

4 May 2020

Josep Borrell Fontelles
European Union High Representative
for Foreign Affairs and Security Policy/
Vice-President of the European Commission

Olivér Várhelyi
European Union Commissioner,
European Neighbourhood Policy
and Enlargement Negotiations

Re: Energix exploiting COVID-19 to develop windfarm in the occupied Syrian Golan while human rights defenders remain at risk

Dear High Representative Borrell and Commissioner Várhelyi,

I am writing to you on behalf of Al-Marsad – Arab Human Rights Centre in the Golan Heights ('Al-Marsad') to urgently inform you that Energix Renewable Energies Ltd. ('Energix') is exploiting COVID-19 to develop a windfarm in the occupied Syrian Golan ('Golan') that threatens Golani Syrians' human rights and livelihoods, as well as to update you on the lawsuit filed against Al-Marsad.

As you will recall from my 9 December 2019 letter¹, Israeli energy company, Energix, is seeking to develop a harmful windfarm in the Golan. Despite countless objections from the Syrian population, Energix obtained approval from the Israeli government in January to progress this project and build 25 wind turbines² on Syrian agricultural land in close proximity to two remaining Syrian villages.

Exploiting COVID-19 Lockdown

Energix is currently taking advantage of the COVID-19 lockdown in the Golan to develop sites for its harmful project. Energix representatives – accompanied by Israeli police – are visiting project sites to demarcate plots and erect signs. Meanwhile, due to COVID-19 movement restrictions, Golani Syrians are grounded in their homes, unable to monitor or peacefully protest Energix's activities. Those that have risked their health to venture out and film Energix and Israeli police visits to project sites have subsequently been harassed and questioned by the police. Al-Marsad and civil society partners, the Association for Civil Rights in Israel ('ACRI') and Bimkom – Planners for Planning Rights, wrote to the Israeli government at the end of March to alert it to the fact that Energix was manipulating COVID-19 restrictions for its benefit but the government has not responded.

Human Rights Defenders at Risk

In addition to violating international law, Energix's project has been marked by a strategy to exploit and intimidate the Syrian population. This culminated in Energix suing Al-Marsad and members of the Syrian population under Israel's controversial 'Anti-Boycott Act' last year. These actions were an attempt to silence the organisation and others who expressed concerns about the project's legality and impact on the Syrian population. Energix subsequently withdrew four lawsuits against individual Golani Syrians and, in March, was ordered by an Israeli court to pay the legal expenses of these individuals. However, the case against Al-Marsad is ongoing. At a February hearing, Al-Marsad rejected a possible settlement that would have compromised its work, reaffirming its intention to fight the case. The next hearing is scheduled for mid-June and will address the 'Anti-Boycott Act' arguments of the lawsuit. However, it is possible this hearing will be delayed due to COVID-19.

¹ Letter appended.

² In addition to a further six more pending final approval.

United Nations Expression of Concern

In January, the UN Special Rapporteurs on the Situation of Human Rights Defenders; Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment; and, the Promotion and Protection of the Right to Freedom of Opinion and Expression wrote to the Israeli government and Energix³. In a 12-page letter, the Special Rapporteurs relayed their legal concerns with Energix's project and lawsuits, asking for more information on nine key issues. The Israeli government responded⁴ last month without meaningfully addressing the legal issues raised. The government did not dispute the facts in the letter, which implicate serious violations of international law, and continues to defend its widely criticized 'Anti-Boycott Act.'

Call for the European Union to Protect Human Rights and Human Rights Defenders in the Golan

Given the highly concerning situation and the urgency of the matter, Al-Marsad respectfully calls on the European Union ('EU') to address the flagrant violations of international law occurring in the Golan with the Israeli government, and in particular to:

- Issue a public statement outlining the EU's opposition to the development of Energix's windfarm in the Golan given that it is a large scale 'national infrastructure' project in occupied territory that will provide electricity to Israel while damaging the interests and health of the Syrian population under occupation.
- Attend the future hearings of the lawsuit against Al-Marsad to ensure compliance with fair trial standards and that the judiciary respects rule of law and freedom of expression principles.
- Submit an amicus curiae brief to the Israeli court hearing the case against Al-Marsad that outlines the EU's legal concerns about the situation of human rights defenders and freedom of speech in the Golan.
- Organise an EU fact-finding visit to the Golan to see first-hand how the windfarm will have a detrimental impact on the Syrian population as well as to hear from Golani Syrians about the major human rights issues they face living under Israeli occupation, for example: severe housing overcrowding, landmines, residency problems, and labour rights violations.
- Support and develop the capacity of human rights defenders in the Golan through training and funding.

Thank you for your time and consideration of this matter. I look forward to hearing from you.

Yours sincerely,



Dr. Nizar Ayoub
Director, Al-Marsad – Arab Human Rights Centre in Golan Heights

³ Letters appended.

⁴ Letter appended.

9 December 2019

Mr. Josep Borrell Fontelles,
High Representative of the Union for
Foreign Affairs and Security Policy /
Vice President of the Commission

Mr. Olivér Várhelyi,
Commissioner, European
Neighborhood Policy &
Enlargement Negotiations

Re: Defending Human Rights Defenders in Israeli Occupied Territories

Dear High Representative Josep Borrell Fontelles & Commissioner Olivér Várhelyi,

I am writing to you on behalf of Al-Marsad – Arab Human Rights Centre in Golan Heights (“Al-Marsad”) to call your attention to an extremely dangerous lawsuit that has been filed against Al-Marsad, the only human rights organization in the Occupied Syrian Golan. Energix Renewable Energies Ltd. (“Energix”), one of the largest Israeli renewable energy companies, has filed suit against Al-Marsad under Israel’s widely condemned Anti-Boycott Law. The suit intends to end Al-Marsad’s human rights work and possibly even eliminate the organization. Al-Marsad is appealing to the European Union (“EU”) because of the EU’s stated commitment to defending human rights defenders.

In September 2018, Al-Marsad began investigating Energix’s development of an enormous energy project that would dominate almost a quarter of the agricultural land on the less than five percent of the occupied Golan that is still indigenous Syrian controlled. The investigation revealed that the project violates the basic human rights of the indigenous Syrian community and supports Israel’s widespread abuses of international law. For instance, the project threatens residential expansion, wildlife, and the health of individuals within the Syrian community. Energix’s actions in the region were also shown to have been manipulative and discriminatory.

In January 2019, Al-Marsad published a report highlighting the project’s implications. Immediately after the report’s publication, individuals affiliated with Energix started a smear campaign against Al-Marsad, vowing to close the organization. When this campaign failed to gain traction, Energix filed its lawsuit—the *first* to ever invoked Israel’s Anti-Boycott Law to suppress the legitimate activities of a human rights organization.

Energix’s complaint, using politically charged language, alleges that Al-Marsad has violated Israel’s Anti-Defamation Law and Anti-Boycott Law. The complaint, without justification, seeks damages equating to just over Al-Marsad’s yearly budget as published publicly. Al-Marsad is currently contesting these baseless charges.

Al-Marsad, again the *only* human rights organization in the occupied Golan, is in imminent danger. In accordance with the EU’s strong support for human rights defenders and freedom of expression and association, I ask that it immediately intervene to condemn the actions taken against Al-Marsad and ensure proper judicial safeguards are in place in Israel so that Al-Marsad’s case is fairly adjudicated.

Kind regards,



Dr. Nizar Ayoub
Director, Al-Marsad – Arab Human Rights Centre in Golan Heights

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL ISR 16/2019

20 January 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 34/5, 37/8 and 34/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of a smear campaign and a strategic lawsuit filed against human rights organisation Al-Marsad by the Israeli company Energix, in connection with Al-Marsad's activities opposing a renewable energy project in the Occupied Syrian Golan.**

Al-Marsad - Arab Human Rights Centre in Golan Heights is a human rights organisation established in 2003 to document human rights violations in the Occupied Syrian Golan and support the local Syrian community, including in the context of the alleged unlawful exploitation of natural resources by Israel.

Concerns relating to the Law for the Prevention of Damage to the State of Israel Through Boycott, also known as the Anti-Boycott Law, were raised by several UN Special Procedures mandate holders in a communication sent to your Excellency's Government on 29 August 2011 (ref no. ISR 7/2011). Particular concerns were raised as to the Law's targeting of non-violent public expression, and thus its compatibility with Israel's obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR), along with the limitations it placed on freedom of association and thus its compatibility with Israel's obligations under article 22 of the ICCPR. We would like to thank your Excellency's Government for the response dated 15 December 2011, however we remain concerned given the allegations below.

According to the information received:

The Clean Wind Energy Project

In 2009, the Israeli Government adopted Decision No. 4450 in which it set out to have 10 percent of the country's energy generated from renewable resources, including wind farms, by 2020. This has resulted in an increased number of solar

and wind energy projects being developed across Israel and the occupied territories, including the Occupied Syrian Golan.

On 26 March 2018, the National Infrastructure Committee (NIC) approved the National Infrastructure Plan 62/ 8- High Tension Cable 161KW, Hula - Bar'on Junction. The plan concerns the construction of electricity infrastructure on occupied land to allow for the transportation of the energy generated by the wind energy farms in the Golan to the Israeli electricity network.

The population of almost 27,000 Syrians currently living in the Occupied Syrian Golan inhabits five villages, which constitute approximately 5% of the Golan. The remaining 95% is occupied by Israeli settlements and military. The Golan is a region with particularly favorable conditions for the development of wind energy farms, with low population density, large open areas and wind speed nearly double that of Israel's coastal plain.

Three wind farm projects developed in the Occupied Syrian Golan have reportedly reached the final phases of the formal approval process, including the Clean Wind Energy Project developed by the Israeli company Energix Renewable Energies Ltd. Energix is one of the largest renewable energy companies in the country.

Energix has been developing the Clean Wind Energy Project since 2013. The plans encompass the construction of 31 wind turbines on the southeastern side of the Syrian village of Majdal Shams, and on the southwestern side of the Syrian village of Masaada. Both locations are agricultural lands owned by Syrian farmers. The electrical substation is planned to be situated in Bar'on Junction. The wind farm is expected to occupy an area of 6013.096 Dunam and generate 152 MW of energy annually, enough to power 66,000 homes. The estimated annual revenues from the project amount to 41-44 million USD.

The project was submitted directly to the NIC, which advances infrastructure projects of "national importance" through an accelerated regulatory process, and thus did not require approval by the District Planning Committee for Northern Israel.

Due to the planned location of the wind farm close to the Syrian villages, the project is expected to restrict their future expansion, exacerbating the already severe housing crisis. Further, Syrian agricultural land would reportedly be destroyed as a result of the implementation of the project, as it requires the construction of roads and the clearing of land in the areas where wind turbines would be located. There are concerns that Syrian agricultural activities, including the production of apples and cherries, would be restricted as a result and the Syrian population would lose the source of their livelihoods.

There are also concerns that infrasound generated by the wind turbines would have a negative impact on the health of the local Syrian population, causing headaches, dizziness, and nausea. Furthermore, the project might also cause “flickering”, a flashing or blinking effect generated by the sun shining through the spinning blades of the wind turbine. Exposure to flickering is especially harmful for persons prone to epilepsy. It is estimated that the wind farm operation could result in up to 1 hour of flickering per day in certain Syrian residential areas, in particular in winter.

The implementation of the project might also endanger wildlife, especially the native and migrating bird populations.

It is reported that the company Energix has publicly claimed that local agricultural activities will not be affected by the project, but has not provided specific information to support these claims. The company has further argued that the project will generate new sources of income for the local Syrian population, however the vast majority of the new employment opportunities will be short-term jobs linked to construction.

The company has reportedly claimed that the project counts with the support of the local Syrian population, including agricultural cooperatives. However, in a survey conducted in 2017 to measure the level of local support for the project, only 14 percent of respondents were residents from areas that would be impacted by its implementation. Furthermore, the vast majority of local Syrians interviewed by the organisation Al-Marsad between September and December 2018 have expressed their opposition to the project.

The wind farm is expected to generate benefits for few individuals from the area, including approximately 40 landowners who signed contracts with the company and the 40 to 50 persons who would benefit from the limited long-term employment opportunities generated by the project.

Energix has reportedly offered financial inducements to influential members of the local communities in order to convince the Syrian farmers to lease their land to the company. Many Syrian landowners have asserted that they were manipulated into signing the contracts by representatives of the company.

The lease contracts require farmers to register their lands with the Israeli authorities, allow the company to destroy and utilize any structures located on the leased land and ensure the company’s freedom to transfer the rights and obligations of the contract to another company or person. The Syrian landowners are offered a compensation of one percent of the project’s revenues, approximately five times less than what is reportedly offered to Israelis who lease their lands for similar projects.

The company and its intermediaries have reportedly harassed the landowners who opposed the terms of the contracts with repeated phone calls and house visits. Some were offered large sums of money for signing the contracts and not voicing any opposition. Several farmers who expressed concerns have reportedly been threatened with lawsuits. The company filed lawsuits against at least six local Syrians opposing the project.

The company opened an office in Majdal Shams, the biggest Syrian village in the Golan, and organized community meetings where information about the alleged benefits of the project was disseminated. Energix also launched a school scholarship fund for the local Syrian population and started sponsoring a local youth football team.

The project was reportedly advanced through the formal approval process only after the company moved the planned wind turbines away from the Israeli settlement of Nimrod and closer to the Syrian villages, to avoid any negative impacts on the Israeli population.

Starting in June 2017, the NIC held a number of meetings to review Energix's project. The Syrian farmers and agricultural cooperatives were repeatedly excluded from them.

On 15 June 2017, several agricultural cooperatives sent a letter to the NIC, raising concerns about the possible negative impacts of the wind farm project. Despite having received the letter, the NIC did not invite any members of the cooperatives to the first meeting on the project. On 7 September 2017, the Syrian cooperatives sent another letter to the NIC, to which the authority responded by arguing that the plans concerning the project would be published for comments and reservations. The NIC never engaged in a discussion with the cooperatives. On 19 December 2017, following the publication of the blueprints for the wind turbines by the NIC, the cooperatives sent a third letter to the authority. No response was provided.

In January 2018, Energix submitted an environmental impact assessment to the NIC. In July and August 2018, the NIC held several meetings with members of the "community" to discuss the project. Only 5 members of the Syrian community were invited, some of which had been employed by Energix.

Between February and April 2019, as part of the formal approval process, the NIC published the project for comments and objections. On 9 August 2019, the NIC rejected all objections submitted regarding the project.

On 9 September 2019, the NIC approved the construction of 25 wind turbines and referred the project to the Cabinet of Ministers for final approval. On 3 December 2019, the Cabinet of Ministers dismissed the project due to mapping errors and

sent it back to the NIC. Energix is now expected to re-map the project and submit it for re-approval to the NIC.

Alleged targeting of Al-Marsad

In September 2018, members of the local Syrian community reached out to Al-Marsad to request the organisation's assistance in investigating the activities of Energix in the area. The initial investigation led Al-Marsad to raise concerns about the potential detrimental impact of the project on the rights of the local Syrian population. In response to requests from the Syrian community, the organisation began organizing meetings to disseminate information on the project and its expected impacts among the local Syrians. As a result, a petition expressing local opposition to the project gained over 6000 signatures.

In January 2019, Al-Marsad published a report on its investigation into Energix and the aforementioned wind farm project. Shortly after, individuals with links to the company reportedly launched a smear campaign against the organisation and those associated with it, aimed at damaging the organisation's reputation among the Syrian community and putting pressure on it to cease its activities. The organisation was accused of supporting foreign interests. Claims were made on Facebook that Al-Marsad employees were "two-faced", as they were simultaneously contesting Israel's occupation and financially benefitting from the Israeli government.

In March 2019, the organisation's largest funder received a letter accusing Al-Marsad's employees of mismanagement of its finances for their personal benefit. The letter stated that Al-Marsad "cheats and exploits the weakness of the local residents". As a response, the funder ordered a re-audit of Al-Marsad's finances by a new international auditing company. The process reportedly took several months and caused significant financial hardship to Al-Marsad's staff, as they were unable to pay salaries and cover day-to-day costs of their operations. In late November 2019, the re-audit was concluded with no irregularities identified.

Despite the reported smear campaign, Al-Marsad has continued promoting the report and holding public meetings on the project.

While the NIC reviewed the wind farm project, in June 2019, Al-Marsad, in cooperation with a partner organisation, submitted objections concerning the project to the Committee. The objections were submitted on behalf of the Syrian community opposing the project, and included expert opinions on its possible impacts. In addition, three Syrian village councils, a group of Israeli settlers, and several other individuals submitted objections to the Committee.

On 1 June 2019, Energix filed a civil lawsuit against Al-Marsad at the Nazareth Magistrates Court. The Court registered it as case number 33745-06-19. The company alleges that the aforementioned report published by Al-Marsad is

defamatory and calls for a boycott of Israel, thus violating the Anti-Defamation Law of 1965 and the Anti-Boycott Law of 2011. The Anti-Boycott Law allows for civil lawsuits to be filed against anyone who knowingly publishes calls for a boycott for the damages they incurred. This is the first time a non-governmental human rights organisation registered in Israel has been sued under the Law.

Energix is suing Al-Marsad for a sum of 900,000 ILS, which slightly exceeds the organisation's annual budget. The company is also demanding Al-Marsad to retract and apologise for all the material published on the project.

In the complaint submitted by Energix to the Court, Al-Marsad is characterized as working together with the BDS movement and "anti-Zionists". Energix also asserts that the organisation encouraged a boycott by organizing awareness raising meetings which sparked strong community opposition to the wind farm project.

On 15 September 2019, Al-Marsad submitted a response at the Court, rejecting all allegations made by the company and arguing that the lawsuit filed by Energix is aimed at intimidating and silencing Al-Marsad.

On 3 November 2019, Energix filed a response at the Court reasserting its claims and stating that significant social and economic damages had been incurred by the project's supporters in the Golan as a result of the public opposition to the project.

In late November, Al-Marsad submitted its second response regarding the lawsuit application, calling for the case to be dismissed by the Court.

The Court is now expected to decide whether any further action should be taken on the case. A hearing has been scheduled for 26 January 2020.

In response to the above-mentioned Cabinet of Ministers' decision of 3 December 2019 to send the project back to the NIC following the identification of mapping errors, Energix issued a public statement in early December, indirectly referring to Al-Marsad by asserting that "foreign interests" are trying to stop the project.

We would like to express our concern at the lawsuit allegedly filed against Al-Marsad by the company Energix as well as the smear campaign targeting the organisation, which appear to be linked to its legitimate human rights activities, in particular its opposition to a renewable energy project in the Occupied Syrian Golan. We are concerned that these actions, including the use of strategic litigation, may be aimed at curtailing the organisation's ability to carry out its legitimate human rights activities, damaging its reputation and forcing it to cease its human rights activities. As this is the first time a human rights organization registered in Israel has been sued under the Anti-Boycott Law, we fear that this case may set a dangerous precedent with chilling effects on the exercise of the right of freedom of expression and on the legitimate work of human rights defenders and civil society organisations in the country and the occupied territories.

With regards to the alleged use of the Anti-Boycott Law by the company Energix in what appears to be judicial harassment, we would like to reiterate our concerns that the Law may intend to restrict freedoms of expression and association as it targets non-violent public expressions of opposition to Israeli occupation policies and practices, particularly Israeli settlements in the occupied territories. We would further like to reiterate our concerns regarding the legal and financial sanctions that could severely curtail the work of civil society organisations, in particular those defending human rights in the occupied territories, by subjecting them to threats of lawsuits and fines, stripping them of their tax-exempt status and forcing them to shut down.

We would also like to express our concerns about the designation of the wind farm project as “national infrastructure”, which appears to indicate it being primarily intended to benefit the economy and population of Israel. This is concerning especially given the negative impacts the project is expected to have on the local Syrian population, including with regards to the housing crisis in the Syrian villages, restricted access of the Syrian population to agricultural land and the negative health impacts. Our concerns are strengthened by the reported lack of an adequate consultation with the affected population, despite the reported strong opposition to the project among the local Syrian community. We are further concerned about reports of harassment of Syrian landowners aimed at pressuring them to lease their lands to the company.

In connection with the above allegations and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the status of the lawsuit filed by Energix against Al-Marsad at the Nazareth Magistrates Court.
3. Please provide information on what steps have been taken by the National Infrastructure Committee to ensure the compliance of the Clean Wind Energy Project with international human rights norms and standards.
4. Please provide detailed information on any consultations held with the local Syrian population in regards to the wind farm project in question.
5. Please indicate the steps that the Government has taken, or is considering to take, to ensure: (i) that Energix company and other business enterprises operating in the Occupied Syrian Golan respect human rights throughout their operations, (ii) the effectiveness of domestic judicial mechanisms with

respect to business-related human rights abuses, and (iii) that the legitimate and peaceful activities of human rights defenders are not obstructed, in line with the UN Guiding Principles on Business and Human Rights.

6. Please provide information as to what steps have been taken to ensure that human rights defenders and organisations in Israel and the occupied territories, including Al-Marsad, are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.
7. Please provide information about how the “Law for Prevention of Damage to the State of Israel through Boycott – 2011”, also known as the “Anti-Boycott Law”, is compatible with Israel’s obligations under international human rights law to respect and promote the freedoms of expression and association.
8. Please highlight the steps that the Government has taken, or is considering to take, to ensure that the “Anti-Boycott Law” is not misused by businesses to obstruct legitimate and peaceful activities of human rights defenders, including by filing civil defamation cases.
9. Please provide information on all steps taken to ensure that the project does not restrict the expansion of the local Syrian community that may be required in order to address its present and future housing needs.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on the same matter has also been sent to the company Energix.

Please accept, Excellency, the assurances of our highest consideration.

Michel Forst
Special Rapporteur on the situation of human rights defenders

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with the above allegations and concerns, we would like to appeal to your Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with the fundamental principles set forth in article 19 of the ICCPR, ratified by Israel on 3 October 1991. We would like to recall that any restriction to freedom of expression must meet the high threshold established under article 19(3) of the ICCPR. That is, be provided by law and be necessary and proportionate to achieve the legitimate aims listed in the provision. As interpreted by the Human Rights Committee in its General Comment 34 (CCPR/C/GC/34), article 19 of the ICCPR requires that authorities guarantee the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, including political discourse, commentary on one's own and on public affairs, discussion of human rights, journalism, among others (paragraph 11). Article 19 of the ICCPR also protects all forms of expression and the means of their dissemination, including all forms of audio-visual as well as electronic and internet-based modes of expression (paragraph 12).

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

With regards to the concerns raised at the possible negative impacts of the wind farm project, we would like to highlight the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights; and
- c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

It is a recognised principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3). The Guiding Principles also require States

to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

-article 6 (a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

-article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

-article 9 paragraph 1, which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone

has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

-article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We further refer to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

Finally, we would like to recall that the right of everyone to an adequate standard of living, including housing, is protected under international law and enshrined in article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Israel is a party since 3 October 1991. In addition, Article 5 of the International Convention on the Elimination of Racial Discrimination, ratified by Israel on 3 January 1979, requires States to ensure equality before the law, including with regard to the enjoyment of the right to housing and the right to own property alone as well as in association with others.



Mission permanent d'Israël
auprès de l'Office des Nations Unies
et des Organisations Internationales à Genève

מְשִׁלַּחַת יִשְׂרָאֵל
לְיַד מְשָׂרְד הָאוֹמוֹת הַמְּאוֹחָדוֹת
וְהָאֲרְגָנוֹן הַבִּינְלָאוּמִי
בִּגְ'נֵבָה

March 20th, 2019

Government of Israel's Response to Joint Appeal

Ref: AL ISR 16/2019

Following your communication of January 20, 2020 (Reference AL ISR 16/2019) regarding "*allegations of a smear campaign and a strategic lawsuit filed against human rights organization Al-Marsad by the Israeli company Emergix, in connection with Al-Marsad's activities opposing a renewable energy project in the Occupied Syrian Golan,*" we would offer the following comments:

At the outset, it should be emphasized that Israel deplores and strongly rejects the use of the terms such as "smear campaign", "strategic litigation" and "judicial harassment" used in the communication to describe a case that is still pending and which was filed by a private company in an exercise of its rights under the law. Israel also deplores the use of the term "the Occupied Syrian Golan" which is merely political and as it is well known, in accordance with Section 1 of the Golan Heights Law from 1981, Israeli law applies to the Golan Heights; accordingly, all Israeli residents and citizens living in the Golan are entitled to the same rights as any other resident or citizen in all aspects of life, including economic, social and cultural rights.

1. On the renewable energy project and its approval after consultation with the local population

At a moment when climate change has taken a prominent place in the global agenda, and its effects are already felt through extreme meteorological phenomena in different geographic regions of the world, states must take decisive action to reduce carbon emissions and move to contain global warming to the extent possible. In that context, the Government of Israel's Decision No. 4450, determining the transition to clean sources of energy, is a crucial step in that direction. For the stated goal of having 10% of the country's energy being generated from renewable sources by the end of 2020, it is necessary to invest in the establishment of large-

scale projects, such as the wind turbines project described in your communication. Needless to say, such projects are intended to serve no one but the public, in Israel and abroad, their interests and rights that are threatened by the concerning progression of global warming.

Infrastructure projects that serve the public interest, be it for the generation of energy or for other public goals such as transportation and trade, inherently require the installation of physical structures that demand space and must be built in sites fitting their purpose. Therefore, the decision to approve the execution of a wind energy project in the Golan Heights, a territory of relatively high altitude and low population density, is in line with all of these considerations and with the technical and professional parameters.

Of course infrastructure projects must never be promoted in disregard of the rights and interests of the local communities, and it is understandable and legitimate that such communities are often displeased by the installation of major energy infrastructures adjacent to them. In fact, the referred project has been the object of opposition by Jewish residents of the Golan, alongside the Druze residents addressed by your communication.

The claims made by those opposing the project were submitted to a careful and orderly examination procedure by the National Infrastructure Committee, but after all considerations the project has enjoyed sweeping inter-ministerial support, including by the Ministry of Health and the Ministry of Environmental Protection.

The renewable energy project involves complex technical considerations, and the issues raised by the complaint – such as alleged risks to health, to the environment and to the rights of local landowners – are questions that were addressed in the framework of the thorough consideration by National Infrastructures Committee, in consultation with professional stakeholders in the government and civil society – including representatives of the local population.

Specifically with regards to the claims about coercion of the landowners – where the project was to be executed on privately owned land, the company had dialogue with those owners, and contracts were negotiated and signed with them, duly authorizing the company to use that land upon compensation.

2. On the civil action filed by "Energix" and the protection of human rights defenders

The company Energix is a privately owned company, and its lawsuit against Al-Marsad was filed in the framework of its full right to access justice and enjoy the provision of

jurisdictional services by the State. Whether the claims it brought forward against the defendant are justified, or constitute, as the present complaint suggests, an "abuse of Israeli legislation" and "undue interference" with the legitimate civil agenda of a human rights organization, is a matter to be addressed only by the judges of the case. The Government of Israel cannot interfere in pending judicial proceedings, and any action in that direction would itself constitute undue interference with the independence of the judicial branch and a potential infringement on human rights or other rights. We also expect that the Special Procedures mandate holders will respect such legal proceedings and refrain from an attempt to intervene in them. Any such attempt would severely undermine the integrity and legitimacy of their mandates.

Israel recognizes that the work of human rights organizations, human rights defenders and organizations representing minority communities are hugely important for the promotion of rights and for the improvement of democratic institutions, and we are committed to protecting human rights defenders' freedom of expression, political mobilization and related rights. However, at the same time, , it is clear that they can be brought to court in fair proceedings, and even be held accountable for their actions when the case so requires.

Therefore, we completely reject the allegations that the fact that civil claims were brought by a private actor – even one in commercial relations with the State – against the organization constitutes a "smear campaign" or "acts of intimidation" against human rights defenders.

The Israeli judiciary branch is independent, and the Druze residents of the Golan Heights, including the organization "Al Marsad", enjoy the full right to legal protection against the claim, be it within the civil procedure at hand, be it through other procedural means.

3. On the guarantees for human rights defenders, the *Law for Prevention of Damage to the State of Israel through Boycotts* and its conformity to international Law

As already emphasized above, Israel recognizes the fundamental value of human rights defenders and civil society organizations, offering practical and legal guarantees for their activities in line with international standards. On a practical level, this is reflected in a rich, dynamic and vibrant civil society, where NGOs acting in different fields and promoting various causes play a vital role.

As Israel has reported during its last Universal Periodic Review, among other Human Rights mechanisms, it maintains a dialogue with civil society organizations, and has held a series of round tables to facilitate an open exchange between civil society, academia and government

representatives on core human rights issues. These sessions offered a unique platform for free discourse among civil society, academia and government representatives on core civil rights issues related, *inter alia*, to social and economic rights in the periphery of the country. Generally, as part of the commitment and relevance of civil society, discussions with its representatives are organized before presentations to the human rights treaty bodies, to enable discussion of State periodic reports that are submitted to committees on an ongoing basis, and to encourage civil society organizations to comment on the State's draft reports.

Regarding the legislative background and current environment, in a general manner, we would emphasize that Israel respects the rule of law, and complies with its obligations under international law. It is worth noting that each law, which is drafted by the Knesset (the Israeli Parliament), may be subject to judicial review by the Supreme Court, which examines and balances between conflicting values. In this vein, the Government respects and implements the decisions of the Supreme Court. Israel provides further information on a regular basis to all the human rights treaty bodies to which it is a party to, as part of its commitment to the periodic review process. Any further information on these issues could be found in these publicly available reports.

The legislation mentioned in the report - *Law for Prevention of Damage to the State of Israel through Boycott*, was adopted by the Israeli Parliament, and is an expression of Israel's sovereignty and democratic parliamentary process. This Law determines *inter alia* that anyone who publishes a public call for imposing a boycott on the State of Israel may be committing a civil tort if, according to the call's content and circumstances of the publication, there is a reasonable possibility that the call will result in a boycott, and the perpetrator is aware of such a possibility.

The Law is intended to protect Israeli citizens from damage caused by organized boycotts and to guarantee that public financial sources will not be used to support activities that may harm Israeli citizens. Naturally, civil and other remedies emanating from the application of this law can only be established by courts, subject to due process guarantees and standards of proof consistent with the applicable procedural regulations.

Several petitions were filed against the Law, and on April 15, 2015, the High Court of Justice, in an extended panel of nine judges, rejected the petitions' claims concerning most of the Law's sections, which permit the Minister of Finance to enforce administrative sanctions against anyone who publishes a call for imposing a boycott on the State of Israel, or on anyone who is committed to participating in such a boycott. The ruling (HCJ 5239/11) stated that "the Law provides a due response to the State's need to defend itself from those who seek

to annihilate it, or from those seeking to change its character, through various aggressive methods". However, the Court ruled that one Section of the Law is void. This provision allowed a Court to inflict exemplary compensation, regardless of any proof of damage, on anyone who maliciously calls for imposing a boycott on the State of Israel.

It is important to clarify that the State of Israel has a long and well-established tradition of respecting freedom of speech. One should also distinguish between criticism of the policies of the Government of Israel, which is legitimate and can contribute to further debate and discussion, and the active engagement in measures seeking to cause direct harm to the State of Israel and its economy, and intended to stifle the free and open exchange of ideas.

4. Conclusion

Israel is a democratic state governed by the rule of law, and remains committed to protecting and ensuring human rights, including the rights of minorities and the role of human rights defenders. The dialogue with civil society organizations and the significant presence and contribution of these bodies to the fabric of civil society are a hallmark of Israel's democracy. Still, human rights organizations in Israel and elsewhere are not immune from criticism and should be subject to requirements of transparency and oversight.

The renewable energy project of the installation of wind turbines in the Golan Heights meets the imperative needs of responding to the challenges imposed by climate change, and has been planned and executed in a thorough and professional process that considered all the important factors, including health and environmental concerns, and particularly the rights of the local population – including Druze and Jewish communities. Any opposition and claims to the effect that their rights were violated will be addressed by an independent judicial system in the framework of pending judicial proceedings, or any other administrative or judicial remedies that the residents may choose to resort to.

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL OTH 59/2019

20 January 2020

Mr. Asa Levinger,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 34/5, 37/8 and 34/18.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning **allegations of a smear campaign and strategic lawsuit filed by Energix against human rights organisation Al-Marsad in connection with Al-Marsad's activities opposing a renewable energy project in the Occupied Syrian Golan.**

Al-Marsad - Arab Human Rights Centre in Golan Heights is a human rights organisation established in 2003 to document human rights violations in the Occupied Syrian Golan and support the local Syrian community, including in the context of the alleged unlawful exploitation of natural resources by Israel.

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Energix

According to the information received:

The Clean Wind Energy Project

In 2009, the Israeli Government adopted Decision No. 4450 in which it set out to have 10 percent of the country's energy generated from renewable resources, including wind farms, by 2020. This has resulted in an increased number of solar and wind energy projects being developed across Israel and the occupied territories, including the Occupied Syrian Golan.

On 26 March 2018, the National Infrastructure Committee (NIC) approved the National Infrastructure Plan 62/ 8- High Tension Cable 161KW, Hula - Bar'on Junction. The plan concerns the construction of electricity infrastructure on occupied land to allow for the transportation of the energy generated by the wind energy farms in the Golan to the Israeli electricity network.

The population of almost 27,000 Syrians currently living in the Occupied Syrian Golan inhabits five villages, which constitute approximately 5% of the Golan. The remaining 95% is occupied by Israeli settlements and military. The Golan is a region with particularly favorable conditions for the development of wind energy farms, with low population density, large open areas and wind speed nearly double that of Israel's coastal plain.

Three wind farm projects developed in the Occupied Syrian Golan have reportedly reached the final phases of the formal approval process, including the Clean Wind Energy Project developed by the Israeli company Energix Renewable Energies Ltd. Energix is one of the largest renewable energy companies in the country.

Energix has been developing the Clean Wind Energy Project since 2013. The plans encompass the construction of 31 wind turbines on the southeastern side of the Syrian village of Majdal Shams, and on the southwestern side of the Syrian village of Masaada. Both locations are agricultural lands owned by Syrian farmers. The electrical substation is planned to be situated in Bar'on Junction. The wind farm is expected to occupy an area of 6013.096 Dunam and generate 152 MW of energy annually, enough to power 66,000 homes. The estimated annual revenues from the project amount to 41-44 million USD.

The project was submitted directly to the NIC, which advances infrastructure projects of "national importance" through an accelerated regulatory process, and thus did not require approval by the District Planning Committee for Northern Israel.

Due to the planned location of the wind farm close to the Syrian villages, the project is expected to restrict their future expansion, exacerbating the already severe housing crisis. Further, Syrian agricultural land would reportedly be

destroyed as a result of the implementation of the project, as it requires the construction of roads and the clearing of land in the areas where wind turbines would be located. There are concerns that Syrian agricultural activities, including the production of apples and cherries, would be restricted as a result and the Syrian population would lose the source of their livelihoods.

There are also concerns that infrasound generated by the wind turbines would have a negative impact on the health of the local Syrian population, causing headaches, dizziness, and nausea. Furthermore, the project might also cause “flickering”, a flashing or blinking effect generated by the sun shining through the spinning blades of the wind turbine. Exposure to flickering is especially harmful for persons prone to epilepsy. It is estimated that the wind farm operation could result in up to 1 hour of flickering per day in certain Syrian residential areas, in particular in winter.

The implementation of the project might also endanger wildlife, especially the native and migrating bird populations.

It is reported that the company Energix has publicly claimed that local agricultural activities will not be affected by the project, but has not provided specific information to support these claims. The company has further argued that the project will generate new sources of income for the local Syrian population, however the vast majority of the new employment opportunities will be short-term jobs linked to construction.

The company has reportedly claimed that the project counts with the support of the local Syrian population, including agricultural cooperatives. However, in a survey conducted in 2017 to measure the level of local support for the project, only 14 percent of respondents were residents from areas that would be impacted by its implementation. Furthermore, the vast majority of local Syrians interviewed by the organisation Al-Marsad between September and December 2018 have expressed their opposition to the project.

The wind farm is expected to generate benefits for few individuals from the area, including approximately 40 landowners who signed contracts with the company and the 40 to 50 persons who would benefit from the limited long-term employment opportunities generated by the project.

Energix has reportedly offered financial inducements to influential members of the local communities in order to convince the Syrian farmers to lease their land to the company. Many Syrian landowners have asserted that they were manipulated into signing the contracts by representatives of the company.

The lease contracts require farmers to register their lands with the Israeli authorities, allow the company to destroy and utilize any structures located on the leased land and ensure the company’s freedom to transfer the rights and

obligations of the contract to another company or person. The Syrian landowners are offered a compensation of one percent of the project's revenues, approximately five times less than what is reportedly offered to Israelis who lease their lands for similar projects.

The company and its intermediaries have reportedly harassed the landowners who opposed the terms of the contracts with repeated phone calls and house visits. Some were offered large sums of money for signing the contracts and not voicing any opposition. Several farmers who expressed concerns have reportedly been threatened with lawsuits. The company filed lawsuits against at least six local Syrians opposing the project.

The company opened an office in Majdal Shams, the biggest Syrian village in the Golan, and organized community meetings where information about the alleged benefits of the project was disseminated. Energix also launched a school scholarship fund for the local Syrian population and started sponsoring a local youth football team.

The project was reportedly advanced through the formal approval process only after the company moved the planned wind turbines away from the Israeli settlement of Nimrod and closer to the Syrian villages, to avoid any negative impacts on the Israeli population.

Starting in June 2017, the NIC held a number of meetings to review Energix's project. The Syrian farmers and agricultural cooperatives were repeatedly excluded from them.

On 15 June 2017, several agricultural cooperatives sent a letter to the NIC, raising concerns about the possible negative impacts of the wind farm project. Despite having received the letter, the NIC did not invite any members of the cooperatives to the first meeting on the project. On 7 September 2017, the Syrian cooperatives sent another letter to the NIC, to which the authority responded by arguing that the plans concerning the project would be published for comments and reservations. The NIC never engaged in a discussion with the cooperatives. On 19 December 2017, following the publication of the blueprints for the wind turbines by the NIC, the cooperatives sent a third letter to the authority. No response was provided.

In January 2018, Energix submitted an environmental impact assessment to the NIC. In July and August 2018, the NIC held several meetings with members of the "community" to discuss the project. Only 5 members of the Syrian community were invited, some of which had been employed by Energix.

Between February and April 2019, as part of the formal approval process, the NIC published the project for comments and objections. On 9 August 2019, the NIC rejected all objections submitted regarding the project.

On 9 September 2019, the NIC approved the construction of 25 wind turbines and referred the project to the Cabinet of Ministers for final approval. On 3 December 2019, the Cabinet of Ministers dismissed the project due to mapping errors and sent it back to the NIC. Energix is now expected to re-map the project and submit it for re-approval to the NIC.

Alleged targeting of Al-Marsad

In September 2018, members of the local Syrian community reached out to Al-Marsad to request the organisation's assistance in investigating the activities of Energix in the area. The initial investigation led Al-Marsad to raise concerns about the potential detrimental impact of the project on the rights of the local Syrian population. In response to requests from the Syrian community, the organisation began organizing meetings to disseminate information on the project and its expected impacts among the local Syrians. As a result, a petition expressing local opposition to the project gained over 6000 signatures.

In January 2019, Al-Marsad published a report on its investigation into Energix and the aforementioned wind farm project. Shortly after, individuals with links to the company reportedly launched a smear campaign against the organisation and those associated with it, aimed at damaging the organisation's reputation among the Syrian community and putting pressure on it to cease its activities. The organisation was accused of supporting foreign interests. Claims were made on Facebook that Al-Marsad employees were "two-faced", as they were simultaneously contesting Israel's occupation and financially benefitting from the Israeli government.

In March 2019, the organisation's largest funder received a letter accusing Al-Marsad's employees of mismanagement of its finances for their personal benefit. The letter stated that Al-Marsad "cheats and exploits the weakness of the local residents". As a response, the funder ordered a re-audit of Al-Marsad's finances by a new international auditing company. The process reportedly took several months and caused significant financial hardship to Al-Marsad's staff, as they were unable to pay salaries and cover day-to-day costs of their operations. In late November 2019, the re-audit was concluded with no irregularities identified.

Despite the reported smear campaign, Al-Marsad has continued promoting the report and holding public meetings on the project.

While the NIC reviewed the wind farm project, in June 2019, Al-Marsad, in cooperation with a partner organisation, submitted objections concerning the project to the Committee. The objections were submitted on behalf of the Syrian community opposing the project, and included expert opinions on its possible impacts. In addition, three Syrian village councils, a group of Israeli settlers, and several other individuals submitted objections to the Committee.

On 1 June 2019, Energix filed a civil lawsuit against Al-Marsad at the Nazareth Magistrates Court. The Court registered it as case number 33745-06-19. The company alleges that the aforementioned report published by Al-Marsad is defamatory and calls for a boycott of Israel, thus violating the Anti-Defamation Law of 1965 and the Anti-Boycott Law of 2011. The Anti-Boycott Law allows for civil lawsuits to be filed against anyone who knowingly publishes calls for a boycott for the damages they incurred. This is the first time a non-governmental human rights organisation registered in Israel has been sued under the Law.

Energix is suing Al-Marsad for a sum of 900,000 ILS, which slightly exceeds the organisation's annual budget. The company is also demanding Al-Marsad to retract and apologise for all the material published on the project.

In the complaint submitted by Energix to the Court, Al-Marsad is characterized as working together with the BDS movement and "anti-Zionists". Energix also asserts that the organisation encouraged a boycott by organizing awareness raising meetings which sparked strong community opposition to the wind farm project.

On 15 September 2019, Al-Marsad submitted a response at the Court, rejecting all allegations made by the company and arguing that the lawsuit filed by Energix is aimed at intimidating and silencing Al-Marsad.

On 3 November 2019, Energix filed a response at the Court reasserting its claims and stating that significant social and economic damages had been incurred by the project's supporters in the Golan as a result of the public opposition to the project.

In late November, Al-Marsad submitted its second response regarding the lawsuit application, calling for the case to be dismissed by the Court.

The Court is now expected to decide whether any further action should be taken on the case. A hearing has been scheduled for 26 January 2020.

In response to the above-mentioned Cabinet of Ministers' decision to send the project back to the NIC following the identification of mapping errors, Energix issued a public statement in early December, indirectly referring to Al-Marsad by asserting that "foreign interests" are trying to stop the project.

We would like to express our concern at the lawsuit allegedly filed against Al-Marsad by the company Energix as well as the smear campaign targeting the organisation, which appear to be linked to its legitimate human rights activities, in particular its opposition to a renewable energy project in the Occupied Syrian Golan. We are concerned that these actions, including the use of strategic litigation, may be aimed at curtailing the organisation's ability to carry out its legitimate human rights activities, damaging its reputation and forcing it to cease its human rights activities. As this is the first time a human rights organization registered in Israel has been sued under the Anti-

Boycott Law, we fear that this case may set a dangerous precedent for freedom of expression and on the legitimate work of human rights defenders and civil society organisations in the country and the occupied territories.

With regards to the alleged use of the Anti-Boycott Law by the company Energix in what appears to be judicial harassment, we would like to reiterate our concerns that the Law may intend to restrict freedoms of expression and association as it targets non-violent public expressions of opposition to Israeli occupation policies and practices, particularly Israeli settlements in the occupied territories. We would further like to reiterate our concerns regarding the legal and financial sanctions that could severely curtail the work of civil society organisations, in particular those defending human rights in the occupied territories, by subjecting them to threats of lawsuits and fines, stripping them of their tax-exempt status and forcing them to shut down.

We would also like to express our concerns about the designation of the wind farm project as “national infrastructure”, which appears to indicate it being primarily intended to benefit the economy and population of Israel. This is concerning especially given the negative impacts the project is expected to have on the local Syrian population, including with regards to the housing crisis in the Syrian villages, restricted access of the Syrian population to agricultural land and the negative health impacts. Our concerns are strengthened by the reported lack of an adequate consultation with the affected population, despite the reported strong opposition to the project among the local Syrian community. We are further concerned about reports of harassment of Syrian landowners aimed at pressuring them to lease their lands to the company.

In connection with the above allegations and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on any consultations held with the local Syrian population in regards to the wind farm project in question, particularly regarding the inclusiveness and transparency of the consultation process.
3. Please provide information on the human rights due diligence steps that your company has taken to prevent, identify and remedy the adverse human rights impacts that your company could have caused or contributed to, in line with the UN Guiding Principles on Business and Human Rights. In particular, please indicate if an independent external human rights

impact assessment on the Clean Wind Energy Project project has been carried out, and if relevant, provide information regarding the findings and how these findings were made public. .

4. Please provide information on steps taken by your company to establish company-level grievance mechanisms to address any adverse human rights impacts caused. Please indicate how related potential barriers faced by rights holders to use the established mechanisms have been identified.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on the same matter has also been sent to the Government of Israel.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Mr. Asa Levinger, the assurances of our highest consideration.

Michel Forst
Special Rapporteur on the situation of human rights defenders

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to appeal to you to take all necessary steps to secure the right to freedom of opinion and expression in accordance with the fundamental principles set forth in article 19 of the ICCPR, ratified by Israel on 3 October 1991. We would like to recall that any restriction to freedom of expression must meet the high threshold established under article 19(3) of the ICCPR. That is, be provided by law and be necessary and proportionate to achieve the legitimate aims listed in the provision. As interpreted by the Human Rights Committee in its General Comment 34 (CCPR/C/GC/34), article 19 of the ICCPR requires that authorities guarantee the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, including political discourse, commentary on one's own and on public affairs, discussion of human rights, journalism, among others (paragraph 11). Article 19 of the ICCPR also protects all forms of expression and the means of their dissemination, including all forms of audio-visual as well as electronic and internet-based modes of expression (paragraph 12).

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

With regards to the concerns raised at the possible negative impacts of the wind farm project, we would like to highlight the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights; and
- c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

It is a recognised principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3). The Guiding Principles also require States

to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

We would also like to refer you to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to your attention the following provisions of the UN Declaration on Human Rights Defenders:

-article 6 (a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

-article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

-article 9 paragraph 1, which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

-article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We further refer to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

Finally, we would like to recall that the right of everyone to an adequate standard of living, including housing, is protected under international law and enshrined in article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Israel is a party since 3 October 1991. In addition, Article 5 of the International Convention on the Elimination of Racial Discrimination, ratified by Israel on 3 January 1979, requires States to ensure equality before the law, including with regard to the enjoyment of the right to housing and the right to own property alone as well as in association with others.