



CENTRE FOR LAW
AND DEMOCRACY

BRIEFING NOTE SERIES ON FREEDOM OF EXPRESSION

Freedom of Expression as a Human Right

Centre for Law and Democracy
International Media Support (IMS)

BRIEFING NOTE 1 OF 12

BRIEFING NOTE 1

Freedom of Expression as a Human Right

Freedom of expression is a core human right which is guaranteed under international law and by virtually every constitutional bill of rights in the world. It is key to human development, dignity, personal fulfilment and the search for truth, and a fundamental pre-requisite for democracy and good governance. It facilitates free debate about and between competing political parties, enables citizens to raise concerns with authorities and ensures that new policies and legislation may be the subject of careful scrutiny. The quality of government is enhanced by free speech because it helps to ensure that authorities are competent and honest and allows individuals to voice concerns about and debate government action. Put differently, democratic values are under threat when information and ideas are not permitted to flow freely.

The importance of freedom of expression has been emphasised by a vast array of different actors. A good example of this is the joint statement by United Nations Secretary-General Ban Ki-moon and UNESCO Director-General Irina Bokova on World Press Freedom Day, 3 May 2014:

This year, the international community has a once-in-a-generation opportunity to prepare a long-term agenda for sustainable development to succeed the Millennium Development Goals when they end in 2015. Successfully implementing that agenda will require that all populations enjoy the fundamental rights of freedom of opinion and expression. These rights are essential to democracy, transparency, accountability and the rule of law. They are vital for human dignity, social progress and inclusive development.

The right to freedom of expression is recognised in all of the main international and regional human rights treaties. This includes, most notably, the

Universal Declaration of Human Rights (UDHR), which was adopted unanimously by the United Nations General Assembly in 1948. While the UDHR is not formally legally binding on States, its guarantee of freedom of expression is widely regarded as having acquired legal force as customary international law. Article 19 of the UDHR states:

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

Similar language is included in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR), a formally legally binding treaty ratified by 168 States as of April 2014:

- (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 regional human rights treaties, including the *African Charter on Human and People's Rights*, the *American Convention on Human Rights* and the *European Convention on Human Rights*.

Although technically different from freedom of expression, Article 19 also protects the right to hold opinions. Importantly, while freedom of expression may be restricted, the right to hold opinions is absolute; the State may never legitimately limit this right.

The right to freedom of expression is broad and multifaceted in scope. First, as a human right, and as is clear from Article 19, freedom of expression belongs to everyone. No distinctions are permitted, among other things, on the basis of a person's race, colour, nationality, sex, language, social origin or property.

Second, it includes the right to impart information and ideas "of all kinds". The right to express oneself encompasses not only speech which is generally accepted or is respectful in tone but also controversial or offensive speech. Indeed, one of the most important aspects of the right to freedom of expression is the protection of unpopular speech. This was made clear by the European Court of Human Rights (ECHR) in the case of *Handyside v. United Kingdom*:

[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".

Third, the right applies to expressions regardless of the media through which they are made, including broadcasting and newspapers, the Internet, public debates, academic research and verbal expressions.

Fourth, the right to freedom of expression includes not only the right to 'impart' information and ideas (i.e. the right to speak) but also the right to 'seek' and 'receive' information from others. In other words, freedom of expression enables every citizen not only to contribute to the public sphere, but also to have access to a wide range of information and viewpoints. This is a very important aspect of the right, which serves as the underpinning of important freedom of expression concepts such as media diversity and the right to access information held by public authorities.

Fifth, another important aspect of the right to freedom of expression is that it imposes both

negative and positive obligations on the State. In its negative aspect, the right places an obligation on States not to interfere with the exercise of the right to seek, receive and impart information and ideas, except as permitted under international law. The positive obligation is essentially to create an environment which supports a free flow of information and ideas in society, and includes elements such as the obligation to put in place a legal framework for accessing public information and to create an environment in which a free and independent media can flourish.

Sixth, the right to freedom of expression applies regardless of frontiers. This means that it protects the right to access information from abroad, whether in the form of broadcasting, newspapers, the Internet or speaking to someone in another country.

Unlike the right to hold opinions, the right to freedom of expression is not absolute. It is universally recognised that certain key public and private interests may justify the placing of restrictions on this right. However, international law sets out a strict three-part test which must be met in order for a restriction to be valid (see Briefing Note 2).

Most States recognise the importance of freedom of expression and proclaim their support for open public discourse but, at the same time, nearly every State has laws and practices which fail to conform to international human rights standards. This ranges from prior censorship regimes to harsh criminal penalties for disseminating prohibited speech to regulatory regimes which give the government undue control over the media, public or private, to overbroad content restrictions to failures to implement access to information laws properly. All States should review their legal frameworks and implementation practices to make sure that they conform to international and constitutional standards. This is a particular priority for transitional democracies, where a barrage of illegitimate legal rules often remain in place and can act as a serious impediment to the process of democratisation.

FURTHER READING

- Case Law databases:
 - African Commission on Human and Peoples' Rights: <http://www.achpr.org/communications/>
 - European Court of Human Rights: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"documentcollectionid2":\["CASELAW"\]}\]\]](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)
 - Inter-American Court of Human Rights: <http://www.corteidh.or.cr>
 - UN Human Rights Committee: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=17
- *International Covenant on Civil and Political Rights*, UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- UN Human Rights Committee, *General Comment No. 34*, 12 September 2011, CCPR/C/GC/34: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en
- *Universal Declaration of Human Rights*, UN General Assembly Resolution 217A(III) of 10 December 1948: <http://www.un.org/en/documents/udhr/>