
Statement by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression at the conclusion of his visit to Israel and the occupied Palestinian territory

Jerusalem, 18 December 2011

I would like to thank the Government of Israel and the Palestinian National Authority for inviting me to visit Israel and the occupied Palestinian territory and for their cooperation before and during the visit. I am grateful to all interlocutors who I met, including senior Government officials, representatives of civil society, lawyers, human rights defenders, and journalists in East Jerusalem, Ramallah, Nabi-Saleh, Gaza, West Jerusalem, Tel Aviv, Be'er Sheva and other surrounding villages in the Negev desert.

The main purpose of my mission is to contribute, through engagement with all interlocutors, to efforts aimed at enhancing the enjoyment of the right to freedom of opinion and expression for all, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.

My mandate is guided by the right to freedom of opinion and expression as defined in article 19 of the International Covenant on Civil and Political Rights (ICCPR). This right includes the right to seek and receive information and ideas of all kinds, including through access to information held by public bodies, and freely to impart and disseminate any information, ideas or opinions, whether it is through speech, critical writing, art, peaceful demonstrations, cultural expressions, or public religious celebrations.

I would like to emphasize that I am not here to compare one situation with another. I rely upon international human rights standards as the yardstick to evaluate each situation on its own merits, in order to assess whether the right to freedom of opinion and expression is being fully guaranteed, and whether the enjoyment of this right is improving or regressing.

During this press conference today, I would like to present my initial findings and recommendations, but I regret that many journalists from the West Bank and Gaza cannot be here due to restrictions on their freedom of movement. In this regard, I would like to recommend that the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza facilitate all journalists' right to freedom of movement in order to carry out their work and to guarantee press freedom.

OCCUPIED PALESTINIAN TERRITORY

My mission to the occupied Palestinian territory was from 6 to 11 December. As a consequence of the political split between the Palestinian Authority and the de facto authorities in Gaza following the Palestinian Legislative Council elections of 2006, certain newspapers and radios perceived to be sympathetic towards either the Fatah or Hamas have been banned. Since these restrictions appear to be primarily symbolic in nature given that the content is accessible on the Internet, I would recommend that these restrictions be lifted by both parties to create a more conducive environment for dialogue and mutual understanding.

In the **West Bank**, the right to freedom of opinion and expression is explicitly guaranteed in article 19 of the Amended Basic Law of 2008. However, the Press and Publications Law of 1995 contains many provisions of concern, which was acknowledged by different officials of the Palestinian Authority with whom I met. I commend the efforts of the Ministry of Information to propose amendments to this law in consultation with representatives of civil society to bring it in line, whenever possible, with international standards.

I also welcome other efforts to promote media freedom in the West Bank, for example the ongoing reform of the Public Broadcasting Corporation into an independent public institution.

Exercise of the right to freedom of expression through peaceful assemblies and demonstrations

Peaceful assemblies and demonstrations constitute a form of expression to raise legitimate concerns and grievances. Authorities must fully respect and facilitate this right and be tolerant of such demonstrations. In the West Bank, many demonstrations have been taking place in areas which are under the security responsibility of the Israeli Defense Forces (IDF). I am concerned by allegations that the IDF prevents peaceful demonstrations from taking place in the first place by preventing the gathering of demonstrators, including by declaring an area a closed military zone and by dispersing protests using crowd control methods even when these demonstrations are peaceful. I raised this issue during a meeting with the Head of Central Command, Major General Avi Mizrahi, who ensured me that orders have been issued not to disperse demonstrations which are entirely peaceful and do not disrupt normal life, and that should he receive a request for a permit to hold a peaceful protest, he would issue it without hesitation. I welcome this position, and hope that it will be fully implemented.

I decided to observe one demonstration on Friday, 9 December 2011 in Nabi-Saleh. Upon my arrival at the village, I witnessed the gathering of several dozen protesters on the road leading to the village and the use of tear gas by the IDF and Border Police. As the events were starting to calm down, I was invited to the house of one of the villagers to be briefed on the situation. While I was at the meeting, I was informed that a young man had been injured with a tear gas canister to the head. I went outside, but did not witness the actual incident, as it had already taken place in another area of the village and I was informed that he had been taken away in an ambulance. Sometime later, after gathering relevant information, I decided to end my visit to the village. After passing the gate of the nearby checkpoint, I stopped to enquire about the young man with the crew of an ambulance, who confirmed that he had already been taken away for medical attention. The next day, I was informed that this young man, Mustafa Tamimi, aged 28, had died in hospital as a result of his injuries. Any loss of life is absolutely regrettable, and I express my deepest condolences to his family and the community. I raised this specific case during my meeting with Major General Mizrahi, who informed me that there are two ongoing investigations, one of which will be concluded by Tuesday, 20 December 2011. I expressed my interest in receiving the results of these investigations.

I would like to emphasize that any use of force against demonstrators or rioters must be minimal and proportionate to the threat posed. For example, while the use of tear gas to disperse a crowd may be legitimate under certain circumstances, tear gas canisters should never be fired directly at demonstrators. While it appears that IDF open-fire regulations prohibit such use, it has been alleged that in practice, members of the IDF do not respect this injunction. I have been informed of similar cases involving the use of tear gas canisters resulting in several injuries and one death. In these cases, investigations, if any, have not to this day led to serious disciplinary sanctions or criminal indictments. While the IDF has affirmed that they are very precise on rules of engagement, without adequate sanctions for any violations of these rules, such regulations can become merely symbolic. According to civil society organizations that have been monitoring demonstrations taking place in the West Bank, a total of around 20 individuals have died in protests since 2003. I would like to stress the importance of prompt and effective investigation into every loss of life to prevent impunity. This is important, as impunity also generates a climate of fear, which hinders the ability of individuals to effectively exercise their right to freedom of expression through peaceful assemblies.

With regard to **restrictions on freedom of movement**, which I have already mentioned in the beginning in relation to journalists, I would like to highlight further concerns regarding travel restrictions imposed by the Israeli authorities on human rights defenders. The right to freedom of movement of human rights defenders is crucial for their work to gather and disseminate information on human rights violations. In particular, I would like to draw attention to the case of Mr. Shawan Jabarin, Executive Director of the human rights organization Al-Haq, who has been banned by Israel from travelling abroad since 2006. I would encourage the relevant authorities to lift the ban in order to allow him to fully exercise his right to freedom of expression. In **Gaza**, I was informed of the trend of arbitrary arrests and overnight detention of journalists and human rights defenders by the security agencies of the de facto authorities, which has an intimidating effect and leads to self-censorship.

I am also concerned by reports from journalists and human rights defenders regarding certain seminars and conferences being prohibited from taking place. For example, an event related to the day of impunity to combat violence against journalists commemorated on 23 November, was prevented from taking place by the de facto authorities.

Moreover, I have been informed of cases of attacks against journalists, such as confiscation of their cameras, arrests and beatings, as well as raids of media offices by the security personnel of the de facto authorities. Additionally, I have been informed of a new practice requiring foreign journalists to name a local contact prior to entering Gaza, which limits their ability to report freely as it may place the named individual in danger. This in turn encourages visiting journalists to apply self-censorship, and thus I would recommend that this practice be abolished.

In addition, there have been allegations of violent dispersal of peaceful assemblies by the de facto authorities in Gaza. For example, during a public assembly in support of Palestinian unity on 15 March 2011, at least 100 participants and observers were beaten, tents were destroyed, and approximately 50 persons were detained. Other smaller demonstrations in support of Palestinian unity during the following days were also allegedly

violently dispersed, including one at Al Quds Open University.

In another incident related to the actions by the IDF, on 15 May 2011, hundreds of Palestinian demonstrators marched towards the Erez crossing protesting against the occupation. The IDF stationed at the crossing allegedly fired live ammunition, rubber-coated bullets and tear gas at the crowd, which caused 125 injuries. Out of these, 13 suffered serious wounds caused by gunshots and 77 suffered wounds caused by live ammunition and fragment of bullets. In this case, the United Nations Secretary-General has underscored that the necessity to use firearms in self-defence seemed unclear. This was particularly so as IDF soldiers at the Erez crossing are positioned either behind fortified concrete walls that are several metres high or inside fortified watch towers, making it difficult for anybody, especially unarmed individuals, to threaten their lives or that of others, which is the principal criterion authorizing the use of live ammunition.

In **East Jerusalem**, I have received information that sections of textbooks used in Palestinian schools, which follow the Palestinian curriculum, have been censored by the Israeli Ministry of Education. For Palestinians in East Jerusalem to enjoy the right to freedom of opinion, they should have the right to follow their own curriculum and determine the content of their textbooks. Additionally, they should also be able to maintain, express and impart their version of historical events.

I also met with two members of the Palestinian Legislative Council who have sought refuge at the International Committee of the Red Cross and are facing risk of transfer from East Jerusalem to another part of the West Bank as a result of having their residency revoked, based on the ground of lack of "loyalty to the State of Israel". As emphasized by the United Nations Secretary-General, such requirement could negatively affect their rights, as well as all other residents in East Jerusalem, to exercise their right to freedom of opinion and expression, for example, when contesting Israeli policies or working for organizations deemed to be disloyal to Israel.

Another issue of concern in East Jerusalem is the banning or prevention of various Arab cultural activities by the Israeli authorities, including in 2009 when Jerusalem was declared as the "Capital of Arab Culture". Other examples were also brought to my attention during my meeting with community leaders of Silwan.

ISRAEL

Following my visit to the occupied Palestinian territory, I visited Israel from 12 to 17 December 2011.

I am encouraged by the free and vibrant press in Israel, where diverse opinions are openly exchanged. However, I am concerned that the right to freedom of opinion and expression is not explicitly guaranteed in the Basic Law on Human Dignity and Liberty, although the High Court has played a key role in interpreting "human dignity" as including the right to freedom of expression. In order to fully ensure the protection of this right, I recommend that the Basic Law on Human Dignity and Liberty be amended to include the right to freedom of opinion and expression and that the independence of the High Court be protected.

State Comptroller

The State Comptroller serves as an important body in Israel to guarantee transparency, accountability and effectiveness of State institutions. I welcome the establishment of the Ombudsman's office as a special unit within the State Comptroller's office, and the opening of various regional offices to receive individual complaints regarding public bodies and persons. However, I would recommend that the Ombudsman's office be established as a separate and independent institution with a specific human rights mandate to receive and examine complaints of human rights violations from the public, and to act as a National Human Rights Institution in accordance with the Principles relating to the Status of National Institutions (the "Paris Principles").

Chief Censor

I had a very interesting meeting with the Chief Censor, Ms. Sima Vaknin-Gil, who has a mandate to screen articles prior to publication on matters related to national security. I was very impressed by her openness and objectivity, as well as the positive views expressed by journalists regarding her role and mandate.

While every State has the right to protect its national security and to keep certain information confidential from the public, I would like to express my concern regarding the existence of a body for prior censorship of the press, which should not exist in any country. As emphasized by the Human Rights Committee, a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other rights.

Restrictive bills

I would like to express my deep concern regarding some bills which have been proposed to or adopted by the Knesset, which contravene international standards on the right to freedom of opinion and expression. This includes three laws which have already been adopted, namely the so-called Nakba law, the foreign funding law, and the anti-boycott law.

The Nakba Law, adopted on 22 March 2011, authorizes the Finance Minister to reduce State funding or support to an institution if it holds an activity that rejects the existence of Israel as a "Jewish and democratic State" or commemorates Israel's Independence Day as *Al Nakba* ("the catastrophe"). This law violates the right of Palestinians to mark Israel's Independence Day as a national day of mourning, and to organize commemorative events. This law violates their right to freely express their opinion, preserve their history and culture, and their right to commemorate *Al Nakba*, which is an integral part of their history. The ability of individuals to be able to account for their own history should not be prescribed by law.

The so-called Anti-Boycott Law, adopted on 11 July 2011, enables the filing of civil lawsuits and economic sanctions against those who call for or participate in a boycott against the State of Israel and its products, including in the settlements. Calling for or participating in a boycott is a form of expression that is peaceful, legitimate and internationally accepted.

The "foreign funding law", adopted on 2 March 2011, requires NGOs to report quarterly to the Registrar of Associations on any funding received from foreign Governments or any other foreign entities. Additionally, there are two other bills which have been combined into one bill entitled "income of public institutions receiving donations from a foreign state entity", which would deprive NGOs that receive foreign funding the legal right to be exempted from income tax. I am relieved that this bill has been put on hold, given that if adopted, it would have restricted the legitimate work of Israeli human rights NGOs who are often the voice of the voiceless.

The bill on the amendment to the law of defamation, which passed its first reading in the Knesset on 21 November 2011, increases the fine for defamation from NIS 50,000 to NIS 300,000 without proof of damages. The bill, if adopted, will create a significant chilling effect and discourage investigative journalists, human rights NGOs, as well as all individuals expressing critical views, due to the dramatic increase in the amount of financial penalties.

I have expressed these concerns with the Speaker of the Knesset, Mr. Reuven Rivlin, and Members of the Knesset Ms. Fania Kirshenbaum, and Mr. Ahmad Tibi. I would like to call on all MKs to ensure that any legislative proposals are in compliance with Israel's international human rights obligations.

Right to freedom of expression of Arab Members of Knesset (MKs)

In relation to Arab MKs, I am concerned by reports that following their participation in public events and the exercise of their right to freedom of expression, certain parliamentary privileges have allegedly been or threatened to be revoked. I would like to stress that all Arab MKs, as other MKs, should be allowed to exercise their right to freedom of expression in all its forms.

Right to freedom of expression of Palestinian Arab citizens in Israel

As Palestinian Arab citizens of Israel comprise approximately 20 percent of the population in Israel, the exercise of their right to freedom of expression through their own media should be facilitated and fully guaranteed. During my visit to the city of Be'er Sheva, I was informed that the Bedouin community lack clubs, meeting places and public places of worship for dialogue, cultural expressions and exchange of ideas and views. In Be'er Sheva, I also visited the "Big Mosque" and was informed that it has been converted into a museum, and that the High Court has ruled in June 2011 that it should be used as an Islamic museum for the Muslim people in the area. I would recommend that the municipal authorities of Be'er Sheva implement the decision of the court, and also allow it to be used as a site for public prayer.

According to the Ministry of Education, there are seven universities in Israel, but it is not possible to study for a degree in Arabic only. This constitutes an obstacle for Arabic students who wish to pursue higher education in their own language.

Conclusion

I would like to underline that freedom of expression does not only include expression of views that are widely accepted by the majority of the population or reflect the Government's policies, but also minority views and dissenting opinions.

Since all human rights are universal, indivisible, interdependent and interrelated, the right to freedom of expression only becomes a reality if everyone has equal opportunity to enjoy this right. Truly democratic societies are measured by their respect of human rights, and in particular the right to freedom of expression as a "facilitator" of all other rights.

Thank you very much for your attention.