

World Press Freedom Day 2018:

Keeping Power in Check: Media, Justice and the Rule of Law

Concept Note

Executive summary

World Press Freedom Day 2018 will provide a forum for diverse actors to discuss the interplay between media, the judiciary and the rule of law, within the context of the 2030 Agenda for Sustainable Development. The Day, observed on 3 May, will debate the issues of media and the transparency of the political process, the independence and media literacy of the judicial system, and the accountability of state institutions towards the public. In this context, strengthening the watchdog role of independent journalism will be explored, so that it can better expose electoral violations, gender-based inequalities, and human rights abuses which undermine the Sustainable Development Goals. A precondition for this role is an enabling environment where freedom of expression, including the right to access information, as a human right, and press freedom in particular, should be guaranteed by the law and protected by an independent judiciary. However, legal over-regulation can also lead to censorship, for example on the Internet, where the question of liability of digital intermediaries evokes new challenges for freedom of expression; and the Day will also therefore examine contemporary challenges of press freedom online. The safety of journalists, both offline and online, is a precondition for keeping power in check, and will also be part of the focus of the Day.

Expected Outcomes

WPF 2018 is expected to achieve the following selected outcomes:

- Governments and other stakeholders are sensitized on the need to adopt and apply laws that create an enabling environment for freedom of expression, the right to information and the safety of journalists, online and offline, as part of achieving SDG 16.
- Awareness is raised through the particular individual or organization who, having made an outstanding contribution to press freedom, is awarded the UNESCO/Guillermo Cano World Press Freedom Prize, one of the most prestigious international awards in this area.
- Local NGOs and media actors across the world take ownership of WPF 2018 with 100 national events expected to complement the main celebration in Accra, Ghana.
- Key stakeholders are engaged and partnerships initiated for the replication in Western Africa of UNESCO's training of judges and judicial officials on safety of journalists and freedom of expression, following successful initiatives in Latin America and Southern and Eastern Africa.
- The Journalism Safety Research Network is strengthened and expanded through Academic Conference on the Safety of Journalists. Greater synergies are created between research findings and work of international media development community.
- Young reporters and media students are sensitized to emerging challenges regarding press freedom and freedom of expression, and their journalistic capacities reinforced through live coverage of a major international event, mentored by media professionals.
- Good practices on media's role in elections are shared to support work of the Inter-agency Coordination Mechanism for UN Electoral Assistance (ICMEA).
- Media organizations have enhanced engagement on press freedom and safety of journalists issues, through coverage, blogs and dedicated webpages in the run-up to WPF 2018.

- There is enhanced capacity of human rights and arts freedom organisations to monitor and advocate for protection of the right of artists to imagine and create in the digital age, and to share their creative work online with society at large.

Introduction

The idea of World Press Freedom Day (WPFDD) originated in the Windhoek Declaration on promoting an independent and pluralistic press, adopted in Namibia in 1991. In 2018, the global event returns once more to the continent where it all started. Accra, Ghana, will be the location of UNESCO's global commemoration in 2018, and the theme for the Day, will be also marked in many other countries around the world.

Under the topic "Keeping Power in Check: Media, Justice and the Rule of Law", WPFDD 2018 will encourage discussion and promote understanding and awareness about current challenges to freedom of expression as well as achievements.

The Day takes place in the context of the 2030 Agenda for Sustainable Development, adopted by the UN General Assembly in 2015, which includes 17 goals for achieving sustainable development for all, including ending inequalities between men and women. Among the goals, Sustainable Development Goal (SDG) 16 focuses on promoting just, peaceful and inclusive societies. Peace, justice and strong institutions allow for good governance as well as other sustainable development efforts to thrive, facilitated further by an independent and enabling media environment.

Across the globe, recent political, technological and economic transformations have placed new strains on press freedom. Some regions have witnessed a tightening of efforts by State actors to curb freedom of expression through restrictive legislation and censorship. New limitations linked to national security and anti-terrorism measures have reinforced this trend. There has also been an increase in large-scale disruptions such as Internet shutdowns.¹ Erosions have been observed in the national legal frameworks that govern source protection.² Even more worrisome are the constant risks that journalists face in carrying out their job: harassment, violence, hate speech, threats, and even death. At the same time, the number of countries having adopted right to information laws is steadily increasing. The international normative framework regarding the safety of journalists, and particularly women journalists, has been significantly bolstered through the adoption of resolutions at the UN General Assembly, Security Council, Human Rights Council and UNESCO, and there is greater recognition of the right to privacy.

The theme of "Keeping Power in Check: Media, Justice and the Rule of Law" highlights the importance of an enabling legal environment for press freedom, and gives special attention to the role of an independent judiciary, fully capacitated in regard to freedom of expression issues, in ensuring legal guarantees for press freedom and the prosecution of crimes against journalists.

At the same time, the theme addresses the role of the media in sustainable development, and not least during times of elections - as a watchdog fostering transparency, accountability and the rule of law. The theme will also explore legislative gaps with regard to freedom of expression and information online, and the risks of regulating online speech.

¹ UNESCO, World Trends in Freedom of Expression and Media Development: Global Report 2017/2018.

² Ibid.

Within the 2030 Agenda for Sustainable Development, the contribution of journalists and media workers is most associated with Sustainable Development Goal (SDG) 16 of peace, justice and strong institutions. In order to reach this goal, effective, accountable and transparent institutions at all levels must be developed, and press freedom is essential for this.

World Press Freedom Day 2018 will thus address the following subthemes:

1. Press freedom, access to information and elections
2. The justice system supporting free and safe journalism
3. Freedom of expression online: improving self-regulation.

1. Press freedom, access to information and elections

A free and plural media environment enables the political will of the public to be expressed and allows good governance to thrive. Thus, one of the primary contributions of journalists to democracy and sustainable development is to hold politicians and institutions accountable, as well as to monitor and report on the democratic processes that mandate them. Independent and gender-sensitive journalism which generates verifiable information and informed comment in the public interest is the best defense against gender-blindness, electoral abuses and decision-making “in the dark”.

In particular, electoral integrity and legitimacy – as dimensions of accountability - can only be ensured through the fundamental freedoms of expression and access to information, applied with due gender-sensitivity. Free media helps to monitor the legality of the voting process, thereby complementing the role of courts as guarantors of the rule of law. Critical reporting provides relevant information on the (past) performance of political candidates.

Independent and gender-sensitive coverage can increase citizen engagement by providing the public with verifiable information. However, the media’s role in the political process also makes it a primary target for manipulation of the electorate. Recent examples have shown this with both private and public actors, as well as media owners. News organizations have been accused of disseminating disingenuous reports in order to influence the political landscape. There have also been major attempts to fabricate news, and utilise social media, in order to polarise people and discredit authentic journalism. These problems highlight the importance of an independent, critical and pluralistic media environment, and the need for free and professional journalism.

Investigative reporting during and outside of election periods can help build a culture of openness and disclosure by familiarising public officials with an inquisitive press. Access to information is also a precondition for the media to be able to carry out their watchdog function. Transparency further empowers citizens with more understanding of public policy, enhances the effectiveness of political processes, and helps combat corruption, thereby contributing to successful development. Over the course of the last decade, a total of 111 countries have enacted laws and policies allowing for the disclosure of public records, with at least 15 countries adopting such laws over the past four years.³ This political adoption of transparency is an important first condition of good governance, and vital to the rule of law.

Nevertheless, the legal availability of information does not lead to the empowerment of the public, and particularly women, nor to the accountability of powerholders. It needs to be made accessible and reach those who are affected by it. Media and civil society can act as intermediaries by analysing and contextualizing information for the reader and bringing it to the attention of the wider public, on the one hand, and by fostering media and information literacy,

³ UN, The Sustainable Development Goals Report 2017
(<https://unstats.un.org/sdgs/files/report/2017/TheSustainableDevelopmentGoalsReport2017.pdf>)

on the other. Through social media, both men and women can increasingly also be an active proponent of positive change through freedom of information and transparency. Free journalists and independent media embody the fundamental freedoms that facilitate this flow, which is essential for accountability and empowerment.

2. The justice system supporting free and safe journalism

A just, effective and independent judiciary serves as the cornerstone of all other democratic institutions by ensuring the rule of law. As Montesquieu underlined almost three centuries ago, there is no liberty if the judiciary is not separated from the legislative and the executive.⁴ An independent judiciary strengthens democracy to a great degree and empowers all stakeholders within society. To enable the media to effectively contribute to the realization of the 2030 Agenda for Sustainable Development, freedom of expression, freedom of information, and the safety of journalists are rights which need to be fully protected by the courts as well as by law enforcement actors.

In this context, the role of judges and judicial officials in promoting an enabling environment for free, independent and pluralistic media has been identified as vital. A precondition for the judiciary to be able to play this positive role is that the law must protect freedom of expression instead of unjustifiably curbing it. Although in some parts of the world, the work of journalists is impeded by, for example, criminal defamation laws, judges nevertheless have scope to interpret the “proportionality” of an “offense”. In addition, it is important that judicial actors have sufficient media literacy and the relationship of press freedom to wider freedom of expression issues, including in the digital environment.

The judiciary can act as the guarantor of press freedom and safety of journalists only when its members are well versed in international standards and regional jurisprudence on freedom of expression. Judicial officials can prevent indiscriminate actions, such as the arbitrary suspension of free speech, by applying clear guidelines prescribed by law. It is in recognition of this role that UNESCO since 2014 has held training programmes for more than 5000 judges and judicial officials in Latin America. This initiative is currently being replicated in Africa, with a primary focus on judges from Eastern and Southern Africa, building upon a partnership with the African Court on Human and Peoples’ Rights.

Judicial officials also have a central role to play in ensuring the safety of journalists by responding (in cooperation with security forces) to attacks on media with legal consequences. According to UNESCO’s records, 929 journalists and media workers were killed between 2006 and 2016, with the majority of perpetrators never brought to justice. Impunity for crimes against journalists leads to self-censorship and makes an open society where the public can express itself freely impossible. Prosecution services can ensure trial of those that have attacked journalists, and thereby send a strong signal to the public about safeguarding freedom of speech.

Besides the judicial sector, other actors have significant roles to play in addressing the safety of journalists and the widespread impunity of those who commit crimes against them. With this understanding, UNESCO spearheads the UN Plan of Action on the Safety of Journalists and the Issue of Impunity (hereafter UN Plan). Since 2012, it has served as a framework to coordinate the activities of all stakeholders in this area. In June 2017, a multistakeholder consultation resulted in a series of concrete proposals to further strengthen the implementation of the UN Plan, among which a focus on increasing capacity-building opportunities for judges, prosecutors and law enforcement agents, and supporting better monitoring and reporting on the judicial follow-up to the killings of journalists.

⁴ Montesquieu, *The Spirit of the Laws*, 1748.

3. Freedom of expression online: improving self-regulation

In the digital age, online data has become the new currency of communications, journalism, advertising, policymaking and diplomacy.

The open nature of the Internet is a benefit to freedom of expression and access to information, but it does have challenges. Hate speech, harassment and the leaking of personal information are dangerous hazards that can potentially affect every Internet user. Journalists and media workers in particular need to circumnavigate these risks when working online, especially when it relates to source confidentiality. The Internet has been portrayed as a platform for violent extremists to diffuse their propaganda, which disproportionate consequences for expression and privacy rights, even although there is a lack of definitive evidence of a direct link between social media and actual radicalization towards violence.

In addressing these risks, the challenge for governments and all stakeholders is how to respond to online hazards through social programmes as well as legal frameworks that respect the vision, represented in UNESCO's concept of Internet Universality and associated R.O.A.M principles for an Internet that is based upon human rights, openness, accessibility and a multistakeholder participation.

Large internet companies play an increasing role in shaping users' freedom of expression and access to information. However, despite improvements in transparency reporting about government requests for content removal and access to user data, corporate internal practices and proprietary algorithms remain opaque. In addition, the terms of service of internet intermediaries often lack sufficient protections for individuals' freedom of expression, privacy, and due process. They are often couched in overly-broad terms, and lack clear and effective remedies for redress.

The weaknesses and under-resourcing of self-regulatory systems by Internet intermediaries have fuelled the growth of legislation and regulation. In this context, court rulings are also setting precedents and possible foundations for further legislation. Examples in recent years with direct impact on media freedom include rulings on the so-called 'right to be forgotten' or 'right to be delisted', transborder data flows and the liability of internet intermediaries. The role of the judiciary in shaping Internet-related law by establishing such jurisprudence is therefore not to be overlooked.

In many cases, from a free expression point of view, much law and regulation in practice has proved to be more problematic than a lack of regulation. Many laws fail to distinguish the liability difference between media institutions that publish or broadcast content (online), and Internet platforms that mainly host content produced by third parties. Such laws often compel platforms, under pain of disproportionate penalty, to begin to play the role of the police. An effect of this is to increase the tendency of platforms to take the simplest and cheapest route of removing, via algorithms or human intervention, any contested content, and handing over user data to other actors without due process. In the process, much legitimate expression falls victim to what is in effect a privatisation of censorship. The platforms become a scapegoat for avoiding attention to legal process regarding actors generating the specific content at hand, as well avoidance of the need for national media and information literacy policies to empower users of the intermediary services. In this context, improving self-regulation is key to protecting online freedom of expression.

Over the last couple of years, interference with Internet services is becoming more common, even in democratic States. As reported in the *World Trends in Freedom of Expression and Media Development: Global Report 2017/2018*, a rise has been observed in the filtering of content, blocking of websites, and blanket Internet shutdowns, and often without well-defined legal basis. Intentional disruptions of Internet services and electronic communications are a blanket measure to exert control over the flow of information. In essence, they constitute

censorship pushed to its full potential. Such actions have been called by the UN Human Rights Council, the Special Rapporteurs with mandates in freedom of expression, the African Commission, and the Freedom Online Coalition as disproportionate restrictions on freedom of expression and access to information. Denial-of-Service attacks and censorship by both State and non-State actors have further contributed to curbing freedom of expression and freedom of information online.

The guarantee of fundamental freedoms online requires a multi-stakeholder approach. This is part of UNESCO's endeavour to promote Internet Universality and related indicators for measuring its R.O.A.M principles. It is this framework which helps to strengthen self-regulatory norms for online expression and privacy, while at the same time keeping in check regulatory measures that could impact adversely on the interdependent R.O.A.M dimensions of the Internet.

Lastly, as reported in the 2018 edition of UNESCO's Global Report "Re-Shaping Cultural Policies", new digital technologies, including social media platforms, are transforming the art world. Social media and music streaming channels, like Instagram and Soundcloud are becoming the platforms on which artists publicly display and promote their work. However, they also bring with them threats to rights and freedoms. Among them is online 'trolling', where threats from other users can intimidate artists into withdrawing their work. Growing digital surveillance is also having a corrosive effect on arts freedom. Many platforms have established mechanisms, such as Instagram's guidelines on 'standards of behaviour', that are wide open for interpretation. This also gives disproportionate power to individuals and organisations who object to the content of artworks and use the platform's reporting processes to get individual artworks removed, and sometimes entire accounts blocked.

For artists, such online actions not only disrupt a flow of ideas, but also curtail their artistic freedom, and -- most importantly -- their ability to connect with their audience. When the key means of displaying their work is shut down, an artist's ability to communicate is thwarted. WPFDF 2018 will offer a renewed opportunity to address such critical issues, and promote further SDG 16 (target 16.10) on public access to information and protection of fundamental freedoms.

Conclusion

In Accra, the global celebration of World Press Freedom Day 2018 will bring together stakeholders from media, government, civil society, and academia from Ghana, the region and beyond. Worldwide, participants in World Press Freedom Day events will also address pressing challenges to freedom of expression and discuss ways of strengthening journalism as a central factor in building just, peaceful and inclusive societies. The 2018 theme therefore is intended to resonate in more than 100 countries. The outcome of the occasion should be better understanding, enabling stakeholders to respond to contemporary challenges affecting press freedom worldwide.