

## **CONCLUSIONS OF THE 8<sup>TH</sup> INFORMAL ASEM SEMINAR ON HUMAN RIGHTS: FREEDOM OF EXPRESSION IN SIEM REAP, CAMBODIA ON 26-28 SEPTEMBER 2007**

Countries in Asia and Europe are converging around the principle of freedom of expression, recognising not only its intrinsic value for realising everyone's full human potential, but also its indispensable contribution to developing tolerant, prosperous and harmonious societies. This was a key conclusion from the 8<sup>th</sup> Informal ASEM Seminar on Human Rights in Siem Reap, Cambodia, on 27-28 September 2007. The seminar, on "Freedom of Expression", brought together about 140 participants from governments and various sectors of civil society, representing 38 of the 43 ASEM countries, the European Commission and the ASEAN Secretariat.

The turmoil not far away in Myanmar loomed large in the background of the seminar and was never far from delegates' minds. France and Sweden, as the two co-ordinators of this informal Human Rights dialogue, endorsed the European Union statement on Burma/Myanmar condemning the violence and urging the country's authorities to open a dialogue with the protesters. Both the European Union and ASEAN issued strong statements of concern over the loss of life resulting from the military clampdown on peaceful demonstrations. Events there brought home to delegates the vital role of freedom of expression and free information flows in the timely circulation of news about human rights abuses. They were also a poignant reminder of how extreme restrictions on freedom of political expression and association can thwart the peaceful resolution of differences, increasing the likelihood of violent confrontation. The seminar convened four working groups for frank and in-depth discussion of a number of dimensions of freedom of expression. The working groups dealt with: political rights; cultural rights; roles and relations of states, civil society and international organisations; and the impact of information and communication technologies (ICT).

- Delegates affirmed the continued relevance of Article 19 of the Universal Declaration of Human Rights adopted in 1948: "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."
- There was no divergence of view on the positive contributions of this fundamental freedom to society. Moreover, despite valid criticism of concentration of media ownership, privately-owned media was still considered to play a positive role in the enjoyment of this freedom. All ASEM countries have embraced education as essential for progress in the information societies and knowledge economies of the 21<sup>st</sup> century. Quality education requires the fullest freedom of expression. In addition, freedom of expression is necessary for consolidating democracy, enhancing citizen participation and achieving sustainable development.
- The key debates in the seminar, therefore, were not over the principle of freedom of expression, but the challenges of implementing this freedom in effective ways in ASEM countries.
- Freedom of expression and its corollary, freedom of the press, continue to be violated. The seminar heard of many instances of censorship and attacks on media workers, artists and human rights defenders, as well as subtler forms of state and corporate pressures on the media. Concern was also expressed about the persistence of excessive concentration of media ownership in both Europe and Asia, at the expense of media diversity.
- The state has a significant role in guaranteeing freedom of expression. On the one hand, this requires a commitment to minimum interference with the media. Public officials and public authorities must be open to robust criticism especially as it relates to the conduct of their offices. Participants noted that the trend against making defamation by journalists an

imprisonable offence strengthened press freedom. On the other hand, the state must take positive steps to ensure plurality of the media and to open access to the means of communication by minorities. The state must uphold the rights of individuals, including artists, to express themselves, notwithstanding the objections of others.

- The importance of freedom of information or “the right to know” was underlined by many delegates. According to this principle, all information held by government should be accessible to the public unless non-disclosure can be justified by an independent authority. Such legislation promotes transparency and good governance, and also affords public authorities legitimacy in the eyes of the public.
- Underlying freedom of expression and information is a commitment to the rule of law and democratic society. Independent courts have a crucial role in finding the legitimate balance between freedom of expression and competing rights and public interests.
- ICTs provide powerful tools to seek, receive and impart information and ideas, and represent an unprecedented opportunity to enhance freedom of expression for all. The internet is not only a tool for individual empowerment, but also for building of communities and for the achievement of human security and development goals.
- While the growth of internet use has been phenomenal in all ASEM countries, it was acknowledged that the digital divide still exists within and between countries, denying the benefits of the new media to millions of the poor, the elderly and those who do not use the dominant languages of the world.
- There is popular and official concern in all countries about the abuse of ICTs, such as child pornography, incitement to hatred, violence and terrorism, and fraud. The seminar was divided as to whether these amount to qualitatively new risks, or simply old risks in new manifestations. But any form of prior censorship of online content by the state or with complicity of internet companies was firmly rejected. National legislation against these crimes should be strictly enforced. In addition, governments should support media literacy programmes, especially in schools.
- Predictably, the question of harmonising the exercise of freedom of religion and freedom of expression provoked a range of views. Some argued that freedom of expression should not extend to insult, satire or offensive comments in respect of any religion. Some argued to the contrary, that while people should treat others’ beliefs with respect, religions are powerful forces in society and the law should not exempt them from criticism. However, there was more agreement on the need to prohibit hate speech, namely incitement or advocacy of hatred of others on grounds of their religion or belief or ethnicity. In fact, international law requires all states to prohibit such speech.

### *Recommendations*

A range of recommendations emerged from the seminar.

#### International

1. All ASEM states should ratify the International Covenant on Civil and Political Rights (ICCPR), and its First Optional Protocol. Article 19 of the ICCPR enshrines freedom of expression as a rule of international law, and offers the most important guarantee for the enjoyment of freedom of expression in all its aspects at the national level.
2. ASEM states might consider requesting the Human Rights Committee, which monitors the implementation of the ICCPR, to prepare a new General Comment to guide states on the scope of Article 19 freedoms, duties and responsibilities. The last General Comment, adopted in 1983, predates the digital revolution in media and communications.
3. ASEM states should disseminate and abide by the UN Declaration on the Rights of Human Rights Defenders 1998. Freedom of expression is one of the crucial rights

identified in the Declaration, to enable human rights organisations to fulfil their advocacy and monitoring roles.

4. ASEM states should ratify the UNESCO Convention on the Promotion and Protection of the Diversity of Cultural Expression.
5. International organisations should continue their capacity-building programmes, specifically in democratising countries, to translate international frameworks into national legislation.

#### Regional

6. The regional human rights systems of Europe offer significant protection for freedom of expression, among other rights. It was strongly suggested that Asian ASEM members would benefit from a similar regional Human Rights mechanism. ASEAN's intention to create a human rights mechanism should be supported by all ASEM countries. The host of the meeting, the Prime Minister of Cambodia Samdech Hun Sen, strongly endorsed that idea in his address to the participants.

#### National

7. ASEM states should, where they have not done so, incorporate the ICCPR into their constitutions and national law and, in connection with the emphasis of this dialogue on freedom of expression, Article 19 in particular. Article 19 does not treat freedom of expression as absolute. But, any restrictions or limitations must conform strictly to those permitted by international law. National legislation should not have vague restrictions but precise ones, to avoid arbitrary interference with freedom of opinion and expression, and freedom of the media. In particular, overbroad counter-terrorism legislation can threaten freedom of expression and related rights such as privacy.
6. Each ASEM state that has not done so should establish a national human rights institution (NHRI) guided by the Paris Principles on the functions, composition and powers of these bodies.
7. ASEM states should introduce freedom of information or access to information legislation where they have not already done so.
8. ASEM might convene a judicial colloquium to enable national judges to exchange experiences as reflected in their case law or jurisprudence on freedom of expression issues. The European Court of Human Rights has developed a remarkable corpus of judicial principles on the protection of freedom of expression and the media. There is also a rich jurisprudence developed by national courts in Asia. The judiciaries of each state have much to learn from each other.
9. In ASEM states, media ownership structures should be monitored and media diversity promoted. Public broadcasting systems (both state-owned and public access media) and community media can play a role in countering the dominance of commercial media.
10. There is no single preferred media regulatory regime, but regulation should be built on the principle of ensuring maximum freedom of expression. In particular, regulatory authorities should be independent of political and economic interests. They should be transparent, accountable and democratic. The membership of such bodies could include representatives of civil society. ASEM could convene an expert conference of audio-visual regulators with a view to exchanging experience.
11. All media have duties and responsibilities to society. Some ASEM countries have self-regulation systems to ensure their accountability to the public, such as press councils and professional codes of ethics for journalists. ASEM should promote such voluntary systems, and the media must recognise that there is a serious onus on them to make these systems effective.