



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

מְשִׁלַּחַת יִשְׂרָאֵל
לִיד מְשָׂרַד הָאוֹמוֹת הַמְּאוֹחָדוֹת
וְהָאֲרִגּוֹנִים הַבִּינְלָאוּמִיִּים
בִּג' נִבְה

March 20th, 2019

Government of Israel's Response to Joint Appeal

Ref: AL ISR 16/2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Conclusion

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

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