



Toolbox III: What are the conditions needed for freedom of **expression** to flourish?

Now that we have established that freedom of expression is an important and necessary component in democracy and peace, we need also to identify and understand the conditions needed for it to flourish. Once we know what these conditions are, we can then work towards defending and promoting these conditions.

Key Concepts:

Rule of Law
Freedom of Information
Free, Independent &
Pluralistic Media
Active Civil Society

Believe it or not: Do you believe that the rule of law exists in your country? In other words, is there a well-established set of laws, a judicial system, and judges who are not influenced by political parties or private entities in their judgments?

1. The rule of law

The rule of law is fundamental to the stability of society. Only when the rule of law is respected can citizens have confidence in the democratic process over the long term and invest in the development of their society.

When the rule of law is not respected, arbitrariness and impunity dominate the political scene. The rule of law depends greatly on the development of an independent and impartial judiciary and the will of any particular government to restrain itself and show respect before the law. The rule of law is best seen not as the given state of affairs, but as an ideal requiring constant vigilance.

The media have a crucial function as one of the sectors of society most capable of promoting vigilance against abuses of the law. This is especially through fostering investigative journalism, the transparency of court, legislative and administrative proceedings, and access to officials and public documents. The government has a key role here in protecting the independence and pluralism of the media, especially during critical moments in the growth and development of these mechanisms.

Identify and Understand Your Rights

In several nations, the freedom of expression and its corollaries, freedom of the press and freedom of information, are enshrined in the country's constitution. The constitution is the highest law in the land and it is the law which lays the foundation of other rules and principles for a government and its citizens. But examine these constitutional guarantees closely, scratch the surface, and see if you can identify what they really mean and what limitations they may have.



Nelson Mandela fought for freedom of expression for all in South Africa. Image courtesy of WAN-IFRA.

The following is an example of the part of constitution which deals with freedom of expression. This example is taken from Article 16 of the Constitution of the Republic of South Africa which came into effect in 1996 after the end of the apartheid regime:

Notice the South African Constitution states very clearly that “everyone has the right to freedom of expression”. In addition, the constitution also emphasizes the freedom of “press” and “media”, “to receive or impart information or ideas”, as well as “artistic creativity”. The South African constitution even included “academic freedom” and “scientific research”, which is less commonly found in constitutions. However, the constitution also put in place limitations on the freedom of expression which exclude “propaganda for war”, incitement, and the calling for violence and hatred.

What do you think about this particular example of a constitution?

- Do you think it is broad enough to give protection to different kinds of freedom of expression?
- Are the limitations reasonable?
- Do you think these guarantees are vulnerable to possible manipulation which could actually be stifling to freedom of expression?

No substantial famine has ever occurred in any country with a relatively free press

Amartya Sen
1998 Nobel Prize
Laureate in Economics

Constitution of South Africa Article 16 Freedom of expression

16.1 Everyone has the right to freedom of expression, which includes-

- freedom of the press and other media;
- freedom to receive or impart information or ideas;
- freedom of artistic creativity; and
- academic freedom and freedom of scientific research.

16.2 The right in subsection (1) does not extend to-

- propaganda for war;
- incitement of imminent violence; or
- advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Challenge Yourself:

If you have access to the Internet, try and search for your country's constitution (using keywords such as Constitution + Your Country's Name) and try to examine what it says about freedom of expression. If you do not have access to the Internet, try the local library; ask the librarian if he or she could help you locate a copy of the Constitution. If you are able to do that, try to compare your country's constitution with the constitutions of other countries, specifically the sections regarding freedom of expression.

Activities:

- Identify the part of the Constitution which protects freedom of expression.
- Identify the caveats, exceptions or limitations to the freedom of expression in your country, as stated in the Constitution.
- Do you agree or disagree with these limitations? Why?
- How different or similar are constitutions of other countries as compared to your own country's constitution?
- Does your country's constitution match up to the realities of your own day-to-day life? Do you feel that what is written in the Constitution reflects the level of freedom of expression in your country?

Think About:

- How many media outlets are there in your country?*
- Are they private, state-owned or public media outlets?*
- If they are private, who are the owners?*
- Are the owners closely linked to the political institutions?*
- How about the editorial independence of the media outlets?*
- Are they being influenced by political pressure?*

2. Flourishing free, independent and pluralistic media

During a UNESCO 3 May conference in 1991, the participants arrived at a consensus on the meaning of “an independent and pluralistic press” and stated it in the Windhoek Declaration:

By independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals. By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community (adapted from Windhoek Declaration 3 May 1991, which also gave us the annual World Press Freedom Day, celebrated each year on 3 May)

There are several types of media (ownership) including private, community, state, and public. By private, we mean for-profit, commercial-based and privately-owned media. This is probably the most predominant type of media. Their main revenues come from advertisements, commercial or subscription, and their programmes are designed to attract the most number of viewers or listeners (customers) as possible.

Media can also be community-based, which means they are programmed and operated by people for the benefit of the community rather than making of profits. While not exclusively, many community media are located in the more rural parts of the country where access to other source of information is limited.

The third is state-owned media. This media type is usually part of the government, normally under the purview of the Ministry of Information or sim-

ilar ministries. These outlets are often accountable for the government and the information they provide is almost always pro-establishment.

Finally, we have public media or usually referred to as public service broadcasting (PSB). PSB is broadcasting that is made, financed and controlled by the public, and for the benefit of the public. It is neither commercial entity nor state broadcasting, free from political interference and pressure from commercial forces. Through PSB, citizens are informed, educated and also entertained. When guaranteed with pluralism, programming diversity, editorial independence, appropriate funding, accountability and transparency, public service broadcasting can serve as a cornerstone of democracy¹⁰.

Consider the contrary situation where there is only one newspaper or broadcasting station in your neighbourhood or area. That station or newspaper would likely be the only source of information for many people. If the only source of information somehow published the wrong information, many people would be misinformed. Alternatively, if the newspaper or the television station were directed or forced to publish false information, many people would be lied to. Therefore, common sense would tell us that having multiple media sources would decrease the likelihood of being misinformed or misled because the readers or the audience could verify the information through other newspapers or stations.

Nevertheless, simply having many newspapers, television or radio stations is not enough. Multiplicity is not diversity. Concentration of media ownership or may undermine a varied and vibrant media landscape because in the end of the day large media conglomerates answer mostly to the profit-margin. In these situations, reporting and coverage may tend to favour “news that sells” or what suits the owner’s interests rather than quality, independent news per se.

If we don't believe in freedom of expression for people we despise, we don't believe in it at all.

Noam Chomsky
American educator, linguist, pioneer of modern linguistics

TRY THIS! Answer the Following Twenty Questions About Your Country:

Who is the largest shareholder of the largest TV station?	So, is it a private, public, or state-run TV station?	In your opinion, is it a neutral or biased TV station?	Have there been incidences of political pressure on the TV content?
Who is the largest shareholder of the largest newspaper?	So, is it a private, public, or state-run newspaper?	In your opinion, is it a neutral or biased newspaper?	Have there been incidences of political pressure on the newspaper content?
Who is the largest shareholder of the largest radio station?	So, is it a private, public, or state-run radio station?	In your opinion, is it a neutral or biased radio station?	Have there been incidences of political pressure on the radio content?
Who is the largest shareholder of the largest Internet service provider?	So, is it a private, public, or state-run Internet service provider?	In your opinion, is it a neutral or biased Internet service provider?	Have there been incidences of political pressure on the Internet service provider?
Who is the largest shareholder of the largest telecom company?	So, is it a private, public, or state-run telecom company?	In your opinion, is it a neutral or biased telecom company?	Have there been incidences of political pressure on the telecom company?

Imagine if the radio, television, newspaper, magazines, and movies are all owned by the same company with the same policy. Would the news be truly diverse, accurate, and balanced? This is why media outlets must be financially and editorially independent from each other. It would be very difficult for media to claim independence if they were linked by the same owners, or influenced by the same political agendas. As the Windhoek Declaration highlighted, the media should represent the “widest possible range of opinions”.

Information is becoming more and more important in our lives. The ability to seek, to receive, and to impart information accurately and speedily has tremendous influence on the health of the freedom of expression and democracy

3. Freedom of information: Access to public information

What is freedom of information?

An important development in recent years in the area of freedom of expression is the increase in the number of freedom of information (FOI) laws, also known as right to information (RTI) laws. These laws facilitate people’s access to information held by public bodies or state agencies. There is a false perception that information held by state agencies or public agencies is confidential and should not be accessible to individuals. However, the truth is that public or state agencies are merely the custodian, and not the owner, of public information in a democracy. In other words, the public has the right to request public information and the request must be promptly processed. Indeed, such information should be automatically and regularly published and made easily available even without request.

Information is becoming more and more important in our lives. The ability to seek, to receive, and to impart information accurately and speedily has tremendous influence on the health of the freedom of expression and democracy. Freedom of information can be interpreted as the right to access information held by public bodies. The notion of freedom of information was recognized by the United Nations as early as in 1946,¹¹ and has long been enshrined as one of the crucial elements of basic human rights. Currently, more than 90 countries have introduced some kind of freedom of information laws into their respective legal frameworks.

Information has often been described as the “oxygen of democracy”. Freedom of information can contribute to government transparency and accountability, and therefore help prevent abuse of power and combat corruption. It is also

linked to empowerment of the people and to development in general.

The following is a list of countries and the year in which they introduced FOI, RTI, or similar laws - as of 2010¹²

Exercise:

Is your country one of the countries that have introduced a freedom of information law which allows its citizens to access information held by public offices?

- Is information easily and readily made available for the public?
- What is the procedure in obtaining information held by public bodies? Is the procedure clearly stated and straightforward? How long is the response time?
- Try to request for information. Think of a piece of information that is important for you or your community (such as your school). For example, request the budget for a state funded or municipal local construction project for a school, or a bus-stop near your home, etc. Try and find out if the information is readily or easily available and the procedure for obtaining the information. Ask your teacher to help you with the drafting of the letter.

Albania (1999)	Guatemala (2008)	Pakistan (2002)
Angola (2002)	Guinea (2011)	Panama (2002)
Antigua/Barbuda (2004)	Guyana (2011)	Peru (2002)
Armenia (2003)	Honduras (2006)	Philippines (1987)
Australia (1982)	Hungary (1992)	Poland (2001)
Austria (1987)	Iceland (1969)	Portugal (1993)
Azerbaijan (2005)	India (2002)	Romania (2001)
Belgium (1994)	Indonesia (2008)	Russia (2009)
Belize (1994)	Ireland (1997)	Serbia (2004)
Bosnia & Herzegovina (2000)	Israel (1998)	Slovakia (2000)
Bulgaria (2000)	Italy (1990)	Slovenia (2003)
Canada (1982)	Jamaica (2002)	South Africa (2000)
Cayman Islands (2007)	Japan (1999)	South Korea (1996)
Chile (2008)	Jordan (2007)	Sweden (1766)
China (2007)	Kazakhstan (1993)	Switzerland (2004)
Colombia (1888)	Kosovo (2003)	Taiwan (2005)
Cook Islands (2008)	Kyrgyzstan (2007)	Tajikistan (2002)
Croatia (2003)	Latvia (1998)	Thailand (1997)
Czech Republic (1999)	Liberia (2011)	Trinidad & Tobago (1999)
Denmark (1970)	Liechtenstein (1999)	Turkey (2003)
Dominican Republic (2004)	Lithuania (1996)	Uganda (2005)
Ecuador (2004)	Macedonia (2006)	Ukraine (1992)
El Salvador (2011)	Mexico (2002)	United Kingdom (2000)
Estonia (2000)	Moldova (2000)	United States (1966)
Finland (1951)	Mongolia (2011)	Uzbekistan (1997)
France (1978)	Montenegro (2005)	St Vincent & Grenadines (2003)
Georgia (1999)	Nepal (2007)	Yemen (2012)
Germany (2005)	Netherlands (1978)	Zimbabwe (2002)
Greece (1986)	New Zealand (1982)	
	Nicaragua (2007)	
	Nigeria (2011)	
	Norway (1970)	

Countries with a Freedom of Information Act or Similar Legislations

*The year in parentheses indicates the year FOI or RTI or similar laws were introduced in the country. This may or may not be the same year in which the laws came into effect.

4. Active and vibrant civil society

Civil society generally refers to the various groups of people, both men and women, who come together freely and voluntarily with a purpose in the public sphere. They are usually non-governmental and not-for-profit. Although members of civil society are not part of the state, they may be working on state issues, or with the state. Civil society groups as such are usually initiated by the people themselves at the grassroots level and not planned by the state. Civil society fulfils a crucial function in public discussions, filling the gap between the individual citizen and the state or the government.

Civil society organizations work on a variety of issues. There are many that work on health issues such as HIV/AIDS, on reducing hunger and poverty, on having better schools, better parks around the neighbourhood, clean water supply, beautifying the downtown area, promoting organic food, encouraging people to do more exercise, etc. There are certainly a lot of civil

Challenge:
Reflect on this Toolbox. What other conditions could you think of that can help make freedom of information stronger in your country or community? (You may want to consider the unique situation in your own country)

society groups! A vibrant civil society is considered to be one of the benchmarks of a healthy democracy and a healthy state of freedom of expression. This is because the very existence of a vibrant civil society denotes the ability of people to freely and voluntarily gather or associate to hold, seek, receive and impart ideas and opinions. For example, in India, the freedom of information act was first introduced and promoted by the local civil society organization, making it a good case of grassroots-initiated and bottom-up process.



MEXICO CITY - Members of a social organization lie beneath Angel de la Independencia Monument in Mexico City, on 6 February 2010, to protest against gang violence in Ciudad Juarez. The T-shirt reads "Drug trafficker, shoot here." AFP Photo. Alfredo Estrella provided by World Association of Newspapers and News Publishers (WAN-IFRA), which provides other materials for newspapers worldwide to use on World Press Freedom Day at www.worldpressfreedomday.org

Toolbox III Activity

What can you do?

Familiarize yourself with the freedom of expression laws of your country, beginning with the Constitution.

Write a formal letter to your local government representative, municipality, mayor's office, etc. requesting information.

Identify the conditions that could help make freedom of expression stronger in your country or community.

Identify the media outlets in your country or region.

Based on the 4 basic conditions needed for freedom of expression to flourish discussed in this Toolbox, identify which is the strongest in your country and which is the weakest.

Toolbox III Summary

The basic conditions needed for freedom of expression to flourish.

There exists a strong rule of law where the laws uphold freedom of expression, and where the judicial system, including the judges, is independent from external influences such as the ruling government or private interests.

There exists a strong freedom of information which allows for easy and unhindered access to public information.

There exists an environment which enables the flourishing of independent and pluralistic media.

There exists an active civil society including non-profit organizations, non-governmental organizations, advocacy groups, etc.