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**Statement by David Kaye
SPECIAL RAPPORTEUR ON THE
PROMOTION AND PROTECTION OF THE RIGHT TO
FREEDOM OF OPINION AND EXPRESSION**

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Mr. President, Excellencies, Ladies and Gentlemen,

This past summer, during its 26th Session, the Human Rights Council entrusted me with the mandate to promote and protect the right to freedom of opinion and expression. Today I am pleased to present to you the final report of my predecessor, Mr. Frank La Rue. In these remarks, I want to draw your attention to the key points Mr. La Rue makes in his report, which focuses on the particular rights of expression enjoyed by children. I will then address, in general outlines, the work I expect to pursue. (A lengthier statement that details the basis for the freedom of expression mandate and the work of my predecessors will be found on line on the OHCHR website.)

Freedom of expression touches upon many of the critical issues that the United Nations has placed at the top of its agenda. The exercise of the right to expression implicates the ability of individuals and societies to climb out of poverty; the rights of individuals to advocate for policies to confront climate change and environmental harm; the ability of journalists to bring to the world's attention the stories that explain conflict, insecurity, disease, and political unrest. States face challenges to confront expressions of extremism while also staying true to their commitment and obligation to uphold the freedom of expression. I begin this mandate with the hope that we can collaborate to address these issues and others and to foster the exercise of the right to freedom of expression wherever it is under threat.

The Thematic Report on Children and Freedom of Expression

In his final report ([A/69/335](#)), Mr. La Rue describes how the right of the child to freedom of expression is articulated in international law, details obstacles to the realization of this right, and concludes by providing recommendations on the alignment of national laws and practices with relevant standards established by international human rights law.

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) do not state that the right to freedom of expression is enjoyed exclusively by adults. As frequently said, children are not mini-human beings, with mini-human rights. On the contrary, the Convention on the Rights of the Child (CRC) expands on the protection of children's civil and political rights. According to the CRC, the right to freedom of expression should be progressively exercised as the child matures.

Sadly, too little has yet been done to give effect to the right of children to freedom of expression.

As the report indicates, unchallenged authoritarian attitudes frequently shape the relationship between adults and children in schools and within families. More worryingly, as communication technologies evolve, some States have adopted disproportionate restrictions on freedom of expression, particularly on the internet, presenting them as measures to protect children from harm, but which in effect limit the rights of children and adults.

Nobody questions the importance of protecting children from harm and the duty of adults to guide children. In some domains, there may be legitimate and understandable concerns for children's safety and well-being in accessing some types of information. For example, many countries regulate broadcasting, and television in particular, with a view, among other things, to

protecting children. However, regulations aimed at protecting children and the mechanisms adopted to enforce them should be regularly reviewed to prevent the imposition of disproportionate or arbitrary restrictions.

All too often, 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. It is wrong to say that children observe these restrictions passively. On the contrary, they often advocate for their rights. In 2011, for example, thousands of secondary school and university students in Chile protested against exorbitant costs of education prompting a national debate. In the Republic of Korea, high school students promoted a major social mobilization against authoritarian practices within the education system.

The report concludes that child protection and freedom of expression must not be regarded as opposing goals. 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 and prohibiting their participation in public debate can only intensify their isolation and political alienation.

Therefore the report recommends:

- States should revise national law, 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.
- States should actively promote the right of children to freedom of expression, including access to information, in all settings. Traditional authoritarian attitudes towards children can be challenged. In particular, the State should pay attention to the creation of channels for child-led activism.
- States should take measures to promote children's access to the internet in all settings. Efforts should be made to re-frame the internet as a positive resource. States should address risks posed by the internet to the safety of children through holistic strategies which include the enhancement of users' capacities to protect themselves from online harm.
- Regular attention to violations of the right of children to freedom of expression should be systematically paid by all international human rights protection mechanisms.

Goals for the mandate over the coming term

My first report as special rapporteur will not be presented until this upcoming June, during the 29th session of the Human Rights Council. At that time, I will provide a detailed introduction of my objectives and methodologies. Nonetheless, given the lengthy period between this first appearance and that first report, I believe it will be appropriate to highlight some of the subjects to which I expect to devote significant attention over the period of my mandate.

My mandate will be one of continuities and expansions. Professor Phillip Alston noted in [his first report as special rapporteur](#) on extrajudicial, summary, or arbitrary executions that his task was “twofold: to maintain and build upon the successful efforts already undertaken under this mandate, and to contribute in a constructive way to its future evolution.” I share that attitude.

I also recognize and celebrate the fact that governments, NGOs, academic specialists, journalists, and many others are exploring the issues at the heart of the freedom of expression mandate. I expect to draw upon this vast expertise and to convene that expertise regularly to promote and protect freedom of expression in all its forms.

A. Protection and Promotion of the Right to Freedom of Expression

The Human Rights Council has mandated, in Resolution [7/36 \(2008\)](#), that the special rapporteur should engage in seeking, receiving, and responding to credible information,

“wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information.”

Such protective activities typically fall under the rubric of **communications**. These involve specific efforts to ensure that individuals are able to exercise the rights they enjoy under Article 19 of the UDHR and, where applicable, the ICCPR.

Though some States have improved their responses to communications recently, they are often late and inadequate. Indeed, a recurrent problem for all special procedures is the low rate of timely responses to Allegation Letters and Urgent Appeals, the main tools used for communications with governments. It is imperative that we take steps to ensure that the communications system achieves the goals assigned to it by the Human Rights Council. For that reason, I have already begun to study the data and explore ways that the mandate might ensure that the communications process works better than it does today.

Country visits enable protection and promotion from up close. I am eager to visit as many States as possible, and I will be making requests of many governments, in all geographic regions, to agree to a country visit. The country visits are absolutely essential to the ability of the mandate to engage in dialogue with key actors, whether governments, non-governmental actors, academics, or others. The Council has thus appealed to States to “consider favourably” requests that the special rapporteur might make for visits.

In due course, I will advise you of those governments to which I have sent requests for a visit. My strong hope is that, by the time I report to you again next year, I will have conducted at least two official country visits and reported on the content and outcomes of those visits to you.

Promotion activities under the mandate involve public engagement of all sorts, but the biannual **thematic reports** will stand at the center of my promotion work. Reporting to the General Assembly and the Human Rights Council are critical opportunities for the rapporteur to present research, findings and recommendations. I expect to use consultations with State delegations, NGOs, independent experts, and others to ensure that thematic reports reflect the input of a multiplicity of views, even if my recommendations will adopt a preference for a particular legal interpretation and policy prescription.

B. Substantive Focus Areas

Many themes have animated the mandate over the course of its existence. Drawing from the past work under the mandate, the priorities that have been highlighted by the Council in renewing the mandate and discussing related issues in other resolutions, and my own consultations with

governmental and non-governmental actors, I believe that the subjects that follow, arranged into three categories, deserve consistent and rigorous attention in the coming years. These topics will be addressed in biannual thematic reports, country visits, and communications. In the context of my initial thematic reports, I will spell out my agenda in much more detail than I offer here.

During my brief time as mandate-holder, I have already undertaken activities to advance the goals of the mandate. I have joined or generated numerous confidential letters to governments raising allegations of actions that undermine freedom of expression in all regions of the world. I have also joined or generated a number of public calls for compliance. These have included condemnation of a wave of detentions of activists and journalists in Iran; a call for the end of persecutions of activists in Azerbaijan; a call for the Australian state of Tasmania not to adopt legislation that would undermine the right of public protest and expression; calls for the release of human rights activists in Bahrain; a call for Ethiopia not to use counter-terrorism legislation to curb rights; and a call for Malaysia to withdraw its Sedition Act of 1948 in the face of a wave of arrests on its basis recently.

1. Protecting the expression of members of vulnerable groups

The Council and Assembly have raised concerns about specific groups throughout the existence of the mandate, and my predecessors have highlighted those and other groups in their thematic reporting, communications, and country visits. The mandate has an obligation to ensure that the uncontested norms at the heart of Article 19 are not merely words on paper for members of certain groups. My predecessors emphasized threats to the freedom of expression of women, who are often sought to be silenced through threats of violence; members of religious and ethnic minorities and indigenous peoples, who are often silenced by majorities that unjustifiably see their expression as threatening; individuals who express unpopular or popular views, whether religious, political, artistic, or any other grounds; those who live in extreme poverty and often lack even basic access to the media of expression; and members of many other groups that vary according to regional, national, and local contexts.

I expect to focus on those groups identified in the past as well as other groups. What are the main obstacles to their expression? What can and must be done to ensure their voices are heard? For instance, in keeping with Human Rights Council [Resolution 27/32](#), what sorts of measures are being applied to undermine the rights of expression of individuals because of their sexual orientation or gender identity? Following Council [Resolution 27/31](#), what obstacles do civil society organizations face in advocating on behalf of vulnerable groups? What restrictions are applied against artists, and how might the mandate confront such restrictions? What is the nature of contemporary attacks on academic freedom?

More broadly, what tools are being used to undermine freedom of expression of members of such groups? What are the ways in which criminal defamation, lèse majesté, and blasphemy laws are used to undermine legitimate expression? Mr. La Rue's [report in 2012](#) on hate speech and incitement noted that restrictions of expression must be narrowly drawn and applied strictly on the basis of the principle of necessity. I share his concern that tools used to regulate and criminalize expression of all kinds are often deployed to restrict legitimate speech.

2. Advancing the right to seek, impart, and receive information

The rights of and protections owed journalists have been a core element of the mandate since its inception. Recently I joined my colleagues in the Inter-American, African, and European

systems in adopting a [Joint Statement](#) in which we noted that attacks on journalists harm the reporters themselves first, but they also “deprive all of us of the right to know and to access information about critical situations around the world.” In its most recent session, the Human Rights Council [adopted an important resolution](#) on the protection and safety of journalists. It appropriately focuses attention on the implementation of best practices at the national and local level, drawing on past work of the mandate and the critical work done by UNESCO, other agencies, and NGOs. What policies can be adopted to undermine the widespread impunity for attacks on journalists and to foster a culture of accountability?

The right to seek, impart, and receive information goes beyond any particular profession. What are the current threats to transparency of government action? How do States implement freedom of information, and what tools do they use to undermine it? How can national policies advance protection not only of journalists but also their sources, including whistleblowers? What are the implications for free expression of concentration of media ownership? What norms should be applied to ensure transparency with regard to media subject to some form of government ownership or control?

3. Ensuring freedom of expression on the internet

The internet is no longer the new set of technologies discussed by Abid Hussein twenty years ago. Today, to be disconnected from the net is to be silenced. Access to the internet is not a privilege; it is a fundamental space for expression, as fundamental as the street corner or the public square or the social club were in their own days. As such, every issue of freedom of expression is amplified on line. Indeed, the [General Assembly just last December](#) “affirm[ed] that the same rights that people have offline must also be protected online.”

Regulating the internet. Internet control at the national level poses problems and opportunities. Several key questions deserve the attention of the mandate: For instance, a number of governments are considering tiered access to the internet, allowing beneficial access to those, for instance, who pay higher premiums or curry favor with authorities. What are the implications of such proposals for the right to freedom of expression on line? What technologies are governments using to control or regulate expression on the internet or to discriminate against content on line? How do government efforts to insist upon data localization, or the territorial location of internet servers, implicate freedom of expression? How are efforts to impose liability on intermediaries for the content of their users undermining freedom of expression on line?

The ITU Plenipotentiary began meeting this week in South Korea, where efforts to expand the ITU’s jurisdiction over internet government will be proposed. It is critical that any discussion of future “regulation” of the net observe and protect strictly the right to freedom of expression. I will be following closely efforts to alter the status quo when it comes to internet regulation to make certain that freedom of expression concerns are taken into account.

Responsibility of non-state actors: Non-state actors often play a dominant role on the internet today, even in those countries where the government exercises substantial control and regulation. My predecessors and many others have addressed corporate responsibility issues, and I intend to build on their work. For instance, what set of best practices should govern those internet actors with a major footprint in social media, commerce, news, and other subjects? What responsibilities are owed users and customers where privacy interests and expression intersect? How do legal innovations such as the European Court of Justice’s so-called right to be forgotten implicate freedom of expression? How can actors implement these policies while avoiding

violations of freedom of expression? What are the appropriate reactions of commercial actors when governments demand compliance with rules that are inconsistent with the freedom of expression or other rights that implicate expression?

Surveillance, Privacy and Expression: Frank La Rue's 2013 thematic report, the General Assembly's 2013 [resolution on privacy in the digital age](#), and this year's Assembly-mandated [Report of the High Commissioner on Privacy in the Digital Age](#) highlight the chilling effect of communications surveillance on the exercise of the freedom of expression. These all lay a foundation for further work on the intersection of surveillance, privacy, and expression. The Assembly's 2013 resolution called upon States to review their own laws and practices to ensure that surveillance did not interfere with fundamental rights; what steps have States taken in this regard to protect freedom of expression? What further areas deserve research in order to explore the intersection of surveillance and expression? What principles should govern surveillance such that legitimate law enforcement and national security measures do not undermine the exercise of freedom of expression? What States undertake electronic surveillance, and for what purposes? How are technologies and laws changing to strengthen surveillance and undermine technology? Are human rights defenders appropriately being trained in the tools to protect themselves from surveillance? Indeed, are we all adequately informed about the vulnerability of our expression online and on the tools to increase our protection?

Mr. President,

I conclude by emphasizing what may have been implicit throughout this introductory statement. The work under the mandate, as with all special procedures, can only be truly successful with cooperation of States, something urged by successive resolutions of the Human Rights Council. I look forward to that cooperation. I look forward to working with your governments, at the national and local levels, to foster compliance, and build capacity to implement the norms of the right to freedom of expression.

Thank you very much.