

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 and the OAS Special Rapporteur on Freedom of Expression

Having discussed these issues in London and virtually 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 and 18 December 2003;

Noting the growing recognition of the key right to access information held by public authorities (sometimes referred to as freedom of information), including in authoritative international statements and declarations;

Applauding the fact that a large number of countries, in all regions of the world, have adopted laws recognising a right to access information and that the number of such countries is growing steadily;

Recognising the fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and business efficiency;

Condemning attempts by some governments to limit access to information either by refusing to adopt access to information laws or by adopting laws which fail to conform to international standards in this area;

Stressing the need for informational ‘safety valves’ such as protection of whistleblowers and protection for the media and other actors who disclose information in the public interest;

Welcoming the commitment of the African Commission on Human and Peoples’ Rights to adopt a regional mechanism to promote the right to freedom of expression and noting the need for specialised mechanisms to promote freedom of expression in every region of the world;

Adopt, on 6 December 2004, the following Declaration:

On Access to Information

- The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.
 - Public authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest. Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure.
 - Access to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost.
 - The right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy. Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall
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public interest in having access to the information. The burden should be on the public authority seeking to deny access to show that the information falls within the scope of the system of exceptions.

- Public authorities should be required to meet minimum record management standards. Systems should be put in place to promote higher standards over time.
- The access to information law should, to the extent of any inconsistency, prevail over other legislation.
- Those requesting information should have the possibility to appeal any refusals to disclose to an independent body with full powers to investigate and resolve such complaints.
- National authorities should take active steps to address the culture of secrecy that still prevails in many countries within the public sector. This should include provision for sanctions for those who wilfully obstruct access to information. Steps should also be taken to promote broad public awareness of the access to information law.
- Steps should be taken, including through the allocation of necessary resources and attention, to ensure effective implementation of access to information legislation.

On Secrecy Legislation

- Urgent steps should be taken to review and, as necessary, repeal or amend, legislation restricting access to information to bring it into line with international standards in this area, including as reflected in this Joint Declaration.
- Public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately secret information under their control. Other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information. Criminal law provisions that don't restrict liability for the dissemination of State secrets to those who are officially entitled to handle those secrets should be repealed or amended.
- Certain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label "secret" for purposes of preventing disclosure of information which is in the public interest. Secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate.
- "Whistleblowers" are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy. "Whistleblowers" releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in "good faith".

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