

Overview of International Standards on Freedom of Expression

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Introduction¹

All serious commentators on democracy recognise the key role played by respect for freedom of expression in general, and freedom of the media, in particular, in realising that important social project. Democracy is, more than anything else, about the ability of citizens to participate in the political process by voicing their views and concerns, and by forming opinions about parties and candidates based on a solid foundation of information.

For democratic change to be effective, it must be built on solid foundations. The need for respect for freedom of expression and an enabling legal environment for the media are absolutely essential parts of those wider foundations. While official tolerance of media freedom is possible even in the absence of a structural enabling legal framework, the experience of countries around the world demonstrates that, without an enabling environment, such tolerance will inevitably remain short-term and unstable.

This Overview aims to provide readers with information about key international standards regarding freedom of expression. It is hoped that it will prove useful as a starting place for understanding international standards regarding freedom of expression law.

General Standards

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The right to freedom of expression is guaranteed in Article 19 of the *Universal Declaration on Human Rights* (UDHR),² as follows:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.³

Freedom of expression is also guaranteed in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR),⁴ a treaty ratified by 173 States,⁵ as follows:

- (1) Everyone shall have the right to freedom of opinion.
- (2) 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, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Freedom of expression is also protected in all three regional human rights treaties, specifically at Article 13 of the *American Convention on Human Rights* (ACHR),⁶ at Article 10 of the *European Convention on Human Rights* (ECHR)⁷ and at Article 9 of the *African Charter on Human and Peoples' Rights* (ACHPR).⁸

The Importance of Freedom of Expression

It is difficult to overstate the importance of freedom of expression. Where this fundamental right is denied, and the free flow of information and ideas is constrained, other human rights, as well as democracy itself, are at risk. Democratic participation depends on the free flow of information and ideas, since the substantive engagement of citizens in decision-making processes can only be achieved if people are both informed and have access to the possibility of voicing their views.

² United Nations General Assembly Resolution 217A (III), 10 December 1948.

³ See, for example, *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain) (Second Phase)*, ICJ Rep. 1970 3 (International Court of Justice) and *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice).

⁴ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

⁵ As of June 2023. For a list, see: https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-48&src=IND.

⁶ Adopted at San José, Costa Rica, 22 November 1969, in force 18 July 1978.

⁷ Adopted 4 November 1950, in force 3 September 1953.

⁸ Adopted at Nairobi, Kenya, 26 June 1981, in force 21 October 1986.

Other social values – including good governance, public accountability, development, individual fulfilment and combating corruption – also depend on respect for freedom of expression.

International bodies and courts have repeatedly emphasised the fundamental importance of the right to freedom of expression. At its very first session, in 1946, the United Nations General Assembly adopted Resolution 59(I),⁹ which refers to freedom of information in its widest sense:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.

As this resolution notes, freedom of expression is fundamentally important both as an individual right and as an indispensable underpinning for the exercise of all other rights. The idea of freedom of expression as an underpinning of democracy and other human rights has also been stressed by international human rights bodies. The UN Human Rights Committee, the body established to monitor implementation of the ICCPR, has held:

The right to freedom of expression is of paramount importance in any democratic society.¹⁰

Similarly, the Inter-American Court of Human Rights has stated: “Freedom of expression is a cornerstone upon which the very existence of a democratic society rests.”¹¹ And the European Court of Human Rights has noted: “Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.”¹²

International guarantees of freedom of expression provide wide protection for all forms of expression, covering not only statements that are generally deemed to be in the public interest but also those that are considered, even by most of the populace, as offensive or unpalatable. Indeed, the notion of protecting unpopular speech lies at the very heart of the importance of guarantees of freedom of expression. As the European Court has made clear:

[F]reedom of expression ... is applicable not only to “information” or “ideas” that are favourably received ... but also to those which offend, shock or disturb the State or any other sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.¹³

⁹ Adopted 14 December 1946.

¹⁰ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

¹¹ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 70.

¹² *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49.

¹³ *Ibid.*

The Importance of Media Freedom

The right to freedom of expression is of particular importance in relation to the media, given its role in making the free flow of information and ideas a reality. In most countries, the media remain the main vehicle for promoting and sustaining public discussion. The Inter-American Court of Human Rights has stated: "It is the mass media that make the exercise of freedom of expression a reality."¹⁴ The European Court of Human Rights has referred to "the pre-eminent role of the press in a State governed by the rule of law."¹⁵ The media as a whole merit special protection in part because of their role in making public "information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'."¹⁶

Similarly, in its *Declaration of Principles on Freedom of Expression in Africa* (African Declaration), adopted in 2003, the African Commission on Human and People's Rights stressed "the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy."¹⁷

The media play a very important role in underpinning democracy, including during elections. The UN Human Rights Committee has stressed the importance of free media to the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.¹⁸

In a similar vein, the European Court has emphasised:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.¹⁹

¹⁴ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 11, para. 34.

¹⁵ *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

¹⁶ *Ibid.*

¹⁷ Adopted by the African Commission on Human and People's Rights at its 32nd Session, 17-23 October 2002.

¹⁸ UN Human Rights Committee General Comment 25, CCPR/C/21/Rev.1/Add.7, 12 July 1996.

¹⁹ *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

The Right to Seek and Receive

Under international law, freedom of expression protects not only the right of the speaker (to ‘impart’ information and ideas) but also the right of the listener (to ‘seek and receive’ information and ideas). The implications of the right to seek and receive information and ideas, a key aspect of the right to freedom of expression, have been elaborated upon clearly and forcefully by the Inter-American Court of Human Rights. The Court recognised early on the important implications of the dual nature of the right to freedom of expression:

[W]hen an individual’s freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to “receive” information and ideas. The right protected by Article 13 consequently has a special scope and character, which are evidenced by the dual aspect of freedom of expression. It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.... In its social dimension, freedom of expression is a means for the interchange of ideas and information among human beings and for mass communication.²⁰

The second aspect of the right rules out arbitrary interferences by the State that prevent individuals from receiving information that others wish to impart to them.²¹ However, the rights of the listener also place a positive obligation on the State to take measures to promote an environment in which a diversity of information and ideas are available to the public. International law recognises generally that States must take positive measures to ensure rights. Article 2 of the ICCPR, for example, places an obligation on States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant”.²² The specific need for positive measures to ensure respect for freedom of expression has been widely recognised.²³

²⁰ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 30-2.

²¹ See, for example, *Leander v. Sweden*, 26 March 1987, Application No. 9248/81 (European Court of Human Rights), para. 74.

²² See also Article 2 of the ACHR.

²³ See, for example, *Vgt Verein gegen Tierfabriken v. Switzerland*, 28 June 2001, Application No. 24699/94 (European Court of Human Rights), para. 45 and *Miranda v. Mexico*, 13 April 1999, Report No. 5/99, Case No. 11.739 (Inter-American Commission on Human Rights).