Human Rights Committee: New General Comment on Freedom of Expression

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In a much-anticipated development, the United Nations' Human Rights Committee adopted a new General Comment on Article 19 (freedom of opinion and expression) of the International Covenant on Civil and Political Rights (ICCPR) on 21 July 2011.

The Human Rights Committee is the body of independent experts entrusted with the task of monitoring the implementation of the ICCPR by states parties. General Comments focus on specific themes or Covenant provisions and they are the leading source of interpretive guidance for the ICCPR. The new General Comment (No. 34) replaces the Committee's earlier General Comment (No. 10) on Article 19, ICCPR, which was adopted in 1983 and did not anticipate the current reality of a globalised communications environment dominated by Internet-based technologies.

The structural divisions of the new General Comment are: 'General remarks', 'Freedom of opinion', 'Freedom of expression', 'Freedom of expression and the media', 'Right of access to information', 'Freedom of expression and political rights', 'The application of Article 19(3)', 'Limitative scope of restrictions on freedom of expression in certain specific areas', 'The relationship of Articles 19 and 20'.

The General Comment reiterates the interrelationship between freedom of expression and other rights safeguarded by the ICCPR, e.g., privacy, religion, association and assembly, electoral and participatory rights, minority rights, etc. It stresses that all branches of the state are under an obligation to respect freedom of opinion and expression. It recalls that freedom of opinion cannot be subject to exception or restriction. It uses a very extensive set of examples to demonstrate the broad scope of freedom of expression.

The General Comment recognises (and explains) the importance of ensuring a free, independent and diverse media in a democratic society. States are specifically called upon to guarantee the operational, editorial and financial independence of public service broadcasting services. The need for states to appreciate the emergence of, and foster the independence of, new media (e.g., "Internet and mobile based electronic information dissemination systems") is also

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emphasised. States are moreover urged to ensure access by individuals to those new media.

The right of access to information held by public bodies is considered in detail and in order to give effect to that right, states are encouraged to “proactively put into the public domain Government information of public interest”. States should furthermore “make every effort to ensure easy, prompt, effective and practical access to such information”.

The lengthiest sections of the General Comment are those dealing with Article 19(3) - restrictions on the right to freedom of expression, and the limitative scope of those restrictions in specific areas. The former elaborates in detail on the specific conditions subject to which restrictions on freedom of expression may be permitted: the restrictions must be provided by law; be based on one of the grounds set out in Article 19(3)(a) and (b), and conform to the strict tests of necessity and proportionality. The latter scrutinises the scope of permissible restrictions in specific contexts, such as political discourse, media regulation, journalism, counter-terrorism and defamation. It stipulates, for instance, that blasphemy laws and laws penalising the expression of opinions about historical facts are incompatible with the ICCPR.

In respect of the media, the new General Comment repeatedly states that restrictions on freedom of expression must comply with the requirements of Article 19(3) (e.g., licensing processes; new media), or finds particular restrictions to be presumptively impermissible (e.g., the penalisation of a media outlet (or prohibition of a website or information dissemination system) solely for criticising the government; generic bans on the operation of certain websites). The promotion of media pluralism is strongly advocated.

The new General Comment concludes with a succinct treatment of the relationship between Articles 19 and 20, ICCPR. The latter article requires states parties to prohibit by law any “propaganda for war” and any “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. The General Comment clarifies that the two articles are “compatible with and complement each other” and that the acts addressed in Article 20 are all subject to Article 19(3). It also states firmly that restrictions on the right to freedom of expression should not “go beyond what is permitted in [Article 19] paragraph 3 or required under Article 20”.

United Nations, Human Rights Committee, General Comment No. 34 - Article 19: Freedoms of opinion and expression, Doc. No. CCPR/C/GC/34 (Advance unedited version), adopted on 21 July 2011

http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

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United Nations, Human Rights Committee, General Comment No. 10 - Freedom of expression (Article 19), adopted on 29 July 1983

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