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Written evidence submitted by NGO Monitor — Foreign & Commonwealth Office Human Rights and Democracy Report 2018

Summary

The following submission details the problem with relying on a select group of non-governmental organizations (NGOs) that are active in the Arab-Israeli conflict as the sole sources of information regarding legal and military issues. These NGOs, which share similar political ideologies, do not employ proper research methodologies nor do they possess requisite expertise to make claims regarding military operations. The following evidence and examples demonstrate the results of these failures, namely the ways that these groups utilize invented or aspirational law, rather than the applicable legal frameworks; blindly repeat unverified claims; and fail to follow standard best-practices to avoid bias in conducting interviews. Governments that rely on these NGO reports risk repeating these same errors.

Issues addressed in this evidentiary submission include:

- NGO claims utilized in the 2017 FCO report, including the “Expropriation Law,” Palestinian minors in detention, demolitions, legal aid funding, and issues regarding Bedouin citizens.
- New claims anticipated in the forthcoming 2018 report, such as the violence surrounding the Gaza “Great March of Return” protests and the Nation State Bill.

Introduction to NGO Monitor

NGO Monitor is an independent, non-governmental Israeli research institute that produces and distributes reports and critical analysis on the political activities of international and local non-governmental organisations (NGO) in the context of the Arab-Israeli conflict. These efforts are meant to promote accountability, transparency, and informed public debate for the benefit of government policy makers, journalists, and the general public. Promoting and defending human rights is a fundamental part of the UK’s foreign policy and the FCO report is a valuable tool to this end, especially as it relates to UK government policy regarding the prospect of a peaceful two-state framework. However, the FCO has limited resources, and report authors often rely on media and NGO reports without independently verifying claims.

NGO Monitor is therefore submitting evidence to highlight the methodological weaknesses and distorted narratives presented by many NGOs. We urge the FCO to take this into account and acknowledge the issue in future publications.

1. Issues from the 2017 report

- 1.1. **Palestinian minors in detention:** Multiple NGOs have written publications accusing Israel of abusing Palestinian minors in detention. These frequently decontextualize data and misrepresent key facts.

- 1.2. NGO reporting on this issue often cites the Palestinian NGO Defense for Children International – Palestine (DCI-P), directly or indirectly. As an organization with close ties to the Popular Front for the Liberation of Palestine (PFLP) terrorist group, DCI-P is a flagrantly unreliable source of information. DCI-P and allied NGOs castigate Israel for prosecuting Palestinian minors in military courts. However, that criticism ignores the fact that international law requires Israel to use these courts and applying Israeli civilian law would require annexation of the territory. Moreover, these reports make no mention of the fact that the procedural and evidentiary rules in the Israeli civilian and military court systems are nearly identical. In addition, the military courts only have jurisdiction over a small subset of terrorism- and security-related crimes committed in the West Bank.
- 1.3. The number of Palestinian minors detained per year is miniscule and pales in comparison to arrests of minors in Western countries, including the UK. NGOs often cite the DCI-P claim that between 500-700 Palestinian minors are detained annually by Israel. Based on April 2017 data published by the Palestinian Central Bureau of Statistics (PCBS), DCI-P's high range of 700 yearly arrests represents only 0.03% of Palestinian minors. In comparison, nearly 90,000 minors aged 10-17 were arrested in England and Wales between April 2015-March 2016, an average of 7,500 per month. Adjusted for population, the rate of arrests of minors in England and Wales is 5.5 times higher than the West Bank, without factoring in the backdrop of armed conflict. In addition, according to military court statistics, only around half of detained Palestinian minors are prosecuted by Israel. The remainder are released shortly after arrest or transferred to the Palestinian Authority.
- 1.4. Another source of NGO reporting on this issue is UNICEF documentation. However, UNICEF has no independent research capacity and works closely with DCI-P and Addameer, another PFLP linked organization, relying on the two for data collection and analysis. This reliance undermines the credibility of UNICEF reports. The 2013 UNICEF report on Israel, often quoted by NGOs, claims that "mistreatment of Palestinian children in the Israeli military detention system appears to be widespread, systematic, and institutionalized." As demonstrated by the small number of cases, Israeli actions cannot be considered widespread. Moreover, the numerous Israeli legal safeguards, designed to ensure that minors are treated respectfully, are tried fairly, and are informed of their rights proves that any abuses that occur are not the result of "systematic" or "institutionalized" behavior.
- 1.5. These unreliable sources of information lead to grave misrepresentations of international law and Israel's compliance with it. For example, DCI-P, UNICEF, and their NGO partners claim that minors are placed in solitary confinement. However, international and domestic law forbids minors from being held with the adult population. Therefore, if a sole minor is arrested, they must be held separately from incarcerated adults, which is different than placing a minor in solitary confinement.
- 1.6. **"Expropriation" law:** Also commonly known as the "Land Regularization Law," was passed by the Israeli Knesset in February 2017, and allows for the retroactive legalization of previously constructed residences built on Palestinian-owned land in Israeli settlements. The

law is meant to “regulate” the status of the residences in question, while providing alternate land or compensation to Palestinian landowners at a rate of 125%.ⁱ

- 1.7. In response to the legislation, numerous foreign governments and human rights organizations issued strong condemnations and claimed that legislative efforts to breach the right to Palestinian self-determination are “accelerating rapidly.”ⁱⁱ However, in reality, the Israeli Supreme Court has demonstrated strong judicial oversight and respect for law by issuing an injunction freezing the operative parts of the law while the case is reviewed.ⁱⁱⁱ Furthermore, Attorney General Avichai Mandelblit has publicly opposed the law, deeming it unconstitutional. As such, there is a significant probability that the legislation is likely to be overturned; a fact many NGOs – as well as the 2017 FCO report – ignore.
- 1.8. **Legal Aid:** The 2017 report notes that the UK government “supports Palestinians whose homes face demolition or who face eviction in Area C of the West Bank through funding to legal aid.” However, the report fails to mention that the majority of this funding goes to the Norwegian Refugee Council (NRC) and goes far beyond “legal aid” or Area C. NRC partners with and transfers funds to radical NGOs in an attempt to both exploit and sabotage the Israeli legal system by flooding courts with cases involving both Area C and Jerusalem. Through its Palestinian and Israeli partner NGOs and private lawyers, this program alone submits between 600-800 new cases to Israeli courts annually. In 2018, ICLA aims to pursue “5,399 opened and continuing cases for legal assistance in the West Bank (West Bank 1162 new and 4237 continuing)” as well as 10 cases to be submitted to the UN and/or other international mechanisms. From 2009-2014, NRC “provided legal representation in court for 4,069 cases.”^{iv} This intensive involvement in the Israeli legal system, if carried out directly by its governmental donors, would be considered an unacceptable violation of international norms, including the principle of state sovereignty.
- 1.9. **Demolitions:** As stipulated in the legal framework of the Oslo Agreement, Israel is required to be responsible for planning and construction in Area C of the West Bank. While the IDF does engage in deterrence-related demolitions of the homes of terrorists, the majority of demolitions occur as a result of homeowners’ failure to obtain required building permits.^v Instead, many opt to build illegally, knowing the risks. However, contrary to the distorted narrative of “impunity,” these demolitions are undertaken after strict legal review and with judicial supervision by the Israeli Supreme Court. Further, many of these “homes” are actually small outbuildings, animal enclosures, and illegal shacks. It should also be noted that the Israeli government actively and routinely demolishes illegal building by Israeli citizens in Jerusalem and elsewhere.
- 1.10. **Bedouin citizens:** The 2017 report discusses Israel’s Bedouin population in regards to their “limited access to government services and basic infrastructure,” as well as the threat of home demolition. Focus on the Bedouin issue often reflects a drive to politicize this complex phenomenon and place it within the context of the Arab-Israeli conflict. This narrative ignores the challenges faced by a modern state in engaging with a community that traditionally practices customs such as polygamy (illegal under Israeli criminal law, while also leading to family groups as large as 30 or more individuals) and maintains a nomadic culture

that, by definition, precludes permanent attachment to specific territory.^{vi} Thus, NGOs use the interactions between the Bedouin population and the state as a political tool that is part of the broader strategy of lawfare and delegitimization campaigns against Israel.

2. Issues from 2018

- 2.1. **Gaza March of Return violence:** Responding to the violence along the Gaza border during the “Great March of Return,” many NGOs leveled accusations that Israel employed “disproportionate use of force” against “protestors” who were “posing no imminent threat at the time they were shot.” However, these actors often lack access to the necessary information regarding the circumstances surrounding each casualty required to make such claims, including knowledge of the rules of engagement, who was targeted and why, whether the individual was civilian or combatant; whether the civilian was directly participating in hostilities, what information was known to the military actor prior to the ordering of an attack; and whether ordering the attack was reasonable under the given circumstances. For NGOs to make legal and factual conclusions outside of their area of competence and in the absence of verified knowledge promotes a politicized narrative instead of facts pertaining to the conflict.
- 2.2. Noteworthy is the decision by several NGOs to invoke the legal standard of “imminent threat to life” to determine the legality of IDF actions on the border. This represents the application of a domestic law enforcement paradigm, not suited for situations of international armed conflict. If Gaza is “occupied,” as many organizations claim, the law of armed conflict is the appropriate legal paradigm.
- 2.3. An honest appraisal of the situation on the border must consider the wider context of the Arab-Israeli conflict. These clashes are part of a protracted armed conflict, as evidenced by the organized attempts to storm the Israeli border and maraud in civilian communities near Gaza, as well as the terror affiliations of most of the casualties.
- 2.4. UK/FCO fact finding should examine violations by Hamas and other Palestinian armed groups in detail, including fire kites and other incendiary devices launched indiscriminately from Gaza; deliberate burning of agricultural fields; deliberate mass burning of tires; shooting of rockets and mortars targeting Israeli civilians; co-locating rockets and other military infrastructure within civilian buildings; machine gun fire targeting border communities; use of human shields including children; recruitment and use of child soldiers; and incitement by Palestinian actors. Significantly, the NGO statements show a consistent pattern of erasing these war crimes and violence, which also impact analysis of Israeli actions.
- 2.5. A 13 June [press release](#) from HRW accusing Israel of “apparent war crimes in Gaza” (as well as a similar statement from 14 May) is based on interviews with a handful of Palestinian participants, most of who were wounded in the violent riots. Given that tens of thousands of individuals were present at the protests, HRW does not reveal how or why it selected these nine individuals, does not provide readers with the questions asked to the interviewees, fails

to note whether translators were used, and does not note whether Hamas or other terror officials were present during the interview. HRW does not state whether it was able to verify interviewee claims.

- 2.6. In addition to unverifiable interview claims, HRW, like many other NGOs, relies on the "Gaza Ministry of Health" (aka Hamas officials) for casualty information. HRW also cites the PFLP-linked DCI-P for details regarding children killed in the violence.
- 2.7. **Nation State Bill:** The disparate narratives surrounding the Nation State Bill serve as a cautionary tale for relying on political NGOs. Detractors of the proposed legislation argued that it could not be reconciled with democratic values, while supporters presented it as codification of the de facto state of affairs in the country. These pronouncements were premature, often reflecting the political preferences of their authors.
- 2.8. Absent from most NGO commentary on the subject was a fact-based, nuanced presentation of the legal significance of the proposal. Often lacking was an analysis of how, if at all, the bill would inform judicial rulings in Israel, or how its application would be influenced by other Basic Laws. NGOs on both sides of the issue sought to influence the public perception of the bill, without doing much to increase understanding about the practical ramifications of its implementation. Therefore, when reporting on this development, the FCO should seek out a pluralistic mix of Israeli legal experts, capable of assessing its legal impact.

ⁱ https://www.mako.co.il/news-military/politics-q4_2016/Article-fc057b1dcbd5851004.htm (Hebrew)

ⁱⁱ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-fcos-human-rights-work/written/84815.html>

ⁱⁱⁱ <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%5C17%5C080%5C013%5Cv21&fileName=17013080.V21&type=2>

^{iv} <https://www.ngo-monitor.org/reports/flooding-the-courts/>

^v https://www.google.com/url?q=http://www.ngomonitor.org/nm/wpcontent/uploads/2018/04/DFID2017Report.odt&sa=U&ved=0ahUKEwjT2ZO33_bdAhVQCuwKHT3FBR0QFggPMAQ&client=internaludscse&cx=010323966898720032183:9pwegkotst0&usg=AOvVaw20jnPwluJoSoq_b4iGChZ

^{vi} Yahel , H., Kark, R. and Frantzman , S. J. "Are the Negev Bedouin an Indigenous People? Fabricating Palestinian History." Middle East Quarterly, Summer 2012, pp. 3-14.