

30 ARTICLES ON THE 30 ARTICLES

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 70: STILL WORKING TO ENSURE FREEDOM, EQUALITY AND DIGNITY FOR ALL

Article 19: Freedom of Opinion and Expression

Why would a human rights organization go to court to support someone whose extreme political views or ethical position it fundamentally opposes? A pornographer perhaps, or an anarchist? Because of the rights asserted in Article 19 of the Universal Declaration of Human Rights (UDHR), we all have the right to form our own opinions and to express and share them freely.

“The first human who hurled an insult instead of a stone was the founder of civilization.”

–Sigmund Freud

“If we do not believe in freedom of expression for people we despise, we do not believe in it at all,” says linguist and political activist Noam Chomsky. Adds Human Rights Watch: “freedom of speech is a bellwether: how any society tolerates those with minority, disfavored or even obnoxious views will often speak to its

performance on human rights more generally.”

This right underpins many others, such as religion, assembly and the ability to participate in public affairs, but freedom of expression is not unlimited. A common metaphor to describe its limits is that you cannot falsely yell “fire” in a crowded theatre and cause a panic and possible injury. Other forms of speech generally not protected include child pornography, perjury, blackmail, and incitement to violence.

The UDHR’s drafters wrestled with the issue of how tolerant a tolerant society should be of people like Nazis and fascists who themselves are intolerant. They were acutely conscious of the role played by the Nazi media and film industry in the creation of an environment that enabled the slaughter of 6 million Jews, and other groups such as the Roma and people with disabilities. After gaining power in 1933, the Nazis used a series of new laws and regulations to crush the independent media, substituting a rabid totalitarian propaganda machine in its place, under the guidance of Joseph Goebbels, the “Reich Minister of Public Enlightenment and Propaganda.”

As a result, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence was explicitly prohibited when the UDHR was translated into binding international law via subsequent treaties. In the International Covenant on Civil and Political Rights, freedom of expression occupies the same slot (Article 19) as it does in the UDHR, providing explicit criteria that

Governments need to comply with when restricting freedom of expression. Article 20, following immediately afterwards, sets the limits with the prohibition of incitement.

The potentially lethal results of hate speech – including its ability to enable the violation of the right to life on a massive scale -- was graphically displayed once again when Rwanda's Radio Mille Collines laid the groundwork for the 1994 genocide by dehumanizing fellow citizens and branding them enemies. Some 800,000 people were killed. More recently in Myanmar, messages of incitement to hatred and violence spread with alarming speed on Facebook, and may have contributed to genocide and crimes against humanity. The Independent Fact-Finding Mission on Myanmar pointed to the use of Facebook by the Myanmar military to incite hatred and spread false information to justify their actions against civilians. In reaction, Facebook closed several of those accounts.

You are entitled to hold any opinion, no matter how foul it may be, but the expression of that opinion – if it amounts to incitement -- must be outlawed, with clear historical examples of what can happen when it is not.

When a British tabloid newspaper revived Mille-Collines-style language in 2015, by referring to migrants and refugees as “cockroaches,” the UN Human Rights Chief Zeid Ra'ad Al Hussein urged European countries to take a firmer line on racism and xenophobia which, he said, “under the guise of freedom of expression, are being allowed to feed a vicious cycle of vilification, intolerance and politicization of migrants, as well as of marginalized European minorities such as the Roma.”

Freedom of expression is however explicitly protected in most spheres, and there are rising concerns today at the continuing, and possibly increasing, efforts to misuse the concept of “hate speech” or “incitement” as an excuse for stifling dissent or criticism of a government in power, often using anti-terrorism legislation as the legal means to what is, under international law, an illegal end.

The UN has on numerous occasions criticized flawed domestic laws that suppress opposition or dissent in the name of combatting “hate speech,” with David Kaye, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noting that “States often assert vague prohibitions on ‘advocacy of hatred’ that do not amount to incitement.”

Article 19 includes the right to “seek, receive and impart information and ideas through any media and regardless of frontiers.” Although individuals enjoy the same rights online as offline, states are also censoring, and sometimes criminalizing, a wide range of online content via vague or ambiguous laws prohibiting “extremism,” “blasphemy”, “defamation”, “offensive” language, “false news” and “propaganda”.

If journalists are attacked, spied on, jailed or even murdered when their quests for information are interpreted by governments or criminal enterprises as a threat, people may be unable to form an opinion or take informed decisions.

The Committee to Protect Journalists says that in 2017, 262 journalists around the world were thrown in prison, and Reporters Without Borders says 90 percent of crimes against journalists go unpunished. Even in democracies that pride themselves on

being free, demonization of journalists and allegations of “fake news”, and limitations on the protection of journalistic sources, are undermining their work.

As efforts to control speech and information increase, the UN Human Rights Office has provided guidance on how to distinguish free speech from hate speech through the Rabat Plan of Action, which suggests setting a high threshold for interpreting the restrictions set by international human rights law in restricting freedom of expression. Its six-part threshold test takes into account the context, intent, content, extent, speaker’s status and likelihood that the speech in question would incite action against the target group, and is being used in Tunisia, Côte d’Ivoire and Morocco, and by the European Court of Human Rights in a recent judgment on the *Pussy Riot* case.

To read the Rabat Plan of Action, visit:
https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

This is one in a series of articles published by the Office of the High Commissioner for Human Rights (OHCHR) to mark the 70th anniversary of adoption of the Universal Declaration of Human Rights on 10 December 1948. All rights enshrined in the UDHR are connected to each other, and all are equally important.

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