

ARTICLE 19

The Camden principles on freedom of expression and equality

Introductory Statement

These Principles are founded on the understanding that freedom of expression and equality are foundational rights, whose realisation is essential for the enjoyment and protection of all human rights. They are also mutually supporting and reinforcing human rights. It is only when coordinated and focused action is taken to promote both freedom of expression and equality that either can effectively be realised.

Pluralism and diversity are hallmarks of freedom of expression. Realisation of the right to freedom of expression enables vibrant, multi-faceted public interest debate giving voice to different perspectives and viewpoints. Inequality results in the exclusion of certain voices, undermining this. The right of everyone to be heard, to speak and to participate in political, artistic and social life are, in turn, integral to the attainment and enjoyment of equality. When people are denied public participation and voice, their issues, experiences and concerns are rendered invisible, and they become more vulnerable to bigotry, prejudice and marginalisation.

Too often, the rights to freedom of expression and equality have been construed as being in opposition to one another, or as being in direct conflict, with attention focused on the potential for tension between them. The Principles assert the affirmative relationship between freedom of expression and equality, identifying the complementary and essential contribution they make to the securing and safeguarding of human dignity, and the fact that together they are key to the indivisibility and universality of human rights. Observed and upheld they enable and strengthen respect for human rights for all.

The Principles also affirm that respect for freedom of expression and equality has a crucial role to play in ensuring democracy and sustainable human development, and in promoting international peace and security. Security measures, particularly in the areas of counterterrorism and immigration, have undermined individual rights, resulting in illegitimate restrictions on freedom of expression and the stigmatisation of certain ethnic and religious groups. The Principles reject the view that security requires human rights to be compromised. They assert instead that respect for human rights is central to attaining true security.

The Principles highlight States' obligations to take positive steps to promote diversity and pluralism, to promote equitable access to the means of communication, and to guarantee the right of access to information. They affirm the positive role of the State in creating an enabling environment for freedom of expression and equality, while recognising that this brings potential for abuse. Strong democratic structures – including free and fair elections, an independent judiciary and a vibrant civil society – are needed to prevent abuse and to realise more fully the goals of pluralism and equitable access. Although the State has an important role to play, self-regulation, where effective, remains the most appropriate way to address professional issues relating to the media.

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These Principles were prepared by ARTICLE 19 on the basis of discussions involving a group of high-level UN and other officials, and civil society and academic experts in international human rights law on freedom of expression and equality issues at meetings held in London on 11 December 2008 and 23-24 February 2009. The Principles represent a progressive interpretation of international law and standards, accepted State practice (as reflect-ed, inter alia, in national laws and the judgments of national courts), and the general principles of law recognised by the community of nations.

The development of these Principles was motivated by a desire to promote greater consensus globally about the proper relationship between respect for freedom of expression and the promotion of equality. ARTICLE 19 sees these rights as mutually supportive and interdependent, and essential to a universal system for the protection of human rights. While tensions can arise between competing visions of these rights, the focus globally has been disproportionately on these potential tensions rather than the far more important positive relationship between them. Furthermore, international law provides a basis for resolving the tensions, as outlined in these Principles.

We call on individuals and organisations around the world to endorse these Principles with a view to providing authority and support to them. We also call on decision-makers, as well as advocates, to take steps to give effect to these Principles at all levels.

The Principles recognise the importance of the media and other means of public communication in enabling free expression and in enabling the realisation of equality, through ensuring equitable access. The traditional media continue to play an important role globally, but they are undergoing significant transformation. New technologies – including digital broadcasting, mobile telephony and the Internet – vastly enhance the dissemination of information and open up new forms of communication, such as the blogosphere. At the same time, in many media sectors access to the media, particularly for minority groups, and genuine diversity in the media are threatened by the increasing concentration of media ownership and other market challenges, including market failures.

These changes bring both opportunities and challenges for pluralism and the public interest. Effective policy and regulatory frameworks which protect pluralism and diversity are needed, but these must be grounded in broad social dialogue that stimulates fresh debate about the role of media in society and involves stakeholders from diverse communities as well as representatives of the media, public authorities, government and civil society.

The Principles are based on a wide notion of equality, which includes the rights to equality before the law and to non-discrimination, as well as the idea of substantively equal treatment and status. They recognise that problems of discrimination and negative stereotyping are deeply rooted socio-economic and political phenomena. Their eradication requires sustained and wide-ranging efforts, including in the areas of education, social dialogue and awareness-raising. Limiting debate about contentious issues, including religion, will not address the underlying social roots of the prejudice that undermines equality. In many contexts, restrictions on freedom of expression target disadvantaged groups, undermining rather than promoting equality. Instead of restrictions, open debate is essential to combating negative stereotypes of individuals and groups and exposing the harm created by prejudice.

The Principles recognise, however, that certain speech, for example intentional incitement to racial hatred, is so harmful to equality that it should be prohibited. Rules prohibiting such speech should be narrowly defined to prevent any abuse of restrictions, including for reasons of political opportunism. Effective steps need to be taken to ensure that such rules are applied equitably for the benefit of all protected groups. In this regard, a case-by-case approach which takes into account context and patterns of vulnerability is important, especially on the part of judicial authorities. Such rules should be used only to protect individuals and groups. They should not be invoked to protect particular beliefs, ideologies or religions.

Finally, the Principles recognise that freedom of expression and equality enhance the growth and vitality of civil society organisations which in turn give voice and visibility to vulnerable and disadvantaged groups and strive towards the protection of their rights. The Principles also re-affirm the vision highlighted in the Preamble to the Universal Declaration of Human Rights that every individual and every organ of society shall strive to promote respect for the rights to freedom of expression and equality and secure their universal and effective recognition and observance.

We, the undersigned individuals and organisations,¹ endorse the Principles and recommend that relevant bodies at the national, regional and international levels undertake steps to promote their widespread dissemination, understanding, acceptance and implementation:

Principles

I. Legal protection for equality and freedom of expression

Principle 1: Ratification and incorporation of human rights law

All States should ratify and give effect in domestic law, through incorporation or otherwise, international and regional human rights treaties guaranteeing the rights to equality and freedom of expression.

Principle 2: Legal framework for the protection of the right to freedom of expression

- 2.1. States should ensure that the right to freedom of opinion and expression, through any medium of communication, including the right to information, is enshrined in domestic constitutional provisions or their equivalent, in accordance with international human rights law.
- 2.2. In particular, States should ensure that domestic constitutional provisions set out clearly the scope of permissible restrictions on the right to freedom of expression, including that such restrictions must be provided by law, be narrowly defined to serve a legitimate interest recognised in the constitution, and be necessary in a democratic society to protect that interest.
- 2.3. States should establish a clear legal framework for the protection of the right to information, including the right of access to information held by public bodies, and promote the proactive disclosure of information.

Principle 3: Legal framework for the protection of the right to equality

- 3.1. States should ensure that the right to equality is enshrined in domestic constitutional provisions or their equivalent, in accordance with international human rights law.
- 3.2. Domestic legislation should guarantee that:
 - i. All persons are equal before the law and are entitled to the equal protection of the law.
 - ii. Everyone has the right to be free of discrimination based on grounds such as race, gender, ethnicity, religion or belief, disability, age, sexual orientation, language, political or other opinion, national or social origin, nationality, property, birth or other status.
- 3.3. States should establish a clear legal and policy framework for combating discrimination in its various forms, including harassment, and for realising the right to equality, including in relation to freedom of expression.

Principle 4: Access to remedies

- 4.1. States should ensure the availability of accessible and effective remedies for human rights violations, including violations of the rights to freedom of expression and equality. These should include both judicial and non-judicial remedies, such as before national human rights institutions and/or ombudspersons.
- 4.2. States should ensure that the right to a fair and public hearing by a competent, independent and impartial tribunal established by law is guaranteed.

II. The right to be heard and the right to speak

Principle 5: A public policy framework for pluralism and equality

- 5.1. All States should have in place a public policy and regulatory framework for the media, including new media, which promotes pluralism and equality, in accordance with the following:
 - i. The framework should respect the fundamental principle that any regulation of the media should only be undertaken by bodies which are independent of the government, which are publicly accountable and which operate transparently.
 - ii. The framework should promote the right of different communities to freely access and use media and information and communications technologies for the production and circulation of their own content, as well as for the reception of content produced by others, regardless of frontiers.
- 5.2. This framework should be implemented, among others, through the following measures:
 - i. Promoting universal and affordable access to the means of communication and reception of media services, including telephones, the Internet and electricity.
 - ii. Ensuring that there is no discrimination in relation to the right to establish newspapers, radio and television outlets, and other communications systems.
 - iii. Allocating sufficient 'space' to broadcasting uses on different communications platforms to ensure that, as a whole, the public is able to receive a range of diverse broadcasting services.
 - iv. Making an equitable allocation of resources, including broadcasting frequencies, among public service, commercial and community media, so that together they represent the full range of cultures, communities and opinions in society.

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- v. Requiring the governing bodies of media regulators broadly to reflect society as a whole.
 - vi. Putting in place effective measures to prevent undue concentration of media ownership.
 - vii. Providing public support, whether financial or in other forms, through an independent and transparent process, and based on objective criteria, to promote the provision of reliable, pluralist and timely information for all, and the production of content which makes an important contribution to diversity or which promotes dialogue among different communities.
- 5.3. This framework should also include the following measures:
- i. Repealing any restrictions on the use of minority languages that have the effect of discouraging or preventing media specifically addressed to different communities.
 - ii. Making diversity, including in terms of media targeting different communities, one of the criteria for assessing broadcasting licence applications.
 - iii. Ensuring that disadvantaged and excluded groups have equitable access to media resources, including training opportunities.
- 5.4. Public service values in the media should be protected and enhanced by transforming State- or government-controlled media systems, by strengthening existing public service broadcasting networks, and by ensuring adequate funding for public service media, so as to ensure pluralism, freedom of expression and equality in a changing media landscape.

Principle 6: Role of the mass media

- 6.1. All mass media should, as a moral and social responsibility, take steps to:
- i. Ensure that their workforces are diverse and representative of society as a whole.
 - ii. Address as far as possible issues of concern to all groups in society.
 - iii. Seek a multiplicity of sources and voices within different communities, rather than representing communities as monolithic blocs.
 - iv. Adhere to high standards of information provision that meet recognised professional and ethical standards.

Principle 7: Right of correction and reply

- 7.1. The rights of correction and reply should be guaranteed to protect the right to equality and non-discrimination, and the free flow of information.
- 7.2. The exercise of a right of correction or reply should not extinguish other remedies, although it may be taken into account in the consideration of such other remedies, for example to reduce damage awards.
- 7.3. These rights are best protected through self-regulatory systems. No mandatory right of reply or correction should be imposed where an effective self-regulatory system is in place.
- 7.4. The right of correction gives any person the right to demand that a mass media outlet publish or broadcast a correction where that media outlet has previously published or broadcast incorrect information.
- 7.5. The right of reply gives any person the right to have a mass media outlet disseminate his or her response where the publication or broadcast by that media outlet of incorrect or misleading facts has infringed a recognised right of that person, and where a correction cannot reasonably be expected to redress the wrong.

III. Promoting intercultural understanding

Principle 8: State responsibilities

- 8.1. States should impose obligations on public officials at all levels, including ministers, to avoid as far as possible making statements that promote discrimination or undermine equality and intercultural understanding. For civil servants, this should be reflected in formal codes of conduct or employment rules.
- 8.2. States should engage in broad efforts to combat negative stereotypes of, and discrimination against, individuals and groups and to promote intercultural understanding and evaluation, including by providing teacher training on human rights values and principles and by introducing or strengthening intercultural understanding as a part of the school curriculum for pupils of all ages.

Principle 9: Media responsibilities

- 9.1. All media should, as a moral and social responsibility, play a role in combating discrimination and in promoting intercultural understanding, including by considering the following:
 - i. Taking care to report in context and in a factual and sensitive manner, while ensuring that acts of discrimination are brought to the attention of the public.
 - ii. Being alert to the danger of discrimination or negative stereotypes of individuals and groups being furthered by the media.
 - iii. Avoiding unnecessary references to race, religion, gender and other group characteristics that may promote intolerance.
 - iv. Raising awareness of the harm caused by discrimination and negative stereotyping.
 - v. Reporting on different groups or communities and giving their members an opportunity to speak and to be heard in a way that promotes a better understanding of them, while at the same time reflecting the perspectives of those groups or communities.
- 9.2. Public service broadcasters should be under an obligation to avoid negative stereotypes of individuals and groups, and their mandate should require them to promote intercultural understanding and to foster a better understanding of different communities and the issues they face. This should include the airing of programmes which portray different communities as equal members of society.
- 9.3. Professional codes of conduct for the media and journalists should reflect equality principles and effective steps should be taken to promulgate and implement such codes.
- 9.4. Professional development programmes for media professionals should raise awareness about the role the media can play in promoting equality and the need to avoid negative stereotypes.

Principle 10: Other actors

- 10.1. Politicians and other leadership figures in society should avoid making statements that might promote discrimination or undermine equality, and should take advantage of their positions to promote intercultural understanding, including by contesting, where appropriate, discriminatory statements or behaviour.
- 10.2. Civil society organisations should respect pluralism, and promote the rights to freedom of expression and equality in accordance with these Principles. In particular, they should promote intercultural understanding, acknowledge dissenting voices, and support the ability of members of different communities, and particularly marginalised groups, to voice their perspectives and concerns, in a way that recognises the internal diversity of communities.

IV. Freedom of expression and harmful speech

Principle 11: Restrictions

- 11.1. States should not impose any restrictions on freedom of expression that are not in accordance with the standards set out in Principle 3.2 and, in particular, restrictions should be provided by law, serve to protect the rights or reputations of others, national security or public order, or public health or morals, and be necessary in a democratic society to protect these interests.² This implies, among other things, that restrictions:
 - i. Are clearly and narrowly defined and respond to a pressing social need.
 - ii. Are the least intrusive measure available, in the sense that there is no other measure which would be effective and yet less restrictive of freedom of expression.
 - iii. Are not overbroad, in the sense that they do not restrict speech in a wide or untargeted way, or go beyond the scope of harmful speech and rule out legitimate speech.
 - iv. Are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorise.
- 11.2. States should review their legal framework to ensure that any restrictions on freedom of expression conform to the above.

Appendix A

Principle 12: Incitement to hatred

- 12.1. All States should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech).³ National legal systems should make it clear, either explicitly or through authoritative interpretation, that:
 - i. The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.
 - ii. The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group.
 - iii. The term incitement refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.
 - iv. The promotion, by different communities, of a positive sense of group identity does not constitute hate speech.
- 12.2. States should prohibit the condoning or denying of crimes of genocide, crimes against humanity and war crimes, but only where such statements constitute hate speech as defined by Principle 12.1.
- 12.3. States should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or religious institutions, unless such expression constitutes hate speech as defined by Principle 12.1.
- 12.4. States should ensure that persons who have suffered actual damages as a result of hate speech as defined by Principle 12.1 have a right to an effective remedy, including a civil remedy for damages.
- 12.5. States should review their legal framework to ensure that any hate speech regulations conform to the above.

The following experts (in an alphabetical order) participated in the consultations that drafted these Principles in their personal capacity. Organisations and affiliations are listed for purposes of identifications only and do not indicate an official endorsement of the Principles.

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The Camden Principles on Freedom of Expression and Equality are founded on the understanding that freedom of expression and equality are foundational rights. Freedom of expression and equality are mutually supportive rights that play a vital role in safeguarding human dignity, ensuring democracy and promoting international peace and security.

The Camden Principles represent a progressive interpretation of international law and standards, accepted State practice and the general principles of law recognised by the community of nations. The Principles were prepared by ARTICLE 19, in consultation with high-level UN and other officials, and civil society and academic experts. This document was created to promote greater global consensus about the relationship between respect for freedom of expression and the promotion of equality.

DEFENDING FREEDOM
OF EXPRESSION AND INFORMATION

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