

## **Fact Sheet: Human Rights Committee Review of Israel's Fifth Periodic Report**

### **Issues**

#### **Restrictions on civil and political rights, especially rights to freedom of expression, assembly and association, and shrinking civic space**

Use of counter-terrorism narrative, inter alia, to repress opposition has been an ongoing problem globally. In Israel and even more so in the oPt, Israeli authorities have relied on security justifications to deny Palestinians' civil and political rights, and especially their rights to freedom of expression, assembly and association. One of the consequences has been the imposition of increasingly restrictive measures on civil society organizations giving rise to concerns about the shrinking of civic space.

The restrictions imposed on the rights to freedom of expression, assembly and association cannot be adequately understood in isolation; instead, they must be situated within the context of long-standing policies and practices which, taken together, demonstrate the systematic nature of the discrimination endured by the Palestinian population.

#### **1. Counter-terrorism legislation (Para 5 list of issues)**

Israel's Counter-Terrorism Law of 2016 and the law it enforces in the oPt to declare organizations "unlawful" have both been separately criticized for not meeting the IHRL standard of legality, as the definitions of "terrorism" or acts otherwise prejudicial to the security of Israel are too vague, and in practice interpreted in an expansive manner. The designations and declarations of Palestinian CSOs as "terrorist" and "unlawful" in 2021 have indeed demonstrated that organizations which do not in fact engage in acts of terrorism, including civil society organizations, can be targeted for political reasons rather than legitimate security grounds.

The legal regimes in Israel and in the oPt do not establish due process or ensure effective avenues to challenge such designations and declarations. Instead, the Israeli authorities heavily rely on confidential evidence which impedes the affected parties from meaningfully challenging the decisions gravely affecting them. In the oPt, strikingly, there is no formal appeal procedure.

#### **Suggested follow up questions:**

- What measures has Israel taken, in Israel and in the oPt respectively, to clarify the definitions of terrorism or similar acts to ensure that its legal framework complies with the principle of legality?
- What measures has Israel taken to ensure that affected persons can meaningfully appeal the decisions in Israel and in the oPt, respectively?
- What measures has Israel put in place to ensure that fair trial guarantees will be respected if the designations/declarations are followed by prosecutions?

## 2. Freedom of expression, assembly and association (Paras 24(c) and 25, list of issues)

Israel has been leading a [well-documented](#) campaign targeting human rights defenders and civil society organizations, especially those whose work is focused on monitoring Israel's compliance with its obligations stemming from international law in the oPt.

First of all, the counter-terrorism and (national) security frameworks in Israel and in the oPt have been applied in a manner that compromises the ability of these organizations to function without apparent justification. As explained above, the vagueness of the respective legal frameworks renders any designation or declaration unforeseeable, as exemplified by recent decisions against prominent CSOs for reasons that have not been duly disclosed. The resulting environment of uncertainty creates a chilling effect in which other actors may feel compelled to self-censor for fear of measures that might be taken against them. Moreover, once an actor is designated as "terrorist"/declared as "unlawful", the enforcement of the ensuing consequences (e.g., prosecution of persons or measures against property) is not automatic but practically left to the discretion of respective authorities, which leaves the affected persons in a limbo.

More broadly, the designations and declarations of the Palestinian CSOs have potentially far-reaching consequences, as they criminalize diverse forms of expression, assembly and association remotely connected with such organizations, and could consequently adversely affect many other individuals and organizations if actively enforced.

Israeli authorities have also resorted, among other things, to forceful repression of peaceful protests or the creation of administrative hurdles hindering the operation of CSOs, e.g., by subjecting them to unduly burdensome reporting obligations or complicating the entry procedures of foreign employees.

The CSOs working in or on the context have also been subjected to attacks and smear campaigns from other private actors. While links between these private actors and Israeli authorities may not always be unequivocally established, Israel retains the obligation to protect everyone under its jurisdiction from infringement of their rights by third actors.

### **Suggested follow up questions:**

- What steps has Israel taken to prevent the harassment, intimidation, and other unjustified restrictions on human rights defenders and civil society organizations?
- What steps has Israel taken to ensure a safe and enabling environment for human rights defenders and civil society organizations to operate?
- What steps has Israel taken to ensure that there are appropriate and reasonable procedures for staff members of civil society organizations to obtain the necessary permits and visas in order to perform their work?
- What legislative framework is in place, and what steps has Israel taken, to protect CSOs and in particular human rights defenders from the acts of third parties?

### 3. Use of force (Paras 13(a)-(c), list of issues)

Israel relies on a so-called “law enforcement in the law of armed conflict” (“LE in LOAC”) framework, which the Israeli authorities argue forms part of IHL, as the basis for its law enforcement conduct. This approach is contrary to international consensus that the use of force is governed by two distinct legal frameworks, and that the law enforcement paradigm is rooted in IHRL. Notably, Israel relies on this notion of “LE in LOAC” to classify as “imminent dangers” threats that have not yet materialized and where the danger is both spatially and temporally removed from the person presumed to pose a threat. Such preventive use of potentially lethal force that is furthermore not based on an individualized assessment goes beyond the limited restrictions to the right to life permissible under IHRL.

Under IHRL, the use of live ammunition constitutes potentially lethal force, and as such can only be used in exceptional situations against particular individuals where it is strictly unavoidable in self-defence or the defence of others against an imminent threat to life or of serious injury. Israel has relied on the notion of “LE in LOAC” to justify the targeting of so-called “key rioters” or “main instigators” who according to the authorities’ definition incite other protesters to violence, even if they themselves do not pose an immediate threat to life or bodily integrity at any point in time. Israel has also defended its use of live ammunition to control and disperse protests and assemblies, even though the [UN Guidance on Less-Lethal Weapons in Law Enforcement](#) explicitly states that “[t]he use of firearms to disperse an assembly is always unlawful”.

The vast majority of cases monitored and documented suggests that the use of force is systematically not in compliance with the IHRL requirements of legality, necessity and proportionality. However, there is an absence of effective investigations and accountability in general. Furthermore, Israel has failed to review its security forces’ “rules of engagement” and “open-fire orders” themselves, focusing instead on non-compliance with and violations of these rules and orders only.

#### **Suggested follow up questions:**

- What measures has Israel taken to ensure that its law enforcement operations are conducted in compliance with its IHRL obligations?
- What are the measures taken by Israel to ensure that use of potentially lethal force by its law enforcement officials is in compliance with the strict requirements stipulated by IHRL?
- What are the measures taken by Israel to ensure that effective investigations are conducted?

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