

TRANSITIONS  *forum*

Free Speech, Free Press, Free Societies

HOW MEDIA REGULATION CAN HELP CREATE THE FOUNDATIONS
FOR PROSPERITY AND PEACE IN TRANSITIONAL COUNTRIES

By Jerry Timmins



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Before setting up GMT Media in 2010, Jerry was a senior executive at the BBC World Service, where he was a board member for over 15 years. He was first responsible for North and South America and went on to be regional head for Africa and the Middle East. He also commissioned training for BBC World Service.

He built a track record for launching new, high-impact projects, programmes and channels, and forged strong international partnerships. Launches included BBC Arabic Television in 2008 (which in 2011 had a measured audience of 34 million); the BBC's first international News co-production *The World*, providing prime-time radio news for public radio in the USA; the BBC's Caribbean Service; and the successful morning radio news programme *BBC World Update*. He also led a major expansion of the BBC's presence internationally, opening multi-lingual production centres in Cairo, Abuja, Dakar, and Miami.

In 2001, he wrote the *Production House of the Future* report, which prompted a fundamental change in studio design and digital production techniques at the BBC. In 2002, he went on to work with the BBC's Director General, leading the people strand of the *Making it Happen Change* project. This has been used by Harvard University as a case study of how to drive successful corporate change.

Prior to his leadership roles, Jerry worked as a reporter, writer, producer and editor at the BBC, working on Radio 4 and BBC TV's *Newsnight*, as well as at World Service. He has written articles for the *Times*, *Sunday Times*, the *Independent* and other newspapers. He has a BA Honours in English from Oxford University and misspent his youth playing drums in dance and rock bands.



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INTRODUCTION

Free Speech, Free Press, Free Societies

How media regulation can help create the foundations for prosperity and peace in transitional countries:

Some insights from conversations in post-genocide Rwanda and post-revolutionary Libya.

To most people, the phrase “media regulation” conjures up the dull image of bureaucrats in a room, making rules. But in a country that has recently experienced a civil war, or one that has recently emerged from a totalitarian or authoritarian regime, there is nothing more important than the regulations and institutions that govern free speech. The structure of state broadcasting, the laws on libel, blasphemy and hate speech, and the economics of newspaper ownership can profoundly influence the public’s ability to debate everything from politics and economics to religion and recent history. In the wake of a major change, the media can help consolidate the public’s sense that a single party is in control. Alternatively, the media can give people the confidence to speak openly about contentious issues and help launch economic renewal and political reform.

The value of public debate has not always been recognized in transitional countries, even in those where the manipulation of the media has led to terrible tragedies in the past. Until recently, officials in Rwanda often argued that they could not run the risk of allowing a truly free press. For justification, they pointed to the role played by the media, especially radio, in promoting the Rwandan genocide of 1994: “Look what happened when we had a free media.” Yet the media at that time was not independent from the government or truly free. On the contrary, the Rwandan radio was used to promote hate and fear in the months before the genocide precisely because it was not independent. At that time, military officers and politicians from the Hutu majority government used radio to spread false and inflammatory information claiming, for example, that the Tutsi had hoarded weapons and murdered administrative officials. If the media had been truly independent in Rwanda, it would not have been possible to orchestrate a systematic campaign of hatred with such ease.¹ Competing voices could have cast doubt on the false claims, or offered alternative points of view—genocide might have been avoided.

Recently the democratically elected government in Rwanda has said that it is keen to see the media play a newly invigorated role in the development of the country, helping people understand and debate the big issues they face. In Libya, business leaders and politicians have been quick to embrace the media and launch new TV and radio channels as part of a huge effort to involve the public in the transition from dictatorship to what most Libyans hope will be a democratic government under a new constitution.

But if the governments of two very different countries like Rwanda and Libya have reached the conclusion that the media is this important, so too should other countries undergoing major transitions. Contrary to the assumptions of most who work on developmental and economic issues in countries recovering from civil war or ethnic violence, or in countries transitioning from dictatorship, the creation of a secure and independent media is not a luxury: a legal and regulatory framework

allows responsible media to flourish, debate to take place and is essential for both security and development. Yet when offering advice to transitional countries, outsiders rarely make media policy and regulation a priority. If they do provide help, it is usually in the form of journalism training. But unless journalists are truly free to write and speak—and unless they write and speak within a framework of rules accepted by all—then any money spent on training will be wasted. Without a minimally reliable system of transmitting information, money spent on election campaigns, political party formation, and even post-conflict reconciliation will probably be wasted as well.

From June 2011 to September 2012 the Legatum Institute supported a series of visits by media experts to both Rwanda and Libya. During this period the authorities in both countries were actively thinking about media reform and had already launched initiatives to help foster debate. Both were at very different stages after emerging from conflict: the Rwandan Civil War and genocide ended in 1994, whereas Libya's Civil War ended in 2011. Both had very different and distinct histories and traditions but both faced some common challenges when it came to media. Their leaders had to balance their very real need for security and the prevention of violence with their stated desire to have a more open public debate. In both countries, most people want to avoid a reversion to civil war and ethnic conflict. At the same time, they need to be able to challenge one another's views and to argue (constructively) about government policy and economic reform. In both countries, people also want access to neutral, unbiased and reliable information.

During these visits, Legatum experts met with government officials, journalists and editors in Rwanda and Libya to discuss the regulation of newspapers and Internet media as well as the reform of public broadcasting. This paper analyses some of the issues that arose during our dialogue.



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THE ISSUES

WHAT TO DO WITH THE STATE BROADCASTERS?

Most countries in transition must decide what to do with a government-funded broadcasting service, often one that has been under heavy central control. In the case of Libya, the state broadcaster in the past said and did nothing that it thought would offend Colonel Gaddafi. The job of journalists, as they well knew, was to communicate his will to the people. When Saif al-Islam Gaddafi experimentally allowed part of the state broadcaster independence in 2009, Colonel Gaddafi, his father, rapidly lost patience and took the station off the air. Now Libya has to revolutionize the role of its old state broadcaster.

In Rwanda, where the state broadcaster (ORINFOR) has been allowed some freedom, the government says there is still a great need for reform. Government controlled state broadcasters often find themselves looking very old-fashioned and out of touch in countries that are undergoing rapid change and development. And they share many common characteristics. Usually their output is unwatchable, as even the governments that fund them often realize. During our meetings, a minister openly expressed dismay at the quality of the programmes produced by ORINFOR TV, Rwanda's state broadcaster. Producers lack creativity and have very low technical and professional standards—largely the result of staff who constantly look over their shoulders, reluctant to take any kind of creative risk.

State broadcasters in Libya and Rwanda are still staffed by civil servants on contracts the same as those of any state employee. Consequently there is no sense of shared professionalism or of independence from the rest of the government. Employees are bound by complex financial procedures that hinder autonomous decision-making. Constant referral back to the government is required on both financial and editorial matters. Even on issues that require quick decisions (such as sending journalists to a breaking news story), government and bureaucratic processes prevent fast action. Senior staff are political appointees who owe their jobs to politicians, with whom they remain in close and sometimes daily contact on editorial matters.

In countries that are trying to move towards more open political debate, frustration with state broadcasting is a common theme. But it can take many years to establish strong and reliable private broadcasting. In the meantime, countries undergoing rapid change often find they still need some form of minimally reliable national television and radio. Upon taking charge of the country, the revolutionary regime in Libya immediately took the reviled state broadcasters off air. Within months the new authorities had to reinstate some of the state channels because the public was demanding more information and transparency from the government. Since then, the government has tried to use the state broadcasting system as a means to explain its plans and ideas to the public. However, this has effort has been resisted by journalists and editors who now want to demonstrate their independence.

In Libya and Rwanda, where senior government advisors and ministers have been actively debating the future of the state media, there has been a common argument in discussions: "What we need is our own BBC." During our visits to both countries, we often heard leading politicians and journalists refer to the BBC as a standard to which they aspire. This is in part because the BBC has been so

influential—particularly in Africa—and because so many people have grown up listening and watching BBC programmes. But it is also because the BBC, though its impartiality is sometimes questioned, has established itself as independent from the British government and as a relatively reliable source of information. To some outside Britain, the BBC is even perceived (incorrectly) as the source of Britain’s independent media culture.

In practice, we often found it useful to start a conversation about the institutions that support free speech in Britain by telling the history of the BBC, which few outside the UK actually know. We began by explaining that the BBC is not the origin of Britain’s free speech traditions, but rather the result. Long before there was radio or TV, the UK had a vigorous tradition of independent and commercially funded newspapers, which did much to pioneer the craft of journalism. Even now, the non-state press provides important competition for the BBC. Politicians in transitional countries often don’t realize that a state broadcaster, by itself, cannot establish a culture of professional journalism, and that competition is fundamental to a healthy public debate.

The BBC also leans on a wider culture of tolerance for different views as well as traditions of institutional independence. British civil servants have long guarded their independence from politicians. Judges uphold their independence from Parliament. Many public bodies are expected to act independently of government and often do. The BBC’s international reputation for independence comes only in part from its Charter, which obliges it to be politically neutral. Its executives also understand that they need a reputation perceived as independent from the government of the day: without it, the BBC could not survive as a publicly funded institution because the public would not support it. All of these factors need to be explained to any government considering a reform of state broadcasting.

However, although we know that the BBC cannot be transplanted directly from Britain to Rwanda or Libya, we also believe that there are some elements of BBC governance and practice that can help those who wish to change a state broadcaster into a more independent, publicly focused institution.

First, an independent public broadcaster—in any country—will be more successful if it has a strong buffer between it and the government. An operational board composed of professionals with experience in the media, led by its own chief executive, should be responsible for day-to-day decisions and editorial control. To build an effective media institution requires leaders who have a genuine understanding of independent journalism and the conditions required to encourage it. Intuitively, journalists are also more likely to follow someone with experience in their own field. This is something that Libya and Rwanda are capable of establishing if they can persuade people of stature and integrity to commit to the profession.

The operational board cannot report to the government. It should instead be held accountable to an independent board of governors or directors. The people recruited to that higher board must have credibility in the eyes of the general public. In a transitional society, where there is no tradition of independent institutions, the spokesmen for the public broadcaster should themselves have a track record of independence. They need to represent the views of the public and be prepared



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to defend the institution from undue political and commercial pressures. Such people have often decided against entering politics or relinquished any party membership in order to remain above party interests. They are often active in civil society, or in social reform movements and charities. They must be willing to step away from any commercial ventures that could create a conflict of interest with their new role in broadcasting. This board of directors can be responsible for approving long-term strategic plans and for monitoring performance but should not interfere with the day-to-day running of the organization.

Also, a public broadcaster needs operational and financial independence from government to allow autonomous decision-making on day-to-day expenditure. Staff must be hired by the chief executive and his operational board on professional contracts, not civil service contracts. Ideally, the chief executive should be appointed by an independent process that makes a recommendation to the relevant minister for sign-off. Many countries do not have such a process (neither Libya nor Rwanda have, for example) but it is extremely important to set a precedent. This system could later be used for appointments in other publicly funded bodies—ombudsmen, anti-corruption watchdogs—which require some day-to-day distance from government officials.

We spent a lot of time explaining the culture of independent broadcasting. Instinctively, politicians emerging from an authoritarian system want to establish firm rules to control journalists' behaviour, and they often want to copy the BBC's guidelines. However, while a public broadcaster should certainly draw up its own editorial guidelines that are within the laws of the land, they should genuinely be guidelines, not rules, so that creative and rational decision-making is encouraged. Rules tend to be made in one context and rarely apply in another. The correct decision or judgement about an editorial issue should always be informed by the prevailing context. New guidelines, we argued, should be supported with rigorous training and development in a safe environment, where mistakes are seen as learning opportunities, not reasons for punishment.

We found ourselves explaining the delicate nature of reputation and the need for popular involvement. A public broadcaster cannot be beyond criticism. Being responsive to the audience and dealing with complaints effectively are the best policies for long-term success. When under attack from competitors or politicians, public support is a vital plank in any defence. Strong institutions do not neglect the public—as the old state broadcasters in Libya and Rwanda often did—but try to cultivate public approval.

Lastly, the success of a public broadcaster often depends on having vigorous and competitive private broadcasters alongside it. Competition spurs creative thinking and innovative programming, as politicians in both Libya and Rwanda are beginning to appreciate. The Rwandan government has already issued a license to the Kenyan Nation Group, which has launched an FM station carrying news in Kigali. This is good news for ORINFOR, whose journalists and managers need to feel the threat of audience loss if they are to have the necessary motivation for change.

In Libya, the government has been remarkably tolerant of new private radio and TV stations. Indeed, had they not been so tolerant Libya's parliamentary election of July 2012 would have been truly chaotic; the electorate was confronted by over 2,500 candidates and 350 parties. People going to the polls needed to know who these people were and what they stood for. They also needed to understand the mechanics of voting—what symbol to look for on the ballot paper, how to register, where to go. In the end, these private stations played an important part in providing a platform for debate between candidates and issuing public service announcements.

THE MYTH OF FREE MEDIA

We found our discussions were often hampered by misunderstandings caused by the use of loose language in relation to the media.

Too often in developed democracies, we talk about freedom of the press as though it was absolute and not bound by restrictions. The former British Prime Minister Tony Blair once described the tabloid press as a “feral beast”, implying it could simply do as it liked. The Levenson Enquiry has also popularized the notion that the English press has always enjoyed unrestrained freedoms, and that only now is there a debate about how—if at all—those freedoms should be limited. In truth, the press has always been bound by the law of the land. The British tabloid press is in trouble because it blatantly flouted laws that apply to all citizens, journalists included.

Politicians in countries where security issues are paramount can be very defensive when challenged about laws they have introduced to restrict press freedom. Part of this defensiveness comes from the fact that they believe their critics are asking them to do away with all restrictions.

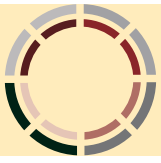
Both Rwanda and Libya do have Constitutional commitments to a free press and speech, as politicians are quick to point out. The Rwandan Constitution guarantees freedom of the press and information in Article 32. In Libya, Article 14 of the Interim Constitutional Declaration adopted on August 3, 2011, guarantees, “freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication, liberty of the press, printing, publication and mass media, freedom of movement, freedom of assembly, freedom of demonstration and freedom of peaceful strikes that shall be guaranteed by the state in accordance with the law”.

Nevertheless, anxiety about instability and violence has persuaded politicians to pass laws that specifically restrict the freedoms that their Constitutions guaranteed—though in both countries we found little resistance to the notion that legislation needed review. In Libya, the National Transitional Council passed law number 37 on May 2, 2012, criminalizing a variety of types of political speech, including speech that “glorifies the tyrant [Muammar Gaddafi]” and does “damage [to] the February 17 Revolution”. This broad, wide-ranging law was immediately denounced by Libyan journalists, some of whom told us they feared it could become a tool for arresting almost anyone. The Libyan Supreme Court declared law number 37 unconstitutional in June 2012 but the fact that many felt the law was necessary in the first place illustrates the tension in the national dialogue around the media. And this dialogue is far from over: it will continue in the coming months within the new Libyan General National Congress, elected July 7, 2012.

In Rwanda, the country’s revised Constitution, passed in June 2003, defends freedom of the media and adopts the International Covenant on Civil and Political Rights². However, Rwanda also has laws relating to genocide denial³, defamation⁴, and divisionism⁵. In practice, these laws make it a criminal offence for anyone to make a statement that: questions (or seems to question) whether the 1994 genocide took place or was perpetrated by Hutus against Tutsis; impugns the reputation of the President or key figures of authority; uses language in any way that might arguably cause a rift between one part of society and another. Some



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critics say that these laws have been used to silence genuine political debate on sensitive issues and Rwanda's Supreme Court appears to agree that the law has in some instances been enforced too enthusiastically. Two journalists (Umimana Nkusi Agnes and Mukakibibi Saidati) were convicted under these laws in 2011 and heavy sentences were passed. Subsequently, their convictions were reviewed by Rwanda's Supreme Court on 5 April, 2012⁶, the court clearing Nkusi of genocide denial and promoting ethnic divisions, and reducing her total sentence on charges of defamation and inciting public disorder from 17 to four years. The Court upheld Mukakibibi's conviction for inciting civil disobedience but reduced her sentence from seven years to three years.

In both countries, many of our conversations concerned laws such as these. We argued, simply, that journalists should enjoy the same freedoms under the law that all citizens (should) enjoy—which is not necessarily complete freedom.

In the UK and USA, for example, journalists' freedoms are restricted in some very important ways. They are bound by laws that cover all citizens and some of these laws limit freedom of speech. They are not allowed to incite hatred or violence. They cannot libel someone without fear of redress in the courts. In the UK, if a journalist publishes a story that damages someone's reputation they have to be able to prove what they wrote was true, and a judge will expect them to produce the proof in court. In Germany, it is still illegal to publish anything that could be construed as Nazi propaganda. In addition to the law, journalists working in established media outlets willingly accept the values and standards created by their institution. Most of these institutions accept voluntary limits on their freedom, though they conduct frequent discussions of what kinds of information is newsworthy and they argue about the boundaries of taste.

In fact, all societies accept limits to freedom of speech, though in democracies these limits are continuously debated and the parameters change as society changes. When we met with officials in Rwanda and Libya, we suggested that their national debate should *not* take the form of an argument for or against total freedom of the media, as some of them seemed to think their international partners were demanding. The national debate should be about the acceptable limits: where they are drawn and whether they accurately reflect what is acceptable for those societies at this stage of their political development. We have found this kind of conversation far more fruitful—and truthful—than an argument over whether either country should immediately abandon all limitations.

While these conversations have been taking place, Rwanda has been reviewing some of its more controversial legislation. In June 2011, the Cabinet adopted a new Media Policy, committing the government to "a rapid strategy of inaugurating a functioning free media to promote accountability and foster public participation and engagement". In the wake of that decision the government has begun revising key pieces of legislation, in order to create a more independent public broadcaster and a self-regulated press.

The results of this change can already be seen. The Media High Council, which had come to be regarded as a censor, is being stripped of all of its powers and its regulatory authority is now being handed over to a new body within the public

utilities regulator, RURA⁷. Rwanda's Media and ICT laws have been revised to allow for these changes. A new Access to Information Bill has been created. These bills were passing through parliament as this report was being written and the government said they hoped they would be signed in to law by the end of 2012.

These changes were partly informed by a week-long set of meetings in November 2011 including Rwandan lawyers, the Minister for Cabinet Affairs Protais Musoni, Jerry Timmins and two other Legatum experts, Steve McCauley and Tony Borden from the Institute of War and Peace Reporting. At the meeting, the Rwandans agreed that much of the detail in the old legislation should be removed. With the additional support of Tim Suter, a regulatory expert with experience at the UK's Ofcom, the team helped finalize and review all legislation related to media regulation. Instead of laws, the Rwandans agreed to define the relationship between the new regulator and the public broadcaster via memorandums of understanding, in order to help encourage media self-regulation. Key provisions from the old legislation—such as the requirement for all journalists to obtain accreditation from the central government—were removed altogether. A comprehensive change plan, which had been drawn up over the previous months with support from the three experts mentioned above and partly financed by the Dutch and Rwandan governments, has since been shared by the Government of Rwanda with international donors and could drive further changes over the coming years.

Libya is still preparing to carry out a similar process. Although the media legislation that Gaddafi passed in the early 1970s is now largely ignored, it still needs to be repealed. Because the National Transitional Council, in power until the elections of July 2012, was reluctant to make radical changes, an air of chaos has settled over the post-revolutionary Libyan media. This chaos has had some positive effects: There is a great deal of media in Libya and although it is of variable quality, the sheer quantity is no bad thing in a post-authoritarian society.⁸

But new regulation will soon be required, if only to stop one radio station drowning out another. Media professionals need not only to organize themselves to lobby for sensible regulation, but to prove they can maintain standards in the current open environment. The danger, as Anne Applebaum pointed out during our visit to Libya in June 2012, is that poor quality media can be used later as an excuse to clamp down on freedom of expression, as happened in Russia around 2006. Some form of regulation—or, better still, self-regulation—may eventually be necessary.

In our discussions, we are often asked whether the media should be singled out for special restrictions. Our view has been that it should not. This is because it is now very difficult to distinguish between an individual's opinions published on the Internet and a professional journalist's work, also published online. Both need to abide by the law of the land. To act against journalists is effectively to act against everyone, so restrictions must be well defined, and generally accepted.

There are encouraging signs in Libya. The judiciary has already begun to enter the debate when freedom of expression is threatened. Civil society groups have also sprung up to defend freedom of speech and some have tried to solve problems without waiting for government intervention. At the time of this publication, a wide range of TV and radio stations, as well the written press, have remained



largely free from censorship and interference. It is true that journalists do abide by codes of self-censorship: We came across examples of stories about internal refugees—people who had fled their homes to escape militia groups—spiked by editors afraid of military reprisals. We also heard of journalists who had been arbitrarily detained and interrogated, and we met one editor whose photographer had had his camera taken by militia who did not want him taking pictures. But overall the story is more positive than negative.

Libya is now in the course of writing a new constitution that will be put to a national referendum. In theory, the constitution will lay out many essential freedoms and rights. It is essential that those writing the constitution keep in mind the critical role that a flourishing media plays in a democracy, and that they revise the laws and structure an independent judiciary with this in mind.

WHEN TO LEGISLATE AND WHEN TO REGULATE?

In our conversations about media, we often discussed the question of who should make rules. We have consistently argued that legislation should be as high and as general as possible, and that a regulator, not the legislature, should be left to fill in the details. This approach reduces the need for courts and police to intervene in disputes about broadcasters or journalists, and it also makes it easier for the rules to be flexible: the more detail enshrined in legislation, the more difficult and time consuming it becomes to change it.

In Libya, for example, legislation was passed in the run-up to the election of June 2011, requiring equal media coverage for all participating candidates and parties. In its early discussions, the High National Election Commission decided to interpret this literally, and demanded equal airtime for more than 3,500 candidates. In our meetings with officials, we pointed out that in this case, it would be impossible to show anything except pre-recorded party broadcasts on the state broadcaster for about ten days in the run-up to the election, thus ensuring that nobody would watch state TV during the election period at all. After much discussion, the idea of equal time was dropped and a more flexible approach was taken. This was possible because the election commission, which was in this case the regulator, did not try to impose an impractical interpretation of the law. A legislature might not have been able to make that judgement. This example reinforces our argument: regulators should have the independence and autonomy to apply common sense and exercise judgement in specific cases.

We have given similar advice in Rwanda, however, at the time of writing, not all legislation has been signed in to law and it is still too early to know what the role of the regulator will finally be. However, in our discussions with the Rwandan government we have heard a commitment at ministerial level to keep legislation simple and to leave detail to the regulator.

We do acknowledge, however, that neither country has any experience with this kind of regulation. In the past, central authorities in both countries simply laid down the law and told journalists what was and was not acceptable. In Libya, we met bloggers who had been called in for questioning by the Gaddafi regime: controls were detailed, invasive and potentially fatal. Ali Hassan Al Jaber, a

journalist with Al Jazeera, was murdered by what was probably a Gaddafi-backed death squad in Benghazi in March 2011⁹. By contrast, in societies with a longer tradition of independent media, regulators behave in a collaborative and consultative way. They explore sometimes-complex issues and discuss changes in regulation in advance with media outlets. This approach helps broadcasters think through difficult issues in advance and gives them a better understanding of regulatory issues.

The Libyans, to their credit, have been trying to forge consensus on media regulation. Different groups inside the country have organized a series of high-profile conferences intended to bring professionals and politicians together, in order to start a conversation about media regulation. Most of these efforts have failed to reach consensus and several have been criticized for including too many foreign media groups or Gaddafi loyalists, or simply for not including enough working journalists. They have been, and will continue to be, complicated by the ambivalent role played by journalists at state media organizations. Currently, state media employs about 6,000 people, many of whom would lose their jobs if the sector were sensibly reorganized. Many of them will attempt to influence the debate over regulation, and not necessarily in a positive way.

Both Libyans and Rwandans would benefit enormously from a better knowledge of regulatory models from other countries. Many officials are accustomed to the top-down approach, and are simply unaware of how an independent regulator with responsibilities devolved from the government can function. This is an area where further international assistance could be very important as we explain below.

CORRUPTION AND INTIMIDATION

Corruption of and by journalists can easily creep into any system, however well designed. Journalists in Britain have recently been caught illegally tapping phones. In some parts of Africa, corruption is considered an integral part of the profession. In his previous editorial job at the BBC, Jerry Timmins had to send a journalist to Nigeria to return a brown envelope stuffed with cash to a Nigerian official who had dropped it in the hands of an unsuspecting BBC journalist on a visit to London. The official expressed amazement and laughed openly in front of his advisors at the “foolishness” of the journalist who had travelled to return the money.

In Rwanda and Libya, ethical lapses have also helped undermine the position of journalists. While many Rwandan journalists are trying to do an honest job, the Media High Council has complained that some engage in blackmail, threatening to print scurrilous stories unless the subjects pay them to refrain. Others print sensational stories without providing evidence to back-up accusations. Their motivation is clear: in a very poor country, where journalists are badly paid, the temptation to sensationalise and go beyond the facts in order to attract attention—and therefore income—is considerable.

Such lapses reinforce the beliefs of those in Rwanda who regard the free press as a threat. In the past, the Media High Council in Rwanda used these practices as an excuse to clamp down on the country’s press. In July 2010, for example, Saidati Mukakibibi, a journalist who worked for the newspaper *Umurabyo* was arrested for defamation, inciting public disorder and ethnic ‘divisionism’, following the publication of an article that compared President Kagame to Hitler. In another country such a comment would be dismissed as ridiculous. In Rwanda, where



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People in every walk of life—whether police, teachers, local government, consumers of the news—need to understand the purpose of laws on free expression, and need to see the utility of a strong, independent media.

journalism has had a poor reputation and where innocent people have suffered at its hands, the reaction was much harsher.

In Libya, we met many state sector journalists who spoke of their desire to be independent of government and free themselves from political direction but very few spoke of acting in the public interest. 'Independence', to them, often meant preserving their own jobs and in some cases pedalling their own political views. In the fast-growing private sector we saw a slightly different version of this problem. Some of the new TV stations are clearly affiliated to political parties or to public personalities, and their journalism is slanted in clear directions.

But journalists in both countries also suffer from intimidation. Though it has been possible to criticize the National Transitional Council in Libya, many are reluctant to write anything critical of the revolution more generally, and most can't even consider stories critical of armed militias. One journalist we talked to was still trying to find out what had happened to his editor who had been kidnapped by an armed group he had offended. Two journalists reporting on the Libyan elections were detained by militia and held at gunpoint in the town of Bani Walid in July 2012. In March 2011, two BBC journalists, Feras Kilani and Goktay Koraltan, were arrested and tortured by pro-Gaddafi forces.

In Rwanda, an online journalist, Charles Ingabire, received death threats while in Uganda and was then fatally shot in December 2011 as he left a bar in Kampala, where he had been living in exile. No one has been charged. In June 2010, Jean-Leonard Rugambage, a deputy editor and reporter for a suspended private tabloid, was shot twice and killed. He had been investigating whether the Rwandan government had been involved in an assassination attempt on a dissident living in South Africa. The Rwandan government denies any involvement in the killing, and two suspects were subsequently arrested in Rwanda and imprisoned for murder.

Not all intimidation is violent. In Rwanda, during the run-up to the 2010 elections, some journalists and relatives claimed to have received anonymous phone calls and texts, sometimes in the middle of the night, telling them to stop criticizing government policies. Others say they were followed when going about their work. One told us he was approached in the street and called *genocidaire*. As noted, denying genocide or saying anything that can be interpreted as excusing or minimising the 1994 genocide is a criminal offence in Rwanda. But what Human Rights Watch has called "a far-reaching campaign against ... divisionism and genocide ideology"¹⁰ has meant that the term *genocidaire* has been used by some people against anyone perceived to be anti-government. Thanks to the vagueness of the law, the term can be too easily applied to legitimate journalism and not by government officials: police, bureaucrats, and even members of the public who support the government sometimes spontaneously defend the status quo, just as they defend the revolution in Libya. The government strenuously denies that it either condones or is involved in any form of intimidation but in recent years a number of Rwandan journalists have chosen to leave the profession or leave the country, citing intimidation as one cause for their departure. Those who stayed often preferred to keep a low profile or leave for better paid careers in PR or advertising. Since the government's recent efforts to revise the regulatory environment, there are signs that this situation may be changing for the better.

A growing number of young students are choosing to pursue careers in media¹¹. Journalism graduates no longer automatically look to mobile phone companies or international institutions for jobs in PR, many of them are now deciding to stick with the media. If this trend continues, it will be one sign that the government's efforts are bearing fruit.

While training can of course help teach journalists how to cope with intimidation, and greater competition will also help raise professional and ethical standards, it is important that the state accepts responsibility for the environment in which journalists work. The state must tackle issues of regulation and security if professional standards are to rise. And not only that: public officials must also campaign to win public support for a freer media. People in every walk of life—whether police, teachers, local government, consumers of the news—need to understand the purpose of laws on free expression, and need to see the utility of a strong, independent media. Only then will the journalistic environment improve and the quality of journalism rise.



CONCLUSION

Both Libya and Rwanda now have leaders who recognize, at least in principle, that they need a strong and independent media in order for development to continue, for prosperity to spread and for their fellow citizens to be empowered. At least at some level, politicians in both countries do understand that independent, quality media can be a real guarantor of good governance. Both say they want to launch a public debate about media policy, legal and regulatory issues. Yet neither has ever received systematic and properly planned support from the international community in their quest for a free media, largely because the need for such advice has not been properly recognised by donors.

The UK's international aid agency, Department for International Development (DFID), does not list media as one of its stated priorities¹² and it has no formal policy on media support. Development organizations in general tend to regard the media as a tactical tool, necessary only to help address bigger problems such as the environment or poverty. When DFID and other international donors have sought to develop the sector through specific projects they have largely focused attention on journalism training. Both the US and UK spent money training journalists in Libya in the run-up to 2012 elections.

In November 2011, DFID gave a £90 million grant to the BBC World Service Trust (now called BBC Media Action) in November 2011, money which mainly goes towards promoting health messages, training journalists and promoting debate on developmental issues, but is rarely used to launch broader discussions of media policy¹³. Since 2010–11 the International Research and Exchange Board used funding from USAID's Millennium Challenge programme to set up community radio stations and to train journalists in Rwanda, but these were strictly rural and local projects. Yet neither donors nor journalists engaged with the ministry responsible for media at the time and the projects had no impact on media policy in the country. This was unfortunate, as the Rwandan government was just then beginning to debate whether its policy towards journalism needed to change.

UNESCO and the EU do respond to requests for advice on media regulation and development. But no donor countries or organizations have adopted a consistent approach or provided sufficient or appropriate support for those seeking to review their regulatory and policy frameworks. This kind of support is not expensive, though it does require an investment of time and a consistent presence in a given country.

We have found that even politicians in countries with strong authoritarian traditions are interested in learning, at the very least, how professional media standards are maintained in democracies and how that learning could be applied in their own context. They are intrigued by the notion of a public broadcaster, supported by the state but independent of it. They respond much better to calls for press freedom when they understand that "free media" does not mean freedom to libel or slander. They are keen to seek out trusted and experienced people who can engage with them as they wrestle with new thinking about how to balance freedom of expression with a requirement to maintain security.

This paper does not advocate a significant new investment to support this kind of high-level engagement. Neither do we advise diplomats or development professionals to devote large amounts of time trying to engage in these conversations. In our

experience, wide-ranging, even philosophical conversations about the media and the place of free speech in a modern society are not necessarily best carried out between government representatives, who may feel an obligation to report back on every ministerial or official utterance. A wider involvement of NGOs, sympathetic journalists and others with experience in print media and broadcasting might work just as well.

We are suggesting that both donors and insiders in transitional countries adopt a more sophisticated understanding of the importance of media policy and regulation and their potential impact on society and development. As that understanding grows, so too does an appreciation of how the media affects every other aspect of government policy and legislation. Officials in charge of security, the judiciary, the police, and the economy in transitional countries need to think more strategically about how to meet their constitutional commitments to a free and independent media, while at the same time controlling violence as these issues are intimately connected.

When governments willingly engage with this agenda—as they have been doing in Libya and Rwanda—they deserve our support, even if their media doesn't yet look as free and open as we would like it to be.



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REFERENCES

1. Human Rights Watch 1999 Report on Rwandan genocide <http://www.hrw.org/legacy/reports/1999/rwanda>
2. Rwanda has also adopted the International Convention on Civil and Political Rights, article 19 paragraph 2 of which states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."
3. Act No 33 of 06.09/2003
4. Article 391 Organic Law No 21/77 of the Rwandan Penal Code
5. Law No 47/2001 of 18/11/2001
6. The Supreme Court Judgement of the Trial No 0061/11/CS on 05/04/2012
7. These laws included for the first time in Rwanda an Access to Information bill. There are also revisions of the Media Law; laws relating to ORINFOR, the State Broadcaster, and the establishment of its successor the Rwandan Broadcasting Agency; The Media High Council; The Rwandan utilities Regulatory Agency; ICT Information, Communications and Technology. In addition there is a memorandum of Understanding between RURA and RBA and a Presidential Order that will detail some issues related to this legislative programme.
8. BBC Monitoring: Media Environment Guide: Libya—October 2011
9. The Legatum Institute wiki: Libya media guide 2012 www.libyamediawiki.com
10. <http://www.independent.co.uk/news/world/africa/libyan-rebels-arrest-gaddafi-death-squad-that-killed-journalist-2241876.html>
11. Human Rights Watch "Law and Reality" Page 39 <http://www.hrw.org/sites/default/files/reports/rwanda0708webwcover.pdf>
12. New opportunities for budding Rwandan journalists include two news websites largely staffed by Rwandan University graduates: <http://www.igitondo.com/> and <http://igihe.com/>. New newspapers have appeared including *The Sun*, Kigali-Rwanda. <http://rwandahosting.com/kigalisun/?cat=4>. The Nation Media Group has also recently launched KFM 97.8 in Kigali.
13. <http://www.dfid.gov.uk/barmar>
14. The BBC itself, in the interests of preserving its impartiality, is reluctant to engage directly with foreign governments or State Broadcasters on issues of reform, media policy and regulation.

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