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State of Palestine: Alarming attack on Freedom of Expression

The Palestinian authorities in the West Bank and the Hamas de facto administration in the Gaza Strip have launched a repressive clampdown on freedom of expression over recent months, Amnesty International said today.

Since the start of 2017, Palestinian authorities in the West Bank have carried out scores of attacks against journalists and activists, subjecting them to arbitrary arrests, violent interrogations, confiscation of equipment, physical assaults and bans on reporting¹. As internal infighting continues, both authorities in the West Bank and Gaza Strip have used threats and intimidation to suppress reporting and legitimate free expression. In the Gaza Strip, Hamas authorities have subjected at least one activist to torture and other ill-treatment for social media posts critical of their handling of the ongoing electricity crisis.

Symptomatic of the current crackdown on freedom of expression is the Electronic Crimes law (16 of 2017) which was adopted by Palestinian President Mahmoud Abbas by presidential decree in July 2017. Amnesty contends that many articles in this new law – which was drafted and passed without the approval of the Palestinian Legislative Council (PLC), and without consultations with the civil society or the public – breach the State of Palestine’s obligations under the International Covenant on Civil and Political Rights (ICCPR)².

Amnesty international is concerned that the new law is being used as a tool to silence dissenting voices and opposition in the ongoing political conflict between the administrations of the West Bank and Gaza. In at least six recent cases, the detention of journalists was used as a bargaining chip in the rivalry between Fatah and Hamas.

¹ According to MADA, the Palestinian Center for Development and Media Freedoms, the Palestinian authorities in the West Bank are responsible for the majority of violations having committed 81 attack on journalists and media outlets since the start of the year. The Hamas authorities in the Gaza Strip have been responsible for at least 20 such violations between January and July. See MADA Center, “Monthly Reports”, available at www.madacenter.org/reports.php?id=13&lang=2&year=2017

² International Covenant on Civil and Political Rights International Covenant on Civil and Political Rights (ICCPR).

Amnesty International urges the Palestinian authorities to repeal the Electronic Crimes law immediately and ensure that legislation safeguards the right of the Palestinian people to freedom of expression, assembly, and the right to privacy. Amnesty International also urges both the Palestinian authorities in the West Bank and the Hamas de facto administration in the Gaza Strip to cease all intimidation of activists and journalists in their areas of control, and calls on them to release immediately any individuals who have been detained solely for the peaceful exercise of their right to freedom of expression.

Electronic Crimes Law

The Electronic Crimes Law was signed by Palestinian president Mahmoud Abbas on 24 June 2017, and came into force on 9 July after it was published in the official gazette. It violates international law and the State of Palestine's obligations to protect the right to freedom of expression and the right to privacy.

In contravention of legislative norms in Palestine, the Electronic Crimes Law was passed discreetly without consultations with Palestinian civil society organizations or the public³. Several Palestinian civil society organizations expressed their concern⁴ that this law violates the right to freedom of expression under Article 19 and 27 of the Basic Palestinian Law⁵ and have called for the law to be frozen until it is amended.

Amnesty International is concerned that at least ten articles infringe on Palestinians' right to freedom of expression, right to privacy and protection of data. The law imposes heavy fines and permits the arbitrary detention of anyone critical of the authorities online including journalists and whistle-blowers. Moreover, it criminalizes dissent in the cyber sphere.

Article 51 of the law provides for imprisonment and up to 15 years of hard labour in the event a crime online is committed for the purpose of "disturbing public order", "national unity", "social peace" or "contempt of religion". Article 7 imposes prison terms and fines ranging from 1,400USD to 4,200USD on "anyone who receives or intercepts data which is transmitted through the computer network or an information technology device without the explicit right to do so," and would therefore punish whistle-blowers and journalists who use leaked information. This is a contradiction of principle 47 of the Global Principles on National Security and the Right to Information (Tshawane Principles).⁶

³ Since the Palestinian Legislative Council (PLC) was shut down in 2007 following the division between Fatah and Hamas, the Palestinian President has been using presidential decrees to pass laws without the approval of the legislative council.

⁴ See MADA Center, "Electronic crimes law and Media freedoms were discussed", available at www.madacenter.org/news.php?lang=1&id=316&_sm_au_=iVVDR3qwfD23NFfr (accessed 22 August 2017).

⁵ See 2003 Amended Palestinian Basic Law, article 19 and 27, available at: www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law

⁶ See Global Principles on National Security and the Right to Information (Tshawane Principles), Principle 47,

Article 20.1 penalizes anyone who “publishes material that is critical of or endangers the integrity of the state and public order” with at least one year imprisonment and/or a fine of between 1,400USD and 7000USD. This article is open to interpretation and abuse since penalising all expression that is critical of the state, for example, is neither necessary nor proportionate to achieving a legitimate governmental aim. Article 20.2 punishes “any person who propagates news mentioned in article (20.1) by any means, including broadcasting or publishing it” with a maximum of one year in prison and/or a fine of a maximum of 1,400USD. This could seemingly be applied to anyone who shares, likes or retweets news deemed illegal, and could be used against journalists further infringing on their ability to work freely.⁷ The law states that the penalty under this article will be doubled if committed under a state of emergency.

Further, Amnesty International is concerned that articles 16, 21, 22 and 24 punish expression aimed at harming family, racial and religious values without defining what these values are, which is very broad, subjective and allows for abuse. Amnesty International stresses that public morals cannot be derived from a single social or religious tradition, and that these laws must respect the universality of human rights and non-discrimination⁸. Amnesty International reminds the authorities of their responsibility to ensure that freedom of expression, including on topics that may be deemed by some to challenge established social norms and traditions such as LGBTI (lesbian, gay, bisexual, transgender and intersex) rights, will be protected.

Article 31 punishes the use of circumvention technology including VPN’s and proxies to access any banned websites under Article 40⁹ of this law, without setting safeguards for freedom of expression. According to the report¹⁰ by Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression David Kaye, published in 2015, access to VPNs and other tools should be protected and promoted “because such tools may be the only mechanisms for individuals to exercise freedom of opinion and expression securely”.

Amnesty International is further concerned that articles 32 and 33 of the Electronic Crimes Law oblige service providers to “retain information about subscribers for at least three years following “legal proceedings” which are not clarified in the legislation. These articles also obliges the providers to adhere to court requests “to assist and cooperate with

available at: www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf

⁷ See European Court of Human Rights, *Jersyld v. Denmark*, 01 Sep 1994, available at: www.article19.org/resources.php/resource/2456/en/jersild-v.-denmark

⁸ See Human Rights General Comment 34, para 32, available at: www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

⁹ Palestinian Electronic Law, article 20, available at www.amad.ps/ar/Details/181979

¹⁰ See Human Rights Committee, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, A/HRC/29/32*, para. 52, available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32_AEV.doc

the competent authorities in collecting, recording and retaining information and electronic data". Additionally, article 35 allows the magistrate court and the Attorney General to retain material and conduct surveillance on individuals for a period of 15 days, which can be renewed once based on new evidence. This article falls short of identifying effective measures for what type of crimes or charges the prosecutor or the court can order surveillance on an individual or organization for.

In addition, Amnesty International is concerned that the law is not sufficiently clear in defining the conditions and circumstances under which the authorities are empowered to resort to communications surveillance measures. In particular, the law does not set out in sufficient detail the extent and scope, and the manner of exercise, of any discretion granted to the relevant authorities to authorize and implement surveillance. Effective safeguards against abuse have not been set forth in the law. These safeguards should have included the limitations on the nature, scope and duration of the permissible communications surveillance measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, subject to periodic checks by a judicial oversight body, and an accessible remedy process.

Ban on websites

On 12 June 2017 the Palestinian internet service providers in the West Bank received letters from the Palestinian Attorney General Ahmad Barak ordering them to block access to a number of websites. According to Mada Center for Development and Media Freedoms, access to 29 news sites has been blocked in the West Bank since then.¹¹ These websites include sites affiliated with political parties including Hamas, media outlets linked to the opposition and independent media outlets that are critical of the government and Ramallah-based authorities. A petition against the ban is currently pending before the Palestinian High Court.

One of the websites that was banned belongs to Al Quds online network, which is a volunteer-run community online news outlet that has been covering events in Palestine and Israel since 2011. The network is considered to be one of the most prominent media outlets, which young people turn to for independent news. It considers itself to be an alternative voice to state-controlled media and strives to highlight violations by all parties in Palestine. A senior news editor at Al Quds online network, who preferred not to be named, told Amnesty International that the service providers informed him that the website was banned based on an order by the Attorney General, and that he was not shown or given a written copy of the decision. He further stated that he believes that the decision to block the websites was politically-motivated, and was implemented to silence independent voices. He said, "The Palestinian Authority is increasingly authoritarian. They want to control all media outlets to block any voices exposing their crimes and violations".

¹¹ See MADA Center, "Noting the blocking of 29 media sites", 4 July 2017, available at: www.madacenter.org/report.php?lang=2&id=1715&category_id=13&year=2017

Such widespread interference is a violation of Palestine's obligations under Article 19 of the ICCPR. In a letter responding to Amnesty International's enquiry on 8 August 2017, Palestinian Attorney General Ahmad Barak confirmed that the websites were blocked by judicial order issued in due process. He stated that the decision "was based on investigations carried out by the public prosecution against these websites and those who run them for their violation of the applicable laws in Palestine." Article (40) of the Electronic Crimes law enables the Attorney General to block websites that publish "material that may threaten the national security, civil peace, public order or public morals". However, the ban was implemented three weeks before the Electronic Crimes law came into force making it also arbitrary under Palestinian law, and violating Palestinian obligations under the ICCPR. Further, as stated above, the legislation is not sufficiently precise to allow an individual to regulate conduct accordingly, which is the first requirement for a legitimate limitation under article 19 of the ICCPR.¹² In addition these bans are clearly not necessary to achieve the legitimate goal of protecting national security and even if so the extent of the limitation is not proportional to the benefit. Peaceful criticism of a political authority can never justify restrictions on freedom of expression.¹³

The ban came under heavy criticism from Palestinian civil society. The Head of "7amleh" the Arab Center for the Development of Social Media, Nadim Nashif expressed concern at the crackdown on freedom of expression. He told Amnesty International that he feels that the space for freedoms is shrinking, "There is instability, and the Palestinian Authority wants to silence any critical media. We have to fight to protect this space."

Arrests and interrogation under the Electronic Crimes law

In the same letter addressed to Amnesty International, Palestinian Attorney General Ahmad Barak stressed that the Electronic Crimes law would not be used to curb freedom of expression and that any criticism of the "Palestinian government, president, official or political parties will not be penalized under this law". He further noted that the law will only be used to stop "extremely dangerous" publications if "publishing this material will lead to shaking the society and making the pillars of society and the state vulnerable to collapse," which in itself is vague and overly broad, and could be used to criminalize peaceful free expression and dissent.

However, since the law came into force, Palestinian intelligence officials have arrested at least six individuals and charged them with "publishing news that would endanger the integrity of the Palestinian state, the public order or the internal or external security" under article 20.1 of the newly passed Electronic Crimes law.¹⁴ Of those five were journalists whose charges related to using social media websites to spread "harmful

¹² See Article 19, "Limitations", available at: www.article19.org/pages/en/limitations.html (accessed 22 August 2017)

¹³ See Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/32/L.20 available at: www.un.org/ga/search/view_doc.asp?symbol=A/HRC/32/L.20&referer=https://www.google.com/&Lang=E

¹⁴ Palestinian Electronic Law, article 20, available at www.amad.ps/ar/Details/181979

information” and working with Hamas-affiliated media. Those arrested include Ahmad Halayka and Mamdouh Hamamreh from Al Quds satellite channel, reporter Tareq Abu Zayd from Al Aqsa TV, reporter Amer Abu Arafa from Shihab online, and freelance journalist Quttaiba Saleh Qasem. All men were arrested in separate raids on their homes on 8 August, and were subsequently held in Palestinian intelligence detention centres in the West Bank. The court had originally ordered their detention for 15 days, however, following the release of Fouad Jaradeh, a journalist held by Hamas authorities in Gaza (see below), the five men were released on 14 August after paying a bail of USD1,400, and are currently awaiting trial. If convicted, they could face at least one year in prison and a fine up to USD3,500.

Arrests, interrogation and detention of journalists by Palestinian authorities in the West Bank

In June and July, at least ten journalists working in print, radio, TV and online media were summoned by Preventative Security Forces for interrogation in Ramallah in a worrying escalation of the Palestinian authorities’ crackdown on freedom of expression. The journalists were told the summons relates to their criticism of the new Electronic Crimes Law. Addameer Association lawyer Muhannad Karajah who represents many of the journalists said the situation in the past months has been the worst in years. “There is no space for freedoms anymore, the Palestinian authorities in the West Bank are becoming a police state, and they are silencing the people,” he told Amnesty International.

On 6 June 2017 Palestinian journalist Thaher al-Shamali was arrested by the Preventative Security forces from his home in Ramallah. He was detained for 15 days after being charged with “insulting higher authorities and causing strife” in an article he published which was critical of the Palestinian president Mahmoud Abbas¹⁵. He told Amnesty International that he was humiliated and subjected to verbal insults during his interrogation. He also said that, following his release, he was threatened over the phone and warned not to talking to human rights organizations and post opinions critical of the government or officials on Facebook. He is currently awaiting trial. Amnesty International reviewed the charge sheet against him and believes that he was arrested solely for his peaceful freedom of expression.

In a related cases, journalism student Nasser Jaradat was arrested on 7 June for reposting the article that Thaher al-Shamali published, and subsequently held at the Preventative Security forces detention centre in Beitunia, in Ramallah. Amnesty international reviewed his charge sheet and found that he was charged with the same offense as Thaher al-Shamali. He was released after 15 days in detention.

In another case documented by Amnesty International, on 6 July 2017 Jihad Barakat, who works as a reporter for Palestine Today satellite channel, was arrested by the Palestinian Preventive Security forces for taking a picture of the Palestinian Prime Minister’s motorcade being stopped at an Israeli checkpoint east of Tulkarem. Jihad Barakat was charged with a crime that is usually used to harass beggars under article 389 of the

¹⁵ See Rai al-Youm, “Thaher al-Shamali”, 4 June 2017, available at www.raialyoum.com/?p=686603

Jordanian penal law relating to “being found in any property, on any road or public street, or in any other public place, at such time and in such circumstances as to conclude that it exists for an unlawful or improper purpose”¹⁶. Jihad Barakat was released from a Preventative Security detention centre in Ramallah on 9 July.

The following day Amnesty International attended his court hearing in Ramallah district court where Jihad Barakat pleaded not guilty to being present in a “suspicious place”. The judge refused to dismiss the case against him, and the hearing was adjourned until 21 September 2017 to hear witness statements. Jihad Barakat told Amnesty International that he was doing his job as a journalist by taking a picture of a public official being stopped at an Israeli checkpoint, “The charge itself is ridiculous and humiliating. I wasn’t doing anything indecent, I was just doing my job.”

Arrests, interrogations and abductions of journalists and activists by Hamas authorities in the Gaza Strip

In the Gaza Strip, Hamas security forces arrested at least two journalists in June, blocked journalists from reporting in some areas, and restricted the work of a foreign journalist. Twelve Palestinians were questioned and detained by Hamas authorities in July 2017 for comments they made on Facebook¹⁷.

On 13 August, Hamas authorities released Palestine TV’s correspondent Fouad Jaradeh after he spent more than two months in detention. His release came after intelligence officials in the West Bank arrested five journalists working with Hamas-affiliated news outlets and charged them with posting harmful information under the Electronic Crimes Law. Fouad Jaradeh was arrested by Internal Security Forces on 6 June and tried before a military court for “collaborating with Ramallah”, although the charge itself has no legal grounds in Palestinian legislation. Amnesty International believes that his detention and trial were directly related to his work as the correspondent of Palestine TV, the government’s official TV station in the West Bank.

In July 2017, Hamas Internal Security forces summoned twelve activists and journalists for questioning on comments and caricatures they published on social media deemed critical of Hamas authorities.¹⁸ At least three individuals reported being subjected to ill-treatment, while one of them also alleged torture during his detention.

Mohammad Nafez al-Talowli, aged 25 from Jabalia refugee camp, has been active in organizing actions and protests against Hamas policies in the Gaza strip especially in their handling of the recent electricity crisis. He was arrested three times by Hamas Internal Security forces this year. In the last arrest in 11 June 2017, he was charged and convicted of misuse of technology and distributing misleading information to the public for comments he made on Facebook criticising a prominent Hamas leader. He spent five

¹⁶ See article 389 paragraph 5, Jordanian Penal Code, Article 389, para. 5, available at: <http://bit.ly/2wOPiiu>

¹⁷ See Mezan Press Release, 17 July 2017, available at: www.mezan.org/post/23996

¹⁸ See Mezan Press Release, 17 July 2017, available at www.mezan.org/post/23996

days in detention and was released on bail of USD165 on the condition that he does not write any posts on Facebook critical of Hamas or its leaders, and that he refrains from calling for, or arranging, any protests. In case he violates these conditions, he will have to pay a heavy fine of USD 27,595. His trial is currently ongoing. Mohammad Nafez al-Talowli told Amnesty International that since his release, he has been receiving threats from individuals telling him over the phone that the next time he posts something he will be shot. He explained that he is feeling “strangled” in the Gaza Strip, “Hamas have taken away all of our rights. We can’t protest, or speak and now we are not allowed to write, soon they will ban us from breathing”.

Amnesty International interviewed two other activists who were targeted by Hamas Internal Security forces since the beginning of the year for social media posts that are critical of Hamas authorities and their involvement in planning protests against Hamas authorities’ handling of the electricity crisis. The men, who preferred to remain anonymous out of fear of reprisals, told Amnesty International that they were kidnaped, beaten, and threatened by Hamas security forces with the use of violence against them and their families. Both activists have had their homes raided several times since the beginning of 2017. One of the men told Amnesty International that he was abducted by members of Hamas Internal Security forces while he was walking in the street, and was subsequently detained and interrogated throughout the night about his role in organizing protests. The other activist, who is from Jabalia, said that he was arrested from his home by Internal Security Forces, and subsequently detained and interrogated in Gaza City detention centre. He reported being beaten with a plastic pipe, blindfolded and forced to sit in strenuous positions with his hands cuffed for around four days. He told Amnesty International that he was given food twice a day while blindfolded but his hands were untied so that he could eat. He has been arrested four times since the beginning of the year for his role in planning protests and posts he made on Facebook that were critical of Hamas leadership. He told Amnesty International that he fears for his life and the safety of his family, “I will no longer write political posts on Facebook. I am exhausted from all the arrests and humiliation, Hamas is controlling our lives and minds”.

The detention of journalists is in breach of the State of Palestine’s obligations under Article 19 of the ICCPR which states that “Everyone shall have the right to freedom of expression; 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”.

Further, Amnesty international is concerned by reports of torture and other ill-treatment. The prohibition of torture is a jus cogens norm of international law and is therefore binding on all states. Torture is also prohibited by the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Cruel, Inhuman and Degrading Treatment or Punishment (CAT), both of which entered into force for the State of Palestine on 2 May 2014.

Restrictions on freedom of assembly

Amnesty International is also concerned by increasing restrictions by Palestinian authorities in the West Bank on the right to peaceful assembly. In July the authorities

banned a two-day youth conference organized by the Palestine Hub, which is part of Al Sharq Youth Forum, an NGO based in Istanbul representing Arabs, Turks, Persians and Kurds. The ban breaches Article 21 of the ICCPR which guarantees the right to freedom of assembly.

In light of the concerns outlined above, Amnesty International is calling on:

The Palestinian authorities in the West Bank:

- To immediately release anyone held solely for peacefully exercising their right to freedom of expression and assembly including detained journalists and activists.
- To immediately repeal the Electronic Crimes law (16 of 2017), and ensure that any amended legislation safeguards the rights to freedom of expression, assembly, and right to privacy.
- To immediately lift the ban on 29 websites and allow the public to access these sites freely.
- To protect the Palestinian people's right to freedom of expression and assembly and abide by their international and domestic legal obligations.

The Hamas de facto administration:

- To immediately release anyone held solely for peacefully exercising their right to freedom of expression and assembly including detained journalists and activists.
- To immediately ensure independent and effective investigation and, where appropriate prosecution, of all credible allegations of torture and other ill-treatment of activists by security forces and end any forms of torture and ill-treatment in detention centres.
- To immediately cease all intimidation of activists and journalists in the Gaza Strip and provide Palestinians living in the Gaza Strip with the right to express themselves freely, without fear of reprisals.