



United Nations
Educational, Scientific and
Cultural Organization

CONCEPT NOTE

Access to Information and Fundamental Freedoms

This Is Your Right!

World Press Freedom Day

3 May 2016

Introduction

World Press Freedom Day is celebrated across the globe every 3 May, representing an opportunity to advance the fundamental principles of press freedom and to pay solemn tribute to journalists who have lost their lives in the line of duty. In 2016, World Press Freedom Day coincides with three important milestones:

- The 250th anniversary of the world's first freedom of information law, covering both modern-day Sweden and Finland
- The 25th anniversary of the adoption of the Windhoek Declaration of press freedom principles
- The year 2016 is also the first year of the 15 year life-cycle of the new Sustainable Development Goals (SDGs)

Against this background, the World Press Freedom Day in 2016 highlights the links between press freedom, a culture of openness and the right to freedom of information, and sustainable development in the digital age. The common thread in all these is the role of journalism, and the importance of safeguarding those who bring this service to the public.

This year's WPFDF will examine the questions from three different perspectives:

- freedom of information as a fundamental freedom and as a human right,
- protecting press freedom from censorship and surveillance overreach; and
- ensuring safety for journalism online and offline.

Background

The world's first freedom of information law, in Sweden-Finland, is a historic milestone which gave legal recognition to two inter-related norms that have had global repercussions: (i) that citizens should have the right to express themselves outside of interference by the state, and, of particular importance, (ii) that information held by the state should be available to citizens. In this perspective, the state should not constrain citizens' realm of information, and neither should it conceal information from them. It is a position that puts a limit on arbitrary state interference in public dialogue on the one hand, and reinforces the accountability of state power on the other.¹ In a nutshell, it frees society to circulate information without state censorship, but also goes further to open up the state to the scrutiny of society.

The adoption of the Windhoek Declaration by journalists in 1991 in Namibia gave rise to World Press Freedom Day being recognized by the United Nations. This declaration highlighted that press freedom is constituted by media freedom, pluralism and independence. Each year, the Day serves as an occasion around the world for stakeholders to celebrate and strengthen this right.

Furthermore, the year 2016 is also the first year of the 15 year life-cycle of the ambitious new Sustainable Development Goals (SDGs) adopted in 2015. Press freedom and the right to information have a direct relevance to achieving these goals, and can also be seen as implicit goals themselves. The SDGs will set the agenda for many policy decisions in coming years, impact on resource mobilization and flows, and highlight the common interest in humanity in a durable process of improving the lives of every person.

Analysis

These three elements of press freedom, the right to information, and sustainable development, are interconnected through the role of journalism as a specialised exercise of the right to free expression that uses professional standards and public interest as its lodestar. The diversity of creative cultural expressions is also an important factor in the equation.

This assessment begins with Article 19 of the Universal Declaration of Human Rights², which states that the fundamental right of freedom of expression encompasses the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers". It is evident that right to *impart* information is of little purpose in the absence of the right to *seek* and *receive*; and also that the scope of the latter activity (sending or receiving) is directly conditioned by the extent of what is imparted. In other words, the right to freedom of expression involves two sides of the same coin: producing messages, and consuming them – neither of which makes sense without the other.

This interconnection means that any limitations on the imparting side of communications impact on the receiving side, and vice versa. The degree to which a society has a rich and open information environment therefore depends on the conditions for freedom in both dimensions. In turn, these

¹ In international human rights law, "arbitrary" designates actions without legal basis, or which are unnecessary and/or disproportional to the aim sought, and/or where the aim is not one of legitimate purposes set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

² Adopted by the United Nations on 10 December 1948.

conditions hinge on: (i) the situation of *press freedom* – the right to make information, including cultural expressions, public,³ and (ii) *the right to information* – the situation of transparency as regards the exercise of power. Journalism is integrally bound up with both aspects.

In its dual dimensions, freedom of expression is a right of high significance to other rights.⁴ It is also highly significant to sustainable development. This is why the SDGs recognize that sustainable development includes “public access to information and fundamental freedoms”. As a SDG target, these objectives are a sub-part of a wider goal (number 16) to: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” It is clear that public access to information and fundamental freedoms are not only an end in themselves, but also an important means to Goal 16 as a whole, and to the rest of the SDG goals – such as those on gender equality and addressing climate change.

It is for these reasons that UNESCO, with the UN Office of the High Commissioner for Human Rights and the Global Forum for Media Development, proposed two indicators for assessing progress towards target 16.10:

1. *Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates (in the previous 12 months)*
2. *Existence and implementation of constitutional, statutory and/or policy guarantees for public access to information*

The first indicator deals directly with a critical measure of fundamental freedoms, and its reference to journalists relates directly to the press freedom dimension of sustainable development. The second indicator highlights freedom of information policies and their application, and their relevance to sustainable development.

The indicators are inter-related. Press freedom and the related safety of journalists impact directly on the information environment to which the public has access. Conversely, the better the public access to information, the better the climate for respecting fundamental freedoms including safety for journalism, and for creative cultural expression as well.

These insights are amplified by the emerging digital age. As information becomes more and more a necessity for sustainable development, so the right to information, securing press freedom and ensuring journalism safety become of increasing significance. In all dimensions, gender

³ Although journalists are among the greatest users of the right, press freedom is not limited to the news media. It is the freedom for any person to use their right to free expression to impart content, including creative content, to a wider public, by means of mass communication platforms that encompass social media, for example. In this sense, each individual has a direct stake in press freedom. Where communicators face arbitrary restrictions and violations of their right to press freedom, such as in the case of being attacked for their journalism, society needs to take special care to ensure protection, particularly so that public interest information is not suppressed – something that could undermine the public’s right to be able to seek and receive information.

⁴ This insight was recognized back in 1946, when the UN General Assembly, through Resolution 59(1) (using the language of the time) said that freedom of information (today “freedom of expression”) was a “fundamental human right and...the touchstone of all the freedoms to which the United Nations is consecrated”.

inequalities need to be addressed if humanity as a whole is to make progress towards the 2030 Development Agenda.

To explore these issues in more depth is the focus of this year's WPFD, which will examine the questions from three different perspectives: 1) freedom of information as a fundamental freedom and as a human right, 2) securing press freedom from possible censorship and surveillance overreach; and 3) ensuring safety for journalism online and offline.

1) Freedom of Information as Fundamental Freedom and Human Right

Freedom of information can be generally defined as the right to access information held by public bodies. As it is explained in the UNESCO publication *Freedom of Connection, Freedom of Expression* (2011): "In so far as freedom of expression is deemed to be one of the fundamental civil rights supporting democratic processes, freedom of information is required in order to ensure that citizens can vote in an informed way, and that they can hold their governments accountable through public scrutiny." Furthermore, in the UN Human Rights Committee's General Comment 34 on Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the connections between imparting expression and access to information are strongly linked to the right for the citizens to take part in public affairs. Journalism has a major role to play in this regard.

The right to information is linked to wider transparency in society, as highlighted in the 2015 UNESCO study *Keystones to foster inclusive Knowledge Societies: Access to information and knowledge, Freedom of Expression, Privacy, and Ethics on a Global Internet*, mandated by the UNESCO Member States. The study further underscores the importance of user empowerment to deal with information and communications, such as through Media and Information Literacy. Again, journalism is central to all these aspects.

A major obstacle to open access to information is overreach in governmental secrecy. States should be able to keep some information confidential in line with legitimate purposes and processes set out in international human rights laws. However, information from administrative and executive authorities, concerning for example laws and public expenditure, should generally be accessible to everyone. Hence, freedom of information both helps provide oversight over governmental bodies, as well as the possibility to hold them accountable, and this right strengthens the relevance of press freedom and independent journalism.

Since the adoption of the world's first freedom of information law in modern-day Sweden and Finland in 1766, more than 90 other countries have adopted such provisions. However, there are issues such as whether exceptions are narrowly tailored; whether there is protection for whistle-blowers, and whether there is impact on relevant information held by private entities. Implementation of freedom of information raises issues such as whether the laws are well-known, in terms of high public awareness; whether requests are administered efficiently and whether there are high fees for the requester; and whether information is published by own initiative or released upon request.⁵ Another issue is that even in countries where there are freedom of information laws

⁵ It is possible to make a distinction between reactive and proactive disclosure of information. Whereas the first refers to release of information upon demand, the second implies that information is available all of the time since public

or legal provisions, journalists may have difficulty in accessing, understanding, and subsequently using the raw data or information. This is where data journalism can play a role in accessing and interrogating data and mashing up datasets to produce results that inform audiences “something new about the news”⁶. Differential access to information along gender lines as well as the gender-disaggregation of information, are additional key issues.

When journalists are empowered to use freedom of information laws to bring hidden information to light, they can amplify their potential to enhance the accountability of institutions as part of the SDG conception of sustainable development. Proactive steps by states to open up records can also greatly help to ensure transparency in public administration. In these ways, freedom of information is closely linked to a culture of openness and the idea of participatory democracy, both of which are key to sustainable development.⁷ It is also important to promote a broad range of cultural expressions in media, in order to develop media diversity and the inclusion of minority groups in the media landscape. All these points add significance to the agreement in November 2015 by the UNESCO Member States to the creation of an International Day for Universal Access to Information, on each 28 September.

Points to ponder:

- How to mainstream SDG Goal 16, Target 10 – public access and fundamental freedoms – within development policies and budgetary planning?
- What is the most effective way to support states to adopt and implement constitutional statutory and/or policy guarantees for gender-sensitive public access to information?
- In countries where legal provisions for freedom of information are in place, how to improve access and usability, including by the use of ICTs and strengthening of data journalism?
- Where private actors hold key information in the public interest, how can this be accessed? What are their policies on information openness? How can the private sector as a whole become more transparent?
- What is the global role of national public broadcasting and independent media in promoting the freedom and diversity of cultural expression?
- How can public access to information be promoted on cultural levels, and be part of a move away from a “culture of secrecy” towards one of openness?
- How to draw the line between a state secret and information that should be commonly known?
- Is whistleblowing an indication of freedom of information dispensations that are absent or functioning poorly, and how can systems be strengthened and whistleblowers protected?

authorities render documents official upon their own initiative. Whereas the first is the norm within most legislations, the second can be stated as a complementary clause with certain restrictions.

⁶ Please see “Open Data Journalism” in <http://www.theguardian.com/news/datablog/2012/sep/20/open-data-journalism>

⁷ For a more developed discussion on this matter, see Mariya Riekkinen and Markku Suksi. *Access to Information and Documents as a Human Right*. Abo Akademi University/ Institute for Human rights, Turku/Abo (2015).

2) Protecting press freedom from possible censorship and surveillance overreach

In the digital age, press freedom is confronted by growing challenges of arbitrarily blocking access to online information, limiting or punishing cyber-expression, and arbitrary intrusions on digital privacy. These developments impact on those who do journalism, on others who express themselves online, and also on those who receive online information indirectly through multi-step flows. They may also unjustifiably limit the diversity of cultural expression, a principle enshrined in the 2005 UNESCO Convention on The Protection and. Promotion of the Diversity of Cultural. Expressions. These phenomena curb both people's access to information as well as the range of information and expression online.

There are serious implications of the increasing number of measures which regulate Internet content through blocking of web sites and of communications tools in ways that exceed international standards requiring legality, necessity, proportionality and legitimate purpose. These steps constrain the ability of a society to make informed choices about development and democracy, a priority for UNESCO in building the foundations for inclusive, knowledge societies. They may also represent a form of prior restraint, pre-emptively presuming an act of communication to be guilty of an offence rather than testing it in court after actual expression.

An inter-related issue is the challenge of possible surveillance overreaching. The right to privacy is well-established as a precondition for freedom of expression, and for the protection of journalists' confidential sources. Privacy intersects also with anonymity, and with the use of encryption. An absence of these facilities can seriously inhibit the free flow of information, something that may have particular implications for people seeking to challenge gender inequality as well as for challenging expressions of advocacy for hatred on gender lines. Where journalistic source protection is compromised, there may be cover-ups of corruption, intimidation and exposure of sources' identities with repercussions on them. In the long term, this can contribute to sources of information running dry and to self-censorship in society at large.

In this regard, the UN Special Rapporteur on Freedom of Expression and Opinion has also assessed the issue through a 2015 report⁸ noting that in situations "where States impose unlawful censorship through filtering and other technologies, the use of encryption and anonymity may empower individuals to circumvent barriers and access information and ideas without the intrusion of authorities". The report further calls on States to have national laws which recognize that individuals are free to protect the privacy of their digital communications by using encryption technology and tools that allow anonymity online.

The legal frameworks that protect the confidentiality of sources of journalism are essential to reporting information in the public interest. However, these frameworks are under significant strain in the digital age, and there is a need to revise and strengthen them - or introduce them where they do not exist. UNESCO, with the support of funding from Sweden, has commissioned research by the World Association of Newspapers (WAN-IFRA) which explore an 11-point assessment tool for consideration by Member States for pinpointing areas where source protection frameworks can be improved.

⁸ 2015 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/29/32

Points to Ponder:

- How to distinguish when acts of blocking or filtering, and surveillance, meet international standards for legitimate limitations of rights to free expression and safety, and when they do not? What safeguards exist, or can be introduced, to prevent violations?
- What is the impact on the diversity of cultural expressions, and how can freedom for artistic expression be defended and the enabling environment for such expression be improved?
- In terms of possible online censorship, what is the role of the Internet intermediaries including service providers and/or content distributors for the protection of free expression? Can self-regulation work, without becoming a form of private or delegated censorship?
- What measures can be taken for protection of journalistic communications with sources to be successfully implemented?

3) Ensuring Safety of Journalists Online and Offline

It is crucial that journalists can safely access and produce information both online and offline. Assuring the physical and psychological well-being of journalists including digital security is one of the most pressing issues in recent times. It is an issue with technological, institutional, economic, political, legal and psychological dimensions.⁹ It is a matter that impacts directly on the environment for public access to information, including on the confidence of the public to speak freely, and on the practical exercise of the right to information and on sustainable development.

Technological advances and the rise of citizen journalism have cemented the notion that journalism today should be understood in terms of an *activity* rather than a status. While not every blogger and social activist engages in journalistic activities, those who do so can risk harassment, threats, and attacks – akin to journalists working within traditional media. Accordingly, all those who generate public interest journalism should be especially protected as increasingly recognized by the international community in recent resolutions across the UN.

While killings and impunity show no sign of abating, more and more attention worldwide is being given to the safety of journalists and of ending impunity. Much of this is guided by the global framework of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, which encourages concerted action by multiple stakeholders. The momentum is evident in the (2013) UN General Assembly Resolution 68/163 and 68/185, Human Rights Council Resolution 21/12 (2012) and 27/5 (2014), UNESCO's Executive Board Decision on Safety of Journalists and the Issue of Impunity at its 196th Session (2015), and the UN Security Council Resolution 2222 (2015) which calls for protection of journalists in armed conflict situations. UNESCO considers the killing of journalists as the ultimate form of censorship and its Director-General systematically condemns such crimes, and reports on impunity.¹⁰ The Organization leads global commemorations of the 2 November International Day to End Impunity for Crimes Against Journalists and the 3 May World

⁹ On this matter, see the UNESCO publication *Building Digital Safety for Journalism. A Survey of Selected Issues* (2015).

¹⁰ Among other dangers that journalists face are harassments of legal and economic character, exile to escape repression, incarceration and arbitrary arrests, self-censorship, and destruction or confiscation of equipment and premises.

Press Freedom Day and is working on many fronts to raise awareness, build coalitions, promote research, and share good practices.

Other inter-governmental organizations are also increasingly taking measures. The Council of Europe has launched an online platform to promote the protection of journalism and safety of journalists. Media and civil society groups are stepping up their activities, for example with regard to alerts, training, campaigning and developing policy for freelancers. However, at both global and national levels, awareness can be further strengthened, impunity remains a huge problem to tackle, and there is a need to address weaknesses in building institutions to protect journalists and punish perpetrators of attacks. The gender dimension of the safe exercise of press freedom also needs attention.

Points to Ponder:

- How can monitoring and reporting on relevant SDG indicators be used to strengthen progress in protecting journalists and combatting impunity?
- What are the most effective steps that can be taken by States to protect journalists and counter impunity?
- How can inter-organizational cooperation (UN Agencies, Governments, NGO, Media, and Academia) be further strengthened?
- How can media organizations and journalists themselves better assure their safety?
- What additional actors can be mobilized to join the momentum to secure safety for journalism?
- What steps are needed to better address the gender dimensions in regards to improving safety of journalists, including online?

Conclusion

Press freedom and access to information are essential to democracy and to sustainable development. Journalism helps make this so. Sometimes referred to as a “watchdog” of political and societal institutions, journalism is also much more: it demonstrates freedom of expression for society at large, it puts new questions on the development agenda, and it empowers citizens with information. It provides a context in which the diversity of cultural expressions can flourish. For all these reasons, strengthening the conditions for journalism is key to developing a culture of openness, access to information and fundamental freedoms. To this end, World Press Freedom Day 2016 seeks to advance the right to information, press freedom, and the environment for journalism to done in safety. It resonates with contemporary global issues and opportunities. In this way, around the world, it should be possible for stakeholders to continue to take the Day to an ever higher level of visibility, relevance, and impact.