ISRAEL

Warning conversations: an intimidation approach to activism?

Rateb Abu-Krinat during one of the demonstrations against the Prawer Plan in 2013.
Photo: Eslam Alsana

the case

As a field worker for the NGO 'Negev Coexistence Forum for Civil Equality,' Rateb Abu-Krinat was active in promoting full civil rights and equality for Arab-Bedouin citizens in the Negev region of southern Israel. Between 2012 and 2013, his activism included participating in public protests against the 'Prawer Plan,' a controversial government initiative to regulate the land ownership structures of the Negev Bedouin.

In June 2012, Rateb received a call requesting that he report to the local police station as part of an investigation. Rateb, an Arab-Israeli citizen, voluntarily complied. When he arrived, he was subjected to a humiliating body search and then taken to a room and introduced to a man who identified himself as 'Jamil' from Shin Bet, the General Security Service (GSS). Insisting that this was just a 'regular conversation,' Jamil proceeded to question Rateb for two and a half hours about his studies and his work, and pressed him to provide details about his family and his friends. Towards the end of the conversation, Jamil asked him about his position on the Prawer Plan. The GSS official concluded this session by making it clear to Rateb that he already knew a great deal about his life and activities and that while he was currently 'untainted,' he should be wary of participating in activities that could harm the security of the state; Jamil told him that he should 'pray' that there would be no need for them to meet again.

Eight months later Rateb received another summons to a follow-up on that meeting at the police station. This time he reached out to the Association for Civil Rights in Israel (ACRI).

For several years ACRI had been gathering testimonies from civil society activists who had been summoned for similar 'warning conversations' with GSS agents. An ACRI employee who worked to defend the rights of residents of East Jerusalem was among them. An

activist involved in Jewish-Arab political activities in northern Israel had likewise been called in, questioned and cautioned, as had activists involved in protest activities against the Occupation, the construction of the Security Barrier, and the blockade on the Gaza Strip.

The testimonies that ACRI collected followed a pattern. Those summoned for these 'conversations' were all activists engaged in advocacy for policies that challenged public consensus. The conversations, which were not part of formal investigations of specific crimes, had the tenor of interrogations, with GSS agents questioning activists about both their personal lives and political activities. The activists were often asked to supply names and phone numbers of family or friends and in some instances were asked for details about their financial situation. In some cases, GSS agents explicitly told the activists that while they were not suspected of violating the law 'for now,' they should be careful not to do so in the future; other times the agents made vague assertions, without specific allegations, that the activists had been involved in disturbances of the peace. Occasionally, the warnings and threats were blunt: one of the 'suspects' was told to 'be aware that we will launch a case against you' but was given no explanation as to what alleged illegal conduct might precipitate such a case.

Most troublingly, in many of the 'warning conversations' it was made explicitly clear to those summoned that the GSS already knew a lot about them and had been monitoring their activity. One of the activists recounted how:

[The agent] began to raise all kinds of personal information about my life that even those close to me don't know…it was as if he was telling me 'we know who you are, we know what you do.'[1]

With reports of these 'warning conversations' mounting, ACRI contacted the GSS and the attorney general several times to demand that they immediately end the practice of 'warning conversations.' One of the few responses received in a letter from the Attorney General's Office, signed by a senior advisor to the attorney general, only intensified the concern.[2]

The letter explained that the activist in question was summoned to participate in a conversation because the GSS possessed information concerning his involvement in a violent demonstration in the country's north, even though GSS agents hadn't raised such an allegation during their conversation with him. As for the legal basis for summoning citizens to 'warning conversations,' the letter referred to the General Security Service Act (GSSA), which authorises the agency to thwart or prevent any illegal activity whose aim is to harm state security, the democratic regime or its institutions. This is despite the fact that, under Israeli law, activities that are considered public disruptions belong under the purview of the Israeli police, not the GSS.

And it was not just that the purported basis for the 'these exchanges' was tenuous; the letter also suggested, as the GSS agents had intimated during 'warning conversations,' that the conversations were linked to evidence gathered via other intelligence powers. According to the letter, when Israeli citizens are targeted for 'warning conversations,' it generally follows the collection of intelligence information. When such intelligence information is received, as explained in the Attorney General Office's letter, its credibility is examined and an attempt is made to supplement it as far as possible with additional intelligence 'gathering tools'—tools that sometimes may include the summation for 'inquiry,' i.e. 'warning conversations.'

When Rateb alerted ACRI that he had received a second summons to report to the police station for further questioning, ACRI sent an urgent letter to the attorney general and the Shin Bet demanding that they

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rescind the summons. The next morning – remarkably swiftly – ACRI received a reply from the GSS’s legal department clarifying that Rateb Abu-Krinat was under no obligation to attend the meeting.

But additional ACRI requests that the GSS and the attorney general explain and delineate the limits of the GSS’s supposed authority to conduct these ‘warning conversations’ went unanswered. So, in July 2013 ACRI submitted a legal petition against the GSS to the Supreme court of Israel.

the context

Digital surveillance is pervasive in Israel with powers distributed among four main intelligence-gathering entities: Unit 8200, which is the Signal Intelligence (SIGINT) Unit of the Israeli Defence Forces; the GSS; the MOSSAD; and Israeli police.

As Israel’s internal security service, the GSS has sweeping access to all communications in Israel. Under the GSSA, the GSS is authorised ‘to receive and collect information’[3] for the purpose of carrying out its missions, including the ‘protection of State security and the order and institutions of the democratic regime against threats of terrorism, sabotage, subversion, espionage, and disclosure of State secrets.’[4] For the GSS, this includes the power to wiretap the phones and monitor the internet activities of Israeli citizens without judicial oversight. To use these tools, it is sufficient simply to receive approval from the prime minister.

To collect communications metadata, the GSS does not even need to seek approval from the prime minister. A permit is given by the head of the service.5 Secret appendices – which are attached to the franchises and licences the state issues to communications companies (according to the Communications Law[6]) and which include specifications on technical infrastructure (equipment and facilities located at the licensee’s premises) – grant Israeli intelligence agencies direct and full access to their databases, enabling the GSS to monitor all communications and collect all metadata directly, without any involvement or specific knowledge of the companies.

In 2007, as part of the Freedom of Information Act’s litigation, the Ministry of Communication refused to disclose the secret appendices attached to the franchises and licences. However, under the court’s enquiry, the minister confirmed that the GSS holds ‘the key’ to the databases – meaning the companies providing internet services do not even know how and when the GSS accesses their databases.

The Israeli public remains in the dark about the scope of surveillance that is conducted under this authority. The GSS is entirely exempt from the Freedom of

Palestinian and international activists react to stun grenades thrown by Israeli forces during a Day of Rage protest against the Prawer-Begin Plan in front of the Israeli settlement Bet El, Al Jalazun, West Bank, 30 November 2013.
Photo: Ryan Rodrick Beiler/Active Stills

Information Act, so the public has no means to find out how often and under what circumstances this power is used. While the prime minister is subject to Freedom of Information Requests (known as FOIA), the GSS exemption means that even something as general as the number of wiretapping permits the prime minister approves each year remains classified. When the prime minister was pressed directly on the question, he insisted that the information is not in his 'physical' possession, because he returns all requests and approvals of wiretaps to the GSS. When ACRI filed a FOIA petition seeking statistics from the Prime Minister's Office on the number of GSS surveillance permits it had approved, the District Court and then the Supreme Court rejected that petition, accepting the state's argument that the relevant data is entirely in the hands of the GSS. That position both distorts the scope of the GSS's legal privilege and calls into question how effectively and rigorously the prime minister supervises the GSS's wiretapping requests.

In 2012 Avi Dichter, the former head of the GSS between 2000 and 2005, acknowledged that he managed to pass the key section governing SIGINT data communication largely 'under the radar' thanks to the fact that people at the time did not realise the full significance of communications metadata and just how revealing that information can be. Dichter also insisted that the GSS 'paid' for those fantastic legal powers by agreeing to 'transparency' in its digital surveillance activities. But what this transparency amounted to was secret and limited reports to certain government ministers, a closed committee in the Knesset, and the attorney general – reports as hidden from the public as the programmes themselves, and reports, Dichter admitted, that were of little interest to these government overseers. In Dichter's words:

I can't recall a single instance as head of the GSS… when a legal or government official…called and told us that we hadn't met the deadlines for providing written or oral updates. In every instance, without a single exception, it was always us that pulled up our sleeves and contacted the attorney general or the Ministerial Committee to say 'friends, you forgot that we are required to report to you.'[7]

The purposes for which the GSS is empowered to mine communications metadata are very broadly and vaguely defined. Wiretapping is conditioned, at least by the wording of the law, on its being 'necessary for state security needs,' and in granting GSS wiretapping

Israeli police march as Bedouin youth throw stones during a protest against the Prawer-Begin Plan, on road 31 near Hura, Israel, on 30 November 2013.
Photo: Oren Ziv/Active Stills

requests, the prime minister is required to balance those needs against the right to privacy. By contrast, a permit to collect or use metadata is issued by the head of the GSS once he or she has been 'convinced that this was required by the Service to fulfil its functions under [the GSSA].'[8]

This is the same statutory standard the GSS relies on to justify its practice of summoning activists to 'warnings conversations.' But while metadata collection and the majority of the GSS's other surveillance activities operate entirely out of view, the 'warning conversations' are conducted in the public realm, offering a rare glimpse into the kinds of activities the GSS engages in under the heading of national security. In challenging the practice of 'warning conversations,' ACRI has sought to drag the GSS's interpretation of its functions and powers into the light.

The GSSA defines the GSS's role in an extremely broad way, stating that 'the service shall be responsible for the protection of State security and the institutions of the democratic regime against threats.'[9] These threats include not only terrorism or espionage but also 'subversion' and threats to 'other State interests vital for national State security, as prescribed by the Government.'[10] ACRI's petition challenged the GSS's wide interpretation of those statutory terms, especially in relation to 'subversive activities.'

In a 2007 response to an enquiry from ACRI, Yuval Diskin, the former head of the GSS between 2005 and 2011, asserted that 'the position of the GSS is that "subversion" can also include aiming to alter the fundamental values of the state by annulling its democratic or Jewish character.'[11] A 2012 GSS publication named 'Radical Right and Left' indicated that the service is not only gathering information on such alleged subversion but has acted on that information, noting that 'Shin Bet information, passed to the state enforcement agencies, has helped to curb acts of delegitimisation of Israel.'[12]

In its response to ACRI's petition challenging 'warning conversations,' the state asserted for the first time that, following a 2009 revision to the definition of 'subversion,' activities or protests against the 'Jewish character of the state' were no longer considered 'subversive activity' under the mandate of the GSS. The fact that such a decision had been made four years earlier, in secret,

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and was only revealed in response to ACRI's petition, was troubling in itself. More troubling, though, was the state's ongoing acknowledgement that the GSS was nevertheless continuing to monitor protests for subversion. According to the state:

As a rule, in a democracy, protests (that exceed the bounds of the law) are a police matter and not a matter for the GSS…However, the GSS must act to foil protest displays that are conducted for subversive and nationalistically motivated ideological reasons, and under circumstances in which the nature of the protest poses a risk to state security.[13]

In its response, the state failed to explain how it differentiates acceptable protests from demonstrations ‘that are conducted for subversive and nationalistically motivated ideological reasons’ and that pose ‘a risk to state security.’

Why are some demonstrations such as the ones Rateb engaged in on behalf of the Bedouin community and against the Prawer Plan treated as state security matters subject to GSS scrutiny, while other protests, such as those organised by Ultra-Orthodox Jews against army conscription, are not treated as such, even when there are fears of public disturbances? To what extent are issues that are of key importance to Israeli Arabs, for example, more likely to be classified and treated as ‘nationalist’ and ‘subversive’ threats to state security? Or treated as activities that serve to ‘delegitimise’ Israel, activities that the GSS asserts the authority to monitor and thwart.

In its response to ACRI's challenge to the ‘warning conversations,’ the state asserted that thwarting ‘delegitimisation’ did not serve as the legal basis for summoning the plaintiffs named in ACRI's petition. But as we mentioned before, the ‘warning conversations’ are only one of the state's many intelligence ‘gathering tools’ (a term that covers a wide scope of surveillance activities). Furthermore, the Israeli government doesn't differentiate between calls to delegitimise the occupation of the Occupied Territories and calls to delegitimise the very existence of Israel as a state, leaving a wide range of anti-occupation and ‘anti-Israeli’ protest activities vulnerable to the (much more pervasive) monitoring and surveillance of the GSS.

ACRI's petition argues that ‘inviting’ political activists to ‘warning conversations’ exceeds the legal authority of the GSS, and it challenges the sweeping manner in which the GSS comprehends its mandate and the wide spectrum of political activities that it considers within its purview. The petition asserts that ‘warning conversations’ violate citizens' fundamental constitutional rights – the rights, first and foremost, to freedom of expression and to protest, and also the rights to dignity, privacy, freedom, equality and due process – and that these ‘conversations’ have a chilling effect on legal protest activity. It further argues that protest activity in general properly belongs under the scrutiny of the police, which unlike the GSS is subject to public oversight and judicial review – however insufficient these powers of review may be in actual practice.

After a public hearing on ACRI's petition – a hearing during which one of the judges noted that the criteria the GSS asserts for determining whether demonstrations and other protest actions constitute a security threat could be applied to almost every protest or political activity of Arab citizens of Israel – the judges announced they would continue the hearing in private with the GSS's legal representatives alone. The court subsequently issued a confidential judgment in which, according to their explanation in open court, the judges asked for further clarifications. They also announced that when they receive those clarifications from the GSS, they will reach a final judgment and decide to what extent they can publish a public and unclassified ruling. Once the GSS submits its classified explanations, it could take up to six months for the final verdict to be handed down.

conclusion

Calling peaceful political activists for friendly conversations over a cup of tea with undercover security agents is hardly a hallmark of democratic societies – especially when those conversations have the tenor of interrogations and include probing questions about political and personal associations and activities, and when the agents are from a security service that wields enormous surveillance powers.

The case of Rateb Abu-Krinat and his fellow activists exposes how, in the hands of a security agency that operates with little public oversight or accountability, sweeping surveillance powers can be combined with intimidation tactics and can be turned on dissenters. As a result, surveillance can be used to harass activists and discourage even peaceful protests and legitimate, constitutionally protected political activities.

'Warning conversations' are only the visible tip of a massive intelligence-gathering apparatus that is being wielded with extremely limited oversight in ways that themselves may pose a threat to the fundamental rights of Israeli citizens.

The stakes in the current litigation are high. As ACRI argued before the Supreme Court:

The limits of the authority of the GSS to track political activity possess implications for the scope of its use of [intelligence] "gathering" tools – specifically its collection and analysis of communications data and execution of wiretapping. These activities are not placed under judicial or public scrutiny. In these circumstances, there is great importance in a clarifying ruling that delineates the borders of the law with regard to the political activities of the GSS. We can assume, that in many of the cases, in which activists are invited for "warning conversations", other unknown activities of [intelligence] "gathering" are performed. A ruling that sets out the interpretation of the GSS authority is necessary to prevent the excessive and harmful utilisation of these tools – a utilisation which by its nature will never be subjected to direct scrutiny.

notes

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1. ACRI's petition (HCJ 5277/13 *ACRI v. GSS*), par. 23. Available at: http://www.acri.org.il/he/wp-content/uploads/2013/07/hit5277.pdf
2. Letter sent to ACRI by Mr. Raz Nizry, then senior advisor to the Attorney General's Office, dated 9 June 2010. The letter, in Hebrew, is available at http://www.acri.org.il/he/wp-content/uploads/2011/11/Nizri090610.pdf.
3. GSSA, Section 8(a)(1). Available at: http://www.knesset.gov.il/review/data/eng/law/kns15_GSS_eng.pdf
4. GSSA, Section 7(a)
5. GSSA, Section 11
6. Communications Law (Telecommunications and Broadcasting) 5742-1982, Section 13(b). Available at: http://www.moc.gov.il/sip_storage/FILES/9/3889.pdf
7. Avi Dichter speaking at the panel on 'The 10th anniversary of the SSG Act,' YouTube (Hebrew). Available at: http://youtu.be/BZ1sZqa0BR0?t=18m43s
8. GSSA, Section 11(c) [See Section 11(c) of GSSA, in footnote no. 6]
9. GSSA, Section 11(c) [See Section 11(c) of GSSA, in footnote no. 6]
10. GSSA, Sections 7–8
11. 'The Shin Bet - Guardian of Democracy?' Haaretz (12 February 2016). Available at: http://www.haaretz.com/print-edition/features/the-shin-bet-guardian-of-democracy-1.250879
12. General Security Service. '2012 Annual Summary: Data and trends in terrorism and prevention response,' GSS website, p. 13. Available at: https://www.shabak.gov.il/SiteCollectionImages/Hebrew/TerrorInfo/Years/2012-he.pdf
13. Section 22 in the state's response to ACRI's petition (HCJ 5277/13 *ACRI v. GSS*), 22 February 2014. Available at: http://www.acri.org.il/he/wp-content/uploads/2014/03/hit5277meshivim0214.pdf

Surveillance at a glance in Israel

Do citizens know more now than they did three years ago about the government's surveillance activities?
Yes

Did the Snowden disclosures lead to meaningful public debate in your country about the proper limits on government surveillance?
No

Since the Snowden disclosures, have any whistleblowers come forward to inform the public about government surveillance activities?
No

In the last three years, have the government's national-security surveillance authorities been narrowed, expanded, or neither?
Neither

In the last three years, have new structural checks (e.g. new transparency requirements) been imposed on intelligence agencies?
No

If the legislature/parliament is considering new legislation relating to government surveillance, would that legislation narrow the government's surveillance powers or expand them?
Expand them (not intelligence surveillance, but surveillance by police and other law enforcement agencies)

If the legislature/parliament is considering new legislation relating to government surveillance, would that legislation impose new structural checks?
Yes

Over the last three years, have the government's national-security surveillance authorities been the subject of domestic litigation, including in constitutional courts?
Yes

Over the last three years, have the courts rejected as incompatible with constitutional or human rights law any aspect of government surveillance?
No

Over the last three years, do you think the public has come to trust the intelligence agencies more, less, or neither?
Neither