

**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 human rights of migrants and the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967**

Ref.: AL DEU 6/2025  
(Please use this reference in your reply)

19 November 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 human rights of migrants and Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, pursuant to Human Rights Council resolutions 58/14, 52/9, 59/4, 52/20 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 alleged misuse of German migration, asylum and citizenship law against individuals, including Palestinians, who express solidarity with Palestine. In particular, we address: **(1) the freezing of asylum application decisions for applicants from Gaza; (2) deportations, refusal of re-entry, and withdrawal of residency; (3) deportation orders against four foreign nationals, Mr. Cooper Longbottom, Mr. Kasia Wlaszczyk, Mr. Shane O'Brien and Ms. Roberta Murray; (4) eligibility for citizenship; and (5) a proposal to wider the grounds for revoking citizenship.** We are concerned that such laws are being used in a manner that may unjustifiably interfere with the human rights to freedom from discrimination on grounds of nationality and of political opinion, freedom of movement, freedom from arbitrary expulsion, freedoms of opinion and expression, of association, and of peaceful assembly, the right to participate in public affairs, and the right to privacy and reputation, and risk violating the obligation of non-refoulement.

We have previously expressed concerns about your Excellency's Government's unjustified restrictions on the "Boycott, Divestment, Sanction" ("BDS") movement ([DEU 7/2024](#) and [DEU 3/2019](#)). In particular, in communication [DEU 7/2024](#), we raised concerns about the classification of the entire BDS movement as a "suspected extremist threat" by Germany's domestic federal intelligence agency, the Bundesamt für Verfassungsschutz ("BfV"). We thank your Excellency's Government for the reply received on [27 February 2025](#), but emphasize that the response reinforces our deep concerns about the disproportionality of this measure.

We have also previously expressed concerns about your Excellency's Government's alleged undue restrictions and human rights violations targeting Palestine solidarity peaceful activism across several cities in Germany, mainly in Berlin, which marks an alarming trend of escalation since October 2023 ([DEU 2/2025](#)). This communication also raised serious concerns about the cancellation of migration

visa/refugee status and forced deportation of activists and human rights defenders as apparent retribution related to Palestine solidarity non-violent activism. We look forward to receiving the response of your Excellency's Government to this communication and the alleged violations therein at your earliest convenience.

According to the information received:

*Freeze of asylum application decisions concerning Gaza*

From November 2023 to July 2025, the Federal Office for Migration and Refugees ("BAMF") suspended decision-making on asylum for applicants from the Gaza Strip. BAMF argues that, due to the war, the situation on the ground is too unclear to make a valid assessment of the risk to those seeking protection in the event of a return and claims the decision freeze is in accordance with section 24(5) of the Asylum Act ("Asyl Gesetz").<sup>1</sup> According to the Act, asylum decisions can be postponed if the situation is temporarily uncertain. Specifically, the answer by the Ministry of Interior states:

*Due to the military situation in the Gaza Strip region since 7 October 2023, there is a temporary uncertain situation in this area in accordance with Section 24(5) of the Asylum Act (AsylG), according to which it cannot reasonably be expected that a decision will be made within the regular deadlines. The Federal Office for Migration and Refugees (BAMF) has therefore postponed decisions on applicants from the region until further notice with circular dated 9 January 2024.*

At least 238 cases were brought in the German administrative courts (Verwaltungsgericht (VG)) to challenge the suspension. Several courts have ruled that such an uncertain situation could no longer be assumed in view of the "dramatic situation and widespread destruction in the Gaza Strip".<sup>2</sup> In at least 187 decisions, courts required the Federal Office to decide cases, and in a few cases the courts themselves granted subsidiary protection (for those not registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and thus eligible) due to the risk of serious harm to applicants in Gaza (such as a threat to life or arbitrary violence in armed conflict). Additionally, several state refugee councils and Pro Asyl, Germany's largest immigration advocacy organization, called for an end of the decision freeze and to grant Palestinians from Gaza the protection they urgently need.

In a [response](#) to [another question](#) from Members of Parliament (MP) for the Left Party, the Ministry of Interior confirmed on 21 March 2025 that:

*The situation in the Gaza Strip remains extremely dynamic, confusing and difficult to assess. For this reason, there is still a stay of proceedings in accordance with Section 24(5) of the Asylum Act (AsylG). After the end of the first phase of the ceasefire, it is currently not possible to*

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<sup>1</sup> [Ministry of the Interior response](#) of 21 February 2024 to a question from an MP for the Left Party, p. 19575.

<sup>2</sup> See e.g. VG Dresden, judgement of 16 April 2024, case reference 11 K 357/24.A, VG Sigmaringen, judgement of 7 March 2024, case reference A 5 K 1560/22, VG Hamburg, judgement of 3 June 2024, case reference 14 A 789/24

*predict how high the chances of success of negotiating the second phase are, so that a final assessment of the situation is not possible at present. If the situation can be assessed, the BAMF will review an adjustment to its decision-making practice and will then resume its decision-making activities.*

Between January 2024 and July 2025, 1,218 Palestinian-related asylum cases reportedly remained pending. Germany resumed processing Palestinian asylum claims on 18 July 2025,<sup>3</sup> after an 18-month suspension.

*Deportation orders, denial of re-entry to residents and revocations of residency*

Palestinians and others have received deportation orders apparently in response to their expressing solidarity with Palestine. These include persons with legal residency and citizens of European Union Member States who enjoy freedom of movement between European Union countries. For example, in spring 2025 Berlin immigration authorities ordered the deportation of four foreign nationals, Cooper Longbottom (U.S. national), Kasia Wlaszczyk (Polish), Shane O'Brien (Irish) and Roberta Murray (Irish), on allegations linked to participation in protests against Israel's war on Gaza. None of the four has been convicted of any crime. Mr. O'Brien's is the only one whose deportation order included a charge, namely the accusation that he called a police officer a "fascist", which was brought before a criminal court in Berlin and resulted in an acquittal. All four are accused, without evidence, of supporting Hamas, which Germany has designated as a terrorist organization. Justifications for issued deportation orders refer to Germany's national pledge to defend Israel, the country's "Staatsräson" (German language for reason of state). "Staatsräson" constitutes a political principle rather than a legal category, with a parliamentary body recently [clarifying](#) that it is not legally binding. To issue a deportation order, German migration law does not require a criminal conviction. However, the grounds for the deportation must be proportional to its severity.

Palestinians and persons who have expressed solidarity with Palestine have also been blocked from re-entering Germany and had their residence permits revoked, including in cases resulting in the exclusion of German-born children. Residence permits have also been refused on the basis of the reasons stipulated in section 54(1) No. 2 or 4 of the Residence Act, which allow for refusal of residence if an applicant was convicted of one or several criminal acts or violated residence restrictions or prohibitions and thereby endangered public safety and order.

Other grounds invoked in the context of both deportation orders and blocked re-entry include alleged "public safety threats", "support for Hamas", including during protests, as well as "ongoing security investigation by the domestic intelligence service ('Verfassungsschutz') for alleged involvement with the Palestine solidarity groups/organizations". These are generally used in these migration law decisions without the existence of criminal convictions. Many deportation orders have been successfully challenged in the courts.

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<sup>3</sup> <https://www.deutschlandfunk.de/bamf-entscheidet-wieder-ueber-asylantraege-aus-gaza-106.html>.

Alleged connections to or support of banned organizations are frequently referred to in decisions applying migration law.

### *Eligibility for citizenship*

In June 2024 Germany passed the Act on the Modernization of Citizenship Law (Gesetz zur Modernisierung des Staatsangehörigkeitsrechts, “StARModG”)<sup>4</sup> which effectively amended the citizenship law (Staatsangehörigkeitsgesetz (“StAG”)).<sup>5</sup> Most notably, section 1(6)(bbb) of the StARModG amends section 10(1) of the StAG. The new paragraph thereto, sentence 1(a), requires those seeking to acquire citizenship to “acknowledge Germany’s special historical responsibility for the unjust National Socialist regime and its consequences, in particular for the protection of Jewish life, as well as for the peaceful coexistence of peoples and the prohibition of waging a war of aggression.”

### *Declaration of loyalty*

According to section 10(1) sentence 1 of the StAG, it is a prerequisite for naturalisation of applicants to commit to the free democratic basic order of the Basic Law for the Federal Republic of Germany, through a signed declaration of loyalty. It may also be necessary, depending on the naturalisation authority, to sign an additional information sheet on loyalty to the constitution. To implement the above-described changes in the citizenship law, additional aspects, including an “ongoing commitment to Jewish life in Germany”, has become part of the declaration of loyalty which has to be signed.

In practice, the StAG provision has reportedly been subject to broad and arbitrary interpretation, in the context of institutional and systematic repression of those expressing support for Palestine.<sup>6</sup> The expression of solidarity with Palestine has reportedly been conflated with potential violations of the StAG provision, threatening access to (and the revocation of) citizenship on grounds of alleged anti-semitism or connection with or support for an organization banned in Germany.

### *Additional questions in the citizenship test*

Germany’s citizenship reform has been accompanied with additional questions in the citizenship test, of which at least two questions are dedicated to the right of Israel to exist. Four questions are themed around antisemitism and Holocaust denial. According to the Minister of Interior, these questions seek to exclude applicants with “antisemitic attitudes”.

At the state level, in the Federal State of Saxony-Anhalt, an explicit affirmation of Israel’s right to exist has been a condition to obtain German citizenship since

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<sup>4</sup> [https://www.recht.bund.de/bgbl/1/2024/104/regelungstext.pdf?\\_blob=publicationFile&v=2](https://www.recht.bund.de/bgbl/1/2024/104/regelungstext.pdf?_blob=publicationFile&v=2).

<sup>5</sup> <https://www.gesetze-im-internet.de/stag/BJNR005830913.html>.

<sup>6</sup> <https://elsc.support/wp-content/uploads/2025/05/ELSC-Executive-repression-Summary-of-the-ELSC-database-of-anti-Palestinian-repression.pdf>.

December 2023. In Regensburg, in the Federal State of Bavaria, failure to do so has allegedly resulted in the denial of citizenship to at least one person.

In practice, German State institutions and actors have reportedly conflated legitimate criticism of the Israeli State for alleged serious international crimes in Palestine with antisemitism and/or support for terrorism. As such, unsubstantiated allegations of antisemitism or terrorism have been used to silence protected expressions of solidarity with Palestinians, and to suppress, unjustly criminalize and ban associations and peaceful assemblies (as noted in DEU 2/2025).

#### *Revocation of citizenship*

Some individuals have reportedly been notified that their citizenship would be revoked due to the discrepancy between their answers to the citizenship test and/or accompanied declaration and their expressions of solidarity with Palestine, in particular where Israel's right to exist is included in a citizenship test.

#### *Proposal to widen the grounds for revoking citizenship*

The possibility of revoking the German citizenship of dual citizens was championed by the current governing party Christian Democratic Union (CDU)/Christian Social Union (CSU) during the coalition negotiations in 2025, but the proposal did not make it into the final coalition contract between CDU/CSU and the Social Democratic Party of Germany (SPD). However, it may still become part of the announced reform of the German citizenship law. In preliminary drafts of the new coalition contract, the CDU/CSU/SPD coalition sought to include the following: "We will examine under constitutional law whether we can revoke the German citizenship of terrorist supporters, anti-Semites and extremists who call for the abolition of the free and democratic basic order if they have another nationality".<sup>7</sup>

While we do not wish to prejudge the accuracy of these allegations, we express our concern at the apparent pattern of misuse of German migration, asylum and citizenship law against Palestinians or others who express, including through associations and peaceful protests, solidarity with Palestine and criticism of Israeli Government actions, without inciting discrimination, hostility or violence prohibited under international law. While States have the right to determine eligibility for admission and stay under migration law, and eligibility for citizenship, these discretions must comply with international human rights law and refugee law, including the obligation of non-refoulement.

#### *Freeze on asylum decisions*

We welcome the lifting of the temporary freeze on asylum for applicants from Gaza and acknowledge that during the 18-month suspension period there were some uncertainties surrounding the situation in Gaza and the effects and prospects of

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<sup>7</sup> Ergebnisse der Sondierungen von CDU, CSU und SPD: [Sondierungspapier vom 08.03.2025](#), paras. 335-339.

ceasefires, as is inevitable in fluid situations of hostilities. However, we emphasize that the suspension, particularly of such a protracted duration, could not be justified given the severe and immediate risks to life in Gaza throughout this period, both from the conduct of hostilities and military attacks directed against civilians and civilian objects, including on civilian displacement camps and medical facilities, as well as the denial of humanitarian relief essential to civilian survival. These grave, widespread and systematic risks were exhaustively documented by authoritative sources, including the International Court of Justice in multiple provisional measures orders in a case concerning allegations of genocide; United Nations humanitarian organizations on the ground, including the United Nations Relief and Works Agency for Palestine, Office for the Coordination of Humanitarian Affairs, World Food Programme and the United Nations Children’s Fund; the Office of the High Commissioner for Human Rights; the Independent International Commission of Inquiry on the Occupied Palestinian Territory; numerous United Nations Special Procedures mandate holders; and foreign States, journalists and civil society, including Palestinian and Israeli organizations. We note also that the International Criminal Court has issued arrest warrants for senior Israeli leaders on the basis that there are reasonable grounds to believe that international crimes have been committed, including: the war crimes of starvation and intentionally directing an attack against the civilian population; and the crimes against humanity of murder, persecution, and other inhumane acts.

In this context, we encourage your Excellency’s Government to take into account the judgment of the European Court of Justice in June 2024 that even Palestinian refugees registered with UNRWA are automatically eligible for refugee status or subsidiary protection under EU law where they are no longer granted protection or assistance by UNRWA for any reason whatsoever. It found further that this is the case if the general situation prevailing in the area of UNRWA’s operation makes it impossible to guarantee the person concerned decent living conditions and a minimum level of security in accordance with UNRWA’s mission, without that person having to prove that he is specifically affected by that general situation owing to factors inherent in his personal situation.<sup>8</sup>

*Deportation, denial of re-entry, revocation of residency, and denial or revocation of citizenship*

We are concerned that migration and citizenship law has been misused to unjustifiably deport, deny re-entry to, revoke the residency of, and deny or revoke the citizenship of individuals for apparent expression or activity that is critical of Israel, its policies and practices or supportive of the human rights, including self-determination, of the Palestinian people, particularly in relation to the conflict in Gaza since 7 October 2023. Such misuse appears to be enabled by the overbroad and arbitrary interpretation of vague concepts such as “Staatsräson”, “public safety threats”, “support for Hamas”, or “ongoing security investigation by the BfV (Verfassungsschutz) for alleged involvement with Palestine solidarity groups/organizations”.

We note that Germany has indicated that the right of Israel to exist, its protection, and the integrity of the State of Israel are part of Germany’s “reason of state” (Staatsräson), especially given Germany’s historical responsibility toward Jewish

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<sup>8</sup> *LN v. Bulgaria*, ECJ Judgment of 13 June 2024 - C-563/22 – SN, para. 87.

people, including in Germany and Israel. Despite its earlier non-legal status as a moral, political and ideological commitment, Staatsräson appears to have increasingly influenced migration and citizenship law and the interpretation of those laws. We are concerned that Staatsräson, reflecting domestic and foreign policy interests, has been improperly invoked in migration and citizenship decisions to suppress and punish legitimate expression and, the exercise of association and assembly rights, that are critical of Israel or its policies and practices, or that are supportive of human rights of Palestinians or Palestinian political causes. In this regard, we reiterate the concerns raised in communication DEU 2/2025, about invoking the principle of Staatsräson related to foreign policy interests to restrict freedom of peaceful assembly rights and impose additional restrictions outside of those permitted under article 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Germany on 17 December 1973. We emphasize that Germany's historical responsibility towards Jewish people does not justify the unnecessary and disproportionate restriction of pro-Palestinian or "anti-Israel" speech and peaceful activism.

We are further concerned that migration decisions have improperly relied upon the alleged involvement with solidarity groups/organizations and the BfV's Verfassungsschutz, which improperly targets legitimate support for the Boycott, Divestment, Sanctions (BDS) movement against Israel. As we emphasized in [DEU 7/2024](#), the classification of the entire BDS movement as a "suspected extremist threat", in conjunction with reliance on the International Holocaust Remembrance Association's (IHRA's) vague and overbroad definition of antisemitism, unjustifiably interferes with the human rights to freedom of opinion and expression, of association, and of peaceful assembly, the right to participate in public affairs, and the right to privacy and reputation. We are equally concerned with the apparently excessive application of the IHRA antisemitism definition in migration and citizenship decisions generally.

Finally, we are concerned that some migration decisions appear to have been made in an opaque manner, with individuals not being informed of the precise factual reasons why their conduct allegedly breaches the various legal concepts invoked.

Further, migration law appears to be increasingly applied where no criminal law offences have been committed, including where prosecutions have resulted in acquittals, which may suggest that the allegations are not particularly well-founded. We are particularly concerned at the deportation orders decided by Berlin immigration authorities against four foreign nationals, Mr. Longbottom (U.S. national), Mr. Wlaszczyk (Polish), Mr. O'Brien (Irish) and Ms. Murray (Irish) (see also [DEU 2/2025](#)). We note that the individuals were not convicted of any crime and that Mr. O'Brien was acquitted of the only charge laid. The deportation of these individuals appears to have been decided as a result of their participation in protests against and criticism of Israel's actions in Gaza, in what appears to constitute a violation of their rights, including their right to freedom of expression and peaceful assembly, as well as their freedom from arbitrary expulsion and right to due process in expulsion.

We are also concerned that a political climate that is hostile to advocacy for Palestinians' human rights and criticism of Israeli policies and practices may be influencing executive decision makers when applying highly discretionary and subjective migration and citizenship law criteria, including in relating to Staatsräson,

vague definitions of antisemitism, unjustified targeting of BDS, and unjustified disproportionate terrorist listings.

These misuses of migration and citizenship law appear to unjustifiably interfere with the human rights to freedom from discrimination on grounds of political opinion or nationality (ICCPR, article 2), freedom of movement (ICCPR, article 12), freedom from arbitrary expulsion and the right to due process in expulsion (ICCPR, article 13), the rights to privacy and reputation (ICCPR, article 17), freedom of opinion and expression (ICCPR, article 19), peaceful assembly (ICCPR, article 21) and association (ICCPR, article 22), and the right to participate in public affairs (ICCPR, article 25).

The cases involving deportations appear to violate freedom from arbitrary expulsion under customary international law, which requires that a person may be expelled only in pursuance of a decision reached in accordance with the law (ICCPR, article 13; International Law Commission Draft Articles on the Expulsion of Aliens, article 5(2)), which in turn entails compliance with international law (including human rights law) (ILC commentary to article 4, para. 3; and ILC Articles, article 5(4)), non-arbitrariness, non-discrimination, and the substantiation of the reasons for expulsion, not mere assertions. We recall that decisions also may not be in accordance with law where they were arbitrary, unreasonable, capricious, or disproportionate, and the application of domestic law was not accessible and foreseeable.

With regards to deportations of Palestinian migrants (refugees or asylum seekers), we reiterate the obligations of States under international law with regards to the principle of non-refoulement, which obliges States not to expel or return a person to territories where their life or freedom would be threatened, on account of their race, religion, nationality, membership of a particular social group or political opinion, or where there are substantial grounds for believing that they would be in danger of being subjected to serious human rights violations, such as torture or other forms of cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life.

We are further concerned about apparent violations of the right to re-enter one's own country (ICCPR, article 12), both for dual citizens arbitrarily deprived of German nationality, and long-term residents whose "special ties" or long attachment to Germany make it their country of nationality (Human Rights Committee, general comment No. 27, para. 20). We are also concerned about possible violations of the right not to be arbitrarily deprived of nationality (A/HRC/13/34, para. 24-25) flowing from the legitimate exercise of the right to freedom of expression, particularly in the absence of convictions for serious offences.

Finally, we are deeply concerned about the discriminatory misuse of migration and citizenship law, which creates a climate of fear and chilling effect, and deters migrants from exercising their freedoms.

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 explain how the suspension of processing asylum applications from Gaza was in accordance with international and European human rights and refugee law.
3. Please indicate whether the German authorities consider that UNRWA's effective protection of Palestinian refugees in Gaza has ceased, thus triggering eligibility for refugee status and/or subsidiary protection for applicants in Germany.
4. Please provide information on the number of Palestine solidarity activists and supporters, including protesters (broken down by gender and age) who were (1) banned from re-entering Germany or (2) deported from Germany, on grounds such as "Staatsräson", "public safety threats", "support for Hamas", or "ongoing security investigation by the domestic intelligence service ("Verfassungsschutz") for alleged involvement with the Palestine solidarity groups/organizations". Please indicate how many such people are citizens of European Union Member States and the citizenship of other individuals.
5. Please explain how the deportation and re-entry ban of Palestine solidarity activists and supporters is consistent with international and European law, including the prohibition on arbitrary expulsion and the right to due process in expulsion (including sufficient disclosure of the facts and reasons for decisions) and the obligation of non-refoulement. Please indicate how deportation orders against Palestine solidarity activists and supporters justified by Staatsräson are proportional in relation to of the serious impacts of deportations.
6. Please detail the factual and legal grounds for the deportation order against Cooper Longbottom, Kasia Wlaszczyk, Shane O'Brien and Roberta Murray. Please indicate what safeguards have been accorded to each individual to uphold their rights to be free from arbitrary expulsion and to due process, and explain how such orders conform with international law, including in relation to their right to freedom of peaceful assembly and expression.
7. Please provide information on the number of Palestinians (disaggregated by gender and age) who had their citizenship refused or revoked in connection with their citizenship test or declaration of loyalty.
8. With reference to the Principles on Deprivation of Nationality as a National Security Measure, please explain how the revocation of citizenship of Palestine solidarity activists is in line with international law, including the right to nationality, the right not to be arbitrarily deprived of nationality, and the right to re-enter one's country of

nationality.

9. Please explain how the measures detailed in this letter are consistent with the rights to freedom of expression, peaceful assembly, and association, including the requirements of legality, necessity, proportionality and non-discrimination, and the principle of content-neutral restrictions.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 be informed that a copy of this communication has been sent to Ireland, Poland and the United States of America.

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

Irene Khan

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

Gina Romero

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

Gehad Madi

Special Rapporteur on the human rights of migrants

Francesca Albanese

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

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the principles and international standards applicable to this communication.

#### *Freedom from discrimination*

Article 2 of the ICCPR protects the right to freedom from discrimination. State Parties are required to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 of the ICCPR further provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. It requires that the law “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

#### *Freedom of movement*

Article 12 of the ICCPR guarantees the right to freedom of movement. Any person lawfully within the territory of a State has the right to liberty of movement and freedom to choose their residence within the territory of that State. Equally, everyone has the freedom to leave any country, including their own. Any restrictions to the liberty of movement must be compatible with the exceptions listed in article 12(3), including restriction provided by law, necessity to protect national security, public order, public health or morals or the rights and freedoms of others, and consistent with other rights in ICCPR. Article 12(4) sets out that “no one shall be arbitrarily deprived of the right to enter his [or her] own country”.

In its general comment No. 27, the Human Rights Committee stated that States Parties to the ICCPR are required to guarantee the right to re-enter one’s own country for persons who hold the nationality of their country and, critically, for long-term residents whose “special ties” or long attachment to a country make it their country of nationality (para. 20).

#### *Freedom from arbitrary expulsion and the right to due process in expulsion*

Article 13 of the ICCPR provides that an alien lawfully in the territory of a State Party “may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his [or her] case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

In the Draft articles on the expulsion of aliens, the International Law Commission further specified that any expulsion decision shall state the ground upon

which it is based, such ground must be provided for by law and must not occur on a ground that is contrary to its obligation under international law (article 5(1), (2) and (4)).

### *Freedom of opinion and expression*

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline, and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (para. 11). The Committee further asserts that States Parties to the ICCPR “shall put in place effective measures to protect against attacks aimed at silencing those who exercise their right to freedom of expression” (para. 23).

With respect to invoking counter-terrorism and counter-extremism justifications to restrict the legitimate exercise of freedom of expression, any restriction on expression or information that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (general comment No. 34). Counter-terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of association and peaceful assembly, including to suppress peaceful minority groups and their members (general comment No. 34).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) of the ICCPR. Restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (ordre public), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (general comment No. 34, para. 35). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed. A restriction must be “the least intrusive instrument among those which might achieve their protective function” (para. 34).

### *Freedom of peaceful assembly and of association*

Article 21 of the ICCPR states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in

the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others’.

Article 22 of the ICCPR protects the right to freedom of association with others. States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66 and A/HRC/29/25/Add.1).

The Human Rights Committee in its general comment No. 37 on the right of peaceful assembly (article 21), stated that the authorities must show that any restrictions on the right to freedom of peaceful assembly meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21. The onus is on the authorities to justify any restrictions and where this onus is not met, States violate article 21 of the ICCPR. The imposition of any restrictions should aim at facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect (para. 36). Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures (para. 37); any restrictions imposed must in principle be content neutral and must not be based on the identity of the participants or their relationship with the authorities (para. 22). The Human Rights Committee also emphasize that “Recourse to courts or other tribunals to seek a remedy concerning restrictions must be readily available, including the possibility of appeal or review” (para. 69).

In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted that “negative and hostile narratives increasingly used to vilify and criminalize civil society and activists deepen the stigmatization of those exercising their rights to peaceful assembly and association. Stigmatization, whether intentional or not, especially when propagated by authorities, effectively denies these fundamental rights. It misrepresents legitimate exercises of freedom as illegal and those involved as criminals or threats to national security, public order or morals. This fuels harmful stereotypes, fosters hostility, justifies punitive measures and triggers undue restrictions on these rights” (A/79/263, para. 11).

#### *Right to participate in public affairs*

Article 25(a) of the ICCPR provides that: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions... [t]o take part in the conduct of public affairs”. The Human Rights Committee noted that “[c]itizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association” (general comment No. 25, para. 8).

### *Right to privacy and to reputation*

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation, and that everyone has the right to protection of the law against such interference or attacks. The Human Rights Committee has emphasized the duty of States “not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons” (general comment No. 16, para. 9).

### *Human rights defenders*

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 (the UN Declaration on Human Rights Defenders), articles 1 and 2, 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. Articles 5(a), 6(c), 9 and 12 state that everyone has the right, individually and in association with others, to meet or assemble peacefully for the purpose of promoting and protecting human rights; to study, discuss, form or hold opinions on the observance of all human rights and fundamental freedoms; to draw public attention to these matters; to benefit from an effective remedy and be protected in the event of the violation of these rights; and to participate in peaceful activities against violations of human rights and fundamental freedoms. Human Rights Council resolution 13/13 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.

### *Principle of legality and terrorism or security related offences*

Although no universal treaty generally defines “terrorism”, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,<sup>9</sup> the General Assembly’s Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). Based on these authoritative sources, the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provides clear, “best practice” guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements (A/HRC/16/51, para. 28).

The principle of legality under article 15(1) of the ICCPR requires that criminal laws must be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence, so as to avoid overly broad or arbitrary application (general comment No. 35, para. 22) or the impermissible targeting of civil society on political or other

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<sup>9</sup> See [https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml](https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml).

unjustified grounds (A/70/371, para. 46). The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the misuse of overly broad definitions of terrorism to quell legitimate activities protected by international law.

The General Assembly has unanimously recognized that effectively combatting terrorism and ensuring respect for human rights are not competing but complementary and mutually reinforcing goals in the Global Counter-Terrorism Strategy (A/HRC/60/288).

Moreover, United Nations resolutions require that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with States' obligations under international law, in particular international human rights law, refugee law and international humanitarian law. Counter-terrorism measures must conform to fundamental assumptions of legality, proportionality, necessity and non-discrimination. Laws which disregard these principles can have deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities and civil society.