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Draft general comment No. 34

Article 19¹

2nd Revised draft undertaken for the Human Rights Committee by Mr. O'Flaherty

General remarks

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

1 Footnotes contained in square brackets will not be retained – they are provided to assist the Committee in its deliberations.

2 Benhadj v. Algeria, No. 1173/2003; Tae-Hoon Park v. Republic of Korea, 1998.

3 See general comment 24 on issues relating to reservations made upon ratification or accession to the Covenant or the optional Protocols thereto, or in relation to declarations under article 41 of the Covenant.

Committee's opinion cannot be made subject to lawful derogation under article 4".⁴ Freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency.⁵

5. Taking account of the relationship of freedom of expression to the other rights in the Covenant, while reservations to particular elements of article 19, paragraph 2 may be acceptable, a general reservation to the rights set out in paragraph 2 would be incompatible with the object and purpose of the Covenant.⁶

6. The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party.⁷ Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities.⁸ The State party must also ensure that persons are protected from any acts of private persons or entities that would impair the enjoyment of freedoms of opinion and expression in so far as these Covenant rights are amenable to application between private persons or entities.⁹

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

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

Freedom of opinion

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

4 General comment No. 29, para. 13.

5 General comment No. 29, para. 11.

6 See general comment 24 on issues relating to reservations made upon ratification or accession to the Covenant or the optional Protocols thereto, or in relation to declarations under article 41 of the Covenant.

7 General comment No. 31, para. 4.

8 *Hertzberg et al. v. Finland*, No. 61/1979.

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

10 *Faurisson v. France*, No. 550/93.

for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.¹¹

10. Any form of coerced effort to shape opinion is prohibited.¹² Since freedom to express one's opinion necessarily includes freedom not to express one's opinions, article 19, paragraph 1, prohibits any action to compel the disclosure of an opinion.

Right of freedom of expression

11. Paragraph 2 requires guarantees of the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right extends to the guarantee of the expression of every form of subjective idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20.¹³ It includes political discourse,¹⁴ commentary on one's own¹⁵ and on public affairs,¹⁶ canvassing,¹⁷ discussion of human rights,¹⁸ journalism,¹⁹ cultural and artistic expression,²⁰ teaching,²¹ religious discourse²² [and commercial advertising.²³] The scope of paragraph 2 embraces even views that may be regarded as deeply offensive,²⁴ although such expression may be limited in accordance with the provisions of article 19, paragraph 3 and article 20.

12. Paragraph 2 protects all forms of expression and the means of their publication. Such forms include, but are not limited to, the spoken and written word and such non-verbal expression as images and objects of art.²⁵ Means of expression include books, newspapers,²⁶ pamphlets,²⁷ posters, banners²⁸ and legal submissions.²⁹ They include all forms of audio-visual as well as electronic and internet-based media. Paragraph 2 does not, however, provide a right of free expression in any specific location.³⁰

13. A State party may choose one or more national or official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's own choice,³¹ and article 27 of the Covenant expressly provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with other members of their group, to use their own language.

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

12 *Kang v. Republic of Korea*, No. 878/1999.

13 *Ballantyne v. Canada*, Nos. 359/1989 and 385/1989.

14 *Primo Jose Essono Mika Miha v. Equatorial Guinea*, No. 414/1990.

15 *Fernando v. Sri Lanka*, No. 1189/2003.

16 *Coleman v. Australia*, No. 1157/2003.

17 Concluding observations on Japan (CCPR/C/JPN/CO/5).

18 *Velichkin v. Belarus*, No. 1022/2001.

19 *Mavlonov et al. v. Uzbekistan*, No. 1334/2004.

20 *Hak-Chul Sin v. Republic of Korea*, No. 926/2000.

21 *Ross v. Canada*, No. 736/97.

22 *Ibid.*

23 *Ballantyne et al. v. Canada*, No. 359, 385/89.

24 *Ross v. Canada*, No. 736/97.

25 *Hak-Chul Sin v. Republic of Korea*, No. 926/2000.

26 *Zundel v. Canada*, No. 1341/2005

27 *Shchetoko et al. v. Belarus*, No. 1009/2001.

28 *Kivenmaa v. Finland*, No. 412/1990.

29 *Fernando v. Sri Lanka*, No. 1189/2003.

30 *Zundel v. Canada*, No. 1341/2005.

31 *Ballantyne v. Canada*, Nos. 359/1989 and 385/1989.

Freedom of expression and the media

14. A free, uncensored and unhindered press or other media is essential in any society for the ensuring of freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.³² The Covenant embraces a right to receive information on the part of the media as a basis on which they can carry out their function.³³ The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.³⁴ Pursuant to Article 19, the public also has the right to receive information as a corollary to the specific function of any journalist to impart information.³⁵

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

16. [States parties should ensure that public broadcasting services operate in an independent manner.³⁶ Actions to ensure independence may include the setting out of the mandate of such broadcasters in law and the provision of legislative guarantees of independence and editorial freedom, as well as the provision of funding in a manner that does not undermine independence].

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

Access to information

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

19. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right of the mass media to have access to information on public affairs³⁷ and the right of the general public to receive mass media output.³⁸ The right of access to information is also addressed elsewhere in the Covenant. As the Committee observed in its general comment No. 16, regarding article 17 of the Covenant, "every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination".³⁹ Pursuant to article 10 of the Covenant, a prisoner does not lose the entitlement to access to his medical records.⁴⁰ The Committee, in

32 *Marques de Morais v. Angola*, No. 1128/2002.

33 *Gauthier v. Canada*, No. 633/95.

34 See General comment No. 25 on Article 25 (Participation in public affairs and the right to vote)

35 *Mavlonov et al v. Uzbekistan*, No. 1334/2004.

36 Concluding observations on Republic of Moldova (CCPR/CO/75/MDA).

37 *Gauthier v. Canada*, No. 633/95.

38 *Mavlonov et al v. Uzbekistan*, No. 1334/2004.

39 See also concluding observations on Norway (CCPR/CO/76/D).

40 *Zheludkova v. Ukraine*.

general comment No. 32 on article 14, set out the various entitlements to information that are held by those accused with a criminal offence.⁴¹ Pursuant to the provisions of article 2, persons should be in receipt of information regarding their Covenant rights in general.⁴² Under article 27, a State party's decision-making that may substantively compromise the way of life and culture of a minority group must be undertaken in a process of information-sharing and consultation with affected communities.⁴³

20. To give effect to the right of access to information, States parties should enact the necessary procedures, such as by means of freedom of information legislation.⁴⁴ The procedures should provide for the rapid processing of requests for information according to clear rules that are compatible with the Covenant. Arrangements should be put in place for appeals from refusals to provide access to information. Fees for the processing of requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. States parties should make every effort to ensure easy, effective and practical access to state-controlled information in the public domain.

Freedom of expression and political rights

21. The Committee, in general comment No. 25 on participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.⁴⁵ The attention of States parties is drawn to the guidance that general comment No. 25 provides with regard to the promotion and the protection of freedom of expression in that context.

[Scope of freedom of expression]

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

41 At para. 33.

42 General comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.

43 *Poma Poma v. Peru*, No. 1457/2006.

44 Concluding observations on Azerbaijan (CCPR/C/79/Add.38 (1994)). [The Committee has welcomed the adoption of such legislation:] concluding observations on Ukraine (CCPR/C/79/Add.52 (1995)); concluding observations on Ireland (A/55/40(SUPP) (2000)); concluding observations on Lithuania (CCPR/C/79/Add.87 (1997)).

45 See para. 25 of General comment no. 25 on art. 25 of the Covenant.

than is provided for in the present Covenant". The Committee recalls that the relation between right and restriction and between norm and exception must not be reversed.⁴⁶

23. Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for the State party for one of those purposes.⁴⁷ Paragraph 3 must be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as public safety. Limitations may be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.⁴⁸

24. Paragraph 3 may never be invoked as a justification for the muzzling of ^{any} advocacy of multi-party democracy, democratic tenets and human rights.⁴⁹ Nor, under any circumstances, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.⁵⁰ Journalists are frequently subject to such threats, intimidation and attacks because of their activities.⁵¹ So too are persons who engage in the gathering of ^{analysis and} information on the human rights situation and, or who publish human rights-related reports.⁵² 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,⁵³ and the victims, ^{or} in the case of killings, their representatives, be in receipt of appropriate forms of redress.⁵⁴

25. Restrictions must be provided by law. "Law" in this regard may include statutory law and ~~law developed on the basis of decisions of the judiciary.~~⁵⁵ It may include the law of parliamentary privilege⁵⁶ and the law of contempt of court.⁵⁷ Since any restriction on freedom of expression constitutes a serious curtailment of human rights, it is not compatible with the Covenant for a restriction to be enshrined in customary, ~~traditional or religious~~ ^{reference to case law as appropriate} law.⁵⁸

26. Laws restricting Covenant rights must themselves be compatible with the provisions, aims and objectives of the Covenant.⁵⁹ Laws may not violate the non-discrimination provisions of the Covenant. Laws may not provide for penalties that are incompatible with the Covenant, such as corporal punishment.⁶⁰

46 See general comment No. 27.

47 [General comment No. 10].

48 See General comment No. 22.

49 Mukong v. Cameroon, No. 458/91.

50 Njiru v. Cameroon, No. 1353/2005.

51 See, for instance, concluding observations on Algeria (CCPR/C/DZA/CO/3); concluding observations on Costa Rica (CCPR/C/CRI/CO/5); concluding observations on Sudan (CCPR/C/SUD/CO/3).

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

53 Ibid. and concluding observations on Georgia (CCPR/C/GEO/CO/3).

54 Concluding observations on Guyana (CCPR/C/79/Add.121v).

55 Coleman v. Australia, No. 1157/2003.

56 Gauthier v. Canada, No. 633/95.

57 Dissanayake v. Sri Lanka, No. 1373/2005.

58 See general comment No. 32.

59 Toonen v. Australia, No. 488/1992.

60 General comment No. 20.

27. For purposes of paragraph 3, a norm, to be characterised as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly⁶¹ and it must be accessible. A law may not confer unfettered discretion for the limitation of freedom of expression on those charged with its execution.⁶²

28. It is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.⁶³ If, with regard to a particular State party, the Committee has to consider whether a particular restriction is imposed by law, the State party should provide details of the law and of actions that fall within the scope of the law.⁶⁴

29. Any restrictions on freedom of expression must meet a strict test of justification.⁶⁵ Restrictions on freedom of expression must be necessary for a legitimate purpose. Thus, for instance, a prohibition on commercial advertising in one language, with a view to protecting the at-risk language of a particular community, fails the necessity test if the protection could be achieved in other ways that do not restrict freedom of expression.⁶⁶ On the other hand, the Committee has considered that a State party complied with the necessity test when it transferred a teacher who had published materials that expressed hostility to a religious community to a non-teaching position in order to protect the right and freedom of children of that faith in a school district.⁶⁷

30. The necessity test embraces the principle of proportionality. The Committee observed in general comment No. 27 that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law”.⁶⁸ The principle of proportionality must also take account of the form of expression at issue. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the political domain.⁶⁹

31. The test of necessity is not to be applied by reference to a margin of appreciation⁷⁰ and the Committee reserves to itself an assessment of whether, in a given situation, there may have been circumstances which made a restriction of freedom of expression necessary.⁷¹ In order for the Committee to carry out this function, a State party, in any given case, must demonstrate in specific fashion the precise nature of the threat to any of the enumerated purposes listed in paragraph 3 that has caused it to restrict freedom of expression.⁷²

32. The first of the permissible limitations listed in paragraph 3 is that of respect for the rights or reputations of others. The term “rights” includes human rights as recognised in the Covenant and more generally in international human rights law. For example, it may be

61 *Leonardus J.M. de Groot v. The Netherlands*, No. 578/1994.

62 See general comment No. 27.

63 *Korneenko et al. v. Belarus*, No. 1553/2007.

64 *Monja Jaona v. Madagascar*, No. 132/1982.

65 *Velichkin v. Belarus*, No. 1022/2001.

66 *Ballantyne et al. v. Canada*, No. 359, 385/89.

67 *Ross v. Canada*, No. 736/97.

68 See also *Marques de Morais v. Angola*, No. 1128/2002; *Coleman v. Australia*, No. 1157/2003.

69 *Bodrozic v. Serbia and Montenegro*, No. 1180/2003.

70 *Ilmari Lansma, et al. v. Finland*, No. 511/1992.

71 *Jong-Kyu Sohn v. Republic of Korea*, No. 518/1992.

72 *Sohn v. Republic of Korea*, No. 518/92; *Shin v. Republic of Korea*, No. 926/2000.

legitimate to limit freedom of expression in order to protect the article 25 right to vote.⁷³ Such limitations must be constructed with care: while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such limitations must not impede political argumentation, including calls for the boycotting of a non-compulsory vote.⁷⁴ The term 'others' may relate to other persons individually or as members of a community.⁷⁵ Thus, it may, for instance, refer to members of a community defined by its religious faith⁷⁶ or ethnicity.⁷⁷

33. The second permissible limitation is that of protection of national security or of public order (*ordre public*), or of public health or morals. Public order refers to the sum of rules which ensure the peaceful and effective functioning of society.⁷⁸ On the basis of maintenance of public order it may, for instance, be permissible in certain circumstances to regulate speech-making in a particular public place.⁷⁹ Similarly, the moving of a detainee from one facility to another in the interests of maintaining order within the facilities may be legitimate.⁸⁰ Contempt of court proceedings relating to forms of expression may be tested against the public order limitation. In order to comply with paragraph 3, such proceedings and the penalty imposed must be shown to be warranted in the exercise of a court's power to maintain orderly proceedings.⁸¹

34. National security refers to, *inter alia*, the political independence and/or the territorial integrity of the State.⁸² When a State party invokes national security as a justification for a limitation of freedom of expression, it must demonstrate in specific and individualised fashion the precise nature of the threat and the necessity of the specific action taken.⁸³ Extreme care must be taken by States parties to ensure that treason laws⁸⁴ and similar provisions relating to national security, such as official secrets and sedition laws, are crafted and applied in a manner that conforms to paragraph 3. It is not compatible with paragraph 3, for instance, to invoke treason laws to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated information of legitimate public interest.⁸⁵ Nor is it generally appropriate to include in the remit of a state secrets law such categories of information as those relating to the commercial sector, banking and scientific progress.⁸⁶ The Committee has found in one case that the issuing of a statement in support of a labour dispute, including for the convening of a national strike, did not, alone, fall foul of the national security limitation.⁸⁷

35. Concerning public morals, it has to be observed that the content of the term may differ widely from society to society - there is no universally applicable common standard.⁸⁸ However, as the Committee observed in general comment No. 22, "the concept

73 *Svetik v. Belarus*, No. 927/2000.

74 *Ibid.*

75 *Ross v. Canada*, No. 736/97.

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

77 Concluding observations on Slovakia (CCPR/CO/78/SVK); concluding observations on Israel (CCPR/CO/78/ISR).

78 [Siracusa Principles] See *Coleman v. Australia*, No. 1157/2003.

79 *Coleman v. Australia*, No. 1157/2003.

80 *Baban v. Australia*, No. 1014/01.

81 *Dissanayake v. Sri Lanka*, No. 1373/2005.

82 *Mukong v. Cameroon*, No. 458/1991; *A.K. et al. v. Uzbekistan*, No. 1233/2003.

83 *Shin v. Republic of Korea*, No. 926/2000.

84 Concluding observations on Hong Kong (CCPR/C/HKG/CO/2).

85 Concluding observations on the Russian Federation (CCPR/CO/79/RUS).

86 Concluding observations on Uzbekistan (CCPR/CO/71/UZB).

87 *Jong-Kyu Sohn v. Republic of Korea*, No. 518/1992.

88 *Hertzberg et al. v. Finland*, No. 61/79; see *Delgado Paz v. Colombia*, No. 195/85.

of morals derives from many social, philosophical and religious traditions; consequently, limitations...for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”.

36. In practice, States parties may seek to justify limitations on freedom of expression on the basis of more than one of the limitations in paragraph 3 or by general reference to the entire paragraph. Some of the subject areas that may raise issues regarding multiple paragraph 3 limitations are set out below.

Scope of political expression

37. Any restrictions on the possibility of political discourse must be scrutinised with great care to assess their compatibility with paragraph 3. Among those restrictions that have given the Committee cause for concern are the prohibition of door-to-door canvassing,⁸⁹ restrictions on the number and type of written materials that may be distributed during election campaigns,⁹⁰ blocking access during election periods to sources, including local and international media, of political commentary,⁹¹ and limiting access of opposition parties and politicians to media outlets.⁹² Not every restriction is incompatible with paragraph 3. For instance, it may be legitimate for a State party to limit political polling in the days preceding an election in order to maintain the integrity of the electoral process.⁹³

38. As noted earlier, concerning the content of political discourse, the Committee has observed that in circumstances of public debate concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high.⁹⁴ Thus, the mere fact that statements are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.⁹⁵ Moreover, public figures, including heads of state, are legitimately subject to criticism and political opposition.⁹⁶ Accordingly, the Committee has expressed concern regarding laws on such matters as, *lese majeste*,⁹⁷ *desacato*,⁹⁸ disrespect for authority,⁹⁹ defamation of the head of state¹⁰⁰ and the protection of the honour of public officials.¹⁰¹ Defamation laws should not provide for more severe penalties solely on the basis of the identity of the person or institution that may have been impugned, such as in the case of laws that prescribe special penalties for criticism of official bodies, the army or the administration.¹⁰²

89 Concluding observations on Japan (CCPR/C/JPN/CO/5).

90 Ibid.

91 Concluding observations on Tunisia (CCPR/C/TUN/CO/5).

92 Concluding observations on Togo (CCPR/CO/76/TGO); concluding observations on Moldova (CCPR/CO/75/MDA).

93 Jung-Cheol v. Republic of Korea, No. 968/2001.

94 Bodrozic v. Serbia and Montenegro, No. 1180/2003.

95 Ibid.

96 Marques de Morais v. Angola, No. 1128/2002.

97 Aduayom et al. v. Togo, Nos. 422-424/1990.

98 Concluding observations on the Dominican Republic (CCPR/CO/71/DOM).

99 Concluding observations on Honduras (CCPR/C/HND/CO/1).

100 Concluding observations on Zambia (CCPR/ZMB/CO/3).

101 Concluding observations on Costa Rica (CCPR/C/CRI/CO/5).

102 Concluding observations on Costa Rica (CCPR/C/CRI/CO/5); concluding observations on Tunisia (CCPR/C/TUN/CO/5).

Scope of expression by the media and related information gathering/dissemination actors

39. 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 3.¹⁰³ Regulatory systems should take into account the fundamental differences between the print and broadcast sectors, as well as the internet. It is incompatible with article 19 to refuse to permit the publication of newspapers and other print media other than in the specific circumstances of the application of paragraph 3. Such circumstances may never include a ban on a particular publication unless specific content, that is not severable, offends paragraph 3. States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations.¹⁰⁴ The criteria for the application of such conditions and licence fees should be reasonable and objective,¹⁰⁵ clear,¹⁰⁶ transparent,¹⁰⁷ non-discriminatory and otherwise in compliance with the Covenant.¹⁰⁸ Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should establish an independent broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.¹⁰⁹

40. Care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements¹¹⁰ are not employed to the effect of impeding freedom of expression.¹¹¹ Furthermore, private media must not be put at a disadvantage compared to public media in such matters as access to means of dissemination/distribution and access to news.¹¹²

41. The State should avoid having or seeking to have monopoly control over the media.¹¹³ In addition, the Committee reiterates its observation in general comment No. 10 that "because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression". In this regard, States parties should take appropriate action, consistent with the Covenant, to impede privately controlled media monopolies.

42. Only in highly exceptional circumstances might the distribution of printed material to certain geographic locations or social sectors,¹¹⁴ or the blocking of local access to international media and to audiovisual signals, be compatible with paragraph 3. It is not

103 Concluding observations on Vietnam (CCPR/CO/75/VNM); concluding observations on Lesotho (CCPR/CO/79/Add. 106).

104 Concluding observations on Gambia (CCPR/CO/75/GMB).

105 Concluding observations on Lebanon (CCPR/CO/79/Add.78).

106 Concluding observations on Kuwait (CCPR/CO/69/KWT); concluding observations on Ukraine (CCPR/CO/73/UKR).

107 Concluding observations on Kyrgyzstan (CCPR/CO/69/KGZ).

108 Concluding observations on Ukraine (CCPR/CO/73/UKR).

109 Concluding observations on Lebanon (CCPR/CO/79/Add.78).

110 Concluding observations on Lesotho (CCPR/CO/79/Add. 106).

111 Concluding observations on Ukraine (CCPR/CO/73/UKR).

112 Concluding observations on Sri Lanka (CCPR/CO/79/LKA); concluding observations on Togo (CCPR/CO/76/TGO).

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

114 Concluding observations on Democratic Republic of Korea (CCPR/CO/72/PRK).

compatible with paragraph 3 to penalise a media outlet or journalist solely for being critical of the government.¹¹⁵

43. Any limitations on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, must be compatible with paragraph 3. Any limitations must be content-specific. Generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or a system from publishing material solely on the basis that it may be critical of the government.¹¹⁶

44. Since journalism is a function shared by a wide range of actors, including professional full time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, general systems of restrictive registration or licensing of journalists are incompatible with paragraph 3. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and, or events. Such schemes should be applied in a manner that is compatible with the Covenant.

45. Only in very exceptional circumstances will it be compatible with paragraph 3 to limit the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings¹¹⁷) to travel outside the State party, to limit the entry into the State party of foreign journalists to those from specified countries¹¹⁸ or to limit freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses). States parties should recognise and respect the limited journalistic privilege not to disclose information sources.¹¹⁹

Restrictions related to counter-terrorism measures

46. States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as “encouragement of terrorism”,¹²⁰ and “extremist activity”,¹²¹ as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to a disproportionate interference with freedom of expression. The criminalisation of expression relating to terrorism should be restricted to actual participation in terrorist acts or instances of intentional incitement to terrorism. Excessive limitations on freedom of information must be avoided. The media play a crucial role in informing the public about acts of terrorism and their capacity to operate should not be unduly restricted. Journalists should not be penalised for carrying out their legitimate activities.

115 Concluding observations on Peru (CCPR/CO/70/PER).

116 Concluding observations on the Syrian Arab Republic (CCPR/CO/84/SYR).

117 Concluding observations on Uzbekistan (CCPR/CO/83/UZB); concluding observations on Morocco (CCPR/CO/82/MAR).

118 Concluding observations on Democratic People’s Republic of Korea (CCPR/CO/72/PRK).

119 Concluding observations on Kuwait (CCPR/CO/69/KWT).

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

121 Concluding observations on the Russian Federation (CCPR/CO/79/RUS).

Restrictions and defamation laws

47. Defamation laws must be crafted with care to ensure that they comply with the test of necessity in paragraph 3, and that they do not serve, in practice, to stifle freedom of expression.¹²² All such laws should include the defence of truth and they should not be applied with regard to the expression of opinions that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalising untrue statements that have been published in error but without malice.¹²³ Care should be taken by States parties to avoid excessively punitive penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party.¹²⁴ States parties should consider the decriminalisation of defamation¹²⁵ and, in any case, the application of the criminal law should only be countenanced in the most serious of cases. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously - such a practice has a chilling effect that may unduly restrict the person's exercise of freedom of expression.¹²⁶

Restrictions and blasphemy laws

48. Blasphemy prohibitions and other prohibitions of display of disrespect to a religion, in order to be compatible with paragraph 3, must be enshrined in legal provisions that comply with the conditions indicated in this general comment. They must also comply with the test of necessity and its proportionality principle. They may not be applied in a manner that is incompatible with the Covenant, including articles 2, 5, 18 and 26. Thus, for instance, they may not discriminate in a manner that prefers one religion or its adherents over another, or religious believers over non-believers; in this regard attention is drawn to general comment No. 22. Blasphemy laws should not be used to prevent or punish criticism of religious leaders or commentary on tenets of faith. States parties should repeal criminal law provisions on blasphemy and regarding displays of disrespect for religion other than in the specific context of compliance with article 20 (discussed below).¹²⁷

Restrictions and "memory laws"

49. Laws that penalise the promulgation of specific views about past events, so called "memory-laws", must be reviewed to ensure they violate neither freedom of opinion nor expression. The Covenant does not permit general prohibitions on expression of historical views, nor does it prohibit a person's entitlement to be wrong or to incorrectly interpret past events. Limitations must never be imposed on the right of freedom of opinion and, with regard to freedom of expression they may not go beyond what is permitted in paragraph 3. As such they must be necessary and proportionate in pursuit of the permissible grounds.

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

123 Ibid.

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

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

126 *Kankanamge v. Sri Lanka*, No. 909/2000.

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

The assessment of compatibility with paragraph 3 is one that must be made in the specific context of the actual exercise of freedom of expression by an individual.¹²⁸

The relationship of articles 19 and 20

50. Article 20 is the subject of general comment No. 11. States parties are invited to take account of that general comment. What follows is a number of additional remarks that further elaborate on the relationship between articles 19 and 20.

51. Article 20 is an important tool for the protection of persons from discrimination, hostility or attack because of their national, racial or religious identity. It imposes an obligation on States parties with regard to the prohibition of specified forms of extreme speech. It requires legislative action on the part of States parties.¹²⁹ Such legislation should be reviewed as necessary to take account of contemporary forms and manifestations of national, religious and racial hatred. It is not compatible with the Covenant for the legislative prohibitions to be enacted by means of customary, traditional or religious law.¹³⁰

52. Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are of such an extreme nature that they would all be subject to limitations pursuant to article 19, paragraph 3. As such, a restriction that is justified on the basis of article 20 must also comply with article 19, paragraph 3, which lays down requirements for determining whether restrictions on expression are permissible.¹³¹

53. What distinguishes the acts addressed in article 20 from other acts that may also be subject to limitations, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19. The acts referred to in article 20, paragraph 2, must cumulatively (a) advocate, (b) be for purposes of national, racial or religious hatred, and, (c) constitute incitement to discrimination, hostility or violence. By "advocacy" is meant public forms of expression that are intended to elicit action or response. By "hatred" is meant intense emotions of opprobrium, enmity and detestation towards a target individual or group. "Incitement" refers to the need for the advocacy to be likely to trigger imminent acts of discrimination, hostility or violence against a specific individual or group. It would be sufficient that the incitement relate to any one of the three outcomes: discrimination, hostility or violence.

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

128 Faurrison v. France, No. 550/93.

129 Concluding observations on Belgium (CCPR/CO/81/BEL); concluding observations on Slovenia (CCPR/CO/84/SVN).

130 See general comment No. 32.

131 Ross v. Canada, No. 736/1997.

