

ROBERTSON REPORT

My preliminary Report on Media Law and Ethics in Mauritius is published today. It recommends sweeping changes to law and practice which will enhance the reputation of Mauritius among the world's leading democracies for respecting freedom of expression. The report proposes:

- the abolition of old colonial laws punishing sedition.
- the adoption of a “freedom of information” law to give the media access to important Government documents and information.
- the issue of private television licences if fit and proper applicants come forward.
- limits for foreign investment in Mauritius media to be raised from 20% to 45%.
- reforms to liberalise defamation and contempt laws, so that journalists doing their jobs, and editors, are not liable to be imprisoned in case of violation of such laws.
- a privacy law, similar to that which operates in France and the UK under the European Convention on Human Rights, but with a strong public interest defence.
- Abolition of the crime of contempt of the National Assembly.
- Adoption of a law to protect journalists' sources of information.
- A new law requiring courts to sit in public unless justice cannot otherwise be done.

The Report considers the difficult question of how the media should be regulated so as to comply with recognised ethical standards. I recommend that the Media Trust should be re-invigorated and partly funded by the Government to train journalists in ethical and professional standards. There should be a Media Ombudsperson, chairing a Media Commission which would adjudicate complaints about inaccuracy and unfairness in newspapers, journals radio and television. The Commission would have power to order the publication and prominence of a correction or a right of reply, but would have no power to fine journalists or to force the press to apologise. The Ombudsperson would also hear complaints against television and radio broadcasts and recommend to the Independent Broadcasting Authority whether the licence-holder should be fined or have its licence suspended. The existing IBA Complaints Committee would no longer operate.

The Report says emphatically that members of the Media Commission must not be influenced by political parties or by the media industry. The Ombudsperson will be appointed by the Judicial and Legal Service Commission, and must have no political or media connections. Nor would the assessors, who will sit with the Ombudsperson on the Media Commission. The Media Trust would have an independent chairman selected by eight trustees, four appointed by civil society (the Equal Opportunities Commission; the Bar Council, the Ombudsperson for Children; the Council of the University of Mauritius) and three by editors and journalists: the Government would appoint only one trustee. The Trust would have a statutory duty to warn of dangers to free speech, and organise the training of journalists and report on the fitness of particular applicants for television and radio licences.

Any modern democracy has to work out how to ensure that its law guarantees free speech while at the same time providing some protection for individual privacy and a system for citizens to complain about unfairness and inaccuracy. I have refrained from completing this report until I could consider the reform suggestions of the Leveson Enquiry in the United Kingdom, and have adopted several of them, but have rejected its recommendations that newspapers should be forced to publish insincere apologies or be subjected to exemplary damages and million-pound fines. The Leveson Report ignores the social media, which is unreal in the modern communication environment. I recommend that the Ombudsperson should issue a declaration of falsity if complainants being damaged by malicious lies on blog sites. The crucial element in press regulation is to ensure that the regulator is independent both of the Government on the one hand and the media industry on the other.

The report has been placed on the Government website. Submissions, sent to the Attorney-General's Office will be received until the 15th of September 2013, when I will consider them and prepare a final report.

Geoffrey Robertson QC

13th April 2013