

28 February 2023



To the attention of Ms Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Call for inputs: Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space

Global Counter-Terrorism Restrictions

The global proliferation of counter-terrorism measures, which often restrict freedom of expression and association, have provided fertile ground for shrinking space amongst civil society organizations (CSO) worldwide.¹ While international law does permit restricting certain fundamental freedoms to ensure, for instance, the protection of national security, states do have a responsibility to apply such measures with proportionality. However, this is often not the case, especially due to the absence of an internationally agreed upon definition of terrorism. This void has enabled states to systematically misappropriate the term to prohibit a wide range of associations, activities, and political expression that question the legitimacy of the state. This has been particularly apparent with social movements of indigenous people, legitimate political dissent, and resistance², including Israel's systematic attacks against Palestinian civil society.

Israeli Counter-Terrorism Legislation and Palestinian Context

At the very heart of the Israeli anti-terrorism framework is the Counter-Terrorism Law of 2016. Vaguely and arbitrarily expanding the definition of “terrorist activity” to include “public expression of support for or sympathy with terrorist organizations,” it may include any organization that engages in legal activity in accordance with the law.³ This law gives Israel wide discretion to determine who is engaging in “terrorist activity” or who is linked to terrorism. As is often the case, Israel deploys the Counter-Terrorism Law to entrench its false conflation of legitimate resistance with terrorism.

Israel's manipulation of legal instruments to suppress Palestinian dissent is not a new phenomenon. Rather, it acts as part of a wide campaign that Israel has pursued since its creation in 1948, as evidenced by its continuous renewal of a “state of emergency.” Particularly in reference to national security, Israel has constantly invoked this stipulation to justify violations of fundamental rights and freedoms, as well as to stifle dissent. UN reports have therefore denounced “an atmosphere of intimidation, threats and arrests of human rights defenders and civil society actors by Israel”,⁴ where accusations are primarily based on misleading information, selective research, and guilt by association, without providing any evidence or while using “secret files”.

In addition to the direct Israeli attack on Palestinian civil society, Palestinian rights advocates are further impacted by a widely-documented phenomenon of shrinking spaces discursively imposed by the international donor community. This is primarily carried out by means of funding constraints, such as politically-conditioned funding clauses based on Israeli-induced categorization of Palestinian political parties as terrorist entities.

These discriminatory and silencing policies are not merely reflective of the colonial mindset of the international donor community; they are part of Israel's wider and protracted strategy to facilitate its

¹ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: *Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders*, UN Doc. A/HRC/40/52 (2019).

² Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: *Impact of counter-terrorism measures on civil society*, UN Doc. A/70/371 (2015).

³ Knesset, The Counter-Terrorism Law, 5776-2016 (15 June 2016).

⁴ Report of the Special Rapporteur's on the human rights situation in the Palestinian Territories occupied since 1967, A/74/48057 (21 October 2019) https://reliefweb.int/attachments/770f3cf5-b39f-3c2f-8b5d-3b5c00609fd2/A_74_48057_AUV.pdf

crimes of ethnic cleansing and forced population transfer of the Palestinian people.⁵ In delegitimizing organizations dedicated to exposing these exact crimes to the international community, Israel is effectively creating a coercive environment in which the Palestinian people are isolated, deprived of any protection or recourse, and forced into silence.

The most recent illustration of this strategy can be found in the Israeli Defense Minister's application of this counter-terrorism legislation to outlaw six prominent Palestinian Human Rights Organizations (HROs), arbitrarily declaring them "terrorist organizations".⁶

EU/International Donor Community's Acquiescence: Stifling Palestinian Civil Society

Funding constraints imposed by the international donor community, as those mentioned above, are a direct result of Israeli coercion and manipulation. By publishing reports and lobbying governments through the Israeli Ministry of Strategic Affairs – which was absorbed into the Ministry of Foreign Affairs – Israel and its proxy organizations (GONGOS⁷) such as NGO Monitor, Im Tirzu, Kela Shlomo, Ad Kan, Shurat Hadin, propagate false claims that certain organizations are terrorists or have ties to terrorism, without providing any evidence.

Examples of such reports include the Terrorists in Suits⁸ and the Money Trail⁹ reports, in which Israel and its GONGOS tried to associate several Palestinian CSOs and activists with political parties listed as terrorist groups by the EU and US. 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. The EU's defensive reaction, focused on denying financing terrorism and assuring that its money was not used to support the boycott of Israel or BDS activities, is highly problematic, as it tacitly accepts Israel's framing, thus setting a grave precedent of validating the Israeli-Zionist false conflation of terrorism with the BDS movement.

These defamation campaigns further prompt governments to enact defunding and silencing policies against both domestic and international organizations, including refusal to use public and/or private facilities for Palestine-related activities or events, closure of bank accounts or obstruction of access to fundraising and/or money transfer tools, and cutting off of funding from public or private donors.

As an example, following a Foreign Ministry review of Denmark's aid to Palestinian HROs, funding conditions were tightened and the number of Palestinian recipients reduced, even if the internal review did not find any contract breaches. The Israeli government and Zionist pro-occupation GONGOS took credit over such a decision.

⁵ See BADIL, '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' (2022) https://www.badil.org/cached_uploads/view/2022/02/23/written-submission-badil-sr-feb2022-1645613684.pdf

⁶ See UN experts letter "Designation of Palestinian NGOs as 'terrorist' " to Josep Borrell (2022) https://www.ohchr.org/sites/default/files/documents/countries/ps/2022-08-25/2022-08-02_LetterHighRepresentativeJosepBorrell.pdf

⁷ Government Organized Nongovernmental Organizations

⁸ Israeli Ministry of Strategic Affairs and Public Diplomacy, 'Terrorists in Suits: The Ties Between NGOs Promoting BDS and Terrorist Organizations' (2019)

⁹ Israeli Ministry of Strategic Affairs and Public Diplomacy, 'The Money Trail: The Millions Given by EU Institutions to NGOs with Ties to Terror and Boycotts against Israel' (2018)

Similarly, the Dutch government conducted at the beginning of 2022 an internal investigation of Israeli claims that the Palestinian Union of Agricultural Work Committees (UAWC) supported terrorism. Even though it found no evidence¹⁰ to support Israeli accusations or any misuse of funding, it ceased all funding to the organization. Israel hailed the move as a victory and urged other European governments to follow suit.

This decision sets a grave precedent, as it dramatically lowers the bar of evidence from proving organizational ties, mismanagement of funds, and fraud, to individual ties at the member and staff levels, without further explanation. The report has also not been made public, and the Dutch government has not revealed its sources on the claim of “individual ties”, which is likely based on Israeli intelligence and security reports.

Counter-terrorism and IHRL Violations In Service of Israel’s Colonial-Apartheid Regime

Not only do these defamation campaigns impede the work of Palestinian rights advocates in Palestine and abroad, whose time and energy have been redirected towards reacting to these allegations instead of much needed advocacy work, but they are also dangerous for fundamental rights and freedoms.

For example, the Palestinian right to education is severely undermined by Israeli-Zionist allegations against the curriculum taught in Palestinian schools, smeared to be glorifying terrorism. Heavily dependent on international funding, the Palestinian Ministry of Education and UNRWA are forced to alter it in order to comply with conditional funding policies induced by Israeli defamation campaigns.¹¹

The abuse of counter-terrorism legislation also impacts Palestinian rights defenders’ freedom of movement. Indeed, travel bans, visa denial and other types of abusive immigration procedures, are surreptitiously implemented to bar them from accessing international forums and denounce human rights violations. Further, Israel uses the threat of residency denial¹² to silence Palestinian voices.

While it is permissible to restrict them, the rights to freedom of expression or association are also crucial to consider, as international law recognizes that their absence is significant to the establishment of apartheid systems. Israel’s terrorist designation of any organization that criticizes its colonial-apartheid policies unquestionably falls into this category of misuse of the counter-terrorism framework. In smearing HROs, arresting their employees and outlawing any dissenting voice, Israel is effectively entrenching its crime of apartheid, as per the 1973 Apartheid Convention, which criminalizes the commission of acts for the purpose of establishing and maintaining a system of racial domination and oppression, including the “[p]ersecution of organizations and persons by depriving them of fundamental rights and freedoms *because they oppose apartheid*”.¹³

In direct service of the establishment and sustainment of its colonial-apartheid regime, Israel is successfully entangling the international community, particularly a willing donor community, despite clear international law obligations of non-recognition and of cooperation to bring an end to such an

¹⁰ Middle East Eye, “*Netherlands ends funding to Palestinian agricultural NGO outlawed by Israel*” (2022) <https://www.middleeasteye.net/news/netherlands-ends-funding-israel-outlawed-palestinian-ngo>

¹¹ See BADIL’s Working Paper No.29: “USA-UNRWA Framework Agreement: Assistance or Securitization?” (2022) <https://www.badil.org/press-releases/12820.html>

¹² See BADIL’s Working Paper no.16 “Denial of Residency” (2014) <https://www.badil.org/phocadownload/badil-new/publications/research/working-papers/wp16-Residency.pdf>

¹³ International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) A/RES/3068(XXVIII), art 2(c) & (f).

unlawful situation.¹⁴ Not only is the global community failing to uphold these obligations, but it is also engaged in direct violation of their own human rights obligations vis-à-vis the Palestinian people. The Special Rapporteur on Freedom of Association has indeed affirmed that foreign and international donors have responsibilities and must pay due attention to the local political, social, and economic context in which associations operate to determine their obligations, and to respect the autonomy of the association.¹⁵ Yet, states are failing to apply a human rights-based approach to their obligations by accepting Israel's misuse of international law.

De-risking/Bank Restrictions for Palestinian NGOs

Palestinian CSOs do not only suffer from increasingly tight funding conditions imposed by Israel-influenced donors, but they are also facing obstacles stemming from banking systems and regulations.

The Palestinian Monetary Authority (PMA) has developed a risk-based approach to combating money laundering and terrorism financing, which aims to balance the need for financial integrity with the need to avoid undue restrictions on legitimate activities. However, the PMA regulations have a chilling effect on civil society and have caused a negative impact on Palestinian CSOs, particularly in terms of access to financial services. CSOs have been identified as high-risk entities, which can lead to banks and other financial institutions de-risking and de-banking them.

In general, the lack of transparency, clarity and consistency around the implementation of PMA regulations makes it difficult for Palestinian organizations to understand the requirements for grant applications, hence restricting their ability to receive much-needed funding.

Moreover, Palestinian organizations receiving grants from international donors are required to share with the PMA, as part of its regulatory oversight and due diligence responsibilities, the grant contract and other project-related documents, to ensure that funds are not linked to terrorism and confirm the legitimacy of the donor and of the activities. This process is time-consuming, expensive and often creates delays in accessing banking services, or causes banks to refuse to work with the CSOs altogether. It can also be used as a political tool to target and suppress Palestinian CSOs that are critical to the system and/or operate on a politically sensitive topic.

Further, PMA and banks do not provide CSOs with written reasons for rejecting grant applications or denying them banking services. They usually communicate their decision through a phone call, and justify it with banks' concerns about the potential legal and reputational risks. There are no other ways to receive detailed explanations for such a decision, and no appeal process for rejected grant applications is available to challenge the PMA's or the bank's decision.

Human rights organizations that carry out advocacy projects abroad and international speaking tours, such as BADIL, are also prohibited from owing or using a credit card, due to numerous restrictions imposed by Israel, the PMA, and international financial services bodies. In addition, any service provided internationally by a Palestinian CSO needs to be approved by the PMA after a due diligence process.

¹⁴ International Law Commission, 'Draft articles on Responsibility of States for Internationally Wrongful Acts' (2001) Supplement No. 10 (A/56/10), ch IV.E.1, art 41.

¹⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: *Ability of associations to access financial resources: a vital part of the right to freedom of association*, A/HRC/23/39 (2013).

Finally, the PMA and Palestinian banks forbid Palestinian HROs located in the West Bank from making financial transactions to partner organizations or researchers in Gaza on topics related to human rights; even if the transaction's legitimacy has been verified and the funds are being used for legal activities, such as human rights research.

BADIL's work, which focuses on defending the rights of forcibly displaced Palestinians, has been negatively impacted by such regulations, especially in the Gaza Strip, where the perpetual Israeli aggressions have led to mass displacement and humanitarian crises. Only transactions related to humanitarian aid (and even then, the process is complicated) are permitted, thus channeling the Israeli attempts to delegitimize Palestinian rights, and to transform a political struggle into a humanitarian crisis.

Conclusion and Recommendations

Under the pretext of combating terrorism, multiple actors therefore prevent civil society organizations from denouncing Israel colonial-apartheid and from protecting Palestinian rights. Whether it is Israel itself, the Palestinian Monetary Authority or the international donor community, all appear to work in tandem to silence any voice raised to condemn human rights violations and defend the Palestinian struggle for liberation.

Palestinian CSOs are an extension of the Palestinian people and their pursuit of dignity. Therefore, it is crucial to recognize that aid to the Palestinian people is a right and an obligation that international organizations should commit to, rather than use as a tool to erase or partially obscure Palestinian identity.

Partners who finance programs and stand in political solidarity with Palestinians should not acquiesce in denouncing resistance or framing it as terrorism. Terminating financial assistance, when organizations reject political funding conditions, should be understood as part and parcel of a raft of punitive and colonial economic measures, globally enforced to subjugate Palestinians, deny their political rights, further enhance de-development, and coerce them into surrendering their national and political rights.

Because protecting fundamental freedoms from abusive counter-terrorism regulations requires adequate civil society participation and sufficient consideration of the impacts of counter-terrorism frameworks on civil society, BADIL calls on:

- The Special Rapporteur to investigate the abuse of the anti-terrorism framework both by Israel and the international donor community.
- The international donor community to responsibly recognize the impact of their counter-terrorism restrictions in inspiring other constraints under the auspices of counter-terror, and to adopt a genuine human rights-based approach that is in partnership with and in service of the Palestinian people's right to self-determination and liberation from colonial oppression.