

January 31, 2022

Written Submission of NGO Monitor to the Human Rights Committee for the Consideration of the Periodic Report of Israel (134th Session)

Introduction

NGO Monitor¹ presents this submission in advance of the consideration of the periodic report of the State of Israel and its compliance with the International Convention on Civil and Political Rights (ICCPR) at the 134th session of the Human Rights Committee (Committee). We hope that this submission will aid the Committee for its review and in the preparation of its report.

Israel is a vibrant parliamentary democracy facing many complex challenges, such as balancing the individual rights of its population (including its Arab minority) with the need to protect against daily attacks on its civilians emanating from Hamas-controlled Gaza, the West Bank, and Hezbollah-controlled Southern Lebanon. The civil society (NGO) network in Israel, the West Bank, and Gaza is thriving and often provides valuable humanitarian assistance, including health services, education, and other basic requirements under difficult conditions. Regrettably, however, this network also often plays a counterproductive role in the Arab-Israeli conflict.

As NGO Monitor and others have systematically documented, human rights NGOs often produce reports and launch campaigns that stand in sharp contradiction to their own mission statements claiming to uphold universal values. They regularly obscure or remove the context of terrorism, provide incomplete statistics and images, and disseminate gross distortions of the humanitarian and human rights dimensions of the Arab-Israeli conflict. This activity often stresses the rights of Palestinians to the exclusion of Israelis, and promotes the protection of some human rights at the expense of more fundamental rights such as the right to life or the right to self-defense. Moreover, violations of human rights and international humanitarian law committed by Palestinian actors and terror groups such as Hamas are ignored or minimized. As a result, NGO publications and campaigns provide an incomplete and often non-credible picture of the state of human rights in Israel.

In conjunction with the factual distortions and missing context, these publications also twist beyond all logical meaning international law relating to human rights and armed conflict. For

¹ Members of NGO Monitor's Advisory Board include Elliott Abrams, Senior Fellow for Middle Eastern Studies at the Council on Foreign Relations; former Canadian Ambassador to Israel, Amb. Vivian Bercovici; Michal Cotler-Wunsh, former member of Knesset for the Blue and White Party; Hon. Michael Danby, MP, senior member of the Australian Labor Party; Harvard Professor Prof. Alan Dershowitz; Canadian Senator, Hon. Linda Frum; best-selling author and commentator and British journalist and international affairs commentator, Tom Gross; Bonnie Glick, former Deputy Administrator and Chief Operating Officer of USAID; Colonel Richard Kemp, former commander of British forces in Iraq and Afghanistan; Douglas Murray, Director of the Centre for Social Cohesion, best-selling author and commentator; former Member of Italian Parliament, Hon. Fiamma Nirenstein, UCLA Professor and President of the Daniel Pearl Foundation, Prof. Judea Pearl; US Jurist and former Legal Advisor to the State Department Judge Abraham Sofaer; Dr. Einat Wilf, former member of Knesset with the Israel Labor Party and advisor to Shimon Peres; Harvard Professor Prof. Ruth Wisse; R. James Woolsey, former US Director of Central Intelligence; and Israeli Supreme Court Justice, Justice Elyakim Rubinstein.

example, rights cannot be assessed in a myopic and isolated framework. The vast majority of individual rights are not absolute, and governments are tasked with the difficult work of interpreting and balancing different rights, the realization of which may create conflicts and tensions. Otherwise, it would be impossible for society to function. Too many NGOs and even UN committees do not take these vital points into consideration. NGOs also often view individual rights in the abstract or invent interpretations of ICCPR provisions that extend beyond the intended meaning.

These processes end up diluting and weakening the very rights at issue. Moreover, they play into the hands of critics who claim that international human rights law is of minimal value because it is devoid of specific and applicable content. If human rights law is so abstract, inflexible, and incompatible with the real world and the complex issues and problems facing society, then it serves no purpose.

Unfortunately, the majority of distorted factual and legal claims presented to the Committee are simply recycled and reinforced by a closed and narrow circle of individuals and organizations. There is little to no critical evaluation or independent verification of this information, which leads to unworkable and unproductive policy prescriptions.

In addition, as in past sessions, several claims made to the Committee are expressions of antisemitism as defined by the IHRA Working Definition of Antisemitism. The Definition has been adopted by UN Secretary General Antonio Guterres, Special Rapporteur Ahmed Shaheed, the European Union, more than 30 countries, and hundreds of public agencies and organizations worldwide.² We urge the Committee to adopt the IHRA definition to guide and inform its work relating to Israel and other countries dealing with the scourge of antisemitism.

To date, several NGOs have submitted lengthy statements to the Committee regarding the forthcoming March 2022 review of Israel. The following examples highlight multiple distortions and false claims in such submissions to the HRC:

Right to Self-Determination (Article 1)

The right to self-determination is a core principle in the ICCPR. All too often, however, in UN frameworks (particularly the Human Rights Council) and in publications relating to Israel, including those presented to this committee, self-determination rights are presented as if they belong to the Palestinians alone; the equal rights of the Jewish people are ignored. Moreover, many of these statements seek to erase or deny the Jewish historical presence and connection to the region.

Several, for instance, repeatedly and offensively accuse Israel of engaging in a policy of “Judaization”. The PLO developed the term “Judaization” to erase the Jewish historical connection to the region, as well as to suggest that the very presence of Jews is alien and unacceptable. The use of the term Judaization, therefore, is an expression of anti-Jewish racism. While it is perhaps not surprising that the PLO would employ such terminology, it is immoral for

² <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism/adoption-endorsement>

human rights organizations to use phrases supporting ethnically-based exclusion. In addition to erasing the self-determination rights of the Jewish people, many NGOs distort this vital concept as it applies to Palestinians.

Between 1993-95, the State of Israel and the Palestine Liberation Organization (designated representative of the Palestinian people) freely entered into a series of agreements (Oslo Accords) regarding the governance and administration of the West Bank and Gaza. These agreements established the Palestinian Authority, the governmental body for the Palestinian people that exercises jurisdiction over more than 95% of the Palestinian population. In 2005, Israel relinquished all claims to the territory of Gaza and removed its armed forces and civilian population. Since that time, Gaza has been entirely self-governing. In 2006, Palestinians elected the Hamas terrorist organization as the majority party in power. In 2007, Hamas took over total control of the Palestinian Authority in Gaza and expelled the Fatah party in a bloody civil clash.

Jewish Self-Determination

Unfortunately, since the founding of Israel in 1948, the discourse of international law and human rights and associated institutions have been used to widely attack the legitimacy of the Jewish State and to intimidate its Jewish citizens. In these contexts, the right of the Jewish people to self-determination, Zionism (the movement founded to realize this right), and the modern State of Israel are often characterized as threats to the post-World War II international legal order, on par with the contemporary world's worst evils – racism, colonialism, imperialism, and apartheid. The nation-state of the Jewish people and their right to self-determination are characterized as illegitimate and illegal, and Israel is portrayed as the primary violator of international norms, based on false claims, extreme double standards, and highly disproportionate focus. Actual racist practices of surrounding Arab states – such as slavery, extreme gender and religious discrimination, and segregation – are ignored, creating an entirely artificial framework to attack Israel.³

These efforts represent the latest manifestation of antisemitism. As Former Swedish Deputy Prime Minister Per Ahlmark remarked, while “anti-Zionists accept the right of other peoples to national feelings and a defensible state... they reject the right of the Jewish people to have its national consciousness expressed in the state of Israel and to make that state secure.” According to Ahlmark, “anti-Semites of different centuries had always aimed at destroying the then center of Jewish existence...today, when the Jewish State has become a center of identity and a source of pride and protection for most Jews, Zionism is being slandered as a racist ideology.”⁴

³ Gerald M. Steinberg and Anne Herzberg, “The Role of International Legal and Justice Discourse in Promoting the New Antisemitism,” in *Anti-Zionism and Antisemitism: The Dynamics of Delegitimization* edited by Alvin H. Rosenfeld, September 1, 2019: http://www.iupress.indiana.edu/product_info.php?products_id=809541

⁴ Manfred Gerstenfeld, *The War of a Million Cuts: The Struggle against the Delegitimization of Israel and the Jews, and the Growth of New Anti-Semitism*, Jerusalem Center for Public Affairs, May 12, 2015: <https://www.amazon.com/War-Million-Cuts-Delegitimization-Anti-Semitism/dp/1618613413> (p31).

Importantly, in his report published on September 20, 2019⁵ and in his remarks to the General Assembly on October 17, 2019, the UN Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, clearly explains this phenomenon:

“17. The Special Rapporteur also takes note of numerous reports of an increase in many countries of what is sometimes called “left-wing” antisemitism, in which individuals claiming to hold anti-racist and anti-imperialist views employ antisemitic narratives or tropes in the course of expressing anger at the policies or practices of the Government of Israel. In some cases, individuals expressing such views have engaged in Holocaust denial; **in others, they have conflated Zionism, the self-determination movement of the Jewish people, with racism**, claimed that Israel does not have a right to exist and accused those expressing concern about antisemitism of acting in bad faith. . . . He further recalls that the Secretary-General has characterized “attempts to delegitimize the right of Israel to exist, including calls for its destruction” as a contemporary manifestation of antisemitism.”⁶

Right to Life (Article 6)

Article six of the ICCPR states that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Yet, the majority of submissions to the Committee undo this fundamental right as it is applied to Israelis by completely erasing the context of Palestinian terrorism and deliberate attacks on Israeli civilians.

Palestinian Terrorism

The context of Palestinian terrorism continues to be greatly minimized or even ignored by human rights NGOs and UN bodies. In 2021, there were more than 4,300 terror attacks [documented](#) by the Israeli security services. During the conflict in April and May 2021, Palestinian terror groups fired thousands of rockets at Israeli population centers, including salvos of hundreds of rockets simultaneously at Tel Aviv. Rioting incited by Hamas led to attacks on Jews in “mixed cities” in Israel and on roadways in the Negev and Galilee. In Jerusalem, this incitement led to attacks on Orthodox Jews that were filmed and posted on TikTok. On the Jewish holiday of Shavuot, Palestinian rioters attacked a Chabad house with dozens of worshippers inside conducting prayers, and bombed a home in the neighborhood of Abu Tor. A second bomb that failed to detonate was found in the yard of the house.

Violence Against Palestinians

There have been cases of attacks by Jewish settlers against Palestinians. All acts of vigilantism and vandalism are illegal and reprehensible and should be punished to the full extent of the law. The Israeli government must take steps to prevent such activity. Contrary to NGO claims, however, the Israeli government, police, and IDF take extensive steps to prevent and prosecute

⁵ “Report of the Special Rapporteur on freedom of religion or belief,” September 20, 2019: <https://undocs.org/A/74/358>

⁶ Ahmed Shaheed, “Antisemitism is toxic to democracy and must be addressed, says expert,” October 17, 2019: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25160&LangID=E>

perpetrators of such attacks. Government officials repeatedly condemn these attacks. Israeli Foreign Minister Yair Lapid [labeled](#) such attacks “terrorism” and a “stain on Israel” for which there should be “[zero tolerance](#)”.

Articles 6, 7, 9, 14 (provisions pertaining to arrest, detention, and fair trial)

In leveling accusations regarding violations relating to arrest, detention and have referred to detainees as “political prisoners,” falsely implying they are being imprisoned simply for their political beliefs. In fact, these individuals have perpetrated and been convicted of murder and other serious crimes, including bombings, kidnappings, stabbings, and shootings. To accept such a characterization delegitimizes the rule of law and suggests that States are not allowed to try and punish those who have committed crimes. To say that such prosecutions are a violation of the ICCPR is not tenable.

Freedom of Movement (Article 12)

Article 12 of the ICCPR states that every person has “the right to liberty of movement and freedom to choose his residence.” In this context, some NGOs claim that Israel is violating Palestinian “freedom of movement” (Article 12) “by the Israeli-imposed siege [on Gaza].” There is no right in international law for non-citizens to be allowed free entry into a country. Under international law, countries have an absolute right to control their borders and to set conditions for entry.

Moreover, these claims ignore subsection 3 of Article 12, which limits the right to movement within a territory for purposes “necessary to protect national security, public order, public health or morals or the rights and freedoms of others.” Claims relating to Gaza ignore the context of terror including the embedding of rocket launchers and storage of weaponry in civilian buildings, terror tunnels crossing the border into Israel, and the many terror attacks that have taken place at Israeli border crossings, including an April 2008, attack on the Nahal Oz fuel depot, a May 2008 truck bomb attack at the Erez crossing, an August 2012 attack on both Israeli and Egyptian security forces next to the Kerem Shalom Gaza crossing, which resulted in 15 Egyptian soldiers killed. In August 2021, [St.-Sgt. Barel Hadaria Shmueli](#) was fatally wounded by a Palestinian gunman while he was patrolling on the northern Gaza perimeter fence

It is also legally and factually false to claim that Israel has imposed a “siege” on Gaza. Restricting the flow of goods in a war environment does not constitute a “siege” under international law and does not refer to the legal act of retorsion (e.g. sanctions, blockades). In fact, pursuant to Article 23 of the Fourth Geneva Convention (which sets standards for the provision of limited humanitarian aid), Israel has no obligation whatsoever to provide any goods, even minimal humanitarian supplies, if it is “satisfied” that such goods will be diverted or supply of such goods will aid Hamas in its war effort. As numerous accounts have reported, Hamas has diverted supplies from Gaza’s civilian population. Although Israel is under no legal obligation, and despite the diversion as well as attacks on the Israeli border crossings, Israel continues to provide thousands of tons of humanitarian supplies and goods to Gaza on a weekly basis.

Equality before the law/Rights of minorities (article 26/article 27)

Article 26 states that the “law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination.”

Israel: A Democratic Jewish State

As a highly heterogeneous democratic society, the assessment of issues related to discrimination in Israel are complex and are best examined in a number of different dimensions. Israel defines itself as the nation-state of the Jewish people, similar to the definitions of other religious democracies, such as Greece,⁷ Denmark,⁸ the United Kingdom of Great Britain and Northern Ireland,⁹ Pakistan,¹⁰ Bangladesh,¹¹ Costa Rica,¹² and Bhutan.¹³

The Balfour Declaration¹⁴ (1917) and the Mandate of the League of Nations¹⁵ (1920) promised to establish a national home for the Jewish People. On this basis, UNGA Resolution 181 of November 29, 1947, regarding the partition of territory under the British Mandate, refers to the establishment of a “Jewish State.” In this respect, Israel’s Declaration of Independence of May 14, 1948 states that “the Land of Israel was the birthplace of the Jewish people. Here their spiritual, religious and political identity was shaped. Here they first attained to statehood, created cultural values of national and universal significance...After being forcibly exiled from their land, the people kept faith with it throughout their dispersion...”¹⁶

The Declaration also pledges to “foster the development of the country for the benefit of all its inhabitants” and commits the country to promote “freedom, justice and peace as envisaged by the prophets of Israel” to “**ensure complete equality of social and political rights to all its**

⁷ Constantine P. Danopoulos, “Religion, civil society, and democracy in Orthodox Greece,” *Journal of Southern Europe and the Balkans*, Vol. 6. No. 1 (April 2004):

<https://www.tandfonline.com/doi/abs/10.1080/1461319042000187256?journalCode=cjsb19>

⁸ Denmark, “Religion in Denmark,” <http://www.denmark.net/denmark-guide/religion-denmark/#targetText=The%20official%20religion%20in%20the,religions%20recognized%20by%20the%20constitution>.

⁹ British Council, “Religion,” <https://study-uk.britishcouncil.org/moving-uk/student-life/religion#targetText=The%20UK's%20official%20religion%20is.%2C%20Sikhism%2C%20Judaism%20and%20Buddhism>.

¹⁰ World Atlas, “Religion in Pakistan,” <https://www.worldatlas.com/articles/religious-beliefs-and-freedoms-in-pakistan.html>

¹¹ Bangladesh, “Religion in Bangladesh, Culture, Churches,” <https://www.bangladesh.com/culture/religion/>

¹² Costa Rica, “Religion in Costa Rica,” <https://www.costarica.com/culture/religion-in-costa-rica>

¹³ Bhutan, “Religion,” <http://www.bhutan.com/religion>

¹⁴ Arthur James Balfour, “The Balfour Declaration,” Israeli Ministry of Foreign Affairs, November 2, 1917: <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20balfour%20declaration.aspx>

¹⁵ League of Nations, “The Mandate for Palestine,” Israel Ministry of Foreign Affairs, July 24, 1922: <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20mandate%20for%20palestine.aspx>

¹⁶ Israel Ministry of Foreign Affairs, “Declaration of Establishment of State of Israel,” May 14, 1948: <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx>

<https://mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm>

inhabitants irrespective of religion, race or sex ... [and] guarantee freedom of religion, conscience, language, education and culture..." (emphasis added).

On this basis, Israel is a democracy, providing equal voting rights, access to institutions, prohibition of discrimination in employment, and other such dimensions in compliance with Articles 26/27 of the ICCPR. For historical reasons related to unresolved fundamental disagreements, including the complexity of the social fabric as discussed below, Israel does not have a formal written constitution and instead relies on a series of [Basic Laws](#) that establish the foundational aspects of the constitutional order. These include the 1992 "Basic Law: Human Dignity and Liberty," establishing that "basic human rights in Israel are based on the recognition of the value of the human being, the sanctity of his life, and his being a free person"; "Basic Law: Freedom of Occupation," guaranteeing the "right of every citizen or inhabitant to engage in any occupation, profession or trade..."; and "Basic Law: The Knesset," dealing with the electoral system, the right to vote and be elected, etc."¹⁷

Nevertheless, many submissions to the Committee accuse Israel of not only violating Articles 26/27 but also claiming that Israel's very existence as a Jewish country is a form of racism and even apartheid. Such charges can be deemed antisemitism under the IHRA definition of antisemitism. According to the [European Commission Handbook](#) on IHRA published in 2021:

Denying the Jewish people the right to self-determination and a national homeland is antisemitic because it denies the religious and historic ties of Jews to the land of Israel. It evades the fact that the State of Israel was founded in 1948 based on Resolution 181 (II) of the United Nations General Assembly. Moreover, asserting that a country is a racist endeavour, by portraying ambivalent aspects of modern statehood in a demonizing manner exclusive to the State of Israel, is an attempt to undermine the international legitimacy of a country.

Recommendations:

- **The Human Rights Committee Should Adopt the IHRA Working Definitions on Antisemitism and Holocaust Denial.**
- **The Committee should take into account when assessing Israeli compliance with the ICCPR, the regional security context along Israel's borders, including threats emanating from Lebanon, Syria, Sinai, and Gaza, and the ongoing Palestinian campaign of terrorism and incitement.**
- **Submissions to the Committee should be made based on credible and verifiable claims and in line with accepted interpretations of international law, in general, and international human rights law, specifically. Recommendations simply repeating hyperbolic or false claims, or that are premised on aspirational or non-existent**

¹⁷ The Knesset, "Basic Laws," <https://m.knesset.gov.il/EN/activity/Pages/BasicLaws.aspx>

norms of law, do not provide meaningful guidance to the State Party under review to improve its compliance with the ICCPR.

- **The Committee should disclose its methodology regarding evaluation of NGO claims and what specific steps were taken to verify claims relied upon in its concluding report.**