

# OCCUPATION AND SHRINKING SPACE



JANUARY 2020

**CHANGE  
MAKERS**

THE ATTACK ON CIVIL SOCIETY IN THE OCCUPIED  
PALESTINIAN TERRITORY AND IN ISRAEL

**11.11.11**

VECHT MEE TEGEN ONRECHT

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## COLOPHON

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# EXECUTIVE SUMMARY

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After decades of occupation, which already put severe restrictions on the ability of CSOs to operate in the occupied Palestinian Territory, and at a time when the Israeli government is no longer hiding its intention to permanently annex large swaths of occupied Palestinian Territory, the civic and humanitarian space in which Palestinian and Israeli civil society are operating is rapidly shrinking.

Recent years have seen a virulent crackdown against civil society in Palestine and Israel. This “shrinking space” for CSOs operating in Palestine and Israel is an inherent feature of the Israeli occupation of Palestinian territory, and manifests itself in various ways:

- **Palestinian CSOs** are prime victims of this shrinking space and are targeted from all sides: the Israeli government, extremist pro-occupation groups closely affiliated with the Israeli government, the Palestinian Authority (PA) and the de facto Hamas authorities in the Gaza strip. They are confronted with administrative and arbitrary detentions; physical threats and harassment; restrictions on freedom of movement, expression and assembly; increasingly restrictive regulatory frameworks; and intense defamation campaigns aimed at undermining their credibility and cutting their external funding.
- **Israeli CSOs**, meanwhile, are under constant attacks by the Israeli government and by extremist pro-occupation groups closely affiliated with the Israeli government. They also face non-stop defamation and incitement campaigns, a multitude of restrictive laws that seriously curtail their freedom of expression and association, and persistent efforts to cut their foreign funding.

**Palestinian and Israeli CSOs are facing a strategic and holistic campaign by dozens of extremist pro-occupation groups operating in Israel, Europe and the US, which is coordinated by the Israeli Ministry of Strategic Affairs (MSA)**

This report aims to shed light on the different ways in which Palestinian and Israeli CSO actors are confronted with this “shrinking space”. It zooms in on the different ways in which Palestinian and Israeli CSOs are attacked by the Israeli government, pro-occupation groups, the Palestinian Authority and by Hamas. It is based on a desk review of existing literature, as well as field research in the occupied Palestinian territory and Israel in June 2019.

To complement initial findings, a survey was also circulated among 17 Palestinian and 10 Israeli CSOs in September 2019, including several partner organizations of 11.11.11’s member organizations. The data collected during this survey **should be considered indicative and prone to changes over time, but nevertheless gives a good “snapshot” of the main issues** threatening the operating space of Palestinian and Israeli CSOs, as well as the policy actions they would like to see prioritized by the EU and EU member states:

- **In terms of main “shrinking space” for Palestinian CSOs, a number of factors stood out in this survey.** “Physical violence” by different actors is a main issue in all contexts surveyed (Israel, Area C, East



Jerusalem, PA-controlled areas in the West Bank, Gaza), while “decrease in external funding due to attacks by nationalist NGOs” is identified as one of the three most important issues in East Jerusalem, Area C, PA-controlled areas and in Gaza. Palestinian organizations working inside Israel and/or East Jerusalem are also particularly worried about new Israeli legislation and efforts to delegitimize and discredit their work, while organizations working in Area A and B of the West Bank are warning about a rapid decline in the rule of law within PA-controlled areas. Finally, Palestinian CSOs working in Gaza also highlight the impact of travel restrictions or travel bans, originating from the Israeli blockade of the Gaza strip.

Palestinian CSOs were also asked to identify the **main actors threatening their space to operate**. The pro-occupation group NGO Monitor and the Israeli Ministry of Strategic Affairs were identified as the most threatening actors, followed by actions and statements by individual Israeli government officials. This is also reflected in the main policy recommendations Palestinian CSOs have for the EU and EU member states. After “increase in core funding”, Palestinian CSOs see the establishment of an EU no-contact policy with NGO Monitor and the Israeli Ministry of Strategic Affairs as a main priority.

- **In terms of “shrinking space” for Israeli CSOs, a number of factors dominate.** Three “shrinking space factors” stand out by far when compared to other factors. New legislation, delegitimization and defamation campaigns, and the decrease in external funding due to attacks by nationalist NGOs are consequently ranked as the three main issues at stake. Israeli CSOs operating in East Jerusalem (which was illegally annexed to Israel in 1980) and Area C of the West Bank, however, face a different type of shrinking space. They are predominantly confronted with arrests and detention, a wide range of administrative obstacles, and with raids on their offices and/or the closure of their offices. Unsurprisingly, Israeli CSOs see Israeli government officials, NGO Monitor and the Israeli Ministry of Strategic Affairs as the **three actors that most threaten their space to operate**. Finally, the 10 Israeli CSOs surveyed identify three main policy actions for the EU and EU member states: the re-establishment of the “Human Rights and IHL Secretariat” (see more background in section 4.3.1) and an increase in field visits by high-ranking European politicians and by members of European parliaments.

When asked about actors that threaten their space to operate, Palestinian and Israeli CSOs surveyed by 11.11.11 all identified the Israeli Ministry of Strategic Affairs and “NGO Monitor” as the main actors. This report therefore paid particular attention to the anti-CSO campaign by Israeli authorities and affiliated groups, in addition to the gross human rights violations and anti-CSO attacks by the PA and Hamas.

**Palestinian and Israeli CSOs are facing a strategic and holistic campaign by dozens of extremist pro-occupation groups operating in Israel, Europe and the US, which is coordinated by the Israeli Ministry of Strategic Affairs (MSA).** Both the MSA and government-affiliated groups such as NGO Monitor are conflating legitimate criticism of gross Israeli human rights violations with anti-Semitism and are employing vague and unsubstantiated claims of terrorist affiliations against Palestinian CSOs, in order to deprive the latter of funding essential to their sustainability. In doing so, Israel wants to delegitimize liberal human-rights voices advocating a free and democratic society in Israel and Palestine, and is **openly attacking the fundamental right to freedom of expression**.

## European territory and politics have become a main battlefield for delegitimization campaigns

This report therefore comes at a critical time. In recent years Israeli pro-occupation actors have stepped up their efforts and have brought their disinformation to the heart of European democracy. The **EU has accused the**

**Israeli government of “disinformation campaigns”** and has described NGO Monitor’s work as a “cocktail of tendentious research, intentional inaccuracies and downright EU-bashing propaganda”.

**European territory and politics have thus become a main battlefield for persistent efforts to delegitimize any discourse about Palestinian rights and respect for international law.** The number of worrying developments has rapidly proliferated in recent years. The Israeli Ministry of Strategic Affairs and its network of extremist pro-occupation groups have taken credit for bringing down EU funding mechanisms such as the Human Rights and International Humanitarian Law Secretariat. They have conflated human rights advocacy and criticism of Israeli policies with anti-Semitism, as can be seen by the promotion of the IHRA definition on anti-Semitism, the adoption of anti-BDS motions and legislation in Germany, Czech Republic, Austria and France and problematic developments in the Netherlands, Denmark and Switzerland.

**Yet the EU continues to engage with such disinformation actors and fails to hold them accountable for such deliberate disinformation campaigns.** The EU, which remains by far the most important donor to both Palestinian and Israeli CSOs, has so far not managed to sufficiently defend and preserve an enabling environment for local

CSOs. Interviews with Palestinian and Israeli CSO actors and with European diplomats have highlighted several serious concerns regarding the EU's ability to meaningfully alter the shrinking space landscape. Such concerns include the non-existent or weak implementation of key EU strategy documents (most importantly the "EU Country Roadmaps for Engagement with Civil Society"); a self-imposed censorship among EU officials to criticize Israel, out of fear for being labelled as anti-Semitic; a clear lack of strong political backing from EU capitals to hold all violators to account and impose consequences for attacks against CSO actors; and a lack of a dedicated analytical capacity to systematically monitor the shrinking space for CSO actors by all actors.

## RECOMMENDATIONS

**The report therefore includes a set of 18 recommendations to ensure continued funding to Palestinian and Israeli CSOs, to differentiate between anti-Semitism and legitimate criticism of Israel and to prioritize the fight against shrinking space in EU policy vis-à-vis Israel and Palestine, including:**

- 1.** EU member states should create a successor mechanism to the IHL and Human Rights Secretariat, while also exploring possibilities to increase legal aid to Palestinian and Israeli civil society organizations under attack.
- 2.** National parliaments in EU member states and the European Parliament should refrain from adopting motions similar to the anti-BDS motion adopted by the German Bundestag in May 2019. Instead, they should unambiguously and publicly state that BDS and other forms of criticism of Israeli policies are a legitimate form of non-violent protest.
- 3.** The new EU High Representative for Foreign and Defence Policies and EU member states foreign ministers should unambiguously and publicly re-iterate that the Boycott, Divestment and Sanctions (BDS) campaign and other forms of criticism of Israeli policies are a legitimate form of non-violent protest.
- 4.** When relying on the IHRA definition of anti-Semitism, EU member states should refrain from using or referring to problematic examples, which are not part of the formal definition.
- 5.** EU institutions in Brussels, the EU Delegation in Tel Aviv, the EU Representation in Jerusalem and EU member states' delegations in Tel Aviv and Jerusalem should review their relationships and engagement with the Israeli Ministry of Strategic Affairs and Israeli groups such as NGO Monitor, as well as developing common EU messages towards such actors.
- 6.** National parliaments in EU member states and the European parliament should more frequently organize publicized field visits to Israel and the occupied Palestinian territory.
- 7.** High-level officials from EU institutions in Brussels, the EU Delegation in Tel Aviv, the EU Representation in Jerusalem and EU member states should regularly and publicly meet with representatives from Palestinian and Israeli CSOs, both at delegation and member state capital level.
- 8.** EU member states and the European Representation in Jerusalem should structurally monitor the shrinking space of Palestinian and Israeli civil society organizations. This can be done, among others, by issuing regular HOMS reports on the matter.
- 9.** EU member states' delegations and the EU Delegation in Tel Aviv should ensure that an updated EU Country Roadmap for Engagement with Civil Society in Israel includes ambitious and measurable priority actions, regularly discuss progress reports and hold relevant actors accountable for violations.
- 10.** EU member states' delegations and the EU Representation in Jerusalem should ensure that an updated EU Country Roadmap for Engagement with Civil Society in Palestine includes ambitious and operational priority actions, should regularly discuss progress reports on the implementation of the Country Roadmaps, and should hold relevant actors accountable for serious violations.
- 11.** EU institutions in Brussels, the EU Delegation in Tel Aviv and EU member states' delegations in Tel Aviv should include the preservation of an enabling environment for Israeli CSOs as a key priority objective in the upcoming "Human Rights and Democracy Israel Country Strategy" for the period 2020-2024.



"My Office remains concerned that the targeting of human rights defenders – including with travel bans, delegitimizing statements and reports, interrogation, detention and ill-treatment – by Israel, the Palestinian Authority and the de facto authorities in Gaza – has increased, resulting in further shrinking of civil society space."

**MICHELLE BACHELET**

UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS  
9 SEPTEMBER 2019<sup>1</sup>



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# INTRODUCTION

Palestinian and Israeli civil society actors play a key role in Israel and in the occupied Palestinian territory (oPt). They are “changemakers” who monitor and document serious human-rights and International Humanitarian Law (IHL) violations committed by all parties<sup>2</sup>; provide vital humanitarian, socio-economic and legal support to affected communities; contribute to inclusive and participatory communities; and monitor and scrutinize abuses of power, corruption and bad governance.

**However, the civic and humanitarian space in which Palestinian and Israeli civil society are operating is rapidly shrinking.** Fundamental freedoms such as the freedom of expression, freedom of assembly and freedom of association are restricted. This is to be seen in the context of a larger international trend, where civil society actors seem to be increasingly the subject of defamation campaigns, restrictive regulations and physical threats and assaults.

Whereas repression of CSOs in the occupied Palestinian territory has been a reality for decades, several recent restrictive actions by Israel and by the Palestinian authorities can be seen as a prime example of this global trend. **This is no coincidence. Palestinian and Israeli CSOs are among the actors that form the last line of defence against an entrenched Israeli occupation, the Israeli blockade of Gaza and resulting human rights violations.** Local CSOs have always been a key force in the opposition against the occupation and annexation agenda of successive Israeli governments.

For decades, Palestinian civil society has been suffering from violent crackdowns and repression by Israeli security forces, settlers and military courts. They are incessantly attacked by the Israeli government and its global network of extremist pro-occupation groups. They also have to operate in an environment where both the Palestinian Authority (PA) and Hamas have established an authoritarian rule and have committed serious human rights violations.

**The civic and humanitarian space in which Palestinian and Israeli civil society are operating is rapidly shrinking**

Recent years have also seen a virulent crackdown against civil society in Israel. Many Israeli CSOs are under relentless attack from extremist forces within Israeli society and politics, who are eager to remove any obstacle to their annexationist agenda.

This report aims to shed light on the different ways in which Palestinian and Israeli CSO actors are confronted with this “shrinking space”. It zooms in on the different ways in which Palestinian and Israeli CSOs are attacked by the Israeli government, pro-occupation groups, the Palestinian Authority and by Hamas. It is based on a desk review of existing literature, as well as field research in the occupied Palestinian territory and Israel in June 2019. To complement initial findings, a survey was also circulated among 17 Palestinian and 10 Israeli CSOs in September 2019, including several partner organizations of 11.11.11’s member organizations. The data collected during this survey **should be considered indicative and prone to changes over time, but nevertheless gives a good “snapshot” of the main issues** threatening the operating space of Palestinian and Israeli CSOs, as well as the policy actions they would like to see prioritized by the EU and EU member states.

Ultimately, this report tries to provide answers to **two main questions**: what do Palestinian and Israeli CSO actors perceive as key obstacles to their work, both inside Israel and the occupied Palestinian territory? And, most importantly, which specific policy measures would Palestinian and Israeli CSOs and individual activists like to see prioritized by the EU and EU member states? In doing so, the report hopes to provide some guidance on what concretely European governments could do differently in order to better defend and expand the civic space in the oPt and in Israel.





# 1. SHRINKING SPACE: CONSEQUENCES FOR PALESTINIAN CIVIL SOCIETY



## 1.1. What does Palestinian civil society think about shrinking space?

In September 2019, 11.11.11 conducted an online survey with 17 Palestinian CSOs.

Participants were asked six questions:

1. What do you consider the most important “shrinking space” factors in Israel?
2. What do you consider the most important “shrinking space” factors in Area C and Jerusalem?
3. What do you consider the most important “shrinking space” factors in Area A and B?
4. What do you consider the most important “shrinking space” factors in Gaza?
5. Which actor do you consider to be the most threatening to your space to operate?
6. Which policy actions would you like to see prioritized by the European Union (EU) and by EU member states, in order to counter the shrinking space for your organization?

Participants were asked to rank answer options (and also add other answers), with 1 being the most important factor or action. The data collected during this survey **should be considered indicative and prone to changes over time, but nevertheless gives a good “snapshot” of the main issues** threatening the operating space of Palestinian CSOs, as well as the policy actions they would like to see prioritized by the EU and EU member states.

**In terms of main “shrinking space”, a number of factors stand out.** “Physical violence” by different actors is a main issue in all contexts surveyed (Israel, Area C, East Jerusalem, PA-controlled areas in the West Bank, Gaza), while “decrease in external funding due to attacks by nationalist NGOs” is identified as one of the three most important issues in East Jerusalem, Area C, PA-controlled areas and in Gaza. Palestinian organizations working inside Israel and/or East Jerusalem are also particularly worried about new Israeli legislation and efforts to delegitimize and discredit their work, while organizations working in Area A and B of the West Bank are warning about a rapid decline in the rule of law within PA-controlled areas. Finally, Palestinian CSOs working in Gaza also highlight the impact of travel restrictions or travel bans, originating from the Israeli blockade of the Gaza strip.

Palestinian CSOs were also asked to identify the **main actors threatening their space to operate**. The pro-occupation group NGO Monitor (see box below) and the Israeli Ministry of Strategic Affairs were identified as the most threatening actors, followed by actions and statements by individual Israeli government officials. This is also reflected in the main policy recommendations Palestinian CSOs have for the EU and EU member states. After “increase in core funding”, Palestinian CSOs see the establishment of an EU no-contact policy with NGO Monitor and the Israeli Ministry of Strategic Affairs as a main priority.

**The Israeli Ministry of Strategic Affairs and NGO Monitor are identified as most threatening actors for civic space**

### NGO Monitor

NGO Monitor was created in 2002 as part of the neoconservative Israeli think tank “Jerusalem Center for Public Affairs” (JCPA). It presents itself as a “globally recognized research institute promoting democratic values and good governance”, publishing “fact-based research and independent analysis about non-governmental

organizations (NGOs), their funders, and other stakeholders, primarily in the context of the Arab-Israeli conflict.” However, as described in detail below, in reality NGO Monitor is a highly biased organization with close ties to the Israeli Prime Minister’s Office, Israeli ministries and Israeli embassies that only targets Israeli, Palestinian and international CSOs that speak out against the Israeli occupation.

Offices of Palestinian CSOs are the subjects of frequent raids, during which files, computers and databases are confiscated and/or destroyed

## SURVEY RESULTS<sup>3</sup>

### What do Palestinian CSOs see as main shrinking space factors inside Israel?

1. New legislation directly impacting civic space
2. Delegitimation and defamation
3. Physical violence by authorities

### What do Palestinian CSOs see as main shrinking space factors inside East Jerusalem and Area C?

1. Delegitimation and defamation
2. Physical violence by authorities
3. Decrease in external funding due to attacks by nationalist NGOs

### What do Palestinian CSOs see as main shrinking space factors inside Area A and B?

1. Decrease in external funding due to attacks by nationalist NGOs
2. Erosion rule of law
3. Physical violence by settlers

### What do Palestinian CSOs see as main shrinking space factors inside Gaza?

1. Physical violence by authorities
2. Travel restrictions or travel bans
3. Decrease in external funding due to attacks by nationalist NGOs

### Which actors do Palestinian CSOs see as most dangerous for their civic space?

1. NGO Monitor (shared first place)
2. Israeli Ministry of Strategic Affairs (shared first place)
3. Israeli government officials

### Which actions do Palestinian CSOs want the EU and EU member states to prioritize?

1. Increase in core funding
2. EU no-contact policy with NGO Monitor
3. EU no-contact policy with Israeli Ministry of Strategic Affairs

which files, computers and databases are confiscated and/or destroyed.<sup>5</sup> This has far-ranging implications for the operations of Palestinian CSOs. Many Palestinian CSOs already have to cope with financial restraints and do not have the capacity to use the cloud or other systems safely due to the surveillance employed by Israel. This often means that the computers taken contain the only copies of documents and plans.<sup>6</sup>

Recent examples of such practices include a raid by Israeli forces on the offices of Palestinian human rights group, Addameer on 19 September 2019, during which they confiscated computers and hard drives. One of Addameer's staff, Ayman Nasser, has also been detained without charges since 17 September 2018.<sup>7</sup> Another prominent example is Salah Hamouri, field researcher for Addameer, who was arrested in August 2017 and detained for one year without charge or trial. In 2018 the offices of the Althouri Women Center in East Jerusalem were also raided by Israeli soldiers. Most recently, on 2 and 11 October 2019, the Finance and Administrative Director of Health Work Committees (HWC) was arrested and HWC offices were vandalized by Israeli soldiers. According to the **UN Special Rapporteur on Human Rights in the occupied Palestinian territory**, the increase in such raids "underlines attempts to further silence civil society organizations and human rights defenders, particularly those working on accountability issues."<sup>8</sup>

Prominent Palestinian human rights organizations like Al Haq and Al Mezan have also experienced frequent hacking attacks on their email accounts and have received intimidating phone calls.<sup>9</sup> A report from Zamleh, a Palestinian organization specialized in digital rights, also shows how Israel's total control over the Palestinian ICT infrastructure enables it to monitor all Palestinian online activity.<sup>10</sup>

The recent protests at the Gaza border are another case in point. The United Nations Commission of Inquiry on the 2018 protests has shown how Israeli snipers were targeting medical personnel and journalists, which amounts to crimes against humanity.<sup>11</sup> For example,

## 1.2. Shrinking space and Israeli government and pro-occupation groups

### - Physical violence, threats and harassment:

Since the beginning of the Israeli occupation, individual Palestinian activists have been killed, injured, threatened (including death threats) or otherwise harassed. Israeli security forces also frequently use violence against Palestinian protesters, which have resulted in the death of several protesters. By employing

violence and administrative detention against Palestinian activists and organizations, Israel tries to weaken or suppress any opposition to the occupation. Civil leaders are also often incarcerated for a long time, thereby removing a catalyst for the development of social movements.<sup>4</sup>

In addition, offices of Palestinian CSOs are the subjects of frequent raids, during



## Several prominent Palestinian CSOs and human rights organizations have been the target of continued defamation and stigmatization campaigns by extremist pro-occupation groups

volunteers working for the Palestinian Medical Relief Society (PMRS) were shot and killed while providing paramedic aid to injured people in Gaza.

Finally, it should also be highlighted that Israeli authorities have frequently targeted Palestinian journalists operating in the oPt. In 2018 alone, the Palestinian Center for Development and Media Freedoms has documented 455 Israeli attacks against Palestinian media freedoms.<sup>12</sup>

### - Restrictions on freedom of movement, association and assembly

Staff members of Palestinian CSOs have routinely been denied permits to travel between the West Bank, East Jerusalem and Gaza. Many staff of Palestinian CSOs have never been able to meet each other in person, and can only communicate with each other through Skype, VOIP or mobile phone.<sup>13</sup> Moreover, staff members of Palestinian CSOs are often harassed at Israeli checkpoints while travelling inside the West Bank.

In East Jerusalem, occupied by Israel since 1967 and illegally annexed in 1980, 120 Palestinian social, cultural, and political institutions have been closed down by Israeli authorities since 1967.<sup>14</sup> Moreover, restrictions on building and licences for Palestinian CSOs based in East Jerusalem are limiting their ability to expand and develop. Palestinian CSOs which have offices in different locations also need to get different registrations from different authorities, while Palestinian CSOs based in East Jerusalem are obliged to change their names to exclude the "Palestinian" identity from the title of the organization. This means that these organizations need to get different licences, accounts and auditors based on their location. Meanwhile, several staff of Palestinian CSOs are temporary banned from Jerusalem and deported either to a city inside Israel or in the West Bank.<sup>15</sup>

Recently, Israeli police has also intensified attacks against Palestinian human rights and cultural organizations. In August 2019 alone, it prevented an event at Yabous Cultural Centre, stopped a ceremony at the East Jerusalem YMCA,

and closed down a lecture on Israeli demolitions of Jerusalemite houses at Burj Luqluq Social Centre Society.

### - Defamation and subsequent cutting of funding

Several prominent Palestinian CSOs and human rights organizations have been the target of continued defamation and stigmatization campaigns by extremist pro-occupation groups. Such actions often falsely depict Palestinian CSOs and individual staff members as terrorist supporters or anti-Semites in order to undermine the legitimacy of the CSO in question, reduce their public support and cut off their external funding.<sup>16</sup>

Israeli ministers, including Prime Minister Netanyahu and Justice Minister Shaked, have equally been involved in such actions. They have on several occasions called on foreign governments, such as Denmark and Norway, to cut financial support to Palestinian CSOs because of their alleged anti-Semitism or links with terrorist groups.<sup>17</sup> 'They never attack us on the content that we produce, but only through vague allegations of anti-Semitism or through guilt-by-association accusations of terrorism support', one senior Palestinian CSO staff member told a staff member of 11.11.11.<sup>18</sup> Several other Palestinian activists also expressed their frustration with the constant allegations of anti-Semitism. 'We do not have any issue with Jews. Anti-Semitism is a serious issue. It should thus clearly be defined in order to then address it. So please go after it, but do not simply mix it up with legitimate criticism of the Israeli occupation', one Palestinian CSO director expressed this widespread sentiment.<sup>19</sup>

With regards to the accusations of affiliation with terrorist entities, it should be noted that such allegations have never been substantiated. Take for example the dismissal of such claims by then Dutch Foreign Minister Halbe Zijlstra, during a debate in the Dutch parliament on 15 November 2017 (emphasis added):

*"Let it be clear that we have no evidence showing that Dutch-sponsored NGOs or their board members in Israel or other countries have been guilty of activities*

*that can be characterized as terrorism. If you say that it concerns terrorism, this has far-reaching consequences. This really has to be done carefully, with due regard for the rights of the people and organizations. The source of the accusation was usually NGO Monitor. I say it very simply: honestly, it is of little use to me. Very often, it concerns very vague accusations. For example, someone would be a relative of a PFLP member. The accusations are at such a level. Indeed, Ms. President [of the House], this is no reason to characterize organizations as supporting terrorist organizations. If this were to be determined, then there is no doubt that action would be taken. But such an accusation deserves careful substantiation and that is lacking. Then we shouldn't go along with such images."*

Yet, even if proven false or fabricated, such accusations have a negative impact on Palestinian CSOs. The latter have to deal with reputational risks, donors requiring special audits or (temporarily) suspending programs, or new donors becoming more sceptical about investing in future projects with Palestinian CSOs for fear of taint by association.

In addition to targeting external funding, defamation efforts have been directed at private banks and consultancy firms. Several Palestinian CSO representatives operating in the West Bank told 11.11.11 that they have recently experienced a serious increase in such attacks, whereby the banks and consultants they work with receive reports and letters by the Israeli Ministry of Strategic Affairs and affiliated lobby groups asking them to deny any services to the Palestinian CSOs in question.

In addition to targeting external funding, defamation efforts have been directed at private banks and consultancy firms. Several Palestinian CSO representatives operating in the West Bank told 11.11.11 that they have recently experienced a serious increase in such attacks, whereby the banks and consultants they work with receive reports and letters by the Israeli Ministry of Strategic Affairs and affiliated lobby groups asking them to deny any services to the Palestinian CSOs in question.<sup>20</sup>

## 1.3. Shrinking space and the Palestinian Authority

### - Authoritarian tendencies

Recent years have seen an increasing slide towards authoritarianism in Area A and B, which are under the control of the Palestinian Authority and represent 40 percent of the West Bank. The Palestinian Legislative Council (PLC) has not been in session since 2007, and Palestinian President Abbas has been ruling by Presidential decree ever since. The independence of the judiciary has also been significantly constrained by Decree 16 and Decree 17, both issued in July 2019. These decrees directly constrain the independence of the Palestinian judiciary, forcing a quarter of current judges (including the 35 judges of the Palestinian Supreme Court) into retirement.<sup>21</sup> In the words of one prominent Palestinian policy analyst:

*'The government is acting illegal on a de facto basis. The PA is constantly breaking its own laws, which are written on paper but not respected on the ground. The authorities are less willing to tolerate dissent, while the security services are without a leash and are only accountable to Abbas, as the judiciary's oversight role is being ignored. In the end they just do what they want, they want to get things done by whatever it takes.'*<sup>22</sup>

This "slide towards authoritarianism" has had a serious impact on the role of civil society. In the absence of a functioning PLC, most CSOs have increasingly taken up a monitoring and watchdog role, have done advocacy

work through engagement with PA line ministries, have scrutinized national legislation, have mobilized the Palestinian public on social and political issues, and have openly called for new elections to be held. In recent years, however, several CSOs have increasingly been targeted by new legislation and by the Palestinian security services, as is further outlined below.

### - Restrictions on freedom of expression

Individual staff members of Palestinian CSOs, as well as individual activists, students and journalists<sup>23</sup>, have on numerous occasions been threatened, arbitrarily arrested, detained and/or tortured by PA security forces.<sup>24</sup> In 2018 alone, the Palestinian Centre for Development and Media Freedoms has documented 88 attacks against media freedoms in PA-controlled areas of the West Bank.<sup>25</sup> The Independent Commission for Human Rights, an independent human rights watchdog, has also documented 201 cases of arbitrary detentions, many on political grounds.<sup>26</sup> According to Human Rights Watch, **torture by PA security forces may amount to crimes against humanity**, given its systematic nature.<sup>27</sup>

In addition, the Palestinian "**Cybercrime Law**", **proclaimed in 2017**, has also resulted in the closing down and banning of 29 news websites, while several TV stations have been closed down by the Palestinian Authority.<sup>28</sup> Although this Cybercrime Law was amended in May 2018, there remain significant concerns about different vaguely defined provisions that allows for misuse by the authorities.<sup>29</sup> One victim of the new Cybercrime Law has been Palestinian human rights defender Issa Amro, director of the Hebron-based "Youth against Settlements". Amro is on trial for charges related to the Cybercrime Law and is facing up to two years in prison. In early 2019 Fatah also warned other CSOs not

to work with Issa Amro or his organization, or face repercussions.<sup>30</sup> Other activists have also been arrested for criticizing the PA on social media or for distributing anti-PA leaflets. *'The cyber-crime law is by far the worst law the PA has ever written, one of the worst things ever adopted in Palestine. It is a sort of guillotine hanging over our heads, which can be used at any time, against anybody'*, according to a prominent Palestinian human rights worker.<sup>31</sup> In October 2019, 59 Palestinian websites, blogs and Facebook pages that oppose the Palestinian Authority were blocked on the basis of the Cybercrime Law. This move also triggered a critical response from the European Union.<sup>32</sup>

### - Restrictions on freedom of assembly

Law 12 (1998) on Public Assemblies allows, in principle, for the freedom

**Recent years have seen an increasing slide towards authoritarianism in areas under control of the Palestinian Authority**

The slide towards authoritarianism has had a serious impact on the role of Palestinian civil society.  
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of assembly in PA-controlled areas. However, the law also contains a number of vague provisions that allows for different interpretations and opens the door for repression. Under article 4 of the law, demonstrations can only be held if they are *'far from areas of tension, and the purpose of the meeting must not contradict with the law or public order.'*<sup>33</sup> Needless to say, notions like "areas of tension" or "public order" can be interpreted in very different ways and may be used to restrict the freedom of assembly.

In recent years PA security forces, including forces that are financed by the European Union, have often used excessive force against peaceful demonstrators across the West Bank. Journalists covering such protests have been harassed (including the confiscation of their equipment), and activists and peaceful demonstrators arrested.

For example, peaceful demonstrations that called upon the PA to lift restrictive measures against Gaza (June 2018) where violently curtailed, and at least 56 Palestinians were arrested and beaten.<sup>34</sup>

#### **- Restrictive legislation and administrative obstacles**

Freedom of association is, in principle, guaranteed by article 26(2) of the Palestinian Basic Law. Under this article, Palestinians have the right *'to form and establish unions, associations, societies, clubs and popular institutions in accordance with the law'*. Key national legislation regulating the work of Palestinian CSOs are the "Law on Charitable Associations and Community Foundations" (**Law 1, 2000**) and the "Regulation on Non-Profit Companies"

**In recent years PA security forces, including forces that are financed by the European Union, have often used excessive force against peaceful demonstrators across the West Bank**





Palestinian CSOs  
have expressed serious  
concern about proposed  
new amendments to  
the 2000 NGO Law

(**Regulation 3, 2010**).<sup>35</sup> The 2000 NGO Law is generally considered to be one of the most liberal NGO laws in the region, although implementation has often been uneven.

However, in the past decade the Palestinian Authority has amended NGO legislation, has significantly increased the administrative burden on Palestinian CSOs and has taken several steps to increase control over funding sources from Palestinian CSOs.

In June 2007, during the state of emergency, Palestinian President Abbas issued a decree which gave the ministry of Interior broad discretion to review existing licenses of Palestinian CSOs. According to Palestinian human rights organization al Haq more than 100 CSOs were dissolved on this basis. In July 2015 the Palestinian Council of Ministers also passed an **amendment to Regulation 3 (2010) on Non-Profit Companies**, stating that *'acceptance of any gifts, donations, aid, or funding is subject to prior approval from the Council of Ministers'*.<sup>36</sup> By doing so the PA gave itself a very powerful tool to effectively shut down or silence critical CSOs, according to many Palestinian CSOs and activists interviewed by a staff member of 11.11.11.<sup>37</sup>

In addition to this amendment, the Palestinian Authority has announced the creation of a new centralized fund through which all CSO funding should be channelled. The PA has also imposed several administrative burdens on Palestinian CSOs, including more steps in the registration process and administrative obstacles in opening new bank accounts.

In addition, Palestinian CSOs have expressed serious concern about proposed new amendments to the **2000 NGO Law**. They have stated that the proposed amendments would constrain their ability to access new funds, would allow the ministry of Interior too much discretion to interfere in CSOs affairs and would allow the ministry of Interior to dissolve the board of an CSO altogether.<sup>38</sup> According to Palestinian



human rights organization al Haq the proposed amendments run counter to several provisions of the Palestinian Basic Law, as well as to provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The State of Palestine has acceded to both treaties.

Others have been more cautious when discussing the proposed amendments to the NGO law, and do not anticipate any formal new amendments anytime soon. But even when no amendments would be passed in the future, the situation on the ground remains problematic. Human rights workers emphasized that

Palestinian security agencies are *already* constantly intervening in the registration process of CSOs (by obliging them to get a security clearance if they want to obtain a new registration or secure foreign funding), although such interventions are not permitted under the existing 2000 NGO Law.<sup>39</sup>

Finally, several Palestinian CSO staff highlighted the fact that the Palestinian and international banking system have become much more suspicious of Palestinian CSOs. Consequently, the latter are facing higher standards for risk classification, resulting in increasing difficulties to open new banking accounts or to transfer money.<sup>40</sup>

**Hamas security forces have on numerous occasions imposed a violent crackdown on peaceful demonstrations in the Gaza strip**

## 1.4. Shrinking space and de facto Hamas authorities

### - Restrictions on freedom of expression

Since 2007 Israel has imposed a blockade on the Gaza strip, which has been under the de facto control of Hamas. Individual staff members of Palestinian CSOs, as well as individual activists, students and journalists<sup>41</sup>, have on numerous occasions been threatened, arbitrarily arrested, detained and/or tortured by Hamas security forces.<sup>42</sup> In 2018 alone, the Palestinian Centre for Development and Media Freedoms has documented 41 attacks against media freedoms in Gaza.<sup>43</sup> According to Human Rights Watch, torture by Hamas security forces **may amount to crimes against humanity**, given its systematic nature.<sup>44</sup>

### - Restrictions on freedom of assembly

Hamas security forces have on numerous occasions imposed a violent crackdown on peaceful demonstrations in the Gaza strip. At such occasions, Hamas security forces have violently targeted peaceful protesters, activists, human rights workers and local journalists.

For example, Amnesty International has reported that, between 14 and 18 March 2019, hundreds of protesters were beaten, arbitrarily arrested, detained and tortured after peacefully protesting the deteriorating socioeconomic situation in Gaza. According to Amnesty, these human rights violations perpetrated by Hamas forces against peaceful protesters, journalists and human rights defenders in Gaza were the most severe for more than a decade.<sup>45</sup> Among the arrested persons were a number of staff members of prominent Palestinian human rights organizations, including Al Mezan and the Palestinian Center for Human Rights. Hamas also violently repressed protests against the economic situation in Gaza in May 2019, during which it beat and arrested dozens of peaceful protesters.<sup>46</sup>



# 2. SHRINKING SPACE: CONSEQUENCES FOR ISRAELI CIVIL SOCIETY

## 2.1. What does Israeli civil society think about shrinking space?

In September 2019, 11.11.11 conducted an online survey with 10 Israeli CSOs.

Participants were asked four questions:

1. What do you consider the most important “shrinking space” factors in Israel?
2. What do you consider the most important “shrinking space” factors in Area C and Jerusalem?
3. Which actor do you consider to be the most threatening to your space to operate?
4. Which policy actions would you like to see prioritized by the European Union (EU) and by EU member states, in order to counter the shrinking space for your organization?

Participants were asked to rank answer options (and also add other answers), with 1 being the most important factor or action. The data collected during this survey **should be considered indicative and prone to changes over time, but nevertheless gives a good “snapshot” of main issues** threatening the operating space of Israeli CSOs, as well as the policy actions they would like to see prioritized by the EU and EU member states.

In terms of “shrinking space” for Israeli CSOs, a number of factors dominate. Three “shrinking space factors” stand out by far when compared to other factors. New legislation, delegitimization and defamation campaigns, and the decrease in external funding due to attacks by nationalist NGOs are consequently ranked as the three main issues at stake. Israeli CSOs operating in East Jerusalem (which was illegally annexed to Israel in 1980) and Area C of the West Bank, however, face a different type of shrinking space. They are predominantly

confronted with arrests and detention, a wide range of administrative obstacles, and with raids on their offices and/or the closure of their offices.

Unsurprisingly, Israeli CSOs see Israeli government officials, NGO Monitor and the Israeli Ministry of Strategic Affairs as the **three actors that most threaten their space to operate**. Finally, the 10 Israeli

CSOs surveyed identify three main policy actions for the EU and EU member states: the re-establishment of the “Human Rights and IHL Secretariat” (see more background in section 4.3.1) and an increase in field visits by high-ranking European politicians and by members of European parliaments.

### SURVEY RESULTS<sup>47</sup>

#### What do Israeli CSOs see as main shrinking space factors inside Israel?

1. New legislation directly impacting civic space
2. Delegitimation and defamation
3. Decrease in external funding due to attacks by nationalist NGOs

#### What do Israeli CSOs see as main shrinking space factors inside East Jerusalem/Area C?

1. Arrests and detention
2. Administrative obstacles
3. Raids and/or closing down of offices

#### Which actors do Israeli CSOs see as most dangerous for their civic space?

1. Israeli government officials
2. NGO Monitor
3. Israeli Ministry of Strategic Affairs

#### Which actions do Israeli CSOs want the EU to take?

1. Re-establishment of Human Rights and Humanitarian Law Secretariat
2. Field visits by high-ranking European politicians, including meetings with CSOs
3. Field visits by members of European parliaments, including meetings with CSOs

**Israeli CSOs see Israeli government officials, NGO Monitor and the Israeli Ministry of Strategic Affairs as the three actors that most threaten their space to operate**



## 2.2. Shrinking space and Israeli government and pro-occupation groups

### - Defamation, stigmatization and incitement

In recent years, and particularly since the start of the fourth Netanyahu government in May 2015, anti-occupation and human rights organizations have been targeted by an intense defamation campaign.<sup>48</sup> Government ministers, Israeli diplomats, right-wing politicians, right-wing nationalist CSOs, social media users and media close to the Netanyahu government have branded such organizations “traitors”, “foreign agents”, “terrorist collaborators”, “Trojan horses”, “lousy collaborators” and a “fifth column”.<sup>49</sup> **According to the United Nations human rights office, such verbal attacks by high-ranking politicians might amount to incitement to violence.**<sup>50</sup>

These defamation campaigns have been led and orchestrated from the very top of Israel's political establishment and have been closely coordinated with extremist pro-occupation organizations. For example, Prime Minister Netanyahu has described the director

of B'tselem as an “enemy collaborator”; former Defence minister Lieberman has accused Israeli CSOs of being “traitors” and “terrorist collaborators pure and simple”; Defence minister Naftali Bennett accused Breaking the Silence of “poisoning” the minds of Israeli children<sup>51</sup>; and ministers Yariv Levin and Tzipi Hotovely have described Breaking the Silence as “spies” and “traitors from within”. Netanyahu also cancelled an April 2017 meeting with then German foreign minister Gabriel over the latter's refusal to cancel a meeting with Israeli human rights organizations, while the Israeli Foreign Affairs Ministry reprimanded the Belgian Ambassador to Israel after Belgian Prime Minister Michel met with representatives from Israeli civil society in February 2017.<sup>52</sup>

Meanwhile, extremist pro-occupation organizations like NGO Monitor, Im Tirtzu and Ad Kan have continuously engaged in hateful incitement against human rights and anti-occupation groups. One main example of such effort is a 2015 “Foreign Agents” report by Im Tirtzu.<sup>53</sup> The report was accompanied by an inflammatory video accusing four well-known Israeli human rights activists of being ‘implants’ and ‘planted agents’ from foreign governments whose only aim is to defend Palestinian terrorists that stab Israeli citizens. ‘*While we fight terror, they fight us*’, the video concludes.<sup>54</sup> The Shomron Settler Committee has also explicitly compared human rights organizations to Nazi collaborators.<sup>55</sup>

### - Restrictive legislation

The above-mentioned defamation and incitement campaigns against Israeli human rights and anti-occupation groups have been accompanied by anti-democratic legislation that restricts the freedom of expression of Israeli human rights and anti-occupation organizations<sup>56</sup>:

- **The 2011 Budget Foundations Law (“Nakba Law”)** allows for the revocation of funding from organizations that question the notion of Israel as a “Jewish State” or that mark Israel's Independence Day as a day of mourning.<sup>57</sup> The “Nakba law” impacts in particular Palestinian cultural and human rights organizations in Israel.
- **The 2011 Law for the Prevention of Harm to the State of Israel through Boycott (“Boycott Law”)** allows for civil claims for damages against

**Extremist pro-occupation organizations like NGO Monitor, Im Tirtzu and Ad Kan have continuously engaged in hateful incitement against human rights and anti-occupation groups**



individuals or organizations that have publicly called for a boycott of activities in Israel or in territories occupied by Israel.<sup>58</sup> In March 2017 the Israeli Ministry of Interior also announced the creation of a database to monitor Israeli “BDS supporters”.

- Under the **2017 Entry into Israel Law** the Israeli Ministry of Interior can deny an entry visa to foreign nationals who have publicly called for a boycott against Israel or a boycott of Israeli activities in the occupied Palestinian territory.<sup>59</sup> A March 2018 amendment to the bill also provides for the revocation of the residency status of Palestinians living in Israel on the basis of a “breach of allegiance” to the State of Israel. On 6 October 2019 Israeli Interior minister, Arye Deri announced that he aims to use this amendment to revoke the residency status of BDS spokesperson Omar Barghouti.<sup>60</sup>

- The **2016 NGO Transparency Law** obliges CSOs that receive over 50 per cent of their funding from foreign governments to disclose this in all their publications, communications and on their website.<sup>61</sup> Critics, including the UN Special Rapporteur for Human Rights in Palestine, noted that 25 out of 27 CSOs affected by the law are liberal anti-occupation and human rights groups, while conservative nationalist CSOs that receive money from private foreign sources are left untouched.<sup>62</sup> The European Commission, in reaction, stated that the law goes “*beyond the legitimate needs for transparency*” and seems to be “*aimed at constraining the activities*” of liberal CSOs working in Israel. Then opposition leader Isaac Herzog (Labor) also lambasted the law, stating that it is “*indicative, more*

*than anything, of the budding fascism creeping into Israeli society*”.<sup>63</sup>

- In July 2018 the Israeli Knesset passed an amendment to the State Education Law (“**Breaking the Silence Law**”). Under this new regulation, the Minister of Education can prevent organizations from entering Israeli schools if their activities ran counter to (ill-defined) “educational goals”.<sup>64</sup> Moreover, organizations involved in the prosecution of Israeli soldiers abroad or assisting in foreign legal proceedings against Israel are equally prevented from entering Israeli schools.<sup>65</sup> Critics, including Amnesty International, have warned that this new law is a serious



## The “anti-Semitic nature of BDS exposed”?

The Israeli Ministry of Strategic Affairs (MSA) is also stepping up its efforts to delegitimize the Boycott, Divestment and Sanctions (BDS) movement as being anti-Semitic. In a September 2019 report, presented during a launch event in the European Parliament, the MSA stated that “it is essential to point out the causality between the BDS movement and anti-Semitism”. The report claims to provide evidence that several BDS activists have expressed anti-Semitic statements. Consequently, the MSA calls on governments and parliaments to adopt anti-BDS motions and to end funding to NGOs that promote BDS.<sup>81</sup>

### The MSA report contains several problematic elements and flaws:

- While the MSA report does include several clear examples of anti-Semitism (certainly in the chapter on “the BDS movement and classic anti-Semitism”), a closer look at the **84 cases documented in the report shows that many cases are clearly not of an anti-Semitic nature:**

- The MSA report **conflates criticism of “Israel” or “Zionism” with anti-Semitism**. As such, it fails to recognize that criticism of a political ideology (Zionism) or the policies (including human rights violations) of a state (Israel) can be very distinct from anti-Semitism.<sup>82</sup> Zionism is a political ideology and can be criticized as such, in accordance with the right to freedom of expression.
- The MSA report claims that BDS founder Omar Barghouti himself has stated that “Jews cannot have their own state in Palestine”, and takes this as a clear evidence of Barghouti’s alleged anti-Semitism. However, the report **offers only a partial quotation of Barghouti’s complete statement, in which he merely expresses his opposition to “any kind of exclusionary state” favoring one religion over another: “A Jewish state in Palestine in any shape or form cannot but contravene the basic rights of the land’s indigenous Palestinian population and perpetuate a system of racial discrimination that ought to be opposed categorically. As we would oppose a Muslim state or a Christian state, or any kind of exclusionary state, definitely, most definitely we oppose a Jewish state in any part of Palestine. No Palestinian — rational Palestinian, not a sell-out Palestinian — would ever accept a Jewish state in Palestine.”**<sup>83</sup> In this regard, it should be noted that the **EU has also not recognized Israel as a “Jewish state”**.
- The MSA report argues that drawing comparisons between Zionism and/or Israel with Nazism (so-called “Holocaust inversion”) is anti-Semitic in itself. Although one can indeed argue if it is appropriate to draw such comparisons, **comparing Israeli policies with Nazism cannot in itself be classified as anti-Semitic. This is also confirmed in a recent report by the UN Special Rapporteur on Freedom of Religion.**

In this report, the Special Rapporteur explicitly notes that the IHRA working definition does not designate the equation of Israeli policy with that of the Nazis as an example of speech that is *ipso facto* anti-Semitic, but that **such examples require a contextual assessment to determine if they are indeed anti-Semitic.**<sup>84</sup> A similar position is expressed in a recent expert opinion on the IHRA working definition by Prof Dr Peter Ullrich (Center for Research on Antisemitism).<sup>85</sup>

- In order to find 84 cases of anti-Semitism by BDS activists across the globe, the MSA report had to include cases dating back to the year 2010. Even if one agrees that all 84 cases documented in the report are indeed anti-Semitic, this can hardly be considered as sufficient empirical evidence to suggest a “causal” relationship between BDS and anti-Semitism, as the report claims.

Even if one agrees that all 84 cases documented in the report are indeed anti-Semitic, it should be noticed that the **vast majority of documented cases are related to individual BDS supporters**, city chapters of national BDS groups, individual participants at events organized by BDS groups and posts by activist Facebook groups. The MSA report itself acknowledges that BDS is a **“loose-knit network of organizations” (p 17) but holds every individual and organization that supports BDS collectively responsible for the 84 cases.**

- The MSA report **relies on the IHRA Working Definition on anti-Semitism and its related examples (see below for a more in-depth discussion) yet fails to mention that these examples are not part of the working definition.** To the contrary, the report falsely claims that the IHRA working definition “includes” several examples of anti-Semitism (...) that were “incorporated” into the working definition (p 25).
- The MSA report **does not attempt to define “BDS”**, raising serious concerns that the perceived relationship between “BDS” and “anti-Semitism” can also be used in the future to label a “differentiation policy” (the systematic distinction between activities in Israel proper and Israeli activities in the occupied Palestinian territory, as required by UNSCR 2334) as a manifestation of anti-Semitism.
- Israeli minister for Strategic Affairs Gilan Erdan has also falsely claimed, during the launch of the MSA report in the European Parliament (25 September 2019), that the UN Special Rapporteur on Freedom of Religion has condemned the BDS movement for encouraging anti-Semitism across the globe. In fact, however, the UN Special Rapporteur has merely “noted” such claims, while also acknowledging statements by the BDS National Committee that the latter categorically opposes all forms of racism, including Anti-Semitism.<sup>86, 87</sup>



violation of the right to freedom of association.<sup>66</sup>

- In June 2017 Prime Minister Netanyahu also proposed a **draft NGO Law** that would prohibit Israeli organizations from receiving any funding from foreign governments.<sup>67</sup> In October 2017, Israeli minister of Tourism, Yariv Levin stated that such new law should lead to the closure of all organizations that the government sees as acting against the interests of the Israeli army, including anti-occupation group Breaking the Silence.

The above examples are only some of the most prominent examples of anti-democratic legislation since 2009. However, it should also be noted that even if a proposed law is not adopted, significant harm is done to the work of Israeli CSOs. As stated in a recent report by the prominent Israeli rights group “Human Rights Defenders Fund” (HRDF):

*“Human Rights Defenders are forced to divert time, energy and resources to deflecting these attacks, at the expense of their real work (...) Furthermore, the damage caused by these legislative initiatives is not reversed even when the law ultimately enacted is softer than the initial proposal and even when bills never do become law. There is a discernible pattern: a draconian bill is proposed,*

*setting off and enflaming an incendiary discourse centered on accusations against those targeted by the bill; the initial proposal is softened, as it is unconstitutional; a softer version of the law is enacted, or, in some cases, the bill is dropped, having achieved the desired public political impact.”<sup>68</sup>*

In addition to such legislative efforts, extremist pro-occupation organizations have also tried to file complaints against Human Rights Defenders (HRDs). Examples of such legal proceedings include a complaint filed by pro-occupation group Ad Kan against several activists who participated in demonstrations.<sup>69</sup> The latter group, Ad Kan, is also known for trying to infiltrate several anti-occupation groups.<sup>70</sup>

#### **- Cutting foreign financial support**

In addition to defamation campaigns and anti-democratic legislation, government officials and pro-occupation organizations such as NGO Monitor (see more below) have been involved in a continued effort to cut the foreign funding sources of Israeli and Palestinian anti-occupation and human rights CSOs.

In order to do so, senior government officials including Prime Minister Netanyahu and former Justice Minister Shaked have issued multiple calls on foreign governments to stop funding human rights and anti-occupation CSOs.<sup>71</sup> For example, during a visit to London in early 2017 Netanyahu urged then British Prime Minister Theresa May to cut all UK funding to Israeli anti-occupation groups.<sup>72</sup>

**Human Rights Defenders are forced to divert time, energy and resources to deflecting these attacks, at the expense of their real work**

**Two specific actors, the Israeli Ministry of Strategic Affairs and NGO Monitor, stand out in Israeli efforts to cut foreign financial support to Israeli and Palestinian CSOs:**

**1) The Israeli Ministry of Strategic Affairs (MSA)** has been particularly involved in disseminating inaccurate and misleading information on the activities of Israeli and Palestinian human rights and anti-occupation CSOs. In May 2018 and January 2019, the MSA published two “Money Trail” reports in which the European Union was accused of funding organizations that promote the delegitimization of Israel and/or have ties with terrorist organizations.<sup>73</sup> In February 2019 the Israeli MSA also published a third report, “Terrorists in Suits”, in which it tried to associate several Palestinian organizations and activists with Palestinian organizations that are designated by the EU and US as terrorist groups.<sup>74</sup> Finally, in September 2019 the MSA published a report on the alleged links between the BDS movement and anti-Semitism (see box 3 on page 20).

The EU has stated explicitly that Israel was spreading disinformation when publishing such reports. Outgoing EU High Representative for Foreign Affairs **Federica Mogherini**, in a letter to Israeli minister of Strategic Affairs Gilad Erdan, called the allegations in the first Money Trail report “**unfounded and unacceptable**”, while also stating that “**vague and unsubstantiated accusations serve only to contribute to disinformation campaigns.**”<sup>75</sup> After publication of the second Money Trail report (January 2019), the EU again dismissed the allegations as “unfounded and unacceptable”.<sup>76</sup> The MSA is also running aggressive social media campaigns based on the claims made in those reports.<sup>77</sup>

In addition to waging smear campaigns against Palestinian and Israeli CSOs, the Ministry of Strategic Affairs coordinates a global network of organizations promoting the viewpoints and interests of the Israeli government.

Leaked statements show Sima Vaknin-Gil, the Director-General of the Ministry of Strategic Affairs, stating that we are “a different government, working on foreign soil”. According to Vaknin-Gil, “**the Israeli government can look at the bigger picture and actually create this co-ordination and co-operation**”, while also “waging a holistic campaign against the other side.”<sup>78</sup> To this extent the ministry has cooperated with the Mossad (the Israeli national intelligence agency) in monitoring and fighting the BDS movement, as revealed by the Israeli newspaper Haaretz.<sup>79</sup> Finally, the Ministry of Strategic Affairs has also been directly involved in the creation of coordination and funding mechanisms such as **Kela Shlomo (later renamed “Concert- Together for Israel”)**, which has received 128 million shekels (approximately 30 million Euro) from the Israeli government for “mass awareness activities.”<sup>80</sup>

**2) NGO Monitor** was created in 2002 as part of the neoconservative Israeli think tank “Jerusalem Center for Public Affairs” (JCPA). It presents itself as a “globally recognized research institute promoting democratic values and good governance”, publishing “fact-based research and independent analysis about non-governmental organizations (NGOs), their funders, and other stakeholders, primarily in the context of the Arab-Israeli conflict.”<sup>88</sup>

However, as described in detail in a report by the Israeli “Policy Working Group,” in reality NGO Monitor is a **highly biased organization with close ties to the Israeli Prime Minister’s Office, Israeli ministries and Israeli embassies that only targets Israeli, Palestinian and international CSOs that speak out against the Israeli occupation.**<sup>89</sup> This is clearly illustrated in the organization’s online database of the 255 organizations it “monitors”, which does not include a single organization that promote the occupation and/or annexation of the occupied Palestinian Territory.<sup>90</sup> This is despite the fact that many of such organizations – such as the Yesha Council, Regavim, Elad, Im

Tirtzu, Samaria Settlers’ Committee – clearly fall within NGO Monitor’s self-proclaimed mandate of monitoring CSOs that receive foreign funding, are not transparent about their funding or advocate extremist positions on the Israeli occupation of Palestine.

Moreover, several key people behind and within NGO Monitor are individuals with close ties to the current Israeli government. Examples include Dore Gold (former Director-General at the Israeli Ministry of Foreign Affairs and former Israeli ambassador to the United Nations, now President of JCPA), Maurice Hirsch (former chief military prosecutor in the West Bank, now military justice consultant for NGO Monitor) and Yosef Kuperwasser (former Director-General of the Israeli Ministry of Strategic Affairs, now board member of NGO Monitor).<sup>91</sup>

Moreover, the articles and reports published by NGO Monitor have repeatedly been **lambasted as factually incorrect and baseless**. They are often based on out-dated information and vague guilt-by-association accusations.<sup>92</sup> Already in 2014, the then EU Ambassador to Israel, Faaborg-Andersen dismissed a publication by NGO Monitor as “**a cocktail of tendentious research, intentional inaccuracies and downright EU-bashing propaganda**”. This was echoed in January 2018 by the then Danish Foreign Minister, Anders Samuelsen, who stated that NGO Monitor “in many instances does not present proper and actual documentation for its claims and that in some cases there has been directly misleading information.” The United Nations humanitarian coordinator for the occupied Palestinian territory has similarly lambasted NGO Monitor, stating in December 2018 that they “are out there to delegitimize humanitarian action in Palestine, including allegations of misconduct and misuse of funds. We don’t mind as humanitarians any type of scrutiny, but it has to be evidence-based.”<sup>93</sup>

**Such descriptions of NGO Monitor’s work are widely shared by European diplomats currently based in Jerusalem.**

*“They are not sincere in any way. But for them it does not matter if their allegations are factually correct or not. The only thing they are after is a newspaper headline that Israeli ministers can use during meetings with EU counterparts. Because they know there is this problematic tendency among EU member states to “do something” then: to suspend funding to 1 or 2 organizations, to announce a review or to impose new conditions on future support”, a senior European diplomat explained.<sup>94</sup>*

### **- Physical threats and harassment**

In recent years several Israeli CSOs and their individual staff operating in the West Bank have been arrested, detained and interrogated by Israeli law enforcement officials. For example, on 31 August 2018 the director of Breaking the Silence was harassed when he was leading a field visit near the settlement of Mitzpeh Yair.<sup>95</sup> In some cases, such arrests have also led to legal proceedings against individual CSO staff.

In addition, Israeli settlers in the West Bank have on numerous occasions assaulted staff members of Israeli CSOs. Israeli anti-occupation and human-rights groups have also been subject to

cyber-attacks, hacking, defamatory emails and phone harassment, while individual staff members have received anonymous death and rape threats and have seen their personal information posted online.<sup>96</sup> In September 2017, a person was also arrested for attempted arson of the offices of anti-occupation group Breaking the Silence.



**Israeli settlers in the  
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# **3. SHRINKING SPACE FOR INTERNATIONAL ORGANIZATIONS**

**TERRORISTS IN SUITS**  
The Ties Between  
NGOs promoting BDS  
and Terrorist Organizations

According to the UN Special Rapporteur for Human Rights in the occupied Palestinian territory, the '*intensifying chill*' against Israeli and Palestinian CSOs has been '*extended to international human rights organizations that investigate human rights concerns*' in the occupied Palestinian territory.<sup>97</sup> This is seen, among other things, in the increased number of people who are denied entry into Israel (and thus also to the oPt). Indeed, an amendment to the Entry into Israel Law obliges Israeli border security to deny visa to non-Israeli persons (including human rights defenders, CSO staff, students and lawyers) if they or their organization supports a boycott of Israel or a boycott of Israeli settlements.

#### **BDS blacklist**

To this end in January 2018, the Israeli Ministry of Strategic Affairs also published a "boycott, divestment and sanctions blacklist" of 20 such international "boycott organizations".<sup>98</sup> Several international organizations have also been named in the above-mentioned "Money Trail" reports from the Israeli Ministry of Strategic Affairs, which calls upon the European Union to cut funding to these organizations.

Recent examples of the increasing pressure on international organizations also include the deportation of Omar Shakir, the Israel/Palestine director of Human Rights Watch.<sup>99</sup> On 5 November 2019, the Israeli Supreme Court upheld the Israeli government's decision to deport Shakir for his alleged support for the Boycott, Divestment and

Sanctions (BDS) movement. In its decision, the Supreme Court also ruled that the Israeli government has the legal right to ban entry to Israel to persons who call for a boycott of West Bank settlements. In response, HRW's executive director Kenneth Roth stated that "the Supreme Court has effectively declared that free expression in Israel does not include completely mainstream advocacy for Palestinian rights", while Shakir's lawyer noted that "today the State of Israel joined the list of countries like

### **An amendment to the Entry into Israel Law obliges Israeli border security to deny visa to non-Israeli persons if they or their organization supports a boycott of Israel or a boycott of Israeli settlements**

Syria, Iran and North Korea, which have expelled HRW representatives in an attempt to silence criticism of human rights violations taking place within their borders."<sup>100</sup>

Other recent examples include the refusal to allow entry to Israel to the UN Special Rapporteur for Human Rights in the occupied Palestinian territory and to two representatives of the Center for Constitutional Rights, and the refusal to allow an Amnesty International staff member to travel out of the West Bank.<sup>101</sup>

# 4. THE EU CONTEXT AND RESPONSE





## 4.1. General EU policy framework

In recent years, the European Union has developed a policy response, at least on paper, to the global phenomenon of shrinking space for CSO actors.<sup>102</sup>

The core of the EU policy regarding civil society support is outlined in the **2012 European Commission communication** “The roots of democracy and sustainable development: Europe’s engagement with civil society in external relations”, and also in a related set of **Council Conclusions** from June 2017.<sup>103</sup> The 2016 “**EU Global Strategy**” for the EU’s Foreign and Security Policy also notes that “societal resilience will be strengthened by deepening relations with civil society” and commits the EU to “speak out against the shrinking space for civil society”.<sup>104</sup> Finally, it should also

be noted that the EU Foreign Affairs Council listed “support for civil society and human rights defenders” as a key EU policy priority for 2018.<sup>105</sup>

In addition, the EU’s support to human rights defenders (HRDs) is guided by the 2008 “**Guidelines on Human Rights Defenders**”. EU delegations in partner countries have also appointed Human Rights Focal Points and Human Rights Defenders Liaison Officers, while the EU’s Human Rights Special Representative has paid increasing attention to the issue of shrinking space.

The EU also has several funding mechanisms at its disposal to support local civil society. This includes the **European Instrument for Democracy**

**and Human Rights** (EIDHR, which funds a protection mechanism for HRDs, “ProtectDefenders.eu”); the **European Neighbourhood Instrument** (ENI); and the **European Endowment for Democracy** (EED).

Since 2014, the EU has also developed “**Civil Society Country Roadmaps**” for over 100 partner countries, while in recent years a new generation of “**Human Rights and Democracy Country Strategies**” was adopted. There is a separate roadmap for engagement with civil society in Israel and one for engagement with civil society in Palestine, covering the period 2014-2017. Draft updates for the period 2018-2020 have been under discussion.

## 4.2. EU tools to counter shrinking space in Israel and Palestine

The EU and many EU member states are generally perceived by local CSOs as helpful actors, both in terms of political and financial support. Good practices that are often emphasized include trial monitoring, the regular issuing of public statements, invitations for (high-level) briefings, and structural financial support.

However, Palestinian and Israeli civil society actors, as well as European diplomats, have also highlighted several serious concerns<sup>106</sup>:

- “**Paper roadmaps**”: most persons interviewed by 11.11.11, including European diplomats, were not even aware of the existence of the EU Country Roadmaps for engagement with civil society, or only possessed a very general notion of what these roadmaps were about. Moreover, in the rare instance that interviewees were familiar with the

existence and specific content of the roadmaps, they often pointed to the lack of proper implementation and lack of political will among EU member states to make the fight against shrinking space a political priority. This is also acknowledged by several European diplomats. “One can indeed question if the roadmap has a significant impact on the ground. But at least we can refer to it if we need

**In the words of one Palestinian human rights worker, “the Europeans listen to what I have to say, but most often fail to take any follow-up action.”**

to answer parliamentary questions’, according to one European diplomat. Moreover, although several CSO staff did appreciate the access they have to EU and EU member state diplomats and officials, several staff also complained about the one-way nature of such interactions and the lack of feedback mechanisms on how the information provided has been used by the EU or EU member states. In the words of one Palestinian human rights worker, “the Europeans listen to what I have to say, but most often fail to take any follow-up action. I sat down 100 times with them, but what came out of these meetings concretely?”

- **Self-imposed censorship**: several European diplomats and officials described the fear among EU member states of being labelled anti-Semitic if they openly criticize

Israeli actions. “The current government and NGO Monitor no longer have any reluctance to openly brand us anti-Semitic or BDS supporters. As they can give us a hard time in our national parliaments, we think twice before publicly criticizing them”, one European diplomat summarized this feeling.

- **Lack of dedicated monitoring capacity:** several CSO representatives and EU diplomats pointed to the lack of a proper mechanism that

structurally monitors and analyses the shrinking space phenomenon and the progress being made in the implementation of the updated Country Roadmaps for 2018-2021.

- **Need for more public support:** CSO representatives emphasized the need for the EU and EU member states to systematically call out attacks on Palestinian and Israeli CSOs and individual activists, as well as the need for more systematic efforts to express public support for such actors.

- **Talk but no action:** in cases where the EU and EU member states call out violations of fundamental freedoms and attacks against CSO actors, the Union lacks the unity and political will to impose concrete consequences for continued violations. “The EU does have significant leverage towards Israel and the PA. But we simply refuse to apply it. We only talk and condemn, we don’t put our money where our mouth is,” one diplomat acknowledged.

## 4.3. Recent developments in European policies

In recent years, Israeli actors have stepped up their efforts and have brought their disinformation and intimidation campaign to the heart of European democracy. The Israeli Ministry of Strategic Affairs and its network of extremist pro-occupation groups have taken credit for bringing down EU funding mechanisms such as the “Human Rights/International Humanitarian Law Secretariat” (4.3.1). They have conflated human rights advocacy and criticism of Israeli policies with anti-Semitism, as can be seen by the promotion and misuse of the IHRA working definition on anti-Semitism (4.3.2), the adoption of anti-BDS motions and legislation in Germany, Czech Republic and Austria (4.3.3) and France (4.3.4) and problematic developments in the Netherlands, Denmark and Switzerland (4.3.5).

### 4.3.1. Dissolution Human Rights/ IHL Secretariat

The “Human Rights/International Humanitarian Law Secretariat” (henceforth “Secretariat”) was a joint donor programme that existed between 2013 and 2017. It was funded by Sweden, Switzerland, the Netherlands and Denmark, and managed by Swedish consultancy organization NIRAS and by the Palestinian Birzeit University. With a budget of USD 17.6 million between 2013 and 2016, the Secretariat aimed to strengthen the capacity of 24 Palestinian and Israeli human rights organizations. In June 2018 it dissolved itself. NGO Monitor explicitly took credit for “bringing down” the Secretariat.<sup>107</sup>

The four donors that originally created the Secretariat saw several advantages in creating this donor consortium.

The Secretariat was seen as a means to reduce transaction costs, to enhance donors’ influence and leverage towards local authorities, to coordinate donor responses on attacks by groups like NGO Monitor, and to provide capacity building and more financial stability for local CSOs working on human rights in Palestine and Israel.

Several Palestinian and Israeli CSOs contacted by 11.11.11 regretted the dissolution of the Secretariat. Former recipients of the Secretariat emphasized the need for the predictable financial support that the Secretariat provided, while the dissolution of the consortium sent a worrisome political signal in a context of the rapidly shrinking space in the oPt.<sup>108</sup>

### 4.3.2. IHRA definition of anti-Semitism

On 26 May 2016, the International Holocaust Remembrance Alliance (IHRA) adopted a “non-legally binding working definition of anti-Semitism”.<sup>109</sup> This definition defines anti-Semitism as “a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

**In recent years, Israeli actors have stepped up their efforts and have brought their disinformation and intimidation campaign to the heart of European democracy**

The above working definition in itself is not problematic, but its scope and future implementation remains unclear. Most problematically, to “help the IHRA in its work”, several examples have been added to the working definition. Most examples clearly relate to anti-Semitism, but others are more ambiguous and potentially problematic:

- **Example 7:** “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour.”
- **Example 8:** “Applying double standards by requiring of it a behaviour not expected or demanded of any other democratic nation.”
- **Example 10:** “Drawing comparisons of contemporary Israeli policy to that of the Nazis.”

In addition, the introduction to the examples specifies that manifestations of anti-Semitism “might include the targeting of the state of Israel, conceived as a Jewish collectivity.”

These examples and the introduction conflate criticism of Israeli policies with anti-Semitism, and thereby give rise to fears that legitimate criticism may be equated with anti-Semitism, which may undermine freedom of expression.

It should be noted, in this regard, that the introduction to the examples do stipulate that “criticism of Israel similar to that levelled against any other country cannot be regarded as anti-Semitic”. This is, however, inadequate as the notion “similar to that levelled against any other country” can be subjective and can thus easily be used to label any criticism of Israel as anti-Semitism.

Several leading experts have similarly warned against the misuse of the IHRA working definition.<sup>110</sup> The **main author of the working definition**, Kenneth Stern, has publicly condemned the way it has been instrumentalized/abused<sup>111</sup>, and stated in December 2019 that “right-wing Jews” are “weaponizing” the working definition.<sup>112</sup> In a recent expert

opinion, Prof Dr Peter Ullrich (Center for Research on Antisemitism) has stated that “the use of the Working Definition of Antisemitism cannot be recommended.”<sup>113</sup> Ullrich warns that the Working Definition is “inconsistent”, “contradictory”, “reductionist” and “formulated very vaguely”, and warns that the working definition can be used to stifle criticism of Israeli policies:

*“The weaknesses of the “Working Definition” are the gateway to its political instrumentalization, for instance for morally discrediting opposing positions in the Arab-Israeli conflict with the accusation of antisemitism (...) In fact, it is instead an instrument that all but invites arbitrariness. It can be used to abridge fundamental rights particularly freedom of speech with respect to disfavoured positions on Israel (...) Accusations of antisemitism may be levelled without good reason and may nevertheless legitimize drastic measures (...) The “Working Definition of Antisemitism” thereby provides a gateway for the stigmatization and public disadvantaging of disfavoured positions in the Israeli-Palestinian conflict. In view of its quasi-legal status, this must be regarded as a threat to freedom of speech.”*<sup>114</sup>

In a similar vein, the **UN Special Rapporteur on Freedom of Religion** has recently stated that the IHRA examples are not designated as “examples of speech that are ipso facto antisemitic” and that “a contextual assessment is required under the definition to determine if they are antisemitic.” The UN Special Rapporteur also warned that “where public bodies use the definition in any regulatory context, due diligence must be exercised to ensure that freedom of expression within the law is protected for all”.<sup>115</sup> In July 2018 more than 40 Jewish groups also warned against the increasing weaponization of the IHRA working definition, stating that it “is worded in such a way as to be easily adopted or considered by western governments to intentionally equate legitimate criticisms of Israel and advocacy for Palestinian rights with antisemitism, as a means to suppress the former.”<sup>116</sup>

## Several examples in the IHRA definition conflate criticism of Israeli policies with anti-Semitism

Since May 2016, several EU Member States have adopted the IHRA definition as their official definition of anti-Semitism. This includes the United Kingdom (December 2016), Austria (April 2017), Romania (May 2017), Germany (September 2017), Bulgaria (October 2017) and Lithuania (January 2018). On 6 December 2018, the Justice and Home Affairs Council of the EU also adopted a Council Declaration on the fight against anti-Semitism, in which it encouraged all Member States to endorse the IHRA definition of anti-Semitism. Responding to concerns on possible restrictions of freedom of expression, European diplomats decided to remove the reference to the eleven examples.

Since its adoption, the IHRA definition has already proven to be an effective tool to attack criticism of the State of Israel and its policies. For example, after its adoption by the UK government in December 2016, the IHRA definition was used to put pressure on the organizers of events about Israel and its violation of Palestinian rights, accusing them of anti-Semitism because they were allegedly singling out Israel and applying double standards. A few of such events have consequently been cancelled in the UK. In Germany, the Bundestag also adopted a motion equating the Boycott, Divestment and Sanctions (BDS) movement with anti-Semitism, which references the IHRA definition. This motion already has negative consequences for the democratic space in Germany (see section 4.3.3).

### 4.3.3. Anti-BDS parliamentary motions in Germany, Czech Republic and Austria

On 17 May 2019, the **German** parliament adopted a motion that equates the Boy-



**The BDS movement, by contrast, has explicitly stated its categorical opposition to “all forms of racism, including Islamophobia and anti-Semitism”**

cott, Divestment and Sanctions (BDS) movement with anti-Semitism. The motion refers to the IHRA working definition of anti-Semitism and states that the “argumentation patterns and methods of the BDS movement are anti-Semitic” and “reminiscent of the most terrible phase in German history”. In the motion, the German parliament calls on the German government “not to support any events organized by the BDS movement or by groups pursuing its aims”, “not to financially support any organizations that question Israel’s right to exist” and “not to financially support any projects which call for a boycott of Israel or which actively support the BDS movement.”

In a similar vein, on 22 October 2019 the **Czech Parliament** adopted a non-binding motion on addressing anti-Semitism, that is similar to the parliamentary motion in Germany. In the motion the Czech Parliament “condemns all activities and statement by groups calling for a boycott of the State of Israel, its goods, services or citizens”, while also requesting the government to refuse financial support for organizations that call for a boycott of the state of Israel. In December 2019 the **Austrian** parliament also submitted a cross-party motion which states that the BDS movement “employs anti-Semitic patterns”. The motion then calls upon the Austrian government “not to support financially or in any other way” BDS activities or groups which support the BDS call.<sup>117</sup> Finally, in December 2019 the **UK** government also announced its intention to pass a law making it illegal for UK public bodies to work with the BDS movement.<sup>118</sup>

These motions are highly problematic and set a worrisome precedent for other European parliaments. Key concerns in the motions include:

- **There is no distinction between Israel and the occupied Palestinian territory (oPt).** It condemns all boycotts of Israeli businesses and goods – including businesses in and goods from Israel’s illegal settlements in occupied territory. As a result, it could lead to a situation in which a boycott campaign of settlement products or of a settlement company is being labelled as “anti-Semitic”. This lack of distinction goes against the EU’s stated settlement policy of differentiation and against the letter and the spirit of United Nations Security Council resolution 2334, which calls upon UN member states “to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.
- The motions claim that the argumentation patterns and methods of the BDS movement are anti-Semitic but **do not provide any evidence that would justify this categorical claim.** The BDS movement, by contrast, has explicitly stated its categorical opposition to “all forms of racism, including Islamophobia and anti-Semitism.”<sup>119</sup> In this regard it should also be noted that 240 **Jewish and Israeli scholars** have strongly criticized the German anti-BDS motion in an open letter and called on the German government not to implement it:

*“We all reject the deceitful allegation that BDS as such is anti-Semitic (...) BDS is essentially a non-violent movement, which protests serious human rights violations (...) One can debate and disagree with BDS, but a categorical de-legitimization of such non-violent means is wrong and counterproductive (...) The equation of BDS with anti-Semitism has been promoted by Israel’s most right-wing government in history. It is part of persistent efforts to delegitimize any discourse about Palestinian rights and any international solidarity with the Palestinians (...) We urge you to fight anti-Semitism and all forms of*

*racism without aiding these malign efforts.”<sup>120</sup>*

In November 2019, **96 Belgian researchers**, experts in the fight against antisemitism and activists (many of them Jewish themselves) also made a similar point:

*The positions of the signatories to this letter are diverse. Some support BDS, while others reject it for various reasons. But we are unanimous in rejecting the false, inappropriate and misleading claim that BDS equals antisemitism (...) The equation of legitimate criticism of Israeli policies with antisemitism is undermining the fight against real antisemitism.<sup>121</sup>*

- The **fundamental right to freedom of expression**, which is protected by article 10 of the European Convention on Human Rights and article 19 of the International Covenant on Civil and Political Rights (ICCPR)<sup>122</sup>, **is clearly at stake.** In this regard it should be emphasized that the draft German motion did include a sentence stating that “the critical handling of Israeli government policy is protected by freedom of opinion, freedom of the press and freedom of expression and must, of course, be permitted in Germany as well as in Israel”. This sentence was however removed from the final version of the motion.<sup>123</sup>
- The motions **ignore that BDS is widely considered as a legitimate and peaceful form of freedom of expression.** Then EU High Representative **Mogherini** has reiterated this point in response to a parliamentary question, stating that “the EU stands firm in protecting freedom of expression and freedom of association in line with the Charter of Fundamental Rights of the European Union, which is applicable on EU Member States’ territory, including with regard to BDS actions carried out on this territory”.<sup>124</sup> In a similar vein, **three UN Special Rapporteurs** have criticized the conflation of BDS and anti-Semitism,

**Since its adoption, the IHRA definition has already proven to be an effective tool to attack criticism of the State of Israel and its policies**

## The German parliamentary motion ignores that BDS is widely considered a legitimate and peaceful form of freedom of expression

stating that although they “do not take a position on BDS, (we) point out that expressing support for, or opposition to, BDS, is fully guaranteed by the rights to freedom of opinion, expression and association”.<sup>125</sup> In October 2019, **five UN Special Rapporteurs** also expressed their specific concern with the German motion:

*“We wish to express our concern that the motion sets a worrying trend of unduly limiting the rights to freedom of opinion and expression, peaceful assembly and of association in its call for governmental bodies, as well as German states, cities and municipalities and other public actors, to refuse financial support, premises or facilities to projects or events organised by the BDS movement or by groups pursuing its aims. Accordingly, the motion unduly interferes with the right of people in Germany to engage in political speech, namely, to express support for the BDS movement. We further express our concern that the motion may hinder the peaceful activities of human rights defenders, groups and organisations denouncing human rights violations as part of the BDS movement by shrinking the civic space available to them to express legitimate grievances.”<sup>126</sup>*

- David Kaye, the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression, has also emphasized that a **“boycott ... has long been understood as a legitimate form of expression, protected under Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR)”**. Kaye has also stated that recent anti-BDS legislation in the United States “appears clearly aimed at combatting political expression”.<sup>127</sup>

### 4.3.4. Criminalization of BDS and anti-Zionism in France

In December 2019 the French parliament adopted a motion that endorses the IHRA definition and equates anti-Zionism with anti-Semitism.<sup>128</sup> This despite the opposition of 127 prominent Jewish experts, who in an open letter in *Le Monde* called upon the parliament not to equate anti-Zionism with anti-Semitism.<sup>129</sup> The motion was also strongly criticized by 39 French civil society groups, who stated that « loin de renforcer la lutte contre l'antisémitisme comme elle le prétend, cette résolution menace les libertés publiques françaises par une suspicion généralisée contre toute critique de l'État d'Israël et de ses incessantes violations des droits de l'Homme”.<sup>130</sup>

Previously, on 12 February 2010, the French Ministry of Justice sent a circular to the public prosecutors. This circular specifically targets “calls for a boycott of Israeli products” and encourages prosecutors to provide a “firm response”. As such it has led to trials against Boycott, Divestment, Sanctions (BDS) activists that called for a boycott of Israeli products during demonstrations at French supermarkets.

On 20 October 2015, two rulings by the Court of Cassation confirmed the sentence by the Colmar Court of Appeal against 14 activists of the BDS movement of 28,000 euros in damages to the civil parties and each to a suspended fine of 1,000 euros. The Court based its decision on articles 225-2 of the Criminal Code (obstruction of normal economic activity) and 24 paragraph 8 of the 1881 Law on Freedom of the Press (which provides for the offence of provocation to discrimination). The French high court considers the boycott an offence of “inciting discrimination, hatred or violence against a person or group of persons on account of their origin or their membership of a particular ethnic group, nation, race or religion”. The interpretation of the Court of Cassation was imposed on all defendants. Only embargoes decided by the State were considered legal by the court.

In March 2016, the affected activists decided to appeal to the European Court of Human Rights in Strasbourg. Their request was admitted. The Court’s judgment is expected in the coming months.

### 4.3.5. Attempts to defund CSOs supporting BDS

In June 2016, NGO Monitor successfully lobbied in the **Netherlands** for a non-binding motion by the Dutch parliament calling on the Dutch government to end the “direct and indirect funding to NGOs who according to their objectives or activities work to achieve or promote sanctions or a boycott of Israel” (BDS). To date, however, the Dutch government has refused to fully implement this motion. Palestinian CSOs that support BDS can therefore still receive funding from the Dutch government.

In **Switzerland**, NGO Monitor promoted a bill to cut Swiss aid to Palestinian and Israeli CSOs. Its lobby efforts were framed as an effort to push back against CSOs that promote racist, anti-Semitic and/or BDS campaigns. However, the legislative proposal proposed distorted definitions of “incitement” and “BDS”, defining incitement as any criticism that could be “considered offensive to sovereign states and BDS as “any notion of boycott, divestment or sanctions against rival groups or sovereign states.” The proposal passed in the Swiss Lower House, but the Upper House later removed the references to BDS and incitement.

In May 2017, again after intense lobby efforts by NGO Monitor and Israeli Prime Minister Netanyahu, the Danish Foreign Ministry announced a review of **Denmark’s** aid to Palestinian human rights organizations. Although this internal review did not find any contract breaches, the then Danish Foreign Minister, **Samuelson** decided in December 2017 to **tighten funding conditions and to reduce the number of Palestinian CSO recipients**.



**5.**

# **CONCLUSION AND RECOMMENDATIONS**



# CONCLUSION

After decades of occupation, which already put severe restrictions on the ability of CSOs to operate in the occupied Palestinian Territory, and at a time when the Israeli government is no longer hiding its intention to permanently annex large swaths of occupied Palestinian Territory, the civic and humanitarian space in which Palestinian and Israeli civil society are operating is rapidly shrinking.

Recent years have seen a virulent crack-down against civil society in Palestine and Israel. This “shrinking space” for CSOs operating in Palestine and Israel is an inherent feature of the Israeli occupation of Palestinian territory, and manifests itself in various ways:

- **Palestinian CSOs** are prime victims of this shrinking space and are targeted from all sides: the Israeli government, extremist pro-occupation groups closely affiliated with the Israeli government, the Palestinian Authority (PA) and the de facto Hamas authorities in the Gaza strip. They are confronted with administrative and arbitrary detentions; physical threats and harassment; restrictions on freedom of movement, expression and assembly; increasingly restrictive regulatory frameworks; and intense defamation campaigns aimed at undermining their credibility and cutting their external funding.
- **Israeli CSOs**, meanwhile, are under constant attacks by the Israeli government and by extremist pro-occupation groups closely affiliated with the Israeli government. They also face non-stop defamation and incitement campaigns, a multitude of restrictive laws that seriously curtail their freedom of expression and association, and persistent efforts to cut their foreign funding.

When asked about actors that threaten their space to operate, Palestinian and Israeli CSOs surveyed by 11.11.11 all identified the Israeli Ministry of Strategic Affairs and “NGO Monitor” as the main actors.

This report therefore paid particular attention to the anti-CSO campaign by Israeli authorities and affiliated groups, in addition to the gross human rights violations and anti-CSO attacks by the PA and Hamas.

**Palestinian and Israeli CSOs are facing a strategic and holistic campaign by dozens of extremist pro-occupation groups operating in Israel, Europe and the US, which is coordinated by the Israeli Ministry of Strategic Affairs (MSA).** Both the MSA and government-affiliated groups such as NGO Monitor are conflating legitimate criticism of gross Israeli human rights violations with anti-Semitism and are employing vague and unsubstantiated claims of terrorist affiliations against Palestinian CSOs, in order to deprive the latter of funding essential to their sustainability. In doing so, Israel wants to delegitimize liberal human-rights voices advocating a free and democratic society in Israel and Palestine, and is **openly attacking the fundamental right to freedom of expression.**

This report therefore comes at a critical time. In recent years Israeli pro-occupation actors have stepped up their efforts and have brought their disinformation to the heart of European democracy. **The EU has accused the Israeli government of “disinformation campaigns”** and has described NGO Monitor’s work as a “cocktail of tendentious research, intentional inaccuracies and downright EU-bashing propaganda”.

**European territory and politics have thus become a main battlefield for persistent efforts to delegitimize any discourse about Palestinian rights and respect for international law.** The number of worrying developments have rapidly proliferated in recent years. The Israeli Ministry of Strategic Affairs and its network of extremist pro-occupation groups have taken credit for bringing down EU funding mechanisms such as the Human Rights and International Humanitarian Law Secretariat. They have conflated human rights advocacy and criticism of Israeli policies with anti-Semitism, as can be seen by the promotion of

the IHRA working definition on anti-Semitism, the adoption of anti-BDS motions and legislation in Germany and France and problematic developments in the Netherlands, Denmark and Switzerland.

**Yet the EU continues to engage with such disinformation actors and fails to hold them accountable for such deliberate disinformation campaigns.** The EU, which remains by far the most important donor to both Palestinian and Israeli CSOs, has so far not managed to sufficiently defend and preserve an enabling environment for local CSOs. Interviews with Palestinian and Israeli CSO actors and with European diplomats have highlighted several serious concerns regarding the EU’s ability to meaningfully alter the shrinking space landscape. Such concerns include the non-existent or weak implementation of key EU strategy documents (most importantly the “EU Country Roadmaps for Engagement with Civil Society”); a self-imposed censorship among EU officials to criticize Israel, out of fear for being labelled as anti-Semitic; a clear lack of strong political backing from EU capitals to hold all violators to account and impose consequences for attacks against CSO actors; and a lack of a dedicated analytical capacity to systematically monitor the shrinking space for CSO actors by all actors.

**There has rarely been a moment in which the work of Palestinian and Israeli CSOs has been so important.** Critical financial shortfalls to the Palestinian Authority and the UN Agency for Palestinian Refugees (UNRWA), the humanitarian crisis in Gaza and the overall intensifying protection crisis in the West Bank, including East Jerusalem, means that the services and support delivered by such organizations are more urgent than ever for Palestinian citizens. The EU and EU member states are thus **at a crossroads.** Do they allow the main actors of resistance against international law violations and annexationist policies in the occupied Palestinian Territory to continue to be squashed? Or do they actively defend human rights and take concrete measures against the rapidly shrinking space for Palestinian and Israeli CSO actors?

# RECOMMENDATIONS

## 1. Ensure continued funding for CSOs

- EU member states should create a **successor mechanism to the IHL and Human Rights Secretariat**, which provides multi-annual funding to Palestinian and Israeli human rights organizations. Such a mechanism should also take into account the lessons learnt from the experience of the earlier Secretariat.
- EU member states and institutions should at the very minimum **maintain current funding levels** for Palestinian and Israeli civil society organizations.
- EU member states should avoid inserting politicized and ambiguous clauses (for example on BDS and incitement) in current and future funding contracts.
- EU member states and EU institutions should explore possibilities to **increase legal aid** to Palestinian and Israeli civil society organizations under attack, for example by increasing financial support to the existing “Human Rights Defenders Fund”.

## 2. Differentiate between anti-Semitism and legitimate criticism of Israel

While stepping up efforts to fight all forms of racism, including anti-Semitism, the EU and EU member states should take the following actions:

- The new EU High Representative for Foreign and Defence Policies and the EU member states foreign ministers should **unambiguously and publicly re-iterate that the Boycott, Divestment and Sanctions (BDS) campaign and other forms of criticism of Israeli policies are a legitimate form of non-violent protest** against the Israeli occupation protected by the freedom of expression and the freedom of association.
- National parliaments in EU member states and the European Parliament should also **refrain from adopting motions similar to the anti-BDS motion adopted by the German Bundestag in May 2019**. Instead, they should unambiguously and publicly **state that BDS and other forms of criticism of Israeli policies are a legitimate form of non-violent protest** against the Israeli occupation protected by the freedom of expression and the freedom of association.
- **When relying on the IHRA working definition of anti-Semitism**, EU member states should **refrain from using or referring to problematic examples**, which are not part of the formal definition. They should also **distinguish clearly** between the notions of Anti-Semitism, anti-Zionism and legitimate criticism of Israeli violations of international law.

### 3. Prioritize the fight against shrinking space in EU policy vis-à-vis Palestine and Israel

- EU institutions in Brussels, the EU Delegation in Tel Aviv, the EU Representation in Jerusalem and EU member states' delegations in Tel Aviv and Jerusalem should **review their relationships and engagement with the Israeli Ministry of Strategic Affairs and Israeli groups such as NGO Monitor**, as well as **developing common EU messages** towards such actors.
- National parliaments in EU member states and the European parliament should **more frequently organize publicized field visits** to Israel and the occupied Palestinian territory.
- High-level officials from EU institutions in Brussels, the EU Delegation in Tel Aviv, the EU Representation in Jerusalem and EU member states should **regularly and publicly meet with representatives from Palestinian and Israeli CSOs**, both at delegation and member state capital level.
- EU institutions in Brussels, the EU Delegation in Tel Aviv, the EU Representation in Jerusalem and EU member states' delegations in Tel Aviv and Jerusalem should **incorporate and apply clear criteria relating to the respect for civil society and human rights within bilateral cooperation agreements**.
- EU institutions in Brussels, the EU Delegation in Tel Aviv, the EU Representation in Jerusalem and EU member states' delegations in Tel Aviv and Jerusalem should **proactively set clear red lines related to proposed changes to NGO laws** in Palestine and Israel, rather than reacting to a fait accompli.
- EU member states and the European Representation in Jerusalem should **structurally monitor** the shrinking space of Palestinian and Israeli civil society organizations. This can be done, among others, by issuing regular HOMS reports on the matter.
- EU member states' delegations and the EU Delegation in Tel Aviv should ensure that an updated **EU Country Roadmap for Engagement with Civil Society in Israel** includes ambitious and measurable priority actions, regularly discuss progress reports and hold relevant actors accountable for violations.
- EU member states' delegations and the EU Representation in Jerusalem should ensure that an **updated EU Country Roadmap for Engagement with Civil Society in Palestine** includes ambitious and operational priority actions, should regularly discuss progress reports on the implementation of the Country Roadmaps, and should hold relevant actors accountable for serious violations.
- EU institutions in Brussels, the EU Delegation in Tel Aviv and EU member states' delegations in Tel Aviv should **include the preservation of an enabling environment for Israeli CSOs as a key priority objective in the "Human Rights and Democracy Israel Country Strategy"** for the period 2020-2024.
- EU member states should **encourage the UN Office of the High Commissioner for Human Rights (OHCHR) and relevant UN Special Rapporteurs to regularly report on the shrinking space for Palestinian and Israeli CSOs**, and discuss their findings during UN Human Rights Council sessions.



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- 87 On its official BDS website the BDS movement, has stated that "the BDS movement stands for freedom, justice and equality. Anchored in the Universal Declaration of Human Rights, the BDS movement, led by the Palestinian BDS National Committee, is inclusive and categorically opposes as a matter of principle all forms of racism, including Islamophobia and anti-Semitism. BDS campaigns target the Israeli state because of its responsibility for serious violations of international law and the companies and institutions that participate in and are complicit in these Israeli violations. The BDS movement does not boycott or campaign against any individual or group simply because they are Israeli. The world is growing increasingly weary of Israel's attempts to conflate criticism of its violations of international law with anti-Semitism and to conflate Zionism with Judaism. Israel is a state, not a person. Everyone has the right to criticize the unjust actions of a state. Many Jewish students, academics, intellectuals, LGBTQ advocates and others as well as and a growing number of Jewish-Israelis support and advocate for BDS. As the US organisation Jewish Voice for Peace has explained, Israel claims to be acting in the name of all Jewish people but a rapidly increasing number of Jewish people of conscience feel compelled to make sure the world knows that many Jews are opposed to Israel's actions." See <https://bdsmovement.net/faqs#collapse16241>.
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A person is climbing a wooden ladder against a wall. The wall has graffiti that reads 'NO VOOR DE VEST' and 'PEACE'. A large blue triangle is overlaid on the left side of the image.

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