

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the recently passed legislation that seriously infringes upon media freedoms and on the legitimate exercise of the right to freedom of expression in general.

According to the information received:

On 15 July 2018, the Egyptian Parliament approved amendments to several laws, including Law No. 92 of 2016.

The new amendments cover articles 4, 5, 12, 16, 19, 29 and 54 of Law No. 92 of 2016. The modified article 4 stipulates that the Supreme Media Council has the right, for reasons of national security, to prevent the dissemination of publications, newspapers, media, or advertising materials issued or broadcast from either inside or outside Egypt if they contain any information that disturbs the public peace or promotes discrimination, violence, racism, hatred, or intolerance.

Article 5 provides the Supreme Media Authority with the power to deny an operating license or permit to a media outlet or to close the outlet down if it promotes religious discrimination.

Article 12 stipulates that journalists or media personnel have the right to attend conferences and public meetings, conduct meetings with citizens, and take pictures of public places after obtaining the necessary permits from the Supreme Media Council.

Article 16 stipulates that journalists cannot be fired from their jobs until there is an investigation that proves their wrongdoing. The media institution where the fired journalist works must notify the Press Syndicate of the reasons for the journalist's dismissal. Within thirty days of the firing, the Press Syndicate has the right to attempt to reconcile the two parties.

Article 19 grants the Supreme Media Council the authority to suspend any personal website, blog, or social media account that has 5,000 followers or more if it posts fake news, promotes violence, or spreads hateful views.

I express concern at these amendments as they represent a further limitation to media freedom, and to the criminalization of the exercise of journalism as well as a limitation to the public's right to information, in a context where these rights are already severely restricted. I am concerned that the amendments fall short of the standards of international human rights law for restricting freedom of expression and as they provide the authorities with overbroad powers to censor information and by allowing for restrictions on the basis of overbroad language. I am particularly concerned at the use of the concept of "fake news", as applied in article 19, as a basis for suspending websites, blogs and social media accounts, as this concept under international human rights law cannot be used as a basis for restricting freedom of expression. The lack of clarity concerning how the amendments would operate, coupled with the threat of criminal sanctions, raise the danger that your Excellency's Government will become arbiters of truth in the public and political domain. Accordingly, I am concerned that the amendments would disproportionately suppress a wide range of expressive conduct essential to a democratic society, including criticism of the government, news reporting, political campaigning and the expression of unpopular, controversial or minority opinions.

I would like to note that Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, protects everyone's right to maintain an opinion without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media. The Human Rights Committee has emphasized that "free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint. Moreover, international human rights law provides States' responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated. Freedom of expression also includes sharing one's beliefs and opinions with others who may have different opinions. In the Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, my mandate together with other regional freedom of expression experts stressed that the "human right to impart information and ideas is not limited to "correct" statements, and "protects information and ideas that may shock, offend, and disturb".

Under article 19(3) of the ICCPR, restrictions on the right to freedom of expression must be "provided by law", and necessary for "the rights or reputations of others" or "for the protection of national security or of public order (ordre public), or of public health and morals". Permissible restrictions on the internet are the same as those offline (A/HRC/17/27).

To satisfy the requirements of legality, it is not enough that restrictions on freedom of expression are formally enacted as domestic laws or regulations. Restrictions must additionally be sufficiently clear, accessible and predictable (CCPR/C/GC/34).

The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions "target a specific objective and do

not unduly intrude upon the rights of targeted persons”. The ensuing interference with third parties’ rights must also be limited and justified in the interest supported by the intrusion (A/HRC/29/32). Finally, the restrictions must be “the least intrusive instrument among those which might achieve the desired result” (CCPR/C/GC/34). The Human Rights Committee has stressed that, in assessing proportionality, the “value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain”.

In light of these standards, the Joint Declaration on Freedom of expression and “Fake News” has concluded that “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information” are incompatible and should be abolished.

Finally, the Human Rights Committee has urged States parties to “consider the decriminalization of defamation” and stated that, in any case, “the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never and appropriate penalty”. The Committee points out that all defamation laws, “in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject of verification. In any event, a public interest in the subject matter of the criticism should be recognized as a defence” (CCPR/CGC/34).

The full texts of the human rights instruments and standards outlined above are available at www.ohchr.org and can be provided upon request.

In light of these concerns, I urge your Excellency’s Government to consider alternative measures such as the promotion of independent fact-checking mechanisms, State support for independent, diverse and adequate public service media outlets, and public education and media literacy, which have been recognized as less intrusive means to address disinformation and propaganda.

Finally, I would like to inform your Excellency’s Government that this communication, as a comment on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>. Your Excellency’s Government’s response will be made available on the same website page and in a report to be presented to the Human Rights Council for its consideration..

Please accept, Excellency, the assurances of my highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression