2004 Joint Declaration by the Three Special Mandates for Protecting Freedom of Expression

IRIS 2005-2:1/1

Toby Mendel
Centre for Law and Democracy

On 6 December 2004, the three special mandates for protecting freedom of expression 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 adopted a Joint Declaration which focuses on two issues, access to publicly held information and secrecy legislation. The three special mandates have adopted a Joint Declaration with the assistance of ARTICLE 19, Global Campaign for Free Expression, every year since 1999. Each year, the Joint Declaration focuses on different thematic issues, such as defamation, broadcast regulation, attacks on journalists and the like. The 2004 Joint Declaration includes a number of important standard-setting norms regarding access to information. It states unequivocally that, "access to information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation [...] based on the principle of maximum disclosure". Exceptions to this right should be narrowly and carefully tailored, and apply only in the context of a risk of substantial harm to a protected interest, which outweighs the public interest in disclosure. The Joint Declaration also recommends that a number of steps be taken to promote effective respect for this right. Procedures for requesting information that are "simple, rapid and free or low-cost" should be put in place. Public authorities should pro-actively publish information of significant public interest. Record management systems should be put in place to ensure that requested information can be located easily. An appeal to an independent body should lie from any refusal to disclose information. Importantly, active steps should be taken to address the culture of secrecy that frequently prevails within the public sector. The Joint Declaration also sets out a number of standards relating to secrecy legislation. Perhaps the most important of these is that public authorities and their staff, "bear sole responsibility for protecting the confidentiality of legitimately secret information under their control." In other words, journalists are free to publish even secret information which has been leaked to them. The Joint Declaration also calls for clear criteria and procedures for classifying information, to prevent abuse of classification to prevent the disclosure of information. Secrecy laws should be reviewed urgently, to bring them into line with international standards in this area. Finally, whistleblowers individuals disclosing information on wrongdoing or serious threats to public well-being should be protected against sanction as long as they acted in good faith. The Joint Declarations, while clearly not formally

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legally binding documents, carry significant weight as standard-setting documents for the elaboration of international standards. They are relied upon extensively by NGOs, lawyers and others trying to promote respect for freedom of expression and information. The 2004 Joint Declaration makes an important contribution to understanding emerging international standards relating to access to information and secrecy.

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, 6 December 2004

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