

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Independent expert on the promotion of a democratic and equitable international order; the Special Rapporteur on minority issues; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Special Rapporteur on the right to privacy

Ref.: OL ISR 9/2025
(Please use this reference in your reply)

27 May 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Independent expert on the promotion of a democratic and equitable international order; Special Rapporteur on minority issues; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 58/14, 52/9, 52/4, 57/7, 52/5, 1993/2A and 55/3.

In this connection, we would like to bring to the attention of your Excellency's Government some observations concerning **(i) amendments to article 24 of the Counter-Terrorism Law to establish a new offence of consumption of terrorist publication; and (ii) proposed amendments to the Counter-Terrorism Law to (a) create a new offence of identifying with a terrorist and (b) lower the threshold for the existing offence of incitement to terrorism.**

We have previously expressed concerns regarding the vague and overbroad definitions contained in the 2016 Counter Terrorism Law and the risk of the Law being misused for political and ideological aims through various letters, including [ISR 6/2022](#), [ISR 15/2022](#), [ISR 6/2023](#), [ISR 9/2023](#) and [ISR 12/2024](#). We regret that we have not received a reply to any of these letters to date.

We are particularly concerned that the amendments and proposed amendments criminalize or otherwise infringe the legitimate exercise of rights protected under international human rights law, the right to freedom expression and opinion (International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991, article 19), the principle of legality (ICCPR, article 15), the right to privacy (ICCPR, article 17) and freedom from discrimination and the right to equality before the law and to equal protection of the law (ICCPR, articles 2 and 26).

We encourage your Excellency's Government to review and amend or repeal aspects of the laws and amendments discussed below to ensure that they are fully compatible with Israel's international obligations, and refrain from adopting any bills that would violate international law. We note that best international practice encourages States to regularly independently review counterterrorism and emergency laws to ensure their necessity, proportionality and compliance with international law.

New offence of consumption of terrorist publications

On 8 November 2023, the Knesset passed Amendment No. 9 and Temporary Order 5784-2023 (“Amendment”), with effect for two years from 12 November 2023. The new article 24(c1)(1) of the Counter-Terrorism Law criminalizes the “systematic and continuous consumption of publications of a terrorist organization under circumstances that indicate identification with the terrorist organization” and carries a maximum penalty of one year imprisonment. The offence applies to any “publication” that includes: (i) direct calls to commit a terrorist act; (ii) expression of praise, sympathy, or encouragement of a terrorist act; or (iii) documentation of the commission of a terrorist act (article 24(c1)(2)).

Consumption of publications “made randomly, in good faith or for a legitimate purpose, including for the purpose of making information available to the public, preventing terrorism offences or research” are excluded (article 24(c1)(3)).

While the Amendment designates Hamas and ISIS (the Islamic State) as the terrorist organizations to which this offence applies, it also grants the Minister of Justice – with the agreement of the Minister of Defense and the approval of the Knesset’s Constitution, Law, and Justice Committee – the authority to designate additional terrorist organizations for the purpose of this offence in accordance with article 3(a) of the 2016 Counter-Terrorism Law. To do so, the Minister of Justice must be convinced that consuming the organization’s publications systematically and continuously creates a risk of perpetrating an act of terrorism “in view of the characteristics of the organization, its areas of activity and the manner in which it recruits operatives to the organization.” (article 24(c1)(4)).

The explanatory memorandum states that the Amendment is necessary to prevent terrorist indoctrination through intensive viewing of the publications of these terrorist organizations, in light of the security situation arising from the Gaza conflict.

The implementation of Amendment No. 9 to the 2016 Counter-Terrorism Law would appear to require Israeli law enforcement agencies to employ intrusive surveillance tools in order to initiate a criminal investigation against an individual, including surveillance of social media accounts. It is reported that the Amendment has already led to multiple arrests based on social media posts.

Freedom of expression

We are concerned that the new offence is not consistent with the right to freedom of opinion and expression under article 19 of the ICCPR. Freedom of expression includes the right to “seek” and “receive” information and ideas “of all kinds” (ICCPR, article 19(2)). This includes “expression that may be regarded as deeply offensive” (general comment No. 34, para. 11) and criticism of the State, including its institutions and its highest authorities.

Restrictions on the right to freedom of expression must be compatible with the requirements in article 19(3) of the ICCPR, that is, they must be provided by law, pursue a legitimate aim (including national security), and be necessary and

proportionate. While the new offence purports to advance security against terrorism, it does not appear adequately “provided by law” or necessary nor proportionate in pursuit of security.

To be provided by law, a restriction must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly, must not confer unfettered discretion, and must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not (general comment No. 34, para. 25). We are concerned that the offence contains compounding vague and overbroad terms, including as regards the meaning of “systematic and continuous consumption”, what constitutes expression of “praise, sympathy, or encouragement” of a terrorist act, the underlying definition of a “terrorist act”, and the concept of “identification” with a terrorist organization. The Human Rights Committee emphasizes that offences such as praising, encouraging, glorifying or justifying terrorism “should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided” (ibid., para. 46; see also A/HRC/16/51, para. 31). The underlying definition of terrorism must also be limited to conduct that is truly terrorist in nature, as properly defined by international standards (A/HRC/16/51, para. 31).

Ambiguous offences are prone to abuse, particularly in heightened security contexts and where the offence is likely to be enforced in a discriminatory manner against Palestinians. We note in this respect that the offence could cover the consumption of “news” reports about terrorist acts produced by terrorist organizations, in a context where Israel has significantly restricted independent media coverage of the armed conflict and occupation, and Israel’s definition of terrorist acts includes certain conduct that is not prohibited by international humanitarian law. We note further that the offence requires “identification” with the terrorist organization generally but not necessarily with the violent terrorist acts of the organization, meaning that an offence could be committed where the person identifies with the national liberation or other political or ideological aim of the group but not necessarily all of its methods for pursuing such aim. The offence could also incriminate human rights defenders, contrary to their rights to expression and opinion in the context of their work, as recognized under article 19 and general comment No. 34 and affirmed 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 (A/RES/53/144).

We are further concerned that the offence is neither necessary nor proportionate in pursuit of its security aim. The offence does not involve “a direct and immediate connection between the expression and the threat”, as required of restrictions under article 19(3) (general comment No. 34, para. 35). The consumption of terrorist publications, even if it involves “identification” with a terrorist organization, is not of itself harmful in any genuine criminal law sense. It does not indicate that the person intends to act imminently upon their consumption and identification of publications in order to commit any criminal terrorist act, that the person has the capacity to do so, or that there is any causal likelihood of terrorist violence resulting.

We emphasize in this regard that criminal offences restricting freedom of expression to counter terrorism must require both an intention to incite terrorism and an objective risk that a terrorist act will be committed (A/HRC/16/51, paras. 31-32); there must be a probability, causal link or real risk that a terrorist attack will occur (A/HRC/40/52, para. 37; see also A/63/337, para. 61). We refer similarly to the requirements of intent and a likelihood of imminent harm occurring under the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4), which additionally requires consideration of the context, speaker, content or form and extent of the speech.

We are also concerned that the offence is disproportionate because it is not the least intrusive measure to achieve the security aim, as required by international law (general comment No. 34, para. 34). The Counter-Terrorism Law already contains an offence of incitement to terrorism, as well as an extensive range of other preparatory terrorism offences, which more directly target expression that is proximately connected to the commission of terrorism as well as other acts more causally connected to the commission of terrorism. Israeli law also provides for the regulation of the media and social media, which is capable of more precisely targeting expression by the terrorist organizations themselves (as opposed to the consumers of their publications), where such expression involves incitement or hate speech in line with international law.

As the explanatory notes to the Amendment observe, the new offence addresses “an additional preliminary stage” to committing terrorism which precedes even the existing preparatory offences under Israeli law, an “exception among exceptions” which deviates from the principle that “criminal law does not punish a thought that is not accompanied by an act”; whereas the new offence criminalizes the consumption of content “that is done in a person’s home, without... publicity” and without “a probability of influencing others to commit offences”. Such extreme overreach – establishing a *pre-preparatory* offence – is not consistent with the right to freedom of expression under international law, and captures conduct that is too remote from the actual commission of terrorism to justify criminal punishment.

We are also concerned that, to address its inherently over-broad scope, the law shifts the burden to a defendant to prove that their consumption of publications is excused by one of the exceptions, namely consumption “made randomly, in good faith or for a legitimate purpose, including for the purpose of making information available to the public, preventing terrorism offences or research”. The law could be used to investigate, question and intimidate people, including human rights defenders, before the defence is demonstrated, even if they are not charged or prosecuted, thus having a chilling effect on freedom of expression, particularly of Palestinians and Arab Israelis. Where a case is brought to trial, an innocent defendant may have been held in protracted pre-trial detention before they can effectively raise such a defence in court, violating their right to liberty under article 9 of the ICCPR.

Freedom of opinion

We are further concerned that although the offence targets the physical act of consumption, this appears to be a proxy for restricting freedom of opinion, by policing the capacity of individuals to consume and thereby identify with or believe certain

ideas. Article 19(1) of the ICCPR protects the right to hold opinions without interference, which “permits no exception or restriction” (general comment No. 34, para. 9). No person may be subject to the impairment of any rights under the ICCPR on the basis of his or her actual, perceived or supposed opinions, including opinions of a political, scientific, historic, moral or religious nature (ibid.). It violates article 19(1) to criminalize, arrest, prosecute, convict, harass, intimidate or stigmatize a person for reasons of the opinions they may hold (general comment No. 34, para. 9).

Right to privacy

The enforcement of the new offence would appear to require Israeli law enforcement agencies to employ intrusive surveillance tools in order to investigate, including surveillance of social media accounts. It is reported that the offence has already led to multiple arrests based on social media posts. The offence thus risks infringing on the rights to privacy under article 17 of the ICCPR. Given the above concerns that the offence does not constitute a lawful, necessary or proportionate restriction on freedom of expression, and violates freedom of opinion, we are concerned that it does not provide a valid basis for intrusions of privacy, including online.

We stress that any interference in the right to privacy must comply with the criteria of legality (including certainty and foreseeability), necessity, proportionality, and non-discrimination (A/HRC/37/52; general comment No. 34, para. 26). Due to the interconnectedness of a range of human rights, the adverse impacts of legally unsound data collection may further engage a broad spectrum of rights (A/HRC/52/39, para. 45). These include, inter alia, the right to equal protection of the law without discrimination, the rights to life, to liberty and security of person, fair trial and due process, and the right to freedom of movement.

Non-discrimination

To the extent that, in practice, the offence would likely be used to target Palestinian citizens of Israel and Palestinian residents of East Jerusalem, rather than also individuals of Jewish background, this would constitute indirect discrimination prohibited by the Convention on the Elimination of All Forms of Racial Discrimination. We echo the concerns expressed by the Committee on the Elimination of Racial Discrimination that your Excellency’s Government has taken the position that “the Convention [on the Elimination of All Forms of Racial Discrimination] does not apply to all the territories under the State party’s effective control”, a position that “is not in accordance with the letter and spirit of the Convention and international law, as also affirmed by the International Court of Justice” (CERD/C/ISR/CO/17-19, para. 9).

In this regard, we note the recent determination of the International Court of Justice in its Advisory Opinion dated 19 July 2024 that “a broad array of legislation adopted and measures taken by Israel in its capacity as an occupying Power treat Palestinians differently on grounds specified by international law”.¹ In its opinion, the Court found that such differentiation of treatment “cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim” and that “the régime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied

¹ ICJ, Advisory Opinion, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, 19 July 2024, para. 223.

Palestinian Territory constitutes systemic discrimination based on, inter alia, race, religion or ethnic origin, in violation of articles 2, paragraph 1, and 26 of the ICCPR, article 2, paragraph 2, of the ICESCR, and article 2 of CERD.” It further concluded that “Israel’s legislation and measures constitute a breach of article 3 of CERD”.² We emphasize that discrimination is also prohibited under international humanitarian law (Fourth Geneva Convention, article 13; ICRC, Customary International Humanitarian Law, rule 88). Lastly, the Court declared that Israel’s occupation of the Gaza strip and the West Bank, including East Jerusalem, is unlawful and mandated Israel to end its occupation. In this context, we remind your Excellency’s Government that Israel has no authority to legislate for the occupied Palestinian territory.

Proposed offence of identifying with a terrorist

The Combating Terrorism Law (Amendment – Identification with a Perpetrator of a Terrorist Offense of the Type of Murder), 5783-2023 was introduced in March 2023 and is still before the Knesset. It proposes to introduce article 24(b)(1) into the Counter-Terrorism Law to establish a criminal offence, punishable by up to three years of imprisonment, for “Whoever publishes words of praise or sympathy for someone who committed an act of terrorism that caused the death of a person, supports him or identifies with him, with the aim of identifying with the act”. Currently, there exists an offence of publishing “praise, sympathy, encouragement or support of a terrorist act, or identification with it”, but not merely for “someone who committed a terrorist act”.

We are concerned this is another instance of a “pre-preparatory” offence which is not consistent with the right to freedom of expression under article 19 of the ICCPR. The offence is not consistent with the legality requirement for restrictions, because it contains compounding vague and overbroad terms, including as regards what constitutes expression of “praise, sympathy, or encouragement” of a person who committed a terrorist act, “support” for or “identification” with that person, the underlying definition of a terrorist act, and “the aim of identifying” with the terrorist act.

We are further concerned that the offence is neither necessary nor proportionate in pursuit of its security aim. The offence does not involve “a direct and immediate connection between the expression and the threat”, as required of restrictions under article 19(3) (general comment No. 34, para. 35). Praise, sympathy or support for, or identification with, a person who committed a terrorist act, even with aim of identifying with the act, is not of itself harmful in any genuine criminal law sense. It does not indicate that the person intends to act imminently to commit any criminal terrorist act, that the person has the capacity to do so, or that there is any causal likelihood of terrorist violence resulting. We emphasize that criminal offences restricting freedom of expression to counter terrorism must require both an intention to incite terrorism and an objective risk that a terrorist act will be committed.

We are also concerned that the offence is disproportionate because it is not the least intrusive measure to achieve the security aim, since there already exists an offence of incitement to terrorist acts in Israeli law, which focuses on the act rather than the individual behind the act, and other offences to address genuine threats.

² Ibid., para. 229.

Proposed amendment of the offence of incitement to terrorism

The Combating Terrorism Law (Amendment – Identification with a Perpetrator of a Terrorist Offense of the Type of Murder), 5783-2023 also seeks to lower the threshold for the offence of incitement to terrorism in article 24(b)(2) of the Counter-Terrorism Law. The existing offence involves publishing “praise, sympathy, encouragement or support of a terrorist act, or identification with it, where the content of the publication and the circumstances in which it was published give rise to a substantial possibility that it will bring about the commission of a terrorist act”. The amendment would lower the standard from a “substantial possibility” to a “reasonable possibility” that an expression involving incitement will lead to a terrorist act.

While we welcome that the offence requires some causal connection between the expression and the consequential commission of a terrorist act, we are concerned that both the existing and proposed thresholds are too low to qualify as necessary and proportionate restrictions on freedom of expression under international law. A mere “possibility”, whether substantial or reasonable, falls far short of a probability or likelihood of terrorism eventuating, as required by international standards (A/HRC/40/52, para. 37). The threshold of the existing offence has already been lowered compared with the earlier jurisprudence on freedom of expression of the Israeli Supreme Court, which had required a near-certainty of the outcome to justify limits.

In addition, the substance of the offence is not concerned with actual incitement to terrorism, but with the earlier preparatory phases of praise, sympathy, encouragement, support, or identification, which are already both vague and overbroad and remote from actual incitement (direct or indirect) to terrorism. In this context the low causal threshold dangerously aggravates the existing risks of unjustified interferences with free expression and the consequential chilling of legitimate political expression by Palestinians in particular.

We respectfully refer your Excellency’s Government to the many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirming that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law.³ Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. The adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights. We stress that respect for international human rights law treaties and norms is a complementary and mutually reinforcing objective in any effective counter-terrorism effort at the national level. Consequently, we urge your Excellency’s Government to review the above laws and bills to ensure their strict compliance with international human rights law and international humanitarian law.

³ Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others.

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 observations.
2. Please indicate whether the new criminal offence of consumption of terrorist publications introduced by Amendment No. 9 will be amended or repealed to ensure compatibility with the requirements of legality, necessity, proportionality and non-discrimination under international human rights law.
3. Please indicate whether the proposed criminal offence of identifying with a terrorist will be amended or withdrawn to ensure compatibility with the requirements of legality, necessity, proportionality and non-discrimination under international human rights law.
4. Please indicate whether the proposed amendment to the offence of incitement to terrorism will be amended or withdrawn to ensure compatibility with the requirements of legality, necessity, proportionality and non-discrimination under international human rights law.
5. Please indicate whether the definition of terrorism under the 2016 Counter-Terrorism Law will be reviewed and amended to ensure it is compatible with international human rights law.
6. Please indicate what safeguards were taken during the legislative process to ensure that the laws and amendments are compatible with international human rights law, in principle and in their application.
7. Please indicate how your Excellency's Government will ensure that human rights defenders and political activists in Israel and the occupied Palestinian territories are able to carry out their peaceful and legitimate work in a safe and enabling environment, without the risk of being prosecuted under the 2016 Counter-Terrorism Law, particularly the new amendments to article 24 of the Counter-Terrorism Law.

We stand ready to provide your Excellency's Government with any technical advice it may require in ensuring that its legislation is fully compliant with international human rights law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a copy of this letter is being sent to the Government of the State of Palestine.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

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