



**119<sup>th</sup> ASSEMBLY OF THE INTER-PARLIAMENTARY UNION  
AND RELATED MEETINGS**

Geneva, 13-15.10.2008

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**SUMMARY RECORDS**

**OF THE PANEL DISCUSSION HELD DURING THE 119<sup>th</sup> ASSEMBLY IN GENEVA  
(OCTOBER 2008)**

on the subject item

***"Freedom of expression and the right to information"***

chosen for debate by the Third Standing Committee  
*(Democracy and Human Rights)*

during the 120<sup>th</sup> Assembly in April 2009 in Addis Ababa (Ethiopia):

## ***Freedom of expression and the right to information***

### Item 3(c) of the agenda

*Panel discussion on the subject to be considered by the  
Third Standing Committee on Democracy and Human Rights  
during the 120<sup>th</sup> Assembly in April 2009*

### **Sitting of Tuesday, 14 October** (Morning)

*The meeting was called to order at 9.15 a.m. with the President of the Third Standing Committee, Mr. D. Canepa (Uruguay) in the Chair.*

The MODERATOR explained that its outcome would be a report and a draft resolution to be presented at the 120<sup>th</sup> Assembly.

Mr. A. DISMORE (United Kingdom), *co-Rapporteur*, said that the right to freedom of opinion and expression had been enshrined in Article 19 of the Universal Declaration of Human Rights (1948); it included the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers.

Rooted in the civil libertarian ideal of "free speech", freedom of expression was significantly different from the absolute free speech practised in some western countries, where virtual media monopolies prevented the expression of a wide range of views. Freedom of expression was a human right for which the State should provide guarantees and set limits: as defined in Article 19 of the International Covenant on Civil and Political Rights, it carried "special duties and responsibilities" and could therefore "be subject to certain restrictions".

The traditional free market in free speech did not always allow those on the fringes of society to be heard and could exclude fair criticism of government or political leaders; it could increase the marginalization of certain views by encouraging governments to be too eager to please dominant voices in the media. However, a statutory regime of freedom of expression could create and guarantee public interest broadcasting, thus ensuring independent representation of the cross section of views that was essential to promote diversity in a pluralist society.

The question was how to create a regulatory regime that would prevent the infringement of individual rights, including defamatory statements or breaches of domestic privacy, while at the same time creating a structure that allowed the widest expression of views. The most fundamental caveat was to ensure that regulation did not lead to censorship of inconvenient criticism of the State. Any regulation should be overseen by an institution that was independent of government and that institution should take appropriate steps to avoid the media concentration that led to monopolies. Pluralism in the media was essential to freedom of expression and regulation or licensing should never be used as a tool by unsympathetic government to interfere with the independence of the media. Those expressing their right to freedom of expression for the benefit of society, such as journalists, teachers and writers, should not be at risk of victimization. Nevertheless, the right to freedom of speech should be exercised responsibly and should not unfairly infringe the rights of others without reasonable justification.

Self-regulation by the media was undoubtedly important but not always effective. Some protection against defamation was likely to be necessary in law, however, it could not be justified if its purpose was to protect individuals against harm to a reputation which they did not have or did not merit or if it was used to prevent legitimate criticism, or the exposure of official wrongdoing or corruption. Nor could such a law be justified as serving to protect any interest other than reputation, particularly if it was aimed at the maintenance of public order, national security or friendly relations with foreign States or governments. Any law on defamation should be aimed at protecting the rights of individuals as a civil legal right; it should encourage apology and correction; defamation should not be criminalized. There was also a danger that powerful corporations would seek to rely on the right to freedom of expression to resist legitimate regulation. It might be possible to accept that 'commercial speech' should not be treated in the same way as 'political speech', thus making reasonable limitations easier to justify.

Inevitably, there would be exceptional circumstance where the exercise of freedom of expression would be in direct conflict with the State, such as a state of emergency or when countering a terrorist threat. However, emergency powers were legitimate only in cases of extreme national crisis that threatened the life of the nation, as defined by the ICCPR; a proportional response was unlikely to justify aggressive action such as suspending broadcast media, detaining journalists or censoring newspapers. Criminalization of the promotion or glorification of terrorism should be defined sufficiently tightly so as not to deny the legitimate expression of criticism; counter-terrorism policy should be aimed at combating terrorism and not at the inconvenient exercise of freedom of expression.

Stereotyping and insulting language could seriously affect dialogue and coexistence amongst and within communities; fighting intolerance and discrimination required a respect for diversity and multiculturalism. The incitement of hatred against minority groups, whether ethnic, national, social, religious or on the grounds of sexuality was also an abuse of the right to freedom of expression. The ICCPR required the prohibition by law of "any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence". Any such law should be tightly drafted to ensure that it did not amount to censorship while protecting the rights of the individuals affected by those statements.

Fair regulation of the Internet posed many challenges to ensure that it constituted a democratic medium of expression, in compliance with human rights principles, without interfering with the rights of others. Although he favoured establishing an international organization charged with administering fair governance of the Internet, he understood that it could prove problematical.

Ultimately, ensuring freedom of expression was not so much a matter of the niceties of the law as a case of empowering citizens to put forward their concerns or complaints against the State without fear of victimization, and enabling even the extreme and eccentric views that were part of life's rich pattern to be expressed.

Putting forward ideas for discussion that would supplement those to be provided by his fellow co-Rapporteur, he wondered whether the right to information should apply to public bodies, private individuals and international companies. Other key areas for debate included whether the right to information should be applied retrospectively, and the format that access to information should take. How access to information affected data protection and the right to privacy should be examined. There was also the question of whether the right to information should apply equally to publicly elected officials and to private individuals. What should the exemptions to freedom of information be and how should they be defined? There was also the question of what mechanisms should be put in place to ensure that people were able to exercise their right, what arrangements could be made to ensure independent monitoring of that right and what right of appeal there should be against a refusal.

Mr. P. RASHTRAPAL (India), presenting on behalf of Mr. K. MALAISAMY, *co-Rapporteur*, said that the right to information enabled people to access and exercise all of the freedoms and rights on which their democracies had been built. A recent bill on the right to information in India had empowered rural communities and the more vulnerable sections of society. An increasing number of democracies around the world were instituting the right to information.

The right to information could sometimes suffer from inadequacies or loopholes in the way relevant information was framed or enforced. In particular, legal systems suffered from inadequate manpower, resources and infrastructure; where there was no code of conduct for the information seeker, the right was likely to be misused; provisions could be unclear and poorly defined; and a culture of secrecy could prevail. The views of delegates were sought on how to address those inadequacies in order to build effective legislation. Civil society should be encouraged to play a constructive role in the dissemination of information, to supplement the efforts of government and to cooperate and coordinate with government agencies.

A significant advantage of the right to information was that it enabled citizens to raise complaints against the legislature and ensured that the people's rights were supreme within a democracy. Parliaments were meant to be representative of their people but it was still difficult for people to gain information from them. Previously, in India, it had been difficult for citizens to receive proper written replies to their queries from members of parliament and from ministers, but current legislation required that a penalty be imposed if the officer responsible for information did not deliver it within a stipulated timeframe. He encouraged parliamentarians in countries where no appropriate legislation on the right to information existed to explore how it could be introduced.

Ms. P. TLAKULA, *Commissioner, African Commission on Human and Peoples' Rights, Panellist*, speaking at the invitation of the Moderator, said that public bodies held information not for themselves, but as custodians for the public. Freedom of information went far beyond the right of the media to know and applied to all citizens.

If the right to information were to have any effect, it had to be enshrined in national constitutions. In 2002, the African Commission had adopted a Declaration on Principles and Freedom of Expression in Africa, amplifying Article 9 of the African Charter on Human and Peoples' Rights which dealt with freedom of expression and freedom of information. The Declaration provided that the right to information be guaranteed by law according to the principles that: everyone had a right to access information held by public and private bodies which was necessary for the exercise or protection of any right; any refusal to disclose information should be subject to appeal to an independent body or to a court of law; public bodies should be required, even in the absence of a request, to publish information of significant public interest; no one should be subject to sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions served a legitimate interest and was necessary in a democratic society; and secrecy laws should be amended, as necessary, to comply with freedom of information principles. Finally, everyone had the right to access and update or otherwise correct their personal information, whether it was held by public or by private bodies. Thus, in Africa, access to information should be provided by both public and private bodies as long as the individual requesting the information could prove that it was necessary for him or her to protect or exercise his or her rights.

On 19 December 2006, a Joint Declaration was issued by the United Nations Special Rapporteur on the right to freedom of opinion and expression, the Organization for Security and Co-operation in Europe (OSCE) representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa that reinforced the principles set out in the African Commission's Declaration. The World Bank Institute had also developed a good-practice checklist for the access-to-information law which stated that: the right to seek, receive and impart information should be guaranteed in the constitution; all information was subject to disclosure; there should be an obligation on public bodies to publish certain key categories of information, even in the absence of a request; exceptions to the right to obtain information from public and private bodies should be clearly defined; a public body could only refuse to provide information if the harm caused to a listed legitimate interest was greater than the public benefit of disclosing the information; the manner in which requests for information were processed should be clear and the process fair, speedy and inexpensive; there should be a right of appeal to an independent body in cases where information was refused; there should be protection for whistleblowers; and the public should be properly informed about access to information laws, thus overcoming the culture of secrecy.

Some African countries had adopted access to information legislation, including Ethiopia, South Africa, Uganda and Zimbabwe and many countries had the right of access to information enshrined in their constitutions. However, laws varied from country to country: in Uganda, the citizens were entitled to access information held by the State or public bodies, while in South Africa, persons and private and public entities could request information from both public and private bodies. The access-to-information law in Zimbabwe applied to information held by public bodies only. Elsewhere on the African continent, access to information bills had been pending for over three years. In most African countries, either legislation still did not exist or there was a tendency to over protection of information held by governments. There was an urgent need for a model law for the continent that would assist African countries in drafting legislation that complied with international and regional standards and that was simple, affordable and easy to implement. As a first step, governments should repeal all laws that restricted the right to information. Secondly, government representatives should champion the right of access to information. Finally, in the quest for creation of "governments in the sunshine", inspiration should be drawn from the preamble to the Declaration of Principles on Freedom of Expression in Africa that the respect for freedom of expression and the right to information would lead to greater public accountability, good governance and the strengthening of democracy.

Ms. A. CALLAMARD, *Executive Director, Article 19, Panellist*, speaking at the invitation of the Moderator, said that freedom of expression had been at the centre of many global controversies, a recent example of which – the Danish cartoon of Prophet Mohammed – had highlighted the difficulty in dealing with freedom of expression in a globalized world. Freedom of expression was a fundamental human right and essential to democracy; it was enshrined in international human rights law and in

regional treaties. In 1946, the United Nations General Assembly had adopted Resolution 59(I) which stated that freedom of information was a fundamental human right and a touchstone of all the freedoms to which the United Nations was consecrated.

The thinking that inspired international human rights law was that, behind every disaster caused by humans in recent history lay the control or repression of expression and of conscience: apartheid, the Holocaust, the Gulag. Freedom of expression was not only a right on its own, but an enabling or empowerment right through which other rights could be realized; through the expression of their rights, people could demand a clean environment or vote meaningfully. Freedom of expression was therefore central to the bodies represented by the members of parliament present. Freedom of expression was under attack all over the world and it required protection. Freedom of expression was not an absolute right and, understandably, it could be subject to restrictions to protect the rights or reputations of others and for reasons of national security, public order or public health, although under international law, States were under no obligation to impose restrictions on those grounds.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) recognized that freedom of expression was not unbounded and that certain expressions could wound and harm. Therefore, under international law, States had a duty in respect of incitement to hatred and, as stated in Article 20 of the ICCPR, any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence was prohibited. Incitement to hatred had been interpreted differently by governments around the world although for any restriction to be legitimate, a three-part test should be applied: it should pursue a legitimate aim, it should be imposed in a democratic framework voted by parliament; and it should be necessary in a democratic society.

Key challenges in the field of freedom of expression included the right of journalists, who were being targeted individually for their work, to be protected; regarding censorship, there were an increasing number of journalists and other individuals being imprisoned for denouncing corruption. Corruption ate at the heart of democracy and to censor those who denounced it damaged democratic institutions. Freedom of expression had been regulated at the time of the introduction of the printing press in Western Europe and the requirement to regulate the present information and technology revolution, including satellite television and the Internet, was problematic for many governments. However, controlling those media might not always provide the best solutions. On the question of the right to freedom of expression and the problem of intolerance, it should be recalled that governments had a duty to put in place measures to protect people from incitement to hatred, although whether those measures should include restricting freedom of expression, and whether that would amount to censorship, was open to question. Unfortunately, many laws that were intended to protect against incitement to hatred were often abused and used against the very minorities they were intended to protect; a vast range of measures needed to be considered, not just restriction and legislative measures. It was important to establish how people could access information and how they could put forward information that would counter-balance the hatred and discrimination expressed towards them, a problem that was exacerbated by having media that was concentrated in the hands of the few and that excluded minority religious and other groups from imparting information. Therefore, members of parliament should give attention to solutions that included enabling access to community media that would allow people to put forward perspectives that were currently being silenced.

### **Debate**

Mr. J. FAIROOZ (Bahrain) said that the previous speakers had explained the relevance of the right to information and freedom of expression; however, those rights brought with them obligations and responsibilities as outlined in Article 20 of the ICCPR. Freedom of expression should never be used to allow expressions of hatred; all religious beliefs and faiths should be respected while defamation and the humiliation of the religious beliefs of others, including cynicism and satire, should be sanctioned. The publication of cartoons depicting the Prophet Mohammed in the press had understandably caused great offence as it had been interpreted more as an attack against religion than as the exercise of freedom of expression. That outrage should be compared to the plight of Palestinian members of parliament who had been imprisoned in Israel merely for having expressed their views on the rights of the Palestinian people. Another example of the need for responsibly exercised rights was the present financial crisis which highlighted issues of transparency and banking privacy and secrecy. A bill on the right to information was currently being drawn up in Bahrain.

Mr. U. CHAUDHARY (Nepal) said that freedom of speech and expression constituted a fundamental pillar of democratic and accountable governance; it comprised a respect for pluralism and diversity and for open discussion among electorates and candidates. The vibrancy of a country's democracy could be reflected in the freedom of the media. Respect for freedom of expression enhanced public accountability, strengthened responsible government and played a crucial role in building a participatory, democratic society.

The right to information helped parliaments to fulfil their public oversight duties more effectively; proper utilization of public funds and respect for the popular mandate were important parliamentary responsibilities that could not be discharged without free and independent dissemination of information. The right to receive information from all State institutions was the essence of the right to information and public access to information corrected an atmosphere of mistrust, promoted understanding and laid the foundation of national unity and reconciliation.

Nepal was making historic, democratic changes to its constitution that included a multiparty system of governance following the start of an internal peace process in 2006. The interim Constitution of Nepal guaranteed freedom of expression and the Right to Information Act of 2007 guaranteed the right to seek and receive information from public offices; public officials who denied citizens their right were liable to prosecution and the victims were entitled to compensation. A regulatory body had been set up to ensure implementation of the right to information and a parliamentary committee oversaw information-related issues in the Parliament.

Mr. NGO ANH DZUNG (Viet Nam) said that Viet Nam was a signatory to the ICCPR and was attempting to fulfil its duties under the Convention. However, while the concept of freedom of expression was easily understood, it was more difficult to implement in practice. The right to information was a fundamental human right, yet as a developing country, Viet Nam encountered problems in realizing that noble ideal as it required a legal framework, technical infrastructure and media activities to make the information available. He was therefore keen to share experiences of the problems involved in introducing access to information with other parliamentarians.

The right to information should also be viewed from the perspective of the development of the Internet, which could be a negative influence on young people due to its dissemination of information on violence, sexual abuse and drug abuse. The question arose of how far governments should intervene under those circumstances; there were cultural traditions in Asia that needed to be respected.

Mrs. A. KYRIAKIDOU (Cyprus) said that, although freedom of expression was considered a fundamental human right that was enshrined in the constitutions of most democracies, many individuals still faced persecution and imprisonment as a result of exercising that right. In the exercise of their own duties, parliamentarians knew how important it was to be able to seek, receive and impart information without fear or interference. The right was important for the development and the dignity of every individual and vital for the functioning of a true democracy. Particular attention should be paid to actions undertaken by governments which used national security as an excuse to restrain political opposition and criticism. In recent years, increased fear about terrorism had been used to justify increased repression. Parliamentarians should reinforce their efforts to ensure the release of thousands of individuals who had been imprisoned because of their beliefs, ethnic origin, sexual orientation or economic status.

There was, of course, a fine line between guaranteeing freedom of expression for one group and having due regard for the well-being and rights of others. Protecting freedom of speech should not prevent punishing conduct that intimidated, harassed or threatened another person. Both governments and civil society, including the media, had a role and responsibilities in facilitating a suitable environment for the supervision of human rights. Freedom of expression could empower citizens, enabling them to scrutinize national policies and put pressure on those in government, yet it should not be forgotten that with power, came responsibility.

Mr. G. ALIKHANI (Islamic Republic of Iran) said that freedom of expression was an inalienable human right and the right to information underpinned the effective interventions of democratic governance. Both rights were essential to ensure accountability, transparency, participation and the rule of law. Accessible and understandable information and the ability to communicate it were crucial to enable people to participate in policy-making processes.

The ultimate goal for all governments should be to move towards a “global knowledge” society. To foster the free flow of information, four key principles of inclusive knowledge societies were required: freedom of expression; equal access to quality education; universal access to information; and respect for cultural diversity. The information and communications technologies presently available should provide the tools to enhance the standard of living of millions of people around the world and fulfil the Millennium Development Goals.

The media occupied a pivotal position in society and they had enormous potential to inform people on everyday issues. The representation of Islam and Muslims in the mainstream Western media had tended to be negative, the more so in recent times; freedom of expression and the right to information should not be used as an excuse for Islamophobia or for anti-religious or racist propaganda. Humankind had the capacity to build an inclusive knowledge society that would empower people everywhere; education and the rational use of technologies could help to reduce existing inequalities and prevent conflict.

Ms. Y. REGUEIFEROS (Cuba) said that, just as there could be no democracy without social equality, so there could be no information democracy without economic democracy; illiteracy barred many from exercising the right to information. The hegemonic model of globalization had encouraged unscrupulous financial speculation and a policy of deregulation had led to merging of companies and the gradual monopolization of influence on opinions. The emphasis on personal fortune had led to a negation of ethical and religious principles.

There was a profound imbalance in how resources were allocated in a world in which 925 million people went hungry. The situation had been made worse by transnational media companies which, for many years, had played down the voices of those who had drawn attention to the irrational model of extreme selfishness and the accelerating depletion of natural resources. The concentration of the media in fewer and fewer hands had led to the exclusion of the majority from the right to inform and to be informed. Companies having a monopoly on thousands of radio and television stations, the written press and film could construct a reality that coincided with the interests of the private sector to which they belonged: the case for the Iraq war had been built on lies although its purpose had been to seize the sources of energy for high-consuming societies.

Cuba had been the subject of campaigns of misinformation and manipulation that had exploited prejudices and stereotypes and influenced the views of millions of people. For almost five decades, the country had suffered while a media silence prevailed as it had done over the detention of five Cubans unjustly incarcerated in the United States.

Mr. G.V. ȘERBU (Romania) said that the role of parliaments was essential in ensuring the right to information; the first step in providing access to it involved adopting appropriate legislation setting out what that right entailed and the associated responsibilities of those bodies providing the information. Putting the law into practice required a commitment to transparency on the part of public authorities, the education of the public and the training of staff so that they were aware of their rights and responsibilities under the law.

The correct processing of requests for information should not be viewed as exceptional behaviour meriting a reward. Parliaments should ensure the full use of new information and communication technologies so that citizens had access to legislation, to parliamentary activity, to send petitions and to receive information online. Political will, resources and a structured approach would be necessary to achieve that end. An exchange of good practices on initiatives such as that of the Romanian Senate, which had just adopted a new strategy on communication, image and public relations, would enable parliaments to be more transparent and bring them closer to their citizens; the IPU could perhaps organize a conference on that subject.

Mr. A. EL KADIRI (Morocco) said that a distinction should be made between the principle of freedom of expression and the bad practices that sometimes accompanied it. Freedom of expression was a fundamental human right that needed to be respected and, given that one person's freedom began where another's ended, not used as a means to incite racism or religious hatred. It was known that the cartoons referred to by previous speakers had incited hatred and racial discrimination and had prompted confrontation between religions; the United Nations had examined the issue and had issued a recommendation stating that freedom of expression excluded attacks on religion. Nevertheless, incitation to racism and hatred of religion persisted under the guise of freedom of expression. Developed countries were able to make use of communication technologies to influence global opinion,

although frequently those media disseminated false information. It should be remembered that people had a right to self determination and the right to resist an occupier; those ideas could not be described as incitation to terrorism as had been alleged in the case of the Palestinian people.

Given that human rights covered economic as well as political rights, the media had a duty to show the suffering in the developing world, in particular the children who were dying of disease and hunger. The media should be used to fight against those problems. In Morocco, certain breaches were tolerated in order to ensure that the media retained its independence.

Mr. V. MUNYABAGISHA (Rwanda) agreed with the Executive Director of Article 19 that the right to information was a fundamental human right. Access to information in Rwanda, a constitutional right, had transformed the lives of women in particular, enabling them to participate in the day-to-day life of the country: currently, some 56 per cent of the Rwandan Parliament was composed of women. However, the country had also experienced a negative aspect of freedom of information when, in 1994, the Government had misused the media to incite genocide. There still existed, both inside and outside Rwanda, groups that used so-called "freedom of expression" to disseminate the ideology of discrimination and genocide. The right to freedom of information and freedom of expression should not be misused. The Rwandan Parliament had installed information technology and planned to transmit radio broadcasts from early 2009 so as to educate the population on how to exercise their rights responsibly.

Mr. A. AL OTHEIMEEN (Saudi Arabia) said that one State, which had considered itself superior to others since the end of the Second World War, had provided advice to the United Nations Security Council which had led to the invasion of Iraq. He agreed with previous speakers that the right to freedom of expression should be limited when it came to respect for religions; it was necessary to resist that which would jeopardize harmony between peoples and make every effort to encourage peaceful co-existence between religions. Any attack against a civilization, culture or religion caused tension between populations. Therefore, the media should refrain from ridiculing religion and focus instead on resolving the problems of humanity. In concluding, he supported the remarks made by the Member for Bahrain concerning Palestine.

Mr. C.S. ATWAL (India) said that freedom of expression was not merely a freedom enjoyed by an individual for personal benefit, but an extension of the democratic process; it helped the electorate to take part in informed discussions and kept elected representatives in touch with the electors. Freedom of expression was enjoyed by all in India and anyone who sought to violate those freedoms was punishable by law. Freedom of expression included the right to freedom of speech and freedom of the press.

Transparency and accountability of government were preconditions for democracy and secrecy had been a cause of discontentment among the electorate; therefore, the right to know assumed great importance. In India, the Right to Information Act, 2005, had proved an effective tool to extract information from the Government although, as no right was absolute, it exempted from disclosure information relating to the security of the country and to scientific or economic interests. Freedom of information encouraged openness and good governance and helped to curtail corruption.

It would be helpful to learn the views and experience of other governments on: implementing policies on the right to information and freedom of expression and, in particular, in running "right to information" campaigns in developing countries where levels of literacy and understanding on the right to be informed could be problematic; the limitations imposed by regulatory regimes and their misuse; whether the immunity enjoyed by members of parliament was necessary for democracy; possible guidelines on defamation; and how freedom of expression and the right to information were to be interpreted in the context of global terrorist activities.

Mr. A. MONTIEL (Venezuela) said that the role of the IPU was to examine how the use of freedom of expression and the right to information affected the development of democracies; the will of the people should be translated into political decisions and it should take precedence over corporate and media interests. Human rights and democracy could be enhanced by strengthening the right to information and freedom of expression. Research should be conducted to ensure that powerful companies and media interests did not interfere with the outcome of transparent and fair elections. It was evident from the current financial crisis that people throughout the world had been deceived by

false information on the status of financial institutions. While it was important not to restrict freedom of expression, there was evidently a need to regulate the activities of corporations and their influence on democracies.

Ms. M.S. HALIMAH (Malaysia) said that freedom of expression was guaranteed under the Malaysian Constitution. A free press was vital to freedom of expression and statutory control of the press was deemed unacceptable, although a multi-racial country like Malaysia required the press to act responsibly in order to avoid a recurrence of the racial clashes the country had experienced in 1969. The 21<sup>st</sup> century had seen unprecedented change in print and electronic media; people's perceptions had been influenced by the Internet and government-controlled media were losing credibility. Nevertheless, the validity of the opposition and alternative views expressed on blogs should be questioned. Since the 1990s, Malaysia had embraced an "open sky" policy and, through its Multimedia Bill, undertaking not to censor the Internet.

The right to freedom of expression was a concept as elusive as that of democracy itself. Malaysia was committed to the fundamental rights of its people, regardless of race or faith, although that right was subject to the notion that it would not infringe upon the rights of others or threaten the peace or harmony of the country. Non-governmental organizations also had responsibility to be the eyes and ears of the people and to protect national security, public safety and public order.

In order to strengthen the right to freedom of expression, it was recommended that developing countries should: establish a working group on protecting and upholding freedom of expression as set out in the Universal Declaration of Human Rights; set up a networking protocol to share news and information; and adopt the Vienna Declaration and Programme of Action (VDPA) in full, to ensure a practical and workable framework of planning, dialogue and cooperation.

Mrs. M.A. SAA (Chile) said that in Chile, as in many other countries, freedom of expression was a constitutional right that could be exercised without censure and could only be curtailed in the event that it would be harmful to the rights or reputation of others, or for reasons of national security, public order or public health or morality as defined in law. The Inter-American Convention on Human Rights (Treaty of San José de Costa Rica) (*opinion consultiva* No 5/85 of 13 November 1985) referred to freedom of expression and of thought as both individual and collective rights that could be exercised through any appropriate medium for the exchange of ideas and information. The right to freedom of expression should be clearly defined in law and used for legitimate ends. It was necessary to ensure pluralism and to prohibit, as in Chile's Constitution, not only State, but also private, monopoly of all communication media as that could jeopardize social dialogue and the expression of different points of view, restricting democracy and diversity.

The right to information applied to both the person disseminating and the person receiving the information and it incorporated the right to privacy. The dissemination of false, partial or manipulated information did not correspond to the exercise of a right but to the violation of a right. In Chile, legislation had recently been passed to improve the transparency of public and State bodies and to make information more readily available. The legislation gave citizens the right to access information and to appeal in the event of a refusal.

Mr. M. ELFORJANI (Libyan Arab Jamahiriya) said that the right to inform, to receive information and hear the views of others were part of Sharia law and freedom of expression was a basic human right. However, those rights should not be used for the purposes of defamation as it then became a danger rather than a benefit; nor should it be used against the public interest. There seemed to be dual standards when it came to the right to information and freedom of expression: in some circumstances, it appeared that attacking religious symbols was classed as freedom of expression, yet in others, to criticize a religion was described as racist and discriminatory. There was a minority of people who used freedom of expression as a reason to incite hatred and to further their own political interests and it was therefore essential to take account of Article 20 of the ICCPR in adopting national legislations as Libya had done. Furthermore, issues of poverty, hunger and illiteracy were even more pressing and needed to be resolved before tackling freedom of expression.

Mr. M. DARUSMAN (Indonesia) requested that the conclusions of the panel discussion should note the statement by the Executive Director of Article 19, and, in particular, her reference to the cartoon controversy with which Muslim countries, including Indonesia, were familiar. The Representative of Article 19 had put forward the idea that the right to freedom of expression might not

be absolute but could be regulated by governments. He was not alone in concluding that double standards were at play given that in some Western countries, newspapers could be taken to court for publishing cartoons that could be deemed anti-Semitic. It appeared that the press sought to dominate the agenda by promoting absolute freedom of expression when it was in their interest to do so.

Mr. GU YIDONG (China) said that freedom of expression and the right to information were fundamental human rights. All Chinese citizens had the right to express themselves freely and could communicate their criticisms to State authorities and public officials. China had published regulations guaranteeing transparency of information and had established a system of spokespersons for central and local government. The Chinese press was playing an increasing role in monitoring freedom of expression and the country had more than two thousand newspapers and many hundreds of radio and television stations. The Internet had developed rapidly in China; the country had more than 200 million Internet users who were able to express their views freely. Pornography and violence in the media were nevertheless a concern. Following the terrible earthquake in China earlier that year, the Government had published information, had shared it with the entire world and benefited from the international response. Economic globalization had not yet solved the problem of access to information; China wished to improve cooperation with other countries in order to increase the transparency of information.

Mrs. N. SADIQ (Pakistan) said that freedom of speech was the inherent human right to voice one's opinion publicly without fear of censorship or punishment. She commended the draft report, which had captured the essential elements of the debate on freedom of expression and the right to information and correctly noted the need for those rights to be exercised responsibly and within permissible legal bounds. She deplored the deterioration in the exercise of the rights which had been used to justify hate speech, racist ideologies and discriminatory policies. Increasing and disturbing incidents of defamation of religions by way of printing and reprinting insulting caricatures and the screening of offensive documentaries and incitement to racial and religious hatred through extreme right-wing political platforms pointed to a new racist trend taking root in many societies. Those behind that behaviour, which was intended to humiliate and exclude specific communities on the basis of race and religion, sought to justify their actions by citing their right to freedom of expression.

Freedom of information was an extension of freedom of speech and referred not only to accessibility to information held by governments; restrictions on access to information should be imposed only to protect legitimate national security interests. Public interest in obtaining information should be a primary consideration in all laws and decisions. Freedom of the press was vital to ensure the free flow of information and States should stand as guarantor for that freedom. The press was a powerful medium that had tremendous influence; ideally, it should be governed by a voluntary code of conduct. Wherever freedom of the press was curtailed and people were denied the opportunity to vent and settle their differences, uprisings and fear followed. Abuses against the press, journalists and writers should be dealt with an iron hand as they were counterproductive in a peaceful and democratic society.

Mr. L. VOLONTÉ (Italy) said that democracy could not exist without respect for Articles 18 and 19 of the ICCPR. Freedom of expression and the right to information relied upon a transparent government and legislative system and on freedom of the market and of communications that avoided market monopolies of information. Nevertheless, freedom of expression was bound by certain limitations, including access to education. As Members from the Islamic Republic of Iran and Saudi Arabia had noted, freedom of expression should not be used as a freedom to offend and to spread religious hatred, as in the case of the Danish cartoons, which went against fundamental human rights. Freedom of expression encapsulated the right to express one's own individuality and to come to a better understanding of oneself by listening to others. Freedom of religion was also a sensitive issue in many countries where minority religious groups were victims of violence.

Mr. K.O. BAPELA (South Africa) said that questions relevant to the African continent included the need to strike a balance between the right to information and the restrictions imposed for reasons of State security or to protect citizens from harmful information containing violence or pornography. Although international human rights law existed, the international community lacked a media regulator that could act in addition to national bodies. Stereotyping by the media of women and the exposure of vulnerable groups such as children to violence should also be combated. Access to information could be hampered by illiteracy although radio and television and, to a much lesser extent, the Internet were

increasingly becoming sources of information in Africa. There were also barriers because most information was still disseminated in official languages, rather than indigenous languages, and more funding for public broadcasting was needed to ensure that information reached vulnerable groups.

Mr. A. DISMORE (United Kingdom), *co-Rapporteur*, summarizing the views expressed thus far, said that many speakers recognized that freedom of expression and the right to information were necessary for democracy; those two factors were empowering and participatory and their lack resulted in secrecy and discontent. The barriers to empowerment lay in lack of education and lack of access to information in minority languages. The problems of economic exclusion and whether the rights discussed were of equal importance to people who did not have enough food or water had also been raised. Developing countries had also raised the willingness of States to develop systems and the importance of exchanging good practice. There was a view that freedom of information also applied to private bodies and that States could use public security as an excuse to put exceptions in place. There was the conundrum of how to protect public morality without using excessive censorship. No solutions had been proposed to the challenges posed by technology although it was also seen as a positive influence in terms of public education. Equally, in terms of media ownership, there had been a general consensus that, while monopolies were bad, freedom of the press was essential.

Religion had been one of the most difficult themes broached thus far: as the report noted, stereotyping and insulting language could seriously affect dialogue and co-existence amongst and within communities. All religions should certainly be treated in the same way, but the question remained as to whether the criteria for defining incitement to hatred should be based on the intention of the person causing the offence, on the subjective view of the person feeling insulted, or on an objective test of whether the action had incited hatred.

Ms. A. CALLAMARD, *Executive Director, Article 19, Panellist*, speaking at the invitation of the Moderator, clarifying her point on international standards and freedom of expression, said that freedom of expression was a fundamental right under Article 19 although it was recognized that under specific and restricted circumstances it could be limited to protect national security, public health and public order. Wealthy individuals or powerful institutions could abuse human rights in order to protect themselves from the scrutiny of the press. National security was routinely used by governments to prevent facts that were merely embarrassing from entering the public domain. Parliamentarians, in their role as legislators and representatives of civil society and political parties, should be aware that laws would be abused in ways that would not be in the interests of democratic government. The Johannesburg Principles provided twelve steps on how to achieve the balancing act between freedom of expression and national security.

Incitement to hatred and defamation were difficult areas as each speaker seemed to use a different vocabulary: some had spoken of the defamation of religion while others had referred to respect for religion and to incitement to religious hatred and some had even talked of sarcasm: it would therefore be difficult to find a standard that would meet the views of all. Nevertheless the threshold for incitement to hatred was very specific and it would be damaging if it were to be lowered to a level not originally intended: it had originally been meant to refer to violence and discrimination. It was important to uphold the distinction, which had been accepted in the past, between something that was deemed offensive and incitement to hatred.

Ms. P. TLAKULA, *Commissioner, African Commission on Human and People's Rights, Panellist*, speaking at the invitation of the Moderator, recommended that parliamentarians should advocate for self-regulation of the press rather than regulation by governments. She wished to stress the link between freedom of information and the right to development, as ordinary people could not exercise their economic and social rights if they did not have access to information. The desirability of confining the right to information to public bodies should be reconsidered given that in some countries private bodies or companies could be more powerful than the State.

Ms. E. SALGUERO CARRILLO (Bolivia) said that the right to public information was a tool for preventing corruption and strengthening democracy. The option to withhold public information for reasons of secrecy, whether banking secrecy or security, should be carefully regulated to ensure that it was not used to hide corruption. Freedom of expression should be exercised according to the principles of diversity and responsibility by journalists and the media who should resist manipulation of the facts. Ownership of the media should also be regulated, as it was in Bolivia, in order to prevent monopolies.

Mr. W. MADZIMURE (Zimbabwe) said that freedom of expression was the cornerstone of economic and social development; parliament should ensure that information was sent to and received from the electorate as the free flow of information enabled parliamentarians to debate effectively. The Executive had an obligation to give information to the population, however in many developing countries the executive had become the culprit in disseminating or inciting hate speech. Furthermore, the Executive often used restrictive domestic laws to muzzle the press and stifle debate and the sharing of information. Legislators should intervene to amend retrograde laws and improve the accessibility of parliaments. It was the responsibility of members of parliament to ensure that information reached ordinary people and that people could exercise the right to freedom of association.

Ms. T. BOONTONG (Thailand) said that freedom of expression and the right to information were critical in protecting people's rights, underpinning informed debate, building societal trust and strengthening democratic institutions. However, those rights could be highly controversial and cause international uproar if they were used in a manner that encroached on the rights of others to express their religious beliefs. It was indispensable to set boundaries to ensure that, in exercising their rights and freedoms, one group did not harm others.

Good governance was founded on the principles of freedom of expression and access to information; they were the indicators of the health of a democracy and parliament had a duty to protect them. Legislations should promote respect for freedom of expression and freedom of information and build a framework for democratic participation at regional and international levels. Parliamentarians should assist people to advocate more effectively for the adoption of media freedoms and freedom of information that were based on universal standards.

Mrs. Z. DRABO OUEDRAOGO (Burkina Faso) said that freedom of expression was a fundamental human right requiring the will of the legislators to ensure that it was enshrined in national laws; freedom of opinion and of the press and access to information were guaranteed under the constitution of her country. Burkina Faso had a pluralistic arrangement with a mix of public and private television stations. During elections, all citizens had access to electoral information. Ministers were responsible for disseminating information on the activities of their ministries to the public and the press.

Regarding the right to information, she was dismayed by the decline in the moral and ethical standards of young people and by the harmful influence of the Internet: she shared similar concerns to those expressed by the delegate of South Africa and wished to learn more about the subject.

Ms. R. KADAGA (Uganda) said that Uganda had an access to information act that promoted effective, transparent and accountable government, gave access to information held by the State, protected people disclosing information on maladministration or corruption, and empowered the public to scrutinize decisions that affected them. She hoped that the resolution they would adopt on that item would make reference to the rights of parliamentarians as, in countries such as Uganda, a recently-introduced multi-party system meant that members of parliament felt pressured by the party whip to conform to their respective party's position.

Freedom of expression and the right to information should also encapsulate women's and children's rights on changing cultural issues such as female genital mutilation; young girls should know where to seek information and protection.

Mr. J.-J. EKINDI (Cameroon) said that the concepts of freedom of expression and the right to information had evolved a great deal in recent years and could include complex and dangerous issues raised by previous speakers, such as the moral and ethical breakdown of society, attacks against religion and incitement to hatred. Freedom of information was only valid as long as information could reach its target audience; the danger was that it could be communicated by so-called experts who could promote a narrow viewpoint and the channels could be monopolized by a few agencies that were capable of shaping opinion while not necessarily presenting an independent view. Information and communication were powerful weapons in cases of conflict and care should be taken to apply international law in an impartial manner. The dangers associated with using information for ideological ends should be mentioned in the final report.

*The Secretary of the Committee took the Chair.*

Mrs. C. NKERO MOUGNOKO (Gabon) said that freedom of opinion and the right to information were concepts which underpinned democratic systems and therefore they were the first to be eliminated by totalitarian States. Although freedom of expression and the right to information had been enshrined in Gabon's Constitution for a long time, they had only taken root after democracy had become well-established, as evidenced in the emergence of a free press during the previous two decades. Pluralism in the media was a phenomenon present in much of Africa although it was still an area causing many difficulties. In her country, private newspapers, television and radio stations ensured that State monopoly of the media was a thing of the past. Independent journalists and analysts in Gabon were able to help educate the population on governmental responsibilities and a national communication board ensured that propaganda and irresponsible reporting were regulated.

Communications and new information technologies were currently the responsibility of a female minister in Gabon: as in many developing countries, women and children were generally marginalized and therefore the Government of Gabon had deliberately sought to give responsibility to women in that area in order to redress the balance. Finally, she wished to highlight the dangers to children of Internet access.

Mrs. L. MENCHACA (Mexico) said that while the rights of women under national and international laws had improved, women still faced barriers and discrimination in exercising the freedom of expression and right to information that would lead to gender equality. The Inter-American Commission on Human Rights had identified factors directly affecting women, such as lack of equal opportunities in education; violence against women; a low level of participation in political life; and gender stereotyping in the media. It was urgent for States to take action to improve women's education and their participation in public life and civil society and to promote diversity and pluralism in the media.

*Mr. D. Canepa (Uruguay), Moderator, resumed the Chair.*

Mr. A. CARDOSO MACHADO (Timor-Leste) said that his country guaranteed freedom of expression and the right to information in its Constitution and had sought to improve transparency, protect democratic institutions and ensure that Timor-Leste was open to the outside world. His country was committed to helping all those who had not yet achieved those freedoms.

Ms. N. MOTSAMAI (Lesotho), commending the draft report and noting the various points highlighted within it, said that freedom of expression and the right to information should be exercised responsibly and not used as a means to humiliate and vilify others or to destabilize governments. Governments were signatories to international instruments intended to guarantee those rights and sought to enshrine them in their constitutions. It would be helpful if international organizations could formulate model legislation on freedom of expression and the right to information that would assist States Parties in adopting appropriate legislative frameworks.

Mr. Z. AZMY (Egypt), supporting the views of the previous speaker, said that freedom of expression strengthened the democratic process and made it possible to combat corruption. However, freedom of expression should be subject to certain limitations to ensure that it did not negatively affect religions or national security. Freedom of expression should not be used to justify defamation. National parliaments should make sure that corporations and big business did not violate the right to freedom of expression. Parliaments should adopt legislation that balanced individual freedoms with the rights of others and with the national interest.

Mrs. A. BOUMEDIENE-THIERY (France) said that, on the one hand, those exercising the right to freedom of expression had a duty to do so responsibly and with self-discipline, while on the other, governments should not use issues of international terrorism as a pretext to remove that right. Parliaments should guarantee the political independence of journalists by allowing them the right to silence and not forcing them to disclose their sources; they should also seek to limit media monopolies. Parliamentarians should ensure that codes of ethics were respected, including the principles of proportionality and justice and that journalists were not penalized.

Mr. S.H. YOON (Republic of Korea) said that in a democracy, where political decisions were made by the people, the right to know and freedom of expression were of primary importance. All citizens in the Republic of Korea enjoyed freedom of speech and of the press and the National Assembly was currently amending provisions in order to: protect people's right to know and ensure individuals' right to access information; propose a standard to recognize defamation of character; guarantee an individual's right to make decisions on his or her personal information; encourage both the public and private sectors to comply with principles on protecting personal information; increase respect for personal rights and privacy; and establish a social and cultural foundation to protect information on human rights. The Government was currently drafting legislation to regulate the Internet and prevent harassment through misuse of websites. Freedom of expression should be subject to some restrictions to ensure that it did not violate the honour or rights of others.

Mr. J.M. GALÁN (Colombia) said that all were agreed that freedom of expression and an independent press were fundamental pillars of democracy. Yet establishing freedom of expression was an ongoing process that required educating citizens on their civil and political rights and it was dependent on vibrant local democracy. In Colombia, drugs traffickers, who had sought to infiltrate the political establishment, posed a serious threat to freedom of expression and to an independent press. Many politicians had been imprisoned in Colombia following the discovery of their links with paramilitary organizations. Organizations such as the IPU should voice their support for the press which had played a role in unmasking the corruption.

Mr. A.J. AHMED (United Arab Emirates) said that his Government guaranteed freedom of expression, thereby removing all censorship of the media and promoting freedom of the press. There was a ban on imprisoning or arresting journalists and new criteria made it possible to grant increased rights to journalists in their investigations. There was also the possibility to have access to information and a journalists' trades union was being set up.

He proposed that the Committee give consideration to strengthening the supervisory and regulatory role of government to ensure that freedom of expression and the right to information were respected. Measures should be taken to ensure transparency and the necessary information should be published by government and by private bodies, including financial institutions. It was a sign of the times that the right to freedom of expression had to be tempered by concerns for public security due to the threat of terrorism. Ensuring transparency and the associated theme of the fight against corruption were also important considerations.

Mr. A. BENSALAH (Algeria) said that human rights should not be viewed from one perspective alone. While some cited human rights to justify inciting hatred or religious intolerance, the Palestinians had been accused of terrorism for talking of fighting the enemy. The concept of freedom of expression should be defined in a balanced way that took into consideration fairness, democracy, human rights, national security and the key interests common to all humanity.

Mrs. M.G. CHETIMA (Niger) said that freedom of expression and the right to information, including freedom of the press, were rights enshrined in the Constitution of Niger. Freedom of expression should be tempered with fairness and impartiality: used properly, it could promote development and raise awareness among citizens; used improperly or in a subjective manner, it could threaten peace and harmony.

Access to information, particularly for those living in rural areas and for women, was still limited for a lot of people in Niger: many did not possess a radio or television set, nor have the time to access information; illiteracy was still a problem. Therefore, she requested that the IPU provide assistance to governments such as her own, which faced the barriers of poverty and limited resources in seeking to disseminate information.

Mrs. M.-O. LOROUGNON GNABRY (Côte d'Ivoire) said that legislation was passed in her country in 2004 guaranteeing freedom of expression and of the press, thus underpinning the democratic process. Unfortunately, freedom of expression had been used by some in the country to make unfounded attacks on the Government and on private individuals that were difficult to counter, which had prompted the need to establish limits and a framework.

Mr. S. HADDAD (Syrian Arab Republic) said that, in contradiction to the actions of some countries, democracy was not a concept that could be imposed on people by force. Human rights were universal and should not be upheld on a selective basis: it was unacceptable for parliamentarians from the Palestinian Authority to be denied freedom of expression and imprisoned while, in the West, campaigns aimed at blasphemy against the Prophet Mohammed which had been deeply upsetting to Moslems were permitted under the guise of freedom of expression. Respect for all religions and for human dignity should be the bedrock of every constitution, for that was surely the best way to combat intolerance and extremism.

Ms. P. TLAKULA, *Commissioner, African Commission on Human and People's Rights, Panellist*, speaking at the invitation of the Moderator, responding to the request by the delegate of Lesotho to provide a model law on freedom of information, said that she was already consulting in Africa on the advisability of drafting such a law.

Ms. A. CALLAMARD, *Executive Director, Article 19, Panellist*, speaking at the invitation of the Moderator, said that there were existing model laws that could be of use to parliamentarians, but they were generic rather than regionally specific. Responding to comments raised, she emphasized that the key principles of freedom of expression and freedom of the press were diversity, pluralism and independence and whenever those principles were violated, the whole structure of freedom of expression was under attack. It would be important to include all of the points put forward in the debate in the Committee's report, particularly the possibility for minorities and disadvantaged groups, including women and children, to impart and have access to information and the kind of legal structures and institutions that could be put in place to strengthen their capacity to do so.

Mr. P. RASHTRAPAL (India), presenting on behalf of Mr. K. MALAISAMY, *co-Rapporteur*, thanked all those who had contributed to the debate. Emphasizing the importance of showing respect for all religions, he pointed out that the right to freedom of expression and freedom of information carried with it a responsibility that transcended national boundaries. In addition to the call for model legislation, another clear message in the debate was that governments were not the owners, but rather the custodians and disclosers of public information. An international regulator might be useful to temper the harmful and exploitative influence of the media, in particular the electronic media.

Mr. A. DISMORE (United Kingdom), *co-Rapporteur*, said that the question of resisting the party whip would probably be a matter for the members of parliament concerned. He noted the number of delegates who had raised the issue of religion. He agreed with the delegate of France that, in regard to freedom of expression, a degree of self-discipline would be helpful. It would be preferable for regulation to be carried out independently of government. He agreed that the rights to freedom of expression and information would be meaningless if access to them was denied due to illiteracy or social exclusion.

*The meeting rose at 1.05 p.m.*