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The role of the media and press freedom in society



In this chapter you will learn:

- Why freedom of expression is important
- Why freedom of expression is a foundational building block of democracy
- What freedom of expression means
- The relationship between freedom of expression and freedom of the media
- The role of the media in society
- Why the broadcast and digital media are so important, particularly in Eastern Africa

1 INTRODUCTION

In the day-to-day life of a busy journalist, publisher, broadcaster or media owner, it is easy to overlook the fundamental principles that are at stake when going about one's work. Newsroom or broadcasting studio constraints include deadlines, squeezed budgets, limited electronic and library resources, demanding managers, distribution difficulties and draconian media laws, to say nothing of news subjects who are often wary of journalists, if not outright hostile. This makes for a challenging work environment, and it is easy for journalists to lose sight of the big picture.

The big picture is that the work of journalists reflects how we as humans interact with each other, and is a measure of how well our society is functioning. The principles of interaction that apply to us as individuals are carried through and apply to how broader social institutions, such as the media and government, interact with each other. You can tell a lot about the state of a country's governance, as well as its commitment to democracy and economic and social development, by looking at whether it respects its citizens and its media.

This handbook unpacks the internationally developed standards and best practice models of democratic media regulation. It examines best practice norms for democratic media (including in respect of online media) and democratic broadcasting regulations, as well as the standards for imposing restrictions upon, or otherwise

regulating, media content. Six East African countries are examined in this work. Each country's media laws are identified and analysed to assess their compliance with best practice standards.

2 WHY IS FREEDOM OF EXPRESSION IMPORTANT? CONSTITUTIVE RATIONALES

2.1 Overview

This handbook begins with a look at certain principles of basic human interaction, in particular, freedom of expression.

It is important to understand why freedom of expression has achieved global recognition as being foundational to human rights generally. There are a number of reasons why we protect the right to freedom of expression. These fall within two broad groupings:

- *Constitutive rationales*: These are based on the recognition that freedom of expression matters because human beings matter, irrespective of whether or not their views are correct, true or valuable in any ultimate sense.
- *Instrumental rationales*: These are based on the recognition that freedom of expression leads to something valuable – that having freedom of expression advances important goals.

2.2 CONSTITUTIVE RATIONALES FOR FREEDOM OF EXPRESSION

Human beings matter; their exploits (mistakes or successes) and experiences have shaped and impacted the world from time immemorial. However, only in fairly recent times has human society come to recognise the importance of the autonomy of every human being. The international community now clearly acknowledges that humans matter intrinsically: who we are and what we think matters. Where does this recognition come from? What is it based on? And what are the hallmarks of that recognition?

2.2.1 Equality

The international community has grappled with the notion of equality since the mid-20th century. The previous century had seen the almost worldwide recognition that slavery – the notion that one human being could be owned by and live in bondage to another human – was barbaric and an affront to humanity as a whole. In the latter half of the 20th century, reflections upon colonialism, apartheid, the Holocaust and

other crimes against humanity caused much of the community of nations to accept that all human beings, irrespective of age, gender, race, ethnicity, nationality, language, class or social origin, or religion, are inherently equal.

2.2.2 Dignity

The recognition of equality is intrinsically linked to the recognition of the inherent dignity of human beings. A key notion that underpins international recognition of human rights is that each and every person, regardless of the differences between that person and any other, is entitled to have his or her dignity respected. The recognition that a person is entitled to dignity represents a profound change in human relations, and is a recent and fundamental departure from historical practices and beliefs.

2.2.3 Autonomy and personality

Once there is widespread recognition of the equality and inherent dignity of each human being, there is recognition of the right of all individuals to be free to develop their personalities, indeed to develop themselves, to their fullest potential. It is this recognition of the right to personal fulfilment and autonomy – the right to be who you are, based on inherent dignity and equality – that underscores so many of the internationally agreed upon statements on fundamental human rights and freedoms.

2.3 Foundational international instruments and the constitutive rationales for freedom of expression

Below are excerpts from some of the foundational international human rights instruments that give recognition to the concepts of the inherent dignity and equality of human beings, as well as to our right to autonomy and self-fulfilment.

2.3.1 The Universal Declaration of Human Rights

The first sentence of the preamble to the Universal Declaration of Human Rights adopted by the United Nations (UN) General Assembly in 1948 states: ‘*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’ The second sentence of the preamble states: ‘... the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.’

Article 1 of the Universal Declaration of Human Rights states: ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and

conscience and should act towards one another in a spirit of brotherhood.’ The first sentence of article 2 states: ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ The first sentence of article 7 states: ‘All are equal before the law and are entitled without any distinction to equal protection of the law.’

2.3.2 The International Covenant on Civil and Political Rights

The Preamble to the UN International Covenant on Civil and Political Rights (ICCPR), which was adopted by the UN in 1966 and which came into force in 1976, reaffirms that ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’ and, consequently, that rights ‘derive from the inherent dignity of the human person’.

2.3.3 The American Convention on Human Rights

The American Convention on Human Rights, which came into force in 1978, states in its preamble that it is recognised that: ‘[T]he essential rights of man are not derived from one’s being a national of a certain state, but are based upon attributes of the human personality.’

2.3.4 The African Charter on Human and Peoples’ Rights

The African Charter on Human and Peoples’ Rights, adopted by the Organisation of African Unity and later by the African Union (AU), entered into force in 1986 and contains a number of noteworthy statements that underpin the notion of human rights.

- The preamble to the African Charter specifically considers that ‘freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples’.
- Article 2 of the African Charter states that: ‘[e]very individual shall be entitled to the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.’ The first clause in the first sentence in article 5 states that: ‘[e]very individual shall have the right to the respect of the dignity inherent in a human being’

2.3.5 Treaty for the Common Market for Eastern and Southern Africa

The Treaty for the Common Market for Eastern and Southern Africa (COMESA)¹ was ratified in 1994 and contains a number of noteworthy statements underpinning human rights.² Although the COMESA Treaty is fundamentally concerned with regulating trade and economic development in the Eastern and Southern African regions, it is noteworthy that the importance of human rights is recognised:

Article 6 of the COMESA Treaty is headed ‘Fundamental principles’ and sub-article (e) provides that: ‘[T]he Member States agree to adhere to the following principles: ... recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.’

2.3.6 COMESA Social Charter

COMESA has also developed a Social Charter,³ which it adopted in February 2014. It comes into force only once 11 countries have ratified it. To date, only Mauritius has done so.⁴ Nevertheless, the Social Charter is an important indication of the intentions of governments in the Eastern and Southern African regions. Article II of the Social Charter sets out its aims and objectives, and sub-article (d) thereof specifies that one of the principle aims and objectives of the Social Charter is to ‘enable all individuals from the region to live in dignity and realize their full potential’.

International recognition of the basic dignity, equality and autonomy of all people has impacted strongly upon the formulation of fundamental rights, particularly with regard to freedom of expression.

Freedom of expression is seen as a foundational human right and is internationally protected (as discussed later in this chapter) precisely because the notions of equality, dignity and individual development or fulfilment require that when human beings talk or otherwise express themselves, what they are expressing or communicating is a reflection of *who they are*, and therefore worthy of respect and protection.

3 WHY IS FREEDOM OF EXPRESSION IMPORTANT? INSTRUMENTAL RATIONALES

3.1 Overview

The other broad set of rationales for freedom of expression is that free expression is a means to an end – that it is necessary for achieving important societal goals. There is no closed list of these goals, but there is consensus on at least two of the main ones:

- The search for truth in the marketplace of ideas
- That freedom of expression is essential for democracy.

3.2 The search for truth in the marketplace of ideas

The argument behind this rationale is that it is only through the ongoing and open expression of different ideas that we are able to test the ‘truth’ of any single idea.

This rationale is based on the recognition that freedom of expression is central to people’s ability to:

- Develop, hone and refine their own ideas, opinions and views
- Reject, discard or replace ideas, opinions and views
- Convince others of their arguments, ideas, opinions and views
- Consider and assess others’ arguments, ideas, opinions and views.

The process of sifting through the notional ‘marketplace of ideas’ is effectively a search for truth. This point is powerfully made with regard to academic or scientific research, which relies heavily on frank peer review ‘expression’ to sift out erroneous conclusions. But the same is true for our general discourse.

Only through free expression can one ensure that there will be competing ideas or views which human beings can adopt or reject for themselves. The enterprise of human development is based on ideas, viewpoints and arguments. For there to be progress, these need continually to be assessed, challenged, validated, refined or discarded. And this cannot happen fully without free expression.

3.3 Freedom of expression is critical to democracy

This rationale is based on the notion that democracy – which recognises that people have the right to elect a government of their choosing – cannot exist in any meaningful way without the right to freedom of expression.

There are many aspects to this rationale, but the fundamental concept is that in order for democracy to be effective, the citizenry that votes in elections and engages in public processes with government must be informed and must have the right to participate freely in public discourse. COMESA has recognised this in its Treaty and in its Social Charter.

Article 6 of the COMESA Treaty is headed ‘Fundamental principles’ and sub-article (f) provides that: ‘[T]he Member States agree to adhere to the following principles:

accountability, economic justice and popular participation in development.’ Similarly, Article III(c) of the Social Charter requires member states to ‘promote Good Governance including participatory governance’.

If there is no freedom of expression – if people are not free to share information and express a range of ideas, opinions and political views; and, the corollary to that, if people are not free to *receive* information in the form of a range of ideas, opinions and political views – they will not be sufficiently well informed to make appropriate and meaningful political choices, whether at the ballot box or in their interactions with government more generally.

4 FREEDOM OF EXPRESSION

4.1 Freedom of expression in various international human rights instruments

It is useful to look at how international human rights instruments define the scope of freedom of expression in order to understand what falls within the freedom and what does not. This section examines the relevant provisions of certain universally accepted human rights instruments, which set out the internationally agreed scope of the right to freedom of expression. Certain aspects of the international human rights instruments are commented on.

4.1.1 The Universal Declaration of Human Rights

Article 19 of the Universal Declaration of Human Rights provides that: ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’

Article 19 warrants some discussion because so many elements of the right to freedom of expression are contained in these few lines. Importantly, the right:

- Is granted to ‘everyone’; there are no qualifiers, such as citizenry or age
- Is to ‘freedom of opinion and expression’. In other words, not only is everyone entitled to hold their own opinions on any issue (clearly encompassing thoughts, ideas and beliefs), they are also entitled to express these
- Is to freedom of ‘expression’. This is broader than speech as it encompasses non-verbal, written and non-written expression, such as dance, mime, art, photography and other non-verbal action

- Specifically includes the right to ‘seek, receive and impart information and ideas’. This is a critical aspect of the right as it means that everyone has the right to obtain information. Thus, states that deny media freedom also trample upon the rights of their citizens to receive information freely
- Includes the right to seek information and ideas ‘through any media’. This is a critically important statement for the press and media because it makes it clear that newspapers, radio, television and the internet, for example, are all clearly encompassed within the right
- Exists ‘regardless of frontiers’. In other words, this is internationally recognised as a universal right that is not dependent upon, or determined by, national borders.

4.1.2 The International Covenant on Civil and Political Rights

Article 19 of the ICCPR elaborates on a number of the provisions of the Universal Declaration of Human Rights. It provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) for respect of the rights or reputations of others;
 - (b) for the protection of national security or of public order, or of public health or morals.

Article 19 of the ICCPR warrants some discussion because it reveals certain important differences between its provisions and those of article 19 of the Universal Declaration. Some particularly noteworthy aspects are discussed below.

- Perhaps the most noteworthy aspect is that article 19 of the ICCPR, unlike the Universal Declaration, contains, in paragraph 3, a clear statement on how the right to freedom of expression may be restricted by states. We all know that rights may conflict with each other. Some examples of this are that the right to freedom of expression can be used unfairly to:

- Ruin a person's reputation through the publication of untrue defamatory statements and therefore infringe upon that person's right to dignity
 - Justify the taking of intimate photographs of a person and therefore violate his or her right to privacy.
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- The provisions of paragraph 3 in article 19 of the ICCPR acknowledge this clashing of rights and recognise the right of states to pass laws to restrict freedom of expression in certain limited circumstances – namely, where this is necessary to protect the rights or reputations of others, as well as to protect national security, public order, public health or morals.
 - The use of the word 'necessary' is noteworthy. It means that unless freedom of expression is restricted, the protection of reputations, national security and public health will be endangered. This is a high standard to meet.

A number of regional international human rights instruments contain similar protections of the right to freedom of expression. Two examples of such regional instruments are highlighted and contrasted below – namely, the EU Convention for the Protection of Human Rights and Fundamental Freedoms, and the African Charter of Human and Peoples' Rights.

4.1.3 The EU Convention for the Protection of Human Rights and Fundamental Freedoms

The European Union (EU) Convention for the Protection of Human Rights and Fundamental Freedoms, which came into being in 1950, in article 10, protects freedom of expression. This article provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 10 of the EU Convention features two particularly noteworthy aspects regarding the formulation of the right to freedom of expression:

- In paragraph 1, it specifically provides that the right does not prevent states from requiring licences for broadcasting, television or cinema enterprises. In our view, licensing of the broadcast media is not, in and of itself, a threat to freedom of expression. Indeed, as broadcast media in Africa makes use of a scarce and finite natural resource, namely, the radio frequency spectrum (as opposed to cable broadcasting, which is not used widely in Africa), licensing is essential to avoid inevitable interference, which would result in no broadcast media being available to the public. However, it is, sadly, a feature of certain East African countries that licences to produce print media are required. It is noteworthy that the licensing of the print media is *not* included in article 10, paragraph 1 of the EU Convention.
- Article 10, paragraph 2 of the EU Convention sets out a fairly comprehensive list of allowed restrictions on freedom of expression by states. Importantly, these are subject to the overall test that such restrictions must be ‘necessary in a democratic society’. The list of allowed restrictions is broader than that contained in the ICCPR, for example, and extends to confidential information and protecting the authority and impartiality of the judiciary.

4.1.4 The African Charter on Human and Peoples’ Rights

The African Charter on Human and Peoples’ Rights’ provisions on the rights to freedom of expression are weak. They do not provide anything like the protection of freedom of expression afforded by the global instruments such as the ICCPR or other regional instruments such as the EU Declaration. Article 9 of the African Charter states:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

There are two particular aspects to article 9 of the African Charter that warrant further discussion:

- Unlike some other international human rights instruments, there is no express corresponding right to impart information in clause 1 of article 9.
- The right to express and disseminate opinions is fairly severely curtailed as this must be done ‘within the law’. What is noteworthy about this restriction on the

right to freedom of expression is not that there are legal restrictions upon the right (as can be seen from the instruments discussed above, this is common) but that there are no requirements in article 9 that such laws be necessary to protect some other social good, such as the rights of others, public health or national security. Effectively, it could be argued that the African Charter elevates restrictions upon freedom of expression found in ordinary national laws – however passed and no matter what their content – above the right to freedom of expression. Needless to say, this is extremely disappointing.

However the African Court of Human and People's Rights⁵ in 2014 handed down an important judgment on this issue and has interpreted this provision progressively to mean that 'the reasons for possible limitations must be based on legitimate public interest and the disadvantages of the limitation must be strictly proportionate to and absolutely necessary for the benefits to be gained'.⁶ The effect of this is to require an in-depth consideration of the legitimacy of the legal restrictions imposed upon freedom of expression.

4.2 Summary of key elements of the right to freedom of expression

It is clear from the international instruments that the scope of the right to freedom of expression is generally accepted to be as follows:

- The right is available to everyone – individuals as well as juristic persons, such as companies.
- The right to freedom of expression is broader than freedom of speech and includes non-verbal and/or non-written forms of expression.
- The right generally encompasses the right to receive as well as to impart information and ideas.
- The right includes the freedom of means of communication, demonstrating that there is no limitation on the medium that may be used to express ideas or opinions.
- Broadcasting licensing requirements do not constitute undue infringements on the right to freedom of expression.
- The right to freedom of expression is not absolute and states are entitled to limit it. However, such limitations must be necessary in a democracy to protect the rights of others or important societal interests, such as national security or public health.

5 THE RELATIONSHIP BETWEEN FREEDOM OF EXPRESSION AND FREEDOM OF THE MEDIA

It is clear from the international human rights instruments examined above that the right to freedom of expression requires not only that everyone is free to express themselves, but that they are free to do so over a range of different types of media, including the print or broadcast media, subject to licensing requirements in respect of the broadcast media. Indeed, one academic, Michael Bratton, has said:

In order to be politically active, citizens require means to communicate with one another and to debate the type of government they desire for themselves. Civic discourse can take place in various forums, the most important of which are the public communications media, both print and electronic.⁷

It is also clear from the international human rights instruments that freedom of expression includes the right to receive information and ideas. This is a critical component of the right. The effect of this is that when a state acts to silence or curtail the operations of the media, whether print or broadcast media, not only is it violating the expressive rights of the media and of the journalists, editors and publishers thereof, but it is also violating the rights of its citizens to *receive* information and ideas freely.

Consequently, the internationally recognised basic contours of the right to freedom of expression clearly and inherently protect the right to freedom of expression of the media, too; thus the expressive and information rights of individuals and of the media are inextricably intertwined.

6 THE ROLE OF THE MEDIA IN SOCIETY GENERALLY

6.1 Definition of the media

‘The media’ is not a monolithic entity but rather a broad term encompassing a variety of content provided to the public, or sectors of the public, over a range of platforms. There is no closed list of content provided by the media: news, politics, business, current affairs, entertainment, motoring, gardening, religion, home decor, fashion, food, celebrity and lifestyle are some of the many topics covered by the media. Furthermore, these topics are provided over a range of platforms. Traditionally, when one thought of the media one thought of newspapers, magazines, radio and television. This is no longer the case. The so-called ‘new media’ encompasses a range of platforms, including web-based platforms, such as internet sites, but also mobile platforms such as mobile television or the ability to listen to news headlines on your

mobile phone. Internet-based media can be merely electronic versions of what is available in the print media. For example, a newspaper's website will carry an electronic version of the newspaper for that day, or else such media can carry unique content not available in hard copy form. New media is changing the way citizens and the media relate. Social networking sites such as Twitter and Facebook, for example, have played a significant role as sources of news and information in repressive countries. The most significant examples are the recent uprisings in the Arab world and in Eastern Africa. The posting of video material and photographs on various internet sites has helped ensure that news and information about the region is becoming much more accessible not only to its citizens but to a worldwide audience.

Just as there is no monolithic 'media' entity, similarly there is no single role that it plays. Indeed, the role of a particular part of the media is very much determined by a range of factors relating to the nature of the media itself, in particular the content of the media (news or current affairs versus light entertainment) and the medium used (print, broadcasting or internet based). Thus the media plays a number of different roles in society, including being informative, educational or entertaining. Media can be narrowly focused by appealing to a particular interest (for example, a fishing magazine), religion (such as a Christian broadcaster) or area of specialisation (such as a trade publication). It can also appeal to a mass audience by being a full service television station or a daily newspaper covering a variety of news and current affairs, whether local, national or international.

It is common to conflate the terms 'the media' with 'the press'. This is not necessarily a problem; however, when thinking about media and press freedom concerns, it is helpful to see the term 'the press' as a sub-set of 'the media'. The press has a connotation that is clearly associated with the news media, whether provided in print or electronically. Within the term 'the press' (meaning the news media) there are various kinds of press outlets – state media, public media, commercial media, and even certain forms of community media can be included in 'the press'. It is important to bear these distinctions in mind when considering the roles of the press, in particular, and of the media more generally.

6.2 General role of the press

Academic commentators have often characterised the media or the press as being 'a separate player on behalf of the public against the agencies of power', and that media organisations 'take a position between government agencies and the public'.⁸ Clearly, this is true only to a certain extent as a number of media outlets (print, broadcasting or otherwise) are fundamentally part and parcel of government, and therefore cannot

and will not play any role that is not supportive of government. However, it is true that a strong and independent media, together with other organs of civil society, can play mutually reinforcing roles to exert pressure on governments to support democracy and socio-economic development.⁹ Media commentator and academic Masudul Biswas has said that the major aim of the independent media is to make ‘political participation meaningful’.¹⁰

This links to one of the instrumental rationales for freedom of expression – namely, that the free flow of information and exchange of ideas is good for democracy because it makes for better democratic decision-making by government, improves transparency and accountability, and gives citizens the ability to make informed political choices.

In order to achieve the important aim of assisting to give democratic participation ‘meaning’, the press must fulfil a number of other roles. These are elaborated on next.

6.3 The press as public watchdog

6.3.1 Overview

The role of the press as ‘watchdog’ is a traditional characterisation of the role of the news media in particular. Biswas describes the media as ‘a watchdog of the society [monitoring] the activities of public administrations and other institutions and practices that directly and indirectly affect the public’.¹¹

This watchdog role can take many forms depending on the nature of the medium concerned, as well as on the state of democracy and development in a particular country. Essentially, this role is to provide information – to be the ‘eyes and ears’ of the public in monitoring what is happening in public life by reporting on daily events as they unfold.

6.3.2 Reporting on government

When one thinks of the press as watchdog, one thinks of the press as reporting on the happenings of government. In and of itself ‘reporting on government’ is a huge task. It involves reporting on the programmes and activities of the three branches of government:

- *The legislature:* Its activities include not only deliberating upon and passing legislation, but also important committee work, overseeing the executive’s operations and being the body to which public authorities are generally accountable.

- *The executive:* Its activities include the day-to-day management of government. The activities of all ministries and government departments fall under the auspices of the executive, which is essentially the ‘engine room’ of governance in a country. The media needs to be able to report on all these ministries – finance, health, trade, education, sports and more.
- *The judiciary:* These are the courts – that is, the administration of justice within a country. The media needs to be able to communicate judgments and court proceedings.

But reporting on government also involves reporting on the activities of other related bodies, including:

- International bodies to which the country belongs, such as COMESA, the AU, the UN and the Commonwealth
- Public authorities, such as the central or reserve bank, the independent broadcasting authority, the public broadcaster, the independent electoral commission, the public protector or public ombudsman (if any)
- Parastatal companies, such as national airlines, electricity utilities, railways and telephony companies
- Different spheres of government, such as provincial government or local government, which is the most relevant to the daily lives of readers, viewers or listeners.

6.3.3 Reporting on economic development

Economic issues can be as important as political ones; hence, a watchdog press also needs to report on economic developments and news. While these will often overlap with government-related reporting (for example, when covering issues such as interest rates, unemployment figures, gross domestic product figures, the budget, development projects or the use of international donor aid), this is not necessarily the case.

Often economic issues involve the private sector, and a watchdog press will need to be able to report on the activities of major corporations and concerns in all spheres of the economy, including mining and/or oil operations, agriculture, manufacturing and services. In doing so, it is important for the press to keep the public informed about the side-effects of economic activity, such as the actions of polluting companies.

6.3.4 Reporting on social issues

The press also needs to be able to report accurately on the social life of the nation. This means covering artistic and cultural happenings and sporting events, as well as social trends and developments that impact on the daily life of all, including children, the youth, the elderly and the disabled.

6.4 The press as detective

The role of ‘detective’ is a critical adjunct to the role of the press as public watchdog; however, it is dealt with separately here to emphasise the difference between reporting on public affairs, and journalistic investigations into wrongdoing in the administration of public affairs.

When journalists are well trained and have trusted sources of information, the press is able to investigate wrongdoing by public officials. These include perpetrating fraud or engaging in corruption in order to divert and personally benefit from public funds or other public resources.

This ‘press as detective’ role is evidenced when the press is able to engage in fairly long-term, detailed, in-depth investigative journalism – the kind that is able to report to the public on large-scale systematic wrongdoing by public (or indeed private) officials, which may include nepotism, corruption, fraud or other kinds of criminality. These exposés often rely on more than one journalist and require the backup of the media company as a whole (be it broadcasting or print) to provide the necessary resources for the investigative exercise.

In many countries, the ability and willingness of the press to engage in investigative journalism is key to encouraging the police and prosecuting authorities to act against corrupt public figures, even if this only occurs as a result of the intolerable pressure that the resulting publicity puts on the police and prosecuting authorities.

6.5 The press as public educator

The press also plays a general educative role in society. This can be done at a number of levels. For example, in support of early childhood development broadcasters can, and often do, broadcast basic educational materials aimed at teaching children the alphabet, colours or animals.

In support of secondary education, print media outlets sometimes include supplementary educational materials for school-goers. Similarly, broadcasters can and do

broadcast historical, scientific or even mathematical programmes also aimed at school-goers.

However, education is much broader than simply formal schooling, and the press can play a general educational role. For example, the media (print or electronic) can inform the adult population about a wide range of educational topics including nutrition, health (especially in relation to diseases such as HIV and Aids, malaria and diabetes), basic money management and budgeting, developments in agriculture, child care, etc.

6.6 The press as democracy and good governance advocate

Linked to its general educational role, but more controversially, the press can also play the role of democracy and good governance advocate. This role is controversial because it envisages the press as both advocate and impartial reporter. In this role, the press comments on issues of the day and advocates improved democratic practices and good governance.

In this advocacy role, the press sees itself firmly on the side of the ordinary citizen, whose life can be improved or worsened depending on how public authority is exercised. This advocacy role is also closely linked to the watchdog role of the press; however, it goes further. The press as advocate will report not only on what is happening but on what should be happening.

The press in many developing countries is almost forced into playing this role because improving basic human living conditions cannot happen without democratic practices and good governance.

An example of this democratic advocacy role is the role of the press during an election. Besides reporting on election issues (for example, the polls, party programmes and party tactics) the media can help to strengthen democratic processes by encouraging the public authorities to hold a free and fair election through educating the public about what this would entail. In this role, the press can, for example, inform the public about how democratic elections ought to be run. The press can provide information on, among other things, the importance of having an up-to-date voters' roll, a secret ballot, election observers, multi-party officials at different ballot stations, security of the ballot boxes, an independent electoral commission, and the role of the media, particularly the public broadcaster. In other words, the press is able to vocalise a democratic standard to which public authorities should be held for their conduct during an election. In this way the press educates the public about holding public officials accountable for their actions.

Other areas where the press can play a democracy advocacy role include:

- Clean administration versus corruption and nepotism
- Appropriate use of public resources versus mismanagement and waste
- Proper policing and public safety versus public violence, particularly if meted out by the security or intelligence forces
- Economic and social development versus growing poverty and unemployment
- Generally increasing living standards versus glaring inequality and wealth disparities
- Responsive and public-oriented public services versus bloated and self-serving bureaucracies
- Transparency, openness and accountability versus secrecy, neglect and repression.

Importantly, a press which plays a democracy advocacy role will target not only government for coverage and comment. In many developing countries, companies (including subsidiaries of large multinational companies) and others in the private sector do not always adhere to basic standards in relation to working conditions, occupational health and safety, or environmental issues. The press needs to be able to point out actions by companies and other private sector actors which fall short of national or international standards and which cause damage to individuals, communities or the environment.

Similarly, some policies of international bodies, such as the International Monetary Fund, the World Bank and the World Trade Organization, can and sometimes do cause significant hardship for developing countries. An advocacy press ought to be able to point out to citizens what, for example, a fair trade regime in relation to the country's exports and imports ought to look like.

6.7 The press as catalyst for democracy and development

If the press is able to perform only its most basic function – that is, reporting on matters of public interest – it nevertheless acts as a promoter of transparency, openness and accountability. Governments (particularly repressive ones) and private sector actors dislike negative press coverage. Of course, a government may try to respond to negative press coverage by clamping down on press freedom through legal and

illegal means, but this is not a sustainable long-term response and usually only serves to hasten the erosion of public confidence in, and support for, the government.

If the press is able to perform some or all of the roles set out above, it can act as a real catalyst for democracy and development, helping to make public participation meaningful. The public supports a press that reports accurately and provides it with reliable news and information about matters of public concern. As this public support grows, governments come under public pressure to be more transparent and accountable, and to work with the press and not against it. As governments learn how to respond appropriately to press criticism, so the space for the media opens up and a positive cycle of more sophisticated government–press relations can ensue. In this way, the government sees the independent media as a key vehicle for communicating with the public about its programmes and actions, and also as a gauge to measure its own popular standing and support, as the press often (although not always) reflects public opinion.

In thinking about the press as a potential catalyst for democracy and development, it is crucial to bear in mind that a number of post-independence African governments expressly used the mass media:

as a tool for national consolidation, development, and authoritarian control ...
The reach of the mass media was extended to rural areas, supposedly to promote development and technical diffusion, but in actuality the media was used as a tool of state control and propaganda (citations omitted).¹²

Clearly, this kind of government-controlled media is not the model of the ‘press as democracy and development catalyst’ that we are talking about here.

The stronger the media becomes in a particular country, the better it is able to fulfil its various roles as watchdog, detective, educator, good governance advocate, and even catalyst for democracy and development. The more the press is able to fulfil these roles, the more the public is informed about public interest issues. The more the public is so informed, the more it is able to hold public power accountable and relate to government (through the ballot box, or in consultations or other interactions), the private sector and even civil society in a manner that is informed. The government of an informed citizenry is often able to engage in focused decision-making as there is a free flow of information and ideas that the government can access to improve its operations.

Then-president of the World Bank, James Wolfensohn, said in the Foreword to a 2002 World Bank report:

A key ingredient of an effective development strategy is knowledge transmission and enhanced transparency. To reduce poverty, we must liberate access to information and improve the quality of information. People with more information are empowered to make better choices. For these reasons I have long argued that a free press is not a luxury. It is at the core of equitable development. The media can expose corruption. They can keep a check on public policy by throwing a spotlight on government action. They let people voice diverse opinions on governance and reform and help build public consensus to bring about change.¹³

7 IMPORTANCE OF THE BROADCAST MEDIA

When thinking about the press and the media, people often focus on the print media – essentially, newspapers. In Africa, and particularly in Eastern Africa, this makes little sense for four key reasons:

- With few exceptions, newspapers are often distributed only in the larger cities and towns. In other words, they are not available in many rural areas.
- Relatively speaking, newspapers are expensive. Many countries in Eastern Africa have extremely high rates of poverty. The little money people have is far more likely to be spent on food and essentials rather than newspapers, which are out of date within a day or so.
- Newspapers in the region tend to be published in English, French or Swahili – the languages of many governments. However, a country’s broadcasting landscape can be characterised by a number of radio stations broadcasting in different local languages, enabling listeners to access news and information in their home languages.
- Most important is the issue of adult literacy: if people cannot read they obviously cannot access the content contained in the print media. Literacy rates in Eastern Africa vary widely. Kenya is recognised as being in the top 10 of African countries, with a literacy rate of over 85%; but two Eastern African countries, Somalia and Ethiopia, are in the bottom 10 of African countries, with literacy rates of 37.8% and 42.7% respectively.¹⁴

In sub-Saharan Africa, the percentage of the population with access to newspapers is 48% (falling to 29% in rural areas).¹⁵ Eastern African figures are likely to be lower given the lower literacy rates in the region.

In the context of low levels of literacy, the broadcast and digital media – which pro-

vide content visually and/or through the spoken word – are extremely important. Of the options provided by the broadcast media, most people access news and information via radio rather than television. This is due to three main reasons:

- Terrestrial television transmission or signal distribution facilities and infrastructure are extremely expensive to roll out. Terrestrial television is therefore often limited to urban areas. Radio or sound transmission facilities are far less expensive, so radio coverage is invariably greater than television coverage. For example, in sub-Saharan Africa as a whole, overall radio penetration stands at 93% of the population (dropping to 92% in rural areas) while overall television penetration stands at 49% of the population (dropping to 28% in rural areas).¹⁶
- In countries with erratic electricity supply or in areas where electricity is not available, watching television is simply not possible; although sometimes people make do by connecting television sets to car batteries or generators and suchlike. As radio sets can be battery operated or even wind-up, the technology is far more suitable to conditions of no, limited or erratic electricity supply. This is a critical issue in Eastern Africa where rates of access to a dependable supply of electricity are very low. Although up-to-date figures are hard to come by, examples of the percentage of the population with access to electricity in the Eastern African countries we are looking at are: Eritrea, with the highest percentage at 32%; Burundi, with the lowest percentage at 5%; and countries in between including – Ethiopia – 24%, Kenya – 20%, Rwanda – 21%, and Uganda – 15%. Obviously, electricity is unevenly distributed with the rural electrification rate being much lower than the urban electrification rate. Besides Eritrea and Ethiopia, the percentage of rural populations in the Eastern African countries dealt with in this handbook with access to electricity is in the single digits.¹⁷
- The (relatively) prohibitive cost of television sets means that many households cannot afford them. Given the high levels of poverty in many Eastern African countries, a television set is a luxury item. Radio sets are far less expensive.

Clearly, broadcasting, and particularly radio, is the medium through which most people in Eastern Africa access news and information. Historically, broadcasting has been a neglected area in the context of press freedom battles in Africa, particularly in Eastern Africa. It is only fairly recently (in the past five years or so) that state monopolies over the airwaves (both radio and television) have been scrapped and a more pluralistic broadcast media has begun to emerge.

An important development in terms of Eastern Africa's access to news and information has been the rise of the smart or feature phone, which has enabled

people to gain access to the internet and to access national, regional and international news and information directly via their handsets. Although internet penetration in Africa remains low at about 26%, this is increasing rapidly, particularly in urban areas. Sadly, Eastern Africa lags behind the rest of the continent. Internet penetration remains particularly low in the region, with the percentage of the population with access to the internet ranging from a high of 69.6% in Kenya to a low of 1% in Eritrea. Other countries' rates include: Burundi – 4.9%; Ethiopia – 3.7%; Rwanda – 25.4%; and Uganda – 32.1%.¹⁸ Nevertheless, online media activity is on the rise across the continent.

This handbook contributes to a free media movement by setting out (in Chapter 2) what democratic media and broadcasting regulatory environments look like, as well as by analysing the media law regulatory environment in each country to test whether or not it meets international best practice standards.

NOTES

- 1 http://www.comesa.int/attachments/article/28/COMESA_Treaty.pdf, last accessed 28 July 2015.
- 2 http://about.comesa.int/index.php?option=com_content&view=article&id=95&Itemid=117&showall=1, last accessed 28 July 2015.
- 3 <http://programmes.comesa.int/attachments/article/82/Comesa%20Social%20Charter%20Final%20-%20ENGLISH.pdf>, last accessed 30 July 2015.
- 4 <http://newsghana.com.gh/mauritiussignscomesasocialcharter/>, last accessed 30 July 2015.
- 5 *Konate v Burkina Faso* (Application No. 004/20013), <http://www.african-court.org/en/images/documents/Judgment/Konate%20Judgment%20Engl.pdf>, last accessed on 31 July 2015.
- 6 *Ibid*, paragraph 133 of the Konate judgment.
- 7 Michael Bratton, 'Civil Society and Political Transition in Africa'. Institute for Development Research Reports, 11(6), 1994, p 2. Available at http://www.issuelab.org/resource/civil_society_and_political_transition_in_africa, last accessed 31 July 2015.
- 8 Masudul Biswas, 'Media Freedom, Governance and Civil Society', Conference Paper, 2009, p 3. Available at http://citation.allacademic.com/meta/p_mla_apa_research_citation/2/8/2/0/7/pages282073/p282073-1.php, last accessed 31 July 2015.
- 9 *Ibid*, p 5.
- 10 *Ibid*.
- 11 *Ibid*.
- 12 Erik Nisbet & Devra Moehler, 'Emerging Political Communication Systems in Sub-Saharan Africa: Some Preliminary Models'. Paper presented at the annual meeting of the American Political Science Association, Marriott Wardman Park, Omni Shoreham, Washington Hilton, Washington DC, 2005, p 5. Available at http://64.112.226.77/one/www/research/index.php?cmd=www_search&offset=0&limit=5&multi_search_search_mode=publication&multi_search_publication_fulltext_mod=fulltext&textfield_submit=true&search_module=multi_search&search=Search&search_field=title_idx&fulltext_search=saharan&PHPSESSID=914a7b08e25b3faac1029d0219bc038c, last accessed 28 December 2009.
- 13 James Wolfensohn, Foreword in 'The Right to Tell: The Role of Mass Media in Economic Development', World Bank Institute Report, World Bank, 2002. Available at Google Books, last accessed 31 July 2015.

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- 14 Figures for this paragraph obtained from: http://theafricaneconomist.com/ranking-of-african-countries-by-literacy-rate-zimbabwe-no-1/#.VbnX_vmqqkp, last accessed 30 July 2015.
 - 15 <http://www.balancingact-africa.com/docs/reports/SSA-Media-Landscape.pdf>, p 25, last accessed 30 October 2016.
 - 16 Ibid.
 - 17 <http://www.worldenergyoutlook.org/resources/energydevelopment/energyaccessdatabase/>, last accessed 10 May 2016.
 - 18 <http://www.internetworldstats.com/stats1.htm>, last accessed 10 May 2016.

