

**BADIL's Written Submission to the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association to Inform Thematic Report on Trends, Developments, and Challenges to the Ability of Civil Society Organizations to Access Resources, Including Foreign Funding, to be Presented to the HRC at its 50th Session**



**BADIL**  
RESOURCE CENTER  
FOR PALESTINIAN RESIDENCY  
AND REFUGEE RIGHTS

**18 February 2022**

**To the attention of Mr. Clément Nyaletsossi Voule, Special Rapporteur on freedom of peaceful assembly and of association,**

Shrinking spaces for Palestinian Civil Society Organizations (CSOs), particularly Human Rights Organizations (HROs), has a dual approach in that it is being directly implemented by Israel and discursively imposed by the international donor community by means of political conditional funding. It is unquestionable that the latter is a direct consequence of the Israeli-Zionist strategy to suppress, silence and destroy Palestinian civil society, functioning as one of the many strategies that Israel executes in order to delegitimize Palestinian resistance and undermine the Palestinian people's inalienable rights, including the right to self-determination. This is evident when considering that the targets of such campaigns are Palestinian HROs that promote a rights-based approach for Palestinian liberation, which presents a threat to the Israeli-Zionist colonial-apartheid ideological regime. As for the international donor community, its imposition of inadmissible funding conditions on Palestinian civil society that criminalize Palestinian resistance validates the Israeli-Zionist false allegations regarding Palestinian CSOs. In fact, Israeli allegations have resulted in a range of conditions that have implicitly imposed by most donors on Palestinian civil society.

The imposition of political conditional funding by the international donor community contributes to the creation of an already Israeli-induced coercive and shrinking environment for Palestinian civil society, whose scope of action is gradually restricted, to the point of not being able to freely and adequately pursue their activities. Importantly, this shrinking space is not only characterized by politically-oriented restrictions on funding, but also the gradual corrosion of democratic processes, the repression of Palestinian human rights defenders, and aggravating Israeli human rights violations and crimes.

**Context of Attacks on Palestinian Civil Society**

The defamation, smear, and delegitimization campaigns that Palestinian and international CSOs/HROs advocating for Palestinian rights are facing stem from Israeli Government-Organized NGOs (GONGOs)<sup>1</sup> that aim to discredit, silence and defund organizations that criticize Israeli colonial policies and practices. These Zionist GONGOs function under the auspices of the former Israeli Strategic Affairs Ministry. The Ministry of Strategic Affairs holds the responsibility to guide, coordinate and integrate the activities of all the ministers and the government and of civil entities in Israel and abroad on the subject of the “struggle against attempts to delegitimize Israel and the boycott movement.”<sup>2</sup>

These actors additionally lobby governments to pass laws and develop policies to suppress domestic and international organizations,<sup>3</sup> including refusal and withdrawal of use of public and/or private facilities for

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<sup>1</sup> These include organizations such as NGO Monitor, Im Tirzu, Kela Shlomo, Ad Kan, Shurat Hadin.

<sup>2</sup> Aeron Davis; Natalie Fenton; Des Freedman; Gholam Khiabany, *Media, Democracy and Social Change: Re-imagining Political Communications*, SAGE Publications Ltd, 2020.

<sup>3</sup> The Danish Foreign Ministry announced a review of Denmark's aid to Palestinian human rights organizations. Although this internal review did not find any contract breaches, the then Danish Foreign Minister, Samuelsen, decided to tighten funding conditions and to reduce the number of Palestinian recipients. The Israeli government and Zionist pro-occupation GONGOs took credit over such decision.

a Palestine related activity or event, closure of bank accounts or obstruction of access to fundraising and/or money transfer tools, and cutting off funding from public or private donors.

Specific examples of these lobbying attempts to the European Union (EU) are revealed in the *Terrorists in Suits*<sup>4</sup> and the *Money Trail*<sup>5</sup> reports, in which Israel and its proxy organizations attempted to associate several Palestinian CSOs and activists with Palestinian political parties that are designated by the EU and US as terrorist groups. Such reports also falsely alleged that millions of Euros went to CSOs with “ties to terrorists” and supporters of the Boycott, Divestment, Sanctions (BDS) movement. While supporting BDS, a non-violent movement aiming to bring an end to Israeli impunity through economic and social pressure, is not a crime in and of itself, these reports described BDS as a banned organization and promoted this accusation as a fact in an attempt to undermine the reputation and credibility of organizations advocating for Palestinian rights and subsequently condemn the financial support provided by the EU to such organizations.

The implicit acquiescence of the EU specifically, and the international donor community generally, whenever these allegations are brought forth, as manifested in the inclusion of the anti-terrorism clauses and conditions in granting contracts, has buttressed this Israeli strategy to undermine Palestinian CSOs. In fact, the recent decision to arbitrarily declare six prominent Palestinian CSOs as “terrorist organizations,” is a direct repercussion of the donor community’s decision, mainly the EU and its Member States, to include terminology that designates Palestinian political parties as terrorist entities in granting contracts. This has paved the way to not only designate six Palestinian organizations as terrorist entities, but also every single Palestinian organization. The result and ultimate goal of which is the delegitimization and elimination of Palestinian civil society.

These EU policies are perilous because they impede Palestinian civil society’s work, while also setting a dangerous precedent which validates the Israeli-Zionist false allegations of terrorism and anti-semitism. This is seen in how these policies have resulted in a range of conditions that have been implicitly imposed by many international donors on Palestinian civil society, including the weaponization of anti-semitism definitions.

In regards to the weaponization of anti-semitism definitions, Israel's Ministry of Strategic Affairs has turned the IHRA working definition into a campaign deployment, with the help of the Zionist GONGO, whereby it became absolutized, politicized and turned into a weapon under the guise of "fighting anti-Semitism." Israel’s intensive focus on labeling critique of Israel as a marker of anti-semitism, thus equating criticism of the State of Israel with anti-semitism, constitutes a blatant attack on freedom of expression under international law and a tool to silence criticism regarding Israel’s human rights record.

It is noteworthy that, since 2016, the EU and its Member States have begun to adopt the “non-binding” IHRA definition as their official definition of anti-semitism, regardless of the numerous calls criticizing the

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<sup>4</sup> *Terrorists in Suits: The Ties Between NGOs Promoting BDS and Terrorist Organization*, prepared by the Israeli Ministry of Strategic Affairs and Public Diplomacy, 2019.

<sup>5</sup> *The Money Trail: The Millions Given by EU Institutions to NGOs with Ties to Terror and Boycotts against Israel*, prepared by the Israeli Ministry of Strategic Affairs and Public Diplomacy, 2018.

highly problematic and controversial definition.<sup>6</sup> It should also be noted that the EU Commission has adopted the “EU Strategy on combating antisemitism and fostering Jewish life.” This strategy has adopted the IHRA definition as the main standpoint in EU’s internal and external policies, which will effectively hinder all advocacy work of organizations advocating for Palestinian rights, both in Palestine and Europe.

### **The Coercive Environment in which Palestinian Civil Society Operates**

The Israeli State’s legislative initiatives to systematically shrink the space for CSOs and human rights defenders in Palestine are by no means new. Since its creation in 1948, Israel has continuously renewed its “state of emergency” to arbitrarily derogate from its obligations under international law in order to justify its silencing of Palestinian organizations and stifling of dissent. After occupying the West Bank in June 1967, the Israeli occupying army enforced a set of British Mandatory “emergency” regulations to declare any Palestinian CSO as an “unlawful association” provided that it opposes Israel’s apartheid-colonial regime.<sup>7</sup> These regulations were also used to justify similar military orders that banned all forms of peaceful assembly and association with any organization declared as “unlawful.”<sup>8</sup>

Israel continues to codify an increasing number of laws and legislative orders to suppress Palestinian civil society. The Nakba Law of 2011 grants the Minister of Finance the power to deny public funding to any institution for simply mentioning that the Nakba occurred in 1948,<sup>9</sup> thus targeting organizations that are almost exclusively Palestinian and pushing a false narrative to erase the Nakba from the collective memory. Similarly, the Boycott Law of 2011 prohibits the public promotion of the BDS movement.<sup>10</sup> The law thereby permits the finance minister to revoke tax exemptions and financial benefits from organizations that support BDS and allows lawsuits to be filed against them, a decision which was upheld by the Israeli High Court of Justice in 2015 on the basis that a call for boycott “does not serve democracy,” despite the justices admitting that the law “indeed infringes on freedom of expression.”<sup>11</sup>

Israel’s Mandatory Disclosure of Foreign Entity Funding Law of 2016 obligates CSOs that receive more than 50% of their funding from “foreign political entities” to declare this fact in all released documents and all public communications.<sup>12</sup> This law is inherently discriminatory against organizations that defend the human rights of Palestinians as they are largely dependent on foreign funding, whereas Zionist pro-occupation GONGOs are funded almost entirely through private donations and are thus unaffected by the law’s provisions.

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<sup>6</sup> In September 2020, 56 Jewish scholars wrote to Facebook urging them not to adopt the IHRA definition of antisemitism”. See also, House of Commons, “UK Government’s adoption of the IHRA definition of anti-Semitism”, 4 October 2018, available at: <<https://commonslibrary.parliament.uk/home-affairs/communities/uk-governments-adoption-of-theihra-definition-of-antisemitism/>>.

<sup>7</sup> The Palestinian Gazette, “The Defence (Emergency) Regulations”, No. 1442 - Supplement No. 2, 27 September 1945, Article 84(1)(a)-(b).

<sup>8</sup> Israeli Defense Forces, “Order Regarding Prohibition of Incitement and Hostile Propaganda Actions”, Order No. 101, 27 August 1967, Article 7A(B).

<sup>9</sup> Knesset, “Budget Foundations Law (Amendment No. 40)”, 5771-2011, 22 March 2011.

<sup>10</sup> Knesset, “Law Preventing Harm to the State of Israel by Means of Boycott”, 5771-2011, 11 July 2011.

<sup>11</sup> *Avneri v. Knesset*. H CJ 5239/11, paras. 21 & 30 (2015).

<sup>12</sup> Knesset, “Duty of Disclosure [for a Body] Supported by a Foreign Political Entity (Amendment) Law”, 5776-2016, 11 July 2016.

The especially concerning Counter-Terrorism Law of 2016 vaguely and arbitrarily expands the definition of “terrorist activity” to include “public expression of support for or sympathy with terrorist organizations,” which may include any organization that engages in legal activity in accordance with the law.<sup>13</sup> This gives the State of Israel wide discretion to determine who is engaging in “terrorist activity” based on “secret evidence,” and defendants are deprived of their right to legal recourse. The most recent enforcement of this law is the Israeli Defense Minister’s decision to arbitrarily declare six prominent Palestinian CSOs as “terrorist organizations”, namely: Al-Haq, Law in the Service of Man (Al-Haq); Addameer Prisoner Support and Human Rights Association (Addameer); Bisan Center for Research and Development (Bisan Center); Defense for Children International-Palestine (DCI-P); the Union of Agricultural Work Committees (UAWC); and the Union of Palestinian Women’s Committees (UPWC).

The Entry into Israel Law of 2017 grants the Minister of Interior the ability to deny any entry visa to any foreign national who has publicly called for a boycott against the State of Israel.<sup>14</sup> Pursuant to this oppressive law, Israel’s Ministry of Strategic Affairs published a list of twenty organizations that support the BDS movement and declared that any members of these organizations would be denied entry into the country. Additionally, human rights defenders face the risk of being deported under this law, as displayed by the Israeli Supreme Court’s decision to authorize the deportation of Omar Shakir, the Israel and Palestine director of Human Rights Watch, due to his advocacy supporting the BDS movement years prior to his employment at HRW.<sup>15</sup>

In a recent reiteration of Israel’s policies of ethno-racial supremacy, the Israeli Supreme Court upheld Israel’s 2018 Nation-State Law in July 2021,<sup>16</sup> a law which declares Israel as the “national state of the Jewish people.”<sup>17</sup> The law identifies the establishment of illegal colonies as a national goal and establishes Palestinians with Israeli citizenship as second-class citizens, thereby making it increasingly difficult for CSOs to campaign against Jewish colonies and to protect the rights of Palestinians.

While all these aforementioned laws are implemented by Israel inside Mandatory Palestine to demonize Palestinian civil society, the international donor community poses additional numerous restrictions on CSOs. For example, BADIL Resource Center for Palestinian Residency and Refugee Rights has consistently been subject to censoring of the language and terminology utilized in reporting, research and publications in form of requesting BADIL to omit terms like Nakba, colonization and apartheid; rejecting or refusing to fund projects that explicitly or implicitly support the rights of Palestinian refugees and Internally Displaced Persons (IDPs); and limiting the geographic scope of projects and beneficiaries to the Palestinian territory and people occupied in 1967 (oPt), as opposed to the whole of the Palestinian people.

## **Israeli Violations of the International Legal Framework**

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<sup>13</sup> Knesset, “Combating Terrorism Law”, 5776-2016, 15 June 2016.

<sup>14</sup> Knesset, “Entry into Israel (Amendment No. 28) Law”, 5777-2017, 6 March 2017.

<sup>15</sup> *Human Rights Watch & Omar Shakir v. Minister of Interior*. Admin A 2966/19 (2019).

<sup>16</sup> *Hassoun v. Knesset*. HCJ 5555/18 (2021).

<sup>17</sup> Knesset, “Basic Law: Israel - The Nation State of the Jewish People”, 19 July 2018.

The aforementioned measures enforced by the Israeli State operate in brazen violation of a myriad of international standards and recommendations, with the explicit intention to silence Palestinian dissent and to circumvent international accountability.

Under Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) alike, everyone has the right to freedom of opinion and expression. Similarly, Articles 21 and 22 of the ICCPR affirm the rights of peaceful assembly and freedom of association, respectively. The Declaration on Human Rights Defenders of 1998 reiterates these human rights standards and includes specific protections to human rights defenders, including the right to form associations and non-governmental organizations, to effective protection under national law in opposing violations of the State, and to receive and utilize resources (including funds from abroad) for the purpose of protecting human rights, among many others.<sup>18</sup> In Communication 1274/2004, the Human Rights Committee established that, where a State disproportionately hinders the right of an organization or association, not only is said organization entitled to an appropriate remedy, but the State is also obligated to prevent similar violations from occurring again.<sup>19</sup>

It is additionally important to stress that the aforementioned legislative measures which explicitly target Palestinians CSOs that oppose Israel's oppressive policies are direct violations of international standards of non-discrimination. Under the ICCPR, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention Against Torture (CAT) alike, States are under an obligation to respect and ensure the rights of all without distinction, and must adopt laws that prohibit discrimination of any kind and provide an effective remedy to those whose rights have been violated. Relevantly, Palestinian CSOs are also entitled to seek and receive adequate financial and other resources, as emphasized in paragraph 25(a) of CAT/C/BLR/CO/4. This is not just limited to international funding, but also applies to funding from the State itself, as recommended by the Committee on the Elimination of Racial Discrimination (ICERD)<sup>20</sup> and the Committee on the Rights of the Child (CRC).<sup>21</sup> Importantly, the freedom to solicit and receive financial and other contributions from individuals and institutions is also included in the right to freedom of thought, conscience, religion, or belief.<sup>22</sup> It is worth noting that the Israeli State is a signatory to the ICCPR, CAT, ICERD, and CRC, all of which are enforceable not just throughout 1948 Palestine but in the OPT as well.<sup>23</sup>

Crucially, these violations of international law do not operate in a vacuum; Israel strategically employs its protracted and institutionalized campaign to criminalize, delegitimize, and isolate Palestinian CSOs with the ultimate purpose of sustaining its apartheid-colonial regime. Palestinian CSOs play a vital role in

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<sup>18</sup> See also UN Human Rights Council, "Protecting human rights defenders", A/HRC/RES/22/6, 12 April 2013.

<sup>19</sup> Human Rights Committee, "Communication 1274/2004", CCPR/C/88/D/1274/2004, 10 November 2006.

<sup>20</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Ireland*, CERD/C/IRL/CO/2, 14 April 2005, para. 12.

<sup>21</sup> UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Malawi*, CRC/C/MWI/CO/2, 27 March 2009, para. 25.

<sup>22</sup> UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, A/RES/36/55, 25 November 1981, Article 6(f).

<sup>23</sup> International Court of Justice, *Advisory Opinion Considering Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, 171-181.

documenting and exposing Israeli violations, supporting victims of said violations, and serving as a tool to realize the Palestinian people's right to self-determination and to resist Israel's colonial domination and its racist regime, both of which are legitimate rights under international law.<sup>24</sup> In suppressing these organizations and punishing the human rights defenders who work within them, Israel is further entrenching its crime of apartheid through the commission of acts for the purpose of establishing and maintaining a system of racial domination and oppression, including the act of "[p]ersecution of organisations and persons by depriving them of fundamental rights and freedoms, *because they oppose apartheid*," corresponding to Article II(f) of the 1973 Apartheid Convention.<sup>25</sup>

### **Impact of Israeli and International Practices on the Palestinian Civil Society**

Israel's discriminatory policies that shrink the space for Palestinian CSOs and human rights defenders are not merely reflective of a disregard or lack of respect for the rights of Palestinian organizations; these policies are constituent of the Israeli State's wider and protracted strategy to facilitate the ethnic cleansing and forced population transfer of the Palestinian people. Israel employs a plethora of oppressive policies to facilitate this goal, including its policies of restrictions on movement and permit regimes; of land confiscation and discriminatory zoning and planning; of denial of access to natural resources and services; of isolation, fragmentation, and segregation; of the suppression of resistance; of its support of violent non-State actors; and of its denial of Palestinian refugees' inalienable right of return.<sup>26</sup>

In criminalizing and delegitimizing the CSOs that are dedicated to exposing these same crimes to the international community and protecting Palestinian victims of these crimes, Israel is effectively creating a coercive environment in which the Palestinian people are isolated from the global community, deprived of any protection or recourse, and forced into silence. By suppressing any form of resistance to its settler-colonial, apartheid regime, the Israeli State – and with the assistance of the complicit global community – can continue to enjoy total impunity and further entrench its colonial subjugation and erasure of the indigenous Palestinian people.

Within this context, the international donor community's policies play a role in hindering and delegitimizing the work of Palestinian CSOs/HROs through funding constraints, including preventing the promotion of Palestinian refugees' right of return and political conditions such as the political conditional funding clause applied in European grants to Palestinian CSOs. These are considered a violation of the Palestinian people's right to freely determine their political course of action and demand their legitimate rights.

The latest Israeli attack on Palestinian CSOs/HROs comes as a corollary of certain accumulative policies and practices of the EU and its Member States. Undoubtedly, this escalation cannot be separated from all Israeli-Zionist policies aimed at obliterating the inalienable rights of the Palestinian people, whereas all this

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<sup>24</sup> See UNGA, *Importance of the universal realization of peoples' right to self-determination*, A/RES/37/43, 3 December 1982.

<sup>25</sup> Emphasis added.

<sup>26</sup> See *BADIL Series, Forced Population Transfer: The Case of Palestine*, BADIL Resource Center for Palestinian Residency and Refugee Rights, 2014 - ongoing. <https://www.badil.org/publications/working-papers>

is occurring in the context of heightening Israeli colonial repression and institutionalization of segregation, fragmentation and isolation.

The EU certainly constitutes one of the most significant financial supporters to Palestinian CSOs. The EU's principles of funding its external actions are based on its own fundamental interests and political vision in the broader Arab region. Amongst the stated EU strategic objectives are "promoting and defending EU values abroad, putting human rights, democracy and the rule of law at the core of EU external action."<sup>27</sup> However, in the wake of 9/11, the EU's approach to Palestine has been oriented towards security concerns at the expense of human rights and democratization.

The EU is failing to take action with regard to their international obligation by allowing itself, its member States, and Israel to continuously shrink the space for Palestinian HROs, which effectively contributes to reinforcing the current imbalance of powers and the colonial-apartheid regime imposed by Israel. It also shows its incapability to play a key role in democratization, by refraining from taking concrete and practical measures to terminate Israel's impunity.

On an operational level, the international donor community focuses on tangible effects or results that can be calculated, resulting in short-term outcomes rather than a long-term impact. Palestinian CSOs are pushed to fulfill the conditions and requirements of grants set by European donors in order to collect the necessary funding so that CSOs can maintain their survival and sustainability.

This, in return, leads to the categorization of HROs according to what the European donor deems appropriate for the needs of Palestinians. Accordingly, unwanted HROs that advocate for the rights of Palestinians and expose the policies and practices of the PA, Israel and European donors are liquidated, which leads to silencing the voices opposing these policies and creating a neutral, donor-oriented, non-confrontational and depoliticized civil society. These policies also encourage the promotion of projects that ignore the needs and rights of the Palestinian people, the root causes of the conflict and ongoing colonial actions of Israel, under the guise of 'peace-building' and 'conflict resolution'.

Accordingly, BADIL calls on:

- The international donor community to recognize that playing this role contradicts their obligations and self-espoused principles like neutrality, partnership and a human rights-based approach, threatening their strategic relationship with the Palestinian people.
- The UN Bodies to take a principled stance against the constant attacks on Palestinian CSOs, and promote a prosperous, sustainable civil society by understanding the nature and environment in which Palestinian CSOs work.
- The international donor community and UN Bodies to recognize the impact of their counter-terrorism restrictions in inspiring other constraints under the auspices of counter-terror.

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<sup>27</sup> European Commission, "Joint Communication to the European Parliament and the Council, Global Europe: A New Approach to Financing EU External Action," COM (2011) 865, 4



- The international community to remain true to their commitment to the Palestinian people's struggle to achieve their legitimate rights as endorsed in its own resolutions and statements, including their right to self-determination and liberation from colonial oppression; and to acknowledge the situation of apartheid imposed by Israel in Palestine.
- The international community to adopt a genuine human rights-based approach in its partnership with Palestine, to empower the Palestinian people to seek and achieve their own solution to the Palestine predicament, instead of its involvement in activities and actions that serve Israel's purpose to reinforce the status quo, if not perhaps concretize its colonial domination over Palestinian people and their land.