

'Everyone has the right to freedom of opinion and expression, and to seek, receive and impart information through any media and regardless of frontiers.'

Universal Declaration of Human Rights, article 19

INTRODUCTION TO POLICY – FREEDOM OF EXPRESSION

The Edinburgh Symposium hosted by the European Cultural Parliament (ECP) in partnership with the International Federation of Arts Councils and Culture Agencies (IFACCA) takes place at Creative Scotland between the 24th and the 26th of September 2013. One of the key themes will be Freedom of Expression. We thought it might be useful for participants to assemble a summary of the key international policies around this issue.

This year, the **UN Special Rapporteur in the field of cultural rights**, Ms Farida Shaheed, submitted her report in accordance with Human Rights Council resolution 19/6. In this report, the Special Rapporteur 'addresses the multi-faceted ways in which the right to the freedom indispensable for artistic expression and creativity may be curtailed'. She reflects upon the growing worldwide concern that artistic voices have been or are being silenced by various means and in different ways. This report addresses laws and regulations restricting artistic freedoms as well as economic and financial issues significantly impacting on such freedoms. The underlying motivations are most often political, religious, cultural or moral, or lie in economic interests, or are a combination of those.

The Special Rapporteur encourages States to critically review their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration their obligations to respect, protect and fulfil this right. The Special Rapporteur notes that more discussion is urgently needed in several areas that she has considered.'

The theme of this ECP/IFACCA symposium is therefore highly timely and appropriate.

The information below is not presented in any order of priority nor is it by any means definitive but we hope it will be of interest and useful to participants for their forthcoming discussion and debate.

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INTRODUCTION TO POLICY – FREEDOM OF EXPRESSION

BACKGROUND

Human Rights

The modern idea of human rights evolved in the wake of the Second World War. Up until that time, the way in which a state treated its inhabitants had been viewed as an internal matter. It was not considered to be a legitimate concern for the outside world.

Outrage at the atrocities committed by the Nazis against their own population and foreign nations was one of the reasons that led to calls for international standards to be agreed:

- To protect the ‘inherent dignity and the equal and inalienable rights of all members of the human family’
- To restrict the ways in which states dealt with their citizens.

The United Nations and Human Rights

When the Allies met in San Francisco in 1945 to agree a charter for the United Nations (UN), human rights concerns were high on their agenda. A proposal to include a comprehensive international bill of rights in the UN Charter was rejected as too ambitious. However, the final document refers to human rights five times and Article 68 orders the UN Economic and Social Council (ECOSOC) to set up a commission “for the promotion of human rights”.

Soon after its establishment, the UN Commission on Human Rights (UNCHR) began to create a set of human rights standards which would reflect, as far as possible, the shared values of all the world’s nations and cultures. The people drafting the document faced one major problem: the legal nature of the document itself.

- Some countries favoured a legally binding treaty, to be ratified by all the UN’s members
- Others preferred a morally persuasive declaration without the force of law.

In the end, pragmatism prevailed: it was decided to do both, starting with the morally persuasive declaration. The initial result was the Universal Declaration on Human Rights (UDHR).

The International Bill of Human Rights

The UN General Assembly adopted the UDHR without a single opposing vote in 1948. Two treaties were subsequently drawn up, based on the UDHR, and adopted in 1966:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR).

By 1 October 2010, these treaties had been ratified by 116 and 110 states respectively. Collectively, the UDHR, ICCPR and ICESCR are often called the 'International Bill of Human Rights'.

The values enshrined in the International Bill of Human Rights are not new: its purpose was, after all, to create an agreed standard of conduct for governments which would reflect the common values of all the world's nations and cultures. The importance of the Bill lies in its legal nature. It sets out, in concrete terms, a state's obligations to every person within its jurisdiction. It also establishes the principle that any violation of these obligations is not an internal affair but the legitimate concern of the international community.

The UDHR remains the flagship statement of international human rights. It has not only inspired the ICCPR and ICESCR, but also:

- Numerous other international and regional human rights treaties
- Parts of many domestic constitutions.

Freedom of expression

The Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of expression, both in Article 19. Freedom of expression is not only important in its own right but is also essential if other human rights are to be achieved.

For individuals: At an individual level, freedom of expression is key to the development, dignity and fulfillment of every person.

- People can gain an understanding of their surroundings and the wider world by exchanging ideas and information freely with others. This makes them more able to plan their lives and to work
- People feel more secure and respected by the state if they are able to speak their minds.

For States: At a national level, freedom of expression is necessary for good government and therefore for economic and social progress.

Freedom of expression and freedom of information contribute to the quality of government in various ways:

1. They help ensure that competent and honest people administer the state. In a democracy, free debate about and between political parties exposes their strengths and weaknesses. This enables voters to form an opinion about who is best qualified to run the country and to vote accordingly. Media scrutiny of the government and the opposition helps expose corruption or other improprieties and prevents a culture of dishonesty
2. They promote good governance by enabling citizens to raise their concerns with the authorities. If people can speak their minds without fear, and the media are allowed to report what is being said, the government can become aware of any concerns and address them.
3. They ensure that new policies and legislation are carefully considered. Through public debate, members of the public with helpful opinions on a subject can present the government with a 'marketplace of ideas' from which to choose. Free debate about new legislation also helps ensure that the eventual law has the support of the population, making it more likely to be respected.
4. They promote the implementation of other human rights. They help improve government policy in all areas, including human rights. They also enable journalists and activists to highlight human rights issues and abuses and persuade the government to take action.

International guarantee

The right to freedom of expression is guaranteed by a number of global and regional human rights treaties, as well as under customary international law. However, this diversity of sources does not reflect a diversity of ideas about what the right means: freedom of expression is a universal right, so its meaning is largely the same in every treaty. Any differences relate mostly to how it is enforced.

The Universal Declaration of Human Rights (UDHR) contains, in Article 19, the first and most widely recognised statement of the right to freedom of expression:

“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.

The UDHR is not a binding treaty but a 'recommendatory' resolution adopted by the UN General Assembly. Through time and universal acceptance, however, much of the UDHR has risen to the level of customary international law, including Article 19, and is therefore binding on all states.

The International Covenant on Civil and Political Rights (ICCPR)

This Covenant was meant to elaborate the UDHR and contains a more detailed but very similar statement about freedom of expression (again in Article 19):

1. Everyone shall have the right to hold opinions without interference.
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.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Key aspects

As its formulation in Articles 19 of the UDHR and ICCPR shows, the right to freedom of expression is very broad in scope. It could be said to have six main aspects.

1. The right to freedom of expression belongs to everyone. No distinctions are permitted on the basis of someone's:
 - level of education
 - race
 - colour
 - sex
 - language
 - religion
 - political or other opinion
 - national or social origin
 - property
 - birth or any other status.

2. ...To seek, receive and impart: The right to impart information and ideas is the most obvious aspect of freedom of expression. It is the right to tell others what one thinks or knows in private or via the media. But freedom of expression serves a larger purpose. It enables every person to access as wide a range of information and viewpoints as possible. Known as the right to information, this includes:

- reading newspapers
- listening to public debates
- watching the television
- surfing the internet
- accessing information held by public authorities.

The right to information has emerged as a new right, distinct but inseparable from the right to freedom of expression.

3. ...Information and Ideas: The right to freedom of expression does not just apply to information and ideas generally considered to be useful or correct. It also applies to any kind of fact or opinion that can be communicated. The UN Human Rights Committee (UNHRCm) has stressed that 'expression' is broad and not confined to political, cultural or artistic expression. It also includes controversial, false or even shocking expression. The mere fact that an idea is disliked or thought to be incorrect does not justify its censorship.

4. Regardless of frontiers: The right to freedom of expression is not limited by national boundaries. States must allow their citizens to seek, receive and impart information to and from other countries.

5. Through any media: The right to freedom of expression includes the use of any media, modern or traditional.

6. To respect and to ensure: The right to freedom of expression means that states must 'respect' free expression and not interfere with it. The right also places a positive obligation on states to actively ensure that obstacles to free expression are removed. Examples of ensuring free expression include:

- ensuring that minorities can be heard
- preventing the monopoly of the media by the state or private companies.

Scope

The right to freedom of expression is one of many rights included in the Universal Declaration of Human Rights (UDHR) and is therefore described very succinctly. To understand its scope, we therefore have to look to:

- the decisions of international and domestic courts
- recommendations and statements by international bodies
- the opinions of experts.

Some of these decisions, recommendations and opinions are fully or wholly binding in international law. The most important sources are:

- The United Nations Human Rights Committee (UNHRCm), which oversees compliance with the ICCPR. It has elaborated on the meaning of the right to freedom of expression
- The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, whose annual reports and missions identify new trends and clarify the scope and meaning of the right
- The United Nations Educational, Scientific and Cultural Organisation (UNESCO), whose mandate includes the promotion of 'mutual knowledge and understanding of peoples'. It has adopted treaties and declarations covering free expression
- The Organization for Security and Co-operation in Europe (OSCE), which oversees several international agreements covering free expression. It has its own Representative on Freedom of the Media
- Regional bodies, such as the European Court of Human Rights (ECtHR), Council of Europe, African Commission on Human and People's Rights (ACHPR), Inter-American Court of Human Rights (IACtHR), and Inter-American Commission of Human Rights (IACmHR), which have made decisions covering free expression. The ACHPR has also created a Special Rapporteur on Freedom of Expression in Africa
- The special mandates, including those of the UN, OSCE and OAS. Supported by ARTICLE 19, they have issued annual joint declarations since 1999 on current trends and issues in free expression

Various International Non-Governmental Organisations (INGOs) have also produced authoritative standards on freedom of expression issues. For example, standards relating to Freedom of Information, Public Service Broadcasting, Principles on Freedom of Expression and Equality and Principles on national security and access to information.

Limitations

Most expression is completely harmless and protected under the right to freedom of expression from interference by the state.

However, 'seeking, receiving and imparting information or ideas' includes expression which few societies could tolerate, such as incitement to murder or the sale of pornography to children. As a result, freedom of expression is not absolute and can be limited when it conflicts with other rights.

International law declares freedom of expression to be the rule. Limitations are the exception, permitted only to protect:

- the rights or reputations of others
- national security
- public order
- public health
- morals.

Limitation is legitimate if it falls within the very narrow conditions defined in the three-part test in Article 19(3) of the ICCPR:

1. **Provided by Law:** The right to freedom of expression cannot be limited at the whim of a public official. They must be applying a law or regulation that is formally recognised by those entrusted with law making.

The law or regulation must meet standards of clarity and precision so that people can foresee the consequences of their actions. Vaguely worded edicts, whose scope is unclear, will not meet this standard and are therefore not legitimate. For example, vague prohibitions on 'sowing discord in society' or 'painting a false image of the State' would fail the test.

The rationale

- It is only fair that people have a reasonable opportunity to know what is prohibited, so that they can act accordingly.
- A situation where officials can make rules on a whim is undemocratic. Decisions limiting human rights must be made by bodies representing the will of people.
- Vague laws will be abused. They often give officials discretionary powers that leave too much room for arbitrary decision-making.

- Vague laws have a ‘chilling effect’ and inhibit discussion on matters of public concern. They create a situation of uncertainty about what is permitted, resulting in people steering far clear of any controversial topic for fear that it may be illegal, even if it is not.

2.Legitimate aim: There must be a legitimate aim to limit the right to freedom of expression. The list of legitimate aims is not open-ended. They are provided for in Article 19(3) of the ICCPR: ‘...respect for the rights and reputations of others, and protection of national security, public order (ordre public), public health or morals’. They are exclusive and cannot be added to.

The rationale

- Not all the motives underlying governments’ decisions to limit freedom of expression are compatible with democratic government. For example, a desire to shield a government from criticism can never justify limitations on free speech
- The aim must be legitimate in purpose and effect. It is not enough for a provision to have an incidental effect on one of the legitimate aims. If the provision was created for another reason, it will not pass this part of the test.

3. Necessity: Any limitation of the right to freedom of expression must be truly necessary. Even if a limitation is in accordance with a clear law and serves a legitimate aim, it will only pass the test if it is truly necessary for the protection of that legitimate aim. If a limitation is not needed, why impose it?

In the great majority of cases where international courts have ruled national laws to be impermissible limitations on the right to freedom of expression, it was because they were not deemed to be ‘necessary’.

The rationale

- A government must be acting in response to a pressing social need, not merely out of convenience. On a scale between ‘useful’ and ‘indispensable’, ‘necessary’ should be close to ‘indispensable’
- A government should always use a less intrusive measure if it exists and would accomplish the same objective. For example, shutting down a newspaper for defamation is excessive; a retraction (or perhaps a combination of a retraction and a warning or a modest fine) would offer the victim of defamation adequate protection
- The measure must impair free expression as little as possible. It should not restrict in a broad or untargeted way, as that could interfere with legitimate expression. For example, it is too broad to ban all discussion about a country’s armed forces in order to protect national security
- The impact of the measure must be proportionate and the harm that it causes to free expression must not outweigh its benefits. For example, a limitation that provides only

partial protection to someone's reputation but seriously undermines free expression is disproportionate

- A court must take into account all of the circumstances at that time before deciding to limit freedom of expression. For example, it could be legitimate to limit freedom of expression for national security reasons during a conflict but not during peacetime
- The European Convention on Human Rights (ECHR) narrows the third test by requiring limitations to be 'necessary in a democratic society'. This wording is preferable as it clarifies that the purpose of the limitation must never be to shield governments from either criticism or peaceful opposition.

International courts have generally judged that any action by a public body that has an actual effect on people's freedom of expression constitutes a 'restriction' or 'limitation'.

- The nature of the action is irrelevant. It could be anything from a law to an internal disciplinary measure
- The nature of the public body is irrelevant. It could be legislative, executive or judicial, or a publicly owned enterprise
- The extent of the action's impact is irrelevant. Any discernible effect on the ability of one or more people to express themselves freely is a restriction.

The ECHR again narrows the definition of a limitation, requiring the three-part test to apply to any "formalities, conditions, restrictions or penalties" under Article 10(2).

Enforcement

A legal saying is that for every right, there is a remedy. The right to freedom of expression can be enforced in the following ways:

1. Municipal and National Courts: States that have ratified the International Covenant on Civil and Political Rights (ICCPR) have agreed to ensure that people whose rights have been violated have an effective remedy, that is, some sort of mechanism that they can use to enforce their right to freedom of expression. The ICCPR does not specify how this mechanism should work because all states have different legal systems. A state may create laws and institutions in any way it sees fit, provided that human rights are protected.
2. The International Level: Prior to World War II, international law focused on the relationship between states and left national courts to resolve disputes between a state and an individual. The main reason for this was the concept of state sovereignty. This changed with World War II and the realisation that some issues were so grave that there was a universal need to address them.

A number of international bodies have been created to monitor human rights issues, including violations of the right to freedom of expression. Some will also receive applications if domestic remedies have been exhausted (or do not exist).

Some of these bodies are not formally binding (that is, they cannot force a state to take a particular action) but they do have significance. States are keen to avoid being criticized or condemned for violating human rights. A decision by an international body is authoritative, unequivocal and embarrassing, making it difficult for a state to deny or ignore an issue. A decision also strengthens the campaigns and influence of those working to address the issue.

The UN Human Rights Council (UNHRC) was created by the United Nations General Assembly (UNGA). It has 47 members, each of which has gained a majority vote within their region. The UNHRC works closely with the Office of the High Commissioner for Human Rights (OHCHR) and meets in sessions three times per year to address specific issues. Within the UNHRC is:

- an Advisory Committee, which provides policy expertise
- a Complaint Procedure, which allows individuals and organisations to bring violations of human rights needing attention
- the Universal Periodic Review, a mechanism for reviewing all member states
- a number of special procedures, is the general name given to the mechanisms established by the UN Human Rights Council and other inter-governmental organisations to address either specific country situations or thematic issues in all parts of the world.">Special Rapporteurs, such as the Special Rapporteur on freedom of opinion and expression.

The 'Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' was created in 1993. The Rapporteur's job is to:

- visit countries
- investigate individual cases and
- raise cases with governments
- attend conferences
- issue press releases and urgent appeals
- publish reports on different countries
- publish an annual thematic report to clarify elements of the right to freedom of expression.

The UN Human Rights Committee: The UNHRCm was established by the ICCPR. The UNHRCm is made up of 18 independent experts, who monitor signatory states' compliance with the ICCPR by examining State Reports and petitions from individuals.

State Reports

- States submit these every five years in accordance with Article 40 of the ICCPR.
- The UNHRCm reviews the reports, meets with delegations, and provides positive and negative feedback known as 'Observations'.
- NGOs can assist states in preparing their State Reports and can submit shadow reports, outlining additional issues.
- Shadow reports are vital in helping the UNHRCm to form a balanced opinion, as the UNHRCm has no opportunity to conduct investigations on the ground or verify states' claims.

There are international bodies at the regional level, including the:

- Inter-American Commission on Human Rights (IACmHR) and Inter-American Court of Human Rights (IACtHR) overseeing the American Convention on Human Rights (ACHR)
- African Commission on Human and People's Rights (ACHPR) and African Court on Human and Peoples' Rights (ACtHPR) overseeing the African Charter on Human and People's Rights (AChHPR)
- European Court on Human Rights (EcmHR) overseeing the European Convention on Human Rights (ECHR).

The IACmHR created a Special Rapporteur for Freedom of Expression in 1997. The Organization for Security and Co-operation in Europe (OSCE) also established a Representative on Freedom of the Media in 1997.

MORE DETAIL:

United Nations: Universal Declaration of Human Rights

This preamble and Articles 1-18 are provided for contextual purposes:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings

shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

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.

Freedom of expression is a principle contained in various human rights documents. Its objective is to ensure that people are able to communicate and express opinions, in public, private, either written or spoken, without the interference of the state or others. It is not an absolute right; therefore it generally only has applicability where the purpose of expression is lawful, and where the act of expression does not infringe the human rights of others (for example, a racist hate speech may not use the right of freedom of expression to permit its communication). Freedom of expression is one of the main themes within the emerging field of internet rights. According to the APC Internet Rights Charter, freedom of expression should be protected from infringement by government and non-state actors. The internet is a medium for both public and private exchange of views and information across a variety of frontiers. Individuals must be able to express opinions and ideas, and share information freely when using the internet.

European Policy

European Court of Human Rights - Freedom of Expression

Positive international, national and local relationships should be based on open and free dialogue between participants. Europe has a time honoured commitment to enshrining the concept of freedom of expression. The European Court of Human Rights defends the idea that freedom of expression 'has an essential role to play in a democratic society, helping to foster the development of an open, tolerant society in which human rights are respected.' However, freedom of expression is a contested field, not least in the arts. Freedom of expression is not unconditional; the very openness and ability to express oneself freely can be in tension with the need to respect the rights of others.

The European Convention on Human Rights: Article 10 of this convention provides the right to freedom of expression, subject to certain restrictions that are 'in accordance with law' and 'necessary in a democratic society'. This right includes the freedom to hold opinions, and to receive and impart information and ideas.

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(SOME) OTHERS.....

Amnesty International

WHY IS FREEDOM OF EXPRESSION SO IMPORTANT TO US?

Fifty years ago, two students in Portugal were jailed for simply raising a glass and toasting freedom. The reaction sparked the launch of what was to become Amnesty International. Since 1961, the right to freedom of expression has been central to our values. But fifty years on, free speech remains a luxury - not a right - for many people all around the world, in various ways. We strongly believe that as long as it's not undermining someone else's rights, **everyone should be able to say what they want, without fear of persecution.**

INTERNET CENSORSHIP

In some countries, such as Saudi Arabia, censorship is so strict that you would not even be allowed to look at these pages.

FREE SPEECH ISSUES IN THE NEWS

- [Zimbabwe: detained media monitoring activists are 'prisoners of conscience'](#) Three detained activists were arrested solely for their legitimate work advocating for media reforms and freedom of expression in Zimbabwe. (Dec 2011)
- [Syria: arrest of blogger Razan Ghazzawi condemned](#) The arrest of a prominent Syrian-American blogger apparently for her peaceful pro-reform activities. (Dec 2011)

Equalities and Human Rights Commission (UK)

Freedom of expression

You have the right to hold your own opinions and to express them freely without government interference.

This includes the right to express your views aloud or through:

- published articles, books or leaflets
- television or radio broadcasting
- works of art
- communication on the internet.

Example

The right to freedom of expression is particularly important for journalists and other people working in the media. They must be free to criticise the state without fear of prosecution – this is an important feature of a democratic society. However, the media does have to bear in mind other human rights, such as a person's [right to respect for their private life](#).

The law also protects your freedom to receive information from other people by, for example, being part of an audience or reading a magazine.

Restrictions

Although you have the freedom to express your views and beliefs, you have a duty to behave responsibly and to respect other people's rights.

Public authorities may restrict your right to freedom of expression if they can show that their action has a proper basis in law, and is necessary and 'proportionate' in order to:

- protect national security, territorial integrity or public safety
- prevent disorder or crime
- protect health or morals
- protect the rights and reputations of other people
- prevent the disclosure of information received in confidence
- maintain the authority and impartiality of the judiciary.

It may be permissible to restrict your freedom of expression if, for example, you express views that encourage racial or religious hatred.

However, the relevant public authority must show that the restriction is 'proportionate', in other words the restriction must be no more than is necessary, appropriate and not excessive in the circumstances.

What UK law says

Article 10: Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Example case

Observer and The Guardian v United Kingdom (1991)

The Guardian and *The Observer* newspapers published some excerpts from Peter Wright's book *Spycatcher*, which contained material alleging that MI5 had conducted unlawful activities. The government succeeded in obtaining an injunction preventing further publication until proceedings relating to a breach of confidence had been concluded. Subsequently the book was published in other countries and then in the UK. *The Guardian* complained that the continuation of the injunction infringed the right to freedom of expression in Article 10.

The European Court of Human Rights held that although the injunction was lawful, as it was in the interests of national security, once the book had been published, there was insufficient reason for continuing the publication ban. The injunction should have been discharged once the information was no longer confidential.

(Case summary taken from *Human rights, human lives*, Department for Constitutional Affairs, 2006.)

The United Nations General Assembly

At their 23rd session the Human Rights Council considered, " the Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to freedom of artistic expression and creativity*

The Report of the Special Rapporteur in the field of cultural rights (Farida Shaheed) is available to download from this link:

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/34

The Special Rapporteur will make a presentation of this report in Brussels on October 2nd 2013. Copies of the Report will be available at our meeting. Our follow up report will include notes from the October presentation.

UNESCO / Universal Declaration on Cultural Diversity (2002)

Another document very relevant to the debate on Freedom of Expression is the Universal Declaration on Cultural Diversity. The key content is as follows:

IDENTITY, DIVERSITY AND PLURALISM

Article 1 – Cultural diversity: the common heritage of humanity

Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.

Article 2 – From cultural diversity to cultural pluralism

In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace. Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. Indissociable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life.

Article 3 – Cultural diversity as a factor in development

Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.

CULTURAL DIVERSITY AND HUMAN RIGHTS

Article 4 – Human rights as guarantees of cultural diversity

The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

Article 5 – Cultural rights as an enabling environment for cultural diversity

Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

Article 6 – Towards access for all to cultural diversity

While ensuring the free flow of ideas by word and image care should be exercised that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.

CULTURAL DIVERSITY AND CREATIVITY

Article 7 – Cultural heritage as the wellspring of creativity

Creation draws on the roots of cultural tradition, but flourishes in contact with other cultures. For this reason, heritage in all its forms must be preserved, enhanced and handed on to future generations as a record of human experience and aspirations, so as to foster creativity in all its diversity and to inspire genuine dialogue among cultures.

Article 8 – Cultural goods and services: commodities of a unique kind

In the face of present-day economic and technological change, opening up vast prospects for creation and innovation, particular attention must be paid to the diversity of the supply of creative work, to due recognition of the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods.

Article 9 – Cultural policies as catalysts of creativity

While ensuring the free circulation of ideas and works, cultural policies must create conditions conducive to the production and dissemination of diversified cultural goods and services through cultural industries that have the means to assert themselves at the local and global level. It is for each State, with due regard to its international obligations, to define its cultural policy and to implement it through the means it considers fit, whether by operational support or appropriate regulations.

CULTURAL DIVERSITY AND INTERNATIONAL SOLIDARITY

Article 10 – Strengthening capacities for creation and dissemination worldwide

In the face of current imbalances in flows and exchanges of cultural goods and services at the global level, it is necessary to reinforce international cooperation and solidarity aimed at enabling all countries, especially developing countries and countries in transition, to establish cultural industries that are viable and competitive at national and international level.

Article 11 – Building partnerships between the public sector, the private sector and civil society

Market forces alone cannot guarantee the preservation and promotion of cultural diversity, which is the key to sustainable human development. From this perspective, the pre-eminence of public policy, in partnership with the private sector and civil society, must be reaffirmed.

Article 12 – The role of UNESCO

UNESCO, by virtue of its mandate and functions, has the responsibility to:

- (a) Promote the incorporation of the principles set out in the present Declaration into the development strategies drawn up within the various intergovernmental bodies;
- (b) Serve as a reference point and a forum where States, international governmental and non-governmental organizations, civil society and the private sector may join together in elaborating concepts, objectives and policies in favour of cultural diversity;
- (c) Pursue its activities in standard-setting, awareness-raising and capacity-building in the areas related to the present Declaration within its fields of competence;
- (d) Facilitate the implementation of the Action Plan, the main lines of which are appended to the present Declaration.

MAIN LINES OF AN ACTION PLAN FOR THE IMPLEMENTATION OF THE UNESCO UNIVERSAL DECLARATION ON CULTURAL DIVERSITY

The Member States commit themselves to taking appropriate steps to disseminate widely the "UNESCO Universal Declaration on Cultural Diversity", in particular by cooperating with a view to achieving the following objectives:

1. Deepening the international debate on questions relating to cultural diversity, particularly in respect of its links with development and its impact on policy-making, at both national and international level; taking forward notably consideration of the opportunity of an international legal instrument on cultural diversity.

2. Advancing in the definition of principles, standards and practices, on both the national and the international levels, as well as of awareness-raising modalities and patterns of cooperation, that are most conducive to the safeguarding and promotion of cultural diversity.
3. Fostering the exchange of knowledge and best practices in regard to cultural pluralism with a view to facilitating, in diversified societies, the inclusion and participation of persons and groups from varied cultural backgrounds.
4. Making further headway in understanding and clarifying the content of cultural rights as an integral part of human rights.
5. Safeguarding the linguistic heritage of humanity and giving support to expression, creation and dissemination in the greatest possible number of languages.
6. Encouraging linguistic diversity – while respecting the mother tongue – at all levels of education, wherever possible, and fostering the learning of several languages from the youngest age.
7. Promoting through education an awareness of the positive value of cultural diversity and improving to this end both curriculum design and teacher education.
8. Incorporating, where appropriate, traditional pedagogies into the education process with a view to preserving and making full use of culturally appropriate methods of communication and transmission of knowledge.
9. Encouraging "digital literacy" and ensuring greater mastery of the new information and communication technologies, which should be seen both as educational discipline and as pedagogical tools capable of enhancing the effectiveness of educational services.
10. Promoting linguistic diversity in cyberspace and encouraging universal access through the global network to all information in the public domain.
11. Countering the digital divide, in close cooperation in relevant United Nations system organizations, by fostering access by the developing countries to the new technologies, by helping them to master information technologies and by facilitating the digital dissemination of endogenous cultural products and access by those countries to the educational, cultural and scientific digital resources available worldwide.
12. Encouraging the production, safeguarding and dissemination of diversified contents in the media and global information networks and, to that end, promoting the role of public radio and television services in the development of audiovisual productions of good quality, in particular by fostering the establishment of cooperative mechanisms to facilitate their distribution.
13. Formulating policies and strategies for the preservation and enhancement of the cultural and natural heritage, notably the oral and intangible cultural heritage, and combating illicit traffic in cultural goods and services.

14. Respecting and protecting traditional knowledge, in particular that of indigenous peoples; recognizing the contribution of traditional knowledge, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.

15. Fostering the mobility of creators, artists, researchers, scientists and intellectuals and the development of international research programmes and partnerships, while striving to preserve and enhance the creative capacity of developing countries and countries in transition.

16. Ensuring protection of copyright and related rights in the interest of the development of contemporary creativity and fair remuneration for creative work, while at the same time upholding a public right of access to culture, in accordance with Article 27 of the Universal Declaration of Human Rights.

17. Assisting in the emergence or consolidation of cultural industries in the developing countries and countries in transition and, to this end, cooperating in the development of the necessary infrastructures and skills, fostering the emergence of viable local markets, and facilitating access for the cultural products of those countries to the global market and international distribution networks.

18. Developing cultural policies, including operational support arrangements and/or appropriate regulatory frameworks, designed to promote the principles enshrined in this Declaration, in accordance with the international obligations incumbent upon each State.

19. Involving civil society closely in framing of public policies aimed at safeguarding and promoting cultural diversity.

20. Recognizing and encouraging the contribution that the private sector can make to enhancing cultural diversity and facilitating to that end the establishment of forums for dialogue between the public sector and the private sector.

The declaration was followed by an implementation plan.

A download of the full declaration and the implementation plan is available at:
<http://unesdoc.unesco.org/images/0012/001271/127160m.pdf>

A few copies of this declaration will be available at our meeting.

Human Rights Education Associates

Human Rights Education Associates (HREA) is an international non-governmental organisation that supports human rights learning; the training of activists and professionals; the development of educational materials and programming; and community-building through on-line technologies. HREA is dedicated to quality education and training to promote understanding, attitudes and actions to protect human rights, and to foster the development

of peaceable, free and just communities.

HREA works with individuals, non-governmental organisations, inter-governmental organisations and governments interested in implementing human rights education programmes. The services provided by HREA are:

assistance in curriculum and materials development;

training of professional groups;

research and evaluation;

clearinghouse of education and training materials;

networking human rights defenders and educators.

Freedom of expression is a cornerstone of democratic rights and freedoms. In its very first session in 1946, before any human rights declarations or treaties had been adopted, the UN General Assembly adopted resolution 59(I) stating "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."

Freedom of expression is essential in enabling democracy to work and public participation in decision-making. Citizens cannot exercise their right to vote effectively or take part in public decision-making if they do not have free access to information and ideas and are not able to express their views freely. Freedom of expression is thus not only important for individual dignity but also to participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violations, in particular the right to freedom of association and assembly.

Progress has been made in recent years in terms of securing respect for the right to freedom of expression. Efforts have been made to implement this right through specially constructed regional mechanisms. New opportunities are emerging for greater freedom of expression with the internet and worldwide satellite broadcasting. New threats are emerging too, for example with global media monopolies and pressures on independent media outlets.

WHAT (SOME) PEOPLE HAVE SAID.....

Freedom of Expression Quotes:

These are a selection of quotes by individuals – no quality threshold has been applied.

“If we don't believe in freedom of expression for people we despise, we don't believe in it at all.” Noam Chomsky.

“You can't pick and choose which types of freedom you want to defend. You must defend all of it or be against all of it.” Scott Howard-Phillips.

“A nation of underachievers is easier to control than a society that excels.” Ryan Hunter.

“How many times in life have I been advised to "toe the line," to "tone it down," to stop "pushing the envelope"”? As a journalist, I had to keep my opinions to myself for 30 years. I thought that, as an artist, I'd have the liberty to express my views. Now I'm told that doing so might hurt my readership. Sherry Jones.

“Look, I don't see why bad artists - I mean artists who are obviously incompetent... - why they should be presented hypocritically as good artists just because they're supposed to be advancing the frontiers of freedom of expression or... ..demonstrating that there should be no limit on subject matter.” Anthony Burgess.

“Artists shouldn't wait until they are told what their art should be, they shouldn't follow trends or allow other people to influence their work, an artist should only create from the strongest emotions within their heart.” Andrew James Pritchard.

“Man must be able to think freely and he must be able to express his thoughts freely! He who is against this is not only fascist and primitive but at the same time is a very great coward also! Only the brave and the honourable men are never afraid of freedom of thought and freedom of expression of ideas! Just like the cockroaches do not like the light, evil minds also do not like the freedom of thoughts!” Mehmet Muran ildan

“Artists, by their free expressions, encourage others to be free. This is the quality that makes works of art enduring.” Marty Rubin.

“It is clear that thought is not free if the profession of certain opinions makes it impossible to earn a living. It is clear also that thought is not free if all the arguments on one side of a controversy are perpetually presented as attractively as possible, while the arguments on the other side can only be discovered by diligent search.” Bertrand Russell.

“Free men can easily become enslaved, if they let others do their thinking and talking, instead of using their own heads.” Richard Puz.

(SOME) USEFUL WEBSITES:

www.un.org/en/documents/udhr

For the Universal Declaration of Human Rights

www.echr.coe.int/documents/

For the European Convention on Human Rights and its 5 protocols

www.indexoncensorship.org

Covers news and issues related to freedom of expression throughout the world.

www.Article19

Article 19 is an organisation defending freedom of expression and freedom of information. It publishes a Freedom of Expression Handbook

www.apc.org

Association for Progressive Communications

www.secularists.org

National Secular Society – expresses its views on Freedom of Expression

www.hrea.org

Human Rights Education Association

www.freedomhouse.org

Information on Freedom of the Press

www.humanism.org.uk

British Humanist Association – expresses its views on Freedom of Expression

www.cpi.org/reports/2006/05

10 most censored countries

[www.academia.edu/1657047/Privacy_and_freedom....](http://www.academia.edu/1657047/Privacy_and_freedom...)

Privacy and Freedom of Speech: Balancing two rights by James Ressel

www.shareyouressays.com/3098

Freedom of Expression Short Essay by Barnali Mondal