

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

REFERENCE: AL
NRU 1/2015:

21 May 2015

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 25/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **restrictions on freedom of expression in Nauru, including prohibitive price for visa application fees for foreign journalists, the blocking of social media websites and the amendments made to the Criminal Code.**

According to the information received:

Media freedom

On 30 January 2014, the fee for single entry media business visas to Nauru increased from 200 to 8,000 Australian Dollars (approximately 6,500 U.S. Dollars). It is reported that the price of the visa fee is prohibitive and has severely restricted the entry of foreign journalists into Nauru, and hampered their ability to report on the country. Such fees are especially problematic in a small country where the number of local journalists and media outlets are limited.

Access to Internet

On 30 April 2015, the authorities instructed the only internet provider in the country to block access to social media websites, including Facebook, which remain blocked since. It is reported that, initially, the authorities explained that the block in access was related to a technical problem with the service provider. However, on 1 May 2015, the authorities allegedly acknowledged and justified the decision to block access to social media websites with the aim to limit

pornography, crime and cyberbullying, as well as to protect the Christian heritage and culture of Nauru. On 13 May 2015, the authorities reportedly explained that the block on some social media websites was temporary, until protection mechanisms were introduced, although no description of such mechanisms was provided.

Reports allege that the restrictions are instead designed to prevent asylum seekers and refugees from sharing information on their situation, including for those detained in the Regional Processing Centre in Nauru from contacting persons outside of the country and report on their situation.

Criminalization of free speech

On 12 May 2015, the Parliament of Nauru adopted an amendment to the Criminal Code, including section 244A, which provides for up to seven years imprisonment of individuals who publish materials and statements that "coerce, intimidate harass or cause emotional distress", who "use language that is threatening, abusive or insulting with intent to stir up racial, religious or political hatred" or if the statement "is likely to threaten national defense, public safety, public order, public morality or public health". It is further alleged that this provision aims at preventing critical statements against the Government, and in particular at criminalizing asylum seekers and human rights defenders advocating for asylum seekers' rights from making statements about the conditions of detention in the immigration detention centers in Nauru.

Serious concern is expressed at the introduction of the new fees for media business visas, which allegedly are prohibitive and have a deterrent effect on foreign journalists from accessing and reporting on Nauru. Further concern is expressed about the blocking of social media websites, including Facebook, by the Government which unduly restricts means of communication and access to information. Disproportionate fees that restrict the access of foreign journalists to the country, preventing them to report on the situation in Nauru, as well as restriction to access Internet websites and social networks would not only curtail the right to freedom of expression of individuals and of the media, but also would infringe the legitimate exercise to the right to seek and receive information and ideas through any media and regardless of frontiers, as enshrined in article 19 of the Universal Declaration on Human Rights (UDHR).

Serious concern is also expressed at the adoption of section 244A of the Criminal Code. As formulated, the provisions of section 244A of the Criminal Code do not comply with international human rights standards, in particular the right to freedom of opinion and expression, as these provisions impose criminal liability and excessive penalties, including prison sentence, with definitions of criminal conducts that are too broad and ambiguous, leading to the criminalization of conducts that could constitute legitimate expressions under international law and standards. Moreover, the fear of possible persecution would also deter individuals and groups, including human rights defenders, academics, journalists, students, politicians and civil society members, to freely express

their opinions and to carry out their legitimate activities in a safe and enabling environment without fear of criminalization or persecution.

I am particularly concerned at the reports alleging that these measures aims at preventing the dissemination of opinions and ideas that are critical to the Government and at preventing the dissemination and access to information on the situation in Nauru, including in relation to the rights of asylum seekers and the conditions of detention in the Regional Processing Centre in Nauru.

I reiterate the central importance in the effective functioning of a vibrant democracy of the right to freedom of opinion and expression, including the right to freely express opinions and to access information, including through the media and the Internet.

In connection to the above alleged facts and concerns, please refer to the Reference to international law Annex attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please explain the increase of the visa fee for media business visas, as well as how these measures are compatible with international human rights norms and standards, in particular article 19 of the Universal Declaration on Human Rights (UDHR).
3. Please provide information on the decision to block social media websites, including Facebook, indicating how such measures are compatible with the aforementioned international human rights norms and standards, in particular article 19 of the UDHR. Please explain what steps are being taken to enable the lifting of this block and indicate when this temporary block would be lifted.
4. Please provide information regarding article 244A of the amendments to the Criminal Code, including any prosecutions brought under the provision, and how this amendment, and possible prosecutions, are compatible with international human rights norms and standards, in particular article 19 of the UDHR. Please indicate which measures are being taken to ensure the compliance of Nauru legislation with international human rights norms and standards.
5. Please indicate what measures have been taken in relation to Nauru's commitment made at the Universal Periodic Review to develop the right of

freedom of information in domestic legislation, including increasing access to the internet, and to ratify the International Covenant on Civil and Political Rights.

6. Please indicate what measures have been taken to ensure that human rights defenders, academics, journalists, students, politicians and civil society members, are able to carry out their legitimate work in a safe and enabling environment without fear of criminalization.

I would appreciate your response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While awaiting a reply, I urge all relevant instances of the State of Nauru to take all necessary measures to ensure the full compliance of domestic legislation with international human rights norms and standards, in particular revoking the legislative provisions, regulations, administrative and other measures that impose undue restrictions to the legitimate exercise of the right to freedom of opinion and expression.

To this end, I would like to request that a copy of the present communication would be shared with the relevant official entities, in particular with the Parliament of Nauru for its due consideration.

As the information before me is sufficiently reliable and serious to indicate a matter warranting immediate attention, I will publicly express the abovementioned concerns shortly. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

Your Excellency's Government's response will be made available 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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, I would like to refer your Excellency's Government to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights, which includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

I would like to refer your Excellency's Government to the recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression which emphasizes that freedom of expression plays a central role in the effective functioning of a vibrant democratic political system, recalling States' responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated. He added that States must remove any regulation of or restriction upon political speech and expression, outside of restrictions that fall within well-recognized understandings of the permissible limitations on freedom of expression as recognized in international human rights law (A/HRC/26/30).

Also, I would like to refer your Excellency's Government to the report of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, which reiterates the essential role of freedom of expression and opinion for democracy, by guaranteeing principles of transparency and accountability, as well as providing the right to hold opinions and to participate in public debates. He also called on States to decriminalise defamation laws, which are disproportionate to the harm done and often used to mask political censorship, and urged States to adopt legislation regulating the work of the media that adheres to the highest international standards on freedom of opinion and expression and allowing for uninhibited debate in the media, in line with principles of diversity and plurality (A/HRC/20/17).

I would like to refer your Excellency's Government to the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, which highlighted that child protection and freedom of expression are not contradictory. The Special Rapporteur acknowledges that in some domains, there may be legitimate and understandable concerns for children's safety and well-being in relation to Internet content. For example, many countries regulate broadcasting, and television in particular, with a view, among other things, to protecting children. Content generally considered unsuitable for children includes sexually explicit content, violence and offensive language. Regulations can, however, have a significant impact on freedom of the media. Moreover, the definition of what constitutes harmful information is subjective. Accordingly, any regulations aimed at protecting children and the mechanisms adopted to enforce them should be reviewed regularly, in an open and transparent way, in order to prevent the imposition of disproportionate or arbitrary restrictions that curtail the rights of both adults and children. The Rapporteur further explains that children can learn to protect themselves from harm by supporting children to develop good communication

skills and to learn to use new technologies positively. Further, he added that States should encourage the positive use of the internet by children in all settings, using holistic strategies to enhance the protection of internet users, including children (A/69/335).

I would like to refer and commend your Excellency's Government to the commitment expressed in January 2011 during the first cycle of the Universal Periodic Review (UPR), in which your Excellency's Government accepted recommendations to continue efforts of introducing freedom of information through ordinary legislation, to establish freedom of information laws, including by amending the Official Information Act of 1976 and increasing access to internet, as well as to ratify the International Covenant on Civil and Political Rights (recommendations 79.3, 79).