

International Mechanisms for Promoting Freedom of Expression

TENTH ANNIVERSARY JOINT DECLARATION: TEN KEY CHALLENGES TO FREEDOM OF EXPRESSION IN THE NEXT DECADE

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,

Having met in Washington on 2 February 2010, with the assistance of *ARTICLE 19, Global Campaign for Free Expression* and the *Centre for Law and Democracy*;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007 and 10 December 2008;

Emphasising, once again, the fundamental importance of freedom of expression - including the principles of diversity and pluralism - both inherently and as an essential tool for the defence of all other rights and as a core element of democracy;

Recognising that many important gains have been made over the last ten years since our first Joint Declaration was adopted in November 1999 in terms of respect for freedom of expression, including gains in respect for the right to information and considerable growth in access to the Internet;

Concerned that at the same time enormous challenges still exist in giving full effect to the right to freedom of expression, including restrictive legal regimes, commercial and social pressures, and a lack of tolerance of criticism on the part of the powerful;

Noting that some of the historic challenges to freedom of expression have still not been addressed successfully, while new challenges have arisen due to technological, social and political developments;

Aware of the enormous potential of the Internet as a tool for realising the right to freedom of expression and to information;

Cognisant of the efforts by some governments to restrict the Internet, as well as the failure to recognise the unique nature of this medium, and emphasising the need to respect freedom of expression and other human rights in any efforts to apply legal rules to it;

Stressing that, while the last ten years have witnessed impressive growth in global efforts to protect and promote freedom of expression, far more attention needs to be devoted to this effort, by governments and other official actors, by human rights and other civil society organisations, and in international cooperation;

Welcoming the impressive development of international standards regarding the promotion and protection of freedom of expression over the last ten years by international bodies and civil society actors;

Adopt, on 3 February 2010, the following Declaration on Ten Key Threats to Freedom of Expression:

1. Mechanisms of Government Control over the Media

Government control over the media, an historic limitation on freedom of expression, continues to be a serious problem. Such control takes many forms but we are particularly concerned about:

- a) Political influence or control over public media, so that they serve as government mouthpieces instead of as independent bodies operating in the public interest.
- b) Registration requirements for the print media or to use or access the Internet.
- c) Direct government control over licensing or regulation of broadcasters, or oversight of these processes by a body which is not independent of government, either in law or in practice.

- d) The abuse of State advertising or other State powers to influence editorial policy.
- e) Ownership or significant control of the media by political leaders or parties.
- f) Politically motivated legal cases being brought against the independent media.
- g) The retention of antiquated legal rules – such as sedition laws or rules against publishing false news – which penalise criticism of government.

2. Criminal Defamation

Laws making it a crime to defame, insult, slander or libel someone or something, still in place in most countries (some ten countries have fully decriminalised defamation), represent another traditional threat to freedom of expression. While all criminal defamation laws are problematical, we are particularly concerned about the following features of these laws:

- a) The failure of many laws to require the plaintiff to prove key elements of the offence such as falsity and malice.
- b) Laws which penalise true statements, accurate reporting of the statements of official bodies, or statements of opinion.
- c) The protection of the reputation of public bodies, of State symbols or flags, or the State itself.
- d) A failure to require public officials and figures to tolerate a greater degree of criticism than ordinary citizens.
- e) The protection of beliefs, schools of thought, ideologies, religions, religious symbols or ideas.
- f) Use of the notion of group defamation to penalise speech beyond the narrow scope of incitement to hatred.
- g) Unduly harsh sanctions such as imprisonment, suspended sentences, loss of civil rights, including the right to practise journalism, and excessive fines.

3. Violence Against Journalists

Violence against journalists remains a very serious threat with more politically motivated killings of journalists in 2009 than in any other year in the past decade. Particularly at risk are journalists reporting on social problems, including organised crime or drug trafficking, voicing criticism of government or the powerful, reporting on human rights violations or corruption, or reporting from conflict zones. Recognising that impunity generates more violence, we are particularly concerned about:

- a) A failure to allocate sufficient attention and resources to preventing such attacks and to investigating them and bringing those responsible to justice when they do occur.
- b) The lack of recognition that special measures are needed to address these attacks, which represent not only an attack on the victim but also an attack on everyone's right to receive information and ideas.
- c) The absence of measures of protection for journalists who have been displaced by such attacks.

4. Limits on the Right to Information

Over the past ten years, the right to information has been widely recognised as a fundamental human right, including by regional human rights courts and other authoritative bodies. Laws giving effect to this right have been passed in record numbers and this positive trend continues, with some 50 laws having been passed in the last ten years. However, major challenges remain. We are particularly concerned about:

- a) The fact that a majority of States have still not adopted laws guaranteeing the right to information.
- b) The weak laws in place in many States.
- c) The massive challenge of implementing the right to information in practice.
- d) The lack of openness around elections, when the need for transparency is particularly high.
- e) The fact that many intergovernmental organisations have not given effect to the right to information in relation to the information they hold as public bodies.
- f) The application of secrecy laws to journalists and others who are not public officials, for example to impose liability for publishing or further disseminating information which has been leaked to them.

5. Discrimination in the Enjoyment of the Right to Freedom of Expression

Equal enjoyment of the right to freedom of expression remains elusive and historically disadvantaged groups – including women, minorities, refugees, indigenous peoples and sexual minorities – continue to struggle to have their voices heard and to access information of relevance to them. We are particularly concerned about:

- a) Obstacles to the establishment of media by and for historically disadvantaged groups.
- b) The misuse of hate speech laws to prevent historically disadvantaged groups from engaging in legitimate debate about their problems and concerns.
- c) The lack of adequate self-regulatory measures to address:
 - i) Underrepresentation of historically disadvantaged groups among mainstream media workers, including in the public media.
 - ii) Inadequate coverage by the media and others of issues of relevance to historically disadvantaged groups.
 - iii) The prevalence of stereotypical or derogatory information about historically disadvantaged groups being disseminated in society.

6. Commercial Pressures

A number of commercial pressures pose a threat to the ability of the media to disseminate public interest content, which is often costly to produce. We are particularly concerned about:

- a) Growing concentration of ownership of the media, with serious potential implications for content diversity.
- b) Fracturing of the advertising market, and other commercial pressures, leading to cost-cutting measures such as less local content, cheap, shallow entertainment and a decrease in investigative journalism.
- c) The risk that the benefits from the switchover to digital frequencies will go largely to existing broadcasters, and other uses such as telecommunications, to the detriment of greater diversity and access, and public interest media.

7. Support for Public Service and Community Broadcasters

Public service and community broadcasters can play a very important role in providing public interest programming and in supplementing the content provided by commercial broadcasters, thereby contributing to diversity and satisfying the public's information needs. Both face challenges. We are particularly concerned about:

- a) The increasingly frequent challenges to public funding support for public broadcasters.
- b) The fact that many public broadcasters have not been given a clear public service mandate.
- c) The lack of specific legal recognition of the community broadcasting sector in licensing systems which are based on criteria that are appropriate to this sector.
- d) The failure to reserve adequate frequencies for community broadcasters or to establish appropriate funding support mechanisms.

8. Security and Freedom of Expression

The notion of national security has historically been abused to impose unduly broad limitations on freedom of expression, and this has become a particular problem in the aftermath of the attacks of September 2001, and renewed efforts to combat terrorism. We are particularly concerned about:

- a) Vague and/or overbroad definitions of key terms such as security and terrorism, as well as what is prohibited, such as providing communications support to terrorism or extremism, the 'glorification' or 'promotion' of terrorism or extremism, and the mere repetition of statements by terrorists.
- b) Abuse of vague terms to limit critical or offensive speech, including social protests, which do not constitute incitement to violence.
- c) Formal or informal pressures on the media not to report on terrorism, on the grounds that this may promote the objectives of terrorists.
- d) Expanded use of surveillance techniques and reduced oversight of surveillance operations, which exert a chilling effect on freedom of expression and undermine the right of journalists to protect their confidential sources.

9. Freedom of Expression on the Internet

The significant potential of the Internet as a tool to promote the free flow of information and ideas has not been fully realised due to efforts by some governments to control or limit this medium. We are particularly concerned about:

- a) The fragmentation of the Internet through the imposition of firewalls and filters, as well as through registration requirements.

- b) State interventions, such as blocking of websites and web domains which give access to user-generated content or social networking, justified on social, historical or political grounds.
- c) The fact that some corporations which provide Internet searching, access, chat, publishing or other services fail to make a sufficient effort to respect the rights of those who use their services to access the Internet without interference, for example on political grounds.
- d) Jurisdictional rules which allow cases, particularly defamation cases, to be pursued anywhere, leading to a lowest common denominator approach.

10. Access to Information and Communications Technologies

While the Internet has provided over a billion people with unprecedented access to information and communications tools, the majority of the world's citizens have no or limited access to the Internet. We are particularly concerned about:

- a) Pricing structures which render the poor unable to access the Internet.
- b) A failure to roll out connectivity the 'last mile' or even further, leaving rural customers without access.
- c) Limited support for community-based ICT centres and other public access options.
- d) Inadequate training and education efforts, especially among poor, rural and elderly populations.

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