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**RIGHT TO FREEDOM OF EXPRESSION**  
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# RIGHT TO FREEDOM OF OPINION, EXPRESSION & INFORMATION

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## PREFACE

This briefing paper examines the scope of the right to freedom of opinion, expression, and access to information, with particular emphasis on human rights defenders and their work. This paper draws together the various international standards for the protection of this right, in addition to examining the different standards and challenges to this right for human rights defenders.

The primary audience of this paper are *human rights defenders* working at the international, regional and national levels. This briefing paper seeks to present relevant information in a simple and accessible manner to human rights defenders, and act as a practical tool to support them in their work, particularly at the regional and national levels. It can be used as a resource or background reading for specific trainings for human rights defenders on this topic, in addition to assisting in national advocacy or awareness raising efforts on freedom of expression, at the regional and national levels.

This paper may also be of use to *national human rights institutions* (NHRIs) when dealing specifically with defenders' issues. In addition, it can be used as resource material for NHRIs when providing advice to States in formulating or reviewing legislation relating to the right to freedom of expression at the national level.

This paper also collates and references the work of the UN treaty bodies and the UN Special Rapporteur on human rights defenders on the right to freedom of expression in relation to defenders, for *academics, students and a wider audience* who may wish to find the relevant information in one place.

## INTRODUCTION

The freedom to form opinions and express them without fear of repression is a fundamental tenet for the development of a pluralistic, tolerant, and democratic society. This right represents not only the right to privacy of individuals to hold opinions and formulate thoughts, but also to express them in a public forum, especially as part of exercising the right to political participation. Additionally, the right to access information, that is the right to seek and receive information, which also forms an important component of this right and which has added significance in the current age of information technology, is intrinsic to the transparent functioning of a democratic government and the effective and well-informed participation of civil society. In this context, freedom of opinion, expression and information is one of the core civil and political rights as it is essential for the exercise of all other human rights.

This right is also of invaluable importance to the work of human rights defenders in protecting and promoting human rights. At a very basic level, the freedom to express ideas as well as to seek and receive information is essential for human rights defenders to obtain information about human rights violations, to inform the public and the State about their occurrence, and most importantly to demand accountability and to express their criticism of unjust laws, policies or practices. From exposing violations to building public pressure upon governments to address them, freedom of expression, along with freedom of association and assembly, constitute the foundation for the work of human rights defenders.

This paper presents an analysis of the right to freedom of expression, with specific emphasis on the importance of this right for the work of human rights defenders. **Section I** establishes a general understanding of the scope and nature of the right to freedom of opinion, expression and information by examining international human rights legal standards, the concluding observations and recommendations of the human rights treaty bodies, and the contributions of relevant special procedures. In particular, this paper examines the relevant work of the Human Rights Committee (HRC), the UN Special Rapporteur on human rights defenders (the Special Rapporteur on human rights defenders)<sup>1</sup>, the Special Rapporteur on freedom of opinion and expression (the Special Rapporteur on freedom of expression) and the UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (the Declaration on human rights defenders).<sup>2</sup>

**Section II** examines the particular challenges to freedom of expression faced by human rights defenders, and the jurisprudence of the treaty bodies in establishing standards for the protection of this right. Some of the issues examined include the use of legislation to limit or prohibit freedom of expression, restrictions on certain media

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<sup>1</sup> Formerly known as the Special Representative of the Secretary General on Human Rights Defenders prior to the review, rationalisation and improvement of mandates of the Human Rights Council by *Resolution 7/8* in March 2008. The Special Rapporteur on human rights defenders is one of the special procedures created by the late Commission on Human Rights. It was established in 2000 and is mandated to monitor the situation of human rights defenders throughout the world and to assist States in the implementation of the Declaration on human rights defenders.

<sup>2</sup> *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted by General Assembly resolution 53/144 of 9 December 1998. Available at: <http://www.ohchr.org/english/law/freedom.htm>.

(broadcasting services, the Internet, etc.) and harassment, attacks, detention and other restrictions placed on defenders themselves.

**Annex 1** summarises the concluding observations of the treaty bodies on the right to freedom of expression.

## I. FREEDOM OF OPINION, EXPRESSION AND INFORMATION IN INTERNATIONAL LAW

The right to freedom of opinion, expression and information is well-established and protected at the international and regional levels both legally and institutionally. The right is enshrined in various international instruments, namely: the *Universal Declaration of Human Rights* (Article 19), the *International Covenant on Civil and Political Rights* (ICCPR, Article 19)<sup>3</sup>, the *International Convention on the Elimination of all forms of Racial Discrimination* (Article 5(d)(viii)), the *Convention on the Rights of the Child* (Article 13) and the *Declaration on human rights defenders* (Article 6). The main international human rights body within the United Nations system, the Human Rights Council (the Council), also provides through its system of special procedures for a Special Rapporteur on freedom of opinion and expression, which was established in 1993.<sup>4</sup>

Several regional instruments also protect the right to freedom of expression, such as the *European Convention on Human Rights* (ECHR; Article 10), the *African Charter for Human and Peoples' Rights* (ACHPR; Article 9) and the *American Convention on Human Rights* (ACHR; Article 13). The Inter-American Commission on Human Rights (IACHR) also provides for a Special Rapporteur on freedom of expression, who drafted a *Declaration of Principles on freedom of expression*, which was adopted in 2000. Similarly, the African Commission on Human and Peoples' Rights has also established a Special Rapporteur on freedom of expression in Africa.

This paper will deal primarily with the right to freedom of expression as enshrined in the ICCPR and the *Declaration on human rights defenders*.

Article 19 of the ICCPR states:

- '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 the 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.'

As can be seen from paragraphs 1 and 2, the right to freedom of expression comprises three distinct facets – the right to hold opinions, the right to express or impart

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<sup>3</sup> International Covenant on Civil and Political Rights (ICCPR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49. Available at: [www.ohchr.org/english/law/ccpr.htm](http://www.ohchr.org/english/law/ccpr.htm).

<sup>4</sup> *Resolution 1993/45*. This mandate was extended in 2005 for a further 3 years and the mandate currently expires in 2008.

information and ideas, and the right to seek and receive information and ideas, each of which will be dealt with separately in the following sections.

In general, it must be noted that when a State becomes party to the ICCPR, it is obliged to protect the right to freedom of opinion, expression and information by:

- Adopting legislative and other measures (policy or administrative, for example) to give effect to the protection of this right
- Provide effective remedy when the right is violated

The *Declaration on human rights defenders* elaborates upon Article 19 of the ICCPR on freedom of expression in Article 6, which states that:

‘6. Everyone has the right, individually and in association with others:  
(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;  
(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;  
(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.’

As mentioned above, the *Declaration on human rights defenders* provides more depth and detail to the contents of Article 19 of the ICCPR with particular reference to human rights defenders, acting both individually, and in association with others, which therefore includes within its ambit protection of non-governmental organisations (NGOs).

With respect to the right to freedom of expression, it is necessary to have a better understanding of who can be considered a human rights defender, and therefore entitled to the protection of the *Declaration on human rights defenders*, in addition to the protection of Article 19 of the ICCPR and other international instruments. There is no specific definition of who can be considered a human rights defender, other than ‘individuals, groups and associations (...) contributing to (...) the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals’.<sup>5</sup> Human rights defenders are characterised by what they do, rather than by who they are. Besides this overarching definition, defenders must advocate for rights in a *peaceful* manner, and must subscribe to the *universality* of human rights.

In the context of the right to freedom of expression, this means that anyone who speaks out against the violation of human rights, or who produces or disseminates information that may have an impact on the protection and promotion of human rights, can be considered a human rights defender. Additionally, it is important to note that this definition includes persons who may do so on an occasional basis as well. This broad definition therefore also includes journalists, media professionals and any

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<sup>5</sup> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, preambular paragraph 5.

other person who, though not ‘defenders by profession’, *act* as defenders when they report on human rights abuses or bear witness to abuses they have themselves seen.

### **Right to freedom of opinion, expression and information in international and regional instruments**

#### *International instruments:*

- Article 19, *International Covenant on Civil and Political Rights*
- Article 5(d)(viii), *International Convention on the Elimination of All Forms of Racial Discrimination*
- Article 13, *Convention on the Rights of the Child*

#### *Regional instruments:*

- Article 7, *African Charter on the Rights and Welfare of the Child*
- Article 9, *African Charter on Human and Peoples’ Rights*
- Article 13, *American Convention on Human Rights*
- Article 10, *European Convention on Human Rights*

#### *Declarations:*

- Article 19, *Universal Declaration of Human Rights*
- Article 16 and Article 31, *Declaration on the Rights of Indigenous Peoples*
- Article 4, *American Declaration of the Rights and Duties of Man*
- Article 6, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms* (Declaration on human rights defenders)
- *Declaration of Principles on Freedom of Expression*, Inter-American Commission on Human Rights

## **A. Scope & Nature of the Right**

The right to freedom of expression protects ‘information and ideas of all kinds, regardless of frontiers, orally, in writing or in print, in the form of art, or through any other media of...choice’ (Article 19(2)). The nature of this right through the explicit inclusion of the phrasing ‘of all kinds’ implies the broadest possible scope of the right and includes ‘every communicable type of subjective idea and opinion, of value-neutral news and information...of political commentary, regardless of how critical’ that fall under the protection of this right.<sup>6</sup> This also includes the anonymous publication of someone’s opinion. Additionally, this right comprehensively protects all forms of communication, including oral, non-verbal, written communication and communication through any other media (such as the Internet).

The right to freedom of expression, as mentioned earlier, can be divided into three distinct components, which will be discussed individually below:

- Freedom of opinion
- Freedom of expression
- Access to information

<sup>6</sup> M. Nowak, *CCPR Commentary* (N.P.Engel, 2005), 443, Para.12.

## 1. Freedom of Opinion

The reason behind the separation of freedom of opinion and freedom of expression is grounded in the distinction between holding and formulating opinions as a private matter (closely related to freedom of thought enshrined in Article 18), and the expression of information and ideas, which is seen to be public in nature. Freedom of opinion is linked to freedom of thought (Article 18) as the formation of opinions is seen to be the result of a thought process, and is considered to be an absolute right, similar to Article 18, and therefore is not subject to any limitations. This can be clearly seen from Article 19(3) of the ICCPR which explicitly states that limitations only apply to 19(2) and not to 19(1) which refers to the right to hold opinions without interference. Freedom of expression (19(2)), on the other hand, is not viewed as an absolute right as it is exercised in the public realm and thus subject to limitation by the State. The HRC has also reiterated this view in its General Comment on freedom of expression, which states that the right to freedom of opinion permits no exception or restriction, and encourages States to provide information in this regard.<sup>7</sup> The explicit wording of Article 19(1) states that everyone shall have the right to hold opinions ‘without interference’, which implies not only interference by the State, but also interference by third parties. States are thus also under an obligation to protect interference with this right by private persons.

Additionally, States must refrain from interfering with this right through practices such as indoctrination, brainwashing, or otherwise unduly influencing (such as through the use of drugs, etc.). In this respect, it is sometimes difficult to distinguish between *interference* with an individual’s opinions, and the *influencing* of an individual’s opinions. Influence over an individual’s opinion can only be considered a violation if it has been done expressly against the person’s will, or at least without the individual’s implicit approval.

The *Declaration on human rights defenders* expands upon the right to freedom of opinion by stating that it includes the right to ‘freely publish, impart or disseminate’ *views* on human rights, in addition to explicitly ‘study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.’<sup>8</sup>

## 2. Freedom of Expression

Freedom of expression, which encompasses the right to ‘seek, receive and impart information and ideas of all kinds’, includes both the right to impart or express information and ideas, and the right to access information. Access to information, although part of Article 19(2) on freedom of expression, will be addressed under the separate heading below due to its special significance.

The Inter-American Commission for Human Rights (IACHR) has differentiated between the right to express one’s thoughts as an individual right, and the right to

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<sup>7</sup> General Comment No. 10: Freedom of expression (Art.19) (29 June 1983), Human Rights Committee, Para.1.

<sup>8</sup> Article 6(a-c).

receive and seek information from others as a collective right.<sup>9</sup> Freedom to impart ideas and information is seen to have a public impact and a public function, irrespective of whether it is explicitly political in nature, although it includes freedom of political opinion as well. The freedom to express ideas and information of all kinds is seen as one of the fundamental pillars of a democratic society. As mentioned earlier, the explicit inclusion of the phrasing ‘of all kinds’ implies the broadest possible scope of the right and includes ‘every communicable type of subjective idea and opinion, of value-neutral news and information (...) of political commentary, regardless of how critical’<sup>10</sup> that fall under the protection of this right, including the anonymous publication of someone’s opinion.<sup>11</sup>

### 3. Access to Information

The IACHR has stated that access to information is a collective right that is of utmost importance to the work of human rights defenders,<sup>12</sup> as it can play a critical role in defending human rights, and even in preventing violations in the future. Additionally, the IACHR has stated that the right to access information must be more than the declaration that certain State-held information be made available to the public, but must also include ‘specific legislative and procedural characteristics that must be exhibited by any compliant access to information regime, including a principle of maximum disclosure, presumption of publicity with respect to meetings and key documents, broad definitions of the type of information that is accessible, reasonable fees and deadlines, independent review of denials, and sanctions for non-compliance’.<sup>13</sup>

The concept of ‘access to information’ includes a two-fold and inter-linked connotation of the way in which an individual may have access to information – that he or she has the right to actively seek information (i.e. beyond mere passive receipt of information), subject to the restriction specified in Article 19(3), and that this pertains to generally accessible information, which means that certain types of information should be *made* generally accessible.<sup>14</sup> The ACHPR, for example, has ruled that the denial of information on human rights, particularly of rights contained in the African Charter, constitutes a ‘particularly grave’ violation of the right to information,<sup>15</sup> and that information relating to the protection and promotion of human rights needs special protection.<sup>16</sup>

The right to access information implies that the State cannot interfere with the right of an individual to access information that should be generally available. For example, counter-terrorism and security legislation passed after 11 September 2001 have

<sup>9</sup> *Report on the Situation of Human Rights Defenders in the Americas*, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, Para.78.

<sup>10</sup> M. Nowak, *CCPR Commentary* (N.P.Engel, 2005), 443, Para.12.

<sup>11</sup> M. Nowak, *CCPR Commentary* (N.P.Engel, 2005), 444, Para.13.

<sup>12</sup> *Report on the Situation of Human Rights Defenders in the Americas*, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, Para.83.

<sup>13</sup> See *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, 2003, Chapter IV, Para.32, Inter-American Commission on Human Rights.

<sup>14</sup> When referring to ‘generally accessible information’, it is accepted that when it comes to the personal information about an individual, that the individual has more right over the information than a third party, unless this information is related to the ‘pressing interests of society’. M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 446, Para.18.

<sup>15</sup> Para.50, Report No. 16, 228/99The Law Office of Ghazi Suleiman/Sudan, African Commission on Human and Peoples’ rights.

<sup>16</sup> Para.52, Report No. 16, 228/99The Law Office of Ghazi Suleiman/Sudan, African Commission on Human and Peoples’ rights.

increasingly been used to limit defenders' access to information, by adopting measures that justify withholding information from the public in the name of security. The Special Rapporteur on human rights defenders has observed that there have been cases where the State has refused to divulge information about detainees designated as 'terrorists' to the public, including to courts.<sup>17</sup> Refusals to share information with human rights defenders working on issues such as torture, arbitrary detention and other related issues thus seriously impede their role in monitoring and conducting advocacy on these issues.

In another relevant example, the ruling of the HRC in the case of *Gauthier V. Canada*, emphasised the importance of the right to seek and receive information on the conduct of political affairs, and also stressed the importance of the privileged treatment of the media in the enjoyment of the right to information. This is due to the valuable public service that the media undertakes by disseminating information that is in the wider public interest.

### **What does the right to freedom of opinion, expression and information cover?**

Under Article 19 of the ICCPR:

- Freedom of opinion
- Freedom of expression
- Right to access information

Under Article 6 of the *Declaration on human rights defenders*:

- To know, seek, obtain, receive and hold information on human rights related issues
- To publish, impart or disseminate information and knowledge on human rights related issues
- To study, discuss, form and hold opinions on human rights related issues

### **B. State obligations to protect freedom of opinion, expression and information**

Under Article 19(1) of the ICCPR, the right to freedom of opinion is an absolute right. It therefore states that 'everyone shall have the right to hold opinions without interference', and it is clear that States have an obligation to protect individuals from *any* interference with their exercise of this right, including interference by third parties.

State obligations with regards to the right to freedom of expression and access to information differ slightly. The *negative* obligation of the State entails refraining from interference with these two aspects of Article 19. The positive obligation of the State implies taking steps towards preventing 'excessive media concentration', such as, for example, State-sponsored financial assistance to the media. Also, as seen in the case of *Gauthier v. Canada*, the HRC was of the view that State parties also have an obligation to protect the media from violation of their right to access information by

<sup>17</sup> Report of the Special Representative of the Secretary-General on the situation of human rights defenders, in accordance with General Assembly Resolution 57/209, Paras 14-15.

private organisations or parties.<sup>18</sup> These aspects of Article 19 therefore recognise not only that States may interfere with Article 19 through censorship of information, but also that restrictions on this right could result from private financial interests or media monopolies restricting the free flow and exchange of information.

States have an obligation to protect freedom of expression of ‘all individuals within [their territory and subject to [their] jurisdiction’, which implies that the right to freedom of expression is protected for both nationals as well as non-nationals within the territory of a State party.<sup>19</sup>

### C. Limitations on the right to freedom of expression

The right to freedom of opinion, expression and information is one of the ‘qualified rights’ contained in the ICCPR. This means that there may be certain instances when this right may be restricted in accordance with Article 19(3). The limitations apply only to Article 19(2) relating to freedom of expression and access to information, but not to freedom of opinion, which is an absolute right. Additionally, the HRC in its General Comment on Article 19 has explicitly stated that while a State party may impose certain restrictions on the exercise of the right to freedom of expression, these restrictions cannot ‘put in jeopardy the right itself’.<sup>20</sup> Similarly, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has strongly stated that any restrictions on freedom of expression should only be applied in ‘cases of extreme danger for the democratic order and should have a well-defined time limit’.<sup>21</sup>

Article 19(3) also states that the rights to freedom of expression and access to information carry ‘special duties and responsibilities’. While it is implicitly understood that every right contained in the ICCPR should be exercised with responsibility, the specific mention of the duties and responsibilities of individuals in relation to the right to freedom of expression indicates that this right could potentially infringe upon the rights of others, thus justifying why it is subject to certain restrictions. For example, the exercise of rights under Article 19(2) may not only interfere with the rights of other individuals such as the right to privacy, but may also violate the right of others to freedom of expression.

Permissible purposes for interference contained within Article 19(3), which will be examined in greater detail below, must additionally fulfill two conditions; they should be *provided by law* and must be *necessary*.

#### 1. ‘Provided by law’

Article 19(3) states that any limitation on the right to freedom of expression must be provided by law. The language of this particular provision makes it clear that any restriction can only be justified if it has a legal basis, that is, if it is explicitly and formally provided for by national legislation. In addition, the restriction must

<sup>18</sup> Robert W. Gauthier v. Canada, Communication No 633/1995, U.N. Doc. CCPR/C/65/D/633/1995 (5 May 1999).

<sup>19</sup> Article 2, ICCPR.

<sup>20</sup> General Comment No.10: Freedom of expression (Article 19), Nineteenth session, 1983, Para.4.

<sup>21</sup> *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo*, in accordance with the Commission on Human Rights *Resolution 2005/38* and Human Rights Council *Resolution 1/102*, (2 January 2007) A/HRC/4/27, Para.71.

‘adequately specify the permissibility of given interference by enforcement organs’.<sup>22</sup> The requirement that the restriction be ‘provided’ by law makes this restriction different from the restriction placed on freedom of assembly (Art.21), which states that limitations must be ‘in conformity’ with the law. While freedom of assembly may be thus also restricted by the lower injunction of an administrative decree or statutory order, freedom of expression can only be restricted by formal legislation.

## 2. ‘Necessary’

Moreover, the restriction must be ‘necessary’ to achieve one of the listed purposes of the restriction, that is for the protection of national security, public order, public health or public morals (discussed further below). This means that the restriction must be *proportional* ‘in severity and intensity to the purpose being sought and may not become the rule’.<sup>23</sup> Additionally, according to accepted conventions regarding the interpretation of human rights principles, the substantive provisions of the right should be interpreted as broadly as possible and the restrictions should be interpreted as narrowly as possible.

Additionally, unlike references to restrictions being ‘necessary in a democratic society’ (for example, those mentioned in Articles 21 or 22), restrictions on freedom of expression need only be ‘necessary’, according to the formulation of this provision. This means that as long as the restriction can be proven to be proportional to the end sought in any given case, it can be deemed permissible. However, it is also well-established that any interference with this right must be interpreted as narrowly as possible when the necessity of the restriction is in question.<sup>24</sup>

## 3. Permissible purposes for interference

The specific permissible restrictions on freedom of expression will be examined below.

### (a) *Respect of the rights and reputations of others*

Article 19(3)(a) states that the right to freedom of expression can be restricted if it interferes with the rights and reputations of others. Additionally, this limitation can also be extended to Article 17 of the ICCPR, which protects the privacy of individuals from unlawful or arbitrary interference, and includes protection of individuals from attacks on their honour or reputation. Article 17(2) calls upon States to extend legal protections to individuals from such attacks. Article 19(3) prescribing the limitation on the right to freedom of expression for the respect of the rights or reputations of others therefore reflects this principle. The jurisprudence of the HRC further clarifies how this provision is interpreted in practice and will be examined in the next section of this paper.

The right to privacy also limits the right to seek information, in so far as States parties should prevent the ‘abusive access’ to personal information of an individual.<sup>25</sup> Article

<sup>22</sup> M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 460, Para.45.

<sup>23</sup> M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 460, Para.47.

<sup>24</sup> M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 460, Para.47.

<sup>25</sup> M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 463, Para.51.

14(1) of the ICCPR allows for limiting the access of the public, including the media, to court proceedings, in the interest of the parties concerned.

The Special Rapporteur on freedom of expression has also stated that this limitation on the right to freedom of expression in order to protect the reputations of others ‘should be exercised without silencing debates on valuable subjects’.<sup>26</sup>

(b) *National security, public order, public health or morals*

Like the other qualified rights contained in the ICCPR, such as the rights to freedom of assembly and association, the right to freedom of expression is subject to restrictions on the basis of national security, public order, public health or public morals. However, in order to ensure full and free exercise of the right, the basis for restrictions must be clearly specified, and restrictions must be interpreted as narrowly as possible.

**National security** refers to any military or political threat to the nation. Freedom of expression could threaten national security, for example, if it involves the dissemination of military secrets, or if it involves engaging in a public call for the violent overthrow of the government during political unrest, or constitutes propaganda for war within the meaning of Article 20(1).<sup>27</sup> Threats to national security have frequently been used by States as an excuse to quell political opposition, civilian dissent, or otherwise legitimate expressions of criticism against governments, and the HRC has in the past rejected such excuses by States as violations of the right to freedom of expression.<sup>28</sup> As with other restrictions, the threat to national security must be justified according to clearly specified criteria.

Restrictions in the interest of maintaining **public order** can be understood as in the interest of preventing disorder or crime. Maintaining public order must also be understood, however, as maintaining order based on ‘universally accepted fundamental principles, consistent with respect for human rights, on which a democratic society is based’.<sup>29</sup> The necessity of restrictions on the basis of maintaining public order must be strictly applied in order to prevent misuse of this provision to justify widespread limitations on freedom of expression. For example, the HRC has expressed the view that ambiguous accusations of ‘subversive or dangerous activities’ cannot be justified by any of the restriction clauses in this article, including that of maintaining public order.<sup>30</sup>

Restrictions on freedom of expression on the basis of protecting **public health** are not common. The protection of **public morals**, on the other hand, has often been used by States to justify restrictions on pornographic, blasphemous or otherwise ‘controversial’ manifestations of freedom of expression. The broad and varying spectrum of public morality makes it difficult to generalise about which limitations can be considered justifiable in order to protect public morals, as morals may differ

<sup>26</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, in accordance with the Commission on Human Rights Resolution 2005/38 and Human Rights Council Resolution 1/102, (2 January 2007) A/HRC/4/27, Para.71.

<sup>27</sup> M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 464, Para.54.

<sup>28</sup> For example, see communication No. 926/2000 (Hak-Chul Shin v. The Republic of Korea), views adopted on 16 March 2004 by the Human Rights Committee.

<sup>29</sup> Article 4(e), *Strasbourg Declaration on the Right to Leave and Return*, 26 November 1986.

<sup>30</sup> M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 466, Para.58.

widely within and between different societies, and what is generally accepted in one may be deemed offensive in another. The HRC has categorically stated that there is no universal applicable standard for public morals.<sup>31</sup> Given the relative nature of this provision, some members of the HRC have also stated that as a general standard for judging the offensiveness to public morals, no restriction should be applied so as to:

...perpetuate prejudice or promote intolerance. It is of special importance to protect freedom of expression as regards minority views, including those that offend, shock or disturb the majority.<sup>32</sup>

#### 4. Limitations according to Article 20

Article 19 is also limited by Article 20, which states that State parties must prohibit by law:

- (a) Any propaganda for war
- (b) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence

While the restrictions contained in Article 20 are reasonable in their own right, it must be noted that accusations of ‘incitement’ have been used against human rights defenders who were legitimately carrying out their work and expressing their views. The Special Rapporteur on human rights defenders noted several such instances where the ‘peaceful expression of views on human rights issues has been termed incitement’,<sup>33</sup> or professors were accused of ‘inciting students to violence’ because they held a meeting on human rights and academic freedom.<sup>34</sup>

#### Summary of permissible limitations on freedom of expression

According to Article 19(3) of the ICCPR, limitations on the exercise of freedom of expression are only permissible if they are:

- Provided by law
- Necessary and proportional for achieving one of the following purposes:
  - Respect of the rights and reputations of others
  - National security, public order, public health or morals

Additionally, limitations according to Article 20 allow for limitation of Article 19 on the basis of:

- Propaganda for war
- Advocacy or incitement of national, racial or religious hatred

<sup>31</sup> Human Rights Committee, Communication No. 61/1979, Para.10.3.

<sup>32</sup> Individual opinion by Committee members Opsahl, Lallah and Tarnopolsky in No.61/1979.

<sup>33</sup> *Report of the Special Representative of the Secretary-General on human rights defenders to the General Assembly*, 2001, A/56/341, Para.23.

<sup>34</sup> *Report of the Special Representative of the Secretary-General on human rights defenders to the General Assembly*, 2001, A/56/341, Para.24.

## II. STANDARDS AND CHALLENGES

As previously mentioned, the right to freedom of expression is critical to the work of human rights defenders in a variety of ways, since a large portion of their work consists of raising awareness about human rights and violations through the dissemination of information.

Violations could be directed towards the medium of expression such as through censorship of published material or prohibitions on the dissemination of the material. State control over entities such as publishing companies, television and broadcasting companies, universities, associations or other entities could lead to direct or indirect restrictions on their right to freedom of expression. Violations of freedom of expression of individuals could occur either through legislation providing for penalties or other preventive measures to restrict freedom of expression, or could occur directly through harassment, violence, detention, or other forms of intimidation against persons who have expressed their views. Some challenges to freedom of expression will be examined in further detail below.

### 1. Abuse of libel and defamation charges

As can be seen from the previous section on the permissible limitations on the right to freedom of expression, Article 19(3)(a) specifies that limitations can be imposed on freedom of expression in order to protect the rights or reputations of others. Many countries around the world therefore have defamation or libel legislation in order to protect individuals from others making false claims either verbally or in publication about other persons. However, defamation and libel legislation are frequently misused to quell legitimate criticism by human rights defenders which is in the public interest. The extensive case-law of the HRC has shown that there have been many instances when public figures, particularly political leaders, have used criminal defamation proceedings to punish human rights defenders for criticising them.

In its concluding observations on Serbia and Montenegro, the HRC asserted that the margin for criticism of public figures was broader than that of private individuals:

The State party, in its application of the law on criminal defamation, should take into consideration on the one hand the principle that the limits for acceptable criticism for public figures are wider than for private individuals, and on the other hand the provisions of article 19(3) [of the Covenant], which do not allow restrictions of freedom of expression for political purposes.<sup>35</sup>

This view has been reiterated by the Special Rapporteur on freedom of expression who also added that in addition to accepting a wider margin of criticism as expressed above, ‘political elites’ should also exhibit a greater level of transparency in this context.<sup>36</sup> The Special Rapporteur on freedom of expression of the Inter-American

<sup>35</sup> Human Rights Committee, Concluding Observations on Serbia and Montenegro, CCPR/CO/81/SEMO, 12 August 2004, Para.22. See also Thailand, CCPR/CO/84/THA, 8 July 2005, Para.18; the Gambia, CCPR/CO/81/GMB, 12 August 2004, Para.20.

<sup>36</sup> *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Ambeyi Ligabo, in accordance with the Commission on Human Rights *Resolution 2005/38* and Human Rights Council *Resolution 1/102*, (2 January 2007) A/HRC/4/27, Para.52.

Commission on Human Rights has also concurred with this view by recommending that States should reform libel, slander and defamation laws to ensure that offenses against public officials incur only civil penalties.<sup>37</sup> The IACHR also highlighted the potential of libel or slander laws to stifle public debate, considering that freedom of expression could be exercised by criticising public policies and the authorities responsible for producing or implementing them.

The HRC has also pointed out that defamation should not be punishable by imprisonment,<sup>38</sup> a view also supported by the Special Rapporteur on freedom of expression who has drawn attention to the frequent use of preventative detention of journalists to prevent criticism of figures of authority. In its examination of Azerbaijan, the HRC also stated that an appropriate balance between the protection of a person's reputation and freedom of expression must be achieved, and expressed its concern that defamation was punishable by closure of print media outlets as well as imposition of heavy fines on journalists.<sup>39</sup>

The Special Rapporteur on freedom of expression has also welcomed the growing number of countries who have decriminalised defamation offences, and moved this category under civil law. However the Special Rapporteur also noted with concern that criminal charges, sentencing to prison terms and heavy fines for defamation, libel and slander continued to be imposed in many other countries.<sup>40</sup> Additionally, the Special Rapporteur has noted that in dealing with cases of defamation, States should move towards establishing independent authorities (such as press councils, for example) and try to avoid direct intervention.

## 2. Other laws and charges

In addition to legislation specifically dealing with defamation, human rights defenders may be prevented from carrying out their work through the use of other legislation and charges aimed at limiting their freedom of expression. This is frequently the case with legislation using broadly worded or vaguely defined offences, which can be arbitrarily used to curtail freedom of expression of human rights defenders.

In its concluding observations on the Russian Federation, for example, the HRC expressed its concern that charges of treason were used to stop legitimate journalistic or investigative work that is in the public interest (within the meaning of Article 19), and recommended that criminal charges should not be used to limit legitimate exercise of freedom of expression.<sup>41</sup> In a similar case from Slovakia, the HRC stated that threats of criminal prosecution by the authorities using legal provisions such as 'spreading false rumours' should not be used to 'deter individuals from exercising their right to freedom of expression, in particular *human rights defenders* from carrying out independent research and publishing the results'.<sup>42</sup>

<sup>37</sup> *Annual Report of the Special Rapporteur for Freedom of Expression 2002*, Inter-American Commission for Human Rights; Chapter V: 'Descato' laws and Criminal Defamation; Para.18.

<sup>38</sup> HRC, Concluding Observations on Italy, CCPR/C/ITA/CO/5, 28 October 2005, Para.19.

<sup>39</sup> HRC, Concluding Observations on Azerbaijan, CCPR/CO/73/AZE, 12 November 2001, Para.22.

<sup>40</sup> *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Ambeyi Ligabo, in accordance with the Commission on Human Rights *Resolution 2005/38* and Human Rights Council *Resolution 1/102*, (2 January 2007) A/HRC/4/27, Para.75.

<sup>41</sup> HRC Concluding Observations on the Russian Federation, CCPR/CO/79/RUS, 6 November 2003, Para.21.

<sup>42</sup> HRC Concluding Observations on Slovakia, CCPR/CO/78/SVK, 22 August 2003, Para.15.

While certain types of broadly worded legislation may be used to temporarily suspend the activities of human rights defenders or other individuals, even when charges are subsequently dismissed (as in the case of Slovakia), such legislation is incompatible with Article 19 of the ICCPR and is considered a violation of the right to freedom of expression. ‘Crimes’ such as ‘injuring the honour and dignity of the President’<sup>43</sup>, treason,<sup>44</sup> ‘spreading false rumours’<sup>45</sup> or ‘disrespect for authority’<sup>46</sup> constitute violations of freedom of expression as they are aimed at preventing individuals from legitimately exercising their right to disseminate information in the public interest and express criticism of the authorities.

### 3. Regulation of the media and the journalist profession

The media and the journalist profession can be regulated by the use of restrictive laws that govern the media, the creation of specific bodies (such as Press Commissions), or through insufficient protection of the independence of the media from the State or other political influence.

With regard to laws regulating the media, the HRC has examined several cases of restrictive legislation considered to violate or undermine the right to freedom of expression. The specific issues identified range from a restrictive regime of registration,<sup>47</sup> limited pluralism,<sup>48</sup> governmental control and political influence over media activities, to excessive concentration of the audio-visual or print media markets (see below). As to the latter issue, the HRC stated in its concluding observations on Italy:

...while noting Laws No. 112 of 3 May 2004 on television broadcasting and Law No. 215 of 20 July 2004 on conflict of interest, expresses concern about information that these steps may remain insufficient to address the issue of political influence over public television channels, of conflict of interest and high level of concentration of the audio-visual market. This situation is conducive to undermining freedom of expression, in a manner incompatible with article 19 of the Covenant.<sup>49</sup>

The HRC addressed the issue of State control and media pluralism in its concluding observations on the Russian Federation:

The Committee notes with concern the closure in recent years of a number of independent media companies and an increase in State control of major media outlets (TV channels, radio stations and newspapers), either directly or indirectly through state-owned corporations, such as the state-run company Gazprom, which took over the independent nationwide television network NTV in 2001. The State party is invited to protect media pluralism and avoid state monopolisation of mass media, which would undermine the

<sup>43</sup> HRC, Concluding Observations on Tajikistan, CCPR/CO/84/TJK, 18 July 2005, Para.22.

<sup>44</sup> HRC Concluding Observations on the Russian Federation, CCPR/CO/79/RUS, 6 November 2003, Para.21.

<sup>45</sup> HRC Concluding Observations on Slovakia, CCPR/CO/78/SVK, 22 August 2003, Para.15.

<sup>46</sup> Dominican Republic, CCPR/CO/71/DOM, 26 April 2001, Para.22. See also; Croatia, CCPR/CO/71/HRV, 30 April 2001, Para.17.

<sup>47</sup> HRC Concluding Observations on the Gambia, *supra* note 1, Para.21.

<sup>48</sup> HRC Concluding Observations on Sri Lanka, CCPR/CO/79/LKA, 1 December 2003, Para.17.

<sup>49</sup> HRC Concluding Observations on Italy, CCPR/C/ITA/CO/5, 2006, Para.20.

principle of freedom of expression enshrined in article 19 of the Covenant.<sup>50</sup>

The Committee has also highlighted the use of laws that regulate the journalist profession, and whose ultimate aim is to control the content of information that is circulated by the media. In the case of the Gambia, the Committee found that the National Media Commission which was given the power to order the detention of journalists, impose heavy fines on them and was also responsible for the licensing regime for journalists, was incompatible with freedom of expression and constituted an infringement on the right to liberty (Article 9).<sup>51</sup> The Committee thus considered that no regulatory body should be given similar power over the journalist profession in a manner that restricts freedom of expression.

#### 4. Emergency, Security and Counter-terrorism Legislation

The right to freedom of expression has been the civil and political right most severely affected by counter-terrorism and security legislation, according to the Special Rapporteur on human rights defenders.<sup>52</sup> The broad and often vague terminology of such legislation which gives special powers to the State can also result in criminalising legitimate activities, such as criticism of the authorities. Direct criticism, demands for transparency or accountability, or exposure of corruption may result in the targeting of journalists and human rights defenders by invoking restrictive security legislation. Sometimes, even non-critical activity that is perceived as a threat to the authorities may be criminalised under the rubric of posing a ‘security concern’.<sup>53</sup> Legislation may also be used as a means to retaliate against defenders who have carried out activities critical of the authorities in the past.

If a public emergency is officially declared by the State, Article 4 of the ICCPR permits State parties to derogate from their obligations under the Covenant with respect to particular rights (such as freedom of expression). However, States often use the excuse of a public emergency to arbitrarily restrict fundamental rights such as freedom of expression. The HRC has on numerous occasions drawn the attention of State parties to the limited scope of and stringent requirements for permissible derogations under Article 4.<sup>54</sup> For example in the case of Syria in 2005, the Committee expressed its concern that the prolonged state of emergency had been used by the State to derogate from the right to freedom of expression, ‘without any convincing explanations being given as to the relevance of these derogations’ to the state of emergency claimed to have been created by the conflict with Israel.<sup>55</sup> In this case, the Committee recommended that any derogations due to the emergency should be justified as ‘strictly required by the exigencies of the situation’ and reasons for the derogation should be provided by the State party.

<sup>50</sup> HRC Concluding Observations on the Russian Federation, *supra* note 3, Para.18. See also the Syrian Arab Republic, CCPR/CO/84/SYR, 9 August 2005, Para.14; Yemen, CCPR/CO/84/YEM, 9 August 2005, Para.20; Togo, CCPR/CO/76/TGO, 28 November 2002, Para.16; Republic of Moldova, CCPR/CO/75/MDA, 26 July 2002, § 14.

<sup>51</sup> HRC Concluding Observations on the Gambia, *supra* note 1, Para.19.

<sup>52</sup> *Report of the Special Representative of the Secretary-General on Human Rights Defenders*, in accordance with General Assembly resolution 57/209 (2003), A/58/380, Para.17.

<sup>53</sup> *Report of the Special Representative of the Secretary-General on Human Rights Defenders*, in accordance with General Assembly resolution 57/209 (2003), A/58/380, Para.18.

<sup>54</sup> The scope of derogations allowed under article 4 has been analysed and clarified by the Committee in its General Comment no. 29 (2001).

<sup>55</sup> HRC Concluding Observations on Syrian Arab Republic, CCPR/CO/84/SYR, 9 August 2005, Para.6.

Anti-terrorist measures have also been increasingly used to justify substantial derogations from human rights obligations by States, particularly affecting rights pertinent to the work of defenders such as the right to assembly and the right to freedom of expression. Such legislation may create such an atmosphere of insecurity for human rights defenders that it may even lead to self-censorship.<sup>56</sup> Any security legislation that undermines the role of human rights defenders in defending human rights could prove particularly detrimental in situations where they can play a prominent and useful role in publicising violations, aiding victims, mobilising public opinion to pressure the authorities into addressing the situation, or alleviate the situation in other ways.<sup>57</sup>

In addition to restricting freedom of expression of human rights defenders, security legislation may also affect in particular the right of defenders to access information. As defenders can play a critical role in providing information and clarity to the public on an emergency situation, it is of vital importance that they are able to access relevant documents, personnel and/or other sources of information during such periods.

## 5. Restrictions relating to the Internet

The Internet has become a vital conduit through which freedom of expression is increasingly exercised today. Restrictions on the use of the Internet can affect both freedom of expression and freedom to access information. Restrictions may affect the right of human rights defenders to use the Internet to express and disseminate their ideas and information pertaining to human rights issues. Restrictions can also be placed on the ability of human rights defenders to access the Internet in order to obtain information that is relevant to their work. Both cases are examined below.

### *Freedom of expression on the Internet*

The Special Rapporteur on freedom of expression has stated that the systematic tracking of users' actions constitutes a clear violation of the right to privacy.<sup>58</sup> Additionally, the Special Rapporteur in conjunction with the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression stated in a joint declaration<sup>59</sup> that:

No one should be required to register with or obtain permission from any public body to operate an Internet service provider, website, blog or other online information dissemination system, including Internet broadcasting.

Additionally, they have also stated that the Internet at both global and national levels should be overseen only by bodies which are protected from governmental, political

<sup>56</sup> *Report of the Special Representative of the Secretary-General on Human Rights Defenders*, in accordance with General Assembly Resolution 57/209 (2003), A/58/380, Para.20.

<sup>57</sup> *Report of the Special Representative of the Secretary-General on Human Rights Defenders*, in accordance with General Assembly Resolution 57/209 (2003), A/58/380, Para.20, 47.

<sup>58</sup> *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Ambeyi Ligabo, in accordance with the Commission on Human Rights Resolution 2005/38 and Human Rights Council Resolution 1/102, (2 January 2007) A/HRC/4/27, Para.74.

<sup>59</sup> *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Ambeyi Ligabo, in accordance with the Commission on Human Rights Resolution 2005/38 and Human Rights Council Resolution 1/102, (2 January 2007) A/HRC/4/27, Annex, pp.23-24.

and commercial interference in the same manner and according to the same universally accepted standards of protection for print and broadcast media.

Filtering systems that are not ‘end-user controlled’, that is if they are controlled by someone other than the user, such as the State, a commercial service provider or another monitoring authority, are a form of ‘prior-censorship’ and do not uphold the right to freedom of expression.

The joint declaration of the Special Rapporteurs also reiterated that any restrictions placed on Internet content, pertaining to both dissemination as well as receipt of information should be imposed in strict conformity with freedom of expression, ‘taking into account the special nature of the Internet’.

### *Access to the Internet*

Restrictions on access to the Internet have also been considered a violation of the right to freedom of expression by several treaty bodies and the Special Rapporteur on freedom of expression. For example, in the case of the Syrian Arab Republic, the HRC considered that the Government had blocked the access of human rights defenders and activists to certain Internet sites that had relevance to their work as a violation of Article 19.<sup>60</sup> The Committee on the Rights of the Child has also considered cases where restrictions on the Internet, such as shutting down chat rooms, have constituted a violation of the right to access information, an important component of freedom of expression.<sup>61</sup>

The Special Rapporteur has also expanded upon the right to access information via the Internet more generally by stating that the right to freedom of expression ‘imposes an obligation on all States to devote adequate resources to promote universal access to the Internet’ through public access points, and that the international community should prioritise offering assistance to States that are as yet unable to do so.<sup>62</sup>

## **6. Harassment, intimidation and violence against journalists**

The Special Rapporteur on human rights defenders has repeatedly noted that human rights defenders are disproportionately targeted before, during or immediately after publicising human rights issues through reports, articles, petitions, letters, radio, public broadcasts or any other public campaigns.<sup>63</sup> Journalists in particular have been kidnapped, threatened and killed, sometimes after the publication of material on violations of human rights.<sup>64</sup> Additionally, the ACHPR has ruled that the imprisonment of journalists not only violates their freedom of expression, but interferes with the right of the public to access information provided by journalists.<sup>65</sup>

<sup>60</sup> HRC Concluding Observations on Syrian Arab Republic, CCPR/CO/84/SYR, 9 August 2005, Para.13.

<sup>61</sup> Committee on the Rights of the Child, Concluding Observations on Republic of Korea, CRC/C/15/Add.197 (2003) Para.36; Uzbekistan, CRC/C/15/Add.167 (2001), Para.37.

<sup>62</sup> *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Ambeyi Ligabo, in accordance with the Commission on Human Rights *Resolution 2005/38* and Human Rights Council *Resolution 1/102*, (2 January 2007) A/HRC/4/27, Annex, pp.23-24.

<sup>63</sup> *Report of the Special Representative of the Secretary-General on Human Rights Defenders*, CHR 2005 (E/CN.4/2005/101), Para.29.

<sup>64</sup> *Report of the Special Representative of the Secretary-General on Human Rights Defenders*, CHR 2005 (E/CN.4/2005/101), Para.18.

<sup>65</sup> Paragraph 107, Report No.22, 228/99, The Law Office of Ghazi Suleiman/Sudan, African Commission on Human and Peoples' Rights.

The HRC has expressed that any attacks, intimidation or violence against human rights defenders (including journalists) that is directed towards suppression of information about human rights violations, or issues in the interest of the broader public, constitute violations of freedom of expression. In the examination of Uzbekistan in 2005, the Committee added that States parties should adopt appropriate measures to prevent harassment or intimidation of journalists.<sup>66</sup> The Committee has also observed in other cases that if harassment, intimidation or any violence against journalists occur, the State party must take immediate steps to investigate, prosecute and punish the perpetrators and guarantee effective remedies to victims.<sup>67</sup>

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<sup>66</sup> HRC Concluding Observations on Uzbekistan, CCPR/CO/83/UZB, 26 April 2005, Para.20. Similarly, Tajikistan, *supra* note 4, Para.21; Morocco, CCPR/CO/82/MAR, 1 December 2004, Para.23; Colombia, CCPR/CO/80/COL, 26 May 2004, Para.18.

<sup>67</sup> HRC Concluding Observations on Albania, CCPR/CO/82/ALB, 2 December 2004, Para.19; Thailand, *supra* note 1, Para.19; Namibia, CCPR/CO/81/NAM, 30 July 2004, Para.15.

## CONCLUSION

Freedom of opinion, expression and information has been hailed as a valuable indicator of the general situation of human rights in a particular country or region. Conversely, an environment in which there is no freedom of expression is often characterised by other violations of human rights, and indeed, makes any assessment of the human rights situation far more difficult. In the context of the work of human rights defenders, freedom of expression is not only a right that defenders fight to protect, but is a right that allows them to carry out their valuable work of protection and promotion of human rights.

This briefing paper has examined the scope of the right to freedom of opinion, expression and information and has also examined some of the challenges to the free exercise of this right by human rights defenders. The most striking threats to freedom of expression of defenders come through physical attacks, threats and intimidation of individuals in retaliation for, or to prevent them from, speaking out against human rights abuses. The use of libel and defamation charges, vaguely worded legislation penalising ill-defined offences, counter-terrorism legislation and other legal means have also been used by States to restrict or control freedom of expression by defenders.

Given the centrality of freedom of expression to the canon of civil and political rights contained in the *International Covenant on Civil and Political Rights*, the HRC has dealt extensively with cases of violations of freedom of expression and has generated, through its concluding observations, authoritative positions on the protection of this right. The compilation of the concluding observations of the HRC in Annex 1, in addition to the recommendations of both the UN Special Rapporteur on human rights defenders and the Special Rapporteur on freedom of expression can be used to support advocacy at the national level to ensure the protection of freedom of expression in accordance with international standards.

## ANNEX 1: Summary of concluding observations of the treaty bodies

<b>CHALLENGES TO FREEDOM OF EXPRESSION</b>			
<b>I. Libel and defamation charges</b>			
Defamation refers to a charge against someone accused of making a false claim about another person. Libel is defamation made via publication, i.e. through a fixed form of communication. Human rights defenders, especially those who are journalists or media persons are often accused of defamation and/or libel by government officials or politicians who they have criticised. In such cases, charges of defamation may be used to silence any criticism of government policies or practices.			
<b>COUNTRY</b>	<b>ISSUES IDENTIFIED BY THE TREATY BODIES</b>	<b>RECOMMENDATIONS MADE BY THE TREATY BODIES</b>	<b>SOURCES</b>
Italy	Defamation punishable by imprisonment	Defamation should not be punishable by imprisonment	HRC, Concluding Observations on Italy, CCPR/C/ITA/CO/5, 28 October 2005, §§18-19.
Thailand	Threats and harassment of media, including defamation suits against journalists, from high-ranking political figures	States should take preventive measures to address threats and harassment of media; Cases should be investigated promptly and appropriate action taken against persons responsible regardless of rank or status	HRC, Concluding Observations on Thailand, CCPR/CO/84/THA, 8 July 2005, § 18.

Serbia and Montenegro	Abuse of defamation charges by politicians	Margin for acceptable criticism of public figures is wider than for private individuals	HRC, Concluding Observations on Serbia and Montenegro, CCPR/CO/81/SEMO, 12 August 2004, § 22.
Gambia	Defamation and libel charges against journalists critical of government	States should afford effective legal redress and compensation	HRC, Concluding Observations on the Gambia, CCPR/CO/81/GMB, 12 August 2004, § 20.
Azerbaijan	Harassment and criminal libel suits used to silence journalists critical of the government	Defamation legislation should maintain proper balance between protection of reputation of persons and freedom of expression	HRC Concluding Observations on Azerbaijan, CCPR/CO/73/AZE, 12 November 2001, § 22.
<b>I. Other laws and charges used against journalists</b>			
Often human rights defenders including journalists, researchers and other writers who produce or disseminate information that is critical of the authorities or is in the public interest, are subject to legal proceedings that in some way attempt to penalise them or restrict their right to do so. This may include charges besides defamation and libel, such as treason, 'spreading false rumours' or other criminal charges.			
COUNTRY	ISSUES IDENTIFIED BY THE COMMITTEES	RECOMMENDATIONS MADE BY THE COMMITTEES	SOURCES
Tajikistan	Broadly worded crimes which may lend themselves to manipulation and limitation of freedom of expression	Law and practice should be in line with Article 19	HRC, Concluding Observations on Tajikistan, CCPR/CO/84/TJK, 18 July 2005, § 22.
Russian Federation	Defenders tried and convicted on charges of treason even though charges were not proven	State party should refrain from criminalising legitimate journalistic and investigative activities	HRC, Concluding Observations on the Russian Federation, CCPR/CO/79/RUS, 6 November 2003, § 21.
Slovakia	Defenders accused of 'spreading false rumours' for publication of independent views	State party's use of Criminal Code cannot deter individuals and defenders from undertaking and publishing independent research	HRC, Concluding Observations on Slovakia, CCPR/CO/78/SVK, 22 August 2003, § 15.

Croatia	Uncertain scope of crimes such as defamation and slander listed under Criminal Code used to stifle political discourse	Review of laws is necessary and should be compliant with permissible restrictions under Article 19(3)	HRC, Concluding Observations on Croatia, CCPR/CO/71/HRV, 30 April 2001, § 17.
Dominican Republic	Existence of 'descato' crimes (disrespecting authorities)	'Descato' crimes are contrary to Article 19 and must be abolished	HRC, Concluding Observations on Dominican Republic, CCPR/CO/71/DOM, 26 April 2001, § 22.
<b>II. Regulation of the media and journalist profession</b>			
In many countries, laws regulating the media can be so restrictive that they are in contravention of the free and full exercise of freedom of expression. Such laws can consist of restrictive regimes of authorisation, governmental or political control over the media or other laws that can restrict the independence of the media and undermine media pluralism. Specific laws regulating the journalist profession may also have a repressive effect on freedom of expression. While the ultimate goal of such measures is to regulate the content of the media, it may be achieved by imposing disciplinary sanctions on journalists, access to the profession, imposition of fines, etc.			
COUNTRY	ISSUES IDENTIFIED BY THE COMMITTEES	RECOMMENDATIONS MADE BY THE COMMITTEES	SOURCES
Italy	Laws on television broadcasting and on conflict of interest are insufficient steps to address the issues of political influence over public television channels	State should provide information on results of relevant laws and follow recommendations of Special Rapporteur on freedom of expression	HRC, Concluding Observations on Italy, CCPR/C/ITA/CO/5, 28 October 2005, § 20.
Syrian Arab Republic	Concern over nature and application of Publications Act 2001	All legislation governing content of audio-visual and print media and licensing regime should be in full compliance with requirements of Article 19 and permissible restrictions under Article 19(3)	HRC, Concluding Observations on Syrian Arab Republic, CCPR/CO/84/SYR, 9 August 2005, § 14.
Yemen	Restrictive nature of Press and Publications Act	Legislation governing media and press should be in conformity with the provisions of Article 19	HRC, Concluding Observations on Yemen, CCPR/CO/84/YEM, 9 August 2005, § 20.
Gambia	Law creating a National Media Commission that has power to impose heavy fines on journalists in addition to ordering their detention	Law is incompatible with Articles 9 and 19, and must be reviewed	HRC, Concluding Observations on the Gambia, CCPR/CO/75/GMB, 12 August 2004, § 19.

Sri Lanka	Repeal of laws that allow for State control over media and creation of a Press Complaints Commission	State is urged to protect media pluralism and avoid State monopolisation of the media, and ensure impartiality of the Press Complaints Commission	HRC, Concluding Observations on Sri Lanka, CCPR/CO/79/LKA, 1 December 2003, § 17.
Russian Federation	Closure of independent media companies and increase in State control of major media outlets	State should avoid monopolisation of the media	HRC, Concluding Observations on the Russian Federation, CCPR/CO/79/RUS, 6 November 2003, § 18.
Togo	Press and Broadcasting Code amended in repressive spirit	Code should be reviewed and brought in conformity with Article 19	HRC, Concluding Observations on Togo, CCPR/CO/76/TGO, 28 November 2002, § 16.
Republic of Moldova	State television and radio broadcasting service has been subject to directives inconsistent with the requirements of impartiality and non-discrimination with respect to political opinion.	State should take steps, including legislative measures, to ensure opposing views are reflected in State media	HRC, Concluding Observations on Republic of Moldova, CCPR/CO/75/MDA, 26 July 2002, § 14.
<b>III. Emergency and counter-terrorism legislation</b>			
Emergency, security or counter-terrorism legislation often give sweeping discretionary powers to the State and which may lead to the undue suppression of certain rights such as the right to freedom of expression.			
COUNTRY	ISSUES IDENTIFIED BY THE COMMITTEES	RECOMMENDATIONS MADE BY THE COMMITTEES	SOURCES
Syrian Arab Republic	Derogation from Article 19 due to declared state of emergency not relevant to the conflict situation and no justification provided for its necessity to meet the exigencies of the situation	State should use General Comment 29 as a guide to derogations during state of emergency and should ensure that derogations are strictly required by situation	HRC, Concluding Observations on Syrian Arab Republic, CCPR/CO/84/SYR, 9 August 2005, § 6.
Sweden	Phone tapping and suspicion of persons of foreign origin risk violation of freedom of expression	States should ensure that counter-terrorist measures are in conformity with the provisions of ICCPR	HRC, Concluding Observations on Sweden, CCPR/CO/74/SWE, 24 April 2002, § 12.

#### IV. Harassment and intimidation

Human rights defenders are also subject to both verbal and physical attacks in addition to other forms of harassment and intimidation for carrying out their work. Such acts aim to obstruct the work of defenders in exposing information that may have been critical of authorities or third parties but that is in the public interest, or may also be in retaliation for already having done so. Investigation and prosecution of such attacks or threats is essential to prevent the escalation of such a situation into one of impunity, which would not be conducive to the free exercise of the right to freedom of expression.

COUNTRY	ISSUES IDENTIFIED BY THE COMMITTEES	RECOMMENDATIONS MADE BY THE COMMITTEES	SOURCES
Tajikistan	Harassment of journalists by State officials and seizure of newspapers	State officials should avoid harassment and intimidation of journalists and ensure that legislation and practice are in full conformity with Article 19	HRC, Concluding Observations on Tajikistan, CCPR/CO/84/TJK, 18 July 2005, § 21.
Thailand	Intimidation, verbal and physical attacks, enforced disappearances and extra-judicial killings of human rights defenders are violations of Articles 19, 21 and 22	State must take measures to immediately halt and protect against harassment and attacks against human rights defenders and community leaders; systematically investigate all reported instances of intimidation, harassment and attacks; guarantee effective remedies to victims and their families	HRC, Concluding Observations on Thailand, CCPR/CO/84/THA, 8 July 2005, § 19.
Uzbekistan	Harassment of journalists in the exercise of their profession	State should adopt measures to prevent the harassment or intimidation of journalists and ensure that legislation gives full effect to Article 19	HRC, Concluding Observations on Uzbekistan, CCPR/CO/83/UZB, 26 April 2005, § 20.
Albania	Harassment, physical violence and threats of defamation suits against journalists, no information provided by State party	State should introduce legal mechanisms to protect freedom of expression and to prosecute and punish perpetrators of violations	HRC, Concluding Observations on Albania, CCPR/CO/82/ALB, 2 December 2004, § 19.

Morocco	Fines and harassment of journalists	State should take necessary measures to prevent harassment of journalists and ensure legislation in compliant with Article 19	HRC, Concluding Observations on Morocco, CCPR/CO/82/MAR, 1 December 2004, § 23.
Namibia	Media have been harassed and allegations that investigations have not been carried out properly	State should undertake prompt and thorough investigations and suitable action against perpetrators should be taken	HRC, Concluding Observations on Namibia, CCPR/CO/81/NAM, 30 July 2004, § 15.
Colombia	Intimidation, physical and verbal attacks against human rights defenders from high political and military sources in violation of freedom of expression	State should halt such practices and strengthen existing protective measures for defenders	HRC, Concluding Observations on Colombia, CCPR/CO/80/COL, 26 May 2004, § 18.
Ukraine	Threats, harassment and ill-treatment of independent journalists and others who have raised allegations of abuses by officials	-	Report of CAT to the General Assembly, A/57/44, 2002, § 57(i).

**V. Restrictions on the Internet**

With the growth in the reach and use of the Internet, persons from nearly any part of the world have access to all kinds of information, and in addition can very easily disseminate information to a global audience with the click of a button. Authorities particularly in repressive regimes therefore have often placed restrictions on the Internet within their own countries, limiting both the content that can be viewed by users, as well as the expression of personal views through the Internet, such as through websites, blogs, etc.

COUNTRY	ISSUES IDENTIFIED BY THE COMMITTEES	RECOMMENDATIONS MADE BY THE COMMITTEES	SOURCES
Syrian Arab Republic	Government blocked access to certain Internet sites used by defenders or activists	State should reform legislation in accordance with Article 19	HRC, Concluding Observations on Syrian Arab Republic, CCPR/CO/84/SYR, 9 August 2005, § 13.
Republic of Korea	Internet chat rooms arbitrarily shut down by authorities	State party should amend legislation in accordance with Articles 12 (freedom of opinion) and 17 (access to information) of CRC	Committee on the Rights of the Child, Concluding Observations on Republic of Korea, CRC/C/15/ADD.197 (2003), § 36.

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Uzbekistan	Restrictions on Internet access are in violation of the right to access information and freedom of expression	State should take all effective measures, including enacting or rescinding legislation to ensure freedom of expression is guaranteed	CRC, Concluding Observations on Uzbekistan, CRC/C/15/ADD.167, 7 November 2001, § 37.
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**ANNEX 2: Resources on freedom of expression****Organisations:**

- Article 19: <http://www.article19.org/>
- International Freedom of Expression eXchange: <http://www.ifex.org/>
- Reporters Without Borders: <http://www.rsf.org/>
- Index on censorship: <http://www.indexoncensorship.org/>
- International Pen: <http://www.internationalpen.org.uk/>
- Amnesty International: <http://www.amnesty.org/en/freedom-of-expression>
- Human Rights Watch : <http://www.hrw.org/en/category/topic/free-expression>

**UN bodies and procedures:**

- For concluding observations and recommendations of the UN treaty bodies, see Universal Human Rights Index: [www.universalhumanrightsindex.org](http://www.universalhumanrightsindex.org)
- UN Human Rights Committee: <http://www2.ohchr.org/english/bodies/hrc/index.htm>
- For reports and recommendations of the UN Special Rapporteur on human rights defenders: <http://www2.ohchr.org/english/issues/defenders/index.htm>
- For reports and recommendations of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: <http://www2.ohchr.org/english/issues/opinion/index.htm>

**Regional bodies and mechanisms:**

- Report on the situation of human rights defenders in the Americas (2006), Inter-American Commission on Human Rights: <http://www.cidh.oas.org/countryrep/Defenders/defenderstoc.htm>
- Special Rapporteur for freedom of Expression (Inter-American Commission on Human Rights): <http://www.cidh.oas.org/relatoria/index.asp?IID=1>
- Special Rapporteur on freedom of expression in Africa (African Commission on Human and People's Rights): [http://www.achpr.org/english/info/index\\_free\\_exp\\_en.html](http://www.achpr.org/english/info/index_free_exp_en.html)
- Special Rapporteur on human rights defenders in Africa (African Commission on Human and People's Rights): [http://www.achpr.org/english/info/index\\_hrd\\_en.html](http://www.achpr.org/english/info/index_hrd_en.html)
- For reports, case-law and analyses of the European Court of Human Rights: [http://www.echr.coe.int/ECHR/homepage\\_en](http://www.echr.coe.int/ECHR/homepage_en)

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## **ABOUT THIS PUBLICATION**

The *Human Rights Defenders Briefing Papers* are a series of six briefing papers providing simple and practical information on rights relevant to the work of human rights defenders. Other papers cover right to freedom of assembly, freedom of association, access to funding, access to information and access to international bodies.

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