



## **Karlsruhe Model United Nations**

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**Human Rights Council**

Study Guide

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## The United Nations Human Rights Council

### Committee Introduction

The Human Rights Council is the principal intergovernmental body responsible for strengthening the promotion and protection of human rights around the world within the system of the United Nations as well as taking action on human rights violations.

The Council held its first meeting in 2006 in the United Nations Office in Geneva, Switzerland with Mr. Luis Alfonso de Alba from Mexico being its first president. Currently the presidential seat is taken by Mr. Joaquín Alexander Maza Martelli from El Salvador since 1st January 2017. The place of meeting is unchanged since the formation of the body.

The Council is made up of 47 Member States (so-called Council Members), being elected by the UN General Assembly with simple majority voting procedure. Each member is elected for the term of three years, with one-third of the committee being renewed each year. Council membership is based on geographical distribution, with African States and Asia-Pacific States each being given 13, Latin-American and Caribbean States being given 8, Eastern European States owning 6 and Western European and other States owning 7 seats. The so-called Bureau consists of the president and the four vice-presidents, each of them representing one of the abovementioned regions. Bureau members serve for one year only, from January until December annually.

The Council can adopt texts with or without votes. During the voting procedure, only Council Members can vote. The decisions are not legally binding thus they are not enforceable. The Human Rights Council adopted over 1300 texts between 2006 and 2016 to address both thematic or country-specific human rights issues.

Apart from the abovementioned scope of duties, an important component of the council's work is the review of all United Nations member states about the current situation of human rights, called Universal Periodic Review.

The Council also has a vast group of independent experts who serve as the ears and eyes of the council, with the opportunity to examine, advise and report further information about human rights violation in specific countries and hot-spots. Furthermore, the Council is empowered to establish international commissions of inquiry, fact-finding missions and investigation in order to respond to human rights violations more effectively, help expose the violators and bring them to justice.

## Notes from the Chairs

Honored Delegates,

It is undeniably an absolutely heartwarming pleasure to welcome you to the United Nations Human Rights Council at KaMUN 2018.

This year's simulation has two exiting topics in store for you: Issues of the Indigenous Communities, and Freedom of Expression in a Digital Age.

The importance of the expression of your opinion, principally in the realms of foreign policy and global diplomacy carries immense value, irrespective of the level of diversity and the number of individuals that may be present to witness your opinion. The Model United Nations platform is not just limited to representing countries, participating in rhetoric and socializing, the objective essentially is to step forward and comprehend the complexities of decision-making and bilateral policy structures.

The success of this conference will not be defined by how much voice an individual raised, but the extent of knowledge and the level of understanding he established of as to why global leadership take enigmatic decisions, which may in fact be an essential step towards the survival and sovereignty of a Nation.

You may have already noticed that the language in this letter seems a bit different than the English you are used to. This is not because we think it is important to appear as intelligent as possible through using uncommon expressions; it is the working style and language of the UN. MUN has adopted this style, so during the conference you will encounter a lot of seemingly "posh" and "stuck-up" phrases. Do not worry, you will get the hang of it very soon.

We have done our best to keep the discussions as accessible as possible, including for those of you who do not have a background related to the subjects and are new to the world of MUN. This study guide is designed to be the starting point of your research. It gives you an introduction to the topic, but does not include specific countries' positions and cannot explore the depths of each issue. That being said; please read the study guide carefully and prepare yourself for your country's position with extensive additional research.

For most of you, this MUN will be the first one, so always keep in mind: You are not the only first-timer here, nobody is perfect. Just be courageous! MUN is all about coming up with creative new solutions and having fun. Do not hesitate to share even the most curious possible solutions with the committee, and do not be afraid of making mistakes.

If you have any questions about what is in this guide, please do not hesitate to contact us. We will be more than happy to answer your questions.

We are looking forward to seeing you at the end of November!

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## Topic A: “Rights of the Indigenous Communities”

### Introduction

Indigenous communities live throughout the whole world, from Canada to Australia, from Argentina to India. They live in over 70 countries worldwide, making a group of over 370 million people. However, the definition of ‘indigenous’ is still not adopted by the United Nations due to the complexity of this term. As commonly accepted, an indigenous community is a particular locality, being a non-dominant group of the society originating from pre-colonial or pre-settler ages, which developed its distinct language, culture and beliefs, with individuals identifying themselves as members of the community and trying to maintain or re-establish their ancient circumstances of living.

Struggling to define this term, the United Nations concluded that it would be more appropriate to identify indigenous people rather than try to define them. Although self-identification is a basic human right, oppression and negative connotations often lead to denial of origins. Apart from the term ‘indigenous’, the following expressions can also be used to refer to groups meeting the abovementioned criteria: tribes, first nations, aboriginals, ethnic groups, hunter-gatherers, peasants, nomads and hill people.

Losing their dominance during history, many indigenous tribes have to face inequality in the country they live in. Although their ancestral land plays a fundamental role in their cultural and physical survival, many of them face growing territorial limitations and outsourcing. Also, these communities are often the neglected segments of societies, not having given the opportunity of self-determination, political representation and participation, or access to social services. Furthermore, both their individual wealth and life-expectancy are usually below average and they often face severe discrimination.

### UN and Indigenous Communities

The United Nations has already stepped on the path of seeking equality between indigenous and non-indigenous peoples. The United Nations Permanent Forum on Indigenous Issues (UNPFII) was established in 2000 with the mandate to handle indigenous issues related to (mostly) social and economic development, human rights, health and culture. The forum is gathered once in every year since 2002. The next, 17th session of UNPFII will be held in New York in April 2018, with the special topic of “Indigenous peoples’ collective rights to lands, territories and resources.”

### UNDRIP and First World Conference on Indigenous People

In 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly. It was voted in favor with 144 states supporting the resolution. However, the United States of America, Canada, New Zealand and Australia voted against the document and 11 states abstained, such as the Russian Federation, Nigeria and Colombia. However, not being legally binding, the declaration only sets a standard for the treatment of such tribes and encourages its member states

to follow it while focusing on basic human rights, such as the right to culture, identity, language, employment, education and health.

Following this path, the first World Conference on Indigenous Peoples was held in New York in 2014. The meeting was preceded by an informal interactive hearing with representatives of indigenous peoples and UN entities, as well as academic institutions, human rights institutions civil societies and non-governmental organizations. Keeping this informal meeting in mind, the General Assembly submitted a draft resolution during the World Conference. This draft welcomes the Global Indigenous Preparatory Conference (held in Norway in 2013) and recall the major achievements in building an international framework for the advancement of the rights and aspirations of the world's indigenous people. Although strong commitment to future cooperation with aboriginal tribes is reaffirmed, the draft resolution also encourages its member states that not yet ratified or acceded to the International Labor Organization Indigenous and Tribal Peoples Convention (1989) to do it so, as common understanding is extremely important within member states to develop coordinated and systematic action to protect the rights of indigenous peoples.

### Core Issue

Unfortunately, expectations of improvement in cooperation are not fully met. Despite having signed or even ratified all the above mentioned agreements, human rights of indigenous communities are still oppressed by some governments. According to the 'Foreign Agent' Law of the Russian Federation, many groups have been given the accusative title of being a 'foreign agent' as they have received funding from foreign sources while showing political activity. Along with over 80 other organizations, the interregional public organization Center for Assistance to Indigenous Peoples of the North and the non-profit organization International Foundation for Development of the Indigenous Peoples of the North, Siberia and the Far East 'Batani' have been given this discriminative legal title.

According to a study delivered in 2010, an estimated 45 million indigenous people live in Latin America, accounting for over 8% of the region's population. They are officially present in most countries but their ratio in society differs vastly: in Bolivia, they made up 62% of the whole population in 2010 while in Brazil an estimated 0.5% of the society referred to themselves as indigenous, the total of 900,000 individuals. Most of the indigenous communities in Latin America face massive degradation as their territories are taken away by the local governments to outsource the natural resources of the lands, especially at the Amazonas. Some of the conflicts led to aggression, for example in Peru, where the Interethnic Association for the Development of the Peruvian Rainforest (AIDSEP) denied access to their territories to local authorities and claimed to protect themselves against the government with weapons if necessary in 2010. AIDSEP leader Alberto Pizango was sentenced to expulsion to Nicaragua after the deadly clash between indigenous communities and local authorities, ending in the death of 10 indigenous individuals and 23 police officers.

Unfortunately, such happenings do not tend to stop. In September this year, 10 members of an uncontacted indigenous tribe have been found murdered at the Jandiatuba River, the Amazonas state of Brazil. This has been the largest mass execution of aboriginals in Brazil since 1993. The situation is tense at the border of lands currently controlled by indigenous tribes, as the government's budget cuts leave

gold miners in an unbearable position. Due to this, the number of invasions in the indigenous lands of Vale do Javari has been increasing. Apart from the economic crisis, this situation is also due to the fact that this vast territory of indigenous people is secured only by 10 officials. It is no doubt that the incoming miners mean huge risk to uncontacted tribes, as they are more vulnerable to violence and diseases.

Human rights of first nations are often disrespected Africa as well. In Namibia, a state report claimed to try to „civilize” indigenous communities within the borders. After this derogatory wording has been condemned by many international organizations such as the African Commission, the Namibian government handed out a new statement in 2014, which reaffirmed the use of „civilize” although it has been completed with a note stating that the use of term is unfortunate and the message is to improve the quality of life of the so-called San community. In Algeria, Amazigh tribes are not recognized as indigenous by the government, although they have been living in 5 major territories in the country since ancient times, speaking different language and following unique traditions and lifestyle. Anti-Amazigh laws are still in force, such as the Law of Arabization from 1992. Officially, Algeria ratified the abovementioned international agreements on the treatment of ethnic tribes, however, the text is still not accessible by the majority of Algerian citizens, and thus it is not applied.

Sadly, Algeria is only an example of how many African governments treat indigenous tribes living within the countries’ borders. In general, it can be stated that many ethnic tribes are not recognized by the state or if so, they tend to live in oppression and deep poverty. Also, the lack of statistics and basic data about African first nations makes it extremely tough for international organizations to make estimations about the amount of such tribes, as well as the number of individuals claiming to belong to these. Unfortunately, without the help of the local governments it is almost impossible to efficiently improve the life-quality of aboriginal individuals in the African continent.

However, some African countries stepped on the path of peaceful discussion and agreement between local authorities and indigenous tribes. In Rwanda for example, the formal distinction between groups according to their origins was realized to have been unproductive and vastly discriminative, thus the government adopted a new policy, according to which, there is only one Rwandan community, composing of all Rwandans.

### History of Strategies and Measures Instigated

In the USA, the status of indigenous tribes became again more insecure after the futurization of President Donald Trump who has not dealt with any indigenous-related issues during his campaign, thus it remained unclear what the change can bring to first nations. However, aboriginal tribes can only hope that the new President will step in the path of his predecessor, Barack Obama, who enacted two important measures in order to save the indigenous landscapes from energy development: Chukchi territories and the Beafort Seas were closed to off-shore drilling and the Bears Ears area (Utah) was declared a National Monument. Hopefully this path will not be abandoned by future presidents of the USA, although the current situation is rather terrifying: Ryan Zinke, the current leader of the Department of Interior promotes the export of Montana coal, much of it from indigenous reservation. Similar cases are not rare in the USA.

In April 2016, the Standing Rock Indian Reservation protests started against the planned Dakota Access Pipeline, which would have carried oil from North Dakota through South Dakota and Iowa until Illinois. Although the route would have not crossed the territory of the Indian Reservation, locals and supporters worried about the safety of the close burial sites. In July, the Standing Rock Sioux Tribe sued the US Army Corps of Engineers for ignoring laws requiring consultations with tribes over sacred sites. More tribes and individuals joined the case and eventually, thousands of people started camping on Corps lands. Seeing this movement as threatening presence, the local authorities were sent help from other states. Regular conflicts were carried out with human rights being oppressed. Indigenous people were attacked by police dogs and were beaten up severely. After all, the Standing Rock tribes with other aboriginal supporters appeared before the Inter-American Commission on Human Rights to call the United States to prevent further irreparable harm to Tribes and their members. The outcome of this situation is still not clear.

In Australia, new studies found that aboriginals have been living on the continent for over 50.000 years, ruling the majority of livable territories. Today, however, almost 50% of them live in the bigger cities, contributing in every area of public, social and community life. Despite their close co-operation with non- native people, the gap in life-expectancy, education, health and employment between the indigenous and non- indigenous remains unacceptably wide.

## Conclusion

Solutions to such issue as human rights violations can never be reached by single states, they require international cooperation. The United Nations Declaration on the Rights of Indigenous Peoples stated in Articles 41 and 41 that the already existing organs and bodies of the United Nations (such as PFII and HRC) should contribute to the realization of the declaration's provisions. Fellow contribution has been proposed by the recently-established Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. Apart from these UN-based bodies and organs, several international organizations have been founded in the last decades. One of the most diverse community is the International Work Group for Indigenous Affairs (IWGIA) which is dedicated to promoting, protecting and defending native tribes' rights. This work group mostly concentrates on land rights, climate actions and human rights violations. Every year, the IWGIA announces a global report on the current rights of indigenous tribes, called the Indigenous World which closely follows the human rights issues in several states.

Apart from indigenous-focused organizations, several commissions take action in promoting native peoples' rights and contribute to the prevention or restraint of human rights violations. The African Commission on Human and Peoples' Rights closely follows the UN-based discussions about the situation of native tribes in the African continent.

## Questions a Draft Resolution Must Answer:

- How can the basic human rights be given to the increasing number of indigenous communities across the world?
- Is UN doing enough to handle the increasing number of indigenous community crisis?
- Are there enough international organizations working with UN to help curb the indigenous crisis?
- Do the states with large population of indigenous people have enough resources to accommodate and support the indigenous communities?
- What additional measure must be taken in order to give full financial support to the regions of such communities?
- Are the current living standards good enough to support the lives of indigenous people across the world?
- How can the current living environment of such communities be improved?
- Are there enough infrastructures to host the increasing number of indigenous people in their regions?
- Are there enough recognized international platforms where these people may directly communicate their issues? If yes, then how can we fund such organizations?
- What new strategies do we need to implement in order to seek the progress of Governmental and Non-governmental organizations working for the indigenous communities?

## Topic B: “Freedom of Expression in a Digital Age”

### Introduction

It is impossible to not communicate. Even when we say or do apparently nothing, we are expressing our stance to the world. Similar to the right to life, communication is attached to us until we die. While one is easily led to only focus on censoring in totalitarian regimes, the issue impacts people around the world, regardless of nationality, gender or socio-economic status. This might be one of the reasons why freedom of expression is regarded as one of the oldest and most valued human rights in the international society<sup>1</sup>.

Freedom of Expression as a human right is enshrined in article 19 of the *Universal Declaration of Human Rights* (UDHR). It states that „Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”<sup>2</sup>. The term freedom of speech is oftentimes used synonymously, but excludes the acts of seeking and receiving information and ideas and does not include every medium to express oneself with. To understand the debate around freedom of expression and speech one has to understand that expression encapsulates a wide range of activities: “speaking, writing, singing, acting, burning flags, yelling on the street corner, advertising, threats, slander and so on”<sup>3</sup>.

According to Andrew Puddephatt<sup>4,5</sup>, the term freedom of speech is mostly used in a western context. He defines it as “the civil libertarian right to be left alone to say what you like without censorship. It implies that the highest state of being is the absence of the state”<sup>6</sup>. In contrast, he defines freedom of expression as not only a human right, but also as one that requires state action to enact<sup>7</sup>.

In international human rights law freedom of expression is recognized in article 19 of the *International Covenant on Civil and Political Rights* (ICCPR) which amends the definition of the UDHR by stating that “The exercise of [these] rights [...] 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 []

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<sup>1</sup> Andrew Puddephatt, “The Essentials of Human Rights: Free Speech, Human Rights And Western Values?,” (Centre for the Study of Human Rights at the LSE, October 28, 2003).

<sup>2</sup> *The Universal Declaration of Human Rights* (2005).

<sup>3</sup> David van Mill, “Freedom of Speech,” <https://plato.stanford.edu/entries/freedom-speech/> (accessed October 28, 2018).

<sup>4</sup> Chair of the Internet Watch Foundation which helps prevent child sex abuse online, Board Chair of the Board of Global Partners Digital focusing on human rights implications of internet policy. Also Deputy Chair of the Sigrid Rausing Trust and management committee member of European Council of Foreign Relations.

<sup>5</sup> Andrew Puddephatt, “Andrew Puddephatt,” <https://de.linkedin.com/in/andrewpuddephatt> (accessed October 18, 2018).

<sup>6</sup> Andrew Puddephatt, “The Essentials of Human Rights: Free Speech, Human Rights And Western Values?”.

<sup>7</sup> Ibid.

for the respect of the rights or reputations of others [...] [and] for the protection of national security or of public order, [...] health or morals”<sup>8</sup>.

## Historical Background

The history of freedom of expression predates the concept of human rights<sup>9</sup>. It dates back to Ancient Greece, where the principle may have emerged as early as in the 5<sup>th</sup> or 6<sup>th</sup> century BC<sup>10</sup>. In the Roman Empire it was included in the set of values<sup>11</sup>. From those early traces on, concepts of freedom of expression and speech can be found in various early human rights documents<sup>12</sup>. The issue was anchored in national law before it was brought to the international floor<sup>13</sup>. In 1689 the British Bill of Rights granted freedom of speech in parliament as a constitutional right; in 1789 the *Déclaration des droits de l'homme et du citoyen* (engl. The Declaration of the Rights of Man) granted freedom of speech<sup>14</sup>. Two years later, the 1<sup>st</sup> Amendment to the *Bill of Rights* in the United States of America provided five freedoms, including freedom of speech and freedom of the press<sup>15</sup>.

Today, freedom of speech and expression are recognized and anchored in various international and regional human rights law documents. As mentioned above, the right is enshrined in art. 19 of the UDHR and ICCPR. Apart from these documents, it is imbedded in art. 10 of the *European Convention on Human Rights* (ECHR), art. 13 of the *American Convention on Human Rights* as well as art. 9 of the *African Charter on Human and Peoples' Rights*<sup>16</sup>.

Ensuring both freedoms has been on the agenda of the United Nations Human Rights Council (UNHRC) and its predecessor, the United Nations Commission on Human Rights, for a long time. The latter addressed the issue by establishing the mandate of the *Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* in 1993 in its resolution 1993/45<sup>17</sup>. The UNHRC then decided to extend the mandate for a period of three years multiple times through resolutions 7/36, 16/4, 25/2<sup>18</sup>. The latest renewal of the mandate took place on the 21th of March 2017 with resolution 34/18<sup>19</sup>. In August 2014 David Kaye has been appointed this position<sup>20</sup>.

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<sup>8</sup> *International Covenant on Civil and Political Rights* (1966).

<sup>9</sup> David Smith and Luc Torres, “Timeline: A History of Free Speech,”  
<https://www.theguardian.com/media/2006/feb/05/religion.news> (accessed October 28, 2018).

<sup>10</sup> Kurt A. Raaflaub, Josiah Ober and Robert W. Wallace, *Origins of Democracy in Ancient Greece*, Joan Palevsky imprint in classical literature (Berkeley: University of California Press, 2007),  
<http://www.jstor.org/stable/10.1525/j.ctt1pp9pt>.

<sup>11</sup> M. P. Charlesworth, “Freedom of Speech in Republican Rome,” *The Classical Review* 57, no. 01 (1943).

<sup>12</sup> David Smith and Luc Torres, “Timeline: A History of Free Speech”.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Andrew Puddephatt, *Freedom of Expression*, The Essentials of Human Rights (Hodder Arnold, 2005).

<sup>17</sup> United Nations Human Rights Office of the High Commissioner, “Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression,”  
<https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx> (accessed October 27, 2018).

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

## Types of Human Rights

Before we focus on the ways in which the freedom of expression can be restricted, we should focus on the different categories of human rights, their characteristics and how freedom of expression relates to other rights.

Human rights are the essential and basic rights inherent to all human beings regardless of their “nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status”<sup>21</sup>. They are considered fundamental for modern, fair and just societies as well as for democracies<sup>22</sup>. However, these rights are prioritized in relation to each other and may or may not be limited. Human Rights are classified into *absolute rights*, *qualified rights* and *limited rights*. The possibility to restrict rights within these categories increases from the absolute to the limited rights.

*Absolute Rights* cannot be interfered with, restricted or limited by national governments or international institutions in any way (e. g. slavery, torture, inhumane or degrading treatment)<sup>23</sup>.

*Qualified Rights* can be interfered with in special circumstances and only when necessary. “The interference must fulfil a pressing social need; pursue a legitimate aim; and be proportionate to the aims being pursued. An example would be government restrictions on the right to assembly and association, in order to calm a riot”<sup>24</sup>.

*Limited Rights* such as liberty, expression or movement can be interfered with, restricted by, limited or amended by governments because these rights come with “expressed or implied exceptions”<sup>25</sup>.

Within one right, there can also be different ‘categories’ even though there is no official scale for them. Some “forms of communication are more important than others and hence require different levels of protection”<sup>26</sup>. Criticizing a government, for example, is considered to be more important than the act of an artist offending an audience through their art<sup>27</sup>. “If two speech acts clash (when yelling prevents a political speech) a decision has to be made to prioritize one over the other, which means that there can be no unlimited right to free speech”<sup>28</sup>.

## Limitations and Restrictions

The rights to freedom of expression and speech are closely related to and critical for upholding other freedoms and rights such as the right to a fair trial, the freedom of thought, conscience and religion or

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<sup>21</sup> United Nations Human Rights Office of the High Commissioner, “What are Human Rights,” <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (accessed October 27, 2018).

<sup>22</sup> Cayman Islands Human Rights Commission, ed., “Human Rights Essentials: A Guide for Mental Health Practitioners in the Cayman Islands”.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> David van Mill, “Freedom of Speech”.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

the right to privacy<sup>29,30</sup>. Since it is so closely related to other rights and competing values, societies impose certain limits on its exercise<sup>31</sup>. Because the right to freedom of expression is classified as a limited right, it may be restricted when it conflicts with other rights<sup>32</sup>. Such rights include aforementioned or instances when the freedom of expression relates to defamation, pornography, violation of intellectual property, territorial integrity, incitement to violence, maintenance of the authority and impartiality of the judiciary or prevention of the disclosure of information received in confidence, etc.<sup>33,34,35</sup>. For an example, a limitation (e. g. through blasphemy laws) may be necessary in order to allow people to practice their religious beliefs without interference<sup>36</sup>.

The two most well-known principles to justify the limitation of freedom of expression are the harm principle and the offense principle. The harm principle proposed by John Stuart Mill argues that freedom of expression may only be restricted against somebody's will in order to prevent harm to others<sup>37</sup>. With this principle the restrictions imposed on freedom of expression will be very slim because it is difficult to prove that the majority of communication causes direct harm to the rights of others<sup>38</sup>.

The offense principle, as proposed by Joel Feinberg, developed in response to the claims that harm principle would not reach far enough<sup>39</sup>. He suggested that the harm principle needs assistance by the offense principle in some instances<sup>40</sup>. The principle allows prohibiting some forms of expression because they are offensive<sup>41</sup>. Because offending someone is less serious than harming someone the penalties should not be severe<sup>42</sup>. It is difficult to apply this principle, because there is no scale for offense (i.e. people are offended to different degrees by different things) and it is often regarded as "the result of an overly sensitive disposition, or worse, because of bigotry and unjustified prejudice"<sup>43</sup>.

Nevertheless, the offense principle is wildly applied in western democracies where actions that do not fall under the harm principle are penalized<sup>44</sup>. Van Mill offers indecent exposure or sexual engagement in public as examples<sup>45</sup>. Some use the principle as an incentive to self-censor themselves either as a form

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<sup>29</sup> Open Society Foundations, ed., "Freedom of Expression Rights in the Digital Age," , special issue, *Mapping Digital Media*, no. 6 (2011).

<sup>30</sup> Jyoti Panday, "Freedom of Expression in a Digital Age: Effective Research, Policy Formation & the Development of Regulatory Frameworks in South Asia," , <https://cis-india.org/internet-governance/events/freedom-of-expression-in-digital-age> (accessed October 12, 2018).

<sup>31</sup> David van Mill, "Freedom of Speech".

<sup>32</sup> Cayman Islands Human Rights Commission, "Human Rights Essentials".

<sup>33</sup> Valerie Finch and John McGroarty, *Qualified Rights*, Human Rights Law Essentials (Edinburgh UP, 2010).

<sup>34</sup> Andrew Puddephatt, *Freedom of Expression*.

<sup>35</sup> Open Society Foundations, "Freedom of Expression Rights in the Digital Age".

<sup>36</sup> Valerie Finch and John McGroarty, *Qualified Rights*.

<sup>37</sup> David van Mill, "Freedom of Speech".

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

of protest against restrictions or in order to remove any form of controversial expression before they are forced to do so<sup>46</sup>. This form of censoring has been especially strong on college campuses<sup>47</sup>.

Possibilities for restrictions have been carefully defined in international human rights and national law<sup>48</sup>. The restrictions are enforced through national or international courts whenever deemed appropriate<sup>49</sup>. However, freedom of expression may not be completely restricted, even in times of emergency, to still allow for public debate<sup>50</sup>.

## Shaping Societies

### Democracy

That is because apart from preserving various rights, freedom of expression is widely regarded as the fundament for “a healthy society and a robust democracy”<sup>51</sup>. Alexander Meiklejohn, a philosopher, educator and free-speech advocate<sup>52</sup>, argued that the central notion of democracy is the self-government of people. The government as the servant and representative of people should not be allowed to censor them<sup>53</sup>. In order for the concept to work, electors need to be informed and knowledgeable which is only possible without limitations on free speech<sup>54</sup>. If the ruling power imposes limitations or influences the flow of information by changing or withholding information democracy will not be true to its core idea<sup>55</sup>. The motives for manipulation can range from securing power to benefiting the society.

Apart from laying the foundation for democracy, freedom of speech helps to maintain it. According to research by the World Bank, freedom of speech impacts the quality of governance of a country<sup>56</sup>. It takes part in providing a balance between change and stability by allowing people to express their discontent verbally instead of revolting<sup>57</sup>. Opposition and open discussion as well as the development of

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<sup>46</sup> Jeffrey Herbst and Geoffrey R. Stone, “The New Censorship on Campus,” <https://www.chronicle.com/article/The-New-Censorship-on-Campus/240269> (accessed October 28, 2018).

<sup>47</sup> Ibid.

<sup>48</sup> Open Society Foundations, “Freedom of Expression Rights in the Digital Age”.

<sup>49</sup> Ibid.

<sup>50</sup> Sebastian Brett, *Limits of Tolerance: Freedom of Expression and the Public Debate in Chile* (New York, London: Human Rights Watch, 1998).

<sup>51</sup> Open Society Foundations, “Freedom of Expression Rights in the Digital Age”.

<sup>52</sup> Amherst College, “About Alexander Meiklejohn,” <https://www.amherst.edu/campuslife/careers/post-graduation-planning-for-first-generation-and-or-low-income-students/meiklejohn-fellows/about-alexander-meiklejohn> (accessed October 25, 2018).

<sup>53</sup> Lawrence Alexander and Paul Horton, “The Impossibility of a Free Speech Principle,” *Northwestern Law Review* 75, no. 5 (1984),

[https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/illlr78&id=1331&men\\_tab=srchresult](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/illlr78&id=1331&men_tab=srchresult)

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<sup>54</sup> Randal Marlin, *Propaganda and the Ethics of Persuasion* (Peterborough, Ontario, New York: Broadview Press, 2003).

<sup>55</sup> Ibid.

<sup>56</sup> The World Bank, ed., “A Decade of Measuring the Quality of Governance,”

<sup>57</sup> Randal Marlin, *Propaganda and the Ethics of Persuasion*.

knowledge enable politics and therefore countries to progress<sup>58</sup>. For those and other reasons, defending the democracy to defend freedom of speech or expression is a common practice in western democracies<sup>59</sup>. Likewise, defending freedom of expression allows a society to support another important value: the ideal of democracy<sup>60</sup>.

### Freedom of the Press

In this context the freedom of the press and the freedom of expression serve an equally important role. The press symbolizes the freedom of expression for all in sharing information, allowing the public to seek and receive it as well as enabling them to spread matters of attention. Together, both freedoms provide citizens with a variety of “reliable and abundant information”<sup>61</sup> that enables them to form an opinion on political matters as well as inform themselves about political parties. A healthy democracy that represents the interests of its governed can form on this basis.

However, freedom of expression and freedom of the press do not necessarily co-exist. In other words, freedom of the press does not necessarily enable freedom of speech and the other way around. The press may confine freedom of expression, for example through suppression of information<sup>62</sup>. Furthermore, only the opinions of those who can afford it may be portrayed<sup>63</sup>.

While freedom of expression and freedom of the press are certainly not the same, they do influence and can sometimes indicate the status of each other. According to the latest *Freedom of the Press Report* “the global press freedom declined to its lowest point in 13 years in 2016”<sup>64</sup> because journalists and outlets have been threatened or are state controlled<sup>65</sup>. The report also found that only 13% of the world’s population lives in countries with a free press while 45% of the population lives in ones where there is no free press<sup>66</sup>. The findings also pay attention to the role of politics in relation to the press. The report dedicates an entire section to the decline in freedom of the press resulting from Trump’s and similar administrations around the world as well as the #fakenews movement.

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> David van Mill, “Freedom of Speech”.

<sup>61</sup> Open Society Foundations, “Freedom of Expression Rights in the Digital Age”.

<sup>62</sup> Karen Sanders, *Ethics & Journalism* (London, Thousand Oaks, Calif: Sage, 2003), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=10369635>.

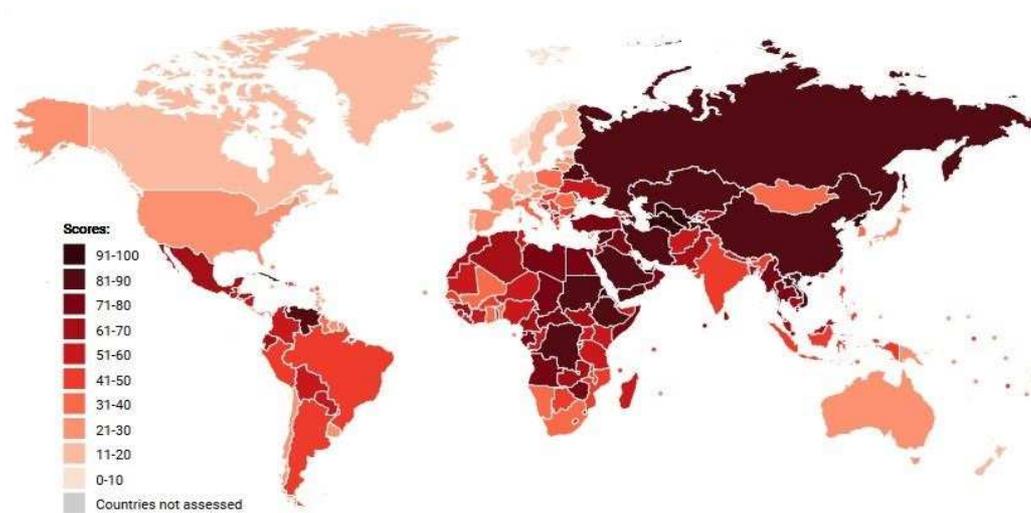
<sup>63</sup> Ibid.

<sup>64</sup> Freedom House, “Freedom of the Press 2017,” <https://freedomhouse.org/report/freedom-press/freedom-press-2017> (accessed October 28, 2018).

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

## Freedom of the Press 2017 by Score



Freedom of the Press Score: 0 = Most Free, 100 = Least Free

Retrieved from: <https://freedomhouse.org/report/freedom-press/freedom-press-2017>

## Digital Space and Emerging Technologies

The *World Summit on the Information Society Declaration of Principles*<sup>67</sup> adopted in 2003 describes the internet as a central opportunity for the freedom of expression due to its accessibility<sup>68</sup>. According to Jon Glanville, editor of the Index on Censorship, “the internet has been a revolution for censorship as much as for free speech”<sup>69</sup>. While digital communication does not change the basic principles of freedom of expression and its limitations in a fundamental way, it does create new forms of expression and censorship<sup>70</sup>. It transformed communication from being local to being global, making vast volumes of content available<sup>71</sup>. Simultaneously, the entry costs and barriers decreased significantly. Both lead to a “democratization’ of freedom of expression”<sup>72</sup> where everyone instead of just an elite group comprised of “journalists, publishers, media owners [and] government censors [] determined who wrote for [the] public”<sup>73</sup>.

<sup>67</sup> “The Information Society (WSIS) was a two-phase United Nations-sponsored summit on information, communication and, in broad terms, the information society”

<sup>68</sup> Andrew Murray and Mathias Klang, *Human Rights in the Digital Age* (London, Portland, Or: GlassHouse, 2005), <http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=596119>.

<sup>69</sup> Jo Glanville, “The Big Business of Net Censorship: Clamping Down on Free Speech on the Internet Has Been a Lucrative Enterprise for Software manufacturers,” <https://www.theguardian.com/commentisfree/2008/nov/17/censorship-internet> (accessed October 27, 2018).

<sup>70</sup> Open Society Foundations, “Freedom of Expression Rights in the Digital Age”.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

It not only changed how and which people could express themselves, but also how and who could censor them<sup>74</sup>. The power players now not only include “media magnates, the state [and] corporations”, but also a lot of middlemen<sup>75</sup>. There is no single entity that governs and controls the internet which led to a “jurisdictional vacuum over content on the web”<sup>76</sup>. If there is a need to restrict or censor content on the internet it is unclear how to do so, because “there is no means of regulating content internationally, nor any consensus on the norms that need to be applied”<sup>77</sup>. This vacuum resulted in intense political and social pressure for companies like Facebook or YouTube to remove offensive material<sup>78</sup>.

Apart from that, blocking material is oftentimes inaccurate and ineffective. Sometimes blocking mechanisms used to hide offensive or illegal material can be used to locate and then access it<sup>79</sup>. In addition, the list of blocked sites by software is so secret that the companies and countries that use such technology do not know which sites are censored because the lists are intellectual property of the respective companies<sup>80</sup>. The lists are additionally protected by national law such as the US Digital Millennium Copyright Act which prohibits people from examining the lists of blocked sites<sup>81</sup>. As a result, censorship is becoming a commercial enterprise<sup>82</sup>.

Authoritarian regimes use those blocking and filtering programs in order to restrict the content their public can access<sup>83</sup>. The probably most well-known example is the Golden Shield project (which includes the great firewall of China) of the People’s Republic of China<sup>84</sup>. In times of perceived crisis some even shut down the access to the internet and messaging services completely<sup>85</sup>.

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<sup>74</sup> Jo Glanville, “The Big Business of Net Censorship”.

<sup>75</sup> Ibid.

<sup>76</sup> Open Society Foundations, “Freedom of Expression Rights in the Digital Age”.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Jo Glanville, “The Big Business of Net Censorship”.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Elizabeth C. Economy, “The Great Firewall of China: Xi Jinping’s Internet Shutdown,” <https://www.theguardian.com/news/2018/jun/29/the-great-firewall-of-china-xi-jinpings-internet-shutdown> (accessed October 28, 2018).

<sup>85</sup> Nicholas Bariyo, “Democratic Republic of Congo Extends Internet Blockage,” <https://www.wsj.com/articles/congo-blocks-internet-access-amid-protests-against-president-kabila-1421938042> (accessed October 28, 2018).

## Guiding Questions

- What actions were taken by your country in order to promote and support or diminish freedom of expression?
- Which limitations on freedom of expression/freedom of the press are in place in your country? How has technology impacted these limitations?
- What are indicators and conditions for a high level of freedom of speech? How does your country foster such conditions?
- How does your country protect free speech advocates?
- How does the way things are expressed on the internet (polarization, exaggeration, fake news...) vary from how they were expressed traditionally? What are the effects on society?
- What is your nation's stance on whistleblowers?
- In how far does this new freedom on the internet impact (inter)national politics? (e.g. polarization, networking of terrorist groups, influence of parties...)
- What is the effect on news not necessarily being edited by journalists any longer but by everybody?
- Is there a legislation in place to protect journalists from discriminatory/disciplinary action, suspected acts of wrongdoing or corruption by competent authorities?

## Suggested Reading

Open Society Foundations, ed. "Freedom of Expression Rights in the Digital Age." Special issue, *Mapping Digital Media*, no. 6 (2011).

<https://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-freedom-expression-rights-20110728.pdf>

Freedom House. "Freedom of the Press 2017." <https://freedomhouse.org/report/freedom-press/freedom-press-2017>

David van Mill. "Freedom of Speech." <https://plato.stanford.edu/entries/freedom-speech/>