

**Urgent Appeal to the UN Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on the promotion and protection of human rights while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the right to peaceful assembly and association relating to the designation of six Palestinian organisations as “terrorist organisations”**

**29 November 2021**

**1. Introduction**

This urgent appeal is brought by the SOAS Centre for Human Rights Law and the SOAS Centre for Palestine Studies in regard to the designation by Israel of six Palestinian organisations as “terrorist”. The organisations are: Addameer, Al-Haq, Defense for Children International – Palestine, the Union of Agricultural Work Committees, the Bisan Center for Research and Development, and the Union of Palestinian Women Committees (hereinafter the organisations).

The urgent appeal concerns the designation of the organisations as “terrorist organisations” under Israel’s Counter-Terrorism Law by Israel’s Minister of Defence on 19 October 2021 and the military orders issued by the West Bank Commander of the Israeli military on 3 November 2021. The 19 October designation and the 3 November military orders entail grave legal consequences under Israel’s Counter-Terrorism Law and Defence (Emergency) Regulations, including: the offices of the organisations can be closed; their property can be seized; their funds can be frozen; and their funding can be blocked. In addition, their workers become liable to detention and criminal sanctions. These measures form part of a broader pattern of oppression and harassment of Palestinian civil society organisations. They violate their, and their members’, freedom of expression, assembly and association, and they violate the prohibition of racial discrimination. Further, the lack of an effective appeal against these measures violates the right to an effective remedy. The designation and military orders are incompatible with the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect

Universally Recognized Human Rights and Fundamental Freedoms (GA Res 53/144, 9 December 1998) (hereinafter UN Declaration on Human Rights Defenders).

This appeal urges the Special Rapporteurs to request Israel to:

- (i) withdraw the designation of the organisations as “terrorist organisations”, and the corresponding military orders in the West Bank;
- (ii) **affirm its commitment to uphold the rights guaranteed in the UN Declaration on Human Rights Defenders**, and to fully respect these rights in law and practice;
- (iii) refrain from any measures that constitute unjustified interference with the legitimate work of the organisations.

## **2. Factual background**

### **2.1. The work of the organisations as human rights defenders**

According to a press statement by UN experts on 25 October 2021:

“The six Palestinian organizations are Addameer, Al-Haq, Defense for Children International – Palestine, the Union of Agricultural Work Committees, the Bisan Center for Research and Development, and the Union of Palestinian Women Committees. Among the communities that they work with are Palestinian women and girls, children, peasant families, prisoners and civil society activists, all of whom face increased levels of discrimination and even violence.

‘These organisations speak the language of universal human rights,’ the experts said. ‘They use a rights-based approach to their work, including a gendered analysis, to document human rights abuses of all kinds in Palestine, including business-related human rights abuses.’”<sup>1</sup>

The organisations’ profiles attest to their important human rights work:

- Addameer – Prisoner Support and Human Rights Association was established in 1991. It “offers free legal aid to political prisoners, advocates their rights at the national and international level, and works to end torture and other violations of prisoners' rights through monitoring, legal procedures and solidarity campaigns.”<sup>2</sup>
- Al-Haq was established in 1979. It seeks “to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT).” It has special

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<sup>1</sup> See, UN experts condemn Israel’s designation of Palestinian human rights defenders as terrorist organisations (25 October 2021), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27702>.

<sup>2</sup> See <https://www.addameer.org/about/our-work>

consultative status with the United Nations Economic and Social Council since 1999, and is the West Bank affiliate of the International Commission of Jurists.<sup>3</sup>

- Defense for Children International – Palestine was established in 1991. It documents and exposes human rights violations against Palestinian children, and provides them with legal representation in Israeli military courts. It is a national section of Defence for Children International (DCI).<sup>4</sup>
- The Union of Agricultural Work Committees (UAWC) was established in 1986 and is “one of the largest agricultural development institutions in Palestine”. It formed agricultural committees in the West Bank and Gaza to represent the interests of small farmers.<sup>5</sup>
- Bisan Center for Research and Development was established in 1989 and is dedicated to the goal of social justice through the advocacy of development that benefits the poor and the marginalised as well as advocacy of socio-economic rights, including the right to health, and gender justice.<sup>6</sup>
- The Union of Palestinian Women Committees was established in 1980 and it advocates to advance gender equality and empowerment of women in society through raising awareness concerning women’s political participation, economic support for women-led businesses, and legal and psychological support against domestic violence.<sup>7</sup>

## 2.2. The designation and its legal consequences

On 19 October 2021, Israeli Minister of Defence Benny Gantz issued declarations, pursuant to Israel’s Counter-Terrorism Law of 2016, which designated the organisations as terrorist because they are “an arm of”, and “act on behalf of”, the Popular Front for the Liberation of Palestine (PFLP), which is designated as terrorist.<sup>8</sup>

The provisions of the 2016 Law are applicable extra-territorially and thus applicable to the members of these civil society organisations.<sup>9</sup> Israel has long applied its penal code to the West Bank.<sup>10</sup> Moreover, all military commanders, including those in the occupied territories, are subordinate to the Minister of Defence. On 3 November 2021, the West Bank Commander of the Israeli military supplemented the Minister’s declaration by issuing

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<sup>3</sup> See <https://www.alhaq.org/about-alhaq/7136.html>. See also Lynn Welchman, *Al-Haq. A Global History of the First Palestinian Human Rights Organization* (2021), available to download at: <https://luminosoa.org/site/books/m/10.1525/luminos.102/>

<sup>4</sup> See <https://www.dci-palestine.org/>

<sup>5</sup> See <https://www.uawc-pal.org/UAWCAbout.php>

<sup>6</sup> See <https://www.bisan.org/>

<sup>7</sup> See <http://upwc.org.ps/?lang=en>

<sup>8</sup> The text of the declarations is available at: <https://nbctf.mod.gov.il/en/Pages/211021EN.aspx>

<sup>9</sup> See, e.g., art. 10 which applies the law to “foreign” individuals who are neither citizens or residents of Israel, and foreign associations which are not based in Israel.

<sup>10</sup> Chaim Levinson, Israel Applies Its Penal Code Across the West Bank, *Haaretz* (28 March 2015).

Military Orders outlawing the organisations as “unlawful associations” pursuant to the Defence (Emergency) Regulations 1945 to cement the legal basis for closing down the organisations’ offices in the West Bank.<sup>11</sup>

Pursuant to the Counter-Terrorism Law of 2016, once an organisation is outlawed as a terrorist organisation its offices can be closed, its property seized, its funds frozen, and its funding blocked. In addition, its workers can be detained and criminalised. For instance, charges of membership in a terrorist organisation, commission of actions that benefit a terrorist organisation, or publishing materials expressing sympathy with a terrorist organisation can lead to years of imprisonment.<sup>12</sup>

The Military Orders declaring the organisations as “unlawful associations” in the West Bank empower the Israeli military authorities to take sweeping and draconian measures against the organisations and those working or associated with them.<sup>13</sup> Military orders have been extensively used to undermine Palestinians’ rights of peaceful assembly, freedom of association, and freedom of speech. In 2019 Human Rights Watch reported that since 1967 the Israeli military authorities have banned no fewer than 411 organisations in the West Bank.<sup>14</sup>

### 2.3. Lack of Evidence, Lack of Due Process

The organisations learned about the declarations referred to in 2.2. above from the media. They were not offered a hearing prior to the decisions. The evidence on which the decisions were made is secret. According to these declarations, the organisations can object to this designation. However, given lack of access to the evidence, no effective challenge can be

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<sup>11</sup> The military order against UPWC, for instance, is available (in Hebrew) here:

<https://www.idf.il/media/89017/%D7%94%D7%9B%D7%A8%D7%96%D7%94-%D7%A2%D7%9C-%D7%94%D7%AA%D7%90%D7%97%D7%93%D7%95%D7%AA-%D7%91%D7%9C%D7%AA%D7%99-%D7%9E%D7%95%D7%AA%D7%A8%D7%AA-5.pdf>.

The one against Bisan is available here:

<https://www.idf.il/media/89011/%D7%94%D7%9B%D7%A8%D7%96%D7%94-%D7%A2%D7%9C-%D7%94%D7%AA%D7%90%D7%97%D7%93%D7%95%D7%AA-%D7%91%D7%9C%D7%AA%D7%99-%D7%9E%D7%95%D7%AA%D7%A8%D7%AA-1.pdf>.

The Defence (Emergency) Regulations 1945 were issued by the British Mandate authorities in Palestine and incorporated into Israeli law.

<sup>12</sup> See Counter-terrorism law 5766-2016, available at:

<https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawPrimary.aspx?lawitemid=2004623>

<sup>13</sup> For instance, article 251 of Military Order 1651 of 2010 imposes a 10-year sentence on anyone who “attempts, orally or otherwise, to influence public opinion in the Area [the West Bank] in a manner which may harm public peace or public order” or “publishes words of praise, sympathy or support for a hostile organization, its actions or objectives”. Available in Hebrew at: [https://www.nevo.co.il/law\\_html/law65/666\\_027.htm](https://www.nevo.co.il/law_html/law65/666_027.htm); See also Human Rights Watch, *Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank* (17 December 2019), available at: <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress>

<sup>14</sup> Human Rights Watch, *Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank* (2019), p. 4.

pursued. Moreover, the objections are presented to the very authorities that determined the designation and the classification of the evidence as secret.<sup>15</sup>

On 4 November the 74-page “classified dossier” that Israeli intelligence prepared and that Israel circulated to foreign governments in support of its decision was obtained and examined by media organisations, which concluded that it offers no evidence to support the designation.<sup>16</sup> Earlier, on 2 November 2021, the Irish Minister for Foreign Affairs declared that Israel has not provided any evidence linking groups to terror.<sup>17</sup> On 8 November 2021, the organization Front Line Defenders revealed that Israel hacked the phones of workers of the organisations using Pegasus which was developed by the Israeli spyware company NSO.<sup>18</sup> The US Commerce Department recently blacklisted NSO as a risk to US national security.<sup>19</sup> Also on 8 November 2021, the leading Israeli National Security Correspondent Ronen Bergman revealed that the Israeli Ministry of Defence had rushed to outlaw the organisations to preempt the looming exposure of the hacking of their workers’ phones and to justify it.<sup>20</sup>

The Counter-Terrorism Law of 2016 which empowers the Minister of Defence to make a declaration designating an organisation as a terror group is deeply flawed as it allows the violation of basic procedural protections for those who are subjected to such a declaration. The grave consequences of the declaration compound the significance of the lack of these safeguards.<sup>21</sup>

## 2.4. Purpose of Designation and Patterns of Harassment

As documented by Al-Haq, organisations have been harassed repeatedly by Israeli occupation authorities including by multiple raids on offices, confiscations of computers, invasion of their clients’ confidential information, revoking workers’ residency, or

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<sup>15</sup> See analysis below in 3.1.1

<sup>16</sup> Yuval Abraham, Oren Ziv and Meron Rapoport, Secret Israeli dossier provides no proof for declaring Palestinian NGOs ‘terrorists’ +972Magazine (4 November 2021), available at <https://www.972mag.com/shin-bet-dossier-palestinian-ngos/> The dossier has now been made available online, see <https://s3.documentcloud.org/documents/21115670/document-sent-by-mofa-to-governments-02052021-1.pdf>

<sup>17</sup> Tovah Lazaroff, Israel hasn’t given us evidence linking NGOs to terror, Irish FM says *Jerusalem Post* (2 November 2021), available at <https://www.jpost.com/israel-news/israel-hasnt-given-us-evidence-linking-ngos-to-terror-irish-fm-says-683844>

<sup>18</sup> Front Line Defenders, Six Palestinian human rights defenders hacked with NSO Group’s Pegasus Spyware (8 November 2021), available at: <https://www.frontlinedefenders.org/en/statement-report/statement-targeting-palestinian-hrds-pegasus>

<sup>19</sup> Reuters and Amitai Ziv, U.S. Blacklist Israeli Cyberarms Firms NSO, Candiru for Harming ‘National Security and Interests’ *Haaretz* (3 November 2021), available at: <https://www.haaretz.com/israel-news/u-s-says-israeli-cyberware-firms-nso-candiru-harm-national-security-and-interests-1.10350660>.

<sup>20</sup> Ronen Bergman, This is more than a quarrel with a digital spyware company from Herzliya, *Ynet* (8 November 2021) (in Hebrew), available at: <https://m.ynet.co.il/articles/skphofuvt>

<sup>21</sup> Eliav Lieblich and Adam Shinar, Counterterrorism Off the Rails: Israel’s Declaration of Palestinian Human Rights Groups as “Terrorist” Organizations *Just Security* (22 October 2021), available at: <https://www.justsecurity.org/78732/counterterrorism-off-the-rails-israels-declaration-of-palestinian-human-rights-groups-as-terrorist-organizations/>

detaining workers, with the aim of intimidating, obstructing, and de-legitimizing them.<sup>22</sup> This is part of a wider attempt to stifle opposition to the occupation and prevent exposures of its practices, especially given some of these organizations' close engagement with the processes leading up to the opening (in March 2021) of an investigation by the Office of The Prosecutor of the International Criminal Court (ICC) into allegations of war crimes and crimes against humanity in the occupied Palestinian territory.<sup>23</sup> Israel also obstructs the work of international human rights organisations: in November 2019 for example it deported the regional director of Human Rights Watch, Omar Shakir; and it has refused "even minimal cooperation" with the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, including in 2008 barring entry to and deporting the then Rapporteur, Richard Falk.<sup>24</sup> This harassment has also included a smear campaign by pro-Israeli organisations such as NGO Monitor and UK Lawyers for Israel (UKLFI) who targetted the NGOs' funding.<sup>25</sup> In 2020 UKLFI had to retract its smears that DCI – Palestine had "close current links to terror organizations and provides material support to terrorist groups".<sup>26</sup> A detailed report by the Israeli Policy Working Group has exposed the working methods of NGO Monitor, "a politically-motivated organization that maintains close coordination and cooperation with the Israeli government."<sup>27</sup>

The designations referred to above at 2.2. are measures within the framework of the longest military occupation since World War II. According to a growing consensus, as expressed *inter alia* by B'Tselem and Human Rights Watch, it is insufficient to treat the situation as merely a "prolonged occupation" or "illegal occupation" but rather as a violation of the prohibition on apartheid and persecution.<sup>28</sup> As such, they follow in the footsteps of Palestinian organisations including Al-Haq who have previously made the same claim in

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<sup>22</sup> Al Haq, *Designated Shrinking Space: Israel's Systematic Harassment Campaigns Against Al-Haq, are the Acts of an Illegal Apartheid Regime* (1 November 2021), available at: <https://www.alhaq.org/advocacy/19143.html>

<sup>23</sup> The current Israeli Minister of Defence, Benny Gantz, who issued the "terrorist" designations against the six organisations, was the army's chief of staff during Israel's war on Gaza in 2014 and is among the officials presumably implicated in the allegations.

<sup>24</sup> "This Special Rapporteur was expelled in December 2008 when attempting to enter Israel to carry out a mission of the mandate to visit occupied Palestine, and detained overnight in unpleasant prison conditions. Such humiliating non-cooperation represents a breach of the legal duty of States Members of the United Nations to facilitate all official undertakings of the organization." [https://www.ohchr.org/HRC/A-HRC-25-67\\_enA/HRC/25/67](https://www.ohchr.org/HRC/A-HRC-25-67_enA/HRC/25/67)

<sup>25</sup> Alex Kane and Mariam Barghouti, How an Israeli smear campaign is ripping away funds from Palestinian farmers +972Magazine (25 January 2021), available at: <https://www.972mag.com/palestinian-funding-uawc-israel-lobby/>

<sup>26</sup> Defence for Children International, UK Lawyers for Israel recants allegations of DCIP material support to designated terror group (10 March 2020) <https://www.dci-palestine.org/uk-lawyers-for-israel-recants-allegations-of-dcip-material-support-to-terror-group>

<sup>27</sup> Policy Working Group, NGO Monitor: Shrinking Space, Defaming Human Rights Organizations that criticize the Israeli occupation (September 2018), available at: [http://policyworkinggroup.org.il/report\\_en.pdf](http://policyworkinggroup.org.il/report_en.pdf)

<sup>28</sup> Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (27 April 2021), available at: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>; B'Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 January 2020), available at: [https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid)



formal submissions for example to the UN Committee on the Elimination of Racial Discrimination.<sup>29</sup>

The “terrorist” designation seeks to stifle criticisms and exposures of the human rights record of the Israeli authorities, including referring to its rule as an apartheid regime. It seeks to obstruct the work of these organisations and prevent any form of resistance to its subjugation of the Palestinians. It is part of what Israel considers a legitimacy war in which regular human rights activity and revelations of Israeli grave human rights breaches, including in relation to ICC investigations, is considered as de-legitimation of Israel.<sup>30</sup>

### 3. Legal Analysis

#### 3.1. Compatibility of the designation with key civil and political rights, particularly Freedom of Expression, Assembly and Association

The freedoms of thought, expression, association and assembly are closely related civil and political rights that are interrelated and interdependent. The guarantee of each is necessary for the other. The fundamental freedoms of expression, assembly and association are guaranteed under Articles 19 and 20 of the UDHR and further in Articles 19, 21 and 22 of the ICCPR.

Several international human rights standards set out the grounds permitting their limitation or restriction, namely legality, legitimate aim or purpose and proportionality.

**3.1.1. Legality:** any limitation on freedom of expression or association must be prescribed by law. A restriction cannot be legitimate where it is based upon the arbitrary whim of an official.<sup>31</sup> A norm, to be characterized as a “law”, must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.<sup>32</sup> Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated (Ibid. See also Committee’s General Comment No.22, A/48/40), annex

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<sup>29</sup> Al-Haq, *Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination* (12 November 2019), available at: <https://www.alhaq.org/advocacy/16183.html>

<sup>30</sup> Israel bemoans Palestinian influence on ICC ‘diplomatic terrorism’ *i24 news* (22 December 2019), available at: <https://www.i24news.tv/en/news/israel/diplomacy-defense/1577013136-israel-palestinian-influence-on-icc-decision-diplomatic-terrorism>; Netanyahu: An ICC investigation of Israel would be ‘pure anti-semitism’ *Times of Israel* (6 February 2021), available at: <https://www.timesofisrael.com/netanyahu-an-icc-investigation-of-israel-would-be-pure-anti-semitism/>

<sup>31</sup> UNHRC ‘General Comment No. 34 – Article 19: Freedoms of opinion and expression’ UN Doc CCPR/C/GC 34 (12 September 2011), para 22 (‘General Comment 34’).

<sup>32</sup> Ibid para 25.

VI).<sup>33</sup> Furthermore, laws must not violate the non-discrimination provisions of the Covenant and must not provide for penalties that are incompatible with the Covenant.<sup>34</sup>

Israel's Counter-Terrorism Law of 2016 was introduced "to replace and update older laws, including emergency legislation dating back to the British Mandate, which targeted both Jewish and Arab resistance to British rule."<sup>35</sup> The Law provides the Israeli Minister of Defence with a wide ambit of powers and discretion through which to designate a body of persons as a "terrorist organisation" or that which is aiding or abetting a "terrorist organisation" (Chapter 2, Article A). A terrorist organisation itself is defined as any body of persons operating with the intention of committing terrorist acts. "Terrorist acts" are defined broadly to include "acts carried out with a political, religious, nationalistic or ideological motive" carried out with "the intention of provoking fear or panic among the public" compelling "a government or other governmental authority, including a government or authority from a foreign country...or a public international organization, to do or abstain from doing any act."<sup>36</sup>

The Law provides the Minister of Defence with the power to designate a body as a terrorist organisation without any prior due process rights to a hearing. Upon being designated a terrorist organisation, member of such groups can be detained, their property can be seized through the issuance of administrative decrees or upon conviction of staff in court, and their activity can be halted.<sup>37</sup> Although there is no prior due process right to a hearing to provide evidence negating the Minister's designation, parties are entitled to submit a petition to the Supreme Court *ex post facto* to rebut the declaration, but it chances are slim.<sup>38</sup> Indeed, the Minister of Defence himself is given the authority to determine the outcome of the organisation's petition, which runs counter to basic rule of law notions that no-one should be a judge in one's own case (*nemo iudex in causa sua*). According to the 19 October designations: "Claims against a temporary designation or a request to cancel a permanent designation, can be submitted to the Advisory Committee regarding designations on Terror Organisations, under the provisions of clauses 5 and 7 of the Anti-Terrorism Law 2016."<sup>39</sup> The 3 November military orders state that "whoever considers himself as injured by this declaration, can submit his objections in writing" within 14 days to the legal representatives of the military commander who issued the order.<sup>40</sup>

The Advisory Committee mentioned in the 2016 Law can only make recommendations (hence the Minister of Defence is under no legal obligation to accept its findings). It is

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<sup>33</sup> Ibid. See also UNHRC 'General Comment No.22: on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to the declarations under article 41 of the Covenant' UNGA, Fiftieth Session, Supplement No. 40, vol. I (A/50/40 (Vol. I)) (1996), annex V.

<sup>34</sup> General Comment 34, para 26.

<sup>35</sup> Lieblich and Shinar (n 21).

<sup>36</sup> Art. 2, Counter-Terrorism Law of 2016.

<sup>37</sup> See articles 20-36 (regarding penalties), article 56 (regarding seizure of property), and articles 69-72 (regarding preventing activity and closing spaces), Counter-Terrorism Law of 2016.

<sup>38</sup> See Lieblich and Shinar (n 21).

<sup>39</sup> See above at note 8.

<sup>40</sup> See above at note 11.



appointed by the Minister of Justice and is composed of three members: a judge, a jurist, and (in consultation with Minister of Defence) a national security expert. In other words, the Minister of Defence has a say in the Committee's composition. In addition, the law requires the Committee to request the reply of the chief of Israeli internal intelligence (or a delegate thereof), whose recommendation led to the designation in the first place, to submitted objections. Moreover, the Committee's deliberations are not public but secret, its meetings *in camera* and its protocols classified. Upon the recommendation of the Minister of Defence it can maintain the classified nature of the evidence supporting the declaration, and thus no effective scrutiny of its findings and recommendations is feasible.<sup>41</sup> The only grounds that the Law specifies for reversing a designation is the Minister of Defence being convinced that "the declaration was without a basis".<sup>42</sup> Yet, having determined the designation in the first place on the basis of a recommendation by the Israeli Security Service, it does not seem very likely that the Minister will reach that opposite conclusion. The Minister's discretion is thus very wide with no effective and external constraints. Finally, with respect to military orders, and as Human Rights Watch stated in 2019, "Military law sets out no formal procedures to appeal the designation of an association as unlawful or a decision to close a business. While Palestinians can appeal such administrative decisions to the High Court of Justice, the Court has shown great deference over the years to the position of the State or army."<sup>43</sup>

To conclude, the declarations were not formulated with sufficient precision, they reflect a process of arbitrary decision-making that empowers military officials with unfettered discretion, without sufficient guidance in the law, without effective mechanisms of scrutiny, and with no effective remedy for the affected organisations and individuals working for them.

**3.1.2. Legitimate aim or purpose:** The interference must follow a legitimate purpose, that is, be based on one of the exhaustive grounds of limitations as listed in the international standards defining freedom of association, assembly or expression. The Human Rights Committee has expressly stated that extreme care must be taken by States when applying provisions of their laws with respect to national security in order to limit these freedoms. The Committee has explicitly stated that it is not compatible with Article 19(3) of the CCPR for a State to withhold from the public information of legitimate public interest.<sup>44</sup> It has further highlighted that States parties should ensure that counter-terrorism measures are compatible with paragraph 3.<sup>45</sup>

Further, the Committee has raised concerns about, and warned against the unjustified invocation of Article 19(3) as a means to stifle human rights work. It stated that States parties should put in place effective measures to protect against

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<sup>41</sup> See articles 5-9 and 14, 16 of the Counter-Terrorism Law; available in Hebrew at: [https://fs.knesset.gov.il/20/law/20\\_lsr\\_343902.pdf](https://fs.knesset.gov.il/20/law/20_lsr_343902.pdf).

<sup>42</sup> Art. 7 *ibid*.

<sup>43</sup> Human Rights Watch (n 14) pp. 4-5.

<sup>44</sup> General Comment 34, para 30.

<sup>45</sup> *Ibid*, para 46.

attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of their freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with Article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.<sup>46</sup>

Israel has based the designation on the alleged link of the organisations with terrorist organisations. It has, however, not provided any evidence to substantiate this allegation. Conversely, there is significant evidence, documented by Al-Haq and other organisations, that the Israeli authorities have harassed Palestinian human rights organisations and have sought to hinder their legitimate human rights advocacy. Scholars have identified such efforts as part of a “lawfare narrative” that aims “to present Palestinian engagement with the law as being the latest and most invidious manifestation of the terrorist threat.”<sup>47</sup> In 2018, a report by Israel’s Ministry of Strategic Affairs and Public Diplomacy calling on EU States to “halt their direct and indirect financial support and funding to Palestinian and international human rights organisations that ‘have ties to terror and promote boycott against Israel’” was cogently considered by Al-Haq and others to have “reveal[ed the State of Israel’s direct official involvement in smear campaigns against Palestinian human rights organisations and their European partners.”<sup>48</sup>

This pattern of obstruction has intensified after these organisations raised the allegation of apartheid, which garnered international attention, and worked to support the ICC investigations (see also above at 2.4.). Specifically, over the past five years, ongoing attacks have been levelled against human rights organisations, especially though not exclusively those engaging in UN forums. The Israeli government has failed to provide justifications for its actions that comply with the principles as set out by the Human Rights Committee above. Several independent international observers and treaty bodies report evidence of this pattern of intimidation. Specifically, we draw your attention to the following:

- (1) The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 highlighted an increasingly virulent environment

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<sup>46</sup> Ibid., para 23.

<sup>47</sup> Michael Kearney, “Lawfare, Legitimacy and Resistance: the Weak and the Law.” *Palestine Yearbook of International Law* 16 (2010): 79-130, 81.

<sup>48</sup> “Palestinian Human Right Organisations Condemn Israel’s Unremitting Attempts to Silence them,” 25 May 2018, <https://www.alhaq.org/advocacy/6197.html>

for human rights defenders working on issues related to the Occupied Palestinian Territory, including those addressing issues in UN forums.<sup>49</sup>

- (2) This report followed a joint press statement issued on 16 December 2016 by the Special Rapporteur and the Special Rapporteur on the situation of human rights defenders, in which they expressed their concerns for human rights activists working in the occupied Palestinian territory who had been subjected to harassment and threats while seeking to promote accountability and engage with the International Criminal Court. Nada Kiswanson, a human rights lawyer in The Hague, where she represents Al-Haq, an organization that documents violations of Palestinians' rights in the Occupied Palestinian Territory regardless of the identity of the perpetrator, is alleged to have been subjected to death threats and accusations linked to her work before the International Criminal Court.<sup>50</sup>
- (3) Israel has been consistently asked to respond to allegations of acts of threats against and harassment, detention and arrests of human rights defenders and civil society organizations, particularly those working on international accountability for violations of human rights law.<sup>51</sup>

In the circumstances, the invocation of public security grounds to justify the designation, i.e. an interference with the freedoms of expression, assembly and association, serves as a pretext to prevent the legitimate exercise of these freedoms.

**3.1.3. Proportionality.** The restriction must be necessary, in the sense that there is a pressing social need for it and any measure taken constitute the minimum requirement to achieve the purpose of the limitation in a democratic society. Restrictions must not be overbroad. The Human Rights Committee referred in its General Comment no.34 to its observations in General Comment no.27 that: “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law”.<sup>52</sup> Further, “the principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”<sup>53</sup>

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<sup>49</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN doc A/HRC/34/70 (13 April 2017) para 47.

<sup>50</sup> Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, Report of the Secretary-General, UN doc A/HRC/36/31 (29 March 2018) para 39.

<sup>51</sup> UNHRC ‘Summary of stakeholders’ submissions on Israel: Report of the Office of the United Nations High Commissioner for Human Rights’, UN doc A/HRC/WG.6/29/ISR/3 (3 November 2017) para 29.

<sup>52</sup> General comment No. 34, para 34.

<sup>53</sup> Ibid.

The designation of the organisations as “terrorist” is based on a law that does not conform with the principle of legality. It also does not follow a legitimate aim. Even if these two preconditions justifying interference with the freedoms referred to above were met, the draconian measures combining, effectively, the paralysis and shutting down of an organisation with the criminalisation of its members, is clearly disproportionate when applied to human rights defenders. It is difficult to envisage any circumstances in which any such measures could possibly be justified.

### **3.2. Compatibility of the designation with the UN Declaration on Human Rights Defenders**

Israel voted in favour of the Declaration on Human Rights Defenders in 1999. It then reaffirmed its commitment to upholding the rights of human rights defenders again in 2015 by supporting a second resolution which noted that the General Assembly was “gravely concerned that national security and counter-terrorism legislation” as well as “laws regulating civil society organizations” that were “in some instances misused to target human rights defenders or hinder their work, endangering their safety in a manner contrary to international law.”<sup>54</sup> That resolution further called upon States “to take all measures necessary to ensure the rights and safety of human rights defenders who exercise the rights to freedom of opinion, expression, peaceful assembly and association, which are essential for the promotion and protection of human rights.”<sup>55</sup>

Article 1 of the Declaration on Human Rights Defenders states that “Everyone has the right, individually and in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” The declaration clearly identifies organisations as human rights defenders in addition to individuals, as evidenced through its official title and the affirmation in each of its articles that the rights protected are enjoyed both by individuals *and* individuals in association with others. This is further affirmed in the fourth preambular paragraph in respect of which ‘individuals, groups and associations’ are referred. The organisations constitute human rights defenders, as set out in the UN Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights (2004).

Israel’s 2016 Counter-Terrorism Law does not provide the legal guarantees envisaged in Article 2(1) of the Declaration for the enjoyment of human rights within its jurisdiction, and its content and application to human rights defenders constitutes a failure, pursuant to Article 2(2) of the Declaration “to adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed” (see also Article 3 on domestic law consistent with the international obligations of the State in the field of human rights and fundamental freedoms). The designation of the organisations as terrorist frustrates a series of their rights under the Declaration, particularly Article 5 (peaceful assembly, association, communication); Article 6 (access to, holding and publishing human rights information,

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<sup>54</sup> A/C.3/70/L.46/Rev.1 (18 November 2015), p.2 preamble para 7.

<sup>55</sup> Ibid., p.3 para 2.

drawing public attention to all human rights and fundamental freedoms); Article 7 (develop and discuss new human rights ideas and principles and to advocate their acceptance); Article 8 (effective access to participation in government, promotion and protection of human rights); Article 9 (effective remedy against the violation of rights); Article 11 (lawful exercise of their occupation or profession); Article 12 (participation in peaceful activities against human rights violations, protection against violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, effective protection under national law); and Article 13 (solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means).

Furthermore, as identified in section 2.2. above, the designation of the organisations may be seen to be a response to their support for ICC investigations, in addition to other UN processes in which they continue legitimately to take part. The Declaration on Human Rights Defenders explicitly affirms the obligation upon States to ensure that all individuals can freely communicate with UN mechanisms in Articles 5(c) and 9(4). Acts of reprisal may breach this obligation. In ordinary terms, an act of reprisal is “an act of retaliation for some injury or attack”. In international human rights law, the term designates “measures that are taken with the intention to deter or punish individuals who have opposed legislative or policy frameworks adopted by public authorities.”<sup>56</sup> Additionally, the Declaration makes it clear that acts of violence or threats against human rights defenders when they communicate with the UN system, or their intimidation or coercion, violate their right to communicate in addition to their other rights.<sup>57</sup> This is further supported by the findings of successive Special Rapporteurs in addition to the reports of the UN Secretary General on Reprisals, who have repeatedly noted the obligation upon States to ensure that no reprisals occur against those who wish to interact with the UN human rights mechanisms or who cooperate with the UN.<sup>58</sup>

### 3.3. Prohibition of Discrimination

Non-discrimination is a fundamental principle of international human rights law. It prohibits differential treatment on prohibited grounds (see e.g. Article 2(1) ICCPR).

In 2014, the Human Rights Committee expressed its concern about the lack of explicit codification of the principle of equality and non-discrimination in Israel’s Basic Law, urging Israel to “ensure equal treatment for all persons within its

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<sup>56</sup> Geneva Academy of International Humanitarian Law and Human Rights, ‘Reprisals against Human Rights Defenders Who Cooperate with the United Nations System’, Academy-in-Brief No.3 (August 2013), 19.

<sup>57</sup> Ibid. See also UNCAT *Hanafi v Algeria*, (Comm No. 341/ 2008) (3 June 2011) para .8

<sup>58</sup> See for instance: UNGA ‘Cooperation with the United Nations, its representatives and its mechanisms, in the field of human rights’ UN doc A/HRC/45/36 (25 September 2020) para 65 and 111; UNGA Cooperation with the United Nations, its representatives and its mechanisms, in the field of human rights’ UN doc A/HRC/42/30 (9 September 2019) para 65; UNGA Cooperation with the United Nations, its representatives and its mechanisms, in the field of human rights’ UN doc A/HRC/39/41 (13 August 2018) para 68 and 53, together with 78. See also UNHRC ‘Report of the Special Rapporteur on the situation of Human Rights Defenders: Human rights defenders operating in conflict and post-conflict situations’ UN doc A/HRC/43/51 (30 December 2019) paras 37 and 42; UNGA ‘Situation of Human Rights Defenders’ UN doc A/73/215 (23 July 2018) paras 56-7.

territory and subject to its jurisdiction, regardless of their national or ethnic origin, and in particular, pursue the review of all laws discriminating against Palestinian citizens of Israel and ensure that any future legislation is fully compatible with the principle of equality and non-discrimination.”<sup>59</sup> In 2019, the Committee on Economic, Social and Cultural Rights urged Israel “to review the Basic Law [Israel-The Nation State of the Jewish People] with a view to bringing it in line with the Covenant or repealing it and to step up its efforts to eliminate discrimination faced by non-Jews in enjoying the Covenant rights, particularly rights of self-determination, non-discrimination and cultural rights.”<sup>60</sup> In 2020, the Committee on the Elimination of Racial Discrimination exhorted Israel to “ensure that the measures taken [related to security and stability in the region] ... do not discriminate in purpose or in effect against Palestinian citizens in the Occupied Palestinian Territory or any other minorities whether in Israel proper or in territories under the State party’s effective control.”<sup>61</sup>

The organisations, through their human rights work, object to, and advocate an end to, racial discrimination of Palestinians and the multiple forms this discrimination takes both within the occupied Palestinian territory and Israel.<sup>62</sup> The pattern of harassment of Palestinian organisations is based both on their identity and advocacy for Palestinian rights. It seeks to stifle any protests against racial discrimination, racial segregation and apartheid.<sup>63</sup> The purported need to maintain security has served as the main justification to take or maintain restrictive and discriminatory measures, which, as demonstrated above at 2, have no factual basis in respect of the designation. The measures taken against the organisation, particularly their designation, therefore constitute part of the institutionalised system of racial discrimination.

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<sup>59</sup> UN doc CCPR/C/ISR/CO/4 (21 November 2014) para 7.

<sup>60</sup> UN doc E/C.12/ISCR/CO/4 (18 October 2019) para 17.

<sup>61</sup> UN doc CERD/C/ISR/CO/17-19 (27 January 2020) para 3(b).

<sup>62</sup> Ibid.

<sup>63</sup> See on the latter, *ibid*, para 23.