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Written statement* submitted by Association for Progressive Communications, non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language(s) of submission only.



A New Wave of Israeli Legislation Posing Severe Threats to Internet Freedoms

The Association for Progressive Communications (APC) and 7amleh - The Arab Centre for Social Media Advancement submit this statement ahead of the Human Rights Council 40th session to express our grave concern about the dramatic upsurge in the number of laws being put forth by Israeli legislators that violate the right to privacy, freedom of expression and often exhibit racist and discriminatory features.

Several of these laws pertain to internet rights, a sphere in which the Israeli government is increasingly carrying out monitoring and surveillance, and are drafted in such a way that would pave the way for further restrictions on free speech for both Israeli and Palestinian citizens. Whilst supporters of the laws insist that they are necessary for the security of Israel, they often contain clauses that indicate Israel's desire to limit free speech, Palestinian solidarity and other activity that is unfavourable to the government's political agenda. Tens of discriminatory laws have been proposed in very recent years, three of which will be examined below. None of the bills have been passed, but it is expected that they will be re-submitted to Knesset in June, following the elections and coalition building.

The Facebook Bill (January 2017)

In addition to limiting the forms of documentation and accountability, Israel has been unrelenting in its efforts to blame social media corporations for the rise of Palestinian "incitement" online and threaten them with a series of coercive legislation and fines. In order to legislate Israel's control over content on social media, on January 3rd of 2017, the Israeli Knesset approved the first reading of the so-called "Facebook Bill", which would grant Israeli administrative courts the power to block internet content that amounts to online "incitement" at the request of the government.¹ The bill would authorize issuing orders to delete content "if it harmed the human safety, public, economic, state or vital infrastructure safety".² This applies to social media giants such as Facebook, Twitter, YouTube and search engines such as Google, where selected content can be blocked.

The bill advanced to its final reading on Monday 23rd of July 2018 in the Knesset before Prime Minister Netanyahu requested that the law be removed for evaluation out of concern that freedom of expression could be harmed.³ Critics have asserted that the bill would have far ranging implications for the free speech of citizens, primarily Palestinians in the West Bank, Gaza and Israel as the main targets, but also other Israeli citizens, due to the broad and vague definitions of "incitement" and "national security".

The Israeli government's strategy to force social media corporations to comply with its discriminatory laws would include fining Facebook or even blocking the social media giant from operating in the country. This bill exemplifies the influence that powerful governments such as the Israel can exert on private corporations to uphold and drive their political agenda.

¹ Haaretz 'Knesset Gives First Nod to So-called Facebook Bill That Would Allow Court to Censor Internet', January 2017. See at: <https://www.haaretz.com/israel-news/knesset-gives-first-nod-to-so-called-facebook-bill-1.5481292><https://www.haaretz.com/israel-news/knesset-gives-first-nod-to-so-called-facebook-bill-1.5481292>

² Middle East Monitor, *Israel pass Facebook Bill which will authorise deleting content considered incitement*, July 2018. See at: <https://www.middleeastmonitor.com/20180717-israel-pass-facebook-bill-which-will-authorise-deleting-content-considered-incitement/>

³ The Jerusalem Post, *Netanyahu Halts Facebook Bill at Last Minute*, July 2018. <https://www.jpost.com/Israel-News/Netanyahu-halts-Facebook-bill-at-last-minute-562802>

Prohibition Against Photographing and Documenting Israeli Soldiers (May 2018)

Soldiers have often become subject to investigation of conduct due to video footage and photographs which showcases their lethal and excessive actions. One of the most distinguished cases is the conviction of IDF soldier Elor Azaria to a year and a half in prison after documentation of him fatally shooting a Palestinian in the head in 2016 surfaced.

In May 2018, the Israeli Ministerial Committee for Legislation put forward “The Prohibition Against Photographing and Documenting IDF Soldiers”, a bill that would criminalize the filming and photographing of Israeli Defense Forces (IDF) and prohibit the dissemination of the photos or video content containing soldiers on social media networks and mainstream media. The bill stipulates that a five-year prison-term would be enforced against those convicted of “filming, photographing, and/or recording soldiers in the course of their duties, with the intention of undermining the spirit of IDF soldiers and residents of Israel”.⁴

The Israeli defense minister Avigdor Liberman, in upholding the bill, stated that “for many years now, the State of Israel has witnessed a worrying phenomenon of documentation of IDF soldiers” and further declared that organizations and the media often use footage of soldiers’ committing crimes against Palestinians to “harm the State of Israel and its security”.⁵

The proposed bill is therefore not only working to censor or moderate content that showcases IDF operations, but is enforcing a blanket ban on digital documentation of the Israeli government’s treatment of Palestinians. By limiting the forms of accountability, the government is paving the way for the illegal military practices to be protected from criticism and accountability.

Cyber Security and National Cyber Directorate Bill (June 2018)

On 20th of June 2018, the Israeli Prime Minister’s Office published a draft of the “Cyber Security and National Cyber Directorate Bill.” The bill, which was circulated to ministers in Netanyahu’s government in July, represents years of consultation about Israel’s approach to cybersecurity. The Council on Foreign Relations reported that the bill contains two fundamental principles: “(a) the need to develop a new approach to cybersecurity by initiating an unprecedented type of cooperation between government and the private sector; and (b) the need to devote national efforts to improve cyber preparedness and mitigate the fallout from incidents.”⁶

The bill provides the legal basis for the establishment of the Israeli National Cyber Directorate (INCD), which would have increased authority to issue national guidance on cybersecurity matters, and cooperate with other regulators in areas such as finance, health, transport, energy and communications. This hub would be responsible for sharing information amongst government and private sector entities and maintaining a national database of threat indicators, which has already been the subject of much public controversy due to the broader issue of user privacy.

The INCD would have direct accountability to the Prime Minister who defines and prioritizes cyber threats. The unit’s employees, who can be hired without being subject to a formal recruitment process, will be tasked with hacking computers or phones of any person or private organization that is defined as a threat to Israeli cybersecurity. Within 24 hours of identifying a potential threat, the unit would have the authority to access the device and extract data without a court order or judicial process. Moreover, these employees would enjoy

⁴ The Jerusalem Post, Netanyahu Halts Facebook Bill at Last Minute, July 2018.

<https://www.jpost.com/Israel-News/Netanyahu-halts-Facebook-bill-at-last-minute-562802>

⁵ European News, *Israel considering law to ban photographing or filming of IDF soldiers*, May 2018. See at: <http://eunewsweek.com/?p=64762>

⁶ Council on Foreign Relations, *A Look at Israel’s New Draft Cybersecurity Law*, July 2018. <https://www.cfr.org/blog/look-israels-new-draft-cybersecurity-law>

legal impunity and will be protected from being sued or having complaints filed against them.

This represents a crucial turning point in how Israel is dealing with national cybersecurity issues. The INCD would be the national cybersecurity regulator, a task that is usually designated to military or security bodies and whose power would otherwise be constrained by legal obligations. Whilst utilizing practices that violate user privacy and data, such as hacking, has been commonplace when it comes to policing Palestinians, this bill further expands, legitimizes and regulates such practices and enables the government to circumvent legal proceedings under the pretext of fighting cybercrime, setting dangerous precedent for local populations and global standards. It also runs counter to emergent norms on cybersecurity and privacy. Both the Human Rights Council and UN General Assembly have both called on States to refrain from employing unlawful or arbitrary surveillance techniques, including hacking.⁷

Conclusion

Given Israel's position as a global leader in technology, cybersecurity and surveillance, the digital sphere has come to represent another arena in which Israel can expand its political agenda and limit dissent. As these three bills exemplify, the Israeli government is creating a context in which speech is increasingly monitored and controlled by invoking vague terms such as "cyber security" and "cyber threat". This comes at a time when the Israeli government is increasingly concerned with the growing global sympathy for Palestinian human rights and the popularity of the non-violent Boycott Divestment and Sanctions movement, as well as its expanding preoccupation with 'national security'. Legislations such as the above not only grant the government legal jurisdiction to violate user privacy and block and suppress content that is critical of the government, but makes such practices and policies constitutionally mandated.

Recommendations

To the Government of Israel:

- Formalise commitment to ensuring transparency and independent oversight on agreements made with social media companies.
- Commit to respecting the right to privacy online in accordance with Article 7 of The Israeli Basic Law for Human Dignity and Liberty (1992).
- Respect and uphold the rights of freedom of opinion and expression and to privacy under the International Covenant on Civil and Political Rights (ICCPR).
- Formulate a new legal framework or reform existing bills to ensure that legislation is consistent with international standards (the principles of necessity, proportionality, legitimacy, and non-discrimination) regarding data privacy, cybersecurity and freedom of expression.
- Engage in open, inclusive and transparent consultations with stakeholders, including civil society and the technical community, when developing legislation on internet rights.

To the Human Rights Council and UN Special Procedures:

- Continue their monitoring of violations of human rights in the digital sphere and emphasise them in thematic reports, statements, and resolutions.

⁷ Human Rights Council, *The safety of journalists* (A/HRC/RES/39/6), September 2018. http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/39/6 and UN General Assembly, *The right to privacy in the digital age* (A/RES/73/179), December 2018. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/179

- Support States in improving internet policies to ensure that human rights are respected online.

To Civil Society:

- Israeli and Palestinian civil society should document violations of internet rights and incorporate internet and privacy rights issue into their advocacy work.

To Social Media Companies:

- Social media companies, search engines and tech companies should formalize their commitment to the UN Guiding Principles on Business and Human Rights by conducting human rights impact assessments, developing mitigation techniques and action plans to remedy harm.
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7amleh - The Arab Center for Social Media Advancement NGO(s) without consultative status, also share the views expressed in this statement.