

Article 19:  
The Free Expression Provision  
and

Article 20:  
The Peaceful Assembly and  
Free Association Provision

Appendix to the Report of the  
Global Citizenship Commission<sup>1</sup>

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# 1. Introduction

Although enumerated in separate articles of the UDHR (Articles 19 and 20), freedom of opinion, expression, assembly, and association (collectively, *expression rights*) are inextricably linked. Expression rights are both essential for good government and central to the affirmation of the dignity of every individual. They are accordingly the hallmark of a free and open society.

Article 19 affirms: “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.” Article 20 is similarly emphatic: “(1) Everyone has the right to freedom of peaceful assembly and association,” and “(2) No one may be compelled to belong to an association.” Article 19 is interpreted to protect the freedom of opinion absolutely, whereas subsequent treaties allow certain limitations to freedom of expression and assembly. The restriction of hate speech inciting violence against particular groups of people is a prominent example.

States and other actors routinely violate the robust protections given to expression rights under international law. The 21st century has already witnessed a rapid development and distribution of communications technologies (e.g., the Internet). While technology offers new avenues for exercising expression rights, it also presents new challenges such as surveillance and monitoring. Other challenges facing expression rights include the lack of access for civil society organizations to foreign funding and the suppression of protest movements.

## 2. Evolution of the legal framework

Articles 19, 21, and 22 of the ICCPR collectively declare wide-ranging rights in the domains of opinion, expression, assembly, and association. Article 19 guarantees the right to “hold opinions without interference,” as well as the ability to “seek and impart information and ideas of all kinds... through any other media regardless of frontiers.” Article 21 establishes the right to peaceful assembly, while Article 22 insists on the right to free association, including, notably, “the right to form and join trade unions.” Article 8 of the ICESCR extends the right to trade unions to national and international confederations of trade unions, and clearly establishes the right to strike as a bargaining tool. The ICCPR and ICESCR establish a set of exceptions to expression, assembly, and association rights, for the protection of national security, public order and safety, and public health and morals.

A number of other international treaties have extended the scope of the ICCPR and the ICESCR, setting out distinct prohibitions against specific types of dissent-suppression. The Convention for the Elimination of all forms of Discrimination Against Women explicitly extends expression rights to women. Specifically, Articles 7 and 8 guarantee the rights to free association, including participation in international organizations. Article 14 imparts a positive duty on states to ensure the education and civic participation of rural women through social policies and aid.

Articles 12-15 of the Convention on the Rights of the Child (**CRC**) explicitly extend the rights to free thought, expression, association, and assembly to children. The CRC introduces limitations on parent’s interference with children’s free expression, noting parents and guardians “may provide direction to the child” but that such direction must be “in a manner consistent with the evolving capacity of the child”

(Article 14). Article 29's establishment of a child's right to education similarly requires that such education is intended to develop a child's personality and talents, and to prepare the child to live "in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples."

Regional treaties have likewise broadened the recognition of expression rights in the post-war period. Generally, regional treaties have followed the prior template established by the global treaties, protecting conscience, expression, association, and assembly with exemptions for public health and morals, national security, public order, and harm to others' rights and reputations. The European Convention on Human Rights (*ECHR*), the American Convention on Human Rights (*ACHR*), the African Charter on Human and People's Rights (*ACHPR*), and the ASEAN Human Rights Declaration (*AHRD*) protect expression rights.

Although substantially similar to the ICCPR, the regional treaties differ somewhat in content, in some places extending expression rights, and in other places restricting their protection. In terms of extensions, the ACHR enshrines a formal right to respond to libel and defamation to the victim of such attacks, while the ACHPR formally prohibits the establishment of groups with compulsory membership. Case law from the European Court of Human Rights (*ECtHR*), most notably in *Zhechev v. Bulgaria*, has grounded association rights firmly in expression rights, noting that associations, even if not registered political parties, must be permitted to express political views, given the importance of pluralism in a democratic society.<sup>2</sup> Similarly, the ECtHR has noted elsewhere that even cases of legitimate restriction must meet the requirements of "pluralism, tolerance, and broad-mindedness."<sup>3</sup> Recent guidelines from the Organization for Security and Co-operation in Europe (OSCE) affirm the judgments of the ECtHR, while at the same time emphasizing the importance of non-discrimination in the protection of expression and association rights, explicitly extending protections to LGBT individuals,

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2 ECtHR.2007. *Zhechev v. Bulgaria*. [http://www1.umn.edu/humanrts/research/bulgaria/Zhechev\\_en1.pdf](http://www1.umn.edu/humanrts/research/bulgaria/Zhechev_en1.pdf). See, *inter alia*, paras. 33, 35, 47-51, and 57.

3 ECtHR. 1976. *Handyside v. UK*. <http://hudoc.echr.coe.int/eng?i=001-57499#%7B%22cite%22%3A%22001-57499%22%7D>

and emphasizing states' responsibilities to protect women, minorities, children, and non-nationals.<sup>4</sup>

In terms of restrictions, the ACHR and AHRD permit restrictions on speech from members of the military, and restrictions on political speech, respectively. Additionally, the AHRD emphasizes the importance of respecting cultural and traditional values, which often conflicts with protections of free expression. The various extensions and omissions across regional human rights bodies, particularly the troubling restrictions on association and political speech in the ACHR and AHRD, often represent concessions to political expediency in the establishment of these bodies, particularly with respect to the AHRD. We recognize both the advances and shortcomings present in the regional documents, and encourage work towards adopting the most expansive speech and association protections across all regional bodies.

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4 OSCE/ODIHR and Venice Commission. 2015. *Joint Guidelines on Freedom of Association*. <http://www.osce.org/odihr/132371>. OSCE. 2014. *Human Rights Guidelines on Freedom of Expression, Online and Offline*. <http://www.osce.org/odihr/120751>

### 3. Progress in implementing the right

Although there has been some progress in improving protections for expression rights, many states continue to abrogate their responsibilities. All existing (admittedly imprecise) datasets show moderate improvements in protecting expression since the end of the Cold War, particularly in Eastern Europe. Progress in other regions has been volatile at best, and the outlook worsened in the wake of September 11, 2001 and the 2008 financial crisis.<sup>5</sup> Despite the evolution of stringent international legal norms surrounding expression rights, significant challenges remain in ensuring their full realization.

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5 This pattern of data is confirmed by three widely-cited data sources, in both academia and civil society. They are: David L. Cingranelli, David L. Richards, and K. Chad Clay. 2014. *The CIRI Human Rights Dataset*. <http://www.humanrightsdata.com>. Jørgen Møller and Svend-Erik Skaaning. 2010. *The Civil Liberties Dataset (CLD)*. <http://ps.au.dk/en/research/research-projects/dedere/datasets/>. Freedom House. 2015. *Freedom of the Press*. <https://freedomhouse.org/report-types/freedom-press>

## 4. Current outlook and challenges

All actors with influence over expression rights—including states, corporations, multilateral bodies, and civil society organizations—possess two types of duties. First, they have negative duties to refrain from interfering in the free exercise of expression rights. The recognition of these duties is a foundational component of international human rights law. Secondly, human rights actors also possess positive duties to facilitate free expression, assembly, and association.

In light of both categories of duty, this section discusses a set of challenges facing the current exercise of expression rights. Generally speaking, failures to uphold negative duties are justified on impermissible interpretations of the public order and national security exceptions to Articles 19, 21 and 22(2) of the ICCPR. Positive duties are either not recognized by the relevant actors, or if recognized, are ignored on the basis that the actor in question lacks the capacity to fulfill them or believes such duties to be beyond the scope of its activities. Following the lead of numerous reports by UN Special Rapporteurs, this analysis focuses on the responsibilities of three categories of actors: states, international organizations, and private corporations.<sup>6</sup>

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6 United Nations Human Rights Council. 2013. "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai." A/HRC/23/39. April 24. [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf) United Nations Human Rights Council. 2014. "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association." A/69/365. September 1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/523/22/PDF/N1452322.pdf?OpenElement>. United Nations Human Rights Council. 2013. "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue." A/HRC/23/40. April 17. [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf). United Nations Human Rights Council. 2015. "Report of the Special Rapporteur on



## States

International human rights mechanisms, such as UN special procedures mandate holders, emphasize that any restrictions on expression rights must meet the tests of legality, proportionality, and necessity, and explicit formulation under domestic law, and can only be justified if they protect the widest application of human rights.<sup>7</sup> States routinely violate these conditions, typically by using the exceptions to public order and national security built into the ICCPR to mask the true intent of restrictions aimed at the suppression of dissent or the repression of speech acts uncomfortable for elected officials.

State interference in four areas is of particular concern: (1) Internet censorship and surveillance; (2) the blocking of funds to civil society organizations (*CSOs*); (3) excessive use of force and undue restrictions on assembly; and (4) the detention of and violence directed at journalists.

(1) Many states actively monitor and censor content transmitted through the Internet with the intent of suppressing dissent or identifying protest coordinators. Numerous studies demonstrate the widespread existence of Internet monitoring has a “chilling effect” on the expression of ideas. For example, a study at the Berkman Institute at Harvard University found that a majority (59 percent) of Internet bloggers in countries who used monitoring techniques refrained from posting at least some content due to the risk of that content being turned over to law enforcement authorities.<sup>8</sup> Other studies have shown that, as a result of post-9/11 Internet monitoring, a substantial majority (71 percent) of Muslim-Americans believe the U.S. government is monitoring their Internet usage, and a sizeable minority of these users (12 percent) have altered their behavior as a result.<sup>9</sup> These worries are unsurprising since

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the rights to freedom of peaceful assembly and of association, Maina Kiai.” A/HRC/29/25. April 28. <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>

7 Ibid. See also EctHR. 2007. *Zhechev v. Bulgaria* and ECtHR. 1976. *Handyside v. UK*.

8 Hal Roberts et. al. 2011. “International Bloggers and Internet Control.” Research Publication No. 2011-06. The Berkman Center for Internet and Society at Harvard University. [http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/International\\_Bloggers\\_and\\_Internet\\_Control\\_0.pdf](http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/International_Bloggers_and_Internet_Control_0.pdf)

9 Dawinder S. Sidhu. 2007. “The Chilling Effect of Government Surveillance Programs on the Use of the Internet by Muslim-Americans.” *University of Maryland Law Journal of Race, Religion, Gender, and Class*, 7: 2, 375-393.

individual users often cannot know if the state is monitoring their usage. Evidence from China suggests that state officials intentionally do not attempt to suppress all dissent, but rather monitor and censor posts with the intent of rounding up particularly troublesome dissidents and disrupting the communications surrounding collective protest movements.<sup>10</sup>

Unfortunately, preventing states from monitoring or censoring Internet activity is challenging. On the one hand, Internet monitoring and censorship are much easier to accomplish if the state has some centralized point of control over the institutions governing the physical distribution of the Internet, and effective monitoring relies on advanced technologies purchased from multinational corporations. Tunisia and Saudi Arabia, for example, each have tightly controlled Internet infrastructure and provisioning with state agencies.<sup>11</sup>

On the other hand, corporate providers of monitoring technology face significant collective action problems in refusing to provide technology to problematic states. Furthermore, simply prohibiting access to technology capable of performing monitoring functions is an unsatisfactory solution, as many of the technologies used in Internet censorship also have legitimate business and privacy applications. Consider the example of “deep packet filtering” software, which scans specific “packets” of information (in emails, website URLs or IP addresses) for potentially sensitive content. Such software has common commercial applications, for example in detecting and filtering “spam” email.<sup>12</sup> Attempts to address the potential of such techniques to censor Internet access need to be cognizant of legitimate commercial applications, and require wide buy-in from the providers of filtering software.

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10 Gary King, Jennifer Pan, and Margaret E. Roberts. 2013. “How Censorship in China Allows Government Criticism but Silences Collective Expression.” *American Political Science Review* 107(2): 326-343.

11 Ben Wagner. 2012. “Push-button-autocracy in Tunisia: Analysing the role of Internet infrastructure, institutions, and international markets in creating a Tunisian censorship regime.” *Telecommunications Policy* 36: 484-492. Philip N. Howard and Muzammil M. Hussain. 2013. *Democracy’s Fourth Wave? Digital Media and the Arab Spring*. Oxford: Oxford University Press, pp. 69-87.

12 Ibid.

(2) States often block the funding of CSOs engaged in political activities or the promotion of human rights. States typically justify these and other restrictions as necessary to prevent CSOs from facilitating foreign espionage or funneling money into terrorist organizations. Outright bans on foreign funding, funneling CSO funds through restricted government accounts, jailing CSO leaders, labelling CSOs receiving foreign funding as 'foreign agents', and banning associations who have received foreign funds from engaging in human rights advocacy clearly violate freedom of expression rights. Furthermore, under the principle of "sectoral equity," states should refrain from disproportionately burdening or targeting CSOs with regulations not applied to the corporate sector, particularly since corporations are demonstrably more likely to funnel money to terrorist organizations than CSOs.<sup>13</sup>

(3) States repress the freedom of assembly through overly burdensome "time, place, and manner" restrictions including sudden requirements that the time and location of an assembly be moved, imposing burdensome prior notification requirements on groups seeking to assemble, or dispersing assemblies for such mild concerns as impeding the flow of traffic. Excessive usage of time, place, and manner restrictions significantly hinders the ability of protesters to reach their target audience, greatly reducing the ability of assemblies to contribute to public debate. Furthermore, in many countries, peaceful protests demanding respect for human rights, good governance, the elimination of corruption, and other reforms have been met with excessive use of force by the police, and protestors have been arbitrarily detained.

The Special Rapporteur on the rights to peaceful assembly and of association, emphasizes that state officials possess a duty to help facilitate, rather than restrict, even large and disruptive assemblies. Thus, while some notification for pre-planned large gatherings is a "best practice" in order to enable local authorities to appropriately protect and provide medical care for demonstrators, the spontaneous nature of many gatherings means that prior notification or registration

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13 A/HRC/23/39, 2013. Emile van der Does de Willebois. 2010. "Nonprofit Organizations and the Combatting of Terrorism Financing: A Proportionate Response." World Bank Working Paper No. 208. <http://documents.worldbank.org/curated/en/2010/01/13089654/nonprofit-organizations-combatting-terrorism-financing-proportionate-response>

cannot be a requirement for all gatherings. Furthermore, public spaces—including parks, streets, and plazas (especially those near government buildings)—should be respected as multipurpose spaces. The exercise of expression rights is just as legitimate a purpose for those spaces as relaxation, conducting government business, or maintaining the flow of traffic.<sup>14</sup>

This area is, unfortunately, one of the primary areas in which even established democracies have failed to uphold their obligations under the ICCPR, in particular with respect to local law enforcement training. The use of excessive force by local police to disband legitimate protests has been of particular concern in the United States, as protests related to both the 2011 Occupy movement and the more recent Black Lives Matter movement have led to the use of pepper spray, tear gas, and other impermissible tactics by local police.<sup>15</sup> Such tactics represent a clear failure of local law enforcement officials to understand that their duty is to *facilitate*, rather than repress, acts of free expression and assembly.<sup>16</sup>

(4) States often directly persecute journalists under the guise of libel and defamation laws or fail to sufficiently protect them from private persecution. The effect of excessively prosecuting journalists for libel and defamation is to produce “libel chill,” where journalists will refrain from reporting on issues for fear of prosecution (*Tolstoy Miloslavsky v the United Kingdom*, 1995). The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression is at pains to note that libel and defamation only provide protection for

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14 A/HRC/23/39, 2013.

15 These incidents were subjects of widespread journalistic coverage. See, among many other reports: Paul Pringle and San Quinones. 2011. “UC Davis chief launches probe into pepper-spraying of Occupy protesters.” Los Angeles Times. November 20. <http://articles.latimes.com/2011/nov/20/local/la-me-occupy-uc-davis-20111120>. Felicia Sonmez. 2011. “Occupy Wall Street police response should be investigated by DoJ, Nadler says.” Washington Post. December 6. [https://www.washingtonpost.com/blogs/2chambers/post/occupy-wall-street-police-response-should-be-investigated-by-doj-nadler-says/2011/12/06/gIQAp1FaO\\_blog.html](https://www.washingtonpost.com/blogs/2chambers/post/occupy-wall-street-police-response-should-be-investigated-by-doj-nadler-says/2011/12/06/gIQAp1FaO_blog.html). Trymaine Lee. 2014. “Ferguson protesters win injunction to stop cops using tear gas.” MSNBC. December 12. <http://www.msnbc.com/msnbc/ferguson-protesters-win-injunction-stop-cops-using-tear-gas>

16 For an example of best practices and the approach that should be taken by local law enforcement, see Amnesty International, “Good Practice for Law Enforcement Officials Policing Demonstrations,” available at: <http://www.amnestyusa.org/pdfs/GoodPracticesForLawEnforcementForPolicingDemonstrations.pdf>

*individual* reputations, rather than flags or states, and that public figures are required to tolerate a higher degree of criticism than private citizens (E/CN.4/1999/64). Furthermore, both the Special Rapporteur and the ECtHR note that defamatory views must be “patently unreasonable” (E/CN.4/1999/64) and that “strict standards of truth” (*Bladet Tromso and Stensaas v. Norway*, 1999) cannot be required of all expressed views. So long as journalists make “reasonable efforts to ascertain the truth” (E/CN.4/1999/64), their speech is acceptable, and the onus of proof is on the *defamed* to prove defamation allegations. Categorically, there is *no requirement* to prove the truth of expressed *opinion* or *value statements*. Finally, even where defamation is found to exist, states should protect it using civil laws, not criminal statutes, and should utilize punishment proportional to the degree of defamation, including the use of formal apologies and corrections, instead of or in addition to monetary damage awards (E/CN.4/2000/63).

## International Organizations

International organizations often fail to facilitate expression rights or turn a blind eye to state repression when it is convenient. In particular, international organizations maintain high barriers to accessing decision-making apparatuses, and often view stakeholder engagement, where any exists, as a one-way communication of their intentions to stakeholders. Barriers to access include imposing multiple, lengthy accreditation processes on CSOs, a lack of transparency regarding official documents, and high travel costs to international organizations’ headquarters. These barriers have the effect of preventing smaller CSOs, especially from developing countries, from consulting with the major international organizations.<sup>17</sup> There is also a notable lack of “sectoral equity” between CSOs and transnational corporations, whereby corporate actors are often given privileged access to policymaking decisions unavailable to CSOs, as with the UN Global Compact and the Sustainable Development Solutions Network.<sup>18</sup> International organizations have also excluded

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<sup>17</sup> A/69/365, 2014.

<sup>18</sup> For the UN initiatives, see A/69/365, 2014. For similar effects on the international financial institutions, see Erica R. Gould. 2006. *Money Talks*. Stanford: Stanford

CSOs from consultations for expressing critical views, and have relied on police forces in authoritarian states to suppress assemblies protesting against the organization's actions.<sup>19</sup>

## Corporations

Although often overlooked, the UDHR applies not only to government bodies, but also to private individuals, including corporate actors. Unfortunately, corporations routinely violate expression rights in two ways. First, corporations monitor and censor Internet usage, either in collaboration with state authorities or for their own benefit. Cooperation with the state involves providing authorities with access to monitoring and censorship software, or providing direct access to user information through the removal of encryption measures.<sup>20</sup>

Monitoring and restriction for corporations' own benefit usually involves using user data to target advertising or selling user information to third parties. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression emphasizes that consumers have the right to know if and how their information will be collected and used. Corporations have the responsibility to provide such information in a simple, clear, transparent manner. In particular, information on consumer data collection and use should *not* be buried in lengthy terms of service agreements and consumers should have access to opt-out procedures that are easy to understand and access.<sup>21</sup>

Some internet service providers have also attempted to charge content producers for "premium" download speeds, in effect restricting the expression rights of producers who cannot afford such services. These policies benefit those who already have market power, often at the expense of marginalized populations. Fortunately, developed

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University Press. See also Mark Copelovitch. 2010. *The International Monetary Fund in the Global Economy: Banks, Bonds, and Bailouts*. Cambridge: Cambridge University Press.

19 A/69/365, 2014.

20 Wagner 2012, 487. Sometimes cooperation is under duress, as in the case of Research in Motion in India, Saudi Arabia, and the UAE. See Howard and Hussein 2013, pp. 74-75.

21 A/HRC/23/40, 2013.

world regulators, following extensive consumer pressure campaigns, have recognized the importance of maintaining “net neutrality” in ISP transmission speeds and bandwidth availability.<sup>22</sup>

Second, corporations investing in infrastructure and extractives projects, typically in developing countries, fail to appropriately engage with local stakeholders. These failures range from infringements on positive duties to actively engage a variety of stakeholders, to infringements on negative duties of non-interference in assemblies protesting corporate activity. Often, such interference occurs at the hands of state actors looking to encourage and expedite inward foreign investment, while corporate actors turn a blind eye. In other cases, corporate actors are directly responsible for rights infringements, while both the source and target states for foreign investment ignore allegations of rights infringement. For example, the Special Rapporteur on the rights to freedom of peaceful assembly and of association notes that “civil society groups in Latin America have in public hearings at the Inter-American Commission on Human Rights highlighted the significant role of Canadian companies in human rights violations in the region, and the support provided by the Government of Canada, despite these allegations.”<sup>23</sup> Part of the reason for state non-action relates to concerns of extraterritoriality, and the lack of a clear locus of institutional authority in holding corporate actors accountable, especially given the capacity constraints and weak institutionalization in developing world states.

Nevertheless, even in cases where multilateral development banks are providing public support for state investments, adherence to human rights has often been deficient.<sup>24</sup> While significant improvements in social and environmental safeguards, as well as consulting procedures, have been made at the World Bank, in particular, there are still examples of large investment projects under the aegis of multilateral banks that have failed to appropriately implement safeguards

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22 For example, following intense public pressure and debate, the US Federal Communications Commission adopted “open internet” rules on February 26, 2015. Federal Communications Commission. “Open Internet.” Available at: <https://www.fcc.gov/general/open-internet>

23 A/HRC/29/25, 2015, para. 36.

24 A/HRC/29/25, 2015.

protecting stakeholder concerns, leading to displacement concerns and inappropriate supervision of revenue redistribution.

A recent example is the failed Chad-Cameroon pipeline project, funded by the World Bank, European Investment Bank, and corporate partners Exxon-Mobil, Petronas, and Chevron. Originally touted as a new model for extractive programs, the pipeline project allotted 5 percent of oil revenues to be spent on poverty alleviation projects in communities impacted by pipeline and well construction. Chad also agreed to pay for the resettlement of those who were displaced or whose livelihoods would be significantly disrupted by the project. The initial design of the project relied heavily on the already-corrupt Chadian government respecting the rule of law and the spirit of their agreement with the Bank. Yet a monitoring mission by the Bank Information Center and Catholic Relief Services found that housing for the displaced was typically of substandard quality, substantial air and water pollution were found in the regions near the oil project, and the promised funds for local development were spent on projects in the regional capital intended to solidify government support among the elite.<sup>25</sup>

In weakly institutionalized settings like Chad and Cameroon, it is vital that donor agencies and their corporate partners each assume additional responsibilities when seeking access to natural resources. Otherwise, as in the case of the Chad-Cameroon project, business and government elites reap the benefits, while the local stakeholders—often displaced by the project—bear the costs. Transnational corporations (TNCs) and donor agencies need to work in concert to develop robust stakeholder consultation processes, as well as monitoring and evaluation processes independent of both the corporation and local government. If profit-sharing with the local community is apt to be an issue, such funds should be managed by the local community itself, rather than relying solely on the central government for their allocation.

Corporate actors typically lack policies and procedures for acquiring prior, informed consent from local stakeholders. Similarly, they fail to appropriately compensate individuals displaced or harmed by new investments and their environmental externalities.

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25 Ian Gary and Nikki Reisch. 2005. "Chad's Oil: Miracle or Mirage? Following the Money in Africa's Newest Petro-State." Joint Report of Catholic Relief Services and the Bank Information Center. <http://www.internationalbudget.org/wp-content/uploads/Chads-Oil-Miracle-or-Mirage.pdf>



## 5. Realizing expression rights in the 21st Century<sup>26</sup>

In light of the above analysis, we identify three areas where significant improvement can be made in protecting and facilitating expression rights. Two of these areas—mitigating state repression and enhancing stakeholder engagement with multilateral organizations and corporations—derive directly from the previous discussion. The third—ensuring the equal access to, and provisioning of, diverse sources of information—facilitates the formation and re-evaluation of opinions, without which expression rights lack their potency in furthering deliberative democratic government.

The first, and most discussed, area for improvement is in mitigating state repression of dissenting political views and minority groups' expression of their identities. We welcome initiatives intended to address the excessive curtailment of associations, in particular the reframing of “time, place, and manner” restrictions to enable local police authorities to facilitate, rather than disperse, assemblies and associations. Any such restrictions should not discriminate against minority groups. Similarly, we welcome initiatives to extend journalist protections to the internet blogging community, as well as the decriminalization of journalistic dissent and associated relaxation of libel and anti-defamation laws. In addition, we encourage attempts to develop a free, private press and to prevent the oligopolistic consolidation of media into the hands of a few actors, public or private.

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<sup>26</sup> The suggestions outlined in this section are illustrative and non-exhaustive proposals for promoting and protecting expression rights in the 21st Century.

A second area of improvements is of particular concern in an age of increased capital mobility and multilateral governance across a wide variety of issue areas. Currently, the activities of many corporations and multilateral organisations are opaque to the public eye and insulated from the concerns of relevant stakeholder groups. We welcome moves by multilateral and corporate actors to improve operational transparency, improve mechanisms for soliciting stakeholder viewpoints and enable stakeholder monitoring of large development projects or major corporate investments, and to respect and facilitate the exercise of assembly rights. Similarly, we encourage multilateral actors to broaden the number of actors they consult in stakeholder engagement procedures, and to ensure such consultations are not dominated by private corporations and large transnational NGOs, at the expense of local stakeholder groups.

A final area of improvement is crucial to the full implementation of expression rights. We encourage all relevant actors, in particular state governments and multilateral regulatory bodies, to encourage and facilitate the expression of the full diversity of viewpoints in person, in the press, and online. Such diversity requires the protection of neutral access to information distribution infrastructures (e.g. public airwaves, the internet, etc.). It also requires that public entities regulate the marketplace to ensure that no one entity or small group of entities, public or private, excessively dominate in the promulgation of their views. We recognize that a variety of regulatory regimes may be implemented to facilitate such viewpoint diversity, but emphasize that any regulatory regime's goal should be to protect and expand, rather than restrict diverse expression. Ensuring that a broad spectrum of views are expressed is essential to enabling individuals to freely form their opinions, as without exposure to a diverse array of viewpoints, individuals cannot appropriately assess each view on its merits. The ability to freely form, express, and act upon one's opinions is the bedrock of democracy.