

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL OTH 59/2019

20 January 2020

Mr. Asa Levinger,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 34/5, 37/8 and 34/18.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning **allegations of a smear campaign and strategic lawsuit filed by Energix against human rights organisation Al-Marsad in connection with Al-Marsad's activities opposing a renewable energy project in the Occupied Syrian Golan.**

Al-Marsad - Arab Human Rights Centre in Golan Heights is a human rights organisation established in 2003 to document human rights violations in the Occupied Syrian Golan and support the local Syrian community, including in the context of the alleged unlawful exploitation of natural resources by Israel.

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Energix

According to the information received:

The Clean Wind Energy Project

In 2009, the Israeli Government adopted Decision No. 4450 in which it set out to have 10 percent of the country's energy generated from renewable resources, including wind farms, by 2020. This has resulted in an increased number of solar and wind energy projects being developed across Israel and the occupied territories, including the Occupied Syrian Golan.

On 26 March 2018, the National Infrastructure Committee (NIC) approved the National Infrastructure Plan 62/ 8- High Tension Cable 161KW, Hula - Bar'on Junction. The plan concerns the construction of electricity infrastructure on occupied land to allow for the transportation of the energy generated by the wind energy farms in the Golan to the Israeli electricity network.

The population of almost 27,000 Syrians currently living in the Occupied Syrian Golan inhabits five villages, which constitute approximately 5% of the Golan. The remaining 95% is occupied by Israeli settlements and military. The Golan is a region with particularly favorable conditions for the development of wind energy farms, with low population density, large open areas and wind speed nearly double that of Israel's coastal plain.

Three wind farm projects developed in the Occupied Syrian Golan have reportedly reached the final phases of the formal approval process, including the Clean Wind Energy Project developed by the Israeli company Energix Renewable Energies Ltd. Energix is one of the largest renewable energy companies in the country.

Energix has been developing the Clean Wind Energy Project since 2013. The plans encompass the construction of 31 wind turbines on the southeastern side of the Syrian village of Majdal Shams, and on the southwestern side of the Syrian village of Masaada. Both locations are agricultural lands owned by Syrian farmers. The electrical substation is planned to be situated in Bar'on Junction. The wind farm is expected to occupy an area of 6013.096 Dunam and generate 152 MW of energy annually, enough to power 66,000 homes. The estimated annual revenues from the project amount to 41-44 million USD.

The project was submitted directly to the NIC, which advances infrastructure projects of "national importance" through an accelerated regulatory process, and thus did not require approval by the District Planning Committee for Northern Israel.

Due to the planned location of the wind farm close to the Syrian villages, the project is expected to restrict their future expansion, exacerbating the already severe housing crisis. Further, Syrian agricultural land would reportedly be

destroyed as a result of the implementation of the project, as it requires the construction of roads and the clearing of land in the areas where wind turbines would be located. There are concerns that Syrian agricultural activities, including the production of apples and cherries, would be restricted as a result and the Syrian population would lose the source of their livelihoods.

There are also concerns that infrasound generated by the wind turbines would have a negative impact on the health of the local Syrian population, causing headaches, dizziness, and nausea. Furthermore, the project might also cause “flickering”, a flashing or blinking effect generated by the sun shining through the spinning blades of the wind turbine. Exposure to flickering is especially harmful for persons prone to epilepsy. It is estimated that the wind farm operation could result in up to 1 hour of flickering per day in certain Syrian residential areas, in particular in winter.

The implementation of the project might also endanger wildlife, especially the native and migrating bird populations.

It is reported that the company Energix has publicly claimed that local agricultural activities will not be affected by the project, but has not provided specific information to support these claims. The company has further argued that the project will generate new sources of income for the local Syrian population, however the vast majority of the new employment opportunities will be short-term jobs linked to construction.

The company has reportedly claimed that the project counts with the support of the local Syrian population, including agricultural cooperatives. However, in a survey conducted in 2017 to measure the level of local support for the project, only 14 percent of respondents were residents from areas that would be impacted by its implementation. Furthermore, the vast majority of local Syrians interviewed by the organisation Al-Marsad between September and December 2018 have expressed their opposition to the project.

The wind farm is expected to generate benefits for few individuals from the area, including approximately 40 landowners who signed contracts with the company and the 40 to 50 persons who would benefit from the limited long-term employment opportunities generated by the project.

Energix has reportedly offered financial inducements to influential members of the local communities in order to convince the Syrian farmers to lease their land to the company. Many Syrian landowners have asserted that they were manipulated into signing the contracts by representatives of the company.

The lease contracts require farmers to register their lands with the Israeli authorities, allow the company to destroy and utilize any structures located on the leased land and ensure the company’s freedom to transfer the rights and

obligations of the contract to another company or person. The Syrian landowners are offered a compensation of one percent of the project's revenues, approximately five times less than what is reportedly offered to Israelis who lease their lands for similar projects.

The company and its intermediaries have reportedly harassed the landowners who opposed the terms of the contracts with repeated phone calls and house visits. Some were offered large sums of money for signing the contracts and not voicing any opposition. Several farmers who expressed concerns have reportedly been threatened with lawsuits. The company filed lawsuits against at least six local Syrians opposing the project.

The company opened an office in Majdal Shams, the biggest Syrian village in the Golan, and organized community meetings where information about the alleged benefits of the project was disseminated. Energix also launched a school scholarship fund for the local Syrian population and started sponsoring a local youth football team.

The project was reportedly advanced through the formal approval process only after the company moved the planned wind turbines away from the Israeli settlement of Nimrod and closer to the Syrian villages, to avoid any negative impacts on the Israeli population.

Starting in June 2017, the NIC held a number of meetings to review Energix's project. The Syrian farmers and agricultural cooperatives were repeatedly excluded from them.

On 15 June 2017, several agricultural cooperatives sent a letter to the NIC, raising concerns about the possible negative impacts of the wind farm project. Despite having received the letter, the NIC did not invite any members of the cooperatives to the first meeting on the project. On 7 September 2017, the Syrian cooperatives sent another letter to the NIC, to which the authority responded by arguing that the plans concerning the project would be published for comments and reservations. The NIC never engaged in a discussion with the cooperatives. On 19 December 2017, following the publication of the blueprints for the wind turbines by the NIC, the cooperatives sent a third letter to the authority. No response was provided.

In January 2018, Energix submitted an environmental impact assessment to the NIC. In July and August 2018, the NIC held several meetings with members of the "community" to discuss the project. Only 5 members of the Syrian community were invited, some of which had been employed by Energix.

Between February and April 2019, as part of the formal approval process, the NIC published the project for comments and objections. On 9 August 2019, the NIC rejected all objections submitted regarding the project.

On 9 September 2019, the NIC approved the construction of 25 wind turbines and referred the project to the Cabinet of Ministers for final approval. On 3 December 2019, the Cabinet of Ministers dismissed the project due to mapping errors and sent it back to the NIC. Energix is now expected to re-map the project and submit it for re-approval to the NIC.

Alleged targeting of Al-Marsad

In September 2018, members of the local Syrian community reached out to Al-Marsad to request the organisation's assistance in investigating the activities of Energix in the area. The initial investigation led Al-Marsad to raise concerns about the potential detrimental impact of the project on the rights of the local Syrian population. In response to requests from the Syrian community, the organisation began organizing meetings to disseminate information on the project and its expected impacts among the local Syrians. As a result, a petition expressing local opposition to the project gained over 6000 signatures.

In January 2019, Al-Marsad published a report on its investigation into Energix and the aforementioned wind farm project. Shortly after, individuals with links to the company reportedly launched a smear campaign against the organisation and those associated with it, aimed at damaging the organisation's reputation among the Syrian community and putting pressure on it to cease its activities. The organisation was accused of supporting foreign interests. Claims were made on Facebook that Al-Marsad employees were "two-faced", as they were simultaneously contesting Israel's occupation and financially benefitting from the Israeli government.

In March 2019, the organisation's largest funder received a letter accusing Al-Marsad's employees of mismanagement of its finances for their personal benefit. The letter stated that Al-Marsad "cheats and exploits the weakness of the local residents". As a response, the funder ordered a re-audit of Al-Marsad's finances by a new international auditing company. The process reportedly took several months and caused significant financial hardship to Al-Marsad's staff, as they were unable to pay salaries and cover day-to-day costs of their operations. In late November 2019, the re-audit was concluded with no irregularities identified.

Despite the reported smear campaign, Al-Marsad has continued promoting the report and holding public meetings on the project.

While the NIC reviewed the wind farm project, in June 2019, Al-Marsad, in cooperation with a partner organisation, submitted objections concerning the project to the Committee. The objections were submitted on behalf of the Syrian community opposing the project, and included expert opinions on its possible impacts. In addition, three Syrian village councils, a group of Israeli settlers, and several other individuals submitted objections to the Committee.

On 1 June 2019, Energix filed a civil lawsuit against Al-Marsad at the Nazareth Magistrates Court. The Court registered it as case number 33745-06-19. The company alleges that the aforementioned report published by Al-Marsad is defamatory and calls for a boycott of Israel, thus violating the Anti-Defamation Law of 1965 and the Anti-Boycott Law of 2011. The Anti-Boycott Law allows for civil lawsuits to be filed against anyone who knowingly publishes calls for a boycott for the damages they incurred. This is the first time a non-governmental human rights organisation registered in Israel has been sued under the Law.

Energix is suing Al-Marsad for a sum of 900,000 ILS, which slightly exceeds the organisation's annual budget. The company is also demanding Al-Marsad to retract and apologise for all the material published on the project.

In the complaint submitted by Energix to the Court, Al-Marsad is characterized as working together with the BDS movement and "anti-Zionists". Energix also asserts that the organisation encouraged a boycott by organizing awareness raising meetings which sparked strong community opposition to the wind farm project.

On 15 September 2019, Al-Marsad submitted a response at the Court, rejecting all allegations made by the company and arguing that the lawsuit filed by Energix is aimed at intimidating and silencing Al-Marsad.

On 3 November 2019, Energix filed a response at the Court reasserting its claims and stating that significant social and economic damages had been incurred by the project's supporters in the Golan as a result of the public opposition to the project.

In late November, Al-Marsad submitted its second response regarding the lawsuit application, calling for the case to be dismissed by the Court.

The Court is now expected to decide whether any further action should be taken on the case. A hearing has been scheduled for 26 January 2020.

In response to the above-mentioned Cabinet of Ministers' decision to send the project back to the NIC following the identification of mapping errors, Energix issued a public statement in early December, indirectly referring to Al-Marsad by asserting that "foreign interests" are trying to stop the project.

We would like to express our concern at the lawsuit allegedly filed against Al-Marsad by the company Energix as well as the smear campaign targeting the organisation, which appear to be linked to its legitimate human rights activities, in particular its opposition to a renewable energy project in the Occupied Syrian Golan. We are concerned that these actions, including the use of strategic litigation, may be aimed at curtailing the organisation's ability to carry out its legitimate human rights activities, damaging its reputation and forcing it to cease its human rights activities. As this is the first time a human rights organization registered in Israel has been sued under the Anti-

Boycott Law, we fear that this case may set a dangerous precedent for freedom of expression and on the legitimate work of human rights defenders and civil society organisations in the country and the occupied territories.

With regards to the alleged use of the Anti-Boycott Law by the company Energix in what appears to be judicial harassment, we would like to reiterate our concerns that the Law may intend to restrict freedoms of expression and association as it targets non-violent public expressions of opposition to Israeli occupation policies and practices, particularly Israeli settlements in the occupied territories. We would further like to reiterate our concerns regarding the legal and financial sanctions that could severely curtail the work of civil society organisations, in particular those defending human rights in the occupied territories, by subjecting them to threats of lawsuits and fines, stripping them of their tax-exempt status and forcing them to shut down.

We would also like to express our concerns about the designation of the wind farm project as “national infrastructure”, which appears to indicate it being primarily intended to benefit the economy and population of Israel. This is concerning especially given the negative impacts the project is expected to have on the local Syrian population, including with regards to the housing crisis in the Syrian villages, restricted access of the Syrian population to agricultural land and the negative health impacts. Our concerns are strengthened by the reported lack of an adequate consultation with the affected population, despite the reported strong opposition to the project among the local Syrian community. We are further concerned about reports of harassment of Syrian landowners aimed at pressuring them to lease their lands to the company.

In connection with the above allegations and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on any consultations held with the local Syrian population in regards to the wind farm project in question, particularly regarding the inclusiveness and transparency of the consultation process.
3. Please provide information on the human rights due diligence steps that your company has taken to prevent, identify and remedy the adverse human rights impacts that your company could have caused or contributed to, in line with the UN Guiding Principles on Business and Human Rights. In particular, please indicate if an independent external human rights

impact assessment on the Clean Wind Energy Project project has been carried out, and if relevant, provide information regarding the findings and how these findings were made public. .

4. Please provide information on steps taken by your company to establish company-level grievance mechanisms to address any adverse human rights impacts caused. Please indicate how related potential barriers faced by rights holders to use the established mechanisms have been identified.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on the same matter has also been sent to the Government of Israel.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Mr. Asa Levinger, the assurances of our highest consideration.

Michel Forst
Special Rapporteur on the situation of human rights defenders

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to appeal to you to take all necessary steps to secure the right to freedom of opinion and expression in accordance with the fundamental principles set forth in article 19 of the ICCPR, ratified by Israel on 3 October 1991. We would like to recall that any restriction to freedom of expression must meet the high threshold established under article 19(3) of the ICCPR. That is, be provided by law and be necessary and proportionate to achieve the legitimate aims listed in the provision. As interpreted by the Human Rights Committee in its General Comment 34 (CCPR/C/GC/34), article 19 of the ICCPR requires that authorities guarantee the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, including political discourse, commentary on one's own and on public affairs, discussion of human rights, journalism, among others (paragraph 11). Article 19 of the ICCPR also protects all forms of expression and the means of their dissemination, including all forms of audio-visual as well as electronic and internet-based modes of expression (paragraph 12).

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

With regards to the concerns raised at the possible negative impacts of the wind farm project, we would like to highlight the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights; and
- c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

It is a recognised principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3). The Guiding Principles also require States

to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

We would also like to refer you to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to your attention the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

- article 9 paragraph 1, which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

-article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We further refer to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

Finally, we would like to recall that the right of everyone to an adequate standard of living, including housing, is protected under international law and enshrined in article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Israel is a party since 3 October 1991. In addition, Article 5 of the International Convention on the Elimination of Racial Discrimination, ratified by Israel on 3 January 1979, requires States to ensure equality before the law, including with regard to the enjoyment of the right to housing and the right to own property alone as well as in association with others.