

**Mandates of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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**

Ref.: AL AUT 2/2022  
(Please use this reference in your reply)

20 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 1993/2A, 43/4, 41/12 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the motion adopted by the Municipal Council of Vienna at its 39th session on 27 June 2018, which includes undue restrictions to the rights to freedom of opinion and expression, peaceful assembly and of association.

According to the information received:

On 27 June 2018, Council member Peter Florianschütz (SPÖ) presented the motion to the Vienna City Council, following a discussion in the Council's working group on combating anti-Semitism. The Council voted the same day to adopt the motion.

The motion condemns the argumentation patterns and methods of the Boycott, Divestment and Sanctions (BDS) movement as anti-Semitic. It undertakes to exclude from the use of municipal premises events that are organized by the BDS movement or by groups pursuing its aims, and to deny support to any event that promotes BDS.

The motion states: "The City of Vienna strongly condemns the spread of anti-Semitism worldwide, opposes the anti-Semitic BDS campaign, does not make municipal premises available for BDS campaigns or events, exhibitions or demonstrations that pursue the goals of BDS, does not support events that promote BDS".

On the basis of this motion, the City of Vienna filed a lawsuit against a member of BDS Austria in November 2021, after he published on social media a photo of the well-known "Visit Apartheid" poster, stuck on a billboard along with the official logo of the Municipality of Vienna. The Commercial Court of Vienna delivered its judgement on 6 April 2022, holding in favor of the City of Vienna and prohibiting the BDS Austria member from associating the logo of the City of Vienna with any publication or public statement.

We wish to express our concern that the City of Vienna's motion follows a worrying trend of unduly limiting the rights to freedom of opinion and expression, peaceful assembly and of association in its decision to make premises or facilities unavailable to campaigns or events organized by the BDS movement or by groups pursuing its aims. Accordingly, the motion appears to unduly interfere with the right of people in Vienna to engage in political speech, namely, to express support for the BDS movement.

We further express concern that the City of Vienna's filing of a lawsuit against a member of BDS Austria may hinder the peaceful activities of human rights defenders committed to monitor and denounce human rights violations in occupied Palestine, shrinking the civic space available to them to express legitimate grievances. While we understand that the Court of Vienna's decision of 6 April 2022 is being appealed, we are concerned that this judgement in the first instance consolidates the City of Vienna's motion against the BDS movement.

Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights respectively guarantee the rights to freedom of expression, freedom of peaceful assembly and freedom of association. The right to promote, discuss and participate in boycott campaigns to raise awareness and advocate for the respect of human rights, is subsumed within these rights. In *Baldassi and Others v. France*, the European Court of Human Rights affirmed: "boycott is above all a means of expressing an opinion of protest. [...] [I]ncitement to differential treatment does not necessarily amount to incitement to discriminate". This decision laid the foundations for the French Criminal Court of Lyon (Tribunal judiciaire de Lyon) to hold, on 18 May 2021, that a call for boycott did not constitute incitement to discrimination.

We further take note of and are encouraged by the recent court decisions that have ruled in favor of groups or organizations whose rights were suppressed on grounds of their support for the BDS movement, including by the Federal Administrative Court in Leipzig (Bundesverwaltungsgericht) on 20 January 2022 (8 C 35.20), the Hessian Administrative Court (Verwaltungsgerichtshof Hesse) on 4 December 2020 (8 B 3012/20), the Cologne Administrative Court (Verwaltungsgericht Köln) on 12 September 2019 (14 L 1765/19), and the Lower Saxony Higher Administrative Court (Niedersächsisches Oberverwaltungsgericht) on 27 March 2019 (ME 10 48/19).

In fact, the BDS movement maintains that it specifically targets corporations and institutions that it deems "complicit" in the State of Israel's violations of international human rights and international humanitarian law. It further defines itself as "an inclusive, anti-racist human rights movement that is opposed on principle to all forms of discrimination, including anti-Semitism and/or Islamophobia". The professed goal of the BDS' call for boycott is not to advocate for an arbitrary discrimination of Israeli citizens, but to target a deliberate State policy and to promote compliance with public international law.

As UN experts, we strongly stand against antisemitism, as well as any other forms of discrimination, racism, bigotry and xenophobia. This is an integral part of the international human rights system and our responsibility, which we uphold by promoting education and advocacy in support of any people under attack on the ground of nationality, ethnicity, religion, or identity.

We do not take an official position on BDS. However, we point out that expressing support for, or opposition to, BDS, is fully guaranteed by the rights to freedom of opinion, expression and association. This is also in line with the Jerusalem Declaration on Antisemitism (JDA), developed and signed by renowned Jewish scholars and intellectuals in 2020. In view of protecting “a space for an open debate about the vexed question of the future of Israel/Palestine”, the JDA stipulates that “boycott, divestment and sanctions are commonplace, non-violent forms of political protest against states. In the Israeli case, they are not, in and of themselves, antisemitic”.

In connection with the above alleged facts 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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information about how the adoption of the above-mentioned motion complies with your Excellency’s Government’s obligations under international human rights law to respect and promote the rights to freedom of opinion and expression, peaceful assembly and of association.
3. Please provide information about the current legal status and the scope of the motion.
4. Please provide information regarding any avenues of appeal and redress for denial of access to services as a result of a determination placing any particular group within the scope of this motion.
5. Please indicate what measures have been taken to ensure that human rights defenders and organizations denouncing human rights violations as part of the BDS movement are able to carry out their legitimate work in a safe and enabling environment, and without undue restrictions.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency’s Government 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 accept, Excellency, the assurances of our highest consideration.

Francesca Albanese  
Special Rapporteur on the situation of human rights in the Palestinian territory  
occupied since 1967

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to recall articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Austria in 1978. These provisions respectively guarantee the rights to freedom of expression, freedom of peaceful assembly and freedom of association.

Article 19 of the ICCPR guarantees freedom of opinion and freedom of expression, which are “the foundation stone for every free and democratic society”.<sup>1</sup> As laid down in paragraph 3 of article 19, these rights may be subject to restrictions only in limited circumstances, where such restrictions are “provided by law” and necessary for one of the enumerated grounds: respect of the rights or reputations of others; the protection of national security, public order (*ordre public*), public health or morals. Restrictions “must conform to the strict tests of necessity and proportionality” to be permissible.<sup>2</sup>

Articles 21 and 22 of the ICCPR guarantee the rights to freedom of peaceful assembly and association, and impose obligations on States to respect and ensure the exercise of these rights without discrimination.<sup>3</sup> In relation to the abovementioned motion that prohibits the use of municipal premises for “BDS campaigns or events, exhibitions or demonstrations that pursue the goals of BDS”, we wish to draw the attention of your Excellency’s Government to General Comment No. 37 of the Human Rights Committee. In it, the Human Rights Committee makes clear that “...peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access...” and the designation of public places or areas where assemblies may not take place “should be generally avoided”. The Human Rights Committee further states that “[a]ny restrictions on assemblies in and around such places must be specifically justified and narrowly circumscribed”.<sup>4</sup>

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<sup>1</sup> Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para. 2.

<sup>2</sup> Ibid, para. 22.

<sup>3</sup> See: Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), 17 September 2020, CCPR/C/GC/37, para. 8.  
Ibid, paras 55 and 56.