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PRESS RELEASE

UK: "Super-Injunctions" Illegitimate Limit to Free Speech

London 19.05.11: Super-injunctions are a serious threat to the right to freedom of expression in the UK which should be prohibited. When balancing the right to freedom of expression and the right to privacy or other rights, a judge should never allow a super-injunction that prohibits all discussion of a case or very existence of it.

"*ARTICLE 19 believes that the imposition of super-injunctions constitutes a serious threat to both freedom of speech and democracy. It constitutes an extreme form of censorship which should not be tolerated by the British democracy"* says Dr. Callamard, ARTICLE 19 Executive Director.

On Friday, 21 May 2011, Lord Neuberger, the Master of the Rolls, is expected to make public the report of the committee set up to examine the use by the courts of media injunctions. The committee will also consider the question of 'super injunctions', which prevent not only the reporting of a story but the existence of the injunction and any details contained in it, including the name of the person or company seeking the injunction.

In the context of freedom of media, an **injunction** is a court order that prohibits media from publishing certain information or continuing to do so, or face civil or criminal penalties. Where applied prior to publication, injunctions are a form of **prior censorship** and as such are an extreme restriction on freedom of expression. If the authorities are able to suppress publications which nobody has seen, it becomes impossible for others to verify whether the suppression was indeed justified; such an unchecked power can be abused to prevent criticism of government or other power entities such as corporations.

Under the American Convention on Human Rights (Article 13 para 2), prior censorship is explicitly prohibited, with the exception of "the moral protection of children and adolescents." In *Martorell v. Chile*, the American Court for Human Rights stated that even abusive exercises of freedom of expression, including invasions of privacy and defamation, may not be the subject of prior censorship**.**

The European Court for Human Rights does not entirely rule out all prior censorship but imposes strict limits on its use. The European Court of Human Rights has stated:

> *The dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court. This is especially so as far as the*

press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest. (The Observer and Guardian v. the United Kingdom, 26 November 1991, Application No. 13585/88, para. 60).

In his report on the Republic of Korea in 1996, the UN Special Rapporteur on Freedom of Opinion and Expression stated that "any system of prior restraint on freedom of expression carries with it a heavy presumption of invalidity under international human rights law."

In the UK, there has been recently a considerable debate over the imposition by judges of "**super-injunctions**". Super-injunctions are an **extreme version of prior censorship**: they are gagging orders that not only prohibit the publication of details of a case but even that a case exists and that an order suppressing it publication has been issued. This measure has mostly been used in the context of cases about the release of information about an individual's personal life but also other cases involving dubious activities by companies. ARTICLE 19 believes that super injunctions are illegitimate limits to freedom of expression and that they should be prohibited.

Instances disproportionately limiting freedom of the media and freedom of expression include the super-injunction obtained by Trafigura a company trading in oil, base metals and other items, which prevented the publication of a report on alleged dumping of toxic waste in the Ivory Coast, and subsequent debate over reporting of Parliamentary Questions relating to that report. In a February 2010 report, the Culture, Media and Sport Committee strongly urged *"that a way is found to limit the use of super-injunctions as far as is possible and to make clear that they are not intended to fetter the fundamental rights of the press to report the proceedings of Parliament."*

Freedom of expression, including the right to access to information, is a fundamental human right, central to achieving individual freedoms and meaningful electoral democracies. The centrality of the right to information has been recognised by international courts and bodies worldwide. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: *"Freedom of expression is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."*

The guarantee of freedom of expression applies with particular force to the media. The European Court has consistently emphasised the *"pre-eminent role of the press in a State governed by the rule of law"* and has stated: "*Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society. (Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43)

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NOTES TO EDITORS:

- For more information please contact: Mona Samari, Senior Press Officer, by email mona@article19.org or by telephone + 44 (0) 7515 828 939

- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.

ARTICLE 19, Free Word Centre, 60 Farringdon Road, London EC1R 3GA, United Kingdom
Tel: +44 (0) 20 7324 2500 / Web: www.article19.org / Email: info@article19.org