

**BACKGROUND GUIDE**  
**HUMAN RIGHTS COUNCIL**

**FREEDOM OF EXPRESSION WITH SPECIAL FOCUS ON RIGHT TO PEACEFUL  
PROTEST**

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# PART A

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Freedom of Expression is known to be the right to express one's ideas and opinions freely through speech, writing, and other forms of communication but without deliberately causing harm to others' character and/or reputation by false or misleading statements.<sup>1</sup>

Many countries and organizations place limits on freedom of expression, perhaps as a way of controlling people. Censoring speech and art and outlawing specific religious and political groups are some of the tools governments have used to control public opposition. Even some societies that consider themselves free and democratic suppress opposing views.

The right to freedom of expression is recognized as a human right under **Article 19** of the **Universal Declaration of Human Rights** and recognized in international human rights law in the **International Covenant on Civil and Political Rights** (ICCPR).

Article 19 of the ICCPR states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". It also specifies that the exercise of these rights carries "special duties and responsibilities" and may "therefore be subject to certain restrictions" when necessary "for respect of the rights or reputation of others" or "for the protection of national security or of public order (order public), or of public health or morals".

## FREEDOM OF EXPRESSION AND THE UNITED NATIONS

On July 5 2012, the Human Rights Council (HRC) of the United Nations unanimously adopted a resolution to protect the free speech of individuals on the Internet (refer to Part B for more news), the first such U.N. resolution of its kind. The resolution was adopted during the HRC's 20th session held in Geneva. While they expressed reservations about it, the representatives of China and Cuba were also among the 47 members of the HRC who approved the resolution. The United States was one of the countries that co-sponsored the resolution with Sweden, which spearheaded the motion.<sup>6, 7</sup>

However, it must be noted that the Secretary General of The United Nations has always supported free speech with specific limitations.<sup>8</sup>

## FREEDOM OF EXPRESSION AS PROVIDED BY IN VARIOUS HUMAN RIGHTS INSTRUMENTS

The **Universal Declaration of Human Rights** (UDHR) was adopted by the General Assembly of the United Nations on 10 December 1948 and provides human rights standards accepted by all member states. The UDHR represents the normative basis that led to formulating the standards for freedom expression.

Article 19 states that “Everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

The **International Covenant on Civil and Political Rights**, also known by its abbreviation ICCPR, entered into force in 1976. It elaborates the principles laid out in UDHR and is legally binding on all states who have signed and ratified its provisions. Article 19 of the ICCPR stipulates that:

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

The office of the **UN Special Rapporteur on Freedom of Opinion and Expression** was established by resolution of the UN Commission on Human Rights in 1993. The mandate of the Special Rapporteur requires that information be gathered from governments, NGOs and others on the discrimination, violence or harassment of persons, including professionals, in the exercise of their right of freedom of opinion and expression. The Rapporteur submits an annual general report plus country reports on site visits, and makes recommendations on the better promotion and implementation of these rights. The Special Rapporteur focuses on both broad thematic issues as well as individual cases in which he intervenes through urgent actions and communications. The Rapporteur is able to visit countries for on-site assessment at the invitation of the government in question.

The guarantees of freedom of expression in the Universal Declaration and ICCPR are very general and the Special Rapporteur has sought to clarify the precise nature of this right, by making a number of statements and declarations, often in conjunction with other human rights mechanisms, containing authoritative interpretations of these articles.

## **Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1996)**

These principles were adopted by a group of experts in international law and endorsed by the UN Special Rapporteur in his annual report of 1996.

Article 19, an NGO campaigning for the right to freedom of expression, has been instrumental in coordinating the activities of international and regional mechanisms. It has convened meetings to bring together the UN Special Rapporteur, the OAS Special Rapporteur on Freedom of Expression and the OSCE Representative on Freedom of the Media. These three institutions have made a number of joint declarations on the issue of freedom of expression.

## **Convention on the International Right of Correction (1952)**

This treaty offers a mechanism whereby states can clarify differences or problems arising from incorrect or misleading news dispatches.

A number of UN treaties concerned with the rights of specific groups expressly or implicitly protect their rights to freedom of expression. Such concerns have therefore been raised with the bodies overseeing the implementation of these treaties:

## **International Convention on the Elimination of All Forms of Racial Discrimination (1965) (Article 5)**

Racial and ethnic minorities equally should not be discriminated against and have equal access to airing their views and sharing information of concern to them. Broadcasters also have a responsibility to promote a culture of tolerance and ensure that their broadcasts do not become a vehicle for spreading hatred and contempt of minority groups. Violations of the treaty can be raised with the Committee on the Elimination of Racial Discrimination.

## **Convention on the Elimination of Discrimination Against Women (1979) (Article 3)**

Equal access to and representation of women in the media are crucial to ensuring proper coverage of issues of concern to women and to enable their full participation in public decision making. Effective measures need to be taken to combat discrimination against women and to promote their access to the media. Breaches can be raised with the Committee on the Elimination of Discrimination Against Women.

## **Convention on the Rights of the Child (1989) (Article 13)**

This treaty clearly establishes not only children's right to freedom of expression, but also their right to have their views heard and to be given due weight in matters concerning them. States should take positive measures to ensure that children are given effective opportunities to provide input into public decisions affecting them, for example in the areas of education, health and prevention of crime. Violations of these rights can be taken up with the Committee on the Rights of the Child.

## **International and Regional Instruments for Protection and Promotion**

International legal instruments take the form of a treaty (also called agreement, convention, or protocol) that binds the contracting states to the negotiated terms. When negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" by the representatives of states. A state can agree to be bound to a treaty in various ways. The most common are ratification or accession. A new treaty is ratified by those states that have negotiated the instrument. A state that has not participated in the negotiations may, at a later stage, accede to the treaty. The treaty enters into force, or becomes valid, when a pre-determined number of states have ratified or acceded to the treaty.

When a state ratifies or accedes to a treaty, that state may make reservations to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others a specific law may be required to give a ratified international treaty the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

### **INTERNATIONAL INSTRUMENTS THAT DETERMINE STANDARDS FOR THE PROTECTION OF THE RIGHT TO FREEDOM OF EXPRESSION:**

#### **AFRICAN UNION (FORMERLY ORGANIZATION OF AFRICAN UNITY, OAU)**

- African Charter on Human and Peoples' Rights (1981) (article 9)
- Article 9 of the main African human rights treaty provides for freedom of expression.

In November 2000, the African Commission on Human and Peoples' Rights (ACHPR), and Article 19 adopted a joint statement noting the importance of freedom of expression, and the limited protection given to this important right by Article 9 of the Charter. A Declaration of Principles of Freedom of Expression was adopted by the ACHPR in October 2002.

#### **EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (1950) (ARTICLE 10)**

Freedom of expression is protected by article 10 of the European Convention and has been the subject of a relatively large number of cases before the court. The

European Court of Human Rights has promoted the free flow of information and ideas, established important precedents which limit state powers to restrict freedom of expression, particularly in the areas of press and broadcasting freedom, political expression, defamation, privacy, national security and demonstrations. Some decisions of the court however have been widely criticised for failing to uphold the right to freedom of expression. and resettlement, whatever the origin and nature of their disability."

### **ORGANIZATION OF AMERICAN STATES (OAS): AMERICAN CONVENTION ON HUMAN RIGHTS (1969) (ARTICLE 13)**

The American Convention on Human Rights, which entered into force in 1978, protects the right to freedom of thought and expression, the right to receive and impart information and for restrictions to be imposed on this right only for limited circumstances, reputations of individuals, national security, public order etc.

### **OAS SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION**

This institution was created by the Inter-American Commission on Human Rights in October 1997 to strengthen the implementation of the right to freedom of expression. The mandate of the Special Rapporteur includes the collection of information, the preparation of annual and thematic reports and country visits. It also covers immediate notification of serious situations, or early warning, as well as promotional activities.

The Inter-American Commission on Human Rights established a Voluntary Fund for Freedom of Expression, to which member states could contribute, to facilitate the functioning of the office of the special Rapporteur. Promotional activities have included the development of declarations, networks, and technical support to states.

### **ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)**

The Organization for Security and Co-operation in Europe (OSCE) is the largest regional security organization in the world with 55 participating States from Europe, Central Asia and North America. OSCE was created by the 1975 Helsinki Final Act which contained a provision to "respect ... human rights and fundamental freedoms, including freedom of thought, conscience and religion, and belief", as well as "equal rights and self-determination of peoples".

The OSCE has been especially concerned with the freedom of the media which is one aspect of the broader issue of freedom of expression. Such principles have been reiterated in a number of OSCE documents e.g. 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (precursor to the OSCE). The OSCE has now created a special institution to deal with these freedoms.

## **OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA**

In 1997 the OSCE established a Representative on Freedom of the Media following an OSCE Heads of State declaration in 1996 that OSCE commitments to free press and media needed strengthening. The OSCE Permanent Council set out the mandate of the Representative by Decision 193 "to strengthen the implementation of relevant OSCE principles and commitments [relating to a free, independent and pluralistic media] as well as to improve the effectiveness of concerted action by the participating states based on their common values."

The Representative is required to carry out a variety of activities including observing media developments in OSCE states; and ensuring a rapid response to serious problems such as obstruction of media activities in cooperation with the concerned state and other parties.

The Representative reports to the Permanent Council frequently and other OSCE bodies and makes recommendations. He/she may also make oral or written statements on issues of urgent concern and interventions with particular OSCE states. He/she also makes country visits some of which result in in-depth reports and is able to receive information on violations from a variety of sources.

Human rights observers say that the OSCE Representative operating in the more close-knit structure of the OSCE has more political commitment and resources than the UN Special Rapporteur, for example, and is also able to undertake promotional or project activities e.g. holding conferences, producing publications, providing technical support and advice to governments, financial and material assistance to set up independent media outlets etc.

## **LIMITATIONS TO THE FREEDOM OF EXPRESSION**

- the rights or reputations of others
- national security
- public order
- public health
- morals



A Limitation is legitimate if it falls within the very narrow conditions defined in the three-part test in Article 19(3) of the ICCPR:

1. '...PROVIDED BY LAW...''

The right to freedom of expression cannot be limited at the whim of a public official. They must be applying a law or regulation that is formally recognised by those entrusted with law making.

The law or regulation must meet standards of clarity and precision so that people can foresee the consequences of their actions. Vaguely worded edicts, whose scope is unclear, will not meet this standard and are therefore not legitimate. For example, vague prohibitions on ‘sowing discord in society’ or ‘painting a false image of the State’ would fail the test.

#### The rationale

- It is only fair that people have a reasonable opportunity to know what is prohibited, so that they can act accordingly
- A situation where officials can make rules on a whim is undemocratic. Decisions limiting human rights must be made by bodies representing the will of people
- Vague laws will be abused. They often give officials discretionary powers that leave too much room for arbitrary decision-making
- Vague laws have a ‘chilling effect’ and inhibit discussion on matters of public concern. They create a situation of uncertainty about what is permitted, resulting in people steering far clear of any controversial topic for fear that it may be illegal, even if it is not.

#### 2. ‘...LEGITIMATE AIM...’

There must be a legitimate aim to limit the right to freedom of expression. The list of legitimate aims is not open-ended. They are provided for in Article 19(3) of the ICCPR: ‘...respect for the rights and reputations of others, and protection of national security, public order (ordre public), public health or morals’. They are exclusive and cannot be added to.

#### The rationale

- Not all the motives underlying governments’ decisions to limit freedom of expression are compatible with democratic government. For example, a desire to shield a government from criticism can never justify limitations on free speech
- The aim must be legitimate in purpose and effect. It is not enough for a provision to have an incidental effect on one of the legitimate aims. If the provision was created for another reason, it will not pass this part of the test.

#### 3. ‘...NECESSITY...’

Any limitation of the right to freedom of expression must be truly necessary. Even if a limitation is in accordance with a clear law and serves a legitimate aim, it will only

pass the test if it is truly necessary for the protection of that legitimate aim. If a limitation is not needed, why impose it?

In the great majority of cases where international courts have ruled national laws to be impermissible limitations on the right to freedom of expression, it was because they were not deemed to be 'necessary'.

### The rationale

- A government must be acting in response to a pressing social need, not merely out of convenience. On a scale between 'useful' and 'indispensable', 'necessary' should be close to 'indispensable'
- A government should always use a less intrusive measure if it exists and would accomplish the same objective. For example, shutting down a newspaper for defamation is excessive; a retraction (or perhaps a combination of a retraction and a warning or a modest fine) would offer the victim of defamation adequate protection
- The measure must impair free expression as little as possible. It should not restrict in a broad or untargeted way, as that could interfere with legitimate expression. For example, it is too broad to ban all discussion about a country's armed forces in order to protect national security
- The impact of the measure must be proportionate and the harm that it causes to free expression must not outweigh its benefits. For example, a limitation that provides only partial protection to someone's reputation but seriously undermines free expression is disproportionate
- A court must take into account all of the circumstances at that time before deciding to limit freedom of expression. For example, it could be legitimate to limit freedom of expression for national security reasons during a conflict but not during peacetime
- The European Convention on Human Rights (ECHR) narrows the third test by requiring limitations to be 'necessary in a democratic society'. This wording is preferable as it clarifies that the purpose of the limitation must never be to shield governments from either criticism or peaceful opposition.

### WHAT IS A 'LIMITATION' OR 'RESTRICTION'?

International courts have generally judged that any action by a public body that has an actual effect on people's freedom of expression constitutes a 'restriction' or 'limitation'.

- The nature of the action is irrelevant. It could be anything from a law to an internal disciplinary measure
- The nature of the public body is irrelevant. It could be legislative, executive or judicial, or a publicly owned enterprise

- The extent of the action's impact is irrelevant. Any discernible effect on the ability of one or more people to express themselves freely is a restriction.
- The ECHR again narrows the definition of a limitation, requiring the three-part test to apply to any “formalities, conditions, restrictions or penalties” under Article 10(2).<sup>10</sup>

## RECENT DEVELOPMENTS

**Internet:** How can the right to freedom of expression be respected, protected and promoted when exercised through the Internet? Is there a need to define new rules for human rights on the Internet? And how can we bridge the digital divide, and attain universal access to the Internet? Under international human rights law, limitations of freedom of expression are permissible in exceptional cases, such as child pornography and incitement to hatred: what are the most effective ways in which such exceptional cases can be taken into account, without jeopardizing the right to freedom of opinion and expression? These and other questions were the focus of the first-ever panel discussion on the right to freedom of expression on the **Internet** held by the UN Human Rights Council on 29 February 2012.

“The Internet has transformed human rights movements,” said UN Human Rights chief Navi Pillay. “States can no longer exercise control by claiming a monopoly over information.”

“This has resulted in a backlash effect and intensified attempts to unduly restrict access to online content or Internet as such,” she stressed. While there is a need to combat criminal activities on the Internet, “there is also a real concern that methods to identify and track down criminals may be used to crack down on human rights defenders and suppress dissenting voices,” Pillay noted.

“Currently 40 countries sanction the Internet, up considerably from a few years ago,” explained William Echikson, Head of External Relations for Google. “Among the 150 countries where Google operates, 25 countries ban or block Google’s products.”

“Whether through oral or written words, art or any other form of expression, the same basic international norms and standards on the right to freedom of expression apply,” said Frank La Rue, UN expert on the right to freedom of opinion and expression. “We do not need new standards on human rights for the Internet,” he stressed.

In his latest reports to the Human Rights Council and the General Assembly, La Rue underscored that the types of information or expression that may be restricted under international human rights law in relation to off-line content also apply to online content.

"There is an increasing trend to criminalize the Internet, and as a result, there is a need for a decriminalization campaign for the Internet," he said at the panel. La Rue stressed the need for a multi-stakeholder dialogue to establish acceptable mechanisms to regulate exceptional types of content deemed to be illegal under international law, including measures such as blocking and filtering.

He also suggested that the Council could adopt a declaration recognizing the indispensable role of the Internet to exercise the right to freedom of expression, and condemning censorship on the Internet. On the question of access to the internet, La Rue said that it is crucial to understand that it was a question of freedom of expression and the international community should strive towards Internet access for everyone.

The Internet has become a vital communications medium which individuals can use to exercise their right to freedom of expression, or the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, as guaranteed under articles 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>11</sup>

**The Middle East:** 3<sup>rd</sup> May'12: Research conducted by the Office of the High Commissioner for Human Rights in the Middle East has shown that although the constitutions of the majority of Middle Eastern countries provide for freedom of expression, in reality conventional and international (including radio, satellite TV and the Internet) media remain under a restricted and intimidatory legal, political and security environment. The research also found that national press and publication laws are frequently changed and vaguely worded, opening them to wide interpretation and potential abuse. "The media – old and new, local and international has paid a heavy price for its sustained and courageous efforts to inform local and international populations about the political upheavals in the Middle East." These comments from Fateh Azzam, Head of the UN Human Rights regional office in the Middle East, on World Press Freedom Day, acknowledge the vital role played by the media in covering events as they have unfolded in the Middle East. According to the **Committee for the Protection of Journalists** (CPJ), by the end of April, eight journalists in the Middle East had lost their lives as a result of their work: one in Lebanon, six in Syria and one in Bahrain this year alone. Noting these trends, Azzam said "many governments in the region have used emergency regulations and their security services (and in some countries the army) to clamp down on freedom of expression and place restrictions on media organizations and outlets." In **Syria**, local and international journalists continue to be targeted. At the time of writing, journalists and activists remain in detention after a raid in February on the Syrian Centre for Media and Freedom of Expression. The detainees have been denied due process and rights groups claim they have been tortured. In **Yemen**, continuing violence against journalists has been reported since political unrest erupted last year, including physical assaults, detentions and attacks on news outlets.<sup>12</sup>

**Freedom of expression and new media:** 1<sup>st</sup> September'11: When the UN Human Rights Committee last clarified the rights to freedom of opinion and expression, use

of the internet was limited and the effect it would have on the mainstream media was still the subject of speculation. More than two decades on, the Committee seeks to give practical application to freedom of opinion and expression in the radically altered media landscape which has the internet and mobile communications centre-stage. Describing “a global network to exchange ideas and opinions that does not necessarily rely on the traditional mass media”, the Committee says “States parties should take all necessary steps to foster the independence of these new media and to ensure access”.

Any restrictions that might be applied to websites, blogs or any other internet-based networks or support systems should be limited, the Committee says, to content only and should not be applied to entire sites and systems.

In the context of permissible restrictions generally, the Committee recommends extreme caution and provides many examples of situations where the urge to restrict freedom of expression should be resisted. There are no circumstances which justify limiting freedom of opinion, the Committee notes in its revised General Comment. Lawmakers, judges, prosecutors, lawyers, human rights defenders, journalists and others will turn to the General Comment for guidance on the scope and practical applications of the rights to freedom of opinion and expression.

In the International Covenant on Civil and Political Rights which sets out the right to freedom of expression, only two situations are described which justify its limitation: respect of the rights or reputations of others and protection of national security or of public order, or of public health or morals. The Covenant also prohibits advocacy of religious hatred. Allowing for those very limited exceptions, the Committee says blasphemy laws and prohibitions on displays of disrespect for a religion or other belief systems are a contravention of the right to freedom of expression, as are laws which favour one religion over another, or religious believers over non-believers, or which prevent or punish criticism of religious leaders or commentary on religious doctrine. The Committee notes that the Convention places a particularly high value on uninhibited debate concerning political figures and public institutions. Laws which prohibit or restrict criticism of important people and institutions are cause for concern the Committee says. “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... 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”.

The same should apply to institutions such as the army. Committee member, Michael O’Flaherty says, “The main point of the general comment and of the Committee adopting it is that freedom of expression is at the heart of the entire human rights system.” “That means,” he says, “we have to put up with a lot of speech that we don’t like.

### **Case Studies:**

1. How businesses have addressed the issue of freedom of speech :  
[http://human-rights.unglobalcompact.org/case\\_studies/freedom-speech/](http://human-rights.unglobalcompact.org/case_studies/freedom-speech/)
2. The Danish Cartoon row – Limits to Freedom of Expression?  
<http://www.ifla.org/files/assets/faife/publications/sturges/cartoons.pdf>
3. Malala Yousafzai  
<http://www.reuters.com/article/2012/10/15/us-pakistan-girl-idUSBRE89E02X20121015>

### **Further Reading:**

1. <http://freespeechdebate.com/en/discuss/article-19-freedom-of-expression-anchored-in-international-law/>
2. <http://www.law-democracy.org/wp-content/uploads/2010/07/11.06.Joint-Declaration.Internet.pdf>
3. <http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf>
4. <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Bangkok/YahiaShukkeir.pdf>
5. <http://www2.ohchr.org/english/law/ccpr.htm>
6. <http://www.hrc.co.nz/report/chapters/chapter08/expression01.html>
7. <http://www.article19.org/data/files/pdfs/publications/blasphemy-hate-speech-article.pdf>
8. <http://www.reuters.com/article/2012/09/28/us-un-assembly-islam-idUSBRE88R1JI20120928>
9. <http://www.freedomforum.org/packages/first/curricula/educationforfreedom/supportpages/L04-LimitsFreedomSpeech.htm>
10. The Case of Aseem Trivedi, Indian Cartoonist.

### **References:**

- 1 - <http://www.businessdictionary.com/definition/freedom-of-expression.html>
- 2 - <http://www.fordfoundation.org/issues>
- 3 - <http://www.reuters.com/article/2012/09/15/us-film-protests>

idUSBRE88D0O320120915

4 - Creative license is a colloquial term, sometimes euphemism, used to denote the distortion of fact, alteration of the conventions of grammar or language, or rewording of pre-existing text made by an artist to improve a piece of art.

5 - <http://in.reuters.com/article/2011/06/09/idINIndia-57595020110609>

6 - [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403231\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403231_text)

7 - <http://www.reuters.com/article/2012/09/28/us-un-assembly-islam-idUSBRE88R1JI20120928>

8 - <http://www wnd com/2012/09/u-n-chief-free-speech-has-limits/>

9 – [http://www.hrea.org/index.php?doc\\_id=408](http://www.hrea.org/index.php?doc_id=408)

10 - <http://www.article19.org/pages/en/limitations.html>

11 - Source (UNOCHR)

<http://www.ohchr.org/EN/NewsEvents/Pages/Theworldismovingonlinepromotingfreedomofexpression.aspx>

12- Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/FreedomofthePressintheMiddleEast.aspx>

## **ISSUES IN FOCUS:**

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Issues.aspx>

## **COUNTRY VISITS BY THE SPECIAL RAPPORTEUR:**

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Visits.aspx>

## PART B

Peaceful protest is a vital part of any democratic society. It can be a very powerful campaign tool and many of the rights and freedoms democracies enjoy today were gained because people were prepared to go out on the streets and protest. However, this right is not absolute and there are a multitude of laws that can be used against protesters. Many countries have brought about new legislation to deal with a range of threats, from terrorism to anti-social behaviour, and thus, given the law enforcement officers very wide powers to control and restrict the actions of protesters.

The right to protest is a perceived human right arising out of a number of recognized human rights.

While no human rights instrument or national constitution grants the absolute right to protest, such a right to protest may be a manifestation of the right to freedom of assembly, the right to freedom of association, and the right to freedom of speech.<sup>1</sup>



### PROVISIONS IN HUMAN RIGHTS INSTRUMENTS

#### 1. The Universal Declaration of Human Rights - Article 20.

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

#### 2. The International Covenant on Civil and Political Rights - Article 21.

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests

of national security or public safety, public order the protection of public health or morals or the protection of the rights and freedoms of others.

### 3. **The European Convention on Human Rights**

Article 11 – Freedom of assembly and association

i) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

ii) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

### 4. **American Convention on Human Rights**

Article 15. Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

## **NATIONAL AND REGIONAL PROVISIONS**

- Bangladesh - Articles 37 and 38 of the Constitution of Bangladesh guarantee the freedom of association and assembly.
- Canada - S. 2 of the Canadian Charter of Rights and Freedoms which forms part of the Constitution Act, 1982
- France - article 431-1 of the Nouveau Code Pénal
- Germany - Art. 8 GG
- Hong Kong Basic Law Section 27
- India- Fundamental Rights in India
- Japan - Article 21
- Macau Basic Law Article 27

- Republic of Ireland - Guaranteed by Article 40.6.1 of the Constitution of Ireland
- Russia - Freedom of assembly in the Russian Federation is granted by Art. 31 of the Constitution adopted in 1993.
- South Africa Bill of Rights Article 17
- Spain - Article 21 of the Spanish Constitution of 1978
- Taiwan (Republic of China) - Article 14 guarantees freedom of assembly and association.
- Turkey - article 33 and 34 of the Constitution of Turkey guarantee the freedom of association and assembly.
- United States - First Amendment to the Constitution of the United States

**Unlawful Assembly:** A disturbance of the public peace by three or more persons who meet together with an intent mutually to assist each other in the execution of some unlawful enterprise of a private nature, with force and violence; if they move forward towards its execution, it is then a rout and if they actually execute their design, it amounts to a riot.<sup>2</sup>

Freedom of speech and freedom to protest are closely linked – free speech would mean nothing if there was no right to use public spaces to make your views known. These rights can be limited by law to protect the interests of others, but only when the limitation is proportionate and necessary in a democratic society.

Thus:

- The right to free speech will not protect a person who tries to spread hateful lies against another but it will protect fair comment;
- The right to protest won't protect violent gatherings but it will protect peaceful protest.

## MEASURES THAT COULD UNDERMINE THE RIGHT TO PROTEST AND FREEDOM OF SPEECH

- Laws intended to combat anti-social behaviour; terrorism and serious crime are routinely used against legitimate protesters.
- Broadly drafted anti-terrorism offences of 'encouragement' and 'glorification' of terrorism threaten to make careless talk a crime.

- Membership of certain organisations can be banned under anti-terror laws even if the organisation is non-violent and political.
- Hate speech laws have been extended in a piecemeal way to ban ever-expanding categories of speech.
- Broad anti-terrorism powers of stop and search have been used to harass and stifle peaceful protesters.
- Protest around Parliament has been severely restricted by laws limiting and overly regulating the right to assemble and protest around Parliament.<sup>3</sup>

## RECENT DEVELOPMENTS

Beginning 18<sup>th</sup> December, 2010, The **Arab Spring** refers to the collective wave of pro-democracy protests in the Arab world. To date, rulers have been forced from power in Tunisia, Egypt, Libya and Yemen; civil uprisings have erupted in Bahrain and Syria; major protests have broken out in Algeria, Iraq, Jordan, Kuwait, Morocco, and Sudan; and minor protests have occurred in Lebanon, Mauritania, Oman, Saudi Arabia, Djibouti, and Western Sahara.

**Tunisia:** Following the self-immolation of Mohamed Bouazizi in Sidi Bouzid, a series of increasingly violent street demonstrations through December 2010 ultimately led to the ousting of long-time President Zine El Abidine Ben Ali on 14 January 2011. The demonstrations were preceded by high unemployment, food inflation, corruption, lack of freedom of speech and other forms of political freedom and poor living conditions. The protests constituted the most dramatic wave of social and political unrest in Tunisia in three decades, and have resulted in scores of deaths and injuries, most of which were the result of action by police and security forces against demonstrators. Ben Ali fled into exile in Saudi Arabia, ending his 23 years in power. Many political developments (which included a state of emergency, an interim prime minister, a cabinet reshuffle) later, On 23 October 2011, citizens voted in the first post-revolution election to elect representatives to a 217-member constituent assembly that would be responsible for the new constitution. The leading moderate Islamist party, Ennahda, won 37% of the vote, and managed to elect 42 women to the Constituent Assembly.

**Egypt:** Protests in Egypt began on 25 January 2011 and ran for 18 days. Beginning around midnight on 28 January, the Egyptian government attempted, somewhat successfully, to eliminate the nation's Internet access, in order to inhibit the protesters' ability to organize through social media.

President Hosni Mubarak dismissed his government, appointing a new cabinet and even appointed the first Vice President in almost 30 years. On 10 February, Mubarak

ceded all presidential power to Vice President Omar Suleiman, but soon thereafter announced that he would remain as President until the end of his term. However, protests continued, and Suleiman quickly announced that Mubarak had resigned from the presidency and transferred power to the Armed Forces of Egypt. The military immediately dissolved the Egyptian Parliament, suspended the Constitution of Egypt, and promised to lift the nation's thirty-year "emergency Laws".



*The now famous graphic that shows internet traffic in Egypt during initial stages of protest.*

A civilian, Essam Sharaf, was appointed as Prime Minister of Egypt on 4 March to widespread approval among Egyptians in Tahrir Square. Violent protests however, continued through the end of 2011 as many Egyptians expressed concern about the Supreme Council of the Armed Forces' perceived sluggishness in instituting reforms and their grip on power. Hosni Mubarak and his former interior minister Habib al-Adli were convicted to life in prison on the basis of their failure to stop the killings during the first six days of the 2011 Egyptian Revolution. His successor, Mohamed Mursi, was sworn in as Egypt's first democratically elected president before judges at the Supreme Constitutional Court. Fresh Protests erupted in November 2012 when the new President Morsi gave himself powers that put him above the judiciary. He called it a temporary measure to protect the revolution, the drafting of a new constitution and the nation's unnecessarily long transition to democracy. However protests are still underway in Egypt against this move, which seems similar to that of Mubarak's.

**Libya:** Anti-government protests began in Libya on 15 February 2011. By 18 February the opposition controlled most of Benghazi, the country's second-largest city. The government dispatched elite troops and militia in an attempt to recapture it, but they were repelled. By 20 February, protests had spread to the capital Tripoli, leading to a television address by Saif al-Islam Gaddafi, who warned the protestors that their country could descend into civil war. The rising death toll, numbering in the thousands, drew international condemnation and resulted in the resignation of several Libyan diplomats, along with calls for the government's dismantlement. On 17th March, United Nations Security Council Resolution 1973 was adopted, authorising a no-fly zone over Libya, and "all necessary measures" to protect civilians. Two days later, France, the United States and the United Kingdom

intervened in Libya with a bombing campaign against pro-Gaddafi forces. A coalition of 27 states from Europe and the Middle East soon joined the intervention. After a three-month-long battle, a loyalist siege of rebel-held Misrata, the third largest city in Libya, was broken in large part due to coalition air strikes. In late August, anti-Gaddafi fighters captured Tripoli, scattering Gaddafi's government and marking the end of his 42 years of power. Many institutions of the government, including Gaddafi and several top government officials, regrouped in Sirte, which Gaddafi declared to be Libya's new capital. On 20 October, fighters under the aegis of the National Transitional Council seized Sirte, killing Gaddafi in the process.

**Yemen:** Protests occurred in many towns in both the north and south of Yemen starting in mid-January 2011. Demonstrators initially protested against governmental proposals to modify the constitution of Yemen, unemployment and economic conditions, and corruption, but their demands soon included a call for the resignation of President Ali Abdullah Saleh, who had been facing internal opposition from his closest advisors since 2009. A major demonstration of over 16,000 protesters took place in Sana'a on 27 January 2011, and soon thereafter human rights activist and politician Tawakel Karman called for a "Day of Rage" on 3 February. In response to the planned protest, Ali Abdullah Saleh stated that he would not seek another presidential term in 2013. 3 months of rage and protests ensued, with Saleh pretended to accept a Gulf Cooperation Council brokered agreement, which allowed him to cede power in return for immunity thrice. He also survived an assassination attempt and was evacuated to Saudi Arabia.

On 3 February, 20,000 protesters demonstrated against the government in Sana'a, others participated in a "Day of Rage" in Aden that was called for by Tawakel Karman, while soldiers, armed members of the General People's Congress, and many protestors held a pro-government rally in Sana'a. A presidential election was then held on 21 February 2012, in which Vice President Abd al-Rab Mansur al-Hadi (the only candidate) won 99.8 percent of the vote. Hadi then took the oath of office in Yemen's parliament on 25 February. By 27 February, Saleh had resigned from the presidency and transferred power to his successor; however he is still wielding political clout as the head of the General People's Congress party.

**Northern Ireland:** The loyalists have held nightly demonstrations since pro-Irish nationalist councillors voted last month to end a century-old tradition of flying the British union flag every day over Belfast City Hall. The flag's removal unearthed deep discontent among loyalists, who complain of feeling left behind by political changes since the 1998 Good Friday Agreement brought an uneasy end to three decades of sectarian conflict that cost some 3,600 lives. Protests have been on since 15<sup>th</sup> January 2013, but they have all been peaceful.

**Greece:** On 19<sup>th</sup> January, 2013, several thousand people marched through central Athens to protest a spate of anti-immigrant attacks in Greece, including the fatal stabbing of a 27-year-old Pakistani immigrant by suspected right-wing extremists.

Greece has been suffering a surge in anti-immigration sentiment during its 3-year-old economic crisis, which has demolished living standards and led to high unemployment. The country also has long been the main gateway for illegal immigrants entering the European Union, with up to one-tenth of the nation's population born abroad.

**Pakistan** – In Lahore, on the 12<sup>th</sup> and 13<sup>th</sup> of January, 2013, Shia Muslims in Pakistan held a peaceful two day sit-in after Islamabad gave in to demands for protection by the Hazara Shias by sacking the provincial government led by Balochistan Chief Minister Nawab Aslam Raisani. Men, women and children spent two nights in freezing conditions to show solidarity with their Shia brethren who had refused to bury the victims of Pakistan's worst single attack on Shias, which killed more than 116 people in Quetta on the 9<sup>th</sup> of January 2013.

**India** – India has seen a spate of peaceful protests in 2012. It started with the “Lokpal” movement, spearheaded by Indian Activist Anna Hazare, who believed that it was essential to pass the Lokpal Bill in Parliament, to ensure transparency among the Indian political class.

The first round of protests that occurred was considered as the Indian Public’s “Crusade against Corruption” with Anna Hazare going on a fast-unto-death till the Government gave in to his demands. Though largely peaceful, these protests turned sour because of several incidents. The nation witnessed widespread protests in



December, over the issue of women's security in India. This sprung into action after the gang-rape of a 23 year old woman in a moving bus, in New Delhi, on December 16<sup>th</sup>. The protest had national participation. However, after the victim's death on the 29<sup>th</sup> of December, the protests in the capital took a violent turn, with the death of a police officer and people hijacking the protest. The government also came under criticism for some of its pre-emptive measures, which included blocking roads and metro stations leading to India Gate.

## **REFERENCES:**

- 1 - <http://www.yourrights.org.uk/yourrights/the-right-of-peaceful-protest/index.html>
- 2- <http://legal-dictionary.thefreedictionary.com/Unlawful+assembly>
- 3- <http://www.liberty-human-rights.org.uk/human-rights/free-speech/index.php>

## **FURTHER READING:**

1. <http://www.apc.org/en/system/files/APC%20-%20Freedom%20of%20peaceful%20assembly%20and%20association.pdf>
  2. Free Speech Zones
  3. Non- Violent Resistance
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