

Mandates of the the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Independent Expert on the promotion of a democratic and equitable international order and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Independent Expert on the promotion of a democratic and equitable international order; and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 43/4, 41/12, 36/4 and 46/18.

In this connection, we would like to offer the following **comments on the Bill to “Protect the Rights of Users in Cyberspace and Organize Social Media” which raises serious concerns regarding the rights to freedom of opinion and expression, as well as to freedom of peaceful assembly and of association, and we respectfully request these comments to be shared with Parliament, its sub-committee and the Guardian Council.**

We welcome the opportunity to submit these comments in light of international human rights standards on the rights to freedom of opinion and expression and to freedom of peaceful assembly and of association, and we stand ready to engage further with your Excellency’s Government on this matter.

According to the information received:

In November 2018, the draft “Bill to Protect the Rights of Users in Cyberspace and Organize Social Media” (*Tarh-e Sianat*), hereinafter “the Bill”, was first presented. It was submitted to the Iranian Parliament (The Islamic Consultative Assembly) in August 2020. On 28 July 2021, Parliament voted for invoking Article 85 of the Constitution to review and experimentally implement the Bill. This procedure entails the review of the Bill by a specialized committee consisting of a small group of parliamentarians, before the Bill is sent to the Guardian Council for review. Members of the specialized committee were appointed in early October 2021. If approved by the Guardian Council, the Bill will be experimentally enforced for a period defined by the Parliament and can later be permanently ratified into law. Article 85 of the Constitution has previously been invoked by the Parliament for experimental implementation of legislation for a long period of time, including the experimental implementation of the Islamic Penal Code which was extended for two decades.

The latest publicly available version of the Bill was published on 17 July 2021.

Internet infrastructure and censorship

The Bill delegates control over international gateways – the infrastructure connecting the Islamic Republic of Iran to the global internet- to the Supreme Regulatory Commission. The Supreme Regulatory Commission is part of the Supreme Council of Cyberspace (SCC) which has 18 voting members, of which 12 are appointed by the Supreme Leader while five are representatives of the security agencies and armed forces. Among the members is the head of the National Center for Cyberspace, and representatives from the Armed Forces General Headquarters, the Islamic Revolutionary Guards Intelligence Organization, Ministry of Communication, Passive Defense Organization and the Judiciary. Article 17 allocates faster internet speeds to domestic networks that are censored by the security establishment, and which enable easy state access into accounts for surveillance purposes.

Article 13 of the Bill establishes a “Fund for Supporting Local Key Online Services” which operates under the Supreme Regulatory Commission. The Fund will be responsible for developing services such as promoting the public’s “digital literacy”, supporting tools for “purifying” and protecting cyberspace, developing “pure services, especially for children and teenagers”, supporting local content production in line with “Iranian-Islamic values” and supporting “cybercrime prevention techniques”.

Restrictions on social media companies

The Bill requires international technology companies to have a legal representative in the Islamic Republic of Iran in order to be able to operate within the country. Article 12 targets “influential foreign providers of basic services” (such as Gmail, Google, Instagram, etc.), stating they should be required to name an official representative in Iran “and follow [state] guidelines” within four months after the bill becomes law, or else they would be blocked.

The Bill also requires social media platforms to comply with national laws and cooperate with the Government of the Islamic Republic of Iran in surveillance and censorship (article 20). Platforms that do not cooperate with the Government will be subject to bandwidth throttling or censored entirely. The Bill furthermore establishes a limit for the share of bandwidth that international services can use.

Unequal access to online content

By introducing legal VPNs in article 4, the Bill paves the way for the introduction of a multitier system that would rank individuals based on their age and profession and provide them with different levels of access to the internet and to certain platforms. The Bill would thus entrench the existing practice whereby some individuals are provided with unfiltered access to banned platforms like YouTube and Twitter. Article 33 of the bill also prohibits the sale of VPNs.

Article 22 bans all government offices from using foreign networks for emails and other basic services.

Restrictions on circumvention tools, anonymity and privacy

The Bill provides for the introduction of “legal VPNs” (article 4) and criminalizes the production, sale and distribution of censorship circumvention tools, ie virtual private networks (VPN) and proxy services, with imprisonment of up to two years (article 33).

Article 25 of the Bill requires service providers to only allow users to sign up for services using their legal identity. The Bill requires service providers to collect users’ data and hand this to the authorities upon request.

Criminal penalties

Failure to comply with the law is punishable by 90 days to six months’ imprisonment, while those who produce, sell or distribute VPNs can risk up to two years’ imprisonment and heavy fines.

Before addressing our specific concerns with the aforementioned Bill, we wish to outline the internationally recognized standards protecting the right to freedom of opinion and expression as well as of association. Articles 19(1), 21 and 22(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975, state that “everyone shall have the right to hold opinions without interference”, that “the right of peaceful assembly shall be recognized” and that “everyone shall have the right to freedom of association with others”, and this without discrimination. Article 19(2) establishes State Parties’ obligations to respect and ensure the “right to freedom of expression”, which includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in print, in the form of art, or through any other media of his choice”. Articles 19(3), 21 and 22(2) of the Covenant provides that restrictions on the rights to freedom of expression, of peaceful assembly and of association must be “provided by law”, and necessary “for respect of the rights or reputations of others” or “for the protection of national security or of public order (ordre public), or of public health and morals” or “which are necessary in a democratic society in the interests of national security”. The Human Rights Committee, the General Assembly and the Human Rights Council have affirmed that permissible restrictions online are the same as those offline.

Articles 19(3), 21 and 22(2) establish a three-part test for permissible restrictions on the freedoms of expression, of peaceful assembly and of association:

- (a) *Restrictions must be provided by law.* Any restriction “must be made accessible to the public” and “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly” (CCPR/C/GC/34). Moreover, it “must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”. *Id.*
- (b) *Restrictions must protect legitimate aims,* which are limited to those specified under article 19(3), 21 and 22(2).
- (c) *Restrictions must be necessary to protect legitimate aims.* The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions “target a specific objective and do not unduly intrude upon the rights of targeted persons” (CCPR/C/GC/34). The ensuing interference with third parties’

rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be “the least intrusive instrument among those which might achieve the desired result”. *Id.*

The Human Rights Committee has found that these criteria “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights”. The Human Rights Committee has emphasized that “free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint.” Moreover, international human rights law provides States’ responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated.

In the context of online expression, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has concluded that States should repeal any law that unduly criminalizes or restricts online expression, and stated that “States should only seek to restrict content pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy” (A/HRC/38/35). States should also “refrain from imposing disproportionate sanctions, whether heavy fines or imprisonment, on Internet intermediaries, given their significant chilling effect on freedom of expression”, and refrain from adopting models of regulation where government agencies, rather than judicial authorities become the arbiters of lawful expression (*ibid.*).

In previous reports, the Special Rapporteur on the right to freedom of peaceful assembly and of association has recognized that digital technology is integral to the exercise of the rights of peaceful assembly and association (A/HRC/20/27 and A/HRC/38/34). Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised (A/HRC/29/25/Add.1, para. 53). The mandate holder has further called upon States to ensure that everyone can access and use the Internet to exercise these rights, and that online associations (A/HRC/20/27, para. 52) and assemblies (A/HRC/29/25/Add.1, para. 34) are facilitated in accordance with international human rights standards. While these rights are not absolute, the freedom to access and use digital technologies for the exercise of peaceful assembly and association rights should be viewed as the rule, and the limitations as the exception. The general norm should be to permit the open and free use of the Internet and other digital tools (A/HRC/23/39, para. 76). Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3 [of article 19 of ICCPR].

In his report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association further noted that States parties must not, for example, block or hinder Internet connectivity in relation to peaceful assemblies (CCPR/C/CMR/CO/5, para. 41). The same applies to geo-targeted or technology-specific interference with connectivity or access to content. States should ensure that the activities of Internet service providers and intermediaries do not unduly restrict assemblies or the privacy of assembly participants. Any restrictions on the operation

of information dissemination systems must conform with the conditions laid out by article 21 ICCPR (CCPR/C/GC/37, para. 34). Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government (CCPR/C/GC/34, para. 43).

On the issue of online anonymity, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has concluded that encryption and anonymity tools “provide individuals with a zone of privacy online to hold opinions and exercise freedom of expression without arbitrary and unlawful interference or attacks” (A/HRC/29/32). The report urged States to refrain from blanket restrictions on encryption and anonymity.

In view of the above-mentioned standards, we are concerned that the Bill, by providing for an increasingly isolationist infrastructure, points to a desire for increased control over access to information, as well as to digital technologies and online platforms. We note that Facebook, Twitter and YouTube have been banned in the country since 2009, while Telegram has been banned since 2018. We express serious concern that the Bill would add to an already restrictive legislative environment that to a considerable degree appears to be aimed at controlling or censoring access to digital information and online tools. The Bill would, if adopted, consolidate a digital wall in the Islamic Republic of Iran, and establish additional limitations to the already significantly restricted rights to freedom of expression, as well as to freedom of peaceful assembly and of association. The Supreme Regulatory Commission lacks the sufficient independence from political control and is provided with overbroad and overreaching powers to control expression.

We are concerned that the Bill would amount to blocking access to information and denying the population the fundamental right to freedom of expression, as well as to freedom of peaceful assembly and of association. In addition to infringing on the right of the population to access information and digital technologies, the proposed Bill would also severely hamper business operations in the country, as many are reliant on foreign tools, services and technologies for their operations, as well as other sectors that rely on online information such as science, medicine and education.

The Bill’s establishment of a multi-tier system for accessing content, would represent a breach of the right to non-discrimination and would also constitute a breach of net neutrality, by making the internet or access to certain areas of the internet a privilege for some individuals depending on their status.

We are furthermore concerned that the Bill would force international tech companies out of the Iranian information landscape by requiring legal presence in the country. We note that the right to freedom of expression in article 19(2) applies “regardless of frontiers”. In this regard, the Bill’s requirement of legal presence of international tech companies in Iran would constitute an undue restriction to the right to freedom of expression.

The Bill would also unduly interfere with online privacy, which is a critical gateway to the freedoms of opinion and expression, as well as of peaceful assembly

and of association. A blanket prohibition on anonymity would unduly limit the individual's private space to exercise freedoms of expression, of peaceful assembly and of association online, and seek accountability or transparency from the State without arbitrary and unlawful interference. Moreover, the Bill's granting of investigative and surveillance tools at the government's disposal would raise concerns at the privacy and security of users which are disproportionate to any legitimate government interest.

We also would like to highlight our concerns at the non-transparent process by which the Bill has been reviewed and the lack of public consultation, which constitute an infringement on the international standards on legislative processes.

Finally, we highlight that this bill is being reviewed at a time of a global pandemic where, the enjoyment of freedoms of opinion and expression, as well as of peaceful assembly and of association, including the right to receive information, and to assemble and associate in virtual spaces, is particularly important for the realisation of several other civil, cultural, economic, political and social rights.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above.
2. Please provide information about the reason for why the Bill has been brought under Article 85 of the Constitution.
3. Please provide a copy of the latest version of the Bill.

In light of the above-mentioned observations and concerns, we urge that the Bill be withdrawn and we urge your Excellency's Government to take measures to bring the legal framework for communications and access to information into line with international human rights standards. We stand ready to provide your Excellency's Government with technical assistance in this regard.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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