

Colombo Declaration on Media Freedom and Social Responsibility

October 2008

On the Occasion of the tenth anniversary of the **Colombo Declaration on Media Freedom and Social Responsibility (“Declaration”)**, we, the undersigned:

Reaffirming our commitment to the principles and values articulated in the Declaration, and to the process of Reform of Media Laws that we set out on.

We take this opportunity to revisit the Declaration, to acknowledge the positive developments that have taken place since then, to remind ourselves of the many goals that remain unfulfilled, and to chart out new challenges that have arisen since the Declaration

We note that the Government of Sri Lanka was one of the signatories to the Colombo Declaration on Media, Development and Poverty Eradication, Colombo, 2006 (“UNESCO Declaration”) and its commitments under this Declaration include the promotion of a free, pluralistic and independent media committed to social justice and development. We recall further that the Windhoek Declaration of 1991 asserted that the right to a free press is a fundamental right underpinning participatory democracy.

We believe that one of the ways of achieving a free, pluralistic and independent media is by implementing the reforms suggested in the Declaration of 1998 and by guaranteeing to journalists the constitutional right to practice their profession while ensuring their safety and security.

Towards that end, we take this opportunity to present a revised version of the 1998 Declaration, and we pledge to work towards translating the normative aspirations of the Colombo Declaration into lived reality.

Preamble

We, the undersigned,

Convinced that freedom of expression and freedom of information are vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Bearing in mind that it is imperative if people are to be able to monitor the conduct of their government, be politically informed and to participate fully in a democratic society, that they have access to information;

Convinced that the existence of a free and independent media during times of

conflict is indispensable in the easing of conflict through the promotion of diversity of opinions

Recognizing that the journalist performs a critical role in society in facilitating the above;

Considering that public officials by nature of their office should tolerate more intense levels of criticism than private individuals;

Convinced that debate on public issues should be uninhibited and robust and that some erroneous statements are inevitable in a free debate, recognise the necessity for legal protection of critics of official conduct;

Recognizing that the application of censorship has often been arbitrary and erratic, and in violation of the public's right to know, and also in violation of international standards of freedom of expression;

Noting with concern the acts of physical attacks, intimidation and threats to media personnel and property, and the lack of investigations into these attacks, intimidation and threats which have adversely affected the freedom of the press, and freedom of expression;

Recognizing that the Press and Media cannot operate freely under the constant condition of fear

Desiring to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage the government from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

Acknowledging that the promotion of a free and independent Press and Media also demands a concomitant responsibility towards the achievement of higher standards of practice, the promotion of a spirit of unity and non partisan cooperation between media players and adherence to ethical norms of practice;

Agree upon the following proposals and recommend that the appropriate bodies undertake steps to promote their widespread dissemination, acceptance and implementation.

Developments since The Colombo Declaration of 1998

We note with appreciation the following positive developments that have taken place in the last decade:

- A. The Abolition of Criminal Defamation provisions in the Penal Code and

the Press Council Law in 2002, the repeal of Section 118 of the Penal Code, which had penalised attempts by contumacious or insulting words or signs, to bring the President into contempt and repeal of the 1978 amendment to the Parliamentary Powers and Privileges Act (1953) which had given Sri Lanka's Parliament the power to deal with serious breaches of privilege

B. The Establishment of the Sri Lanka Press Institute and the Press Complaints Commission and the Sri Lanka College of Journalism

We note with anguish, that apart from these positive developments, there has been little else that has been done to implement the proposals set out in 1998. While a few initial taken steps have been taken towards Media Law Reform, such as the establishment of a Prime Ministerial Committee to Media Law Reforms, the approval of by the Cabinet of Ministers of a Freedom of Information Act, the appointment of a Parliamentary All Party Select Committee to draft Contempt of Court Act, it is unfortunate that these reforms are forgotten by successive governments, despite their electoral promises of greater freedom of speech for individuals and the Media.

While some strides have been evidenced in the judicial expansion of the Right to Information, the expansion of certain fundamental rights through encouraging interpretations of the scope of Freedom of Speech and Expression by the judiciary, have been lost due to legislative apathy, and executive excess.

We therefore reiterate our demands for the following reforms

1. Constitutional Provisions

1.1 Constitutional Guarantees of Freedom of Expression

1.1.1 We require that the media personnel be free to engage in their profession in safety and security as provided for by Article 14 (1) (g) of the Constitution which guarantees the right to engage by himself or herself or in association with others in any lawful occupation, profession, trade, business and/or enterprise in the Republic of Sri Lanka.

1.1.2 Sri Lanka's Constitutional guarantees of freedom of expression need to be brought in line with the Country's international legal obligations, specially the International Covenant on Civil and Political Rights (ICCPR) that was ratified by Sri Lanka in 1980.

1.1.3 A better formulation of the words defining the freedom of expression, opinion and information in the Constitution which is more in keeping with the words of Articles 19 (1), 19 (2) of the ICCPR, is needed. i.e. -

Article 19 of the ICCPR states -

1. Every one shall have the right to hold opinions without interference.
2. Every one shall have the right to freedom of expression; this 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.

1.2 Constitutional Restrictions on Fundamental Rights.

As a broad liberal Constitutional provision on freedom of expression will be rendered ineffective if the executive is permitted to restrict such a right easily, it is proposed that;

(I) Restrictions on the substantive right of freedom of speech, expression and information should be reasonable, justifiable and necessary in an open and democratic society based on human dignity, equality, and freedom, taking into account all relevant factors including a) the nature of the right, b) the importance of the purpose of the limitation, c) the nature and extend of the limitation, d) the duration between the limitation and its purpose and e) less restrictive means to achieve the purpose.

Or in the alternative, that;

(II) Restrictions should be confined only to those exceptions permitted under the ICCPR Article 19(3);

- (a) for the respect of the rights or reputation of others, and
- (b) for the protection of national security or of public order or of public health or morals.

1.3 Parliamentary Privileges – The provisions in the Constitution setting out restrictions relating to parliamentary privileges should be removed as this constitutes an unnecessary privilege conferred on members of parliament and is not reflected in modern standards relating to the right to freedom of speech, expression and information. The Parliamentary Powers and Privileges Act (1953) should be returned to its original position and the consequent amendments to the Act should be specifically repealed.

1.4 Derogation of Fundamental Rights in times of Emergency - Restriction to fundamental rights in times of emergency should be limited only to the restriction of the right of citizens to approach the Court for redress to the extent set out in Article 4 of the ICCPR, as modified where necessary to suit the Lankan context. These are

- i. They must be made only 'in time of public emergency which threatens the

life of the nation, the existence of which is officially proclaimed’.

ii. They may only be ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law’

iii. They must not involve discrimination solely on the race, caste, colour, sex, sexual orientation, language, religion or social origin.

iv. Certain specified rights, i.e; right to life, right to be free from torture/ cruel, inhumane degrading treatment or punishment, right to free from slavery, the right not to be imprisoned merely on the ground of inability to fulfill a contractual obligation” should never be derogated from whatever the circumstances.

1.5 Judicial Review of the Constitutionality of Legislation - The Constitution should be amended to permit judicial review of legislation at any time, of both existing and future law, on grounds of inconsistency with the Constitution and there should be no time limit on judicial review of enacted legislation. Article 16(1) of the Constitution should be removed in order to make this possible.

Article 16(1) of the Constitution which is as follows - “All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the proceeding provisions of this chapter” should be repealed as it violates a fundamental principle of constitutional law.

2. Newspaper and Press Laws

2.1 **The Official Secrets Act** which defines official secrets vaguely and broadly should be repealed and a **Right to Information Act** be enacted where disclosure of information will be the norm and secrecy the exception.

2.2 A **Right to Information Act** should reflect principles of transparency and open Government. Such Law should specifically list the types of information that maybe withheld indicating the duration of secrecy. Legal provision should be made for enforcement of access with provision for appeal to an independent body. Such Law should, therefore, make provision for exempt categories such as protection of individual privacy including medical records, trade secrets, and confidential commercial information, law enforcement investigations, information obtained on the basis of confidentiality, and national security. We urge the Government to enact a Right to Information Bill on the lines of the Freedom of Information Act approved by the Cabinet in 2004.

Provision should be made to appoint an Independent Authority empowered to investigate complaints of arbitrary denial of information. Secrecy provisions of

other Laws should be subordinate to the Right to Information law.

2.3 Press Council Law of 1973, should be repealed in view of the self regulatory initiatives currently in force by way of the Press Complaints Commission of Sri Lanka.

2.4 In any event, section 16 thereof which prohibits newspapers from publishing proceedings of Cabinet meetings, decisions or Cabinet documents, which is arbitrary and restrictive and cannot be justified, should be repealed.

2.5 Broad basing the ownership of the Associated Newspapers of Ceylon (ANCL)

The ANCL (Special Provisions) Law read as a whole unequivocally indicates the principle of broad basing and not nationalisation. Successive Sri Lankan governments have pledged in their respective manifestos to broad base the ownership of the Lake House in keeping with the intention of the legislation and a 1996 government appointed committee proposed a mechanism by which the company should be broad based. However, these recommendations have not been implemented. It is imperative that the provisions of the ANCL law are implemented forthwith in this regard.

3. Offences under the Penal Code

3.1 Section 120 dealing with sedition, which is a 19th century formulation being too wide in scope should be repealed or modified in keeping with International Human Right Laws.

4. Contempt of Court

There should be a Contempt of Court Act in order to clarify the substantive and procedural Law concerned, which would define precisely the scope of Contempt of Court and the *Sub-Judice* Rule, broadly structured on the lines of the UK Contempt of Court Act of 1981, and the Indian Contempt of Court Act of 1971. The law should allow for fair and reasonable criticism of judgments, judicial conduct and judicial proceedings including when such proceedings are pending so long as such comment does not constitute substantive prejudice to the administration of justice, should specify, *inter alia*, narrowly defined exceptions to the general rule regarding confidentiality of sources, should prescribe fair procedures for the determining of contempt allegations and should prescribe a maximum sentence that could be imposed when contempt is, in fact, found.

5. Banning of Publications

The current state of the law should be clarified with regard to the banning of publications and the Customs embargo on importation of publications, in order to

prevent interference, except on grounds that are constitutionally permissible and are compatible with the freedom of expression and information.

6. The 6th Amendment to the Constitution.

The provisions of the 6th Amendment to the Constitution should be subjected to revision in regard to whether the provisions impinge on the freedom of speech and expression.

7. Emergency Rule

7.1 Censorship and other restrictions under Emergency Rule

7.1.1 Expression shall not be subject to prior censorship except within the framework prescribed by the ICCPR and such regulations which restrict expression should be notified by Gazette, publicized in all sections of the media in all three languages immediately and should be subjected to a rigorous process of parliamentary approval within a prescribed period of time.

7.1.2 The policy relating to censorship should be guided by the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1st October 1995.

7.1.3 All regulations made under the Public Security Ordinance (1947) should be subject to statutorily stipulated tests of necessity and/or expediency and/or proportionality. Arrests made under emergency law should be made on objective grounds that the arrest is justified in law and not on vague or general suspicion, reasons should be given for the arrest and the person arrested should be brought promptly before the nearest court;

7.1.4 Emergency Regulations that prohibit publications together with those provisions of the Prevention of Terrorism Act (1979) which prohibits any publication, without the approval of a competent authority, of any matter relating to the commission of any act which constitutes an offence under the Act or constitutes and *inter alia*, an incitement to violence and the sealing of the printing presses of the newspaper concerned for violation thereof should be repealed or amended in order to subject ministerial power to the tests of necessity and/or expediency and/or proportionality and also to specify proportionate punishment rather than the drastic remedy of sealing the presses.

8. The High Cost of Newsprint

The exorbitant duties presently imposed on newsprint make the price of education and information through newspapers costly to the economically deprived. The import duty acts as a deterrent for better distribution and dissemination of knowledge. It is proposed that a zero rate of duty be levied on

imports.

It is important to acknowledge that Freedom of Speech and Expression can be curtailed not only by direct means such as censorship and restrictive media laws, but also by issues of infrastructure such as the cost of newsprint, import duties etc. This principle has been acknowledged by the Supreme Court of India, which has held that an exorbitant import duty on newsprint can make it unviable for a press to be operational, and this will result in a violation of freedom of speech and expression.

Newsprint accounts for 55-65% of the total cost of producing a newspaper in Sri Lanka in comparison to 25-30% in Western countries.

Newsprint production is now tightly controlled by top three companies generating 70% of worldwide capacity and prices are not determined by demand and supply.

As a direct result of escalating newsprint prices, publishers of developing economies like Sri Lanka, are compelled to increase the cover price of newspapers thus impacting on the dissemination of news and views.

This Declaration calls upon the major suppliers of newsprint to take into consideration the problems faced by the newspaper publishers of the smaller countries, to safeguard dwindling readership.

9. Public Broadcasting Service

9.1 All State funded and managed broadcasting services in Sri Lanka should be converted to publicly-owned bodies and not subject to any form of State control.

9.2 Values of Public Broadcasting should be safeguarded by ensuring that the governing bodies of the Broadcasting Authority should have a balanced and independent composition.

10. Electronic Media

10.1 An Independent Broadcasting Authority

There should be an independent broadcasting authority which is genuinely independent of any form of governmental or non-governmental pressure to oversee the implementation of the broadcasting policy, and be responsible for the licensing of community radio, public and private broadcasting including technical aspects, the legislation should specifically state the public's right to receive information and opinion on matters of public interest, and specifically state the principle of maintaining a fair balance of alternative points of view. The selection process for the members of this body must be such as to ensure it is not dominated by any political group.

10.2 Community Radio and Television –

A policy for the development of community radio and television should be set out in Law. A regulatory authority should ensure that at least 50% of the programming should be within the declared aims of the community service.

10.3 Internet

One of the most significant developments in the last ten years has been the growth of the Internet, which has resulted in the democratization of media and encouraged the emergence of non professional journalists in the form of bloggers etc. We acknowledge the contribution of bloggers towards the promotion of free speech and democratic media. We also recognize that bloggers are as susceptible to controls by the state, misuse of their work as traditional print and broadcast media. We take this opportunity to commit our support to responsible bloggers and other new media practitioners, and hope to work with them in solidarity towards establishing a convergent media which is strong and independent.

10.4 We specifically call on the government to recognize the internet as an important space for deliberative democracy, and extend to it, all such policies as would enhance the space of free speech on the Internet, and to avoid all policies of banning, blocking, or censoring websites without reasonable grounds. There is now a convergence between the traditional print media and the internet, with a number of newspapers being accessed through the internet, and we would strongly urge that all the privileges and protections sought in this declaration be extended to the web editions of newspapers

11. Protection of Sources

Legislation to protect the confidentiality of media sources should be introduced and should be part of a Contempt of Court law, where the conditions under which divulgence of media sources are compelled, are clearly defined.

12. Review of Legislation

Laws should be reviewed and amended in keeping with contemporary internationally accepted norms. In particular, The Obscene Publication Laws of 1927, The Public Performances Ordinance of 1912, The Public Performance Board Act and the Profane Publications Act of 1958 should be reviewed.

13. Responsibilities of Media Institutions and Personnel - Voluntary Code of Ethics – Support for Self-regulation

13. 1 All media institutions/personnel in the print media shall adhere to the Code

of Professional Practice of The Editors' Guild of Sri Lanka for the time being in force, and adopted by the Sri Lanka Press Institute, the Press Complaints Commission of Sri Lanka, the Sri Lanka College of Journalism, the Newspaper Society of Sri Lanka, the Free Media Movement, the Sri Lanka Working Journalists Association, the Sri Lanka Tamil Media Alliance, the Sri Lanka Muslim Media Forum, the Federation of Media Employees Trade Union, and the South Asian Free Media Association – Sri Lanka Chapter. All media institutions/ personnel in the print media shall co-operate swiftly with the Press Complaints Commission of Sri Lanka and adhere to the communications of the Commission's Secretariat and the adjudications of the Commission's Dispute Resolution Council. (The aforementioned Editor's Code is annexed as part and parcel of this Declaration).

13.2 We acknowledge that a media should be free not just of political control, but strive towards being free of undue commercial influence and controls. While we recognize that Media survives through commercial advertisements, we also acknowledge that there has been a global trend where commercial establishments attempt to pressurize media through withdrawal of advertisements, attempts at capturing editorial space etc. We will strive to maintain the independence of the media from such undue commercial influences, and in particular to ensure that the interests of commercial advertisements do not influence our editorial and news policy, or in any manner violate our integrity and objectivity in reporting.

13.4 We encourage members of the academic community, professional bodies, activists, scholars and ordinary citizens to help us achieve higher standards by engaging us in constructive criticism through the provision of feedback, peer review, and work in partnership with us so that we can create a free and independent media in Sri Lanka.

14. The Improvement of Working and Safety Conditions for Journalists

There can be no free media without journalists who are able to work freely. Recognizing the importance of guaranteeing working journalists the ability to work freely, we acknowledge the need to establish laws that protect the rights of journalists and to adopt best practices within the industry including but not limited to:

- a. Lobbying for a legislation on the lines of the Working journalists and other Newspaper Employees (Conditions of Service) Act, 1955 which is used to regulate conditions of employments in India
- b. Implementing Art. 79 of the Additional Protocol (8 June 1977) to the Third Geneva Convention that deals with the protection of journalists engaged in dangerous professional missions in areas of armed conflict.
- c. Encourage the establishment of insurance schemes for journalists

- d. Encourage the formation of collective forms and organizations that will protect the interests of journalists

15. Need for Journalism Training

This Declaration recognizes a need to infuse greater professionalism in the Media, and especially work towards providing training, both academic and practical to young and mid-career journalists. This includes the conversion of the current Diploma in Journalism course conducted by the Sri Lanka College of Journalism towards a degree awarding course.

This consensus does not preclude individual organisations from campaigning for reform over and above the provisions contained herein.

CONCLUSION

We welcome the fact that the 10th Anniversary symposium on Media Freedom and Social Responsibility was jointly organised by the Sri Lanka Press Institute in partnership with the Sri Lanka Working Journalists' Association, the Free Media Movement, The Editors' Guild of Sri Lanka and the Newspaper Society of Sri Lanka and the support of the United Nations Education, Scientific and Cultural Organization (UNESCO) thereby demonstrating the highest spirit of co-operation and collaboration among the various sectors of the media.

We reiterate our commitment to further co-operation and unity in our efforts to promote the freedom of expression in general and media freedom in particular with its attendant social responsibility. We, therefore, call upon media organisations to overcome difference of opinion and divergences in style in order to work together to actualize this common vision.

**Signed by
Sri Lanka Working Journalists Association
Free Media Movement
Newspaper Society of Sri Lanka
The Editors' Guild of Sri Lanka**

End/WSR – November 2008