

Re: Draft Law on Cyber Crimes

13 February 2017

Dear Special Rapporteur Kaye,

Al-Haq, a Palestinian human rights organization based in Ramallah, Occupied Palestinian Territory (OPT), would like to call your attention to the State of Palestine's draft Law on Cyber Crimes. Al-Haq believes that the draft law contradicts international standards regarding freedom of expression as well as the Palestinian Basic Law. We write to you to highlight some of our concerns, with the hope that you will comment on the draft as soon as possible, even in a general manner, before it becomes cemented into law.

The Palestinian Basic Law functions as the constitution. Relevant articles include:

*Article 19-* "Freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law."

*And*

*Article 27(1)-* "Establishment of newspapers and all media means is a right for all, guaranteed by this Basic Law. Their financing resources shall be subject to the scrutiny of the law.(2) Freedom of audio, visual, and written media, as well as freedom to print, publish, distribute and transmit, together with the freedom of individuals working in this field, shall be guaranteed by this Basic Law and other related laws. Censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling."

The Special Rapporteur should note that the Palestinian Legislative Council (PLC) has neither convened nor legislated since 2007. Instead, legislative authority has been *de facto* under President Mahmoud Abbas. Al-Haq notes the general lack of transparency in Palestinian governance, and believes that a Freedom of Information Act, which was first drafted in 2005, has not been passed in order to maintain the current climate.<sup>1</sup> Instead of moving towards accountability and transparency (such as by passing a Freedom of Information Act), the Palestinian Authority is seeking to punish freedom of expression and other rights through the draft Law on Cyber Crimes.

While we are concerned with the draft law in its entirety, below are a few examples which are representative of the broad language and penalties provided throughout:

*Article 17-* "Creating and publishing ideas against public order and morals. Whoever established a website, used, or published information on the internet, or any technological device which aims to facilitate

programs or ideas, or promotes them, and it would disrupt public order or morals will be imprisoned for a period of no less than one year, and fined between 1000 to 5000 Jordanian dinars, or one of the two penalties.”

*Article 21-* “Establishing a website which published false news which puts the security of the State at risk.

1) Any person that establishes or administers a website on the internet, or any other information technology, which publishes inaccurate news intended to put the safety of the state, or general order or internal or foreign security at risk, will be punished with prison for a period of no less than one year, and a fine between 1000-5000 Jordanian dinars, or one of the two penalties. 2) Any one who promoted, broadcast, or published, by any means, inaccurate news, with the same aforementioned intent, will be imprisoned for a period of no greater than one year, and fined between 200-1000 Jordanian dinars, or one of the two penalties.”

*Article 22* “Defamation. Anyone who infringes upon family principles and values, or publishes news, pictures, voice or visual recordings, which are related to the sanctity of private or family life, even if true, or infringes on another through libel, slander, contempt, or defamation, or caused harm to them by means of the internet or another means of information technology, will be penalized by prison for a period of no less than six months, fined between 1000-5000 Jordanian dinars, or one of the two penalties.”

*Article 23* penalizes insulting/offending anything holy, prophets, and messengers...on the internet will be imprisoned for a period up to three years, and fined between 1000-5000 Jordanian dinars.

Article 72 calls for a prison sentence of no less than six months and a fine between 200-1000 Jordanian dinars, or one of the two penalties, for an individual who intentionally fails to report or intentionally provides a false report on an IT (information) crime.

*Article 74-* “Incitement, interference, or participation. Anyone that participates by way of agreement, incitement, help or interference in the commission of a felony or misdemeanor is punishable under this law with the same penalties as for the original act, and if the crime is not committed, the penalty will be reduced by half.”

We also note that Article 76 binds the judge to issuing certain penalties.

Al-Haq finds that the current draft uses language which is overly broad, has excessive penalties, and fails the three-part test under Article 19 of the International Covenant on Civil and Political Rights. We are further deeply concerned that the law can, and likely will, be misused especially in cases of perceived political opponents. Over the past year, there have been numerous cases of arrests for ‘insulting the president’ and other political statements on social media. Other indicators of the closing of civil, political, and social space include the recent lifting of [parliamentary immunity](#) of PLC members, and an order by the Prosecutor General to confiscate a new book “[Crime in Ramallah](#)” from the local market. The order was issued under the charge of offending general values. The draft law will further embolden similar actions.

Again, we only highlighted a few of the articles which we feel are representative of the broad issues in the law. Kindly find enclosed the draft law. We believe that your public comments will have an impact on the substance and status of the draft.

Thank you for your time and consideration.

Sincerely,



Shawan Jabarin  
General Director