removed, Mr Misra said, and these people need to be empowered.

Hon. Charles Kakoma, MP, (Zambia) raised the problems of press freedom without legal backing. The Zambian press have the right to criticize, but there is no legal backing for their right, he claimed, because the constitution has no specific provision regarding freedom of the press. The government's view is that the press can rely on the provision for freedom of expression. Zambian journalists feel that this right is too general, and that they cannot rely on it as a defence. Two years ago, there was a move to introduce freedom of information legislation, Mr Kakoma said, but no Bill has come before Parliament so far. In response to recent concerns among MPs, the government is revisiting the legislation and will probably bring it to Parliament.

Mr Kakoma said the Official Secrets Act defines virtually all government documents as official and therefore potentially secret. One can therefore be arrested for quoting from any government document. For instance, an MP speaking in Parliament quoted from bank statements regarding the irregular externalization of funds from a government account. The allegations, which could be tantamount to fraud or abuse of public office, were published in the press. Subsequently, bank and government officials tried to interrogate the MP, claiming that the account belonged to the intelligence office. Mr Kakoma said there have been cases in which the media has disclosed sensitive information without government reprisals. These include cases of corruption, theft of public funds and incompetence of high government officials. Notably, journalists responsible for such reports were previously imprisoned by a committee of Parliament.

Hon. P. Ramaiah, MLC, (Karnataka) stated that India upheld the right to freedom of expression and the right to hold opinions without interference. He referred to a United Kingdom parliamentary committee that had found that for someone to be able to play a responsible role as a citizen, that person must know what is happening in the country. There are two distinct aspects to the provision of access to information: one relates to ordinary citizens and the other to the media. The media depend largely on establishing a rapport with news sources. A journalist who has developed credibility with a government minister can usually get the desired information. The law is therefore primarily required to ensure access to information for the ordinary citizens. He added that India's

freedom of information legislation could be improved to enhance access to information by the public.

Sri Ramaiah reported that the state of Karnataka has a committee to assist small newspapers (defined as those with circulations between 10,000 to 15,000). However, the committee's lower cadre officials have been accused of withholding information rather than risking rebukes from their superiors for giving too much information. Such conduct needed improvement, especially because small newspapers are becoming increasingly critical providers of vital information.

Mr Nadarajen Pillai, senior news editor with the Mauritius Broadcasting Corporation, reported that his country has many newspaper titles, some aligned to political parties and some independent. Until recently, the Mauritius Broadcasting Corporation had a monopoly, but now the radio airwaves have been liberalized and there are private stations and television is set to follow. Arrest of journalists in Mauritius is almost unheard of and there is no law that prevents them from doing their work. At one time, the government wanted to institute a code of practice for journalists but this was rejected by the profession; although a Media Trust was created for all journalists in the print and electronic media with state funding to defend their interests and to provide training. Mauritian MPs normally rely on the competence of individual journalists and decide who is able to deal with a particular piece of information. A Human Rights Commission was set up recently to act against all human rights violations, including those relating to freedom of expression and information. There are therefore sufficient safeguards in Mauritius, said Mr Pillai.

Another Mauritian journalist, Mr Jean-Marc Poché, of *Le Mauricien*, countered that his fellow journalists were not entirely safe from the abuse of power. In the 1970s they were subject to censorship and in the 1980s the government tried to exert pressure on the independent press (which is usually regarded as supporting the opposition) in the form of withdrawal of subsidies and the setting of financial guarantees for publication that were unaffordable for some newspapers. Journalists were sometimes arrested for trivial reasons. Mauritius moved out of this through the mobilization of public opinion and political leverage and there is now a campaign for a Freedom of the Press Act, which would be more specific than the legislation on freedom of expression. The press is free at the moment, Mr Poché said, but media advisers to Ministers, or their spokespersons, can discriminate in choosing the journalists with whom they deal. This could create risks for the media because these advisers do not generally manipulate information, although the temptation is there.

Mr Conrad Burke of the South African Broadcasting Corporation pointed out that the spin doctor phenomenon was pretty universal.

Hon. Sarah Mangena, MPL, (Northern Province) asked whether it could not be said that a chief editor censors news. Often it is the chief editor who has to apologize when, for example, information has leaked, even if the report concerned was written by someone else. Mr Pillai doubted that a chief editor could control content in, for example, something that was said in Parliament. Dr Gideon Shoo, the director of the Habari Corporation of Tanzania, responded that the chief editor was the only responsible person, being legally held responsible for whatever appears in the newspaper and therefore any alteration made by the chief editor would be called "editing", not "censoring".

Sri Ramaiah suggested that when an editor shot down a good story produced by a junior reporter, this had a discouraging effect that amounted to stifling the freedom of the press at a certain level.

Hon. Sarat Kumar Kar, MLA, (Orissa) expressed the view that, just as the law was honoured more in the breach than the observance, freedom of information was relative, even though the existence of parliamentary democracy presupposed that right. It is a difficult proposition to say that there must be legislation supporting the right of ordinary citizens to information. Amongst MPs and journalists, where was the right to information, asked Shri Kar. After all, where the right to education might exist, it might still not be possible to exercise it. The “right to information” is therefore sometimes a misnomer; but MPs have a right to speak and journalists a right to report. MPs are free, but must observe the party whip, and often cannot speak without permission. Editors too are not truly free since they must answer to the owners of the media, whether the government, political parties or private companies. As a result, Shri Kar said information is manipulated for certain ends rather than for the sake of the public.

Legislation on its own is not sufficient, said Shri Kar, giving the example of one Indian state in which there had been conflict along race, language or religious grounds, which had led to burning and looting. The Human Rights Commission condemned the persecution of minorities, but the government, instead of pursuing this, chose to resign so as to seek a popular mandate. He went on to say that the government often will not spontaneously divulge information, particularly in response to investigative journalism, and the information has to be dug out. An example was the response to reported cases of starvation death, which the Indian government would attribute to other causes. The government is therefore shying away from bringing in legislation to cover this, he said.

Mr Luckson Chipare, the chief executive of the Media Institute of Southern Africa (MISA), said that the premise of the discussion was that freedom of information was a human right, and he cited article 19 of the Universal Declaration of Human Rights, arguing that it covered the rights of the media. The media are not special and there is no distinction, in terms of the right to information, between the media and the public. However, the media should be assisted by regulation, as the public usually cannot exercise its right to information except through the media. The right to information is a universal right, he said, and the media exercises the same right that ordinary people have.

Mr Chipare said that nearly every Commonwealth country still has an Official Secrets Act and that Parliaments should be encouraged to repeal them. In Zimbabwe’s case, the recent enactment of the Access to Information and Protection of Privacy Act was not accompanied by a repeal of that country’s Official Secrets Act. Such examples of legislation negate any attempts to improve access to information.

Many countries also retain legislation on parliamentary privilege, he said. In Zambia, Parliament may even imprison journalists. Such laws should be repealed and journalists should not be penalized for reporting what goes on in a Chamber of Parliament. There should be other ways of making journalists accountable. Restricting the dissemination of information should be a thing of the past.

According to Dr Shoo, Tanzania probably has the most draconian laws in the Commonwealth and they should be repealed. When confronted, the President assured media representatives that the laws were dormant. However, more than 200 cases brought under those laws are still pending, he said, which affects the whole journalism fraternity. In Tanzania, there is a media law reform initiative involving a number of organizations, helped by MISA, Dr Shoo said. The government

responded to their approaches by promising a new media policy – the first instance of the media and other stakeholders being approached for such a discussion.

Dr Shoo claimed the problem in Tanzania had its roots in the constitution. Section 18(1) gives the right to freedom of expression, but also states that this right exists only “without prejudice to the laws of the land”. Some of the existing laws, such as the National Security Act of 1970 and the Penal Code of 1995, were not favourable to freedom of expression or of information. In terms of the Broadcasting Act of 1993, any Tanzanian using a video camera could be jailed, because one cannot film in the country without official permission. This has been challenged in court, but, apparently because it touches on the constitution, no judge is ready to rule on it, said Dr Shoo. In another example, the terms of the Prisons Act of 1967 designate as a prison any place where there is a prisoner accompanied by a prison officer, thereby potentially restricting the activities of the press.

Tanzania’s Regional Commissioners and District Commissioners Act of 1962 allows these officials to detain journalists for a period of 24 hours, said Dr Shoo, following which they can be released and then immediately re-detained. This happened to a group of journalists recently, when they accompanied the Vice-President to a region in which there were rumours of ethnic conflict. They were detained and had their cameras and films confiscated. The District Commissioner responsible was summoned before the Media Council but refused to appear because he claimed he was doing his duty as a servant of the government. The detention was later ruled to be unconstitutional.

Tanzania has no piece of legislation protecting the rights of journalists to collect and disseminate information. Such legislation is being drafted and will be lobbied for by Parliamentarians known to support the media law reform initiative, said Dr Shoo. They will also recommend the repeal of legislation including the detention law.

Parliament is abusing its powers, said Dr Shoo. He related the case of one journalist who was arrested and brought to court for writing a story. The parliamentary committee concerned did not claim that the story is untrue, but only that the journalist was behaving rudely by reporting it. This sort of abuse intimidates reporters, in particular the younger ones with less experience, he said. Since Parliamentarians do not seem ready to enact laws for journalists, they have to be lobbied. Some MPs fear that giving the media freedom will lead to reports of their misbehaviour in Parliament, although the media has said that such behaviour would be reported only if it amounted to disorder or a public nuisance.

Mr Burke asked if there was any indication that the government of Tanzania was likely to repeal the offending laws in the foreseeable future. Dr Shoo replied that the Minister responsible for information and policy had responded to approaches and had attended a seminar. The Minister said the government had received proposals and was working on them. Instead of waiting for government action, the advocates of reform had commissioned academics at the University of Dar es Salaam to draft a Bill, which Dr Shoo hoped would soon be tabled.

Ms Phule Mthala, media liaison officer with the Gauteng Legislature, indicated that the South African constitution enshrined freedom of expression and access to information as rights. The Open Democracy Act, the Promotion of Access to Information Act and proposed media diversity legislation provide a good overall framework. However, the constitution does limit freedom of expression where it involves the “advocacy of hatred that is based on race, ethnicity, gender or religion”. The Human Rights Commission held an inquiry on racism and the media in response to

complaints from the public. While many journalists said the inquiry implied a limitation of their freedom of expression, the commission said its aim was to have a dialogue with them.

Sri Ramaiah commented on the paradox between the name of the new Zimbabwean Act and its effect, which was the opposite of facilitating access to information. He voiced the opinion that representatives of the Commonwealth media and Parliaments should take a public stand against such legislation as in Zimbabwe because not to do so would negate the work that was attempted by those attending the conferences on “Parliament and the Media”. Other countries should be discouraged from following the example of Zimbabwe.

Mr Gambanga said that he was very encouraged by the sentiments expressed by the delegates. He distributed copies of the Zimbabwean Access to Information and Protection of Privacy Act and of a *Cape Times* story on the arrest of a Zimbabwean editor. He pointed out that the editor had been arrested in terms of section 64 of the Act, entitled: “Abuse of freedom of expression”.

The background to the arrest was that when the election results were announced on television by the Zimbabwean Registrar-General of Elections, the media, both government-owned and private, failed to notice the lack of accuracy of the figures given. This was pointed out by a member of the public much later. The *Daily News* obtained a video recording of the televised announcement and Mr Gambanga and the reporter writing the story established that the figures did not tally. On the day that the story was published, the Registrar-General called a press conference and produced different figures. The *Daily News* followed with another story, and on that basis the editor was arrested.

Mr Gambanga said he wanted the video shown around the world because the government had arrested the newspaper’s editor-in-chief in order to instil fear in junior reporters and discourage them from writing anything critical of the government.

Mr Gambanga also felt that the discussion had not done justice to Ms Mangena’s point regarding what happened to stories before they were published. When a *Daily News* reporter wrote a parliamentary story, it goes to him as the news editor acting as the first gatekeeper. In normal circumstances it is the news editor’s duty to check the story factually. If necessary the story will be changed and/or shortened, possibly by giving appropriate instructions to the original reporter. When the news editor is happy, the story is sent up to the assistant editor. When cleared by the assistant editor the story is sent to the duty editor, for example the newspaper’s deputy editor-in-chief. This process is critical, and what is eventually published may be very different from the original story, so that a reporter might conceivably be blamed for something inserted in the article by those meant to clean up the copy.

Mr Chipare added that the *Daily News* editor had won five awards in the past two years, including the World Association of Newspapers Golden Pen award and this year’s UNESCO Press Freedom award. He had also received MISA’s Press Freedom award for 2000. The *Daily News* is known for being accurate most of the time, said Mr Chipare, and the story in question bears credence, considering the fact that the Registrar-General did come back with new figures. Mr Chipare felt that the group ought to state firmly that the kind of legislation enacted in Zimbabwe should not see the light of day.

Shri Bhim Prasad Dahal, MP, (India) said that his country was totally committed to freedom of expression. He pointed out that no government wanted to open up completely and that there are

issues of national security that have to be treated carefully. The Indian government is committed to freedom of expression, but certain conventions have to be drawn up to ensure that there is balance and that information output does not go against overall security.

Dr Shoo gave an illustration of how a government can use existing laws to restrict not only press freedom, but also the rights of the individual. He described a situation in which a group of newspapers in Tanzania had three years previously published allegations concerning how a Minister and his wife had conspired to steal a substantial sum of money for a London shopping spree. The Minister was ultimately forced to resign.

Dr Shoo alleged that the Minister had written threateningly to the newspaper group's five directors. According to him, the publication of the allegations caused the company's chairperson to be stripped of his Tanzanian nationality, although he had been born in Tanzania and had represented the country abroad. Having stripped him of his nationality, the government apparently said he could appeal against the decision. But, claimed Dr Shoo, he was also told to tone down criticism of the authorities in the group's newspapers.

### **Press Freedom versus Invasion of Privacy**

Mr Walter Hamilton, head of national coverage, news and current affairs for the Australian Broadcasting Corporation, described the situation in Australia with regard to MPs' privacy. He indicated that the privacy of Members as public figures is protected by the Members' Privacy Act of 2000, which restricts media reporting about the private life of public figures. The Press Council determines the matters of public interest to be published, but despite its existence the privacy of Members of Parliament can be invaded. Mr Hamilton also mentioned the whistle-blowing approach, whereby newspapers come forward with information that is private and make it an issue of public interest. He talked about standards of privacy invasion: the people concerned should be informed before publication and be given an opportunity to respond, and the balance between press freedom and intrusions into the privacy of public figures should be regulated. He recommended self-regulation and also regular debates about the media disclosing information about the private life of public figures, especially their sex life.

Mr Mark Stephens, of the London law firm Finers Stephens Innocent and the Oxford University Programme in Comparative Media Law and Policy, outlined the self-regulatory approach in the U.K, one that is different to that adopted in America. In the U.K. media regulation is undertaken by an enormous range and mixture of self regulatory bodies, independent regulators and QUANGOs. Often the regulator will also have a reporting or sponsoring ministry whilst others are entirely industry funded and controlled.

He added that one should test the "health" of a regulator by looking at a number of indicia including: Are appointments to the regulator independent of those they regulate? Are those individuals independent of the industry they regulate? Is the funding of the regulatory organization independent of those they regulate? What is the status of their codes of practice (if any), are they compulsory or merely recommended best practice? If compulsory, are breaches of the code punished by some sort of sanctions which are sufficient to secure compliance with the code? Is there an independent appeals body, to review decisions of the regulator? Is the remit of the regulator clearly understood by industry and public alike?



A regulator in “rude” health will ordinarily be expected to be well known and to command the respect of society; and will be used by that society. The regulator will reflect the social norms and standards of that society.

Mr Stephens went on to say that problems have arisen in the U.K. where public confidence has been dented by regulators who are perceived to be too close to their industry or to government. There have also arisen occasions where the courts jurisprudence have begun to diverge from the regulator. For example the Press Complaints Commission has applied a differing definition of, “privacy” than that being adopted by the courts. This has led to the courts being preferred as a forum for dispute resolution on such matters. The test for invasion of privacy is (arguably) easier to establish in Court (than before the PCC), a result in court comes with the additional benefit of damages and injunctive relief. He said that whilst on the other hand the PCC has a lamentably low success rate for complainants – way below the 30 per cent success which the Consumers Association expects of an effective regulator – and even if the complainant wins there is no compulsion on the regulated newspaper to abide by the decision.

The area of privacy law is a developing one at the moment in the U.K, Mr Stephens concluded, and it remains to be seen if the courts will embrace within privacy the French concept of a “right to rehabilitation”, i.e. the right for private facts which have earlier been made public to be reburied so that they cannot – once gone from the public consciousness’ – be repeated.

Mr Wilf Mbanga, the founding managing director of Associated Newspapers of Zimbabwe, now managing director of a communications company, mentioned that the approach to developing privacy law would differ in developing countries such as Zimbabwe. He also mentioned that in Zimbabwe laws that prevent the invasion of privacy are used to block access to information that should flow from the government to the media. He suggested that there should be a balance between access in the interests of the people and the right to a private life. A general inquiry on what is happening in developing countries could be undertaken.

Mr Stephens suggested that the media should refrain from writing about public figures’ private and sex lives. He talked about the concept of a “zone of privacy”, a sophisticated approach that outlines the level of information about the private lives of public figures to be disclosed.

Ms Zubeida Jaffer, a journalist from South Africa, indicated that in her country there is a problem with the media disclosing health details about Members of Parliament and public figures, especially their AIDS status. She referred to the death of Mr Parks Mankahlana, the presidential spokesperson. She suggested that, before publishing reports, the media should get confirmation of the cause of death from medical practitioners. She mentioned that in South Africa there are no laws restricting the media from reporting on public figures’ private or sex lives. She also suggested that grief stories should not be published.

Mr Stephens clarity was needed on the question of writing about a person’s life and death. After deliberation, the delegates said that reporters should be able to write about a person’s health after death provided the cause of death has been confirmed by medical officers. Mr Mbanga mentioned that in Zimbabwe medical officers are not allowed to put down AIDS as a cause of death.

Mr Shafiqul Amin Ferdausi, the director-general of Bangladesh Betar, claimed that there is no press freedom in that country. The AIDS problem is neglected. Invasion of privacy is regulated by the courts. Disclosure of private information is by agreement. There is a Press Council, which has a

constitution that enables it to regulate the media; but broadcasters are not represented on it. A Human Rights Commission headed by a neutral person – which is impossible in a politically divided country like Bangladesh, said Mr Ferdausi – protects the private life of MPs.

Ms Mithleshni Gurdayal, a reporter with Fiji's *Daily Post*, explained that in her country the media are free to cover the private life of public figures and politicians, whose details are always highlighted and published as headlines. Sex scandals are freely published.

Another journalist, Mr Gideon Munthali, of Malawi's *Nation*, asked when and how the sex lives of public figures become a matter of public interest. Mr Tim Carrington, of the World Bank Institute, referred to U.S. President Bill Clinton, whose private sex life became a public interest issue simply because he lied under oath.

Miss Cindy Wirtz, a journalist from the Seychelles Broadcasting Corporation, pointed out that it was difficult to compare big countries like the U.K. with a small country like the Seychelles, where broadcasting is fully funded by government and therefore the stories to be aired are decided by the government. There is less invasion of privacy by the media as a result.

Smt. Kalawati Subba, MLA, (Sikkim) explained that the media in her country are free to publish any information about public figures. There is an Ethics Committee that oversees the behaviour of Members inside and outside the House. She suggested that the media should establish good relationships with politicians to minimize personal clashes and that journalists should be trained and experienced. They should be impartial and not be politically affiliated.

Mr Hamilton mentioned that the Australian media had the pressure of taking assignments from editors who determined what would be published. Parliamentarians are required to disclose their financial assets. He suggested that the privacy of public figures and their families should be protected and that Members of Parliament should be protected in disclosing their financial status.

Mr Carrington asked where the access to information stopped and the invasion of privacy began. Mr Hamilton said he felt that the issue of public interest needed to be redefined. He also mentioned that the media in Australia is self-regulated.

Hon. Ravindra Randeniya, MP, (Sri Lanka) suggested that self-regulation was the key to the issue of invasion of privacy as countries differed. He suggested that every country should develop its code of ethics and conduct as norms, behaviour and values differ between them. If an issue has been declared a matter of public interest, the media should take into account the response from the public. He said the media should be strong and cautious, because people rely on the them. He also mentioned that editors should be responsible and accountable for what is published.

Hon. Suzanne Vos, MP, (South Africa) briefly sketched the background of the relationship between the media and Members of Parliament in South Africa, one which she described as co-operative. Training and workshops are offered yearly by Parliament to train Members to handle the media. She suggested that MPs should understand the role of the media and that the media and politicians should both work hard to prevent the invasion of privacy. People need to understand their rights and what a "free press" means.

Mr Carrington suggested that when the media talk about free press they should take into consideration the reputation of a particular paper. How does one keep people interested in news produced by that paper?

Mr Stephens referred to the media focusing on the private lives of politicians' families and said that in the U.K. the children of public figures are sometimes considered newsworthy by the media.

Delegates agreed that this becomes a problem when the media publish stories that can put the family in danger, raising again the question of who determines what is published and what is not.

Mr Hamilton suggested that the media could reasonably restrain themselves from reporting on politicians' families and their private lives as this could harm the relationship between the media and politicians, and that exposing the families of politicians to the media is usually unethical.

### **Media Ownership**

The Chief Executive of Mail and Guardian Media, South Africa, Mr Govin Reddy, commented that media ownership was central to press freedom. Mr Conrad Burke, a political correspondent with the South African Broadcasting Corporation, observed that there was a great deal of literature on media ownership. Media ownership does not mean interference in journalists' work. For example, in privately owned media companies, journalists are not satisfied with the way they are treated and object to the fact that if they do not want to report something that is of importance to the owner of the media company, they are sacked. South Africa is facing problems as far as media ownership is concerned in that it does not have the kind of media freedom that it would like to see. There have been complaints in a number of magazines, especially from the disadvantaged communities. Broadcasters such as CNN and the BBC also face the problem that journalists do not tell the truth about certain issues, he said.

Hon. Mike Sebalu, MP, (Uganda) said that in his country, freedom of the press runs smoothly because there is not a multiparty system and media companies are not owned by government. He added that people should concentrate on the realistic situation on the ground, not the ideal situation. He described press freedom as a need to agree on the common goal of informing people and that people must appreciate what is being delivered. Defining press freedom in terms of democracy will narrow that freedom. Problems for journalists are: the attitude of the owners, the interference of owners in their work and the preoccupation of a majority of press owners with financial gain rather than a desire to serve the community. Freedom of the press has caused journalists to take advantage by criticizing or being biased towards certain political parties. That is why they should set themselves common goals on their standard of performance.

Mr Reddy asked whether a multiparty system was a prerequisite for a free press. Hon. Pule Malefane, MPL, (Gauteng) responded that press freedom and the issue of multiparty or single-party government were not related. Mr Reddy expressed the strong feeling that there was a relationship, in that in a single-party country there seemed to be no problem with freedom of the press, for example Uganda, where there was no multiparty system. Mr Burke added that the Soviet Union had collapsed because there was no freedom of the press. Freedom of the press allows points to be discussed and corrected.

Hon. M.L. Mangcotywa, MPL, (Eastern Cape) talked about the danger of confusing two issues, namely democracy and the multiparty state. The multiparty state is an impediment to the press. In Zimbabwe there is no freedom of the press because it is a multiparty state, which causes all the

friction in the country. Multiparty states are not a prerequisite for a free press, even in South Africa.

Mr Sebalu agreed and he asked the group to look at the essence of democracy, not its specific form. The democratic credentials of Uganda are seen in the fact that when someone has done wrong, even if that person enjoys high status in the government, he can be called to account, as in the case of the government newspaper, *New Vision* initiating a Minister being called to order. Uganda is a no-party state because people are elected on individual merit. There used to be party governments where a party would send a representative, but now individuals represent themselves, he said.

Mr Reddy wondered whether a free press can exist in a one-party state. Mr Malefane responded by saying that if a party upholds democracy, whether in a one-party or a multiparty state, this can happen. A one-party state can be democratic if the representatives enjoy the support of the majority. Mr Nixon Kariithi, of South Africa's Rhodes University, added that if the legislature works with the executive in building up policies and the products of the political systems that the people want, that is democracy.

Mr Malefane commented on media ownership and press freedom by saying that there is constitutionally guaranteed press freedom in South Africa and there is no political interference. But in the way reporting has been done, especially on economic issues, little coverage has been devoted to workers' perceptions and disadvantaged groups; everything is always about big business. The media are driven by propagating the interests of media owners: if something is of interest to them it can run throughout the week, even in all papers. The press is so free in his country, said Mr Malefane, that a journalist insulting the President can never be called to account for that.

Mr Simphiwe Mdlalose, the Chairperson of the Media Institute of Southern Africa, posed the following questions: Does ownership affect editorial independence? How much access financially do local people get? What is the role of government in regulating media ownership?

An Indian journalist, Dr Sudha Ramachandran, gave her views on the ownership of the media in her country. She said the Indian government plays a major role in the electronic media and there are private journalists operating. There is no foreign ownership of media for cultural and commercial reasons and because they would not be able to face the competition of foreign media.

Smt. Roshan Warjri, MLA, (Meghalaya) observed that in India, as a multiparty country, there is freedom of the press. Media ownership by political parties is a real problem, though she said it does not affect her country, which has commercially-owned media.

Miss Ellen Wanjiru, a reporter with the Kenya Broadcasting Corporation, said that there was press freedom in theory but not in practice. The broadcasting station she works for is owned by the government, which is formed by the ruling party, which owns the *Kenya Times*. Journalists are facing problems in that even though they have freedom of the press as journalists, they must know what to write and what to report to the community. For instance, in the daily newspapers there is freedom to report, but they do not report anything that is advanced in the *Daily Nation*. There are many media stations in Kenya, but the government is not comfortable about licensing those stations.

Mr Burke said that the media in South Africa are very biased in that legislative development are not reported in the media, but they focus on criticizing. South Africans have a culture of respecting

their seniors, but the media in some cases do not practise that culture. Foreign-owned media do not have that respect and are very biased in reporting what is happening in Palestine and the land issue in Zimbabwe. Largely, media ownership does not reflect the vast majority of the country.

Mr Reddy pointed out that the press in South Africa is not largely foreign-owned, but overwhelmingly black-owned. For instance, the largest newspaper, *Sowetan*, is black-owned, as is the *Sunday Times* and some television channels. Commercial radio stations are also black-owned.

Mr Kariithi said that before 1994 the media were owned by English-speaking people but that has changed. What has not changed is the culture of the newsroom, because they have never enjoyed the freedom they always wanted to have. He urged the group to look at the diversity of ownership, the commercial media and the Media Trust.

Hon. Kanika Ganguly, MLA, (West Bengal) said that the majority of the print media are controlled by capitalists and multinational groups.

Mrs Maria de Piedade João, a journalist from Mozambique, mentioned that press freedom comes on top of the moral issues. In Mozambique there are two television stations, one Portuguese-owned. This station is very good and produces useful and educative programmes. The other one belongs to the Universal Church and does not educate to the community. The church services that this station shows take about four hours and for the rest they show films to the community. The community is divided because of this and the government does not want to interfere.

Mr Sebalu said that he was interested in local versus foreign media ownership. The government always respects press freedom to such a degree that the media get all the information. He also asked whether community and trust businesses were sustainable.

Mr Hassan Shahriar, the executive editor of the *Daily Ittefaq* of Bangladesh, said that to run a media organization one needed a huge sum of money and industrialists and businesses must be allowed to own media. Editorial policy must be set whereby the owners cannot overrule the journalists and journalists must have a say in this policy.

Mr Kariithi added that the media is very broad as it comprises newspaper, radio, printing *et cetera*, and therefore the editorial aspect is a fraction of the total situation. Owners of the media companies tend to be editors, so they focus on the profit rather serving the community. He gave the example of the Port Elizabeth paper the *Evening Post*, which survived 50 years and closed last year because it was not making advertising profit though the circulation was high.

Mr Malefane said that the workshop had afforded Members of Parliament and representatives of the media an opportunity to have a clear picture of what is happening on the media front and also to find solutions to the problems faced by media. He recommended that media institutions be engaged in what is happening so that their reporting assists good governance.

For the way forward, Mr Mdlalose proposed that:

- There is a need for government intervention in terms of media ownership, such as print media.
- Government and business have to create a mechanism for this to work by encouraging skills development and creating a skills development fund.

- There should be participation of local people in media ownership. Journalists should be encouraged to own a certain percentage of the company.
- The issues are: community-based media, media diversity and ownership of the media.
- Diversification of the media structures must be increased.
- The Employment Equity Act is not properly practised among the media in South Africa, where everybody must be represented equally. Top reporters or journalists are still predominantly white.

Mr Reddy said the Media Development and Diversity Act was passed by the South African Parliament because most of the media in South Africa are controlled by big businesses. There is now an alliance of non-governmental organizations, government and business in South Africa. The media in South Africa are very urbanized, especially the print media, so this initiative will make the media accessible to everyone and will also contribute to media diversity in the country. This is a good model for Commonwealth countries to look at.

Mr Kariithi concluded that one of the objectives is to have independent media dominated by local content. He also mentioned that there is a conspiracy in the media about poor people or black people.

Mr Sebalu said investors without a professional journalistic background have no sense of moral concern about what they are doing. People should be able to regard the media as a social investment and not as people who want to corrupt the industry. Mr Burke added that there is a serious shortage of qualified journalists.

### **Self-Regulation versus Statutory Regulation**

The Executive Director of the Commonwealth Press Union, Mr Mark Robinson, summarized the operations of the U.K. Press Complaints Commission. The newspaper industry in the U.K. responded to the calls for statutory regulation of the press by establishing the commission. The commission works on a two-tier system, which means that anyone can complain about a newspaper report. The commission will analyze the complaint to see whether it is necessary to take the matter further. Only if there is a serious complaint will the commission adjudicate on it. In the majority of cases the matter is resolved without going to adjudication.

The commission is made up of representatives of the media as well as lay persons (who are in the majority). The commission is able to finalize a matter within a relatively short time because, unlike statutory regulatory bodies, the commission does not allow arguments to be heard. The calibre of the chairperson of the commission is an important factor. Once the commission has made its decision, the newspaper affected by the decision, irrespective of whether the decision is in its favour or not, will – this has been done in all cases thus far – publish the findings of the commission voluntarily and prominently. The commission had been very proactive in getting agreement with the media that, in respect of royal children and politicians' children under the age of 18, the press will report a fact but leave the minor alone thereafter.

Mr Robinson further indicated that for a system of self-regulation to be effective it must reflect the needs of the country implementing the system. He added that he had been involved in various seminars dealing with the issue of self-regulation of newspapers in Commonwealth countries and that a report on these matters was to be published at the end of the year. He concluded that it would be more difficult to develop a system of self-regulation for television and other broadcast media because of the licensing arrangements.

Hon. Phillip Pental, MLA, (Western Australia) indicated that Australia had a Press Complaints Council similar to that in the U.K., although it had a fairly low profile.

Mrs Anna van Wyk, MP, (South Africa) indicated that the Press Ombudsman in South Africa also had a relatively low profile. She believed that self-regulation was necessary in the case of print media, but that it should be different for broadcasting media. She asked whether the quality of reporting in the print media could be improved if there was a system of self-regulation.

Mr Robinson said that in the U.K. there was currently a debate on that point. It is generally recognized that the system of self-regulation will never influence quality because quality is built on considerations such as readership and advertising. In the U.K. the commission receives its funding via a special board of finance so as to ensure that the commission is thoroughly independent. He had been told by the South African Press Ombudsman that the ombudsman could only react to complaints and could not be proactive. The difficulty which the ombudsman had was that from the outside the system did not look independent.

Mr Syed Mohammad Fazal, the editor of the Karachi *Daily News* in Pakistan, asked whether there were any clashes between the newspaper and the commission itself. Mr Robinson said that the one time there was an incident in which an editor was upset with the finding of the commission. The chairperson of the commission took the matter up with the publisher and the editor was told to simply accept the commission's finding.

Mrs Van Wyk said that the press coverage of Parliament was not satisfactory. Politicians often make statements outside Parliament and the media focus on those matters and not on what is happening in Parliament.

Mr Robinson then referred to the coverage of Parliament. The difficulty is that newspapers do not have a duty to publish the work of Parliament unless that work is regarded as newsworthy.

Hon. Stephen Ndicho, MP, (Kenya) said that in his country the government had a duty to inform the public of what is happening, and therefore it did not matter if statements were made in Parliament or outside. He gave the example of the situation in Kenya when anonymous newsletters had been published and circulated containing very defamatory allegations. Because nobody knew who was responsible for these newsletters the Attorney-General had prepared a Bill that would regulate all types of media, the mainstream media as well. Members of Parliament were of the view that if that Bill were introduced it would easily be passed by Parliament and would result in a very serious encroachment on press freedom. The Attorney-General was persuaded to shelve the Bill for the time being until further consultation could take place as to whether the press should be self-regulated or whether there should be statutory regulation.

Ms Padmaja Padman, an independent journalist from Malaysia, said that in her country there was an attempt to set up a Media Council. The entire process was being spearheaded by a select group of editors and academics; politicians were not involved. She had seen the draft and asked whether it is possible for self-regulation to be based on statute.

Mr Robinson said that statute could be used as a possible route for self-regulation if, for example, the media wanted self-regulation but the government was the only body that could fund such a system. He added that any system, whether statutory or self-regulatory, would only succeed if it

had the confidence of the press, the public and the government. The statutory regulation system breaks down because, in the context of press freedom, editors want to push the boundaries whereas government's policy is to limit the boundaries.

**The Media and Elections in Zimbabwe by Mr Wilf Mbanga, Managing Director, Activate Communications, Zimbabwe**

Like the Zimbabwean 2002 presidential elections themselves, which have been widely condemned as fraud, the media have not been acquitted for their coverage before, during and after those elections. What has been happening in the media in Zimbabwe is a microcosm of what is happening in the general Zimbabwean society. The government-owned and controlled Zimbabwe Broadcasting Corporation (ZNBC), the national news agency, the community newspapers group, and the privately-owned media – *The Daily News*, *The Sunday Standard*, *The Financial Gazette* and *The Independent* – have become increasingly polarized during the past two years on a scale never experienced before.

On the outset, let me state that I have no illusions concerning the fact that most newspapers in the world today pursue a particular ideological line or support a particular dispensation. However, what I find unacceptably offensive is reporting that shows a disregard or contempt for the truth, reporting that encourages racism, tribalism, fear, hatred and violence, and does not endeavor to give the two sides to a story. What we have seen in the media in Zimbabwe during the past two years has been shown to be genocide at its worst, and I am ashamed of it.

We have seen reporters commenting in the news columns on stories they were writing. This practice has been allowed by editors. A reporter's job to me is simply to find out and write the facts of any given matter, not to interpret or otherwise manipulate those facts. Reporters should apply the same standards for every story – truth, fairness and accuracy being of primary concern. When I was trained as a reporter some 34 years ago, it was simply understood and universally accepted that journalists would be fiercely apolitical, and would jealously guard their personal and professional independence. Of course, there is no such a thing as perfectly apolitical news analysis. However, fairness is demanded: both sides of the story must be given, and reporters should never allow their personal beliefs to influence their professional judgment.

The editorial column has traditionally been the one area where a newspaper could identify itself with a particular political or other stance. The editor is the only one allowed to comment on any matters. Moreover, that comment is restricted to the editorial column and should never spill over into the general news sections or indeed into the advertising space.

Newspapers are in business to make money. However, I find it remarkable, indeed incomprehensible, for any newspaper to pursue a bias that is at variance with the majority of its readers, which then forces such readers to start buying a rival newspaper. During the past two years, state-owned newspapers have blatantly vilified the opposition party, Movement for Democratic Change (MDC), whilst lavishly praising the ruling ZANU-PF. The independent press, understandably, has felt an obligation to counterbalance this by doing the opposite. As a result, buying a newspaper in Zimbabwe today has become a political statement.

One of the most alarming developments in the local media during this period has been the increased misuse of the old journalistic ruse – the source. The use of unnamed sources is accepted by the profession in investigative reporting cases of extreme delicacy such as the Watergate scandal. However, irresponsible use of unnamed sources has become rampant in Zimbabwe to the



point where just about every political story in the government media is attributed to an “unnamed”, and therefore uncheckable, unaccountable, irrefutable and mostly untrue source. This I find unacceptable.

Another trick is to say something derogatory or false about someone and then claim that person was unavailable for comment. In my days, if you could not get hold of a person for comment, the editor held the story from publication until you did. Perhaps the most distressing development of all was and still is the disregard for the truth in the government media. Stories are published without even being checked, let alone double-checked. For example, in the run-up to the March 2002 presidential elections, there was an armed robbery at the Johannesburg International Airport, which the South African Police traced to a number of Zimbabwean and South African criminals. This story was highlighted in *The Herald* and its sister newspaper, *The Chronicle*, under a banner headline, “MDC involved in armed robbery”. The link between the robbery and the MDC has not been proved in any court of law and *The Herald* has continued to link the MDC to the robbery without any proof whatsoever.

It is common for rumors to make their way onto the front pages. Politicians out to get their opponents are quoted in the media making many unsupported allegations. No attempt is made to verify facts. Even more ominous is the unashamed use of government media to publish blatantly untrue propaganda on a daily basis. For instance, let us look at the incidences of violence during the presidential elections. The government media only carried reports of anti-ZANU-PF violence. This was particularly reprehensible, because they had access to all the government information services and records, and to support mechanisms such as the police. The private media, which have problems accessing information from official sources, had to rely upon hearsay and tip-offs. The police would not answer any queries from the private media. This was appalling.

What I also find disturbing is that newspapers seemed to tolerate violence as long as it was perpetrated by the political party that they supported. Some newspapers seemed to suggest that there was an acceptable level of violence. All forms of violence are unacceptable and should be condemned, no matter whom the perpetrators are. Newspapers condoning violence are doing their readers, Zimbabwe and Africa a great disservice. The media should adopt zero tolerance towards violence and denounce any person or political party that uses violence as a political campaign tool.

During the same elections, the number of people killed, tortured or beaten also became a game. *The Herald* published figures to suit its editorial policy, namely, the level of violence was low and therefore acceptable. *The Daily News*, on the other hand, had considerably higher figures. To add to this confusion, the police had their own figures, which were different from everybody else's.

I believe the media should highlight and condemn all incidents of violence, be it assault, torture, coercion or intimidation, and regardless of the perpetrator. In a country that has recently emerged from war, newspapers have a crucially important unifying role to play. I was therefore appalled at the number of times that racial and tribal sentiments were worked up during the election campaign. Shame to those journalists who allowed themselves to be used to whip up racial and tribal animosity.

I cannot understand why it is necessary to mention a person's race when covering a story. *The Herald* and its sister newspaper, *The Sunday Mail*, were particularly guilty of prostituting themselves in this way. Journalists working for government media were generally guilty of repeating in their copy the inflammatory language used by politicians at rallies. It was bad enough

if politicians did this, but when journalists repeated such outrageous statements verbatim, that was regrettable.

I now turn to political advertising. The most disturbing trend notable during the election campaign was the total disregard for advertising regulations to which all the media in Zimbabwe subscribe. Anybody contesting elections should be treated like a business trying to sell a product. One basic rule states that advertisements should focus on the advantages of the product and should not denigrate a rival product. Also, newspapers should accept advertisements from any business so long as they are paid for. Interestingly, only *The Zimbabwean Mirror*, an independent weekly with a tiny circulation, carried adverts from both political parties. *The Daily News* refused to carry adverts from all parties except the MDC, but ZANU-PF took a decision not to advertise in the newspaper. The state-controlled newspapers refused to accept MDC adverts at all. Even the most partial bystanders were alarmed by ZANU-PF advertisements. Their typical messages contained racist and insolent language aimed at the opposition and other perceived adversaries. It must be said that in contrast, the MDC adverts were creative, positive and focused on solving the country's problems.

Readers' letters demonstrated yet another perspective to the polarization between the ruling party and the opposition. Evidence of careful selection was so obvious as to be laughable, if it was not so tragic. This biased selection process was evident when it came to random public interviews. Everybody interviewed on television on the streets of Harare unwaveringly supported government policy and the ruling ZANU-PF. If you only watched state-controlled ZBC television or listened to ZBC radio, you would be convinced that everybody in Zimbabwe was a faithful ruling party supporter.

Finally, on a slightly positive note, let me say that the standard of political cartoons was excellent in all newspapers during and after the elections. Unfortunately, the content of every cartoon followed the predictable editorial line. Had they managed to capture the essence of political developments without being so blatantly partisan, those cartoons would surely have been internationally hailed as true works of art.

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## **REPORTING PARLIAMENT**

### **What Is News?**

**Hon. Phillip Pental, Western Australia**

In preparing for today, like other speakers, I went back to the Parliament and media conference transcripts in New Delhi 2000. The common trends running through several presentations on that occasion were the following: First, that Parliament and the media needed to cultivate a harmonious relationship – the cordial relations between these two pillars of democracy needed to be strengthened – and that Parliament and the media are complementary institutions. A number of speakers aspired to a kind of comradeship between the two institutions where there might be a sense of shared power or co-responsibility for the good of mankind.

I must say at the outset that I take a somewhat different view to that. And perhaps the closest that any speaker in New Delhi came to expressing my own views came from Ms Linda Christmas, of the Commonwealth Press Union. She said: "Parliament and the media should neither be allies nor adversaries." She went on to explain that the relationship between the media and Parliament ought

to be one of understanding, mutual respect and tolerance. But she put some distance between herself and those others who advocated some fraternal camaraderie between the two institutions.

It is certainly my own experience, after working in both journalism and in politics in Australia, that both groups view each other quite differently. My own experience and some of the attitudes that I saw coming out at New Delhi invariably have Parliamentarians clinging to what I think is an idealized notion of what the relationship should be: that is, one of mutual respect, they would say interest and co-operation. While journalists on the other hand invariably see Parliament in quite different and pragmatic terms: that is, does the Parliament provide news? If this is an accurate assessment on my part, we are dealing with a problem of vastly different expectations from the two sides.

I intend to deal with the pragmatic issue of just what is news. Simply stated, news is whatever the media defines it to be. It becomes a value judgement on the part of the journalists about what would interest readers or viewers. It goes to no loftier height than that and neither do I suggest it should. Also, it goes without saying that there can be no pact, arrangement or deals over what Parliaments or governments define as news. Instead, if any informal pact were to exist, it must acknowledge the need for the full, unfettered, unconditional freedom of the media to define for themselves without impediment just what is news and how it is to be reported.

On the face of it, this can appear one-sided and unfair. How many of us have felt just a little bit cheated as Parliamentarians, on the one hand, by the failure of the media to report our in-depth speech. On the other hand, space is given to what might be a silly or unguarded unintended interjection, which lands that Member in trouble. As unfair and as one-sided as that may appear to be, the reality of the freedom of the press is that it must make the choice between which incident or account was more worthy of a news report.

So against that background does the media always win, is it all one way? An objective assessment, at least in the jurisdiction that I operate in Western Australia, is that the answer is a resounding no. That may surprise you; so, let me take it a little further. Ironically, it has always been Parliament, which has adapted to new conditions while the media has changed very little. For example, the media operates today much as it did 25 years or 50 years ago. It is driven by the same dynamics, that is, to seek and to publish that which it believes to be the news. Parliament, on the other hand, has reformed quite significantly over that period. The very nature of the reforms has actually made Parliaments more relevant and newsworthy, not less. A generation ago in our Parliament, for example, there was no such creature as a Public Accounts Committee to oversee public expenditure. We now have one. A generation ago, Parliament had no committee system. Today, we have an extensive, well-resourced system of committees, capable of enquiry into any facet of public policy. A generation ago, Parliament had no such thing as a Members' interests register; it does now.

Not only have these reforms been accomplished, in each case they have themselves become highly newsworthy to press, radio and television in Western Australia. Hence, modernization and innovation by Parliaments have not only been desirable in themselves, but they have actually given the Parliament that extra opportunity to place itself on display or be in front of an otherwise very cynical audience.

The immediate dividends for our Parliament, and others that have travelled the same path, are at least twofold. First, the media today have infinitely more opportunities for news. Second,

Parliament is in the news more often than ever before. Hence, its relevance is presumably confirmed in people's daily lives.

Other elements of modernization in our jurisdiction have played similar roles in increasing media interest in the Parliament. I understand that our jurisdiction was only the second in the Westminster world to create the Office of Ombudsman, which we grafted onto our system from Scandinavia in the early 1970s, somewhat after New Zealand. Second, the Office of the Auditor General has nowadays taken on a life of its own in Western Australia, especially in the past decade.

Two positive outcomes have resulted from that. First, the offices of the Ombudsman and the Auditor General, created by Parliament, are part of neither the civil service nor the executive. Second, when the Ombudsman and Auditor General report periodically to Parliament, they generally attract considerable media coverage. In fact, they are seen as the honest brokers acting not for government or a partisan interest, but for Parliament. There is a clear understanding by the media that both roles are quite independent of executive government. As such, my argument is that reform and innovation by Parliament – an organization often portrayed as being resistant to change – have attracted increasing media attention.

An affirmation of the impact on newsworthiness occurred in 1993 when the government of the day began televised transmission of parliamentary proceedings. Before then, standing orders prohibited the filming of the House on a continuous basis; so parliamentary reporting was confined to the print media. I was initially dubious whether television would have any sustained interest in parliamentary footage in nightly news bulletins.

How wrong I turned out to be. A system is now in place and has helped to bring about live broadcasts of debates on serious public issues. It is common to see regular use of parliamentary footage on nightly television news bulletins, thanks to the reforms that the Parliament itself was prepared to initiate. This increased media interest is all the more remarkable and welcome given that the media's own attendance, at least in our Parliament, is entirely without any statutory basis at all.

Years ago when I first entered politics, I asked my former editor at the *Perth Daily News* how we can best guarantee freedom of the press in Western Australia. His reply at the time seemed unduly modest. He said: "Just guarantee the media's right to be present in the Press Gallery and its right to report proceedings without limited privilege and without strings attached."

The fact that sustained media attention is given to Parliament suggests that without any unhealthy deals being struck between the two, both sides win. Because the media get access to more news and Parliament, its activities are also more transparent. It may not be that publication of the full speech or a 20-minute ministerial statement achieves it. But coverage increases the likelihood that more and more Members gain public attention because of those reforms. Against this background, there is a case to be made for ensuring there is no cordial relationship between Parliaments and the media. For if there were, it would in all probability suggest a level of cosiness and accommodation, and an unhealthy liberal democracy. In such circumstances, the media might be reporting for reasons other than their own assessment of newsworthiness and public interest.

In conclusion, we still experience all the usual tensions – the likes and dislikes – between Parliament and media. But perhaps against all odds, Parliament's own internal reforms have

actually helped save its bacon. Its internal reforms have significantly raised its value to the media. Simply put, it is perhaps more newsworthy than ever before.

I suspect this has been heightened by the scandals that occurred in Western Australia in the late 1980s. A royal commission followed, culminating in the creation of the Commission on Government. This in turn produced what for us was a milestone document of reform based on new levels and understanding of accountability. All sorts of novel newsworthy reforms have since followed. This renaissance or renewal has been good for the society at large.

Finally, there is an underlying element to all of this. Internal parliamentary reform may in fact contain the recipe for a wider agenda that could interest all Parliamentarians, namely, clawing back some of the moral and legal authority that Parliaments have ceded to executive government over the past century. Growth in executive power has come not just because executives have sought to take it, but also because Parliaments have been submissive. Parliaments have the capacity to take on executive governments by insisting that a greater number of public bodies and authorities first report to the Legislature. Innovations like Ombudsmen, Auditors General and Commissioners for Information will add real power and vigour to Parliament. They can do so in ways that attract media interest. This way, Parliaments can free themselves from the tight control of executive government.

### **Responses to Hon. Phillip Pental**

Hon. Mike Sebalu, MP, (Uganda) said the conference needed to take Mr Pental's comments seriously. He said the Ugandan Parliament was also reforming, and had created the offices of Inspector General and Auditor General. The two reported to Parliament, a feature that raised media coverage of Parliament. Whenever their reports were tabled in the House, media coverage of Parliament increased because there were always interesting issues relating to government expenditure. Mr Sebalu said newsworthy issues are those that are useful to the communities and not simply news about personalities. He said coverage of personalities had continued, often at the expense of important social issues like HIV/AIDS. AIDS is a major problem in Africa and it needs more discursive space in the media. AIDS had been a major problem in Uganda but people were reluctant to discuss it publicly. Even the media were shy to write about it. Ugandan President Yoweri Museveni decided to talk about it in all his public addresses and the media had no choice but to pick it up. This helped many Ugandans because it gave that killer disease a human face, yet it was never considered newsworthy.

Dr Sudha Ramachandran, an independent journalist from India, said the challenge before the conference was to reverse history and provide more parliamentary news to the people. She said that newspapers generally looked for spicy news that attracted public attention. She said recent patterns showed that public attitudes were changing with readers calling for softer news than what was happening in Parliament. Furthermore, Legislature debates were so dominated by government announcements and decisions that nobody bothered about the long debates. She said the media have little patience, and in the prevailing circumstances, economic subjects have taken a back seat. They are no in-depth discussions. There was a period when substantial time in the House was devoted to discussing the budget. Discussions used to continue late into the night in order to beat the 31 March deadline for the government's financial year. Dr Ramachandran regretted that such commitment was gone. The House debated the budget for three or four months. Consequently, public interest in the House debates was poor and the passing of the budget had become a ritual. The media also did not delve deeply into the various demands in the proposed appropriations, and there were no follow-ups.

On reports of parliamentary committees, Dr Ramachandran said the media would certainly spur public interest if they reported the proceedings of parliamentary committees, especially the reports by the Comptroller and Auditor General and the Public Accounts Committee. Unfortunately, the media do not pay attention, nor do they follow up on issues raised during question time. In states where opposition parties are weak, the media should play the role of a third force – whatever could not be discussed on the Floor of the House could be taken up by the media and published. She however lamented that such counterbalancing reports were never seen in the media.

In reinvigorating parliamentary reporting, Dr Ramachandran called for increased coverage of some issues and the scrapping of others. Such issues as developmental and economic matters should get increased debate in the House and coverage by the media. She said that unless the House engaged in substantive debate, there was no point blaming the media for not getting the news. The reinvigoration should include attitude changes among both Parliamentarians and media practitioners in ways that they could complement each other.

Mr Anurag Misra, from the news services division of All-India Radio, defined newsworthiness as “what is new and different from what was said and happened yesterday”. He concurred that development issues should be reported on, but warned that such reporting should not be dictated by politicians. Politicians should not decide what gets reported. He cautioned that some of the issues debated in Parliament were really not news: for example, politicians saying they will bring down unemployment or provide electricity. Mr Misra said most citizens no longer take such statements seriously, hence pledges need not be covered in the Indian media. He said unless politicians delivered on their campaign promises, their statements should be treated as rhetoric and not news.

Mr Jean-Marc Poché, a Mauritian reporter from *Le Mauricien*, said one of the basic lessons in journalism was that “there is no news when dog bites man, but it is news when man bites dog”. He said controversies were considered newsworthy because the media are commercial organizations with profit-maximizing objectives. When defending themselves from accusations of scandal-mongering, journalists argue that they look for controversies or contentious issues that would attract readers. He suggested that reports from such parliamentary bodies as Public Accounts Committees should be circulated widely. Mr Poché said the Public Accounts Committee and the Auditor General in Mauritius were very critical of the government, sometimes even more critical than the journalists themselves. As a result, the two institutions got wide coverage. He warned that even with expanded coverage, journalists should never be perceived as spokespeople for Parliament who report everything that is said on the Floor. Instead, MPs should be efficient and improve the quality of their parliamentary submissions if they are to get coverage.

Mrs Anna Van Wyk, MP, (South Africa) said that Parliamentarians were partly to blame for failing to fully utilize the electronic media. She said research had shown that radio was more effective than the print media, especially in countries with low literacy levels. She noted that parliamentary debates in South Africa, and in many developing countries, were poorly covered by radio and television. MPs and governments should seriously consider making full use of radio and television through use of local languages since they were better understood. Mrs Van Wyk said it was critical for media practitioners in developing countries to show a high degree of responsibility by articulating national issues discussed in Parliament. She said even though the media were business entities, it was incumbent upon them to balance between business objectives and national aspirations. If the media looked only at the business side, then they would be doing a great disservice to their country. She supported calls for senior journalists to be assigned to cover

Parliament, saying only experienced and competent journalists could tackle national issues, quiz MPs and make informed analyses of the issues for the benefit of the country.

Several delegates said that problems of parliamentary coverage were attributable to the failure by MPs to speak to journalists rather than speak to the electorate through journalists. They said Parliamentarians could overcome the problem of poor reporting if they mastered the art of speaking to journalists. They said MPs should be accountable to the electorate and not to the media. As such, they should beware being trapped into framing their activities around what is newsworthy. Instead, MPs should endeavour to inform the media about their work in Parliament and in the constituencies. They said the problem lay with both the media and with MPs in their capacity as public representatives.

Hon. Stephen Ndicho, MP, (Kenya) said the issue of parliamentary coverage was linked to the election process and the quality of candidates running for office. He said in the euphoria of multiparty politics, many inexperienced people found their way into Parliament. There were young and uneducated people in Parliament who did not comprehend parliamentary procedures and the law-making processes. Consequently, small groups of MPs dominated the news media. They were the only people who contributed in debates or asked questions. The public would often wonder what happened to their MP since they heard nothing of him or her in Parliament. Mr Ndicho said MPs should not complain about media coverage, since the media often knew what to look for in parliamentary deliberations.

He said the media set the standard of newsworthiness, and if MPs did not meet such standards they had not made news. This meant that MPs needed to be aware of various ongoing issues in order to get coverage. He cited Uganda's movement system, saying during elections candidates had to prove that they were articulate and could make good leaders to represent the people adequately and effectively. He contrasted this system with the one in Kenya, where candidates ran on party tickets and were often elected regardless of their personal qualities. Mr Ndicho warned that such problems would eventually affect the level and quality of debate in Parliament, and therefore the extent to which the media covers parliamentary proceedings. He said he had filed a motion in the Kenyan Parliament seeking to abolish political parties in favour of a system under which MPs were elected on individual merit instead of a party ticket.

Mr Shafiqul Amin Ferdausi, the Director-General of Bangladesh Betar, told the conference that it was wrong to compare Parliaments across countries, adding that a country got the Parliament that it deserved. He said the Bangladeshi media has clear policies on covering the country's Parliament. Question time is reported faithfully and truthfully, capturing the question and answer sessions in full. The same applies to debates on various motions. Finally, journalists were free to meet and talk to MPs and government Ministers in the lobby. However, the media are not allowed into committee meetings and therefore do not cover committee proceedings. Mr Ferdausi said Bangladesh had two main political parties, with the Prime Minister as head of government. Unfortunately, contributions on the Floor were often marked by partisan politics, to the point that the media were confused on what to report. He cited a recent incident in which an MP moved a privileged motion to censure a newspaper for publishing pictures of the Prime Minister and the Leader of the Opposition on the same page. He said the legislator believed that the Prime Minister's picture should have been published alone.

Another participant said the media often published what it wanted, but were governed in their decisions by the objective to make profits from advertising. The delegate said media consumers

were not often the key objects of media coverage because the media were often aiming to appease advertisers. He challenged media organizations to come up with new reporting strategies that were more representative of the people's needs and aspirations. Such strategies, he argued, must include parliamentary coverage. He criticized the media for failing to effectively cover Parliament and to create newsworthy items from issues emanating from Parliament. The delegate also criticized MPs, saying they often did not know how to interface with the media or even how to focus on media audiences. He suggested that people would be keen to know what MPs did if such information was creatively packaged and disseminated by the media.

Mr Charles Silas Kakoma, MP, (Zambia) said his experience both as an editor and a Member offered him a unique perspective to the discussion on media coverage of Parliament. He said whereas MPs complained more than journalists about the coverage, it was actually journalists who should have been complaining about MPs and parliamentary deliberations. He said many Commonwealth Parliaments had held workshops for journalists with a view to promoting the role of Parliament and parliamentary procedures. However, little had been done to educate and sensitize MPs about the importance of the media and news reporting generally.

Mr Kakoma said some of the misunderstandings between the two institutions emanated from MPs' ignorance about the media and what was considered to be news. In many instances, journalists used clear criteria for selecting news or what they considered newsworthy. For example, MPs known to bring controversial motions to the House received added media attention and coverage. Journalists also looked at issues that involved power struggles between political parties or politicians. As such, politicians who did not want to be controversial, or who did not want to be seen to be struggling for power received little attention. He noted that journalists were often accused of sensationalism and of highlighting petty issues.

From experience, however, Mr Kakoma said editors judged important national stories that deserved front-page coverage on expected public reaction in terms of sales. Editors published what readers wanted to read, and not just anything simply because it was important to the country. He said MPs who repeated what others said should not expect the media to cover them. He added that while one solution lay in having live parliamentary broadcasts on radio and television, such programming was prohibitively expensive yet it did not offer opportunities to attract advertising. He suggested that Commonwealth countries explore possibilities for providing government funding to media that would enable them cover parliamentary debates. For such programmes to work, he noted, Parliaments needed to lift restrictions on the media's access to information, for example restrictive standing orders and other House privileges.

#### **A Final Word on "What is News"**

**Hon. Nat Kekana, MP, Chairperson of the Portfolio Committee on Communications, South Africa**

I want to thank the media practitioners for their frank submissions. Their views confirmed that MPs should refrain from thinking that journalists are bearers of parliamentary news, reporting on anything happening in Parliament. Journalists are not messengers of Parliament. Their job is to deliver the message from Parliament to the electorate. In fact, we should refrain from even thinking that they are the mirrors and that we need to look at ourselves through these mirrors. They are like any commercial entity: they are there to sell news and make profits.



Secondly, I think they have told us – certainly in South Africa – that they are there because they are selling particular commodities, and that they need to make these commodities as attractive as possible.

Thirdly, the institutional challenge to Parliament is that it must build effective relationships with the media and other agencies in its bid to reach the public. Parliament has to sell itself to the public differently. Once it has done so, newspaper readers will demand that newspapers report House proceedings accurately and substantively.

It might be futile to argue with media owners and editors on the need to send senior journalists to cover Parliament. For example, there are 27 or so committees meeting everyday in the South African Parliament. There are not enough journalists to cover all these meetings. The challenge is for committee officials to entice journalists by telling them more on committee proceedings beyond the little contained in an Order Paper. We need to find ways of dealing with journalists telling our stories.

I also think that when we talk about journalists also, we often mean print as opposed to broadcast. In the South African Parliament, for example, we now know that we are not communicating effectively with people who do not understand English. Let us use alternative languages, and the best medium for this is radio. We need to take radio seriously. Because they are literate, MPs want to see their quotes in newspapers, yet many ordinary people in developing countries rely primarily on radio. In such countries, I suggest that MPs need to take radio more seriously than print. Radio could take messages to the electorate much more effectively than the print media. Television is more about summarizing everything that has happened, the drama and the visuals.

We need to find ways of ensuring that people understand exactly what is happening in committees, because while House proceedings are important, we know that a lot of work happens in committees. We have not been able to effectively sell the work being done in committees to the public. For example, when the House appears deserted, the absence of MPs is all that is shown on television and talked about in other media. But what is not being communicated is that MPs could be busy doing committee work.

The media should play a leading role in inculcating a reading culture among our people. For example, the media should impress upon the populace that economic analyses are worth reading. This is a major challenge, but it reflects what we need to address in the 21<sup>st</sup> Century as we tackle globalization and competition. We must help people appreciate figures, for example, to understand the proceedings of committees handling budget matters. Many journalists do not want to cover budget committees because they do not consider the proceedings newsworthy. To some extent, this issue of newsworthiness is used to cover up journalistic incompetence.

Finally, sensational reporting of House proceedings lowers the quality of debate. In some instances, it has created a crop of MPs who speak to the gallery. Some people will say something simply because it will be in the news tomorrow. They will even be looking up at the Press Gallery as they speak. My advice is that journalists should listen and carefully pick out issues from such parliamentary submissions. We appreciate the media must operate profitably, but we all have a duty to develop our countries. A country cannot develop unless it is informed. Media should help people appreciate economic issues such as the national budget.

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