

Universiteit van Pretoria

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Fakulteit Opvoedkunde  
Skool vir Opvoedkundige Studies  
Departement Onderwysbestuur en Beleidstudie

## Addendum O: Request Letter to do research to School Governing Body

16 April 2004

Die Voorsitter  
Beheerliggaam

Geagte Meneer

### NAVORSINGSPROJEK

Hiermee doen ek aansoek vir goedkeuring om data-insameling in u skool toe doen. Ek is 'n voltydse dosent in die Fakulteit van Opvoedkunde se Departement van Onderwysbestuur en Beleidstudie by die Universiteit van Pretoria.

My vakgebied is Onderwysreg. Ek is tans besig met my doktorale studies. Die titel van my skripsie is: ***“Learners’ understanding of their right to freedom of Expression.”***

Ek het by u distrik sowel as die GDO toestemming verkry om by vyf skole waarvan u skool een is, data in te samel. Die data-insameling sal in drie fases gebeur. Vir fase 1 van my data-insameling moet 'n Graad 11-registerklas 'n vraelyste voltooi. Vir fase 2, sal ek met agt, Graad 11 leerders in fokusgroeponderhoud voer en vir fase 3 'n persoonlike onderhoud met twee Graad 11 leerders voer.

Die doel van die studie is uit die aard van die saak om my PhD te voltooi, maar ook om aan beleidmakers aan te dui wat leerders huidiglik verstaan onder hul grondwetlike mensereg van vryheid van spraak. Dit behoort beleidmakers in staat te stel om pro-aktief op te tree en die nodige beleid en regulasies daar te stel sodat die reg van leerders in skole nie geskend sal word nie, maar ook hoe dié reg in ons demokratiese samestelling in skole gebalanseer kan word.

Die name van die vyf deelnemende skole sowel as elke respondent sal nêrens bekendgemaak word nie.

## University of Pretoria etd – Van Vollenhoven, W J (2006)

Ek vertrou dat u die aansoek gunstig sal oorweeg en dat u skool ook baat mag vind met die navorsingsprojek.

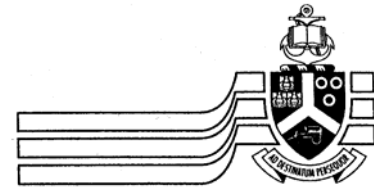
Vind aangeheg:

- (1) Toestemmingsbrief van die Gauteng Departement van Onderwys
- (2) Toestemmingsbrief van die Tshwane South Streekkantoor.

**Willie van Vollenhoven**

Departement Onderwysbestuur en Beleidstudie

082 872 3782



University of Pretoria

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Faculty of Education  
School of Educational Studies  
Department of Educational Management  
and Policy Studies

## Addendum O: Request Letter to do Research to School Governing Body

26 April 2004

The Chairperson  
School Governing Body

Dear Sir

### RESEARCH PROJECT

I hereby apply for approval to collect data in your school.

I am a fulltime lecturer in the Faculty of Education in the Department of School Management and Policy Studies at the University of Pretoria. My study field is Education Law. Currently, I am busy with my doctoral studies. The title for my thesis is *Learners' understanding of their right to freedom of expression*.

The GDE as well as the Tshwane South District, approved my request to collect data for this project at five secondary schools of which your school is one. The collection of data will happen in three phases. In phase 1, every learner in a Grade 11 register class, should complete a questionnaire. For phase 2, I will conduct a focus-group interview with eight of the Grade 11 learners and in phase 3, I will have an interview with two of the Grade 11 learners.

The purpose of the study is firstly to complete my PhD but also to indicate to policy makers what learners at schools currently understand under their right to freedom of expression. This might help policy makers to be pro-active in developing policies and regulations to ensure that this right will be respected in schools but also to indicate how this right will be balanced in a school situation to ensure that the school authorities will not be sued by learners for infringing upon their right to freedom of expression.

The five participating schools and all the respondents will be totally anonymous.

University of Pretoria etd – Van Vollenhoven, W J (2006)

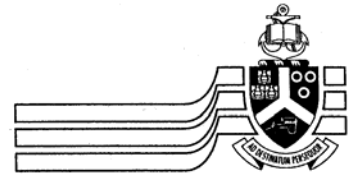
I firmly believe that both your school and myself will benefit from this research relationship and that you therefore will agree on the approval.

Attach please find:

- (1) Letter of approval from the GDE
- (2) Letter of approval from the Tshwane South District Office.

King regards

Willie van Vollenhoven  
082 872 3782



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## Addendum P: Request Letter to do Research to Principals

16 April 2004

Die Hoof

Geagte Meneer

### NAVORSINGSPROJEK

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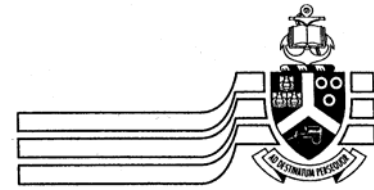
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## **Addendum P: Research Letter to do Research to Principals**

26 April 2004

The Principal

Dear Sir

### **RESEARCH PROJECT**

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I am a fulltime lecturer in the Faculty of Education in the Department of School Management and Policy Studies at the University of Pretoria. My study field is Education Law. Currently, I am busy with my doctoral studies. The title for my thesis is *Learners' understanding of their right to freedom of expression*.

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The purpose of the study is firstly to complete my PhD but also to indicate to policy makers what learners at schools currently understand under their right to freedom of expression. This might help policy makers to be pro-active in developing policies and regulations to ensure that this right will be respected in schools but also to indicate how this right will be balanced in a school situation to ensure that the school authorities will not be sued by learners for infringing upon their right to freedom of expression.

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King regards

Willie van Vollenhoven  
082 872 3782



## **ADDENDUM Q: TEN SCENARIOS**

### **SCENARIO 1:**

Jonathan is a grade ten pupil at Achievement High School and he wears a golden sleeper ring in his left ear. The Code of Conduct for learners specifically mentions that only girls are allowed to wear a golden stud or sleeper ring in their ears. Jonathan is instructed to remove the earring or face possible disciplinary action against him.

### **QUESTIONS TO BE POSED:**

- (1) What would you do if you were Jonathan? Why?
- (2) Do you think that wearing an earring could be a form of expression of his freedom of expression?
- (3) Suppose Jonathan is suspended from school because he refuses to remove the earring, would he be successful in suing the school for infringing his right to freedom of expression?

## **SCENARIO 2**

Bianca is a grade eleven learner at New Life Secondary School. She embraced the principles of the Rastafarian religion. As a way of expressing her religious beliefs she grew her hair in dreadlocks and covered her hair with a cap. She knew that this was contrary to the hair rules set out in the school rules and proceeded to ask permission from the principal to do this. Her request was turned down by the school principal stating that the school embraced Christian religious principles as part of the school ethos and code of conduct, which her parents accepted when she was enrolled at the school. Believing her right to freedom of religion and expression was infringed; she continued to attend school wearing a navy cap because this matched the prescribed school colours. The school regarded her behaviour as constituting serious misconduct and Bianca was subsequently suspended for five days. Her parents appealed this decision of the school governing board.

According to section 4.5.1 of the Schedule, issued by the Ministry of Education, which deals with guidelines for consideration of SGBs in adopting a code of conduct for learners:

Freedom of expression is more than freedom of speech. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles.

### **QUESTIONS TO BE POSED:**

- (1) Do you think the school violated Bianca's right to freedom of expression?
- (2) Do you think the school can legally limit Bianca's right to freedom of expression? Give reasons for your answer.

**SCENARIO 3:**

The SGB of a school decided to make condoms available to all learners who wish to have access to them. The condoms are kept in the administration office. A group of female learners felt offended by this decision and asked the principal to hold a meeting in the school hall. This was granted and they held the meeting during break. They decided to form an action group that would promote abstaining from premarital sex, to wear a white ribbon that would identify them as members of the group and to demonstrate against the issuing of condoms on the school premises.

**QUESTION TO BE POSED:**

- (1) Did they act in accordance with their right to freedom of expression?

**SCENARIO 4:**

Riverside High School's ethos is based on Christian principles. They have a very strong Christian association where learners can freely participate in prayer and worship ceremonies during break time. The members of this association wear a badge on their uniform to witness to fellow learners.

Rebotile, a grade eight learner, was suspended from school for wearing a badge on her uniform to promote Satanism. She sued the school claiming that her right to freedom of expression was violated.

**QUESTIONS TO BE POSED:**

- (1) Do you think the school may allow the wearing of badges of the Christian organisation?
- (2) Do you think Rebotile had a strong case in the court?
- (3) What do you think would be the best precaution that the school can take in order to prevent legal action for cases like this?

**SCENARIO 5:**

John Doe was suspended for wearing a black armband to school with the abbreviation WWJD (what would Jesus do?) on it. The Code of Conduct clearly states that no type of jewellery is allowed with the school uniform.

**QUESTIONS TO BE POSED:**

- (1) Can John claim that this was an infringement of his right to freedom of expression?
- (2) Do you think that the school can legally prohibit the wearing of this armband?
- (3) Would the scenario change if the slogan on the armband read “Satan is King?”

**SCENARIO 6:**

According to the draft Revised Curriculum Statement in the learning area Arts and Culture (RSA 2001), pupils are supposed “to convey particular feelings and moods” and “communicate ideas, thoughts and feelings through dance”. Annah and John, two Grade 11 learners at Sunrise Secondary School, performed their dance and suggested through their dance the whole passionate ritual of intimate sex. The rest of the class were embarrassed, while some whistled and cried out sexual slogans. The two learners were suspended.

**QUESTION TO BE POSED:**

- (1) Can they argue that their right to freedom of expression was infringed?

**SCENARIO 7:**

Kim, a grade 11 learner at Starview Secondary School, was suspended for having a tattoo on his right arm.

**POSING QUESTIONS:**

- (2) Can Kim claim that this was an infringement of his right to freedom of expression?
- (3) Do you think that schools can limit this practice?

## **SCENARIO 8**

At Atteridge High School, they offer art as a subject. The Grade 11 learners had to submit a portfolio of their work which also included personal choice of work. Tsepo submitted amongst his work a nude painting. The model was another Grade 11 pupil of the opposite sex. The art teacher refused to mark the work as it could not be displayed at the annual art gallery for the art students. She reported the case to the principal who started with a disciplinary hearing to expel Tsepo from school.

### **QUESTIONS TO BE POSED:**

- (1) Do you think Tsepo can claim that it is an infringement of his right to freedom of expression because the teacher refused to accept his painting?
- (2) What criteria do you think should be used to limit one's right to artistic freedom of expression?
- (3) Would the scenario be different if the model were not a pupil from the school?
- (4) Would the principal act within his legal power to start with disciplinary measures?



**SCENARIO 9:**

A Grade 9 Xhosa-speaking learner at Prestige High School was suspended for shaving his head.

**QUESTIONS TO BE POSED:**

- (1) Did the SGB act within their legal power in suspending this learner?
- (2) Was this an infringement of the right to freedom of expression?
- (3) How would the situation change if the boy argued that he shaved his head as an act of respect for a deceased relative?

**SCENARIO 10:**

The grade 11 pupils at Sunrise Secondary School had to write, compose and sing their own lyrics in the learning area, Arts and Culture. One group's lyric is:

LSD gives us power

LSD makes us strong

The best investment in our future is dedication to LSD.

The whole group was immediately summoned to the principal's office and expelled after a disciplinary hearing.

**QUESTIONS TO BE POSED:**

- (1) Can the learners claim that the expulsion is a violation of their right to freedom of expression?
- (2) Do you think there should be a limitation of the right to freedom of artistic creativity in this case?



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## Addendum R: Letter to Critical Friends

Dear

### **FREEDOM OF EXPRESSION**

Section 16 of the Constitution of the Republic of South Africa, Act 108 of 1996 states:

- 16(1) Everyone has the right to freedom of expression, which includes
- (a) freedom of the press and other media;
  - (b) freedom to receive or impart information or ideas;
  - (c) freedom of artistic creativity; and
  - (d) academic freedom and freedom of scientific research.

I am doing my PhD research on this topic under the title:

*“Learners’ understanding of their right to freedom of expression.”*

My intention is thus to determine what learners understand at this stage by this right to freedom of expression.

Of course, this right entails the written and the spoken word. I am however focusing on freedom of expression that is neither the written nor the spoken word. My focus will thus be on sections 16(1)(b) and 16(1)(c).

For my data collection, I would like to have focus group interviews with Grade 11 learners. In the focus group interviews, I will sketch three scenarios to them and ask questions in order to determine what they understand by their right to freedom of expression.

University of Pretoria etd – Van Vollenhoven, W J (2006)

I would like to use you as a critical friend to help me with the selection of the scenarios, since you work daily with Grade 11 learners and know what is really an issue for them. I would therefore like you to prioritize according to your opinion the ten attached scenarios using the criteria of

- (1) This really is a burning issue among Grade 11 learners
- (2) Grade 11 learners will really want to talk about this topic.

You are also welcome to sketch your own scenario and give it to me, if you believe that there is an important scenario which is not represented in the ten provided scenarios.

Thank you for your time.

Willem van Vollenhoven.

## **ADDENDUM S: FINAL SCENARIOS FOR FOCUS-GROUP INTERVIEWS**

### **SCENARIO 1:**

Jonathan is a grade ten pupil at Achievement High School and he wears a golden sleeper ring in his left ear. The Code of Conduct for learners specifically mentions that only girls are allowed to wear a golden stud or sleeper ring in their ears. Jonathan is instructed to remove the earring or face possible disciplinary action against him.

### **QUESTIONS TO BE POSED:**

- (1) What would you do if you were Jonathan? Why?
- (2) Do you think that wearing an earring could be a form of expression of his freedom of expression?
- (3) Suppose Jonathan is suspended from school because he refuses to remove the earring, would he be successful in suing the school for infringing his right to freedom of expression?

## **SCENARIO 2**

Bianca is a grade eleven learner at New Life Secondary School. She embraced the principles of the Rastafarian religion. As a way of expressing her religious beliefs she grew her hair in dreadlocks and covered her hair with a cap. She knew that this was contrary to the hair rules set out in the school rules and proceeded to ask permission from the principal to do this. Her request was turned down by the school principal stating that the school embraced Christian religious principles as part of the school ethos and code of conduct, which her parents accepted when she was enrolled at the school. Believing her right to freedom of religion and expression was infringed; she continued to attend school wearing a navy cap because this matched the prescribed school colours. The school regarded her behaviour as constituting serious misconduct and Bianca was subsequently suspended for five days. Her parents appealed this decision of the school governing board.

According to section 4.5.1 of the Schedule, issued by the Ministry of Education, which deals with guidelines for consideration of SGBs in adopting a code of conduct for learners:

Freedom of expression is more than freedom of speech. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles.

### **QUESTIONS TO BE POSED:**

- (1) Do you think the school violated Bianca's right to freedom of expression?
- (2) Do you think the school can legally limit Bianca's right to freedom of expression? Give reasons for your answer.

### **SCENARIO 3:**

According to the draft Revised Curriculum Statement in the learning area Arts and Culture (RSA 2001), pupils are supposed “to convey particular feelings and moods” and “communicate ideas, thoughts and feelings through dance”. Annah and John, two Grade 11 learners at Sunrise Secondary School, performed their dance and suggested through their dance the whole passionate ritual of intimate sex. The rest of the class were embarrassed, while some whistled and cried out sexual slogans. The two learners were suspended.

### **QUESTION TO BE POSED:**

- (1) Can they argue that their right to freedom of expression was infringed?

# **ADDENDUM T: THE RIGHT TO FREEDOM OF EXPRESSION IN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

## **FREEDOM OF EXPRESSION IN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

### **1 The United Nations Charter (UNC) of 1945**

By ratifying the UNC, South Africa pledged to promote “universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion”<sup>1</sup>. Yet, the policy of apartheid was implemented and the fundamental human rights of the majority of citizens were violated. Every fundamental right enshrined in the UDHR was violated by South Africa (Patel & Watters, 1994 p. V) and this led to the imposition of economic sanctions against South Africa by the countries which had ratified the UNC and the UDHR. It specifically mentions the right to freedom of expression. As the fundamental human rights of South Africans were violated, the right to freedom of expression, which is a core right in a democracy, was also violated.

### **2 The Universal Declaration of Human Rights (UDHR) of 1948**

Article 19 of the UDHR provides that:

...[e]veryone 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 (“UDHR”, 1948 article 19).

The way the right to freedom of opinion and expression is stipulated in article 19 of the UDHR corresponds with the literature which resonates with the fact that the right to freedom of expression tends to be an absolute right. There is absolutely no inherent limitation to article 19 and it provides for opinions to be held without interference and for the recital of and imparting of ideas through any media, regardless of “frontiers”.

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<sup>1</sup> Article 55 of UNC.



### **3 The International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976**

Although the intention of this Covenant is not primarily to address human rights, it notes in article 18 and 19 that the Commission on Human Rights will be advised on this issue as required. It states in article 19 that:

- 1 Everyone shall have the right to hold opinions without interference.
- 2 Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in printing, in the form of art, or through other media of his choice ("ICESCR", 1976 article 19).

Again, this right is basically the same as the protection of the right to freedom of expression as protected under article 19 of the UDHR and it also looks as if it tends towards an absolute right. It elaborates, however, wider than the UDHR by stating that this right is not only for oral (verbal) or written expression, but also includes not only printed media, but also creativity and artistic expression.

It then adds to the protection of this right as provided in article 19(1) and 19(2) an inherent limitation in article 19(3) which is not found in the UDHR. None of the earlier covenants and declarations included inherent limitations to the right to freedom of expression. It states the inherent limitation in article 19(3):

- (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals ("ICESCR", 1976 article 19).

In other words, in terms of article 19(3)(a) the right to freedom of expression can be limited if any other right of a person is violated in the process. (See § 2.4.2.1) Furthermore, in terms of article 19(3)(b) it can also be limited in order to protect the national security or public order, or public health or morals. It is clear, judging by these inherent limitations, that the right can be balanced by responsibilities. In other words, when exercising your right to freedom of expression, one has to remember that you have to abide by your responsibilities that are reciprocal to your right.

## 4 The American Convention on Human Rights (ACHR) of 1978

The ACHR provides for the rights to freedom of thought and expression in article 13. This is a fairly lengthy provision. Article 13: Freedom of Thought of Expression

- (1) Everyone shall have the right to freedom of thought and expression. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of his choice.
- (2) The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary in order to ensure:
  - (a) respect for the rights or reputations of others; or
  - (b) the protection of national security, public order, or public health or morals.
- (3) The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
- (4) Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
- (5) Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offences punishable by law ("ACHR", 1978 article 13).

Article 13(1) echoes article 19(2) of the ICCPR which indicates a whole spectrum under the right to freedom of expression.

Article 13(2) limits the right to freedom of expression in article 13(1) as the right to freedom of expression is limited in the same way in article 19(3) of the ICCPR. It continues, however, in article 13(3), to state that "government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions", may not restrict this right. In terms of article 13(4) the right to freedom of expression may be limited for the moral protection of childhood and adolescence. Finally, it ends in article 13(5) with the limitation that, if freedom of expression amounts to "propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to lawless violence or to any other similar illegal action against any person or group of persons on any grounds, including those of race, colour, religion, language or national origin, shall be considered as offences punishable by law."

This offers a broad framework of the conditions under which the right to freedom of expression can be limited, which is in accordance with the fact that freedom of expression is limited if the rights of others are violated in the process of exercising one's own right to freedom of expression (see § 2.4).

## **5 The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1953**

When looking at article 10 of the ECHR, one notices that it is based closely on article 19 of the UDHR. (See § 2) At article 10(1) a new sentence is added, which reads:

This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises ("ECHR", 1953 article 10).

This indicates that governments may have a certain amount of control over these enterprises. Both the UDHR as well as the ICESCR refers to "freedom to seek, receive and impart information". Noteworthy is the fact that the ECHR omits the word "seek". They avoid this word to imply that public authorities have a corresponding obligation to give information. This section refers thus to the duties and responsibilities of everybody and that one's right can be balanced by one's duties.

It is stated in article 10 that this right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It continues then, with a limitation, stating that "[t]his article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises".

Although the concept of freedom of expression is not defined, it includes the whole spectrum of expression of own opinion and to impart or receive information by any method or in any way. It gives, however, the right of government to decide or to have control over the broadcasting industry's licensing meaning that government still has a veto right on what can be broadcast or not which in fact boils down to a limitation (perhaps a violation ) of the right to freedom of expression. The more the government control and the limitation of this right, the less is the right to freedom of expression of citizens to speak their minds through the media or to hear or see through the media what they want or should see.

In article 10(2) this right is inherently limited when it is in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure and impartiality of the judiciary. This limitation therefore comes into effect whenever the right of someone else is violated when someone exercises this right (see Canon Lawyers § 2.2.2). This is not a legal document but needs to be ratified by countries.

## **6 The African Charter on Human and Peoples Rights (1986) (African Charter)**

In connection with the right to freedom of expression the African Charter provides briefly in article 9 that:

- 1 Every individual shall have the right to receive information
- 2 Every individual shall have the right to express and disseminate his opinions within the law ("The African Charter", 1986 article 9).

The only limitation built into this provision is that the exercising of the right to freedom of expression must be within the boundaries of the law. This term allows for the right to be nullified by statute (Alston, 2002:59) and is in line with the tendency that the law or the government or society (collectively) has more power than the right of the individual.

## **7 The Universal Declaration of Islamic Human Rights (UDIHR) of 1981**

In connection with the right to freedom of expression, the UDIHR provides in article XII:

- XII Right to Freedom of Belief, Thought and Speech
- (a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.
  - (b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.
  - (c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the State.
  - (d) There shall be no bar on the dissemination of information, provided it does not endanger the security of the society or the State and is confined within the limits imposed by the Law.

- (e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims ("UDIHR", 1981 at XII).

In short, the protection of the right to freedom of expression in the UDIHR does not vary much from other international declarations. Some of the inherent limitations are in line with those of other international declarations, e.g.:

- XII(a) "... No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspirations on other persons" ("UDIHR", 1981 at XII(a)).

It emphasises however, the fact that the duty of the Muslim has higher value than the right, e.g.:

- XII(b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim ("UDIHR", 1981 at XII(b)).

Further, the tension between religion and government is also spelled out within this right

- XII(c) ... right and duty to protest and strive (within the limits set out by the Law) against oppression can, if it involves challenging the highest authority in the State ("UDIHR", 1981 at XII(c)).

In other words, The Muslim may by law challenge government if they or their laws contradict the Shari' ah Law. It is also evident that every right that is allowed, is allowed only if under the auspices of the Shari'ah Law of the Muslim. It is within this provision, where the Law is supreme to the international or national legislation that tension can develop between a government and its Islamic citizens. The UDIHR, however, is not insensitive toward the value systems of society and governments, as is clear in article XII(d) on freedom of expression. Furthermore, it provides in article XII(e) that "respect for the religious feelings of others is obligatory on all Muslims".

## **8 The Cairo Declaration on Human Rights in Islam (Cairo Declaration) of 1990**

As the Law of Allah has priority over the constitutional rights of international laws, freedom of expression can also be limited for the Muslims in terms of their law.

An example is the legal school rule of deciding on school uniforms. A Muslim student, however, can wear his/her Muslim dress/headscarf to school, instead of the school uniform, claiming his/her right to freedom of expression. Clearly, this poses a problem for school managers. Can this right be limited in terms of Section 16(2) of the Constitution or can it be limited in terms of a legitimate school rule?

In regard to freedom of expression, article 22(a) of the Cairo Declaration provides that everyone has the right to express an opinion freely, but as with all other rights, it is limited in the way that the right of expression may not be contrary to the principles of the Shari'ah Law. It also includes being free to "advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah" ("The Cairo Declaration", 1990 article 22(b)).

Information is seen as a vital necessity to society, but must not be used to undermine moral and ethic values (Art. 22(c)). Art 22(d) poses an inherent limitation on freedom of expression if it would arouse nationalistic or doctrinal hatred, or do anything that may be an incitement to any form of racial discrimination.

Alston (2002:81) states that freedom of expression is not accepted by Muslims, as a citizen cannot disregard a divinely inspired directive. There is, however, not only one line of Moslem view and the Islam Human Rights Instruments is an attempt to bring human rights in line with the beliefs of the Western world but the tension between individual human rights and the rights of the society or Shari 'ah Law remains an issue in Muslim countries.

## **9 Declaration of the Rights of the Child of 1959**

The Declaration makes no specific mention of freedom of expression. In terms of principle 2 the child needs opportunities "to enable him to develop physically, mentally ... and in conditions of freedom and dignity".

As freedom of expression is viewed as a prerequisite for individual development (Alston, 2002 p. 61); Section p. 3 (freedom of expression)) one could argue that the goal of principle 2 can be achieved only if freedom of expression is applied and is therefore implicitly included in this principle.

## **10 The Convention on the Rights of the Child of 1990**

The Convention respects the right to freedom of expression of the child, but balances it against the human rights and responsibilities of others. Although it views the right to freedom of expression of the child as a serious issue which deserves due weight, its views certainly are not the only ones to be considered. This Convention became the most widely accepted human rights

treaty ratified by 191 countries in a very short time. On freedom of expression it states in article 12:

State Parties shall assure the child who is capable of forming his/her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child ("CRC", 1990 article 12).

It further states in article 13(1) that:

- (1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through other media of the child's choice ("CRC", 1990 article 13(1)).

In 13(2) it continues with an inherent limitation, stating that freedom of expression may be subject to certain restrictions when necessary:

- (2) The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals ("CRC", 1990 article 13(2)).

This provision is identical to article 19 of the ICESCR (see § 3).

African Charter on Human and Peoples' Rights, (1986).

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