

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

Ref.: OL ISR 24/2025
(Please use this reference in your reply)

19 January 2026

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 independence of judges and lawyers and Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, pursuant to Human Rights Council resolutions 58/14, 53/12 and 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Bill for the Incarceration and Prosecution of Participants in the Events of 7 October 2024** ("the Bill"), introduced to the Knesset by the Minister of Justice on 3 June 2025,¹ which would establish a Special Court to prosecute suspects in the 7 October 2023 attack on Israel. We are concerned that the Bill could result in criminal trials which are not consistent with international human rights law, including the rights to fair trial by an independent and impartial court, life, liberty, freedom from torture and other ill-treatment, and non-discrimination and equality. We are also concerned about potential political interference in prosecutorial independence, which is essential to a fair trial, the proper administration of justice and the rule of law.

Purpose of the Bill

The Bill is intended to regulate the incarceration and prosecution of the alleged participants in the acts of hostility, murder, rape, looting and kidnapping that ensued on 7 October 2023, that were intended to destroy the Jewish people and the State of Israel, which is the nation-state of the Jewish people, while deliberately harming the country's citizens and residents" (section 1).

The explanatory notes assert that the regular legal system is not equipped to deal with the complexity, scale and unique nature of the crimes committed by hundreds of perpetrators, including crimes against humanity and genocide. It further explained that rapid and effective processes are needed to deter such crimes and do justice to the victims, while protecting the rights of the accused and maintaining the principles of justice and international law.

¹ <https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2222852>.

Key Provisions

Section 3 of the Bill establishes a Special Court with jurisdiction to try offences listed in Israel's Law Concerning the Prevention and Punishment of the Crime of Genocide, 5710-1950, which carry the death penalty. Judges would be appointed from among those qualified to sit as a Supreme Court judge, or from non-citizens or non-residents who the Minister of Justice, in consultation with the Minister of Foreign Affairs, considers possess appropriate knowledge and experience (section 4). The tribunal could sit as a panel of three judges or five judges, where charges are joined in a single indictment, with a total of 15 judges (section 5). Appeals would be heard by all 15 judges (section 6).

Section 7 authorises the Court to deviate from the rules of evidence and accepted procedures, pursuant to regulations established by the Minister for Justice and approved by the Knesset's Constitution, Law and Justice Committee.

Section 8 establishes a political steering committee to determine the prosecution's policy in prosecuting defendants among the "illegal combatants" in the 7 October events, comprising representatives from the Minister of Justice, Minister of Defense and Minister of Foreign Affairs. The committee will decide whether to file indictments from among those cases the State Attorney has determined can be brought to trial for genocide and additional charges (section 9). The committee will take into account the security of the State of Israel and its foreign relations, the circumstances of the offence, the rights of the victims and the public interest.

Section 11 introduces the category of "unlawful combatant in the October events" into the Imprisonment of Unlawful Combatants Law, 5762-2002. It authorises the Israel Defense Forces Chief of Staff to order administrative detention where he or she has reasonable grounds to believe that a detainee participated in the 7 October events, after the detainee has been given an opportunity to be heard. The District Court must consider whether to confirm the order within 14 days of imprisonment. The amendment thus removes the usual requirement to demonstrate that the person is both an "unlawful combatant" (as defined by Israeli law) and that their "release would endanger the security of the state". It also removes the requirement of a six-monthly judicial review of detention under section 5(c) of the Unlawful Combatants Law, thus potentially allowing indefinite detention (see ISR 12/2024). The explanatory notes indicate that "[t]he amendment would allow for a longer period of detention of the person, even if he or she does not pose an immediate danger, for the purpose of investigation, prosecution, or long-term national security considerations."

Human rights concerns

We are concerned that the Bill could enable criminal trials that would not be consistent with Israel's obligations under international human rights law and international humanitarian law.

Judicial independence and impartiality

We are concerned that the Special Court may not meet the requirements of an independent and impartial tribunal as required by article 14(1) of the ICCPR and

international humanitarian law. Firstly, the Bill provides an exceptional procedure for the appointment of judges which both differs from the rules governing appointments to other courts and does not guarantee security of judicial tenure or regulate other aspects of a judge's appointment, thus potentially enabling a high level of discretionary executive control over the terms and conditions under which judges work.

We wish to recall that international standards stipulate that the notion of a "tribunal" designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys, in specific cases, judicial independence in deciding legal matters in proceedings that are judicial in nature².

International standards concur that guarantees of a fair and public trial include the courts' independence and impartiality and require the judicial system not to depend on the discretion of any branch of the government, especially the executive branch. A situation, then, where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former, such as the one described in the provision of the bill, is incompatible with the notion of an independent tribunal³.

The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges independent of other branches of the State, the guarantees relating to their security in office, and the guarantees of respect for their independent decisions and rulings. Article 14(1) of the ICCPR requires that "[i]n order to safeguard their independence, the status of judges, including their term of office, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law" (general comment No. 32, para. 19).

Further, judges must be protected "from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them" (*ibid*). The requirement of competence, independence and impartiality of a tribunal "is an absolute right that is not subject to any exception" (*ibid*). In the highly emotive and politicised context of addressing the crimes of 7 October 2023, it is also vital that the Court "must also appear to a reasonable observer to be impartial" (*ibid*, para. 21).

While international human rights law does not prohibit special courts to try civilians, such courts "may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned" and it is thus essential that they fully comply with article 14 of the ICCPR, including as regards the independence and impartiality of the court and fair trial guarantees (*ibid*, para. 22). Trials of civilians by special courts should be exceptional and limited to cases where the State party can show that they are necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials (*ibid*). We are concerned that the proponents of the

² CCPR/C/GC/32, paragraph 18.

³ CCPR/C/GC/32, paragraph 19.

Bill have not convincingly demonstrated that regular criminal trials in line with article 14 of the ICCPR would not be feasible, including by providing additional funding and human resources to the regular courts as necessary.

We further emphasise that international humanitarian law requires trial by a “regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples” (common article 3 of the four Geneva Conventions 1949) and that these requirements are substantially similar to those applicable under international human rights law. A regularly constituted court must be independent and impartial, and trial by special security courts must be exceptional and fully guarantee fair trial (ICRC Commentary 2025 to article 3 of the Fourth Geneva Convention 1949, paras. 770-774).

Fair trial

We are alarmed that section 7 authorises the Court to deviate from the rules of evidence and accepted procedures, pursuant to regulations established by the Minister for Justice and approved by the Knesset’s Constitution, Law and Justice Committee. Such deviation appears intended to lower the existing level of fair trial rights under Israeli law, which are themselves already inconsistent with articles 9 and 14 of the ICCPR in counter-terrorism cases (see Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Israel (2022), paras. 18-19), including due to the use of secret evidence and the “widespread and systematic practice of torture and ill-treatment” of Palestinian detainees (*ibid*, para. 30, see also CAT/C/ISR/CO/6).

In light of the debates surrounding the Bill in Israel, we are particularly concerned that the Bill may be intended to permit restrictions on legal representation, disclosure of evidence, witness examination, and admissibility of evidence (including as regards intelligence information and circumstantial evidence). Reports that Israeli lawyers are unwilling to represent defendants raise additional concerns about access to effective legal representation under article 14(3)(b) and (d).

We are disturbed by reports that the Special Court might be authorised to conduct collective or “mass” trials of suspects (including where charges are “joined in a single indictment” under section 5), in the absence of proof of individual criminal acts, such as on the basis of mere participation in the events of 7 October 2023 as a whole or association with Hamas or other armed groups. As a result, depending on the number of defendants in the trial, it may be very difficult, if not impossible, for each defendant to enjoy each of the specific guarantees of fair trial, for the following reasons:

- First, the underlying principle of individual criminal responsibility, and the presumption of innocence of each defendant (article 14(2) of the ICCPR), may be compromised because of the cumulative effect of the adverse evidence about the terrorist organisation generally and potentially numerous acts allegedly committed by the multiple defendants on trial. The court may face difficulty in disentangling the responsibility of each defendant from the mass of highly prejudicial evidence about alleged terrorist activities, most of which will not relate to each defendant personally. We note that mere participation by

combatants in hostilities, without targeting civilians, is not criminal under international humanitarian law.

- Secondly, for the same reasons, there is a significant risk in sentencing that convicted persons will receive punishment that exceeds their individual responsibility. In this respect, we emphasise that criminal punishment must be individually tailored and proportionate to the culpability of each perpetrator.
- Thirdly, trial in single proceeding may, for practical reasons related to the procedural management of multiple defendants, inhibit the ability to guarantee: adequate time and facilities for the preparation of the defence of each defendant and to communicate with counsel of each defendant's own choosing (article 14(3)(b)); the right of each defendant to defend themselves in person or through legal assistance of their own choosing (article 14(3)(d)); the right of each defendant to examine witnesses (article 14(3)(e)); the right to an interpreter (article 14(3)(f)); the right to silence of each defendant (article 14(3)(g)); and the right of appeal (article 14(5)).
- Fourthly, the right to be tried without undue delay (article 14(3)(c)) could be undermined by the need for the court and the parties to handle the very large volumes of evidence typically involved in multi-defendant trials involving criminal organisations, including complex electronic evidence. Further delay is likely to result from the many lengthy pre-trial arguments over the proper procedural management of multi-defendant cases precisely in order to guarantee fair trial.
- Fifthly, special procedures could infringe on the discretion of the judiciary to manage cases and court procedures and thus undermine the independence of the judiciary, contrary to article 14(1) of the ICCPR.
- Finally, depending on the procedures, the conduct of highly publicised mass trials could risk violating the presumption of innocence under article 14(2).

Prosecutorial Independence

We are concerned that the political screening of indictments, from among the cases selected by the State Attorney, by three Government Ministers could heavily politicise decisions to commence prosecutions and thus interfere in prosecutorial independence and potentially deny accountability and effective remedies to victims of international crimes where feasible cases are not prosecuted.

International standards guarantee prosecutorial independence. States must ensure that prosecutors are able to perform their functions "without undue interference" (United Nations Guidelines on the Role of Prosecutors 1990) and prosecutorial discretion must be "exercised independently and free from political interference", in order to protect the interests of justice, the rule of law and human rights (International

Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors 1999).

While the possibility of instructions from non-prosecutorial authorities is envisaged, such instructions must be transparent, consistent with lawful authority and subject to guidelines in order to safeguard both the actuality and the perception of prosecutorial independence (IAP Standards 1999). We are concerned that some of the criteria to be applied by the political steering committee, particularly State security and foreign relations, introduce vague, subjective and politicised considerations into prosecutorial decision-making and are likely to taint public and victims' perceptions of prosecutorial independence.

Right to life and the death penalty

We are concerned that any imposition of the death penalty following Special Court proceedings that do not meet fair trial standards before an independent and impartial tribunal would amount to an arbitrary deprivation of life, contrary to article 6(1) of the ICCPR (general comment No. 36, paras. 35-44).

In addition, ECOSOC resolution 1984/50 on “Safeguards guaranteeing protection of the rights of those facing the death penalty” provides that capital punishment may only be imposed where the person’s guilt is established on the basis of clear and convincing evidence, leaving no room for any reasonable alternative explanation of the facts. Such standard of evidence cannot be met in the absence of fair trial before an independent tribunal. These concerns are in addition to those previously raised in relation to the Penal Bill (Amendment– Death Penalty for Terrorists) 5783-2023, itself (see OL ISR 23/2025).

Equality before the law and non-discrimination

We are concerned that the Special Court may involve discrimination and inequality of rights contrary to articles 2 and 26 of the ICCPR, since it would exclusively try suspects in the 7 October 2023 attacks – almost all of whom are Palestinian – and would not have jurisdiction to prosecute the possibly thousands of Israeli military personnel who may have committed international crimes since 7 October 2023 in Gaza and the West Bank or during the Israeli occupation of Palestine since 1967. Given that the scale of the 7 October 2023 events and the large number of suspects are key factors invoked to justify the Special Court, along with the need for deterrence and justice for victims, the same considerations would apply to addressing alleged Israeli atrocities. Such differential treatment without objective and reasonable justification would contravene articles 2 and 26 of the ICCPR (general comment No. 18, paras. 6-13). We encourage Israel to pursue a comprehensive, balanced transitional justice process to deal with all international crimes and serious violations of human rights connected with the conflict and occupation.

We recall that mandate holders have already expressed concern in the past about differential treatment and lack of fair trial in the occupied West Bank, where the Israeli military forces’ exercise of legislative, executive, and judicial powers since 1967 ([AL ISR 11/2024](#)). As part of the military judicial system, Israeli military courts prosecute Palestinian civilians based on Israeli military orders issued by the Israeli military

commander in the occupied West Bank (and previously for occupied Gaza) violating due process guarantees and the right to fair trial under international human rights law and international humanitarian law. The current bill may replicate that model in which people are tried under different court systems for the alleged commission of the same crimes, with different rules and different access to due process guarantees, on the basis of their nationality, in clear violation also of article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination, acceded to by Israel in 1979.

Right to liberty and freedom from torture and other ill-treatment

We are alarmed that the Bill's amendment to the Unlawful Combatants Law would authorise administrative security detention where a person is neither determined to be risk to national security nor subject to criminal charge, in violation of the right to liberty under article 9 of the ICCPR and international humanitarian law (see A/80/284, Annex II). Security detention is only permissible in "the most exceptional circumstances" where a person poses a "present, direct and imperative threat" and alternative effective measures, including criminal proceedings, are unavailable (general comment No. 35, para. 15). Vague and overbroad grounds must be avoided and a high standard of proof must be satisfied (A/80/284, para. 45). Detention must also not last longer than absolutely necessary, and the overall length of detention must be limited.

We are further concerned that the Bill's amendment to the Unlawful Combatants Law removes the requirement of a six-monthly judicial review of detention, thus potentially allowing indefinite detention. Under international humanitarian law and human rights law, administrative security detention in armed conflict must be judicially reviewed at least every six months.⁴ The lack of periodic review also dramatically increases the risk of torture or other ill-treatment in detention, which is particularly concerning in the light of the documented abuses at Israel's military's Sde Teiman prison and other detention facilities holding Palestinians (see CAT/C/ISTR/CO/6).

We stand ready to provide any technical advice your Excellency's Government may require in ensuring that legislation is consistent with international human rights law and international humanitarian law.

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 analysis.
2. Please explain how the Special Tribunal would meet the requirements of an independent and impartial tribunal under international law.
3. Please indicate how the Special Tribunal's procedures would satisfy the requirements of the right to fair trial under international law, including

⁴ Jelena Pejić, "Procedural Principles and Safeguards for Internment/Administrative Detention in Armed Conflict and Other Situations of Violence" (2005) 87 International Review of the Red Cross 375, 389; ICRC Commentary (2020) to article 3 of the Third Geneva Convention 1949, paras. 761-762; A/80/284, Annex II.

so as to avoid violations of the right to life resulting from the imposition of the death penalty following unfair trials.

4. Please detail how prosecutorial independence would be guaranteed.
5. Please explain why Israeli citizens alleged to have committed international crimes since 7 October 2023, and in the occupied Palestinian territory since 1967, are not within the jurisdiction of the Special Court, and what steps will be taken to avoid such discrimination.
6. Please indicate whether the Bill's amendment to the Unlawful Combatants Law will be withdrawn, and if not, how such an amendment is consistent with the right to liberty, including periodic judicial review of detention and freedom from torture and other ill-treatment.

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 has been sent to the Government of the State of Palestine.

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

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Margaret Satterthwaite

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