NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

OSCE
The Representative on Freedom of the Media

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9359 / +41 22 917 9543 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

334/16

4 October 2016

Rt Hon Karen Bradley MP
Secretary of State for Culture, Media and Sport

Dear Ms Bradley,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolutions 25/2 and as OSCE Representative on Freedom of the Media (OSCE Permanent Council Decision No. 193).

We would like to call your Excellency's attention to **the proposals to reform the British Broadcasting Corporation (BBC) governance**, as well as to problems allegedly arising in relation to the **implementation of the Royal Charter on self-regulation of the press (Royal Charter)**.

In June 2016, we received a letter signed by a number of prominent experts and academics as well as the non-governmental organisation Article 19, expressing concern about the attempts to undermine the independence of public service broadcasting and to insure independence of press regulation in the UK.

According to the information received:

White paper on the future of the BBC

.../2

His Excellency Mr. Julian Braithwaite
Ambassador
Permanent Representative
Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva

Her Excellency Ms. Sian MacLeod
Ambassador
Head of United Kingdom Delegation to the Organization for Security and Co-operation in Europe in Vienna

On 12 May 2016, the Government published a White Paper on the future of the BBC, the UK public service broadcaster. This document sets out the main elements of the renewal of the BBC Charter, which will define the remit and governance of the public service broadcaster for the next 11 years.

The White Paper proposes reforms to the board of the BBC. Under the new charter, the government would appoint the Chair, the Deputy Chair and 4 members of a board of 12 to 14 members. The other members would be appointed by the BBC. Even though the White Paper pledges to strengthen the editorial independence of the BBC with specific clauses to be included in the new charter, there is real concern that the proposed composition of the board will pave the way for direct government interference in BBC editorial decision-making for the first time in its history. Staff in the BBC has reportedly resisted the introduction of direct government appointment of executive board members, claiming that this would be an unacceptable interference in the internal editorial processes of the Corporation.

Implementation of provisions accompanying the Royal Charter on self-regulation of the press

The Royal Charter on self-regulation of the press (Royal Charter) establishes a Press Recognition Panel which can give official recognition to self-regulatory bodies, and new legislation has been adopted to provide incentives for media to join a voluntary scheme by offering members a shield from liability. There are currently two self-regulatory bodies established in the UK: the Independent Press Standards Organisation (IPSO) and the Independent Monitor for the Press (IMPRESS).

Part of the provisions that accompany the Royal Charter, Section 40 of the Crime and Courts Act 2013, would shield press defendants from costs associated with legal proceedings when they are members of an approved self-regulatory body providing low cost arbitration to the public. Allegedly, the Secretary of State for Culture, Media and Sports has chosen to delay the implementation of Section 40 at the request of the press industry, who would not be willing to take part in an independent self-regulatory body. At present, the Secretary of State for Culture, Media and Sports has not yet confirmed whether (s)he would eventually sign the law into effect. This decision has the effect of placing the system of self-regulation of the press under the direct influence of the Government.

Serious concern is expressed on the potential impact of these recent measures in the independence of public service broadcasting and the independence of press regulation in the United Kingdom.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to our concerns regarding the alignment of these measures with relevant international norms and standards.

With regard to the changes in the appointment of the BBC unitary board, we would like to underline that while there are no specific rules or criteria either in the UN or the OSCE specifically addressing the issues of public service broadcasting governance, the key issue for us as media freedom rapporteurs is to assess whether a governing board is independent of political influence. On this matter, we would like to refer to General Comment No. 34 (2011) on Article 19 of the ICCPR, in which the Human Rights Committee pointed out that "States parties should ensure that public broadcasting services operate in an independent manner" and "guarantee their independence and editorial freedom." In our view, a mechanism by which the government appoints half or nearly half of the governing board falls short of the standard for independence. In this regard, we also note the recent decision of the prime minister, H.E. Ms. Theresa May, to reverse the reappointment of Ms. Rona Fairhead as chair of the BBC unitary board. The opening of a new selection process casts doubts as to the independence of the new board, most of whose members would be appointed by the government.

Regarding self-regulation of print media, we also refer to the recommendation of the Human Rights Committee calling States parties to the ICCPR to ensure that legislative and administrative frameworks for the regulation of the mass media are fully consistent with the provisions of paragraph 3 of Article 19 of the ICCPR. In this regard, we would also like to refer to the 2003 Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, emphasizing that all public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature.

The OSCE Representative has also been on the record as expressing concern about an agreement to establish a regulatory agency, underpinned by a Royal Charter, since it was proposed in 2013 (public statement available at www.osce.org/fom/107680).

It is our joint opinion that a government-established regulatory body, regardless of how independent it is intended to be, could pose a threat to media freedom. Grassroots self-regulation is the best way to deal with ethical lapses and failures to comply with professional standards.

The resolution of both of these issues could have lasting consequences for the media landscape in the United Kingdom.

We would be grateful for your observations on the allegations and concerns expressed above.

Yours sincerely,

Dunja Mijatović

OSCE Representative on
Freedom of the Media

David Kaye

United Nations Special Rapporteur on
Freedom of Opinion and Expression