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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Promotion and protection of the right to freedom of opinion and expression**

### **Note by the Secretary-General\*\***

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, submitted in accordance with Human Rights Council resolution 25/2.

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\* [A/69/150](#).

\*\* The present document was submitted late owing to the need to consult partners.



## **Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

### *Summary*

In the present report, submitted in accordance with Human Rights Council resolution 25/2, the Special Rapporteur focuses on the right of the child to freedom of expression. He calls for a greater focus by the international community and States on children's right to freedom of expression and access to information, while noting with concern the adoption of various restrictive measures allegedly aimed at protecting children from harmful information.

## I. Introduction

1. In the present report, submitted in accordance with Human Rights Council resolution 25/2, the Special Rapporteur focuses on the right of the child to freedom of expression.

2. In the Convention on the Rights of the Child, the recognition of children as full subjects of rights is underscored. In accordance with the Convention, it is not acceptable to use the immaturity of children as a justification for depriving them of rights that would otherwise be enjoyed only by adults. Children are not mini-human beings, with mini-human rights. On the contrary, the Convention expands on the protection of children's civil and political rights and sets out some specific measures to ensure that every child develops his or her personality to the fullest potential. Also according to the Convention, the right to freedom of expression should be exercised progressively as the child matures.

3. Nobody questions the importance of protecting children from harm and the duty of adults to guide children. All too often, however, the possible risks that children face as a consequence of their young age and relative immaturity are overstated and used as an excuse for unduly restricting the rights of both adults and children to freedom of expression. These restrictions may emerge from vague and broad definitions of what constitutes harmful information or simply be perpetuated through the tacit acceptance of authoritarian attitudes in schools, families and society in general.

4. If the Internet is widely recognized as an indispensable tool for promoting development and human rights, it also stands to reason that the Internet is an indispensable tool for children. Concerns have emerged, however, about the use of these tools for violent or abusive purposes. Widespread restrictions on the use of digital communications and censorship are not only unacceptable but also ineffective solutions to these concerns. Human rights norms call for a balanced approach where restrictions on communications conform to strict tests of necessity and proportionality.

5. In the present report, the Special Rapporteur describes how the right of the child to freedom of expression is articulated in international human rights treaties, paying particular attention to the Convention on the Rights of the Child. He then details important obstacles to the realization of this right, including direct restrictions on children's rights to freedom of expression and access to information, as well as blanket restrictions that ostensibly aim to protect children but in effect limit adults' freedom of expression. He also describes some experiences of protecting and promoting children's right to freedom of expression. Given the unparalleled impact of the Internet on contemporary societies, the Special Rapporteur discusses the importance of new technologies for the promotion of children's rights and some specific concerns that are emerging in this domain. Lastly, he concludes by providing recommendations on the alignment of national laws and practices with relevant standards established by international human rights law.

## II. Activities of the Special Rapporteur

6. During the reporting period, the Special Rapporteur continued to participate in national and international events relating to the right to freedom of opinion and expression. In July 2014, the Special Rapporteur presented his latest annual report to the Human Rights Council (A/HRC/26/30), in which he addressed freedom of expression in elections and the regulation of political communications. Before that, in April, he presented his reports on his visits to Montenegro (A/HRC/26/30/Add.1), the former Yugoslav Republic of Macedonia (A/HRC/26/30/Add.2) and Italy (A/HRC/26/30/Add.3). Also during the twenty-sixth session of the Council, the Special Rapporteur participated in a panel discussion on the safety of journalists and in side events on the safety of journalists, freedom of expression in elections and the space for civil society.

7. As he concluded his term as mandate holder, the Special Rapporteur reiterated his regret at the lack of response from Indonesia and Pakistan to his attempts to set up dates for a visit despite having received formal invitations from both countries in 2012. Requests for visits to the following countries also remained pending: Iran (Islamic Republic of) (requested in February 2010), Sri Lanka (requested in June 2009), Thailand (requested in 2012), Uganda (requested in May 2011) and Venezuela (Bolivarian Republic of) (requested in 2003 and 2009).

8. To prepare the present report, the Special Rapporteur reviewed relevant studies and consulted experts on the right of children to freedom of expression. The report also benefited from information compiled by the Child Rights International Network. In addition, the Special Rapporteur organized expert consultations on the topic in Rio de Janeiro (Brazil), Florence (Italy), Mexico City and Johannesburg (South Africa).

## III. Right of children to freedom of expression

### A. Right to freedom of expression in international human rights law

9. Freedom of expression is enshrined in all international and regional human rights instruments on civil and political rights.<sup>1</sup> In article 19 of the International Covenant on Civil and Political Rights, it is recognized that everyone has the right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. All forms of expression and the means of their dissemination are protected under that article (see para. 2). This right includes the expression and receipt of communications of every kind of idea and opinion that can be transmitted to others, subject to the limitations set out in articles 19, paragraph 3, and 20 of the Covenant.

10. Traditionally, the right to freedom of expression has not been associated with children, even though, as individuals, children benefit from all of the civil rights

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<sup>1</sup> See article 19 of the Universal Declaration of Human Rights, article 19 of the International Covenant on Civil and Political Rights, article 10 of the European Convention on Human Rights, article 13 of the American Convention on Human Rights and article 9 of the African Charter on Human and Peoples' Rights.

enunciated in the Covenant.<sup>2</sup> Earlier international instruments dealing with children, such as the Geneva Declaration on the Rights of the Child of 1924 and the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV)), did not include any reference to this right, on the assumption that children were not able, because of their immaturity, to make meaningful choices. The Convention on the Rights of the Child marks a watershed in the protection of the rights and the inherent dignity of children. Unlike previous international legal instruments, the Convention promotes a dramatic shift in emphasis, from an approach based on the obligations of adults towards children (see the Declaration of the Rights of the Child) to one focusing on the child as a rights-holder.

## **B. Article 13: the right of the child to freedom of expression**

11. The Convention on the Rights of the Child is the first international legal instrument proclaiming the right of children to freedom of expression.<sup>3</sup> The wording of article 13 closely follows that of article 19, paragraphs 2 and 3, of the International Covenant on Civil and Political Rights. According to some, there is little value in article 13 itself, since it was simply “lifted” from article 19 of the Covenant with little attempt to apply it to children.<sup>4</sup> However, read in conjunction with the provisions set out in articles 12 and 17 of the Convention, which protect the right to be heard and the right to have access to information, article 13 provides a level of protection to the child’s right to freedom of expression that is comparable, if not superior, to that afforded by article 19 of the Covenant.

12. There is no reference in article 13 to the child’s evolving capacities, nor is a minimum age or a certain degree of maturity for the exercise of the right to freedom of expression fixed. In this sense, freedom of expression has been regarded as having a developmental aspect, since its aim is to enable children to develop their minds and themselves in society with others and grow into citizens participating in public life.<sup>5</sup> Children’s freedom of expression does not — and cannot — start when children become capable of expressing their views autonomously or become teenagers; they cannot be expected to develop as autonomous beings and participants in society at the magical age of 18 years without having had the opportunity beforehand.<sup>4</sup>

13. Nevertheless, children are not adults, and the fact that they have evolving capacities cannot be avoided. This principle, enshrined in article 5 of the Convention on the Rights of the Child, simply reflects the need to take children’s “childness” into account, as well as the fact that children evolve and exercise their rights differently from adults. The role accorded to parents and others responsible for the child under article 5 of the Convention suggests that, in practice, children’s enjoyment of their right to freedom of expression may not be as expansive as that of adult holders of similarly expressed rights under non-child-specific international

<sup>2</sup> *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40)*, annex VI, para. 2.

<sup>3</sup> See also article 7 of the African Charter on the Rights and Welfare of the Child, which entered into force in 1999.

<sup>4</sup> Sylvie Langlaude, “On how to build a positive understanding of the child’s right to freedom of expression”, *Human Rights Law Review*, vol. 10, No. 1 (2010), pp. 33-66.

<sup>5</sup> Herdís Thorgeirsdóttir, *A Commentary on the United Nations Convention on the Rights of the Child: Article 13 — The Right to Freedom of Expression* (Martinus Nijhoff Publishers, 2006).

human rights instruments.<sup>6</sup> The exercise of the right to freedom of expression expands as children mature, whereas the appropriate direction and guidance provided by parents under article 5 diminishes correspondingly.<sup>4</sup>

14. Although the wording of article 13 of the Convention generally follows that of article 19 of the Covenant, certain provisions are omitted. First, article 13 does not include the right to hold opinions without interference, provided in article 19, paragraph 1, of the Covenant. It may be reasoned, however, that this right is implied in article 13, paragraph 1, or covered either by article 12 or article 14 of the Convention.<sup>7</sup> Secondly, article 13 does not include the first sentence of article 19, paragraph 3, of the Covenant: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities.” The inclusion of this sentence, which was introduced in the Covenant because of the powerful influence of modern media of expression, was apparently not found necessary with regard to the child’s freedom of expression.<sup>7</sup>

15. The scope of the right to freedom of expression is quite wide. According to the Committee on the Rights of the Child, article 13 of the Convention confers a right that can be exercised not only against the State, but also within the family, in the community, at school, in public policy decisions and in society.<sup>4</sup>

16. The family, in particular, is regarded as one of the most important pillars in realizing the rights of the child to freedom of expression. It is widely acknowledged that parents assume the primary responsibility for the upbringing and development of their child, and hold the child’s best interests as a fundamental concern. The Committee encourages the implementation of a participatory family structure in which a child learns to freely express his or her views, and thus becomes equipped with the skills necessary to participate in society. The duty of family members includes the obligation to hear the child’s views and take them seriously and to support children in the realization of their rights under the Convention (see [CRC/C/43/3](#), paras. 999-1,002).

### **Right to seek information**

17. The right to seek information set out in article 13, paragraph 1, of the Convention on the Rights of the Child has often been associated with the right to access to information, in particular information held by public authorities. This right is also closely related to the provisions of article 17 of the Convention, which aims to ensure that children have access to information and material from a diversity of national and international sources.

18. Seeking and accessing information is essential for the child’s development and represents an essential precondition for participating in social life. Therefore, the Committee on the Rights of the Child has construed this right as imposing a positive obligation on States to provide access to information held by public authorities. The Human Rights Committee has observed that, to give effect to this right, States should make every effort to ensure easy, prompt, effective and practical access to information of public interest, and enact the necessary procedures, whereby one may

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<sup>6</sup> Aoife Nolan, *Human Rights Law in Perspective: Children’s Socio-Economic Rights, Democracy and the Courts* (Oxford, Hart Publishing, 2011).

<sup>7</sup> Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, 1999).

gain access to information, such as by means of freedom of information legislation (see [CCPR/C/GC/34](#), para. 19).

### **Right to receive information**

19. The child also has the right to receive information and ideas of all kinds. The Committee on the Rights of the Child does not often refer to this provision in its concluding observations and recommendations. The only emerging principles are that measures must be taken to acquaint children with different cultures, that the media must help children to learn about other civilizations and that steps should be taken to encourage the publication, dissemination and availability of children's literature to all children.<sup>4</sup>

20. The right to receive information is closely linked to the provisions of article 28, according to which States parties recognize the right of the child to education, and article 29, in which it is emphasized that education of the child shall, *inter alia*, aim at the development of the child's personality, talents and mental and physical abilities to their fullest potential.

### **Right to impart information**

21. Lastly, children have the right to impart information to others. As is the case for the right to receive information, there are few references to this right in the jurisprudence of the Committee on the Rights of the Child. The Committee has stated, for example, that children have the right to contribute to children's magazines, television and other media, to engage in political activities both within and outside the school and to set up Internet chat rooms.<sup>4</sup>

### **Permissible limitations**

22. In article 13, paragraph 2, of the Convention on the Rights of the Child it is expressly stated that the exercise of the right to freedom of expression may be subject to certain restrictions, which are set out. The Committee on the Rights of the Child has not developed comprehensive jurisprudence on permissible limitations to this right.<sup>4</sup> However, the analysis made by the Human Rights Committee on the interpretation and application of article 19, paragraph 3, of the Covenant applies, *mutatis mutandis*, to the child's right to freedom of expression (see [CCPR/C/GC/34](#), para. 21).

23. First, restrictions must be provided by law made accessible to the public and be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. Second, restrictions may be imposed only on the grounds set out in paragraphs 2 (a) and (b) of article 13, namely, for respect for the rights or reputations of others and for the protection of national security, of public order or of public health or morals.<sup>8</sup> Third, restrictions must conform to the strict tests of necessity and proportionality.

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<sup>8</sup> During the *travaux préparatoires* for the Convention on the Rights of the Child, the inclusion of a reference to "the spiritual and moral well-being of the child" as an additional legitimate ground for restriction was rejected on the basis that it would be unfair to impose such a restriction on children alone and that the matter had already been dealt with under article 17, on access to information. See Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child*.

### **C. Article 12: the right of children to express their views freely and to have their views given due weight**

24. Article 12 of the Convention on the Rights of the Child represents a unique provision in international human rights law. This is a right that only children have, not adults, since children do not have a general right expressly set out in the International Covenant on Civil and Political Rights to express their views in all situations concerning them.<sup>4</sup> That children are not always listened to justifies the inclusion in the Convention of a general right to be heard. The aim of article 12 is to address the legal and social status of children, who, on the one hand, lack the full autonomy of adults but, on the other, are subjects of rights (see [CRC/C/GC/12](#), para. 1).

25. Paragraph 1 of the article accords to the child who is capable of forming his or her views the right to express those views freely in all matters affecting him or her, and the subsequent right to have those views given due weight in accordance with his or her age and maturity. Paragraph 2 asserts the right of the child to be heard in any judicial or administrative proceedings affecting him or her.

26. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child has identified article 12 as one of the four general principles of the Convention, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights (see [CRC/C/GC/12](#), para. 2).

27. In accordance with article 12, States parties are obliged to recognize that right in their legal system, to adopt appropriate mechanisms to facilitate the active involvement of children in all actions and decision-making processes affecting them and to fulfil the obligation to give due weight to those views once expressed. The Committee on the Rights of the Child has noted that, while appearing to listen to children is relatively unchallenging, giving due weight to their views requires real change. According to the Committee, listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights (see [CRC/GC/2003/5](#)).

28. The right to freedom of expression is often confused with the right to be heard set out in article 12. The Committee on the Rights of the Child considers that, while both articles are strongly linked, they articulate different rights and should not be confused. Article 12 relates to the right of expression of views specifically about matters which affect the child, and the right to be involved in actions and decisions that have an impact on the child's life. This provision imposes an obligation on States parties to adopt appropriate measures to facilitate the active involvement of children in all decisions and processes affecting them, and to fulfil the obligation to give due weight to those views, while freedom of expression requires no such engagement or response from States parties. The Committee considers, however, that the creation of an enabling environment for children to express their views freely also contributes to building children's capacities to exercise their right to freedom of expression (see [CRC/C/GC/12](#), para. 81).

29. Another interesting aspect of article 12 relevant to freedom of expression is the emphasis on participation. Although the term is not found in the article, the



Committee on the Rights of the Child has stated on various occasions that children's participation in society enables them to be heard, to be informed about public affairs and to play a role in the life of their country (see, for example, [CRC/C/SR.379](#), para. 55). Participation should be encouraged within the family, at school and in society at large; it should concern political, social, economic and cultural life; and it should happen through existing institutions and through the creation of children-specific bodies. The rationale behind encouraging the children's participatory rights is to facilitate their development, given that children cannot be expected to mature into full members of society if they lack the experience of participating in school and community life (see, for example, [CRC/C/SR.277](#), para. 50).

#### **D. Article 17: the child's right to have access to information**

30. Article 17 of the Convention on the Rights of the Child deals with the right of the child to have access to information, and addresses the role of the State in encouraging the mass media to provide such information. The provision aims to ensure that the child has access to information and material from a diversity of national and international sources, in particular those aimed at the promotion of his or her well-being and health. It also recognizes the important function performed by the mass media and lists a number of measures that States parties need to adopt to implement the child's rights under article 17. These include a positive right to seek and access information, notably through books, magazines, newspapers, television, radio programmes and libraries.

31. States parties are required under article 17 (e) to develop appropriate guidelines for the protection of the child from information and material injurious to his or her well-being. Accordingly, although children should be given access to an increasing range of material as they mature, depending on their evolving capacities, they should also be protected from material that is likely to be harmful to their development. The Committee's jurisprudence has not provided a comprehensive definition of "harmful and injurious material", except in general references to violent, racist or pornographic material.

32. This right is closely related to the right to seek information set out in article 13 of the Convention, since its exercise aims to enable children to inform themselves and thus be able to participate in social life. The Committee on the Rights of the Child has noted that the fulfilment of this right also constitutes a prerequisite for the effective exercise of the right to be heard (art. 12). The Committee has clarified that children need access to information in formats appropriate to their age and capacities on all issues of concern to them, for example information relating to their rights, any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures.

33. The Committee has also observed that the media play an important role both in promoting awareness of the rights of children to express their views and in providing opportunities for the expression of such views (see [CRC/C/GC/12](#), para. 83). Other duties of the media under this provision include: providing access to different sources of information; portraying the positive contribution of young people to society; disseminating information on the existence of services, facilities and opportunities for children; promoting egalitarian principles and roles; and

minimizing the level of pornography, drugs and violence portrayed (see General Assembly resolution [45/112](#), annex).

#### **IV. Restrictions to children's right to freedom of expression**

34. Children face particular hurdles to the realization of their right to freedom of expression as a result of entrenched paternalistic attitudes that often overstate the risks of allowing children to communicate freely and underestimate their agency. In addition, the rights of children are also affected by all the barriers hampering the freedom of expression of adults.

35. The Committee on the Rights of the Child has commented to numerous States that traditional attitudes towards children in all spheres, including the home, school and society in general, continue to delay the acceptance of children's right to express themselves freely (see, for example, [CRC/C/SGP/CO/2-3](#), para. 33, and [CRC/C/ECU/CO/4](#), para. 40). Obstacles to the freedom of expression of children are particularly prevalent in settings in which the power of adults over children remains unquestioned. Educational settings highlight with particular clarity some of the tensions between the recognition of children as human beings with rights, views and feelings of their own on the one hand, and paternalistic perceptions of them on the other.

36. In paragraph 8 of its general comment No. 1, on the aims of education, the Committee on the Rights of the Child stated:

Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life.

37. In many countries, however, children are denied the right to express themselves freely because of the idea that education serves as a tool for adults to mould children into predetermined shapes. This is evident in the prevalence of authoritarian school environments and teaching methods that, for instance, often preclude students from expressing their views on how their school is run (see [CRC/C/KOR/CO/3-4](#), para. 40). In some places, rote learning continues to be the norm rather than participatory methods of teaching that encourage children to develop and express their views ([CRC/C/15/Add.148](#), para. 39).

38. Many schools do not permit students to organize and express political or controversial views. The 1969 case *Tinker v. Des Moines Independent Community School District* is perhaps the first important case on the protection of children's freedom of expression. In December 1965, three school students (aged 13, 15 and 16) planned to wear black armbands with peace symbols to school in protest at the Vietnam War. When their local school administration heard of the planned protest, they banned armbands in school and suspended the students involved. The students appealed to the courts with support from the American Civil Liberties Union and their appeal was upheld, in 1969, by the Supreme Court of the United States of America.

39. Judicial systems often play a significant role in altering engrained authoritarian practices. There are as yet few examples of court decisions affirming children's right to freedom of expression and access to information. However, there

is a growing number of examples within educational settings, especially in the United States. For example, a student at a Florida high school was banned from wearing any symbol of support for gay rights at school because the principal believed that any symbol featuring rainbows would make students picture gay people having sex. In a decision quoting the *Tinker* case mentioned above, a federal judge ruled in May 2008 that the school had violated the students' rights.<sup>9</sup>

40. Student-run publications are another important means by which students can express their views. They provide a source of support because they contain reports on topics that are of concern to young people and that adults may not feel comfortable discussing. Students' writing has, however, been censored for covering issues such as teenage pregnancy and the effects of parental divorce. Increasingly, students' posts on social media are also under scrutiny and, in some cases, children have been expelled for posting criticism of their school.

41. Children's access to cultural activities may also be censored without justification. In the 1993 case *Dunduzu Chisiza Jr. v. Minister Kate Kainja*, a judge in Malawi upheld the complaint of an actor who had challenged a ban on all plays and other performances by independent groups in public schools as violating freedom of expression.<sup>10</sup> There are also reports of some schools banning music lessons for religious reasons.

42. Restrictions on the content of school curricula may also affect children's access to diverse sources of information. In this regard, the banning of books and teaching materials containing ideas that run counter to those supported by the school administration is another concern. In the 1982 case *Board of Education v. Pico*, for example, a court in the United States ruled that books could not be removed from school libraries for ideological reasons.

43. In addition to banning information outright, some school curricula present biased accounts of history or prejudiced views of certain groups, such as girls, sexual or ethnic minorities or children with disabilities, which can negatively affect children's freedom to form their own views and instead perpetuate discrimination — a situation raised by various United Nations treaty bodies in their recommendations to States.

44. This issue has also been addressed by the European Committee of Social Rights, which in 2009 found that the Croatian school curriculum covering sex education discriminated on the basis of sexual orientation. The Committee asserted that some statements in the curriculum stigmatized homosexuals and were based upon negative, distorted, reprehensible and degrading stereotypes.<sup>11</sup>

45. The effects of limits on children's right to freedom of expression spill out of the school gates into public life. Children, just as adults, may be subject to excessive violence or arbitrary detention for expressing political views. For example, the Committee on the Rights of the Child recently highlighted such violations to the Syrian Arab Republic in relation to the arrest and incommunicado detention of a group of children between 8 and 15 years of age accused of painting anti-

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<sup>9</sup> American Civil Liberties Union, "Federal judge rules that students can't be barred from expressing support for gay people" (13 May 2008).

<sup>10</sup> See Article 19, "Kid's talk: freedom of expression and the UN Convention on the Rights of the Child" (1999).

<sup>11</sup> *International Centre for the Legal Protection of Human Rights v. Croatia*.

government graffiti on a school wall in the southern town of Dara'a (see [CRC/C/SYR/CO/3-4](#), para. 46). It also expressed its concern to Belarus about the detention of adolescents during demonstrations held in the context of presidential elections in December 2010 (see [CRC/C/BLR/CO/3-4](#), para. 35).

46. Disproportionate legal restrictions interfere with the rights of both adults and children. This includes legislation containing vaguely worded limitation clauses citing, for example, the requirement to interpret freedom of expression in the light of “Islamic principles” or excessively wide interpretations of risks to security, which could exceed the restrictions set out in articles 13, paragraph 2, and 15 of the Convention on the Rights of the Child (see [CRC/C/15/Add.254](#), para. 40, and [CRC/C/PRK/CO/4](#), paras. 27-28).

47. Undue restrictions on the child’s right to peaceful assembly mirror some of the common obstacles to their freedom of expression. In a recent report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association noted:

There may be safety concerns when young people participate in some public demonstrations. However, ... laws such as that of Malaysia [where children under 15 years of age cannot participate in a public demonstration] are not tailored narrowly enough to specifically address that concern. Rather, a blanket ban on individuals of a certain age eliminates the right to participate in peaceful public assemblies for an entire portion of the population, without exception, contrary to article 15 of the Convention on the Rights of the Child. (See [A/HRC/26/29](#), para. 24.)

## **V. Child protection used as a justification for disproportionate restrictions on freedom of expression**

48. In some domains, there may be legitimate and understandable concerns for children’s safety and well-being in gaining access to some types of information. For example, many countries regulate broadcasting, and television in particular, with a view, among other things, to protecting children. National regulations often include some kind of watershed system, for example, and establish independent bodies to enforce that system. Content generally considered unsuitable for children includes sexually explicit content, violence and offensive language. Regulations can, however, have a significant impact on freedom of the media. Moreover, the definition of what constitutes harmful information is subjective. Accordingly, any regulations aimed at protecting children and the mechanisms adopted to enforce them should be reviewed regularly, in an open and transparent way, in order to prevent the imposition of disproportionate or arbitrary restrictions that curtail the rights of both adults and children. Furthermore, it is crucial to ensure the independence of the bodies tasked with enforcing these regulations — rules regarding membership, for example, should be defined so as to protect them against any interference, in particular by political forces or economic interests.

49. The result of vague and broad definitions of harmful information, for example in determining how to set Internet filters, can prevent children from gaining access to information that can support them to make informed choices, including honest, objective and age-appropriate information about issues such as sex education and

drug use. This may exacerbate rather than diminish children's vulnerability to risks (see more in section VII below, on the Internet).

50. The imposition of prior censorship to protect children from harmful material provides an example of disproportionate restrictions that run counter to international human rights standards. For instance, in the case *The Last Temptation of Christ (Olmedo Bustos et al) v. Chile*, the Inter-American Court of Human Rights ruled that the Government of Chile had violated article 13 of the American Convention on Human Rights, on freedom of thought and expression, in banning Martin Scorsese's film *The Last Temptation of Christ* in order to protect the morals of children. The Court reasoned that children could easily be protected by adopting less restrictive measures than prior censorship, such as controlling their entrance to cinemas.

51. In a more recent case on prior censorship (*Print Media South Africa and Another v. Minister of Home Affairs and Another*), the High Court of South Africa declared that an amendment to the South African Films and Publications Act (No. 65 of 1996) infringed the constitutional right to freedom of expression. The amendment required publishers, with some exceptions, to submit publications for prior approval to prevent the exposure of children to age-inappropriate material and to ban child pornography. The decision indicated concerns about a system of prior restraint and the vague and overly broad criteria for classifying publications.

52. Child protection arguments are part of a new pattern in which children are increasingly used to justify restrictions not only on their access to information, but also on the rights of adults. In many cases, the restrictions are rooted in a genuine, well-meaning desire to protect children from harmful information, while in others they have been used to defend discrimination and censorship.

53. Most disturbingly, child protection arguments are being used to block access to information on, for example, lesbian, gay, bisexual and transgender issues and thereby legitimize discrimination against sexual minorities. In the Russian Federation, amendments to the administrative code and law protecting children from harmful information entered into force in July 2013, outlawing "propaganda of non-traditional sexual relations" among children.<sup>12</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association publicly expressed concern about that law in a joint statement with other mandate holders. The child protection rationale for the Russian anti-homosexuality law has also been rejected by the European Court of Human Rights in its 2011 case *Alekseyev v. Russia*. Despite the criticism, other countries have followed suit. In Ukraine, in 2013, it was recommended that a draft law prohibiting "propaganda of homosexual relations" aimed at children be considered by the parliament.<sup>13</sup> In the draft law "propaganda" is defined as any public action aimed at spreading information about same-sex relations. In June 2014, the human rights committee of the parliament of Kyrgyzstan approved a bill criminalizing the dissemination of information "aimed at forming positive attitudes towards non-traditional sexual relations".<sup>14</sup>

<sup>12</sup> See Russian Federation Federal Law No. 135-F3 (29 July 2013).

<sup>13</sup> See draft law No. 1155 on the prohibition of propaganda of homosexual relations aimed at children (June 2011).

<sup>14</sup> See draft law on the protection of children from information harmful to their health or development (2014).

## **VI. Promoting children's freedom of expression**

54. Besides protecting the right of children to freedom of expression, States are also obliged to promote children's freedom of expression. It is not sufficient to encourage children's participation in activities organized by adults such as music, art and drama to guarantee their freedom of expression. Children should have satisfactory opportunities and space to articulate their views orally or by other means, without fear of punishment, and have access to information from diverse sources and across borders — and this applies to all children without discrimination. This positive obligation should also be kept in mind during times of economic crisis, when funds for public libraries, activities such as music lessons and facilities such as playing fields are often among the first to get cut. Some examples of how children's freedom of expression can be actively promoted are listed below.

### **A. Encouraging children's freedom to organize and participate in politics**

55. Increasingly, structures are available to children to participate in politics — from youth mayorships to children's parliaments. In Iceland, following the financial crisis, it was agreed that civilians would rewrite the Constitution in 2008. As part of this, the Young People's Constitution Project was established to ensure that the opinions of children and young people were also taken into account in the constitutional amendment process. In the Dominican Republic, municipal councils dealing with issues such as the provision of safe drinking water in schools are formed and elected by young people.

56. The engagement of a new generation of children in politics is beneficial for renewing political culture and increasing participation in elections. Some countries have lowered the minimum voting age to 16 years — a positive start that serves to officially legitimize children's views and encourage their participation in politics. Children of all ages should have the opportunity to be involved, if so they choose, in political processes and consultations on public policy in some way.

### **B. Encouraging child-led advocacy**

57. Campaigns initiated by children have generated important debates and brought benefits to society as a whole. Student unions often play a central role in articulating child-led advocacy initiatives: in 2011, for example, thousands of secondary school and university students in Chile protested against the exorbitant costs of education. The political impact of their mobilization continues to be felt in the ongoing debates on the Chilean education system. Similar student protests against the costs of education have occurred in multiple countries.

58. In the Republic of Korea, high school students have promoted a major social mobilization against authoritarian practices within the education system. As a result of the public debate generated by the students, in January 2012, the Seoul Metropolitan Council adopted a students' rights ordinance ensuring, inter alia, the right of students to protest, a ban on corporal punishment, the elimination of mandatory participation in religious activities and the protection of lesbian, gay, bisexual and transgender students and pregnant students against discrimination.

Action for Youth Rights of Korea, an association established by Korean students in the context of this mobilization, continues to promote student activism.

59. A 13-year-old from the United Kingdom of Great Britain and Northern Ireland took a stand against his school's discriminatory dress code, which allows girls to wear skirts in the summer months but does not allow boys to wear shorts. Chris Whitehead took advantage of a loophole in the school's uniform policy, whereby boys are not forbidden from wearing a skirt. Around 30 fellow pupils joined the protest, prompting the school to review its uniform policy. Meanwhile, Chris Whitehead was nominated for a Liberty Human Rights Award.<sup>15</sup>

60. In India, members of the Adolescent Girls' Clubs against Child Marriage network help to persuade families not to marry their daughters off at a young age by educating people about the harmful consequences of early marriage. They offer a lifeline not only to girls who want to resist family pressure, but also to parents afraid that going against gender-based expectations will leave their daughters ostracized.<sup>16</sup>

### C. Ensuring access to information from a range of sources

61. For children to be able to form their own views and become informed and responsible citizens, they also need to have access to information from a range of sources. This access is limited for many children, in particular for those living in isolated communities and those deprived of their liberty. The Committee on the Rights of the Child has also raised the issue of accessibility of information for minority groups, which may not be sufficiently relevant to their needs or in their own language, and for children with disabilities.

62. In recommendations arising from its day of general discussion on "The child and the media", the Committee affirmed the importance of budgetary support from the State to ensure the production and dissemination of books, magazines, music, theatre and other forms of expression for children, and of assistance through international cooperation (CRC/C/15/Add.65, para. 256). Investments in community and public broadcasting often play a central role in the promotion of access to information from a diversity of sources and in the inclusion of children's voices in the media. In Argentina, for example, the Law on Communication and Audiovisual Services establishes the obligation for public broadcasting entities to dedicate programming time to children and other sectors of the population not contemplated by commercial broadcasting. The public entity tasked with overseeing the implementation of the law promotes public hearings, including with children, to discuss communication and audiovisual services. It has also recently supported the promotion of radio activities led by students within their own schools. Moreover, the Ministry of Education of Argentina has supported the establishment of a channel aimed at promoting child-sensitive educational programming, including through the active participation of children in the production of the content.

<sup>15</sup> Lucy Sherrif, "Chris Whitehead, schoolboy who wore skirt to school, up for human rights award", *Huffington Post* (21 November 2011).

<sup>16</sup> Melanie Kramers, "Indian girls persuade parents they are too young for marriage", *Guardian*, 29 June 2011.

## D. Promoting media self-regulation

63. In addition to providing budgetary support, States can encourage media organizations to self-regulate the way in which they cover and involve children. The International Federation of Journalists has devised a set of draft guidelines and principles for reporting on issues involving children that have been adopted by journalism organizations in 70 countries. They include provisions on avoiding the use of stereotypes and the sensational presentation of stories involving children.

64. Children also have participatory rights in the media, and some publications are run entirely by children. In its recommendations arising from the above-mentioned day of general discussion, the Committee on the Rights of the Child promoted children's participatory rights in the media, asserting that students should be enabled to relate to and use the media in a participatory manner, as well as to learn how to decode media messages, including advertising ([CRC/C/15/Add.65](#), para. 256).

## VII. Children's access to the Internet

65. The Internet has dramatically improved the ability of children and adults in all regions of the world to communicate quickly and cheaply. It is therefore an important vehicle for children to exercise their right to freedom of expression and can serve as a tool to help children claim their other rights, including the right to education, freedom of association and full participation in social, cultural and political life. It is also essential for the evolution of an open and democratic society, which requires the engagement of all citizens, including children. The potential risks associated with children accessing the Internet, however, also feature prominently in debates about its regulation, with protection policies tending to focus exclusively on the risks posed by the Internet and neglecting its potential to empower children. More worryingly, some States resort to disproportionate and ineffective measures, whether out of a genuine desire to protect children or as a front for censorship, such as broad and insensitive filtering and blocking systems that undermine online communication for all.

66. The spread of the Internet has allowed millions of people to learn, publish and communicate on an unprecedented scale. The Internet can provide great educational benefits through its potential for interactive use in schools and the wide array of information it makes available. Plan Ceibal in Uruguay, for example, is a remarkable example of promoting Internet access through the education system. More specifically, as suggested by the Committee on the Rights of the Child, the Internet plays an important role in education owing to its ability to provide education for children who cannot travel to schools, through mobile school programmes that rely on the Internet (see [CRC/C/GC/11](#), para. 61).

67. Furthermore, the Internet provides unique avenues for young people to participate in public debates. For example, in the United States a 17-year-old boy reportedly organized a Twitter campaign to protest against a bill that would have banned teachers from discussing homosexuality in schools.<sup>17</sup>

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<sup>17</sup> Shira Lazar, "Is it okay to say gay? Devon Hicks protests Tennessee bill", *Huffington Post*, 25 May 2011.



68. Social networking sites are also increasingly important to children as a means of fostering relationships and facilitating information exchange and interaction.<sup>18</sup> Children report that social networking encourages creativity, enables choices and opinions to be informed by peer preferences, facilitates discussion and provides a platform for self-expression that is unavailable offline.<sup>19</sup> These sites may serve an especially important role for members of minority groups, such as the lesbian, gay, bisexual and transgender community, who might otherwise feel isolated.<sup>18</sup>

69. Nevertheless, Internet use does pose some risks to children. Widely acknowledged risks associated with Internet use include exposure to pornographic material, cybergrooming and cyberbullying.

70. In the case of sexual exploitation, for example, advances in technology, including faster Internet connections and new ways of transmitting material that circumvent Internet service providers, have facilitated the sharing of images involving child abuse. Cybergrooming also involves the use of the Internet, this time to “befriend” and facilitate online sexual contact or a physical meeting with a child or young person for the purpose of committing sexual abuse.<sup>18</sup> Offenders often use online forums such as chat rooms, social networking sites and instant messaging for this purpose; these “deconstruct traditional boundaries of privacy” and result in children being exposed to risks.<sup>18</sup> Lastly, cyberbullying is understood as the psychological bullying and hazing by adults or other children through information and communications technologies. Cyberbullying can take various forms, including threats and intimidation, harassment, cyberstalking, vilification and defamation, exclusion or peer rejection, impersonation, unauthorized publication of private information or images, and manipulation. This is particularly problematic for groups that are already considered vulnerable in society.<sup>18</sup>

## A. Concerns regarding the adoption of disproportionate restrictions

71. The popular fear that the Internet is dangerous to all children is misleading and oversimplifies the reality that the Internet can be both harmful and beneficial in certain circumstances. Understanding children’s vulnerability to online risks from a wider social and cultural perspective can give greater insight into the nature of these concerns and how they should be framed. Children’s use of the Internet, their behaviour and vulnerabilities to risks are different at different ages and depend on the individual child. Protection measures must seek to recognize the evolving capacities of children rather than use absolute blocking or censorship measures that adversely affect children and adults alike.<sup>18</sup>

72. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has previously noted with concern the increase in restrictions on the Internet, for instance by blocking and monitoring online activities in order to target and silence activists and critics and criminalize legitimate expression — in some cases, Governments have adopted restrictive legislation to justify such measures (see [A/HRC/17/27](#), para. 23). These restrictions are often imposed without transparency, which makes the reporting of censorship issues difficult. Furthermore,

<sup>18</sup> UNICEF Innocenti Research Centre, *Child Safety Online: Global Challenges and Strategies* (May 2012).

<sup>19</sup> Child Exploitation and Online Protection Centre, *Understanding Online Social Network Services and Risks to Youth: Stakeholder Perspectives* (2006).

even where some level of restriction may be justified, blanket bans on material beyond unlawful content are disproportionate to the goal of protection (*ibid.*, para. 44). Indeed, such measures also have unintended consequences that range from excessively limiting adults' right to freedom of expression to putting children in greater danger by inhibiting discussion about online risks.

73. The Special Rapporteur has pointed out that blanket bans by State actors are not necessary when parents and school authorities can use software to control children's access to the Internet and can guide children regarding online safety (see [A/HRC/17/27](#), para. 27). In fact, such broad bans determined by State actors are inconsistent with article 18 of the Convention on the Rights of the Child because they prevent parents and caregivers from exercising their judgement to determine children's access to the Internet. In addition, there are some projects under way to assist content providers with self-regulation strategies.

74. The limited understanding of children's use of the Internet frequently leads to the adoption of more restrictive approaches aimed at safeguarding children.<sup>20</sup> In fact, the vast majority of children and young people do not believe that their online behaviour leads to victimization or harm. Children already use a range of strategies to protect themselves from the Internet, including consulting online or offline friends, blocking or ignoring unwanted content and changing privacy settings.<sup>18</sup> Research reveals that, when parents and teachers are less familiar with the Internet, children engage in more risky online behaviour.<sup>20</sup> Conversely, evidence also suggests that informed and actively engaged parents who discuss the Internet and their experience with their children are the strongest protective measures for ensuring a safer online experience.<sup>18</sup> Perhaps this suggests that measures taken by parents and caregivers are more effective at protecting children than the current trend towards extensive restrictions.

## **B. Empowering children to use the Internet**

75. There is a need to create an environment in which information and communications technologies, including the Internet, are regulated and monitored from the perspective of empowering children to use these technologies in a way that promotes children's rights and development while also promoting safety (see [CRC/C/GC/13](#)). The European Commission provides a useful example of strategies to improve the online safety of children in its European Strategy for a Better Internet for Children.<sup>21</sup> Empowerment is more than just making the Internet a safer space for children, however: it is also necessary to focus attention on how the Internet is a tool for accessing information and supporting children to think critically.

76. Empowering children must include training parents and professionals who work with children to support them in using the Internet, keeping in mind their evolving capacities.<sup>18</sup> A positive way to introduce online safety and information beneficial to the development of children is through school curricula, including by involving children in the development of school policies on information and

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<sup>20</sup> Sonia Livingstone and Monica E. Bulger, "A global agenda for children's rights in the digital age: recommendations for developing UNICEF's research strategy" (September 2013).

<sup>21</sup> See also Brian O'Neill, "Policy influences and country clusters: a comparative analysis of Internet safety policy implementation" (London School of Economics, 2014).

communications technologies. Non-governmental organizations and public communications such as radio messages can provide similar support to children who are not in school.<sup>16</sup> Some examples of child safety initiatives are SaferNet Brasil, the Slovak Safer Internet Centre and Manos por la Niñez y Adolescencia (Hands for Children and Adolescents) in the Bolivarian Republic of Venezuela.

77. It is important to engage children when creating Internet protection and promotion strategies to meet their needs and to use their diverse intellectual and creative strengths, especially given that children and young persons tend to be more in touch with the latest technologies. Such a strategy of engagement can also help to build trust and encourage open communication. The Committee on the Rights of the Child has recommended that all countries establish accessible and child-friendly reporting systems, with child-friendly helplines for protection (see [CRC/C/GC/12](#), para. 120).

### C. Expanding research

78. More research is needed to clarify the role of the Internet in the exercise of the rights of the child, in particular with regard to how children use the Internet, how they can learn to do so safely and how the Internet can be viewed as a positive rather than a destructive tool by parents, caregivers and States. It is also important that current restrictions on Internet use be looked at carefully and critically in order to uncover potentially negative consequences for children and adults, encourage practical solutions to Internet safety concerns and maximize opportunities for children on the Internet.

## VIII. Conclusions and recommendations

79. **Children's right to freedom of expression is well established by international human rights treaties, including the Convention on the Rights of the Child, which represents a milestone for the protection of all children's rights. In practice, recognizing children as full subjects of rights — the vision set out in the Convention — requires a shift in laws, policies and attitudes. Respecting, protecting and promoting the right of children to freedom of expression is at the heart of this shift.**

80. **The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights establish the right to freedom of opinion and expression in their articles 19, but do not state that this right is enjoyed exclusively by adults. In fact, in the preamble to the Covenant it is established that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Also in the preamble, it is recognized that these rights derive from the dignity inherent to all persons.**

81. **Despite the almost universal ratification of the Convention on the Rights of the Child, too little has been done to give effect to the right of children to freedom of expression and many obstacles to the realization of this right for children remain. Unchallenged authoritarian attitudes frequently shape the**

relationship between adults and children in schools and within families. More worryingly, as communications technologies evolve, some States have adopted disproportionate restrictions on freedom of expression, presenting them as measures to protect children from harm while, in effect, they limit the rights of children and adults.

82. It is clear that States have a fundamental obligation to protect children and that it is the duty of adults to provide children with guidance. Child protection and freedom of expression must not, however, be addressed as opposing goals. On the contrary, it is by supporting children to develop good communication skills and to learn the positive uses of new technologies that we can enhance their capacity to protect themselves from harm.

83. Children may not have the same maturity as adults, but childhood is an evolving process during which maturity is gained gradually. The ability to develop opinions, as well as to express them clearly, stems from a learning process that begins at the earliest stages of our lives and that needs appropriate respect and encouragement to develop completely. If neglecting the duty to protect children from harm brings serious risks, so too does denying them space to develop their minds, critical thinking and opinions. Depriving children of information on certain matters and prohibiting their participation in public debate can only intensify their isolation and political alienation. Ensuring that children are able to exercise their right to be heard is not only an obligation: it is crucial to enhancing the effectiveness of protective measures.

84. States must never forget to keep the goal of the best interest of the child at the forefront of all their public policies. This includes establishing regulatory norms to protect children from harm and, at the same time, ensuring that all norms comply with the international standards related to the right to freedom of expression.

85. The Special Rapporteur recommends that States take the actions set out below.

**Revise laws, regulations and policies in order to eliminate undue restrictions on freedom of expression of children**

86. States should revise national laws, regulations and policies that limit the right of children to express themselves, as well as to access information, to align them with international human rights standards. Any law limiting the freedom of expression of adults or children must also comply with the three established criteria for restricting this right, namely, prescription by an unambiguous law, pursuit of a legitimate purpose and respect for the principles of necessity and proportionality.

87. States should carefully revise laws and regulations concerning the protection of children in broadcasting activities, the Internet and any other media. Classification systems are acceptable for the protection of children in broadcasting activities, for example, but the prior suppression of any particular expression before it is made public is unacceptable. The independence of authorities mandated to enforce regulations on communications should be protected from political and economic interference.

88. States should pay particular attention to the removal of authoritarian norms and practices within education systems given the centrality of schools in the promotion of children's agency.

**Promote the right of children to freedom of expression**

89. States should actively promote the right of children to freedom of expression, including access to information, in all settings. Traditional authoritarian attitudes towards children in all spheres, including the home, school and society in general, can be challenged. In particular, the State should pay attention to the creation of channels for child-led activism.

90. States should encourage the use of diverse forms of communication by children in schools, including oral, written and all forms of art. Schools curricula should impart knowledge on social communications, media and journalism.

91. States should promote programming with educational and recreational content for children of different ages and with content produced by children.

**Promote access to the Internet and online safety**

92. States should take proactive measures to promote children's access to the Internet in all settings. The Internet's central role in the promotion of all the rights of children, in particular the right to freedom of expression, to participation in public life and to education, should be taken into consideration within education systems. Efforts should be made to reframe the Internet as a positive resource — with benefits for both the individual child and society as a whole — as opposed to a negative or otherwise dangerous medium. For example, the Internet is an excellent tool for accessing books for children from all social origins.

93. States should address the risks posed by the Internet to the safety of children through holistic strategies that include the enhancement of users' capacities to protect themselves from online harm. Strategies should include training parents and professionals who work with children. Children should be actively engaged in the design and implementation of initiatives aimed at fostering online safety. Further research on the impact of the Internet on children's lives is also required.

**Increase global attention to the right of children to freedom of expression**

94. Regular attention to violations of the right of children to freedom of expression should be paid by all international human rights protection mechanisms. In particular, the Committee on the Rights of the Child could pursue articles 13 and 17 systematically in its recommendations to States.