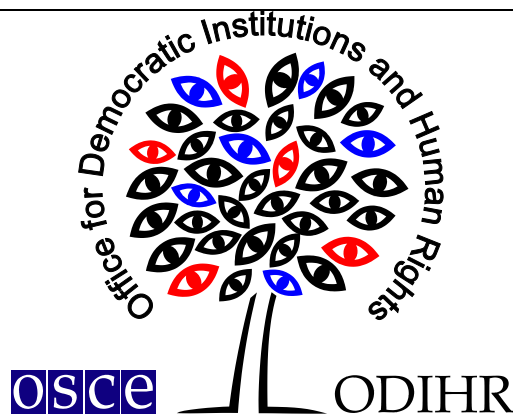


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COMMENTS

ON CERTAIN LEGAL ACTS REGULATING MASS COMMUNICATIONS, INFORMATION TECHNOLOGIES AND THE USE OF THE INTERNET IN UZBEKISTAN

**based on an unofficial English translation of the legal acts
commissioned by the OSCE Office for Democratic Institutions and Human Rights**

*This Opinion has benefited from contributions made by Richard Clayton QC, barrister,
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*These Comments are also available in Russian.
However, the English version remains the only official version of the document.*

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- Decree no. 228 of the Cabinet of Ministers on Additional Measures for Improving the Monitoring System in the Sphere of Mass Communications (5 August 2011, as last amended on 4 June 2019)
- Decree no. 297 of the Cabinet of Ministers amending certain Decisions of the Government of the Republic of Uzbekistan (Decree no. PE-5349 of the President “On Measures for Further Improvement of the Sphere of Information Technologies and Communications” and Resolution no. PR-3549 of the President “On Organizing Activities of the Ministry for Development of Information Technologies and Communications”) (20 April 2018, as last amended on 4 June 2019)
- Decree no. 707 of the Cabinet of Ministers on Measures for Improving Information Security in the Global Information Network Internet (5 September 2018, as last amended on 4 June 2019)

I. INTRODUCTION

1. *On 22 May 2019, the Acting OSCE Project Co-ordinator in Uzbekistan sent to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) a request for a legal review of various pieces of legislation on counter-terrorism and “extremism”, mass communications, information technologies and the use of the Internet, to assess their compliance with international standards and OSCE human dimension commitments.*
2. *On 27 May 2019, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal analysis of these legal provisions. In light of the key elements and scope of the legal review, ODIHR decided to prepare separate legal analyses, one focusing respectively on the decrees pertaining to mass communications, information technologies and the use of the Internet (the Decrees),¹ on the Law on Combatting Terrorism and on the Law on Countering “Extremism”, which should be read together.²*
3. *In light of the subject-matter, in July 2019, ODIHR invited the OSCE Representative on Freedom of the Media (RFoM) to contribute to this legal review.*
4. *These Comments were prepared in response to the above request.*

II. SCOPE OF REVIEW

5. The scope of these Comments covers only the Decrees, submitted for review. Thus limited, the Comments do not constitute a full and comprehensive review of the entire legal and institutional framework aiming at countering the use of the Internet for terrorist purposes or regulating mass communications, information technologies and the use of the Internet, freedom of expression, access to information and their impact on other human rights in Uzbekistan.
6. The Comments raise key issues and provides indications of areas of concern. In the interests of conciseness, they focus more on those provisions that require improvements rather than on the positive aspects of the Decrees. The ensuing recommendations are based on international standards and practices and will also seek to highlight, as appropriate, good practices from other OSCE participating States.
7. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women³ (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender

¹ The Decree no. 555 of the Cabinet of Ministers on Measures for Improving the Management Structure in the Sphere of Mass Communications (24 November 2004, as last amended on 12 September 2018); the Decree no. 228 of the Cabinet of Ministers on Additional Measures for Improving the Monitoring System in the Sphere of Mass Communications (5 August 2011, as last amended on 4 June 2019); the Decree no. 297 of the Cabinet of Ministers amending certain Decisions of the Government of the Republic of Uzbekistan (Decree no. PE-5349 of the President “On Measures for Further Improvement of the Sphere of Information Technologies and Communications” and Resolution no. PR-3549 of the President “On Organizing Activities of the Ministry for Development of Information Technologies and Communications”) (20 April 2018, as last amended on 4 June 2019); and the Decree no. 707 of the Cabinet of Ministers on Measures for Improving Information Security in the Global Information Network Internet (5 September 2018, as last amended on 4 June 2019).

² All legal reviews on draft and existing laws of Uzbekistan are available at: <<https://www.legislationline.org/odihr-documents/page/legal-reviews/country/55/Uzbekistan/show>>.

³ UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Uzbekistan acceded to this Convention on 19 July 1995.

perspective into OSCE activities, the Comments analyse the potentially different impact of the relevant legislation on women and men.⁴

8. These Comments are based on the unofficial English translation of the Decrees commissioned by ODIHR, which are attached to this document as Annexes. Errors from translation may result. The Comments are also available in Russian. However, the English version of the Comments remains the only official version of the document.
9. In view of the above, ODIHR would like to make mention that these Comments do not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Uzbekistan that they may wish to make in the future.

III. EXECUTIVE SUMMARY

10. The Decrees under review envisage a scheme whereby governmental bodies, the Centre for Mass Communications (hereinafter “the Centre”) and the Expert Committee in the Sphere of Information and Mass Communications (hereinafter “Expert Committee”), assess the compliance of “*the national information space and activities of mass media*” with applicable laws and regulations. On this basis, relevant public authorities decide for or against the issuance, suspension or withdrawal of licenses in the sphere of information services and registration of mass media outlets and/or restricting access to Internet information resources containing so-called “prohibited information”.
11. ODIHR concludes that the contemplated scheme should not be retained at all, especially given the serious human rights concerns arising from vague and overbroad scope of the restrictions to freedom of opinion, expression and information and the substantial overlap of the Decrees with other legislation, especially the criminal and administrative codes. Indeed, as expressly stated by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, States should refrain from “*establishing laws or arrangements that would require the ‘proactive’ monitoring or filtering of content*” and “*adopting models of regulation where government agencies, rather than judicial authorities, become the arbiters of lawful expression*”.⁵ Overall, ODIHR reiterates the concerns raised in its election reports concerning the Republic of Uzbekistan⁶ about the absence of any clear, precise and exhaustive criteria to determine whether specific expression or information is prohibited or not, thus failing to comply with the principle of legal certainty and opening the way to arbitrariness and abuse by relevant public authorities.⁷
12. If the contemplated monitoring mechanism is nevertheless retained, the Decrees should be substantially revised, especially the powers and responsibilities of the Centre and the Expert Committee, in order to comply with international human rights standards and OSCE commitments. The legal drafters should define the terms of the decrees more precisely while ensuring that content restrictions mentioned in the Decrees that are not otherwise contained in legislation of general application should be removed altogether.

⁴ See par 32 of the [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004).

⁵ *ibid.* par 68.

⁶ ODIHR, [Election Observation Mission Final Report – Uzbekistan](#), 4 December 2016, page 14.

⁷ *ibid.* page 14 (2016 ODIHR Election Observation Mission Final Report), which noted that “*legislation governing media should provide clear and exhaustive criteria for the denial of registration, suspension of media outlets, and content removal and the blocking of online national and international media should be established and consistently and transparently applied by an independent regulatory body*”.

Moreover, the decision providing for restrictive measures, such as the suspension or withdrawals of licenses and restrictions to Internet access, should be imposed only by judicial bodies, following appropriate court procedures respecting minimum due process guarantees. More generally, the legal framework of the Republic of Uzbekistan related to freedom of expression and information should be extensively reviewed to ensure its compliance with international human rights standards and OSCE commitments.

13. More specifically, in light of international human rights standards and good practices, and in addition to what was stated above, ODIHR makes the following recommendations to enhance the Decrees:
 - A. The Centre and the Expert Committee should not be in charge of monitoring mass media and the information space to assess their compliance with applicable laws and regulations; [par 23]
 - B. to remove content restrictions and instead make cross-references to the specific provisions of general application from the Criminal Code, Code on Administrative Responsibility and other specific laws, and in any case, in the Decrees and other relevant legislation as appropriate:
 - delete the term “*propaganda of terrorism*” and replace it with the term “*incitement to terrorism*”, while ensuring that the offence or prohibition (a) expressly refers to the intent to communicate a message and intent that this message incite the commission of a terrorist act; and (b) is limited to the incitement to conduct that is truly terrorist in nature; and (c) includes an actual (objective) risk that the act incited will be committed; and (d) excludes criminal liability in certain cases, for instance when the statements were intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest; [pars 44 and 56]
 - remove unclear and over broad terms such as “*religious extremism*”, “*fundamentalism*”, “*destructive, negative information and psychological influence on public conscience*”, “*destructive influence and causing harm to physical and mental Health of Population*”, “*maintaining and ensuring succession of national and cultural traditions and heritage*” as grounds for content restrictions; [pars 57-58, 61, 62-64]
 - remove, or more strictly circumscribe, the references to “*propaganda of separatism*”, public calls to “*violation of territorial integrity [...] of the Republic of Uzbekistan*” and “*other encroachments on the constitutional system*”; [pars 59-59]
 - ensure that so-called “*incitement to national, ethnic, racial or religious hatred*” is prohibited only if the expression is intended to incite imminent violence, is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; [par 70]
 - delete the reference to the reliability or trustworthiness of information, especially if this can serve as a ground for removing certain information or providing sanctions; [par 34]

- expressly state and ensure that fair comments on issues of general public interest or value judgments based on sufficient factual basis are protected by the right to freedom of opinion and expression; [pars 33, 49 and 71]
- C. certain criminal offences which unduly restrict freedom of expression and other human rights should be decriminalized, especially defamation, the illegal manufacture, storage, import and distribution of materials of religious content and proselytism and other missionary activities; [pars 50 and 52]
- D. the Centre and the Expert Committee should be substantially reformed in order to ensure their independence and impartiality, and transparency of their composition, functioning and decision-making, while reconsidering the scope of their powers and responsibilities, to ensure that they are precisely and clearly circumscribed; [pars 84 and 87]
- E. the suspension or withdrawal of licenses, and blocking of Internet websites or webpages should only be possible when the conduct constitutes a criminal offence in national law, which should itself be in compliance with international human rights standards, and only if imposed by judicial bodies, following appropriate court procedures respecting minimum due process guarantees; [pars 91 and 93] and
- F. all decisions concerning the denial of registration, suspension of media outlets, and content removal and the blocking of online national and international media should be publicly available, while specifying the grounds, scope and duration of those corresponding measures. [par 96]

Additional Recommendations, highlighted in bold, are also included in the text of the opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. Relevant International Standards and OSCE Commitments

14. The right to freedom of expression, including the right to seek, receive and impart information, is a human right crucial to the functioning of a democracy and is central to achieving other human rights and fundamental freedoms. The full enjoyment of this right is one of the foundations of a free, democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can voice their opinions, while bringing visibility to marginalized or underrepresented groups.
15. The international human rights instrument binding upon the Republic of Uzbekistan, which is the most relevant to this legal review is the International Covenant on Civil and Political Rights (ICCPR).⁸ Its Article 19 protects the rights to hold opinions without interference (par 1) and to freedom of expression, including the “*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*” (par 2). This right should be guaranteed to everyone, including in respect of access to the media, without discrimination. Various other international instruments signed or ratified by the Republic of Uzbekistan also specifically recognize the right to

⁸ The *UN International Covenant on Civil and Political Rights* (ICCPR), was adopted by General Assembly resolution 2200A (XXI) on 16 December 1966. The Republic of Uzbekistan acceded to the ICCPR on 28 September 1995, <<http://indicators.ohchr.org/>>.

freedom of expression of particular persons or groups, such as the Article 13 of the Convention on the Rights of the Child (CRC)⁹ and Article 21 of the Convention on the Rights of Persons with Disabilities (CRPD, signed but not ratified).¹⁰

16. Any restriction on freedom of expression must meet the three-part test under international human rights law, namely that it is provided for by law, it serves to protect a legitimate interest recognized under international law (i.e., respect of the rights or reputations of others and protection of national security, public order, public health or morals) and it is necessary and proportionate to protect that interest (Article 19 par 3 of the ICCPR). In addition, laws that impose restrictions on freedom of expression must not violate the non-discrimination principle.¹¹ Moreover, administrative measures which directly limit freedom of expression, including regulatory systems for the media, should always be applied by an independent body and subject to appeal before an independent court or other adjudicatory body.¹²
17. Content available on the Internet is, in principle, subject to the same human rights regime as traditional media, such as printed materials and speech. Resolution 20/8 of the United Nations Human Rights Council affirms that the “*same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice*”.¹³ As such, all forms of audio-visual as well as electronic and internet-based modes of expression are protected.¹⁴
18. At the OSCE level, numerous OSCE commitments to the right to freedom of opinion and expression, freedom of the media and free flow of information, without interference by public authority and regardless of frontiers.¹⁵ This includes the right to seek, receive and impart information in the languages and through the media of one’s choice.¹⁶ In that

⁹ The *Convention on the Rights of the Child*, was adopted by General Assembly resolution 44/25 of 20 November 1989. The Republic of Uzbekistan acceded to the CRC on 29 June 1994.

¹⁰ The *Convention on the Rights of Persons with Disabilities (CRPD)*, was adopted by General Assembly resolution 61/106 of 24 January 2007. The Republic of Uzbekistan signed the CRPD on 27 February 2009 but has not yet ratified it. Though not legally binding on Uzbekistan, in principle, pursuant to Article 18 of the *Vienna Convention on the Law of Treaties* (to which the Republic of Uzbekistan acceded on 12 July 1995), “a state is obliged to refrain from acts which would defeat the purpose of a treaty when [...] it has signed the treaty”. Hence, following the signature of the CRPD, the Republic of Uzbekistan should not be adopting legislation that would be in flagrant contradiction with the provisions of the UN CRPD, thus defeating the very purpose of this Convention and being in violation of Article 18 of the Vienna Convention on the Law of Treaties.

¹¹ UN Human Rights Committee (CCPR), *General Comment no. 34 on Article 19: Freedoms of opinion and expression*, 12 September 2011, par 26.

¹² International Mandate-holders on Freedom of Expression, *2015 Joint Declaration on Freedom of Expression and Responses to Conflict Situations*, 4 May 2015, par 4 (a).

¹³ See UN Human Rights Council, *2012 Resolution 20/8 on the Promotion, Protection and Enjoyment of Human Rights on the Internet*, A/HRC/RES/20/8, 16 July 2012, par 1.

¹⁴ See *op. cit.* footnote 11, par 12 (2011 CCPR General Comment no. 34).

¹⁵ CSCE/OSCE, *Helsinki Final act of the 1st CSCE Summit of Heads of State or Government*, 1 August 1975, which proclaims the aim to facilitate the freer and wider dissemination of information of all kinds. See also CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, par 9.1. OSCE participating States also committed to “allow individuals, institutions and organizations [...] to obtain, possess, reproduce and distribute information material of all kinds” and to “take every opportunity offered by modern means of communication, including cable and satellites, to increase the freer and wider dissemination of information of all kinds” (*Concluding Document of the Third Follow-up Meeting*, Vienna, 19 January 1989, pars 34-35), while ensuring “unimpeded transborder and intra-State flow of information” (*Charter for European Security*, Istanbul 1999, par 26). See also Astana 2012, par 6, where OSCE participating States have committed “to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries”. More recently, OSCE participating States also committed to “[f]ully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom, including by respecting, promoting and protecting the freedom to seek, receive and impart information regardless of frontiers” and to “[b]ring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference” (*Ministerial Council Decision No. 3/18 on the Safety of Journalists*, MC.DEC/3/18, adopted by the OSCE Ministerial Council in Milan on 7 December 2018, pars 1-2).

¹⁶ OSCE High Commissioner on National Minorities, *Tallinn Guidelines on National Minorities and the Media in the Digital Age* (2019), par 1.

respect, free, independent and pluralist media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms, as emphasized in various OSCE commitments.¹⁷ In addition, the [2012 OSCE Consolidated Framework for the Fight against Terrorism](#) identifies countering the use of the Internet for terrorist purposes¹⁸ as one of the strategic focus areas of OSCE counter terrorism activities. The [2015 Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism \(VERLT\)](#) also calls for practical measures to counter the use of the Internet and other means for the purposes of inciting VERLT. The [2006 Ministerial Council Decision on Countering the Use of Internet for Terrorist Purposes](#) invites participating States to increase their monitoring of websites of terrorist/violent extremist organizations while ensuring respect for the rights to privacy and freedom of opinion and expression and the rule of law (par 6). Other commitments focus on the criminal use of information and communication technologies and illegal activities endangering cybersecurity.¹⁹

19. Finally, and while the Republic of Uzbekistan is not a Member State of the Council of Europe (CoE), the Comments will also refer, as appropriate, to the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the case law of the European Court of Human Rights (ECtHR), since they serve as useful reference documents for the purpose of comparison on the issue of freedom of expression. The Comments will likewise mention, whenever relevant, the opinions and publications of the European Commission for Democracy through Law of the CoE (Venice Commission), which can also serve as useful guidance.
20. The ensuing recommendations will also make reference, as appropriate, to other documents of a non-binding nature, which have been elaborated in various international and regional fora and may prove useful as they contain a higher level of details as to how international standards should be interpreted and examples of good practices.²⁰

2. Domestic Legal Framework pertaining to Freedom of Expression

21. According to Article 29 of the Constitution of the Republic of Uzbekistan, “*everyone shall be guaranteed freedom of thought, speech and convictions*” and “*shall have the right to seek, obtain and disseminate any information, except that which is directed against the existing constitutional system and some other instances specified by law*”.

¹⁷ *ibid.* par 26 (1990 Copenhagen Document); CSCE/OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, par 26; OSCE, [Charter for European Security](#), Istanbul 1999, pars 26-27; OSCE Ministerial Council, [Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding](#), 6 December 2006, par 9.

¹⁸ The “use of the Internet for terrorist purposes” has been interpreted comprehensively as the use of the Internet by terrorist organizations “to identify and to recruit potential members, to collect and transfer funds, to organize terrorist acts, to incite terrorist acts in particular through the use of propaganda” (see e.g. [Sofia Ministerial Council Decision on Combating the Use of the Internet for Terrorist Purposes](#), MC.DEC/3/04, December 2004).

¹⁹ See par 6 of Decision No. 1106 Initial Set of OSCE Confidence-Building Measures to reduce the Risks of Conflict Stemming from the Use of Information and Communication Technologies, PC.DEC/1106, 3 December 2013.

²⁰ These include, e.g., the [General Comment no. 34 of the UN Human Rights Committee on the freedoms of opinion and expression \(2011\)](#); the reports of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (hereafter “UN Special Rapporteur on Freedom of Opinion and Expression”) and of other human rights mandate-holders (available at: <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>); the documents and guidelines published by the OSCE Representative on Freedom of the Media (available at: [https://www.osce.org/resources/documents/?filters=+im_taxonomy_vid_1:\(27\)&solrsort=score%20desc&rows=10](https://www.osce.org/resources/documents/?filters=+im_taxonomy_vid_1:(27)&solrsort=score%20desc&rows=10)) and by the OSCE High Commissioner on National Minorities (available at: <https://www.osce.org/hcnm/thematic-recommendations-and-guidelines>); and the [digital inclusion resolutions](#) of the International Telecommunication Union (ITU); the Republic of Uzbekistan joined the ITU, the United Nations specialized agency for information and communication technologies, on [10 July 1992](#)).

Article 29 also specifies that “[f]reedom of opinions and their expression may be restricted by law if any state or other secret is involved”. Article 67 of the Constitution further provides that “[t]he mass media shall be free and act in accordance with law”, that it “shall bear responsibility for trustworthiness of information in a prescribed manner” and that “[c]ensorship is not permitted”.

22. The legal framework relating to freedom of expression, media and mass communications is scattered among the Constitution and several laws governing or potentially impacting this field.²¹ The Criminal Code and the Code on Administrative Responsibility of the Republic of Uzbekistan also sanction certain forms of expression, including when they involve the use of information technologies and the Internet.²² In addition, numerous decrees on a wide range of subjects, most notably on mass communications, information technologies, the Internet, press and information, supplement the primary legislation. As recommended in ODIHR 2015 and 2016 presidential election observation mission reports, the legislation governing the media should be extensively reviewed and could be consolidated into one comprehensive law.²³
23. The Decrees under review envisage a scheme whereby a governmental body, the Centre for Mass Communications, monitors the national information space and activities of mass media to assess their compliance with applicable laws and regulations (Article 1 of Decree no. 555). On this basis, the Centre then recommends to the relevant public authorities to decide for or against the issuance, suspension or withdrawal of licenses in the sphere of information services and registration of mass media outlets (see Decree no. 555, par 3) and/or restricting access to Internet information resources containing so-called “prohibited information” (Decree no. 707). As will be elaborated in the following sections, it is questionable whether the contemplated scheme should be retained at all, given the inherent difficulty of providing a legal definition of which content should be prohibited, the serious human rights concerns arising from vague and overbroad scope of the restrictions and the substantial overlap of the Decrees with other legislation, especially the criminal and administrative codes. As expressly stated by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “States and intergovernmental organizations should refrain from establishing laws or arrangements that would require the ‘proactive’ monitoring or filtering of content, which is both inconsistent with the right to privacy and likely to amount to pre-publication censorship”.²⁴ The Special Rapporteur further stated that “States should refrain from adopting models of regulation where government agencies, rather than judicial authorities, become the arbiters of lawful expression”.²⁵ **It is therefore recommended to reconsider whether such a scheme should be retained at**

²¹ These include, among others, the Law on Mass Media, the Law on Principles and Guarantee of Freedom of Information, the Law on Informatization, Law on Telecommunications, the Law on the Guarantees for Media Practitioners; Law on the Protection of Professional Activity of Journalists and the Law on the Protection of Professional Activity of Journalists.

²² Such as the following provisions of the Criminal Code of the Republic of Uzbekistan: 130¹ (Production, import, distribution, advertising, demonstration of products that promote the cult of violence or cruelty), 139 (Libel), 140 (Insult), 141 (Violation of equality of citizens), 141¹ and 141² (Privacy breach and Violation of personal data law), 150 (Propaganda of War), 156 (Incitement of National, Racial, Ethnic, or Religious Enmity), 158 par 3 (Public insult or defamation of the President of the Republic of Uzbekistan), 159 (Infringement of the constitutional order of the Republic of Uzbekistan), 192 (Discredit of a competitor), 244¹ (Production, storage, distribution or display of materials containing a threat to public safety and public order), 244² (Illegal production, storage, import or distribution of religious materials); and the following provisions of the Code on Administrative Responsibility of the Republic of Uzbekistan: Articles 40 (Slander), 41 (Insult), 46 (Disclosure of information that may cause moral or material damage to a citizen), 46¹ (Privacy breach), 46² (Violation of personal data law), 51⁶ (Distribution of false information about candidates, political parties), among others.

²³ ODIHR, *Limited Election Observation Mission Final Report – Republic of Uzbekistan*, 29 March 2015, page 15.

²⁴ See UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Report on the Regulation of User-generated Online Content*, A/HRC/38/35, 6 April 2018, par 67,

²⁵ *ibid.* par 68.

all. If it is nevertheless retained, the legal drafters should define the terms of the decrees more precisely while ensuring that they fully comply with fundamental human rights principles (see Sub-Section 4) and that any restriction to freedom of expression is decided by an independent and impartial body, according to standards of due process and subject to some forms of prompt judicial oversight (see Sub-Section 5).

24. In light of the above, **the legal framework related to freedom of expression and information should be extensively reviewed to ensure its compliance with international human rights standards and OSCE commitments, while ensuring that any restriction imposed on the right to freedom of expression strictly complies with the three-part test (see par 16 *supra*).** The legal drafters should also consider, to the extent possible, **consolidating the respective rules and regulations in one comprehensive version of the legislation to ensure better public accessibility and foreseeability.**²⁶
25. Finally, it is worth emphasizing that the Comments focus on substantive and procedural provisions concerning content regulation and restrictions of mass communication under the Decrees and therefore mainly address questions related to the compliance of those regulations with international standards on freedom of expression and access to information. The regulatory framework for other measures to counter the use of the Internet for terrorist purposes – which may involve interference with private communications (including on social media), access of Internet users to secure communication and encryption technology or with the protection of personal data – are not the subject of the present Comments. In this context, it is recalled that the right to privacy is (like freedom of expression) instrumental for the exercise of many other human rights and of paramount importance in a democratic society. Therefore, all such measures – whether investigative or preventive ones – must be fully in line with international standards related to the right to privacy.

3. Overall Objectives of the Decrees

26. The mandate of the Centre for Mass Communications includes the monitoring of the compliance with requirements of laws and regulations of the “*production, creation, processing, relay, broadcasting and storage of radio and television programs, other mass information with the use of information and communication technologies (space and satellite communication, data communications networks, including the Internet, etc.) as well as the production, dissemination and storage of periodical printed and book products, audio-visual products and phonograms for public use on any carriers (audio and video tapes, video CDs, etc.)*” (see III.7 of Annex 2 to Decree no. 555). The Centre is also in charge of monitoring of compliance of mass media outlets (including Internet publications and online versions of print media) and other service providers in the sphere of mass communications with license requirements and registration conditions, legislation in the sphere of production and dissemination of mass information and advertisement, competition laws as well as technical regulations and standards (see III.7 of Annex 2 to Decree no. 555). The mandate of the Centre has a

²⁶ *ibid.* Principle B.3.

broad scope and covers every conceivable means of communication of information, including print media, broadcast media and the Internet.

27. In principle, regulatory systems pertaining to freedom of expression and the media should take into account the differences between the print and broadcast sectors and the Internet, while also noting the manner in which various media converge.²⁷ Approaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet and printed media.²⁸ Indeed, some forms of regulation and licensing/registration of the broadcast media is legitimate,²⁹ mainly because broadcasting frequencies are scarce and therefore a mechanism for allocation of spectrum frequency bands to specific users is needed. Such a modality is however not necessary in the case of print and Internet-based media where there is no technical limits to the number of concurrent publications. Accordingly, printed or online media should not be required to obtain permission from any public body to operate on Internet, through website, blog or any other online information dissemination system.³⁰ Hence, **regulation in this sphere should distinguish between print and Internet-based media on the one hand, and broadcast media on the other, with registration or licencing by a body independent from the government may only be necessary in relation to broadcast media using frequencies.**
28. If licensing or registration requirements exist, they should in any case be purely technical and meet the following conditions: (1) there should be no discretion to refuse registration, once the requisite information has been provided; (2) the system should not impose substantive conditions upon the print or internet media for the purposes of registration; (3) the system should not be excessively onerous.³¹ **The Decrees and other applicable legislation should not provide for the possibility to refuse licensing based on the findings of the monitoring carried out by the Centre, and more generally, should be substantially revised in order to comply with the above-mentioned principles.**
29. It is worth noting that the Decrees also refer to a number of content-based restrictions, which duplicate to a certain extent or are relatively similar to existing prohibitions already found in the Criminal Code and the Code on Administrative Responsibility of the Republic of Uzbekistan.³² It is not clear why the legal drafters are referring to similar and/or overlapping concepts instead of referring to the specific provisions of the said codes, which already prohibit certain forms of expression. Moreover, this creates a confusing legal situation where several sets of rules that are overlapping to a certain extent are applicable to the same conduct, which may give rise to questions as to whether the interferences are reasonably foreseeable.³³ In that respect, the International Mandate-Holders on Freedom of Expression have expressly considered that “*media-*

²⁷ See *op. cit.* footnote 11, par 39 (2011 CCPR General Comment no. 34).

²⁸ International Mandate-Holders on Freedom of Expression, [2011 Joint Declaration on Freedom of Expression and the Internet](#), 1 June 2011, Section 8 on Security and Freedom of Expression, par 1 (c).

²⁹ For instance Article 10(1) of the ECHR specifically states that Article 10 “shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

³⁰ International Mandate-Holders on Freedom of Expression, [2005 Joint Declaration](#), Sub-Section on the Internet.

³¹ International Mandate-Holders on Freedom of Expression, [2003 Joint Declaration on the Regulation of the Media](#), Sub-Section on the Regulation of the Media, 2nd and 3rd paragraphs.

³² See *op. cit.* footnote 22, which lists the relevant provisions of the Criminal Code and Code on Administrative Responsibility of the Republic of Uzbekistan.

³³ See, for the purpose of comparison, ECtHR, [Rekvényi v. Hungary](#) [GC] (Application no. 25390/94, judgment of 20 May 1999), par 34.

*specific laws should not duplicate content restrictions already provided for in law as this is unnecessary and may lead to abuse”.*³⁴

30. More generally, it is questionable whether a separate regulation should specifically address content-based restrictions by the media, mass communications, information technologies and the Internet, rather than legislation of general application governing any individual or legal entity. If the publication or public expression of a certain category of statement carries a sufficient risk of harm to justify a restriction on freedom of expression in accordance with international standards, this should apply regardless of the manner in which or by whom the statement is disseminated. The International Mandate-Holders on Freedom of Expression have specifically emphasized that no special content restrictions should be established for material disseminated over the Internet.³⁵
31. In light of the foregoing, and to the extent that certain restrictions on the right to freedom of expression are legitimate and necessary in compliance with international standards, **they should be contained in a single legislation of general application, instead of being set out in laws or regulations specifically targeting the media or the Internet** (see also Sub-Section 4. *infra* regarding the non-compliance of certain content-based restrictions contained in the Criminal Code and the Code on Administrative Responsibility with international standards).
32. The Preamble to Decree no. 555 on the Management Structure in the Sphere of Mass Communications refers to the purpose of ensuring “*relevance, accessibility and reliability of information*”. States are under a positive obligation to foster an enabling environment for the exercise of freedom of expression and access to information, which includes promoting, protecting and supporting diverse media.³⁶ The main purpose of regulation in this field should primarily be **to promote freedom of expression and of information,³⁷ grounded by the principle of maximum disclosure, which could be more reflected in the Decrees.**³⁸
33. Moreover, the reference to the “*relevance*” and “*reliability*” of information is problematic since human right to impart information and ideas is not limited to “correct” or “reliable” statements. Indeed, fair comments on issues of general public interest or value judgments based on sufficient factual basis³⁹ are protected by the right to freedom of opinion and expression, even if they are not true.⁴⁰ As noted in ODIHR 2016 Election Observation Mission Final Report, the media are held liable for the “trustworthiness” of disseminated information, which may have a chilling effect and prevent them from fully and genuinely covering the campaign and informing the public.⁴¹ At the OSCE level, there is overall consensus that while recognizing that online and offline disinformation may threaten security in the OSCE region, the

³⁴ See *op. cit.* footnote 31, Sub-Section on the Regulation of the Media, 4th paragraph ([2003 Joint Declaration](#)).

³⁵ *Op. cit.* footnote 28, Section 8 on Security and Freedom of Expression, par 1 (d) ([2011 Joint Declaration](#)).

³⁶ International Mandate-holders on Freedom of Expression, [2019 Joint Declaration on Challenges to Freedom of Expression in the Next Decade](#), par 1; and [2017 Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#), 3 March 2017, ninth paragraph of the Preamble. See also *op. cit.* footnote 16, par 5 (2019 OSCE HCNM Tallinn Guidelines).

³⁷ *ibid.* ninth paragraph of the Preamble ([2017 Joint Declaration](#)).

³⁸ See e.g., ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), par 147; see also UN Special Rapporteur on Freedom of Opinion and Expression, [2013 Report on the Right to Access Information](#), UN Doc. A/68/362, 4 September 2013, par 98.

³⁹ For the sake of comparison, at the Council of Europe level, see e.g., ECtHR, [Feldek v. Slovakia](#) (Application no. 29032/95, judgment of 12 July 2001), par 76; see also [Jerusalem v. Austria](#) (Application no. 26958/95, judgment of 27 February 2001), par 43.

⁴⁰ For the sake of comparison, at the Council of Europe level, the ECtHR expressly stated that the right to freedom of expression as such “does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful”; see ECtHR, [Salov v. Ukraine](#) (Application no. 65518/01, judgment of 6 September 2005), par 113.

⁴¹ ODIHR, [Election Observation Mission Final Report – Uzbekistan](#), 4 December 2016, page 14.

protection of human rights, including freedom of expression and freedom of the media, within the broader context of the OSCE concept of comprehensive security, is seen as an integral part of the OSCE's participating States' contribution to peace and security.⁴² As noted in the [2017 Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda](#), general prohibitions on the dissemination of information based on vague and ambiguous ideas, including "false news", "non-objective" or non-reliable information are incompatible with international standards for restrictions on freedom of expression, and should be abolished.⁴³ The UN Human Rights Committee has also expressly considered that false news legislation unduly limit the exercise of opinion and expression, even in cases where the prohibition concerns false news posing a threat to public order.⁴⁴ At the same time, official or State actors should, in accordance with their domestic and international legal obligations and their public duties, take care to ensure that they themselves disseminate reliable and trustworthy information, including about matters of public interest.⁴⁵

34. In light of the above, **the overall purpose of Decree no. 555 and other regulations in this sphere should be reframed to emphasize the main purpose of promotion of freedom of expression and of information.** Moreover, **the Centre or other entities should not be controlling the correctness or reliability of information disseminated by private entities or individuals**, which is protected by the right to freedom of expression and information, except in very specific cases (see Sub-Section 4.1. *infra*). **The reference to the reliability or trustworthiness of information, especially if this can serve as a ground for removing certain information or providing sanctions, should be removed from the Decrees and other legal acts, as appropriate.**
35. It is worth emphasizing that the Republic of Uzbekistan is also a member of the UN International Telecommunication Union (ITU).⁴⁶ In light of the recent [2018 ITU Resolution 70 on Mainstreaming a Gender Perspective in ITU and Promotion of Gender Equality](#),⁴⁷ ITU Member States were called upon to take a number of measures to mainstream gender and promote gender equality in the telecommunications and ICT fields.⁴⁸ Similarly, the recommendations made by the UN Special Rapporteur on violence against women, its causes and consequences concerning online violence against women⁴⁹ could serve as a useful basis to broaden the mandate of the Centre so that it can contribute to the prevention of online and ICT-facilitated violence against women and girls.

⁴² See International Mandate-holders on Freedom of Expression, [2010 Joint Declaration on Ten Key Threats to Freedom of Expression](#), 3 February 2010, Section 8 on Security and Freedom of Expression.

⁴³ *Op. cit.* footnote 36, par 2 (a) ([2017 Joint Declaration](#)). For reference, at the Council of Europe level, the ECtHR expressly stated that the right to freedom of expression as such "does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful"; see ECtHR, [Salov v. Ukraine](#) (Application no. 65518/01, judgment of 6 September 2005), par 113.

⁴⁴ CCPR, [1995 Annual Report](#), A/50/40, 3 October 1995, par 89. See also OSCE Representative on Freedom of the Media, [International Standards and Comparative National Approaches to Countering Disinformation in the Context of Freedom of the Media](#), March 2019, see pars 25-26.

⁴⁵ *Op. cit.* footnote 36, seventh paragraph of the Preamble and par 2 (d) ([2017 Joint Declaration](#)).

⁴⁶ The Republic of Uzbekistan joined the ITU, the United Nations specialized agency for information and communication technologies, on [10 July 1992](#).

⁴⁷ [ITU Resolution 70](#) (rev. Dubai, 2018).

⁴⁸ Such measures include, among others, to facilitate the capacity-building and employment of women and men equally in the telecommunication/ICT field, including at senior levels of responsibility in telecommunication/ICT administrations, government and regulatory bodies, as well as to review their policies and strategies related to the information society so as to ensure the inclusion of a gender perspective in all activities and the fostering of gender balance to secure equal opportunities through the use and appropriation of telecommunications/ICTs and the empowerment of women and girls through telecommunications/ICTs.

⁴⁹ UN Special Rapporteur on violence against women, its causes and consequences, [Report on online violence against women and girls from a human rights perspective](#) (18 June 2018), A/HRC/38/47, pars 113-119.

36. Additionally, and while it is welcome that the Preamble to Decree no. 555 specifically mentions “accessibility”, the content of the Decrees (or other relevant legislation/regulations in this sphere) could be enhanced by reflecting the recommendations made in [ITU Resolution no. 175 on Telecommunication/ICT Accessibility for Persons with Disabilities and Persons with Specific Needs](#) (Dubai, 2018).⁵⁰ Additionally, the OSCE [Guidelines on the use of Minority Languages in the Broadcast Media](#) (2003) and the [Tallinn Guidelines on National Minorities and the Media in the Digital Age](#) (2019) published by the OSCE High Commissioner on National Minorities (OSCE HCNM) offer useful guidance for measures needed to create spaces for pluralistic debate in diverse societies aimed at strengthening societal integration and resilience. More generally, States should promote media diversity, including by supporting efforts to give voice to groups, which are marginalized and at risk of discrimination.⁵¹ **These objectives, as well as other measures mentioned in the above-mentioned resolutions and guidelines pertaining to gender mainstreaming, diversity and accessibility for persons with disabilities could be reflected more prominently as part of the mandate of the Centre for Mass Communications.**
37. Finally, and while not being directly covered by the Decrees, it is worth noting that the issue of Internet-based communication (chat, messengers, private groups in social media, emails etc.), must be subject to different type of regulations and needs strong privacy protections and safeguards against potential surveillance and against the interception of private communications.

4. Content-based Restrictions

38. Several provisions of the Decrees contain terms, which are overly broad, lack clarity and give rise to different interpretations. This is troubling since this terminology serves as grounds for public authorities to adopt severe measures, such as refusal, suspension or withdrawal of licence or of state registration (see Decree no. 555) and restriction of access to websites and/or webpages (see Decree no. 707), which constitutes restrictions to freedom of expression and information.
39. Decree no. 555 refers to the monitoring by the Centre of the compliance with laws aimed at “*protecting interests of the individual, society and the State in the information sphere*”, “*preventing destructive, negative information and psychological influence on public conscience*” and “*maintaining and ensuring succession of national and cultural traditions and heritage*”. In addition, the Annex 2 to Decree no. 555 specifies that the Centre will, among others, prepare proposals on “*improvement of the system for preventing dissemination by information and communication systems of the Republic of information aimed at undermining the sense of national identity, abandoning historical and national traditions and customs, destabilization of socio-political situation, disruption of interethnic and interfaith concord*”. Moreover, the Centre should further

⁵⁰ These include, e.g.: to develop, within their national legal frameworks, guidelines or other mechanisms to enhance the accessibility, compatibility and usability of telecommunication/ICT services, products and terminals, and to offer support to regional initiatives related to this issue; to introduce appropriate telecommunication/ICT services and to encourage the development of applications for telecommunication devices and products in order to enable persons with disabilities and persons with specific needs to utilize these services on an equal basis with others, and to promote international cooperation in this regard; etc.

⁵¹ International Mandate-holders on Freedom of Expression”, [2019 Joint Declaration on Challenges to Freedom of Expression in the Next Decade](#), par 1 (c).

identify “*intended or unintended actions of media outlets having destructive influence and causing harm to physical and mental health of population*”.

40. Decree no. 707 refers to restrictions to Internet websites and/or webpages when they contain various types of expressions, including “*calling to violent change of the constitutional order, territorial integrity of the Republic of Uzbekistan*”, so-called “*propaganda of war, violence and terrorism as well as ideas of religious extremism, separatism and fundamentalism*”. Decree no. 555 contains a somewhat similar wording concerning the monitoring by the Centre to identify “*the national information space materials containing public calls to violent change of the constitutional order, violation of territorial integrity and sovereignty of the Republic of Uzbekistan*” and “*incitement of social, ethnic, racial and religious hatred, other encroachments on the constitutional system as well as information aimed at propaganda of war, violence, pornography and cruelty, ideas of terrorism and religious extremism*”.
41. Annex 2 to Decree no. 228 refers to a number of content-based restrictions that should be identified by the Expert Committee in the Sphere of Information and Mass Communications (hereinafter “Expert Committee”), including “*violation of sovereignty of the Republic of Uzbekistan*” and “*other encroachments on the constitutional system*”. It also contains wording similar to Decrees nos. 707 and 555 on “*information aimed at propaganda of war, violence, pornography and cruelty, ideas of terrorism and religious extremism*”.

4.1. General Comments

42. As mentioned in par 16 *supra*, any restriction on freedom of expression must be provided for by law, serve to protect a legitimate interest recognized under international law (i.e., respect of the rights or reputations of others and protection of national security, public order, public health or morals) and be necessary and proportionate to protect that interest (Article 19 par 3 of the ICCPR). The restriction must be clear and foreseeable and formulated with sufficient precision to avoid all risk of arbitrariness and enable individuals to regulate their conduct in conformity with it.⁵² As the UN Human Rights Committee stressed, “*[a] law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution*”.⁵³ Accordingly, legislation must provide sufficient guidance to enable implementers to ascertain what sorts of expression are properly restricted and what sorts are not,⁵⁴ while also being non-discriminatory.⁵⁵ In relation to the right to freedom of expression, the UN Human Rights Committee has noted that “*[r]estrictions are not allowed on grounds not specified in paragraph 3 [of Article 19 of the ICCPR], even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.*”⁵⁶ Accordingly, restrictive measures must be narrowly defined to meet a clearly set-out legitimate purpose prescribed by law, temporary in nature and should not be used to target dissent and

⁵² See *op. cit.* footnote 11, par 25 (2011 CCPR General Comment no. 34); Council of Europe, Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, 18 March 2016, pages 25-26.

⁵³ *ibid.* par 25 (2011 CCPR General Comment no. 34).

⁵⁴ *ibid.* par 25 (2011 CCPR General Comment no. 34).

⁵⁵ *ibid.* par 26 (2011 CCPR General Comment no. 34).

⁵⁶ *ibid.* par 12 (2011 CCPR General Comment no. 34).

critical speech.⁵⁷ When a State invokes a legitimate ground for restriction, it must demonstrate in specific and individualized fashion the precise nature of the threat, in particular by establishing a direct and immediate connection between the expression and the threat.⁵⁸ Furthermore, they must be narrowly interpreted and the necessity for restricting the right to freedom of expression and to impart or receive information must be convincingly established to be compatible with international human rights standards.⁵⁹

43. International human rights law recognizes a limited number of types of expression which States must prohibit or render punishable (by law), providing that the legal provision is strictly interpreted in accordance with international freedom of expression standards, especially when dealing with “incitement”. These include “*direct and public incitement to commit genocide*” (Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide), the “*propaganda of war*” and the “*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*” (Article 20 (1) and (2) of the ICCPR), and “*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as [...] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin*” (Article 4 (a) of the ICERD).⁶⁰
44. In addition, international recommendations call upon States to enact laws and measures, as appropriate, “*to clearly prohibit and criminalize online violence against women, in particular the non-consensual distribution of intimate images, online harassment and stalking*”, including “[t]he threat to disseminate non-consensual images or content”, which must be made illegal.⁶¹ States should also ensure that effective measures are taken to prevent the publication of harmful material that comprises gender-based violence against women, and for their removal on an urgent basis.⁶² Similarly, “*incitement to terrorism or acts of terrorism*” should also be prohibited in compliance with international human rights law, meaning that the offence must (a) expressly refer to the intent to communicate a message and intent that this message incite the commission of a terrorist act; and (b) be limited to the incitement to conduct that is truly terrorist in nature; and (c) include an actual (objective) risk that the act incited will be committed; and (d) preserve the application of legal defences or principles leading to the exclusion of criminal liability in certain cases,⁶³ for instance when the statements were intended as

⁵⁷ See the OSCE Representative on Freedom of the Media, “*Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States*” (2010).

⁵⁸ See *op. cit.* footnote 11, par 35 (2011 CCPR General Comment no. 34).

⁵⁹ See OSCE Representative on Freedom of the Media, *OSCE Study “Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States”* (15 December 2011), page 35. See also the 2012 *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, 5 October 2012, par 18; and e.g., ECtHR, *Vogt v. Germany*, (Application no. 17851/91, judgment of 26 September 1995), par 52.

⁶⁰ These include: “*direct and public incitement to commit genocide*”, which should be punishable as per Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide to which Uzbekistan acceded on 9 September 1999; the “*propaganda of war*” and the “*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*”, which should be prohibited as per Article 20 (1) and (2) of the ICCPR; “*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as [...] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin*”, which should be an offence punishable by law according to Article 4 (a) of the ICERD. See also OSCE RFoM, *Non-Paper on Propaganda and Freedom of the Media* (2015), especially with reference to propaganda of war and hatred that leads to violence and discrimination.

⁶¹ UN Special Rapporteur on violence against women, its causes and consequences, *Report on online violence against women and girls from a human rights perspective* (18 June 2018), A/HRC/38/47, par 101.

⁶² *ibid.* par 100 (2018 Report of the Special Rapporteur on VAW).

⁶³ See the model offence of incitement to terrorism provided by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereafter “UN Special Rapporteur on counter-terrorism”) in *2010 Report on “Ten areas of best practices in countering terrorism”*, A/HRC/16/51, 22 December 2010, par 31. See also UN Security Council,

part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest.⁶⁴ Concerning national security more generally, content restriction should only be possible if such content poses a real threat to national security and if it is likely and intended to incite imminent violence, and there is a direct and immediate connection between the expression and the likelihood of occurrence of such violence.⁶⁵ Accordingly, the threat to national security cannot be abstract or hypothetical.⁶⁶

45. Moreover, “*child sexual exploitation material*”⁶⁷ should also be prohibited and criminalized as per the [“Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography”](#), which is binding upon the Republic of Uzbekistan,⁶⁸ while ensuring that a clear definition in line with international standards is provided.
46. The legal drafters should ensure that the national legislation prohibit or render punishable the limited number of types of expression expressly mentioned by international standards (see pars 44-45 *supra*), providing that the legal provision is strictly interpreted in accordance with international freedom of expression standards, especially when dealing with “incitement”. Then, where it has been ascertained by the competent authorities that the contents that have been posted clearly fall outside of what is protected by international standards on freedom of opinion and expression, investigation and possible prosecution of those responsible must fully respect international standards on due judicial process.⁶⁹

[Resolution 1624 \(2005\)](#), 14 September 2005, par 1, which calls on states to prohibit, by law, incitement to commit terrorist acts. As expressly stated by the International Mandate-Holders on Freedom of Expression “[i]ncitement should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring”; International Mandate-Holders on Freedom of Expression, [2005 Joint Declaration](#), Sub-Section on Anti-terrorism measures. See also e.g., *op. cit.* footnote 28, Section 8 on Security and Freedom of Expression, par 1 (d) ([2011 Joint Declaration](#)). See also ODIHR, [Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014), page 42; and [Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#), September 2018, pages 53 and 55. See also Principle 6 of the [Johannesburg Principles on Freedom of Expression and National Security](#) (1995), adopted on 1 October 1995 by a group of experts in international law, national security, and human rights and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression. For reference, see also Article 5 of the [2005 CoE’s Convention on the Prevention of Terrorism](#) on the “public provocation to commit acts of terrorism”, defined as “the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed”.

⁶⁴ See e.g., OSCE Representative on Freedom of the Media, [Legal Analysis of the Proposed Bill C-51, the Canadian Anti-terrorism Act, 2015: Potential Impact on Freedom of Expression](#) (May 2015), pages 9-10.

⁶⁵ See *op. cit.*, footnote 35, par 2 (d) (2016 International Mandate-holders on Freedom of Expression Joint Declaration on Freedom of Expression and Countering Violent Extremism); and footnote 42, Principle 6 (Johannesburg Principles on Freedom of Expression and National Security).

⁶⁶ ODIHR, [Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#), September 2018, page 57.

⁶⁷ In that respect, it is noted that the wording “child pornography” should be avoided, although still widely used in international legal instruments. Indeed, “pornography” is a term primarily used for adults engaging in consensual sexual acts and is increasingly normalized, and may thus contribute to diminishing its gravity while at the same time risking insinuating that the acts are carried out with the consent of the child - see e.g., Interagency Working Group on Sexual Exploitation of Children, [Luxembourg Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse](#), 28 January 2016, Sub-Section F; and UNODC, [Criminal Justice Reforms in Uzbekistan: Brief Analysis and Recommendations](#), April 2018, page 20. See also for reference, European Parliament, [Resolution on Child Sexual Abuse Online](#), 11 March 2015, par 12, explicitly calling Member States “to use the correct terminology for crimes against children, including the description of images of sexual abuse of children, and to use the appropriate term ‘child sexual abuse material’ rather than ‘child pornography’”.

⁶⁸ Uzbekistan acceded to the [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#) on 23 December 2008. Its Articles 2 (c) and 3 (1) (c) provide that the “producing, distributing, disseminating, importing, exporting, offering, selling or possessing” “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes” shall be criminalized.

⁶⁹ ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), par 151.

4.2. Overlap of the Decrees with Other Legislation

47. Though this goes beyond the scope of this legal review, it is worth noting that certain provisions of the Criminal Code and of the Code on Administrative Responsibility of the Republic of Uzbekistan contain some content-restrictions that are not compliant with international standards. This should be noted here since the mandate of the Centre includes to monitor the compliance with “*laws of the Republic of Uzbekistan aimed at protecting interests of the individual, society and the State in the information sphere*” (Decree no. 555) and Decree no. 707 also refers to the restriction of access to Internet websites and/or webpages if used for the “*commission of other actions entailing criminal and other responsibility in compliance with law*”. Hence, the provisions of the Criminal Code and the Code on Administrative Responsibility can be used as the basis for imposing restrictions to freedom of expression and information according to the Decrees. The provisions of the Decrees have also the potential to overlap, to some extent, with certain provisions of the *Law on Combatting Terrorism* and the *Law on Countering “Extremism”*, which are subject of separate legal reviews.⁷⁰ As mentioned in par 29 *supra*, overlapping provisions might also give rise to problems about whether interferences with freedom of expression are reasonably foreseeable.

4.2.1. Slander, Libel and Insult in the Criminal Code

48. Articles 139 and 140 of the Criminal Code criminalize slander, libel and insult. Moreover, Article 158 par 3 of the Criminal Code provides that public insult or defamation of the President of the Republic of Uzbekistan, including through the use of the press or other media, shall be punished by correctional labour, restriction of liberty or imprisonment of up to five years.
49. There is an increasing international consensus that criminal liability for defamation should be abolished in view of their chilling effect on free expression.⁷¹ In this context, it should be noted that numerous other OSCE participating States, such as Armenia, Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Ireland, Moldova, Montenegro, and the United Kingdom have abolished criminal defamation. Moreover, the UN Human Rights Committee has expressed concern regarding legislation providing for “*defamation of the head of state and the protection of the honour of public officials*” and stated that “*laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned*”.⁷² In any case, public figures should generally be prepared to tolerate criticism and the limits of acceptable criticism should be wider compared to those of private individuals.⁷³ The UN Human Rights

⁷⁰ Available at <<https://www.legislationline.org/odihr-documents/page/legal-reviews/country/55/Uzbekistan/show>>.

⁷¹ See *op. cit.* footnote 15, par 11 (2018 OSCE *Ministerial Council Decision No. 3/18 on the Safety of Journalists*); *op. cit.* footnote 11, par 47 (2011 CCPR General Comment no. 34). See also International Mandate-Holders on Freedom of Expression, *2002 Joint Declaration*; *op. cit.* footnote 42, par 2 (2010 Joint Declaration on Ten Key Threats to Freedom of Expression); and *op. cit.* footnote 36, par 2 (b) (*2017 Joint Declaration*). See also ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), par 140; and OSCE Representative on the Freedom of the Media, *Legal Analysis of Law No. 925 of 17 October 2013 concerning the Defamation Legislation in Italy* (November 2013). See also for reference, e.g., ECtHR, *Marchenko v. Ukraine* (Application no. 4063/04, judgment of 19 February 2009), par 52; and Recommendation 1814 (2007) and Resolution 1577 (2007) of the Parliamentary Assembly “*Towards Decriminalisation of Defamation*”.

⁷² *Op. cit.* footnote 11, par 38 (2011 CCPR General Comment no. 34).

⁷³ See for example, the views of the UN Human Rights Committee in the case of *Bodrozic v. Serbia and Montenegro*, Communication no. 1180/2003, October 2005, par 8. See also *op. cit.* footnote 11, pars 38 and 47 (2011 CCPR General Comment no. 34), which provides that “*public figures, including those exercising the highest political authority such as heads of state and government, should be legitimately subject to criticism and political opposition*”; and e.g., Venice Commission, *Amicus Curiae Brief for the Constitutional Court of Georgia on the Question of the Defamation of the Deceased*, CDL-AD(2014)040, 15 December 2014, par 23. See also, for the purpose of comparison, e.g., in the case of *Eon v. France* (Application no. 26118/10, judgment of 14 March 2013), par 59; and *Incal v. Turkey* [GC] (Application no. 22678/93, judgment of 9 June 1998), par 54, where the ECtHR has also expressly stated that “*the limits of*

Committee has also pointed out that defamation laws must be crafted with care to ensure that they do not serve, in practice, to stifle freedom of expression.⁷⁴ Accordingly, civil law rules on liability for false and defamatory statements are legitimate only if they exclusively apply to those forms of expression that are, of their nature, subject to verification⁷⁵ and only if defendants are given a full opportunity and fail to prove the truth of those statements and also benefit from other defences, such as fair comment.⁷⁶ In any event, a public interest in the subject matter of the criticism should be recognized as a defence.⁷⁷

50. In light of the foregoing, ODIHR reiterates, as done in its presidential election observation mission reports on Uzbekistan⁷⁸ and as also recommended by the UN Human Rights Committee,⁷⁹ that **defamation should be decriminalized and replaced with reasonable and proportional civil responsibility, which should only be imposed after due process, and if it is the least restrictive measure.**⁸⁰ In any case, to ensure that the offence is narrowly defined and does not lead to abuse or to discretionary interpretation limiting freedom of expression, **the legal drafters should consider including defences or exceptions, for instance when the statements were intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest.**⁸¹ This is an important exception in order not to stifle public debate and guarantee independent academic inquiry.⁸²

4.2.2. *Incitement of Enmity in the Criminal Code*

51. Article 156 of the Criminal Code condemns the “*Incitement of National, Racial, Ethnic, or Religious Enmity*”.⁸³ As recommended by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “[t]o prevent any abusive use of hate speech laws, [...] only serious and extreme instances of incitement to hatred [should] be prohibited as criminal offences”.⁸⁴ Moreover, such forms of expression would only be seen as threatening national security when the following three criteria are met cumulatively: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate

permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion”.

⁷⁴ See *op. cit.* footnote 11, par 47 (2011 CCPR General Comment no. 34).

⁷⁵ *ibid.* par 47 (2011 CCPR General Comment no. 34).

⁷⁶ *Op. cit.* footnote 36, par 2 (b) ([2017 Joint Declaration](#)).

⁷⁷ See *op. cit.* footnote 11, par 47 (2011 CCPR General Comment no. 34).

⁷⁸ *Op. cit.* footnote 23, page 16 (2015 ODIHR Limited Election Observation Mission Final Report); and *op. cit.* footnote 41, page 14 (2016 ODIHR Election Observation Mission Final Report).

⁷⁹ CCPR, [Concluding Observations on Uzbekistan](#), UN Doc. CCPR/C/UZB/CO/3, 7 April 2010, par 24.

⁸⁰ *Op. cit.* footnote 41, page 14 (2016 ODIHR Election Observation Mission Final Report).

⁸¹ See e.g., OSCE Representative on Freedom of the Media, [Legal Analysis of the Proposed Bill C-51, the Canadian Anti-terrorism Act, 2015: Potential Impact on Freedom of Expression](#) (May 2015), pages 9-10.

⁸² See ODIHR, [Opinion on the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova](#) (26 April 2019), par 54; and ODIHR-Venice Commission, [Joint Interim Opinion on the Law of Ukraine “On the condemnation of the communist and national socialist \(Nazi\) regimes, and prohibition of propaganda of their symbols”](#) (21 December 2015), par 92.

⁸³ Article 156 of the Criminal Code states: “Production, storage for the purpose of distribution or distribution of materials propagandizing national, racial, ethnic or religious hostility, committed after the application of an administrative penalty for the same acts shall be punished with a fine of up to six hundred minimum monthly wages or correctional labor up to three years or restriction of liberty from one to three years or imprisonment up to three years. Intentional actions that degrade national honor and dignity, offend the feelings of citizens in connection with their religious or atheistic beliefs, committed to incite hatred, intolerance or discord to groups of people on national, racial, ethnic or religious grounds, as well as direct or indirect restriction of rights or the establishment of direct or indirect advantages depending on their national, racial, ethnicity or attitude to religion is punished by restriction of freedom from two to five years or imprisonment up to five years.”

⁸⁴ See UN Special Rapporteur on Freedom of Opinion and Expression, [2012 Report](#), A/67/357, 7 September 2012, pars 79-80.

connection between the expression and the likelihood or occurrence of such violence.⁸⁵ Other cases should be addressed under civil legislation⁸⁶ (see also Sub-Section 5 *infra*).

4.2.3. *Production, Storage, Distribution or Demonstration of Certain Information or Materials*

52. Article 244¹ of the Criminal Code prohibits the production, storage, distribution or demonstration of materials containing a threat to public safety and public order, which expressly refers to “*materials containing ideas of religious extremism, separatism and fundamentalism*”, and as such mirrors the wording contained in the Decrees (see Sub-Section 4.3.1. *infra*). Article 244³ of the Criminal Code also prohibits the illegal manufacture, storage, import and distribution of materials of religious content, without obtaining prior state permission. Article 216² further criminalizes other violations of legislation on religious organizations, including proselytism and other missionary activities and Article 229² bans all religious education that has not been sanctioned by the State. **These provisions have been criticized by international human rights monitoring mechanisms as being incompatible with Article 18 of the ICCPR, also in conjunction with freedom of expression,⁸⁷ and should therefore be reconsidered entirely.**

4.3. *Specific Content Restrictions in the Decrees*

53. As mentioned in par 30 *supra*, no special content restrictions should be established for material disseminated over the Internet and in the media, as they should be contained in **legislation of general application, providing that they are themselves compliant with international standards, to which other legislation/regulation should make cross-references. Content restrictions mentioned in the Decrees that are not otherwise contained in legislation of general application should be reconsidered altogether.**
54. It must also be emphasized that the right to freedom of expression protects all forms of ideas, information or opinions, including those that “*offend, shock or disturb*” the State or any part of the population,⁸⁸ and even “*deeply offensive*” speech.⁸⁹ While the right to freedom of expression may, in very limited cases, be restricted,⁹⁰ simply holding or peacefully expressing views that are considered offensive, radical or “*extreme*” under any definition should never be prohibited or criminalized, unless such views are

⁸⁵ See *op. cit.*, footnote 35, par 2 (d) (2016 International Mandate-holders on Freedom of Expression Joint Declaration on Freedom of Expression and Countering Violent Extremism); and Principle 6 of the [Johannesburg Principles on Freedom of Expression and National Security](#) (1995), adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression. See also the UN Secretary General, [Report on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism](#), A/63/337, 28 August 2008, par 62.

⁸⁶ See UN Special Rapporteur on Freedom of Opinion and Expression, [2012 Report](#), A/67/357, 7 September 2012, pars 79-80.

⁸⁷ See UN Special Rapporteur on freedom of religion or belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, pars 97 and 101. See also [Report of the Working Group on the Universal Periodic Review](#) (UPR) for the Republic of Uzbekistan, A/HRC/19/18, 9 July 2018, Recommendation 101.110 (accepted).

⁸⁸ *Op. cit.* footnote 36, seventh paragraph of the Preamble ([2017 Joint Declaration](#)). See also UN Special Rapporteur on counter-terrorism, [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, par 38. See also for reference, ECtHR, [Handyside v. United Kingdom](#) (Application no. 5493/72, judgment of 7 December 1976), par 49; and [Bodrožić v. Serbia](#) (Application no. 32550/05, judgment of 23 June 2009), pars 46 and 56.

⁸⁹ See *op. cit.* footnote 11, pars 11 and 38 (2011 CCPR General Comment no. 34).

⁹⁰ See e.g., Article 20 of the ICCPR, Article 4 of the ICERD, Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, Security Council Resolution 1624(2005).

associated with violence or criminal activity.⁹¹

4.3.1. Propaganda of War, Violence, Ideas of Terrorism, “Religious Extremism” and “Fundamentalism”

55. First, there seems to be no robust definition of what the Decrees no. 555 and 707 mean by “*calling*” or “*propaganda*”, e.g., whether or not it requires an element of publicly disseminating the information or whether, for instance the sharing of information within a private group of persons would also fall under this provision. It is thus difficult to distinguish from other forms of expression protected by Article 19 of the ICCPR.⁹² Additionally, the provisions do not contain the caveat that the actions in question must be committed with the intent and in a manner likely to incite imminent violence according to the above-mentioned meaning (see par 51 *supra*). Hence, should such a limitation be retained, **it should be more strictly circumscribed.**
56. As to the “*propaganda of terrorism*” in particular, the offence should contain all the constitutive elements of “*incitement to terrorism*” stated in par 44 *supra*,⁹³ in order to comply with international human rights law. In this context, general terms such as “*propaganda*” should be avoided⁹⁴ and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalized.⁹⁵ Accordingly, the word “*propaganda*” should be replaced by “*incitement*”, and the related definition **should be clearly circumscribed by reflecting the four above-mentioned elements** (see par 44 *supra*).
57. Decrees nos. 555 and 707 also refer to the prohibition of the propaganda of “*religious extremism*”. First, generally speaking, “*extremism*” may not necessarily constitute a threat to society if it is not connected to violence or other criminal acts, such as advocacy of hatred that constitutes incitement to violence, inciting or condoning criminal activity and/or violence, which are themselves defined in compliance with international human rights law.⁹⁶ Second, here is no universal definition of “*extremism*”⁹⁷ or “*religious extremism*” and the term “*religious extremism*” is extremely vague and too general to fulfil the requirement of legal certainty and foreseeability. Indeed, it is noted that the OSCE/ODIHR and other international bodies have previously raised concerns pertaining to “*extremism*”/“*extremist*” as a normative legal concept and the vagueness of such a term, particularly in the context of criminal legislation.⁹⁸ Lacking a specific legal definition generally allows States to adopt highly intrusive, disproportionate and discriminatory measures, notably to limit freedom of expression.⁹⁹ This is demonstrated by the findings of international human rights monitoring mechanisms,¹⁰⁰ which point to persistent problems, in particular, with so-called “*religious extremism*” charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of unlawful arrests, detention, torture and other ill-treatment in the Republic of Uzbekistan. In this respect, ODIHR also refers to its upcoming [Comments on the Law on Countering Extremism of the Republic of Uzbekistan](#). Furthermore, the prohibition of so-called “*religious extremism*” could also proscribe the production and dissemination of religious materials or information, as well as religious teaching or proselytising activity

⁹¹ *Op. cit.* footnote 88, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism). See also ODIHR, [Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014), page 42; and [Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#), September 2018, pages 54-57.

aimed at convincing others of the superiority of one's religion or beliefs to attempt to persuade them to convert, which also constitute criminal offences under Uzbekistan's national legislation (see Sub-Section 4.2.3. *supra*), whereas they should instead be protected by the right to freedom to manifest one's religion or belief.¹⁰¹

58. Similar comments as to the lack of internationally accepted legal definition of "fundamentalism" and vagueness of the concept can be made.¹⁰² Hence, **the misuse of the concept of so-called "religious extremism" and "fundamentalism" to repress certain forms of expression is a serious concern and the use of such wording in the Decrees (and in legislation in general) should be reconsidered altogether.**

4.3.2. *Violation of Sovereignty and Other Encroachments on the Constitutional System*

59. The terminology "*other encroachments on the constitutional system*" is very vague and may potentially lead to arbitrary application. Moreover, it is worth recalling that demanding fundamental constitutional changes do not automatically amount to a threat to the country's territorial integrity and national security, unless they actually incite discrimination or violence, as defined above, in the pursuit of these aims.¹⁰³ On the contrary, peaceful advocacy for a different constitutional structure should be seen as legitimate expressions.¹⁰⁴ Accordingly, **this terminology should not prevent individuals from advocating for fundamental constitutional changes in a peaceful manner.**

⁹² See e.g., ODIHR-Venice Commission, [Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist \(Nazi\) Regimes and Prohibition of Propaganda of their Symbols](#), 21 December 2015, paras 83-85 and 119.

⁹³ i.e., the offence must (a) expressly refer to the intent to communicate a message and intent that this message incite the commission of a terrorist act; and (b) be limited to the incitement to conduct that is truly terrorist in nature; and (c) include an actual (objective) risk that the act incited will be committed; and (d) preserve the application of legal defences or principles leading to the exclusion of criminal liability in certain cases; see the references cited in footnote 63.

⁹⁴ See e.g., UN OHCHR, [Factsheet on Human Rights, Terrorism and Counter-Terrorism](#) (2008), pages 42-43.

⁹⁵ International Special Rapporteurs/Representatives on Freedom of Expression, [2008 Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation](#) (10 December 2008), Section "Anti-Terrorism Legislation", second indent.

⁹⁶ *Op. cit.* footnote 38, paras 38-39 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism). See also *op. cit.* footnote 31, pages 42-43 (2014 ODIHR's Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism).

⁹⁷ See e.g., UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereafter "UN Special Rapporteur on counter-terrorism"), [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, paras 11 and 21, noting that "[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an 'elusive concept'".

⁹⁸ See *op. cit.* footnote 11, par 46 (2011 CCPR General Comment no. 34); and UN Special Rapporteur on counter-terrorism, [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 01 March 2019, par 19, where it is stated that the term "extremism" is *per se* "a poorly defined concept that has already been used to target civil society and human rights defenders". See also ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), paras 100, 205 and 213; [Preliminary Opinion on the Draft Amendments to the Legal Framework "On Countering Extremism and Terrorism" in the Republic of Kazakhstan](#) (6 October 2016), par 21 and the references contained therein; and [Opinion on the Law on Countering Extremist Activity of the Republic of Moldova](#) (23 June 2004), paras 4.1. to 4.3. See also UN Special Rapporteur on Freedom of Religion or Belief, [2014 Report on the Mission to the Republic of Kazakhstan](#), A/HRC/28/66/Add.1, 23 December 2014; and Venice Commission, [Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation](#), CDL-AD(2012)016-e, 15-16 June 2012, par 30.

⁹⁹ See also UN Special Rapporteur on counter-terrorism, [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 01 March 2019, par 19.

¹⁰⁰ See UN Special Rapporteur on freedom of religion or belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, paras 98 and 101; UN General Assembly, [Report of the Working Group on the Universal Periodic Review Uzbekistan](#), A/HRC/39/7 (9 July 2018); and CCPR, [Concluding Observations on Uzbekistan](#), CCPR/C/UZB/CO/4 (17 August 2015), paras 17 and 22.

¹⁰¹ See ODIHR and the Venice Commission, [Guidelines for Review of Legislation Pertaining to Religion or Belief](#) (2004), Part II.I., page 20. See also e.g., ECtHR, [Larissis and others v. Greece](#) (Application no. 140/1996/759/958-960, judgment of 24 February 1998), par 45.

¹⁰² See e.g., UN Special Rapporteur on Cultural Rights, [Report on the Impact of Fundamentalism and Extremism on the Enjoyment of Cultural Rights](#) (2017), A/HRC/34/56, paras 9-12.

¹⁰³ See e.g., for reference, ECtHR, [Stankov and the United Macedonian Organisation Ilinden v. Bulgaria](#) (Application nos. 29221/95 and 29225/95, judgment of 2 October 2001), paras 97-103; and [Singariyski and Others v. Bulgaria](#), (Application no. 48284/07, judgment of 18 October 2011), paras 46-47.

¹⁰⁴ See e.g., Venice Commission, [Compilation of Venice Commission Opinions and Reports concerning Freedom of Expression and Media](#), 19 September 2016, Sub-section 4.1.

60. Decree no. 707 also refers to the “*propaganda of [...] ideas of separatism*”, while Decree no. 555 refers to public calls to “*violation of territorial integrity [...] of the Republic of Uzbekistan*”. Such expressions should not be prohibited as such if the statement cannot be reasonably regarded as inciting discrimination or inciting the use of violence and if the possibility that such violence occurs is unlikely¹⁰⁵ (see par 51 *supra*). Indeed, imparting information or ideas calling for regional autonomy or even requesting secession of part of the country’s territory does not automatically amount to a threat to the country’s territorial integrity and national security,¹⁰⁶ if it is unlikely to steer violence and there is no actual (objective) risk that violence occurs. **This content restriction should be withdrawn from Decree nos. 707 and 555 (and other legislation as appropriate) or more strictly circumscribed as mentioned above.**

4.3.3. “*Destructive, Negative Information and Psychological Influence on Public Conscience*” and “*Destructive Influence and Causing Harm to Physical and Mental Health of Population*”

61. What is encompassed by the reference to “*protecting interests of the individual, society and the State in the information sphere*” and “*preventing destructive, negative information and psychological influence on public conscience*” in Decrees nos. 228, 555 and 707 is not clear, is too broad in scope and may be interpreted in various manners. Thus, this leaves too much discretion on the public authorities to decide on potential restrictions to the right to freedom of expression. It is reiterated that freedom of expression protects all forms of ideas, information or opinions, including those that are considered “*radical*” or “*extreme*” under any definition, unless such views are linked to violence or criminal activity (see par 54 *supra*). The vagueness of the above term and severe sanctions in case the Centre or the Expert Committee concludes that there is a violation of the law (which may lead to the suspension, withdrawal of licence decided by the Agency for Information and Mass Communications (AIMC, the former Uzbek Agency for Press and Communication), or restriction on access to Internet websites and/or webpages by the Ministry for Development of Information Technologies and Communications), may inevitably result in self-censorship by the media or other service providers when reporting on public affairs.¹⁰⁷ As noted in the 2016 ODIHR election report, the legal framework and its implementation induce an environment of self-censorship, including online, and fall short of international standards for freedom of expression, most notably Article 19 of the ICCPR.¹⁰⁸ In light of the foregoing, **the above-mentioned wording should be reconsidered altogether.**

4.3.4. *National and Cultural Traditions and Heritage*

62. The reference to “*maintaining and ensuring succession of national and cultural traditions and heritage*” is vague and too broad in scope, and should accordingly not serve as a ground for limiting freedom of expression and information. Moreover, it is important to point out that pursuant to Article 27 of the ICCPR, “*persons belonging to [ethnic, religious or linguistic] minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and*

¹⁰⁵ See e.g., ECtHR, *Özgür Gündem v. Turkey* (Application no. 23144/93, judgment of 16 March 2000), par 70.

¹⁰⁶ See e.g., ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (Application nos. 29221/95 and 29225/95, judgment of 2 October 2001), par 97.

¹⁰⁷ See ODIHR, *Limited Election Observation Mission Final Report – Republic of Uzbekistan*, 29 March 2015, page 15, last paragraph. See also e.g., CCPR, Concluding Observations Tunisia CCPR/C/79/Add.43 (1994).

¹⁰⁸ *Op. cit.* footnote 41, page 14 (2016 ODIHR Election Observation Mission Final Report).

practise their own religion, or to use their own language". As noted in UN Human Rights Committee's General Comment No. 34, limitations to freedom of expression must be based on principles not deriving exclusively from a single tradition, and hence must be understood in the light of universality of human rights and the principle of non-discrimination.¹⁰⁹ OSCE participating States have also committed that persons belonging to national minorities should "*have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will*"¹¹⁰ and have underlined their attachment to "*the protection and promotion of [their] cultural and spiritual heritage, in all its richness and diversity*".¹¹¹ The reference to "*national and cultural traditions and heritage*", should not be used as a potential ground for limiting freedom of expression and information of persons belonging to national minorities.

63. Moreover, the reference to "*national and cultural traditions and heritage*" may not be conducive to ensuring that persons belonging to national minorities have effective access to expressive opportunities and information resources, and/or to facilitating the production and dissemination of content by and for national minorities, including in their own languages, contrary to what is recommended at the international level.¹¹² The right to freedom of expression protects the expression or dissemination of information or ideas asserting a minority consciousness.¹¹³
64. In light of the foregoing, and to dispel any misconception, **it is recommended to reconsider such a vague and broad wording as a ground for limiting freedom of expression in the Decrees and other legislation as appropriate. Additionally, the Decrees could expressly refer to the right of persons belonging to national minorities to enjoy and develop their cultural, linguistic or religious identity through the use of any media.**¹¹⁴ This is all the more important in light of some findings of international human rights bodies concerning the enjoyment of minority rights in the Republic of Uzbekistan.¹¹⁵

4.3.5. *State Secret or Other Secret Protected by Law*

65. Decree no. 707 also refers to the restriction of access to Internet websites or webpages to prevent disclosing "*information constituting state secret or any other secret protected by law*".
66. Certain information may legitimately be secret on grounds of national security or protection of other overriding interests listed in Article 19 par 3 of the ICCPR.¹¹⁶ At the same time, as noted in the [ODIHR Guidelines on the Protection of Human Rights](#)

¹⁰⁹ *Op. cit.* footnote 11, par 26 (2011 CCPR General Comment no. 34).

¹¹⁰ [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), 29 June 1990, par 32.

¹¹¹ CSCE/ODCE, [Charter of Paris for a New Europe](#), 21 November 1990, page 11.

¹¹² *Op. cit.* footnote 16, par 7 (2019 OSCE HCNM Tallinn Guidelines).

¹¹³ ECtHR, [Sidiropoulos and others v. Greece](#) (Application no. 26695/95, judgement of 10 July 1998), pars 44-45.

¹¹⁴ *Op. cit.* footnote 142, par 86 (2005 ODIHR-Venice Commission-OSCE Mission to Georgia-HCNM Joint Opinion on the Draft Amendments to the Constitution of the Republic of Georgia).

¹¹⁵ See e.g., Committee on the Elimination of Racial Discrimination (CERD), [Concluding Observations on the Combined 8th and 9th Reports of Uzbekistan](#), 14 March 2014, par 10; and CCPR, [Rakhim Mavlonov and Shansiy Sa'di v. Uzbekistan](#), Communication no. 1334/2004, 19 March 2009, par 8.7, where the Committee found a violation of Article 27 of the ICCPR read together with Article 2 of the ICCPR due to the denial of the right to enjoy minority Tajik culture in light of the refusal to use a minority language press as means of airing issues of significance and importance to the Tajik minority community in Uzbekistan, by both editors and readers, which the Committee considered as an essential element of the Tajik minority's culture.

¹¹⁶ See International Mandate-Holders on Freedom of Expression, [2004 Joint Declaration](#) (6 December 2004), Sub-Section on "Secrecy Legislation", 3rd paragraph.

Defenders, national security is frequently used to justify the over-classification of information, thus limiting access to information of public interest and creating another obstacle for whistleblowers and investigative journalists trying to bring to light alleged corruption and human rights violations by state actors.¹¹⁷ Hence, secrecy laws should define national security precisely and include narrowly and clearly defined prohibited disclosures, which are necessary and proportionate to protect national security. They should indicate clearly the criteria, which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label “secret” for purposes of preventing disclosure of information which is in the public interest.¹¹⁸ Moreover, disclosure should not be limited in the absence of the Government’s showing of “*a real and identifiable risk of significant harm to a legitimate national security interest*”¹¹⁹ that outweighs the public’s interest in the information to be disclosed.¹²⁰ If a disclosure does not harm a legitimate State interest, there is no basis for its suppression or withholding.¹²¹ In any case, it is not legitimate to limit disclosure in order to protect against embarrassment or exposure of wrongdoing, human rights violations or to conceal the functioning of an institution.¹²² Furthermore, clear and transparent procedures should be put in place to avoid over-classification of documents, unreasonably long time-frames before de-classification and undue limitations in accessing historical archives.¹²³

67. In that context, it is important to ensure the adequate protection of “whistleblowers” (i.e., individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy) releasing information on violations of the law, on wrongdoing by public bodies or abuse of public office, on a serious threat to health, safety or the environment, or on human rights or international humanitarian law violations – all such information being considered presumptively in the public interest.¹²⁴ These individuals should be protected against legal, administrative or employment-related sanctions if they act in “good faith” when releasing information.¹²⁵ At least 60 States have adopted some form of whistle-blower protection as a part of their national laws.¹²⁶ In addition, as indicated by the International Mandate-Holders on Freedom of Expression, individuals other than public officials or employees, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information if they do not place anyone in an imminent situation of serious harm, regardless of whether or not it has

¹¹⁷ ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), par 144.

¹¹⁸ *ibid.* Sub-Section on “Secrecy Legislation”, 3rd paragraph (2004 Joint Declaration).

¹¹⁹ *ibid.* par 47 (2017 UN Special Rapporteur on Freedom of Opinion and Expression’s Report on Whistleblowers); and *op. cit.* footnote 124, Principle 3 (b) (2013 Global Principles on National Security and the Right to Information).

¹²⁰ See UN Special Rapporteur on the Promotion and the Protection of the Right to Freedom of Opinion and Expression, [Report on the Protection of Sources and Whistleblowers](#) (2017), A/70/361, par 10.

¹²¹ See *Op. cit.* footnote 11, par 30 (2011 CCPR General Comment no. 34).

¹²² See *op. cit.* footnote 42, Principle 2 (b) (Johannesburg Principles on Freedom of Expression and National Security). See also UN Special Rapporteur on Freedom of Opinion and Expression, [Report on the Protection of Sources and Whistleblowers](#) (2017), A/70/361, pars 11 and 60.

¹²³ ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), par 146.

¹²⁴ See International Mandate-Holders on Freedom of Expression, [2004 Joint Declaration](#) (6 December 2004), Sub-Section on “Secrecy Legislation”, 4th paragraph. See also ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), par 148; UN Special Rapporteur on Freedom of Opinion and Expression, [Report on the Protection of Sources and Whistleblowers](#) (2017), A/70/361, pars 10 and 63; and the [Global Principles on National Security and the Right to Information](#) (The Tshwane Principles), developed and adopted on 12 June 2013 by a large assembly of experts from international organisations, civil society, academia and national security practitioners, Principle 37. See also for reference, Parliamentary Assembly of the Council of Europe, [Resolution 1954 \(2013\) on National Security and Access to Information](#), pars 6 and 9.6.

¹²⁵ *ibid.* Sub-Section on “Secrecy Legislation”, 4th paragraph (2004 Joint Declaration).

¹²⁶ *ibid.* par 27 (2017 UN Special Rapporteur on Freedom of Opinion and Expression’s Report on Whistleblowers).

been leaked to them, unless they committed fraud or another crime to obtain the information.¹²⁷

68. In light of the foregoing and with a view to ensure the human rights-compliant application of Decree no. 707, **the legal drafters should ensure that the rights to freedom of expression of journalists, civil society representatives, media outlets and private individuals is not restricted on the basis of overbroad and/or vague regulations on the protection of state and other secret and classification of information in the Republic of Uzbekistan.** Moreover, those disseminating legitimately secret information should not be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information.¹²⁸

4.3.6. *Incitement to National Ethnic, Racial or Religious Hatred*

69. Decree no. 707 also provides for restrictions regarding websites and webpages disseminating “*information inciting national, ethnic, racial or religious hatred*”, “*impairing honour and dignity or business reputation of citizens, invading their privacy*”. A similar wording is used in Decree no. 555, which refers to the identification of materials inciting “*social, ethnic, racial and religious hatred*” and to the “*impairment of honour and dignity of citizens through mass media outlets*”.
70. Advocacy of national, racial or religious hatred pursuant to Article 20 of the ICCPR should be banned only if it constitutes incitement to discrimination, hostility or violence. As noted above, such forms of expression would only be seen as threatening national security when the following three criteria are met cumulatively: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.¹²⁹ Moreover, the severity threshold to amount to incitement is quite high, as emphasized in the [Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence](#), which lists six factors to determine whether the expression is serious enough to warrant restrictive legal measures. These six factors are: context, speaker (including the individual’s or organization’s standing), intent, content or form, extent of the speech, and likelihood of harm occurring (including imminence).¹³⁰ **It is recommended that the wording of Decrees nos. 707**

¹²⁷ International Mandate-Holders on Freedom of Expression, [2004 Joint Declaration](#) (6 December 2004), Sub-Section on “Secrecy Legislation”, 2nd paragraph. See also ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), paras 146 and 149, which states that “[t]he sharing and publication of otherwise publicly available information or academic research should not be viewed as unlawful disclosure of state secrets, even when their disclosure into the public domain occurred in violation of secrecy laws”.

¹²⁸ *ibid.* Sub-Section on “Secrecy Legislation”, 2nd paragraph ([2004 Joint Declaration](#)).

¹²⁹ See *op. cit.*, footnote 35, par 2 (d) (2016 International Mandate-holders on Freedom of Expression Joint Declaration on Freedom of Expression and Countering Violent Extremism); and Principle 6 of the [Johannesburg Principles on Freedom of Expression and National Security](#) (1995), adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression. See also the UN Secretary General, [Report on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism](#), A/63/337, 28 August 2008, par 62.

¹³⁰ See the [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#), in the Report of the United Nations High Commissioner for Human Rights on the prohibition of incitement to national, racial or religious hatred”, United Nations General Assembly, 11 January 2013, Appendix, par 29. This six-part threshold test has been endorsed by various independent experts and human rights monitoring bodies, e.g., in the [Report of the United Nations Special Rapporteur on Freedom of Religion or Belief \(Tackling manifestations of collective religious hatred\)](#), United Nations General Assembly, UN Doc. A/HRC/25/58, 26 December 2013, par 58; and in Committee on the Elimination of Racial Discrimination, [General Recommendation 35: Combating Racist Hate Speech](#), UN Doc. CERD/C/GC/35, 12-30 August 2013, par 15.

and 555 be brought in line with Article 20 of the ICCPR and the above-mentioned criteria.

4.3.8. “Honour and Dignity of Citizens” and Privacy

71. The wording “*impairing honour and dignity of citizens*” referred in Decrees no. 555 and 707 appears to be unclear, too broad in scope and could potentially be subject to various and potentially arbitrary interpretation, and as such used to silence a broad range of opinions that may otherwise be legitimate and protected by the right to freedom of expression.¹³¹ As mentioned above in par 54 *supra*, also “*deeply offensive*” speech is protected by Article 19 of the ICCPR.¹³² As such, public expression that is said to humiliate “*honour and dignity*” may thus nevertheless be protected by the right to freedom of expression.¹³³ At the same time, Article 17 of the ICCPR states that “*no one shall be subjected to [...] unlawful attacks on [one’s] honour and reputation*” and has “*the right to the protection of the law against such [...] attacks*”. Generally, it should be for the individual who considers that her/his honour or dignity has been impaired to file a complaint or action in court or other competent authorities, but not for a public authority to police the Internet and other media in that respect. In any case, there needs to be a fair balance between the right to freedom of expression and the right to be protected against unlawful attacks on one’s honour and reputation and a number of criteria should be considered by the courts or other competent authorities, including whether the disclosed information contributes to a debate of public interest, the degree of notoriety and prior conduct of the person concerned, the content, form and consequences of the publication, and how the information was obtained.¹³⁴ It is also worth reiterating that fair comments on issues of general public interest or value judgments based on sufficient factual basis¹³⁵ are protected by the right to freedom of opinion and expression (see also the comments made in Sub-Section 4.2.1. *supra* regarding slander, libel and insult). **Such content restriction should be removed from Decrees nos. 707 and 555.**
72. Decrees nos. 707 and 555 also refer to “privacy” as a ground for adopting measures restricting freedom of expression and information. The right to privacy is enshrined in Article 17 of the ICCPR and Article 16 of the CRC. Article 19 (3) of the ICCPR provides for restrictions on freedom of expression and information to protect the rights of others. As noted by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the international jurisprudence at regional level indicates that in situations of conflict between privacy and freedom of expression, reference should be made to the overall public interest on the matters reported.¹³⁶ When issues of privacy do arise, it should primarily be for the individual to initiate an action before a court or other relevant authorities, rather than for a public

¹³¹ See ODIHR, [Opinion on Draft Amendments to the Moldovan Criminal and Contravention Codes relating to Bias-motivated Offences](#) (15 March 2016), par 68. See also *op. cit.* footnote 11, pars 11 and 38 (2011 CCPR General Comment no. 34).

¹³² See *ibid.* par 11 (2011 CCPR General Comment no. 34).

¹³³ *ibid.* par 38 (2011 CCPR General Comment no. 34). See also ODIHR, [Opinion on the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova](#), 26 April 2019, par 38.

¹³⁴ For the purpose of comparison, see the case-law of the ECtHR concerning the balance between the right to respect for private life and the right to freedom of expression, [Guide on Article 8 of the ECHR](#) (as of 31 August 2019), pars 43-44.

¹³⁵ For the sake of comparison, at the Council of Europe level, see e.g., ECtHR, [Feldek v. Slovakia](#) (Application no. 29032/95, judgment of 12 July 2001), par 76; see also [Jerusalem v. Austria](#) (Application no. 26958/95, judgment of 27 February 2001), par 43.

¹³⁶ UN Special Rapporteur on Freedom of Opinion and Expression, [Report on the implications of States’ surveillance of communications on the exercise of the human rights to privacy and to freedom of opinion and expression](#) (2013), A/HRC/23/40, par 27. See also UNESCO, [Global Survey on Internet Privacy and Freedom of Expression](#), 2012, pp. 53 and 99.

authority to monitor such aspects, and accordingly, **this ground should be removed from the Decrees.**

4.3.9. *“Otherwise Influencing Courts Before its Decisions or Judgment Enters into Force”*

73. The protection of the right to a fair trial and to maintain public confidence in the administration of justice may be a legitimate interest under Article 19 par 3 of the ICCPR, but the restriction must also be necessary and proportionate. In any case, such a provision should not be used to prevent the fair and accurate reporting of the statements made by judges, parties or witnesses during judicial proceedings in the media,¹³⁷ or to jeopardize the public interest in knowing about and discussing public affairs. As further developed below, decisions on such matters should be made by courts on their own initiative or on the basis of the motion from the parties to the case, but not by a governmental entity.

4.3.10. *Catch-all Provision*

74. Finally, the Decrees refer more generally to other violations of laws in the sphere of information and informatization, press, information and advertisement by state administration bodies and other entities and other cases of violation of mass media laws (Decree no. 555) or “commission of other actions, entailing criminal and other responsibility in compliance with law” (Decree no. 707) as grounds to impose restrictions on freedom of expression and information. The wording is so broad and vague that it has the potential of covering a wide range of possible expressions. **To avoid arbitrary application, it is recommended to introduce cross-references to the specific laws in question as well as relevant provisions of the Criminal Code or Code on Administrative Responsibility, so that it is clear which violations of laws are meant, while ensuring that those laws are themselves compliant with international freedom of expression standards.**

4.4. Preventive Measures

75. Annex 2 to Decree no. 555 specifies that the Centre will among others prepare proposals on “*improvement of the system for preventing dissemination by information and communication systems of the Republic of information aimed at undermining the sense of national identity, abandoning historical and national traditions and customs, destabilization of socio-political situation, disruption of interethnic and interfaith concord*”. A similar wording is used in Annex 2 to Decree no. 228 regarding the functions of the Expert Committee. It is unclear what these preventive measures would entail. It must be emphasized that the dangers inherent in prior restraints to the dissemination of information are such that they call for the most careful scrutiny since especially for the press, news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.¹³⁸
76. In any case, the wording is so broad and vague that it is likely to lead to arbitrary interpretation and implementation and lead to *de facto* censorship, even though censorship is *a priori* prohibited according to Article 67 of the Constitution of the

¹³⁷ See e.g., Venice Commission, [Opinion on the Legislation pertaining to the Protection against Defamation of the Republic of Azerbaijan](#), CDL-AD(2013)024, pars 102-105.

¹³⁸ See e.g., ECtHR, [The Observer and Guardian v. United Kingdom](#) (Application no. 13585/88, judgment of 26 November 1991, par 60).

Republic of Uzbekistan. Moreover, as emphasized above in Sub-Section 4.3.4. *supra*, references to national identity, historical and national traditions and customs may jeopardize the rights of persons belonging to national minorities. Also, “*destabilization of socio-political situation*” and “*disruption of interethnic and interfaith concord*” fall short of the requirements to prohibit incitement to discrimination or to commit violent acts as defined in Sub-Sections 4.3.1. and 4.3.6. *supra*.

77. Furthermore, this provision should not be used to prevent public debate on socio-political situation or criticism directed at ideas, beliefs or ideologies, religions or religious institutions, or religious leaders, or commentary on religious doctrine and tenets of faith.¹³⁹ As noted by the UN Special Rapporteur on freedom of religion or belief, insulting the religious feelings of believers may offend people and hurt their religious feelings but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion or belief.¹⁴⁰ The freedom of religion or belief primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.¹⁴¹ This may severely limit honest debate or research on religious matters.¹⁴² Additionally, the UN Human Rights Committee has expressly recognized that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20 par 2 of the Covenant” i.e., when constituting incitement to discrimination, hostility or violence.¹⁴³ A consensus on this issue was reached within the UN framework in Resolution 16/18 of the Human Rights Council, which called on States only to ban “*incitement to imminent violence*”.¹⁴⁴ In any case, **the provisions under review, especially the reference to “preventing dissemination”, should not lead to prior restrictions/censorship nor be interpreted so as to restrict debate of public interest, on socio-political or religious or belief issues and/or potential criticisms directed at ideas, beliefs or ideologies, religions or religious institutions, or religious leaders, or commentary on religious doctrine and tenets of faith.**

4.5. Conclusion

78. In light of the above, **ODIHR reiterates the concerns raised in its 2016 election report¹⁴⁵ about the absence of any clear, precise and exhaustive criteria to determine whether specific information is prohibited or not. The types of expression that may be restricted are overly broad in scope, and are not sufficiently clear and foreseeable to be objectively identified, which fails to comply with the principle of legal certainty and has the potential to open the way to**

¹³⁹ See *op. cit.* footnote 11, par 48 (2011 CCPR General Comment no. 34). See also Principle 12.3 of the [Camden Principles on Freedom of Expression and Equality](#) (2009), prepared by the international non-governmental organization Article 19 on the basis of discussions involving a group of high-level UN and other officials, and civil society and academic experts in international human rights law on freedom of expression and equality issues.

¹⁴⁰ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, 20 September 2006, UN Doc. A/HRC/2/3, pars 40-43.

¹⁴¹ *ibid.*; see also [Aydin Tatlav v. Turkey](#) (Application no. 50692/99, judgment of 2 May 2006), pars 27-30.

¹⁴² *ibid.*; see also [Gündüz v. Turkey](#) (Application no. 35071/97, judgment of 4 December 2003).

¹⁴³ *Op. cit.* footnote 11, par 48 (2011 CCPR General Comment no. 34). See also International Mandate-holders on Freedom of Expression, [2010 Joint Declaration on Ten Key Threats to Freedom of Expression](#), 3 February 2010, Section 2 on Criminal Defamation.

¹⁴⁴ [Human Rights Council Resolution 16/18](#), par 6 (f), 12 April 2011.

¹⁴⁵ *Op. cit.* footnote 41, page 14 (2016 ODIHR Election Observation Mission Final Report).

arbitrariness and abuse by relevant public authorities.¹⁴⁶ Indeed, too wide a margin of appreciation and subjectivity is left to the authorities both in terms of the assessment of the information and in relation to the corresponding procedure.¹⁴⁷ This may invite censorship and seriously endangers the rights to freedom of opinion and expression and of the public to receive information, protected by Article 19 of the ICCPR and puts undue pressure on civil society organizations, media outlets and individuals, which undoubtedly has a negative impact on the free and effective exercise of human rights and fundamental freedoms.¹⁴⁸ This approach is likely to allow undue restrictions to freedom of expression, for instance solely on the basis that certain media may be critical of the government or the political social system espoused by the government.¹⁴⁹ Further, this may also have a “chilling effect” on the media, which may be discouraged from publishing materials that are actually legitimate, out of uncertainty whether or not one of the content restrictions of the Decrees applies.

79. If the contemplated scheme is retained, **the content restrictions mentioned in the Decrees should be removed and cross-references to the specific provisions of general application from the Criminal Code, Code on Administrative Responsibility and other specific laws, should be made, providing that such provisions are themselves compliant with the principle of legal certainty and international human rights standards.**

5. Sanctions

80. Decree no. 707 provides that in case a website or webpage contains some of the above-mentioned prohibited content (see Sub-Section 4 *supra*), the relevant authority may decide a restriction of access defined as “*a set of organizational, software and hardware measures, aimed at terminating users’ access to a corresponding Internet information resource in the Republic of Uzbekistan*”. This will happen after the identification of the Internet information resources containing prohibited information and the placing of the domain name or web address in the Register of Information Resources of the Global Information Network Internet containing Prohibited Information (hereinafter “the Register”). Such prohibited information is identified by the Centre during its regular monitoring of the Internet or following applications of individuals and legal entities submitted to the Centre. If such information is identified, the Centre shall prepare within one working day an opinion concerning the presence of the prohibited information recommending the placement in the Register, which may be appealed before court (par 10 of Annex 1 to Decree no. 707). The Expert Committee may also adopt a decision to that effect, either on the basis of the Centre’s opinion or at its own initiative. Once placed on the Register, the Ministry for Development of Information Technologies and Communications (hereinafter “the Ministry”) shall adopt within 12 hours a range of measures to restrict access to the Internet information.

¹⁴⁶ *ibid.* page 14 (2016 ODIHR Election Observation Mission Final Report), which noted that “*legislation governing media should provide clear and exhaustive criteria for the denial of registration, suspension of media outlets, and content removal and the blocking of online national and international media should be established and consistently and transparently applied by an independent regulatory body*”. See also e.g., ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova* (Application no. 45701/99, judgment of 13 December 2001), par 109, where the Court held that the term “prescribed by law” not only requires that the said measures shall have some basis in domestic law, but also refers to “*the quality of the law in question, which must be sufficiently accessible and foreseeable as to its effects, that is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct*”.

¹⁴⁷ See e.g., *op. cit.* footnote 98, par 75 (2012 Venice Commission’s Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation).

¹⁴⁸ *ibid.* par 63 (2012 Venice Commission’s Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation).

¹⁴⁹ See *op. cit.* footnote 11, par 43 (2011 CCPR General Comment no. 34).

81. Removal from the Register happens when the owner of the website or webpage informs about the removal of the prohibited information or upon final judgment of a court invalidating the opinion of the Centre or decision of the Expert Committee. The Centre has then 24 hours to remove the data from the Register and then the Ministry an additional 24 hours for lifting the restriction of access to the Internet website or webpage.
82. Furthermore, the Centre's findings shall constitute grounds for the AIMC to decide for or against issuance, suspension or withdrawal of licenses in the sphere of information services and certificates of state registration of mass media outlets (Article 3 of Decree no. 555).

5.1. Responsible Bodies

83. Section IV of Annex 2 to Decree no. 505 describes the structure and organization of the activities of the Centre. The Head of the Centre is appointed and dismissed by order of the Director General of the AIMC and a labour agreement is signed by the Head with the AIMC (par 10 of Annex 2 to Decree no. 505). Moreover, the Centre's activities are supervised by the AIMC with scheduled and unscheduled inspections (par 17 of Annex 2 to Decree no. 505). Further, the reorganization and liquidation of the Centre is conducted in accordance with governmental decisions (par 18 of Annex 2 to Decree no. 505). All these elements tend towards concluding that the Centre is not an independent entity, as it falls under the direction or supervision of the AIMC, which is itself part of the Presidential Administration.¹⁵⁰
84. As to the composition of the Expert Committee, it is approved by the Cabinet of Ministers and experts from government bodies, public organization and other organizations having respective special knowledge may be invited to join the Committee (see Sub-Section V of Annex 2 to Decree no. 228). It is also specified that the Committee "shall have its own form", but otherwise, it is not clear what will be **its exact composition and this should be clarified**. Moreover, the Committee submit its activity reports to the Cabinet of Ministers of Uzbekistan on a quarterly basis (see par 31 of Annex 2 to Decree no. 228). Overall, this tends to the conclusion that the Expert Committee is under the direct supervision of the Cabinet of Ministers.
85. The AIMC, which then decides on the issuance, suspension or withdrawal of licenses and certificates of state registration on the basis of the Centre's or Expert Committee's findings or decisions, itself operates under the sole supervision of the government, as does the Ministry which is authorized to restrict access to Internet information resources. This gives the state a control over the media, which is not in line with the OSCE commitments with regard to freedom of expression and other related international standards.¹⁵¹
86. In principle, restrictions on freedom of expression must be subject to independent judicial oversight and adopted through an order issued by a court or a competent body

¹⁵⁰ It used to fall under the Cabinet of Ministers.

¹⁵¹ In the 1997 Copenhagen Ministerial Council Document, OSCE participating States reaffirmed that "*free, independent and pluralistic media are essential to a free and open society and accountable systems of government.*" CCPR, General Comment no. 25 on Article 25 of the ICCPR reads that "*In order to ensure the full enjoyment of rights protected under the article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.*"

which is independent of any political, commercial or other unwarranted influences.¹⁵² For the most serious measures such as denial of registration, suspension or withdrawal of licences of media outlets, and Internet content removal or blocking, they should be only decided by a court of law or another independent, authoritative and impartial oversight or regulatory body, subject to prompt judicial review.¹⁵³ **The scheme provided by the Decrees is not in line with such principles and should therefore be reconsidered in its entirety.**

87. In that respect, regulatory models whereby government agencies/non-independent bodies directly decide on the suspension or withdrawal of media outlets' licenses, and the blocking of certain Internet resources, are inherently problematic. Indeed, such entities are, by nature, more likely to call for measures that protect the particular state interests they are tasked to protect, rather than freedom of expression, all the more since the objective of promoting freedom of expression and access to information is not even mentioned in the Decrees (see par 32 *supra*). In countries where such decisions are nevertheless made by public authorities, the legislation should guarantee that those authorities are independent of government and that their decisions can be readily challenged before a court or tribunal. **Accordingly, the Centre and the Expert Committee should be substantially reformed in order to ensure their independence and impartiality, while ensuring that their composition, functioning and decision-making is more transparent** (see also Sub-Section 5. *infra*) **and that prompt judicial review of their decisions is guaranteed, with the restrictive measure being suspended until the court itself decides on the issue.**

5.2. Proportionality of Sanctions

88. The power to withdraw or suspend licenses of media outlets, and as such interrupt their activities, is an extremely severe sanction to place on a media outlet and constitutes a serious threat to the free flow of information and public debate.¹⁵⁴ The Decrees also do not specify the potential duration of the suspension. It is highly foreseeable that a suspension of any period of time may adversely impact the financial viability of the entity in question, resulting in a suspension becoming, in all practicality, a permanent ban. Therefore, the proportionality of this measure with the legitimate aims envisaged by Article 19 of the ICCPR is highly questionable. This is all the more troubling given the vaguely defined criteria for imposing such restrictive measures (see Sub-Section 4. *supra*), which have led to the blocking of Internet or to having news agencies being forbidden to function for dissemination of information on controversial and politically

¹⁵² See e.g., *op. cit.* footnote 36, par 1 (e) ([2017 Joint Declaration](#)), which states that “[r]estrictions on freedom of expression must be subject to independent judicial oversight”; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, [2011 Report](#), A/HRC/17/27, pars 24 and 75.

¹⁵³ See e.g., UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, [Report on the Regulation of User-generated Online Content](#), A/HRC/38/35, 6 April 2018, par 68, which refers to “judicial authorities”. See also *op. cit.* footnote 28, par 6 (c) ([2011 Joint Declaration](#)); OSCE, [International Standards and Comparative Approaches on Freedom of Expression and Blocking of Terrorist and “Extremist” Content Online](#) (January 2018), par 47, which states: “[w]ebsite blocking measures can only be compatible with international standards on freedom of expression where they are provided by law and a court has determined that a particular measure is necessary and proportionate to protect legitimate aims as specified by international law”; OSCE Representative on Freedom of the Media, [Legal Analysis on the Draft Law of Ukraine on Changes to Some Legislative Acts of Ukraine on Countering Threats to National Security in the Information Sphere](#) (October 2017), page 4; and ODIHR, [Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan](#) (6 October 2016), pars 107-109.

¹⁵⁴ See e.g., Venice Commission, [Compilation of Venice Commission Opinions and Reports concerning Freedom of Expression and Media](#), 19 September 2016, Sub-Section 5.4.; and Venice Commission, [Opinion on Draft Amendments to the Media Law of Montenegro](#), CDL-AD(2015)004, 23 March 2015, pars 17-20. See also e.g., ECtHR, [Ürper and Others v. Turkey](#) (Application nos. 14526/07 et al., judgment of 20 October 2009), pars 40 etc.

sensitive issues,¹⁵⁵ as also recently noted by the OSCE Representative on Freedom of the Media.¹⁵⁶

89. Similarly, State-mandated blocking of entire websites, IP addresses, ports or network protocols is an extreme measure, which severely limits individuals from receiving and imparting a wide range of information, including in the personal sphere, and also encroaches significantly on their ability to send and receive information of public concern. As such, it can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, meaning that it is proportionate, there are no less intrusive alternative measures, which would protect the said interest and it respects minimum due process guarantees.¹⁵⁷ The specific conditions for blocking the Internet provided in the Decrees are overly broad and vague, which risks content being blocked arbitrarily and excessively, with blocking measures not sufficiently targeted, potentially rendering a wide range of content inaccessible beyond that which has been deemed illegal, and thus being disproportionate.¹⁵⁸ This is particularly so when less restrictive measures, such as the removal of the specific content on a specific webpage is possible, rather than the blocking of the entire Internet website. The threat of such excessive sanctions alone can already produce a climate of self-censorship and stifle freedom of expression more generally.¹⁵⁹
90. To ensure the proportionality of sanctions in this field, consideration may be given to **introducing a gradual scale of less invasive measures**. This could for instance be achieved by introducing **some forms of warnings, minor administrative fines, civil remedies** (see Sub-Section 4.2.1. *supra*), **or limited restraints on publication or dissemination of content**,¹⁶⁰ which would not be as intrusive as a complete suspension or withdrawal of licenses, access ban of a webpage or even an entire website.
91. Any more serious penalties such as higher fines, suspension or withdrawal of licenses, and blocking of Internet websites or webpages should only be possible in the most serious situations, when the conduct constitutes a criminal offence in national law, which should itself be in compliance with the principle of legal certainty and international human rights, including freedom of expression, standards (see Sub-Section 4.1.).
92. In certain circumstances, it may be justifiable to provide for an accelerated judicial procedure to ensure the prompt removal of the said prohibited content, providing that there is a clear definition of the prohibited content in compliance with international standards¹⁶¹ and that sufficient time is provided for the removal, which should be pronounced by an authority that is independent and impartial, and according to due process and standards of legality, necessity and legitimacy.¹⁶² This is especially

¹⁵⁵ See CCPR, [Concluding Observations on Uzbekistan](#), CCPR/C/UZB/CO/4 (17 August 2015), par 23.

¹⁵⁶ See the [statement](#) made by the OSCE Representative on the Freedom of the Media on 17 April 2019, regarding the blocking of media outlets in Uzbekistan.

¹⁵⁷ *Op. cit.* footnote 36, par 1 (f) ([2017 Joint Declaration](#)).

¹⁵⁸ See e.g., UN Special Rapporteur on Freedom of Opinion and Expression, [2011 Report on the right to freedom of opinion and expression exercised through the Internet](#), A/HRC/17/27, par 31.

¹⁵⁹ ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), par 44.

¹⁶⁰ See e.g., Venice Commission, [Compilation of Venice Commission Opinions and Reports concerning Freedom of Expression and Media](#), 19 September 2016, Sub-Section 5 on Sanctions, Remedies and Procedural Issues.

¹⁶¹ See e.g., regarding the removal of “terrorist content” in the EU context, the [Joint Communication of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the UN Special Rapporteur on the right to privacy and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#), 7 December 2018.

¹⁶² *ibid.* Sub-Section 2. See also UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, [Report on the Regulation of User-generated Online Content](#), A/HRC/38/35, 6 April 2018, par 66.

important for instance when prejudicial or harmful material involve children or constitute online violence against women, for which States have been called to provide fast and effective procedures for blocking and removing the said content in order to avoid the negative impact if such material continues to be accessed and shared.¹⁶³

93. In any case, **the criminal offenses potentially leading to content removal should be all listed in an clear, precise and exhaustive manner¹⁶⁴ and cross-referenced in the Decrees and the decision providing for restrictive measures should be imposed only by judicial bodies, following appropriate court procedures respecting minimum due process guarantees** (see Sub-Section 5.3. *infra* on procedural safeguards)¹⁶⁵, **with the court always examining whether less far-reaching measures could be adopted.**¹⁶⁶

5.3. Procedural Safeguards

94. The procedure leading to the withdrawal or suspension of licenses and blocking of the Internet should include a number of procedural safeguards to ensure that the rights of individuals and entities are respected. Indeed, as noted in the 2016 ODIHR election report, the system lacks safeguards against the misuse of administrative powers by the Centre, the Expert Committee and the former Uzbek Press and Information Agency (now the AIMC), also in light of the broadly worded grounds for suspension or withdrawal of licences and Internet restrictions.¹⁶⁷
95. First, one of the requirements of the principle of proportionality in freedom of expression cases is that **the reasons given by the national authorities to justify restrictions to the right to freedom of expression should be relevant and sufficient**, also to enable the parties to make effective use of any existing right of appeal.¹⁶⁸ In any case, the decision **needs to indicate a validity timeframe**, while guaranteeing as much as possible that takedown decisions only affect the pieces of content that are under the suspicion of constituting criminal activities and that the rest of the content published by the provider remains online.¹⁶⁹
96. Second, the public authorities should ensure **the transparency of restrictive measures by making them public through publicly available registers and websites**, to enable individuals to be aware that some sources of information and content have become non-accessible.¹⁷⁰ According to Annex 1 to Decree no. 707 (par 23), access to the Register is not public and can be granted only to public and administrative bodies and to legal

¹⁶³ See e.g., Committee on the Rights of the Child, *Draft Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (February 2019), par 109; and UN Special Rapporteur on violence against women, its causes and consequences, *Report on online violence against women and girls from a human rights perspective* (18 June 2018), A/HRC/38/47, par 100. See also page 5 (2019 RFoM *Legal Analysis on the Draft Amendments to the Law on Audio-visual Media in Albania*).

¹⁶⁴ *ibid.* page 5 (2019 OSCE RFoM Legal Analysis on Albanian Media Draft Legislation).

¹⁶⁵ See e.g., OSCE, *“Media Freedom on the Internet: an OSCE Guidebook”* (2016), page 6; *op. cit.* footnote 36, par 1 (f) (*2017 Joint Declaration*); and ODIHR, *Opinion on Amendments to Certain Laws of Ukraine passed on 16 January 2014* (10 February 2014), par 109. See also *op. cit.* footnote 181, par 6 (c) (2011 UN-OSCE-OAS-ACHPR Joint Declaration on Freedom of Expression and the Internet); and *op. cit.* footnote 11 (2011 CCPR General Comment no. 34).

¹⁶⁶ See e.g., *op. cit.* footnote 190, par 76 (2014 ODIHR Opinion on the Draft Law of Ukraine on Combating Cybercrime). See also, for instance, *Ahmet Yildirim v. Turkey*, ECtHR judgment of 18 December 2012 (Application No. 3111/10).

¹⁶⁷ *Op. cit.* footnote 41, page 14 (2016 ODIHR Election Observation Mission Final Report).

¹⁶⁸ See e.g., Venice Commission, *Compilation of Venice Commission Opinions and Reports concerning Freedom of Expression and Media*, 19 September 2016, Sub-section 5.6; and *Turkey - Opinion on Law No. 5651 on regulation of publications on the Internet and combating crimes committed by means of such publication (“the Internet Law”)*, CDL-AD(2016)011, par 38.

¹⁶⁹ *ibid.* page 5 (2019 OSCE RFoM Legal Analysis on Albanian Media Draft Legislation).

¹⁷⁰ OSCE Representative on Freedom of the Media, *Legal Analysis on the Draft Law of Ukraine on Changes to Some Legislative Acts of Ukraine on Countering Threats to National Security in the Information Sphere* (October 2017), page 10.

entities or individuals based on requests for information about their own websites or webpages. This should be reconsidered as this is not in line with the above-mentioned principle and the recommendations made by the OSCE, whereby **all decisions concerning the denial of registration, suspension of media outlets, and content removal and the blocking of online national and international media should be publicly available.**¹⁷¹ Such publication would also need to specify **the grounds, scope and duration of those corresponding measures.**¹⁷²

97. Third, all those affected by blocking orders or other restrictive measures, including journalists and other authors, as well as publishers of content, and those who seek to access the content, should be given an opportunity to challenge such orders and **must therefore be notified of their existence.**¹⁷³ Annex 1 of decree no. 707 requires that the designated body shall bring to knowledge of users that the resource was placed on the Register and contact information for communications, which may appear to provide for a mechanism for notification.
98. Fourth, **the burden of proof should be on the public authorities** and unless impracticable or there are compelling reasons of public interest to proceed otherwise (which requires justification as being necessary and proportionate), **both sides should be given the opportunity to be heard before the adoption of the restrictive measure.**¹⁷⁴
99. Finally, the decision should be challengeable immediately after its adoption before the competent judge, with **the measure suspended until the court itself decides on the issue of further suspension.**¹⁷⁵ Moreover, in all cases the courts should at any moment have the power to suspend the enforcement of all the sanctions, whatever is their degree and character.¹⁷⁶
100. In light of the foregoing, **the above-mentioned procedural safeguards should be introduced.**

6. Other Measures

101. Annex 2 to Decree no. 555 refers to “*best international practices in the sphere of mass media monitoring*” (sub-paragraph 14 of par 7) to be followed by the Centre in the performance of its tasks. In that respect, it is key to emphasize that international recommendations pertaining to the media and freedom of expression generally suggest the adoption of self-regulatory measures in this field rather than regulation.¹⁷⁷

¹⁷¹ *Op. cit.* footnote 41, page 14 (2016 ODIHR Election Observation Mission Final Report). See also the [statement](#) made by the OSCE Representative on the Freedom of the Media on 17 April 2019, regarding the blocking of media outlets in Uzbekistan.

¹⁷² OSCE Representative on Freedom of the Media, [Legal Analysis on the Draft Law of Ukraine on Changes to Some Legislative Acts of Ukraine on Countering Threats to National Security in the Information Sphere](#) (October 2017), page 10.

¹⁷³ OSCE, [International Standards and Comparative Approaches on Freedom of Expression and Blocking of Terrorist and “Extremist” Content Online](#) (January 2018), par 52.

¹⁷⁴ See e.g., OSCE Representative on Freedom of the Media, [Legal Analysis on the Draft Laws on Changes and Amendments to the Law on Audio-visual Media in the Republic of Albania](#) (July 2019), page 6. See also e.g., OSCE, [“Media Freedom on the Internet: an OSCE Guidebook”](#) (2016), page 6; *op. cit.* footnote 36, par 1 (f) ([2017 Joint Declaration](#)); and ODIHR, [Opinion on Amendments to Certain Laws of Ukraine passed on 16 January 2014](#) (10 February 2014), par 109. See also e.g., Venice Commission, [Opinion on Media Legislation \(Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media\) of Hungary](#), CDL-AD(2015)015, par 44.

¹⁷⁵ See e.g., UN Special Rapporteur on Freedom of Opinion and Expression, [2011 Report](#), A/HRC/17/27, par 24; and *ibid.* page 6 (2019 RFoM [Legal Analysis on the Draft Amendments to the Law on Audio-visual Media in Albania](#)).

¹⁷⁶ See e.g., *op. cit.* footnote 174, par 44 (2015 Venice Commission’s [Opinion on Media Legislation of Hungary](#)).

¹⁷⁷ See e.g., OSCE Representative on Freedom of the Media, [2008 Media Self-regulation Guidebook](#). See also OSCE, Ministerial Council [Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding](#), MC.DEC/13/06, Brussels 2006, par 9, which states that the Ministerial Council “[r]ecognizes the essential role that the free and independent media can

Accordingly, media organizations should be encouraged to develop guidelines, codes of ethics or other standards and self-regulatory mechanisms that facilitates an open and pluralistic media system, and one which is conducive to the promotion of human rights, is accessible and contributes to the protection of human rights defenders.¹⁷⁸ Such mechanisms, such as press councils and ombudspersons, should “*be established in a consultative and inclusive process and (...) be independent from government interests*”.¹⁷⁹ In any case, any such self-regulatory system should itself be compatible with international norms and standards.

102. States should also take effective measures to raise awareness and promote media and information literacy among the public, including in the languages of national minorities,¹⁸⁰ and by covering these topics as part of the regular school curricula, while engaging with civil society and other stakeholders to raise awareness about these issues, providing trainings to promote the critical use of online media, and supporting professional journalistic training.¹⁸¹ This should include the provision of gender-sensitive education, outreach and training for Internet users on online and ICT-facilitated violence against women and girls in schools and communities as a way to prevent it.¹⁸² Other measures to promote alternatives to narratives of terrorist or violent extremist groups,¹⁸³ to promote equality, non-discrimination, inter-cultural understanding and other democratic values, including with a view to addressing the negative effects of disinformation and propaganda, could also be considered.¹⁸⁴ In that respect, the *Report on International Standards and Comparative National Approaches to Countering Disinformation in the Context of Freedom of the Media* (March 2019), published by the OSCE Representative on Freedom of the Media, provides useful examples in terms of self-regulation and measures to enhance media literacy of the public.¹⁸⁵
103. In light of the foregoing, **the legal drafters and public authorities should substantially reconsider their approach regarding this field and consider shifting to a self-regulatory model, while seeking to promote greater media and information literacy of the public.**

play in democratic societies and the strong influence it can have in countering or exacerbating misperceptions, prejudices and in that sense encourages the adoption of voluntary professional standards by journalists, media self-regulation and other appropriate mechanisms for ensuring increased professionalism, accuracy and adherence to ethical standards among journalists”. See also, e.g., *op. cit.* footnote 174, par 32 (2015 Venice Commission’s *Opinion on Media Legislation of Hungary*); European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication “Action Plan against Disinformation”*, 5 December 2018; Parliamentary Assembly of the Council of Europe, *Resolution 1970(2014) on Internet and Politics, the Impact of New Information and Communication Technology on Democracy*, 29 January 2014, pars 12 and 14.

¹⁷⁸ ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), par 154.

¹⁷⁹ *ibid.* par 154 (2014 ODIHR Guidelines on the Protection of Human Rights Defenders”); and “*15th Central Asia Media Conference: Reflecting on OSCE media freedom commitments*”, Bishkek, Kyrgyzstan, 27-28 June 2013, 15th Anniversary Declaration, par 13.

¹⁸⁰ *Op. cit.* footnote 16, par 9 (2019 OSCE HCNM Tallinn Guidelines).

¹⁸¹ See e.g., UNESCO, *Terrorism and the Media. A Handbook for Journalists*, 2017; see also *op. cit.* footnote 36, par 3 (e) (*2017 Joint Declaration*); and *op. cit.* footnote 28, par 1 (e) and (f) (*2011 Joint Declaration*). See also e.g., Parliamentary Assembly of the Council of Europe, *Resolution 2143(2017) on Online Media and Journalism: Challenges and Accountability, 25 January 2017*, pars 6 and 12.1; *Resolution of the European Parliament on EU strategic communication to counteract propaganda*, 23 November 2016, which laid certain foundations for both anti-EU propaganda and disinformation in legacy and social media; and European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication “Action Plan against Disinformation”*, 5 December 2018.

¹⁸² UN Special Rapporteur on violence against women, its causes and consequences, *Report on online violence against women and girls from a human rights perspective* (18 June 2018), A/HRC/38/47, par 110.

¹⁸³ See e.g., OSCE Secretariat, *Handbook: the Role of Civil Society in Preventing and Countering VERLT: a Focus on South Eastern Europe*, 4 July 2019, especially pages 57 and 60.

¹⁸⁴ *Op. cit.* footnote 36, par 3 (f) (*2017 Joint Declaration*).

¹⁸⁵ Andrey Rikhter, *International Standards and Comparative National Approaches to Countering Disinformation in the Context of Freedom of the Media*, Vienna: OSCE Representative on Freedom of the Media (March 2019), Section III.

7. Final Comments

104. ODIHR is unaware of whether the legal drafters conducted consultations with media and civil society representatives during the process leading to the adoption of the Decrees.
105. OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 Copenhagen Document, par 5.8).¹⁸⁶ Moreover, key commitments specify that “*[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*” (1991 Moscow Document, par 18.1).¹⁸⁷
106. Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.¹⁸⁸ Especially when developing legislation that may impact freedom of expression and information, the effective participation of a wide range of stakeholders should be ensured throughout the process, including of independent national media regulatory authorities, the media, internet intermediaries, civil society (including representatives of national minority groups and women’s groups) and academia, while ensuring equal participation of women and men in these processes.¹⁸⁹ Consultations that allow for an open and inclusive debate will increase all stakeholders’ understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also tends to improve the implementation of the legislation once adopted.
107. It is also important to emphasize that, especially given the permanent evolution of the Internet, existing regulatory practices in this field should be reviewed regularly regarding their respect of the above-mentioned principles, with evaluation mechanisms of implementation established by the legislation. This will ensure that the authorities, the legislator and civil society will be able to verify regularly that the legislation in place does not go beyond defined legitimate aims, and that human rights, particularly freedom of expression and freedom of the media, are properly protected.¹⁹⁰
108. In light of the above, any future reform process in this field **should be transparent, inclusive, extensive and involve effective consultations, including with representatives of the media, internet intermediaries, civil society (including representatives of national minority groups and women’s groups) and academia. The process should involve a full impact assessment including of compatibility with relevant international standards, according to the principles stated above, while ensuring that a proper review and evaluation mechanism is embedded in the**

¹⁸⁶ Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

¹⁸⁷ Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

¹⁸⁸ See e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by the ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

¹⁸⁹ *Op. cit.* footnote 16, par 6 (2019 OSCE HCNM Tallinn Guidelines). See also e.g., *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan*, 9 June 2017, par 80.

¹⁹⁰ OSCE, *International Standards and Comparative Approaches on Freedom of Expression and Blocking of Terrorist and “Extremist” Content Online* (January 2018), par 53.

adopted legislation. It would be advisable for relevant stakeholders to follow such processes in future legal reform efforts. ODIHR remains at the disposal of the authorities for any further assistance that they may require in any legal reform initiatives pertaining to freedom of expression and access to information.

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