

# **Recommendations for an Informed Democracy**

## **Conclusions of a CPA Study Group on Parliament and the Media Held in partnership with the World Bank Institute and The Parliament of Western Australia Perth, Western Australia, 17 — 21 February 2003**

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.

Recognizing this, the Commonwealth Parliamentary Association (CPA) Study Group on Parliament and the Media urges Commonwealth Parliaments to be exponents of the protection of 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 facilitates the operation of the media based on the fundamental rights of freedom of speech, freedom of expression and the freedom of the press. Parliaments should seek to ensure the dissemination of information and a plurality of opinions without any intervention from the state and without censorship.

The Group, which has met in partnership with the World Bank Institute and the Parliament of Western Australia, acknowledges that the media are at the cutting edge of civic engagement. It therefore recommends the following 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 role of Parliament and the media in communicating parliamentary activities to citizens is essential in enfranchising the public, and the media provides a conduit through which public opinion is communicated to Members of Parliament.

### **(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 a 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 which 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 stipulates 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 which 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 which ensures those selected are free of associations with any interest which 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 which 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 its 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 noted 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 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 which 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 families' 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 which 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.

## **CPA Study Group on Parliament and the Media**

### **Members**

Hon. Ratu Rakuita Vakalalabure, MP, Deputy Speaker, Fiji

Mr Mohammed Ali Zinnah, MP, Bangladesh

Dr Bikram Sarkar, MP, India

Mr Edward Garnier, QC, MP, United Kingdom

Hon. Joseph Mbah-Ndam, MP, Leader of the Opposition, Cameroon

Hon. Fitzgerald E. Hinds, MP, Trinidad and Tobago

Sen. the Hon. Joseph A. Day, Canada

Mr Nkenke Nathaniel Kekana, MP, South Africa

Sen. Jeannie Ferris, Australia

Mr Ronald Kiandee, MP, Malaysia

### **Advisors**

Mr Rick Stapenhurst, Senior Public Sector Management Specialist, World Bank Institute, Washington, U.S.A.

Mr Mark Stephens, Finers Stephens Innocent Solicitors specializing in comparative media law and regulation, and Oxford University Programme in Comparative Media Law and Policy, United Kingdom

### **CPA Secretariat**

Mr Andrew Imlach, Director of Information Services

Mr Shem Baldeosingh, Assistant Director (Reference Services)

Mr Nick Bouchet, Assistant Editor