



Promoting the Human Right to Freedom of Expression and Access to Information in Development Cooperation

Introduction

In May 2011, the German Federal Ministry for Economic Cooperation and Development (BMZ) adopted its strategy paper '[Human Rights in German Development Policy](#)' (PDF, 484 KB) The aim of this paper is to ensure that German development cooperation (DC) is systematically oriented towards promoting and protecting civil, political, economic, social and cultural rights. BMZ pursues a twin-track approach, aiming, on the one hand, to establish human rights as a cross-cutting issue in all sectors and priority areas of cooperation and, on the other, to promote these rights by means of targeted projects.

The right to freedom of expression and access to information falls within the category of civil and political rights. As an 'empowering right', it facilitates the implementation of other human rights such as the right to participation in political and public life. The ability to exercise this right is also a key precondition for economic and social development and good governance.

- People are only able to form an opinion and make informed decisions if they have free access to information and public debate.
- People are only able to communicate their concerns and needs to governments and state authorities and ensure these are taken into account if they are free to express themselves without fear.

- To ensure that governance is transparent and that governments can be effectively called to account, the media and civil society must be free to gather and disseminate information on the actions of states.

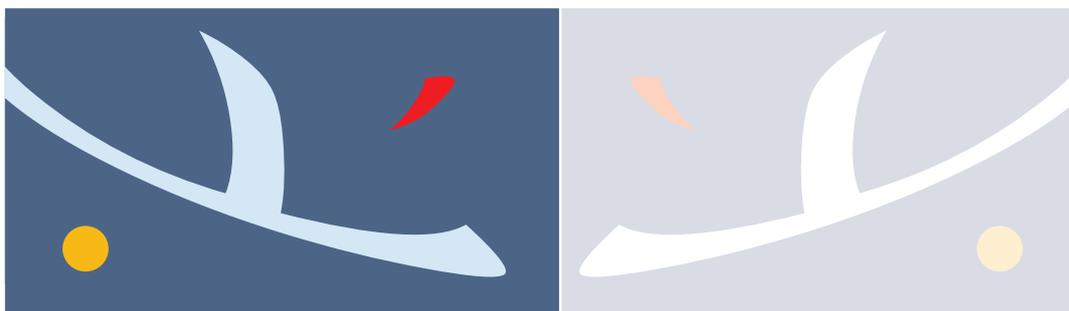
This e-info tool aims to:

- define and clarify the scope of the human right to freedom of expression and access to information;
- give an overview of the structures in place to protect and implement this right;
- provide information on the role of development cooperation in this context.

1. Definition and scope of the human right to freedom of expression and access to information

Article 19 of the [Universal Declaration of Human Rights](#) (PDF, 116 KB) adopted in 1948, states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.



The Universal Declaration of Human Rights is a political declaration of intent by the international community and, as such, is not legally binding; however, most of the provisions it contains have been incorporated into common law. In 1966, the United Nations (UN) adopted the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR). The right to freedom of expression is enshrined in article 19 of the ICCPR:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - a. *for respect of the rights or reputations of others;*
 - b. *for the protection of national security or of public order (ordre public), or of public health or morals.*

The ICCPR has now been ratified by 168 nations, including all of Germany's development cooperation partners (as at: 11/2014).

The right to freedom of expression and access to information is also enshrined in article 13 of the [UN Convention on the Rights of the Child](#) and in article 21 of the [Convention on the Rights of Persons with Disabilities](#) (PDF, 126 KB) It is also included in regional human rights instruments, for instance in article 13 of the [American Convention on Human Rights](#), article 11 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) and article 9 of the [African Banjul Charter](#). The [African Platform on Access to Information \(APAI\)](#) (PDF, 220 KB), adopted in 2011, comprises detailed political demands relating to the implementation of the right to access to information, though these are not legally binding. Article 32 of the [Arab Charter on Human Rights](#) (PDF, 80 KB) also guarantees the right to freedom of expression and free access to information. Finally, the right to freedom of expression is also recognised in article 23 of the [ASEAN Human Rights Declaration](#) of 2012 (though this is not yet legally binding).

The aim of these regional human rights instruments is to complement the international system of human rights treaties; as such, they underscore the universality of human rights. They include stipulations on issues relating to specific historical or cultural contexts at regional level which go beyond the provisions of the international agreements.

1.1. Interpretation of the right to freedom of expression and access to information

Each of the core human rights treaties of the United Nations is monitored by a specially designated [treaty body](#), composed of independent experts nominated by the respective state parties and representing the various world regions. The treaty bodies meet two to three times a year for a few weeks at a time. Each of the treaty bodies publishes its interpretations and clarifications of the respective human rights treaty in the form of [General Comments](#). The [Human Rights Committee](#) is the body responsible for monitoring the International Covenant on Civil and Political Rights, in which the right to freedom of expression is enshrined.

In July 2011, the Human Rights Committee published [General Comment Nr. 34](#) (PDF, 208 KB) on article 19 of the International Covenant on Civil and Political Rights, in which it takes account of recent developments in information and communications technology such as digital and, in particular, social media. The General Comment notes in its introductory remarks that the right to freedom of opinion and access to information constitutes the foundation stone for every free and democratic society and that this right forms the basis for the full enjoyment of a wide range of other human rights, such as the rights to freedom of assembly and association, and the right to vote. The obligation to respect the freedoms of opinion and expression is binding on all branches of the State (executive, legislative and judicial) and at all levels – national, regional and local. The obligation also requires States party to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression.

The General Comment of the Human Rights Committee also notes that paragraph 1 of article 19 of the International Covenant on Civil and Political Rights requires States party to protect the right to hold opinions and to change opinions at any time. It is incompatible with paragraph 1 to impose restrictions on, harass, intimidate, stigmatise or arrest a person on the grounds of the opinions they may hold, including opinions of a political, scientific, historic, moral or religious nature.

The right to freedom of expression also includes the freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers (article 19, paragraph 2 of the International Covenant on Civil and Political Rights). This applies to all ideas and opinions not covered by article 19, paragraph 3 (legitimate restrictions) and article 20 (war propaganda and advocacy of national, racial or religious hatred) of the Covenant. All forms of expression are protected, including spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They also include all forms of electronic and internet-based modes of expression.

State authorities are urged to take particular care to encourage an independent and diverse media. Among other things, this means recognising the significance of new internet and mobile phone-based information systems and fostering their independence. States should take all necessary steps to ensure individuals are able to access these media. They are also called upon to ensure that public broadcasting services operate in an independent manner. Licences for public, commercial and community broadcasting services should be allocated equitably. General Comment No. 34 notes that this is especially important as a free, uncensored and unhindered press and other media are essential to ensure that the right to freedom of opinion and expression is respected and that other rights can be implemented.

The **right to access to information** (article 19, paragraph 2 of the International Covenant on Civil and Political Rights) includes records held or stored by public bodies and other entities carrying out public functions. In accordance with the Covenant, every individual should have the right to ascertain what personal data is stored by what authority and for what purposes. In addition, every individual should have the right to have his or her records rectified if certain files contain incorrect personal data or have been collected in breach of the provisions of the law. States party are required to put in the public domain information that is of public interest and ensure this information is accessible to all. They should also enact the necessary procedures whereby one may gain access to public information, including by means of freedom of information legislation.

1.2. Restrictions on freedom of expression

In accordance with article 19, paragraph 3 of the International Covenant on Civil and Political Rights, restrictions to the right to freedom of expression can only be imposed if three conditions are fulfilled. Such restrictions must be:

- provided for by law;
- necessary in order to ensure the rights and reputations of others are respected or to protect national security, public order, health or morals (n.b. for a restriction to be 'necessary' there must be no less intrusive means available);
- proportionate, meaning that restrictions can only be imposed following careful consideration of the right to freedom of expression and access to information on one hand and the specific interest that is to be protected on the other.

Restrictions must always be justified and based on the circumstances of the individual case. Restrictions that aim to suppress advocacy of multi-party democracy, democratic tenets and human rights are **not permissible**. This also applies to laws that restrict criticism of public persons, including those exercising the highest political authority. The following provisions also apply:

- Blasphemy laws and prohibitions of criticism of religious leaders are incompatible with article 19, except in the circumstances envisaged in article 20 (prohibition of advocacy of national, racial or religious hatred).
- Restrictions on the operation of websites, blogs or any other information dissemination system such as internet service providers or search engines are only permissible to the extent that they are compatible with article 19, paragraph 3; restrictions should be content-specific and should not apply to the entire website or information system.
- General state systems of registration of journalists are incompatible with paragraph 3; limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Journalists must not be prevented from travelling outside the State party and foreign journalists should not be prevented from entering the State party. Furthermore, the freedom of movement of human rights investigators and journalists within the State party should not be restricted. This also applies in conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses.
- States party must ensure that counter-terror measures are compatible with article 19, paragraph 3 of the International Covenant on Civil and Political Rights and that terrorism-related offences are clearly defined by law.
- Laws that restrict freedom of expression on the basis of morality are impermissible if they are based on principles deriving exclusively from a single tradition.
- Restrictions must take into account the universality of human rights and the principle of non-discrimination. They must be proportionate to the specific interest to be protected and must actually be necessary and suited to the purpose of protecting the public.

2. Structures mandated to protect and implement the right to freedom of expression and access to information

States have a duty to respect, protect and ensure the full realisation of the right to freedom of expression and access to information. Many, however, are neglecting this duty or failing to take sufficient action in this context. For example, some governments pass laws to prohibit public discussion of their policies, censor media content or refuse access to information. Journalists, human rights campaigners and investigators and civil society initiatives play an important role in strengthening the right to freedom of expression, often working in challenging environments. They carry out research on politically sensitive issues, create alternative information channels and establish local networks, despite facing significant resistance. There are also various national, regional and international instruments and institutions in place to protect these rights.

2.1. United Nations Human Rights Council

The United Nations Human Rights Council is an inter-governmental body within the UN General Assembly. It is made up of 47 Member States, which are elected for three years by the General Assembly. The Universal Periodic Review is a cooperative process by which all 193 UN Member States evaluate each other's human rights records. There is also a confidential procedure in place by which complaints can be made to the Council regarding cases of systematic human rights abuse.

2.2. United Nations Human Rights Committee

The United Nations Human Rights Committee is a body consisting of 18 independent experts that monitors implementation of the International Covenant on Civil and Political Rights. All States party are obliged to submit reports to the Committee every two to five years detailing how the rights enshrined in the Covenant are being implemented, including the right to expression and access to information. On the basis of these reports and other sources, the Committee makes concluding observations, indicating positive and negative developments and giving specific recommendations on how to improve the implementation of individual rights. The Committee also has the competence to examine individual complaints with regard to alleged violations by states of the rights enshrined in the Covenant, such as the right to freedom of expression. For this to apply, the state in question must have ratified the First Optional Protocol to the Covenant (as at 11/2014: 115 states).

2.3. Special Rapporteurs at the international and regional level

The UN Human Rights Committee also nominates Special Rapporteurs on specific human rights issues. Since 1993, there has been a UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The Special Rapporteur is mandated to gather information in countries around the world relating to violations of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists and other persons active in the field of information. In accordance with his/her mandate, the Special Rapporteur communicates with governments, non-governmental organisations (NGOs) and the affected individuals. On the basis of the information gathered in this way, he/she draws up recommendations on how the right to freedom of opinion and expression can be better protected and implemented worldwide.

In 2004, the African Commission on Human and Peoples' Rights also established the position of Special Rapporteur on Freedom of Expression and Access to Information. The mandate calls for the Special Rapporteur to analyse national media legislation, undertake country missions to strengthen the right to freedom of expression, and make public interventions where rights violations have occurred. The Special Rapporteur submits reports at each biannual session of the African Commission on the status of the right to freedom of expression in Africa.

The Organization of American States (OAS) also has a Special Rapporteur for Freedom of Expression. He/she is mandated to advise the Inter-American Commission on Human Rights on evaluating individual cases and preparing reports and on-site visits to OAS member states, to carry out independent awareness raising campaigns on the right to freedom of thought and expression, and to provide support to national ombudsmen's offices and human rights institutions. He/she also prepares an annual report on the situation regarding the right to freedom of thought and expression in OAS member states.

The Organization for Security and Co-operation in Europe (OSCE) has a Representative on Freedom of the Media. He/she monitors the development of media freedom in all 57 OSCE member states and, among other things, issues early warnings in the case of serious rights violations.

The four Special Rapporteurs have been meeting once a year since 1999, and produce regular joint declarations.

2.4. UNESCO

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has the specific mandate to promote freedom of expression and freedom of the press. UNESCO works to foster free, independent and pluralistic media, promotes policies for improving the safety of journalists and supports the implementation of laws on free access to information. At the initiative of UNESCO World Press Freedom Day is celebrated worldwide on 3 May, the anniversary of the Declaration of Windhoek, which was adopted in Namibia in 1991 and which emphasises the importance of free, independent and pluralistic media for democracy and economic development.

2.5. Regional human rights structures

The Inter-American and African Human Rights Commissions and the Inter-American, African and European Courts of Human Rights monitor compliance with and implementation of the right to freedom of expression and access to information, which is enshrined in the regional human rights agreements.

Regional court decisions on the protection of the right to freedom of expression

In 2012, the Inter-American Commission on Human Rights issued precautionary measures against Ecuador due to violation of the right to freedom of expression. A judgement sentencing journalists to three years in prison and ordering them to pay a fine of USD 40 million that was handed down by the national courts in the context of libel and slander proceedings instigated by the Ecuadorian president was declared to be disproportionate and a violation of the right to expression. (*Case No. MC 406/11 dated 21 February 2012 – Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga vs. Ecuador*).

In 2011, the European Court of Human Rights (ECHR) ruled that whistleblowing is protected under the right to freedom of expression. According to this judgement, the dismissal of employees who denounce or publicly expose internal wrong-doing is, in a democratic state under the rule of law, an unnecessary and disproportionate restriction of the right to freedom of expression and the right to disseminate information. The decision of the ECHR refers to the resolution of the Parliamentary Assembly of the Council of Europe, which states that external whistleblowing must be protected in cases where the full functioning of internal whistleblowing channels cannot be expected and the employer does not put an end to wrong-doing and breaches of the law despite having been notified of their occurrence. (*ECHR No. 28274/08, Judgement dated 21 July 2011, Heinisch vs. Germany*).

2.6. National Human Rights Institutions

There are National Human Rights Institutions (NMRI) (PDF, 293 KB) in over 100 countries. Their task is to promote and protect human rights both within the country in question and in the context of national foreign policy. This mandate is set out in the Paris Principles along with corresponding normative standards. NHRIs cooperate with each other at national, regional and international level and serve as intermediaries between civil society and the state. In accordance with the Paris Principles, NHRIs are independent from the state and, as a matter of key importance, have the right to freedom of expression and access to information:

Within the framework of its operation, the national institution shall: [...]

a) hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

b) address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations [...]

National human rights institution in Bosnia

Bosnia and Herzegovina's Freedom of Access to Information Act accords the national Institution of Human Rights Ombudsmen a key protective and monitoring role. It is responsible for monitoring whether all state institutions are issuing appropriate directives and facilitating access to information for citizens. The institution also handles complaints and provides the relevant forms on its website.

2.7. Non-governmental organisations (NGOs)

International, regional and local human rights and journalist organisations monitor compliance with rules guaranteeing the right to freedom of expression and access to information and lobby for the protection of media professionals and human rights activists. The International Freedom of Expression Exchange (IFEX) founded in 1992, is an NGO network consisting of over 90 member organisations. The NGO Article 19 is active worldwide in the field of freedom of information and the protection of media professionals. Reporters Without Borders and Freedom House publish regular reports and international rankings reflecting the current state of press and internet freedom. The Committee to Protect Journalists (CPJ) and Reporters Without Borders also provide practical assistance to journalists who have been threatened or persecuted.

3. The role of development cooperation

The human rights approach pursued in development cooperation involves developing the capacity of the state to fulfil its duty to ensure that the right to freedom of expression and access to information is respected, protected and guaranteed. At the same time, citizens should receive support to ensure they are aware of their rights and that they are in a position to assert these rights and hold the government accountable. As an 'empowering right', the right to freedom of expression and access to information facilitates the implementation of other human rights. Against this backdrop, development cooperation can provide support in the following areas:

- advising on the formulation of laws that promote compliance with human rights standards, freedom of expression, free access to information and a pluralistic media, and on the implementation of such laws;
- promoting access to independent media, including community media, e.g. for disadvantaged young people or women;
- supporting media self-regulation (e.g. media councils and ombudsmen's offices) and non-governmental organisations that actively protect media professionals (including bloggers and internet activists) and freedom of expression;

- working to empower poor and disadvantaged groups as regards access to methods of communication and information, for example by promoting media literacy;
- advising on the development of barrier-free information and communications services in various languages for indigenous communities and people with disabilities;
- improving initial and in-service training for media professionals in cooperation countries, for example by supporting curriculum reforms that promote the development and application of knowledge in relation to human rights, media law and media ethics;
- strengthening media institutions (e.g. trade unions, interest groups, professional associations and networks) and helping them to work together, including at regional level;
- providing assistance for the development and implementation of sustainable financing models that support independent journalism in the respective media markets;
- advising media organisations on editorial and quality management issues with the aim of ensuring independent, sustainably financed journalism and journalistic content that is locally relevant, accessible to disadvantaged groups and easy to understand (and that also allows for public participation).

African Model Law on the Right to Information

BMZ supports the work of the African Commission's Special Rapporteur on Freedom of Expression and Access to Information. Specifically, it is helping to raise awareness of the Model Law on Access to Information, which is used by African states in the drafting and enactment of national legislation. The Ministry also supports research activities and is contributing to a pan-African campaign to decriminalise media-related offences such as libel and slander.

Media reform in Myanmar

Myanmar is currently experiencing a media boom. However, after five decades of restrictive economic and media policy, the development of the sector remains marked by inequality of opportunity. The vast majority of Myanmar's citizens still do not have free access to independent news sources. In a broad-based and long-term project, BMZ is promoting the transition from state-run media to media companies answerable to the public. This work focuses primarily on organisational reform in the country and establishing regional offices with the aim of developing a more citizen-focused media infrastructure. At the same time, BMZ is working to strengthen the role of community radio stations, for which a new legal framework is currently being established, as well as the national Press Council, which has become the most prominent critic of state media policy. The Council is committed to improving press rights and has drawn up a journalistic code of ethics.

Training centre for digital media in Cambodia

The BMZ-commissioned project 'Digital innovation for Human Rights' promotes the safe and professional use of social media. The project supports the efforts of bloggers, human rights activists and computer specialists to set up a common meeting point and training centre. For the first time, media professionals are now also receiving training in data-driven journalism. Course participants learn how to analyse, present and publish digitally available data relating to topics such as public services.

Parliamentary forum on media freedom and freedom of expression in Uganda

BMZ provides support for the establishment of a parliamentary forum on media freedom and freedom of expression in Uganda. For the first time, Ugandan members of parliament are working on a cross-party basis to promote media freedom and freedom of expression. This involves organising regular forums in which specific recommendations for action are drawn up on issues such as freedom of expression on the internet and the safety of journalists. In this work, the members of parliament cooperate closely with journalists and human rights organisations. The aim is to revise media legislation in order to bring it into line with international standards and to establish an effective system of media self-regulation. The new cooperation arrangement is helping to break down mutual prejudices held by members of parliament and media professionals and to support lobbying activities on this sensitive issue.

Young reporters in Guatemala

The aim of this measure is to help disadvantaged young people from Guatemala City to exercise their right to freedom of expression more effectively. They are trained as young reporters and work together on the development of an online and SMS-based platform (www.reporterosjovenes.gt). They can use the platform to publish their own articles on life in their neighbourhood as well as debates and interviews they have conducted with community representatives, and to exchange ideas and information with their peers.

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4. Resources relating to the right to freedom of expression and access to information

Human Rights Committee (CCPR)

- [General Comment No. 34](#)
- [Concluding Observations](#)

Special Rapporteurs on Freedom of Expression

- [UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#)
- [Special Rapporteur to the African Commission on Freedom of Expression and Access to Information](#)
- [OAS Special Rapporteur for Freedom of Expression](#)
- [OSCE Representative on Freedom of the Media](#)
- [Joint Declarations of the Special Rapporteurs on Freedom of Expression](#)

UNESCO

- [Overview of themes and publications on freedom of expression](#)
- [World Trends in Freedom of Expression and Media Development, 2014](#)
- [Freedom of Expression Toolkit, 2013](#)
- [Global Survey on Internet Privacy and Freedom of Expression, 2012](#)

Article 19

- [Overview of activities and publications](#)

CIMA (Center for International Media Assistance)

- [Country profiles focusing on media freedom and freedom of expression](#)
- [Breathing Life into Freedom of Information Laws: The Challenges of Implementation in the Democratizing World, 2013](#)

Committee to Protect Journalists

- [Overview of activities and publications](#)

DW Akademie

- [Overview of activities and publications](#)
- [Media Freedom Indices: What they tell us – and what they don't, 2014](#)

Freedom House

- [Freedom of the Press: Annual Reports and Index](#)
- [Freedom of the Net: Annual Reports and Index](#)

Global Forum for Media Development

- [Overview of activities and publications](#)

IFEX

- [Overview of activities and publications](#)

Reporters Without Borders

- [Overview of index and reports](#)
- [World Press Freedom Index 2014](#)
- [Enemies of the Internet 2014](#)

Published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

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Layout Ira Olaleye

Version November 2014

GIZ is responsible for the content of this publication.

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Division Governance; democracy; rule of law; freedom of speech and of the press

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