

International Mechanisms for Promoting Freedom of Expression

JOINT DECLARATION

by

the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression

Having discussed these issues together with the assistance of *ARTICLE 19, Global Campaign for Free Expression*;

Recalling and reaffirming their Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004 and 21 December 2005;

Stressing the importance of respecting the right of journalists to publish information provided to them on a confidential basis;

Emphasising the importance of the recent ruling of the Inter-American Court of Human Rights in the case of *Marcel Claude Reyes and others v. Chile*, which confirmed the existence of a right to access information held by States;

Aware of the adoption by the Global Transparency Initiative, a civil society movement, of the Transparency Charter for International Financial Institutions: *Claiming Our Right to Know*, calling for greater openness by multilateral development banks and other international financial bodies;

Welcoming the progressive amendments that a number of international financial institutions have made to their information disclosure policies in recent years;

Noting that international public bodies and inter-governmental organisations, like their national counterparts, have an obligation to be transparent and to provide access to the information they hold;

Cognisant of greater public awareness of the tensions that may result from certain types of expression due to different cultural and religious values, in particular prompted by the Danish cartoons incident;

Concerned about calls from certain quarters to resolve the tensions noted above by reversing hitherto well-established standards of respect for freedom of expression;

Reaffirming that freedom of expression and a free media can play an important positive role in addressing social tensions and in promoting a culture of tolerance;

Recalling that attacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public;

Noting the need for specialised mechanisms to promote freedom of expression in every region of the world and the lack of such a mechanism in the Asia-Pacific region;

Adopt, on 19 December 2006, the following Declaration:

On Publishing Confidential Information

- Journalists should not be held liable for publishing classified or confidential information where they have not themselves committed a wrong in obtaining it. It is up to public authorities to protect the legitimately confidential information they hold.

Openness of National and International Public Bodies

- Public bodies, whether national or international, hold information not for themselves but on behalf of the public and they should, subject only to limited exceptions, provide access to that information.
- International public bodies and inter-governmental organisations should adopt binding policies recognising the public's right to access the information they hold. Such policies should provide for the proactive disclosure of key information, as well as the right to receive information upon request.
- Exceptions to the right of access should be set out clearly in these policies and access should be granted unless (a) disclosure would cause serious harm to a protected interest and (b) this harm outweighs the public interest in accessing the information.
- Individuals should have the right to submit a complaint to an independent body alleging a failure properly to apply an information disclosure policy, and that body should have the power to consider such complaints and to provide redress where warranted.

Freedom of Expression and Cultural/Religious Tensions

- The exercise of freedom of expression and a free and diverse media play a very important role in promoting tolerance, diffusing tensions and providing a forum for the peaceful resolution of differences. High profile instances of the media and others exacerbating social tensions tend to obscure this fact.
- Governments should refrain from introducing legislation which makes it an offence simply to exacerbate social tensions. Although it is legitimate to sanction advocacy that constitutes incitement to hatred, it is not legitimate to prohibit merely offensive speech. Most countries already have excessive or at least sufficient 'hate speech' legislation. In many countries, overbroad rules in this area are abused by the powerful to limit non-traditional, dissenting, critical, or minority voices, or discussion about challenging social issues. Furthermore, resolution of tensions based on genuine cultural or religious differences cannot be achieved by suppressing the expression of differences but rather by debating them openly. Free speech is therefore a requirement for, and not an impediment to, tolerance.
- Professional and self-regulatory bodies have played an important role in fostering greater awareness about how to report on diversity and to address difficult and sometimes controversial subjects, including intercultural dialogue and contentious issues of a moral, artistic, religious or other nature. An enabling environment should be provided to facilitate the voluntary development of self-regulatory mechanisms such as press councils, professional ethical associations and media ombudspersons.
- The mandates of public service broadcasters should explicitly require them to treat matters of controversy in a sensitive and balanced fashion, and to carry programming which is aimed at promoting tolerance and understanding of difference.

Impunity in Cases of Attacks Against Journalists

- Intimidation of journalists, particularly murder and physical attacks, limit the freedom of expression not only of journalists but of all citizens, because they produce a chilling effect on the free flow of information, due to the fear they create of reporting on abuses of power, illegal activities and other wrongs against society. States have an obligation to take effective measures to prevent such illegal attempts to limit the right to freedom of expression.
- States should, in particular, vigorously condemn such attempts when they do occur, investigate them promptly and effectively in order to duly sanction those responsible, and provide compensation to the victims where appropriate. They should also inform the public on a regular basis about these proceedings.

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