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**Statement by Frank La Rue  
SPECIAL RAPPORTEUR ON THE PROMOTION AND  
PROTECTION OF THE RIGHT TO FREEDOM OF OPINION  
AND EXPRESSION**

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Honourable Chair, Excellencies, Ladies and Gentlemen,

My report to the General Assembly this year is on the right to freedom of opinion and expression exercised through the Internet. It expands upon my last report presented to the Human Rights Council in June, and addresses the issue through two equally important dimensions of Internet access: access to online content and access to Internet connection.

My main recommendation to all States is to maintain the free flow of information and ideas on the Internet, and to ensure that the Internet is made widely available, accessible and affordable to all.

#### **Access to online content**

The Internet has become a vital tool to connect, share and exchange information and ideas between individuals around the globe. By enabling people to access information from diverse sources and facilitating an instant exchange of information relatively inexpensively, the Internet has become one of the most powerful tools to enhance knowledge, expose wrongdoing, and to amplify the collective demand for accountability and justice. The Internet thus continues to play a key role in mobilizing peaceful and democratic movements taking place around the world.

At the same time, I am deeply concerned that the potential of the Internet as a catalyst for change has generated fear among Governments and the powerful, leading to the adoption of increasingly sophisticated technologies and tactics which are hidden from the public to censor content, as well as to identify and monitor individuals who express critical opinions, which frequently lead to arbitrary arrests and detention. I am cognizant of the fact that the Internet can also be used to cause harm to others, but I would like to reiterate that as a general rule, there should be as little restriction as possible to the flow of information on the Internet, except in a few, very exceptional and limited circumstances prescribed by international law, and that adequate safeguards must be in place to prevent censorship of content under the guise of seemingly legitimate goals.

In this regard, I would like to reiterate that by explicitly providing that everyone has the right to express him or herself through any media of his or her choice, articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights were drafted with foresight to include and to accommodate future technological developments through which individuals can exercise their right to freedom of expression. Hence, the types of content that are prohibited offline under international law also apply to the online environment, and the framework of international human rights law remains relevant today, and equally applicable to new communication technologies such as the Internet.

Nevertheless, given the ongoing debate regarding what types of content should be restricted on the Internet, I believe that it is important to clarify the differences between illegal content, which States are required to prohibit under international law, and those that are considered harmful, offensive, objectionable or undesirable, but which States are neither required to prohibit nor to criminalize.

Indeed, it is important to make a clear distinction between three types of expression: (1) expression that constitutes an offence under international law and can be prosecuted criminally; (2) expression that is not criminally punishable but may justify a restriction and a civil suit; and (3) expression that does not give rise to criminal or civil sanctions, but still raises concerns in terms of tolerance, civility and respect for others. These different categories of content pose different issues of principle and call for different legal and technological responses.

The four types of expression that fall under the first category, which States are obliged to prohibit under international law, are (1) child pornography; (2) direct and public incitement to commit genocide; (3) advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and (4) incitement to terrorism. The elements of these crimes are detailed in section III(A) of the report. I would like to stress that all other types of expression should never be criminalized.

It should be emphasized that any domestic criminal law that prohibits these four types of expression must also meet the three-part test of restrictions to the right to freedom of expression. This means that the limitation must: (1) be provided by law, which is formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and made accessible to the public; (2) must be proven as necessary to achieve one of the purposes set out in paragraph 3, article 19 of the International Covenant on Civil and Political Rights (ICCPR); and (3) must be proportionate, or proven as the least restrictive means to achieve the intended aim.

I remain concerned that despite these standards, States continue to utilize broad and vaguely worded domestic legislation, which are often misused to suppress critical expression. These include domestic legislation that prohibit “glorifying” or “promoting” terrorism, incitement to religious unrest”, “promoting division between religious believers and non-believers”, “defamation of religion”, “inciting to violation”, “instigating hatred and disrespect against the ruling regime”, “inciting subversion of state power”, and “offences that damage public tranquility”.<sup>1</sup> Such laws are in clear violation of the right to freedom of expression as they do not meet the criterion of legal clarity and are subject to abuse.

Moreover, as the Human Rights Council has repeatedly stated in its resolutions on the right to freedom of opinion and expression,<sup>2</sup> as well as the Human Rights Committee in its recently adopted General Comment,<sup>3</sup> States can never, under any circumstance, justify restrictions on 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.

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<sup>1</sup> The joint paper by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance is available from [http://www2.ohchr.org/english/issues/opinion/articles1920\\_iccpr/docs/experts\\_papers.htm](http://www2.ohchr.org/english/issues/opinion/articles1920_iccpr/docs/experts_papers.htm).

<sup>2</sup> For the most recent resolution, see A/HRC/RES/12/16, para.5(p)(i).

<sup>3</sup> CCPR/C/GC/34, para.23.

## Access to Internet connection

Although access to the Internet is not a human right as such, I would like to reiterate that States have a positive obligation to promote or to facilitate the enjoyment of the right to freedom of expression and the means necessary to exercise this right, including the Internet, which has now become an essential communications tool. Moreover, having access to Internet connection is not only vital to exercise the right to freedom of expression, but also to realize a range of other rights, such as the right to education, the right to freedom of association and assembly, the right to full participation in social, cultural and political life, and the right to social and economic development.

In particular, I believe that access to Internet connection is a crucial element of the right to education. It enables access to a vast and expanding source of knowledge, supplements or transforms traditional forms of schooling, and makes previously unaffordable scholarly research available to people in developing States through “open access” and other non-profit initiatives. Moreover, the educational benefits attained from Internet usage directly contribute to the human capital of States, thus accelerating development.

Although public and private policies aimed at extending Internet access have substantially increased the presence of Internet facilities, Internet usage continues to lag behind in developing countries. According to the latest Millennium Development Goals Report of 2011, although the number of Internet users continues to expand, penetration levels in the developing world remain relatively low at 21 per cent, compared to 72 per cent in the developed regions.

There are a number of factors that pose challenges to ensuring Internet access at the national level. In many countries, the Internet market, and particularly the backbone infrastructure and international gateway, remain under the monopoly of one or very few telecommunications operators. Furthermore, both limited competition and scarce international Internet bandwidth tend to keep prices for Internet access high and often unaffordable.

To overcome these barriers, it is particularly important for States to play a proactive role by making the Internet more affordable, and by allowing as many people as possible to have Internet access at home, while at the same time ensuring public access for people in rural areas and for people with low income levels.

In this regard, I have taken note of several good examples in my report, including the active role taken by the Government of Brazil to develop programmes to make broadband Internet access available to people in lower income brackets, and to operate a network of community telecentres that offer Internet access free of charge.

In Uruguay, under “Plan Ceibal”, over 450,000 laptops have been delivered to all students and teachers in the primary education system and no-cost Internet access throughout the country. In Europe, Sweden was the first country in the region to develop in 1999 a broadband policy, with the Government aiming to provide broadband Internet access in rural and remote areas where there is no market incentive to do so.

I would also like to highlight the role that mobile technology can play in bridging the “digital divide” and expanding access to Internet connection. While cellular phones do not provide

the same benefits as direct computer-based Internet access, given their widespread availability, even in developing States, they can be a stepping stone to attain Internet connectivity, particularly in remote areas where fixed line access is more difficult to establish.

Given the importance of the Internet for empowerment and education, and in line with the commitments undertaken by States under Goal 8 of the Millennium Development Goals, I urge all States to adopt effective and concrete policies and strategies, developed in consultation with individuals from all segments of society, including the private sector as well as relevant Government ministries, to make the Internet widely available, accessible and affordable to all.

### **Digital literacy**

Finally, to enable all individuals to access online content in a meaningful way, I encourage States to provide support for training in information communications technology (ICT) skills, which can range from basic computer skills to creating webpages, as well as on Internet safety and security. This can be done through integration of Internet literacy into the school curricula, as well as in learning modules outside of schools. One example is the ThutoNet programme in Botswana, which not only aims to provide all schools in the country with computers and access to the Internet, but to train teachers on how to use ICT as a classroom tool, including formal ICT education as part of the school curriculum.

Additionally, I call upon all States to pay particular attention to removing obstacles to effective access to information on the Internet for particular groups in society, such as persons with disabilities and persons belonging to linguistic minorities.

Honourable Chair, Excellencies, Ladies and Gentlemen,

The Internet has not only become a crucial tool for self or collective expression, but also for self-empowerment by enabling people to access previously unattainable information and knowledge. In turn, it can help accelerate development and democratic progress. However, while most of us in this room take the Internet for granted, we must not lose sight of the fact that three-quarters, or the majority of the world's population, still lack access to this technology. I therefore urge all States to renew their efforts to make the Internet widely available, accessible and affordable to all. At the same time, I call upon States to ensure that there are no undue restrictions to legitimate content disseminated via the Internet under the guise of seemingly well-intended purposes.

Thank you very much for your attention.

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