

NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME
(LL.M)

MASTER'S THESIS

**THE REGULATION OF FREEDOM OF EXPRESSION BY THE
STATE**

SANAR SHAREEF ALI

NICOSIA

2016

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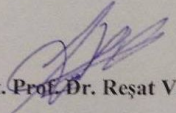
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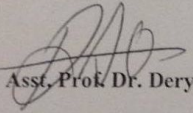
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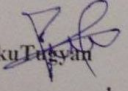
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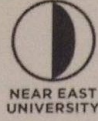

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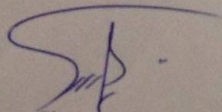
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ABSTRACT

This thesis has examined that the utilization of international limits into the interference with the right to freedom of expression (FOE) has been abused by the States in such a way that they make the exercise of the right practically impossible, and this takes many forms: may be the constitution guaranteed the right to (FOE) but the laws violated it by using vague and unclear terms, may be the constitution itself in less common cases contains vague terms, or may the constitution in rare cases contains provisions violate (FOE) explicitly. There are many laws that are used by the government for this purpose, such as: defamation and slander, anti-terrorism, national betrayal laws etc. Therefore, the thesis recommends: Work on the unification of laws restricting (FOE) in the world in order to prevent governments from abusing their powers in enacting laws regulating (FOE), give a clear definition to some terms that carry wide meanings such as public order and national security etc, another terms such as: induce, provoke, glorify, are vague, and they need to be prohibited, or even if there is a need to use some of them in special circumstances, they have to be defined and interpreted narrowly and clearly by the law, the list of restrictions must be limited to, not for example, to prevent authorities from adding new crimes, and the constitutions must explicitly provide that any regulation has not to jeopardizes the right and must meet the international standards.

Keywords: Human Rights, Freedom of expression (FOE), ICCPR, Human Rights Committee.

ÖZ

Bu tez, özgürce ifade edilmesi hakkına müdahalede uluslararası limitlerin kullanımı Devletler tarafından haklarının kullanımının neredeyse imkansız halde istismar edildiğini incelemiştir. Bu birçok formu içermektedir: Anayasa, özgür ifade hakkını güvence altına alabilir, fakat yasalar muğlak ve belirsiz terimleri kullanarak bunu ihlal eder. Daha az yaygın vakalarda anayasa kendisi belirsiz terimleri kapsayabilir veya nadir durumlarda anayasa hükümlerini de açıkça özgür ifade ihlalini içerebilir. Bu amaçla hükümet tarafından kullanılan birçok yasalar mevcuttur. Örneğin: hakaret, iftira, terörle mücadele, ulusal ihanet yasaları vs. Bu nedenle, tez, serbestçe ifade özgürlüğünü düzenleyen yasaları yürürlüğe koymak üzere hükümeti kötü yetkilerinden önlemek amacıyla dünyada özgür ifadeyi kısıtlayan yasaların birleşmesi üzerinde çalışmayı ve kamu düzeni ile ulusal güvenlik gibi geniş anlamlar taşıyan bazı şartlara açık bir tanımını vermekyi önermektedir. Diğer terimler ise: ikna etme, kışkırtma ve övme müphemdir (belirsizdir). Özel durumlarda bazılarının (terimlerin) kullanılmasına ihtiyaç duyulmasına rağmen yasak olmaları gerekip kanunla belirlenerek dikkatli ve açık bir biçimde yorumlanmalı. Kısıtlamaların listesi, sınırlayıcı olması gerekir. Mesela yeni suçlar eklemesinin, yetkilileri önlemek için olmaması gerekmektedir. Aynı zamanda Anayasalar açık bir şekilde herhangi bir düzenleme hakkını tehlikeye atmama hakkına sahip olma şartıyla uluslararası standartlara uygun olmalıdırlar.

Anahtar Kelimeler: İnsan Hakları, İfade özgürlüğü, Kişisel ve Siyasal Haklar Uluslararası Sözleşmesi, İnsan Hakları Komitesi.

DEDICATION

This study is dedicated to my supportive Mother and Father

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Thanks for God's Grace and Mercy

Thanks for your mom and father for your standing with me in difficulties.

Thanks for you my supervisor Dr. Tutku Tugyan. You taught me in best way, you did correct my mistakes gently and kindly. I appreciate your supervision without you and I could not finish this work.

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LIST OF ABBREVIATIONS

UDHR_____ Universal Declaration of Human Rights

ICCPR_____ International Convention on Civil and Political Rights

EHCR_____ European Convention on Human Rights

ICESCR_____ International Covenant on Economic, Social and Cultural Rights

HRC_____ Human Rights Committee

ICERD_____ International Convention on Elimination of Racial Discrimination

FOE_____ Freedom of expression

CHAPTER ONE

INTRODUCTION

1.1Background

Freedom of expression (FOE) has a great significance in the life of individuals and society as a whole in terms of social, economic, political and cultural aspects. It is one of the essential subjects that the man thoroughly fought for, sacrificed for, and considered it as a symbol of human dignity. The Restrictions on (FOE) is a violation of the human wills and dignity, when an individual is prevented from making his views or listen to others opinions, this means that this right has been violated as an individual capable of thinking and making decision, so there is neither room for creativity without freedom nor value of progression without achieving more freedom. (FOE) is the key subject of freedom, which is the feature of contemporary society and democratic system, as Ronald Dworkin says: (FOE) clause of the legitimate government; the laws and policies do not be legitimate only if applied through a democratic process, the process cannot be democratic if the government prevent anyone from expressing their beliefs about what ought to be laws and policies, In a democratic state, if I have views on whom represent me politically, I should be allowed to express my opinions, not just put a sign next to the candidate's name in the ballot paper every few years.¹ (FOE), whether in newspapers, magazines or network ... etc., is a way to know what is happening in as certain society, they reveal bugs rampant at the society, and it is working to encourage actors responsible to fix the problem. As for society, how citizens can, in a democratic society, to make correct decisions, if they are unable to receive a great amount of ideas, and how to recognize a variety of ideas from people who trust them, especially the voters, because they want to listen to a wide range of opinions. In democratic states, (FOE)

¹ Nigel Warburton, *Free speech* (Tran. Zainab Atif Said, 1st edn, Hindawy Institution for Cultural and Education, 2013) 11

has a particular significance, so in democratic countries, even when they see that the views expressed by government reprehensible on the political, moral or personal level, may be not transmitted these views directly via newspapers, radio and television, but it is usually presented in the novels, poems, movies, cartoons and songs, as well as can be expressed symbolically for instance burn the flag, as it has been done by the demonstrators of the anti-Vietnam war.²

Therefore, in order to ensure that this right is not violated, it should be enshrined in the constitutions, because the protection of (FOE) by constitution considered the most requirement test for determining the existence and relative health of constitutionality in any nation.³ Because of its importance for the individual and society, the (FOE) has been stipulated in international and regional charters and declarations, such as the universal declaration of human rights (UDHR), international covenant on civil and political rights (ICCPR), and European convention on human rights (ECHR), etc. Despite the importance of (FOE), it is not considered as an absolute right, but it is subject to regulatory restrictions in order not to turn into a mess and do not violate the social, political boundaries and the best interests of the community.

Some may work on the Legitimize of (FOE), intellectually and politically without controls or objective conditions through emphasis on the right to express positions and opinions, even if this right has led to provoke, humiliate and insult others, for instance, the liberals such as Dworkin² have always insisted that free speech is absolute.⁴ However, this absolute Legitimize that has been justified within the frame of mind is not based on respect for the values and cultures of others because it does not recognize the legitimate limits, so it lacks continuity and survival, the presence of who faces it, and stop its intellectual and political career. Because the (FOE) one of the freedoms that its impact exceed the individual to the whole community, it cannot be absolute and unrestricted, because it may be turned out to a mess, therefore, this right can be regulated without leading to its revocation or compromised.

² Nigel Warburton, (supra note 1) 11

³ Lawrence Ward Beer, *freedom of expression in Japan: a study in comparative- law, politics and society* (first edition, kodansha international LTD, Tokyo, New York and san Francisco, 1984) 21

⁴ Kelly Guglielmi, 'Virtual Vhild Pornography as a New Category of Unprotected Speech' Vol.9 COMMLAW CONSPECTUS 207, 43

Hence, the risk start from here when states deliberate about regulating this right, and make use of this right to interfere with the (FOE) under the cover of regulation such as the maintenance of public order, public security, etc, or by using words have wide meanings, wide interpretations and other means which undermine the provisions of the constitution that protected (FOE).

In fact, it is not about whether or not the laws or regulations are constitutional, because the right of (FOE) has enshrined in the majority of modern constitutions but at the same time they undermine the purport of constitution by regulation, because the constitution does not go through details, therefore the laws and regulations do so, for example the Chinese constitution protect the right to (FOE), at the same time the government is actually violating the constitution in reality. The term “disturbing social order,” which enshrined in both civil and criminal laws creates a vagueness that, combined with the national culture of censorship, and undermines the provisions of the constitution that protected (FOE).⁵ There is no doubt that the restrictions are legitimate if they are according to the constitution, but the question that arise here, is it permissible for the constitution includes restrictions contrary to the international standards?

Some scholars believe that the international declarations of human rights are above the Constitution, some others believe that these declarations have no value, while some other believes that they enjoy the same power. Therefore, some constitutions considered international law is an integral part of it, such as French constitutions 1946 and 1958.⁶ Some others, explicitly incorporate general international law into national law, and empower the legislature and the courts to harmonize conflicts between the two laws, while, some others, despite the incorporation of the international law into municipal law, recognized the priority of international law over national law.⁷

⁵ Liza Negriff, *The Past, Present, and Future of Freedom of Speech and Expression in the People's Republic of China* (Topical research Digest: Human Rights in China) 130

⁶ Prof. Dr. Noman Ahmed al-Khatib, *The Mediator in the Political Systems and Constitutional Law* (7thedn, the House of Culture for Publishing and Distribution 2011) 544

⁷ Sheikh Hafizur Rahman ' Karzon Abdullah-AL-Faruque, 'Status of International Law under the Constitution of Bangladesh' [1999]3:1 Bangladesh Journal of Law 1, 2

1.2 Statement of the Problem

The problem of this study is not the prevention, restrictions or outright interference in (FOE), but the problem lies in the restriction or interference in (FOE) by many governments under the pretext of regulation, where laws become a tool to restrict (FOE) and violation of the rights of the individuals.

Days after the attacks, the US Congress passed a hurry, "the authorization to use force" law, which gives the president authority to "use all force necessary and appropriate against countries, organizations and individuals who planned and gave permission and committed or aided in the attacks that took place in September 11, 2001,⁸ since that time there were abuses of power; such as Warrantless Wiretapping Torture, Kidnapping and The Growing Surveillance Society, Abuse of the Patriot Act, Government Secrecy Political Spying — No Fly and Selectee Lists, Attacks on Academic Freedom etc.⁹

Governments are using justifications such as maintain national security or public order etc, to reduce (FOE),¹⁰ silencing and beaten opposition parties and free voices that reveal the disadvantages and drawbacks of the government, such as anti-terror law, by giving rubber definition for the meaning of terrorism, and use it as justification for many violations as large tightening that occurs on the right to (FOE), peaceful assembly and association, giving exaggerated powers to the police and public prosecution, violation of the right to privacy, reduce the independence of the courts, the right to a fair trial and the application of a permanent state of emergency without legal guarantees provided by the emergency law, make opponents and violators of opinion accused of terrorism such as Tunisian anti-terrorism Law No. (75) 2003 which gave a broad definition of terrorism, including acts such as (disturbing the public order) and resulting in a Peaceable opposition trial, also

⁸ Al Jazeera Net, 'September 11 Attacks' <<http://www.aljazeera.net/encyclopedia/events/2014/12/30/%D9%87%D8%AC%D9%85%D8%A7%D8%AA-11%D8%B3%D8%A8%D8%AA%D9%85%D8%A8%D8%B1-2001>> Accessed Apr 9, 2016

⁹ Abdus- Sattar Ghazali, '2001-2011: A Decade of Civil Liberties' Erosion in America, August 25, 2011', National Coalition to Protect Civil Freedoms <<http://www.civilfreedoms.org/?p=7260>> Accessed June 7, 2016

¹⁰ ICELANDIC HUMAN RIGHTS CENTRE, 'THE RIGHT TO FREEDOM OF EXPRESSION AND RELIGION' <<http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-freedom-of-expression-and-religion>> Accessed may 19, 2016

violated the law, the right of a suspect to prepare a good legal defense, included provisions could open the way for prosecuting political opposition as terrorism, and gives judges excessive powers as use exceptional procedures and limit the lawyer's ability to defend in an effective manner, but the bill does not guarantee the existence of adequate judicial control over the police intervention in the peculiarities of persons during an anti-terror¹¹, articles 171 to 200 Part Fourteen of the Egyptian penal code, provides for imprisonment in the rubber crimes and are subject to different interpretation, such as "Incitement to overthrow the regime", "change the fundamental principles of the Constitution art 174", "hatred of sect or scorn them", "disturbing public peace art 176", "inconsistent with morals art 178", "harms the reputation of the country of 178", and "insulting the President of the Republic art 179."¹² Also use vague terms such as Encouragement, inducement, and glorification as found in the UK Terrorism Act 2000, 14, which criminalizes lawful gatherings and demonstrations etc,¹³ and the expansion in the some concepts such as "incitement."¹⁴

This thesis will examine that the utilization of international limits into the interference with this right has been abused by the States in such a way that they make the exercise of the right practically impossible in situations it's needed the most, and this takes different forms: may be the constitution guaranteed the right to (FOE) but the laws violated it by using vague and unclear concepts. May be the constitution itself in less common cases contains vague terms. Or may the constitution in rare cases contains provisions violate the freedom expression explicitly.

¹¹Human Rights Watch, ' Tunisia: Amend Draft Counterterrorism Law, Improves on 2003 Law, but Concerns Remain' (JULY 7, 2014) <<https://www.hrw.org/news/2014/07/07/tunisia-amend-draft-counterterrorism-law>> Accessed may 19, 2016

¹²The Initiative for an Open Arab Internet, <<http://old.openarab.net/ar/node/207>> Accessed may 19, 2016

¹³ARTICLE 19 Global Campaign for Free Expression, 'The Impact of UK Anti-Terror Laws on Freedom of Expression' Submission to ICJ Panel of Eminent Jurists on Terrorism Counter-Terrorism and Human Rights' April 20067

¹⁴In 2007 the Committee of Ministers of the Council of Europe issued that that "Vague terms" such as incitement should not be used to limit freedom of expression and should be clearly define. According to The Camden Principles on Freedom of Expression and Equality the term 'incitement' refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.

1.3 Aim and Question of the Study

The restriction on (FOE) was common in the past, because the concepts of freedom had not developed, domination of dictatorial state and the principle of King infallible, now the situation is different in the view of evolution on the concepts of freedom and democratic state, and it is difficult for governments to place restrictions explicitly on the (FOE), so the governments often resort to restrict (FOE) by regulating it. This study aims to determine and reveal means that used by governments in order to restrict the (FOE), (These means are legal, but used to achieve illegal objective), and place reasonable and possible standard for any restrictions.

The Question of the Study:

- Are there necessary restrictions on the (FOE)?
- Are the restrictions within international limits?
- Do laws become a tool to restrict (FOE)?

1.4 The Importance of the Study

The (FOE) of great significance in the life of the individual and society, a symbol of human independence and dignity, a way to liberate the mind and conscience, a way to see what is happening in society, what is the government doing, what should be done in community service, and put pressures on officials to fix deficiencies in the state administration; the preservation of this right, remove all the obstacles in front it and prevent governments and regimes from interfering with this right are more important for the community, because it is form a vital part of the democratic process as free discussion regarding public matters and facilitates the strengthening and promoting of a democracy.¹⁵ Undoubtedly, that is difficult for governments in the contemporary society to prevent or restrict (FOE) publicly; they often resort to use regulation as a mean to do that. So this study has a great significance in revealing the means used by governments to restrict (FOE), increase the awareness of individuals

¹⁵Freedom of Expression Institute Module Series, 'Hate Speech and Freedom of Expression in South Africa' 2013 10
<http://fxi.org.za/home/fxi_downloads/Hate_Speech_and_Freedom_of_Expression_in_SA.pdf>Accessed may 27, 2016

to know their rights, sets standards for the more democratic and common restrictions, and prevent authorities from interfering with the right arbitrarily.

1.5 The Structure of the Study

This study is divided into five chapters. Chapter I contain: Background, Statement of the Problem, Aim and Question of the Study, the Importance of the Study, Methodology and Theoretical Framework of the Research. Chapter II: Examine what is international law, International Human Rights, what is (FOE). Chapter III: Necessity Restrictions on (FOE), which discuss the limitations that are necessary and can be placed on (FOE). Chapter IV: Restrictions Impair (FOE), which examine the arbitrary limitations on (FOE). Chapter V: Conclusion of the Study and Recommendations as to how prevent authorities from using laws to restrict the (FOE).

CHAPTER TWO

FREEDOM OF EXPRESSION: BACKGROUND

2.1 Introduction

Before we talk about, criticize, or assess the government interference with the right to (FOE), firstly we have to know, what is the right? What does it mean? What is its scope, its principle, or its basics? Under which branch of law it has regulated? Because we can't go through any topic without knowledge about it, therefore, it is worth explaining and defining the right, in order to be able to understand its importance and value to the individuals and society, and therefore protect it, and stand against any arbitrarily procedures that undermines it. Because of the international nature of (FOE), it has recognized internationally and regionally, as a fundamental human right, and regulated under the international law (human rights law), therefore in order to understand the essence and legal bases of the right, this chapter will examine; what is international law? What is human rights law? What does (FOE) mean?

2.2 International Law

Basically defined, international law is simply the set of rules that countries follow in dealing with each other,¹⁶ and also defines the legal responsibilities of States in their behavior with each other, and their treatment of individuals within State boundaries,¹⁷ unlike domestic law which regulates the relationship between the state and its citizens or between citizens themselves. International law include three distinct legal processes the first Public International Law (The relationship between

¹⁶ Globalization 101 a project of suny Levin institute, 'International Law and Organizations'³<<http://www.globalization101.org/what-is-international-law/>>Accessed 26 may, 2016

¹⁷ Global issues, 'International law'<<http://www.un.org/en/globalissues/internationallaw/>> Accessed may 19, 2016

sovereign states and international entities such as International Criminal Court), Private International Law dealing with question of jurisdiction in conflict), and Supranational Law (The set of laws that sovereign states voluntarily yield to) Its resources are Treaties, Custom, General Principles of Law, Judicial Decisions and Legal Scholarship.¹⁸

2.3 International Human Rights Law

Aftermath of the Second World War International human rights law emerged as a distinct field of international law. The standard normative account of this law is that its general mission is to protect fundamental and universal features of what it means to be a human being from the exercise of sovereign power.¹⁹

According to “Allen Buchanan and David Golove” human rights are those moral entitlements that accrue to all persons, regardless of whether they are members of this or that particular polity, race, ethnicity, religion, or other social grouping”.²⁰ because, International Human Rights Law governs a state’s relations with its subjects, rather than governing relations between states, so this point can be distinction between International Human Rights Law and most areas of international law, we can find the roots of The Modern Human Rights Law Movement after the WWII trials of Nazi commanders at Nuremburg, it was recognized by world community that mass atrocities committed during WWII were too serious to be dealt under national law, because these crimes were against all of humanity,²¹ the adoption of (UDHR) by the United Nations General Assembly on 10 December 1948, was an impetus for strengthening, The International Human Rights Movement, for the first time in human history the Declaration spell out basic, political, civil, economic, cultural and social rights, that all mankind beings should enjoy.²²

¹⁸ Globalization,(supra note 16) 3

¹⁹Patrick Macklem, 'What is International Humanitarian Law? three applications of a distributive account, [November 19, 2007] Bernard and Audre Rapoport Center for Human Rights and Justice University of Texas School of Law 1, 1

²⁰Larry Alexander, *Is there a right of freedom of expression*(1stedn, Published in the United States of America by Cambridge University Press, New York 2005) 3

²¹Globalization, (supra note 16) 8

²² United Nations Office of the High Commissioner, 'Human Rights' <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>> Accessed may 19, 2016

The Human Rights Commission—at the time the lead UN body of human rights, took place the first step--produced the “International Bill of Human Rights,” which composed of the Declaration of Human Rights and two treaties which are binding: (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as a need to update its human rights organizations On March 15, 2006, the Human Rights Council was created by the General Assembly of the UN.²³

2.4 Freedom of Expression

“I hate what you say, but I will defend to the death your right to say”.

This argument - attributed to Voltaire - summarizes that freedom of speech worthy of death in its defense, even when it at odds with what is said, commitment to freedom of speech includes protection of words that you do not want to hear, just like the protection of the words you want to hear, this principle is the basis of democracy and a fundamental human right, the protection of this principle a symbol of civilized and tolerant society.²⁴

If the comprehensive concept of freedom is one of the necessities of life, the rights to (FOE) and opinion is a strong basis to get this freedom, and it implies free the mind from slavery blind to the cogitation and prudence, and considered "the best way for attainment the truth"²⁵, the (FOE) means "*right to express one's ideas and opinions freely through speech, writing and other forms of communication but without deliberately causing harm to others' character and/or reputation by false or misleading statements*"²⁶ at the international level the right of free speech is defined by both (UDHR)²⁷, and (ICCPR)²⁸, by comparing the content of the materials governing (FOE) in terms of the Universal Declaration and the International Covenant, we can say that there is an almost complete similarity between those standards addressed by the Article 19 of the (ICCPR), and those contained in the

²³Globalization, (supra note 17) 8

²⁴Nigel Warburton, (supra note 1)9

²⁵Hate Speech and Freedom of Expression in South Africa, (supra note 15) 10

²⁶Alexandra V. Ardinge, 'Private Universities and Freedom of Expression: Free Speech on Elon University's Campus' (2011) Vol. 2, No. 1' The Elon Journal of Undergraduate Research in Communications 94, 96

²⁷Universal Declaration on Human Rights UDHR (10 December 1949)United Nations General Assembly Resolution 217A (III)

²⁸International Covenant on Civil and Political Rights ICCPR (Adopted 16 December 1966, in force 23 March 1976) (UN General Assembly Resolution 2200A (XXI)

(UDHR), the only difference in this Particular lies in expansion that has characterized the International Covenant in its review of the content of this right. According to the article 19 of the ICCPR " *Everyone shall have the right to (FOE); this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice*".

EVERYONE.... Without distinction on the basis of the religion, level of education, color, language, race, political or other opinion, sex, etc, has the right to seek, receive... With respect to the right of the public, the rights of both speakers and listeners, and demonstrators and observers are equally protected²⁹, it will be violation of the audience right if they are prevented from receiving information from speakers.³⁰

...IMPART INFORMATION AND IDEASThe right to impart information and ideas considers the most obvious aspect of (FOE). It is the right to tell and inform others what one thinks or knows in private or through the media. But (FOE) serves a larger purpose. It gives every person the ability to access as wide a range of information and opinions as possible.³¹

... INFORMATION AND IDEAS OF ANY KIND... It is not necessary that (FOE) must be applied to useful or correct information and ideas. It also applies to any type of fact or opinion that can be communicated. It has been confirmed by the UN Human Rights Committee (UNHRC) that 'expression' is broad and not confined to political, cultural or artistic expression.³² But, it can include themes, considered as critical or controversial by the government or by the majority of people, false, offend, disturb,³³ or even shocking expression, a censorship cannot be justified by the mere fact that an idea thought to be incorrect or disliked.³⁴ This is a strong

²⁹Toby Mendel 'Restricting Freedom of Expression: Standards and Principles' Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression, Centre for Law and Democracy2

³⁰Larry Alexander, (supra note 21)8

³¹European Cultural Parliament ECP, 'International federation of arts councils and culture agencies IFACC'6 <http://media.ifacca.org/files/Introduction_to_Policy.pdf> Accessed may 19, 2016

³² Ibid

³³EU Human Rights Guidelines on Freedom of Expression Online and Offline, adopted by council of the European Union, foreign affairs council meeting Brussels (12 may 2014) 4

³⁴Article 19 org, 'key aspects' <<https://www.article19.org/pages/en/key-aspects.html>>Accessed may 19, 2016

confirmation that the proper mental created by (FOE) can exercise this broad freedom without any overkill and encroachment, and the community in which the principles of tolerance have grown can accept this expansion in (FOE).

...REGARDLESS OF FRONTIERS... The knowledge knows no boundaries or limitations, technological developments in the human world has changed the world from a planet to a small village, therefore, the (FOE) is not confined on national frontiers. The citizens must be allowed to seek, receive and impart information to and from other countries.

...THROUGH ANY MEDIA... The (FOE) is not limited to only speech but it can be in writing, in the form of art "sign language, pictographs, pictures, movies, plays, and so forth"³⁵ or any other media, it can modern or traditional.³⁶ The expression can include many means, such as: books, pamphlets, banners, posters and all forms of audio-visual, electronic and internet-based modes of expression.³⁷ This definition has given a wide scope to the forms that can be used to expression, so we can say it is a positive point in this context, because it expanded the scope of (FOE).

There are many international and regional human rights treaties as well as customary international law, guaranteed the right to (FOE).³⁸ At the international level, General Assembly Resolution 59(I) of 14 December 1946, stating that freedom of information is a fundamental human right, (UDHR) in Article 19, and (ICCPR) in Article 19³⁹. It is worth mentioning that there are the Mass Media Declaration of UNESCO,⁴⁰ the Johannesburg Principles,⁴¹ and Declaration of Santiago⁴² Regarding (FOE).

³⁵Larry Alexander, (supra note 21) 7

³⁶Article 19 org, (supra note 34)

³⁷EU Human Rights Guidelines on Freedom of Expression Online and Offline, (supra note 32) 4

³⁸European Cultural Parliament ECP, (supra note 31) 4

³⁹UN General Assembly Resolution, (16 December 1966, entered into force 23 March 1976) 2200 A XXI

⁴⁰ Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, Tampere, Finland, (June 26-28, 198)

⁴¹National Security, 'Freedom of Expression and Access to Information' *were adopted by a group of experts* (1 October 1995)

⁴²Declarations on Promoting Independent and Pluralistic Media (6 May 1994 endorsed by the General Conference at its twenty-eighth session-199)

At the regional level, the European Convention on Human Rights (ECHR) in article 10,⁴³ the American Convention on Human Rights (ACHR) in article 9,⁴⁴ and the African Charter on Human and Peoples' Rights (ACHPR) in article 13.⁴⁵

There are different arguments that justifying the importance of (FOE), the most important between them the arguments of truth, self-fulfillment and democracy.

The truth argument is famously attributed to John Stuart Mill's argument that seeking of truth has a great importance for the development of society, and we should know that allowing free discussion and debates is the best way to arrive at the truth.⁴⁶

With regard to dangerous, incorrect or obscene opinions mill argues even if the opinion is outrageous, still it cannot be prevented, because it may turn out to be true or to have some truth.⁴⁷ For dangerous opinion mill makes two responses: first, even if we belief that an opinion is dangerous, we cannot be sure that it is in fact has a danger to society only if we allow free discussion on the issue, so we must allow the dangerous opinion to be discussed. Second, if the opinion to be censored is true, it means that the opposite view must be false.⁴⁸

The argument of self-fulfillment confirms that (FOE) is a vital part of each individual's right to self-development and fulfillment in that people will only be able to maximise their potential as human beings if they have the freedom to express and receive, ideas, beliefs and arguments.⁴⁹

The argument of democracy, both the aims and scope of freedom of speech must be understood as in service of political democracy,⁵⁰ legal philosophers such as Meikle

⁴³ Adopted 4 November 1950, entered into force 3 September 1953

⁴⁴ Adopted 22 November 1969, entered into force 18 July 1978.

⁴⁵ Adopted 26 June 1981, entered into force 21 October 1986.

⁴⁶ Itumeleng Pascalina shale, *who is watching who? Regulation of media and freedom of expression in Uganda, a critical analysis of the press and journalists act 1995* (Centre for Human Rights, University of Pretoria 1 NOVEMBER 2008)1

⁴⁷ Deirdre golash, *Freedom of Expression in a Diverse World* (The Department of Justice, Law and Society American University, Washington, D.C. USA, AMINTAPHIL Philosophical Foundations of Law and Justice 2010) xvii

⁴⁸ Michael Lacewing, 'Mill on Freedom of Thought and Expression' 2<<http://documents.routledge-interactive.s3.amazonaws.com/9781138793934/A2/Mill/MillTruth.pdf>> Accessed June 7, 2016

⁴⁹ Itumeleng Pascalina Shale, (supra note 46) 1

⁵⁰ David A.J. Richards, 'Constitutional Legitimacy, the Principle of Free Speech and the Politics of Identity'[April 1999] Volume 74 Issue 2 Chicago-Kent Law Review Article 16 779, 782

John support this argument which articulated the role of (FOE) with regard to discussing the merits of political matters in a democracy.⁵¹ The citizens in a democracy must have free access to information about politicians and their policies in order to be able to effectively exercise their democratic responsibilities, the argument of democracy which its origin is historically associated with Alexander Meikle John, seems to have dominated over the other arguments is that (FOE) is essential⁵² and valuable because it maintains and promotes democracy.⁵³

2.5 Conclusion

Because of the international nature of (FOE), it has recognized internationally and regionally and regulated under the international law (human rights law), so it is important to know, what is international law? What is international humanitarian law? What is (FOE)?

Basically defined, international law is simply the set of rules that countries follow in dealing with each other, and also defines the legal responsibilities of States in their behavior with each other, and their treatment of individuals within State boundaries. With respect to international humanitarian law: because, it governs a state's relations with its subjects, rather than governing relations between states, so this point can be distinction between International human rights law and most areas of international law, according to Allen Buchanan and David Golove "Human rights are those moral entitlements that accrue to all persons, regardless of whether they are members of this or that particular polity, race, ethnicity, religion, or other social grouping".

(FOE) is defined at the international and regional levels, according to article 19 of the ICCPR, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

There are many arguments regarding the importance of (FOE), the most important are: The truth argument which is famously attributed to John Stuart Mill's argument

⁵¹ Harry melkonian, *Freedom of speech and society Asocial approach to freedom of expression* (CAMBRIA PRESS, Amherst, new York, Cambria Press 2012)xxvii

⁵² Itumeleng Pascalina Shale, (supra note 46) 1

⁵³ Jack m. balkin, 'Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society' [2004] Vol. 79:1 79 N.Y.U. L. REV. 1 New York University Law Review 1

that seeking of truth has a great importance for the development of society. The argument of self-fulfillment confirms that (FOE) is a vital part of each individual's right to self-development and fulfillment. And according to the argument of democracy, both the aims and scope of freedom of speech must be understood as in service of political democracy.

Though the great significance of (FOE), it is not absolute right, but subject to necessary limits for protecting certain interests of the society. Therefore this right can be restricted, but in such way that met international standards. Therefore we have to know, what are the necessary restrictions on (FOE)? And what are the international standards for such restrictions? More details in chapter III.

CHAPTER THREE

NECESSARY RESTRICTIONS ON FREEDOM OF EXPRESSION

3.1 Introduction

It is undoubtedly that (FOE) is the cornerstone for any democratic society, there is no society proclaiming to be democratic without (FOE). The theoretical approach to free speech that likely to be the most important, has argued that free speech is valuable because it maintains and promotes democracy.⁵⁴

If we criticize governments for arbitrarily interference with (FOE), firstly we have to know on which grounds we criticize the government, we consider such interferences are arbitrarily, and we evaluate the legality of such restrictions, because not every restriction or interference considered arbitrarily or unnecessary, there are necessary restrictions that the states are allowed or obliged under international law to place them, for this purpose we have to know what are the international standards for such restrictions, to assess them on this ground, and therefore determine whether or not such restrictions or measures are legitimate and necessary.

This chapter will examine; is (FOE) an absolute right? If is not, what is the necessary restrictions? What are the international standards for such restrictions?

International standards for necessary restrictions on (FOE)

Indeed, the right to (FOE) is not absolute and has necessary limits, exceptions and restrictions which have been recognized in international and regional declarations,

⁵⁴Jack m. Balkin, (supra note 53)

covenants, "most national constitutions"⁵⁵, "courts and mechanisms".⁵⁶ Such exceptions, limits and restrictions of (FOE) until a few decades ago were determined by national states, consequently scrutinized by the national judicial authority, with no external control.⁵⁷ But the situation has changed after the emergence of international and regional conventions, charters and frameworks, where placed many standards for any interference with the right.

The 'restriction' or 'limitations' as generally has been judged by the international courts, "*means any action by public body that has an actual impact on people's (FOE) irrespective to*":

- 1- The nature of the action, it could be anything from a law to an internal disciplinary measure.
- 2- The nature of the public body. It could be legislative, executive or judicial, or a publicly owned enterprise.
- 3- The extent of the action's effect. Any impact on the ability of one or more people to express them freely is a restriction.⁵⁸

The scope of the interference with the (FOE) is very broad, as set out in the European Convention on Human Rights, which refers for instance any "formalities, conditions, restrictions or penalties" placed on the right.⁵⁹

The government may use two ways in restricting free speech, first: It is the most common which is identifying some types of speech that it is forbidden and cannot be published, and then punish the violators, second: Prior-restrictions, which apply in two ways / either by submitting the material which is intended to be published to a competent authority in order to obtain a license to publish, or a court may issue a

⁵⁵Dr. Agnes Callamard, 'Freedom of Expression and Advocacy of Religious Hatred that Constitutes Incitement to Discrimination Hostility or Violence' *Expert meeting on the links between articles 19 and 20 of the ICCPR*, UN HCHR (October 2-3, 2008) Geneva

⁵⁶EU Human Rights Guidelines on Freedom of Expression Online and Offline, (supra note 32) 4

⁵⁷Dirk Voorhoof, *The Right to Freedom of Expression and Information under the European Human Rights System: Towards a more Transparent Democratic Society* (Robert Schuman Centre for Advanced Studies Centre for Media Pluralism and Media Freedom EUI Working Paper 2014) 5

⁵⁸Article 19 org, 'limitations' <<https://www.article19.org/pages/en/limitations.html>> Accessed may 19, 2016

⁵⁹Toby Mendel 'Restricting Freedom of Expression: Standards and Principles' Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression, Centre for Law and Democracy 7

temporary limiting order or an injunction against engaging in particular speech.⁶⁰ In any case, it is necessary to point out that many of the experts of the United Nations body confirmed that restrictions on the right to (FOE) should be the exception, not the rule, as the Human Rights Committee under ICCPR, indicates that the states in adopting laws must provide for permissible restrictions that should always be guided by the principle that not impede the essence of the right as a result of restrictions.⁶¹

There are many declarations construed the exceptions and any form of interference with the (FOE) that always must be strictly and narrowly interpreted,⁶² tailored, may not put in jeopardy the right itself,⁶³ are applied by an independent body and are guaranteed from abusing, including the right to access to an independent court, otherwise, the lack of such safeguards lead to abuse of these measures, in particular if the respect of the principles of human rights and democracy is weak, as hate speech laws in the past have been used against such protected speech.⁶⁴ The relation between the right and the restriction and between the norm and the exception must not be reversed, as has been repeatedly highlighted by The (UNHRC).⁶⁵

According to article 19 of the ICCPR (FOE) can be subject to certain limitations, these will only be such as are "*provided by law and are necessary: for respect of the rights or reputations of others and for the protection of national security, of public order or of public health or morals*".⁶⁶ It is worth mentioning that this list: "national security, public order, public health or morals" limited of purposes that is provided to ensure that regulations interfering with the (FOE) be kept to a minimum, placed for only narrowly tailored, and justifiable reasons.⁶⁷

⁶⁰Kathleen Ann Ruane Ruane K A, 'Freedom of Speech and Press: Legislative Attorney, Exceptions to the First Amendment' *Prepared for Members and Committees of Congress*, Congressional Research Service(September 8, 2014)6

⁶¹Mervat Rishmawi,' the right to freedom of opinion and expression in terms of international law' <<http://amnestymena.org/ar/Magazine/Issue16/righttofreedom.aspx> >Accessed may 19, 2016

⁶²Shukeir Y, 'Freedom of Expression and Incitement to Hatred– How to Strike a Balance? to Regulate or not?' <<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Bangkok/YahiaShukkeir.pdf>>Accessed 27 may, 2016

⁶³Article 19 Free World Centre, *Defining Freedom of Expression and Information, Freedom of Expression and ICTS: Overview of International Standards* (2013)10

⁶⁴Agnes Callamard, (supra note 55)

⁶⁵EU Human Rights Guidelines on Freedom of Expression Online and Offline, (supra note 32) 4

⁶⁶Ibid

⁶⁷Toby Mendel, (supra note 28) 3

Determining whether a restriction is narrowly tailored is often articulated as a three-part test. Limitations must: (i) be provided by law; (ii) necessary; (iii) pursue a legitimate aim,⁶⁸ which means that any lawful measures, whether criminal, civil or administrative, that constitute an interference with (FOE) must meet the three tests.⁶⁹

3.1.1 Provided by the law

This does not only mean that the limitation is based in law, but also the law to be clear, accessible,⁷⁰ and to meet international standards. Even the secret laws, can be legitimate in certain circumstances, but not where they place limitations on (FOE), and it is clear that the purpose of this law is to ensure preventing statements which cause harm.⁷¹

Any civil, criminal or administrative law procedures that constitute an interference with (FOE) must be provided by law,⁷² to prevent the authorities from taking any measures that not based on the law to interfere with the right.

The law will fail the requirement of “prescribed by law” if it gives the authorities broad discretionary powers to limit (FOE), as has stated by the ECHR that, when a discretion power is granted to a media regulatory body, there must be a clarity in the scope of discretion and the manner of its exercise, also the law must provide protection against any overstep or arbitrary use of the discretionary powers,⁷³ to grant individuals sufficient protect against any interference seemed to be arbitrary. Each of the (UNHRC) and national courts, have expressed their concerns about excessive ministerial discretion.⁷⁴

⁶⁸Article 19 Free World Centre, (supra note 63) 10

⁶⁹Agnes Callamard, (supra note 55)

⁷⁰ARTICLE 19 Global Campaign for Free Expression, 'The Impact of UK Anti-Terror Laws on Freedom of Expression' Submission to ICJ Panel of Eminent Jurists on Terrorism Counter-Terrorism and Human Rights' April 2006 2

⁷¹Toby Mendel, (supra note 28) 9

⁷²Itumeleng Pascalina Shale, (supra note 46) 19

⁷³Douwe Korff , 'the standard approach under articles 8- 11 ECHR and article 2 ECHR' London Metropolitan University, Mar08 1, 2

⁷⁴The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 2

3.1.2 Necessity

"Necessity" considers the centre of international protection for (FOE).⁷⁵ Indeed it is not enough for the restrictions, to be provided by the law and have a legitimate aim, but also should be necessary because any unnecessary limitations consider a violation of (FOE).

"Necessary" means that there must not be lesser means available. The European Court for Human Rights examines the existence of "pressing social need" for any interference, therefore, if so, it examines the proportionality of this interference, so we can consider the interference as "necessary in a democratic society" if it responds a "pressing social need", proportionate and the justifications of the restriction are relevant and sufficient".⁷⁶

Because the requirement of necessity is indispensable for protection the right to (FOE), in the bulk of cases that a limitation on the (FOE) has invalidated by international courts was on this basis.⁷⁷

It is not required to consider the restriction "necessary" to prove that it is "irreplaceable" and it means a situation less than that at the same time more than just being a "reasonable" or "acceptable"; it should establish a proof of the existence of "urgent social need" to this restriction. In addition to all above, the restriction must be proportionate to the legitimate intended purpose.⁷⁸

According to Camden principles No.11.1.; The restrictions should be defined in clear and narrow way, in responsive to a pressing social need, any measures should be the least restrictive of (FOE), are not overbroad: which implies that the restriction should not be widely or in untargeted way, must not go beyond harmful speech and prevent legitimate speech and are proportionate: it means that the harm to (FOE) should not outweighs the benefit of protected interest.⁷⁹ For instance, a restriction that provides

⁷⁵ Center for Law and Democracy International Media Support, 'Analysis of the Guarantees of Freedom of Expression in the 2008 Constitution of the Republic of the Union of Myanmar' August 20127

⁷⁶ Douwe Korff Professor, (supra note 73) 3,5

⁷⁷ Toby Mendel, (supra note 28) 4

⁷⁸ Human Rights Public Library, 'Accepted restrictions on the freedom of expression and freedom of access to information' <<http://old.qadaya.net/node/2065>> Accessed may 19, 2016

⁷⁹ The Camden Principles on Freedom of Expression and Equality (April 2009) ARTICLE 19 Free Word Centre, EC1R 3GA United Kingdom 9

only partial protection to someone's reputation but seriously undermines (FOE) is disproportionate.⁸⁰ It means that in resorting to any measures, must taken into account the proportionality between the protected interests and the harm caused to (FOE).

Any exception, limitation, condition or any interference with (FOE) could be applied only to a particular exercise of the right; the content of this right cannot be touched, therefore, restricting the content of one right is similar to the destruction of the said right.⁸¹

It should be noted that is not every restriction can continue forever, there are some restrictions which are especially for some circumstances, therefore all such circumstances that preceded the decision of restriction must to be taken in to account by the courts, and for instance, some restrictions may be legitimate in time of war but illegal in peacetime.⁸² This implies that if a particular situation requires certain restrictions, shall not continue to after this situation, to prevent governments from abusing their power and intervene arbitrarily with (FOE). For example, there are communities live in a permanent state of emergency such as (Egypt, Libya, Syria, Iraq, and Sudan), where is given broad powers to the executive powers and impose extremely harsh restrictions on the freedom of opinion and expression.⁸³

3.1.3 Pursue Legitimate Aims

It implies that the restriction must be for the protection of an overriding interest and addresses a legitimate aim, therefore in assessing that, it should be taken in to account the purpose and the effect of the restriction.⁸⁴ The restriction must be proportionate; it is unconstitutional, when the benefit of protected interest do not

⁸⁰ Article 19, (supra note 58)

⁸¹ Monica Macovei, *Freedom of expression A guide to the implementation of Article 1, of the European Convention* (Edition on Human Rights, Human rights handbooks, No. 2. 2nd edition Directorate General of Human Rights Council of Europe January 2004) 20

⁸² What we do Article 19, 'Limitations'<https://uofahsmun.files.wordpress.com/2012/06/limitations-c2b7-what-we-do-c2b7-article-19.pdf>>Accessed may 19, 2016.

⁸³ Prof. Mohamed Nour Farahat, 'The History of the System of Emergency in Egypt' [2005/6/24] Issue 1238 Committee for the Defence of Freedoms, civilized dialogue<http://alhakemegypt.blogspot.com/2011/09/blog-post_4800.html>

⁸⁴ Toby Mende, (supra note 28) 13

outweighs the harm to (FOE).⁸⁵ The European court for human rights, during reviewing, it assesses the proportionality of a limitation on (FOE) to the aim pursued. There for, any disproportionality interference to the legitimate aim pursued will not be counted "necessary in a democratic society" as provided by article 10 of the (ECHR).⁸⁶ Also the restriction must have legitimate motives: It would be illegal to prohibit the publishing of material only on the ground that it has a critical view for the government, the social or political system adopted by the government.

The most important point in these aims, that provided by (article19) of the ICCPR, they are exclusive and cannot be added to,⁸⁷ so it prevents authorities in broadening or adding another aims. Any justification if has not mentioned in a particular convention, governments cannot interfere with the (FOE) in that ground, and limitations that claim to serve a particular legitimate purpose, must not intend to another aims.⁸⁸

3.2 Types of Unprotected Expression

As we have said, it is recognized by international and regional conventions, courts and mechanisms, that (FOE) can be restricted by law under specific circumstances in certain, narrowly defined ways,⁸⁹ for protection of interests of society. There are some expressions are unprotected under international standards and national laws, as hate speech, pornography, obscenity, fighting words and incitement of illegal activity.

3.2.1 Hate Speech

We can describe hate speech as *“any speech, gesture or conduct, writing, or display which is forbidden because it may incite violence or prejudicial action against or by*

⁸⁵ Joanna Stevens, 'Obscenity Laws and Freedom of Expression A Southern African Perspective' *Media Law and Practice in Southern Africa*, the International Centre Against Censorship January .No. 12(2000) 7

⁸⁶ Mario Oetheimer, *Freedom of expression in Europe, Case-law concerning Article 10 of the European Convention on Human Rights Council*, (Updated edition, Human rights files, No. 18, Council of Europe, 1998-2006, Printed at the Council of Europe March 2007) 9

⁸⁷ Article 19, (supra note 58)

⁸⁸ Douwe Korff, (supra note 73) 3

⁸⁹ EU Human Rights Guidelines on Freedom of Expression Online and Offline, (supra note 32) 4

*a protected individual or group, or because it disparages or intimidates a protected individual or group”.*⁹⁰

Under the international law,⁹¹ Both (ICCPR)⁹² and (ICERD)⁹³ contained provisions which have addressed hate speech, we can find the foundation of hate speech,⁹⁴ in the art 4 (a) of (ICERD), which has declared an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

Also according to art 20 (ICCPR) States parties should prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

With regard to the international criminal law, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have analyzed hate speech in the context of crimes of incitement to commit genocide and persecution.⁹⁵ In the judgment on the accused Julius Streicher and Hans Fritzsche in 1946 by the International Military Tribunal (IMT) at Nuremberg, the Incitement to genocide first became a crime under international law.⁹⁶

Depending on the ICERD and for European countries the (ECHR), many national laws contained provision for hate speech which have been modeled around such conventions, and take different forms, such as form of criminal law or civil laws.⁹⁷

⁹⁰Hate Speech and Freedom of Expression in South Africa, (supra note 16) 13

⁹¹Larry Kuehn, 'Freedom of Speech for Teachers' [FALL 2013] 13 (2) our schools/Ourselves Canadian Education and Law Journal 68, 203

⁹²ICCPR, (supra note 4)

⁹³International Convention on the Elimination of All Forms of Racial Discrimination (adopted and opened for signature and ratification of 21 December 1965 entry into force 4 January 1969) by General Assembly resolution 2106 (XX)

⁹⁴Hate Speech and freedom of Expression in South Africa, (supra note 16, 13)

⁹⁵Professor Sandra Fredman' Dr Liora Lazarus, *Comparative Hate Speech Law: Annexure* (Research prepared for the Legal Resources Centre, South Africa, March 2012)3

⁹⁶Wibke Kristin Timmermann, 'Incitement in International Criminal Law' [December 2006] Volume 88 Number 864] International Review of The Red Cross 823,827

⁹⁷Hate Speech and Freedom of Expression in South Africa, (supra note 16)

3.2.2 Pornography and Obscene:

A limitation on certain permissive things, for example pornographic material depicting minors, would be an example of a limitation on (FOE) based on public morality.⁹⁸ The states do not have the freedom in determining what is constitute contrary to morality, as human rights committee stated that the terms of moral derives from many different traditions, therefore restrictions aimed to protect morals must be based on worldwide principles that not deriving exclusively from a single tradition, and such restrictions must be according to universality of human rights and non-discrimination principle.⁹⁹

Giving pornography a definition is oddly problematic in a legal sense, "*Authors of Black's Law Dictionary exemplify this when they collapse the terms 'pornography' and 'obscenity' into their definition of the pornographic: 'that which is of or pertaining to obscene literature; obscene; licentious. Obscenity, however, is not protected speech. Pornography by contrast is, or at least can be'.*"¹⁰⁰

Pornography as defined by - D.H. Lawrence, *Pornography and Obscenity* (1929): "*is the attempt to insult sex, to do dirt on it*".¹⁰¹

Child pornography is obscene when it illustrates a minor engaged in sexually open behavior.¹⁰² Obscenity is any conduct, manifestation, or phrase that defies the norms of sexual morality.¹⁰³

In the U.K, "pornographic" implies what basically produced for the aims of sexual arousal; "obscene" that which tends to deprave and corrupt persons exposed to it, the Scotland Act of 2010 prohibits the possession" of an "extreme pornographic image", which include "obscene," "pornographic," and "extreme." An image considers

⁹⁸Fayazuddin Ahmad, 'Restrictions on freedom of expression'[12:00 AM, October 06, 2015 Last modified: 12:00 AM, October 06, 2015]The Daily Star <<http://www.thedailystar.net/law-our-rights/restrictions-freedom-expression-152341>> Accessed May 25, 2016

⁹⁹ Human Rights Committee, General Comment No. 22 (11-29 July 2011) 102nd session, Geneva paragraph 32

¹⁰⁰Steven Balmer, Jr, 'The Limits of Free Speech, Pornography and the Law' *Aberdeen Student Law Review* 66, 1

¹⁰¹ Ibid 1

¹⁰²Amos O. Olagunju, 'Harmonizing the Interests of Free Speech, Obscenity and Child Pornography on Cyberspace: The New Roles of Parents Technology and Legislation for Internet Safety' (October 18, 2009) *The Scientific World JOURNAL* 1260, 1261

¹⁰³Ibid 1261

obscene where its “effect” is “such as to tend to deprave and corrupt persons who are likely” to see it.¹⁰⁴

One of the fastest growing businesses on the internet is child pornography. In 2004, the Internet Watch Foundation located 3,433 child abuse domains; in 2006, the child abuse domains increased significantly to 10,656[24]. Of all known child abuse domains, 54% were housed in the U.S. [24].¹⁰⁵

Because of the relationship of this topic with public morality and variation the standards on it from one community to another, there is no room for agreement in what is protected and what is unprotected, as well as under the constitutional right to expression from one country to another and from one system to another, and the standards that are governed by different depending on the time and place, as it may vary from one region to another within the same country and time period to another.¹⁰⁶ Currently, pornography is one of the most controversial themes though efforts by law enforcement and governments to limit such materials on the online.¹⁰⁷ Modern means of communication especially online have proven, that no sense for a serious stresses in such restrictions, as these restrictions have become free of their content because of the impossibility imposed in this new space, and cannot be restricted in an effective manner without compromising the (FOE) itself.¹⁰⁸ Therefore it is better to let such things governed by personality, and the roles of education and technology should outweigh the legislative interventions of authorities.¹⁰⁹

But it is important to ask, is it possible to permit obscene and pornography continued to target society via media, because of democracy and (FOE)?

It is permissible under international law to place restrictions on obscenity and pornography for protection of morality, as provided by article 19 of the ICCPR. These materials have been restricted by many governments, for example the First

¹⁰⁴ Mark B. Rasmuson, 'for prohibiting possession of violent pornography' [spring2014] Ave Maria international law journal 29, 33

¹⁰⁵ Amos O. Olagunju, (supra note 102) 1163

¹⁰⁶ Mohammad AL-Khader, *The Judiciary and the Media Freedom of Expression: Theory and Practice* (Palestine Center for Development and Media Freedoms (MADA) Ramallah, Palestine, December 2012) 66

¹⁰⁷ Amos O. Olagunju, (supra note 102) 1260

¹⁰⁸ Mohammad AL-Khader. (supra note 106) 66

¹⁰⁹ Amos O. Olagunju, (supra note 102) 1260

Amendment of U.S. Constitution has not considered Obscenity as a protected speech and pornography is subject to modest regulation.¹¹⁰ The sexually graphic materials can be regulated by governments by using the long established category of obscenity, this approach consider an invention in anti-pornography. With respect to the regulation of the obscenity and pornographic, it is said that the former is law highlights on morality while the latter focuses on power.¹¹¹

U.S Supreme Court considered Speech that is of "low value," like obscenity is outside the limits of core protection of any of free speech theories that espoused.¹¹² In *Ferber*, the court ruled the prohibition of the distribution of any material depicting a sexual performance by children, and any exploitation of such materials.¹¹³

According to article 13(4) of the American Convention, which is unique regarding the prohibition of prior censorship, the sole aim for permitting prior censorship is for the protection the morality of childhood and adolescence.¹¹⁴

3.2.3 Fighting words:

Expressions which constitute an attack on the other are those expressions that if addressed directly to someone, it is likely that the speech prompt will be faced a violence.¹¹⁵

It is permissible to restrict speeches that contain fighting words. U.S Supreme Court considered "fighting words" outside the limits of core protection of any of free speech theories that espoused.¹¹⁶

There is requirement which is imposed by the courts: that the speaker should have an intention to cause a violation of the peace or incite to violence.¹¹⁷ But the general

¹¹⁰ Amos O. Olagunju, (supra note 102) 1262

¹¹¹ Elena Kagan Source, 'Regulation of Hate Speech and Pornography after *R.A.V.*' (Summer - Autumn, 1993) Vol. 60, No. 3/4 The University of Chicago Law Review 873, 892

¹¹² Foster, Viktor Mayer-Schönberger, 'More Speech, Less Noise: Amplifying Content-Based Speech Regulations through Binding International Law'[12-1-1995] Volume 18 | Issue 1 Boston College International and Comparative Law Review Article 3 59, 62

¹¹³ Elena Kagan Source. Case 771F 2d at 332-33(N111) 891

¹¹⁴ Human Rights Watch, 'Freedom of Expression and Transition to Democracy' <<https://www.hrw.org/legacy/reports98/chile/Chilerpt-01.htm>> Accessed may 19, 2016

¹¹⁵ Mohammad AL-Khader, (supra note 106) 67

¹¹⁶ Foster, Viktor Mayer-Schönberger, (supra note 112) 62

¹¹⁷ USLegal, 'Legal Definitions Home- Fighting Words Law & Legal Definition' <http://definitions.uslegal.com/f/fighting-words/>> Accessed may 19, 2016

rule that has been approved by the American justice in this regard, that the idioms that are likely to provoke violence against speech prompt should not be an excuse to arrest him if it was possible to control the target audience and the expressions that received to the public and include the words racist or inciting religious hatred are considered protected by the right to expression as long as they do not reach the stage of arousing the listeners to the use of violence against the speaker. In this context, the American justice developed two criteria for dealing with this type of speech, first, that the speech addressed directly to a particular person is likely to respond with violence, it is not protected by the right to expression. And second, a public discourse that can arouse listeners to commit violence, it is not protected under the right to expression.¹¹⁸

3.2.4 Incitement of illegal activity:

The incitement is important issue because it gives a value question: how can balancing the need for social order against desire to protect free speech by the society? When, advocating of criminal activity and incitement to overthrow of the government be stopped for promotion of order and security?¹¹⁹

The Constitution gives protection to (FOE) and the restrictions that are often used by authority such as inciting to use of violence or incitement to break the law, are acceptable in most legal systems, as the U.S first amendment which considers any speech that is directed to inciting or producing imminent lawless action as an unprotected speech,¹²⁰ but the interpretation of these restrictions in practice and in specific cases evoke the problem.¹²¹ For example renowned case of the "Brandenburg v. Ohio, 395 U.S. 444 (1969)" of the US Supreme Court, which summarized the facts that a party leader delivered a speech, and therefore were being charged of violating Ohio law regarding prohibiting groups or criminal organizations that incite to crime and violence as a means to achieve change, political or economic reform law. In this case, the court ruled the unconstitutionality of this law, without taking into consideration whether the accused in his speech had violated the law, and the court

¹¹⁸Mohammad AL-Khader, (supra note 106) 67

¹¹⁹Erwin Chemerinsky, 'Constitutional Law, Types of Unprotected and Less Protected Speech' First Amendment: Freedom of Expression 1321, 1322

¹²⁰Kelly Guglielmi, (supra note 5) 209

¹²¹Mohammad AL-Khader, (supra note 106) 59

decided new requirements on such legislations, which is supposed that the legislator adhered to, in order to consider the speech or speech that incites violence or commit crimes constitutes a restriction on the (FOE), these requirements include: "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action"¹²²

3.3 Conclusion

Despite, that international covenants, charters and declarations at the international and regional level recognized the right to (FOE) as a fundamental human right, it can be restricted under specific circumstances in certain, narrowly defined ways, these will only be such as are: provided by law and are necessary: for respect of the rights or reputations of others and for the protection of national security, of public order or of public health or morals. But in any case the restrictions on the right to (FOE) should be the exception, not the rule and the harm to (FOE) should not outweigh the benefit of protected interest. Therefore, some expressions are unprotected under international standards and national laws, as hate speech, pornography and obscenity, fighting words and incitement of illegal activity, so the countries have the right to restrict such expressions, but it should be in a manner that not undermine the right to (FOE).

The main problem arises from here, when the states restrict lawful statements and protected speech under the name of necessity, use the laws to justify their interferences with the right, and utilize international limits in such way that harm (FOE). More details in chapter IIV.

¹²²U.S. Supreme Court, *Brandenburg v. Ohio*, 395 U.S. 444 (1969) Appeal From the Supreme Court of Ohio. No. 492, Argued February 27, 1969, Decided June 9, 1969 <https://www.courses.psu.edu/comm/comm403_jsb15/brandenburg.html> Accessed May 19, 2016

CHAPTER FOUR

RESTRICTIONS IMPAIR THE RIGHT TO FREEDOM OF EXPRESSION

4.1 Introduction

The restriction on (FOE) was commonplace in the past, because the concepts of freedom had not developed, domination of dictatorial state and the principle of King infallible. Now the situation is different in the view of evolution on the concepts of freedom and democratic state, the spread and development of the media methods at the level of countries and continents, where the world has become a small town nothing can be hidden, so it became difficult in the current era to interfere publicly in the (FOE) for fear of reactions of People and International Condemnations, therefore the states resort to find legitimate ways or legal tricks in order to restrict (FOE).

As we have mentioned before that (FOE) is not absolute right and can be regulated, therefore the countries have the right to regulate (FOE) in accordance with international standards. Hence, the problem begins when the regulation is used as cover to justify undue interference with the (FOE).

This chapter will examine; what are restrictions that impair (FOE)? Do laws become a tool to restrict (FOE)? Are the restrictions within international limits?

The principles of fundamental rights including the right to (FOE) can often be found in a country's constitution, exceptions to and limitations of these rights can be found in laws at lower level, ordinance, decisions and permit conditions (licenses).¹²³In a

¹²³ Teliasonera, 'Freedom of expression and privacy- the international framework' (November2012)2<<http://annualreports.teliasonera.com/en/2012/sustainability-report/strategy-and-priority-action-plan/human-rights/>>Accessed 26 may, 2016

democratic society the restrictions on (FOE) are of no force and effect if they are not in accordance with the constitution.¹²⁴

The utilization of international limits into the interference with this right has been abused by the States in such a way that they make the exercise of the right practically impossible, and this takes different forms: may be the constitution guaranteed the right to (FOE) but the laws violated it by using vague and unclear concepts, or may be the constitution itself contains vague terms, for instance; the constitution of Myanmar contains many restrictions for protection certain interests, some of them find close parallels under international law, but the others such as “community peace and tranquility” is not legitimate grounds for limiting (FOE), for example the tranquility may be undermined by political criticism, whereas, under international law the political criticism is clearly protected. Such concepts are broad and vague, and can harm the (FOE).¹²⁵

-The section 12 of the constitution of Botswana provides that the limitations must be (reasonably justified),¹²⁶ such limitation is vague and can be interpreted in a way that may harm (FOE); according to European convention such it must be (necessary in a democratic society).¹²⁷

-Though the Article 14 clause 1 of the Singapore Constitution guarantee the right to free speech and expression, clause 2 of the same article contains vague terms such as; restrictions that considered expedient in the interest of the security, friendly relations with other countries, and protect the privileges of parliament.¹²⁸

- Tough, the article 41 of the Cambodia constitution guarantees the right to (FOE), press and publication, but the restrictions for protection "the good traditions of the society" that is provided by the same article is vague and broad.¹²⁹

Or may the constitution in rare cases contains provisions violate the freedom expression explicitly, as the Cuban constitution that though it in article 53 provides

¹²⁴Bugalo Maripe, 'Freezing the Press: Freedom of Expression and Statutory Limitations in Botswana' *African Human Rights Law Journal* 52, 55

¹²⁵Center for Law and Democracy International Media Support, (supra note 57) 7

¹²⁶Constitution of Botswana 1996, Part II, section 12

¹²⁷Bugalo Maripe, (supra note 124) 6

¹²⁸ The Constitution of Singapore (Adopted; 16 sep 1963/ status; 24 march)

¹²⁹This Constitution of the kingdom of Cambodia, (was adopted by the Constitutional Assembly in Phnom Penh on September 21, 1993 at its 2nd Plenary Session) art 41

that the citizens have the right to free speech, but in the same paragraph has prohibited the private ownership of all kinds of media.¹³⁰

Also, there are constitutions guaranteed the right to (FOE) very clearly and they do not leave a wide discretionary for laws in restricting this right. They directly adopting an international or regional convention standards in their provisions, or clearly prohibits some forms of intervention such as censorship.

- The Germany Constitution 1949, in article 9, guaranteed the right to (FOE) within limits of universally applicable laws, and also in the same article clearly prevents the censorship on press.¹³¹
- The Swiss Constitution 1999, art 36, provides that any limitations on fundamental rights should have legal bases and be proportionate, and the significant limitations should have their bases in Federal Act. Also art 17 Paragraph 2 clearly prohibits the Censorship.¹³²
- The Constitution of Italian Republic 1974 art 22 prevents the censorship of the press, also prohibits the seizure, only by judicial order in special cases.¹³³
- According to the First Amendment to the U.S. Constitution, the congress shall make no law to abridge the free speech, or free press or peaceful assembly.
- The Constitution of UK 1991 in Chapter 2 part 11 adopted standards in very similar terms with ICCPR and ECHR.¹³⁴

But all these did not prevent laws from violating the right to (FOE).

Days after September 11, 2001 attacks, the US Congress passed a hurry, "the authorization to use force" law, many other measures,¹³⁵ and there were abuses of power; such as Warrantless Wiretapping Torture and Kidnapping.¹³⁶

The UK's Anti-Terrorism Act 2000, 14 defined terrorism in a way that is vague and excessively broad in its reach.¹³⁷ The law contained some vague terms that can harm

¹³⁰The Constitution of the Republic of Cuba, 1976 (as Amended to 2002), article 53

¹³¹Constitution of the German Democratic Republic (7 October 1949)

¹³²Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 14 June 2015)

¹³³Constitution of the Italian Republic; 22 December 1947 approved

¹³⁴Constitution of UK 1991

¹³⁵Al Jazeera Net, (supra note 9)

¹³⁶Abdus-Sattar Ghazali,(supra note 10)

¹³⁷The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 4

(FOE) such as “glorification” and “justification” “Encouragement” and “inducement”.¹³⁸

In 2001, the European regional group of the International Federation of Journalists (IFJ) claimed that Switzerland prevented journalists and media staff from working *“for reasons of censorship and political self-interest, not security or public welfare.”*¹³⁹

In the period from 1994 to 1995, from 2001 to 2006, and from 2008 to 2001, Italian government faced a lot of criticism related to censorship.¹⁴⁰

The Germany criminal code still contains strict provisions which penalize insulting the Federal Republic, and defamation of president.¹⁴¹

4.2 Examples of Laws or Means are used by Governments in Restricting (FOE).

4.2.1 Laws Prohibiting Defamation and Libel

Defamation is one of the most complicated issues, and the most vulnerable to broad interpretations, which is used by governments in order to justify their interference in (FOE).

*"Libel is broadly defined as a false and defamatory statement made to a third party about another individual, with the potential to harm the subject's reputation. In most jurisdictions, an action for libel is a civil case, brought by the individual as a means of recovering monetary damages".*¹⁴²

¹³⁸The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 7

¹³⁹ Halie Davis, 'Free Speech and Free Press around the World- Switzerland' <https://freespeechfreepress.wordpress.com/switzerland/> Accessed June 6, 2016

¹⁴⁰ Ragnedde M, 'Censorship and Media Ownership in Italy in The Era of Berlusconi' (GMG: Mediterranean Edition 9 (1) spring 2014) 14 <http://www.academia.edu/7393447/Censorship_and_media_ownership_in_Italy_in_the_Era_of_Berlusconi> Accessed June 6, 2016

¹⁴¹ The Voice of Free Expression, 'Index on Censorship- Germany: A Positive Environment for Free Expression Clouded by Surveillance' (21 August 2013) <<https://www.indexoncensorship.org/2013/08/germany-a-positive-environment-for-free-expression-clouded-by-surveillance/>> Accessed June 6, 2016

¹⁴² IIP DIGITA, 'The Right to Criticize Government Officials' <<http://iipdigital.usembassy.gov/st/english/publication/2010/11/20101123123808nayr0.6124929.html#axzz47CCiqybp>> Accessed May 19, 2016

International Human Rights Instruments and National Laws widely acknowledged the need for protection the individual's reputation,¹⁴³ as the article 19 of the ICCPR, permits restrictions that are necessary for protection individuals' reputation.

Because the term of "defamation" or "libel" carries different meanings and can be interpreted in wide ways, Journalists often face charges related to defamation and libel, when they reveal wrongful act of public officials, where the defamation law became an active tool that used by governments in silencing journalists and free speech, and protect public officials and public figures. The (HRC) expresses its concerns with respect to laws such as "desacato, lèse" majesty, disrespect for flags and symbols, defamation of the head of the state, disrespect for authority and the protection of the honor of public officials.¹⁴⁴

The protection of public employees and facilitate legal procedures to them, whether plaintiff or defendant, the lack of requirement for many of the laws on the claimant (in the official government case) to prove the essential elements of the offense, such as falsity and malice, makes the misuse of these laws very easy, also using laws that punish the publication of data or to protect the reputation of the government agencies, and symbols of the state, or the reputation of the state itself.¹⁴⁵

There is no special protection for public officials under international standards, whenever the rank of public figures is higher the criticism become more legitimate, and greater responsibility comes greater scrutiny¹⁴⁶. The (HRC) stated that, all public figures are subject to criticism and political opposition including the heads of the state and government, and merely because a form of expression is considered as insulting to a public figures cannot justified the imposition of penalties and also the criticism of institutions, such as army or the administrative should not be prohibited by state parties.¹⁴⁷ In 2002, three international mandates regarding (FOE), in joint declaration

¹⁴³ Global campaign for free expression, Principles on Freedom of Expression and Protection of Reputation (INTERNATIONAL STANDARDS SERIES, ARTICLE 19 25 3 July 2000) 1

¹⁴⁴ Human Rights Committee, General comment No. 34 (11-29 July 2011) 102nd session, Geneva Paragraph 38

¹⁴⁵ Mohammad AL-Khader, (supra note 106) 74

¹⁴⁶ Cairo Institute for Human Rights Studies, 'Freedom of Expression in Tunisia and Egypt' 1

¹⁴⁷ Human Rights Committee, (supra note 144) Paragraph 38

stated that criminal defamation laws should be repealed and exchanged with appropriate civil defamation law, because it is not justifiable restriction on (FOE).¹⁴⁸

Contrary to these standards there are states such as Tunisia and Egypt penalizing any negative expression towards authority, for example, the Tunisia's penal code in article 125 and 128, imposes sanctions upon those who insult public officials in connection with the exercise of their functions or suggest that a public official has committed illegal acts without establishing the veracity of such claims,¹⁴⁹ whereas, Tunisian's constitution 1959 article 8 guaranteed the right of thought, expression, publication, meeting and association.

Also, Egyptian penal code in article 179 violates the right to (FOE) which clearly penalizes the insulting of president,¹⁵⁰ whereas the Egyptian constitution 1971, guarantees the right to (FOE), as provided in article 47: the (FOE) is guaranteed, everyone can express his opinion verbally, in writing or photography or by other means of expression, also article 48 provides (press, printing, publication and mass media shall be guaranteed. Censorship on newspapers, warning, suspension or cancellation of the administrative remedy is prohibited and may be an exception in the case of emergency or in time of war is imposed partly on newspapers, publications and media-specific censorship in matters related to public safety or purposes of national security, all in accordance with the law.¹⁵¹

In 2009 under the Thai's restrictive lèse-majesté legislation for anti-royal comments posted on the Prachatai website, Chiranuch Premchaiporn of the popular Prachatai online news portal was arrested, also because of failing to delete material deemed offensive to the monarchy, he was convicted under the 2007 computer crime law,¹⁵² whereas, Thai constitution in section 45, guarantees the right to free speech and opinion.¹⁵³

¹⁴⁸ Joint Declaration of December 10, 2002 by the UN Special Rapporteur on Freedom of Opinion and Expression, the Office for Security and Co-operation in Europe representative on freedom of the media, and the Organization of American States special Rapporteur on Freedom of Expression

¹⁴⁹ Cairo institute, (supra note 146)

¹⁵⁰ Cairo Institute, (supra note 146)

¹⁵¹ Constitution of Egypt 1971

¹⁵² Putsata Reang, 'Freedom of Expression and Right to Information in Asian countries, A Regional Analysis of Challenges, Threats and Opportunities' the Development Cooperation Section of the Embassy of Sweden in Bangkok (March 2014)³²

¹⁵³ Constitution of Thailand 2007

In cases of private individuals not public officials or public figures, the U.S supreme court permits each state to form the requisite standard, the court recognizes a legitimate state interest in conferring individuals the opportunity to be paid as quid pro quo when their reputations be damaged by published falsehoods, at the same time the court requires at a minimum that a claimant prove publisher negligence.¹⁵⁴ Many laws don't differentiate between public and private figures, despite of they may impose stricter standards of proof on claimants who are public officials or public figures.¹⁵⁵

4.2.2 Improper Language Relative to Penalization Specific Categories of Content:

According to article 20 of the ICCPR, any propaganda of war and any advocacy of hatred that constitute incitement to discrimination, hostility or violence shall be prohibited by law. Accordingly, restricting such types of speech is necessary, but it should be narrowly and clearly defined, proportionate, the least intrusive measure available and not overly broad¹⁵⁶. There are many laws banning or criminalizing, entire categories of speech, usually, such laws overly broad involve bans on alarming or prejudicial statements, for instance statements that containing advocacy to incite violence or classified as hate speech, these laws infringe the right to (FOE), as the (HRC) stated, that the protection is not only for valuable speech, but “deeply offensive” speech as well.¹⁵⁷

In Rwanda: after the 1994 genocide, series of laws were adopted in the country, these laws aimed for preventing the recurrence ethnic violence, such as: The 2001 Law on Instituting Punishment for the Offences of Discrimination and Sectarianism, the 2003 Law on Repressing the Crime of Genocide, Crimes Against Humanity and War Crimes, and the 2008 Law Related to the Punishment of Genocide Ideology are three laws, often referred to as the “genocide denial laws, many of human rights defenders, judges and lawyers have criticized the laws, because they contained vaguely defined crimes that have the ability of suppressing legitimate expression.¹⁵⁸ Whereas the

¹⁵⁴The Right to Criticize Government Officials, (supra note 142)

¹⁵⁵The Right to Criticize Government Officials, (supra note 142)

¹⁵⁶The Camden Principles on Freedom of Expression and Equality, (supra note 79) 9

¹⁵⁷Global trends in NGO law A quarterly review of NGO legal trends, 'The Right to Freedom of Expression: Restrictions on a Foundational Right' VOLUME 6 ISSUE 1. 1, 123

¹⁵⁸Ibid 26

constitution of Rwanda in article 33 and 34, guaranteed the right to thought, opinion and press.¹⁵⁹

4.2.3 Laws Criminalizing National Betrayal

National betrayal is one of the means that used by governments in interfering with the right to (FOE) and restrict it.

Despite that the South Africa constitution 1997 in section (16), guaranteed the right to (FOE) which include freedom of press, media, receive, impart information and idea¹⁶⁰, but it violated the right to (FOE) as we can see in "secrecy bill" which was adopted in 2013, described as the first anti-democracy legislation since the termination of racial discrimination, where imposes sentences of up to 25 years for whistleblowers and journalists who possess, leak or publish state secrets, or who are engaged in spying.¹⁶¹

4.2.4 Using Criminal Charges to Restrict the (FOE)

Many countries do use criminal charges as a mean for restricting (FOE). The ECHR has warned states from using criminal law to restrict (FOE) only if this is truly necessary.¹⁶² Despite that article 29 of the Uganda constitution guarantees the right to (FOE), the government have been used some of its domestic laws to charge journalists, opposition, political and other activists, and prevent them from activities which are legitimate exercise of the right to (FOE). Currently more than 30 journalists face different charges including: incitement to violence, forgery, the promotion of sectarianism and criminal defamation. All charges related to critical view of government policies or public figures.¹⁶³ A Bolivian journalist has been sentenced to two and a half years in prison on charges of “defamation, libel and spreading insults”.¹⁶⁴

¹⁵⁹The Constitution of the Republic of Rwanda (Adopted on 26 May 2003)

¹⁶⁰The Constitution of South Africa 1997

¹⁶¹Global trends in NGO law, (supra note 157) 7

¹⁶²The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 3

¹⁶³Amnesty International Publications, International Secretariat Peter Benenson House, 'Stifling Dissent: Restrictions on the Right to Freedom of Expression and Peaceful assembly in Uganda' (First published 2011) 9

¹⁶⁴Alice Purkiss, 'Bolivia: Journalist sentenced to prison for defamation' (X Index20 the Voice of Free Expression, March 2012) <<https://www.indexoncensorship.org/tag/bolivia/>> Accessed may 28, 2016

4.2.5 The Use of General Phrases, Vague and Broad Provisions

Lot of laws resort to restrict freedoms through text on general, unobvious and vague phrases that have a wide and unclear meaning, and definition which pave the way to the authority to deal arbitrarily with these rights, and be exploited to restrict public freedoms, including (FOE), laws containing vague, broad and unclear words targeting speech based on its content infringes the (FOE), because such laws grant the government a wide discretionary powers to penalize oppositions who criticize the authority or its policy, and can easily be used in targeting protected speech.¹⁶⁵ Also, such laws or such unclear terms, have a (chilling effect) where inhibit matters of public concern to be discussed and create uncertainty situation regarding what is permissible, which made people steer far clear of any controversial theme for fear that it may be unlawful, even if it is lawful,¹⁶⁶ it implies that, these laws may trap the innocent Because of the lack of fair warning.¹⁶⁷

So the law or regulation must meet standards of clarity and precision to enable people to foresee the consequences of their actions. Unclear and Vague words, which have unobvious scope will not meet the required standard and are therefore not legitimate. For instance: ‘sowing discord in society’ or ‘painting a false image of the State’ would fail the test.¹⁶⁸ As often broadens the interpretation of words such as defamation, libel or slander that touches someone or something which is still in force in most countries represent another threat to (FOE), or may be the government give various reasons in order to ban or censor books and magazine, for example they may say that a particular piece of work is contrary to patriotic interests or effect badly on the national security,¹⁶⁹ Serious issue here is the direct conflict between constitutional provisions and criminal texts, hence, any expansion in the interpretation of such phrases, turned the framework of the right protected under the Constitution to the framework of the offense under the Criminal Code.¹⁷⁰

Indeed such vague terms do not meet international standards and they violated the right to (FOE), and the constitutional courts can play an important role in this regard,

¹⁶⁵Cairo Institute, (supra note 146)

¹⁶⁶ What we do article 19, (supra note 82)

¹⁶⁷The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 2

¹⁶⁸Article 19 Org, (supra note 58)

¹⁶⁹Kaye Stearman, *Freedom of Expression* (Hove East Sussex, 1stedn, wayland LTD 1993)14

¹⁷⁰Mohammad AL-Khader, (supra note 106)71

such as the courts in United States which have ruled clearly the unconstitutionality of any restrictions that formulated vaguely.¹⁷¹

With respect to the meaning and definition of some concepts that provided by ICCPR such as public morality, national security and public order that bear a different meaning and can be interpreted widely, the (HRC) stated that there is no universally applicable standard for what constitutes public morality. A limitation on certain permissive things, for example pornographic material depicting minors, would be an example of a limitation on (FOE) based on public morality,¹⁷² and with respect to the public order, the committee stated: It may in some circumstances and on the basis of maintaining public order, to do, for example, regulating speeches in a particular place. It can examine the issue of contempt of court proceedings in connection with the forms of expression in the light of public order considerations. In line with paragraph 3, it must prove that the procedures and penalties are justified in the context of the Court's exercise of its authority in maintaining the integrity of the proceedings. These proceedings must not be used to restrict the exercise of the legitimate rights of the defense.¹⁷³ And regarding the term of national security, the Johannesburg principles have clearly recognized the illegality of many grounds for protecting national security such as entrenching a particular ideology and protecting the government from embarrassment.¹⁷⁴

There are Laws penalizing speech that undermines certain state interests, while territorial integrity and the military and diplomatic situation of a country may be legitimate state concerns more broadly, a law which prohibits undermining such areas in this way, without more specification, is vague, unclear and may be used to impair (FOE) and target legitimate political criticism.¹⁷⁵

Examples of laws containing vague terms; Algerian Media Law 15 January 2012, bans the media coverage in vague definition areas, including "when the news affecting foreign and economic interests of the country's politics," and "when the

¹⁷¹ Peter Vallentyne, 'Freedom of Expression, Hate Speech, and Censorship' [April 6, 2013] VCU 1, 1

¹⁷² Fayazuddin Ahmad, (supranote98)

¹⁷³ Human Rights Committee, (supra note 144)

¹⁷⁴ Katharine Larsen' Julia C. Atcherley, 'Freedom of Expression-Based Restrictions on the Prosecution of Journalists under State Secrets Laws: A Comparative Analysis' VOL. 5, NO. 1 J. INT'L MEDIA & ENTERTAINMENT LAW 49, 354

¹⁷⁵ Cairo Institute, (supra note 146)

news is related to the secret research and judicial investigation. Whereas the "Algeria Constitution in article 41 guaranteed the right to (FOE), association and meeting,¹⁷⁶ and with respect to the broadening of the definitions and meaning, the Hong Kong Bar Association HKBA criticized the definition of obscenity and indecency which has provided by the "COIAO"¹⁷⁷ in section 2(2) and (3) because it gave a meaning wider than the natural meaning of "obscenity" and "indecency"¹⁷⁸.

4.2.6 Anti-Terrorism Law

Media's ability in performing its function has faced new challenges with emergence the anti-terrorism legislation and efforts since 2001.¹⁷⁹ Days after September 11, 2001 attacks, the US Congress passed a hurry, "the authorization to use force" law, many other measures,¹⁸⁰ and there were abuses of power; such as Warrantless Wiretapping Torture, Kidnapping and the Growing Surveillance Society,¹⁸¹ that violate (FOE). Despite of there are support for free speech, many people and elected representatives continue in supporting restrictions on speech that they consider offensive, such as ideology in schools and burning the flag.¹⁸²

Nearly all European countries enacted new laws in that period. This legislation resulted in new restrictions which affected on the ability of the journalists in gathering information¹⁸³. In the context of the European legal tradition, the prohibition of speech that contains incitement of terrorism is not illegitimate restrictions on free speech.¹⁸⁴

¹⁷⁶Constitution of the Democratic Republic of Algeria 1989 (Amended by the constitutional revision of 1996)

¹⁷⁷Control of Obscene and Indecent Articles Ordinance

¹⁷⁸Submission of the Hong Kong Bar Association, 'Consultation Document on Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016' 2<<http://hkba.org/whatsnew/misc/2-HKBA-ConstDev%20Submission%20final.pdf>> Accessed may 28, 2016

¹⁷⁹David Banisar, *speaking of terror A survey of the effects of counter-terrorism legislation on freedom of the media in Europe* (Media and Information Society Division, Directorate General of Human Rights and Legal Affairs, Council of Europe. November 2008) 3

¹⁸⁰Al Jazeera Net, (supra note 9)

¹⁸¹Abdus-Sattar Ghazali,(supra note 10)

¹⁸²Donna Leinwand, 'Final Speech' (USA

TODAY)<<http://usatoday30.usatoday.com/educate/firstamendment/finalspeech.pdf>> Accessed may 28, 2016

¹⁸³David Banisar, (supra note 179) 13

¹⁸⁴Convention on the Prevention of Terrorism, Council of Europe (May 16, 2005) C.E.T.S. 1966

Though the international law is not contain legally binding obligations to prohibit incitement to terrorism, according to the main bodies of United Nations the incitement to terrorism should be prevented and prohibited,¹⁸⁵ but these should be in such way that is not undermining the right to free speech. And because of the broad scope of their counter-terror laws – in particular those that have been ‘toughened up’ in the years since 2001, the (HRC) regularly criticizes states.¹⁸⁶

Indeed, often these laws undermine the Sources protections and journalist's rights, the authorities have been given wide powers to conduct surveillance, and other legislations facilitated the conducting of surveillance by imposing technical and administrative requirements on keeping information.¹⁸⁷

Due to such laws the right to (FOE) faces significant challenges, the most important is the creation of new crimes for speech such as "encourage" either directly or indirectly, glorification for terrorism. Other speech that is critical of symbols and national institutions has been prohibited by some countries.¹⁸⁸ As the UK's anti terrorism act 2000, 14 which is defined terrorism in a way that is vague and excessively broad in its reach, it criminalizes not only acts that are widely understood to be terrorist in nature, but also demonstrations and lawful gatherings, and other behaviors that, while unlawful, cannot be considered as terrorism.¹⁸⁹ The law contained some vague terms that can harm (FOE) such as “glorification” and “justification” “Encouragement” and “inducement” “indirect encouragement or other inducement” such terms can be used in prohibiting or criminalizing lawful statements.¹⁹⁰

According to Ethiopian Anti-Terrorism Proclamation 2009, which sentences with rigorous imprisonment from fifteen years to life or with death, for the terrorist acts which include; “disruption of any public service”, “damage to natural resources, environment, historical or cultural heritages” or “serious damage to property”. According to a leading observer of human rights in Ethiopia, since adoption of the

¹⁸⁵Daphne Barak-Erez' David Scharia, 'Freedom of Speech, Support for Terrorism, and the Challenge of Global Constitutional Law' [2011] President and Fellows of Harvard College 1, 23

¹⁸⁶The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 5

¹⁸⁷David Banisar. (supra note 179) 5

¹⁸⁸David Banisar. (supra note 179) 19

¹⁸⁹The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 4

¹⁹⁰The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 7

law in 2009, politically motivated prosecutions under the law has been decimated the independent media. The law was used to convict journalists and bloggers who criticizing the government, of participating in a terrorist organization and conspiracy to commit terrorist acts.¹⁹¹ Whereas, Ethiopia constitution in article 29, has adopted the international standards regarding (FOE), impart, receive, information and idea, and prohibited any form of the censorship and guaranteed the right to association.¹⁹²

Such vague and unclear terms paved the way for authorities in interfering with the right to (FOE) arbitrarily, the (HRC) in general comment number 30 stated: the states parties should guaranteed the compatibility of anti- terrorism measures with paragraph 3. such crimes as “extremist activity”, “encouragement of terrorism”, “justifying”, “praising” or “glorifying”, should be given clear definition for insuring that they don't lead to unnecessary or disproportionate interference with the right to (FOE), also they must avoid from imposing excessive restrictions¹⁹³. Vague and broad terms such as; induce, encourage, provoke, glorify and foster must to be abandoned and replaced by internationally accepted terms such as "incite".¹⁹⁴ And even the term of "incite" the states have to define it clearly, in 2007 the Committee of Ministers of the Council of Europe stated that "vague concepts" such as "incitement" should be clearly defined and should not be used to restrict the (FOE).¹⁹⁵

4.2.7 Legislations for Regulating the Media

There are many attempts by governments to control the media and to reduce its ability in influencing public opinion by using laws, by adopting legislation creating oversight commissions, regulatory boards and other means of media control.¹⁹⁶

Despite that Burundi's Constitution of 2005, in article 31&32 guaranteed the freedom of opinion, thought, conscience, expression, religion, assembly and association. In 2013 a media law passed in Burundi that restricts journalists from reporting on certain matters, such as topics that have an impact on the Burundi's " national unity" public order" honor, morality, human dignity, and the privacy of individuals, also

¹⁹¹Global trends in NGO law, (supra note 157) 10

¹⁹²The constitution of Ethiopia 1994, article 29

¹⁹³Human Rights Committee, (supra note 144)

¹⁹⁴The Impact of UK Anti-Terror Laws on Freedom of Expression, (supra note 14) 9

¹⁹⁵David Banisar. (supra note 179) 5

¹⁹⁶Global trends in NGO Law, (supra note 157) 12

another matters involving" propaganda or the enemy of Burundian nation in times of peace as war and information that could have an impact on the credit of the state and the national economy. Journalists should possess university degrees in order to be allowed to work in press and a minimum of 2 years experience, and large fines for violators ranging between 2000 and 6000 \$.¹⁹⁷

4.2.8 Joint Liability in Publishing Crimes

Another unreasonable interference with the right to (FOE) is the joint liability in the offences of publication. Many of the legal provisions restricting (FOE) and the press go to criminalize not only the writer, but also the publisher and editor in chief.¹⁹⁸ The justification of such liability is based on the fact that a newspaper or any other media instruments, considered as a single body, that represent single group or single party, consequently they aims to realize same ends, so any publication represents the whole body, thus the responsibility lay with all members.

Egypt's Constitutional Court ruled for such criminal responsibility " the unconstitutionality of the text of Article 15, paragraph 2, of the Parties Law No. 40 of 1973, which provides that each party has the right to issue one or more newspaper to express its opinions, the Chairman of the Party and the editor of the newspaper are responsible of what is published. The Court in its judgment has emphasized that the criminal justice do not know the assumed criminal responsibility, and therefore the court ruled the unconstitutionality of this text and its abolition because of violating the provisions of Article 66 of the Egyptian constitution, which states; "Personal punishment ".¹⁹⁹

4.2.9 Laws Governing Access to Internet, Information, and Communications Technology

Though the right to universal access to the online has not yet been established as independent human rights under international law, it has been mentioned and guaranteed in a number of documents.²⁰⁰ The (HRC) stated that any restriction on the operation of any internet-based, must be compatible with paragraph 3, otherwise it is

¹⁹⁷ Global trends in NGO Law, (supra note 157) 13

¹⁹⁸ Mohammad AL-Khader, (supra note 106) 82

¹⁹⁹ Mohammad AL-Khader. (supra note 106) 82

²⁰⁰ Article 19 free world centre, (supra note 63) 13

not allowed, it is also inconsistent with paragraph 3 the prohibition of publishing material for the sole cause that it may be critical of the government or its policy.²⁰¹

Indeed, one of the most important principles of the right to access to online is; "net neutrality" it requires equal treatment by the governments and Internet service providers (ISPs) with all traffic and data on the online, without differentiation, irrespective to the nature of the user, sender, type of data, platform, and content. The governments and ISPs are also prohibited from impeding the access to certain applications or services.²⁰²

The state intervention with the internet content increased as a result of increasing the use of online, the right to access to the online has acknowledged by a number of countries laws, either as a basic human rights or as component part to the (FOE), the countries that guarantee the right to access to the online within their laws are, Spain, Greece, Costa Rica, Finland and France.²⁰³ By contrary, there are some countries interfered arbitrarily and violated the right in different ways. For instance, in Asia region generally there are an increase of new enactments and enforcement existing regulation specifically controlling internet activity, for targeting Human Rights activists and journalists who have critical view to the government.²⁰⁴ Thailand, Vietnam and Belarus are the cases in point. In Vietnam, the bloggers and journalists facing a lot of problems, in 2008, a series of decrees were issued by the government which aimed specifically at controlling internet content, such as decree 72, was passed in 2013, which banning the sharing of news on social media.²⁰⁵

Also Belarus is another example in this regard, though the constitution 1994 in article 33 guaranteed (FOE) which include receive and impart information and the freedom of associations, in 2012, ahead of parliamentary elections in September, Belarusians officials started media campaigns against opponents over the internet, where four people were arrested, at least, including two from the group of pro-opposition on Russian social network V Kontakte, overseers were officials on the page "We are tired of this Lukashenka" despite that they were beaten, detained and

²⁰¹Human Rights Committee, (supra note 144) Paragraph 43

²⁰²Article 19 Free world centre, (supra note 63) 14

²⁰³Ibid 13

²⁰⁴Putsata Reang, (supra note 152) 19

²⁰⁵Putsata Reang, (supra note 152)34

their computers confiscated, they were sentenced, one of them five days in jail, and the second, seven days on charges related to disturbing public order, and the other two were released after a lot of interrogations and investigations with respect to their activities on the internet. Also the government hacked a number of online discussion forums, known for their criticism of the president.²⁰⁶

4.2.10 Imposing Onerous Licensing Conditions

Placing onerous conditions for licensing is another mean that is used by governments in restricting (FOE). The (HRC)calls states parties to avoid from imposing onerous licensing conditions and fees on the broadcasting media, and the criteria for application of such conditions must be reasonable, clear, objective, non discriminatory and transparent.²⁰⁷

In Singapore there are unreasonable conditions for licensing, websites must remove any contents that the authority deems objectionable, within 24 hours with any request, also there are requirement to post S\$50,000 (US\$40,000) for ensuring the compliance to the bond.²⁰⁸ Whereas, Singapore Constitution in Article 14 clause 1 guarantees the right to free speech and expression, but it's worth mentioning that the clause 2 of the same article contains vague terms such as; restrictions that considered expedient in the interest of the security, friendly relations with other countries, and protect the privileges of parliament²⁰⁹

Also Ethiopia is another examples in this regard, though the constitution in article 29, has adopted the international standards regarding (FOE) impart receive information and idea, prohibited any form of the censorship and guaranteed the right to association.²¹⁰ There are significant limitations and onerous conditions regarding the press work are imposed by the article 5 of the Ethiopian's new draft press law, according to this law many of categories are not allowed to work in this area such as; anyone who are not Ethiopian citizens or residents, who are less than 18 years old, or

²⁰⁶Global trends in NGO law, (supra note 157) 18

²⁰⁷Human Rights Committee, (supra note 144) Paragraph 39

²⁰⁸ Human Rights Watch, 'Singapore: Licensing Regime Chills News Climate' (June 7, 2013)<<https://www.hrw.org/news/2013/06/07/singapore-licensing-regime-chills-news-climate>> Accessed may 19, 2016

²⁰⁹Constitution of Singapore (Adopted; 16 sep 1963/ status; 24 march)

²¹⁰Constitution of Ethiopia 1994 article 29

who have been suspended from teaching etc.²¹¹ Also the government didn't open the licensing authority until 2002, and only two private FM stations were awarded license by 2006, whereas the 1999 broadcasting proclamation provided for the licensing of private radio broadcasters.²¹²

4.2.11 The Control of the Mass Media

The joint declaration in 2010 about the main challenges to (FOE) in the next decade has stated many forms of media control by governments, such as; the influence of political parties and entities on the public media, where such media became authority mouthpieces instead of serve the public interests, onerous and unreasonable requirements for registering the print media or using or access the online, direct control of the government over licensing or regulation of broadcasters, or oversight of such processes by a non-independent body, controlling or ownership of such media by parties or political leaders, and using laws that penalize criticism of government, such as sedition laws or prohibition of false news.²¹³ Also there are another means that used by government aimed to control the media such as Bureaucratic foot-dragging which can be an effective means to control over the media space, and is often used by the government to withhold licenses from private outlets.²¹⁴

The (HRC) stated that; The State should not impose monopolistic control over the media and should strengthen the plurality of the media. As a result, States Parties shall take appropriate measures consistent with the Covenant, to prevent any inappropriate dominance in the media or prevent the concentration of media groups

²¹¹ ARTICLE 19 Global Campaign for Free Expression, 'The Draft Ethiopian Proclamation Concerning Press Freedom' (June 2003) <<https://www.article19.org/data/files/pdfs/analysis/ethiopia-updated-media-law.pdf>> access may 21, 2016.

²¹² AFREEDOM HOUSE SPECIAL REPORT, 'License to Censor the use of Media Regulation to Restrict press' (September 2011) 7 https://www.freedomhouse.org/sites/default/files/inline_images/License%20to%20Censor%20-%20Media%20Regulation%20Report > Accessed may 19, 2016

²¹³ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and The African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Having met in Washington with the assistance of ARTICLE 19, Global Campaign for Free Expression and the Centre for Law and Democracy, 'Ten Key Challenges to Freedom of Expression in the Next Decade 'Tenth Anniversary Joint declaration (2 February 2010)

²¹⁴ AFREEDOM HOUSE SPECIAL REPORT, (supra note 213) 7

owned by the private sector in a monopolistic situation that could harm the diversity of sources and opinions.²¹⁵

In Vietnam, the country owns a huge number of media means, more than seven hundred news agencies, 66 TV and radio stations, more than 850 newspapers and magazines and eighty online newspaper, all of these are strictly controlled by the government,²¹⁶ whereas, Vietnam constitution in article 69 guarantees the free speech and press.²¹⁷

In Cambodia, the country owns a number of media means, the most of them are under the state control, only two of the country's 11 television aren't state-controlled, also the radio stations, and the country owned 160 radio stations only two of them are considered truly independent.²¹⁸ Whereas, Cambodia constitution in article 41 guarantees the right to (FOE), press and publication, but the restrictions for protection "the good traditions of the society" that is provided by the same article is vague and broad.²¹⁹

Also in Philippine, Control of mainstream media by the ruling party leaves little space for neutral news.²²⁰ Media monopolies controlled by political families greatly reduce the space for neutral news and information, particularly around electoral processes.²²¹

4.2.12. Giving the Administrative Wide Power to Restrict and Censor Broadcasting

Many national laws grant discretion to administrative authority in order to place restrictions on (FOE), for instance, in many countries the regulators of broadcasting are granted the power for adopting a binding code of conduct for the broadcast

²¹⁵Human Rights Committee, (supra note 145) Paragraph 40

²¹⁶Putsata Reang, (supra note 152) 32

²¹⁷ Constitution of the Socialist Republic of Vietnam 1992 (As Amended 25 December 2001)

²¹⁸Putsata Reang, (supra note 152) 32

²¹⁹This Constitution of the kingdom of Cambodia, was adopted by the Constitutional Assembly in Phnom Penh on September 21, 1993 at its 2nd Plenary Session

²²⁰Putsata Reang, (supra note 152) 39

²²¹Putsata Reang, (supra note 152) 45

media, also they are granted wide discretionary powers to some extent as to what might be included in such codes.²²²

There are arbitrary directives on content practiced by states: in June 2010 a blanket ban on all media were issued by the High Authority for Broadcasting and Communication (HAAC) in Benin against coverage that could be described as “premature” election campaigning until 15 days prior to the elections.²²³

Such media regulators must be independent from government and political entities to be able to perform their function in good manner and without interference. The (HRC) calls states parties that they should ensure the independency of broadcasting services operation, and such bodies should be funded in a manner that not undermine their independence.²²⁴

Though Malaysian Constitution guarantees the right to (FOE) in article 10, the 1984 printing press and publications law, which amended in 2012, the interior minister has been granted absolute discretion over licensing of printing presses. The Malaysian Communications and Multimedia Commission can instruct websites to remove content, leading Internet users to exercise self-censorship.²²⁵

4.2.13 Censorship on the Media

The (HRC) stated that; given to the evolution of the means of modern mass media, it is necessary to take effective measures to prevent the imposition of censorship on the media.²²⁶

Though, Thai Constitution in section 45 guarantees the right to free speech and opinion. In the same section allowed the censorship on the publications and other mass media when the country is in the state of war or armed conflict,²²⁷ which paved the way to the Legitimize of The "material law" which gives soldiers the

²²²Toby Mendel, (supra note 28) 11

²²³AFREEDOM HOUSE SPECIAL REPORT, (supra note 212) 8

²²⁴Human Rights Committee, (supra note 134) Paragraph 16

²²⁵Putsata Reang, (supra note 152)46

²²⁶Human Rights Committee, (supra note 144) Paragraph 40

²²⁷The constitution of Thailand 2007

power to censor any comments deemed "negative".²²⁸ Recently, there has been an increasing in governmental censorship on internet political message and websites that government deems a threat to national security, also there were another forms of official censorship took place in 2013.²²⁹

Prior censorship has more dangerous, because the publications are suppressed by the authority and nobody has seen, therefore nobody can verify whether the suppression was justified.²³⁰

According to article 13(4) of the American Convention, which is unique regarding the prohibition of prior censorship, the sole aim for permitting prior censorship is for the protection the morality of childhood and adolescence.²³¹

4.3 Conclusion

It is difficult for governments in contemporary society to interfere explicitly in (FOE), so it resort to use laws as mean to justify its interference, where laws became an effective tool for targeting the right to (FOE). For this purpose the governments use many ways; The utilization of constitutional limits into the interference with this right has been abused by the States in such a way that they make the exercise of the right practically impossible, such as using vague and unclear concepts, as we mentioned above many constitutions that have been violated by laws under the name of regulation such as Belarus, Burundi's, Thailand, Tunisian, Rwanda South Africa, and Ethiopia. In other cases may be the constitution itself contains vague terms, for instance; the constitution of Myanmar contains many restriction for protection certain interests, some of them find close parallels under international law, but the others such as "community peace and tranquility" is not legitimate grounds for limiting (FOE), for example the tranquility may be undermined by political criticism, whereas, under international law the political criticism is clearly protected. Such concepts are too broad and vague to some extent and can harm the (FOE).

²²⁸ C TV news, 'Thailand imposes media censorship as military coup begins' (May 22, 2014)<<http://www.ctvnews.ca/world/thailand-imposes-media-censorship-as-military-coup-begins-1.1832916>> accessed may 24, 2016

²²⁹Freedom house, ' freedom of the press 2014- Thailand'<https://freedomhouse.org/report/freedom-press/2014/thailand> Accessed may 25, 2016

²³⁰ <https://www.article19.org/pages/en/censorship-violence-press-freedom-more.html>> Accessed may 25, 2016

²³¹Human rights watch, (supra note 114)

In other cases may the constitution includes provisions violate the freedom of speech explicitly, but such cases are not commonplace in current era, as the Cuban Constitution that though it in article 53 provides that the citizens have the right to free speech, but in the same paragraph has prohibited the private ownership of all kinds of media.

The examples of laws unlawfully interfered and restricted (FOE): Laws governing access to internet, information and communications technology- Joint liability in publishing crimes- Laws regulating the media- Laws preventing extremism and terrorism- The use of general phrases, vague and broad provisions- Using criminal charges to restrict the freedom of press, laws criminalizing national betrayal- Improper language relative to penalization specific categories of content- Laws prohibiting defamation and libel.

CONCLUSION

(FOE) has a great importance in the life of individuals and society as a whole in terms of social, economic, political and cultural aspects. It is one of the essential subjects that the man thoroughly fought for, sacrificed for, and considered it as a symbol of human dignity.

Ronald Dworkin says: "(FOE) clause of the legitimate government; the laws and policies do not be legitimate only if applied through a democratic process, the process cannot be democratic if the government prevent anyone from expressing their beliefs about what ought to be laws and policies, in a democratic state, if I have views on whom represent me politically, I should be allowed to express my opinions, not just put a sign next to the candidate's name in the ballot paper every few years.

The exceptions, limits and restrictions of (FOE) until a few decades ago were determined by national states, consequently scrutinized by the national judicial authority, with no external control. But the situation has changed after emergence international and regional conventions, charters and frameworks, where placed many standards for any interference with the right.

Because of the international nature of (FOE), it has recognized at the international and regional level and regulated under the international law (Human Rights Law).

The right to (FOE) is defined at the international and regional levels, according to article 19 of the ICCPR this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Also it has been defined by (UDHR), (ECHR) and other charters. Generally there are a lot of similarity between those definitions and the article 19 of the ICCPR.

There are many arguments regarding the importance of (FOE) the most important are: The truth argument, which is famously attributed to John Stuart Mill's argument that seeking of truth has a great importance for the development of society. The

argument of self-fulfillment confirms that (FOE) is a vital part of each individual's right to self-development and fulfillment. And according to the argument of democracy, both the aims and scope of freedom of speech must be understood as in service of political democracy.

Despite, that international covenants, charters and declarations at the international and regional level recognized the right to (FOE) as a human fundamental rights, it can be restricted under specific circumstances in certain, narrowly defined ways, these will only be such as are provided by law and are necessary: for respect of the rights or reputations of others and for the protection of national security, of public order or of public health or morals. But in any case the harm to (FOE) should not outweigh the benefit of protected interest. Therefore, there are some speeches are unprotected under international standards and national laws, as hate speech, pornography, obscenity, fighting words and incitement of illegal activity, so the countries have the right to restrict such speeches, but it should be in a manner that not undermine the right to (FOE).

Indeed, it is difficult for governments in contemporary society to interfere explicitly in (FOE), so it resort to use laws as mean to justify its interference, where laws became an effective tool for targeting the right to (FOE). Therefore, the utilization of international limits into the interference with this right has been abused by the States in such a way that they make the exercise of the right practically impossible, and this takes different forms: may be the constitution guaranteed the right to (FOE) but the laws violated it by using vague and unclear concepts, or may be the constitution itself contains vague terms, for instance; the constitution of Myanmar contains many restriction for protection certain interests, some of them find close parallels under international law, but the others such as "community peace and tranquility" is not legitimate grounds for limiting (FOE), for example the tranquility may be undermined by political criticism, whereas, under international law the political criticism is clearly protected. Such concepts are broad and vague, and can harm the (FOE).

Or may the constitution in rare cases contains provisions violate the freedom expression explicitly, as the Cuban Constitution that though it in article 53 provides that the citizens have the right to free speech, but in the same paragraph has prohibited the private ownership of all kinds of media.

Examples of laws unlawfully interfered and restricted (FOE): Laws governing access to internet, information and communications technology- Joint liability in publishing crimes- Laws regulating the media- Laws preventing extremism and terrorism- The use of general phrases, vague and broad provisions- Using criminal charges to restrict the freedom of press, laws criminalizing national betrayal- Improper language relative to penalization specific categories of content- Laws prohibiting defamation and libel etc.

Recommendations

- 1- Work on the unification of laws restricting (FOE) in the world in order to prevent governments from abusing their powers in enacting the laws regulating (FOE), the development of uniform standards where applicable to all States without exception.
- 2- Give a clear definition to some terms that carry wide meanings and can be interpreted in different way, such as public order, national security, and public morals.
 - Another terms such as (induce, provoke, glorify, foster, glorification, justification, sowing discord in society, and painting a false image of the State etc), are vague, unobvious and can harm (FOE) so they need to be prohibited, or even if there is a need to use some of them in special circumstances, they have to be defined and interpreted narrowly and clearly by the law.
 - The list of restrictions must be limited to, not for example, to prevent authorities from adding new crimes.
- 3- The constitutions must explicitly provide that any regulation have not to jeopardizes the right, and must met the international standards.
- 4- The need to develop and support civil society organizations and other international organizations that defend human rights and (FOE).
- 5- Whenever the people's cultural level has increased, the government will be more fear of people's reaction, so it is important to work on the development of the educate

level of the peoples and disseminating the concepts of rights and freedoms to enable the individuals to be more knowledge of their rights.

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