



VOICES

Article 19: UN Reinforces Right to Freedom of Expression and Information

July 28, 2011 | by Sandra Coliver | Open Society Justice Initiative

The UN Human Rights Committee has just concluded two years of consultation and debate on how to interpret the "freedoms of opinion and expression" guaranteed by Article 19 of the International Covenant on Civil and Political Rights (<http://www2.ohchr.org/english/law/ccpr.htm>).

The committee's thinking, as set out in its General Comment No. 34 (http://www.soros.org/initiatives/justice/focus/foi/articles_publications/publications/unhrd-gc14-20110725), has authoritative legal credibility that will carry strong weight before courts and tribunals, and will substantially influence the development of legal norms globally. It will be especially significant in parts of the world—namely the Middle East and Asia—that do not yet have their own regional human rights adjudication mechanisms. In regions that do have such human rights bodies—the Americas, Africa and Europe—the International Covenant on Civil and Political Rights plays an important role in setting minimum standards.

The commentary on freedom of expression benefited from written and oral contributions from more than 70 NGOs—including the Open Society Justice Initiative—as well as governments, national human rights institutions, and academics. The Comment addresses several key aspects of Article 19, including:

- The significance of freedom of expression and information as a "meta-right" upon which other rights rely.
- Government obligations to protect freedom of expression and to make information available.
- The right of journalists and others to disseminate information, as well as the rights of individuals to receive information.
- Recognition of the changing nature of modern media and developing technologies.
- The importance of media independence.

The general comment affirms that media freedom is entitled to high standards of protection, and that the protections afforded to traditional media extend in full to new media. It calls on states to "take all necessary steps to foster the independence of these new media and to ensure access of individuals" to it.

One of the most dramatic advances is the comment's assertion that "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the covenant," although restrictions on such speech may be justified in the specific circumstances envisaged in article 20(2) of the covenant, which prohibits "incitement to discrimination, hostility or violence." While "hostility" is a vague term, the committee could not disregard this explicit treaty language.

This statement is particularly significant in light of the fact that four of the 18 experts on the committee are from North African countries (Algeria, Egypt, Morocco and Tunisia) that are members of the Organization of Islamic Conference (OIC). The OIC has, for the past several years, been rigorously lobbying the UN Human Rights Council to adopt resolutions calling on states to criminalize defamation of religion.

Another important advance is the clear affirmation that Article 19 "embraces a right of access to information held by public bodies."

This right has been recognized by the Inter-American and European Courts of Human Rights (in 2006 and 2009, respectively) and by the African Commission on Human and Peoples' Rights of the African Union (since at least 2002). The Human Rights Committee itself clearly recognized the right in May of this year, in a case brought by a citizen of Kyrgyzstan who sought access to information regarding execution statistics. The outcome of that case likely was influenced by the committee's work on the general comment; already in March of this year, the committee had approved the comment's language elaborating the right of access to information.

General Comment No.34 elaborates four important components of the right of access to information. States must make every effort to ensure prompt, easy, effective and practical access to state-controlled information in the public domain. They should proactively put in the public domain information about government functions as well as other information of public interest. They must provide for appeals from failures to

bodies—including the legislative and judicial branches—and may extend to private entities that carry out public functions.

The comment, incorporating a recommendation from the Justice Initiative, also makes clear that states may not, consistent with the covenant, "suppress or withhold from the public information of legitimate public interest that does not harm national security." This marks a significant advance. In other words, states should not classify such information, they should release it upon request, and they should publish it proactively. Moreover, states may not "prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information." It is implicit that this duty extends even to information that has been formally classified.

In a sign of the intensity of debate around Article 19, it is notable that this document runs to 15 pages and 54 paragraphs, compared to the three paragraphs that constituted the last general comment on freedom of expression, issued in 1983.

Michael O'Flaherty (<http://www.nottingham.ac.uk/law/staff-lookup/M.Oflaherty>), the HRC member responsible for shepherding the drafting of the comment, said that after two years of work the committee had achieved "as strong a statement as was possible."

Comments ²

Essoulami
posted on Aug 6, 2011

Well done Sadra,

I presume the contributions of North African members of the human rights committee were positive. I would like to read the transcript of the discussions of the committees' members. I do not know if these are published.

All the best,

Said

Sandra
posted on Aug 6, 2011


Hi Said,
The HRC members from North Africa -- Mr. Lazhari Bouzid (Algeria), Mr. Ahmad Amin Fathalla (Egypt), Mr. Mahjoub El-Haiba (Morocco) and Mr. Abdelfattah Amor (Tunisia) -- all played a significant role in getting good language limiting restrictions based on insult to religion included in the General Comment. They are to be especially congratulated, as well as Michael O'Flaherty, the Comment's chief drafter, and the current and past chairs, Zonke Zanele Majodina (South Africa) and Yuji Iwasawa (Japan), and acting chair for a few sessions, Nigel Rodley (UK).

As far as I know, the sessions are not recorded and there is no transcript. Did anyone who attended the July session take notes of the insult to religion discussion?

Best,

Sandra

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