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## Human Rights Committee

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## Draft general comment No. 34 (Upon completion of the first reading by the Human Rights Committee)

### Article 19

#### General remarks

1. This general comment replaces general comment No. 10 (nineteenth session).
2. Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society.<sup>1</sup> They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.
3. Among the other articles that contain guarantees for freedom of opinion and, or expression, are articles 18, 17, 25 and 27. The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association.
4. Taking account of the specific terms of article 19, paragraph 1, as well as the relationship of opinion and thought (article 18), a reservation to paragraph 1 would be incompatible with the object and purpose of the Covenant.<sup>2</sup> Furthermore, although freedom of opinion is not listed among those rights that may not be derogated from pursuant to the provisions of article 4 of the Covenant, it is recalled that, “in those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee’s opinion cannot be made subject to lawful derogation under article 4”.<sup>3</sup>

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<sup>1</sup> Benhadj v. Algeria, No. 1173/2003; Tae-Hoon Park v. Republic of Korea, No. 628/1995.

<sup>2</sup> See general comment 24 on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant.

<sup>3</sup> General comment No. 29, para. 13.

Freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency.<sup>4</sup>

5. Taking account of the relationship of freedom of expression to the other rights in the Covenant, while reservations to particular elements of article 19, paragraph 2 may be acceptable, a general reservation to the rights set out in paragraph 2 would be incompatible with the object and purpose of the Covenant.<sup>5</sup>

6. The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party.<sup>6</sup> Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities.<sup>7</sup> The State party must also ensure that persons are protected from any acts of private persons or entities that would impair the enjoyment of freedoms of opinion and expression in so far as these Covenant rights are amenable to application between private persons or entities.<sup>8</sup>

7. States parties are required to ensure that the rights contained in article 19 of the Covenant are enshrined in the domestic law of the State, in a manner consistent with the guidance provided by the Committee in its general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.

8. It is recalled that States parties should provide the Committee in their periodic reports with the relevant domestic legal rules, administrative practices and judicial decisions, as well as relevant policy level and other sectorial practices relating to the rights protected by article 19, taking into account the issues discussed in the present general comment. They must also include information on remedies available if those rights are violated.

## **Freedom of opinion**

9. Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subjected to any form of discrimination or the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including, but not limited to, opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalise the holding of an opinion.<sup>9</sup> The harassment, intimidation or stigmatisation of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.<sup>10</sup>

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<sup>4</sup> General comment No. 29, para. 11.

<sup>5</sup> See general comment 24 on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant.

<sup>6</sup> General comment No. 31, para. 4.

<sup>7</sup> *Hertzberg et al. v. Finland*, No. 61/1979.

<sup>8</sup> General comment No. 31, para. 8; *Gauthier v. Canada*, No. 633/1995.

<sup>9</sup> *Faurisson v. France*, No. 550/93.

<sup>10</sup> *Mpaka-Nsusu v. Zaire*, No. 157/1983; *Primo Jose Essono Mika Miha v. Equatorial Guinea*, No. 414/1990.

10. Any form of coerced effort to shape opinion is prohibited.<sup>11</sup> Since freedom to express one's opinion necessarily includes freedom not to express one's opinions, article 19, paragraph 1, prohibits any action to compel the disclosure of an opinion.

### **Freedom of expression**

11. Paragraph 2 requires guarantees of the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right extends to the guarantee of the expression of every form of subjective idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20.<sup>12</sup> It includes political discourse,<sup>13</sup> commentary on one's own<sup>14</sup> and on public affairs,<sup>15</sup> canvassing,<sup>16</sup> discussion of human rights,<sup>17</sup> journalism,<sup>18</sup> cultural and artistic expression,<sup>19</sup> teaching,<sup>20</sup> religious discourse<sup>21</sup> [and commercial advertising]<sup>22</sup> The scope of paragraph 2 embraces even views that may be regarded as deeply offensive,<sup>23</sup> although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.

12. Paragraph 2 protects all forms of expression and the means of their publication. Such forms include, but are not limited to, the spoken and written word and such non-verbal expression as images and objects of art.<sup>24</sup> Means of expression include books, newspapers,<sup>25</sup> pamphlets,<sup>26</sup> posters, banners<sup>27</sup> and legal submissions.<sup>28</sup> They include all forms of audio-visual as well as electronic and internet-based media. Paragraph 2 does not, however, provide a right of free expression in any specific location.<sup>29</sup>

13. A State party may choose one or more national or official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's own choice,<sup>30</sup> and article 27 of the Covenant expressly provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with other members of their group, to use their own language.

### **Freedom of expression and the media**

14. A free, uncensored and unhindered press or other media is essential in any society for the ensuring of freedom of opinion and expression and the enjoyment of other Covenant

<sup>11</sup> Yong-Joo Kang v. Republic of Korea, No. 878/1999.

<sup>12</sup> Ballantyne v. Canada, Nos. 359/1989 and 385/1989.

<sup>13</sup> Primo Jose Essono Mika Miha v. Equatorial Guinea, No. 414/1990.

<sup>14</sup> Fernando v. Sri Lanka, No. 1189/2003.

<sup>15</sup> Coleman v. Australia, No. 1157/2003.

<sup>16</sup> Concluding observations on Japan (CCPR/C/JPN/CO/5).

<sup>17</sup> Velichkin v. Belarus, No. 1022/2001.

<sup>18</sup> Mavlonov et al. v. Uzbekistan, No. 1334/2004.

<sup>19</sup> Hak-Chul Sin v. Republic of Korea, No. 926/2000.

<sup>20</sup> Ross v. Canada, No. 736/97.

<sup>21</sup> Ibid.

<sup>22</sup> Ballantyne et al. v. Canada, No. 359, 385/89.

<sup>23</sup> Ross v. Canada, No. 736/97.

<sup>24</sup> Hak-Chul Sin v. Republic of Korea, No. 926/2000.

<sup>25</sup> Zundel v. Canada, No. 1341/2005

<sup>26</sup> Shchetoko et al. v. Belarus, No. 1009/2001.

<sup>27</sup> Kivenmaa v. Finland, No. 412/1990.

<sup>28</sup> Fernando v. Sri Lanka, No. 1189/2003.

<sup>29</sup> Zundel v. Canada, No. 1341/2005.

<sup>30</sup> Ballantyne v. Canada, Nos. 359/1989 and 385/1989.

rights. It constitutes one of the cornerstones of a democratic society.<sup>31</sup> The Covenant embraces a right to receive information on the part of the media as a basis on which they can carry out their function.<sup>32</sup> The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>33</sup> Pursuant to article 19, the public also has the right to receive information as a corollary to the specific function of any journalist to impart information.<sup>34</sup>

15. States parties must take particular care to encourage an independent and diverse media. They must also promote and protect access to the media for minority groups.

16. [States parties should ensure that public broadcasting services operate in an independent manner.<sup>35</sup> Actions to ensure independence may include the setting out of the mandate of such broadcasters in law and the provision of legislative guarantees of independence and editorial freedom, as well as the provision of funding in a manner that does not undermine independence].

17. Issues concerning the media are discussed further in the section of this general comment that addresses restrictions on freedom of expression.

### **Access to information**

18. Article 19, paragraph 2 embraces a general right of access to information held by public bodies. Such information includes all records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies include all levels of State bodies and organs, including the judiciary and with regard to the carrying out of public functions, it may include other bodies.

19. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right of the mass media to have access to information on public affairs<sup>36</sup> and the right of the general public to receive mass media output.<sup>37</sup> The right of access to information is also addressed elsewhere in the Covenant. As the Committee observed in its general comment No. 16, regarding article 17 of the Covenant, “every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination”.<sup>38</sup> Pursuant to article 10 of the Covenant, a prisoner does not lose the entitlement to access to his medical records.<sup>39</sup> The Committee, in general comment No. 32 on article 14, set out the various entitlements to information that are held by those accused with a criminal offence.<sup>40</sup> Pursuant to the provisions of article 2,

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<sup>31</sup> *Marques de Morais v. Angola*, No. 1128/2002.

<sup>32</sup> *Gauthier v. Canada*, No. 633/95.

<sup>33</sup> See general comment No. 25 on article 25 (Participation in public affairs and the right to vote)

<sup>34</sup> *Mavlonov et al v. Uzbekistan*, No. 1334/2004.

<sup>35</sup> Concluding observations on Republic of Moldova (CCPR/CO/75/MDA).

<sup>36</sup> *Gauthier v. Canada*, No. 633/95.

<sup>37</sup> *Mavlonov et al v. Uzbekistan*, No. 1334/2004.

<sup>38</sup> See also concluding observations on Norway (CCPR/CO/76/D).

<sup>39</sup> *Zheludkova v. Ukraine*, No. 726/1996.

<sup>40</sup> At para. 33.

persons should be in receipt of information regarding their Covenant rights in general.<sup>41</sup> Under article 27, a State party's decision-making that may substantively compromise the way of life and culture of a minority group must be undertaken in a process of information-sharing and consultation with affected communities.<sup>42</sup>

20. To give effect to the right of access to information, States parties should enact the necessary procedures, such as by means of freedom of information legislation.<sup>43</sup> The procedures should provide for the rapid processing of requests for information according to clear rules that are compatible with the Covenant. Arrangements should be put in place for appeals from refusals to provide access to information. Fees for the processing of requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. States parties should make every effort to ensure easy, effective and practical access to state-controlled information in the public domain.

### **Freedom of expression and political rights**

21. The Committee, in general comment No. 25 on participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>44</sup> The attention of States parties is drawn to the guidance that general comment No. 25 provides with regard to the promotion and the protection of freedom of expression in that context.

### **The application of article 19 (3)**

22. Paragraph 3 expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason two limitative areas of restrictions on the right are permitted which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (ordre public), or of public health or morals. However, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. The Committee also recalls the provisions of article 5, paragraph 1 of the Covenant according to which "nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant". The Committee recalls that the relation between right and restriction and between norm and exception must not be reversed.<sup>45</sup>

23. Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for the State party for one of those grounds.

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<sup>41</sup> General comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.

<sup>42</sup> *Poma Poma v. Peru*, No. 1457/2006.

<sup>43</sup> Concluding observations on Azerbaijan (CCPR/C/79/Add.38 (1994)).

<sup>44</sup> See para. 25 of general comment no. 25 on article 25 of the Covenant.

<sup>45</sup> See general comment No. 27.

Restrictions on freedom of expression must meet a strict test of justification.<sup>46</sup> Restrictions are not allowed on grounds not specified in paragraph 3, even if they would be allowed as restrictions to other rights protected in the Covenant, such as public safety. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>47</sup>

24. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.<sup>48</sup> Nor, under any circumstances, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.<sup>49</sup> Journalists are frequently subjected to such threats, intimidation and attacks because of their activities.<sup>50</sup> So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports.<sup>51</sup> All allegations of attacks on or other forms of intimidation or harassment of journalists, human rights defenders and others should be vigorously investigated, the perpetrators prosecuted,<sup>52</sup> and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.<sup>53</sup>

25. Restrictions must be provided by law. "Law" in this regard may include statutory law [and, where appropriate, case law].<sup>54</sup> It may include the law of parliamentary privilege<sup>55</sup> and the law of contempt of court.<sup>56</sup> Since any restriction on freedom of expression constitutes a serious curtailment of human rights, it is not compatible with the Covenant for a restriction to be enshrined in customary law.<sup>57</sup>

26. For purposes of paragraph 3, a norm, to be characterised as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly<sup>58</sup> and it must be made public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.<sup>59</sup>

27. Laws restricting Covenant rights must themselves be compatible with the provisions, aims and objectives of the Covenant.<sup>60</sup> Laws may not violate the non-discrimination provisions of the Covenant. Laws may not provide for penalties that are incompatible with the Covenant, such as corporal punishment.<sup>61</sup>

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<sup>46</sup> Velichkin v. Belarus, No. 1022/2001.

<sup>47</sup> See general comment No. 22.

<sup>48</sup> Mukong v. Cameroon, No. 458/91.

<sup>49</sup> Njaru v. Cameroon, No. 1353/2005.

<sup>50</sup> See, for instance, concluding observations on Algeria (CCPR/C/DZA/CO/3); concluding observations on Costa Rica (CCPR/C/CRI/CO/5); concluding observations on Sudan (CCPR/C/SDN/CO/3).

<sup>51</sup> Njaru v. Cameroon, No. 1353/2005; concluding observations on Nicaragua (CCPR/C/NIC/CO/3); concluding observations on Tunisia (CCPR/C/TUN/CO/5); concluding observations on Syria (CCPR/CO/84/SYR); concluding observations on Colombia (CCPR/CO/80/COL).

<sup>52</sup> Ibid. and concluding observations on Georgia (CCPR/C/GEO/CO/3).

<sup>53</sup> Concluding observations on Guyana (CCPR/C/79/Add.121v).

<sup>54</sup> Coleman v. Australia, No. 1157/2003.

<sup>55</sup> Gauthier v. Canada, No. 633/95.

<sup>56</sup> Dissanayake v. Sri Lanka, No. 1373/2005.

<sup>57</sup> See general comment No. 32.

<sup>58</sup> Leonardus J.M. de Groot v. The Netherlands, No. 578/1994.

<sup>59</sup> See general comment No. 27.

<sup>60</sup> Toonen v. Australia, No. 488/1992.

<sup>61</sup> General comment No. 20.

28. It is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.<sup>62</sup> If, with regard to a particular State party, the Committee has to consider whether a particular restriction is imposed by law, the State party should provide details of the law and of actions that fall within the scope of the law.<sup>63</sup>

29. The first of the legitimate grounds for restriction listed in paragraph 3 is that of respect for the rights or reputations of others. The term “rights” includes human rights as recognised in the Covenant and more generally in international human rights law. For example, it may be legitimate to restrict freedom of expression in order to protect the article 25 right to vote, as well as under article 17 rights (See para. 39).<sup>64</sup> Such restrictions must be constructed with care: while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate, including, for example, calls for the boycotting of a non-compulsory vote.<sup>65</sup> The term ‘others’ may relate to other persons individually or as members of a community.<sup>66</sup> Thus, it may, for instance, refer to members of a community defined by its religious faith<sup>67</sup> or ethnicity.<sup>68</sup>

30. The second legitimate ground is that of protection of national security or of public order (*ordre public*), or of public health or morals.

31. Extreme care must be taken by States parties to ensure that treason laws<sup>69</sup> and similar provisions relating to national security, such as official secrets and sedition laws, are crafted and applied in a manner that conforms to paragraph 3. It is not compatible with paragraph 3, for instance, to invoke treason laws to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated information of legitimate public interest.<sup>70</sup> Nor is it generally appropriate to include in the remit of a state secrets law such categories of information as those relating to the commercial sector, banking and scientific progress.<sup>71</sup> The Committee has found in one case that a restriction on the issuing of a statement in support of a labour dispute, including for the convening of a national strike was not permissible on the grounds of national security.<sup>72</sup>

32. On the basis of maintenance of public order it may, for instance, be permissible in certain circumstances to regulate speech-making in a particular public place.<sup>73</sup> Contempt of court proceedings relating to forms of expression may be tested against the public order ground. In order to comply with paragraph 3, such proceedings and the penalty imposed must be shown to be warranted in the exercise of a court’s power to maintain orderly proceedings.<sup>74</sup>

33. Concerning public morals, it has to be observed that the content of the term may differ widely from society to society – there is no universally applicable common

<sup>62</sup> *Korneenko et al. v. Belarus*, No. 1553/2007.

<sup>63</sup> *Monja Jaona v. Madagascar*, No. 132/1982.

<sup>64</sup> *Svetik v. Belarus*, No. 927/2000.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ross v. Canada*, No. 736/97.

<sup>67</sup> *Faurisson v. France*, 550/93; concluding observations on Austria (CCPR/C/AUT/CO/4).

<sup>68</sup> Concluding observations on Slovakia (CCPR/CO/78/SVK); concluding observations on Israel (CCPR/CO/78/ISR).

<sup>69</sup> Concluding observations on Hong Kong (CCPR/C/HKG/CO/2).

<sup>70</sup> Concluding observations on the Russian Federation (CCPR/CO/79/RUS).

<sup>71</sup> Concluding observations on Uzbekistan (CCPR/CO/71/UZB).

<sup>72</sup> *Jong-Kyu Sohn v. Republic of Korea*, No. 518/1992.

<sup>73</sup> *Coleman v. Australia*, No. 1157/2003.

<sup>74</sup> *Dissanayake v. Sri Lanka*, No. 1373/2005.

standard.<sup>75</sup> However, as the Committee observed in general comment No. 22, “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”.

34. Restrictions must be “necessary” for a legitimate purpose. Thus, for instance, a prohibition on commercial advertising in one language, with a view to protecting the language of a particular community, violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.<sup>76</sup> On the other hand, the Committee has considered that a State party complied with the test of necessity when it transferred a teacher who had published materials that expressed hostility to a religious community to a non-teaching position in order to protect the right and freedom of children of that faith in a school district.<sup>77</sup>

35. The Committee observed in general comment No. 27 that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected....The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law”.<sup>78</sup> The principle of proportionality must also take account of the form of expression at issue. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.<sup>79</sup>

36. When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualised fashion the precise nature of the threat and the necessity of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>80</sup>

37. The Committee reserves to itself an assessment of whether, in a given situation, there may have been circumstances which made a restriction of freedom of expression necessary.<sup>81</sup> In this regard, the Committee recalls that the scope of this freedom is not to be assessed by reference to a “margin of appreciation”<sup>82</sup> and in order for the Committee to carry out this function, a State party, in any given case, must demonstrate in specific fashion the precise nature of the threat to any of the enumerated grounds listed in paragraph 3 that has caused it to restrict freedom of expression.<sup>83</sup>

### **Limitative scope of restrictions on freedom of expression in certain specific areas**

38. Restrictions on freedom of expression in order to be compatible with paragraph 3, must be enshrined in legal provisions that comply with the conditions indicated in this general comment. They must also comply with the test of necessity and the proportionality principle.

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<sup>75</sup> Hertzberg et al. v. Finland, No. 61/79; see Delgado Paez v. Colombia, No. 195/85.

<sup>76</sup> Ballantyne et al. v. Canada, No. 359, 385/89.

<sup>77</sup> Ross v. Canada, No. 736/97.

<sup>78</sup> See also Marques de Morais v. Angola, No. 1128/2002; Coleman v. Australia, No. 1157/2003.

<sup>79</sup> Bodrozic v. Serbia and Montenegro, No. 1180/2003.

<sup>80</sup> Shin v. Republic of Korea, No. 926/2000.

<sup>81</sup> Sohn v. Republic of Korea, No. 518/1992.

<sup>82</sup> Ilmari Lansman, et al. v. Finland, No. 511/1992.

<sup>83</sup> Sohn v. Republic of Korea, No. 518/92; Shin v. Republic of Korea, No. 926/2000.

39. Among those restrictions on political discourse that have given the Committee cause for concern are the prohibition of door-to-door canvassing,<sup>84</sup> restrictions on the number and type of written materials that may be distributed during election campaigns,<sup>85</sup> blocking access during election periods to sources, including local and international media, of political commentary,<sup>86</sup> and limiting access of opposition parties and politicians to media outlets.<sup>87</sup> Not every restriction is incompatible with paragraph 3. For instance, it may be legitimate for a State party to restrict political polling in the days preceding an election in order to maintain the integrity of the electoral process.<sup>88</sup>

40. As noted earlier in paragraph (paras. 14 and 21.), concerning the content of political discourse, the Committee has observed that in circumstances of public debate concerning public figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high.<sup>89</sup> Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit, public figures benefit from the provisions of the Covenant.<sup>90</sup> Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.<sup>91</sup> Accordingly, the Committee has expressed concern regarding laws on such matters as, *lese majeste*,<sup>92</sup> *desacato*,<sup>93</sup> disrespect for authority,<sup>94</sup> defamation of the head of state<sup>95</sup> and the protection of the honour of public officials,<sup>96</sup> and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. State parties should not prohibit criticism of institutions, such as the army or the administration.<sup>97</sup>

41. Legislative and administrative frameworks for the regulation of the mass media should be reviewed to ensure that they are consistent with the provisions of paragraph 3.<sup>98</sup> Regulatory systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge. It is incompatible with article 19 to refuse to permit the publication of newspapers and other print media other than in the specific circumstances of the application of paragraph 3. Such circumstances may never include a ban on a particular publication unless specific content, that is not severable, offends paragraph 3. States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations.<sup>99</sup> The criteria for the application of such conditions

<sup>84</sup> Concluding observations on Japan (CCPR/C/JPN/CO/5).

<sup>85</sup> Ibid.

<sup>86</sup> Concluding observations on Tunisia (CCPR/C/TUN/CO/5).

<sup>87</sup> Concluding observations on Togo (CCPR/CO/76/TGO); concluding observations on Moldova (CCPR/CO/75/MDA).

<sup>88</sup> Jung-Cheol Kim v. Republic of Korea, No. 968/2001.

<sup>89</sup> Bodrozic v. Serbia and Montenegro, No. 1180/2003.

<sup>90</sup> Ibid.

<sup>91</sup> Marques de Morais v. Angola, No. 1128/2002.

<sup>92</sup> Aduayom et al. v. Togo, Nos. 422-424/1990.

<sup>93</sup> Concluding observations on the Dominican Republic (CCPR/CO/71/DOM).

<sup>94</sup> Concluding observations on Honduras (CCPR/C/HND/CO/1).

<sup>95</sup> Concluding observations on Zambia (CCPR/ZMB/CO/3).

<sup>96</sup> Concluding observations on Costa Rica (CCPR/C/CRI/CO/5).

<sup>97</sup> Concluding observations on Costa Rica (CCPR/C/CRI/CO/5); concluding observations on Tunisia (CCPR/C/TUN/CO/5).

<sup>98</sup> Concluding observations on Vietnam (CCPR/CO/75/VNM); concluding observations on Lesotho (CCPR/CO/79/Add. 106).

<sup>99</sup> Concluding observations on Gambia (CCPR/CO/75/GMB).

and licence fees should be reasonable and objective,<sup>100</sup> clear,<sup>101</sup> transparent,<sup>102</sup> non-discriminatory and otherwise in compliance with the Covenant.<sup>103</sup> Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.<sup>104</sup>

42. The Committee reiterates its observation in general comment No. 10 that “because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression”. The State should avoid having or seeking to have monopoly control over the media.<sup>105</sup> States parties should take appropriate action, consistent with the Covenant, to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.

43. Care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements<sup>106</sup> are not employed to the effect of impeding freedom of expression.<sup>107</sup> Furthermore, private media must not be put at a disadvantage compared to public media in such matters as access to means of dissemination/distribution and access to news.<sup>108</sup>

44. It is not compatible with paragraph 3 to penalise a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government.<sup>109</sup>

45. Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, must be compatible with paragraph 3. Any restrictions must be content-specific. Generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or a system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.<sup>110</sup>

46. Since journalism is a function shared by a wide range of actors, including professional full time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, general systems of registration or licensing 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. Such schemes should be applied in a

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<sup>100</sup> Concluding observations on Lebanon (CCPR/CO/79/Add.78).

<sup>101</sup> Concluding observations on Kuwait (CCPR/CO/69/KWT); concluding observations on Ukraine (CCPR/CO/73/UKR).

<sup>102</sup> Concluding observations on Kyrgyzstan (CCPR/CO/69/KGZ).

<sup>103</sup> Concluding observations on Ukraine (CCPR/CO/73/UKR).

<sup>104</sup> Concluding observations on Lebanon (CCPR/CO/79/Add.78).

<sup>105</sup> Concluding observations on Guyana (CCPR/CO/79/Add.121); concluding observations on the Russian Federation (CCPR/CO/79/RUS); concluding observations on Vietnam (CCPR/CO/75/VNM); concluding observations on Italy (CCPR/C/79/Add. 37).

<sup>106</sup> Concluding observations on Lesotho (CCPR/CO/79/Add. 106).

<sup>107</sup> Concluding observations on Ukraine (CCPR/CO/73/UKR).

<sup>108</sup> Concluding observations on Sri Lanka (CCPR/CO/79/LKA); concluding observations on Togo (CCPR/CO/76/TGO).

<sup>109</sup> Concluding observations on Peru (CCPR/CO/70/PER).

<sup>110</sup> Concluding observations on the Syrian Arab Republic (CCPR/CO/84/SYR).

manner that is non-discriminatory and compatible with article 19 and other provisions of the Covenant.

47. It is normally incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings)<sup>111</sup> to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries<sup>112</sup> or to restrict freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses). States parties should recognise and respect the limited journalistic privilege not to disclose information sources.<sup>113</sup>

48. States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as “encouragement of terrorism”<sup>114</sup> and “extremist activity”<sup>115</sup> as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to a disproportionate interference with freedom of expression. Excessive restrictions on freedom of information must also be avoided. The media play a crucial role in informing the public about acts of terrorism and their capacity to operate should not be unduly restricted. In this regard, journalists should not be penalised for carrying out their legitimate activities.

49. Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression.<sup>116</sup> All such laws should include the defence of truth and they should not be applied with regard to the expression of opinions that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalising or otherwise rendering unlawful untrue statements that have been published in error but without malice.<sup>117</sup> In any event, a public interest in the subject matter of the criticism should be recognised as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party.<sup>118</sup> States parties should consider the decriminalisation of defamation<sup>119</sup> and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously - such a practice has a chilling effect that may unduly restrict the person’s exercise of freedom of expression of the person concerned and others.<sup>120</sup>

50. Blasphemy prohibitions and other prohibitions of display of disrespect to a religion or other belief system may not be applied in a manner that is incompatible with the

<sup>111</sup> Concluding observations on Uzbekistan (CCPR/CO/83/UZB); concluding observations on Morocco (CCPR/CO/82/MAR).

<sup>112</sup> Concluding observations on Democratic People’s Republic of Korea (CCPR/CO/72/PRK).

<sup>113</sup> Concluding observations on Kuwait (CCPR/CO/69/KWT).

<sup>114</sup> Concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6).

<sup>115</sup> Concluding observations on the Russian Federation (CCPR/CO/79/RUS).

<sup>116</sup> Concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6).

<sup>117</sup> Ibid.

<sup>118</sup> Concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6).

<sup>119</sup> Concluding observations on Italy (CCPR/C/ITA/CO/5); concluding observations on the Former Yugoslav Republic of Macedonia (CCPR/C/MKD/CO/2).

<sup>120</sup> *Kankanamge v. Sri Lanka*, No. 909/2000.

paragraph 3 or other provisions of the Covenant, including articles 2, 5, 18 and 26 taking into account relevant general comments including general comment No. 22. Thus, for instance, they may not discriminate in a manner that prefers one or certain religions or belief systems or their adherents over another, or religious believers over non-believers. Blasphemy laws should not be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith. States parties should repeal criminal law provisions on blasphemy and regarding displays of disrespect for religion or other belief system other than in the specific context of compliance with article 20 (discussed below).<sup>121</sup>

51. Laws that penalise the promulgation of specific views about past events, so called “memory-laws”,<sup>122</sup> must be reviewed to ensure they violate neither freedom of opinion nor expression. The Covenant does not permit general prohibitions on expression of historical views, nor does it prohibit a person’s entitlement to be wrong or to incorrectly interpret past events. Restrictions must never be imposed on the right of freedom of opinion and, with regard to freedom of expression they may not go beyond what is permitted in paragraph 3 or required under article 20.

### **The relationship of articles 19 and 20**

52. Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are of such an extreme nature that they would all be subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3, which lays down requirements for determining whether restrictions on expression are permissible.<sup>123</sup>

53. What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19.

54. The Committee is concerned with the many forms of “hate speech” that, although a matter of concern, do not meet the level of seriousness set out in article 20. It also takes account of the many other forms of discriminatory, derogatory and demeaning discourse. However, it is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions. In every other case, while the State is not precluded in general terms from having such prohibitions, it is necessary to justify the prohibitions and their provisions in strict conformity with article 19.

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<sup>121</sup> Concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/79/Add.119). See also concluding observations on Kuwait (CCPR/CO/69/KWT).

<sup>122</sup> *Faurisson v. France*, No. 550/93.

<sup>123</sup> *Ross v. Canada*, No. 736/1997.