



**State of Israel
Ministry of Justice**

The Human Rights and Foreign Relations Department

Date: Adar 2nd, 5781
May 14, 2021

To: Ms. Irene Khan, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

Dear Ms. Khan,

Re: The State of Israel's submission to the Special Rapporteur's upcoming report on the issue of disinformation and freedom of opinion and expression

1. The State of Israel respectfully submits its contribution in relation to the above-mentioned report.
2. In its decision concerning *Szenes v. The Broadcasting Authority* from 1999,¹ the Israeli Supreme Court held that: "[t]he way to deal with falsehood is not by suppressing it but by explaining the truth. Falsehood fails when it is exposed, not when it is suppressed. [...] Lies are not fought by suppressing the freedom of the one who lies, but by strengthening the freedom of the one who speaks the truth. [...] The truth shall prevail by virtue of its own inner power and ability to defeat falsehood in the clash of ideas. The truth shall emerge from the struggle between it and falsehood".
3. Israel attaches great importance to the right to freedom of expression. The right to freedom of expression has long been recognized as a supreme, constitutional norm in Israel, and any limitations on its exercise must meet strict standards of scrutiny regarding their justification and scope. While *Basic*

¹ H.C.J. 6126.94 *Szenes et.al. v. The Broadcasting Authority et al.*, 26 July 1999.

The Human Rights and Foreign Relations Department

Law: Human Dignity and Liberty 1992 does not directly articulate the right to freedom of expression and opinion, the Supreme Court regards these rights as constitutional rights protected in this Basic Law (see for example H.C.J. 5239/11 *Uri Avneri et. al. v. The Knesset et. al.* (15.4.15)).

4. Generally, freedom of expression may be restricted only if the speech in question gives rise at least to a "near certainty" that the public order, broadly construed, will be endangered, and only if other means to lessen the severity or the likelihood of such a violation of public order are of no avail (H.C.J. 73/53, *Kol Ha'am Ltd. v. The Minister of Interior* (16.10.53)).

What legislative, administrative, policy, regulatory or other measures have Governments taken to counter disinformation online and offline?

5. The main laws addressing offensive publications online under civil law include the *Prohibition on Defamation Law* 5725-1965, the *Protection of Privacy Law* 5741-1981, the *Prevention of Sexual Harassment Law* 5758-1998, and the *Prevention of Threatening Harassment Law* 5771-2002. Criminal offenses addressing harmful or offensive publications are included under the *Criminal Law* 5737-1977, the *Prohibition on Defamation Law* 5725-1965, the *Protection of Privacy Law*, 5741-1981 and the *Prevention of Sexual Harassment Law* 5758-1998.
6. In addition, Section 3 of the *Computers Law* 5755-1995 and Section 159 of the *Criminal Law* 5737-1977 criminalize intentional publications of false information aimed at misleading the public or causing public panic or distress.

What measures have been taken to address any negative impact on human rights?

7. As part of Israel's efforts to address the above-mentioned detrimental effects of disinformation online, on November 2020, the Arbel Committee, headed by Supreme Court Justice (ret.) Edna Arbel, published its report on "The Formation of Public Protection Measures Including Public Servants from Offensive Acts and Publications, as well as Online Bullying". The Committee

The Human Rights and Foreign Relations Department

was appointed by the Minister of Justice in August 2015. The Committee recommended that the State provide by law that internet service providers shall not be held liable under civil law due to content published via a website for which they are responsible, except in such cases where an individual offended by the publication had requested that the provider remove the offensive content, and the provider failed to inform the source of the publication of the request.

8. The Committee further recommended that the State establish a mechanism aimed at addressing individual complaints regarding offensive publications, by assisting individuals in requesting content providers that the offensive content be removed, only in such cases where the publication amounts to a criminal offense, or where there is an imminent threat of a severe risk to the wellbeing and the personal safety of the offended individual. The Committee further recommended that a summary judgement procedure be made available to individuals seeking compensation.
9. The Report further includes recommendations as to child online protection, such as establishing national educational programs on human dignity and on digital literacy and the online environment; establishing mechanisms at schools for addressing a child's distress; raising parental awareness to digital literacy and removal of content; developing tools for handling harmful parental use of the digital environment; developing psychological treatment programs for persons negatively impacted by harmful content online, and more. The recommendations were submitted to the former Minister of Justice, shortly before his resignation in December 2020.

Please share any suggestions or recommendation you may have for the Special Rapporteur on how to protect and promote the right to freedom of opinion and expression while addressing disinformation.

10. The State of Israel provides legal assistance to victims of online bullying not only in cases of infringements on rights, but also for mitigating and preventing harms, such as requesting the removal of harmful content and the prevention

The Human Rights and Foreign Relations Department

of its further circulation. The Israeli National Child Representation Unit (NCRU) within the Legal Aid Department, is the organizational framework for child representation in civil proceedings, which aims to provide the best possible legal aid service for children and youth and to promote their right to access to justice, particularly in child protection proceedings. Child representation services are provided to children and youth by 90 lawyers who specialize in the field of child representation. The NCRU provides training to all lawyers representing children on its behalf.