

Draft Text: Freedom of Opinion and Expression

The Human Rights Council,

PP1 *Recalling Human Rights Council Resolution 7/36 and all previous resolutions of the Commission on Human Rights on the right to freedom of opinion and expression, (updated)*

PP2 *Recognizing that the exercise of the right to freedom of opinion and expression is one of the essential foundations of a democratic society; is enabled by a democratic environment which, inter alia, offers guarantees for its protection; is essential to full and effective participation in a free and democratic society; and is instrumental to the development and strengthening of effective democratic systems,*

PP3 *Recognizing also that the effective exercise of the right to freedom of opinion and expression is an important indicator of the level of protection of other human rights and freedoms, bearing in mind that all human rights are universal, indivisible, interdependent and interrelated,*

PP4 *Deeply concerned that violations of the right to freedom of opinion and expression continue to occur, including increased attacks directed against, and killings of, journalists and media workers, and stressing the need to ensure greater protection for all media professionals and for journalistic sources,*

PP5 *Stressing the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression,*

PP6 *Stressing also the importance of full respect for the freedom to seek, receive and impart information, including the fundamental importance of access to information, to democratic participation, to accountability and to combating corruption,*

PP7 *Recognizing the importance of all forms of the media, including the print media, radio, television and the Internet, in the exercise, promotion and protection of the right to freedom of opinion and expression,*

~~PP7 bis — *Recalling that the exercise of the right of freedom of expression carries with it special duties and responsibilities, and that States should encourage free, responsible, and mutually respectful dialogue (new)*~~

PP7bis *Recalling that the exercise of the right of freedom of expression carries with it special duties and responsibilities, in accordance with article 19(3) of the ICCPR. (new)*

PP7ter *Recalling also that States should encourage free, responsible, and mutually respectful dialogue. (new)*

1. *Reaffirms the rights contained in of individuals and obligations of States Parties under the International Covenant on Civil and Political Rights regarding the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the*

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 their choice, and the intrinsically linked rights to freedom of thought, conscience and religion, peaceful assembly and association and the right to take part in the conduct of public affairs; (Reverting to original text of 2005/38)

1bis. Reaffirms the positive role that the exercise of the right to freedom of expression and opinion, as well as the full respect for the freedom to seek, receive and impart information can play in strengthening democracy and in promoting pluralistic societies, respect and tolerance for diversity of opinions, beliefs and religions as well as combating racial and religious discrimination, in line with relevant provisions of international human rights law. (Revised OP6bis)

2. *Takes note* of the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/11/4), as well as his **presentation and the interactive dialogue thereon at the 11th session of the UN Human Rights Council** and ~~welcomes in particular his ongoing and increasing cooperation with other mechanisms and organizations;~~

3. *Expresses its continuing concern* that:

(a) Violations of the rights referred to in paragraph 1 above continue to occur, often with impunity, including extrajudicial killing, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination, including gender-based violence and discrimination, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders;

(b) These violations are facilitated and aggravated by abuse of states of emergency;

(c) Threats and acts of violence, including killings, attacks and terrorist acts, particularly directed against journalists and other media workers in situations of armed conflict, have increased and are not adequately punished, in particular in those circumstances where public authorities are involved in committing those acts;

(d) High rates of illiteracy continue to exist in the world, especially among women, and reaffirms that full and equal access to education for girls and boys, women and men, is crucial for the full enjoyment of the right to freedom of opinion and expression;

(e) Media concentration is a growing phenomenon in the world, and can limit a plurality of views;

3(bis) Expresses further its concern that incidents of racial and religious intolerance, discrimination, and related violence, as well as of negative stereotyping of religions and racial groups around the world, continue to rise, and condemns, in this context, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and urges States to take effective measures, consistent

with their international human rights obligations, to address and combat such incidents.

(new)

4. *Calls upon* all States:

(a) To respect **and ensure the respect for the rights of individuals and obligations undertaken by States Parties** referred to in paragraph 1 above; (Reverting to original text of 2005/38)

(b) To take all necessary measures to put an end to violations of these rights and to create conditions to prevent such violations, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented;

(c) To ensure that victims of violations of these rights have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity;

(d) To ensure that persons exercising these rights are not discriminated against, particularly in employment, housing, the justice system, social services and education, with particular attention to women;

(e) To facilitate the full, equal and effective participation and free communication of women at all levels of decision-making in their societies and in national, regional and international institutions, including in mechanisms for the prevention, management and resolution of conflicts;

(f) To enable children to exercise their right to express their views freely, including through school curricula that encourage the development and respect for different opinions, and to have their views taken into account in all matters affecting them, the views of the child being given due weight in accordance with the age and maturity of the child;

(g) To respect freedom of expression in the media and broadcasting, in particular the editorial independence of the media;

(h) To promote a pluralistic approach to information and multiple points of views through encouraging a diversity of ownership of media and of sources of information, including mass media, through, inter alia, transparent licensing systems and effective regulations on undue concentration of ownership of the media in the private sector;

(i) To create and permit an enabling environment in which training and professional development of the media can be organized in order to promote and protect the right to freedom of opinion and expression and can be carried out without threat of legal, criminal or administrative sanction by the State;

(j) To refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law;

(k) To adopt and implement policies and programmes that aim to effectively raise awareness of, and disseminate information and education on, prevention and treatment of HIV/AIDS and other diseases through effective and equal access to information and all appropriate means, including through the media and availability of information and communication technologies, and targeted at specific vulnerable groups;

(l) To adopt and implement laws and policies that provide for a general right of public access to information held by public authorities, which may be restricted only in accordance with article 19 of the International Covenant on Civil and Political Rights;

(m) To facilitate equal participation in, access to and use of, information and communications technology such as the Internet, applying a gender perspective, and to encourage international cooperation aimed at the development of media and information and communication facilities in all countries;

~~(n) To review their procedures, practices and legislation, as necessary, to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (ordre public) or of public health or morals;~~

~~OP4(n) alt To review their procedures, practices and legislation, with a view to ensure the full and effective implementation of all their obligations under international human rights law related to the exercise of the right to freedom of opinion and expression;~~
(new)

OP4(n) alt To review their procedures, practices and legislation, as necessary, with a view to ensure the full and effective implementation of all their obligations under international human rights law, including to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (ordre public) or of public health or morals; (Combined OP4(n) and OP4(n)alt)

(o) To refrain from using counter-terrorism as a pretext to restrict the right to freedom of opinion and expression in ways that are contrary to their obligations under international law;

(p) While noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on:

- (i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;

- (ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;
- (iii) Access to or use of information and communication technologies, including radio, television and the Internet;

OP4 bis Stresses that condemning and addressing, in accordance with international human rights obligations, including those regarding equal protection of the law, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, is an important safeguard to ensure the enjoyment of human rights and fundamental freedoms of all, particularly minorities; (new)

5. *Calls on all parties to armed conflict to respect international humanitarian law, including their obligations under the Geneva Conventions, of 12 August 1949, for the protection of victims of war the two and, where applicable, the Additional Protocols thereto of 8 June 1977, whose provisions extend protection to journalists in situations of armed conflict and to allow, within the framework of applicable rules and procedures, media access and coverage, as appropriate, in situations of international and non-international armed conflict;*

OP5 bis Recognizes the relevant moral and social responsibilities of the media, and the importance that the media's own elaboration of voluntary codes of conduct can play in combating racism, xenophobia and related intolerance; (new)

OP5 ter Encourages consultations among media professionals through relevant associations and organizations at the national, regional and international levels, with the assistance of OHCHR, with a view to exchanging views on this subject and sharing best practices, taking into account the independence of the media and international human rights law; (new)

6. *Recognizes the positive contribution that the exercise of the right to freedom of expression, particularly by the media, including through information and communication technologies such as the Internet, and full respect for the freedom to seek, receive and impart information, can make to the fight against racism, racial discrimination, xenophobia and related intolerance and to preventing human rights abuses, but expresses regret about the promotion by certain media of false images and negative stereotypes of vulnerable individuals or groups of individuals, and about the use of information and communication technologies such as the Internet for purposes contrary to respect for human rights, in particular the perpetration of violence against and exploitation and abuse of women and children and disseminating racist and xenophobic discourse or content;*

~~**OP6 bis Reaffirms the positive role that the exercise of the right to freedom of opinion and expression, as well as the full respect for the freedom to seek, receive and impart information can play in combating racism, racial discrimination, xenophobia and related intolerance, in line with relevant provisions of international human rights law; (moved to OP1bis)**~~

OP6 ter Recognizes that the open public debate of ideas, as well as interfaith and intercultural dialogue at the local, national, and international levels, can be among the best

protections against racism, racial discrimination, xenophobia, and related intolerance, and can play a positive role in strengthening democracy and combating national, racial, or religious hatred (new)

7. *Invites* the Special Rapporteur, within the framework of his mandate, to continue to carry out his activities in accordance with its resolution 7/36 and all relevant Human Rights Council resolutions and decisions special procedures and paragraph 17 (a) to (c) and (f) of its resolution 2003/42, in particular his cooperation with other mechanisms and human rights treaty bodies and organizations, including regional organizations and non-governmental organizations;

8. *Appeals* to all States to cooperate fully with and assist the Special Rapporteur in the performance of his tasks, contained in its resolution 7/36, to provide all necessary information requested by him and to consider favourably his requests for visits and for implementing his recommendations;

9. *Invites once again* the United Nations High Commissioner for Human Rights, the working groups, representatives and special rapporteurs of the Commission Human Rights Council and human rights treaty bodies to pay attention, within the framework of their mandates, to the situation of persons whose right to freedom of opinion and expression has been violated;

10. *Reminds* States of the possibility of seeking technical assistance if needed, including from the Office of the High Commissioner for Human Rights, to better promote and protect the right to freedom of opinion and expression;

~~11. Welcomes the participation of the Special Rapporteur in the first preparatory meeting for the second phase of the World Summit on the Information Society, which took place in Hammamet, Tunisia, from 24 to 26 June 2004, and stresses the importance of the continued active participation of the Special Rapporteur and the High Commissioner, within the framework of their mandates, in the second phase, including preparatory meetings, of the World Summit, to be held in Tunis from 16 to 18 November 2005, to provide information and expertise on matters related to the right to freedom of opinion and expression; (outdated)~~

12. *Again requests* the Secretary-General to provide the assistance necessary to the Special Rapporteur to fulfil his mandate contained in its resolution 7/36 effectively, in particular by placing adequate human and material resources at his disposal;

~~13. Decides to extend the mandate of the Special Rapporteur for a further three years (outdated)~~

14. *Requests* the Special Rapporteur to submit an annual report to the Human Rights Council and to the United Nations General Assembly covering activities relating to his/her mandate; (revised)

14(bis) *Decides* to continue its consideration of the issue of the right to freedom of opinion and expression in accordance with its programme of work. (revised)

15. ~~Recommends the following draft decision to the Economic and Social Council for adoption:~~

~~“The Economic and Social Council, taking note of Commission on Human Rights resolution 2005/... of... April 2005, approves the decision of the Commission to extend the mandate of the Special Rapporteur on the right to freedom of opinion and expression for a further three years and its request to the Special Rapporteur to submit annually to the Commission a report covering activities relating to his mandate.” (outdated)~~

