**Draft Checklist for Reporting under Article 19 ICCPR: based on Frank La Rue Framework[[1]](#footnote-1) and on General Comment 34 on Article 19.[[2]](#footnote-2)**

**Project Working Draft December 2012**

**A General Protection of Freedom of Expression**

* National laws or constitution protect internet based freedom of expression

**Restrictions on online content**

**1 Arbitrary Blocking or Filtering**

* There are no generic bans on content
* Sites are not prohibited solely because of political or government criticism
* State blocks or filters websites based on lawful criteria
* State provides lists of blocked and filtered websites
* Blocked or filtered websites have explanation on why they are blocked or filtered
* Content blocking occurs only when ordered by competent judicial authority or independent body
* Where blocked or filtered content is child pornography, blocking or filtering online content is connected with offline national law enforcement strategies focused on those responsible for production and distribution of content.

**2. Criminalising Legitimate Expression**

* Defamation is not a criminal offence
* Journalists and bloggers are properly protected
* National security or counter-terrorism laws restrict expression only where:

a) the expression is intended to incite imminent violence;

(b) it is likely to incite such violence; and

(c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

**3. Imposition of Internet Intermediary Liability**

* State does not delegate censorship to private entities
* Internet intermediaries are not liable for refusing to take action that infringes human rights
* State requests to internet intermediaries to prevent access to content, or to disclose private information are:

1. strictly limited to certain purposes such as for the administration of criminal justice
2. by order of a court or independent body.

* Private corporations
* act with due diligence to avoid infringing individuals’ rights
* only implement restrictions to these rights after judicial intervention;
* are transparent to the user involved about measures taken and where applicable to the wider public; provide, if possible, forewarning to users before the implementation of restrictive measures; and
* minimize the impact of restrictions strictly to the content involved.
* There are effective remedies for individuals affected by private corporations’ actions, including the possibility of appeal through the procedures provided by the intermediary and competent judicial authority
* Private corporations disclose details of content removal requests from States and accessibility of websites

**4. Disconnecting Users from the Internet**

* Internet access is maintained at all times, including during political unrest
* Disconnecting users is not used as a penalty, including under intellectual property law

**5. Cyber-attacks**

* State does not carry out cyber attacks
* State takes appropriate and effective measures to investigate actions by third parties, hold responsible persons to account and adopts measures to prevent recurrence

**6. Protection of the right to privacy and data protection**

* There is adequate data and privacy protection laws and these apply to the internet
* The right to anonymity is protected
* State does not adopt real name registration policies
* Limitations on privacy rights are exceptional (such as for administration of justice or crime prevention) and there are safeguards to prevent abuse.

**B Access**

* State has a national plan of action for internet access
* State fosters independence of new media
* Concrete and effective policy developed with public and private sector to make the internet available, accessible, and affordable to all
* Development programmes and assistance policies facilitate universal internet access
* State supports initiatives for meaningful access to diverse content, including for disabled people
* There are digital literacy programmes

[the following are not included in the Frank La Rue Framework or in General Comment 34]

**C International Human Rights Mechanisms and Commitments**

* State was a signatory to the Human Rights Council Resolution on Freedom of Expression and the Internet
* State reports on internet related human rights issues in the UPR
* State reports on internet related human rights issues in other treaty body processes

**D Women’s Human Rights**

* State laws uphold women’s human rights, including on the internet
* State laws prohibit violence against women online or through the use of information communication technologies and effective remedies are available.

**E Internet Governance**

* There are national processes for multi-stakeholder internet governance
* State participates in regional and global internet governance forums in a manner that respects, protects and promotes human rights online and offline

**Article 19**

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 print, in the form of art, or through any other media of his choice.

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.

**General Comment 34: Extracts**

11. Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms include, the spoken, written and sign language and such non-verbal expression as images and objects of art.23 Means of expression include books, newspapers,24 pamphlets,25 posters, banners26, dress and legal submissions. 27 They include all forms of audio-visual as well as electronic and internet-based modes of expression.

14. State parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network to exchange ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. State parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.

41. Legislative and administrative frameworks for the regulation of the mass media should be reviewed to ensure that they are consistent with the provisions of paragraph 3.94 Regulatory systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media

45. Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, must be compatible with paragraph 3. Any restrictions must be content-specific. Generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or a system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.106

46. Since journalism is a function shared by a wide range of actors, including professional full time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, general systems of registration or licensing of journalists are incompatible with paragraph 3. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and, or events.

1. Available here: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf> [↑](#footnote-ref-1)
2. Available here: <http://www2.ohchr.org/english/bodies/hrc/comments.htm> Extracts also attached as appendix. [↑](#footnote-ref-2)