2021 JOINT DECLARATION ON POLITICIANS AND PUBLIC OFFICIALS AND FREEDOM OF EXPRESSION

The United Nations (UN) Special Rapporteur on the Protection and Promotion of 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 discussed these issues together with the assistance of *ARTICLE 19, Global Campaign for Free Expression,* and the *Centre for Law and Democracy* (CLD);

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, 10 December 2008, 15 May 2009, 3 February 2010, 1 June 2011, 25 June 2012, 4 May 2013, 6 May 2014, 4 May 2015, 4 May 2016, 3 March 2017, 2 May 2018, 10 July 2019 and 30 April 2020;

Noting the essential role played by freedom of expression and the right to information in fostering the free flow of information and ideas in society, and enabling people to participate in debate about matters of public interest, including politics, and to access a broad range of opinions, thereby strengthening democracy, respect for all human rights and sustainable development;

Stressing that respect for freedom of expression and the right to information are essential for everyone to receive, debate and form and share opinions, as well as for politicians and public officials to communicate their ideas and proposals to the public;

Keeping in mind our 2020 Joint Declaration on Freedom of Expression and Elections in the Digital Age, which sets out key standards for States, media and other non-State actors in relation to elections;

Highlighting that the full realisation of freedom of expression and the right to information requires, on the one hand, strong protection for open and inclusive debate about matters of public interest and, on the other hand, acceptance by politicians and public officials that, by virtue of their positions, their official conduct and certain aspects of their private lives are legitimate objects of close public scrutiny and strong criticism;

Alarmed by the harassment, threats and high level of violence committed with impunity against journalists, right to information activists, human rights defenders and others for exercising their right to freedom of expression, especially in cases where these individuals expose corruption or report on other forms of wrongdoing, including by politicians and public officials;

Expressing concern at the growing incidence of online and offline "hate speech", disinformation and dangerous rhetoric against and scapegoating of the media, human rights defenders and groups at risk of discrimination, including by politicians and public officials, which chills freedom of expression, thereby reducing the diversity of information and ideas in society and misleading citizens;

Acknowledging that politicians and public officials play an important role in shaping the media agenda, public debate and opinion and that, as a result, ethical behaviour and attitudes on their part, including in their public communications, is essential for promoting the rule of law, the protection of human rights, media freedom and intercultural understanding, and for ensuring public trust in democratic systems of governance;

Denouncing the increase in public communications by some politicians and public officials which are intolerant and divisive, deny established facts, attack journalists and human rights defenders for exercising their right to freedom of expression, and seek to undermine democratic institutions, civic space, media freedom and human rights, including freedom of expression;

Observing that States have a positive obligation to create an enabling environment for freedom of expression and the right to information, including by fostering media independence and diversity as a key means of promoting robust, open debate about matters of public interest, and by adopting rules that ensure public transparency and accountability of public actors;

Cognisant that international human rights standards require everyone, including politicians and public officials, to refrain from advocacy of hatred that constitutes incitement to violence, hostility or discrimination, while moral imperatives call on them to speak out firmly and promptly against intolerance;

Adopt, on 20 October 2021, the following 2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression:

1. Scope of this Joint Declaration

This Joint Declaration addresses freedom of expression issues that arise in the context of action by politicians and public officials, understood broadly to comprise individuals in leadership positions or with significant power, influence and outreach in the public sphere, such as elected and appointed public officials, candidates for public office, leaders and office holders of political parties, and others who engage explicitly in political affairs in an influential manner.

2. Recommendations for States

a. General Principles

Based on States' obligation to ensure that any restrictions on freedom of expression comply with the international law test for such restrictions and their positive obligation to create an enabling environment for freedom of expression and of the media, and the right to information, States should:

i. Recognise, in law, policy and practice, the special imperative of providing a high level of protection to political speech, including speech which many may find unduly critical or even offensive.
ii. Take effective action to prevent attacks on journalists and others in retaliation for exercising their right to freedom of expression, including where this involves political speech, to provide protection to those who are at risk of such attacks, to investigate such attacks when they do occur and to prosecute those responsible, so as to end the culture of impunity for such attacks.
iii. Ensure that all bodies which have regulatory powers over the media and all public bodies which facilitate freedom of expression are independent of politicians, public officials and commercial players, are accountable to the public and operate transparently.

iv. Support robust media and information literacy (MIL) programmes, aimed at all segments of society, including with a focus on promoting participation in political affairs and equipping people with knowledge, awareness and skills to understand and contextualise political communications.
v. Never engage in or finance coordinated inauthentic behaviour or other online influence operations which aim to influence the views or attitudes of the public or a section of the public for party political purposes.

b. Protection of Political Speech and Speech on Other Matters of Public Interest

In order to ensure the highest possible level of protection for political speech and speech on other matters of public interest, including through the media and digital communication platforms, especially in the context of elections, where the unhindered exercise of freedom of expression by parties and candidates has particular significance, States should:

i. Ensure that any restrictions on freedom of expression are fully in line with the three-part international law test for such restrictions, namely that they meet the requirements of legality, legitimacy of aim and necessity, and do not discourage robust public debate about matters of public interest.
ii. Abolish any criminal defamation laws and replace them, where necessary, with appropriate civil defamation laws.
iii. Repeal any defamation or lèse-majesté laws which provide special protection to or provide for greater penalties for statements directed at heads of State or government, politicians or officials.
iv. Ensure that civil defamation laws conform to the following standards, among others:
    a. Provide greater protection for speech about politics and other matters of public interest, including by requiring politicians and public officials to tolerate a higher level of criticism than ordinary citizens.
    b. Ensure that damages awards are proportionate taking into account all of the circumstances and are not so large as to exert a chilling effect on freedom of expression.
    c. Ensure that courts have the power, either at the request of the defendant or on their own motion, to dismiss, in a summary fashion at an early stage of the proceedings, defamation lawsuits involving statements on matters of public interest that do not have a realistic chance of success (Strategic Lawsuits Against Public Participation or SLAPPs).
    d. Ensure that appropriate defences are available to defendants in defamation cases involving statements on matters of public interest so that they do not bear strict liability for inaccurate statements of fact, such as the defence of "reasonable publication".
v. Ensure that laws protecting privacy include limitations so that statements about matters of public interest will not be liable where, on balance, the benefits of the statement being made outweigh the harm to privacy.
vi. Ensure mechanisms, such as systems of accreditation, are in place so that journalists can freely access locations (such as parliament) and events (such as press conferences) to gather information on matters of public interest for purposes of reporting them to the general public, which conform to the following standards:
    a. They are independent and non-discriminatory in nature, including on the basis of political opinion.
    b. Allocation and any withdrawal of accreditation is based on justifiable, objective criteria and not on the editorial or critical position or independence of a journalist.

c. Limits on accreditation are based on justifiable, objective criteria, such as limited space at the venue, and respect and facilitate diversity.

vii. Repeal or refrain from adopting general prohibitions on the dissemination of inaccurate information, such as false news or "fake news" laws, and respect the following standards in relation to disinformation and false news:
   a. Adopt policies which provide for disciplinary measures to be imposed on public officials who, when acting or perceived to be acting in an official capacity, make, sponsor, encourage or further disseminate statements which they know or should reasonably know to be false.
   b. Ensure that public authorities make every effort to disseminate accurate and reliable information, including about their activities and matters of public interest.

c. Media Independence and Diversity

Taking into account the importance of media diversity in ensuring that a wide range of information and ideas, including on matters of public interest, is available to the public, including information of relevance to women, persons with disabilities, national minorities and other groups at risk of discrimination, States should:

i. Ensure the presence of independent, adequately funded public service broadcasters.
ii. Respect the editorial independence of all media in both law and in practice.
iii. Ensure that the allocation of advertising by public authorities is not used as an indirect means of influencing media content.
iv. Ensure that effective rules are in place to prevent undue concentration of ownership for all media sectors, in line with international standards in this area, including effective oversight of these rules, for example by relevant regulators.
v. Ensure that effective rules are in place which require media outlets, telecommunications operators and online intermediaries to be transparent about their ownership and sources of funding, including where media outlets are owned by political parties or politicians.
vi. Limit any requirements for media outlets to register and/or obtain a licence to what is necessary to ensure the appropriate operation of the media sector concerned, so as to limit the risk of political interference in the media.
vii. Consider putting in place fair, transparent and independent subsidy or other financial support arrangements for the media, based on the idea that the provision of diverse, quality news and current affairs content is a public good.

d. Transparency

Given the importance of transparency and the right to information to facilitate robust debate about matters of public interest and to ensure the accountability of politicians, public officials and good governance overall, States should:

i. Adopt laws in line with international human rights standards guaranteeing the public's right to access information held by public authorities and implement those laws properly, as called for by UN Sustainable Development Goal Indicator 16.10.2.
ii. Require all elected officials, candidates for elected office and senior public officials to make asset declarations and ensure that independent oversight bodies have the power to take effective action where these disclose conflicts of interest; where this is justified in the public interest, such asset declarations should be publicly accessible.

e. "Hate Speech"

Given the harm done by "hate speech", including to the ability of its targets to exercise fully their right to freedom of expression and to participate in political activities, States should:

i. Prohibit by law any advocacy of hatred that constitutes incitement to discrimination, hostility or violence, in accordance with international law.
ii. Undertake a range of activities – including education and counter-messaging – to combat intolerance and promote social inclusion and intercultural understanding.

3. Recommendations for Political Parties, Politicians and Senior Public Officials

i. Political parties should adopt and enforce measures, such as codes of conduct, which set minimum standards of behaviour for their officials and candidates for elected office, including to address speech that promotes intolerance, discrimination or hatred, or constitutes disinformation which is designed to limit freedom of expression or other human rights
ii. Political parties should consider introducing or participating in cross-party initiatives aimed at countering intolerance, discrimination and dis/misinformation, and promoting intercultural understanding, social inclusion and respect for diversity.
iii. Politicians and public officials should not make statements that are likely to promote intolerance, discrimination or dis/misinformation and should, instead, take advantage of their leadership positions to counter these social harms and to promote intercultural understanding and respect for diversity.
iv. When conducting press conferences, politicians and public officials should treat participants with respect and ensure that they have an equitable opportunity to pose questions.
v. Politicians and public officials should not intentionally make false statements attacking the integrity of journalists, media workers or human rights defenders.

4. Recommendations for Social Media Companies

Given their key role in enabling, facilitating and moderating public debate, including about politics and other matters of public interest, social media companies should:

i. Ensure that their content moderation rules, systems and practices reflect international human rights standards including the importance of open and inclusive debate about matters of public interest, and elaborate clearly when, how and what measures may be taken against content posted by politicians and public officials.
ii. Adopt rules indicating whether political advertisements will be published on their platforms and, if so, ensure that the rules are clear, fair and non-discriminatory, require political advertisements to be labelled as such, and require public disclosure of who paid for advertisements, how advertising operates, and who is targeted by it and why.
iii. Where political advertisements are published, maintain a publicly accessible archive of them.
iv. Introduce systems that allow users to opt out of being targeted by political advertising or having their personal data used for targeting of political advertisements.
v. Promote the maximum possible transparency in relation to their content moderation rules, systems and practices, especially where these affect public interest content or content posted by politicians and public officials.
vi. Taking into account their size and market dominance, ensure that their content moderation rules, systems and practices respect basic due process principles, including by providing independent dispute resolution options, ideally overseen by independent multi-stakeholder bodies.
vii. Taking into account their size and market dominance, including in any particular political jurisdiction, ensure that their content moderation systems and practices take into account local languages, traditions and culture.

5. Recommendations for the Media

Given their importance in terms of reporting on and facilitating debate about politics and other matters of public interest and maintaining public trust, media outlets should:

i. Take effective steps to ensure that they are subject to complaints systems, whether of a self-regulatory, co-regulatory or statutory nature, which are accessible to the public and which set minimum professional standards for, among other things, accuracy in news and current affairs reporting, respect for diversity and avoiding coverage that promotes intolerance.

ii. Have clear policies in place for how they report on statements made or policies adopted by politicians and political parties which are likely to exacerbate intolerance, so that their reporting informs the public about those statements and policies but does not itself promote or exacerbate intolerance.

iii. Disclose any conflicts of interest they have which might affect the way they report on an issue.