

Annex: X Background note

The relationship of freedom of expression, the right to information, the right to communicate and the right to know

What do we mean by rights?

Many countries have their own Bills of Rights, which are often the product of their own history and circumstances, both in content and manner of enforcement. The agreed definitions of rights are found at the international level in the three documents that make up the International Bill of Rights:

- the Universal Declaration of Human Rights (UDHR)
- the International Covenant on Civil and Political Rights (ICCPR), and
- The International Covenant on Economic, Social and Cultural Rights (ICESC).

The UDHR and subsequent covenants set out those rights or entitlements the protection of which is regarded as a necessary condition for living a life in dignity. These rights are civil and political, social, economic and cultural. In other words, their protection involves supporting the basic conditions of human existence, the ability of people to function in civil society and as political beings, and the defence of their cultural expression (including language). Rights imply a duty upon bodies to provide for them and a responsibility upon people to respect the rights of others.

Freedom of expression

Freedom of expression is an individual human right, guaranteed in all international human rights treaties. It is based on the recognition that unless human beings are allowed to express themselves they cannot experience their own humanity, as expression is fundamental part of human beings live in a community.

There are three lines of argument used to explain the centrality of freedom of expression.

- a) The right to freedom of expression is seen an important human right in itself, in that it is a vital aspect of human individuality, one that is essential to human integrity – as Cato said “where a man cannot call his tongue his own, he can scarcely call anything his own” In this sense – a meaning that is strongly represented in “western” thought and philosophy – it lies at the heart of what it means to be human. This could be characterised as a “**liberty**” view and lies at the heart of the Anglo-American philosophical approach.
- b) The right to freedom of expression is also seen as a cornerstone of democratic freedoms. Freedom of expression helps guarantee the free operation of competing political parties and viewpoints and thereby helps secure democratic freedoms. This would be a “**democratic**” view and explains why the international community lays so much emphasis on the role of communications in the transition to democracy.
- c) Finally, freedom of expression has been seen as an important instrument in the fight against structural poverty and for social and economic development. This view was popularised by the great economist, Amartya Sen who argued that there had never been a famine in a country with a relatively free press and relatively free elections. Most development agencies now believe that unless the recipients of aid can express their views effectively on what the aid is for and how the aid is delivered, development programmes are unlikely to be effective. This would be the “**development**” view.

For this right to freedom of expression to have effect, however, there needs to be widespread available means of communication, accessible to all. Groups with marginal power, such as

the poor, need to be able to access effective communications. Women, who have been excluded from power for most of history, need to be able to access means of communication and information to better exercise control over their lives, particularly in societies where they are excluded from participation in formal political processes. Artistic and cultural expression requires a means through which it can be communicated to an audience; politics in turn requires the free exchange of information and opinions. The media through which all this happens is therefore of central importance to the exercise of the right but freedom of expression is not a “media” right.

Freedom of information

The right to freedom of information has been deduced from the right to freedom of expression which refers to the right to seek, receive and impart information regardless of frontiers. Exactly what this means as a right, has evolved since the drafting of the international instruments. Most modern interpretations assume it implies a positive obligation upon states to provide information, although the European Court of Human Rights has been reluctant to assume such a positive obligation. It is now generally recognised however as a positive obligation upon states and around sixty countries have now recognised the positive obligation by passing legal guarantees.

Right to Know

Another term used regularly is the right to know. Like the right to communicate discussed below, this is not an established right in international law but is rather a term used to summarise a range of information rights. Specifically the right to know covers Data Protection laws that create rights of access and correction of personal information held about people by both private and public bodies, as well as embracing Freedom of Information and related legislation that deals with rights of access to all other types of information, where it is held by public bodies.

Right to Communicate

The right to communicate was first proposed by a French public servant, Jean d'Arcy, in 1969. He wrote:

The time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than man's right to information, first laid down ... in Article 19. This is the right of man to communicate. This is the angle from which the future development of communication will have to be considered to be understood.

In other words the right to freedom of expression was seen as too passive, implying no obligation other than to refrain from interfering with the right. Those arguing for a new right claimed that something more positive was required. There is no agreed international treaty establishing a right to communicate so at his stage it represents a campaign aspiration.

The right to communicate is often defended as being an element of democratising access to media and to guarantee greater access for the poor to the means of communication. This latter argument polarised UNESCO when it was aired in the early 1990s, when the US government and US freedom of expression groups saw this argument as being used to justify state interference or even state control over independent media. UNESCO's pursuit of the issue led to the USA and the UK withdrawing from UNESCO for several years. There is little chance that the right to communicate will be established as a guaranteed human right and it is likely to remain more of a slogan for the foreseeable future.