2007 Joint Declaration by the Four Special Mandates for Protecting Freedom of Expression

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This note reviews the Joint Declaration 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 – on 12 December 2007. This year's Joint Declaration, unlike many of the past, which focused on multiple themes, centres around just one key issue: diversity in broadcasting.

With the assistance of ARTICLE 19, Global Campaign for Free Expression, the three special mandates at the UN, OSCE and OAS have adopted a Joint Declaration every year since 1999. Since 2006 they have been joined by the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights (see IRIS 2006-3: 3, IRIS 2005-2: 2 and IRIS 2004-2: 6). Each year, the Joint Declaration focuses on different thematic issues. In the past, it has promoted such issues as defamation, broadcast regulation, access to publicly-held information, secrecy laws, the Internet, anti-terrorism measures, openness of national and international public bodies and freedom of expression and cultural/religious tensions. This year, for the first time since 2002, the mandates actually met together in person, along with a number of leading experts, to discuss the focus issue, diversity in broadcasting.

The 2007 Joint Declaration starts by noting the importance of diversity in the media in relation to a number of important social values, including democracy, social cohesion and broad participation in decision-making. It also recognises the dual role of media diversity, both in giving voice to, and in satisfying the information needs of everyone, as protected by international guarantees of freedom of expression, which include the right to seek and receive, as well as to impart, information and ideas. The preamble also notes different kinds of diversity – of outlet (type of media), of source (ownership) and of content – which then serves as the organisational framework for the substantive part of the Declaration.

There is some tension between the imperative of promoting media diversity and the somewhat intrusive regulatory tools that this requires, on the one hand, and the potential these tools create for political interference with media freedom, on

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the other. This is something freedom of expression advocates have long been aware of and concerned about. The Declaration tries to resolve this tension by stating, in its first substantive point, that regulation of the media with a view to promoting diversity is legitimate only if undertaken by bodies that are protected against political and other forms of unwarranted interference. While valid as a principle, in practice this trade-off can be very difficult to achieve. The Declaration seeks to further bolster protection against interference by calling for transparency to be a “hallmark of public policy efforts” in the area of broadcasting, including specifically with respect to regulation, ownership and public subsidy schemes. Finally, the Declaration calls for measures to prevent government advertising being used as a vehicle for political control.

The main thrust of the section of the Declaration on diversity of outlet is to promote policy vehicles which support the availability of different types of broadcasters – commercial, public service and community – on different communications platforms. Specific recommendations to this end include the allocation of sufficient space on different platforms to broadcasting uses and the equitable allocation of space to different types of broadcasters. The Declaration also calls for the importance of diversity to be taken into account in planning for the digital switchover, and for public interest uses to be protected instead of simply allowing market imperatives to dominate decision-making. Specific policy recommendations include ensuring that the costs of digital transition are not prohibitive for community broadcasters, protecting at least part of the spectrum gain for broadcasting uses, even when these are not able to outbid other users, and reserving part of the spectrum for analogue radio, at least for the medium term.

Specific recommendations for public service broadcasters include the need for diversity to be stipulated as part of their core mandates, including in the sense of giving voice to different sections of society, and ensuring adequate public funding for PSBs, in order to enable them to deliver this aspect of their mandate in practice. The Declaration also calls for the explicit recognition in law of community broadcasting as a distinct broadcasting sector, and for the adoption of licensing rules which are tailored to the particular needs of this sector.

The Declaration calls for special measures to be put in place to prevent undue concentration of media and cross-media ownership, both horizontal and vertical. The need for transparency of ownership is reiterated here, along with calls for specific measures such as taking concentration of ownership into account as a licensing criteria and granting the power to regulators to prevent media combinations from taking place where necessary to preserve ownership diversity. To combat concentration of ownership, the Declaration also recommends that consideration be given to providing support, based on objective criteria, to those wishing to establish new media outlets.

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The Declaration is somewhat conservative when it comes to promoting diversity of content, calling simply for measures to be considered that are consistent with international guarantees of freedom of expression. As with ownership, the Declaration recommends that consideration be given to putting in place positive measures, in the form of supporting the production of diverse media content.

The Joint Declarations are not formally legally binding. However, as statements by leading official freedom of expression mandates, appointed by inter-governmental organisations, they provide authoritative interpretation of the scope of international guarantees of freedom of expression in different thematic areas. As such, they have proven invaluable to campaigners, lawyers, judges and decision-makers, when addressing freedom of expression issues.

Joint Declaration by 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 , 12 December 2007

http://www.article19.org/pdfs/igo-documents/mandates-broadcasting.pdf

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