



## **List of questions for the UN Human Rights Committee for the 7th UK ICCPR Review**

ARTICLE 19 and English PEN

July 2015

### **Introduction**

ARTICLE 19, Global Campaign for Free Expression (ARTICLE 19), an international human rights organisation, and English PEN, a UK based-free expression organisation, respectfully submit these questions for the Committee's consideration concerning the United Kingdom at its 112th Session.

In these suggestions for questions, ARTICLE 19 and English PEN focus on areas of concern relating to the exercise of the rights to freedom of expression, association, assembly and privacy with a view to clarifying the United Kingdom's obligations under the ICCPR to fully ensure the achievement of these rights.

### **1. Article 19 - Right of Free Expression**

#### **Anti-terrorism legislation**

The Committee in the 6th Review of the UK expressed concern about the scope of UK anti-terrorism laws. Little change has been made to the legislation in the meantime. The Terrorism Act 2000 (c. 11) was used to detain and search the partner of a prominent journalist, which was upheld by the High Court (*Miranda v Secretary of State for the Home Department & Ors* [2014] EWHC 255 (Admin) (19 February 2014)). The High Court's decision found that the Terrorism Act can be used against journalists who hold leaked documents. The police have also been revealed to have been creating large databases of "domestic extremists" which include peaceful protesters and political figures.

The Supreme Court has described the scope of anti-terrorism legislation as "concerningly wide" (*R v Gul*, [2013] UKSC 64) while the Independent Reviewer of Terrorism Legislation in his 2014 report described it as "extraordinarily broad" and only limited by the "wise discretion" of ministers, prosecutors and police officials.

**What actions is the Government taking to review the current anti-terrorism legislation and ensure that it does not restrict fundamental human rights including freedom of expression,**

**access to information and freedom of association, in light of the recommendations of the Independent Reviewer of Terrorism Legislation?**

**How is the Government working to ensure that journalists and those assisting them are not subject to anti-terrorism legislation?**

## **Prosecutions of Social Media Offences**

The UK has witnessed a sharp increase in the number of social media prosecutions. One of the most notable cases (*R v Chambers*, 2008) prompted the Director of Public Prosecutions (DPP) to issue guidelines for prosecutors. The guidelines, issued in 2013, set a high bar for prosecution and the DPP stated that a message should be more than just “grossly offensive” before a prosecution is brought. However, in 2014 two more people were prosecuted under s.127 of the Communications Act 2013.

**What steps are the UK Government, the Crown Prosecution Service and the police taking to ensure that freedom of expression on social media is protected, and that prosecutors adhere to established guidelines?**

## **Official Secrets Act**

The Committee in both its 5th and 6th Reviews of the UK expressed concern about the Official Secrets Act being used to suppress information whose disclosure was in the public interest. Since that time, the Act has remained unchanged. Since the last review, it has been used on a number of occasions to threaten journalists including the *Guardian* newspaper.

**What steps is the Government taking to implement the previous recommendations and ensure that the Act is made compliant with Article 19 and General Comment 34?**

## **Defamation law**

The Committee criticised the defamation law in its 6<sup>th</sup> review in 2008 (para 25). In response, the UK Government reformed the law in England & Wales through the Defamation Act 2013. However, the Act only applies to England & Wales with only two sections applying in Scotland. The devolved administrations in Northern Ireland and Scotland have so far failed to implement similar reforms. This creates ambiguity and uncertainty for publishers who operate throughout the United Kingdom and weakens the impact of the reforms.

**What steps are the UK Government and the devolved administrations taking to ensure that reforms and the new statutory defences are extended to the jurisdictions of Scotland and Northern Ireland?**

Two UK local government authorities, Carmarthenshire County Council and South Tyneside Council, recently used public money to fund libel claims brought by council officials on a personal basis. This

undermines the welcome precedent established in *Derbyshire County Council vs Times Newspapers Ltd (1992)* that government and its agencies should not sue citizens for libel.

**What action is the UK Government taking to ensure that local government funded libel actions do not undermine the *Derbyshire* principle as well as international law?**

The high cost of bringing or defending a defamation case has long been regarded as both a chill on freedom of expression, and also a barrier to ordinary citizens defending their reputation. A consultation on this issue was carried out in 2013 but the Ministry of Justice has yet to respond.

**What steps is the UK Government taking to help people and organisations of modest means to be able to bring and defend defamation and privacy claims without the fear of having to pay unaffordable legal costs to the other side if they lose?**

## **Media regulation**

In 2013, a Royal Charter on Self-Regulation of the Press was granted by the Privy Council. The Charter will create the recognition panel that oversees the new press regulator and is funded by the Exchequer. Its terms can only be changed by a two-thirds majority in both Houses. While this is seen as a safeguard by campaigners for reforming press regulation, that will keep the executive at arm's length, it is possible to foresee a situation where such a majority may be achieved (for example during a time of national crisis) affording politicians the possibility of intervening directly in press regulation. The Charter also allows the recognition panel to review the regulator on an ad hoc basis when it considers that it is a matter of public interest or under exceptional circumstances. In this case, too, there are concerns that this might expose the regulator and the press to political pressure.

**How will the UK government guarantee that the operation of the press remains free from political interference?**

Section 40 of the Crime & Courts Act 2013 gives a court power to award costs and exemplary damages against a defendant in a libel or privacy claim on the basis that the publisher could have been, but chose not to be, a member of an 'approved regulator'. This could mean that a publication could publish a story in the public interest, be sued by a claimant, win the case and have to pay the costs of both sides. This proposal has been described by leading QCs (Lord Pannick QC, Desmond Browne QC, Anthony White QC) in legal opinions seen by English PEN, as being possibly in breach of Article 10 and Article 6.

**How will the UK government ensure that such costs orders do not chill the freedom of expression of publishers who choose not to join a regulator nor reduce the right to a fair trial?**

Section 41 and Schedule 15 of the Crime & Courts Act establish the concept of a 'relevant publisher' for the purposes of media regulation, exemplary damages, and costs orders. This category was created without effective scrutiny or debate in Parliament and there is a lack of clarity that may chill the freedom of expression of small publishers.

**What steps is the UK Government taking to clarify the meaning of 'relevant publisher' and to establish certainty as to whether a particular publisher falls within the definition?**

## **The Right to Information**

The UK Government and courts have consistently refused to acknowledge the right of access to government information. The Freedom of Information Act (FOIA) 2000 has an extensive provisions exempting bodies and information from release. Ministers also have a power of veto which they have increasingly used to block the disclosure of information of public interest. The Act also exempts all information relating to the security and intelligence services and, following a recent amendment, all communications with senior members of the Royal family, no matter how great the public interest in the information. In addition, many of the British Overseas Territories and Crown Dependencies do not have any legislation at all.

**What measures will the government take to ensure that the right to information as recognised under Article 19 is fully recognised in the UK and the British Overseas Territories and Crown Dependencies?**

## **2. Articles 21 and 22 Right of Association and Assembly**

### **Limits on protests/association and surveillance**

There has been a series of high profile revelations about the use of undercover police officers (the Special Demonstration Squad) to infiltrate peaceful protest groups and campaigns, including environmental organisations and families of victims of crime and police wrongdoing. A number of prosecutions against environmental protesters were recently found unsafe after it was revealed that undercover officers has been actively involved in the actions.

The UN Special Rapporteur for Freedom of Association and Assembly has made a series of recommendations following his 2013 country visit (A/HRC/23/39/Add.1).

The Special Rapporteur also expressed concern about limits on freedom of assembly, relating to the broad scope of the Public Order Act. He also expressed concern about private injunctions being used to prohibit protests, containment measures, and preemptive arrests before major events.

**What action is being taken to ensure accountability for the embedding of undercover police officers in legal associations engaged in political activities, and to ensure an end to this practice?**

**What action is being taken to ensure that the personal or identifying information of participants in peaceful assemblies is not gathered or retained by law enforcement agencies?**

**What action is being taken to ensure the law enforcement authorities do not employ intimidatory tactics, such as preemptive arrests, that are aimed at or are likely to have the effect of deterring activists from lawfully exercising their democratic rights?**

**What action is being taken to ensure that containment (also known as 'kettling'), or the threat of containment, is not employed unnecessarily or disproportionately, and is the government**

**confident that its use to date has not had a chilling effect on expression and peaceful assembly rights?**

**How do the criminal offences of aggravated trespass (S68 and 69 of the Criminal Justice and Public Order Act 1994) and offences around trespassory assemblies (Section 14 A - C of the Public Order Act 1986) and injunctions through the civil law strike a proportionate balance between private property rights and the rights to freedom of expression and peaceful assembly?**

### **Restrictions on civil society campaigning**

The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 passed into law in January 2014 and has been widely criticised by a broad spectrum of organisations and individuals for reducing the space for civil society campaigning around elections. It limits activities up to 7.5 months before an election. It was drafted without consultation with civil society, nor the Electoral Commission which is the body that would be required to interpret and enforce the legislation.

**What steps will the government take to ensure that the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 does not unduly limit the rights of civil society groups and individuals to peacefully assemble and associate to engage in legitimate campaigning activities in and around an election period?**

**How will the government ensure that the long period placed on the freedom of association and assembly of civil society and individuals prior to an election under Act will not disproportionately affect the freedom of expression of vulnerable groups and minorities?**

## **3. Article 17 - The Right to Privacy**

### **The Right to Access Personal Information**

General Comment 16 states that individuals have a right to obtain personal information about themselves held by public and private bodies. Under the Data Protection Act 1998, individuals whose right of access has been denied can apply to the Information Commissioner's Office (ICO) for a remedy. Although the ICO receives thousands of such complaints each year it rarely makes use of its power to make legally binding decisions. Instead it produces a non-binding assessment of whether it is 'likely' or 'unlikely' that the Act has been complied with. Individuals who remain dissatisfied must enforce their rights in the courts which is beyond the ability of most people to afford. In contrast, under the Freedom of Information Act and the Environmental Information Regulations, the ICO issues over a thousand legally binding decisions each year.

**What plans does the Government have to remedy this discrepancy to ensure that individuals can effectively ensure that their right of access is enforced?**

## **Contact information**

We thank the Committee for its consideration of these issues. We would be pleased to provide additional information on any of these issues.

For ARTICLE 19, David Banisar, Senior Legal Counsel, + 44 207 324 2500, [banisar@article19.org](mailto:banisar@article19.org)

For English PEN, Robert Sharp, Head of Campaigns, + 44 207 324 2538 [robert@englishpen.org](mailto:robert@englishpen.org)

Free Word Centre  
60 Farringdon Rd  
London EC1R 3GA  
United Kingdom