

Right to freedom of information, opinion and expression

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ICCPR Article 19 states:

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.

International scrutiny

The Human Rights Committee General Comment 10: Freedom of Opinion is brief and is copied in full below:

1. Paragraph 1 requires protection of the "right to hold opinions without interference". This is a right to which the Covenant permits no exception or restriction. The Committee would welcome information from States parties concerning paragraph 1.
2. Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to "impart information and ideas of all kinds", but also freedom to "seek" and "receive" them "regardless of frontiers" and in whatever medium, "either orally, in writing or in print, in the form of art, or through any other media of his choice". Not all States parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.
3. Many State reports confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law. However, in order to know the precise regime of freedom of expression in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.
4. Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.

Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for that State party for one of those purposes.

Complaints under the Optional Protocol

Freedom of expression under Article 19 has been considered through the complaints procedure under the Optional Protocol as follows

Coleman v Australia (2006)

The Committee's views and Australia's responses are available on the [Attorney-General's page on human rights communications](#).

Mr Coleman was convicted under Queensland law for giving a public address in a pedestrian mall without a permit.

The Committee rejected Australia's arguments that the complaint was inadmissible and unsubstantiated.

The Committee found:

- the author's arrest, conviction and sentence undoubtedly amounted to a restriction on his freedom of expression

- the restriction was prescribed by law

- while freedom of speech could be subject to restrictions in the interests of public order, these restrictions could not be such as to be incompatible with Article 19

- there was no evidence that Mr Coleman's conduct had been unduly disruptive

- the restriction applied to Mr Coleman was disproportionate

- there was thus a violation of Article 19.

In its response Australia rejected the Committee's finding of a violation and argued that the permit system in operation was necessary to protect the rights of other users of the mall.

Commission work

Submissions

Draft Commission submission on the Media Reform Bills Package (2013) is available:
[Download in Word](#) or [Download as PDF](#)

[Strengthening human rights education in the Civics and Citizenship curriculum](#) - August 2012

Human rights discussed: ICCPR Articles 2, 19, 25, ICESCR Article 2, UDHR Articles 6-11; 26; CRC Article 12; CERD, CEDAW, CRPD, CRC

[COAG Review of Counter-Terrorism Legislation](#) - September 2012

Human rights discussed: ICCPR Articles 2.3; 9.1, 9.4, 12, 17, 19, 22

[Review of Counter-Terrorism and National Security Legislation – Submission to INSLM](#)
September 2012

Human rights discussed: ICCPR Articles 2.3, 9.1, 9.4, 12.3, 14.3, 17, 19, 22; ICESCR Article 7

[Commission submission in Langer v Australian Electoral Commission](#) (1996)

Reports

- No. 34 - Report of an inquiry into a complaint by Mr Daniel Clark against the Minister for Foreign Affairs and Trade of a breach of his human right to freedom of expression (2006)
Withdrawal of invitation to Falun Dafa representative to attend human rights consultations: Falun Dafa protest outside same venue
Human rights considered: ICCPR Articles 19, 21
- No. 32 - Report of an inquiry into a complaint made on behalf of federal prisoners detained in New South Wales correctional centres that their human rights have been breached by the decision to ban distribution of the magazine 'Framed' (2006)
Breach of right to freedom of expression and information found; limitations in ICCPR Article 19.3 found not to apply
Human rights considered: ICCPR Articles 19.2, 19.3

Casenotes

Casenote: Monis v The Queen (March 2013)

In Attorney-General for South Australia v Corporation of the City of Adelaide and Ors a majority of the Court upheld a local government by-law prohibiting activities such as preaching or distributing pamphlets on public roads (such as footpaths or malls) without permission. The Human Rights Law Centre has criticised the decision on the basis that less restrictive measures could have been taken to protect the rights of other persons

In Monis v the Queen; Doudis v the Queen the Court divided 3 each way on whether provisions in the Criminal Code which prohibit using a postal or similar service in a way that "reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive" are consistent with the freedom of political communication which the Court has previously found to be implicit in the Constitution. The Commission has prepared a brief Casenote discussing the issues in this case.

Access and safety in online information and communication

As noted by the Human Rights Committee, Article 19 requires protection of the right to seek as well as impart information. It also applies to any media, and so applies to online information and communication as well as older media such as print, radio and television.

Cyber safety for older Australians

Submission to inquiry into Cybersafety for Senior Australians (January 2012)

Supplementary information to the Inquiry into Cyber Safety for Senior Australians (May 2012)

Press release supporting Committee recommendations (May 2013)

Media and information access for people with disability

See our media access and information access pages in the Disability Rights section of this site

Other issues

More links to the Commission's work on freedom of information, opinion and expression will be added here shortly