

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL ISR 8/2019

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **State publications which appear to stigmatize civil society organisations for their engagement with international bodies, including the UN in the field of human rights, and the broader harassment of civil society organisations engaging with UN human rights mechanisms.**

According to the information received:

Stigmatization of civil society organisations working for the promotion and protection of human rights in the OPT, including following their interaction with the UN Human Rights Council and other international bodies

In May 2018, a report was published by the Israeli Ministry of Strategic Affairs entitled "The Money Trail: The Millions Given by EU Institutions with Ties to Terror and Boycotts against Israel". The report lists a number of civil society organisations working on the defence and promotion of human rights in the Occupied Palestinian Territories (OPT), along with humanitarian and development organisations working in the OPT, who had received direct or indirect financial support from European Union (EU) institutions, and called for the halting of this support. In the report, the Ministry alleged the involvement of these human rights organisations in "anti-Israel delegitimization" and the promotion of the Boycott, Divestment and Sanctions (BDS) movement. Among the activities included by the Ministry under the umbrella of "anti-Israel delegitimization" were support for the creation of a database on businesses that have enabled, facilitated and profited from the construction and growth of Israeli settlements in the OPT, as requested by Human Rights Council resolution A/HRC/RES/31/36/, and petitioning the UN Secretary General on further issues related to business and human rights in the OPT. In the report, the Ministry also repeatedly claimed and implied, on what have been reported to be unspecified, inaccurate and heavily contested bases, links between these human rights organisations and "terrorist organisations", suggesting that "European taxpayers'

money is being used to support ties with terrorist organisations”. The accusations made by the Ministry in the report were strongly rejected by Ms. Federica Mogherini, the EU High Representative for Foreign Affairs and Security Policy, who reportedly deemed them “vague and unsubstantiated” and as serving “only to contribute to disinformation campaigns”.

In January 2019, an updated version of the report, entitled “The Money Trail: European Union Financing of Organizations Promoting Boycotts against the State of Israel – 2nd Edition”, was published by the same Ministry. The updated report’s stated focus was on the identities of the organizations receiving funding from the EU, rather than the projects connected to the funding in question. Alongside repeating the accusations made in the May 2018 report, in the updated version the Ministry further accused the human rights organisations listed of lack of transparency and included information on cooperation by the organisations with the International Criminal Court. The report also expanded its allegations of ties between the organisations and “terror” [sic], and made reference to a forthcoming report, which would focus on these alleged ties.

In February 2019, this new report, entitled “Terrorists in Suits: The ties between NGOs promoting BDS and terrorist organisations”, was published by the Ministry. The report alleged the existence of a campaign to delegitimize Israel and promote the BDS campaign. It claimed that this campaign was being carried out by a network of non-governmental organisations (NGOs), including multiple human rights organisations, which had been “infiltrated and adopted” by operatives of terrorist organisations for the purpose of eliminating the State of Israel as the nation-state of the Jewish people. On this basis, the report called upon governments and donor organisations providing funds to these organisations to halt all such support. The report listed several organisations working on the defence and promotion of human rights in the OPT, referring to their members as “operatives with dual roles” and including information on their engagement with the Human Rights Council, the 2009 UN fact-finding mission on Gaza, their petitioning of the UN Secretary-General on issues relating to business and human rights in the OPT, and cooperation with the International Criminal Court. In the report, the Ministry referred to its “Money Trail” reports, which it claimed had exposed the “deep ties between the BDS campaign and Palestinian terrorist organizations”, and stated its intention to publish further reports on the issue of NGO funding.

Harassment of civil society organisations working for the promotion and protection of human rights in the OPT, including for their cooperation with the UN and its human rights mechanisms

During the 40th session of the Human Rights Council that took place between the 25 February and 22 March 2019 in Geneva, staff of a Palestinian human rights organisation were subjected to harassment while participating in side-events organised in parallel with the Human Rights Council session and during private

meetings with OHCHR staff. This included their being followed and photographed by staff members of an organisation reportedly involved in the discrediting of members of Palestinian civil society. Information from a variety of sources suggests that the organisation in question has publically accused multiple organisations working for the protection and promotion of respect for human rights in the OPT of disseminating demonizing statements against Israel, having ties with armed groups, and being engaged in anti-Israeli ‘lawfare’, a practice alleged to include engaging with the Human Rights Council and the International Criminal Court. On at least one instance, the Ministry of Strategic Affairs, in its above-mentioned reports, referred to the work of this organisation in support of its analysis and allegations.

This harassment came amidst the presentation of several reports at the same session of the Human Rights Council detailing multifaceted threats against members of human rights organisations in the OPT. These included the report of the UN High Commissioner for Human Rights on ensuring accountability and justice for all violations of international law in the OPT, including East Jerusalem (A/HRC/40/43) and the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, examining the current human rights situation in the OPT with a focus on access to water and environmental degradation (A/HRC/40/73).

In her report, the High Commissioner highlighted a number of actions impeding the work of human rights defenders and civil society actors, in particular when documenting or advocating for accountability for alleged violations of international human rights and humanitarian law in the OPT. These actions included public statements by high-ranking Government officials against civil society organisations promoting and protecting human rights in the OPT, including attempts to de-legitimize their foreign sources of funding. The High Commissioner also detailed the instrumental role played by some organisations in discrediting Palestinian civil society and human rights defenders, the publication of a “blacklist” of NGOs supporting the BDS movement by the Ministry of Strategic Affairs, and restrictions on freedom of movement of human rights defenders, including denials or restrictions on work permits and visas. In addition, reference was made to cases of arbitrary arrest, assault, detention and legal proceedings against human rights defenders, and to legal developments affecting civil society in Israel. The High Commissioner outlined the danger that such delegitimization may in turn legitimise and incite the use of violence and aggression against groups, including Israeli NGOs, defending human rights in the OPT.

In his report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 reported verbal attacks, disinformation campaigns and efforts to delegitimize Palestinian civil society, as well as the targeting of their sources of funding. Further to these observations, the Special Rapporteur also reported a rise in intimidation and threats against civil society and

human rights defenders, along with restrictions on freedom of movement in the form of travel bans and visa denials, public stigmatization, arbitrary arrests and prosecutions, all designed to obstruct human rights defenders work and narrow the space for advocacy and litigation in support of human rights where connected to the OPT.

Both the report of the High Commissioner and of the Special Rapporteur highlighted the accountability gap present between violations of international humanitarian and human rights law in the OPT and the widespread impunity surrounding threats and attacks against human rights defenders and civil society working therein.

Legislative background and current environment

On 11 July 2011, the Law for the Prevention of Damage to the State of Israel Through Boycott, also known as the Anti-Boycott Law, was passed by the Israeli Knesset. The law provided for the fining of any person or organisation knowingly publishing a public call for a boycott of Israel and enabled the State to withdraw benefits from organisations deemed to be doing so. The law does not distinguish between boycotts of goods produced in illegal Israeli settlements in the Occupied Palestinian Territory and boycotts of goods produced by Israel. Several UN Special Procedures mandate holders raised concerns relating to the law in a communication sent to your Excellency's Government on 29 August 2011 (ref no. ISR 7/2011). Particular concerns were raised as to the Law's targeting of non-violent public expression, and thus its compatibility with Israel's obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR), along with the limitations it placed on freedom of association and thus its compatibility with Israel's obligations under article 22 of the ICCPR.

On 12 July 2016, the Transparency Requirements for Parties Supported by Foreign State Entities Bill, also known as the Transparency Law, was passed by the Knesset. The law required Israeli NGOs receiving more than half of their funding from foreign public funds to disclose this in all publications, subject to fines. The law has since overwhelmingly affected human rights organizations, in particular those run by Palestinian citizens of Israel, which rely on funding from such donors. Organisations receiving private foreign funding, including those promoting government policies, were not subject to the requirements of the new law. Concerns about the impact of the law on freedom of association, freedom of expression and human rights defenders were raised with your Excellency's Government by several Special Procedures mandate holders on 3 March 2016, while the Law was still in its draft stage (ref. no OL ISR 1/2016).

On 6 March 2017, the Bill for the Entry into Israel Law (Amendment No. 28) was passed by the Knesset. The Amendment allowed authorities to refuse entry into Israel to anyone without Israeli citizenship or a permit for permanent residency in Israel, who has publicly called for, or who has undertaken to participate in, a

boycott against Israel as defined by the 2011 Law, or who is associated with a body that has done so. The amended law has since been used to target human rights defenders working on the protection and promotion of respect for human rights in the OPT from Israel, as raised by several Special Procedures mandate holders in an official communication sent to the Government on 14 May 2018 (ref no. AL ISR 8/2018).

On 16 July 2018, the State Education Law (Prevention of Activity in an Educational Institution of External Bodies Acting against the IDF or the Goals of Education), otherwise known as the Breaking the Silence Law, was passed by the Knesset. The law blocks access to Israeli schools for persons or organisations whose activity contradicts the State's educational objectives, or who are seeking to take legal or political proceedings outside Israel, either against Israeli soldiers for an action conducted in the course of their duties or against the State of Israel. The law also applies to local organisations assisting organisations abroad that might promote political proceedings against Israel.

Prior to the dissolution of the Knesset to allow a general election to take place in April 2019, several further pieces of legislation with potentially restrictive effects on civil society organisations were under discussion in the parliament. These included a bill which would deny certain tax benefits to organisations considered to be acting against the State, including through issuing publications accusing Israel of committing war crimes and calling for boycotts against Israel, and a bill amending the 2011 Boycott Law to allow for the filing of lawsuits for punitive damages against those calling for a boycott in instances where no damage is proven.

We express concern at the information outlined above, which we fear constitutes a pattern of actions cumulating in the serious restriction of space in which organisations working for the protection and promotion of respect for human rights in the OPT may operate. We raise specific concern that these actions, with the effect of undercutting the rights to freedom of expression and association, may represent acts of intimidation and reprisals for cooperation with the UN in the field of human rights, including UN human rights mechanisms, and the International Criminal Court. The descriptions of human rights organisations included in the reports of the Israeli Ministry of Strategic Affairs, alongside public comments by State officials concerning certain human rights organisations, conflate the promotion and protection of human rights and freedom of expression with the delegitimization of Israel and terrorist activity. We worry that this misleading narrative places individuals and groups promoting and protecting human rights in the OPT at risk, legitimizing threats and harassment against them in society, and seriously undermines their legitimate work, which is already placed on fragile ground by restrictive legislation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations and facts.
2. Please provide information as to what is meant by “anti-Israel delegitimization” and the “delegitimization of the State of Israel” as it is used in the above-mentioned State publications and how your Excellency’s Government assesses whether any organization is engaged in such.
3. Please provide information about how the passing of the above-mentioned laws comply with your Excellency’s Government’s obligations under international human rights law to respect and promote the freedoms of expression and association.
4. Please indicate what measures have been taken to ensure that Israel respects its international human rights obligations and that human rights defenders in Israel and the Occupied Palestinian Territory are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment, or reprisals of any kind.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

In light of the allegations of reprisals against civil society organizations for engaging with UN human rights mechanisms, we reserve the right to share this communication – and any response received - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official appointed by the Secretary general to lead efforts within the United Nations system to address this issue.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 19 and 22 of the International Covenant on Civil and Political Rights, which guarantee the rights to freedom of expression and freedom of association respectively.

We would also like to underline the principles laid out by the UN General Assembly in its Declaration on the Right and Responsibility of Individuals, groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, we would like to highlight article 5, which guarantees the right of everyone to communicate with international organisations for the purpose of promoting and protecting human rights.

We would also like to recall HRC resolution 25/18, which urges all States to take concrete steps to create, in law and in practice, a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity; HRC resolution 27/31, which underlines the importance of the ability of civil society actors to solicit, receive and utilize resources for their work; and the report of the High Commissioner for Human Rights to the 32nd session of the HRC on practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned (A/HRC/32/20).

We further wish to refer to Human Rights Council Resolutions 12/2, 24/24 and 36/21, which reaffirm the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. These resolutions call on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations and to take all appropriate measures to prevent the occurrence of intimidation or reprisals, as well as to provide for the right to unhindered communication with the United Nations.