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Saint Vincent and the Grenadines: Cybercrime Bill Needs Revision

Saint Vincent and the Grenadines is preparing to pass a Cybercrime Bill which criminalises a wide range of activities including defamation, obtaining information without lawful excuse and cyberbullying. The Centre for Law and Democracy (CLD) recognises the need to address harmful behaviour online, including in some cases through the criminal law, but it is not legitimate to criminalise defamation and the scope of several of the other crimes as defined in the Bill is simply too broad.

"Countries around the world are looking at ways to address harmful content online," said Toby Mendel, Executive Director of CLD. *"Instead of rushing ahead with seriously problematical legislation, Saint Vincent and the Grenadines should build on what we have learned so as to create a more carefully tailored law."*

It is now clear that criminal defamation laws are not consistent with international guarantees of freedom of expression and that penalties of imprisonment for defamation are never legitimate. As the UN Human Rights Committee stated in its 2011 General Comment No. 34, paragraph 47: "*States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty*." There is, furthermore, no need to create a special offence of defamation to cover online speech. Consideration might, however, be given to amending the civil defamation laws, as necessary, so that remedies such as an apology and/or the rights of correction and reply are provided for.

The definition of cyberbullying is far too broad. A far more tailored regime for addressing cyberbullying in the Canadian province of Nova Scotia, which included a similar definition to that found in Saint Vincent and the Grenadines' Cybercrime Bill, was struck down as unconstitutional, with the court describing the definition as being "*a colossal failure*" (*Crouch v. Snell*, 2015 NSSC 340, paragraph 165). The law had been used and abused mainly by adults involved in personal disputes, which had not been the original intention behind adopting it. Proposals to include a crime of disseminating sexually explicit images of another person without their consent (Sexual Harassment by Electronic Communication) could, if carefully prepared (including by removing the reference to "without lawful excuse" – see below – and adding in a public interest defence for appropriate cases), represent a far more tailored way of addressing one of the most serious problems often associated with cyberbullying. These should, therefore, be considered as an alternative to the cyberbullying rules.

Section 7 of the Bill would create an offence of intentionally and without lawful excuse obtaining computer data which is not meant for the individual and which is protected against unauthorised access. Although this might appear to be legitimate, in democracies one does not need a lawful excuse to undertake an activity. Rather, one is free to do anything that is not prohibited by law. As a result, this rule might capture a lot of perfectly innocent browsing activity. This could be substantially narrowed by adding in requirements that the obtaining of the data was illegal or was for an illegal purpose and of intent to use the data for that purpose. Section 11 of the Bill includes an intent requirement along these lines and might be used as a reference for that purpose. Several other sections in the Bill suffer from the same problem of prohibiting activities done "without lawful excuse".

There are also serious problems with the procedural sections of the Bill, many of which grant judges the power to authorise police action on the basis of an *ex parte* application (i.e. in the absence of representation by the affected party) made by a police officer. While *ex parte* applications are justifiable in certain situations (normally characterised by urgency and a high risk of harm), they should be reserved for those situations rather than being employed largely by default as is the case with the Bill. Unduly broad reliance on *ex parte* applications was another reason the Nova Scotian Act referred to above was struck down (see paragraph 158 and preceding). The jurisdictional scope of the Bill is also significantly overbroad, extending, under section 31(1)(d), to acts which take place entirely outside of Saint Vincent and the Grenadines and which are done by individuals who are not citizens.

The Centre for Law and Democracy strongly recommends that the government of Saint Vincent and the Grenadines review the whole of the Cybercrime Bill to assess its compliance with and to amend it to bring it into line with constitutional and international guarantees of freedom of expression. If this was to be undertaken, we would be happy to prepare a detailed analysis of the Bill and to propose alternative language that would strike a more appropriate balance between the need to prevent harmful expressive activity online and the right to freedom of expression.

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