

Submission by the Diakonia IHL Centre for the Human Rights Committee's review of Israel's Fifth Periodic Report

134th session of the Human Rights Committee (28 February – 25 March 2022)

Introduction

The IHL Centre avails itself of the opportunity, in lieu of submitting a formal shadow report, to draw the Committee's attention to three recent publications that provide legal analysis on concerns identified in the Committee's List of Issues dated 7 September 2018 (UN Doc. [CCPR/C/ISR/QPR/5](#)). The IHL Centre's analysis relates specifically to Israel's conduct in respect of the following:

1. Respect for **freedom of expression, peaceful assembly and association** (Arts. 19, 21 and 22 of the ICCPR and [para. 24\(c\) of the List of Issues](#));
2. Israel's **counter-terrorism legislation and wider counter-terrorism policy** ([para. 5 of the List of Issues](#));
3. Israel's compliance with the **right to life** (Art. 6 of the ICCPR and [paras. 13\(a\), \(b\) and \(c\) of the List of Issues](#));
4. The **constitutional and legal framework within which the Covenant is implemented** ([paras. 2\(b\) and \(c\) of the List of Issues](#));
5. Israel's compliance with the Covenant's **non-discrimination provisions** as well as **respect for private life and protection of the family** (Arts. 2 and 17 of the ICCPR and [paras. 8\(a\), \(b\) and \(d\) as well as 22\(c\) of the List of Issues](#)); and
6. Israel's compliance with the **right to be free from torture or inhuman treatment, the right to liberty and security of person**, and the obligation to **treat persons deprived of their liberty humanely** (Arts. 7, 9 and 10 of the ICCPR and [paras. 15\(b\), \(c\) and 16 of the List of Issues](#)).

The three publications are annexed to this letter, and their relevance is explained further below.

1. **Designation of Six Palestinian Civil Society Organizations as "Terrorist/Unlawful Organizations" in Israel and in the oPt: Questions and Answers ([Designation Q&A](#))**

The IHL Centre published a Q&A in November 2021, following the announcement by the Israeli Ministry of Defence that it has designated six prominent Palestinian civil society organizations as

“terrorist organizations”.¹ Corresponding orders by the military commander in the occupied West Bank declaring five of the organizations “unlawful” followed shortly thereafter (the sixth organization had already been so declared previously).

The Q&A provides legal analysis *inter alia* on the following issues:

- (a) The legal bases used by Israel for the designations and declarations;
- (b) The consequences of the designations and declarations for the six organizations and their staff;
- (c) Measures that the six organizations can take against the designations and declarations;
- (d) The international legal framework governing Israel’s conduct in the oPt;
- (e) Whether the declaration of the organizations as “unlawful” in the oPt is in line with the limitations that IHL imposes on Israel as the occupying power;
- (f) Whether enforcement of the military orders in the oPt would be in conformity with Israel’s obligations under IHL;
- (g) The main human rights concerns regarding the designations and declarations;
- (h) How the designations and declarations impact the enjoyment of the rights to freedom of expression and association protected under IHRL; and
- (i) Specific protections that the six organizations enjoy as human rights defenders.

The Q&A thus directly relates to Israel’s respect for the **rights to freedom of expression and association as protected in Arts. 19 and 22 of the ICCPR** ([Questions 7 and 8 of the Designation Q&A](#)), and further provides information on “acts of threats against and harassment, detention and arrests of human rights defenders and civil society organizations, particularly those working on international accountability for violations of human rights and humanitarian law” as identified in [para. 24\(c\) of the List of Issues](#) ([Questions 2, 3, 9 and 10 of the Designation Q&A](#)).

Since the designations and declarations were made pursuant to, respectively, Israel’s Counter-Terrorism Law of 2016 and the Defence (Emergency) Regulations of 1945 which Israel enforces in the West Bank, the Q&A also speaks to Israel’s **counter-terrorism legislation and wider counter-terrorism policy**. In particular, the Q&A may inform the Committee’s assessment of whether Israel has taken

¹ The six organizations are the Union of Agricultural Work Committees (UAWC); Defense for Children International-Palestine (DCIP); Al-Haq; the Bisan Center for Research and Development; Addameer-Prisoner Support and Human Rights Association; and the Union of Palestinian Women’s Committees (UPWC).

sufficient measures to “ensure that definitions of terrorism are precise, are limited to countering terrorism, and are in full conformity with the Covenant” as stipulated in [para. 5 of the List of Issues \(Questions 1, 7 and 8 of the Designations Q&A\)](#).

II. The Use of Force in Law Enforcement in the oPt: Questions and Answers (UoF Q&A)

In December 2021, the IHL Centre published a Q&A on the international legal framework governing the use of force in law enforcement by Israeli forces in the oPt, specifically in the context of demonstrations. The Q&A responds to long-standing concerns regarding Israel’s compliance with applicable international standards as well as recent reports that the Israeli army now allows its forces to open fire at Palestinians who threw stones even as they are backing away.

The Q&A provides legal analysis on the following issues, amongst others:

- (a) Which bodies of international law regulate the use of force in armed conflict;
- (b) How international law regulates the use of force in law enforcement;
- (c) Whether the existence of an armed conflict, including occupation, influences how force can be used in law enforcement;
- (d) Israel’s approach to law enforcement in the oPt and to what extent this approach conforms with international law;
- (e) Which rules on the use of force apply to so-called “main instigators”;
- (f) Whether Israel can use live ammunition to control demonstrations and protests; and
- (g) Which measures are required to ensure accountability for the use of force in law enforcement.

This publication may prove useful for purposes of assessing Israel’s compliance with and respect for the **right to life as enshrined in Art. 6 of the ICCPR**.

Specifically, the Q&A may support the Committee’s evaluation of:

- (a) Measures taken by Israel, if any, to **prevent the excessive use of force against Palestinians** during law enforcement operations, *inter alia* by ensuring that its rules of engagement and regulations on the use of firearms are consistent with Art. 6 of the ICCPR and with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as stipulated in [para. 13\(a\) of the List of Issues \(Questions 4 and 5 of the UoF Q&A\)](#);

- (b) The **rules governing the use of live ammunition** employed in the context of law enforcement or other relevant security operations as identified in para. 13(b) of the List of Issues ([Question 6 of the UoF Q&A](#)); and
- (c) Whether Israel has launched **thorough, effective and independent investigations** into all allegations of excessive use of force by law enforcement officers and taken steps to ensure prosecution and punishment where allegations are proven, as well as effective remedies for victims or their families as stipulated in para. 13(c) of the List of Issues ([Question 7 of the UoF Q&A](#)).

III. **Resurging Violence and Hostilities in Israel-Palestine: Legal Brief** ([Resurgence Legal Brief](#))

In response to resurging violence and hostilities in the Israeli-Palestinian context in May 2021, the IHL Centre published a legal brief containing detailed analysis on various thematic issues including:

- (a) The legal framework applicable to Israel's conduct in the oPt;
- (b) Demographic and other changes in the occupied territory;
- (c) Excessive use of force against Palestinian protesters in the context of civil unrest and law enforcement activities in the oPt;
- (d) The arrest and detention of Palestinian protesters including children, at times with considerable physical force;
- (e) Access to consecrated religious sites and other religious freedoms in the oPt; and
- (f) Conduct of hostilities and the prohibition of indiscriminate attacks.

The legal brief may be particularly relevant for the Committee's analysis of the following issues:

- (a) Assessment of the **constitutional and legal framework within which the Covenant is implemented** ([Topic 1 of the Resurgence Legal Brief](#)). In particular, this may inform the Committee's assessment of steps Israel has taken to review its legal position so as to acknowledge:
 - i. The extraterritorial application of the Covenant under certain circumstances (para. 2(b) of the List of Issues); and
 - ii. That the applicability of IHL during armed conflict including occupation does not preclude the application of the Covenant (para. 2(c) of the List of Issues).
- (b) Evaluation of Israel's compliance with the Covenant's **non-discrimination provisions**, including Art. 2 of the ICCPR, as well as **respect for private life and protection of the**

family as enshrined in Art. 17 of the ICCPR ([Topic 2 of the Resurgence Legal Brief](#)). In particular, this may be useful for the Committee's evaluation of:

- i. Measures taken, if any, to cease construction and expansion of settlements in the oPt, including East Jerusalem, and all settlement-related activities, including the transfer of Israel's population to occupied territory ([para. 8\(a\) of the List of Issues](#));
- ii. Steps taken, if any, to refrain from interfering with the ownership and use of Palestinian property, particularly by putting an end to expropriations, confiscations, requisitions and encroachment in the oPt, including East Jerusalem ([para. 8\(b\) of the List of Issues](#));
- iii. Measures taken, if any, to ensure that Palestinians in the oPt, including East Jerusalem, have non-discriminatory access to land, natural resources, water and sanitation ([para. 8\(d\) of the List of Issues](#)); and
- iv. Measures taken, if any, to ensure that the authorities refrain from implementing evictions and demolition orders affecting Palestinians, and information on available legal measures for protection and due process guarantees ([para. 22\(c\) of the List of Issues](#)).

(c) Compliance with the **right to life** as enshrined in Art. 6 of the ICCPR and **respect for freedom of expression, peaceful assembly and association** as guaranteed in Arts. 19, 21 and 22 of the ICCPR ([Topic 3 of the Resurgence Legal Brief](#)). Like the aforementioned UoF Q&A, this part of the Resurgence Legal Brief may speak to, in particular:

- i. Measures taken by Israel, if any, to prevent the excessive use of force against Palestinians during law enforcement operations, *inter alia* by ensuring that its rules of engagement and regulations on the use of firearms are consistent with Art. 6 of the ICCPR and with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ([para. 13\(a\) of the List of Issues](#));
- ii. The rules governing the use of live ammunition employed in the context of law enforcement or other relevant security operations ([para. 13\(b\) of the List of Issues](#)); and
- iii. Whether Israel has launched thorough, effective and independent investigations into all allegations of excessive use of force by law enforcement officers ([para. 13\(c\) of the List of Issues](#)).

- (d) Compliance with the **right to be free from torture or inhuman treatment, the right to liberty and security of person**, and the obligation to **treat persons deprived of their liberty humanely** as guaranteed by Arts. 7, 9 and 10 of the ICCPR ([Topic 4 of the Resurgence Legal Brief](#)). In particular, this may support the Committee’s review of:
- i. Conditions of arrest for Palestinians, including Palestinian children, and steps taken, if any, to ensure that arrests are conducted in accordance with the Covenant ([para. 15\(b\) of the List of Issues](#));
 - ii. Measures taken, if any, to ensure that detention of children is used as a measure of last resort only ([para. 15\(c\) of the List of Issues](#));
 - iii. Information on administrative detention, particularly in relation to the detention of Palestinians ([para. 16 of the List of Issues](#)).

Conclusion

The IHL Centre is grateful for the opportunity to present these publications to the Human Rights Committee to support its review of Israel’s compliance with the ICCPR at its 134th session and remains available to the Committee for questions or further inquiries.

A full list of the IHL Centre’s publications can be viewed on its [website](#).

Jerusalem, 26 January 2022

ANNEX I:

Designation of six Palestinian civil society organizations as “terrorist/unlawful organizations” in Israel and in the occupied Palestinian territory: [Questions and Answers](#), November 2021.

ANNEX II:

The use of force in law enforcement in the occupied Palestinian territory: [Questions and Answers](#), December 2021.

ANNEX III:

Resurging violence and hostilities in Israel-Palestine: [Legal Brief](#), May 2021.

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About the Diakonia International Humanitarian Law Centre

The Diakonia International Humanitarian Law Centre promotes respect for the laws of war through independent research, advice, and advocacy. Since its establishment in 2004, the Centre's Jerusalem Desk has been a source of legal expertise supporting humanitarian and human rights action in the Israeli-Palestinian context.

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