

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
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18 September 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 34/18 and 32/32.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning media decree 40/2018, issued by the Council of Ministers, which came into force on 22 August 2018, and imposing exorbitant fees on local and foreign media operating in the country.

According to the information received:

In June 2018, the Council of Ministers adopted decree 40/2018 ("the decree"). The decree came into force on 22 July 2018, after it was signed by the Prime Minister. The decree comes into force two months before municipal elections are due to take place and one year prior to general elections.

The decree aims to establish a legal regime for the licensing and registration of all types of media (article 1) and introduces a system of fees for this purpose, elaborated in the annex of the decree.

Among the fees imposed by the decree are:

- a fee of 100.000,00 Mt (approximately USD 1700) for media accreditation;
- a fee of 30.000,00 Mt (approximately USD 500) for accreditation of national freelancers
- a fee of 150.000,00 Mt (approximately USD 2500) for accreditation of foreign freelancers
- a fee of 200.000,00 Mt (approximately USD 3300) for permanent national correspondents
- a fee of 500.000,00 Mt (approximately USD 8400) for foreign correspondents residing in Mozambique

In addition, the decree introduces similar fees for renewal of accreditations.

Furthermore, the decree establishes new fees for Mozambican media organizations, imposing a fee 200.000,00 Mt (approximately USD 3300) for new publications and a fee of 50.000,00 (approximately USD 800) for new community radio stations.

The decree has reportedly been approved without prior consultation with the media. Subsequent to the entry into force, it has been reported that the Council of Ministers has agreed to review the fee structure in consultation with the media.

On 24 August 2018, an agreement was reached between the Government Information Office (GABINFO), media professionals and civil society organizations, mediated by the Ombudsman, that while the decree is in force, the Government would delay implementation of the new fees, and that additional regulations would be developed to determine fee structure.

We express concern at the high fees imposed by decree 40/2018 as this would represent a serious hindrance to the exercise of journalism, media diversity and media freedom, including the right to associate freely, in Mozambique. This form of limitations to journalism has furthermore serious implications on the public's right to information, in particular in election context where the role of the media is of particular importance. In light of this, we urge your Excellency's Government to review and revise the decree.

We would like to note that Article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Mozambique on 21 July 1993, 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. 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".

As highlighted by the Human Rights Committee, States parties should ensure that the legislative and administrative framework for the regulation of the mass media are consistent with article 19(3). In this regard, the Committee has stated that States parties must avoid imposing onerous licensing conditions and fees on broadcast media, including on community and commercial stations. The criteria for the application of such conditions and license fees should be reasonable and objective, clear, transparent and non-discriminatory, and otherwise in compliance with ICCPR (CCPR/C/GC/34). We are concerned that the high fees imposed through the regulatory framework of this decree are disproportionate and represent a regulatory mechanism that restricts media freedom, media diversity and may effectively be used as an overt method of control over the media. Such a framework may also restrict the dissemination of news and information and bar new entrants to the media market and possibly perpetuating the dominance of state 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 (CCPR/C/GC/34).

We are furthermore concerned that the imposition of high fees may also disproportionately affect media outlets as associations and may aim at restricting their available financial resources (A/HRC/23/39).

We similarly wish to remind your Excellency’s Government of its obligations under Article 22 of ICCPR that guarantees the right to freedom of association. We recall that, in accordance with the ICCPR, no restriction may be placed on the exercise of the right to freedom of association other than those that are prescribed by law and that are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

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

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 our highest consideration.

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association