

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 **Royal Decree No. 7/2018, which contains several vaguely defined provisions that could unduly restrict the right to freedom of opinion and expression, in particular the rights of human rights defenders and online activists.**

On 11 January 2018, Royal Decree No. 7/2018 was signed by Sultan Qaboos bin Said. The Decree containing provisions of the new Penal Code, was published in the Official Gazette on 14 January 2018 to come into effect on the next day.

Before discussing the provisions, I would like to first draw your Excellency's Government attention to Article 19 of the Universal Declaration of Human Rights, which protects the right of everyone 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 right to freedom of expression is also protected under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), acceded by Oman on 7 February 2006; the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), acceded by Oman on 2 January 2003, and the Convention on the Rights of the Child (CRC), acceded by Oman on 9 December 1996. While Oman is not party to the International Covenant on Civil and Political Rights (ICCPR), the content of article 19 of the ICCPR should inform Oman's obligations under the above-mentioned treaties.

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 of public order (ordre public) or of public health and morals". To meet the "provided by law" requirement, it is not sufficient that restrictions on freedom of expression are formally enacted as domestic laws or regulations. In addition, restrictions must also be sufficiently clear, accessible and predictable (CCPR/C/GC/34).

While restrictions on freedom of expression may be established to protect a legitimate objective under the provision, they must also be "necessary". The requirement

of necessity “also implies an assessment of proportionality” of those restrictions. A proportionality assessment ensures that restrictions “target a specific objective and do not unduly intrude upon other rights of targeted person”. Finally, I would like to emphasize that “laws imposing restrictions or limitations must not be arbitrary or unreasonable and must not be used as a means of political censorship or of silencing criticism of public officials or public policies” (A/HRC/14/23).

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 the above standards of international human rights law, I would like to bring to the attention of your Excellency’s Government aspects of the Decree and consequent changes to the Penal Code that raise concerns in connection with the right to freedom of expression:

I. Article 116 on freedom of association

Under article 116 of the Penal Code, “any person who establishes, organizes, administers or finances an association, party, body, organization, centre or the like, whatever its name or form” aimed at combating the political, economic, social or security principles of the State, or the domination or elimination of one social class over another with imprisonment for between minimum three and maximum ten years . Furthermore, “any person who joins any of these associations, parties, bodies or organizations or one of its branches, participates in it in any form, promotes it or wishes to join, even if it is located outside the country” shall also be punished.

This article is overly broad and fails to include any safeguards for the protection of rights to freedom of expression, the right to freedom of association, and many other fundamental rights. It leaves important terms, such as “establishes”, “organizes” “administrates”, “joins” and “participates” undefined, leaving broad restrictions on the right to freedom of expression. It grants sweeping powers to authorities to punish any individual or group of individuals for conducting essentially any activities or joining any group, including civil and non-violent activities or groups, as being anti-state. This provision is a clear violation of international human rights law.

II. Article 118 on freedom of opinion and expression

Article 118 further punishes anyone “who has obtained or edited editorials or publications containing a favour or promotion of anything provided for in article 116 of this law if they are intended for distribution or for others to read, as well as those who have obtained or made any means of printing, registration or publicity- even if only temporarily – to print, record or broadcast appeals or propaganda to any of the entities provided for in article 116”. Anyone found guilty of an offense under this article can be punished by imprisonment for a term not less than six (6) months, and not more than three (3) years.

Under article 118, individuals’ freedoms to opinion and expression are directly violated because it criminalizes any access, possession, and distribution of information,

no matter what the content. This provision also constitutes a major threat to the work of human rights defenders, online and offline activists and journalists where individuals must “print, record or broadcast” relevant information to carry out the duties of their work. By punishing any communication or sharing of information including those protected by international human rights law, this provision clearly violates the right to freedom of opinion and expression.

III. Article 125 on prejudicing the independence of the country

Article 125 provides that “any person who intentionally commits an act which prejudices the independence, unity or territorial integrity of the country shall be punished with death or life imprisonment”.

By not defining the scope of the term “prejudices”, “unity” or “territorial integrity”, the Decree grants vast discretion to the authorities to punish individuals for any action, even those protected by international human rights law. The death penalty is mentioned several times throughout the penal code, and can be used to silence, threaten and punish opponent for any actions, including for actions that do not qualify as the most serious crime.

I express serious concern that Royal Decree No. 7/2018 in its current form, uses overly broad terms that lack sufficiently clear definitions and permits authorities to severely criminalize expression. This allows authorities unbound discretion to punish public expression of any kind, which could lead to the institutionalization of violations of the fundamental rights to freedom of expression for individuals, in particular activists, human rights defenders or journalists. The legal framework moreover contributes to creating a chilling effect and self-censorship.

Additionally, the excessive broadness of the language in the law violates article 19(2) of the ICCPR. The language of this law gives authorities expansive power to punish citizens for not only associating with a group, association, body or the like, but for seeking and receiving any information and ideas from such organizations. Further, without precise definitions for many terms, it is impossible to assess the threshold of this standard. By providing overly broad language and equipping authorities with great discretion, the law limits the information and ideas that individuals can impart and obtain including information on culture, government, politics, religion, family and social norms, education and more.

I am further concerned that the multiple references to penalties under the Decree are incompatible with article 19(3) of the ICCPR and similar provisions in CEDAW, CERD and CRC. I would like to emphasize that any restrictions on the right to freedom of expression must be clearly provided by law and necessary and proportionate to achieve one or more of the enumerated objectives. Here, the vagueness and broadness of the code is insufficient to meet the “provided by law” standard. Next the code fails to meet the “necessary” requirement because there does not seem to any grounds for claiming that the provisions are necessary for the protection of national security, public order or other concerns of public health or morals. Lastly, the penalties provided by the penal code do not meet the proportionality requirement of article 19(3), as the penalties far outweigh the

activities they are designed to sanction. Life imprisonment and the death penalty are severely excessive in this regard and cannot be considered as lawful sanctions under international human rights standards.

In view of the aforementioned comments, I would like to call on your Excellency's Government to take all steps necessary to immediately revise Royal Decree No. 7/2018 and ensure its compliance with international human rights standards. I request that your Excellency's Government explore methods by which the terms of the penal code can be made more precise, and further, revise provisions by clearly defining the nature of the content which is punishable and ensuring that it clearly adheres to the international standards for freedom of opinion and expression.

Finally, I would like to inform that this communication 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 reply will be posted at the same page as well as in the report 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