

HUMAN RIGHTS COUNCIL – 52nd Session

Written Submission on Item 3

ID on the report of the SR on the promotion and protection of human rights and fundamental freedoms while countering terrorism

The absence of an internationally agreed upon definition of terrorism has allowed states to systematically misappropriate the term to prohibit a wide range of associations, activities, and political expression questioning the legitimacy of the state. This has been particularly apparent with social movements of indigenous people, legitimate political dissent, and resistance.¹

Since its creation in 1948, Israel has continuously renewed its “state of emergency”. Particularly in reference to national security, Israel invokes this stipulation to justify violations of fundamental rights and freedoms, as well as to stifle dissent. As a result, Palestinian rights advocates are facing a widely-documented phenomenon of shrinking spaces, enabled directly by the false Israeli conflation of legitimate resistance with terrorism, but also discursively by the international donor community through funding constraints, such as politically-conditioned funding clauses based on the (Israeli-induced) categorization of Palestinian political parties as terrorist entities.

These discriminatory and silencing policies are not merely reflective of the colonial mind-set of the international donor community; they are part of Israel’s wider and protracted strategy to facilitate its crimes of ethnic cleansing and forced population transfer of the Palestinian people.² In delegitimizing organizations dedicated to exposing these crimes to the international community and to protecting Palestinian victims of these crimes, Israel is effectively creating a coercive environment in which the Palestinian people are isolated, deprived of any protection or recourse, and forced into silence.

Israel’s Counter-Terrorism legislation

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 cover “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.

¹ 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, A/70/371 (18 September 2015), para [14].

² 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>.

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

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”.

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, arbitrarily declaring them “terrorist organizations”.⁵ Such a decision is a direct repercussion of the donor community’s decision to include terminology that designates Palestinian political parties as terrorist entities in granting contracts,⁶ following Israeli lobbying campaigns.

EU/International donor community’s acquiescence

As a result, the European Union is constantly trying to defend itself against “funding terrorism” accusations levelled by Israeli officials and other proxy organizations.⁷ Examples of such EU lobbying are revealed in 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.

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. Indeed, as they are often successful, smear campaigns result in the interdiction of use of 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.

⁴ See 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>.

⁵ 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>.

⁶ See BADIL, Position Paper on EU Conditional Funding (2020) <<https://www.badil.org/press-releases/615.html>>.

⁷ Also known as GONGOs (Government Organized Nongovernmental Organizations) such as NGO Monitor, UN Watch, Im Tirzu, Kela Shlomo, Ad Kan, and Shurat Hadin.

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).

Counter terrorism and IHRL violations in service of Israel's colonial-apartheid regime

The Palestinian right to education is severely undermined by these Israeli-Zionist allegations which pressure both the Palestinian Authority and UNRWA (as well as its donor states) to alter the curriculum taught in Palestinian schools, smeared by Israel to be glorifying terrorism. Heavily dependent on international funding, the Palestinian Ministry of Education and UNRWA are hence forced to comply with the conditional funding policies encouraged by Israel.

While permissible, restrictions to freedom of expressions 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 organisations and persons by depriving them of fundamental rights and freedoms *because they oppose apartheid*".¹⁰

In direct service of the establishment and sustainment of its colonial-apartheid regime, Israel is hence 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 unlawful situation.¹¹ 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.¹² Yet, states are failing to apply a human rights-based approach to their obligations by accepting Israel's misuse of international law.

Conclusion and Recommendations

Palestinian NGOs are an extension of the Palestinian people and their pursuit of dignity. Partners who finance programs and stand in political solidarity with Palestinians should not acquiesce in the denouncing of resistance or framing of it as terrorism. Furthermore, terminating economic assistance when organizations reject political funding conditions should be understood as part and parcel of a raft of punitive and colonial economic measures which are enforced globally to subjugate Palestinians, to

¹⁰ International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) A/RES/3068(XXVIII), art 2(c) & (f).

¹¹ 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 <<https://www.refworld.org/docid/3ddb8f804.html>>.

¹² 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 (24 April 2013), para 14.



deny their political rights, further enhance de-development, and coerce them into surrendering their national and political rights.

Therefore, BADIL calls on:

- The UNHRC and its member states to pressure Israel to rescind the designation of Palestinian organizations as “terrorist” entities.
- 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.
- The Special Rapporteur to investigate the abuse of the anti-terrorism framework both by Israel and the international donor community.