

**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 situation of human rights defenders**

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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 situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning criminal penalties for spreading "fake news" online, which may unduly restrict freedom of expression.**

According to the information received:

On 17 January 2020, the penal code was amended with the creation of article 136 (bis) under "Crimes against Internal State Security." The text of the amendment is as follows:

"A penalty of imprisonment for a period not exceeding five years and a fine of no more than (100,000) one hundred thousand riyals, or one of these two penalties, shall be imposed on anyone who broadcasts, or publishes or re-publishes rumours, statements, false or malicious news or propaganda, at home or abroad, with the intention of harming national interests, provoking public opinion, or violating the social system or public order of the state.

The penalty stipulated in the previous paragraph shall be doubled if the crime occurred in wartime."

Before explaining our concerns about the amendment, we would like to reiterate your Excellency's Government's obligation to respect and protect the right to freedom of opinion and expression and the right to freedom of peaceful assembly and of association under articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Qatar on 21 May 2018.

Article 19 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.” (General Comment No. 25, para. 26). 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, the mandate of the Special Rapporteur on freedom of opinion and expression 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.”<sup>1</sup>

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. In its General Comment N. 34, the Human Rights Committee clarified that restrictions must additionally be sufficiently clear, accessible and predictable (CCPR/C/GC/34 para. 25).

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 para. 34). The Human Rights Committee has moreover 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” (CCPR/C/GC/34 para. 34).

In light of these standards, the Joint Declaration on Freedom of expression and “fake news”, the mandate of the Special Rapporteur on freedom of opinion and expression together with other regional freedom of expression experts 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”.

Applying the above standards, we are seriously concerned that article 136 (bis) may run contrary to the requirements under Article 19 of the ICCPR.

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<sup>1</sup> Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, 3 March 2017 <https://www.osce.org/fom/302796?download=true>

Article 136 (bis) is extraordinarily vague. It imposes up to five years of imprisonment on “anyone” at home or abroad without defining key terms such as “national interests,” “public order,” “false,” “malicious,” “social system,” “rumours,” or “provoking public opinion.” Nor does it define the level of intentionality required to trigger such a punishment.

We are concerned that the vague language of Article 136 (bis) may result in disproportionate restrictions on freedom of expression since the penalties, including hefty fines, are severe in comparison to loosely defined governmental interests such as moderating public opinion and protecting the public order.

Moreover, there are less restrictive means to combat “fake news” 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.

Lastly, Article 136 (bis) does not seem to clearly delineate who will ultimately decide the threshold for “fake news” and on what basis. In short, Article 136 (bis) may likely give excessive discretion to the government without reference to any existing judicial process, legal standards, or appellate procedures.

The lack of clarity concerning how the legislation would operate, coupled with the threat of criminal and civil sanctions raises the danger that your Excellency’s Government will become arbiters of truth in the public and political domain. Accordingly, we are concerned that the legislation may disproportionality suppress a wide range of expressive conduct essential to a democratic society, including criticism of the government, news reporting, exposing human rights violations and the expression of unpopular, controversial and minority opinions from human rights defenders and others.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please clarify how your Excellency’s Government will assess whether content “harm[s] national interests, provoke[s] public opinion, or violat[es] the social system or public order of the state” under article 136 (bis).
3. Please clarify the criteria used to prove whether someone had “intent” under article 136 (bis).
4. Please clarify your Excellency’s Government understanding of and how your Excellency’s Government will assess whether a particular source of

information is “false,” “malicious,” “provoking public opinion,” and “rumours” under article 136 (bis).

5. Please indicate how article 136 (bis) is consistent with the requirements of legality, necessity and proportionality under Article 19(3) of the ICCPR, including addressing the concerns identified above.
6. Please clarify how your Excellency’s Government will assess the territorial scope of article 136 (bis) and its application to citizens abroad.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders