THE COMMONWEALTH AND CHALLENGES TO MEDIA FREEDOM

The inaugural conference welcomed journalists, professionals, diplomats and academics from more than 20 member countries to discuss multiple and complex contemporary challenges to media freedom across the Commonwealth.

In the first panel on **new policy directions in media and governance** across Commonwealth countries, **William Horsley** (international director, Centre of the Freedom of the Media, University of Sheffield) emphasised two key changes confronting journalists since 2000 – the loss of their perceived neutrality, and the growing deliberate targeting by governments and others, in a drive to intimidate and control reportage.

The absence of the Commonwealth from the debate on the accelerating number of attacks on journalists and other issues around media freedom, paralleled by rising use of repressive legislation and the courts, has been noticeable. This has contrasted with the role of UN agencies and NGOs to address these trends of harassment and persecution, with the gradual coalescence of multi-stake holder activity: UN Action Plan on the Safety of Journalists, and the role of regional and sub-regional organisations. The progress of the Francophonie in structures and adjudication on these matters has been striking, whereas the Commonwealth has lagged behind. In his call for new policy directions, William Horsley laid out clear criteria for media and governance to be made central to the Commonwealth's agenda; a call for the Commonwealth to be a partner in the UN action plan; the importance of benchmarks and mechanisms to hold governments to account, and the need for reform of colonial era laws.

Mark Stephens, Commonwealth Lawyers Association, picked up the theme of criminalisation of speech as an important colonial legacy (these include insult laws, sedition, scandalisation of the court, and criminal libel and defamation). While there is opportunity for Commonwealth lawyers to challenge these rulings in the international courts, there are still important problem areas where it is very difficult to push back against these legal frameworks: these include sedition laws, licensing and ownership of the media.

In his experience, typically, governments look to control traditional print media, paralleled by drives to restrict or shut down electronic and telecommunication networks. He gave examples of Cameroon, where internet access has been blocked for nearly three months for 20 per cent of the population, and Uganda during the 2016 election (when mobile telephone and internet networks were deliberately disrupted by the government, using technology to block banking access and financial transactions by the opposition).

Therefore, there were two principal rights being threatened – the right of freedom of speech, and the right to access to information. As journalists and social media users are increasingly using data in their journalism and reports, this makes them increasingly susceptible to targeting. He underlined the need to think about the different ways in which governments are trying to access and control media flows, expressly to deal with problematic information and news, which are becoming increasingly sophisticated. In this fractured media-scape of multiple communication flows, he urged the Commonwealth to look at the challenges beyond the traditional media.

Lawrence McNamara (the Bingham Centre for the Rule of Law) highlighted new policy moves in the UK around media and the rule of law, focussing on the range of debate around the Miller case. In the UK, the Lord Chancellor has a particular responsibility to uphold the continued independence of the judiciary – which was effectively called into question by particular media coverage around the judgement by three members of the Supreme Court in December 2016. In her initial handling of the ensuring heated debate, the Lord Chancellor appeared to be defending press freedom, but in essence threw the judges 'to the wolves'. While in the UK, neither of the core pillars of the 2004 Latimer House Principles – freedom of the press and the independence of the judiciary – are imperilled, in his view there needs to be active debate on how each supports the other.

Lord Black, chairman of the News Media Association's legal, policy and regulatory affairs committee, speaking on behalf of Commonwealth Press Union Media Trust, highlighted the importance of a free press for development and prosperity in Commonwealth countries. However, he warned that independent journalism is under considerable pressure from state controlled systems of regulation. In the UK, he identified the threat of Section 40 as 'one of the most serious assaults on a free press that has been seen anywhere in the free world'.[1]

The Commonwealth had been ignored by the British political establishment for too long, but this would have to change if successful partnerships are to be forged in the wake of BREXIT. He suggested four key policy areas as crucial to establishing a necessary thriving media in Commonwealth countries: investing more in the training of journalists; encouraging women to play a more active role in media; ensuring barriers are removed on legal frameworks; and greater efforts to ensure the protection and safety of journalists. In his view, Section 40 constituted a fundamental and pernicious attack on independent journalism, and also set a dangerous precedent for perceptions of British leadership on freedom of expression across the Commonwealth. [See summary of Lord Black's talk here]

A number of points were highlighted in general discussion: the increasing complexity of media landscapes, the new opportunities provided by social media and the growing sophistication of governments in their interventions. Professor Steve Barnett questioned Guy Black's criticism of Section 40: he said it had been the subject of months of consultation and argued that the press should consider some form of co-regulation, as has happened in Denmark and Ireland.

Guy Black retorted that Leveson had not taken evidence on the issue and the legislation had been rushed through parliament with only six hours of scrutiny. Mark Stephens referred to the chilling effect of the legislation, which imposes full costs on newspapers outside the Government scheme even when they win their cases. He pointed out that one of the unintended consequences is the troubling precedent it sets for other Commonwealth countries. Mark said it was important for the Commonwealth to strengthen adherence to its values and he suggested the appointment of an independent rapporteur on human rights.

In the second panel on **Government channels and information flows**, **Kishali Pinto Jayawardena** (legal analyst on civil liberties, member the Right to Information Commission, and columnist, *Sunday Times*) gave a forthright account of the relative

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[1] Section 40 is part of the Crime and Courts Act 2013. It addresses the awarding of costs in a case where someone makes a legal claim against a publisher of "news-related material". 'The provision means that any publisher who is not a member of an approved regulator at the time of the claim can be forced to pay both sides' cost in a court case — even if they win.' Source: https://www.indexoncensorship.org/2017/01/section-40-crime-courts-act-2013/ . The government has held a public consultation to gauge opinion before deciding whether to do so, amid an outcry from the national and regional press.

progress towards freedom of information in Sri Lanka since the conclusion of the country's civil war in 2009. She expressed concern over the proposed Counter Terrorism Act which was strongly reminiscent of previously repressive legislation.

Martin Plaut (former Africa editor of *BBC World Service*) argued that the media-scape in South Africa was currently facing its greatest threat since 1994. Given the South African constitution, based on the party list system and the dominance of the ANC in national government, the media has a huge role to play in underpinning democracy in the country. The erosion of South African media freedom has paralleled the erosion of popular support for the ANC, as the government is becoming increasingly repressive.

The SABC has been transformed by the appointment of ANC party cadres; the state has diverted funds towards pro-government media organisations, particularly the New Age; critical newspapers have been seized or purchased, and through the use of covert 'ops, the ANC has used media coverage to threaten or attack the political opposition. Commentators are increasingly concerned that as the political situation in South Africa becomes increasingly fraught, then the range of newspapers and combative blogs will come under more and more pressure.

Addressing the current media environment in neighbouring Botswana, **Sonny Serite** (correspondent for *The Telegraph*) was emphatic that that the popular belief that Botswana represents a 'beacon of hope' on the African continent is misplaced. He described a scenario of fundamental lack of access to information, minimal government press briefings, a lack of FOI legislation and a regressive relationship between the media and the government of President Ian Khama.

As the government has starved media organisations of advertising revenue, journalists are increasingly shifting to public relations work. Controversial media stories have been matched by persecution of journalists, and editorial independence has been dramatically reduced. Similarly, social media and Facebook have been restricted by the passage of a law on cybercrime. Restrictive laws, which have remained on the statute book since the colonial era, have been used to repress reporting. This, combined with personal pressure from ministerial departments and officials, has led to increasing self-censorship by journalists. Botswana's weak oversight institutions and lack of vibrant and vocal civil society organisations have compounded the problem.

Gwen Lister, (former editor, *The Namibian*) summarised the panel speakers' emphasis on the deteriorating media environment and information flows, underlining that the Commonwealth has failed to put media freedom at the centre of its agenda: the relative fragility of democratic institutions, of which media freedom is a key element; the high levels of government impunity; the setbacks to freedoms, information flows, and the plethora of internet shutdowns in countries which previously had been deemed as more progressive.

She quoted the Commonwealth Charter which, in her view, did not go far enough to hold governments to account. Media are a vital watchdog against corruption, particularly where opposition parties are fragmented and civil society weak. It is the responsibility of Commonwealth governments to ensure and to facilitate an enabling environment for a free, pluralistic media; and for the Commonwealth as an association to lend support for ending repressive out-dated colonial legislation. She concluded with the argument that 'governments should get out of media'.[2] She reminded the audience of the Windhoek Declaration of 1991 and successive international statements to underpin journalistic freedom and safety.

In Panel 3, **Media, Elections and Post-Election Contests, Nicholas Cheeseman** (Professor of International Development, University of Birmingham) and **Seth Ouma**

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[2] See The Commonwealth Expert Group publication, Freedom of Expression, Association and Assembly, 2003, for similar recommendations. Full text available **here**

(University of Oxford) summarised their research and findings in successive Kenyan elections. Based on extensive interviews with journalists who had covered both elections, as well as the post-election violence in the country after December 2016, they concluded that Kenyan journalists were, and are, confronted by multiple pressures: from government sources, opposition criticism, public lack of support, and from within their own media organisations, influenced by politicised ethnicity and the highly charged election campaigns.

Irene Ovonji Odida, executive director of the Uganda Association of Women Lawyers and a highly experienced Commonwealth election monitor, analysed the role and place of the media in the 2016 Ugandan Presidential election. Although Uganda has courageous journalists and a range of media outlets, there are deep structural challenges and constraints.

She described important shifts in Uganda since 1995 which have influenced this: the neo-liberal environment stemming from the Washington consensus which has led to a lack of control over media rights; changes in the constitution, resulting in the emergence of the neo-patrimonial regime and centralisation of Presidential power; the growing inequalities across Ugandan society despite overall growth; and the connections between the domestic and international economic and political elite, involved in the most lucrative sectors of the economy. Consequently, the three arms of the state do not function as they should.

The 2016 elections were the first in which national NGOs and external observers found the electoral process to be flawed. There has been a progressive curtailment of media freedom (state exploitation of the criminal code, and harassment of journalists; restrictions on licences; blocking of social media; break-ins). Furthermore, commercialisation of the media sector has resulted in access to citizens and dissemination of information depended on money. The rise of social media - potentially another avenue of debate – has not resulted in energetic and engaged debate, since liberalisation has impacted directly on education, and consequently limited critical understanding of the issues and wider drivers.

Kayode Samuel, associate fellow, ICWS, analysed the media in Nigeria following the 2011 and 2015 elections. Here the debate concerned the media's role as instigator or victim. In part, this dates back to the position of the media as the creation of colonial rule, and consequently a long held hostility of governments post-independence to its role and the associated freedom of the press. This combines with the legacy of long years of military rule.

The 2011 elections, the first time in which a Presidential candidate from a non-traditional group (the Delta) had presented himself for election, introduced a strong element of novelty into Nigerian politics and electioneering. This challenged strong political power groups who were hostile to this innovation. The violence which erupted around the election could be traced directly to this. The media's response further aggravated matters, through the use of phrases such as 'power shift', which were not comfortable narratives for traditionally dominant groups.

In 2015 there was another innovation in Nigerian politics: the first time in which an incumbent was challenged by a grand, national coalition, and in which he was defeated. Again, the media has been affected by these big political shifts. As an umbrella 'organisation', the independence it used to claim has been chipped away. In the same sense of Nigeria's political transition from military rule, there have been some transitions in the media: the old media barons (media ownership is still relatively national) are no longer as effective as they used to be in calling the government to account. The perception on the streets is that the fourth estate has moved from 'watch dog' to 'lap dog'. This seemingly cosy, partisan relationship between the media and the government has been underpinned by the transition of many journalists into public life. In contrast, the emergence of the internet has opened up space for information and debate, and social media is becoming a

very strong force.

This is likely to be critical in the 2019 elections, as politicians are keenly aware, and there is growing discussion on whether online media should be controlled. As the Nigerian political economy is still largely controlled by the state, there is a lot riding on the persona of the President. Therefore for Commonwealth observers, it is important to note that Nigeria is different: the election event is different from the electoral process, and greater resources and time devoted to Commonwealth monitoring teams in country.

Dan Branch (University of Warwick) as discussant pointed out that the liberal internationalist narrative of freedom of speech and freedom of the media is under pressure globally, and not simply from government authoritarianism or strident populism. The debate includes those in wider society who argue that it stimulates political turbulence and dissent, and therefore is in itself potentially socially disruptive and counter-productive; and among some journalists themselves (eg Kenya).

There has also been a fetish-isation of stability by foreign stakeholders, with emphasis on a 'peace narrative'. Therefore, freedom of the press was not, and is not necessarily seen as a priority by a considerable number of domestic and international actors. The vulnerability of journalists to multiple pressures is noted, not least the precarious nature of their jobs. Is too much expected of journalists when other institutions are so fragile? In terms of social media, the relationship between governments across Africa and telecommunication companies has to be remembered.

The issue was raised of how much traction the Commonwealth actually has – as a values based association, or in its election monitoring role. How much leverage does it have, faced with government resistance to any impingement upon state sovereignty? Should there be insistence on implementing the recommendations in election monitoring reports? The positive contribution of the Commonwealth of external validation of what local observers are saying was underlined, as solidarity is an important and underestimated factor to local actors. The aspect of South/South validation of best practice, and cross-Commonwealth learning experiences are also crucial.

However, there is an important need for the Commonwealth to track the media in the election process from one election to the next – ie over the longer term – thereby providing a stronger and more supportive framework. This could be done in collaboration with local groups, who can follow developments. It is important to remember decentralised local media is just as prone to capture by local politicians, as national media, and local and national elites are increasingly savvy on how to use, and manipulate polls.

In her keynote lecture, Commonwealth secretary general Patricia Scotland, responded to a number of key themes discussed at the conference. She warmly welcomed the possibility of a civil society-inspired process of creating a Commonwealth model on the media and governance, akin to the 2004 Latimer House Principles. She also stressed the advantages of working towards Commonwealth guidelines on media and elections, and a commitment to international norms and standards in the field. The full text of SG Scotland's keynote address is available here.

Panel 4, Journalists, Bloggers and Social media in conflict zones, addressed three areas of contention in South Asia.

In her presentation on the disputed region of Kashmir, **Victoria Schofield** (independent scholar and journalist) focussed on the area of greatest tension – the valley of Kashmir. She pointed out the entire region uses social media to share information and news, which has revolutionised contact between communities, in sharp contrast to what was before. Thus social media has been a positive force in time and region of conflict, enabling people to humanise the issue.

The confrontation between India and Pakistan is thus no longer just the state narrative, as social media provides a platform for opinion makers on a range of faith issues, economic hardships etc. This has permitted an indigenous, counter-narrative which before was stifled by the larger Indian/Pakistan narrative. Therefore, in contrast to other areas of the world where social media is regarded as an insidious disruptive force, in Kashmir it has enabled positive communication between communities, and across continents (local individuals, communities and the diaspora).

In sum, the internet has been an ideal way to connect populations across the line of control, pricking the bubbles of lack of knowledge. However, social media is a double-edged sword, providing a platform for propaganda and staged events and planted stories. As a means of communication, it is monitored and manipulated by both Pakistani and Indian authorities. Kashmiris themselves also manipulate messaging, meaning the medium is as prone to proliferation of rumours, misplaced perspectives and provocative comment, gender bias and bigotry as elsewhere; while closed social media circles, while giving a beneficial outlet to opinion, also risk being 'echo chambers'.

Kiran Hassan (SOAS) offered a different interpretation to the role of social media in Pakistan. She was careful to set usage of Facebook, LinkedIn and Twitter in context, emphasising the private television channels remain the most influential media in the country. Based on her recent research, she argued approximately 2 per cent of social media is being used for extremist proselytisation, whereas the overwhelming majority of Pakistani civil society has no appetite for news reports around terrorism, and want more positive stories.

In her view, social media is being used by the youth bulge (18–30 year olds) primarily for entertainment purposes. Secondly, there was a strong sense that media stations should take up the targeting and killing of journalists with the government – ie to use existing laws to pursue and prosecute perpetrators of violence. While extremist networks are certainly using social media very effectively to recruit particularly among teenagers and women, focussing on this aspect of social media usage in Pakistan presents a distorted picture.

The Pakistani security forces themselves have a large social media presence, and devote considerable resources to monitoring and scrutinizing sites. Pakistani journalists have often found themselves caught between these two groups – harassed by both the security forces and the militant groups. However, this is a fluid and rapidly shifting picture: of abductions of bloggers for propagating secular views, in contrast to human rights activists labelled as 'mischief makers', and Facebook sites being shut down on grounds of 'immorality', or YouTube bans.

In his analysis of social media in Bangladesh, **Syed Badrul Ahsan** (journalist and columnist) emphasised the fractured political picture of a country comprising 160 million people, and a vibrant media scene with more than 70 Bengali and 11 English language newspapers, a range of government controlled radio and television channels as well as 32 private news channels. Independent media outlets have been compromised by their collaboration with government as media advisers; self-censorship is common; and newspapers with vested interests in multinational corporations, are careful not to cover their possible involvement in corruption. Bloggers and secular writers have been targeted by Islamist fanatics, prompting many to leave the country.

In summing up the place of social media in low-intensity conflict areas across South Asia, **Elisabeth Witchell** (Committee to Protect Journalists) picked up on the themes of the value of social media humanizing and connecting different sides, as well as offering myriad ways to access information, to bear witness and to disseminate news as counter narratives to traditional media outlets. Social media also offered tools which could be used to enhance journalists' security – such as Pakistani editors sharing security information on attacks on journalists. However, the drawbacks and dangers were readily acknowledged:

manipulation by governments, extremist groups and militant opposition; as a platform to foment racism and hatreds; the dangers of fake/inaccurate news, as well as self-censorship. All the speakers criticised the inadequate response by governments to investigate attacks on journalists, as well as the excessive caution of media houses. It raises the question of who/what is a journalist?

Bloggers do not form part of traditional networks of support, and are vulnerable to labelling by the state as 'troublemakers' or 'mischief makers'. There is an evident need for pooling of information and guidance to individual bloggers – which is already available via the web – and to use social media more effectively to highlight arrests, and to pressure the authorities. Social media can and should be used for capacity building and information sharing.

In the final Round Table panel, **Guy Berger** (director of information, UNESCO) stressed the Commonwealth should focus on key challenges facing us, to marshal its limited resources and exploit its existing strengths. In his view, in terms of addressing the challenges of media freedom the Commonwealth should zoom in on the role of media in elections. He underlined that while fake news is obviously not a new phenomenon, the current information environment offers extraordinary opportunities for toxic or inaccurate news to be spread from autonomous individuals, providing fertile ground for populist ideas.

'Many politicians don't like the scrutiny that comes from strong journalism, but better the devil they know than a murky world in which no one can tell what's really going on'. The challenges around fake news become particularly acute around the time of elections: when the integrity of journalism is at a premium, it also risks being compromised.

He stressed the need to try to persuade Commonwealth governments to line up to standards, to uphold the rule of law and to refrain from perpetrating fake news and self-serving propaganda, backed by the use of state funds. This would require concerted efforts by multiple stakeholders: within country and supported from outside (such as UNESCO/CJA/Commonwealth). [Read Guy Berger's summary]

Nupur Basu described the complex media scape in present day India, under the Modi government, where ultra-nationalist politics is affecting the media. There is a marked pattern of censorship – through an insidious process of self-censorship; a substantial number of job losses among journalists as their livelihood has become more precarious; and a growing polarization in the profession, backed by worrying instances of intimidation, which have undermined journalistic solidarity. A pattern of binary labelling has crept into the discourse, such as the description of those reporting on acute poverty and social issues as 'left leaning Naxalites'. Therefore, while there is still a vibrant independent media across India, this is an increasingly uncomfortable and heavily politicised reporting environment.

Jonathan Grun addressed the current British media landscape, pointing out that in the UK the free press is under pressure, as it is across the Commonwealth, but from a different quarter. He specifically addressed the issue of Section 40 of the Crime and Courts Act, arguing the case for press self-regulation via IPSO rather than through state regulation by royal charter (which he felt would make the press particularly vulnerable to rich bullies.) He made important points on behalf of the UK press about the proven abuses by police snooping on journalists' phone records and the perceived dangers from the new UK espionage act. Overall, he stressed the need for constant vigilance to protect rights of freedom of information and freedom of the press.

Peter Wickham highlighted the particular challenges of freedom of information and freedom of the press in small states across the Commonwealth. In his view, 'size is critical' as it is directly linked to viability and critical mass. In essence, it is a question of economics: media is a product which needs a consumer and a market.

Therefore the size of population, and national GDP are vital criteria influencing local media. In the Caribbean, for example, in the debate around television licences, only Trinidad and Tobago and Jamaica have sufficient audiences and national income to permit a vibrant private terrestrial television market; elsewhere, in the micro-states across the region, the level of government control is high, with corresponding considerable influence on editorial coverage and content.

In these states, there is generally low quality of local/national radio coverage and output, with minimal production and investigative journalism. [Most draw on external news networks, such as the BBC or CNN]. Furthermore, given cheap radio licences, government and opposition parties own radio stations. While social media is becoming increasingly popular across the Caribbean, electronic media remains the most used, followed by newspaper circulation. However, the financial environment is not conducive to independent journalism with increasing 'pay for play' newspaper content.

Kayode Soyinka concluded the round table with his summary on the 'rugged and fascinating' media in Nigeria. He echoed Kayode Samuel's description of a media struggling to adapt to the democratic political landscape since the end of military rule 18years ago. He felt the two most serious challenges facing the profession which need to be addressed are (i) the media and elections; and (ii) the media and insurgency.

On (i) he stressed the need for good relations between the press and the INEC. [The Independent Nigerian Election Commission.] However, in the 2015 elections, the INEC had exclude the media from its pre-election strategy meetings – this is symptomatic of the military's enduring distrust of journalists whom they still regard as the 'enemy'. Yet, there is a pressing need to build trust and strategic communications networks. The Commonwealth should be instrumental and active in convening such meetings, as part of its remit around elections.

Similarly on (ii), the challenge of Boko Haram has been a new experience for the media, just as it has for the Nigerian military. The Nigerian security forces were ill-equipped and caught knapping, quite apart from their fundamental lack of understanding on how to disseminate news. The media houses themselves did not have the resources to send reporters to the region. (For example, it was only when better-funded, international journalists, started covering the story that they followed suit.)

Frustrated by this deeply engrained lack of trust and contact between the military and the press, on his own initiative Soyinka brought in external military advisers and experienced war correspondents, to help establish better communication between the two groups in Nigeria. This has resulted in regular briefings by the security forces, embedded journalists, and greatly improved communication and information flows. This offers an excellent model which the Commonwealth could use in other conflict situations to improve military/media communication.

The two-day meeting concluded with unanimous agreement that the issue of media freedom and support for independent journalism needs to be firmly on the Commonwealth's agenda. The SG's endorsement of the need for 'Latimer House –type' principles on media freedom was warmly welcomed. The challenge now is to encourage the Commonwealth to participate actively in the UN Action Plan, and to raise the issue as much as possible in the run up to the 2018 summit, ideally with a view to capturing the attention of heads as well as civil society. The ICWS fully supports the work currently being done to draft principles and criteria.

In terms of future events:

1. The ICWS will host the documentary film, 'Velvet Revolution' on Wednesday 3 May, 2017. Executive producer and director, Nupur Basu.

2. Comparative research on the work of the Francophonie to underpin media freedom across the association, to offer possible learning outcomes for the Commonwealth.

3. The Commonwealth, the media and elections workshop to be held on 6th December 2017.