

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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Ref.: OL ISR 20/2025
(Please use this reference in your reply)

23 September 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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 58/14, 52/9, 59/4, 52/4, 1993/2A and 54/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Prohibition of Denial of Massacre Incidents of 7 October 2023 (Shemini Atzeret Massacre) Law, 5785-2025**, (hereafter "the Law"),¹ enacted by your Excellency's Government on 21 January 2025.

The Law criminalizes the denial of the 7 October 2023 attacks on Israel, "with the intent to defend, express sympathy for, or identify with the Hamas terrorist organization or its partners" (section 3). It was modelled on Israel's 1986 Holocaust denial law and aims to combat the denial of the killings that occurred during the coordinated attacks carried out by members of the Hamas military wing and other Palestinian armed groups in Southern Israel on 7 and 8 October 2023.

We unequivocally condemn the grave violations of international law committed during the 7 October attacks, stand in solidarity with the victims and their families, and recognise the importance of preserving historical memory and promoting non-recurrence.

We are nonetheless concerned that, as explained below, the Law, particularly sections 2 and 3, appears to criminalize or otherwise infringe on the legitimate exercise of rights protected under international human rights law, including the right to freedom of expression (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 freedom of assembly and of association (ICCPR, articles 21 and 22), the right to privacy (ICCPR, article 17) and the right to liberty and security of the person

¹ https://fs.knesset.gov.il/25/law/25_lsr_5565194.pdf.

(ICCPR, article 9).

This Law, as it stands, risks suppressing legitimate discourse and engagement with historical and political issues, and thereby chilling freedom of expression, particularly in relation to Palestinians and Arab Israelis. We note that we have previously expressed concerns regarding the increasing surveillance and criminalization of individuals who peacefully express dissent or advocate for the rights of Palestinians on social media through various letters, including [ISR 9/2025](#) and [ISR 6/2024](#). We regret that we have not received a reply to any of these letters to date.

We underline that any measures taken to combat terrorism and violent extremism must comply with all obligations under international human rights law and international humanitarian law (see A/74/337). We encourage your Excellency's Government to review and reconsider key aspects of the Law discussed below to ensure that they are fully compatible with Israel's international obligations, and to repeal all laws that are incompatible with international law. We note that best international practice encourages States to regularly independently review counterterrorism and emergency laws to ensure their continuing necessity and compliance with international law.

The Law

Section 1 of the Law details that its purpose is “to combat the denial of the massacre events that occurred as part of the murderous terrorist attack carried out in an organized and deliberate manner by the terrorist organization Hamas and its partners against the citizens and residents of Israel on the 22nd and 23rd of Tishrei 5784 (7-8 October 2023), acts which constitute crimes against the Jewish people and crimes against humanity”.

Section 2 defines “the 7 October Massacre (Simchat Torah Massacre)” as “the massacre events carried out in an organized and deliberate manner by the terrorist organization Hamas and its partners on the 22nd and 23rd of Tishrei 5784 (7-8 October 2023)”.

Section 3 of the Law makes it a criminal offence to “publish [...], either orally or in writing, statements that deny the 7 October Massacre (Simchat Torah Massacre), with the intent to defend the terrorist organization Hamas and its partners, to express sympathy for them, or to identify with them”. Such an offence is punishable by up to five years' imprisonment.

Section 4 carves out exceptions to the Law, stating that “the following shall not be considered an offense [...], publications that are made accidentally, in good faith, or for a legitimate purpose, including for the purpose of providing information to the public, for research, or within the framework of a legal proceeding”.

Section 5 states that an indictment for an offense under this law shall be filed only by the Attorney General or with their consent.

Freedom of expression and opinion

We are concerned that the new offence may unjustifiably restrict the right to freedom of expression under article 19 of the ICCPR. 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, and be necessary and proportionate and non-discriminatory.

Legality

To be provided by law, a restriction must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly, must not confer unfettered discretion, and must provide sufficient guidance to those charged with the execution of laws to enable them to ascertain what sorts of expression are properly restricted and what sorts are not (general comment No. 34, para. 25). Further, the principle of legality prohibits retroactive criminal punishment under article 15 of the ICCPR.

We are concerned that the definition of “the October 7 Massacre” in section 2 is vague and overbroad because it does not particularize the kinds of facts which would constitute “the massacre events carried out in an organized and deliberate manner by the terrorist organization Hamas and its partners on ... (7-8 October 2023)” or their denial. It is unclear whether, for example, publishing a written or oral statement questioning discrete distinct facts within the broader context of the “massacre events” could be considered as denial under the Law and thus subject to criminal liability.

We note in this regard that Israel has not yet conducted a thorough, independent and impartial investigation into these events, as requested by former Israeli hostages, survivors, victims and their families, including in relation to (a) any failures by Israel to diligently prevent foreseeable threats to life, as required by Israel’s obligation to protect the right to life under article 6 of the ICCPR, and (b) Israel’s own responsibility for the use of force in response to the attacks, which reportedly also killed and injured Israeli victims. As such, there is not yet any thoroughly investigated independent record of the “events” that could be the baseline against which to measure denial, even if that were permissible under international law (see next section).

We are additionally concerned that other elements of the section 3 offence are also vague and overbroad, including an intent to “defend”, “express sympathy for”, “identify with” Hamas and its partners, as well as who constitutes such “partners”. These terms could potentially capture legitimate expressions of support for the international legal right of Palestinian self-determination and national liberation, including resistance against Israeli occupation (which was declared to be unlawful by the International Court of Justice in its 2024 [Advisory Opinion](#)), i.e. violence that does not deliberately target civilians in violation of international humanitarian law, thus affecting peaceful human rights defenders, political activists, and academics. We recall that Pillar I of the Global Counter-Terrorism Strategy, adopted by the consensus of the General Assembly including Israel, commits States to addressing the conditions conducive to terrorism, including State violations of human rights.

Further, the term ‘published’ is vague and undefined which allows for the possibility of statements made in private to be caught within the scope of the Law,

which could lead to infringing on the right to privacy (ICCPR, article 17).

Accordingly, we are concerned that the vague terms in sections 2 and 3 create a lack of certainty and foreseeability that does not satisfy the requirements of legality under articles 19(3) and 15 of the ICCPR, and could potentially increase the risk of arbitrary interpretation and abusive or discriminatory enforcement, which could be misused to violate the rights to freedom of expression, including the freedom of the media, the freedom to seek, receive and impart information, and academic freedom. This could potentially suppress legitimate discourse and deter public engagement with sensitive historical and political issues, particularly affecting Arab Israeli and Palestinian citizens who may face increased scrutiny or legal action for expressing dissenting views. Because the terms within this Law are vague or undefined, any legitimate discourse surrounding the facts of the 7 October attacks could be subjectively considered as denial and thus subject to criminal suppression.

Lack of a legitimate aim

The restriction imposed by section 3 must be in pursuit of a legitimate aim, namely, for the respect of the rights or reputations of others, for the protection of national security, public order, or public health or morals (article 19(3) ICCPR). Section 1 provides that the purpose of the Law is “to combat the denial of the massacre events that occurred as part of the murderous terrorist attack carried out in an organized and deliberate manner by the terrorist organization Hamas and its partners against the citizens and residents of Israel on the 22nd and 23rd of Tishrei 5784 (7-8 October 2023)”. It is unclear which legitimate aim the restriction intends to pursue.

In general comment No. 34 (2011), the Human Rights Committee stated that “[l]aws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States Parties in relation to the respect for freedom of opinion and expression. The ICCPR does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events.” In this respect, the aim of combating the denial of the attacks that occurred on 7-8 October 2023 (section 1) is not a legitimate aim for the purpose of imposing restrictions under article 19 ICCPR, because in conjunction with section 3 it penalizes the expression of opinions about historical facts, even if those expressions would not constitute incitement to hatred. This is true even if there existed any independent, thoroughly investigated account of the events.

We are concerned that by criminalizing “denial”, the Law appears to impermissibly restrict freedom of opinion and expression by policing a singular State-approved interpretation of the historical “truth” and punishing dissenting viewpoints. 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 their actual, perceived or supposed opinions, including opinions of a political, scientific, historic, moral or religious nature (ibid). The law should not be used to criminalize, arrest, prosecute, convict, harass, intimidate or stigmatize individuals for reasons of the opinions they may hold (ibid).

Distinguishing Holocaust denial

The Law is modelled on Israel's 1986 Holocaust denial law. We note that the General Assembly, in A/RES/76/250, rejected and condemned without reservation any denial of the Holocaust as an historical event; reaffirmed the positive role that the exercise of the right to freedom of opinion and expression and full respect for the freedom to seek, receive and impart information can play in strengthening democracy and combating religious intolerance; and further reaffirmed that measures to restrict freedom of expression must be in full compliance with international human rights law. We recognize that the Human Rights Committee has found, in an individual case, that a criminal conviction for Holocaust denial may be a necessary restriction on freedom of expression where it protects the rights of others or the community as a whole, namely the right of the Jewish community to live free from an atmosphere of antisemitism (*Faurisson v. France*, communication No. 550/1993, CCPR/C/58/D/550/1993 (1996)). We further recall the jurisprudence of the European Court of Human Rights, which has consistently upheld the exclusion of Holocaust denialism from the protection of the right to freedom of expression. In these cases, Holocaust denial has been presumed by the Court to incite hatred or intolerance, allowing for such an incitement to not be proved in each case. This presumption is based on the Court's view that, given the historical context of the States concerned, Holocaust denial, even if dressed up as impartial historical research, must be seen as connoting an anti-democratic ideology and antisemitism.²

The European Court of Human Rights has underlined the distinction between statements concerning "clearly established historical facts, such as the Holocaust", and "facts about which there is still an ongoing debate among historians".³ In contrast to the Holocaust, the attacks on 7 and 8 October 2023 occurred in recent history, the precise details of which are still the subject of an ongoing debate among the Israeli and Palestinian populations, historians, experts, and the international community; and as already noted, there has been no thorough independent investigation by the State of Israel itself. Therefore, the contextual and well-settled historical evidence which justifies the Court's presumption that Holocaust denial incites hatred or intolerance because of its connotations with anti-Semitism cannot be readily established in cases that would fall under the scope of the Law. Other distinguishing factors include the sheer magnitude of the Holocaust, its archetypally genocidal character, and the linkages between its denial and incitement to antisemitic violence.

Lack of necessity and proportionality

While the section 3 offence requires that published statements are made with the "intent to defend the terrorist organization Hamas and its partners, to express sympathy for them, or to identify with them", the Law does not require proof that they both intend to incite hatred or violence and are likely to do so. For a restriction on freedom of expression to be necessary in pursuit of any legitimate aim (such as protecting the rights of others and/or counter-terrorism) under article 19(3) of the ICCPR there must be "a

² *Lehideux and Isorni v. France*, Application No. 24662/94, ECtHR Judgment, 23 September 1998; *Garaudy v. France*, Application No. 65831/01, ECtHR Inadmissibility Decision, 24 June 2003; *Perinçek v. Switzerland*, Application No. 27510/08, ECtHR (Grand Chamber) Judgment, 15 October 2015; and *M'Bala M'Bala v. France*, Application No. 25239/13, ECtHR Inadmissibility Decision, 20 October 2015.

³ *Lehideux and Isorni v. France*, *ibid.*

direct and immediate connection between the expression and the threat” (general comment No. 34, para. 35). Unless publications incite hatred or violence, denial of facts concerning the 7 October attacks may not of itself be harmful in any genuine criminal law sense and thus cannot provide a lawful basis for the restriction of fundamental rights. Even if statements involved an “intent to defend... express sympathy for... or to identify with” the “terrorist organization Hamas and its partners”, this does not necessarily mean that the person intends to incite hatred or unlawful violence or that such result is likely to occur.

We recall that laws addressing terrorist-related expression must: be precisely prescribed and avoid vague terms; be based on a precise underlying definition of terrorism; be strictly necessary and proportionate to counter-terrorism; and include both an intent to incite terrorism and an objective risk that it will be committed (A/HRC/16/51, para. 31). In relation to incitement to ethnic, racial or religious fanaticism, the six-part test on hate speech in the Rabat Plan of Action (A/HRC/22/17/Add.4) recommends that laws consider referring to: context; speaker; intent; content or form; extent of the speech; and likelihood of harm occurring, including imminence.

We acknowledge that section 4 of the Law includes exceptions allowing a person to prove that their statement was “made accidentally, in good faith, or for a legitimate purpose, including providing information to the public, conducting research, or within the framework of legal proceedings”. However, we are concerned that this shifts the burden to the defendant to prove their innocence and may compromise the presumption of innocence under article 14 of the ICCPR. The offence should not be drafted in such a vague and overbroad manner, which invites subjective and excessive interpretation, so as to require defendants (who are likely to be deprived of liberty pending trial) to invoke these defenses in order to establish their innocence. Further, we are concerned that some of these terms themselves may be ambiguous (“accidentally, in good faith, or for a legitimate purpose”), risking discretionary and restrictive application rather than an interpretation that confers the benefit of the doubt on the defendant. These uncertainties are likely to have a further chilling effect on freedom of expression, particularly in relation to Palestinians and Arab Israelis.

Finally, we are concerned that the offence is disproportionate because it is not the least intrusive measure to achieve its stated aim, as required by international law (general comment No. 34, para. 34). While States have a duty to preserve memory, specifically to combat revisionism and negationism (E/CN.4/2005/102/Add.1), alternative non-penal mechanisms are available for recognizing, honoring and commemorating the memory of victims. We also refer your Excellency’s Government to the thematic report on memorialization of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence in which he recommended “preventing future violence through education and awareness-raising and establishing a culture of peace” (A/HRC/45/45, para. 22). This can be done through “[m]emory processes [which] help to promote commitment to a democratic society, encourage debates on the representation of the past and allow the problems of the present to be addressed in a relevant manner” (ibid).

Discriminatory effects

We are concerned that in practice the Law is likely to have discriminatory impacts on Palestinians and Arab Israelis, whose legitimate expressions of support for Palestinian self-determination, including lawful resistance, may be captured by the overbroad scope of the Law. Such application is also likely to have chilling effects on other members of these groups and exacerbate the intimidation and harassment of human rights defenders promoting the rights of Palestinians, including self-determination. We recall that articles 2 and 26 of the ICCPR impose obligations in relation to non-discrimination and equality, including on the basis of nationality and political opinion.

Consequential arbitrary detention

Further, if the Law is used to arrest or detain individuals as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR, including freedom of opinion and expression, detention would be arbitrary in violation of article 9 of the ICCPR (general comment No. 35, para. 17). In addition, a sentence of up to five years' imprisonment further indicates the disproportionality of an expression-related offence that does not involve incitement to violence or racial hatred and the consequent punishment. Human rights defenders, political activists, and academics whose discourse differs from the Government's assertion of the facts of the 7 October attacks are at particular risk of arbitrary detention.

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 Law will be amended or withdrawn to ensure compatibility with the requirements of legality, necessity, proportionality and non-discrimination under international human rights law.
3. Please indicate how your Excellency's Government will ensure that individuals engaging in legitimate discourse, including human rights defenders, political activists, and academics, will be able to do so without the risk of prosecution under the Law.
4. Please provide information on what measures your Excellency's Government intends to take to ensure that individuals are not unjustifiably penalised under the Law.
5. Please indicate what measures will be taken to prevent discriminatory enforcement of the Law against Palestinians and Arab Israelis.

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 standards and international humanitarian 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 has been sent to the Government of the State of Palestine.

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

Ben Saul

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