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Helen Jasper

Keegan James

Marco Guzman

Arturo J. Carrillo

George Washington University Law School, acarrillo@law.gwu.edu

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***He Who Dares Not Offend Cannot Be Honest:*¹ United Nations Human Rights Committee Jurisprudence and Defamation Laws Under the ICCPR**

Authors: Helen Jasper, Keegan James, Marco Guzman, & Arturo J. Carrillo

I. Introduction

Despite a global trend towards decriminalization,² 160 countries still have criminal defamation laws on the books.³ These laws purport to take aim at disinformation, misinformation, cybercrime, or hate speech, but they often contain overly vague language or disproportionate punishments that have negative implications for media freedom and threaten online freedom of expression generally. Similar laws exist in countries as diverse as Japan,⁴ Italy,⁵ Canada,⁶ and Thailand,⁷ among others. Such strict regulations persist despite jurisprudence from the United Nations Human Rights Committee, an authoritative body of international experts, which has evaluated this kind of state practice and suggested clear standards to apply to criminal defamation laws. In Pakistan, not only do criminal defamation laws persist on paper and practice; they have also been the subject of multiple attempts to expand their scope and penalty.

For example, in 2021, a bill proposed up to a two-year imprisonment and Rs500,000 (about USD \$1900) fine for ridiculing the armed forces.⁸ In 2022, President Arif Alvi promulgated an amendment to the Prevention of Electronic Crimes Act (“PECA”) that increased criminal penalties, broadened the scope of speech subject to regulation by PECA, extended coverage of the application to non-natural persons, and relaxed standing requirements, permitting third parties to file complaints on behalf of public officials/institutions.⁹ Even prior to such serious expansion through the ordinance, the criminal defamation regime was used to silence political dissenters and media figures.¹⁰ Although the Islamabad High Court struck down the 2022 ordinance and a portion from the 2016 version of the law pertaining to criminal defamation, Sections 499 and 500 of the Pakistan Penal Code remain on the books. After disagreement among Pakistan’s high courts,¹¹ the Supreme Court of Pakistan will consider the constitutionality of these provision.¹² Even more troublesome, on February 7, 2023, the Federal Cabinet of Pakistan formed a committee to review the Criminal Laws (Amendment) Act, 2023, which would amend existing criminal defamation laws in Pakistan to punish defamation of the army and judiciary with up to five-year imprisonment and a Rs1,000,000 (about USD \$3800) fine.¹³

Keeping in mind the case of digital speech in Pakistan and other countries, this paper focuses on United Nations Human Rights Committee (“the HRC or Committee”) jurisprudence addressing the legality of defamation laws under the International Covenant on Civil and Political Rights (“ICCPR”).¹⁴ Part II presents an overview of the treaty’s framework for interpreting Article 19, which protects the right to freedom of opinion and expression. It identifies recognized restrictions of Article 19, including by means of defamation laws. Part III then analyzes the HRC’s relevant jurisprudence to determine how Article 19’s normative framework has been interpreted and applied in practice. It focuses on the application of Article 19(3)’s balancing test for resolving conflicts of rights, and how that test is deployed by Committee to determine when limits imposed by States on the right to freedom of expression are permissible under the ICCPR. The article concludes with the authors’ observations on how the HRC’s jurisprudence might serve as a framework for evaluating defamation laws in the digital arena moving forward.

II. Article 19 Framework

Article 19 of the ICCPR preserves the dual rights to freedom of opinion and expression by outlining the extent of the rights and potential limitations across three paragraphs.¹⁵ The second and third paragraphs provide the fundamental elements for analyzing criminal defamation laws. Below, this article will take each paragraph in turn, supplemented by the Human Rights Committee's explanations in its General Comment 34, to track the general contours of (1) the right to freedom of expression and (2) the ICCPR's exceptions regime.

A. Fundamentals: Who, What, and Where?

ICCPR Article 19(2) protects sharing “ideas of all kinds ... orally, in writing or in print, in the form of art, or through any other media[.]”¹⁶ The Covenant broadly protects expression because it is “essential for any society” and necessary to ensure transparency, accountability, and the promotion of human rights generally.¹⁷ Because expression is integral to achieving other human rights, States' responsibilities are not limited to State institutions; States must also “ensure that persons are protected from any acts by private persons or entities” which would harm the right to freedom of expression.¹⁸ In other words, States must ensure that free public discourse is possible by preventing acts, private or public, designed to chill free expression. The ICCPR, therefore, protects expression from intrusion by a broad range of actors.

Article 19(2) protects “all forms of expression,” which includes various digital platforms as well as traditional written and oral expression.¹⁹ Therefore, State policies that target electronic, internet, and digital means of expression must also strictly conform to with the exceptions regime of Article 19(3); otherwise, such policy would breach the fundamental rights of Article 19.²⁰ The protection also encompasses a broad range of subjects. “Expression” includes “every form of idea,” ranging from political affairs and journalism to artistic and educational expression.²¹ In addressing journalism, the HRC notes that journalistic expression is not limited to a cadre of professionals.²² Instead, it tends to emphasize that journalism focuses on communicating information in the public interest or of public concern.²³ Nonetheless, the ICCPR's protections are not limitless; Article 20 specifically prohibits incitement to “discrimination, hostility or violence.”²⁴ Moreover, Article 19(2) is subject to reasonable exceptions under Article 19(3) as discussed below.

B. State Authority to Restrict Expression

Naturally, freedom of expression has its limits, as demonstrated by the tension between freedom of expression and the prohibition on incitement to discrimination, hostility, or violence. To reconcile this tension, Article 19(3) provides a method to lawfully restrict the freedom of expression.²⁵ The test essentially has two stages. First, any restriction must be in pursuit of a legitimate state interest and be lawfully created. If these two conditions are met, the restriction must meet a balancing test which weighs the legitimate state interest against the intrusion into the freedom of expression. Restrictions whose effect on the right are not both necessary and proportionate violate the ICCPR.²⁶

1. Legitimate State Interest

ICCPR Article 19(3) enumerates the limited reasons for which a State may restrict freedom of expression: (1) the protection of rights or reputations of others, or (2) the protection of national security, public order, or public health or morals.²⁷ The first such option is straightforward – a State may lawfully restrict expression in order to meet its other obligations, such as protecting individuals from “unlawful attacks on their reputation.”²⁸ In addition to the rights enshrined in the ICCPR, a State may invoke a right arising from other conventions to satisfy this requirement of any restriction on freedom of expression.²⁹

With regard to the protection of national security, public health, and public morals, States must take extreme care to ensure that restrictions made in the name of these aims are crafted and applied in a manner that conforms to the strict requirements of the exceptions regime. States may not, for example, invoke laws regarding treason or state secrets to prevent discussion of information “of legitimate public interest” which is not related to national security.³⁰ Similarly, restrictions which prosecute journalists or activists for disseminating such information are incompatible with Article 19(3).³¹ Considerations of public morality must respect the plurality of traditions that define morality. Consequently, restrictions which rely on a single tradition would violate Article 19(3) because they undermine the notion that human rights are accessible to all regardless of religious or philosophical identity.³²

2. Provided by Law

In addition to pursuing a legitimate aim, restrictions must also be “provided by law,”³³ meaning that they must arise through legislative or legitimate rule-making processes.³⁴ Moreover, such restriction must be publicly available and sufficiently clear that an individual can understand the law and act accordingly.³⁵ The application of that law must not grant excessive discretion to the executor, whether that is police, prosecutors or the courts.³⁶ Restrictions in this regard that exceed Article 19(3)’s strictures are not lawful.

3. Necessary and Proportionate

Even if restrictions are lawfully created to advance a legitimate state aim, they must also satisfy the principles of necessity and proportionality. To be “necessary,” restrictions must be “directly related to the specific need on which they are predicated.”³⁷ The HRC emphasizes that there must be “a direct and immediate connection between expression and the threat [to the legitimate state aim.]”³⁸ If a state could meet its aim through a means other than restricting freedom of expression, its choice to limit freedom of expression would violate Article 19(3)’s necessity requirement.³⁹ Moreover, where restrictions are actually necessary to achieve the state’s legitimate aim, the restriction chosen must still be proportionate to the legitimate aim.

There are three aspects of proportionality that must guide the decision on the extent of a limitation of the freedom of expression: (1) the chosen restriction must be appropriate to achieve the legitimate aim; (2) the chosen restriction must be the least restrictive among all possible options, and; (3) the chosen restriction’s effect must be proportionate to the interest protected by the legitimate state aim.⁴⁰ To determine the effects of restriction, the state must consider the type of expression and how it is shared; the HRC has interpreted the Covenant to place “particularly high” value on unrestricted public discussion of public and political figures.⁴¹ The HRC considers proportionality not only when the law is created, but also based on the application of that law.⁴²

The principle of proportionality and necessity are further developed in the HRC's jurisprudence as are the elements of legitimate state aim and provided by law. These four elements will be assessed below via relevant cases, as well the substantive areas of political opinion, journalistic expression, and the protection of honor within the context of Article 19.

III. UN Human Rights Committee Jurisprudence on Defamation Laws

Defamation laws— a category that includes proscriptions on libel, slander, calumny, and criminal insult—are a specific type of restriction on the freedom of expression that are generally and theoretically aimed at the protection of the honor and reputation of others. However, defamation laws, especially those incurring criminal penalties, can be used by states to silence political opposition, journalists, human rights defenders, or others in the name of pursuing a legitimate aim.⁴³ The HRC has stated in General Comment 34 that defamation laws “must be crafted with care to ensure that they comply with paragraph 3, and they do not serve, in practice, to stifle freedom of expression.”⁴⁴ This Part will examine the HRC's views on defamation laws first by examining the HRC's application of each step of the Article 19(3) exceptions regime test, before discussing how the HRC evaluates different forms of protected expression against the right to respect for the honor and reputation of others.

A. Operation of ICCPR's Article 19(3) Exceptions Regime in Practice

1. Legitimate State Aim

Under Article 19(3), restrictions on expression must be created only in the pursuit of legitimate aims. The only acceptable legitimate state aims under the exceptions regime are ensuring the respect for the rights and reputations of others and providing for the protection of national security, public order, and public health or morals.⁴⁵ Definitionally, defamation laws are intended to protect the right to honor and reputation, but they may also pursue other legitimate aims as well. In the case of *Eglė Kusaitė v. Lithuania*, the HRC considered whether a fine and criminal proceedings were lawful restrictions under Article 19(3).⁴⁶ In *Kusaitė*, the author alleged during her criminal proceedings that the prosecutors “commits (sic) crimes ... kill people... [and] are criminals.”⁴⁷ Although it ultimately decided that further prosecution and detention were disproportionate to the Kusaitė's statements, the HRC also distinguished the purpose of the restrictions from merely protection public officials' reputations. Instead, the restriction in this case was more like contempt of court because it sought to protect the administration of public order by preserving the necessary public confidence in public prosecutors.⁴⁸ Accordingly, for the purpose of its analysis of defamation laws, the HRC considers the protection of public order to include the maintenance of judicial integrity and public trust in the administration of justice.

2. Provided by Law

As a baseline, to be “provided by law” within the meaning of Article 19(3), defamation laws must be enacted or arise through legislative or legitimate rule-making processes and such restriction must be publicly available and sufficiently clear that an individual can understand the law and act accordingly.⁴⁹ In its jurisprudence, the HRC has expanded the definition of “provided by law” to include rules arising from judicial interpretation. In *Kusaitė*, the parties could not agree whether prosecutors were included in the definition of civil servants for the purposes of Article 290. The Supreme Court of Lithuania found that excluding prosecutors from protection

afforded to civil servants would be contrary to Lithuanian and European Court of Human Rights jurisprudence.⁵⁰ The HRC found that because the Supreme Court of Lithuania had made this determination, the inclusion of prosecutors under Article 290 was sufficiently provided by law. In the HRC's view, the principle of legality is not violated where a law has a reasonable ambiguity which the judiciary reasonably resolves. However, where an evaluation is arbitrary or amounts to a manifest error or denial of justice, the rule may still violate the principle of legality.⁵¹

3. Necessary and Proportionate

Defamation laws are only “necessary” insofar as they are directly related to whatever legitimate aim they are being created to pursue.⁵² In *Pavel Kozlov v. Belarus*, the petitioner was fined for sending “derogatory and humiliating” criticisms by letter to different government agencies.⁵³ In reviewing the merits of this case, the HRC reiterated that:

*“to meet the test of necessity any restriction on the right to freedom of expression which seeks to protect the reputation of others must be shown to be appropriate to achieve its protective function; must be the least intrusive instrument among those which might achieve their protective function; and must be proportionate to the interest to be protected.”*⁵⁴

In *Kozlov*, the HRC resolved that, although the letters included rude statements about civil servants, it was primarily aimed at sharing a matter of public interest – mismanagement of a public company.⁵⁵ Moreover, because Kozlov had only sent the letter privately to the Minister of Finance, rather than publish it publicly, there was little state interest in protecting the subject from reputational harm.⁵⁶ Because the state interest was substantially lower than the intrusion on the right of expression, the HRC decided that the restrictions were not “proportionate.”⁵⁷

The HRC pays close attention to the specific circumstances when weighing whether a specific restriction is necessary and proportionate, including the type of expression, the situation in which it was made, and the effect of the restriction on the individual. This tendency is also demonstrated in *Kusaitė*, where, the HRC found that fines and criminal proceedings were not proportionate, because Kusaitė's statements were vaguely negative statements made about the prosecutors made as a spontaneous reaction in a highly stressful situation.⁵⁸ The HRC also expanded its consideration of proportionality to include whether the imposition “could amount to an excessive burden” in light of the age and employment status of the individual under threat of penalty.⁵⁹ As a result of these considerations, the restrictions were not necessary and proportionate.

Furthermore, in determining whether a particular restriction is necessary and proportionate to an offending expression, the HRC considers the veracity of a statement to increase the value of protecting such expression and minimize the state interest in restricting the same statements. In *Zeljko Bodrožić v. Serbia and Montenegro*, the HRC evaluated whether a conviction of criminal insult was a necessary restriction on speech when the insulting speech was factually true and directed at a public figure by a journalist.⁶⁰ Although the domestic court found that the use of “sarcasm” was intended to “cause derision and belittling,” the HRC concluded that the restriction on expression imposed by the criminal insult statute was not necessary.⁶¹ In essence, the veracity of Bodrožić's statement vitiated any state interest in this particular case,

because the State cannot have an interest in protecting someone's reputation from truthful statements. Thus, the truthfulness of an expression minimizes the legitimacy of imposing restrictions on that specific expression.

One example of a penalty for defamation that is never necessary or proportionate is imprisonment.⁶² The HRC confirmed this view in *Alexander Adonis v. The Philippines*, a case in which a radio broadcaster in the Philippines faced imprisonment and substantial fines related to charges of libel for reporting on the alleged extramarital affair of an anonymous member of the Filipino Congress.⁶³ Recalling that "imprisonment is never an appropriate penalty" for criminal defamation,⁶⁴ the HRC decided that the imprisonment of the author was inherently violative of the ICCPR.⁶⁵ Similarly, in the case of *Lydia Cacho Ribeiro v. Mexico*, which involved the detention, torture, and ill-treatment of a journalist and human rights defender on charges of calumny and defamation following the publication of a book about a child sexual exploitation ring,⁶⁶ the HRC stated that "no detention based on charges of defamation may ever be considered either necessary or proportionate."⁶⁷ Thus, in the HRC's view, imprisonment for defamation is never permissible.

Beyond imprisonment, the HRC does not outright condemn criminal sanctions for defamation. However, it notes in *Adonis* that criminal proceedings and penalties should only be pursued in the most serious of cases.⁶⁸ Additionally, states should avoid excessively punitive measures and penalties in civil or criminal proceedings. In *Kusaité*, the HRC found that, when her age and economic status were considered, the imposition of even a minor fine could be considered disproportionate.⁶⁹ The HRC also found that, considering the fact that her statements were made spontaneously in the context of another criminal trial that she had been made to undergo, requiring her to go through further criminal proceedings was a disproportionate penalty in and of itself.⁷⁰

Very high civil fines may also be disproportionate. In *Lukpan Akhmedyarov v. Kazakhstan*, a journalist and a human rights activist faced several defamation suits after he published an article in the *Uralskaya Nedelya* newspaper about the family ties of several public officials serving in local executive bodies.⁷¹ Ultimately, the court found that the article contained false information and damaged the public official's reputation.⁷² The information in the article was judged as false because the author refused to disclose the name of his source for the information about the public official.⁷³ Akhmedyarov and his publication *Uralskaya Nedelya* were jointly ordered to pay more than 5 million tenge (approximately 33,000 USD) for moral damage and court costs.⁷⁴

The HRC found that this fine was a disproportionate penalty because, in assigning the fine, the court had failed to take into consideration the fact that Akhmedyarov's article commented on public figures and on matters of public interest.⁷⁵ Further, care should be taken "to avoid penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice."⁷⁶ The HRC also found that, "[w]here relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party."⁷⁷

To avoid being disproportionate, penalties should therefore be assigned according to context, with significant weight being given to speech that is in the public interest or is a part of the public debate in a democratic society. Very high civil fines should not be imposed if the

insulting speech in question contributes to the public discourse. Fines generally should not be unduly burdensome and there should be reasonable limits on compensating the plaintiff for court costs and lawyer fees. Defamation laws may be deemed disproportionate if defenses like the fact their statements are true are not available to the defendant or are not considered by the court.

B. Balancing Rights

1. Political Speech

If context is important for evaluating the necessity and proportionality of restrictions on expression, then so is the actual content of the speech. The HRC grants considerable weight to speech that takes place as a part of public debate in a democratic society, relates to figures in the political domain, or concerns a matter of public interest. Although the language in Kozlov's letters to the state official, mentioned in Section A(3) above, for example, was abusive and insulting, his critiques were aimed at the alleged irresponsible management of a State-owned insurance company. The HRC observed that "[s]ince the company was owned by the State party, the critique of the perceived lack of responsibility and monitoring of the company was a matter of public interest."⁷⁸ The HRC found in *Bodrožić*, where the author politically criticized several individuals, including a previously prominent member of the Socialist Party of Serbia., that the author's expression should not have been restricted because the plaintiff was a public figure and, therefore, open to criticism.⁷⁹

According to the HRC in *Bodrožić*, "in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high."⁸⁰ Situations do not have to directly relate to politics or public officials in order to be given greater weight by the HRC when evaluating the necessity and proportionality of defamation laws. In *Kusaite*, the subjects of *Kusaite's* criticism were granted greater protections than public officials; however, because her comments could contribute to public discussion of a matter of public interest, they were owed greater protection against restriction. As a result, the restrictions imposed were neither necessary nor proportionate.⁸¹ Consequently, speech that takes place as a part of public debate in a democratic society, concerns figures in the political domain, or concerns a matter of public interest should only be restricted rarely, where the State interest is truly significant.

2. Journalistic Expression and the Right to Impart Information

The HRC emphasizes that a free and uncensored press is of critical importance for the protection of freedom of opinion and expression, as well as other rights under the ICCPR. Accordingly, the HRC places high value on the media's ability to comment on public issues and impart information, as well as the public's right to receive information. The HRC also notes that as a part of the right to freedom of expression, the limited journalistic privilege not to reveal information sources ought to be protected.⁸² Journalists are frequently targeted in free speech disputes, as can be found in the numerous examples throughout this paper. Additionally, imparting information has been a nested topic addressed by the HRC.

In the case of *Kouider Kerrouche v. Algeria*, the author, Kerrouche, reported numerous criminal violations by supervisor at work.⁸³ After learning that the case was not going to be pursued due to apparent corruption, Kerrouche wrote a letter to the President of Algeria detailing

the various abuses and corruption that he witnessed. After the letter was also forwarded to a chief prosecutor in his region.⁸⁴ The prosecutor brought charges against Kerrouche for imparting information that was derogatory towards public officials. The HRC looked unfavorably on the actions of the prosecutor because Kerrouche was punished for imparting information in his letter regarding the corruption of officials without any discernable, defensible state interest.⁸⁵ The HRC found this to be an inappropriate restriction of Kerrouche's right to freedom of expression.⁸⁶

3. Honor and Reputation

The HRC considers the protection of individuals' right to protection of their honor and reputation to be a legitimate state aim. However, this right is weaker for public officials and politicians, whom the HRC describes as being naturally subject to criticism and opposition. In the case of *Rafael Marques de Morais v. Angola*, de Morais, wrote a series of articles in the independent journal *Agora* that were critical of the Angolan president and administration.⁸⁷ He was subsequently arrested for defamation and slander against the President of Angola. De Morais was convicted under the Press Laws and criminal codes of Angola and imprisoned for six months while also being fined.⁸⁸

The Angolan government argued that the charges and subsequent penalties against de Morais were both lawfully executed and were made in the name of protecting the honor and reputation of the President. While the HRC assumed without deciding that Angola was pursuing a legitimate aim in protecting the honor of the President, the HRC ultimately found that the laws establishing imprisonment were neither necessary nor proportionate to achieve the stated aim.⁸⁹ Furthermore, given the importance of the right to freedom of expression and of free press and the media in a democracy, the HRC considered the State had limited interests in restricting de Morais's expression, since his criticisms were aimed at the President – a public figure subject to criticism and opposition.⁹⁰

The HRC has concluded that imprisonment is never a proportionate restriction of the freedom of expression in cases seeking to protect the rights and reputations of individuals. Similarly, defamation laws might violate the principle of proportionality where they do not limit the damages awarded or where damages do not consider the defense of truth or other mitigating factors. Moreover, the substantial value of public discussion of political concerns militates against strict protection of the reputation of public officials, although some apolitical officials, such as judges and prosecutors, might enjoy greater protection from defamation by virtue of their role in maintaining the public confidence in legal institutions.

Concluding Observations

The HRC's jurisprudence highlights several interpretative approaches that are important for the general application of ICCPR principles to contemporary criminal defamation laws and related conduct by governments that have not yet decriminalized their legislation. First, certain kinds of expression enjoy heightened protection, such as that connected to the political opinion of citizens. The HRC in the *Bodrožić* and *Kozlov* cases emphasized this central tenet of Article 19's protections. Similarly, like political speech, the transmission of information to and from journalists and by a free press are highly protected values embedded in the ICCPR given their importance to nourishing democratic dynamics. The *Akhmedyarov* and *Kerrouche* cases illustrate

the HRC's high valuation of the media's ability to comment on public issues and impart information, as well as the public's right to receive information.

Second, the right to honor and reputation are also values expressly protected by the ICCPR, but they like all human rights can be made subject to reasonable limits that advance legitimate state aims, such as those related to advancing the public interest. In the *Kusaité* case, for example, the HRC recognized that government officials who require public trust, like prosecutors, might possess a qualified level of protection under the treaty in this regard. Likewise, the HRC found in *de Morais* case that political figures, especially elected ones, can be subject to truthful criticism and public discourse in line with democratic values in ways that do not unduly impinge on their other rights. In both cases, allowing freedom of expression concerns outweigh those to honor and reputation in limited circumstances was deemed to better advance the public interest.

The HRC also establishes the closes thing to a bright line in its jurisprudence pertaining to punishment. The clearest line drawn is that imprisonment is “never” necessary or proportionate as a punishment for criminal defamation, even when the law is legitimately crafted and otherwise pursues an appropriate aim. Similarly, criminal charges for defamation generally should be applied in only the most extreme cases. Substantial fines are also typically disproportionate, depending on the content, context and target of an expression. In general, defamation laws must conform to the limitations of Article 19(3) and must not serve to stifle freedom of expression in practice.

The foregoing summary of HRC jurisprudence confirms that criticism of one's government is generally protected as part of the right to freedom of expression, and restrictions of that right must be narrowly construed to comply with the ICCPR. It further establishes that countries that impose harsh criminal penalties for defamation are fundamentally out of step with their legal obligations under the ICCPR. The existence of such laws curtailing the communication of political and other protected speech to avoid causing any offense is anathema to a free and democratic society—human rights law guarantees all citizens the right to speak truth to power, even if that truth is unpleasant to hear.

¹ Thomas Paine, Forester's Letter III from *the Pennsylvania Journal*, April 24, 1776, available at <https://www.thomaspaine.org/works/essays/american-revolution/the-forester-s-letters.html>

² Laura Holt, et al., *Decriminalizing Defamation: A Comparative Law Study*, INT'L L. & POL'Y BLOG (Mar. 2022), <https://studentbriefs.law.gwu.edu/ilpb/2022/03/19/decriminalizing-defamation-a-comparative-law-study/>.

³ *Journalism Is a Public Good: World Trends in Freedom of Expression and Media Development, Global Report 2021/2022*, UNESCO (Paris 2022), <https://unesdoc.unesco.org/ark:/48223/pf0000380618?4=null&queryId=df4713bc-6576-4f29-895b-1d77a6d77c40>.

⁴ Mari Yamaguchi, *Japan toughens defamation penalties after wrestler's suicide*, Associated Press News (Jun. 13, 2022), <https://apnews.com/article/sports-business-japan-tokyo-d336fb8fb537de88918e40ea98eed523>.

⁵ *Italy: Defamation laws must be reformed*, Article 19 (Jun. 23, 2021), <https://www.article19.org/resources/italy-decision-of-constitutional-court-on-prison-for-journalists/>.

⁶ *Critics Are Not Criminals: Comparative Study of Criminal Defamation Laws in the Americas*, COMMITTEE TO PROTECT JOURNALISTS (Mar. 2, 2016), https://cpj.org/wp-content/uploads/2016/03/critics_are_not_criminals-english.pdf.

⁷ *Thailand: Criminal law must not be used in defamation cases and to inhibit freedom of expression*, International Commission of Jurists (Feb. 7, 2023), <https://www.icj.org/thailand-the-criminal-law-must-not-be-used-in-defamation-cases-and-to-inhibit-freedom-of-expression/>.

⁸ Kashif Abbasi, *NA panel approves bill against intentional disrespect for forces*, DAWN (Apr. 8, 2021), <https://www.dawn.com/news/1617040>.

⁹ Naveed Siddiqui, *President promulgates ordinance to regulate social media as minister warns against indulging in 'fake news'*, DAWN (Feb. 20, 2022), <https://www.dawn.com/news/1676116>

¹⁰ Farieha Aziz, *Project Peca III: What goes around, comes around*, DAWN (Dec. 16, 2022), <https://www.dawn.com/news/1726162/project-peca-iii-what-goes-around-comes-around>.

¹¹ *See, e.g., Meera Shafi v. Pakistan*, (2022) 2022 LHC (Lahore) 1786, ¶¶37, 46 (Pak.).

¹² SC accepts Meesha Shafi's plea for hearing against PECA ordinance, Dunya News (Jun. 8, 2022), <https://dunyanews.tv/en/Entertainment/655276-SC-accepts-Meesha-Shafi-plea-for-hearing-against-PECA-ordinance>.

¹³ Riazul Haq, *Cabinet committee formed to review bill proposing 5-year jail terms for defamation of army, judiciary*, DAWN (Feb. 7, 2023), <https://www.dawn.com/news/1735853/cabinet-committee-formed-to-review-bill-proposing-5-year-jail-terms-for-defamation-of-army-judiciary>.

¹⁴ International Covenant on Civil and Political Rights, March 23, 1976, TIAS 92-908, 999 U.N.T.S. 171 (hereinafter "ICCPR").

¹⁵ *Id.* at Art. 19.

¹⁶ *Id.* at Art. 19(2).

¹⁷ Human Rights Committee, *General Comment 34*, U.N. Doc CCPR/C/GC/34, paras. 2 – 3 (Sept. 12, 2011), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/453/31/pdf/G1145331.pdf> (hereinafter "General Comment 34").

¹⁸ *Id.* at para. 7.

¹⁹ *Id.* at para. 12.

²⁰ *Id.* at para. 43.

²¹ *Id.* at para. 11.

²² *Id.* at para. 44.

²³ *See, e.g., id.* at para. 47 ("In any event, a public interest in the subject matter ... should be recognized as a defense [to criminal prosecution]"); *id.* at para. 38 ("... all public figures ... are legitimately subject to criticism[.]").

²⁴ ICCPR, *supra* note 6, at Art. 20.

²⁵ *Id.* at Art. 19(3).

²⁶ *General Comment 34*, *supra* note 9, at para. 22.

²⁷ ICCPR, *supra* note 6, at Art. 19(3); *see also General Comment 34*, *supra* note 9, at para. 22 ("Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant.").

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- ²⁸ See ICCPR, *supra* note 6, at Art. 17.
- ²⁹ *General Comment 34*, *supra* note 9, at para. 28.
- ³⁰ *Id.* at para. 30.
- ³¹ *Id.*
- ³² *Id.* at para. 32.
- ³³ ICCPR, *supra* note 6, at Art. 19(3).
- ³⁴ *General Comment 34*, *supra* note 9, at para. 25.
- ³⁵ *Id.*
- ³⁶ *Id.* at paras. 25, 7.
- ³⁷ *Id.* at para. 22.
- ³⁸ *Id.* at para. 35.
- ³⁹ *Id.* at para. 33 (A restriction “violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.”).
- ⁴⁰ *Id.* at para. 34.
- ⁴¹ *Id.*
- ⁴² *Id.*
- ⁴³ For detailed description of Criminal Defamation Laws, *see* Holt, *supra* note 4.
- ⁴⁴ *Id.* at para. 47.
- ⁴⁵ ICCPR, *supra* note 6, at Art. 19(3).
- ⁴⁶ Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2716/2016*, U.N. Doc CCPR/C/126/D/2716/2016, paras. 2.1 – 2.3 (Sept. 24, 2019), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/283/91/pdf/G1928391.pdf> [hereinafter “Eglė Kusaitė v. Lithuania”].
- ⁴⁷ *Id.* at para. 2.1.
- ⁴⁸ *Id.* at para. 8.7.
- ⁴⁹ *General Comment 34*, *supra* note 9, para. 29.
- ⁵⁰ *Eglė Kusaitė v. Lithuania*, *supra* note 37, at para. 8.4.
- ⁵¹ *Id.* at para. 8.5.
- ⁵² *General Comment 34*, *supra* note 9, at para. 22.
- ⁵³ Human Rights Committee, *Views adopted by the Committee at its 111th Session*, U.N. Doc CCPR/C/111/D/1986/2010, paras. 2.4 (Aug. 27, 2014), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/148/58/pdf/G1414858.pdf> [hereinafter “Pavel Kozlov v. Belarus”].
- ⁵⁴ *Id.* at para. 7.6.
- ⁵⁵ *Id.* at para. 7.5.
- ⁵⁶ *Id.* at para. 7.6.
- ⁵⁷ *Id.*
- ⁵⁸ *Eglė Kusaitė v. Lithuania*, *supra* note 37, at para. 8.10.
- ⁵⁹ *Id.*
- ⁶⁰ Human Rights Committee, *Views adopted by the Committee at its 111th Session*, U.N. Doc CCPR/C/85/D/1180/2003, paras. 7.2 (Jan. 23, 2006), available from <https://documents-dds-ny.un.org/doc/UNDOC/DER/G06/401/87/pdf/G0640187.pdf> [hereinafter “Zeljko Bodrožić v. Serbia and Montenegro”].
- ⁶¹ *Id.* at paras. 7.2, 2.2.

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- ⁶² *General Comment 34*, *supra* note 9, at para. 47.
- ⁶³ Human Rights Committee, *Views adopted by the Committee at its 103rd Session*, U.N. Doc CCPR/C/103/D/1815/2008/Rev.1, paras. 2.1 – 2.3 (Apr. 26, 2012), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/422/05/pdf/G1242205.pdf> [hereinafter “Alexander Adonis v. The Philippines”].
- ⁶⁴ *Id.* at para. 7.9; *see also General Comment 34*, *supra* note 9, at para. 47.
- ⁶⁵ *Alexander Adonis v. The Philippines*, *supra* note 54, at para. 7.10.
- ⁶⁶ Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2767/2016*, U.N. Doc CCPR/C/123/D/2767/2016, paras. 2.3 – 2.7 (Aug. 29, 2012), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/262/35/pdf/G1826235.pdf> [hereinafter “Lydia Cacho Ribeiro v. Mexico”].
- ⁶⁷ *Id.* at para. 10.8.
- ⁶⁸ *Alexander Adonis v. The Philippines*, *supra* note 54, at para. 7.9.
- ⁶⁹ *Eglė Kusaitė v. Lithuania*, *supra* note 37, at para. 8.10.
- ⁷⁰ *Id.*
- ⁷¹ Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2535/2015*, U.N. Doc CCPR/C/129/D/2535/2015, paras. 2.2 – 2.4 (Nov. 27, 2020), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/327/83/pdf/G2032783.pdf> [hereinafter “Lukpan Akmedyarov v. Kazakhstan”].
- ⁷² *Id.*
- ⁷³ *Id.* at para. 2.6.
- ⁷⁴ *Id.*
- ⁷⁵ *Id.* at para. 9.9
- ⁷⁶ *Id.* at para. 9.8; *see also General Comment 34*, *supra* note 9, at para. 47.
- ⁷⁷ *Lukpan Akmedyarov v. Kazakhstan*, *supra* note 62, at para. 9.8; *see also General Comment 34*, *supra* note 9, at para. 47.
- ⁷⁸ *Pavel Kozlov v. Belarus*, *supra* note 44, at para. 7.5.
- ⁷⁹ *Zeljko Bodrožić v. Serbia and Montenegro*, *supra* note 51, at paras. 7.2, 2.2.
- ⁸⁰ *Id.* at para. 7.2.
- ⁸¹ *Eglė Kusaitė v. Lithuania*, *supra* note 38, at para. 8.10.
- ⁸² *Lukpan Akmedyarov v. Kazakhstan*, *supra* note 62, at para. 9.7.
- ⁸³ Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2128/2012*, U.N. Doc CCPR/C/118/D/2128/2012, para. 2.4 (Dec. 29, 2016), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/443/15/pdf/G1644315.pdf> [hereinafter “Kouider Kerrouche v. Algeria”].
- ⁸⁴ *Id.* at para. 2.9.
- ⁸⁵ *Id.* at para. 8.8.
- ⁸⁶ *Id.*
- ⁸⁷ Human Rights Committee, *Communication No. 1128/2002*, U.N. Doc CCPR/C/83/D/1128/2002, para. 2.1 (Dec. 29, 2016), available from <https://documents-dds-ny.un.org/doc/UNDOC/DER/G05/411/46/pdf/G0541146.pdf> [hereinafter “Rafael Marques de Morais v. Angola”].

⁸⁸ *Id.* at paras. 2.6 – 2.10.

⁸⁹ *Id.* at para. 6.8.

⁹⁰ *Id.*