



# CHALLENGES IN FREEDOM OF SPEECH AND INTERNATIONAL HUMAN RIGHTS

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# 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, or of public health or morals.

# United Nations Mandate for Freedom of Expression

- **The Special Rapporteur is mandated by Human Rights Council Resolution 7/36:**

1. To gather all relevant information relating to the violation of freedom of expression, discrimination against, threats or use of violence, harassment, persecution, or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression.
2. To seek, receive and respond to credible and reliable information from entities who have knowledge of these cases
3. To make recommendations and provide suggestions on ways and means to better promote the right to freedom of opinion and expression in all its manifestations

- **Working Methods:**

1. Transmits urgent appeals and letters of allegation to Member States on alleged violations of the right to freedom of opinion and expression
2. Country visits (by invitation only)
3. Annual/Thematic Reporting

# Substantive Areas of Work

- Independence of media and protection of journalists
- Protection of dissent, members of vulnerable groups
  - i.e., online abuse against women, LGBTQ, etc.
- Freedom of online & digital rights
  - i.e., cybersecurity, content regulation, Internet shutdowns, etc.

# Overview – Communications

- A communication is a direct contact to a state regarding concerns of violations of the freedom of opinion and expression
- Three types of communications:
  1. Allegation letters
  2. Urgent Appeals
  3. Other – Legislative Suggestions

# Communication Example – South Korea

- Allegation letter to the South Korean government
- Artistic/Cultural blacklist under the authority of the Ministry of Culture
- Alleged 10,000 blacklisted artists who were politically “left-leaning”
- Impact: prohibits artists from state funding, participation from government-endorsed festivals, venues, etc.



# *Amicus Curiae* to the Constitutional Court of the Republic of Korea

- Filed May 2017
- Article 83(3) and 83(4) of the Telecommunications Business Act, which permits telecommunications operators to disclose customer identity data to select government authorities without a judicial warrant
- The Act:
  - *Provides the government and law enforcement comprehensive insight into an individual's online and offline identities, including their legal name, where they live and work, phone numbers, e-mail addresses, and user names – all without a proper judicial warrant*
- The Impact:
  - *Deters individuals from expressing themselves freely in private communications, creates a chilling effect that may have negative impacts especially on attorney-client relationships, journalists and their sources, whistleblowers, human rights defenders, and minorities and vulnerable groups*

# Analysis Under Article 19

- Warrantless access to customer identity data interferes with:
  1. Article 19(1) right to freedom of **opinion**
  2. Article 19(2) right to freedom of **expression** (\*including anonymous expression)
  3. Article 19(3) **provided by law**, which are **necessary and proportionate**
  
- Emerging global consensus against warrantless access to customer data
  1. *R v. Spencer* (Supreme Court of Canada, 2014)
  2. *Hun-Ma* (Constitutional Court of the Republic of Korea, 2010)