STATEMENT

on Draft General Comment No. 34 on Article 19 of the ICCPR on Freedom of Opinion and Expression

upon completion of the first reading
by the Human Rights Committee

January 2011

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I. Introduction

1. This Statement is submitted on behalf of ARTICLE 19: the Global Campaign for Free Expression to the Human Rights Committee ("Committee") in response to draft General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights ("Covenant") following the completion of the first reading by the Committee.[1]

2. ARTICLE 19: Global Campaign for Free Expression ("ARTICLE 19") is an international human rights organisation, independent of all ideologies and governments. It takes its name and mandate from the nineteenth article of the Universal Declaration of Human Rights which proclaims the right to freedom of expression, including the right to receive and impart information and ideas. ARTICLE 19 seeks to develop and strengthen international standards which protect freedom of expression by, among other methods, making submissions to international, regional and domestic tribunals and human rights bodies. ARTICLE 19 is a registered UK charity (No.32741) with headquarters in London and regional offices in Kenya, Senegal, Bangladesh, Mexico and Brazil.

3. ARTICLE 19 welcomes the decision of the Committee to draft a General Comment on Article 19 of the Covenant since it offers an important opportunity for the Committee to elaborate upon its interpretation of that provision and, in so doing, advise States parties to the Covenant as a whole on the realisation of the right to freedom of expression. The drafting of the General Comment is especially timely given the nature and range of threats to freedom of expression that exist in the world today. These threats, which have been well documented by ARTICLE 19 and other organizations, include: far-reaching governmental controls over the media; reliance on criminal defamation laws; impunity for violence against journalists, media workers and human rights defenders; a culture of secrecy and a lack of transparency in relation to matters of public interest; discrimination in relation to the enjoyment of freedom of expression; concentration of media ownership; national security laws unduly limiting free speech; and censorship and numerous other restrictions on internet based speech.[2]

4. We note that the last time the Committee specifically addressed Article 19 in a General Comment was in 1983 at its nineteenth session.[3] The guidance provided in that, very brief General Comment does not reflect the significant developments in the law, practice and understanding of the right to freedom of expression since that time and is inadequate to respond to the range of contemporary and long-standing challenges to the realisation of the right.

5. According to the Committee's own standards, a General Comment should promote cooperation between States parties in the implementation of the Covenant, summarize the experience gained by the Committee in considering State reports, draw the attention of States parties to matters relating to improvement of the reporting procedure and the implementation of the Covenant

[1] Draft general comment No. 22 October 2010 CCPR/C/GC/34/CRP.4.
[2] See the cases and issues highlighted by ARTICLE 19 at http://www.article19.org/index.html and International Mechanisms for Promoting Freedom of Expression, "Joint Declaration, Ten Key Challenges to Freedom of Expression In the Next Decade", 2 February 2010 http://www.article19.org/pdfs/standards/tenth-anniversary-joint-declaration-ten-key-challenges-to-freedom-of-express.pdf
[3] General comment No. 10, 29 June 1983.

and stimulate activities of States parties and international organizations in the promotion and protection of human rights.[4]

6. Overall, in ARTICLE 19's opinion, the draft General Comment meets these standards by offering a detailed and progressive interpretation of the rights contained in Article 19 of the Covenant. As it stands, the draft General Comment should provide States parties with valuable direction in implementing their obligations under Article 19 of the Covenant and deserves to be supported by the international community. ARTICLE 19 welcomes, in particular, the Committee's express acknowledgement that Article 19 paragraph 2 embraces a "general right of access to information held by public bodies".

7. The draft General Comment indicates a number of weaknesses however which ought to be addressed before the General Comment is finalised. Most notably, the current provisions on the "right of access to information" overlook a number of important dimensions of proper legal protection for the right to information, including the need for an independent and autonomous oversight body, proactive disclosure of information and the protection of whistleblowers. The draft General Comment also does not take up the opportunity to highlight basic principles on the exercise of freedom of expression through new information and communications technologies (ICTs). Further, the draft General Comment fails to assert a clear and unequivocal position against all criminal defamation laws and laws prohibiting blasphemy or "defamation of religions".

8. While we recognise that the Committee adopts General Comments by consensus, in our view, the Committee's primary responsibility should be to motivate States parties and international organizations towards the *highest* standards of the promotion and protection of freedom of expression. In assisting the Committee towards meeting this responsibility, we do not aim to identify and emphasise each one of the positive features and references in the draft General Comment or to analyse every single one of its paragraphs. Rather, our intention is simply to point out the shortfalls of the draft General Comment and our recommendations to overcome them.

II. Comments

1. General remarks

9. We welcome the draft General Comment's assertion that the rights to freedom of opinion and expression are "indispensable conditions for the full development of the person", "essential for any society" and the "foundation stone for every free and democratic society" (paragraph 2). In our view, the General Comment should make more specific linkages between freedom of opinion and expression and the "full enjoyment of a wide range of other human rights" (paragraph 3). In particular, the General Comment should indicate that the right to **freedom of**

[4] Statement on the duties of the Human Rights Committee under article 40 of the Covenant, Decision of the Committee of 30 October 1980 CCPR/C/18.

opinion and expression is essential for the realisation of civil and political rights as well as economic, social and cultural rights.[5]

10. We believe that the General Comment should explicitly **affirm that the rights of children include the right to freedom of opinion and expression** on the basis that Article 19 of the Covenant applies to everyone, including children, and that the Convention on the Rights of the Child provides extensive protection for the rights to freedom of opinion and expression and the right to information in various provisions (including Articles 13, 17, 23 and 28).

11. We also suggest that the General Comment should explicitly **affirm the rights of people with disabilities to freedom of expression on an equal basis with the others**. In doing so, the General Comment should make reference to Article 21 of the Convention on the Rights of Person with Disabilities ("CRPD") which sets out specific measures to ensure that persons with disabilities enjoy the right to information on an equal basis with others and through all forms of communication of their choice, including by: providing information intended for the general public (from both public and private entities) in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost; and by accepting and facilitating the use of sign languages, Braille, augmentative and alternative modes of communication of their choice by persons with disabilities in official interactions. The General Comment should also refer to the definition of "communication" in Article 2 of the CRPD that states that communication "includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology".

12. We welcome the Committee's statement that State parties should 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" (paragraph 6). Whilst we note that a later paragraph deals with attacks, intimidation and harassment of journalists, human rights defenders and others (paragraph 24), we believe that the States' obligations in relation to non-state state actors might be more clearly stated at this stage in the General Comment. The General Comment should state in the general remarks that **States parties should ensure that any attacks by non-state actors on individuals for exercising their freedom of expression (e.g. journalists, human rights defenders) should be promptly and thoroughly investigated and that those suspected of carrying out or ordering such actions should be made accountable**.

[5] See ARTICLE 19, "Access to Information: An Instrumental Right for Empowerment", July 2007 http://www.article19.org/pdfs/publications/ati-empowerment-right.pdf; London Declaration on *Transparency, the Free Flow of Information and Development* http://www.right2info-mdgs.org/wp-content/uploads/London-Declaration.pdf

2. Freedom of expression and the media

New Media

13. The rapid growth of new media organisations using information and communications technologies ("ICTs") has been a significant development over the past decade. ARTICLE 19 believes that **references to "other media" in the draft General Comment should be expressly followed with the words "including new media".** The General Comment should, for instance, state that "a free press and other media, *including new media*, [should be] able to comment on public issues without censorship or restraint and to inform public opinion" (paragraphs 14 and 21).

Public service broadcasting

14. ARTICLE 19 believes that the Committee should recommend in a separate paragraph that **all state and government broadcasters should be transformed into independent public service broadcasters in order to ensure their independence and the promotion of diversity. Furthermore, public service broadcasts should receive adequate funding to enable them to discharge their responsibilities.**

Diversity and the Media Regulation

15. ARTICLE 19 applauds the Committee for recognising that 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" (paragraph 15). The recommendation that public service broadcasters operate "in an independent manner" (paragraph 16) is also positive.

16. However, in our opinion, these provisions should go further in recommending that **States parties should put in place a public policy and regulatory framework for the media, including new media, which promotes pluralism and diversity in the media, including in terms of ownership, types of media and content.** This framework should: (a) respect the fundamental principle that any regulation of the media should be undertaken by bodies which are independent of the government and publicly accountable, and which operate transparently; and (b) promote the rights of minority groups to freely access and use media and new media for the production and circulation of their own content, as well as for the reception of content produced by others, regardless of frontiers.[6]

17. In addition, the General Comment should further stipulate that **States parties "should encourage all mass media, as a moral and social responsibility, to take steps to: (a) ensure that their workforces are diverse and representative of society as a whole; (b) address as far as possible the issues of concern to all groups in society; (c) seek a multiplicity of sources and voices from different groups; (d) adhere to high standards of information provision that meet recognised professional and ethical standards."**

18. Furthermore, **States parties should ensure that public service broadcasters are under an obligation to avoid negative stereotypes of individuals and groups,**

[6] See *Camden Principles on Freedom of Expression and Equality*, April 2009, Principle 5 http://www.article19.org/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf

and that their mandate requires them to promote intercultural understanding.

3. Access to Information

19. ARTICLE 19 strongly supports the explicit recognition that Article 19 paragraph 2 encompasses "a general right of access to information held by public bodies". We welcome paragraphs 14 and 18 – 20 in this regard.

20. However, in our view, the provisions on "the right of access to information" may be strengthened in various ways, according to international best practices.[7]

Right to information

21. ARTICLE 19 recommends that **the Committee should refer to the "right to information", rather than the "right of access to information" or "freedom of information",** in the General Comment. The "right to information" is the broadest formulation and encapsulates both the negative and also positive aspects of the right.

A law on the right to information

22. ARTICLE 19 makes a number of comments in connection with the Committee's position on "freedom of information legislation".

23. *First*, the draft general comment indicates that States parties should, "give effect to the right of access to information ... enact the necessary procedures, *such as by* means of freedom of information legislation" (paragraph 20) (emphasis added). In our view, this recommendation is too weak and there should be an obligation on states to adopt and implement legislation on the right to information.[8] In our view, the General Comment should state that **Article 19 paragraph 2 *requires States parties to enact and implement legislation giving* effect to the right to information in accordance with international standards on the right** (emphasis added).

24. *Second*, the General Comment should state that **States parties should ensure that any exemptions to the principle of disclosure of information are limited and provided in such legislation on the right to information**, which should: (a) contain a harm test limiting disclosure only when its dissemination would harm a specified legitimate aim; (b) contain a public interest test where information may not be withheld unless the legitimate interest protected is greater than the public interest in disseminating that information; (c) should not include general exemptions for cabinet documents, information relating to intelligence or security services, crimes against humanity or other human rights violations; (d) allow for the possibility of redacting documents; (e) limit the time for classification of documents to 15 years.

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[7] There are now about 90 states which have adopted legislation or national regulation on the right to access information to date. See Privacy International, *National Freedom of Information Laws, Regulations and Bills 2010* http://www.privacyinternational.org/foi/foi-laws.jpg

[8] *Claude Reyes et al. v Chile* judgment of the Inter-American Court of Human Rights of 19 September 2006.

25. *Third*, the General Comment should recommend that States parties ensure that **legislation on the right to information provides for an independent and autonomous oversight body which is specialised in transparency and access to information.** Such a body should have the authority to hear and determine appeals from individuals refused access to information, to issue binding decisions and monitor and follow-up on compliance with its decisions.

26. *Fourth*, the draft General Comment includes a general statement on affirmative publication which requires further elaboration: "States parties should make every effort to ensure easy, effective and practical access to state-controlled information in the public domain." In our opinion, **the General Comment should indicate that public authorities should proactively disclose information relating to following: the internal organisation of the public body or agency; information regarding decision-making; financial information; any other matters which may be useful or relevant for the knowledge of or evaluation of public bodies. Furthermore, public authorities or agencies should use language which is clear, accessible and which facilitates comprehension by users.**

27. *Fifth*, there is an absence of any protection regarding whistleblowers – persons who disclose information on wrongdoing in the public interest. In interpreting states obligations under Article 19, paragraph 2 with respect to the right to information, **the General Comment should provide that States parties are obliged to ensure that domestic legislation protects whistleblowers whether through a law on the right to information or otherwise.**[9] More specifically, the General Comment should recommend that States parties ensure protection against any legal, administrative or employment related sanctions for individuals who release information on wrongdoing, or which would disclose a serious threat to health, safety or the environment. This protection should apply where the individual acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment. Wrongdoing should be defined to include the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious maladministration regarding a public body.[10]

Political Rights

28. Paragraph 21 properly indicates that freedom of expression is essential in the participation of public affairs. However, it takes an unfortunately narrow view by focusing on the role of the media in providing commentary and information in informing the discussion. **The role of citizen commentary using ICTs has**

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[9] See for example *Guja v Moldova* (Application No. 14277/04) judgement of the Grand Chamber of the European Court of Human Rights of 12 February 2008. Whistleblower protection laws have gained a strong interest around the world in recent years. Furthermore, the UN Convention Against Corruption recommends that countries adopt "appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention". Article 14, UN Convention on Anti-Corruption s 33 http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf See David Banisar, *Whistleblowing: International Standards and Developments* (World Bank-Institute for Social Research, UNAM, Washington, DC) http://www.corrupcion.unam.mx/documentos/investigaciones/banisar_paper.pdf

[10] See ARTICLE 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (June 1999), Principle 9 http://www.article19.org/pdfs/standards/righttoknow.pdf and ARTICLE 19, *Model Freedom of Information Law* (August 2001), Part VII http://www.article19.org/pdfs/standards/modelfoilaw.pdf

becoming increasingly important and should also be recognised and fully protected through the General Comment.

4. The application of Article 19(3)

29. Restrictions on freedom of expression are often justified on the basis that they meet the criteria set forth in Article 19(3) of the Covenant. In this regard it is particularly important that the Committee emphasises that "the relation between the right and restriction and between norm and exception must not be reversed" (paragraph 22), which we support.

30. We also welcome the Committee's recommendation that "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, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress" (paragraph 24).

31. This provision may be improved, however, through the recognition that states should set aside resources to ensure effective investigations. We recommend that the General Comment states that **States parties are under a positive obligation to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression, including by devoting sufficient resources and attention to attacks when they do occur.**

32. Paragraph 29 of the draft General Comment interprets the "rights or reputations of others", a legitimate basis for restrictions of freedom of expression listed in Article 19 paragraph 3. The Committee should state that the term "rights" does not simply "[*include*] human rights as recognised in the Covenant and in international human rights law, but constitutes human rights only". In other words, the **General Comment should state that freedom of expression cannot be restricted in order to protect a legal right that does not qualify as a human right as recognised by the Covenant and more generally by international human rights law.**

5. Restrictions on freedom of expression in certain specific areas

Title of section

33. **The title of the eighth section of the draft General Comment – "limitative scope of restrictions on freedom of expression in certain specific areas" – is confusing and should be simplified to "restrictions on freedom of expression in certain specific areas".**

Licensing

34. We note that the draft General Comment indicates States parties should not impose "onerous licensing conditions and fees on the broadcast media, including on community and commercial stations" (paragraph 41) and that "general systems of registration or licensing are incompatible" with Article 19 paragraph 3 (paragraph 46). However, it would be useful for Committee to emphasise **the**

overarching principle that any system of licensing or any rules which restrict access to the profession of journalism are contrary to Article 19 paragraph 3.

Protection of sources

35. The right of journalists to protect their sources of information has been found by international and national courts as well as intergovernmental human rights bodies to be a fundamental right.[11] Over 100 countries now recognise this right in law or by judicial decision.[12] The draft general comment should **affirm the right of journalists and other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source not to disclose their confidential sources and recommend that States parties protect this right by law.**

Information and communications technologies

36. As noted above, developments in information and communications technologies ("ICTs") have been very significant area of growth in the past ten years. It is disappointing that the draft General Comment only briefly acknowledges them. Paragraph 41 "indicates that 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. 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". However, the Committee does not offer any guidance about how regulatory systems should reflect the obvious differences between these forms of media.

37. The Committee should use the opportunity of the drafting of the General Comment to highlight some basic principles on the exercise of freedom of expression through ICTs. We note that paragraph 45 states: "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." In our view, the General Comment should expand on issues related to ICTs given the rapid developments in the area in the following ways.

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[11] See, for example, *Sanoma Uitgevers v The Netherlands* (Application No. 38224/03), Judgment of the Grand Chamber, European Court of Human Rights of 14 September 2010; *Prosecutor v. Brđanin*, Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal (11 December, 2002); *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, Decision on the Defence Motion for the Disclosure of the Identity of a Confidential 'Source' Raised During Cross-Examination of TF1-355 (6 March 2009), pp 30-33; Council of Europe, Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information; OSCE Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference: Co-operation in Humanitarian and Other Fields, §40; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain, submitted pursuant to Commission resolution 1997/27, Addendum: Report on the mission of the Special Rapporteur to the Republic of Poland. E/CN.4/1998/40/Add.2, 13 January 1998; Commission on Human Rights, Report of the Special Rapporteur, Mr Ambeyi Ligabo, submitted in accordance with Commission resolution 2002/48, E/CN.4/2003/67, 30 December 2002; Report of the Special Rapporteur, Mr Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1997/26 E/CN.4/1998/40 28 January 1998; Inter-American Declaration of Principles on Freedom of Expression Approved by the Inter-American Commission on Human Rights, 108th regular sessions, October 2000.

[12] See *Silencing Sources: An International Survey of Protections and Threats to Journalists' Sources*, Privacy International, November 2007 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1706688

38. *First*, **the Committee should indicate that the blocking or filtering of information, removing information from sites, restricting domain names, and other content based restrictions on providing, sharing or access to information through the ICTs are unjustified under Article 19 paragraph 3 of the Covenant unless they are based on a court order approved by a independent judge taking into account domestic and international laws on freedom of expression.**

39. *Second*, the Committee should state that **no individual or party should be held liable for content on the networks of which they are not the author, unless they have either adopted that content as their own or refused to obey a court order to remove that content.** Therefore, internet service providers (ISPs) as intermediaries either who act as conduits or as hosts should be protected from all liability for content on the Internet.

40. *Third*, the **Committee should state that no one should be required to register with or obtain permission from a public body to operate a website, blog or other new media outlet.**

41. *Fourth,* the Committee should state **governments must secure net neutrality and adopt policies that prevent internet service providers from discriminating against information services and providers.**

Counter-terrorism measures

42. The draft General Comment states that States parties should ensure that counter-terrorism measures are compatible with paragraph 3 (paragraph 48). The General Comment should indicate, more specifically, **that a restriction on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.** Furthermore, the General Comment should emphasise that a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests, such as the protection of a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.[13]

43. It would also be helpful if the Committee set forth the circumstances in which forms of expression may be punished as a threat to national security. In our view**, expression may be curtailed on these grounds only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.** [14]

[13] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (June, 1996) Principle 2 http://www.article19.org/pdfs/standards/joburgprinciples.pdf

[14] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (June, 1996) Principle 6 http://www.article19.org/pdfs/standards/joburgprinciples.pdf

44. Furthermore, the provisions on counter-terrorism measures should also acknowledge that the **expanded use of surveillance techniques and reduced oversight of surveillance operations may exert a chilling effect on freedom of expression and also undermine the right of journalists to protect their confidential sources.**

Criminal defamation

45. The draft General Comment implies that criminal penalties may be appropriate in certain circumstances. Paragraph 40 states that "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" (emphasis added). Paragraph 49 later states "[c]are should be taken by States parties to avoid excessively punitive measures and penalties" and "States parties should consider the decriminalisation of defamation and, in any case, the application of criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate remedy. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously …" However, criminal penalties (including those short of prison sentences such as fines) are never appropriate for defamation in *any* circumstances.[15]

46. In ARTICLE 19's opinion, therefore, **the General Comment should offer a clear and unequivocal stance against criminal defamation by recommending that States parties should abolish all criminal defamation laws and provisions and replace them, where necessary, with appropriate civil defamation laws.** Furthermore, **the General Comment should explicitly state that any special protection for public officials in defamation law should be abolished**. Finally, **references to "penalties" should be replaced with "measures limiting freedom of expression".**

"Defamation of religions" or blasphemy laws

47. The draft General Comment implies that laws prohibiting blasphemy or "defamation of religions" may be justified in certain circumstances (paragraph 50) – if they do 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. In the opinion of ARTICLE 19, laws and policies prohibiting or restricting "defamation of religions" are contrary to the right to freedom of expression, under Article 19 of the Covenant, as well as the prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to violence, discrimination and hatred which is provided for in Article 20 of the Covenant. ARTICLE 19 reiterates that international human rights standards do not protect religions *per se*, but rather individuals and groups from discrimination and harassment on the basis of their religion or ethnicity. Belief systems themselves should not be exempt from debate, commentary or even sharp criticism, whether internal or external.[16] Moreover, there is evidence that laws on "defamation of religions" have a discriminatory impact in practice however they are framed, and the concept of "defamation of religions" has been abusively relied

[15] ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and the Protection of Reputation (July, 2000) Principle 4 http://www.article19.org/pdfs/standards/definingdefamation.pdf

[16] See Letter from Civil Society Organisations to State Representatives at the 13th session of the Human Rights Council 11 March 2010 http://www.article19.org/pdfs/letters/letter-from-civil-society-organizations-to-state-representatives-defamation-.pdf

upon to stifle dissent and criticism from religious believers, religious minorities and non-believers around the world.[17] Given that some states and international organisations (notably the Organisation of Islamic Conference) rely upon Articles 19 and 20 of the Covenant, to support laws on defamation of religions, it is especially important that the Committee asserts that such laws are contrary to freedom of expression.

48. **On this basis, we strongly urge the Committee unequivocally state in the General Comment that all criminal and civil laws on blasphemy, "defamation of religions" or "religious insult" are incompatible with Article 19 of the Covenant and should be repealed.**

49. The Committee should also emphasise that **states should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or institutions, unless such expression constitutes hate speech under Article 20 of the Covenant.[18]**

"Memory laws"

50. In ARTICLE 19's view, so called "memory laws", as well as laws which prohibit the condoning or denying of crimes of genocide, crimes against humanity and war crimes, may only be permissible if they constitute hate speech under Article 20 paragraph 2 of the Covenant.[19] Paragraph 51 should be amended to indicate that **the Covenant does not permit *any* (rather than "general") prohibitions on expression of historical views unless those prohibitions meet the requirements of Article 20 of the Covenant.**

6. The relationship between Articles 19 and 20

51. While ARTICLE 19 supports the general position outlined by the Committee with respect to the relationship between Articles 19 and 20 of the Covenant, in our view the Committee should give further guidance on the content and scope of Article 20 through the General Comment. **We recommend that the Committee next turns its attention to drafting a general comment on Article 20 of the Covenant as an essential complement to General Comment No. 34 once it is adopted.**

III. Concluding remarks

52. **We urge the Committee to consider and take on our recommendations which are summarised below in revising draft General Comment No. 34 before its finalisation and adoption.**

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[17] Joint Statement of the Special Rapporteurs on freedom of opinion and expression, freedom of religion or belief and contemporary forms of racism, racial discrimination, xenophobia and related intolerance at the Durban Review Conference 22 April 2009 http://www2.ohchr.org/English/issues/religion/docs/SRjointstatement22april09.pdf

[18] See *Camden Principles on Freedom of Expression and Equality*, April 2009, Principle 12.3. http://www.article19.org/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf

[19] See *Camden Principles on Freedom of Expression and Equality*, April 2009, Principle 12.2. http://www.article19.org/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf

IV. Recommendations

We urge the Committee to ensure that the final version of General Comment No. 34:

1. Affirms that the right to freedom of opinion and expression is essential for the realisation of civil and political rights as well as economic, social and cultural rights;
2. Affirms that the rights of children include the right to freedom of opinion and expression;
3. Affirms the rights of people with disabilities to freedom of expression on an equal basis with the others;
4. Asserts that States parties should ensure that any attacks by non-state actors on individuals for exercising their freedom of expression should be promptly and thoroughly investigated and that those suspected of carrying out or ordering such actions should be made accountable;
5. Includes express references to "new media" when referring to "other media";
6. Recommends that all state and government broadcasters should be transformed into independent public service broadcasters in order to ensure their independence and the promotion of diversity;
7. Recommends that States parties put in place a public policy and regulatory framework for the media, including new media, which promotes pluralism and diversity in the media, including in terms of ownership, types of media and content;
8. Recommends that States parties should encourage all mass media, as a moral and social responsibility, to take steps to: (a) ensure that their workforces are diverse and representative of society as a whole; (b) address as far as possible the issues of concern to all groups in society; (c) seek a multiplicity of sources and voices from different groups; (d) adhere to high standards of information provision that meet recognised professional and ethical standards;
9. Recommends that States parties should ensure that public service broadcasters are under an obligation to avoid negative stereotypes of individuals and groups, and that their mandate requires them to promote intercultural understanding;
10. Consistently refers to the "right to information", rather than the "right of access to information" or "freedom of information", throughout the text;
11. States that Article 19 paragraph 2 requires States parties to enact and implement legislation giving effect to the right of access to information;
12. Recommends that States parties should ensure that any exemptions to the principle of disclosure of information are limited and provided in such legislation on the right to information;
13. Recommends that legislation on the right to information should provide for an independent and autonomous oversight body which is specialised in transparency and access to information;
14. Recommends that public authorities should proactively disclose information relating to certain types of information and should use clear and accessible language.

15. Recommends that States parties should ensure that domestic legislation protects whistleblowers whether through a law on the right to information or otherwise;
16. Recognises the increasingly important role of citizen commentary using ICTs;
17. Affirms that States parties are under a positive obligation to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression, including by devoting sufficient resources and attention to attacks when they do occur;
18. States that freedom of expression cannot be restricted in order to protect a legal right that does not qualify as a human right as recognised by the Covenant and more generally by international human rights law;
19. Refers to "restrictions on freedom of expression in certain specific areas" instead of "limitative scope of restrictions on freedom of expression in certain specific areas" as the title for the eighth section;
20. States as an overarching principle that any system of licensing or any rules which restrict access to the profession of journalism are contrary to Article 19 paragraph 3;
21. Affirms the right of journalists and other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source not to disclose their confidential sources and recommend that States parties protect this right by law;
22. States that the blocking or filtering of information, removing information from sites, restricting domain names, and other content based restrictions on providing, sharing or access to information through the ICTs are unjustified under Article 19 paragraph 3 of the Covenant unless they are based on a court order approved by a independent judge taking into account domestic and international laws on freedom of expression;
23. States that no individual or party should be held liable for content on the networks of which they are not the author, unless they have either adopted that content as their own or refused to obey a court order to remove that content;
24. States that no one should be required to register with or obtain permission from a public body to operate a website, blog or other new media outlet;
25. Recommends that States parties must secure net neutrality and adopt policies that prevent internet service providers from discriminating against information services and providers;
26. States that a restriction on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government;
27. States that expression may be curtailed on the grounds of national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence;
28. Indicates that States parties' counter-terrorism measures should also acknowledge that the expanded use of surveillance techniques and reduced oversight of surveillance operations may exert a chilling effect on freedom of expression and also undermine the right of journalists to protect their confidential sources;

29. Emphasises, through a clear and unequivocal statement, that criminal defamation laws and provisions should be abolished and replaced, where necessary, with appropriate civil defamation laws;
30. States that any special protection for public officials in defamation law should be abolished;
31. Replaces all references to "penalties" in the text with "measures limiting freedom of expression";
32. Unequivocally states that all criminal and civil laws on blasphemy, "defamation of religions" or "religious insult" are incompatible with Article 19 of the Covenant and should be repealed;
33. Emphasises that States parties should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or institutions, unless such expression constitutes hate speech under Article 20 of the Covenant;
34. Emphasises that the Covenant does not permit any (rather than "general") prohibitions on expression of historical views unless those prohibitions meet the requirements of Article 20 of the Covenant;
35. Indicates that the Committee will next turn its attention to drafting a General Comment on Article 20 of the Covenant as an essential complement to General Comment No. 34 once it is adopted.

FURTHER INFORMATION:

- For more information please contact Sejal Parmar, Senior Legal Officer, +44 20 7324 2500 sejal@article19.org

- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.