

# Report on the Repression of Human Rights Defenders in Israel, the Occupied Territories of Palestine and the Golan

Submitted to the UN Special Rapporteurs on the Situation of Human Rights Defenders, the Situation of Human Rights in the Palestinian Territory, the Rights to Freedom of Peaceful Assembly and of Association, the Freedom of Opinion and Expression, and Contemporary Forms of Racism by International Human Rights Clinics, Centers, and Human Rights Organizations

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Palestinian Human Rights Organizations Council



مركز العربية لحقوق الإنسان في الجولان  
ARAB HUMAN RIGHTS CENTER IN GOLAN



AL - HAQ

January 2022

## Signatories of this Report

**Al-Marsad, Arab Human Rights Centre in Golan Heights**, is a non-governmental organization based in Majdal Shams, in the Syrian Occupied Golan. Al-Marsad was founded in 2003 to promote compliance with humanitarian and human rights law in the Occupied Golan. Al-Marsad works to protect civil, political, economic, social, and cultural rights by documenting and denouncing violations of international law relating to settlement expansions, land annexations, the presence of landmines, and the associated consequences of Israel's occupation.

**Al-Haq** is an independent Palestinian non-governmental human rights organization based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organization has special consultative status with the United Nations Economic and Social Council. Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable.

**Palestinian Human Rights Organizations Council** is a coalition of human rights organizations that are active in the occupied Palestinian territory. The Council was established in 2006 to enable Palestinian human rights NGOs to act collectively to serve a common goal; promoting the role of law in the occupied Palestinian territory. The Council addresses human rights violations committed by Israeli occupying forces and any Palestinian official or unofficial party through issuing press releases and position papers and conducting joint advocacy activities.

**ESCR-Net, the International Network for Economic, Social and Cultural Rights** is a collaborative initiative of groups and individuals from around the world working to secure economic and social justice through human rights. ESCR-Net seeks to strengthen the field of all human rights, with a special focus on economic, social and cultural rights, and further develop the tools for achieving their promotion, protection and fulfillment.

**Cornell Law School International Human Rights Clinic** works to promote social justice through litigation and advocacy before domestic and foreign courts as well as international bodies with an emphasis on prisoner's rights, the death penalty, and the right of occupied peoples to self-determination.

**Boston University Law School International Human Rights Clinic** works for global and regional human rights while representing non-governmental organizations and group clients from all parts of the world.

**Repression of Human Rights Defenders in Israel, the Occupied Territories  
of Palestine and the Golan:**

**Joint Report**

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**January 31, 2022**

**EXECUTIVE SUMMARY**

When human rights organizations in Israel, Palestine and the Golan advocate for Israel's compliance with international law, they have come to expect systematic retaliation from state and private actors. Human rights defenders have become accustomed to verbal, physical and digital attacks, threats to funding, and lawsuits that follow the pursuance of their work. Yet the past two years have reached an unprecedented level in the deterioration of civil society organizations and individuals' freedom of action.

In October 2021, the Israeli Minister of Defense took aggressive and unprecedented measures against civil society organizations in the region by issuing an order that designated six Palestinian non-governmental organizations as "terrorist organizations." These six organizations are Al-Haq, Addameer, Defense for Children-Palestine (DCI-P), the Union of Agricultural Work Committees (UAWC), the Union of Palestinian Women Committees (UPWC), and the Bisan Center for Research and Development (Bisan). The Commander of the Israeli Occupying Army signed a military order that outlawed the six Palestinian Organizations within the West Bank itself, with the effect of authorizing the army, on suspicion of membership in or association with a terrorist group, to arrest and detain their employees, raid their offices, freeze their bank accounts and seize their property. These orders constitute harassment and intimidation aimed at exerting pressure on their funders and jeopardizing their operations, while simultaneously attempting to create a chilling effect on other human groups operating in the region more broadly.

This attempt to stifle dissent is the latest in a series of measures meant to silence all resistance to Israel's occupations. In 2019, Israel deported the Palestine director of Human Rights Watch for his alleged support for the Boycott, Divestment and Sanctions campaign *while he was a student*, long before his employment with Human Rights Watch. Meanwhile, a private company sued Al-Marsad, the only human rights organization in the Occupied Syrian Golan, before the Nazareth Magistrate's Court, invoking Israel's anti-BDS law after Al-Marsad published a report concluding that the company's construction of a windfarm violated international law.

Over the past ten years, Israel has developed a sophisticated set of laws, policies and practices to discredit and defund organizations that work to expose human rights violations in Palestine, Israel

and the occupied Golan. Israel has also enabled private actors to silence the voices of these human rights defenders. This report documents the cumulative impacts of Israel's policies and practices on human rights defenders throughout the land governed or occupied by Israel, including Palestine and the Syrian Golan, where its military occupation is too often forgotten.

In November 2019, Cornell Law School's International Human Rights Clinic conducted interviews with ten human rights organizations. Responses from other organizations were subsequently solicited in an online survey. All human rights organizations surveyed reported that recent Israeli laws and policies had undermined their work.<sup>1</sup> Half rated its negative impact as high.<sup>2</sup> This report summarizes the findings of those interviews and survey responses, revealing that Israel's actions have caused human rights defenders to:

- Engage in self-censorship to avoid legal repercussions;
- Defend themselves against harassment and attacks on their reputation by private and parastatal organizations operating with the support of the Israeli government;
- Witness the erosion of support for their activities from the Israeli public and the international community;
- Endure restrictions on their movement and;
- Expend scarce resources and time to justify and defend their activities before donors and others.

Respondents traced these harms to laws, policies, practices and the broader political climate which all together restrict projects and activities carried out by civil society actors because they are critical of the state. The report concludes that Israel has adopted laws and policies that violate rights to non-discrimination, freedom of opinion and expression, and freedom of assembly enshrined in Articles 2, 19, 22 of the International Covenant on Civil and Political Rights because they curtail the fundamental freedoms of human rights defenders, while allowing private actors to intimidate human rights defenders with total impunity. It corroborates a growing body of literature that enumerates the tactics deployed by the Israeli state and parastatal actors to silence its critics.

## **I. Introduction**

Over the last several years, human rights organizations have faced unprecedented attacks on their operations and legitimacy both within Israel's 1948 borders and throughout the territories Israel unlawfully occupies, through the passing of laws and enactment of policies that stifle their expression and activities. One of these laws is the Nakba Law, which sanctions organizations for reminding the public of historical events that violated international law. Another is the Anti-BDS law, which threatens organizations with financial sanctions, lawsuits, and public censure for mobilizing against Israel's illegal occupations. The Mandatory Disclosure of Foreign Entity Funding Law also smears organizations that accept funds from foreign donors, undermining their credibility as critics of government policy. As early as 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sounded the alarm, stating it was "concerned by recent threats to the openness and acceptance of divergent views in Israel as a result of an increasing emphasis on Israel as a Jewish State and growing intolerance of criticism regarding the policies and practices of occupation."<sup>3</sup> Many of the Special Rapporteur's predictions of intimidation and self-censorship have come to pass. Wherever they operate, human

rights organizations work under state-instigated hostile conditions. Israel's actions violate the rights to expression, association, and to effective remedies under Articles 19, 22 and 2 of the ICCPR. Israel's undermining of Palestinian human rights defenders' freedom of opinion, expression and peaceful assembly constitutes a major pillar of Israel's system of inhuman acts that facilitate its entrenching and maintaining of an apartheid regime over the Palestinian people, corresponding to Article II(f) of the 1973 Apartheid Convention.<sup>4</sup>

A recent lawsuit filed under Israel's notorious Anti-Boycott Law of 2011 represents one of the starkest illustrations of this repressive environment. In June 2019, one of Israel's largest renewable energy companies, Energix Renewable Energies ("Energix"), sued Al-Marsad — Arab Human Rights Center in Golan Heights ("Al-Marsad"), the only human rights organization currently operating in the Occupied Syrian Golan.<sup>5</sup> Energix claimed Al-Marsad had defamed its company and incited an economic boycott by publishing a report documenting violations of international law committed by Israel when it authorized Energix to build a wind farm on occupied territory. Energix's lawsuit marks the first time an Israeli entity has sought to suppress the speech and actions of a human rights organization under Israel's anti-boycott law.<sup>6</sup>

In response to this lawsuit, Al-Marsad, in coalition with 15 organizations and with the support of Cornell Law School's International Human Rights Clinic, submitted an emergency appeal to the Working Group on Business and Human Rights and various other United Nations experts, calling for their urgent intervention to protect human rights in the Occupied Syrian Golan.<sup>7</sup> On 20 January 2020, three Special Rapporteurs submitted a communication to the United Nations Human Rights Council expressing their concern that the case against Al-Marsad "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 organizations in the country and the occupied territories."<sup>8</sup>

This report documents the cumulative impacts of laws and policies enacted over the last ten years. The report focuses primarily (but not exclusively) on the conditions of human rights organizations that are registered with Israel, many of whom work in the rest of the occupied territories. It also enumerates various strategies and tactics deployed by parastatal actors and how these also contribute to silencing human rights advocacy. In combination, these policies and actions aim to isolate and stigmatize human rights defenders and their supporters. They serve to drastically constrain criticisms of the occupations, with the predictable result of further marginalizing those already victimized by it.

## **II. Methodology**

In November 2019, Cornell Law School's International Human Rights Clinic interviewed staff members of ten organizations about their experiences as human rights defenders and the conditions and climate they face in their professional activities, with a specific focus on developments over the last ten years. Interviewees included lawyers, policy advocates and human rights activists who work to bring Israel in compliance with its obligations under international and domestic law, in all the territories it occupies.<sup>9</sup> Some organizations work exclusively in the occupied territories, including east Jerusalem, the West Bank, Gaza and the Golan, whereas others work within the 1948 borders of Israel. In the Spring of 2020, the team distributed an online survey to other human

rights, legal aid, and humanitarian organizations within the same territorial scope. The survey contained both open-ended and multiple-choice questions designed to assess the various impacts of recent laws and policies that govern the activities of civil society.<sup>10</sup> Ten organizations responded to the survey, including organizations that provide direct legal assistance to Palestinian people and to human rights defenders; engage in domestic and international human rights litigation and advocacy; and raise awareness about Israeli policies in the occupied territories.<sup>11</sup> This report compiles responses captured in those interviews and surveys.<sup>12</sup> Direct quotes from interviews have been anonymized to protect the security of respondents. Where relevant, findings are corroborated and supported by secondary sources. The report does not discuss the criminalization of human rights defenders, nor the conduct of military or intelligence agencies.

### **III. Laws and Policies Contributing to the Shrinking Civil Space**

Israel has passed a series of laws and policies that have contributed to a shrinking civil space for human rights organizations. It has also established new state institutions and facilitated the growth of private organizations that work to discourage, harass and silence human rights defenders.

#### **A. Laws Contributing to the Shrinking Civil Space**

We describe the following laws and their impact: Mandatory Disclosure of Foreign Entity Funding Law; Law for Prevention of Damage to the State of Israel through Boycott; Amendment No. 28 to the Entry to Israel Law; Israel—the Nation-State of the Jewish People Law; Nakba Law; and Breaking the Silence Law. Many of these laws have subsequently been affirmed by the courts in response to legal challenges.

##### *Mandatory Disclosure of Foreign Entity Funding Law*

The 2016 law mandating disclosure of foreign entity funding requires NGOs to publish quarterly reports on any funding received from foreign governments or publicly-funded foreign donors.<sup>13</sup> Organizations that receive more than 50 percent of their annual budget from foreign governments must disclose this fact in *all outgoing communications*. This law—and the deliberations around it—have promoted a common mischaracterization of human rights groups as “serving foreign interests” or being traitors.<sup>14</sup> Six out of ten survey respondents said that this law had a negative impact on their organizations, the highest mention of all laws surveyed.<sup>15</sup> Three reported each of the following repercussions: damage to their reputations; attacks on the legitimacy of their organizations by parastatal or state-supported organizations and; having to expend more resources to justify human rights activities to donors.<sup>16</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression raised “concern about the discriminatory impact of th[is] law on Israeli human rights NGOs who rely upon foreign Government funding, while other groups that receive private funding, such as Israeli Jewish settler groups, remain unaffected.”<sup>17</sup>

##### *Anti-BDS Law*

The 2011 Law for Prevention of Damage to the State of Israel through Boycott (the “Anti-BDS Law”), allows private plaintiffs to file suit for civil damages against anyone who publicly calls for

or commits to deliberately avoiding economic, cultural or academic ties with another person or body solely because of their affinity with Israel.<sup>18</sup> It also allows the Finance Minister to revoke tax exemptions and other benefits to public institutions, including academic, cultural and scientific institutions, who support a boycott.<sup>19</sup> The law was passed to diminish the growing strength of the global Boycott Divestment Sanctions (BDS) movement, which exerts non-violent pressure on Israel to recognize Palestinian rights.<sup>20</sup> Israel's anti-BDS law is part of the global backlash against the nonviolent movement.<sup>21</sup> One common tactic deployed to suppress the BDS movement is to falsely equate the movement's aims with anti-Semitism.<sup>22</sup> In 2011, three Special Rapporteurs flagged 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 territory."<sup>23</sup> They noted that "the legal and financial sanctions... could severely curtail the work of civil society organisations, in particular those defending the human rights of Palestinians in the occupied Palestinian territory, by subjecting them to threats of lawsuits and fines, stripping them of their tax-exempt status and forcing them to shut down."<sup>24</sup> Furthermore, they noted that participating in peaceful boycotts is an internationally recognized and legitimate form of expression.<sup>25</sup>

In *Avneri v. The Knesset* (2015), a group of eight civil society organizations filed a petition in the Supreme Court of Israel, arguing that the Boycott Law was unconstitutional because it infringed on freedom of speech.<sup>26</sup> The Court upheld the core provisions of the law, preserving the private right of action in tort on the grounds that boycotts deserve less protection than speech.<sup>27</sup>

As of December 2021, there have been at least two civil suits brought under this law, including the one brought against Al-Marsad, detailed below.<sup>28</sup> Human rights defenders noted that these lawsuits have had a chilling effect that extends beyond those sued. Of the organizations we surveyed, three stated that they had experienced repercussions from the Boycott Law, including: increased attacks on their NGO's legitimacy by parastatal or state-supported organizations (4); increased attacks on the legitimacy of their organizations by state institutions (3); increased harassment or surveillance by state institutions (3); and spending resources to justify activities to donors (3).<sup>29</sup> The majority of organizations surveyed noted that the law has contributed to the negative perceptions of the BDS campaign. Three of these organizations said that the law had prompted them to revisit their messaging to avoid liability under this law.<sup>30</sup> One organization said that the law had discouraged it from openly supporting the movement.<sup>31</sup>

#### *Amendment No. 28 to the Entry to Israel Law*

The 2017 Amendment Number 28 to the Entry into Israel Law prohibits the government from granting visas or residency permits if the person or "the organization or entity for which he works, has knowingly issued a public call to impose a boycott on the State of Israel" or "has committed to participate in such a boycott."<sup>32</sup> Five out of ten survey respondents reported this law had negatively affected their organizations.<sup>33</sup> The law makes recruiting international staff difficult because of the uncertainty about what might happen at the border. One organization interviewed stated that its volunteers trying to enter the West Bank and Gaza had been subjected to increased scrutiny since the law's passage.<sup>34</sup>

After a recent ruling by the Israeli Supreme Court, any foreign national whose work includes encouraging business to follow international law and end ties with illegal settlements could be deported. In November 2019, Israel's highest court upheld the deportation of Omar Shakir, Human Rights Watch's Israel and Palestine Director under this law. While he was working for Human Rights Watch (HRW), Shakir had never called for a boycott. But to justify his deportation, the government pointed to his alleged pro-boycott opinions when he was a student, years before he began working for HRW. The Government bolstered its case by pointing to his work in support of HRW campaigns asking private businesses to refrain from operating in Israeli settlements, which is their legal duty to avoid complicity in human rights abuses.<sup>35</sup> His activities for HRW were sufficient to justify deportation, according to the Israeli Supreme Court, because they "express[] [the] negation of the legitimacy of the state."<sup>36</sup> In response to Shakir's deportation, the U.N. Secretary General and three Special Rapporteurs conveyed their concern about the shrinking space for human rights defenders to operate in Israel.<sup>37</sup>

In 2018, Israel's Strategic Affairs Ministry published a list of twenty organizations whose members would be denied entry to Israel due to their support of the BDS movement.<sup>38</sup> Strategic Affairs Minister Gilad Erdan described this move as "shift[ing] from defense to offense." In July 2017, five members of an interfaith delegation were prevented from boarding their flights to Israel in what was Israel's first implementation of the policy.<sup>39</sup> Three of the five individuals prohibited from entering were members of Jewish Voice for Peace ("JVP"), including the organization's deputy director, Rabbi Alissa Wise.<sup>40</sup>

Israel has also used this policy to pressure and coerce international activists into renouncing their support of the BDS movement and suspending their activism in order to be allowed in by Israel. In 2018, Katherine M. Franke, a Columbia University law professor, was banned from entering the country for having worked with Jewish Voice for Peace.<sup>41</sup> Franke was part of a delegation of American civil rights activists visiting Palestine to learn about the human rights situation and meet with local activists.<sup>42</sup> Israel's immigration officials deported Franke and her colleague, Executive Director of the Center for Constitutional Rights Vincent Warren, claiming they were coming to "promote BDS in Palestine" despite their repeated denials.<sup>43</sup> Later that year, Lara Alqasem, a 22-year-old U.S. Citizen and former member of Students for Justice in Palestine, was detained for over two weeks after landing at Ben-Gurion Airport in Israel.<sup>44</sup> While in detention, Strategic Affairs Minister Gilad Erdan recommended that "[i]f Lara Alqasem will tomorrow in her own voice, not through all kinds of lawyers or statements that can be misconstrued, say that support for BDS is not legitimate and she regrets what she did, we will certainly reconsider our position."<sup>45</sup> Thus, the law restricting entry to Israel functions to both preclude international organizations' entry and to coerce their members into expressing anti-BDS stances to avoid detention or deportation. In addition to these well-publicized deportations, Amendment No. 28 serves to deter organizations and human rights advocates from even attempting to enter to support the work of Israeli and Palestinian civil society organizations, contributing to the isolation and marginalization of those who oppose Israeli government policies.

### *Israel—the Nation-state of the Jewish People Law*

The 2018 law, also known as the nation-state law, is a new "basic law," or constitutional law. The law grants "the right to exercise national self-determination" exclusively to Jewish people.<sup>46</sup> It



establishes Hebrew as Israel’s official language and downgrades Arabic to a language of “special status.”<sup>47</sup> The law further establishes “Jewish settlement as a national value” and mandates that the state “will labor to encourage and promote its establishment and development.”<sup>48</sup> Concretely, the law makes it difficult to advocate against Jewish settlements. Furthermore, the law erodes the legal basis for pursuing equal rights for Syrian Arabs or Palestinians with Israeli citizenship or under Israeli occupation. The U.N. Committee on Economic, Social and Cultural Rights conveyed its concern about the discriminatory effect of the law, noting that it will “further deteriorate the economic, social [and] cultural rights situations in the occupied territories, which have already significantly been hampered by the settlement policy.”<sup>49</sup> The Committee urged Israel to amend or repeal the law.<sup>50</sup>

### *Nakba Law*

Amendment Number 40 to the Budget’s Foundation Law (the “Nakba Law”) was passed in 2011. It authorizes the Finance Minister to reduce state funding or support for an institution if it holds an activity that rejects the existence of Israel as a Jewish and Democratic State, or commemorates Israel’s Independence Day as a day of mourning. The law prevents cultural institutions from memorializing the Palestinian Nakba Day (“Day of the Catastrophe”) which marks the expulsion of Palestinians from their homeland when Israel was established in 1948.<sup>51</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression warned that the “mere existence of the law itself encourages self-censorship,” and is incompatible with Israel’s obligation to protect the right to freedom of expression.<sup>52</sup> The Special Rapporteur urged Israel to repeal the law.<sup>53</sup> In 2012, the human rights organizations Adalah and the Association for Civil Rights in Israel (ACRI) challenged the Nakba Law before it took effect for its likely chilling effect but the Israeli Supreme Court ruled that the case was not yet ripe for review.<sup>54</sup> This law has forced playwrights and theaters to consider changes to their plays and programming that memorialize the Nakba.<sup>55</sup>

### *Breaking the Silence Law*

Breaking the Silence is an organization of Israeli military veterans who “expose the Israeli public to the reality of everyday life in the Occupied Territories.”<sup>56</sup> Breaking the Silence hosts public events and offers educational programming in schools that features testimony from former Israeli soldiers who describe the abuse towards Palestinians they witnessed or in which they directly participated. The law, passed in 2018, gives the Minister of Education the authority to prohibit organizations from gaining entry into educational institutions if the organization’s mission undermines the state’s goals for education and criticizes the Israeli Defense Forces. The law also redefines the state’s education objectives to include promoting national military service.<sup>57</sup>

While the organizations surveyed did not report any specific repercussions they had suffered as a result of the last three laws (Israel—the Nation-state of the Jewish People Law, Breaking the Silence Law and the Nakba Law), they cited them as part of an increasingly hostile climate that impeded their work.

## B. Executive Actions

The majority of organizations interviewed identified the Ministry of Strategic Affairs and Public Diplomacy, created in 2015, as a potent official threat to their work.<sup>58</sup> The Ministry is tasked with the “responsibility to act against the delegitimization and boycott campaigns against the state of Israel.”<sup>59</sup> But many of the Ministry’s activities are mired in secrecy, and it has exempted itself from Freedom of Information requests.<sup>60</sup> Critics have described the Ministry as “wag[ing] all-out war” against the BDS movement and its activists, “exerting diplomatic, legal and even economic pressure.”<sup>61</sup> In its publications, the Ministry equates boycotts against settlement enterprises with boycotts against Israel.<sup>62</sup> The Ministry has collaborated with the Israeli intelligence agency Mossad and with private organizations to monitor and discredit human rights groups.<sup>63</sup> It has, for example, launched an app that encourages citizens to report on websites that contain statements critical of Israel.<sup>64</sup> It disseminated false reports that staff members in Palestinian civil society organizations belonged to the Popular Front for the Liberation of Palestine, an organization that has been classified a terrorist group by Israel and the United States.<sup>65</sup> The Ministry promoted these false allegations after these same organizations asked the UN to publish its database on companies involved in settlement enterprises operating in the OPT. The Ministry also accused the EU of financing terrorism, when it supported these organizations—a move that seemed calculated to reduce donor support of human rights NGOs.<sup>66</sup>

Organizations have also been publicly denounced by members of the government. The Human Rights Defenders Fund has catalogued the numerous occasions when sitting members of government have denounced human rights organizations as traitors, members of the fifth column,<sup>67</sup> terrorist sympathizers, and collaborators, in reference to Europeans during World War II who collaborated with Nazis.<sup>68</sup> In January of 2021, Israeli Education Minister Yoav Gallant issued an order banning B’Tselem from Israeli schools after the organization delivered a presentation that criticized the Israeli occupation.<sup>69</sup> Im Tirzu, a right-wing NGO, applauded the Minister’s decision.<sup>70</sup>

Most recently, Israel took its most aggressive stance yet against Palestinian civil society. On October 19, 2021, the Israeli Minister of Defense, Benny Gantz, issued an order that designated six Palestinian non-governmental organizations “terrorist organizations”.<sup>71</sup> These six organizations—who have been in existence for decades and have won numerous international awards for their work defending human rights—are Al-Haq,<sup>72</sup> Addameer,<sup>73</sup> Defense for Children-Palestine (DCI-P),<sup>74</sup> the Union of Agricultural Work Committees,<sup>75</sup> the Union of Palestinian Women Committees,<sup>76</sup> and the Bisan Center for Research and Development.<sup>77</sup> United Nations experts and international human rights scholars have condemned Minister Gantz’s decision and have called upon the international community to “defend the defenders” against the Israeli Defense Ministry’s “silencing” tactics.<sup>78</sup> Just two weeks after Minister Gantz’s order, the Commander of the Israeli Occupying Army signed a military order that outlawed the six Palestinian Organizations within the rest of the West Bank as well.<sup>79</sup> The order by the Commander means the army can act against the designated organizations immediately by arresting their employees on suspicion of membership in a terrorist group, raiding their offices, and seizing their property and assets.<sup>80</sup>

Civil society organizations in the region released a joint statement standing in solidarity with their Palestinian colleagues and condemning the “draconian measure that criminalizes critical human rights work,” calling it “characteristic of repressive authoritarian regimes.”<sup>81</sup> UN Commissioner for

Human Rights, Michelle Bachelet, condemned the move as “an attack on human rights defenders, on freedoms of association, opinion and expression and on the right to public participation, and should be immediately revoked,” and noted that the accused organizations were “some of the most reputable human rights and humanitarian groups in the occupied Palestinian territory.”<sup>82</sup> Bachelet observed that “[c]laiming rights before a UN or other international body is not an act of terrorism.”<sup>83</sup>

The Israeli Defense Ministry’s and Israeli Occupying Army Commander’s orders are a clear misuse of anti-terrorism legislation, which, as Commissioner Bachelet noted, should never “be applied to legitimate human rights and humanitarian work.”<sup>84</sup> Under Security Council Resolution 1456, “states must ensure that any measure taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law.”<sup>85</sup> Yet the October 19 and November 3 orders violate the rights of human rights advocates to freedom of speech and expression, allowing “Israel to raid the organizations’ offices, seize assets, arrest employees and criminalize funding and expressions of support.”<sup>86</sup> Without the presence of these organizations in the Occupied Palestinian Territories, the Palestinian people will be left without skilled, experienced legal advocates to defend them and raise the Palestinian voice—and the world will be deprived of critical information about the human rights situation throughout the region.

### C. Private Organizations Supported by the State

These government attacks parallel and draw on campaigns launched by private groups.<sup>87</sup> These groups include Im Tirzu,<sup>88</sup> NGO Monitor,<sup>89</sup> Ad Kan,<sup>90</sup> Kela Shlomo,<sup>91</sup> Shurat Hadin,<sup>92</sup> and Canary Mission<sup>93</sup>. They each share a commitment to discrediting, silencing and defunding organizations that criticize Israeli occupation. Many enjoy tacit or explicit state support—unlike the human rights organizations profiled here. For example, the Israeli Ministry of Foreign Affairs has hosted press conferences to promote publications by NGO Monitor as far back as 2009. As recently as 2017, the same ministry supported NGO Monitor’s lobbying efforts in the EU.<sup>94</sup>

NGO Monitor led a successful campaign to dismantle the largest source of funding for Palestinian NGOs and for the Palestinian Authority. The Human Rights & International Humanitarian Law Secretariat was a joint funding mechanism for the governments of Denmark, the Netherlands, Sweden and Switzerland.<sup>95</sup> NGO Monitor accused the Secretariat of promoting terrorism and anti-Semitism by funding Palestinian civil society. In 2018, the governmental donor consortium announced it was disbanding. NGO Monitor claimed credit. All except one of the organizations interviewed reported that the loss of the Secretariat was significant one for human rights work in the region.<sup>96</sup>

In addition, NGO Monitor, Irm Tirzu, Ad Kan, Kela Shlomo, Shurat Din and Canary Mission have each engaged in misinformation campaigns—publicizing false information about human rights organizations and conducting smear campaigns.<sup>97</sup> They have also encouraged censorship by pressuring venues to cancel or refuse to book events by human rights organizations.<sup>98</sup> They have attempted to shut down human rights organizations by attacking sources of funding, conveying misinformation to donors.<sup>99</sup> Government agencies have come to rely on their reports and

misinformation to deny human rights activists entry into Israel and to discredit their activities in public.<sup>100</sup> The use of lawfare, or legal forums used for political purposes, has also grown among private groups with the technical support and funding of the Israeli Ministry of Foreign Affairs.<sup>101</sup> Seven out of ten survey respondents reported increased harassment or surveillance by parastatal or state-supported organizations as a consequence of legislative and political changes by Israel over the last ten years.<sup>102</sup>

#### **IV. Cumulative Impacts on Human Rights Organizations**

These official acts have created a hostile climate for organizations working to uphold the rights of individuals and communities suffering under Israeli occupation, or who advocate within Israel's 1948 borders for equality for Syrians and Palestinian citizens of Israel. In this section, we report our findings based on interviews and surveys. The harms are discussed in order of importance.

##### **A. Loss of Credibility and Support**

Eight out of ten survey respondents reported increased attacks on the legitimacy of their NGOs by parastatal or state-supported organizations as a result of legal and political changes by Israel over the last several years.<sup>103</sup> Six out of ten respondents reported increased attacks on their NGOs' legitimacy by state institutions.<sup>104</sup> One interviewee explained:

[W]e are facing attacks on the legitimacy of our organization. There have always been disagreements, but now our standing is reduced in the public. We used to train police officers on human rights. That work has now stopped. Instead of cooperating with the Ministry of Education, we have to do direct outreach with teachers.<sup>105</sup>

When asked about the biggest challenge faced by their organization, a survey respondent stated: "On this topic, I would say the reputational impact has been greatest, thus far. We are less able to recruit allies and support than we were 10 years ago."<sup>106</sup> Both public and private actors have created the misperception that merely holding Israel accountable to its international and domestic legal obligations is tantamount to betrayal.<sup>107</sup>

##### **B. Threats to Funding**

Several organizations reported that their funding has become more precarious as a result of government action and pressure from parastatal organizations. The organizations interviewed rely heavily on foreign funding because domestic Israeli philanthropic organizations are unsympathetic to their mission. Larger organizations tend to be more insulated from these threats to funding, while smaller organizations are at a higher risk.

State actors have directly interfered with funding. The Israel Prime Minister's office and other members of government have asked foreign states to stop funding specific human rights organizations operating in territories Israel controls.<sup>108</sup> Prime Minister Netanyahu also directly intervened to prevent Al-Haq and B'Tselem, prominent Palestinian and Israeli human rights organizations, from receiving a prestigious award from the French government.<sup>109</sup> In addition,

private, state-supported organizations, including NGO Monitor, have pressured European governments and donor agencies to cut their funding to NGOs critical of Israel.<sup>110</sup> For example, two interviewees reported that private actors have threatened their funding by directly approaching donors and in one case characterizing their work as support for terrorism.<sup>111</sup> Three organizations interviewed revealed that in response to this pressure, their donors have questioned them about their activities.<sup>112</sup> One organization recounted that donors have grown more vigilant and imposed stricter reporting requirements.<sup>113</sup> Eight out of ten survey respondents reported spending resources to justify human rights activities to donors as a consequence of legislative and political changes by Israel over the last ten years.<sup>114</sup> Two stated that donors have refused to fund certain activities as a result of the more repressive political climate.<sup>115</sup> Four out of the ten organizations surveyed explained that they found it more difficult to access donor funds through local banking institutions, as the banking sector is also under increased pressure from the government.<sup>116</sup>

### C. Censorship

This hostile legal and political climate has compelled some organizations to self-censor. Five of ten organizations decided to opt out of campaigns or have refrained from issuing public statements because of the increased stigma surrounding advocacy that is critical of Israel.<sup>117</sup> With the passage of the anti-BDS law, one organization explained that its staff had engaged in a heated internal discussion about how to respond to the new law, while also preserving its ability to work in the future.<sup>118</sup> Another organization explained:

[W]e are cautious about the language we use in advocacy. We have integrity. We do not compromise our positions, but we are informed by what is effective given this polarized moment. We do not speak about BDS, but because it is not politically effective to do so. We speak about human rights. We emphasize that we are promoting a two-state solution.<sup>119</sup>

The expansive scope of civil liability contemplated by the anti-BDS law has prompted organizations to be more vigilant about the policy recommendations they make with regard to settlements to avoid the appearance of encouraging a boycott. But the breadth of the law's application makes it hard to predict what speech is safe, and what speech could trigger a lawsuit or deportation.<sup>120</sup> The uncertainty alone has a chilling effect.

One organization observed that members of the artistic community are hesitant to publish works about the Nakba, in light of the Nakba Law.<sup>121</sup> Another organization has opted to minimize its visibility to avoid attacks by state actors and parastatal organizations.<sup>122</sup>

### D. Restrictions on Movement

Aside from the restrictions on entry discussed above,<sup>123</sup> Israel's closure of Gaza and restrictions on entry to Palestine have also impeded the ability of human rights organizations to conduct their work.<sup>124</sup> One organization reported that because of the closure of Gaza, one staff member had not been able to travel to meet with the rest of the organization's staff since 2009. "As a result, he is cut off, and he does not know many of the people on our staff."<sup>125</sup>

#### E. Resources Expended to Justify Activities

In the face of skepticism from donors and hostility from the public and government, groups are increasingly on the defensive.<sup>126</sup> Such defensive adaptations, while necessary, can also detract the organizations' core mandates, whether to end the illegal occupations, or to advance more inclusive policies for Syrians and Palestinians citizens of Israel.

The judicial climate has also become more hostile. Three organizations interviewed revealed that they now spent more time litigating, because of the increased frequency of violations and/or because advocates were compelled to lodge their case in lower courts, whereas in the past they would proceed directly to the highest court. One organization surveyed who litigates to defend Palestinian rights explained, "there is growing hostility in the Israeli judicial system to Palestinian rights; even greater reluctance of judges to intervene to protect rights."<sup>127</sup> An organization seeking permits for Palestinians recounted, "we are filing more petitions in court because our administrative requests are being denied more frequently."<sup>128</sup>

#### F. Cumulative impact

The results of our interviews and survey reveal that human rights defenders are experiencing ever-increasing pressure from both government and parastatal organizations. The legal and political climate is unremittingly hostile to their work. They must constantly defend themselves from threats to their funding and rebut public smear campaigns that attack their integrity and label them as terrorists. Organizations have to work on two fronts: their core work of monitoring and mitigating the harms produced by Israeli policy, and now managing the inevitable retaliation that accompanies their advocacy. Human rights defenders report that these official actions seek to silence their speech by making it expensive, in both financial and human terms, to perform their work publicly.

#### V. **Case Study: Lawsuit against Al-Marsad**<sup>129</sup>

With the anti-BDS law, Israel has armed private actors with a new weapon to stifle opposition to profit-making settlement enterprises. The lawsuit by Energix Renewable Energies Ltd. ("Energix") against Al-Marsad illustrates the danger facing human rights organizations that dare to document violations of international law relating to private business activities on occupied lands.

Al-Marsad, founded in 2004, is the only human rights organization in the Occupied Syrian Golan. Al-Marsad engages in a variety of legal, advocacy, cultural enrichment, and educational activities to contest Israel's discriminatory policies and preserve Syrian-Arab identity. Since 2018, Al Marsad has been documenting and reporting on the consequences of a massive renewable energy project that Energix plans to build on the already limited land allocated to indigenous Syrians in the Occupied Golan. Energix has proposed building 31 wind turbines, each up to 220 meters in height, on top of Syrian agricultural lands adjacent to Majdal Shams and Massada, two of the few remaining Arab villages in the Occupied Golan. Currently, small tracts of farmlands carve the landscape into a patchwork of cherry and apple orchards. Beginning with the springtime blossoms, Syrian-Arabs spend lengthy periods residing in small cottages among the trees. The lands

themselves are communal, and governed collectively. The turbines will permanently alter the environment. The energy produced will supply the Israeli electric grid, with minimal benefits to the local population.<sup>130</sup>

When initial news of the project reached Majdal Shams, members of the community asked Al-Marsad to investigate Energix's actions. Al-Marsad subsequently published a report in January 2019 detailing the health and environmental impacts of the windfarm.<sup>131</sup> It assessed the legality of the proposed project under international law, and concluded that by approving such a project, Israel would contravene its obligations to Syrian Arabs under international human rights and humanitarian law.<sup>132</sup> Al-Marsad called on the international community to hold Israel accountable for its actions.<sup>133</sup> Additionally, Al-Marsad asked consumers and Energix's partners to demand that the company halt the project, because it entrenches Israel's illegal occupation.<sup>134</sup>

Energix retaliated by launching an aggressive campaign to secure government approval and silence opposing viewpoints from the affected community in the Occupied Golan.<sup>135</sup> In June 2019, Energix filed suit against Al-Marsad alleging defamation and claiming that Al-Marsad had incited a boycott in violation of Israel's anti-BDS law. Energix is seeking NIS 900,000 in damages—an amount that approximates Al-Marsad's annual budget. This marks the first time the law has been used in an attempt to silence the speech and activities of a human rights organization. Alarming, Energix seems to suggest that Al-Marsad's efforts to oppose the windfarm and demand that Energix comply with international law amount to a boycott.<sup>136</sup> The complaint characterizes Al-Marsad as working in tandem with the BDS movement and “anti-Zionists.”<sup>137</sup>

While the lawsuit was pending, Energix ultimately sought and won approval for its project from the Israeli National Infrastructure Committee. The Committee swept aside Syrian Arabs' concerns, giving the final green light to Energix in Spring 2020. Israel's failure to consult with the Syrian Arab community, and its plan to extract energy for the benefit of the Israeli population, violates its obligations under international humanitarian law.<sup>138</sup>

Three Special Rapporteurs<sup>139</sup> have expressed their concern that the lawsuit and the smear campaign appear to be “judicial harassment.”<sup>140</sup> They conclude: “[T]hese 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.”<sup>141</sup>

Indeed, Al-Marsad has expended significant time and energy to defend itself in this lawsuit, while also continuing to mobilize in opposition to the windfarm that will permanently destroy the Syrian Arab way of life in the Golan. Fighting on both fronts can drain a small organization's limited resources. The case is still pending in the Nazareth Magistrate's Court. The Court has encouraged the parties to settle, which would require Al-Marsad to retract portions of its report. Al-Marsad has refused to do so on the grounds that it would set a dangerous precedent.

In addition to the lawsuit against Al-Marsad, Energix sued five private individuals for defamation, all of whom had expressed opinions critical of its energy project.<sup>142</sup>

Local Syrian Arab residents depend on Al-Marsad, as the only human rights organization operating in the Occupied Golan, to amplify their voices and express their disapproval of Energix’s energy project. The wind farm would dramatically and irrevocably devastate their way of life. The lawsuit seeks to silence one of the community’s few channels for dissent and self-determination, and it distracts from other direct services Al-Marsad provides to the community.

## **VI. Violations of the ICCPR**

Israel’s conduct towards human rights defenders clearly violates the International Covenant on Civil and Political Rights (“Covenant” or “ICCPR”) and its guarantee to protect freedom of expression. Indeed, state actors are required to protect speech that they may find offensive.<sup>143</sup> Article 19 requires governments to protect freedom of expression and association of all, regardless of their actual or perceived opinions. Israel, however, has developed a set of tools to specifically target criticism—or even the memorialization of—its occupation. Moreover, the state has an affirmative obligation to facilitate “the work of human rights defenders. . . by creating a conducive environment and enabling them to peacefully exercise their legitimate right to freedom of opinion and expression.”<sup>144</sup> States parties are further obligated “to ensure that persons are protected against ‘semi-State’ entities and private entities that seek to impair the freedom of opinion and expression, to the extent these Covenant rights are amenable to application between private persons or entities.”<sup>145</sup> Yet the efforts of private Israeli actors to discredit and intimidate human rights organizations continue without any consequences.

Every level of government has participated in silencing and stigmatizing the work of civil and human rights organizations who attempt to bring Israel in compliance with international human rights law. The Ministry of Strategic Affairs, in particular, is dedicated to undermining speech and political activities of organizations critical of the state. These official efforts are amplified by the work of non-state actors who share the government’s zeal to stifle criticism. These groups also lay the groundwork for legislative changes or official action through their campaigns of misinformation. Once they have achieved legislative gains, they use the law to realize their ambitions to thwart the work of human rights defenders. Legislation, court rulings, executive declarations and private actions all work together to infringe on the freedom of expression of human rights defenders, and impede their ability to act collectively towards a common goal.

Special procedures and human rights bodies have repeatedly raised concerns that Israel, in adopting these laws and policies described above, has interfered with the freedom of expression and association of human rights defenders, in violation of Articles 19 and 22 of the ICCPR.<sup>146</sup> In their communication to Israel, three Special Rapporteurs emphasized that the freedom of expression includes political discourse, discussion on human rights, journalism, and commentary on one’s own and public affairs.<sup>147</sup> Disseminating information, building community power, engaging in the conduct of public affairs, communicating with international human rights bodies, and submitting proposals for policy and legislative changes are the building blocks of democracy. Yet Israel has imposed various obstacles to restrict these activities. As a result, Israel has also violated Article 2 of the ICCPR, which entitles all people to an effective remedy. Israel is required to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in



an official capacity.” But when Syrian Arabs and Palestinians ask the Israeli government for recognition of their rights, they are more likely to face retaliation than recognition.

Instead of creating the conditions for open, safe and thriving civil society, Israel has fostered a climate that forces human rights defenders to be self-censoring. Although the organizations surveyed here each pride themselves on their resilience and integrity in the face of repression, it is unmistakable that these laws, policies, actions facilitated by the state have had a negative impact. These harms are predictable. The Israeli government has recognized that “[t]he 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.”<sup>148</sup> Yet in practice, Israel aggressively suppresses the human rights communities that resist Israel’s illegal occupations.

Israel’s laws, policies and practices overall intend to systematically suppress Palestinian peaceful resistance to colonial oppression. Such persecution constitutes a mainstay of Israel’s apartheid regime aimed at entrenching and maintaining a discriminatory system of domination over the Palestinian people and their lands. Israel thereby violates Article II(f) of the 1973 Apartheid Convention, which prohibits, as one of the inhuman acts inherent to apartheid, the “persecution of organizations and persons by depriving them of fundamental rights and freedoms, because they oppose apartheid.”<sup>149</sup> Such acts may be prosecutable before the International Criminal Court, as a crime against humanity as per Article 7(1)(j) of the Rome Statute.<sup>150</sup>

## **VII. Recommendations**

In light of the above facts, we recommend that the United Nations Special Procedures, the international community, the Government of the United States, and civil society call on Israel to:

- Restore and protect the rights of all human rights defenders operating in territories Israel controls, regardless of their viewpoints, as required under Articles 2, 19 and 22 of the ICCPR.
- Repeal the following laws, and any other laws that violate Articles 2, 19 and 22 of the ICCPR: the Mandatory Disclosure of Foreign Entity Funding Law; the Law for Prevention of Damage to the State of Israel through Boycott; Amendment No. 28 to the Entry to Israel Law; Israel—the Nation-State of the Jewish People Law; Nakba Law; and the Breaking the Silence Law.
- Cease to enact new laws that violate Articles 2, 19 and 22 of the ICCPR and stifle the voices of human rights defenders.
- Regulate the activities of pro-government private organizations to ensure they do not infringe on the rights of other groups and individuals.
- Comply with United Nations Security Council Resolution 242, which requires that Israel withdraw from all territories it occupies.

- Ensure that Israeli courts provide fair trials under the law.
- Curtail the government’s active attacks on civil society through entities like the Ministry of Strategic Affairs.

All of the entities listed above should continually engage with and listen to civil society challenging the Israeli occupation to understand their ongoing struggles.

Submitted by:

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<sup>1</sup> In response to Q.7 of the survey (“In light of the legal changes outlined in the previous question, what repercussions has your NGO experienced as a result of legislative and political changes in Israel over the last ten years?”), seven organizations reported spending resources to justify human rights activities to donors; seven organizations reported increased harassment or surveillance by state institutions; six organizations reported damage to reputation; six organizations reported increased attacks to their NGO’s legitimacy by state institutions; five organizations reported increased criticism or slander in public forums. *See* Appendix A, Q.7.

<sup>2</sup> *See* Appendix, Q.9.

<sup>3</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Addendum : Mission to Israel and the occupied Palestinian territory*, A/HRC/20/17/Add.2, ¶ 97, (11 June 2012).

<sup>4</sup> “Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.” UNGA, International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, A/RES/3068(XXVIII), Article II(f), [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10\\_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf)

<sup>5</sup> “Syrian Golan,” “Occupied Golan,” and “Occupied Syrian Golan” are used interchangeably throughout this report.

<sup>6</sup> Al-Marsad, *Al-Marsad Appeals to UN Experts to Protect Human Rights in the Occupied Syrian Golan*, AL-MARSAD (9 Sept. 2019), <https://golan-marsad.org/al-marsad-appeals-to-un-experts-to-protect-human-rights-in-the-occupied-syrian-golan/> (accessed 5 Sept. 2020).

<sup>7</sup> *See* Al-Marsad, *Appeal for Urgent Action: Syrian Villages and Farms in Occupied Syrian Golan Under Threat While Local Human Rights Organization Targeted*, available at [http://golan-marsad.org/wp-content/uploads/Al-Marsad\\_Urgent-Appeal-to-UN-Experts.pdf](http://golan-marsad.org/wp-content/uploads/Al-Marsad_Urgent-Appeal-to-UN-Experts.pdf).

<sup>8</sup> U.N. Human Rights Council, *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*, AL ISR 16/19, p.6, (20 Jan. 2020)..

<sup>9</sup> “Occupied Palestinian Territories” or “OPT” are used interchangeably throughout this report.

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<sup>10</sup> The survey questions are listed in Appendix A.

<sup>11</sup> See Appendix A, Q.4-Q.5.

<sup>12</sup> The names of the persons and organizations interviewed have been assigned numbers to preserve anonymity and are cited accordingly. The survey is included as an Appendix to this report, but the responses are not.

<sup>13</sup> *By All Means: The Various Ways Israel Targets Human Rights Defenders*, HUMAN RIGHTS DEFENDERS FUND, 16–17 (June 2019), [http://hrdf.org.il/wp-content/uploads/2019/06/By-all-means\\_web.pdf](http://hrdf.org.il/wp-content/uploads/2019/06/By-all-means_web.pdf) (last visited 5 Sept. 2020).

<sup>14</sup> *Id.* at 17.

<sup>15</sup> See Appendix A, Q.6.

<sup>16</sup> See Appendix A, Q.17.

<sup>17</sup> U.N. Human Rights Council, *supra* note 1, at ¶ 36

<sup>18</sup> Law Preventing Harm to the State of Israel by Means of Boycott, 5771-2011, S.H. No. 2304 p. 1 (Isr.). <https://law.acri.org.il/en/wp-content/uploads/2011/07/Boycott-Law-Final-Version-ENG-120711.pdf>.

<sup>19</sup> *Id.*; U.N. Human Rights Council, *Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders*, AL G/SO 214 (67-17) Assembly & Ass’n (2010-1) G/SO 214 (107-9), (29 Aug. 2011).

ISR 7/2011, p. 2, <https://spcommreports.ohchr.org/TmSearch/SearchCode?code=ISR%207/2011>.

<sup>20</sup> BDS, <https://bdsmovement.net/what-is-bds> (last accessed 5 Sept. 2020) (“Palestinian BDS call urges nonviolent pressure on Israel until it complies with international law by meeting three demands: Ending its occupation and colonization of all Arab lands and dismantling the Wall... Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality... Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.”).

<sup>21</sup> See e.g., Nahal Toosi, *U.S. Weighs Labeling Lead Human Rights Groups ‘Anti-Semitic’*, POLITICO (21 Oct. 2020) <https://www.politico.com/news/2020/10/21/state-department-weighs-labeling-several-prominent-human-rights-groups-anti-semitic-430882> (discussing the Trump administration potentially considering labeling several leading human rights organizations as anti-Semitic, citing to their support of the BDS movement). See e.g., *Open Letter: Labour Party is Suppressing Palestinian Voices and Free Speech on Israel*, PALESTINECHRONICLE (19 Sept. 2020), <https://www.palestinechronicle.com/open-letter-labour-party-is-suppressing-palestinian-voices-and-free-speech-on-israel/> (reporting that 20 prominent British Palestinians expressed their concerns over the shrinking space to discuss the Palestinian struggle and the Labour party’s decision to adopt the controversial IHRA definition of anti-Semitism); *Legislation Targeting Advocacy for Palestinian Rights*, PALESTINE LEGAL <https://legislation.palestinelegal.org/#statistics> (21 Apr. 2021) (“Bills targeting advocacy for Palestinian rights have proliferated since... 2014 [in the United States], and the types of bills introduced have evolved in response to the movement’s victories. Early efforts focused on defunding universities to punish or deter support for an academic boycott of Israeli institutions. Subsequent legislative efforts aimed to prohibit state contracts with or state investments in entities that support BDS. More recent legislation aims to redefine antisemitism to include criticism of Israel for use in discrimination complaints or criminal investigations.”).

<sup>22</sup> See *Wielding Antidiscrimination Law to Suppress the Movement for Palestinian Rights*, 133 HARV. L. REV. 1360 (2020) (“Anti-BDS laws are not backed by a valid antidiscrimination interest.”). The co-founder of the BDS movement, Omar Barghouti addressed claims that the BDS movement was anti-Semitic in the following manner: “BDS is a human rights movement that believes in equal rights for all humans, irrespective of identity. Being anchored in the Universal Declaration of Human Rights, we reject all forms of . . . anti-Semitism. We absolutely, categorically reject anti-Semitism. We will not accept anti-Semites in our ranks, we will never accept any anti-Semitic language, even hints of anti-Semitic language or actions within our platform. In the 9 years of BDS, the Israeli government, the Israel lobby and the Israeli-run media could not find one iota of proof of anti-Semitism. They’re using this to shut down the debate, because our boycott against Israel has absolutely nothing to do with the identity - whether Jewish or other identity. It has everything to do with Israel being an oppressive, colonial, and apartheid regime. . . It matters very little to the oppressed the identity of the oppressor.” See *South Africa; Five Questions for BDS Co-Founder Omar Barghouti*, THE DAILY VOX (JOHANNESBURG)(8 July 2014). Courts in the US and Europe have diverged in their responses to these laws. See e.g., *Baldassi and Others v. France*, nos. 15271/16 and 6 others, 11 June 2020, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-202756%22%5D%7D> (finding that French activists’ criminal convictions for inciting a boycott against goods produced in illegal settlements violates Article 10 of the European Convention on Human Rights, which protects freedom of expression); *Ark. Times LP v. Waldrip*, 988 F.3d 453 (8th Cir. 2021) (ruling that an Arkansas law requiring state contractors to pledge not to boycott Israel violates the First Amendment of the U.S. Constitution).

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<sup>23</sup> U.N. Human Rights Council, *Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders*,

AL G/SO 214 (67-17) Assembly & Ass'n (2010-1) G/SO 214 (107-9)

ISR 7/2011, at 2, (29 Aug. 2011) <https://spcommreports.ohchr.org/TmSearch/SearchCode?code=ISR%207/2011>.

<sup>24</sup> *Id.*

<sup>25</sup> U.N. Human Rights Council, *supra* note 1, at ¶ 34.

<sup>26</sup> Participating civil society organizations included five human rights organizations in Israel (Adalah, Acri, The Public Committee Against Torture in Israel, HaMoked – Center for the Defence of the Individual, and Yesh Din) and three organizations that promote economic boycotts to end occupation (Coalition of Women for Peace, the High Follow-up Committee for Arab Citizens in Israel, and the Jerusalem Legal Aid and Human Rights Center).

<sup>27</sup> H CJ 5239/11 Avneri v. Knesset, ¶ 26–¶ 38 (2015) (Isr.) (finding the test for legal infringement of a constitutional right requires that: 1) a particular action or group of actions infringing upon a constitutional right must be made by law or by virtue of a law; 2) such action must benefit the values of the State of Israel as a Jewish and democratic state; 3) such action must serve a proper purpose; and 4) such action may only infringe on the right to an extent no greater than is required, in that it must pass the rational connection test; the least harmful means test; and the proportionality test).

<sup>28</sup> Shurat HaDin, an Israeli NGO, brought a suit on behalf of three Israeli teenagers who purchased tickets to a Lorde concert. Lorde had cancelled her concert following a boycott campaign and intense social media pressure. Shurat HaDin sought US\$13,000 in emotional damages from the two New Zealand activists who called for Lorde to cancel her concert in protest of the Israeli government's treatment of Palestinians. Amy Spiro, *New Zealand BDS Activists Ordered to Pay Damages Over Lorde Israel Boycott*, THE JERUSALEM POST (11 Oct. 2018), available at: <https://www.jpost.com/Israel-News/New-Zealand-BDS-activists-ordered-to-pay-damages-over-Lorde-Israel-boycott-569194>.

<sup>29</sup> See Appendix A, Q. 14. The numbers in parenthesis indicate the number of organizations who endorsed this specific repercussion.

<sup>30</sup> See *infra* notes 118-120 and accompanying text.

<sup>31</sup> Interviewee # 1.

<sup>32</sup> Entry into Israel (Amendment No. 28) Law, SH 5777 No. 2610, p.458 (2017) (Isr).

<sup>33</sup> See Appendix A, Q.6. In response to Q.7, one organization noted “We used to engage civil service volunteers and are no longer able to. Also one of our funders was denied entry to Israel and banned for 10 years and a staff member was detained at the border but eventually allowed in, both based on the anti-boycott/entry to Israel law.”

<sup>34</sup> Interviewee # 5.

<sup>35</sup> *Israel: Supreme Court Greenlights Deporting Human Rights Watch Official*, HUMAN RIGHTS WATCH (5 Nov. 2019), <https://www.hrw.org/news/2019/11/05/israel-supreme-court-greenlights-deporting-human-rights-watch-official>.

<sup>36</sup> *Id.*

<sup>37</sup> *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*, UNITED NATIONS (3 May 2019), <https://www.un.org/press/en/2019/db190503.doc.htm>; *UN Experts Call on Israel to Overturn Deportation of Human Rights Watch Director*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (25 April 2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24516&LangID=E>.

<sup>38</sup> Noa Landau, *Israel Publishes BDS Blacklist: These are the 20 Groups Whose Members Will be Denied Entry*, HAARETZ (7 JAN, 2018), <https://www.haaretz.com/israel-news/israel-publishes-bds-blacklist-these-20-groups-will-be-denied-entry-1.5729880> (The twenty organizations included on the list are France-Palestine Solidarity Association, BDS France, BDS Italy, The European Coordination of Committees and Associations for Palestine, Friends of Al-Aqsa, Ireland Palestine Committee of Norway, Palestine Solidarity Association of Sweden, Palestine Solidarity Campaign, War on Want, BDS Kampagne, American Friends Service Committee, American Muslims for Palestine, Code Pink, Jewish Voices for Peace, National Students for Justice in Palestine, US Campaign for Palestinian Rights, BDS Chile, BDS South Africa, BDS National Committee.).

<sup>39</sup> Rachell Zoll, *Israel Bars Entry to 5 US Activists Under Anti-BDS Law*, APNEWS (25 July 2017), <https://apnews.com/article/3cf863f6c448420f8cacadd72d39fbb5>.

<sup>40</sup> *Interfaith Leaders Denied Entry to Israel for Supporting Palestinian Human Rights*, JEWISH VOICE FOR PEACE (24 July 2017), <https://jewishvoiceforpeace.org/2017/07/interfaith-leaders-denied-entry-israel-supporting-palestinian-human-rights/>.

<sup>41</sup> Lahav Harkov, *Government Reevaluating Ban on BDS Activists Entering Israel*, THE JERUSALEM POST (13 Aug. 2020), <https://www.jpost.com/israel-news/government-reevaluating-ban-on-bds-activists-entering-israel-638505> (In

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2020, Franke was allowed to enter Israel after Strategic Affairs Minister Orit Farkash-Hacohen publicly declared that Franke is no longer an activist in BDS organizations. Despite the declaration by Farkash-Hacohen, Franke tweeted in support of a coalition of organizations that included JVP after leaving Israel.).

<sup>42</sup> *Detained and Then Deported: U.S. Human Rights Lawyers Barred from Entry into Israel*, DEMOCRACYNOW (2 May 2018).

<sup>43</sup> *Id.*

<sup>44</sup> *US Student Lara Alqasem Claims Victory in Israel Boycott Case*, AL JAZZERA (18 Oct. 2018), <https://www.aljazeera.com/news/2018/10/18/us-student-lara-alqasem-claims-victory-in-israel-boycott-case/>.

<sup>45</sup> Associated Press, *American Student Lara Alqasem Detained in Israel for Alleged Boycott Support*, NBCNEWS (9 Oct. 2018), <https://www.nbcnews.com/news/world/american-student-lara-alqasem-detained-israel-alleged-boycott-support-n918271>.

<sup>46</sup> Raoul Wootliff, *Final Text of Jewish Nation-State Law, Approved by the Knesset Early on July 19*, TIMES OF ISRAEL (18 Jul. 2018), available at: <https://www.timesofisrael.com/final-text-of-jewish-nation-state-bill-set-to-become-law/>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> U.N. Economic and Social Council, *Concluding observations on the fourth periodic report of Israel*, E/C.12/ISR/CO/4, ¶16, (12 Nov. 2019).

<sup>50</sup> *Id.*

<sup>51</sup> Hakim Bishara, *Israel's Culture Minister Pushes Bill to Freeze Funds for Arts Organizations Highlighting Palestinian Narratives*, HYPERALLERGIC (10 Oct. 2018), <https://hyperallergic.com/464763/israels-culture-minister-pushes-bill-to-freeze-funds-for-arts-organizations-highlighting-palestinian-narratives/>.

<sup>52</sup> U.N. Human Rights Council, *supra* note 1, at ¶ 31.

<sup>53</sup> *Id.*

<sup>54</sup> *Adalah and ACRI: Israeli High Court Ignored the Chilling Effect Already Caused by the "Nakba Law"*, ADALAH (5 Jan. 2012), <https://www.adalah.org/en/content/view/7188> (last visited 5 Sept. 2020).

<sup>55</sup> Interviewees # 1, 6.

<sup>56</sup> *About the Organization*, BREAKING THE SILENCE <https://www.breakingthesilence.org.il/about/organization> (last visited 5 Sept. 2020).

<sup>57</sup> *The "Breaking the Silence" Law*, THE ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL (ACRI) (20 July 2018), <https://law.acri.org.il/en/2018/07/20/the-breaking-the-silence-law/> (last visited 5 Sept. 2020).

<sup>58</sup> Interviewees # 1, 4, 5, 6, 8.

<sup>59</sup> *Ministry of Strategic Affairs and Public Diplomacy*, GOV.IL (1 Aug. 2019), [https://www.gov.il/en/departments/units/ministry\\_of\\_strategic\\_affairs\\_and\\_public\\_diplomacy](https://www.gov.il/en/departments/units/ministry_of_strategic_affairs_and_public_diplomacy).

<sup>60</sup> Eyal Hareuveni, *Such a Mysterious Israeli Ministry of Strategic Affairs*, ORIENTXXI (29 Oct. 2018), <https://orientxxi.info/magazine/such-a-mysterious-israeli-ministry-of-strategic-affairs,2709>.

<sup>61</sup> Haaretz Editorial, *Israel's Ministry of Strategic Harm* HAARETZ (12 June 2019), <https://www.haaretz.com/opinion/editorial/premium-israel-s-ministry-of-strategic-harm-1.7363931>.

<sup>62</sup> *Id.*

<sup>63</sup> Gur Meggido, *Israel Seeks to Erase Archives of Intel Firm Employed in anti-BDS Campaign* (18 June 2019) (“Israel’s Ministry of Strategic Affairs in 2016 retained another private sector company called Kela Shlomo (and since renamed) to conduct a fight against BDS, but half the 256 million-shekel (\$71 million at current exchange rates) budget was supposed to come from private donations.”).

<sup>64</sup> Mattathias Schwartz, *Security Flaws in Israel Propaganda App Exposed User Emails*, THE INTERCEPT (30 June 2017), <https://theintercept.com/2017/06/30/israel-propaganda-hasbara-app-security-flaw-rallyware-maccabee/>.

<sup>65</sup> *Behind the Headlines: The Terror Behind the UNHRC Database*, ISRAEL MINISTRY OF FOREIGN AFFAIRS (13 Feb. 2020), <https://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/The-terror-behind-the-UNHRC-database-13-February-2020.aspx> (last visited 5 Sept. 2020).

<sup>66</sup> Noa Landau, *EU Blasts Israeli Minister: You Feed Disinformation and Mix BDS, Terror* HAARETZ (17 July 2018), <https://www.haaretz.com/israel-news/premium-eu-s-mogherini-to-israeli-minister-you-feed-disinformation-1.6280308>.

<sup>67</sup> A Fifth Column is a “clandestine group or faction of subversive agents who attempt to undermine a nation’s solidarity by any means at their disposal.” *Fifth column*, ENCYCLOPEDIA BRITANNICA, (20 Nov. 2018), <https://www.britannica.com/topic/fifth-column>.

<sup>68</sup> Human Rights Defenders Fund, *supra* note 13, at 26.

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<sup>69</sup> Tzvi Joffree, *B'Tselem Speaks to Haifa School Despite Ban*, THE JERUSALEM POST (19 Jan. 2021), <https://www.jpost.com/israel-news/btselem-spoke-at-haifa-school-despite-education-ministers-ban-655832>. (In 2018, the Knesset passed a law authorizing the education minister to bar groups that “act against the goals of education and against the IDF” from entering schools.”). In addition to B'Tselem, Gallant barred groups in Israeli schools that allegedly “contradict the goals of the education system, including calling Israel false disparaging names, opposing Israel as a Jewish, Zionist and democratic state, discouraging meaningful service in the IDF or acting to harm or degrade IDF soldiers during or after their service.” In response to Gallant’s ban, the Hebrew Reali School in Haifa vowed to protect their students’ right to express their opinions. *Id.*

<sup>70</sup> Daniel Siryoti, *Israeli Education Minister Bans Group Maligning Country, IDF From Schools* JEWISH NEWS SYNDICATE, (18 Jan. 2021), <https://www.jns.org/israeli-education-minister-bans-groups-maligning-country-idf-from-schools/>.

<sup>71</sup> *Israel Designates 6 Palestinian Human Right Groups as Terrorist Organizations*, NAT’L PUB. RADIO, (23 Oct. 2021), <https://www.npr.org/2021/10/23/1048690050/israel-palestinian-human-right-groups>.

<sup>72</sup> Al-Haq, founded in 1979, is the West Bank affiliate of the International Commission of Jurists- Geneva. Al-Haq has won, among many other international awards, the Human Rights Prize of the French Republic, the Danish PL Foundation Prize, the Geuzenpenning Prize for Human Rights Defenders, and the Gwynne Skinner Human Rights Award from the International Corporate Accountability Roundtable. Al-Haq has issued dozens of reports on topics such as the right to life and bodily integrity, the right to housing, freedom of movement, the annexation wall, and settler violence.

<sup>73</sup> Addameer, founded in 1992, advocates for Palestinian political prisoners who suffer long-term arbitrary detention—without charge or trial—and has documented severe abuse and torture of detainees, including children, by Israeli authorities. Addameer has worked closely for years with Amnesty International, Human Rights Watch, the World Organization against Torture (OMCT) and the International Federation of Human Rights (FIDH).

<sup>74</sup> “Defense for Children International - Palestine (DCIP) is an independent, local Palestinian child rights organization dedicated to defending and promoting the rights of children living in the West Bank, including East Jerusalem, and the Gaza Strip. Since 1991, we have investigated, documented, and exposed grave human rights violations against children; provided legal services to children in urgent need; held Israeli and Palestinian authorities accountable to universal human rights principles; and advocated at the international and national levels to advance access to justice and protection for children.” Who We Are, DEF. FOR CHILDREN INT’L [https://www.dci-palestine.org/who\\_we\\_are](https://www.dci-palestine.org/who_we_are).

<sup>75</sup> The Union of Agricultural Work Committees (UAWC) is one of the oldest Palestinian NGOs that supports and advocates for Palestinian farmers' rights to sovereignty of their land and products. They have played a leading role in documenting settler violence against Palestinian farmers. Since August 2021, settlers have injured at least 22 Palestinians and have destroyed over 1,800 Palestinian trees. UAWC has received the UNDP Equator Prize and the US Food Sovereignty Alliance's Food Sovereignty Prize for its contribution to global sustainable food development based on its unique seed bank initiative.

<sup>76</sup> The Union of Palestinian Women Committees (UPWC), established in 1980, is the umbrella organization for all Palestinian women's groups in the Occupied Territories. Its staff have supported Palestinian women's rights, equality between men and women, and equity between social classes. UPWC has been a major force in the women's rights movement in Palestine and plays an active role in the global movement for women's rights.

<sup>77</sup> The Bisan Center for Research and Development has been in operation since the late 1980's and has a particular focus on marginalized communities in Palestine. It has centered its work on economic and social rights of women, youth, and workers in rural and deprived areas, advocating for their development needs. The Center has conducted pioneering research on attitudes toward gender-based violence in the health community and has partnered with UNIFEM on work to end violence against women.

<sup>78</sup> *UN Experts Condemn Israel's Designation of Palestine Rights Defenders as Terrorist Organisations*, U.N. NEWS, (25 Oct. 2021) <https://news.un.org/en/story/2021/10/1103982>.

<sup>79</sup> The Israeli Defense Forces Defense Regulations (Emergency), 1945 Declaration of an Unauthorized Organization (3 Nov, 2021) [https://www.alhaq.org/cached\\_uploads/download/2021/11/07/military-order-english-1636315718.pdf](https://www.alhaq.org/cached_uploads/download/2021/11/07/military-order-english-1636315718.pdf) (unofficial english translation); *Alert: Israel takes Alarming Steps to Enforce its Persecution of Six Palestinian Organisations in the West Bank, International Community Must Intervene*, AL-HAQ (7 Nov. 2021) <https://www.alhaq.org/advocacy/19179.html>.

<sup>80</sup> Nir Hasson, *Two Weeks on, Israeli Army Extends Palestinian NGO Terror Designation to West Bank*, HAARETZ (7 Nov. 2021) <https://www.haaretz.com/israel-news/.premium-two-weeks-on-israeli-army-extends-palestinian-ngo-terror-designation-to-west-bank-1.10361491?v=1636651409195>.

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<sup>81</sup> *Joint Statement: Draconian Measure Against Human Rights*, B'TSELEM (25 Oct. 2021), [https://www.btselem.org/press\\_releases/20211025\\_draconian\\_measure\\_against\\_human\\_rights](https://www.btselem.org/press_releases/20211025_draconian_measure_against_human_rights).

<sup>82</sup> *Israel's "Terrorism" Designation an Unjustified Attack on Palestinian Civil Society – Bachelet*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27708&LangID=E>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> S/RES/1456 (2003), [https://www.undocs.org/S/RES/1456%20\(2003\)](https://www.undocs.org/S/RES/1456%20(2003)).

<sup>86</sup> *Israel Designates 6 Palestinian Human Right Groups as Terrorist Organizations*, NAT'L PUB. RADIO, (23 Oct. 2021) <https://www.npr.org/2021/10/23/1048690050/israel-palestinian-human-right-groups>.

<sup>87</sup> Human Rights Defenders Fund, *supra* note 13, at 25-26; Chaim Levinson and Noa Landau, *How a Right-wing NGO's Agenda Became Israeli Government Policy*, HAARETZ (30 Oct. 2018), <https://www.haaretz.com/israel-news/.premium-how-a-right-wing-ngo-s-agenda-became-israeli-government-policy-1.6551076>.

<sup>88</sup> Im Tirzu defines its mission as the following: "We aim to protect Zionism when it comes under attack within Israel. Unknown to many is the fact that there are widespread efforts to delegitimize Israel from within, whether it is in the form of BDS or subverting sovereign policies." *Who We Are*, IM TIRZU, <https://imti.org.il/en/about-us/movement/>. See, e.g., Sarah Levi, *Right-wing NGO Im Tirzu Accuses Hebrew University of Promoting BDS*, THE JERUSALEM POST (28 Nov. 2017), <https://www.jpost.com/israel-news/right-wing-ngo-im-tirzu-accuses-hebrew-university-of-promoting-bds-515404> (describing Im Tirzu as a "a right-wing NGO known for campaigning against non-right-wing NGOs."). The Jerusalem Post reported that Im Tirzu protested a Hebrew University event that featured representatives from the Coalition of Women for Peace, describing the Coalition as an "organization that leads boycott campaigns against Israeli banks, security companies like Elbit and G4S, and . . . the Norwegian Government Pension Fund's decision to divest from Israel." The Chairman of Im Tirzu also referred to the BDS movement as "the embodiment of new antisemitism." See also Shlomo Piotrovsky, *Im Tirzu Video Won't be Probed for 'Incitement'*, ARUTZ SHEVA (24 Jan. 2016) (referencing a video Im Tirzu published that referred to the heads of B'Tselem and Breaking the Silence as "[living] among us as foreign agents. When we fight terror, they fight against us.").

<sup>89</sup> NGO Monitor defines itself as the following: "NGO Monitor is a globally recognized research institute promoting democratic values and good governance. We work to ensure that decision makers and civil society operate in accordance with the principles of accountability, transparency, and universal human rights." *About NGO Monitor*, NGO MONITOR, <https://www.ngo-monitor.org/>; See, e.g., Benjamin Weinthal, *NGO Monitor Urges Germany to Halt Antisemitic Aid Arm in Gaza, West Bank*, THE JERUSALEM POST (31 Mar. 2018) ("The Jerusalem-based NGO Monitor called on the German government on Friday to immediately halt the activities and funding of its Corporation for International Cooperation operating in Jordan, the West Bank, the Gaza Strip and the Federal Republic because of widespread antisemitism spread by employees of the humanitarian relief organization."); But see Yossi Alpher, *NGO Monitor Needs a Monitor*, THE FORWARD (25 Dec. 2009). "[NGO Monitor] seems dead set on eliminating human rights monitoring of Israel entirely and smearing anyone who supports this vital activity. In so doing, NGO Monitor is running roughshod over some important organizations that are working to maintain Israel's integrity in the context of its ongoing occupation of the West Bank."

<sup>90</sup> See, e.g., *Ad Kan Report Exposes Breaking the Silence's Lies*, ARUTZ SHEVA (9 Mar. 2021) (describing a report Ad Kan published to allegedly "[expose] the lies spread by the Breaking the Silence operation after Operation Protective Edge in 2014."). Ad Kan claims that "the lies and distortions that Breaking the Silence tells about the State of Israel have tremendously damaged Israel as a whole, and these soldiers in particular." The organization also stated: "Breaking the Silence took advantage of the naivete of soldiers in order to carry out an international campaign to besmirch Israel." *Id.*

<sup>91</sup> See generally Josh Nathan Kazis, *Israeli Government Teams Up With Far-Right U.S. Jewish Funders For Anti-BDS Effort*, THE FORWARD (26 Sept. 2018), <https://forward.com/news/411028/israeli-government-teams-up-with-far-right-us-jewish-funders-for-anti-bds/> (describing Kela Shlomo as "an effort by Israel's Ministry of Strategic Affairs, at least in part, to fund anti-BDS activities outside of Israel that won't be attributable to the government itself.").

<sup>92</sup> See, e.g., *10 Years in, Shurat Hadin Fights Iranian Terrorism and BDS in International Courts*, THE JERUSALEM POST (10 Nov. 2013) <https://www.jpost.com/national-news/10-years-in-shurat-hadin-fights-iranian-terrorism-and-bds-in-international-courts-331189> (reporting on Shurat Hadin's class action lawsuit against Sydney University Prof. Jake Lynch for his participation and public support of boycotts of Israel, brought in the Federal Court of Australia under the Racial Discrimination Act of 1975).

<sup>93</sup> Canary Mission defines itself in the following way: "Canary Mission documents individuals and organizations that promote hatred of the USA, Israel and Jews on North American college campuses. Canary Mission investigates hatred

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across the entire political spectrum, including the far right, far left and anti-Israel activists.” *About Us*, CANARY MISSION, <https://canarymission.org/about>. The Canary Mission website also reads “IF YOU’RE RACIST, THE WORLD SHOULD KNOW.”

[Canary Mission] has been criticized for using ‘McCarthyesque’ tactics to silence freedom of speech, with opponents saying it’s designed to deter its subjects from advocating for Palestine. Associate Professor Samer Ali, director of the Center for Middle East and North African Studies and the Islamophobia Working Group, researches scapegoating and stigma. He called Canary Mission an example of both of these. “It’s a complete surveillance operation,” Ali said. “You’re going to feel like you’re being watched, targeted. The explicit purpose of Canary Mission is to make it difficult for people to graduate and find jobs, internships or apply for funding because any employer who googles them, some of what they’ll find are these blacklists.”

*Canary Mission Blacklists Students, Faculty for Pro-Palestine Views*, MICHIGAN DAILY: UNIVERSITY OF MICHIGAN-ANN ARBOR (2019 Mar. 1).

<sup>94</sup> *NGO Monitor: Shrinking Space, Defaming Human Rights Organizations that Criticize the Israeli Occupation* POL’Y WORKING GROUP 14-15 (Sept. 2018), available at: [http://policyworkinggroup.org.il/report\\_en.pdf](http://policyworkinggroup.org.il/report_en.pdf).

<sup>95</sup> *Id.* at 17.

<sup>96</sup> Interviewees # 1-8.

<sup>97</sup> Amal Jamal, *The Rise of ‘Bad Civil Society’ in Israel, Nationalist Civil Society Organizations and the Politics of Delegitimization*, SWP Comment 2018/C 02, (Jan. 2018), at 3 and 5, [https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C02\\_jamal.pdf](https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C02_jamal.pdf).

<sup>98</sup> Interviewee # 5.

<sup>99</sup> *Id.* at 5. Interviewee # 1.

<sup>100</sup> See e.g., *The Anonymous Blacklist Behind Israel’s Tactics Against pro-Palestinian Activists*, THE FORWARD (7 Aug. 2018) (“The site [Canary Mission], which is applauded by some pro-Israel advocates for harassing hardcore activists, is now being used as an intelligence source on thousands of students and academics by Israeli officials with immense power over people’s lives.”); Amal Jamal, *The Rise of ‘Bad Civil Society’ in Israel, Nationalist Civil Society Organizations and the Politics of Delegitimization*, SWP Comment 2018/C 02, (Jan. 2018), at 3 and 5, [https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C02\\_jamal.pdf](https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C02_jamal.pdf); *NGO Monitor: Shrinking Space, Defaming Human Rights Organizations that Criticize the Israeli Occupation* POL’Y WORKING GROUP 9 (Sept. 2018), available at: [http://policyworkinggroup.org.il/report\\_en.pdf](http://policyworkinggroup.org.il/report_en.pdf).

<sup>101</sup> Kay Guinane, *THE ALARMING RISE OF LAWFARE TO SUPPRESS CIVIL SOCIETY: THE CASE OF PALESTINE AND ISRAEL* 18 (2021).

<sup>102</sup> See Appendix A, Q.7.

<sup>103</sup> See Appendix A, Q.7.

<sup>104</sup> See Appendix A, Q.7.

<sup>105</sup> Interviewee # 6.

<sup>106</sup> See Appendix A, Q.25.

<sup>107</sup> *NGO Monitor: Shrinking Space, Defaming Human Rights Organizations that Criticize the Israeli Occupation* POL’Y WORKING GROUP 9 (Sept. 2018), available at: [http://policyworkinggroup.org.il/report\\_en.pdf](http://policyworkinggroup.org.il/report_en.pdf).

<sup>108</sup> Human Rights Defenders Fund, *supra* note 13, at 25.

<sup>109</sup> Adri Nieuwhof, “Israel Enraged by French Human Rights Prize,” *Electronic Intifada*, 14 December 2018, <https://electronicintifada.net/blogs/adri-nieuwhof/israel-enraged-french-human-rights-prize>

<sup>110</sup> *NGO Monitor: Shrinking Space, Defaming Human Rights Organizations that Criticize the Israeli Occupation* POL’Y WORKING GROUP 15 (Sept. 2018), available at: [http://policyworkinggroup.org.il/report\\_en.pdf](http://policyworkinggroup.org.il/report_en.pdf).

<sup>111</sup> Interviewees # 1, 4; see Human Rights Defenders Fund, *supra* note 13, at 28 (Israel’s policy “puts pressure on governments, institutions, organizations and communities that rely on government funding, as well as on top officials within ministries, to refrain from collaborating with HRDs, deny them a platform and avoid meetings with them, thus preventing them from presenting their positions and criticisms and, in turn, obviating the need to address their allegations in public.”).

<sup>112</sup> Interviewees #1,4, 5; BEN WHITE, *CRACKS IN THE WALL: BEYOND APARTHEID IN PALESTINE* 94 (2018).

<sup>113</sup> Interviewee #4.

<sup>114</sup> See Appendix A, Q.22.

<sup>115</sup> See *id.* (explaining donors have refused to fund work related to BDS, the International Criminal Court, and legal assistance to human rights defenders).

<sup>116</sup> See Appendix A, Q.22. The organization, UK Lawyers for Israel, has worked to terminate credit card facilities for well-established human rights organizations, including Al Haq, Women’s Affairs Technical Committee, Union of



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Agricultural Work Committees and the Alternative Information Centre; *See* UK Lawyers for Israel, *Credit Card Donations to Terrorist Linked NGOs Terminated* UK LAWYERS FOR ISRAEL (3 May 2018), <http://www.uklfi.com/credit-card-donations-to-terrorist-linked-ngos-terminated.>; Human Rights Defenders Fund, *supra* note 13, at 26.

<sup>117</sup> *See* Appendix A, Q.22.

<sup>118</sup> Interviewee #1. *See also* Appendix A, Q.22 (6/10 endorsed the statement “[w]e have had internal conversations about our strategy and communications.”)

<sup>119</sup> Interviewee # 4.

<sup>120</sup> Interviewee # 9.

<sup>121</sup> Interviewee # 6.

<sup>122</sup> Interviewees # 8, 4.

<sup>123</sup> *See supra* III.A Anti-BDS Legislation.

<sup>124</sup> Amicus Curiae Brief by Amnesty International Interior et Submitted in Administrative Appeal 2966/19 Human Rights Watch et al. v. Minister of al, index number MDE 15/0745/2019 4 (18 July 2019); *See* <https://www.amnesty.org/en/documents/mde15/0745/2019/en/> (noting that Israel has denied Amnesty International entry into the Gaza Strip since 2012).

<sup>125</sup> Interviewee # 4.

<sup>126</sup> *See supra* note 112-115 and accompanying text; Human Rights Defenders Fund, *supra* note 13, at 25.

<sup>127</sup> Interviewee # 6.

<sup>128</sup> Interviewee # 4.

<sup>129</sup> Information contained in this section is sourced from Al-Marsad, including its *Objection to the National Infrastructure Plan (NIP)/47 - Wind Turbines in North Golan* (28 June 2020), submitted to the National Infrastructure Committee.

<sup>130</sup> *Report on the State of Israel's Violations of the International Covenant on Civil and Political Rights On the Occasion of the Human Rights Committee's 2020 Review of the State of Israel's Implementation of the International Covenant on Civil and Political Rights*, submitted by AL-MARSAD, ARAB HUMAN RIGHTS CENTRE IN GOLAN HEIGHTS, at 5, (2021).

<sup>131</sup> AL-MARSAD, WINDFALL – THE EXPLOITATION OF WIND ENERGY IN THE OCCUPIED SYRIAN GOLAN 39 (1 Jan. 2019) <http://golan-marsad.org/wp-content/uploads/Windfall-%E2%80%93-The-Exploitation-of-Wind-Energy-in-the-Occupied-Syrian-Golan.pdf> (last accessed 5 Sept. 2020).

<sup>132</sup> *Id.* at 39–49.

<sup>133</sup> *Id.* at 50.

<sup>134</sup> *UN Guiding Principles on Business and Human Right: Implementing the United Nations “Protect, Respect, and Remedy” framework* (2011), [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf); UN Special Rapporteur’s letter to Israel at 8 (on file with author).

<sup>135</sup> *Quarterly Report for the Period Ended on March 31, 2018*, ENERGIX RENEWABLE ENERGIES LTD. 2 (2018), <http://www.energix-group.com/uploads/1543916188.pdf>.

<sup>136</sup> AL-MARSAD, *Al-Marsad Submits Response to Energix Lawsuit*, AL-MARSAD (1 Oct. 2019) <https://golan-marsad.org/al-marsad-submits-response-to-energix-lawsuit/> (last accessed 5 Sept. 2020).

<sup>137</sup> Energix alleged the following in its complaint against Al-Marsad (on file with author).

1. As is well known, around the world, the BDS movement (acronym for Boycott, Divestment, and Sanctions) operates through an international campaign calling for pressure on the State of Israel through an economic, academic and cultural boycott.

2. Most BDS operations are carried out outside the borders of the State of Israel, but absurdly, some of the operations are also carried out within the State of Israel itself, through citizens and residents of the state.

Thus, the defendant, as part of the global BDS movement, and together with an anti-Zionist group of local activists in the Golan Heights, recently launched a campaign aimed at thwarting and delaying the establishment of a national infrastructure project in the field of renewable energy.

(Hereinafter: “the Project”)

4. In order to achieve their wrongful purpose, the defendant maliciously made a number of publications that include, among other things, misleading, defamatory and false information about the plaintiffs and the project, and even call for a boycott of the project, and specifically for its boycott in the Golan Heights, which is supposedly occupied Syrian territory.

5. As will be explained below, this is a tort under the Prohibition of Defamation Law and a tort under section 2 of the Law for the Prevention of Damage to the State of Israel through a boycott.

*See* Complaint, CivC 33745-06-19 Energix v. Al-Marsad, (16 June 2019) (Isr.).

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<sup>138</sup> AL-MARSAD, *supra* note 104..

<sup>139</sup> U.N. Human Rights Council, *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*, AL ISR 16/19, (20 Jan. 2020).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> The cases pending in Nazareth Magistrate’s Court are: Energix v. Mahmood Abu Saleh 46413-06-19, Energix v. Taufeek Abu Saleh 65795-06-19, Energix v. Salem abu Jabal 65820-06-19, Energix v. salman awad 65844-06-19, Energix v. Hasan Abu Saleh.

<sup>143</sup> Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, ¶ 11 at 3, (12 Sept. 2011)..

<sup>144</sup> U.N. Human Rights Council, *12 Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/25/55, ¶ 129, (28 July 2011).

<sup>145</sup> Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, ¶ 8 at 3, (12 Sept. 2011) (stating that “the positive obligations on State Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”); *see also Gauthier v. Canada*, Communication No. 633/1995 Human Rights Committee, (7 Apr. 1999). For more on “semi-State” entities, *See Hertzberg et al. v. Finland*, Communication No. 61/1979, Human Rights Committee (2 Apr. 1982).

<sup>146</sup> Mission to Israel and the Occupied Palestinian Territory: Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, 10 March 10 2006; Promotion and protection of human rights: Human rights defenders: Report of the Special Representative of the Secretary-General, Hina Jilani (22 Mar. 2006) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/119/58/PDF/G0611958.pdf?OpenElement>; *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, Michel Forst (20 Feb. 2017) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/038/21/PDF/G1703821.pdf?OpenElement>.

<sup>147</sup> U.N. Human Rights Council, *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*, AL ISR 16/19, (20 Jan. 2020).

<sup>148</sup> *Government of Israel’s Response to Joint Appeal*, Reference: AL ISR 16/19, at 5 (20 Mar. 2020).

<sup>149</sup> UNGA, International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, A/RES/3068(XXVIII), Article II(f), [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10 International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10%20International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf)

<sup>150</sup> UNGA, Rome Statute of the International Criminal Court, 17 July 1998, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>