

# Colombo Declaration on Media Freedom and Social Responsibility

Colombo Declaration on Media Freedom and Social Responsibility

September 30, 2018

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

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

Take this opportunity to revisit the Declaration, to acknowledge the positive developments that have taken place since it was first adopted, to remind ourselves of the many goals that remain unfulfilled and to chart out new challenges that have arisen.

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 that its commitments under this Declaration include the promotion of a free, pluralistic and independent media committed to social justice and development.

Recall that the Windhoek Declaration of 1991 asserted that the right to a free press is a fundamental right underpinning participatory democracy.

Believe that one of the ways of achieving a free, pluralistic and independent media is by implementing the reforms suggested in the 1998 Declaration, by guaranteeing journalists their constitutional right to practice their profession while ensuring their safety and security, and by creating an environment in which a free, pluralistic and independent media can flourish.

To 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 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 people need to have access to information if they are to be able to monitor the conduct of their government, to be politically informed and to participate fully in a democratic society;

Reaffirming that the existence of a free and independent media during times of conflict is indispensable in the easing of the conflict and that the media and journalists cannot operate freely if they operate in a constant condition of fear;

Recognising that journalists perform a critical role in society in facilitating the above;

Considering that public officials, by virtue of the nature of their office, should tolerate a greater degree of criticism than other individuals;

Stressing that debate on public issues should be uninhibited and robust, and that some erroneous statements are inevitable in a free debate, and recognising that the legal rules should reflect that;

Reiterating that the application of restrictions on freedom of expression and of the media has often been arbitrary and erratic, in violation of the public's right to know and international guarantees of freedom of expression;

Cognisant of the massive changes brought about by digital communications technologies and the need for regulatory systems to take these changes into account;

Noting with concern the ongoing incidence of physical attacks on, intimidation of and threats to media personnel and property, and that the lack of effective investigations into and prosecutions based on these actions has adversely affected freedom of expression and of the media;

Desiring to promote a legal framework which limits the scope of restrictions on freedom of expression and of information that may be imposed in the interests of national security, so as to limit the ability of the government to abuse the pretext of national security to unduly restrict the exercise of these freedoms;

Recalling that restrictions on freedom of expression, including contempt of court, must be clearly defined in law and must not grant undue discretion to the judiciary;

Acknowledging that the promotion of a free and independent media also demands a concomitant responsibility on the part of the media to achieve higher professional standards of practice, the promotion of a spirit of unity, nonpartisan cooperation between media players and adherence to ethical norms of practice;

Agree the following Declaration and recommend that the appropriate bodies undertake steps to promote its 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 two decades:

A. The abolition of criminal defamation provisions in the Penal Code and the Press Council Law in 2002, and 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.

A. 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 the Press Complaints Commission of Sri Lanka and the Sri Lanka College of Journalism.

C. The adoption, in 2015, of the 19th Constitutional Amendment adding Article 14A, guaranteeing a constitutional right to information, and the adoption in 2016 of the Right to Information Act.

We note with grave concern, however, that apart from these positive developments little else has been done to implement the recommendations set out in the 1998 Declaration, despite electoral promises by successive governments to secure greater freedom of speech for individuals and the media.

While early advances were made through encouraging interpretations of the scope of freedom of expression by the Sri Lankan judiciary, these gains have since been lost due to legislative apathy, executive excess and increased conservatism among the judiciary.

We therefore reiterate our demands for the following reforms:

## **1. Constitutional Provisions**

### **1.1 Constitutional Guarantees of Freedom of Expression**

1.1.1 Media personnel should, in practice, be free to engage in their profession in safety and security as provided for in Article 14(1)(g) of the Constitution, which guarantees every citizen the right to engage, by himself or herself or in association with others, in any lawful occupation, profession, trade, business and/or enterprise.

1.1.2 The guarantee of freedom of opinion and expression set out in Article 14(1)(a) of the Constitution should be brought into line with the country's international legal obligations, specially the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Sri Lanka in 1980. Specifically, the right should provide absolute protection for opinions, protect the rights to "seek, receive and impart" information and ideas, "of all kinds", "regardless of frontiers" and through any media, in line with Articles

1.1.3 19(1) and 19(2) of the ICCPR (cited below).

1.1.4 Articles 19(1) and (2) of the ICCPR state:

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**

A broad liberal constitutional provision on freedom of expression will be rendered ineffective if it also grants the executive and legislature undue latitude to restrict this right. To avoid that, the following recommendations should be put into place, recognising that this right is an entitlement and not a privilege:

(I) The Constitution should only allow restrictions on the right to freedom of speech, expression and information which are reasonable, justifiable and necessary in an open and democratic society based on limited interests relating to human dignity, equality and freedom, and taking into account all relevant factors including: a) the nature of the right; b) the importance of the objective of the restriction; c) the nature and extent of the restriction; d) the nexus, including temporal nexus, between the restriction and any material risk to the interest it protects; and e) any less restrictive means to protect the interest.

(II) In addition, restrictions should not go beyond those permitted under Article 19(3) of the ICCPR, which only allows restrictions which are provided by law, and which are necessary to protect ; the rights or reputations of others, national security, public order, or public health or morals.

## **1.3 Parliamentary Privileges**

The provisions in the Constitution setting out restrictions on rights, including freedom of expression, relating to parliamentary privileges should be removed as this constitutes an unnecessary power conferred on Members of Parliament and fails to respect international guarantees of freedom of expression.

## **1.4 Derogation of Fundamental Rights in times of Emergency**

Derogations on fundamental rights in times of emergency should be limited to extent allowed by Article 4 of the ICCPR, as assessed in the Lankan context. These are:

- i. Derogations must be made only ‘in time of public emergency which threatens the life of the nation, the existence of which is officially proclaimed’.
- ii. Derogations may only be imposed ‘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. Derogations must not involve discrimination on the basis of race, caste, colour, sex, sexual orientation, language, religion or social origin.
- iv. Certain rights – namely the right to life, the right to be free from torture or cruel, inhumane or degrading treatment or punishment, the right to free from slavery, and the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation – should never be derogated from whatever the circumstances.

## **1.5 Judicial Review of the Constitutionality of Legislation**

Article 16(1) of the Constitution should be repealed and replaced with a rule that permits judicial review of legislation at any time, for both existing and proposed laws, on grounds of inconsistency with the Constitution, and there should be no time limit on judicial review of legislation.

## **1.6 Legislation Limiting Rights**

The government should refrain from enacting new laws that are contrary to the rights to freedom of expression and information, including by exempting certain offices or individuals from the reach of the Right to Information Act.

## **2. Newspaper and Print Media Laws**

### **2.1 The Official Secrets Act**

The Official Secrets Act, which defines official secrets vaguely and broadly, should be repealed or substantially amended to bring it into line with international standards.

## **2.2 The Press Council Law of 1973**

This Law should be repealed in view of the self-regulatory initiatives currently in force, namely the Press Complaints Commission of Sri Lanka. This shall include the repeal of , 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.

## **2.3 Broad basing the ownership of the Associated Newspapers of Ceylon Law (ANCL)**

The ANCL (Special Provisions) read as a whole unequivocally supports the idea of broad basing the ownership of Lake House rather than nationalisation of it. Successive Sri Lankan governments have pledged in their respective manifestos to broad base the ownership of 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 these provisions of the ANCL be implemented.

## **3. Sedition**

Section 120 of the Penal Code, dealing with sedition, follows a 19th century approach to this issue which is too wide in scope and should be repealed or revised to bring it into line with International human rights standards.

## **4. Contempt of Court**

A Contempt of Court Act should be adopted in order to clarify the substantive and procedural rules relating to contempt, including by defining precisely the scope of contempt of court and the sub judice rule, taking into account the United Kingdom Contempt of Court Act, 1981 and the Indian Contempt of Court Act, 1971. The law should allow for fair and reasonable criticism of judgments, judicial conduct and judicial proceedings including when such proceedings are pending as long as such comment does not create substantive prejudice to the administration of justice. The

Act should also prescribe fair procedures for the determination of contempt allegations and should prescribe a maximum sentence that may be imposed when contempt is proven.

## **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 right to freedom of expression and information.

## **6. The 6th Amendment to the Constitution**

The 6th Amendment to the Constitution should be revised to ensure that it does not impinge on the right to freedom of speech and expression.

## **7. Censorship and other restrictions under Emergency Rule**

7.1 Expression should not be subject to prior censorship except in accordance with the standards set out in Article 19(3) of the ICCPR. Any regulations restricting expression on the basis of a state of emergency should be notified in the Gazette, publicised in the media in all three languages and lapse unless they are obtain parliamentary approval within a prescribed period of time.

7.2 The rules relating to censorship during emergencies should respect the standards in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

7.3 All regulations made under the Public Security Ordinance, 1947, should be subject to statutorily stipulated tests of necessity and proportionality. Any arrests made under emergency law should respect the following: the arrest should objectively be justified in law rather than based on vague or general suspicion; reasons should be given for the arrest; and the person arrested should be brought promptly before a court.

7.4 Any emergency regulations and those provisions of the Prevention of Terrorism Act, 1979, which allow for the banning of any publication or the sealing of the



printing presses of a newspaper without the prior approval of a court should be repealed or amended in order to subject ministerial power to the tests of necessity and proportionality, including in relation to punishments (i.e. so as to avoid the drastic remedy of sealing the presses).

7.5 Proposed counter terrorism legislation should not incorporate archaic concepts of espionage, broadly defined categories of ‘confidential information’ or vague prohibitions on the right of the media and citizens to exercise free speech.

## **8. The High Cost of Newsprint**

The exorbitant duties presently imposed on newsprint make the price of disseminating information through newspapers costly, especially for the economically deprived. The import duty acts as a deterrent for better distribution and dissemination of knowledge. A zero rate of duty should therefore be levied on imports of newsprint.

Freedom of expression can be curtailed not only by direct means, such as censorship and restrictive media laws, but also indirectly by measures 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 to operate a print media outlet which represents a violation of freedom of expression. Newsprint accounts for a large percentage of the total cost of producing a newspaper in Sri Lanka.

## **9. Public Service Broadcasting**

9.1 All State funded and managed broadcasting services in Sri Lanka should be converted into independent, publicly-owned bodies which are not subject to any form of government or political control.

9.2 Values of public service broadcasting should be safeguarded, including by ensuring that State funded broadcasting services are overseen by governing boards which are independent and have a balanced and representative composition.

## **10. Electronic Media**

## **10.1 An Independent Broadcasting Authority**

A broadcasting authority which is genuinely independent of any form of governmental or non-governmental interference should be created to oversee the implementation of broadcasting policy and to be responsible for the licensing of broadcasters (whether community, public or commercial), including their technical aspects. The legislation creating the authority should also set out clear rules for licensing which specifically recognise the public's right to receive diverse information and ideas on matters of public interest, the need for broadcasters to be professional and politically balanced in their news and current affairs programming, and the principle of maintaining a fair balance of alternative points of view. The selection process for the members of the authority should be such as to ensure that it is not dominated by any one political group.

## **10.2 Community Radio and Television**

A policy for the development of community radio and television should be set out in law. The independent authority noted above should regulate this sector, including so as to ensure that at least 50% of the programming disseminated by these media serves the local needs of the community.

## **11. Internet**

11.1 One of the most significant developments since the adoption of the 1998 Colombo Declaration has been the growth of the Internet, which has resulted in the democratisation of media and encouraged the emergence of non professional journalists in the form of bloggers, citizen journalists, etc. We acknowledge the contribution of bloggers and others to the promotion of free speech and democratic media. We also recognise that bloggers and others are susceptible to State control and misrepresentation of their work as legacy media output. We take this opportunity to commit our support to responsible bloggers and other new media practitioners, and we hope to work with them in solidarity towards establishing a convergent media which is strong and independent.

11.2 We specifically call on the government to recognise the Internet as an important space for deliberative democracy, to extend to it policies which enhance free speech on the Internet, and to avoid adopting policies which allow for the banning, blocking or censoring of websites contrary to international law. There is now a convergence between the traditional media and the Internet, with most legacy media also being accessed through the Internet. All of the privileges and protections for the legacy media recommended in this Declaration should be extended to their web editions.

11.3 A broad social debate should be held to determine what are the appropriate legal and regulatory rules governing the Internet and the government should then take the necessary steps to put this system into place. Among other things, these rules should ensure that the Internet is not subject to special systems of regulation, that new rules duplicating rules of general application are not imposed on Internet communications, that everyone has the right to use encryption and anonymisation tools online and that the State is under a positive obligation to promote universal access to the Internet.

## **12. Protection of Sources**

The Contempt of Court Act noted above should include rules which protect the confidentiality of media sources. The Act should set out narrowly and clearly defined exceptions to the general rule regarding confidentiality of sources.

## **13. Review of Legislation**

All laws which restrict freedom of expression should be reviewed and amended to bring them into line with international standards. In particular, The Obscene Publication Law, 1927, The Public Performances Ordinance, 1912, and The Public Performance Board Act and the Profane Publications Act, 1958 should be reviewed.

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

14.1 All institutions/personnel working in the print media sector 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 institutions/personnel working in the print media sector shall co-operate 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.

14.2 We acknowledge that the media should be free not just of political control but also strive towards being free of undue commercial influence and controls. While we

recognise that media survives largely through commercial advertisements, we also acknowledge that there has been a global trend whereby commercial establishments attempt to pressure media through withdrawal of advertisements, attempts at capturing editorial space, etc. We will strive to maintain the independence of the media from undue commercial influence and, in particular, to ensure that commercial advertisements do not influence our editorial and news policy, or in any manner violate our integrity and objectivity in reporting.

14.3 We will strive to represent social reality in all its diversity, complexity and plurality, and shall be particularly mindful of gender and minority sensitivities in the composition of media regulatory bodies, in media institutions and in reporting.

14.4 A system should be established to ensure that the allocation of advertisements from the public sector is independent of political considerations and is, instead, done on the basis of objective criteria such as reaching the target audience.

14.5 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 working in partnership with us so that we can create a free and independent media in Sri Lanka.

## **15. The Improvement of Working and Safety Conditions for Journalists**

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

- a. Lobbying for legislation along the lines of the Working Journalists and other Newspaper Employees (Conditions of Service) Act, 1955, which is used to regulate conditions of employment in India.
- a. Implementing Article 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.
- b. Encouraging the establishment of insurance schemes for journalists,
- c. Encouraging the formation of collective arrangements and organisations that will protect the rights, interests and welfare of journalists, including the possibility of a system of complaints to address abuses of their employment rights.
- d. Recognising the right of journalists, including provincial journalists, to fair and living wages, to organise themselves to advocate for this right and not to be subject to

employment retaliation for undertaking such activities.

e. Expanding the remit of the Wages Board to cover not only print media workers but also those working for broadcasters and the electronic media.

f. Putting in place effective measures to address the problem of gender discrimination within the media.

## **16. Need for Journalism Training**

This Declaration recognises the need for greater professionalism in the media and especially the need to provide 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 into a degree course.

## **17. Safety of Journalists**

17.1 A special safety mechanism should be created to ensure that appropriate actions are taken to protect media workers and outlets against attacks. The remit of this mechanism should include prevention, protection and addressing impunity. On the prevention side, the mechanism should have the power to allocate appropriate prevention measures where these are needed. On the impunity side, the mechanism should have the power to promote the rapid and effective investigation and prosecution of crimes against freedom of expression (crimes committed with the intent to silence someone), including through training relevant administration of justice actors.

17.2 Where media workers are at risk of attack, media outlets should provide them with appropriate training and equipment to enhance their ability to protect themselves in dangerous situations.

The consensus set out in this Declaration does not preclude individual organisations from campaigning for reform over and above the recommendations contained herein.

## CONCLUSION

We welcome the fact that the 20th Anniversary 1998-2018: The Colombo Declaration 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 freedom of expression in general and media freedom in particular with its attendant social responsibility. We therefore call upon media organisations to overcome differences of opinion and divergences in style in order to work together to actualise this common vision.

Signed by:

Sri Lanka Working Journalists Association

Free Media Movement

Newspaper Society of Sri Lanka

The Editors' Guild of Sri Lanka