



Note

on

Sri Lanka's Proposed National Media Policy

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Introduction

On 22nd August 2007, the Sri Lankan Ministry of Mass Media and Information released a Proposed National Media Policy (draft Policy) for consultation (see Annex 1). It is not clear what, precisely, has motivated the idea of a national media policy at this time. The draft Policy notes that no media policy “to provide essential guidance for media practice” has been in place since independence in 1948, although by the same token it would appear that such a policy is not, in fact, essential to guide the media. There is no formal media policy in most democracies, although there is also no reason why such a policy, if drafted consistently with the right to freedom of expression, should not be adopted.

The draft Policy is extremely brief – just one page in total. For the most part it consists of instructions to, or standards for, the media rather than policy statements as such to guide government action in this area. The Mission statement gives a good flavour of the overall tenor of the policy, stating:

“Achieving excellence in the total practice of the media by creating a people-centred, development oriented, free, and responsible media culture as required by a well-informed and democratic society.”

Although the Mission refers to a 'free' media it fails to mention other key characteristics of established international and constitutional standards regarding the media, in particular that the media should be independent and pluralistic. Of greater concern are the numerous references to a directed role for the media which, according to the Mission statement, should be 'excellent', 'people-centred', 'development oriented' and 'responsible', all in service of a well-informed society.

The theme of a media in service of various social goals is developed extensively in the Objectives. These refer to a media culture that 'upholds national identity, unity and harmony', that has 'a clear understanding of its social responsibility' and that is 'socially responsible [repeated] and ethical'. The Objectives call for the creation of an enabling environment, not to promote media freedom, independence and pluralism but to 'promote professionalism among media practitioners'. They also refer to an environment in keeping with technological advances and best media practices. In fact, media freedom is mentioned only once and even then as flowing from a media that is socially responsible rather than anything incumbent upon government, such as passing and respecting laws that conform to international standards regarding freedom of expression.

While there is nothing wrong with a media policy referring to the idea of media responsibility, we note with concern that this is a refrain which, in the mouths of officials, is almost always a call for media control to the detriment of a free and independent media. The substance of the draft Policy is very unclear as to how media responsibility will be promoted. We wish to bring attention to the significant difference between the media itself undertaking measures to enhance its service to public goals and quite another for the government or officials to do so, particularly through legislation.

It may be noted that a government media policy should focus primarily on official action. Many of the statements in the draft Policy are legitimate only insofar as they are left to the media to implement on a voluntary or self-regulatory basis. These matters have, for the most part, no place in an official media policy. Several of the specific responsibilities mentioned – including upholding national identity, unity and harmony – are not, in democracies, recognised as media roles, regardless of how they are sought to be implemented. Rather, it is the responsibility of the media to serve as a forum for wide-ranging public debate, reflecting the full gamut of views held by different members of society.

An equally serious and related problem is the almost complete failure of the Mission, Objectives or substance of the draft Policy to recognise the obligation of the government to take measures to create an enabling environment in which a free, independent and pluralistic media can thrive. This obligation flows from constitutional, as well as international, guarantees of freedom of expression and entails a number of aspects. These include refraining from interfering with media freedom, establishing a legal framework which ensures an appropriate balance between this freedom and competing interests such as reputation and security, ensuring that regulation of the media is independent of government control and promotes pluralism and putting in place effective legislation to enable citizens' right to information. The present legal and regulatory framework in Sri Lanka, as well as government practice, fails to conform to international and constitutional standards in all of these areas. Unsurprisingly, there is little or no mention of this in the draft Policy.

In short, the whole thrust of the draft Policy, is that the media are under a set of responsibilities to society rather than the obligations of government to create a positive enabling environment for the media. Our primary recommendation to the government is

that it discontinues the development of this Policy or, should it wish to continue, restart the process from the beginning through an open public consultation not based on an already developed draft.

The next section analyses the substantive part of the draft Policy. This is followed by a short overview of some of the priority issues for the media in Sri Lanka which the draft Policy fails to address and the by a set of recommendations.

Analysis of the Substantive Part of the Draft Policy

Given that the fourteen substantive sections of the draft Policy, as noted, contain, for the most part, standards for the media rather than policy directions as such, it is very difficult to discern what the government actually intends to do to bring about the results enumerated in the draft Policy. Thus, the section on the right of reply stipulates that those who consider that a reply is needed should be given one, but it does not indicate whether the government intends to pass legislation to this effect or to leave it to the media to implement a voluntary right of reply. Clearly, from the perspective of media freedom, there is a great difference between these two approaches. It is thus difficult to assess the appropriateness or relevance of many of the statements in the draft Policy.

The substantive part of the draft Policy contains a mix of statements which range from the very prescriptive (“the media are bound by an obligation”, “media should totally refrain”) to the ambiguous (“to respect ... accuracy”, “to bring about”) to the promotional (“encourage”, “guide”). As forewarned in the Mission and Objectives, these focus almost exclusively on the idea of directing the media – to bring about a well-informed citizenry, to refrain from invading privacy, to be accountable to society and related foci – rather than on the obligation of the government to put in place a positive framework for respecting media freedom. As such and as noted, the failure of the draft Policy to articulate this key objective severely undermines its significance and raises grave concerns on the understanding of and approach to media reform by the present government.

1. Media Freedom and Right to Access Information

The first section of the draft Policy brings together a number of separate ideas. The draft Policy refers to safeguarding “the right of all citizens to express their views via any and all media”. This notion is misplaced. While the media as a whole will, in a healthy democracy, reflect the range of views held in society, it is impractical and unworkable to ensure that citizens, as the draft Policy suggests, have a right of access to any and all media.

Further, the draft Policy refers to the right of citizens to “receive, provide and gather information required for the proper functioning of society”. In most democracies, this is delivered in two key ways. First, through the creation of an environment in which a free, independent and pluralistic media can flourish, providing a range of views and perspectives to citizens. As noted, there is nothing in the draft Policy to suggest that this is what the government intends. Second, this is achieved through the adoption of Right to information legislation (RTI), now universally recognised as central to democratic governance (within South Asia, India, Nepal and Pakistan have all adopted RTI laws and the Bangladeshi government is in the process of doing so). The *Media Charter for a democratic and pluralistic media culture and social and professional rights for media and journalism in Sri Lanka* (Media Charter)¹, adopted by a September 2005 conference of leading journalist unions and organisations facilitated by the Centre for Policy Alternatives supports this view, stating that the law must “guarantee citizen’s access to information and freedom of information at all levels of government” (Section 3.4). Any commitment by the government of Sri Lanka to adopt such legislation would be very welcome. However, given that it is not clearly enumerated this does not appear to be the intention of the draft Policy. While the media have a professional responsibility to inform

¹ Available for download in English, Sinhala and Tamil from <http://www.cpalanka.org/media.html>

the public, imposing a legal obligation to do so is unacceptable especially since the draft Policy does not make explicit how it sees this being achieved.

Third, this section of the draft Policy states that the “media would not in any manner harm the Sri Lankan National identity” and seeks to prevent media from subjecting any person or community to “contempt, insult, disgrace or hate”. The focus is on the responsibility of the media, rather than the idea of balancing media freedom with the protection of other social interests. The question of limits on media freedom is complex. The terms used here – not harming the national identity or insulting any person or group – are over broad and fail to pass muster under international or constitutional law as legal restrictions on freedom of expression. It is, however, difficult to assess these statements without more detail as to how they are to be achieved. There is nothing to prevent the media from adopting ethical standards in this area and, on this, the *Media Charter* states:

Responsibility for ethical conduct in journalism rests with media professionals who should be responsible for drawing up codes of ethical conduct and who should establish credible and accountable systems of self-regulation. (Section 2.4)

2. National and Social Responsibility

This section is cast more in terms of encouraging than requiring the media to foster various social objectives, including to promote Sri Lanka's pluralistic identity and to bring about a well-informed society. These are valid objectives for the media which are reflected in the *Media Charter* (see, for example, section 1.5). Once again, however, it is unclear what means the draft Policy intends should be used to achieve them. In particular, there is no mention of the two key means of achieving these objectives in democracies, namely, as noted above, by fostering an environment in which a free, independent and pluralistic media can flourish and by adopting comprehensive Right to information legislation.

3. Privacy

This section states that the right to privacy “should be scrupulously upheld by the media”. As a statement of policy, this is inconsistent with international and constitutional standards on freedom of expression, as well as the practice of democratic States, both of which recognise that privacy must be balanced against other social interests. For example, privacy cannot be held up as a bar to reporting on corruption. In other words, it is legitimate for investigative journalists to intrude on privacy where this is necessary to expose corruption. In many countries this is reflected in legislation by protecting privacy, but subjecting such protection to a public interest override.

4. Right of Reply

This section states that any person or organisation that “reasonably considers that a report [concerning them] requires to be replied” should be provided with an opportunity to make a correction or clarification in the media. International standards on the right of reply recognise the importance of this means of redressing inaccurate media reporting. At the same time, it must be subjected to certain constraints to avoid it being abused. In particular, it should apply only where the media have published or broadcast an inaccurate statement which breaches a legal right of the claimant. The standard of “reasonably considers that a report requires” a reply is a far lower standard than this. Once again, as noted, no indication is given as to the important matter of how this is to be achieved. In particular, a voluntary system of the right to reply established by media

outlets requires far less stringent scrutiny from the perspective of freedom of expression than a mandatory system, provided for by law.

5. Accountability

This section suggests that the media are accountable to society. This is true in a very general sense; the *Media Charter* recognises as a fundamental principle:

That the creation of tolerant, peaceful and just society depends upon the freedom of citizens to have access to quality media that respect the principles of pluralism, diversity and universal respect for human rights. (Section 1.2)

At the same time, the modalities by which such accountability is to be achieved should also be very general, for example through market pressure and public respect, rather than anything more specific. Once again, the draft Policy is silent as to the manner of implementation of this statement. Any legal provision that seeks to coercively establish media accountability to the general public will not pass muster in light of established international media freedom and Sri Lanka constitutional frameworks that would see such provisions as restricting the freedom of expression.

6. Advertising and Publicity

The draft Policy calls for high standards in advertising and all forms of publicity, in accordance with best media practices and relevant codes of ethics. If this means, as the language suggests, that the media should adopt codes of ethics which call for high advertising standards, it is welcome. If it is a call for legislative intervention, more detail is needed to assess whether or not it is consistent with the guarantee of freedom of expression.

7. Use of Language

This section suggests that the media should respect established conventions of language usage in their reporting. This is not something that should be the subject of government policy. It is up to the media to determine the best means of communicating their messages to the public. It is perfectly legitimate to achieve this by using slang, colloquialisms or other informal language forms that do not respect established language usage conventions.

8. Editorial Independence

This section calls for editorial independence to be guaranteed "to all media personnel". Editorial independence is normally associated with the right of media outlets, pursuant to internal decisions by editors, to determine the content of the media, rather than, as this phrase suggests, something which relates to individual journalists. At the same time, it is important that the rights of individual journalists be respected by media outlets, as well as by officials, and this is reflected in the *Media Charter*, which calls for the adoption of "internal editorial statutes and other provisions safeguarding the independence of journalists" (Section 2.6). Once again, the means by which this is to be achieved is crucially important. Legal provisions protecting against interference by officials with editorial decisions would be welcome. On the other hand, the manner in which editorial decisions are taken internally is a matter for journalists and editors, rather than officials, to establish.

9. Rights of Media Personnel

This section calls for 'action' to be taken to guarantee the professional and employment rights of media personnel. The *Media Charter* recognises the right to media staff of freedom of association and to collective bargaining (Section 1.3), rights which are also recognised under international and constitutional law. It also calls for media representatives and the workforce to work together to promote 'the economic and social development' of the media, including various employment issues. Once again, the draft Policy is silent as to what 'action' means. If this refers to putting in place an appropriate labour law framework in which the collaboration just noted can happen, it is to be welcomed. If 'action', however, means official interference in the labour relations of particular media outside of this legal framework, it is inappropriate.

10. Research, Training & Development

This section calls for research as a means to ensuring good quality media content, as well as for providing adequate training opportunities for media personnel. It is up to individual media outlets to determine their approach to reporting. While research, particularly in the form of investigative journalism, is always useful, it depends on many factors, including the resources available to media outlets. As a result, this is not something which is appropriate for inclusion in an official media policy. However, the commitment in the draft Policy to providing training opportunities is welcome.

11. International Relations

This section refers to the idea of maintaining dialogue with international media organisations and media practitioners to enrich local media practices. Such dialogue is welcome and necessary. However, its goals should not only be to enrich local media practices, but also to ensure an enabling legal and regulatory environment for the media. Once again, the draft Policy focuses exclusively on the media and ignores the obligations of the State.

12. Crime and Violence

This section calls on the media to "totally refrain from encouraging and or glorifying crime and violence." As with the statements regarding national security, hate speech and privacy, this fails to reflect the careful balance established by international standards and constitutional guarantees between various social interests and freedom of expression. International law, for example, recognises that it is legitimate to ban incitement to crime, but not simply the glorification of crime, since this is far broader and could be abused to prevent the media from discussing difficult topics. For example, State authorities may consider that presenting the demands of opposing parties involved in the internal conflict in Sri Lanka in a sympathetic light constitutes glorification of their (illegal) activities, whereas in fact, open discussion about the underlying interests and demands of all parties to the conflict is important.

13. Children's Right

This section calls for guidance to be provided to the media so as to promote best media practices regarding children. It is obviously positive to promote best practices in this area, depending on what form the 'guidance' takes and what are considered to be best practices. As with many sections in the policy, at the substantive level, a balance needs to be achieved between freedom of expression and reporting in the public interest, and the need to protect children. Furthermore, it is unclear why the draft Policy proposes to provide official guidance to the media in this area and, in particular, why this might be needed outside of legal restrictions, to which the section does not appear to refer. In

terms of implementation, guidance could take many forms, some of which would not be compatible with media freedom.

14. Gender

This section calls for media practices that ensure fair treatment in the area of gender to be pursued. As with the previous section of the draft Policy, whether or not this is appropriate depends on which media practices are being promoted and how.

Key Policy Directions Absent from the Draft Policy

The draft Policy, as noted, focuses almost exclusively on responsibilities of the media to the exclusion of State responsibilities. It is not intended here to engage in a comprehensive or detailed discussion of what a media policy for Sri Lanka should seek to achieve. Rather, only some of the most important missing priorities are outlined.

First, as noted above, a key part of the framework for ensuring a well-informed citizenry capable of engaging in democratic debate is Right to information legislation. The draft Policy is completely silent on this important matter.

Second, Sri Lankan law contains many restrictions on the content of what may be published or broadcast that go beyond what are acceptable limitations on freedom of expression. Areas of law which are particularly problematical are civil defamation law, the law regarding contempt of court, secrecy and national security rules, emergency regulations, anti-terrorism regulations and the law on parliamentary privilege. Instead of making a commitment to review these problematical restrictions, the draft Policy calls for the media to respect a number of vague content limitations.

Third, the Sri Lankan government continues to exercise extensive control over State media, contrary to clear international and constitutional standards which call for publicly owned media to be protected against political interference.

Fourth, broadcast regulation in Sri Lanka at present signally fails to conform to international and constitutional standards. In particular, there is no independent body to oversee broadcast regulation, which is instead conducted directly by the government, in some cases with the involvement of the Sri Lanka Broadcasting Authority, itself not independent of government. There are a number of other problems with the current approach to broadcast regulation that result in its failure to promote diversity and the public interest in this sector². These include the lack of clear rules on content and the absence of an appropriate framework for licensing community broadcasters.

² For a detailed note on the establishment of such a means of regulation, read An Independent Broadcasting Authority by Dr. Paikiasothy Saravanamuttu, http://www.ifj-asia.org/page/misc/Sri_Lanka_-_CPA.pdf

Recommendations

Primary Recommendation

The whole idea of introducing a Media Policy should be reconsidered. If the government wishes to proceed with this, it should restart the process by holding wide-ranging consultations with interested stakeholders as to the direction such a policy should take.

Recommendations Regarding the Proposed Draft Policy

Should the government decide to proceed with developing the draft Policy, the following recommendations are relevant:

- The draft Policy should make it very clear how those provisions which refer to the content of the media – namely sections 1 (in part), 2, 3, 6, 7, 12, 13 and 14 – are to be implemented. Where legislation is proposed, the substance of the provision should be revised to ensure an appropriate balance between freedom of expression/of the media and the social interest being protected, in line with international and constitutional standards. Where legislation is not being proposed, the relevance of including the provision in an official media policy should be reviewed and, in particular, any role of the State should be made explicit.
- Certain provisions – such as that part of section 1 suggesting that all media should be accessible to everyone – are simply impractical and unworkable and should be removed.
- The draft Policy should make explicit how the remaining provisions – including the right of reply, accountability of the media, editorial independence, rights of media personnel, research and international relations – are to be implemented. Where this is via internal or self-regulatory approaches, as we recommend in many cases, the relevance of the provision in an official media policy should be reviewed. Where the government is making a commitment to do something, as with providing training or maintaining a dialogue with the media, the precise nature of the proposed course of action should be clarified.

Recommendations on Matters to be Added to any Media Policy

- The government should commit to adopting a progressive Right to information law.
- A commitment should be made to review all current restrictions on content and amend them as necessary to bring them into line with international and constitutional standards of respect for freedom of expression.
- Legislation should be introduced to transform all State media into independent public service media.
- Legislation should be introduced to establish an independent broadcast regulator, along with clear rules regarding licensing and regulation of content which are consistent with international and constitutional standards.

About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation. These publications are available on the ARTICLE 19 website: <http://www.article19.org/publications/law/standard-setting.html>.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme's operates the Media Law Analysis Unit which publishes around 50 legal analyses each year, commenting on legislative proposals as well as existing laws that affect the right to freedom of expression. The Unit was established in 1998 as a means of supporting positive legal reform efforts worldwide, and our legal analyses frequently lead to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/publications/law/legal-analyses.html>.

If you would like to discuss this Note further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us at the address listed on the front cover or by e-mail to law@article19.org

About the Centre for Policy Alternatives

The Centre for Policy Alternatives (CPA) - <http://www.cpalanka.org> - was formed in the firm belief that there is an urgent need to strengthen institution- and capacity-building for good governance and conflict transformation in Sri Lanka and that non-partisan civil society groups have an important and constructive contribution to make to this process.

The primary role envisaged for the Centre in the field of public policy is a pro-active and interventionary one, aimed at the dissemination and advocacy of policy alternatives for non-violent conflict resolution and democratic governance. Accordingly, the work of the Centre involves a major research component through which the policy alternatives advocated are identified and developed.

The objectives of the Centre are:

- To contribute to public accountability in governance through the strengthening of the awareness in society of all aspects of public policy and policy implementation.
- To make inputs into the public policy-making and implementation process in the constitutional, legislative and administrative spheres to ensure responsible and good governance.
- To propose to the government and parliament and all other policy-making bodies and institutions, constructive policy alternatives aimed at strengthening and safeguarding democracy, pluralism, the Rule of Law, human rights and social justice.
- To focus attention on the social and political consequences of development.
- To contribute towards the conflict resolution process in Sri Lanka and the South Asian region, so as to strengthen institution and capacity – building for democratic governance in multi-ethnic and pluralist societies.

If you would like to discuss this Note further, or if you have a matter you would like to bring to the attention of the Centre for Policy Alternatives, you can contact us at the address listed on the front cover or by e-mail to info@cpalanka.org

Annex 1



PROPOSED NATIONAL MEDIA POLICY

In keeping with the "Mahinda Chinthana" Policy statement, the Ministry of Mass Media and Information has initiated action to formulate a National Media Policy for Sri Lanka. Since the achievement of Independence in 1948, there has not been a media policy to provide essential guidance for media practice in this country.

The proposed media policy stems from the generally accepted need for enabling measures to guarantee the right of the media to Publish, editorialize and critique with responsibility and accountability, along with the assurance that the public is free to receive the information they need to be well informed members of a free democratic society.

This is a draft that would help in formulating a National Media Policy for Sri Lanka. The final Policy will, in keeping with the needs of a free democratic society, embody the views, suggestions and responses of the general public to these draft proposals are now in the public domain.

Mission

"Achieving excellence in the total practice of media by creating a people-centered, development oriented, free, and responsible media culture as required by a well-informed and democratic society"

Objectives

- ★ To create a media culture that upholds national identity, unity and harmony.
- ★ To establish a media tradition with a clear understanding of its social responsibility.
- ★ To bring about a socially responsible, ethical media culture ensuring media freedom.
- ★ To bring about an enabling environment to encourage and promote professionalism among media practitioners and organization
- ★ To pave the way for a media environment in keeping with technological advancements and best media practices.

Policies

1. Media Freedom and Right to Access Information

- 1.1 To safeguard the right of all citizens to express their views via any and all media and to receive, provide and gather information required for the proper functioning of society.
- 1.2 Ensure that the media would not in any manner harm the Sri Lankan National identity and would prevent any person or community being subject to contempt, insult, disgrace or hate by the media.

2. National and Social Responsibility

- 2.1 To encourage media organizations to reorganize, respect and safeguard and propagate Sri Lanka's pluralistic identity.
- 2.2 To bring about a well-informed society enabling every citizen to actively participate in the democratic process
- 2.3 Encourage the media to promote all aspects of national and social development.
- 2.4 Encourage media practitioners to produce media content which helps to improve the knowledge, skills and attitudes of the people in order to bring about a well-informed and democratic society.

3. Privacy

- 3.3.1 The right of an individual or institution to privacy should be scrupulously upheld by the media.

4. Right of Reply

- 4.1 Any person or organization that reasonably considers a report or comment about such person or organization requires to be replied, for purpose of correction or clarification, should be provided the earliest opportunity for such correction or clarification by the media.

5. Accountability

- 5.1 Media are bound by an obligation to be accountable to society.

6. Advertising and Publicity

- 6.1 To ensure high standards in advertising and all forms of publicity in compliance with best media practices and relevant codes of ethics.

7. Use of Language

- 7.1 To respect the accuracy and the conventions of language usage in the media.

8. Editorial Independence

- 8.1 To ensure and guarantee editorial independence to all media personnel.

9. Rights of Media Personnel

- 9.1 To take action to guarantee the professional and employment rights of media personnel.

10. Research, Training & Development

- 10.1 To encourage research as a means to ensure good quality and content in the media.
- 10.2 Recognizing the professional needs of the media, to provide adequate opportunities to media personnel for training, education and development.

11. International Relations

- 11.1 To maintain constant dialogue with international media organization and media practitioners to enrich local media practices.

12. Crime and Violence

- 12.1 The media should totally refrain from encouraging and/or glorifying crime and violence.

13. Children's Right

- 13.1 To guide media organizations and media persons towards best media practices to protect the rights of children and ensure proper development of the personality of the child.

14. Gender

- 14.1 To pursue media practices that would ensure fair and just treatment in matters of gender.

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Views and Suggestions are invited.
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