

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

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(Please use this reference in your reply)

27 June 2024

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 52/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the 'Prevention of Foreign Broadcasting Entity Harm to State Security Law' (the "Foreign Media Law"), that was adopted by the Knesset on 1 April 2024, to share my observations and comments on the law and to engage constructively with your Excellency's Government to encourage the Government to revise the Law to bring it in line with international human rights standards.

As set out in further detail below, the Law appears not to fully comply with article 19 of the International Covenant on Civil and Political Rights ("ICCPR"), to which Israel acceded in 1991. It is vital for democracy as well as human rights that individuals are able to access diverse sources of information, including from foreign media, even in times of emergency. The total ban of media outlets, and other restrictive measures for a temporary period and on a renewable basis, appears to constitute a serious restriction of freedom of expression standards not in line with the conditions for legitimate restrictions under international human rights law.

International human rights standards

Before sharing specific observations on the Foreign Media Law, I would like to recall the relevant international human rights norms and standards applicable to the rights to freedom of expression.

Article 19 of the International Covenant on Civil and Political Rights (hereafter: ICCPR)¹, provides that "*everyone shall have the right to hold opinions without interference*" and that "*everyone shall have the right to freedom of expression; this right shall include 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.*" This right includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.² Media freedom is an integral element of the right to seek, receive and impart information. The principle of confidentiality of journalistic sources is also derived from this article.³

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, and must

¹ Ratified by Israel on 3 October 1991.

² CCPR/C/GC/34 para. 7.

³ A/70/361, para 15.

be necessary and proportionate to achieve the specified legitimate aims, namely, respect for the rights or reputations of others or the protection of national security or public order (*ordre public*), or public health or morals. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. The Human Rights Committee recalled that the relationship between right and restriction and between norm and exception must not be reversed. Furthermore, the Human Rights Committee clarified that “*penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government, can never be considered to be a necessary restriction of freedom of expression.*”⁴

The General Assembly and the Human Rights Council have affirmed that permissible restrictions on the Internet are the same as those offline.⁵

International law allows States to derogate from certain rights, including freedom of expression, during a state of emergency “which threatens the life of the nation.”⁶ However, measures under derogation must be time-limited, proportionate, and only “to the extent strictly required by the exigencies of the situation”.⁷

Issues to review

The Foreign Media Law provides broad powers for the Minister of Communications to order interruptions of broadcasts of foreign media channels and even the closures of channels that are deemed “harmful” to state security. Additionally, the Law allows for the confiscation of journalistic equipment. These measures may be undertaken by the Minister of Communications with the consent of the Prime Minister and approval of the Committee of Ministers and require the Executive to provide a “professional opinion on security factors” informed by Israel’s security services on the necessity of such a measure to protect national security. This process is entirely contained within the Executive Branch, and there is no requirement of judicial review or independent oversight at any stage of the designation process. The Law also grants the ability to order owners of servers in Israel, or companies registered in Israel, to restrict access to media sites.

The interruption and closure of foreign media outlets is a major restriction on the right to freedom of expression. Further, confiscation of media equipment constitutes a far-reaching restriction of freedom of expression, seriously limiting or rendering impossible the operations of the media outlet. The latter can also constitute a violation of the principle of confidentiality of journalistic sources. The measures allowed by this law do not only directly limit the freedom of expression of the media outlets and affiliated journalists, it also limits access to information and the right of the public to be informed. This fundamental right is of vital importance at all times, and especially now during the armed conflict in Gaza, for the public in Israel, the OPT and globally.

⁴ CCPR/C/GC/34, para42

⁵ A/RES/68/167; A/HRC/RES/26/1.

⁶ Article 4 of the International Covenant on Civil and Political Rights.

⁷ CCPR/C/21/Rev.1/Add.11, para. 5.

Vague and broad powers to limit media operations

I note that the Foreign Media Law contains unclear and overbroad provisions which grant wide discretion to public officials, allowing restrictions on journalistic conduct to be determined by the “professional opinion” of security agencies. The processes to determine “security factors” are said to include the defence and intelligence apparatus of the government, though without further elaboration and specification of their role and competencies. Furthermore, there is no specific description of the expected “harm” that has been or is likely to be caused by the media outlet to national security which the ban is expected to avert.

Article 19(3) ICCPR provides that legitimate restrictions must be ‘provided by law’. The Human Rights committee has noted that in order for a norm to be characterized as ‘law’ for the purposes of article 19(3) ICCPR, the norm *‘must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly (...)’*. Furthermore, the Human Rights Committee has specified that ‘a law should not provide *‘unfettered discretion’* to restrict freedom of expression to those responsible for the execution of the law. The Human Rights Committee further stressed that the *‘laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.’*⁸ The law does not seem to meet these international standards.

Legitimate aim

The Foreign Media Law invokes the prevention of “harm” to “national security” as the legitimate aim for the restriction of foreign media. While freedom of expression may be restricted for the protection of national security, States have frequently sought to use national security as an excuse to silence critical voices, including those of journalists, human rights defenders and political opponents. As noted by the UN Human Rights Committee, restrictions based on national security must be “crafted and applied” according to the strict requirements of article 19(3). Even when seeking to protect national security, States must show in “specific and individualized fashion” the precise nature of the threat and the necessity and proportionality of any restriction, in particular by establishing a direct and immediate connection between the journalistic activities and the threat.⁹

The Human Rights Committee has held that *‘it is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.’* I note that the law in certain instances allows the targeting of media outlets, including by banning their operations or confiscating their equipment, resulting in withholding from the public information of legitimate public interest. This is especially the case where international news agencies are denied free access to conflict zones to report on hostilities, including on possible violations of human rights and international humanitarian law. In my 2022 report to the UN General Assembly A/77/288 I stressed that the right to information should not be considered a legitimate target of war, and that it is a “survival right” on which people’s lives, health, well-being, safety and security depend in times of crisis

⁸ CCPR/C/GC/34, para. 25.

⁹ CCPR/C/GC/34, paras. 30 and 35.

and conflict.¹⁰

I wish to point out that the Human Rights Committee has stated that *‘the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.’*¹¹

The proportionality of restrictions

The restrictions provided for must also be ‘necessary’ to achieve the legitimate aim.¹² The possibilities of banning an entire media outlet, and confiscation of journalistic equipment without sufficiently clear guidelines for the application of these restrictions appear to be at odds with the requirement of proportionality. The Human Rights Committee has noted that restrictions should not be overbroad and *‘that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected (...)’* and that *‘the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law’.*¹³

Here I point out that States have other less restrictive tools at their disposal to counter threats of disinformation and propaganda arising from foreign media, starting with the governments’ own obligation to proactively disclose accurate official data, encourage trustworthy fact-checking, promote independent, diverse, pluralistic media, ensure media, digital and information literacy and foster an enabling and inclusive environment for civil society to take initiatives to counter information manipulation.

Legal oversight

I note the absence in the Foreign Media Law of any requirement of prior judicial review or other independent oversight of the executive determinations. This increases the risk of arbitrary interference by officials, in contravention of article 19 of the ICCPR. While I understand that the Law has been challenged before the High Court in Israel,¹⁴ this process allows review after the decision has taken place, rather than as a safeguard prior to the decision being made by the Executive Branch. I wish to reiterate that the Human Rights Committee has made clear that to be compatible with article 19(3), a law may not give “unfettered discretion” for restrictions on freedom of expression on “those charged with its execution”.¹⁵ Prior judicial review could be an important step towards ensuring the application of the law in line with international human rights standards.

Derogation of rights under the Covenant

In the event that Israel wishes to assert a derogation of freedom of expression due to a state of emergency, in line with its obligations under article 4 of the ICCPR it

¹⁰ A/77/288, para . 102.

¹¹ CCPR/C/GC/34, para. 42.

¹² CCPR/C/GC/34, para. 33.

¹³ CCPR/C/GC/34, para. 34.

¹⁴ Yael Freidson, Israel’s Top Court Hears Petition Against Law Used to Halt Al Jazeera Broadcasts in Israel, Haaretz, 4 June 2024. Israel court extends Al Jazeera ban, ministry says, VOA News, 14 June 2024.

¹⁵ CCPR/C/GC/34, para. 25.

would need to articulate why such a derogation is strictly required under the circumstances. It further would have an obligation under article 4(3) of the ICCPR to “immediately” notify other parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. Further, States have an obligation to include in reports submitted to the Human Rights Committee under article 40 of the ICCPR “sufficient and precise information” regarding the exercise of any emergency powers that derogate from any provision of the Covenant.¹⁶ To my knowledge, such notifications of derogations in relation to article 19 of the ICCPR have not been made by the state of Israel.

Concluding observations

In short, the Law has severe implications for the freedom of expression in Israel, the Occupied Palestinian Territory (OPT) and beyond, some of which I have sought to highlight in this letter. I urge your Excellency’s Government to review and revise the Law in light of Israel’s international human rights obligations. I also call on the Government to undertake broad, inclusive consultations with civil society stakeholders to address this issue with a view to ensuring full compliance with international standards.

I look forward to receiving your comments and additional information relating to my observations above, in particular how you will ensure the implementation of this legislation is compliant with the obligations of your Excellency’s Government to respect and promote freedom of expression under article 19 of the ICCPR.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all situations brought to my attention, I 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 analysis of the Law
2. Please provide your observations on how the Law guarantees media freedom and freedom of expression in full compliance with article 19 ICCPR, including in relation to right of the citizens of Israel and the OPT to access diverse sources of information, including from foreign media.
3. Please explain how the draft law complies with other provisions of the ICCPR and international human rights standards, including in relation to derogation.

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](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

¹⁶ CCPR/C/21/Rev.1/Add.11.

I stand ready to provide Your Excellency's Government with any technical advice it may require in ensuring that the draft Law is fully compliant with international human rights obligations.

Please accept, Excellency, the assurances of my highest consideration.

Irene Khan

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