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# FREEDOM OF EXPRESSION – HOW DOES IT WORK? UNITED NATIONS

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# UNIVERSAL DECLARATION OF HUMAN RIGHTS

## Article 19

Everyone has the right to **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.

## FREEDOM OF EXPRESSION'S ELEMENTS

Freedom to hold  
opinions without  
interference

Freedom to seek,  
receive and impart  
information and  
ideas

# UNIVERSAL DECLARATION OF HUMAN RIGHTS

## Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against **any incitement to such discrimination.**

# INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

## Article 19

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.

# FREEDOM OF OPINION

The only element of freedom of expression that cannot be restricted

It comprehends the right to change an opinion whenever, and for whatever reason a person so freely chooses.

All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature.

# FREEDOM OF EXPRESSION

Includes the right to seek freely, receive and impart information and ideas of all kinds,

There should not be any obstacles of free flow of information with regard of frontiers.

Freedom of expression includes all means of expression: orally, writing, in print, in the form of art.

# FREE, UNCENSORED AND UNHINDERED PRESS

- This element is essential freedom of opinion and expression and to the enjoyment of other rights provided by the Covenant
- It also implies a free press and other media that can comment on public issues without censorship or restraint and to inform public opinion
- On the other hand, this is a necessary element to fulfil the passive facet of freedom of expression – the right to be informed
- This element enables the press to contribute to the democratic society (watchdogs of democracy)

## RIGHT TO ACCESS INFORMATION

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Includes the right of access to information held by public bodies (records held by a public body, regardless of the form in which the information is stored)

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It contributes to inform the citizen, enabling him/her to participate actively in the society without constraints

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This is an element of freedom of expression where it is possible to comprehend the thesis about right to internet as a human right

# LIMITATIONS TO FREEDOM OF EXPRESSION

## ICCPR

- The ICCPR introduces limitations to freedom of expression on the basis that this right comprehends duties and responsibilities
- This is acknowledge on article 19, paragraph 3 of the Covenant and also on article 20.

## ARTICLE 19, §3

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- (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.

## ARTICLE 20

1. Any **propaganda for war** shall be prohibited by law.
2. Any **advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.**

## MONITORING AND PROTECTION

The International Covenant on Civil and Political Rights creates the Human Rights Committee (article 28)

Monitors the implementations of the Covenant by the States

- The States are obliged to present reports about the measures and proceedings taken to apply the ICCPR in their country
- The HRC adopts general comments that help clarify the interpretation and application of the Covenant

# MONITORING AND PROTECTION

- The Optional Protocol induced the HRC to also receive individual complaints:
  - From individuals who suffered a violation of a right enshrined in the Covenant
  - From States alleging violations of the Covenant by other States

## ADMISSIBILITY CRITERIA (HRC)

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Victim Status

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Exhaustion of domestic remedies

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No examination under another procedure of international investigation or settlement

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# ADMISSIBILITY CRITERIA (HRC)

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## *WHAT HAPPENS?*

The Committee decides upon the communication received if it should take the matter to the attention of the State. When it does so, the States should respond within 6 months with explanations or clarifications on the matter and should indicate what measures were taken to remedy the situation.

# HUMAN RIGHTS COUNCIL

- It is an inter-governmental body
- Created by United Nation Assembly General on 15 March 2006 (Resolution 60/251)
- It is made up of 47 of the United Nations Member States which are elected by the UN GA.
- It is responsible for strengthening the promotion and protection of human rights & addressing the situation of human rights' violations and make recommendations on them

HOW?

# HOW?

- Universal Periodic Review - a mechanism which serves to assess the human rights situations in all United Nations Member States
- Advisory Committee – serves as the Council’s “think tank” providing it with expertise and advice on thematic human rights issues (18 independent experts from different professional backgrounds, from the different regions of the world)
- Complaint Procedure – allows individuals and organizations to bring human rights violations to the attention of the Council

## ADMISSIBILITY CRITERIA TO THE COMPLAINT PROCEDURE

- It must be lodged by **Individuals** as well as **NGOs** with or without consultative status to the Human Rights Council;
- **At any time;**
- **Domestic remedies must be exhausted** unless such remedies would be ineffective or unreasonably prolonged;
- The pattern of human rights violations alleged cannot be being dealt with by one of the Special Procedures, a treaty body or other United Nations or similar regional complaints procedure.

## WHAT HAPPENS?

The Human Rights Council can take one of the following measures:

- to discontinue considering the situation, if no further action is needed;
- to keep the situation under review, and request further information from the State concerned;
- to keep the situation under review and appoint an independent expert to monitor the situation and report back to the Council;
- to discontinue reviewing the situation under the confidential complaint procedure in order to take up a public consideration;
- to recommend to the OHCHR to assist the State concerned.

# SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

- Established by the Human Rights Council (then Human Rights Commission) in 1993

## Mission:

*Gather relevant information of discrimination against, threats or use of violence and harassment, including persecution and intimidation, directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression as affirmed in the UDHR and the ICCPR.*

# RABAT PLAN OF ACTION

- The Rabat Plan of Action is the culmination of a series of expert workshops to ground debate on incitement to hatred in international human rights law.

## Objectives:

- To gain a better understanding of legislative patterns, judicial practices and policies regarding the concept of incitement to national, racial or religious hatred,
- Ensuring full respect for freedom of expression as outlined in articles 19 and 20 of the International Covenant on Civil and Political Rights;
- Arrive at a comprehensive assessment of the state of implementation of the prohibition of such incitement in conformity with international human rights law; and to identify possible actions at all levels.

## IMPORTANT DEFINITIONS

- The terms '**hatred**' and '**hostility**' refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group;
- The term '**advocacy**' is to be understood as requiring an intention to promote hatred publicly towards the target group; and
- The term '**incitement**' refers to statements about national, racial or religious groups, which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.

# THE THRESHOLD TEST

- A six-part threshold test that takes into account:
  1. Context
  2. Speaker
  3. Intent
  4. Content and form
  5. Extent of the speech act
  6. Likelihood, including imminence

# I. CONTEXT

Context is of great importance when assessing whether **particular statements are likely to incite discrimination, hostility or violence** against the **target group**, and it may **have a direct bearing on both intent and/or causation**.

Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated

## 2. SPEAKER

The **speaker's position or status** in the society should be considered, specifically the individual's or organization's standing in the **context of the audience to whom the speech is directed**

## 3. INTENT

Article 20 of the ICCPR anticipates intent.

**Negligence and recklessness are not sufficient** for an act to be an offence under article 20 of the ICCPR, as this article provides for “advocacy” and “incitement” rather than the mere distribution or circulation of material.

In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience

## 4. CONTENT AND FORM

The content of the speech constitutes one of the key focus of the court's deliberations and is a critical element of incitement.

Content analysis may include the **degree to which the speech was provocative and direct**, as well as the **form, style, nature of arguments** deployed in the speech or the balance struck between arguments deployed

## 5. EXTENT OF THE SPEECH

Extent includes such elements as the **reach of the speech act, its public nature, its magnitude and size of its audience.**

Other elements to consider include whether the **speech is public**, what **means of dissemination** are used, for example by **a single leaflet or broadcast** in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public

## 6. LIKELIHOOD, INCLUDING IMMINENCE

Incitement, by definition, is an inchoate crime.

The action advocated through incitement speech does not have to be committed for said speech to amount to a crime.

Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct

THANK YOU !

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