

**איתי מק, עו"ד**  
**Eitay Mack, Advocate**  
**ايتاي مك، محام**

רח' כ"ט בנובמבר 28/9, ירושלים ■ טל' 02-5877766, פקס 02-5877744  
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January 2, 2023

**To:**  
**Racheli Chen**  
**Director of the Defense Exports Control Agency (DECA)**  
**Israel Ministry of Defense**

**To:**  
**Elad Sharon**  
**Chief Executive Officer**  
**Cognyte Software Ltd.**

**Re: Urgent demand to immediately cancel the export and marketing licenses that were given for Cognyte Software Ltd's interception system to Myanmar**

1. I apply to you on behalf of Avrum Burg, Prof. Ruth HaCohen Pinczower, Prof. Eva Illouz, Dr. Ran Shauli, Daniel Silberman Abarzua, Tamar Yaron, Nora Bendersky, Naomi Kirshner, Rela Mazali, Shoshana London Sappir, Bilha Sündermann Golan, Prof. Ben-Tzion Munitz, Shahaf Weisbein, Rami Pinczower, Ravital Elkayam, Naftali Sappir, Roni Segoly, Raya Rotem, Micah Leshem, Dr. Snait Gissis, Haim Schwarczenberg, Arieln Niezna, Claudio Kogon, Avi Rov, Nuni Tal, Prof. Veronika Cohen, Dr. Elliot Cohen, Amnon Lotanberg, Dr. Gilad Liberman, Ofer Neiman, Amir Bitan, Vered Bitan, Irit Halavy, Guy Butavia, Tamar Cohen, Oded Efrati, Nira Efrati, Yehudit Elkana, Dr. Yonatan Nissim Gez, Efrat Levy, Alona Cohen, Naomi Schor, Shaul Tcherikover, Tuly Flint, Shahar Shiloach, Dr. Ruchama Marton, Tal Nitzan, Shira Yahav, Yair Bunzel, Shirli Nadav, Hanna Barag, Itamar Feignbaum, Dalia Kerstein, Omer Arvili, Vardit Goldner, Natasha Dudinski, Edith Breslauer, Daphne Banai, Chaya Ofek, Dr. Tzvia Shapira, Dr. Diana Dolev, Dr. Hila Dayan. Dr. Erella Grassiani, Sigal Kook Avivi, Dr. Anat Matar and myself.
2. The reason we are contacting you now with an urgent demand, is because recently we received from activists in the group "Justice For Myanmar" documents from Myanmar that proves that in 2020, when the Myanmar military was preparing for another military coup, the Director of DECA have authorized

Cognyte to participate in a tender, which it won, to sell an interception system to Myanmar.

3. According to the official documents that "Justice For Myanmar" managed to obtain from the License Division in the Posts and Telecommunications Department (PTD) of the Ministry of Transport and Communications (This Ministry is responsible in Myanmar for the acquisition and installation of systems for monitoring communications) and their unofficial translation to English (one page is originally in English), Cognyte won a tender for interception system from the state-owned telecommunications company Myanmar Posts and Telecommunications (MPT), also under the Ministry of Transport and Communication, and the purchase order was issued on December 30, 2020 – which is one month before the last military coup:



ပြည်ထောင်စုသမ္မတမြန်မာနိုင်ငံတော်  
 ဦးဆောင်ရေးနှင့် ဆက်သွယ်ရေးဝန်ကြီးဌာန  
 မြန်မာ့ဆက်သွယ်ရေးလုပ်ငန်း  
 စာအမှတ် ၂၅၂၄/၂၅၂၂/LIS စည်းစိမ်/၂၀၂၀/၀၁၉  
 ရက်စွဲ ၂၀၂၁ ခုနှစ်၊ ဇန်နဝါရီလ ၇ ရက်

သို့  
 ✓ ညွှန်ကြားရေးမှူးချုပ်  
 ဆက်သွယ်ရေးညွှန်ကြားမှုဦးစီးဌာန  
 အကြောင်းအရာ Lawful Interception System (LIS) နှင့်စပ်လျဉ်း၍ ဆောင်ရွက်ပြီးနောက်  
 တင်ပြခြင်း  
 ရည် ညွှန်းချက် ၊ ဆက်သွယ်ရေးညွှန်ကြားမှုဦးစီးဌာန၏ (၂၄-၁၁-၂၀၂၀) ရက်စွဲပါ စာအမှတ်  
 ၅၀၀-အည/ခွဲ (၇) လိုင်စင်/၀၉၁၁  
 ရည်ညွှန်းချက်ပါစာဖြင့် ဆက်သွယ်ရေးညွှန်ကြားမှုဦးစီးဌာနမှ Lawful Interception  
 System (LIS) နှင့်စပ်လျဉ်း၍ ဆောင်ရွက်ပြီးနောက် တင်ပြရန် အကြောင်းကြားလာမှုအပေါ်  
 မြန်မာ့ဆက်သွယ်ရေးလုပ်ငန်း၏ ဆောင်ရွက်ပြီးနောက် ပူးတွဲပါ အတိုင်ပင်ခံပို့အပ်ပါသည်။

  
 ဦးဆောင်ညွှန်ကြားရေးမှူးချုပ်(ကိုယ်စား)  
 (မျိုးသန်းအထွေထွေမန်နေဂျာ)

ပိတ္တမိတ်  
 - အထွေထွေမန်နေဂျာ၊ စည်းစိမ်ညွှန်ကြားမှု မြန်မာ့ဆက်သွယ်ရေးလုပ်ငန်း  
 - ဖွဲ့စည်း  
 - ဓမ္မာစာထု

Republic of the Union of Myanmar  
 Ministry of Transportation and Telecommunications  
 Myanmar Post and Telecommunications

[Stamp of MPT]

[Initials]  
 Letter No. CoNyaNa / NaOoNya / LIS Meeting/ 2020/019  
 Date: January 7 2021

To  
 [Initial] Director General  
 Posts and Telecommunications Department

Subject: **Reporting on the completion of Lawful Interception System (LIS)**  
 Ref: No. 500-SaNya/Sub (5) License 8911/ letter dated on (24.11.2020) of Posts and  
 Telecommunications Department

In response to the notice of Posts and Telecommunications Department to submit the  
 completion status of the Lawful Interception System (LIS) in the reference letter, the status of  
 Myanmar Posts and Telecommunications is attached.

[Signature/7/1/21]  
 Managing Director (on behalf of)  
 Myo Than, General Manager

Copied To  
 - General Manager, Technical Department, Myanmar Posts and Telecommunications  
 - Received Copy  
 - Office Copy

This page is originally in English:

**Integration and Testing. [ PTD Target date 30th Dec 2020]**

Almost finished for CS/ PS HI1, HI2, HI3 interface by 28th Dec 2020.

MC team accepted as completed for MPT side support at this time target by 30th Dec 2020.

No.	Tasks Descriptions	MPT	Notes
1	HI-1 Testing (add/delete/list)		
2	HI-2 Decoding for CS		Domain ID is temp. Solution.
3	HI-2 Decoding for PS		
4	HI-2 Decoding for SMS		
5	HI-3 Decoding for CS		
6	HI-3 Decoding for PS		
7	HI-2 Decoding for CDMA CS		
8	HI-2 Decoding for CDMA SMS		
9	HI-3 Decoding for CDMA CS		
10	HI2 & HI3 integration for WCDMA in MC		
11	HI2 & HI3 integration for CDMA in MC		
12	GIS Integration Testing		

☑: Done    ○: On-Going & almost Done    X: Pending    -: None

**Fixed Data LIG.**

We already finished Tender and Approval process.

Selected Winner Vendor is Cognyte Technologies Israel [ Former Verint System Ltd - Israel].

PO has been issued to Vendor by 30<sup>th</sup> Dec 2020.

Total schedule target by end of May / Early Jun 2021.

**GLMC / SMLC (Real Time GPS positioning tracking for Target user).**

We need to understand MC side required interface standard and specification and expected capacity.

We will need to study technical feasibility on existing network equipment.

Dedicated additional equipment (may be third party equipment)

Process will require same as Fixed LIG.

PTD Target is end of Jun 2021.

**ပိုင်းဆက်သွယ်ရေးအော်ပရေတာများ၏ Voice / Data/ SMS နှင့် ISP ပိုင်းဆိုင်ရာ Lawful Interception (LI) ဆောင်ရွက်မှုအခြေအနေအား တင်ပြခြင်း**

သတင်းအချက်အလက်နည်းပညာနှင့် ဆိုက်ဘာလုံခြုံရေးဦးစီးဌာန၏ LI စီမံကိန်းအတွက် သတ်မှတ်အချိန်ဇယား	မြန်မာ့ဆက်သွယ်ရေးလုပ်ငန်း (MPT) မှ LI စီမံကိန်းအတွက် ဆောင်ရွက်မှုအခြေအနေ	တယ်လီဖောမြန်မာ လီမိတက် (TML) မှ LI စီမံကိန်းအတွက် ဆောင်ရွက်မှုအခြေအနေ	အော်ရီဒါမြန်မာလီမိတက် (OML) မှ LI စီမံကိန်းအတွက် ဆောင်ရွက်မှုအခြေအနေ	တယ်လီကွန်းအင်တာနေရှင်နယ်မြန်မာ ကုမ္ပဏီလီမိတက် (Mytel) မှ LI စီမံကိန်းအတွက် ဆောင်ရွက်မှုအခြေအနေ
Lawful Interception System (LIS) အကောင်အထည်ဖော်ဆောင်ရွက်ရာတွင် Operators အနေဖြင့် အောက်ဖော်ပြပါ လုပ်ငန်းအဆင့်များ ဆောင်ရွက်ရန်ဖြစ်ပါသည်- (က) Telecom Operators ၊ Internet Service Providers (ISPs) များ၏ Transmission Equipments များအား LIS Transmission စက်ခန်းတွင် တပ်ဆင်ခြင်း (ခ) Telecom Operators ၊ Internet Service Providers (ISPs) များနှင့် LIS Transmission GE, FE, E1 စက်ခန်းကြား ဆက်ကြောင်းများ သွယ်ဝန်းချိတ်ဆက်ခြင်း (ဂ) Telecom Operators ၊ Internet Service Providers (ISPs) များနှင့် LIS Transmission စက်ခန်းကြား GE, FE, E1 ဆက်ကြောင်းများ	မြန်မာ့ဆက်သွယ်ရေးလုပ်ငန်းအနေဖြင့် HI-1, HI-2, HI-3 နှင့် GIS Integration & Testing အား MC Team သို့ (၃၀-၁၂-၂၀၂၀) ရက်နေ့တွင် လှုံ့ပြောင်းပေးနိုင်ခဲ့ကြောင်း၊ Fixed Data LIG နှင့် ပတ်သက်၍ Cognyte Technologies Israel (Former Verint System Ltd- Israel) အား (၃၀-၁၂-၂၀၂၀) ရက်နေ့တွင် Purchasing ပြုလုပ်၍ ဇွန်လ ပထမအပတ်တွင် ဆောင်ရွက်ရန် စီစဉ်ထားရှိကြောင်းနှင့် GLMC /SMLC (Real Time GPS positioning tracking for Target user) နှင့်ပတ်သက်၍ Standard specification expected capacity သိရှိရန် လိုအပ်ပြီး ချိတ်ဆက်ခြင်း	တယ်လီဖောမြန်မာလီမိတက် အနေဖြင့် LI စီမံကိန်းအတွက် သတင်းအချက်အလက်နည်းပညာနှင့် ဆိုက်ဘာလုံခြုံရေးဦးစီးဌာနနှင့် လုပ်ငန်းများ ပူးပေါင်းဆောင်ရွက်လျက်ရှိသော်လည်း LI လုပ်ငန်းစဉ်သည် ရာဇဝတ်မှု စုံစမ်းစစ်ဆေးရေးအတွက် အရေးအမှတ် (၉.၃) နှင့်အညီ ဆောင်ရွက်နိုင်ရေး LI နှင့်သက်ဆိုင်သော ဥပဒေပြဋ္ဌာန်းချက်များ ပြဋ္ဌာန်းပြီးမှသာ အပြီးသတ်ဆောင်ရွက်နိုင်မည်ဖြစ်ကြောင်း	အော်ရီဒါမြန်မာလီမိတက်အနေဖြင့် (က) Mobile Voice / Data/ SMS နှင့်ပတ်သက်၍ Physical Fiber Connectivity ၊ IP Connectivity from LI Gateway ၊ 3 SIM testing ၊ HI-1, HI-2, HI-3 interfacing နှင့် MTP2 (MGW) connectivity via E1 တို့မှ အောက်တိုဘာလအတွင်း ဆောင်ရွက်ပြီးစီးပြီးဖြစ်သော်လည်း Integration နှင့် final testing (data & voice) တို့မှ Vendor နှင့် Technical Experts လိုအပ်ချက်ရှိ၍ ဆေးနည်းဆိုင်ခံဖြစ်ပါသည်။	တယ်လီကွန်းအင်တာနေရှင်နယ်မြန်မာ ကုမ္ပဏီလီမိတက် (Mytel) အနေဖြင့် (က) Mobile Voice / Data/ SMS နှင့်ပတ်သက်၍ လိုအပ်သော စက်မှုပိုင်းဆိုင်ရာများကို deployment and connection အဆင့်များကို စစ်ဆေးဆောင်ရွက်ထားရှိပြီး LI for Mobile SMS အတွက် ၂၀၂၀ ပြည့်နှစ်၊ ဒီဇင်ဘာလ (၁၅) ရက်နေ့တွင်လည်းကောင်း၊ LI for Mobile Data အတွက် ၂၀၂၁ ခုနှစ်၊ ဧပြီလအတွင်းတွင်လည်းကောင်း၊ အပြီးသတ်ဆောင်ရွက်သွားနိုင်မည်ဖြစ်ပါသည်။ (ခ) LI for ISP နှင့်ပတ်သက်၍ LI ပြုလုပ်နိုင်ရန် လိုအပ်သော စက်မှုပိုင်းဆိုင်ရာ deployment အဆင့်ကို ပြင်ဆင်နေဆဲဖြစ်ပြီး ၂၀၂၁ ခုနှစ်၊ စက်တင်ဘာလအကုန်မှ စစ်ဆေးဆောင်ရွက်

Reporting on the status of Lawful Interception (LI) operation to Voice/Data/SMS and ISP of mobile communication operators

Schedule for LI Project of Information Technology and Cyber Security Department	Operation status for the LI project by Myanmar Posts and Telecommunications (MPT)	Operation status for LI project by Telenor Myanmar Limited (TML)	Operation status for LI project by Ooredoo Myanmar Limited (OML)	Operation status for the LI project by Telecom International Myanmar Company Limited (Mytel)
<p>As operators in implementing the Lawful Interception System (LIS), the following steps are to be taken;</p> <p>(a) Installation of transmission equipment of telecom operators and internet service providers (ISPs) in the LIS transmission room</p> <p>(B) Connection of transmission line between telecom operators, internet service providers (ISPs) and LIS Transmission GE, FE, E1 equipment.</p> <p>(C) Testing whether GE, FE, E1 connections between telecom operators, internet service providers (ISPs) and</p>	<p>MPT could transfer HI-1, HI-2, HI-3 and GIS Integration &amp; Testing to MC Team on (30-12-2020).</p> <p>Regarding Fixed Data LIG, Cognyte Technologies Israel [Former Verint System Ltd-Israel] was purchased on (30-12-2020) and is scheduled to be carried out in the first week of June.</p> <p>And, regarding GLMC / SMLC (Real Time GPS positioning tracking for Target user), it is necessary to know standard specification expected capacity and connection.</p> <p>All will be completed by the end of June 2021.</p>	<p>Telenor Myanmar Limited is cooperating with ITCSD for the LI project, but since the LI process is important for criminal investigation, it will be able to be carried out in accordance with license terms No. (9.3), and only after the legal provisions related to LI are enacted.</p>	<p>As Ooredoo Myanmar Limited,</p> <p>(A) Though Physical Fiber Connectivity, IP Connectivity from LI Gateway, 3 SIM testing, HI-1, HI-2, HI-3 interfacing and MTP2 (MGW) connectivity via E1 regarding Mobile Voice / Data / SMS have been completed in October, there is a need of vendors and technical experts for integration and final testing (data &amp; voice) and which negotiations are still ongoing.</p> <p>(B) Regarding ISP (FTTH and DIA), it is necessary to upgrade their Broadband Remote Access Server (BRAS) system, and RFP Process Solution high level</p>	<p>As Telecom International Myanmar Company Limited (Mytel),</p> <p>(A) Mobile Voice / Data / SMS required technical deployment and connection stages have been tested and LI for Mobile SMS and LI for Mobile Data will be completed by Dec 15, 2020 and Apr 2021 respectively.</p> <p>(b) Regarding LI for ISP, the level of industrial deployment needed to make LI is still being prepared, and it is expected to test connection by the end of September 2021.</p> <p>(c) Regarding the Real Time Location Service, it is necessary for the Ministry to</p>

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မိုဘိုင်းဆက်သွယ်ရေးအော်ပရေတာများ၏ Voice/ Data/ SMS နှင့် ISP ပိုင်းဆိုင်ရာ Lawful Interception (LI) ဆောင်ရွက်မှုအခြေအနေအား တင်ပြခြင်း

သတင်းအချက်အလက်စုညှိယူသောနှင့် ဆိုက်ဘာလုံခြုံရေးဦးစီးဌာန၏ LI စီမံကိန်းအတွက် သတ်မှတ်အချိန်ဇယား	မြန်မာ့ဆက်သွယ်ရေး လုပ်ငန်း(MPT) မှ LI စီမံကိန်းအတွက် ဆောင်ရွက်မှုအခြေအနေ	တယ်လီဖော့မြန်မာ လီမိတက် (TML) မှ LI စီမံကိန်းအတွက် ဆောင်ရွက်မှုအခြေအနေ	အော်ရီဒူးမြန်မာ လီမိတက် (OML) မှ LI စီမံကိန်းအတွက် ဆောင်ရွက်မှုအခြေအနေ	တယ်လီကွန်းအင်တာနေရှင်နယ်မြန်မာ ကုမ္ပဏီလီမိတက် (Mytel) မှ LI စီမံကိန်းအတွက် ဆောင်ရွက်မှုအခြေအနေ
<p>(စ) Voice Interception လုပ်ငန်းများ စမ်းသပ်ဆောင်ရွက်ခြင်း</p> <p>(ဆ) Data Interception လုပ်ငန်းများ စမ်းသပ်ဆောင်ရွက်ခြင်း</p> <p>(ဇ) Real Time Location စမ်းသပ်ဆောင်ရွက်ခြင်း</p> <p>(ဈ) Lawful Interception System (LIS) နှင့် ဆိုက်ဘာလုံခြုံရေးလုပ်ငန်း အားလုံးကို (၁၅-၁၂-၂၀၂၀) ရက်နေ့တွင် အပြီးသတ်ပြီးစီးအောင် ဆောင်ရွက်ရမည်ဖြစ်ပါသည်။</p>				
<p>LIS Transmission equipment are working or not.</p> <p>(D) Sending HI1, HI2, HI3 interface information, sample packet data related to Lawful Interception Gateway (LIG) installed in telecom operators, internet service providers (ISPs)</p> <p>(E) Conducting HI1, HI2, HI3 connection testing activities between LIGs in LIS telecom operators and internet Service Providers (ISPs).</p> <p>(F) Testing of Voice Interception activities</p> <p>(G) Testing of Data Interception activities</p> <p>(h) Testing of Real Time Location</p> <p>(i) The whole operation with Lawful Interception System (LIS) must be completed on (15-12-2020).</p>			<p>scope LIG server ordering HW installation Internal Commissioning Integration will be completed by the end of June 2021.</p>	<p>provide detailed technical and mechanical requirement specification information in order to purchase and prepare the necessary GLMC / SMLC.</p>

4. The term “lawful interception” creates a false veil of normality to the fact the Israelis are again aiding and abetting crimes against humanity. There have never been a legal framework or safeguards in place in Myanmar for lawful interception.
5. As will be explained below, the severity of the situation in Myanmar was known both before and after Cognyte won the tender. Cognyte and the senior officials in the MOD and MFA cannot claim that they did not know about the severity of the situation in Myanmar, and they knew or should have known that they are aiding and abetting crimes against humanity.
6. Starting in October 2016, the junta launched a large-scale military operation against the ethnic minority called Rohingya - which included burning villages and houses, killing and maiming civilians, torture, and rape of women and girls. As a result, until December 2016, at least 30,000 Rohingya were displaced from their homes; Therefore, on January 22, 2017, an urgent petition was submitted to the Israeli High Court of Justice (No. 648/17), demanding a halt to all military exports to Myanmar, and a hearing was scheduled for September 25, 2017.
7. During the procedure at the High Court of Justice, the situation had already deteriorated to full genocide. Starting on August 25, 2017, the junta increased its crimes, and launched a "clearance operation" during which hundreds more villages were burned and at least 10,000 people were murdered. The security forces and their militias separated the men and children and executed them. Women and girls were taken and gang-raped, then murdered or seriously injured. This "operation" caused the escape of about 800,000 people from the Rohingya group to Bangladesh.
8. While there is a gag order on the court ruling, until now it was known that due to huge public and media outrage in Israel, at the beginning of 2018 the MOD and the MFA decided to stop all the Israeli military exports to Myanmar and all Israeli defense companies stopped their activities there. This is what was said repeatedly to journalists, Knesset members and other individuals who contacted the MOD and the MFA.
9. Of course, there was a problem with the military equipment that had already been transferred since September 2015 (the date of the signing of the security agreement between the countries), but until now it was not known that new marketing and export licenses had been approved by the MFA and the MOD to Myanmar.
10. Long before the hearing at the High Court of Justice in September 2017, it was known to all those crimes against humanity, war crimes and serious violations of human rights committed by the security forces in Myanmar (the relevant evidence was attached to the first complaint to your office, from August 2018). Therefore, since the beginning of the 1990s, there has been a continuous arms

embargo of the countries of the European Union and the United States on Myanmar<sup>1</sup>.

11. Between the hearing at the High Court of Justice (September 2017) and the Cognyte company winning the tender in Myanmar (2020), there was no doubt about the continuation of severe crimes under international law. The position of the UN, the US and the EU was clear, and if it were not for China's right of veto in the UN Security Council, an arms embargo might also have been imposed in the Council. Among other things:
  - a) On September 27, 2017, the US ambassador to the UN, Nikki Haley, called on the countries of the world to freeze arms sales to Myanmar<sup>2</sup>. The US stated on November 22, 2017, that ethnic cleansing is taking place in Myanmar and that it will act to impose additional sanctions on the country<sup>3</sup>
  - b) On March 23, 2018, the UN Secretary-General published a report that included reference to the use of sexual violence by the security forces of Myanmar<sup>4</sup>.
  - c) On February 26, 2018, the Council of the EU adopted resolution (6418/18) which continued the arms embargo, and condemned the crimes committed against the members of the Rohingya group and in the Shan and Kachin states<sup>5</sup>.
  - d) On April 26, 2018, the EU Council decided (2018/655) that, "The sale, supply, transfer or export of equipment, technology or software intended primarily for use in the monitoring or interception by the Government of Myanmar/Burma, or on its behalf, of the internet and of telephone communications on mobile or fixed networks in Myanmar/Burma, including the provision of any telecommunication or internet monitoring or interception services of any kind, as well as the provision of financial and technical assistance to install, operate or update such equipment, technology or software, by nationals of Member States or from the territories of Member States shall be prohibited."<sup>6</sup>
  - e) On August 27, 2018, a report of a special UN fact-finding mission was published, which found that the Myanmar security forces committed a crime of genocide against the Rohingya group and are committing crimes against humanity and war crimes in the Shan and Kachin states. The

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<sup>1</sup> <https://www.gpo.gov/fdsys/pkg/FR-2016-12-06/pdf/2016-29171.pdf> ; <https://www.pmdtc.state.gov/FR/1993/58FR39280.pdf> ; [https://www.pmdtc.state.gov/embargoed\\_countries/](https://www.pmdtc.state.gov/embargoed_countries/) ; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0627&from=EN>

<sup>2</sup> <https://www.reuters.com/article/us-myanmar-rohingya/u-s-envoy-to-u-n-demands-myanmar-prosecutions-weapons-curbs-over-rohingya-idUSKCN1C30GP>

<sup>3</sup> <https://www.bbc.com/news/world-asia-42084895>

<sup>4</sup> <http://undocs.org/S/2018/250>

<sup>5</sup> <http://data.consilium.europa.eu/doc/document/ST-6418-2018-INIT/en/pdf>

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018D0655>

mission recommended prosecuting those responsible for the crimes at the International Criminal Court in the Hague, or at a special tribunal<sup>7</sup>.

- f) On August 5, 2019, another UN fact-finding mission report regarding Myanmar was published. In the report, the UN independent investigative team named the State of Israel as one of the few countries that sold weapons to Myanmar in recent years. According to the report, even though Israel stopped its military exports after the petition to the High Court of Justice, from the beginning Israel was forbidden from selling weapons over there, this is in light of the clear knowledge of the extent of the crimes being committed and the real risk that the weapons would assist the military in their commission. It was also determined that this was a violation of the International Arms Trade Treaty (ATT) which the State of Israel signed (but did not ratify)<sup>8</sup>.
- g) On August 8, 2019, another report of the UN fact-finding mission was published, which stated that the Rohingya group is still in real danger of renewed genocide, and that Myanmar's security forces are committing crimes against humanity and war crimes in the Shan and Kachin states<sup>9</sup>.
- h) On March 11, 2020, the US State Department published a report for year 2019 on the severe situation of human rights in Myanmar, and on the involvement of the security forces in crimes<sup>10</sup>. The report mentioned an estimate that at the time there were approximately 100,000 prisoners, and more than 20,000 inmates were serving their sentences in labor camps across the country. Significant human rights issues included: extrajudicial and arbitrary killings by security forces; enforced disappearance by security forces; torture and rape and other forms of sexual violence by security forces; arbitrary detention by the government; harsh and sometimes life-threatening prison conditions; political prisoners; arbitrary or unlawful interference with privacy; significant problems with the independence of the judiciary; severe restrictions on free expression including arbitrary arrest and prosecution of journalists, and criminal libel laws; substantial interference with the rights of peaceful assembly and freedom of association, including arrests of peaceful protesters and restrictions on civil society activity; severe restrictions on religious freedom; significant restrictions on freedom of movement, in particular for Rohingya; significant acts of corruption by some officials; unlawful recruitment and

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<sup>7</sup> <https://www.ohchr.org/en/press-releases/2018/09/myanmar-un-fact-finding-mission-releases-its-full-account-massive-violations?LangID=E&NewsID=23575> ; <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/reportofthe-myanmar-ffm>

<sup>8</sup> <https://www.ohchr.org/en/press-releases/2019/08/un-fact-finding-mission-myanmar-exposes-military-business-ties-calls?LangID=E&NewsID24868=> ; <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>

<sup>9</sup> <https://www.ohchr.org/en/press-releases/2019/09/myanmars-rohingya-persecuted-living-under-threat-genocide-un-experts-say?LangID=E&NewsID=24991> ; [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/42/50](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/50)

<sup>10</sup> <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/burma/>

use of child soldiers; trafficking in persons; crimes involving violence or threats targeting members of national, ethnic, and religious minorities; and the use of forced and child labor.

12. Close to Cognyte winning the tender, on November 8, 2020, general elections were held in Myanmar. The military immediately falsely claimed that they were forged, and it was clear that it will not accept them.
13. Less than three months after the elections, on February 1, 2021, the Israeli Embassy in Myanmar witnessed a military coup, carried out by Senior General Min Aung Hlaing who had signed the security agreement with Israel five years earlier. The military took up positions at the capital's main intersections, raided the parliament and arrested several hundred people, including the stateswoman Aung San Suu Kyi, a Nobel Peace Prize laureate.
14. Since the military coup, every day more protesters, civil society activists and journalists are murdered by the junta, at night activists for democracy are kidnapped from their homes and the streets and disappear, and those who are arrested undergo severe torture.
15. On March 15, 2022, the UN High Commissioner for Human Rights published a report about the situation of human rights in Myanmar since 1 February 2021<sup>11</sup>. According to this report the security forces in Myanmar have killed at least 1,600 people and detained more than 12,500, since the coup. Myanmar's military and security forces have shown "**a flagrant disregard for human life**", many have been shot in the head, burned to death, arbitrarily arrested, tortured, or used as human shields. Detainees reported facing torture and other forms of ill-treatment during lengthy interrogations in military detention centers across the country. For example, detainees are being suspended from the ceiling without food or water; being forced to stand for extended periods while in solitary confinement; detainees are suffering from electrocution, sometimes alongside injection of unidentified drugs; and Muslim prisoners are forced to ingest pork.
16. On March 21, 2022, the U.S. Secretary Antony J. Blinken announced that members of the Burmese military committed genocide and crimes against humanity against Rohingya<sup>12</sup>.
17. According to a statement by Nada Al- Nashif, UN Acting High Commissioner for Human Rights, on September 26, 2022, in the 19 months since the military coup, some 15,000 people have been taken into custody in Myanmar, and at least 2,316 people (including at least 188 children) have been killed. The death

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<sup>11</sup> <https://news.un.org/en/story/2022/03/1113972> ;  
[https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session49/Documents/A\\_HRC\\_49\\_72\\_AdvanceUneditedVersion.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session49/Documents/A_HRC_49_72_AdvanceUneditedVersion.docx)

<sup>12</sup> <https://www.state.gov/secretary-antony-j-blinken-at-the-united-states-holocaust-memorial-museum/>

toll of people in custody is steadily rising. At least 273 persons have died in formal detention settings, such as prisons, detention and interrogation centers, and police stations as well as at least 266 reported deaths following raids and arrests in villages, at least 40 of whom were reportedly killed with headshots. Family members reported seeing signs of physical abuse, ill-treatment, or suspected torture, despite being informed that the death was a result of natural causes. There are 111 reported cases of people being burned, either alive or after being executed, in what appears to be a tactic of summary executions and attempts to destroy evidence of crimes. UN OHCHR has also documented that the military has arrested and charged at least 10 lawyers who were defending people charged with spurious, politically motivated offences<sup>13</sup>.

18. The Myanmar military's "operations" throughout the country after the coup are designed not only to target its opponents but also to punish any communities it deems to be supporting them. Military tactics involve the "scorched earth method", and indiscriminate attacks on civilians. In Magway and Sagaing regions as well as Kachin, Shan, Kayah, and Kayin states, residential buildings – as many as 30,000 - schools and other civilian infrastructure have been burnt to the ground during military ground operations<sup>14</sup>.
19. There is no doubt that Cognyte's interception system could be important in the military manhunting of democracy activists who are resisting their illegal military coup. On April 12, 2022, the US State Department published a report for year 2021 on the severe situation of human rights in Myanmar, and on the involvement of the security forces in crimes. In the report it was mentioned that **"The regime regularly monitored private electronic communications through online surveillance; there were numerous reports that the regime monitored prodemocracy supporters"**, and also that, **"before the coup, the military built an “electronic warfare capability” and bought surveillance technology, including cell phone-hacking tools to monitor prodemocracy activists"**<sup>15</sup>.

### **The obligations imposed on the director of the DECA to cancel the export and marketing licenses that were given for Cognyte's interception system to Myanmar under Israeli and international law**

20. As explained above, Cognyte and the officials in the MOD and MFA knew or should have known that they are aiding and abetting crimes against humanity. The fate of those who are located and arrested with the help of Cognyte's interception system, is to suffer the worst horrors.

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<sup>13</sup> <https://www.ohchr.org/en/statements-and-speeches/2022/09/oral-update-human-rights-situation-myanmar-human-rights-council>

<sup>14</sup> <https://www.ohchr.org/en/statements-and-speeches/2022/09/oral-update-human-rights-situation-myanmar-human-rights-council>

<sup>15</sup> <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/burma/>

21. As will be explained in detail, Cognyte and the Israeli officials who approved the marketing and export licenses of the company's interception system to Myanmar are violating international and Israeli laws.
22. Despite the many faults inherent to the Israeli Defence Exports Control Law, entering into effect in late 2007<sup>16</sup> (the Control Law), this law regularizes licensing protocols and decision-making processes. The law sets criteria for the receipt of licences, setting civil and criminal sanctions to be enforced on those found in breach of the law's provisions, or those of the licences' terms.
23. The Control Law's application is very extensive, applying to any Israeli citizen and/or resident and/or corporation under Israeli control (see article 2, Definition, in said law). Moreover, contrary to common public conception according to which defence export pertains solely to the trade of arms, the Control Law defines defence export at a much broader definition of export of equipment, dual-use technologies, know-how and provision of defence services. Very broad definitions are similarly applied to defence marketing activity (article 14 of the Control Law) and brokering activities (article 21 of the Control Law).
24. As a prerequisite to receiving a licence, the requesting party must be registered in the defence export registry and comply with the stipulations established in Chapter C of the Control Law. Moreover, the applicant/receiver of such licence must comply with the specific provisions for each licence type, and the general provisions set forth in Chapter D of the Control Law.
25. The director of DECA is in charge with the implementation of the Control Law's articles, with the administration of the defence export registry and with granting licences for defence export. The responsibility for enforcing the Control Law's provisions lies with DECA, where the Control Law vests authorities with DECA to check and ensure that the export activity is conducted according to the law's provisions, and that the exporter complies with the terms stipulated in the granted licences, in order to prevent equipment, know-how and technologies from leaking to undesirable entities.
26. Article 9 of the Control Law, on "Licence revocation and suspension or restriction of a licence", states the following:
  - (a) **The licensing authority is authorized to revoke a license that is granted pursuant to this chapter or to suspend it, including on probation or according to stipulations it shall set forth, as well as to restrict the license, taking into account, amongst others, the considerations listed in Section 8 above.**

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<sup>16</sup>[http://www.exportctrl.mod.gov.il/Documents/%D7%97%D7%95%D7%A7%20%D7%94%D7%A4%D7%99%D7%A7%D7%95%D7%97%20+%20%D7%A6%D7%95%D7%95%D7%99%D7%9D%20+%20%D7%AA%D7%A7%D7%A0%D7%95%D7%AA/Defense\\_Export\\_Control\\_Law.pdf](http://www.exportctrl.mod.gov.il/Documents/%D7%97%D7%95%D7%A7%20%D7%94%D7%A4%D7%99%D7%A7%D7%95%D7%97%20+%20%D7%A6%D7%95%D7%95%D7%99%D7%9D%20+%20%D7%AA%D7%A7%D7%A0%D7%95%D7%AA/Defense_Export_Control_Law.pdf)

- (b) **The licensing authority shall not revoke, suspend or restrict a license, prior to affording the license holder the opportunity to voice their arguments.**
  - (c) **Despite the provisions in subsection (b), under special circumstances and due to urgency, the licensing authority may suspend or restrict a license prior to affording the license holder to voice their arguments.**
  - (d) **Reasons of state security, foreign relations considerations or international obligations will not constitute as an argument against the licensing authority's decision under this section.**
  - (e) **An announcement regarding a decision by the licensing authority under this section will be made known to the applicant in a manner and time period as set forth by the minister in regulations.**
27. Article 8(7) of the Control Law determines the director of DECA authority to refuse granting the licence due to "**considerations regarding the end-user or the end-use.**"
  28. Articles 25-27 define the status of the head of the defence exports unit in the MFA, as an advisor to the director of DECA in the regulation on defence exports.
  29. The director of DECA is no different than any other administrative authority in the State of Israel, to which the rules of Administrative Law apply. One of the basic concepts are that, once an administrative entity is vested with authority, it carries the continuous obligation to consider the need to execute said authority (see HCJ 4374/15 Movement for Quality Government in Israel (R.A.) v. Prime Minister of the State of Israel (published in Nevo, 27.3.2016); HCJ 297/82 Ezra Berger v. Minister of Interior (published in Nevo, 12.6.1983); and also, Daphne Barak-Erez, Administrative Law, book 1, p. 201-202 (2010)).
  30. In order to make an adequate administrative decision on granting, suspending or revoking a defence export and marketing licences for interception systems to Myanmar, the director of DECA should have formulate sufficient factual basis for making the decision, review all applicable considerations and enact the judgement he/she was endowed with in a reasonable, proportional manner, taking into account all relevant considerations. Additionally, he/she should have justified his/her rationales for the decision, and this obligation also gives rise to his/her obligation to present the public with the factual basis upon which his/her decision was made. These are all, as aforementioned, basic principles of the Israeli Administrative Law (see paragraphs 32 and 41 in the judgement of Chief Justice (retired) President M. Naor on AAP 8101/15 Almasjad Griusos Tzagatz v. Minister of Interior (published in Nevo, 28.8.2017)).

31. There is no doubt that the interception systems of Cognyte are considered defence equipment as defined in section 2 of the Control Law. Any export of defence equipment, defence knowledge or defence service requires an export license. In Cognyte's report to the US Securities and Exchange Commission on December 22, 2020, the company wrote<sup>17</sup> : **"We also must receive a specific export license for defense related hardware, software, services and know-how exported from Israel"**.
32. Also, the participation of Cognyte in the tender in Myanmar required a marketing license from the MOD and MFA. Article 14 of the Control Law, defines "Defense marketing activity" as, **"An activity aimed at promoting a defense export transaction, including brokering activity towards a defense export transaction, whether in Israel or outside of Israel, in writing or orally or via any other means, directly or indirectly, in exchange for remuneration or not, whether transfer of defense know-how occurs or not, or the holding of negotiations towards such transaction; the activity can be geared toward a certain customer or toward a general public, and may or may not result in a defense export transaction"**.
33. In recent years there has been a revolution in the responsibility imposed on exporting countries and defense exporters for the use of exports in their target countries. See, for example, the decision of the International Criminal Court for Sierra Leone (SCSL) in the case of former Liberian President C. Taylor (Prosecutor v. Taylor, Case No. SCSL-03-01-A, Judgment, Sep. 26, 2013). Taylor was convicted of aiding and abetting war crimes and crimes against humanity, inter alia, for supporting and transferring weapons to the RUF; Similarly, the International Criminal Tribunals for Yugoslavia (ICTY) and Rwanda (ICTR) have clarified the definitions of "assistance" and "participation". According to the ICTY, the abettor must provide assistance to the perpetrator knowing that the perpetrator intends to commit the crime but must not himself support the purpose of the perpetrator. Moreover, it does not matter whether the assistance is given to the offender before, after or during the commission of the offense (Prosecutor v. Blaskic, Case No. IT-95-14 (Trial Chamber), March 3, 2000). According to the ICTR, one possible element of assistance is the supply of weapons (Prosecutor v. Akayesu, Case No. ICTR-96-4-T (Trial Chamber), September 2, 1998).
34. The UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968<sup>18</sup>, as well as the provisions of article 29 of the Rome Statute of the International Criminal Court (1998)<sup>19</sup> explicitly state that war crimes and crimes against humanity are not subject to statute of limitations.

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<sup>17</sup> <https://cognyte.gcs-web.com/node/6166/html>

<sup>18</sup> [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.27\\_convention%20statutory%20limitations%20warcrimes.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.27_convention%20statutory%20limitations%20warcrimes.pdf)

<sup>19</sup> <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

35. In 2005, the Red Cross (ICRC) published a guide on international customary international law<sup>20</sup>, which is considered a trusted source for identifying customary rules. The guide identified 161 rules of customary law, among them is the rule that there is no statute of limitations for the offense of crimes against humanity and war crimes (Rule 160)<sup>21</sup>.
36. In this context it is worth noting, that the preamble<sup>22</sup> of the Israeli bill on the Prevention and Punishment of the Crime of Genocide (Amendment), 1966, states that the State of Israel supported the UN resolution, which was adopted unanimously, on April 9, 1965, according to which it is necessary to prevent a statute of limitations for offenses of the type of crimes against humanity, and the UN resolution on the subject was quoted, in its full wording.
37. Article 17 of the UN Declaration of 18 December 1992 (A / RES / 47/133<sup>23</sup>) United Nations Declaration on the Protection of All Persons from Enforced Disappearance, provides:

**Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.**

**When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.**

**Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.**

38. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (2006)<sup>24</sup> defines "enforced disappearance":

**For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the**

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<sup>20</sup> J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law (2005)

<sup>21</sup> [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule160](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule160)

<sup>22</sup> [https://www.nevo.co.il/law\\_word/Law17/PROP-0679.pdf](https://www.nevo.co.il/law_word/Law17/PROP-0679.pdf)

<sup>23</sup> <https://www.un.org/documents/ga/res/47/a47r133.htm>

<sup>24</sup> <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

**disappeared person, which place such a person outside the protection of the law.**

39. Article 2 of the United Nations Declaration of 18 December 1992 on the Protection of All Persons from Enforced Disappearance (A / RES / 47/133)<sup>25</sup>, provides:

**1. No State shall practise, permit or tolerate enforced disappearances.**

**2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.**

40. The provision of article 5 of International Convention for the Protection of All Persons from Enforced Disappearance (2006), defines as crimes against humanity, a widespread or systematic enforced disappearances:

**The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.**

41. Article 6 of the Constitution of the Military Tribunal at Nuremberg (1945) defines war crimes and crimes against humanity<sup>26</sup>:

*War crimes:* namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

*Crimes against humanity:* namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

42. Subsequently, on the basis of the interpretation given by the International Criminal Courts, Articles 7-8 of the Rome Statute have defined in great detail war crimes and crimes against humanity.

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<sup>25</sup> <https://www.un.org/documents/ga/res/47/a47r133.htm> ; <https://undocs.org/en/A/RES/47/133>

<sup>26</sup> [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2\\_Charter%20of%20IMT%201945.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf)

43. In addition to the obligations of the State of Israel (according to the decisions of international criminal courts, individual international conventions, and customary international law) to refrain from assisting in crimes against humanity and war crimes, a global meeting was held at the UN Headquarters in New York in September 2005. Its conclusion was adopted by the UN Plenum by a majority (Resolution A/60/L.1)<sup>27</sup>. According to the resolution, the countries of the world undertook as follow: **"Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability"**.
44. In October 2009, the UN Plenum reaffirmed by a large majority the principle of **"Responsibility to Protect"** (Resolution No. A / RES / 63/308)<sup>28</sup>.
45. Beginning in 1946, when the UN General Assembly adopted the principles of the Nuremberg Military Tribunal (IMT) Constitution<sup>29</sup> and its rulings, international law considers torture a crime at the international level, both within the category of crimes against humanity and as a crime in itself, conferring universal jurisdiction to prosecute individuals accused of committing acts that amount to torture, regardless of the place where they were committed, the identity of the victims or the citizenship of the perpetrator.
46. Article 5 of the UN Declaration of Human Rights, 1948, sets out the prohibition on torture<sup>30</sup>, **"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"**; Also, article 7 of the International Covenant on Civil and Political Rights (1966) prohibits torture<sup>31</sup>, **"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation."**
47. On October 22, 1986, the State of Israel signed the Convention against Torture and Cruel, Inhuman or Degrading Treatment and Punishment (1984), and ratified it on August 4, 1991. Article 4 (1) of this Convention provides: **"Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to**

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<sup>27</sup> [http://www.un.org/ga/search/viewm\\_doc.asp?symbol=A/60/L.1](http://www.un.org/ga/search/viewm_doc.asp?symbol=A/60/L.1)

<sup>28</sup> [http://responsibilitytoprotect.org/Resolution%20RtoP\(3\).pdf](http://responsibilitytoprotect.org/Resolution%20RtoP(3).pdf)

<sup>29</sup> <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b39614>

<sup>30</sup> [https://www.btselem.org/hebrew/international\\_law/universal\\_declaration](https://www.btselem.org/hebrew/international_law/universal_declaration)

<sup>31</sup> [https://www.nevo.co.il/law\\_word/Law09/amana-1040.pdf](https://www.nevo.co.il/law_word/Law09/amana-1040.pdf)

**an act by any person which constitutes complicity or participation in torture".**

48. Article 3 of the 1948 UN Declaration of Human Rights states the right to life and liberty: **"Everyone has the right to life, liberty and security of person."** The provisions of Article 6(a) of the International Covenant on Civil and Political Rights (1966) also stipulate the right to life and the prohibition to arbitrarily take a person's life: **"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."**
49. In the UN document entitled Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, dated 24.5.1989, article 1 states that states must prevent and prohibit executions without trial<sup>32</sup>: **"Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths"**.
50. Human rights defenders' activities do not constitute a crime or terrorist activity. See, for example, article 1 of the UN assembly resolution (53/144), dated December 9, 1998<sup>33</sup>: **"Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels"**.
51. Human rights activists and organizations, demonstrators, journalists and activists for democracy, can never be used as a target just because of their views. Any attempt to impose certain opinions on them is prohibited, and any attempt to infringe on their rights based on their opinions also constitutes a violation of their right to freedom of expression, enshrined in Article 19 of the International Covenant on Civil and Political Rights<sup>34</sup>.

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<sup>32</sup> <https://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>

<sup>33</sup> <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>

<sup>34</sup> <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

**1. Everyone shall have the right to hold opinions without interference.**

**2. 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.**

**3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:**

**(a) For respect of the rights or reputations of others;**

**(b) For the protection of national security or of public order (ordre public), or of public health or morals.**

52. Article 7(h) of the Rome Statute defines "persecution" as a crime against humanity, **"Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court"**.

53. In paragraphs 436-438 of the decision of the International Criminal Tribunal for Sierra Leone (SCSL) regarding the former President of Liberia C. Taylor (Prosecutor v. Taylor, Case No. SCSL-03-01-A, Judgment, Sep. 26, 2013), regarding the mental element required in the offense of aiding and abetting:

**436. The Appeals Chamber's review of the post-Second World War jurisprudence demonstrates that under customary international law, an accused's knowledge of the consequence of his acts or conduct – that is, an accused's —knowing participation in the crimes – is a culpable mens rea standard for individual criminal liability. Similarly, the post-Second World War jurisprudence was found in early ICTY Judgments other than Furundžija to establish that under customary international law, —awareness of the act of participation coupled with a conscious decision to participate in the commission of a crime entails individual criminal responsibility. The 1996 ILC Draft Code supports this conclusion, and Article 25(3)(c) of the Rome Statute is not evidence of state practice to the contrary. Whether this standard is termed —knowledgell, —general intentll, —dol specialll, —dolo direttoll or —dolus directus in the second degree ll, the concept is the same.**

**437. In light of the foregoing, the Appeals Chamber reaffirms that knowledge is a culpable mens rea standard for aiding and abetting liability under Article 6(1) of the Statute and customary international law.**

**438. This Appeals Chamber and the Special Court Trial Chambers have consistently held that —awareness of the substantial likelihood is a culpable mental state for aiding and abetting under customary international law. The Defence has not provided cogent reasons to depart from this jurisprudence, which is consistent with the principle that awareness and acceptance of the substantially likely consequence of one's acts and conduct constitutes culpability. In finding Taylor criminally responsible for aiding and abetting, the Trial Chamber found beyond a reasonable doubt that Taylor knew that his acts assisted the commission of the crimes. Accordingly, the Appeals Chamber concludes that the Defence has not shown an error that would occasion a miscarriage of justice and finds it unnecessary to further consider the Defence submissions.**

As to the factual element required in the offense of aiding and abetting under international law, paragraphs 365-396 of the decision provide that there is no need to prove the physical use of the aid by a specific principal perpetrator (e.g., some soldier), and the only proof required is that of aiding the crime, including through the supply of weapons:

**As the issue presented concerns the elements of aiding and abetting liability under Article 6(1) of the Statute, the Appeals Chamber must look to the Statute and customary international law... The Defence submission that an aider and abettor's assistance must be used by the physical actor in the commission of the specific crime is thus contrary to the Statute. The plain language of Article 6(1) and the object and purpose of the Statute ensure accountability for those who participate in the commission of crimes, in whatever manner and at whatever stage.... The Appeals Chamber does not accept the Defence submission that the principle to be derived from the jurisprudence is that an aider and abettor must provide assistance to the physical actor and that the assistance must be used in the commission of the specific crime. To the contrary, the Appeals Chamber has held that in respect of the actus reus of aiding and abetting liability, the essential question is whether the acts and conduct of an accused can be said to have had a substantial effect on the commission of the crime charged... Interpreting the Statute in accordance with its plain meaning in context, in light of its object and purpose, the Appeals Chamber finds that Article 6(1) establishes individual criminal liability in terms of the accused's relationship to the crime, not to the physical actor... Aiding and abetting liability has attached to those who have provided assistance, encouragement or moral support to a variety of different crimes in a variety of contexts. Confirmed**

convictions for aiding and abetting liability have been entered for: the rape of a single victim; attacks on peacekeepers; detention, ill-treatment and forcible transfer throughout a municipality; killings, torture, destruction of homes and religious institutions and persecution in a region; persecution throughout a State; a genocide. The acts and conduct of those convicted had a substantial effect on the commission of crimes in an infinite variety of ways. An accused's acts and conduct can have a substantial effect by providing weapons and ammunition, vehicles and fuel or personnel, or by standing guard, transporting perpetrators to the crime site, establishing roadblocks, escorting victims to crime sites or falsely encouraging victims to seek refuge at an execution site. Such variety also includes providing financial support to an organisation committing crimes, expelling tenants, dismissing employees, denying victims refuge or identifying a victim as a member of the targeted group.... The Appeals Chamber agrees with the ICTY Appeals Chambers that —a defendant may be convicted for having aided and abetted a crime even if the principal perpetrators have not been tried or identified, and that —it is not required as an element of aiding and abetting liability that the principal perpetrators know of the aider and abettor's existence or of his assistance to them.

54. According to paragraphs 283-285 of the decision of the International Criminal Tribunal for Yugoslavia (ICTY) Prosecutor v. Blaskic, Case No. IT-95-14 (Trial Chamber), March 3, 2000), regarding the factual element required in the offense of aiding and abetting:

**The actus reus consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime... The Trial Chamber holds that the actus reus of aiding and abetting may be perpetrated through an omission, provided this failure to act had a decisive effect on the commission of the crime and that it was coupled with the requisite mens rea... Proof that the conduct of the aider and abettor had a causal effect on the act of the principal perpetrator is not required. Furthermore, participation may occur before, during or after the act is committed and be geographically separated therefrom.**

As to the mental element required in the offense of aiding and abetting under international law, paragraphs 286-287 of the decision provide that the aider and abettor need not know the precise crime planned:

**The Trial Chamber is of the view that in addition to knowledge that his acts assist the commission of the crime, the aider and abettor needs to have intended to provide**

assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct... It is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.

55. In paragraphs 538-541 of the decision of the International Criminal Tribunal for Rwanda (ICTR), Prosecutor v. Akayesu, Case No. ICTR-96-4-T (Trial Chamber), September 2, 1998, written that it is not necessary for an accomplice to support a crime in order to convict him of aiding and abetting:

**The intent or mental element of complicity implies in general that, at the moment he acted, the accomplice knew of the assistance he was providing in the commission of the principal offence. In other words, the accomplice must have acted knowingly... As far as genocide is concerned, the intent of the accomplice is thus to knowingly aid or abet one or more persons to commit the crime of genocide. Therefore, the Chamber is of the opinion that an accomplice to genocide need not necessarily possess the *dolus specialis* of genocide, namely the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such... Thus, if for example, an accused knowingly aided or abetted another in the commission of a murder, while being unaware that the principal was committing such a murder, with the intent to destroy, in whole or in part, the group to which the murdered victim belonged, the accused could be prosecuted for complicity in murder, and certainly not for complicity in genocide. However, if the accused knowingly aided and abetted in the commission of such a murder while he knew or had reason to know that the principal was acting with genocidal intent, the accused would be an accomplice to genocide, even though he did not share the murderer's intent to destroy the group.**

56. Article 2(c) of the Israeli Secret Monitoring law, 1979<sup>35</sup>, defines an offence: "a person who sets or installs a device for unlawful wiretapping or to enable its use for said purpose, shall be liable to five years imprisonment".

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<sup>35</sup> [https://knesset.gov.il/review/data/eng/law/kns9\\_monitoring\\_eng.pdf](https://knesset.gov.il/review/data/eng/law/kns9_monitoring_eng.pdf)

57. Article 5 of the Israeli Privacy Protection Law, 1981<sup>36</sup>, defines an offence: **"a person who wilfully infringes the privacy of another in any of the ways enumerated under sections 2(1), (3) to (7) and (9) to (11), shall be liable to five years imprisonment"**, while article 2(1) defines infringement of privacy as **"spying on or trailing a person in a manner likely to harass him, or any other harassment"**.
58. Article 4 of the Israeli Computers Law, 1995<sup>37</sup>, defines an offence: **"A person who unlawfully penetrates computer material located in a computer, shall be liable to imprisonment for a period of three years; for this purpose, "penetration into computer material" - penetration by means of communication or connection with a computer, or by operating it, but excluding penetration into computer material which constitutes eavesdropping under the Eavesdropping Law, 1979"**;
59. Article 31 of the Israeli Penal Law, 1977<sup>38</sup>, defines an "Accessory", **"a person who does anything – before an offense is committed or during its commission – to make its commission possible, to support or protect it, or to prevent the perpetrator from being taken or the offense or its loot from being discovered, or if he contributes in any other way to the creation of conditions for the commission of the offense, then he is an accessory"**; Article 29(b) of the Israeli Penal Law defines a "joint perpetrator", **"Participants in the commission of an offense, who perform acts for its commission, are joint perpetrators, and it is immaterial whether all acts were performed jointly, or some were performed by one person and some by another."**
60. "Accessory" or "joint perpetrator" of the relevant offences that are defined in the Israeli Penal Code, 1977:
- a) Articles 300, 301a, 301b, 301c and 304 of the Israeli Penal Law, that prohibit manslaughter and murder.
  - b) Articles 368b, 378, 379 and 382 of the Penal Law, regarding assault and aggravated assault.
  - c) Articles 329(a), 333, 334, 335 and 340 of the Penal Law, which prohibit causing a physical injury that causes a person to have a disability or disfigurement with aggravated intent, and also causing serious body injury and damage through negligence.
  - d) The definitions of the abduction offenses in the Israeli Penal Law are similar to the definition of " Enforced Disappearance" in international law. Thus, in

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<sup>36</sup> <https://www.gov.il/BlobFolder/legalinfo/legislation/en/ProtectionofPrivacyLaw57411981unofficialtranslatio.pdf>

<sup>37</sup> [https://sherloc.unodc.org/cld/uploads/res/document/computer-law\\_html/Israel\\_Computers\\_Law\\_5755\\_1995.pdf](https://sherloc.unodc.org/cld/uploads/res/document/computer-law_html/Israel_Computers_Law_5755_1995.pdf)

<sup>38</sup> <https://www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf>

the provision of article 369, "abduction" was defined as, **"forcing a person by force or threat or by deceiving him by means of deception to leave his place - it is an abduction, and he is liable to imprisonment for ten years"**; And article 372 defines abduction for the purpose of extortion or threats, **"Whoever abducts a person in order to kill him or to put him in danger of murder, or abducts a person to extort or threaten, is liable to imprisonment for twenty years."**

- e) Especially relevant to interception systems, article 428 that prohibit extortion by threats, **"Whoever threatens a person in writing, orally or by conduct, unlawfully harming his body or another person's body, their liberty, property, livelihood, reputation or privacy, or threatens a person to publish or to refrain from publishing anything concerning him or another person, or to intimidate a person in any other way, all in order to motivate the person to commit an act or to refrain from an act that he is entitled to do, is liable to imprisonment for seven years; If the act or omission was committed due to a threat or intimidation as aforesaid or during them, he is liable to imprisonment for nine years. "**
  - f) Article 371 that defines "Abduction with intent to confine": **"Whoever kidnaps a person intentionally in order to have him imprisoned illegally, is liable to imprisonment for twenty years."**
61. Also seems relevant article 262 of the Israeli Penal Law, which determines that, **"a person who knows that a certain person plans to commit an offense and has not taken all reasonable actions to prevent its commission or completion, then he is liable to two years imprisonment."**
62. It doesn't matter if the offenses are done outside of the State of Israel – Article 16(a) of the Israeli Penal Law stipulates that, **"Israel's penal laws shall apply to foreign offenses which the State of Israel has undertaken, in multilateral and open conventions to join, to punish; This will apply even if they were committed by someone who is not an Israeli citizen or a resident of Israel, regardless of where the offense was committed."**; Article 15(a) of the Israeli Penal Law stipulates that, **"Israel's penal law shall apply to a foreign offense of a crime or misdemeanor committed by a person who was, at the time of the offense or thereafter, an Israeli citizen or resident of Israel; if a person was extradited from Israel to another country for the same offense and was prosecuted there, Israel's penal laws will no longer apply to it."**
63. The "accessory" is a secondary and indirect party in the commission of the offense. While another commits the offense, the accomplice acts to enable the commission of the principal offense, facilitate it, secure it, or otherwise contribute to it. Accordingly, the penalty imposed on the accessory is equal to half the penalty for committing the same offense (article 32 of the Israeli Penal Code).

64. The elements of the offense of being an accessory were defined in the guiding judgment given in Case 320/99 Plonit v. State of Israel (published in Nevo, February 15, 2001).
65. As part of the factual component in the definition of the offense, auxiliary conduct is required, that is, conduct which has the potential to create the conditions for the commission of the offense by the principal perpetrator in one of the ways listed in article 31 of the Penal Code. The law does not require that without the assistance the principal offense would not have been materialized. It is not necessary that in his conduct the accessory should make an effective contribution to the commission of the principal offense. The demand is, so it was ruled, merely for the conduct to carry the potential to assist in the commission of the main offense (see Cf. 4317/97 Polyakov v. State of Israel (published in Nevo, 21.1.1999); Cf. 11131/02 Yusupov v. State of Israel (Published in Nevo, 15.3.2004)). The emergence of the factual basis does not depend on the completion of the main offense, and it is sufficient that the main offender approaches its commission (see the judgment of the President Esther Hayut in case 2219/14 Ploni v. State of Israel (published in Nevo, 16.11.2014)).
66. The mental element includes three components: Awareness of the nature of the assistive behavior, that is, that the act contributes to the commission of the principal offense; Awareness that the main perpetrator is about to commit an offense "with a tangible purpose", when it is not enough to know about a theoretical possibility or willingness to commit an offense; And a purpose for the assistance.
67. In Case 320/99, with regard to the mental element, it was determined that a basic element of purpose is required of the accessory to assist the main offender. Regarding the mental attitude to the offense being committed, or about to be committed, it was determined that beyond the cognitive element no volitional element is required in relation to the commission of the offense, that is, the accessory is not required to intend for the main perpetrator to fulfill his scheme.
68. According to paragraph 9 of the judgment of the Vice President (retired) Eliezer Rivlin in case 11131/02 Yusupov, the awareness - both of the nature of the auxiliary behavior and of the circumstance of the commission of the main offense - may be replaced by suspicion as to the auxiliary nature of the behavior and awareness of the possibility of the existence of the circumstance of the commission of the offense by the principal offender, in accordance with the provisions of section 20 (c)(1) of the Penal Code ("closing one's eyes"). In addition, according to the "rule of predictability", the element of intention to serve as an accomplice takes place even where the intention of the accomplice is not to assist the main offender, but he is aware that his behavior may, in all probability, contribute to the commission of the offense by the main perpetrator.
69. The component of intent to serve as an accessory is realized even when the assistant does not want the offense to materialize, including a case in which he acts **"out of social pressure or out of greed, even though he does not want**

**this offense to materialize"** (see the judgment of the President Esther Hayut in case 2219/14 above).

70. It was further determined that although in the normal case the auxiliary act will be carried out by way of an active act, there is no impediment to recognizing the assistance to an offense by way of default (paragraph 23 of the judgment of the Vice President (retired) Elyakim Rubinstein in case 2219/14).
71. Once a public authority has learned that it is acting contrary to its authority by law, it must correct the defect without delay and on its own initiative, and not continue to act in a state of illegality. In this context, the words of the Hon. Judge E. Levy in paragraph 19 of his judgment in HCJ 10296/02 Teachers' Organization in Post-Primary Schools, Seminars and Colleges v. Minister of Education, Culture and Sports (published in Nevo, 15.12.04): **"We must not turn a blind eye to an ongoing situation of exceeding one's authority, and the administrative authority should not be allowed to adopt a policy of procrastination in correcting the faulty situation. On the contrary, the court does not hesitate to have its say where the authority is procrastinating in correcting an act that is defective. "**
72. We ask you to exercise your powers under the provisions of the Control Law and immediately cancel the export and marketing licenses that were given for Cognyte's interception system to Myanmar, and to refrain from granting new export and marketing licenses to Myanmar, of any equipment, knowledge and services. Of course, Cognyte must also be required to disable its systems that have already been handed over to Myanmar
73. Especially after the NSO company was put on the US blacklist, and is unable to get out of it, it is difficult to understand the logic of the two of you to forcefully put another Israeli company on the sanctions list.
74. We would appreciate your prompt response.



Eitay Mack, Adv.