

8. Freedom of information – Challenges and the way forward

COMMENTARY

While the media has demonstrated that it can cover global and governance issues, it neglects the potential to be a responsible partner, especially in developing countries such as Papua New Guinea and to an extent the Pacific. However, this partnership can be strengthened with the media industry and government departments and agencies working to improve their ability to work with each to achieve social, economical and political mileage. Freedom of information and a free media is about upholding the freedom we currently enjoy in a democratic society, as it is about our freedom to express ourselves and be informed appropriately and responsibly.

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BRINGING together professionals from various places and institutions to share knowledge is a step in the right direction, especially in the area of developing information sharing strategies that will lead to improved leadership and management systems and practices and the promotion of good governance and accountability. Papua New Guinea has encountered numerous challenges to the media and fledgling democracy since independence in 1975. It is fortunate that media freedom is enshrined in PNG's Constitution, and that all threats to this freedom have been vigorously and successfully opposed. Many of our politicians, and other prominent leaders, and influential citizens all declare they are firm believers in the principle of a free media and will strive to embrace it. There are instances however, where many comment negatively when the media spotlight is turned on them, their institutions or their cohorts.

Against the backdrop of critical challenges facing the media and the Constitutional right to freedom of information, the media continues to fight its battles. Global trends are such that Papua New Guinea is not exceptional in linking up with the rest of the world's electronic and print media information dissemination and delivery systems.

Global trends are ever present in the PNG-cultured media which embraces social norms such as the principles of governance and respect. But the way in which the PNG media embraces the international media in my view has become all-persuasive in eroding national cultures and traditional values, with so many overseas programmes aired locally, from BBC and ABC programmes on our free to air radio networks to pay TV broadcasts of CNN, and a number of channels broadcasting imported Bahasa, French and Korean-language content.

Foreign influence in the form of material covered and presented in the Papua New Guinea media is so huge. There is a great need for greater focus on PNG-oriented programmes, events and issues. The recently launched Government television network, Kundu Two, shows PNG is beginning to embrace this notion of broadcasting homegrown material, but much more needs to be done to improve the service to its audience as there is still scarcity of local content.

Freedom of information

There are three main components that underpin the right to information in many Pacific states, including Papua New Guinea. Firstly, the right to request information from public authorities and from private bodies where information is needed for the exercise or protection of a right. An applicant for such a request does not have to justify why he or she needs this information from public bodies. In the case of PNG, which has yet to enact an *Information Act* to regulate the provision or non-provision of requests for information, the National Court in 1998 made an interesting decision when a defendant (to an originating summons), who was a member of the National Parliament for Tambul-Nebilyer Open Electorate, refused to release to the plaintiff information relating to funds granted to him for use in the electorate.

The plaintiff sought to enforce his right under Section 51 of the Constitution to ensure accountability of the defendant Member of Parliament.

Section 51 of the Constitution states:

1. Every citizen has the right to reasonable access to official documents, subject only to the need for such secrecy as is reasonable in a democratic society in respect of ...
2. Provision shall be made by law to establish procedures by which citizens may obtain ready access to official information.

The National Court held the following:

1. A citizen has the right to access information relating to monies

allocated to his or her Member of Parliament where the monies are allocated to the member for use in the electorate.

2. The freedom of the citizens to access the courts to enforce his or her constitutional right cannot be precluded by the normal operations of constitutional offices and state organisations.

The Court went on to say that ‘the National Court is not necessarily restricted to the causes of action that are usually found in common law system. The National Court has an unlimited jurisdiction and this jurisdiction includes many matters which originate in rights and responsibilities referred to in the Constitution.’

This is a clear indication that the courts in PNG will not hesitate to use the available provisions in the Constitution relating to rights and freedoms to promote access by interested applicants to information from governmental bodies.

The second component underpinning the right to information is the actual availability of information and the maintenance of records. The right to gain access to information is one thing, but the actual availability of records is even more important. In many government departments, record-keeping and maintenance continues to be given very low priority. It is legitimate to ask why proper record keeping, data collection and the training of personnel for such purposes have never been on the agenda of an average public body. It is only recently, through various initiatives with our development partners, that we in Papua New Guinea have begun to realise the importance of record-keeping and information management, and of developing various systems to accommodate our needs in this regard.

It is important therefore that governments within the Pacific region have systems in place to process requests for information, including effective records management systems to enable the systematic, structured and well-managed release of information.

Properly trained records and information management staff are necessary, with an independent leader within their operational ‘set up’ who should be tasked to supervise them and ensure that requests are properly screened and processed.

The final component of the right to information is the duty of government to provide certain baseline information proactively on a routine basis before

requests for information are made, in order to encourage and promote trust between the government and its people. This would enable the FOI process that many democratic governments preach and claim to stand for.

In Papua New Guinea, the government now uses its government-owned National Broadcasting Corporation (NBC) to disseminate government policies and initiatives on both radio and television through its ‘government talk-back show programme’.

The public are also invited to phone in and make comments and observations. This is a good start and should be encouraged with wider publicity on the issues to be covered with reasonable time allowed for debate or information dissemination. Having said that, this freedom must be also kept in check by the exercise of great responsibility.

The PNG Ombudsman Commission often oversees the demarcation of these constitutionally-guaranteed freedoms and stresses how important it is for leaders who oversee the information industry to uphold their integrity.

Likewise, those operating and managing information and its dissemination have the same obligation to behave with integrity and honesty in all their dealings. So the questions I want to pose are:

- Are we honest in how we conduct ourselves?
- Are we honest in our dealings with colleagues, stakeholders and the wider community?
- Are we biased, opinionated, or being bribed to do what we do?

The Media Code of Conduct/Ethics should act as a reminder to guide us in our day to day roles and responsibilities, by putting the public good, and that of our organisation, ahead of our own interests. In the PNG context, former Chief Ombudsman (the late Sir Charles Maino—1995) raised concerns about the power of the media and its need to be responsible. He said that the freedom of the press was not a privilege but a responsibility that required the mass media to be independent, impartial, honest and fair in all mediums and methods of reporting.

Another former Chief Ombudsman, Simon Pentanu, encouraged more investigative reporting to complement the role of the Commission in fighting corruption as a way to encourage accountable and transparent governance.

The recently proposed Moses Maladina Bill/Amendment leaves a lot to be desired. In fact, the proposed Amendment has now created a wave of public

debate calling on Parliament halt the Amendment affecting the powers of the Ombudsman Commission.

One of the amendments to the Constitutions (S.27(4)) removes the power of the Ombudsman Commission to issue directions that will prevent the abuse or misappropriation of public funds by a leader. This provision (power) is used to protect the integrity of the leader and the integrity of the Government in Papua New Guinea and has been used on previous occasions to protect millions dollars of public funds from misuse by leaders.

The availability of information or reasonable access to such information can be difficult to obtain without the existence of expressed provisions of the law, but due to the energy and drive of the media in PNG, they are able to provide a platform to voice people's frustrations and concerns in relation to issues affecting PNG's use of the broad provisions of the Freedom of Information (S.51) and the Freedom of Expression (S.46) sections of the Constitution.

Conclusion

It is important to note that the role the media plays in society is not for them alone, but for all professionals and laity and civil society, in facilitating transparency and greater awareness of important issues. The media has an important role to play as a watchdog in exposing corruption and it also has a role in safeguarding development and investment. The PNG media and their counterparts in other Pacific Island countries have the same roles, but the conditions under which they exercise their profession may vary due to economical and social factors.

The media has no obligation to publicise any specific issue; and addresses each issue as it arises. Media agencies or companies are in the business of generating revenue, often at the expense of good governance, although they also offer free publicity and coverage to a range of 'good causes' advocated by charities, human rights NGOs and the like. However, to prevent (such outcomes,) the further erosion of good governance and promote greater corporate social responsibility by the media, those in the front line of journalism should impart factual information, report in a fair and balanced manner. This can help to open up doors to development and investment in an ethical way.

While the media has demonstrated that it can cover global and governance issues, it neglects its potential role as a responsible partner, especially

in developing countries such as Papua New Guinea and in the Pacific more broadly. However, this partnership can be strengthened if the media industry and government departments and agencies can work with each other to achieve social, economic and political progress within their regions and abroad.

Finally, freedom of information and a free media is as much about upholding the freedom we currently enjoy in a democratic society, as it is about our freedom to express ourselves and be informed appropriately and responsibly. I conclude with this question— is there a limit to freedom of information? And when should information be controlled and tailored to meet demands and needs?

In my view, this should only be done when requests for freedom of information are seen to question or overstep the boundaries of national sovereignty and the national interest as provided for under section 51 of the PNG Constitution.

Chronox Manek is the Chief Ombudsman of Papua New Guinea. An earlier version of this paper was presented at the UNESCO World Press Freedom Day 2010 Conference at the University of Queensland, Brisbane, 1-3 May 2010.

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