

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 **proposed amendments to the Cybercrime Law, currently pending before Parliament, which includes overbroad definitions of "hate speech" that would restrict the exercise of freedom of expression in ways that are incompatible with international human rights law.**

According to the information received:

The Cybercrime Law no 27 was adopted in June 2015.

In January 2017, the Ministry of Justice proposed additional amendments explicitly addressing "hate speech".

In June 2018, the Government approved the changes before presenting them to the Parliament. In September 2018, several members of Parliament referred the amendments to the parliamentary legal committee for discussion. The text is due to be brought before Parliament for a vote at any moment.

Before explaining my concerns, I would like to reiterate your Excellency's Government's obligation to respect and protect the right to freedom of opinion and expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Jordan on 28 May 1975.

Article 19(2) of the ICCPR provides that "[everyone] shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

The right to freedom of expression may only be restricted if the high threshold established by Article 19(3) is met. Article 19(3) states that restrictions must be provided by law and necessary for the protection of "the rights or reputations of others", of "national security or of public order (ordre public), or of public health or morals". The Human Rights Committee has stipulated that these restrictions must be "the least

intrusive instrument” among those which might achieve the desired result and must be “proportionate to the interest to be protected” (CCPR/C/GC/34).

Article 20(2) of the ICCPR requires States to prohibit “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” but restrictions must still satisfy the cumulative conditions of legality, necessity and legitimacy as laid down by article 19(3) of the ICCPR (CCPR/C/GC/34).

In light of the above-mentioned standards, I am concerned that several of the proposed amendments would, if adopted, be incompatible with the obligations of Jordan under international human rights law. I note that the amendments are proposed in the context of a framework that is already of concern in the way in which it restricts freedom of expression.

1. *The amendments’ definition of prohibited “hate speech” and the criminalization of publication or re-publication of “hate speech” online*

Article 2(4) of the draft amendments defines “hate speech” as “*any statement or act that would incite discord (fitna), religious, sectarian, racial or ethnic strife or discrimination between individuals or groups*”.

The amended law provides for a penalty of “*imprisonment for no less than a year and no more than three years and a fine of no less than JD 5000 and no more than JD 10,000 for anyone who publishes or republishes what is considered hate speech via the internet, website or data systems*”.

I am concerned that these proposed amendments, through the overbroad definition of “hate speech”, would lead to the criminalization of a range of expression that is protected under international human rights law. The language of the amendment provides excessive discretion to the authorities, which could be used to target legitimate expression. Accordingly, I am concerned that the amendments would disproportionately suppress a wide range of expressive conduct that may not be suppressed or penalized in a democratic society, including criticism of the government, news reporting, political campaigning and the expression of unpopular, controversial or minority opinions.

Moreover, I am also concerned that the proposed amendment may impose third party liability on platforms in ways that could undermine freedom of expression. In the face of the penalties prescribed by the provision, such liability may encourage online platforms to overregulate or censor online content.

2. *Existing provisions in the Cybercrime Law and in the Penal Code*

In addition to the proposed amendments, the continued existence of criminal defamation under article 11 of the Cybercrime Law No.27 remains problematic. Article 11 states that internet users can face a jail term of no less than three months and a

maximum fine of JD 2000 (approximately USD 2800), if they are found guilty of defamation on social media or online media outlets.

Article 118 of the Penal Code provides that “*anyone who engages in acts, writings, or speeches not approved by the government that would subject Jordan to the danger of violent acts or disturb its relations with a foreign state*” is to be punished with a minimum of five years of imprisonment.

Article 122 of the Penal Code punishes with up to two years of imprisonment anyone who insults a foreign state or head of state, while Article 195 of the Penal Code sanctions with one to three years of imprisonment anyone who “*proves audacity to insult his Majesty the King*”, or sends “*a written or an oral message or a picture or a comic drawing to His Majesty the King or posted such message, picture or drawing in a way that would undermine the dignity of His Majesty*”. The same applies to any messages that insult the Queen, the Crown Prince, or guardians of the Throne.

I am concerned at the continued existence of criminal defamation in Jordanian legislation. I recall that under international human rights standards, as highlighted by the Human Rights Committee, criminal sanctions, in particular imprisonment for libel and defamation are not deemed proportionate with an effective exercise of the right to freedom of expression (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”.

With respect to article 118, I am concerned that this provision fails to meet the level of clarity and precision as required by article 19(3) of the ICCPR for restrictions to freedom of expression. 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). I am concerned that the wording of article 118 does not meet the level of clarity and predictability as required by international human rights law and that it contributes to a chilling effect on the exercise of freedom of expression, and impede upon public debate and journalism.

In light of the above, I urge your Excellency’s Government to ensure a revision of the proposed amendments and existing provisions with a view to bringing them into line with international human rights standards. I underline that a strategy against cybercrimes should not rest solely on a criminal law approach, but should also include an educational and advisory approach. Absent a broader strategy to ensure protection of the internet as free space for exchange, the current amendments to combat cybercrimes may not achieve their intended aim. I stand ready to engage with your Excellency’s Government through technical cooperation on this matter.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government

will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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