2006 Joint Declaration by the Four Special Mandates for Protecting Freedom of Expression

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On 19 December 2006, a new Joint Declaration was adopted by the four 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, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression. This year's Joint Declaration focuses on four key issues: publishing confidential information; openness of national and international public bodies; freedom of expression and cultural/religious tensions; and impunity in cases of attacks on journalists.

The three special mandates at the UN, OSCE and OAS have adopted a Joint Declaration with the assistance of ARTICLE 19, Global Campaign for Free Expression, every year since 1999 (see IRIS 2006-3: 3, IRIS 2005-2: 2 and IRIS 2004-2: 6). This year they were joined for the first time by the new Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights. Each year, the Joint Declaration focuses on different thematic issues. In the past it has addressed such issues as defamation, broadcast regulation, the access to publicly held information, secrecy laws, and the Internet and anti-terrorism measures.

The substantive part of the 2006 Joint Declaration starts by reiterating a point that the special mandates have made before, namely that journalists should not be held liable for publishing information, even of a confidential or classified nature, which has been leaked to them. Although this is not always respected in practice, it is up to public authorities, not journalists, to protect any legitimately confidential information that they may hold. Indeed, the leaking of confidential information to journalists can serve as an important information safety valve, making sure that information of public interest is generally available. This is consistent with the recent acquittal of three Danish journalists - Niels Lunde, Michael Bjerre and Jesper Larsen - on the basis that their publication of secret intelligence reports on Iraq was in the public interest.

An important focus of the 2006 Joint Declaration is on openness of national and international bodies; the key new point here is that inter-governmental bodies (IGOs), like their national counterparts, also have an obligation of openness. This section is supported by references in the preamble of the Declaration to the

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Reyes v. Chile case, decided by the Inter-American Court of Human Rights - which recognised a right to access information held by public bodies as an aspect of the wider right to freedom of expression - as well as the "Transparency Charter for International Financial Institutions: Claiming Our Right to Know" - which sets out minimum civil society demands for openness at international financial bodies like the World Bank and the IMF.

Substantively, the Joint Declaration calls on IGOs to adopt binding information disclosure policies recognising the right to know, providing for proactive disclosure of information, and establishing a right to request and receive information. Exceptions should be narrowly drawn and information only withheld where disclosure would cause serious harm to a protected interest, which outweighs the overall public interest in accessing the information. Furthermore, individuals should have the right to complain to an independent body in cases where their requests for information have been refused.

In relation to the complex issue of freedom of expression and cultural/religious tensions, of high relevance in the context of the recent Danish cartoons incident, the Joint Declaration makes a number of important points. It highlights the positive role of a free and diverse media in promoting tolerance, of diffusing tensions and providing a forum for the peaceful resolution of disputes. It also recognises the special role that public service broadcasters can play in this area, and their special obligation to promote tolerance and understanding of difference.

Importantly, the Joint Declaration cautions against the often knee-jerk tendency of governments to introduce new legislation restricting freedom of expression in response to difficult social challenges. While recognising the legitimacy of appropriately structured hate speech laws, it draws attention to the potential for abuse of provisions which ban merely offensive speech. The resolution of genuine cultural or religious tensions cannot be resolved by suppressing the expression of differences but, rather, by debating them openly. Instead of legal constraints, the Joint Declaration highlights the potential role of professional and self-regulatory bodies, and calls for the creation of an enabling environment in which such bodies are likely to emerge on a voluntary basis.

Finally, the Joint Declaration draws attention to the chilling effect of attacks against journalists, which reached high, possibly unprecedented, levels in 2006. States have an obligation to take effective measures to prevent such attacks, including their condemnation and investigation, the sanctioning of those responsible wherever possible, and the provision of compensation to victims where appropriate.

The Joint Declarations are not formally legally binding. However, they help elaborate on the meaning of freedom of expression in different thematic areas. As a result, they play an important normative role in this area and are relied upon

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extensively by NGOs, lawyers and others.

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http://www.article19.org/pdfs/standards/four-mandates-dec-2006.pdf

Corte Interamericana de Derechos Humanos, sentencia de 19 de Septiembre de 2006, caso Claude Reyes y otros vs. Chile

http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_esp1.doc

Inter-American Court of Human Rights, decision of 19 September 2006, case Claude Reyes and others v. Chile

Transparency Charter for International Financial Institutions: Claiming Our Right to Know

http://www.ifitransparency.org/activities.shtml?x=44474&als[select]=44474

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