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## مجلس حقوق الإنسان

الدورة العشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير المقرر الخاص المعني بتعزيز وحماية الحق في حرية الرأي والتعبير، السيد فرانك لا رو

إضافة

#### البعثة إلى إسرائيل والأرض الفلسطينية المحتلة\*\*

موجز

يقدم المقرر الخاص المعني بتعزيز وحماية الحق في حرية الرأي والتعبير هذا التقرير إلى مجلس حقوق الإنسان، عملاً بقراري مجلس حقوق الإنسان ٣٦/٧ و٤/١٦. وقد قام المقرر الخاص ببعثة إلى إسرائيل والأرض الفلسطينية المحتلة في الفترة من ٦ إلى ١٧ كانون الأول/ديسمبر ٢٠١١ للوقوف على في حالة الحق في حرية الرأي والتعبير. ويعرض المقرر الخاص في هذا التقرير القضايا الرئيسية التي أثارته قلقه في إسرائيل والضفة الغربية وغزة إزاء التزامات كل من حكومة إسرائيل والسلطة الفلسطينية والسلطات الفعلية.

\* يُعمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعمَّم باللغة التي قُدِّمَ بها فقط.

\*\* تأخر تقديم هذه الوثيقة.

وفي إسرائيل، أعرب المقرر الخاص عن قلقه إزاء المحاولات الحديثة العهد الرامية إلى تقليص حيز النقد داخل إسرائيل بشأن سياساتها وممارساتها للاحتلال، بما في ذلك اعتماد الكنيست مؤخراً لسلسلة من القوانين التقييدية. ولاحظ المقرر الخاص أيضاً معاملة إسرائيل للمواطنين الفلسطينيين معاملة تمييزية ووجود محاولات ترمي إلى تقويض حقهم في حرية الرأي والتعبير.

وفي الأرض الفلسطينية المحتلة، سلط المقرر الخاص الضوء على الحواجز التي يواجهها الصحفيون في أداء عملهم، كنتيجة بالأساس للقيود التي تفرضها حكومة إسرائيل على حرية تنقلهم، والتقسيم الداخلي بين السلطة الفلسطينية في الضفة الغربية والسلطات الفعلية في غزة.

وفي الضفة الغربية، أعرب المقرر الخاص عن قلقه إزاء الاتجاه المقلق المتمثل في تعرض عدد متزايد من الصحفيين والمدافعين عن حقوق الإنسان وأصحاب المدونات للاحتجاز التعسفي والاستجواب على يد قوات أمن السلطة الفلسطينية بسبب تعبيرهم عن آراء انتقادية. وسلط الضوء أيضاً على القيود غير اللازمة التي تفرضها قوات الأمن الإسرائيلية على الحق في حرية التجمع، باعتبار ذلك مجازاً من المجالات المثيرة للقلق.

وفي القدس الشرقية، وجه المقرر الخاص الانتباه إلى القيود التي قد تفرضها حكومة إسرائيل على حق الفلسطينيين في التماس الأفكار والآراء وتلقيها ونشرها.

وفي غزة، أعرب المقرر الخاص عن قلقه إزاء القيود المختلفة التي تفرضها السلطات الفعلية على الحق في حرية التعبير والحق في التجمع.

ويُختتم التقرير بتوصيات إلى حكومة إسرائيل، والسلطة الفلسطينية، والسلطات الفعلية في غزة بشأن القضايا الرئيسية المثيرة للقلق.

## Annex

[English only]

**Report of the Special Rapporteur on the promotion and  
protection of the right to freedom of opinion and expression  
on his mission to Israel and the occupied Palestinian territory**

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	4
II. International legal standards .....	6–8	4
III. International human rights obligations.....	9–13	5
IV. Main issues of concern in Israel.....	14–45	6
A. Lack of sufficient protection of the right to freedom of opinion and expression in domestic legislation.....	15–20	6
B. Prior censorship on issues related to national security .....	21–26	7
C. Restrictive bills and laws which threaten the right to freedom of opinion and expression .....	27–40	8
D. Restrictions on the right to freedom of opinion and expression of minority groups in Israel .....	41–45	10
V. Main issues of concern in the occupied Palestinian territory .....	46–96	11
A. Restrictive provisions in the Press and Publications Law of 1995 .....	48–52	12
B. Defamation as a criminal offence.....	53–55	12
C. Ensuring the independence and effective functioning of the Palestinian Broadcasting Corporation .....	56–57	13
D. Restrictions on the distribution of certain newspapers in the West Bank and Gaza .....	58–60	13
E. Restrictions on freedom of movement of journalists and human rights defenders imposed by Israel .....	61–65	14
F. Attacks against journalists, human rights defenders and bloggers .....	66–75	15
G. Restrictions on the right to peaceful assembly .....	76–89	16
H. Restrictions on the right to freedom of opinion and expression in East Jerusalem imposed by Israel.....	90–96	18
VI. Conclusions and recommendations.....	97–118	19
A. Government of Israel.....	97–108	19
B. Palestinian Authority .....	109–114	21
C. De facto authorities in Gaza .....	115–118	22

## I. Introduction

1. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, carried out a visit to Israel and the occupied Palestinian territory from 6 to 17 December 2011, at the invitation of the Government of Israel and the Palestinian Authority. In Israel, he visited West Jerusalem, Tel Aviv, Be'er Sheva and other surrounding villages in the Negev desert. In the occupied Palestinian territory, he visited East Jerusalem, Ramallah, Nabi Saleh and Gaza.

2. The visit was undertaken with a view to contributing, through effective engagement with all interlocutors, to efforts aimed at enhancing the enjoyment of the right to freedom of opinion and expression for all, without discrimination of any kind. The Special Rapporteur thanks both the Government of Israel and the Palestinian Authority for their invitation and the cooperation extended to him before and during the visit.

3. In Israel, the Special Rapporteur met with the Deputy Prime Minister and Minister of Intelligence and Atomic Energy, Dan Meridor; Spokesperson of the Prime Minister's Office; Deputy Foreign Minister, Daniel Ayalon; Spokesperson of the Ministry of Foreign Affairs; Deputy Director General for International Organizations at the Ministry of Foreign Affairs, Eviatar Manor; Minister of Improvement of Government Services; Spokeswoman for the Minister of Internal Security; Director of the Human Rights Unit at the Ministry of Justice; Director-General of the Ministry of Communications; Minister of Education; Judge Eliakim Rubinstein of the Supreme Court; the Speaker and three Members of the Knesset; State Comptroller (Ombudsman); Deputy Mayor of Tel Aviv; and Head of the Central Command of the Israeli Defense Forces (IDF).

4. In the occupied Palestinian territory, the Special Rapporteur held meetings with the Prime Minister, Minister of Foreign Affairs, Minister of Justice, Minister of Telecommunications and Information Technology, Minister of Women's Affairs, Deputy Minister of Information and Media Affairs, Chief Justice of the Higher Judicial Council, representatives of the Palestinian Broadcasting Authority, members of the Palestinian Legislative Council, Head of Preventive Security, Deputy Minister of Interior, and Head of General Intelligence Services. He also met with the representatives of the de facto authorities in Gaza.

5. In addition, the Special Rapporteur met with journalists, human rights defenders, lawyers, and community leaders in Israel and the occupied Palestinian territory, as well as with representatives from the United Nations country team and the Office of the High Commissioner for Human Rights (OHCHR) in Ramallah. He wishes to express his sincere appreciation for the outstanding support provided to him by the staff of OHCHR and its office in the occupied Palestinian territory.

## II. International legal standards

6. In carrying out his assessment of the situation regarding the enjoyment of the right to freedom of opinion and expression in Israel and the occupied Palestinian territory, the Special Rapporteur is guided primarily by article 19 of the International Covenant on Civil and Political Rights, which provides that:

- (a) Everyone shall have the right to hold opinions without interference;
- (b) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless

of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;

(c) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (i) For respect of the rights or reputations of others;
- (ii) For the protection of national security or of public order (*ordre public*), or of public health or morals.

7. In addition, where relevant, given that peaceful assemblies and demonstrations constitute a form of expressing grievances and opinions, particularly in situations where media freedom is limited, article 21 of the International Covenant on Civil and Political Rights is also relevant to the mandate of the Special Rapporteur.

8. The legal framework of the mandate also includes relevant provisions of international humanitarian law, in particular the four Geneva Conventions of 1949 and their Additional Protocols. As emphasized for example by the Human Rights Committee in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the application of international humanitarian law and international human rights law is not mutually exclusive, but is complementary (para. 11). With regard to the applicability in the occupied Palestinian territory of certain rules of international humanitarian law and human rights instruments, the Special Rapporteur would like to refer to the Advisory Opinion of the International Court of Justice of 9 July 2004, where this issue is discussed in detail.<sup>1</sup>

### III. International human rights obligations

9. Israel has acceded to the main United Nations human rights instruments,<sup>2</sup> including the International Covenant on Civil and Political Rights. With regard to the applicability of the Covenant in the occupied Palestinian territory, the Special Rapporteur underscores that the international human rights obligations of Israel continue to apply in territories under its effective control, as well as during armed conflict.<sup>3</sup>

10. The Palestinian Authority, the Palestine Liberation Organization and the Palestinian Legislative Council have made numerous statements and undertakings through which they have declared themselves bound by international human rights obligations.<sup>4</sup>

11. Although control over the Gaza Strip was officially transferred from Israel to the Palestinian Authority in 2005, it has been under the control of the *de facto* authorities following the Palestinian Legislative Council elections of January 2006. At the same time, despite the withdrawal of Israeli forces from the Gaza strip, the legal responsibility of Israel as the occupying power in Gaza has not ceased, as it continues to exercise control over Gazan airspace, territorial waters and land access.

<sup>1</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, *I.C.J. Reports 2004*, paras. 86–113.

<sup>2</sup> See [www.ohchr.org/EN/countries/MENARRegion/Pages/ILIndex.aspx](http://www.ohchr.org/EN/countries/MENARRegion/Pages/ILIndex.aspx).

<sup>3</sup> See, for example, concluding observations of the Human Rights Committee, CCPR/C/ISR/CO/3, para. 5.

<sup>4</sup> Reports of the High Commissioner for Human Rights on human rights situation in Palestine and other occupied Arab territories, A/HRC/8/17, para. 8; and A/HRC/12/37, para. 7.

12. Additionally, the jurisdiction of the Palestinian Authority in the West Bank remains limited, as Israel exercises exclusive control over approximately 62 per cent of the territory.<sup>5</sup> The Palestinian Authority only exercises control over security and civil matters in Palestinian urban areas (“Area A”) and civil matters in Palestinian rural areas (“Area B”), while the remainder of the territories, including bypass roads between Palestinian communities in the West Bank, is under the exclusive control of the Government of Israel (“Area C”).

13. With respect to the de facto authorities in Gaza, the United Nations High Commissioner for Human Rights has stressed that “non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control” (A/HRC/12/37, para. 7). The de facto authorities have also made public statements that they are committed to respect international human rights and humanitarian law (A/HRC/8/17, paras. 8–9).

#### **IV. Main issues of concern in Israel**

14. The Special Rapporteur is encouraged by the vibrant media landscape in Israel, where divergent opinions are openly exchanged. However, he underscores the importance of preventing undue media dominance or concentration by privately controlled media groups, as noted by the Human Rights Committee.<sup>6</sup> He would also like to raise the following issues of concern in Israel.

##### **A. Lack of sufficient protection of the right to freedom of opinion and expression in domestic legislation**

15. In the absence of a formal constitution, Israel has enacted a set of Basic Laws that set forth the State’s main institutions and fundamental rights. Among these, the most important is the Basic Law on Human Dignity and Liberty (1992), amended in 1994. However, the right to freedom of opinion and expression, as well as a general provision for equality and non-discrimination, are lacking in the Basic Law. Furthermore, the Penal Code of 1977 contains several vaguely and broadly worded definitions of incitement, in contravention of international standards.

16. The Special Rapporteur notes that despite the lack of an explicit reference to the right to freedom of opinion and expression in the Basic Law on Human Dignity and Liberty, the Supreme Court has contributed to safeguarding the right through its case law. For example, in response to the ban imposed by the Israeli Film Board on a film entitled *Jenin, Jenin* on the premise that it presented a distorted version of events, the Supreme Court in 2003 affirmed that “the fact that the film includes lies is not enough to justify a ban”, and that the film board’s decision “infringes on freedom of expression above and beyond what is necessary”. Nevertheless, the Special Rapporteur underscores that, as a State party to the

<sup>5</sup> Office for the Coordination of Humanitarian Affairs, “Area C Humanitarian Response Plan Fact Sheet” (2010). Available from [www.ochaopt.org/documents/ocha\\_opt\\_area\\_c\\_humanitarian\\_response\\_plan\\_fact\\_sheet\\_2010\\_09\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_area_c_humanitarian_response_plan_fact_sheet_2010_09_03_english.pdf).

<sup>6</sup> CCPR/C/GC/34, para.40.

International Covenant on Civil and Political Rights, Israel is required to fully guarantee this right in its domestic legislation.<sup>7</sup>

17. The Israeli Penal Code contains several provisions that restrict the right to freedom of expression, including expression that constitutes incitement to racism, violence or terror. Publication of materials to incite racism, as well as any calls to “commit an act of violence or terror, or praise, words of approval, encouragement, support or identification with an act of violence or terror”, is subject to five years’ imprisonment (art. 1 A, paras. 144B and 144D2, respectively). Moreover, possession of publication that incites violence or terror is punishable by one year of imprisonment (para. 144D3). Furthermore, if a person “acts by speech in a public place or at a public gathering or by publishing to incite hostile acts against the Government of a friendly state”, the individual is liable to three years’ imprisonment (art. 5, para. 166).

18. In addition, under article 7, paragraph 173, of the Penal Code, a person who “publishes any printed, writing, picture, or effigy calculated to outrage the religious feelings or belief of other persons”, or who “utters in a public place and in the hearing of another person any word or sound calculated to outrage his religious feelings or belief” is liable to one year’s imprisonment.

19. While article 20 of the International Covenant on Civil and Political Rights requires States to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, the Special Rapporteur is concerned about the vague and broad terms used in the aforementioned provisions, such as “words of approval” or “identification” with an act of violence or terror, inciting “hostile acts against the Government of a friendly state”, and prohibition of expressions which “outrage the religious feelings or belief of other persons”. Moreover, he finds that making mere possession of a publication which may incite violence or terror an offence punishable by imprisonment is excessive.

20. The Special Rapporteur reiterates that any legislation which restricts the right to freedom of expression must comply with the conditions set out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights: the law must be narrowly defined and justified as being necessary and the least restrictive means to serve a legitimate aim. Additionally, an individual whose right to freedom of expression has been restricted must be able to challenge the legal basis of the restriction in an independent court. To avoid arbitrary application of the law, the Special Rapporteur urges the Government to ensure that all domestic legislation which restricts the right to freedom of expression is in compliance with such criteria.

## **B. Prior censorship on issues related to national security**

21. The Israeli Military Censor is a unit in the IDF Directorate of Military Intelligence, which is headed by the Chief Censor, an officer directly appointed by the Minister of Defense. The Chief Censor is mandated to screen and censor materials related to national security issues before publication.

22. According to an agreement signed between the Israeli Editors’ Committee and the Ministry of Defense in 1949, Israeli editors may voluntarily submit articles that relate to specific military issues or strategic infrastructure issues to the Chief Censor. The Special Rapporteur was informed that there were initially 65 topics subject to censorship, but that this has been reduced to 35 in the fifth agreement between the Editors’ Committee and the

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<sup>7</sup> See Human Rights Committee, general comment No. 34 on article 19, para. 8.

Ministry of Defense. Foreign journalists are exempt from this agreement and the need to seek prior authorization for publication on national security matters. The Censor's decision may be appealed to the High Court of Justice, and the Censor cannot appeal a court judgment.

23. The Special Rapporteur was informed by the Chief Censor that when materials are submitted by journalists, a threat assessment is undertaken, based on the criterion of "imminent certainty of actual harm to State security". According to the Chief Censor, the list of topics provided to journalists provides sufficient guidance to journalists and editors to determine whether they will need to submit certain articles for prior screening and censorship.

24. Journalists and editors can also reportedly challenge the decision of the Chief Censor by submitting an appeal to an arbitration committee known as the "Committee of Three", which is headed by a former judge. Journalists or editors concerned may also appeal the decision of the Committee to the Supreme Court of Israel.

25. While the Special Rapporteur has been informed that there have been very few articles that have been censored by the Chief Censor, and that foreign journalists are free to report on national security matters without her review, he is concerned by the very existence of such a body for prior censorship. In the view of the Special Rapporteur, such a body should not exist in any country. In addition, the Special Rapporteur would like to remind Israel that any restriction on the right to freedom of expression must be clearly established in law, which must be accessible, unambiguous, drawn narrowly and with precision, and justified as being necessary and the least restrictive means available to protect a specific and legitimate national security interest. He regrets that such a law is currently lacking in Israel.

26. Moreover, he would also like to remind the Government of Israel that journalists should not be held accountable for receiving, storing and disseminating classified data which they obtained in a way that is not illegal, including leaks and information received from unidentified sources (see the thematic report of the Special Rapporteur, A/HRC/20/17). Furthermore, journalists should not be forced to reveal their sources of information.

## **C. Restrictive bills and laws which threaten the right to freedom of opinion and expression**

27. The Special Rapporteur is deeply concerned by various bills and laws that have been proposed or have been adopted by members of the Knesset which contravene international standards on the right to freedom of opinion and expression. These include three laws that have already been adopted, namely the Budget Principles Law (Amendment No. 40) (the Nakba Law); the Law Preventing Harm to the State of Israel by Means of Boycott, 2011 (the Anti-Boycott Law); and the Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity (the Foreign Funding Law).

### **1. The Nakba Law**

28. The Nakba Law, which is an amendment to the Budget Principles Law of 1985, was adopted by the Knesset on 22 March 2011. This amendment empowers the Minister of Finance to fine public bodies that receive public funding, such as schools, universities or local authorities, if they hold events that commemorate "Independence Day or the establishment of the state as a day of mourning". Additionally, fines could also be imposed if such institutions hold events that aim to revoke "the existence of Israel as a Jewish and democratic State".



29. The Special Rapporteur is deeply concerned that this law is inherently discriminatory towards Palestinian citizens of Israel, who refer to Israeli Independence Day as the “Nakba”, meaning catastrophe or tragedy, to commemorate those who died and were displaced following the Israeli Declaration of Independence in 1948. The law severely undermines their right to freely express their opinion, preserve their history and culture, and to their right to commemorate the Nakba, which is an integral part of their history. In this regard, the Special Rapporteur would like to recall that “laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on State parties ... Restrictions on the right to freedom of opinion should never be imposed” (Human Rights Committee, general comment No. 34, para. 49).

30. Furthermore, given the vagueness and ambiguity of the wording of the law, the Special Rapporteur is concerned that fines could be imposed for holding events at which the Nakba is mentioned, or for criticism of the definition of Israel as a Jewish and democratic State. In order to avoid sanctions, individuals may self-censor themselves or refrain from organizing events which could be in breach of the law.

31. The Special Rapporteur also expresses his regret that, on 5 January 2012, the High Court, in response to a petition challenging the constitutionality of the law, avoided ruling on the matter until a concrete case arises. Given that the mere existence of the law itself encourages self-censorship and that the law itself is incompatible with the international obligations of Israel to fully guarantee the right to freedom of opinion and expression of all individuals, the Special Rapporteur strongly urges that the law be annulled.

## 2. Boycott Law

32. The so-called Boycott Law, passed by the Knesset on 11 July 2011, makes it a civil offence to call for a boycott against Israel and its products and those produced in the settlements in the West Bank. Parties filing lawsuits do not have to prove that a call to boycott has resulted in actual damages, as courts can order people or organizations calling for a boycott to pay compensation independently of the damages caused. In addition, the law allows the Minister of Finance to revoke the tax-exempt status of non-governmental organizations (NGOs) calling for a boycott. Furthermore, companies or organizations participating in a boycott may also be disqualified from applying for Government contracts.

33. On 29 August 2011, the Special Rapporteur submitted a joint allegation letter regarding this law, together with 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 (see communications report of special procedures, A/HRC/19/44, p. 70).

34. While the Special Rapporteur appreciates the reply received from the Government of Israel dated 15 December 2011,<sup>8</sup> the Special Rapporteur is of the view that the law violates the right to freedom of opinion and expression, as calling for or participating in a peaceful boycott is a legitimate form of expression which is internationally recognized. Moreover, given that lawsuits can be brought against individuals without any proof of damages, it creates further incentives for self-censorship, including on the Internet, to avoid litigation. The Special Rapporteur is concerned by reports that, since the adoption of the law, the ability of individuals to freely discuss boycott-related issues via social media platforms has diminished significantly.

35. As explained in the response from the Government of Israel, the Special Rapporteur looks forward to the decision of the High Court of Justice regarding the legality of this law.

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<sup>8</sup> Available from [https://spdb.ohchr.org/hrdb/19th/Israel\\_15.12.11\\_\(7.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/Israel_15.12.11_(7.2011).pdf).

### **3. Foreign Funding Law**

36. The law known as the Foreign Funding Law, adopted by the Knesset on 2 March 2011, requires NGOs to report quarterly to the Registrar of Associations on any funding received from foreign Governments or any other foreign entities. While the declared purpose of the law is to increase transparency, it appears redundant, given that every non-profit organization in Israel is already required by law to list its donors and other financial information publicly on its website and to submit annual reports on donations received. The Special Rapporteur expresses concern about the discriminatory impact of the 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.

37. Additionally, there are two other bills which have been combined into the Bill on Income of Public Institutions Receiving Donations from a Foreign State Entity, which would deprive NGOs that receive foreign funding of the legal right to be exempted from income tax. The Special Rapporteur welcomes the fact that this bill has been put on hold, given that if adopted, it would have further restricted the work of Israeli human rights NGOs.

### **4. Amendment to the defamation law**

38. The bill on the amendment to the defamation law, which passed its first reading in the Knesset on 21 November 2011, increases the fine for defamation from NIS 50,000 to NIS 300,000 without proof of damages. Due to the dramatic increase in financial penalties, the bill, if adopted, will create a significant chilling effect and will discourage investigative journalists, human rights NGOs and individuals expressing critical views.

39. The Special Rapporteur expresses concern that such initiatives constitute an attempt to undermine the work of Israeli human rights NGOs who are critical of the Government, particularly in relation to the occupation. The Special Rapporteur underscores the importance of facilitating the work of human rights defenders in Israel by creating a conducive environment and enabling them to peacefully exercise their legitimate right to freedom of opinion and expression.

40. Finally, while he has raised these concerns with the Speaker of the Knesset, Reuven Rivlin, and members of the Knesset, Faina Kirshenbaum and Ahmad Tibi, he would like to call upon all members of the Knesset to ensure that any legislative proposals presented to the Knesset are in compliance with the international human rights obligations of Israel. The Special Rapporteur would also like to underscore that all branches of the State – executive, legislative and judicial – and other public or governmental bodies, at whatever level, are in a position to engage the responsibility of Israel for any actions taken in contravention of international norms and standards on the right to freedom of opinion and expression (Human Rights Committee, general comment No. 34, para. 7).

## **D. Restrictions on the right to freedom of opinion and expression of minority groups in Israel**

41. The right to freedom of opinion and expression constitutes a key vehicle through which individuals and communities can draw attention to their grievances and combat situations of inequality and discrimination. Hence, the right is particularly important for the empowerment of vulnerable sectors of society, including minorities. In this regard, article 4, paragraph 2, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities stipulates that States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs,

except where specific practices are contrary to international standards. Additionally, as a State party to the International Covenant on Civil and Political Rights, Israel has a positive obligation under article 19 to promote media pluralism and diversity, including in minority languages.

42. However, as briefly mentioned earlier, the Basic Law on Human Dignity and Liberty does not explicitly guarantee the right to freedom of opinion and expression, and also lacks a general provision for equality and the prohibition of racial discrimination. With regard to the latter, the Committee on the Elimination of Racial Discrimination has repeatedly called upon the Government of Israel to ensure that the prohibition of racial discrimination and the principle of equality are included in the Basic Law and that a definition of racial discrimination is duly incorporated into the law (CERD/C/ISR/CO/13, para. 16; CERD/C/ISR/CO/14-16, para.13).

43. The Special Rapporteur has been informed that Palestinian citizens of Israel are frequently regarded and treated as “an enemy from within”, given their ethnic and religious ties to the Palestinians in the occupied Palestinian territory and the surrounding Arab and Muslim States, and consequently suffer from various discriminatory policies and treatment. The Committee on Economic, Social and Cultural Rights has also expressed concern that “excessive emphasis upon the State as a ‘Jewish State’ encourages discrimination and accords a second-class status to its non-Jewish citizens” (E/C.12/1/Add.27, para. 10; E/C.12/1/Add.90, para. 16).

44. As mentioned earlier, recent legislation passed by the Knesset, in particular the Nakba Law, infringe upon the right of Palestinian citizens of Israel to freely express their opinions and to commemorate a historically significant event. In relation to Arab Members of the Knesset, the Special Rapporteur is concerned about reports that following their participation in public events in defence of the rights of Palestinians and the exercise of their right to freedom of expression, certain parliamentary privileges have been revoked.

45. During his visit to the Negev desert, the Special Rapporteur was informed that the Bedouin community lacks clubs, meeting places and public places of worship to express and develop its culture, religion and traditions. In the city of Be’er Sheva, the Special Rapporteur visited the “Big Mosque”, and was informed that it has been converted into a museum, and that the Israeli High Court ruled in June 2011 that it should be used as an Islamic museum for the Muslim community. The Special Rapporteur recommends that the municipal authorities of Be’er Sheva implement this decision of the court, and also allow it to be used as a site for public prayer to allow the Muslim community to collectively express and maintain their culture and religion.

## **V. Main issues of concern in the occupied Palestinian territory**

46. Individuals living in the West Bank face difficulties in exercising their right to freedom of opinion and expression by the Israeli security forces and by the growing intolerance of criticism by the Palestinian Authority, while those living in Gaza face interference and harassment by the de facto authorities. The situation in the occupied Palestinian territory is further compounded by an unclear domestic legal system which comprises a patchwork of British, Jordanian and Egyptian laws and Israeli military orders, as well as internal inter-factional conflict between the Palestinian Authority and the de facto authorities.

47. The following section outlines the main issues of concern in the occupied Palestinian territory, and are examined vis-à-vis the respective obligations of the Government of Israel, the Palestinian Authority and the de facto authorities.

## **A. Restrictive provisions in the Press and Publications Law of 1995**

48. The Palestinian Basic Law, passed by the Palestinian Legislative Council in 1997 and ratified by the President in 2002, serves as a temporary constitution for the Palestinian Authority, and guarantees basic human rights and liberties. In particular, article 19 of the Basic Law provides that “freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law”.

49. In addition, article 27 of the Basic Law guarantees the establishment of all media as a right for all, protects media freedom, and prohibits censorship of the media, by stipulating that “no warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling”.

50. However, despite these provisions guaranteeing the right to freedom of expression, the Special Rapporteur is concerned by the existence of provisions that unduly restrict the right to freedom of opinion and expression in the Press and Publications Law of 1995.

51. While the intended purpose of the Press and Publications Law is to provide guidance to the media, guarantee journalists’ right to access information and to ensure every individual’s right to freedom of expression, it contains various provisions which contravene the Palestinian Basic Law and international standards on the right to freedom of opinion and expression. These include excessive Government control over the media, including licensing of print media and censorship of publication, and broad restrictions on the content of what may be published, many of which are vague. For instance, publication materials that contradict principles of freedom, national responsibility, or are “inconsistent with morals” or which may “shake belief in the national currency” are prohibited under articles 7 and 37. Furthermore, materials must be submitted for review by the Government prior to publication, in contravention of article 27 of the Palestinian Basic Law which prohibits media censorship. In addition, the Press and Publications Law provides harsh sanctions, including imprisonment, for breach of its provisions.

52. The Special Rapporteur welcomes the acknowledgement by Government officials of such problematic elements in the Press and Publications Law and efforts made by the Ministry of Information to amend the law in consultation with civil society representatives. He has been informed that the final version of proposed amendments to the Press and Publications Law will be submitted to the President for approval. He would like to reiterate his willingness to provide technical assistance in the reform process to bring the law into conformity with international standards, and to establish a clear regulatory framework for the media which would facilitate the work of journalists in Palestine and prevent any undue or excessive interference with their work.

## **B. Defamation as a criminal offence**

53. The Jordanian Penal Code of 1960, which remains applicable in the West Bank, provides for criminal penalties of up to two years in prison for defamation, including in relation to Government officials (arts. 189 and 191). The Special Rapporteur has consistently called for decriminalization of defamation as a criminal offence, which is inherently harsh and encourages self-censorship. He has also stressed that all public figures are legitimately subject to criticism and should exercise a higher degree of tolerance, given their functions to serve the public.

54. The Special Rapporteur is particularly concerned by recent reports of detention and investigation of individuals who have expressed criticism of Palestinian officials, including unfavourable comments regarding President Mahmoud Abbas posted on Facebook.<sup>9</sup> Such cases reveal a worrying trend of growing intolerance of criticism and monitoring of Palestinian users' Facebook accounts. Although individuals may not be formally prosecuted and convicted for defamation, the Special Rapporteur stresses that arrests, questioning and investigation themselves constitute a form of intimidation and harassment that engender a climate of fear and discourage individuals from criticizing authorities.

55. The Special Rapporteur thus calls upon the Palestinian Authority to decriminalize defamation and refrain from prosecuting individuals for defamation when it involves expression of opinion or criticism or matters of public interest which, even if false, was done without malicious intent. Moreover, the Palestinian Authority should take measures to promote a culture that is tolerant of diverse views, opinions and criticism.

### **C. Ensuring the independence and effective functioning of the Palestinian Broadcasting Corporation**

56. The Palestinian Broadcasting Corporation (PBC) was established in 1993 under the direct control of the Palestinian Authority to offer public television and radio in Palestine, which was forbidden prior to its establishment. As a Government institution, its employees are civil servants and appointed by the Palestinian Authority. However, following a presidential decree of 2009, PBC has been undergoing a series of reforms to become an independent and autonomous public service institution. To this end, the Special Rapporteur was informed that initiatives have been taken to promote cultural diversity in broadcasting and provide airtime for private and independent programmes, including satirical programmes. In particular, he is pleased to note that PBC is willing to provide the space for all individuals to express their opinions regardless of their political affiliation.

57. The Special Rapporteur is cognizant of the difficulties and challenges faced by PBC in transforming into an independent and autonomous body, including the political climate, paralysis of the Palestinian Legislative Council, and resistance from within PBC and from certain sectors of society who deem certain programmes to be contrary to cultural values and traditions. While many of the initiatives have yet to be implemented, including the establishment and appointment of the Board of Trustees, the Special Rapporteur welcomes the gradual transformation of PBC and looks forward to receiving information on the progress of reform. He also hopes that the availability of independent and satirical programmes will create a culture of openness and tolerance towards criticism.

### **D. Restrictions on the distribution of certain newspapers in the West Bank and Gaza**

58. As a consequence of the inter-factional division between the Palestinian Authority and the de facto authorities in Gaza following the Palestinian Legislative Elections of 2006, certain newspapers, perceived to be sympathetic towards either Fatah or Hamas, have been banned in Gaza and the West Bank, respectively. For example, *Al-Quds al-Arabi*, *Al-Hayaat al-Jadida* and *Al-Ayyam* are banned in Gaza, while *Al-Risala*, *Falastine* and *Minbar al-Islah* are prohibited in the West Bank.

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<sup>9</sup> Details of these cases will be included in the next joint communications report of special procedures.

59. Restrictions on the distribution of newspapers in Gaza and the West Bank constitute a clear breach of domestic law, including article 27 of the Palestinian Basic Law, which guarantees media freedom and prohibits restriction of publications without legal basis and judicial ruling. The Special Rapporteur reiterates that any restriction on dissemination of information must be based on law and clearly justified as being necessary to pursue a legitimate aim. The banning of newspapers is not only a violation of the right to impart information, but the right of the public to receive information.

60. Moreover, the legitimacy of the prohibition of the aforementioned newspapers is further undermined by the fact that the content of newspapers is available online in both the West Bank and Gaza. As such, the Special Rapporteur recommends that these politically symbolic restrictions be lifted by both parties to create a more conducive environment for dialogue and mutual understanding.

## **E. Restrictions on freedom of movement of journalists and human rights defenders imposed by Israel**

61. Palestinians living in the West Bank, including East Jerusalem, and Gaza face daily obstacles and humiliation to travel both inside and outside of the occupied Palestinian territory, as a result of the construction of the Wall and other barriers, coupled with the imposition of military checkpoints, permit requirements and travel bans by Israel. The work of journalists and human rights defenders in the occupied Palestinian territory is particularly hindered by these restrictions to movement, as documenting and collecting information is central to their work.

62. In this regard, the Human Rights Committee has stressed that it is incompatible with the obligations under the International Covenant on Civil and Political Rights to “restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings) to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists and human rights investigators within the State party” (Human Rights Committee, general comment No. 34, para. 45).

63. In addition, the Special Rapporteur is concerned about the imposition of travel bans, which are often justified on the basis of secret evidence. For instance, joint urgent appeals have been sent to the Government of Israel regarding a travel ban imposed on Shawan Jabarin, Executive Director of *Al-Haq*, a human rights NGO.<sup>10</sup>

64. Following his meeting with Mr. Jabarin during his visit, the Special Rapporteur extended an invitation to him to participate in an event at the nineteenth session of the Human Rights Council, which enabled Mr. Jabarin to appeal to the High Court of Israel regarding his travel ban. On 22 February 2012, the State Prosecutor approved a “temporary exception” to the ban to allow Mr. Jabarin to travel to Geneva, albeit with strict conditions. The Special Rapporteur regrets that upon his return to the West Bank on 1 March 2012, the travel ban has been reinstated for an indefinite period.

65. The Special Rapporteur urges the Israeli authorities to lift the travel ban against Mr. Jabarin altogether and carefully review the necessity of travel restrictions imposed on other human rights defenders and journalists so as to enable them to exercise their right to freedom of expression. In the light of the disturbing information that travel bans are justified on the basis of secret evidence, he would like to emphasize that any travel

<sup>10</sup> A/HRC/7/14/Add.1, paras.348-350; A/HRC/14/23/Add.1, paras.1287-1296.

restriction imposed on an individual on the grounds of national security must allow the affected individual the opportunity to challenge the justifications for applying the restrictions, including the evidence supporting it, in a timely and open process.

## **F. Attacks against journalists, human rights defenders and bloggers**

66. Local journalists in the occupied Palestinian territory face difficulties in undertaking their work not only as a result of their restrictions to movement as described earlier, but also due to arbitrary arrests and detention, physical attacks and raids of their offices by the security personnel of both Israel and the Palestinian Authority in the West Bank and the de facto authorities in Gaza.

67. In the West Bank, the Special Rapporteur is deeply concerned by the actions taken by the Palestinian Authority to arrest journalists and bloggers for critical comments regarding senior political officials, as noted in the preceding section. While the Special Rapporteur welcomes the announcement on 27 March 2012 of an annual press freedom prize recognizing exemplary journalism, he urges the Palestinian Authority to respect media freedom in practice.

68. Journalists in the West Bank are not only subjected to restrictions imposed by the Palestinian Authority, but by Israel, including arbitrary closure of radio and television stations, arbitrary arrests and detention, and attacks while covering demonstrations.

69. Recent cases of interference with Palestinian media include a raid by Israeli security forces on 2 April 2012 of a Palestinian radio, television and online media network established by Al-Quds University in East Jerusalem, when equipment and personal files were confiscated and two employees arrested. Similarly, Israeli security forces carried out night raids on 29 February 2012 of two Palestinian television stations in Ramallah and Al-Bireh, and confiscated broadcasting equipment, over 20 computers, two servers, hard drives containing the channel's archives and physical administrative and financial files. The Special Rapporteur expresses concern that such action may constitute an attempt by Israel to prevent the establishment of free and independent Palestinian media in occupied Palestinian territory. He urges the Government of Israel to refrain from such arbitrary interferences and return any seized equipment without any undue delay.

70. The Special Rapporteur also expresses deep concern over arbitrary arrests of journalists by Israeli security forces, including the recent arrest of Mohammad Anwar Muna on 3 April 2012 in Nablus. He notes with concern that journalists are among those held in administrative detention by the Israeli authorities.

71. Furthermore, the Special Rapporteur is concerned by reports of deliberate attacks against Palestinian, Israeli and foreign journalists covering demonstrations in the West Bank by the Israeli security forces. He would like to remind the Government of Israel to allow journalists to perform their functions to monitor and report on demonstrations, and to investigate all allegations of attacks by the Israeli security forces and to bring those responsible to account to prevent impunity.

72. In Gaza, journalists, bloggers and human rights defenders face restrictions on monitoring, documenting and reporting freely on matters such as human rights violations committed by the de facto authorities and calls for Palestinian unity. He has also been informed of cases of attacks against journalists, such as confiscation of their cameras and equipment while covering demonstrations, which in some cases are followed by raids, arrests and beatings, including torture allegedly. For example, following a public assembly in support of Palestinian unity, the security personnel of the de facto authorities raided the offices of Reuters, destroyed equipment, beat two employees and confiscated a camera (see

report of the United Nations High Commissioner for Human Rights, A/HRC/19/20, para. 14). Journalists who are detained or summoned for an interview with the internal security apparatus are often allegedly coerced to sign a document to refrain from acts of incitement against the authorities (ibid.). These forms of harassment have an intimidating effect and constitute a clear breach of article 27 of the Palestinian Basic Law.

73. Additionally, the Special Rapporteur notes that journalists working for local news agencies in Gaza are at particular risk of such forms of harassment and avoid reporting on human rights violations for fear of being summoned or penalized by the Government Press Office of the de facto authorities. Hence, local journalists reportedly tend to make reference to reports or statements already published by human rights organizations to avoid being identified as a major source.

74. Furthermore, the ability of journalists to report freely in Gaza has been threatened by a new practice adopted by the de facto authorities requiring foreign journalists to name a local contact in order to enter Gaza. The Special Rapporteur has been informed by representatives of the de facto authorities that such a requirement has been introduced for security reasons, following the death in April 2011 of an Italian activist, Vittorio Arrigoni. However, the Special Rapporteur is deeply concerned that such practice encourages visiting journalists to avoid reporting on sensitive issues and to apply self-censorship, as the named local may be placed at risk of reprisals.

75. The Special Rapporteur urges the de facto authorities in Gaza to ensure that both local and foreign journalists can carry out their legitimate work without intimidation, harassment and interference by officials from the Internal Security Agency and the General Intelligence Service. This includes halting the practice of short-term detentions; abolishing the requirement for foreign journalists to name a local contact in Gaza; and creating an atmosphere of openness towards criticism.

## **G. Restrictions on the right to peaceful assembly**

76. Peaceful assemblies and demonstrations constitute a means for individuals to publicly express their opinions or to raise legitimate concerns and grievances. As such, undue restrictions on the right to freedom of assembly may also constitute violations of the right to freedom of opinion and expression.

77. In the West Bank, regular demonstrations have been taking place to express grievances against the practices of occupation by Israel in areas under the security control of the Israel Defense Forces (IDF). In such areas, IDF Order No. 101 Regarding Prohibition of Incitement and Hostile Propaganda Actions, also known as Military Order 101, has been used to restrict Palestinians' rights to freedom of expression and assembly.

78. Military Order 101, issued in August 1967 by the then Officer Commanding of the Central Command and Commander of IDF in the West Bank, criminalizes political expression and activities, including organizing and participating in protests; taking part in assemblies or vigils; holding, waving, or displaying flags or other political symbols; and printing and distributing any material "having a political significance". Any breach of the order is punishable by 10 years of imprisonment and/or a fine. One of the main problems with the order is the sweeping prohibition of expression deemed to be "political", which is vague and subject to interpretation. Additionally, the use of "required degree of force" to enforce the order is permitted, which leaves considerable room for discretion and the potential for excessive use of force.

79. The Special Rapporteur is deeply concerned by the IDF practice of preventing peaceful demonstrations from taking place by stopping demonstrators gathering by setting up temporary checkpoints prior to scheduled demonstrations and declaring the area a closed



military zone. As a consequence, anyone who enters the area despite the military closure is considered to have violated Military Order 101. Further, protesters are frequently dispersed by IDF using crowd control methods, even though the demonstrations are peaceful. The Special Rapporteur also expresses concern that IDF allegedly intimidate and collectively punish villagers of the site of demonstrations through night raids, using sound or gas bombs aimed at villagers' houses and declaring an entire village a closed military zone.

80. During his mission on 9 December 2011, the Special Rapporteur observed one demonstration in the village of Nabi Saleh in the West Bank. Since 2009, Palestinian, Israeli and international human rights defenders have been peacefully demonstrating against the construction of illegal Israeli settlements and the obstruction of access to Eing al-Qaws spring, which has been used by residents of Nabi Saleh for farming and recreational purposes. Despite the restraining effect that his presence at the site may have had on the large contingent of IDF forces, who withdrew from the main road leading to the village shortly after his arrival, the Special Rapporteur noted the use of tear gas and was informed of a young man who had been injured while he was in a meeting with the villagers in another area. The Special Rapporteur enquired about the fate of the demonstrator with the crew of an ambulance as he was passing the gate of a nearby checkpoint, and was informed that he had already been taken away for medical attention. The next day, the Special Rapporteur was informed that the young man, by the name of Mustafa Tamimi, had died in hospital as a result of his injuries caused by a tear gas canister fired from a short range directly into his face.

81. The Special Rapporteur is alarmed by the use of disproportionate and excessive use of force by the Israeli security forces to repress peaceful protests, including the use of tear gas, rubber-coated metal bullets and stun-grenades. He notes that the Secretary-General has also expressed concern regarding frequent and excessive use of force against unarmed demonstrators by Israeli security forces, including live ammunition and "tear gas canisters being fired as projectiles at protesters, resulting in severe injuries" (report of the Secretary-General, A/66/356, para. 20).

82. The Special Rapporteur raised such concerns during the meeting with Major General Mizrahi, Head of Central Command of IDF, including the specific case of Mr. Tamimi's death. He was informed that there are two ongoing investigations into Mr. Tamimi's death, one of which was to be concluded by 20 December 2011. The Special Rapporteur expressed his interest to receive the results of these investigations, which should also be made public, but regrets that he has not received such information.

83. In addition to the death of Mr. Tamimi, the Special Rapporteur has been informed that since 2003, a total of around 20 individuals have died while participating in demonstrations. The Special Rapporteur urges the Government of Israel to take effective measures to ensure prompt, impartial and effective investigations into every loss of life, which is essential to ensure accountability and to prevent impunity. He also emphasizes that any use of force against demonstrators or rioters must be strictly minimal and proportionate to the threat posed. For example, while the use of tear gas to disperse a crowd may be legitimate under certain circumstances, tear gas canisters should never be used at short range or aimed directly at protesters. While it has been alleged that IDF open-fire regulations prohibit such use, the Special Rapporteur has been informed of repeated infractions by members of IDF, who are rarely sanctioned or criminally held to account.

84. In the West Bank, the Special Rapporteur has also been informed of instances where security officials of the Palestinian Authority forcibly dispersed peaceful protests and journalists, photographers and human rights monitors were assaulted. The Special Rapporteur urges the Palestinian Authority to fully guarantee the rights of the Palestinian people to protest peacefully to express their views, including by investigating all attacks against protesters and journalists and holding perpetrators to account.

85. In Gaza, the Special Rapporteur is concerned by reports of excessive use of force by the security forces of the de facto authorities to disperse peaceful protests, as well as of arbitrary arrests and detention of protesters and journalists monitoring demonstrations. For instance, during a public assembly in support of Palestinian unity on 15 March 2011, at least 100 participants and observers were reportedly beaten, tents were destroyed and approximately 50 individuals were detained. Other smaller demonstrations in support of Palestinian unity during the following days were also allegedly violently dispersed.

86. Moreover, workshops and seminars in Gaza, including on human rights issues, are frequently disrupted by the security forces of the de facto authorities and prevented from taking place. For instance, the internal security personnel prevented the Palestinian Journalists' Syndicate from holding a workshop in commemoration of the International Day to End Impunity on 23 November 2011. The Special Rapporteur is also concerned by information received that organizers of events frequently receive phone calls from the internal security forces prior to the meeting telling them to cancel the event, or there will be "consequences".

87. In other instances, offices of human rights-oriented organizations have been closed by the police, including the offices of Sharek Youth Forum, a non-governmental organization funded by the United Nations Development Programme that seeks to create space for Palestinian youth to engage actively in the development of local communities. On 30 November 2010, the Attorney General of the de facto authorities ordered the offices to be closed on the grounds of "moral misconduct". The Special Rapporteur regrets that the closure order remains in place at the time of submission of the report.

88. Furthermore, the Special Rapporteur expresses deep concern over reports of individuals facing reprisals by the security forces of the de facto authorities as a result of participating in academic conferences or workshops outside of Gaza. These include arbitrary detention, summons for interrogation and, in some cases, threats and ill-treatment (A/HRC/19/20, para. 13).

89. The Special Rapporteur stresses that peaceful demonstrations and assemblies should not be viewed as a threat, and urges the Government of Israel, the Palestinian Authority, and the de facto authorities to promote a culture of tolerance of divergent and opposing views, which is essential for any democratic society.

## **H. Restrictions on the right to freedom of opinion and expression in East Jerusalem imposed by Israel**

### **1. Loyalty to the State of Israel**

90. Palestinians who were residing and physically present in East Jerusalem at the time of illegal annexation by Israel in 1967 (A/66/356, para. 34; Security Council resolution 478 (1980)) were designated permanent residents and issued with different identity documents to Palestinians living in other areas of the West Bank. However, following their election in 2006 to the Palestinian Legislative Council, the residency status of four Palestinian Members of Parliament, Mohammad Totah, Ahmad Attoun, Mohammad Abu Teir, and Khaled Abu Arafah, was revoked due to their affiliation with a "hostile entity". On 8 December 2010, Mr. Abu Teir was forcibly transferred from East Jerusalem to another part of the West Bank by Israeli security forces, while Mr. Attoun was arrested in September 2011 and transferred on 7 December 2011.

91. The Special Rapporteur met with the two remaining members of the Palestinian Legislative Council who have been seeking refuge at the International Committee of the Red Cross, Mr. Totah and Mr. Abu Arafah. He is disturbed by the news that they were

arrested by the Israeli police inside the premises of the Red Cross on 23 January 2012. As emphasized by the Secretary-General, the requirement of “loyalty to the State of Israel” is not only a violation of international humanitarian law, which prohibits the imposition of swearing “allegiance to the hostile power”,<sup>11</sup> but also undermines the right of Palestinian residents in East Jerusalem to exercise their right to freedom of opinion and expression (see A/66/356).

92. The Special Rapporteur appeals to the Government of Israel to reinstate the residency status of the four members of the Palestinian Legislative Council and enable them to peacefully exercise their right to freedom of opinion and expression in East Jerusalem. He also calls upon the Israeli authorities to fully ensure that all Palestinians living in East Jerusalem are able to peacefully express dissent and criticism of Israel without fear of revocation of their residency status or other forms of reprisals.

## **2. Censorship of textbooks**

93. According to the Declaration of Principles on Interim Self-Government Arrangements, the Palestinian Authority has jurisdiction over educational matters in East Jerusalem. However, the Special Rapporteur has been informed that sections of textbooks used in Palestinian schools have been censored by the Israeli Ministry of Education.

94. The Special Rapporteur emphasizes that Palestinians in East Jerusalem have the right to form their own opinions by following their own curriculum and determining the content of their textbooks. In addition, they should be able to maintain, express and impart their version of historical events.

## **3. Ban on cultural activities in East Jerusalem**

95. Various Arab cultural events and activities in East Jerusalem have reportedly been prohibited by the Israeli authorities. For instance, in 2009, a number of cultural activities were prevented from taking place when Jerusalem was declared the Arab Capital of Culture as part of the Cultural Capitals Programme of the United Nations Educational, Scientific and Cultural Organization. Other examples were brought to the attention of the Special Rapporteur during his meeting with community leaders of Silwan, who informed him of various instances where cultural activities organized by the community members were banned by the Israeli authorities.

96. The Special Rapporteur calls on the Government of Israel to ensure that all cultural activities, which are an important element of the right to seek and share information, can be held without undue restrictions in East Jerusalem.

# **VI. Conclusions and recommendations**

## **A. Government of Israel**

**97. The Special Rapporteur is concerned by recent threats to 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**

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<sup>11</sup> Article 45 of the Regulations concerning the Laws and Customs of War on Land (Hague Regulations). Article 49 of the Fourth Geneva Convention also prohibits the forcible transfer of civilians of an occupied territory, except when necessary to ensure the security of the civilians involved.

practices of occupation. This has been manifested through a series of laws adopted by the members of the Knesset, including the prohibition of the commemoration of the Israeli independence day as a day of mourning; creation of additional, yet redundant, reporting obligations for Israeli human rights NGOs; prohibition of boycotts or calling for a boycott of Israeli products, including those produced in the settlements in the West Bank; and a six-fold increase of financial penalties for defamation.

98. The Special Rapporteur calls upon the Members of Knesset to refrain from adopting laws that are inconsistent with the obligations of Israel under international human rights law, including article 19 of the International Covenant on Civil and Political Rights. While the Supreme Court can rule such laws to be incompatible with Israeli Basic Laws, the proposal and adoption of restrictive laws generates a climate of self-censorship. He would also like to underscore that all branches of the State – executive, legislative and judicial – and other public or Governmental bodies, at whatever level, are in a position to engage the responsibility of Israel for any actions taken in contravention of international norms and standards on the right to freedom of opinion and expression.

99. As recommended by various United Nations treaty bodies, the Basic Law on Human Dignity and Liberty should be amended to include principles of non-discrimination and equality and the right to freedom of opinion and expression.

100. The Special Rapporteur also recommends that the Government amend or repeal the vaguely worded provisions in the Penal Code, as highlighted in Chapter IV, section A.

101. The Special Rapporteur recommends that the post of Chief Censor be abolished in Israel, and that restrictions on the right to freedom of expression on the grounds of national security be prescribed by law. Such law must be accessible, unambiguous, drawn narrowly and with precision, and justified as being necessary and the least restrictive means available to protect a specific and legitimate national security interest. The law should also provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of a particular restriction by an independent court.

102. The right of individuals in the West Bank to express themselves through peaceful assemblies must be fully respected by the Israeli Security Forces. The Special Rapporteur urges the Government of Israel to repeal Military Order 101, and to ensure that there is no excessive use of force against peaceful protesters. Every injury or death resulting from the use of force by the Israeli security forces must be swiftly investigated and the individual responsible held accountable.

103. The Special Rapporteur calls upon the Government of Israel to ensure that all journalists in the West Bank, including East Jerusalem, can perform their professional duties without undue interference. This includes halting the practice of arbitrary raids of and seizure of equipment from media offices, arbitrary arrests and detention of journalists, and deliberate attacks against journalists monitoring demonstrations. He urges the Israeli authorities to return all confiscated equipment without undue delay, release journalists who have been arbitrarily arrested or ensure that they are promptly brought before a court in accordance with international standards on the right to a fair trial, and investigate all attacks against journalists and bring perpetrators to account in order to prevent impunity.

104. The right to freedom of movement is crucial to the work of human rights defenders and journalists to access information and monitor, record and report on human rights violations and other matters of public interest. The Government of Israel has an obligation to justify the continued need for the imposition of travel bans

on human rights defenders and journalists, including presentation of evidence to enable individuals to challenge bans in court.

105. The Special Rapporteur calls upon the Government of Israel to ensure that Palestinian citizens of Israel can fully exercise their right to freedom of opinion and expression, including through their own media and language. The requirement of “loyalty to the State of Israel” in East Jerusalem is in clear violation of international law and undermines the right to freedom of opinion and expression and should thus be repealed.

106. The right to freedom of opinion and expression of Arab Knesset members, as with all individuals in Israel, should be fully respected.

107. The Special Rapporteur appeals to the Government of Israel to reinstate the residency status of the four members of the Palestinian Legislative Council and to enable them to peacefully exercise their right to freedom of opinion and expression in East Jerusalem. He also calls upon the Israeli authorities to fully ensure that all Palestinians living in East Jerusalem are able to peacefully express dissent and criticism of Israel without fear of revocation of their residency status or other forms of reprisals.

108. The Special Rapporteur calls upon the Government of Israel to refrain from interfering with the content of text books used in Palestinian schools in East Jerusalem. Moreover, he calls upon the Government of Israel to ensure that all cultural activities can be held without undue restrictions in East Jerusalem.

## **B. Palestinian Authority**

109. While recognizing the difficulties in implementing legislative reforms due to the paralysis of the Palestinian Legislative Council, the Special Rapporteur urges the Palestinian Authority to revise the Press and Publications Law of 1995, in consultation with civil society representatives, for ratification by the President.

110. The Special Rapporteur calls upon the Palestinian Authority to decriminalize defamation. He also urges public officials to exercise a higher degree of tolerance for critical comments and refrain from filing defamation lawsuits.

111. The Special Rapporteur recommends that the Palestinian Authority halt the practice of detaining and interrogating individuals for legitimate criticism of public officials. He also appeals to the Palestinian Authority to ensure that the right to freedom of expression on the Internet is fully guaranteed. Moreover, measures should be taken to promote tolerance of diverse opinions.

112. The Special Rapporteur recommends that the Palestinian Authority facilitate and support the reform of the Palestinian Broadcasting Corporation into an independent institution.

113. The Special Rapporteur calls upon the Palestinian Authority to lift the ban on newspapers affiliated with the de facto authorities, and ensure that journalists working for such newspapers can freely undertake their work in the West Bank without fear of harassment or intimidation.

114. Peaceful demonstrations should be allowed to take place in the West Bank without undue restrictions.

### **C. De facto authorities in Gaza**

115. The Special Rapporteur calls upon the de facto authorities to promote a culture of tolerance of divergent views, including criticisms, which is essential for any healthy society. To this end, he urges the de facto authorities to stop the practice of arbitrary arrests, detention and interrogation of individuals expressing critical views, as well as raids of offices, and interference with human rights related conferences and events.

116. The Special Rapporteur recommends that the de facto authorities lift the ban on newspapers affiliated with the Palestinian Authority and that journalists working for such newspapers can carry out their legitimate work in Gaza without any undue interference or harassment.

117. Peaceful assemblies and demonstrations should be allowed to take place in Gaza without undue interference and restrictions, as well as peaceful conferences and workshops.

118. The Special Rapporteur urges the de facto authorities in Gaza to ensure that both local and foreign journalists can carry out their legitimate work without intimidation, harassment and interference by officials from the Internal Security Agency. This includes halting the practice of short-term detention and abolishing the requirement for foreign journalists to name a local contact in Gaza.

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