



## A Report on Freedom of Expression:

# AFI Changemakers at the 32<sup>nd</sup> Regular Session of the United Nations Human Rights Council July 2016



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## ACKNOWLEDGEMENTS

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*Images provided by Iman Nauman and Rebecca Morcos*

*As delegates for Ariel Foundation International Changemakers, we had the great honour to attend the 32<sup>nd</sup> Regular Session of the Human Rights Council 2016. We would like to thank Dr Ariel King for her efforts and providing us with this opportunity to contribute to these discussions.*



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## [1] Introduction

The Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) both guarantee the right to freedom of expression in Article 19.

Freedom of expression is key to the development, dignity and fulfilment of every person.

This right allows people to gain an understanding of their wider world through the exchange of ideas and information. Furthermore, individuals feel more secure and respected by the state if they are able to voice their opinions.<sup>1</sup> It is a key component for change in an evolving society.

Whilst the UDHR is not a binding treaty, the United Nations Human Rights Council (UNHRC) has implemented resolutions that embody the right. Moreover, it must be noted that through time, much of the UDHR has risen to the level of customary international law, including Article 19, and is therefore binding on all states.

International law declares the right to freedom of expression to be the rule, however, it is not an absolute right and can be limited in order to protect the rights or reputations of others, national security, public order, public health and morals.<sup>2</sup> Such limitation is only legitimate when it is in accordance with the three-part test also contained within Article 19(3) of the ICCPR.

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<sup>1</sup> "Freedom of expression: Limitations", ARTICLE 19, available at: <https://www.article19.org/pages/en/limitations.html>, [accessed 15 July 2016].

<sup>2</sup>Article 19(3), ICCPR, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.



## [2] **Executive summary**

Whilst the enjoyment of freedom of expression is broad in scope and impact and underpins the associated freedoms of assembly and association, the focus of this report is to highlight and respond to the prevalent themes observed during attendance at the 32nd regular session of the UNHRC.

In conjunction with this, further recent examples are drawn from across the international sphere to complement the highlighted themes.

Regard is also given to the 2016 report of David Kaye, the Special Rapporteur on freedom of expression to the UNHRC.

In his report, the Special Rapporteur explores the impact on and challenges to freedom of expression in the digital age and how to achieve the accepted, though not always respected, proclamation that individuals enjoy the same rights online as they do offline.<sup>3</sup>

The context of the digital age is of particular importance to young people among whom there are now generations of so-called “digital natives”;<sup>4</sup> those born into the age of the internet and social media with no experience of the world prior to the rise of these cultural and technological developments, and who can be predisposed to take for granted this instant connectivity and wealth of information available at just the click of a button.<sup>5</sup>

Although young people are able to connect across more mediums than ever before, recent events, such as the Arab Spring, evidence that youth engagement with politics, society and the wider world is not a product of the digital age but rather that the internet, social media and modern technology have provided the tools and the platform to enable young people to engage on a revolutionary scale.<sup>6</sup>

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<sup>3</sup> A/HRC/32/38. See also A/HRC/20/L.13.

<sup>4</sup> Prensky, M. (2001), ‘Digital Natives, Digital Immigrants’, available at <http://www.marcprensky.com/writing/Prensky%20-%20Digital%20Natives,%20Digital%20Immigrants%20-%20Part1.pdf>, [accessed 10 July 2016].

<sup>5</sup> ‘Youth and the internet: a guide for policy makers’, Barnardos, May 2015: <https://www.barnardos.org.uk/youth-and-the-internet-report.pdf>, page 2, [accessed 10 July 2016].

<sup>6</sup> ‘Egypt five years on: was it ever a ‘social media revolution’?’, The Guardian, 25 January 2016: <https://www.theguardian.com/world/2016/jan/25/egypt-5-years-on-was-it-ever-a-social-media-revolution>, [accessed 13 July 2016].

In attending the UNHRC, AFI Changemakers note that the new challenges for freedom of expression posed by the advancements of new technology and the digital age are juxtaposed with continuing and prevalent violations of the right in its most rudimentary forms.

The recurrent issues of concern observed at the 32nd session were as follows:

- an increased clampdown on the activities of human rights defenders (HRDs) and civil society organisations in particular in the run up to the session;
- the disproportionate or illegitimate use of national security and public order grounds to restrict the exercise of the right to freedom of expression;
- the gap between the recommendations of the UNHRC to protect human rights and freedoms internationally and the practical implementation of these recommendations at state level, as demonstrated by ongoing violations;
- the need for protection of freedom of expression offline to be translated to that offered online;
- the roles of private actors in the freedom of expression debate.

The following challenges will be explored from a youth perspective throughout this report:

- restricted freedom of expression has educational implications and means less access to, dissemination of and variety of information;
- the risks of freedom of expression being stifled reducing open debate and discussion due to fear of reprisals;
- threats to opportunities and space for civic engagement by young people.



### [3] Increased clampdown in the face of scrutiny: restrictions on human rights defenders (HRDs), civil society organisations and the press

During attendance at the 32nd regular session of the UNHRC, AFI Changemakers were not only concerned by reports of clampdowns on the activities and movements of HRDs and restrictions to civil society participation, but also by the timing of increased pressure on these actors both prior to and concurrent with the session itself. Of particular note was the Bahraini authorities imposing travel bans on six individuals attempting to travel to Geneva to participate in the UNHRC session without stating the justification.<sup>7</sup> Similarly, Bahraini HRD, Nabeel Rajab, President of the Bahrain Center for Human Rights, was arrested on 13 June 2016, the first day of the 32nd session, having already been subjected to a travel ban previously in relation to speech-related charges.<sup>8</sup>

Attention was also drawn to the critical situation for freedom of expression and the exercise

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<sup>7</sup> HRDs Hussain Radhi, Ebtisam Al-Saegh and Ebrahim Al-Demistani, and the parents of Ali Mashaima, were stopped at the Bahrain International Airport on 12 June 2016. Available from the Bahrain Center for Human Rights: <http://bahrainrights.org/en/node/7882>, [accessed 10 July 2016].

<sup>8</sup> 'Press briefing note on Bahrain and Iraq', UNHRC, 21 June 2016: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20146&LangID=E>, [accessed 10 July 2016]. See also 'Bahrain: Travel Ban on Rights Activist', Human Rights Watch, 14 December 2015, available at: <https://www.hrw.org/news/2015/12/14/bahrain-travel-ban-rights-activist>, [accessed 11 July 2016]. At the time of writing, Mr Rajab still remains in detention. See the urgent appeal of The International Federation for Human Rights (FIDH) on 12 July 2016: <https://www.fidh.org/en/issues/human-rights-defenders/high-criminal-court-decided-to-postpone-the-trial-of-mr-nabeel-raiab>, [accessed 13 July 2016].

of the freedom of the press in Egypt. Media freedom, pluralism and independence are being violated on a regular basis on the pretext of protecting national security and stability.<sup>9</sup>

Reporters Without Borders have recently ranked the country as "the world's fourth biggest prison for media personnel, after China, Eritrea and Iran."<sup>10</sup>

In the side panel, "Egypt: The Price of Silence", chaired by Laila Matar, UN Advocate at Human Rights Watch's Geneva office, human rights activists and representatives from Amnesty International, the Tahrir Institute for Human Rights and the Committee to Protect Journalists highlighted and discussed the deteriorating situation for the media describing this as the worst time to be a journalist in Egypt, with the best time having been in the wake of the 25th January 2011 revolution.<sup>11</sup> Amnesty International have described the storming of the Press Syndicate in May this year as "the most brazen attack on the media the country has seen in decades."<sup>12</sup>

Several other examples among the many cited during the main session are as follows:

- Freedom of the press in Turkey is in crisis<sup>13</sup> and faces daily threats to the diversity of the media in the form of harassment of both individual journalists and raids on news and media outlets known for "critical journalism".<sup>14</sup>
- Violations of freedom of expression and threats to civil society in Bangladesh including impunity for "attacks on bloggers, publishers, academics, civil society activists and religious figures" pushing those with opposing views into self-censorship and/or exile as a result.<sup>15</sup>

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<sup>9</sup> 'Journalists constantly threatened in Egypt', Reporters Without Borders, 30 June 2016: <https://rsf.org/en/news/journalists-constantly-threatened-egypt>, [accessed 14/07/2016].

<sup>10</sup> *Ibid.*

<sup>11</sup> "Egypt: The Price of Silence", side panel session of the UNHRC 32nd session, 15 June 2016. The panellists were Nadine Hadad, Campaigner in the MENA Programme at Amnesty International, Nancy Okail, Executive Director at Tahrir Institute for Middle East Policy, Sherif Mansour, MENA Program Coordinator at the Committee to Protect Journalists, and Abdelrahman Mansour, human rights activist and founder of the Facebook page "We are all Khaled Said".

<sup>12</sup> 'Egypt: Head of press syndicate detained in unprecedented crackdown on media freedom', Amnesty International, 30 May 2016, available at: <https://www.amnesty.org/en/latest/news/2016/05/egypt-head-of-press-syndicate-detained-in-unprecedented-crackdown-on-media-freedom>, [accessed 14 July 2016].

<sup>13</sup> Please note that the preparation of this report pre-dates the recently attempted coup d'etat against the government in Turkey on 15 July 2016.

<sup>14</sup> 'Imminent collapse of journalism in Turkey', Index on Censorship, 3 May 2016, available at: <https://www.indexoncensorship.org/2016/05/yavuz-baydar-imminent-collapse-of-journalism-in-turkey>, [accessed 15 July 2016].

<sup>15</sup> 'Statement to UNHRC about Free Expression Deterioration in Bangladesh', PEN America in partnership with several other organisations, 7 June 2016, available at: <https://pen.org/blog/statement->

The panel on Egypt highlighted the importance of the role of civil society and a space for open criticism and discussion without fear of reprisals, in order to enable society to develop and stabilise through engagement, interaction and respect for human rights. This approach is advocated as essential to achieving the aforementioned goals in a real and sustainable form,<sup>16</sup> as opposed to combatting unprecedented security threats through escalating internal violence and the dangers of creating a public information vacuum.<sup>17</sup> A lack of open space and flow of information also has educational implications and limits opportunities for young people to learn about and question their surroundings and become involved in civic engagement. Such stifling can instead lead to disillusionment and disenfranchisement with the societies they live in.

AFI Changemakers support Reporters Without Borders' #Protectjournalists Campaign initiative<sup>18</sup> calling for a special representative for the safety of journalists and arguing that "Without effective protection for journalists, you cannot guarantee the right to information and you cannot combat propaganda and violent extremism."<sup>19</sup> Additionally, we hope that the recent UNHRC resolution (A/HRC/32/L.29 as orally revised) to protect civil society space will not only pressurise states into recognising the positive role of these actors at a regional level, but also equip the UNHRC with a renewed mandate to foster, promote and protect civil society engagement with international organisations including the United Nations.<sup>20</sup>

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[unhrc-about-free-expression-deterioration-bangladesh](#), [accessed 15 July 2016].

<sup>16</sup> See in particular comments by Thomas Hughes, Executive Director of ARTICLE 19 in 'UNHRC: States must implement crucial resolution on civil society space', ARTICLE 19, 5 July 2016, available at:

<https://www.article19.org/resources.php/resource/38434/en/unhrc:-states-must-implement-crucial-resolution-on-civil-society-space>, [accessed 15 July 2016].

<sup>17</sup> See both 'ISIS Targets Egypt: Why the Group Set its Sights on the Sinai', Foreign Affairs, 17 May 2016, available at: <https://www.foreignaffairs.com/articles/egypt/2016-05-17/isis-targets-egypt>, and 'Who is behind Isis's terrifying online propaganda operation?', The Guardian, 23 June 2014, available at: <https://www.theguardian.com/world/2014/jun/23/who-behind-isis-propaganda-operation-iraq>, [both accessed 14 July 2016].

<sup>18</sup> '#Protectjournalists Campaign: For a Protector of Journalists', Reporters Without Borders, available at: <https://rsf.org/en/protectjournalists-campaign>, [accessed 14 July 2016].

<sup>19</sup> 'International coalition urges UN to appoint "journalists' protector"', Reporters Without Borders, 29 April 2016: <https://rsf.org/en/news/international-coalition-urges-un-appoint-journalists-protector>, [accessed 14 July 2016].

<sup>20</sup> 'UNHRC: States must implement crucial resolution on civil society space', ARTICLE 19, 5 July 2016, available at: <https://www.article19.org/resources.php/resource/38434/en/unhrc:-states-must-implement-crucial-resolution-on-civil-society-space>, [accessed 15 July 2016].

### 3.1 Recommendations

3.1.1 - AFI Changemakers support Reporters Without Borders in their call for the establishment of a 'Special Representative to the UN Secretary-General for the Safety of Journalists' in order to improve compliance by states with their international human rights obligations.

3.1.2 - We call for the UNHRC to adopt an introspective approach in considering how to bolster the function of the UNHRC regular sessions as a space for civil society to raise human rights issues of concern that state parties may seek to conceal, and to address the controversy and incongruousness of states restricting the participation of such representatives by preventing their attendance.

3.1.3 - We call for the UNHRC to continue to work with states party to international human rights instruments to achieve international and consistent respect for them for generations to come.<sup>21</sup>

#### **[4] Freedom of expression in the digital age**

Article 19 confirms the right to freedom of expression is to be guaranteed "...through any media",<sup>22</sup> and therefore there is no doubt that this includes digital expression.

The last decade has seen an unprecedented increase in the use of the internet; one that the UNDHR could not have anticipated. The internet has created a myriad of forums and outlets for self-expression.

New technologies have found a primary user in the youth. A study in internet habits by communications watchdog, Ofcom, identified young people aged between 16 and 24 spend more than 27 hours per week on the internet.<sup>23</sup>

The context of the digital age is of particular importance to young people among whom there are now those of a generation born into the age of the internet and social media with no experience of the world prior to the rise of these cultural and technological developments and who take for granted their perceived normality. Compared to 22% in 2007, today nearly

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<sup>21</sup> We note the recent case of the arrest and questioning by military intelligence of Egyptian journalist and human rights defender, Hossam Bahgat, in which the UN High Commissioner for Human Rights called for his immediate release. See 'Egypt releases journalist Hossam Bahgat after interrogation', UN News Centre, 10 November 2015: <http://www.un.org/apps/news/story.asp?NewsID=52506>, [accessed 15 July 2016].

<sup>22</sup> Article 19, UDHR, available at: <http://www.un.org/en/universal-declaration-human-rights/>.

<sup>23</sup> Anderson, E. (2015), 'Teenagers spend 27 hours a week online-how internet use has ballooned in the last decade', The Telegraph, 11 May 2015. Available at: <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/digital-media/11597743/Teenagers-spend-27-hours-a-week-online-how-internet-use-has-ballooned-in-the-last-decade.html>.

three quarters of internet users have a social media profile.<sup>24</sup>

The use of the internet by the youth continues to grow at a rapid rate and there is no sign of this slowing down. This brings with it significant implications for free speech.

As a result, the right to freedom of expression has had its remit expanded and it is the parameters of this newly defined 'online' right that we would like to bring to the UNHRC's attention.

#### **4. 1 Recommendations**

4.1.1 - The same level of protection offered online should be extended to cover that online. There is a gap between the level of protection offered on both platforms. This is owing to the fact that the internet space is new and one that the human rights field is still adjusting to. It is important to note that technology is expanding at a rapid rate and the gap is only going to get larger. Protection must be bolstered so that we aren't forever playing catch-up. Resolution 20/8, introduced four years ago, required that "the same rights that people have offline must also be protected online, in particular freedom of expression".<sup>25</sup> While this was reaffirmed in a subsequent resolution (A/HRC/RES/26/13), more needs to be done to close the gap. The following recommendations address how this can be realised.

4.1.2 - The youth need to be educated not only about the right to freedom of expression but also the responsibilities that come with that right. It is all well and good for rights to be granted but there is no use if we are not aware of them. The youth should be empowered in a way that gives them the confidence to voice their opinions online but should also be advised of the responsibility to promote tolerance in safe spaces when doing so. As much as human rights are new to the technological field, so are the youth when first entering the world of social media. There is a duty to educate these right holders.

4.1.3 - Consultation with the youth during this age is crucial for their input to be acknowledged. There needs to be a relationship of trust between the youth and decision-making bodies such as the UN. This will give rise to recommendations that deal with issues today that could raise significant consequences in the long term if they are ignored. The generation that have grown up in a world of technology are our future. They will go on to take on significant roles in the public and private sector. It is important to address this at the

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<sup>24</sup> *Ibid.*

<sup>25</sup> 'UNHRC rejects attempts to dilute internet freedoms', ARTICLE 19, 26 June 2014, available at: <https://www.article19.org/resources.php/resource/37602/en/unhrc-rejects-attempts-to-dilute-internet-freedoms>.

grass-roots level.

## **[5] The role of the government and private actors in public spaces used for freedom of expression**

A fringe event hosted by ARTICLE 19 on Digital Media, Internet and Private Actors during the 32nd Session of the UNHRC highlighted the roles of private bodies and governments in this space.

While initially it was thought that these spaces were entirely out of our control, recent developments tend to suggest otherwise.

With Google introducing the 'right to be forgotten' and internet censorship a rife, there is an increasing amount of evidence for the trend that private actors and governments are becoming arbitrary adjudicators.

These platforms are predominantly privately-owned and abide by the rules of those corporations. We ask the UNHRC to consider the role of private actors in the free speech domain.

AFI Changemakers identifies the proliferation of laws to shut down legitimate online speech as a growing concern. An increasing pressure exists in this space as these actors (both in the private sector and the government) realise their evolving role and the importance of transparency in the digital age. Twenty internet shutdowns have been recorded by Access Now in the first half of 2016 alone.<sup>26</sup>

We would like to bring the following examples to the UNHRC's attention that demonstrate the above:

- Iran (2009): Facebook ban followed general election amid fears that opposition groups were mobilising online.<sup>27</sup>
- Turkey (2014): Ankara carried out a Youtube ban for 30 months after a video insulting the founder of modern Turkey was uploaded to the site.<sup>28</sup>
- Pakistan (2016): Mobile phone services were shut down during a wrestling match. Reports suggested that the government was trying to prevent violence after people

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<sup>26</sup>Internet disrupted in Bahrain around protests as wrestling match sparks shut down in India', Access Now, 24 June 2016, available at: <https://www.accessnow.org/internet-disrupted-bahrain-around-protests-wrestling-match-sparks-shutdown-india/>.

<sup>27</sup>Kirkland, A. (2014), 'Ten countries where Facebook is banned', Index on Censorship, 4 February 2014, available at: <https://www.indexoncensorship.org/2014/02/10-countries-facebook-banned/>.

<sup>28</sup>Bender, J. (2015), 'Six countries that block social media', UK Business Insider, 6 April 2015, available at: <http://uk.businessinsider.com/the-six-countries-that-block-social-media-2015-4?r=US&IR=T>.

were injured at the competition previously.<sup>29</sup>

- Bahrain (2016): Reports suggested local cell towers were throttled to prohibit access to 3G and 4G mobile networks in the geographic areas where protests would take place.<sup>30</sup>

The justifications are rarely clear but the outcomes are the same: cutting off freedom of expression in sensitive situations when dialogue is most crucial.

In situations such as that of Bahrain, freedom of expression is intrinsically linked to freedom of assembly in which communication tools are of significant importance.<sup>31</sup> Freedom of assembly involves the coming together of people to express collectively. The right to freedom of expression is therefore of great importance as it gives way for other rights to be exercised.

Shutdowns of this nature need to satisfy the principles of necessity and proportionality in order to be justified. These measures are not being met which is not only preventing freedom of expression of the individual but the media at large.

## 5.1 Recommendations

5.1.1 - We ask the UNHRC to consider whose responsibility the private sector is as well as a clearer demarcation of the roles of the bodies in this space.

5.1.2 - To ensure the recent adoption of the resolution supporting human rights online is seen through by member states allowing for freedom of expression in the public domain including media and journalism.

5.1.3 - To consider human rights in the business context and demand businesses to approach business decisions from this perspective. AFI Changemakers asks the UNHRC to consider the good practice found within Yahoo who have set up a business and human rights department.

5.1.4 - To consult with stakeholders in this sector and identify the key roles and responsibilities as well as the rights of bodies in this sector.

5.1.5 - To consider the pressures on local media outlets by governments and other bodies to suppress their content. These local media outlets have less bargaining power. Freedom of expression implications must be considered at all levels of society. We cannot reduce the

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<sup>29</sup> Internet disrupted in Bahrain around protests as wrestling match sparks shut down in India', Access Now, 24 June 2016, available at: <https://www.accessnow.org/internet-disrupted-bahrain-around-protests-wrestling-match-sparks-shutdown-india/>.

<sup>30</sup> *Ibid.*

<sup>31</sup> Article 19(3), ICCPR, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

conversation to one of superpowers; the UNHRC needs to consider how the local level is impacted and involve them in discussions moving forward.



## **[6] Conclusion**

AFI Changemakers acknowledge that the increasing variety of tools and mediums through which freedom of expression can be exercised bring with them increasing challenges for both the legitimate exercise and restriction of this fundamental and universal right. Furthermore, irrespective of the pace of such technological advancements, there remain longstanding challenges not only for the exercise of freedom of expression but the creation and protection of safe spaces in which to do so. We hope that the UNHRC, in continuing efforts and engagement with states and civil society to address these issues, will continue to safeguard and develop opportunities for young people to also engage with such processes and have their voices heard as the stakeholders of the future.

## **BIOGRAPHIES**

### **IMAN NAUMAN, SPEAKER**



Iman obtained a First Class Honours in Law from the University of Manchester. She has a strong interest in the rights of minorities, women and the youth as well as a passion for social justice. She is currently working in the social housing department for a regional law firm, representing socially disadvantaged groups in court. She has represented her academic institutions in Cambrai and Dubai as well as Bosnia and Hercegovina as a delegate for the charity Remembering Srebrenica. She has interned with the Government Legal Service and Manchester City Council and previously worked as a Refugee Support Case Worker at the British Red Cross and a Regional Representative for Liberty. She is one of the founders of The Hawa Project which successfully collected over 200 care packages consisting of female sanitary products to be distributed in refugee camps.



### **REBECCA MORCOS, SPECIAL RAPPORTEUR**

Rebecca is a law graduate from a multidisciplinary background with a special interest in human rights and empowerment through rights education. Rebecca has a Bachelor's degree in Arabic and Classical Literature and a Masters in Applied Translation Studies, both from the University of Leeds. After completing her Masters, Rebecca spent 6 months as a volunteer with the Individuals at Risk Team at Amnesty International's International Secretariat in London, which consolidated her passion for upholding the rights of groups and individuals and educating all citizens about their rights. This inspired her to pursue a legal career and she then completed the Graduate Diploma in Law at the University of Law in York in 2013. During her training, she volunteered as an advice worker with Sheffield Citizens Advice and Law Centre, worked as a legal intern with freedom of expression NGO, ARTICLE 19, and attended the Advocates for International Development Future Lawyers' Training Conference on Law and International Development in London. Currently, she works as a legal assistant to a consultant litigation solicitor and participates in the Young Legal Aid Lawyers North group in the UK.