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**United Nations Human Rights Committee**

**Comments on Draft General Comment 34 on  
Freedom of Expression**

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This is an important addition to the Human Rights Committee's jurisprudence, and is to be welcomed by the international community. I have the following comments.

1. **Para 11:** I think the words after note 23 (ie. "although such ... and article 20) should be deleted. After all, all expression can be limited under 19(3) or 20, not just offensive speech. While it is true that offensive speech is more likely to be so limited, it shouldn't be singled out in this way. The paragraph makes it seem as if offensive speech can always be legitimately limited, which is not true.
2. **Para 12:** The reference at note 29 doesn't make sense. That case says nothing about freedom of expression in a particular location. I think you mean the earlier Zundel (communication 953)
3. **Para 19:** if one's details as held by the government are incorrect or processed unlawfully, shouldn't one have the right to *demand* rather than merely *request* rectification or elimination?
4. **Freedom of information in general:** it would be good if the Committee could say something about whistleblowing, obviously a hot topic in today's Wikileaks world. Ie – that there should be minimum protections for legitimate whistleblowers, who reveal, eg, government malfeasance or corruption.
5. **On 19(3):** it would be good for the HRC to give guidance on how, if at all, *ordre public*, differs from "public order". If it does not, make that clear. This issue is not unique to Article 19, but this Comment could start to redress the absence of any explanation of this term in the HRC's jurisprudence.
6. **Para 25:** I don't understand the reference to "customary law" nor the footnote to GC 32 on fair trials (though I realise that GC refers to customary or religious courts). I agree that customary rules dictated by customary or religious courts should not limit freedom of expression. But what about common law? It should be made clear that these are allowed, or not allowed – common law is not mentioned at all.
7. **Para 29:** The HRC should make it clear that the "rights of others" refers to the "human rights of others". Ie. Freedom of expression can't be limited under this ground by a "right" that is less than a human right. To give an example, in *Wingrove v UK*, ECHR, freedom of expression was limited on the ground of the right of others not to be offended on religious grounds. To my mind, that is *not* a human right. It is not pleasant to be offended, but there is no human right to freedom from offence (whether on religious or other grounds). If a restriction can't be justified as one of public morals, or some other enumerated limitation, it can't come under "rights of others" unless the restriction proportionately protects other *human* rights.
8. Given its prominence in debate in the Human Rights Council, I would like the HRC to reject the notion of "defamation of religions" as either a separate permitted restriction on Article 19 or a compulsory restriction on freedom of expression. Defamation of religion can overlap

with other permitted restrictions (eg protection of public morals), and might equate with hate speech on occasion. But there is no need for it to be recognised as a separate category of restriction on freedom of expression (whether mandatory or permissible). The concept in fact represents a serious threat to true freedom of expression.

9. **Para 41:** The HRC is implying that different restrictions apply according to whether speech is in print, is broadcast, or is on the internet. It should give an example of the types of differences it is alluding to.
10. **Para 51:** I don't think this paragraph is particularly clear. What does the second sentence mean? Are holocaust denial laws an example of "general prohibitions on expression of historical views"?
11. The scope of Article 20 is very important in the context of freedom of expression. I think it is a good idea if the next General Comment deals with Article 20.