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Amicus Curiae Brief

by Amnesty International

Submitted in Administrative Appeal 2966/19 Human Rights Watch et al. v. Minister of Interior et

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INTRODUCTION

1. Amnesty International is a leading non-governmental organization representing a global movement of over 7 million people in over 150 countries and territories worldwide, who campaign for a world where human rights are enjoyed by all. Established in 1961, Amnesty International is independent of any government, political ideology, economic interest or religion. Its vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. In pursuit of this vision, the organization promotes respect for human rights and monitors the compliance of all actors – state and non-state – with international human rights law and standards and, where applicable, with international humanitarian law. It works to prevent and end grave abuses of human rights and to demand justice for those who suffered human rights violations. Amnesty International is a Nobel Peace Prize laureate (awarded 1977) for its work against torture and for the protection of the rights of prisoners of conscience.
2. Amnesty International operates around the world. Its International Secretariat has regional offices in Africa, the Americas, Asia-Pacific, Europe and Central Asia, and the Middle East and North Africa. Its Middle East and North Africa Regional Office operates out of four locations: three registered offices in the region, situated in Beirut, Tunis and East Jerusalem, and the London premises of the International Secretariat. It serves to document human rights abuses in each of the 19 countries in the region and to campaign for changes to the abusive practices and policies of both state and non-state actors.
3. Amnesty International has a particular interest in ensuring the correct interpretation of international human rights law and correct application of international human rights treaties and other instruments. With its expertise in human rights law, research and international advocacy expanding over 50 years, Amnesty International is well placed to assist courts in the correct interpretation of international humanitarian law and international human rights law, particularly in issues relating to the standards that apply to human rights defenders and current practices and trends in human rights advocacy. Amnesty International has extensive experience in appearing as a friend of the court (*amicus curiae*) in domestic, regional and international courts on issues relating to the correct interpretation of international law, for example in proceedings before the European Court of Human Rights, the Inter-American Court of Human Rights, the Supreme Court of the United States and the Supreme Court of Canada.¹
4. Amnesty International conducts research into and campaigns against human rights violations and abuses by all actors in Israel and the Occupied Palestinian Territories. Amnesty International documents human rights abuses by Israeli authorities inside Israel, including issues relating to but not exclusive to: the rights of refugees and asylum-seekers and of Bedouin and other minorities; gender-based violence against women and girls and lesbian, gay, bisexual, transgender and intersex (LGBTI) people; and the rights of conscientious objectors to military service.² It also documents and campaigns against human rights violations by Israeli authorities in the Occupied Palestinian Territories, including, among other issues, excessive use of force, unlawful killings, attacks on civilians, disproportionate and indiscriminate attacks, house demolitions and arbitrary arrest and detentions by Israeli forces. Amnesty International also researches and advocates

¹ Selected international and national cases in which Amnesty International has intervened as a third party or an *amicus curiae* include: *Soering v United Kingdom* (14038/88), European Court of Human Rights (1989); *Paloma Angélica Escobar Ledezma and others v Mexico* (12.551), European Court of Human Rights (2018); *Alekhina v Russia* (38004.12); European Court of Human Rights (pending judgment) *Ecodefence v Russia* (9988.13); Inter-American Commission on Human Rights (2013); *Kiobel v. Royal Dutch Petroleum Co.* (133 S.Ct. 1659), Supreme Court of the United States (2013); *Ezokola v. Canada (Citizenship and Immigration)* (SCC 40), Supreme Court of Canada (2013)

² See, for example, Amnesty International, *Israel and Occupied Palestinian Territories 2018*, www.amnesty.org/en/countries/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/report-israel-and-occupied-palestinian-territories/

against violations by the Palestinian authorities in the West Bank and by the de facto authorities in the Gaza Strip, including arbitrary arrests and torture by security forces, the use of the death penalty, extrajudicial executions and gender-based violence against girls and women and LGBTI people.³ The organization has called on Palestinian authorities, on numerous occasions, to respect human rights and end abuses. Amnesty International has also documented and campaigned against attacks by Palestinian armed groups against civilians in Israel, including the firing of indiscriminate rockets from Gaza at civilians in Israel and suicide attacks targeting civilians.

SUBMISSION IN BRIEF

5. States have an obligation to respect the right to defend human rights, which includes not only the obligation to refrain from interfering in the work of human rights defenders but also to guarantee a safe and enabling environment in which they can operate without fear of reprisals, *inter alia* by ensuring their safety from threats, harassment, intimidation and attacks, providing them with an adequate framework for peacefully exercising the rights to freedom of peaceful assembly and association and allowing them to freely express their opinions, including ones that governments may not consider legitimate.⁴
6. The rights to freedom of expression and association, provided in Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Israel is a State Party, are essential for the protection and promotion of human rights and have been deemed crucial for carrying out human rights work. Restrictions on the rights to freedom of expression and association of human rights defenders that are not in line with provisions of the ICCPR seriously undermine their ability to perform their work and contribute to a climate of fear and repression against them.
7. All companies have a responsibility to respect international humanitarian law and human rights wherever they operate, including throughout their operations and supply chains. The responsibility to respect is based on the globally endorsed UN Guiding Principles on Business and Human Rights (UN Guiding Principles). Under the UN Guiding Principles, the responsibility to respect human rights requires companies to “avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur.” If a company identifies that it is causing or contributing to human rights abuses, and that it cannot prevent this, the only possible course of action is not to undertake the relevant activity.
8. There is a consensus in the international community that the establishment, continued existence and expansion of Israeli settlements in the Occupied Palestinian Territories violate Article 49 of the Fourth Geneva Convention, which prohibits the transfer of population into occupied territories, and constitute war crimes under the Rome Statute of the International Criminal Court.⁵ Besides violating human rights in and of itself, Israel’s settlement policy is one of the main forces behind a large number of other human rights violations of Palestinians in the Occupied Palestinian Territories.
9. Business activities are essential to virtually every aspect of the maintenance, development and expansion of the settlements in the Occupied Palestinian Territories. Industrial parks in settlements offer numerous incentives, notably tax breaks. Economic activities in these zones are expanding.
10. Regardless of the human rights impacts of specific activities, virtually all business activity in the settlements is both part of and goes to support an unlawful situation characterized by grave and widespread violations of human rights and international humanitarian law. This means that it is not possible for a company to operate in Israeli settlements in the Occupied Palestinian Territories without contributing to breaches of humanitarian law arising from the very existence of the settlements. In such a context, a reasoned interpretation of the UN Guiding Principles would be that businesses should refrain from undertaking any activities in these settlements. Any company already carrying out such activities should take immediate steps to discontinue them.
11. Advocating for ending human rights abuses committed by corporations, including by calling for their boycotts, has been a tactic used for decades by human rights defenders and it is a tool protected under the right to freedom of expression. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has recognized

³ See, for example, Amnesty International, *Palestine (State of) 2018*, www.amnesty.org/en/countries/middle-east-and-north-africa/palestine-state-of/report-palestine-state-of/

⁴ UN General Assembly Resolution 53/144, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)*, UN Doc. A/RES/53/144 (1999), www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf

⁵ HRC, *Report of the independent fact-finding mission to investigate the implications of the Israeli settlements*, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf

that “calling for or participating in a peaceful boycott is a legitimate form of expression which is internationally recognized”.⁶

12. Amnesty International is concerned by the Israeli District Court's decision to confirm the Israeli authorities' de facto deportation of a non-national human rights defender solely based on their use of peaceful tools to advance human rights. Amnesty International is concerned about the wider chilling effect this decision will have on human rights defenders and civil society organizations in the country, and fears an increasing risk to their ability to continue operating in Israel and the Occupied Palestinian Territories if the decision is not overturned.
13. Amnesty International further submits below that Mr Omar Shakir and Human Rights Watch's public call for businesses to ensure respect of international humanitarian law is a peaceful tool in the present-day human rights advocacy tool kit, protected under international human rights law. These calls are for companies to respect international law, they are not and should not be interpreted as a call for boycott. Even if the Israeli authorities do take the view that such activities amount to calls for boycotts, advocates of such calls must be allowed to express their views freely.
14. Amnesty International submits that upholding the District Court's decision to confirm the authorities' decision to de facto deport Mr Omar Shakir, which has been solely based on his use of peaceful tools to advance human rights and his activities as a human rights defender, will be an unreasonable and disproportionate restriction on his rights to freedom of expression and association in contravention of Israel's obligations under international human rights law.

THE ROLE OF HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY ORGANIZATIONS IN PROMOTING HUMAN RIGHTS

15. It is well recognized under international human rights law and standards that human rights defenders play an essential role in fostering debate on matters of public importance, including public policy. The United Nations (UN) Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) particularly recognizes the important role of human rights defenders in the promotion and defence of human rights, by campaigning and advocating for human rights, sharing information, holding those in power to account, and demanding justice, equality, dignity and freedom.⁷ In 2013, the UN Human Rights Council adopted a resolution urging all states to acknowledge publicly the important and legitimate role of human rights defenders and that dissenting views may be expressed peacefully.⁸
16. The Declaration on Human Rights Defenders articulates existing rights protected under international human rights law, and applies them to the particular role and situation of civil society organizations and human rights defenders. The Declaration stresses the importance for human rights defenders of the rights, among others, to freedom of expression, association and peaceful assembly, and their right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. As established in Article 2 of the Declaration, the State has the prime responsibility to protect human rights defenders, to prevent and effectively address allegations of human rights violations and abuses committed against them, and to ensure that they can carry out their work in a safe and enabling environment.
17. States must ensure human rights defenders can exercise the right to defend human rights through activities such as seeking, obtaining and disseminating ideas and information; advocating for human rights; engaging in governance and the conduct of public affairs; accessing and communicating with international human rights bodies; and submitting proposals for policy and legislative reform at the local, national and international levels, as stipulated by the Declaration on Human Rights Defenders.⁹
18. The Declaration on Human Rights Defenders also provides additional protections to the right of human rights defenders and organizations to “offer and provide professionally legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms” to state and non-state actors.¹⁰ Thus, in exercising their right to freedom of expression, human rights defenders can call on states and non-state actors not to violate human rights treaties and other standards nor to breach international humanitarian law.

⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/20/17/Add.2, 11 June 2012, para. 34.

⁷ Declaration on Human Rights Defenders, Articles 6, 7, 8.

⁸ UN Human Rights Council Resolution, UN Doc. A/HRC/RES/22/6, 21 March 2013, paras 5 and 11 (i).

⁹ Declaration on Human Rights Defenders, Articles 6, 7, 8.

¹⁰ Declaration on Human Rights Defenders, Article 9.

19. The Declaration on Human Rights Defenders recognizes the risks and challenges faced by human rights defenders for sharing information about human rights and human rights abuses and for being critical of state and non-states actors' failure to protect and respect human rights, and thus calls for the need of higher and effective protection for them, including under national law and against "acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms".¹¹ The UN Special Rapporteur on the situation of human rights defenders has emphasized the need for states to ensure that there is a safe and enabling environment for every individual to be able to carry out human rights work, including through the implementation of a conducive legal, institutional and administrative framework.¹² In particular, the Special Rapporteur has called on States to remove the obstacles that some domestic laws may place on the activities to promote and protect human rights conducted by defenders.¹³
20. Human rights defenders must be able to promote and protect human rights without fear of retaliation for expressing critical and public views. The UN General Assembly has repeatedly called on all states "to take all measures necessary to ensure the protection of human rights defenders, at both the local and national levels".¹⁴ The Inter-American Commission has established that "one cannot legitimately impose a sanction that impedes or restricts the critical and necessary work of human rights defenders when they scrutinize the persons who hold public positions. An excessive sanction may have a chilling effect on such criticism".¹⁵
21. Nevertheless, Amnesty International has documented trends and measures used by state and non-state actors to silence or otherwise create a chilling effect on human rights defenders and to limit the civic space available for them, to deter them from performing their work.¹⁶ Such measures include intimidation, personal attacks, surveillance both by state and non-state actors, and attacks on human rights defenders' capacity to communicate as well as other violations of their rights to peaceful assembly and association. It has documented instances where states blocked access to non-national human rights defenders to prevent them from documenting human rights violations, such as China and Sudan. The organization has also documented the introduction by at least 50 countries, among them Egypt, Bahrain, Algeria and India, of restrictive legislation and regulations governing the conduct of civil society organizations, including on their right to seek, receive and utilize funds from domestic and international sources.¹⁷ Finally, it has documented how many states, among them Turkey and Cuba, and non-state actors, such as businesses and armed groups, are subjecting civil society groups and individual human rights defenders to mass monitoring and surveillance, in an effort to intimidate human rights defenders and create a chilling effect on their work.¹⁸
22. It is of great concern that a number of countries have restricted entry to international human rights monitors, including Amnesty International, and hindered their ability to seek access to document human rights violations, among them Cuba, Eritrea and North Korea. Specifically, in the Middle East and North Africa, Amnesty International has long been barred access to Iran, Saudi Arabia and government-controlled areas of Syria to research human rights issues in these countries, and is currently facing serious obstacles to access in Bahrain and Egypt for the same purpose.¹⁹
23. In Israel and the Occupied Palestinian Territories, Amnesty International has documented increasing levels of targeting of civil society groups and human rights defenders in recent years, through legislation, formal and informal policies, arrest and detention, and harassment by various state authorities. For example, several Israeli human rights organizations face smear campaigns and threats by government authorities and high-ranking politicians, in addition to increased and burdensome reporting requirements on those organizations that receive the majority of their funding from foreign governments and institutions.²⁰ Israel has prevented Amnesty International from entering the Gaza Strip to conduct research into the human rights situation there since 2012. It also continues to bar entry to the UN Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory into the region. Palestinian authorities, for their part, use measures such as threats, physical assault and arrests and ill-treatment to intimidate opponents.²¹

¹¹ Declaration on Human Rights Defenders, Article 12.

¹² Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/25/55, 28 July 2011, para. 129.

¹³ Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/70/217, 28 July 2011, para. 93(c).

¹⁴ See, for example, UN General Assembly Resolution 64/164, UN Doc. A/RES/ 64/164, para. 4.

¹⁵ Report on the Situation of Human Rights Defenders in the Americas, para. 81.

¹⁶ Amnesty International, *Laws designed to silence: The global crackdown on civil society organizations* (Index: ACT 30/9647/2019), February 2019; Amnesty International, *Deadly but preventable attacks: Killings and Enforced Disappearances of those who defend human rights* (Index: ACT 30/7270/2017), December 2017; and Amnesty International, *Human rights defenders under threat: A shrinking space for civil society* (Index: ACT 30/6011/2017), May 2017.

¹⁷ Amnesty International, *Laws designed to silence: The global crackdown on civil society organizations* (Index: ACT 30/9647/2019), February 2019.

¹⁸ Amnesty International, *Laws designed to silence: The global crackdown on civil society organizations* (Index: ACT 30/9647/2019), February 2019.

¹⁹ Amnesty International, *Amnesty international report 2017/18: The state of the world's human rights* (Index: POL 10/6700/2018), February 2018.

²⁰ The Disclosure Obligations of Recipients of Support from Foreign Government Entities Bill (Amendment - Increased Transparency by Recipients of Support, when the Majority of their Funding is from Donations from Foreign Government Entities), 2016, fs.knesset.gov.il//20/law/20_Isr_346561.pdf (In Hebrew).

²¹ Amnesty International, *Palestine: Authorities must drop charges against human rights defender Issa Amro for peaceful criticism*, 27 March 2019, www.amnesty.org/en/latest/news/2019/03/palestine-authorities-must-drop-charges-against-human-rights-defender-issa-amro-for-peaceful-criticism/

THE RIGHTS TO FREEDOM OF EXPRESSION AND OF ASSOCIATION UNDER INTERNATIONAL HUMAN RIGHTS LAW

24. The right to freedom of expression, provided in Article 19 ICCPR, protects the right of all people to seek, receive and impart information of any form, including political discourse, commentary on one's own and on public affairs, journalism, cultural and artistic expression, teaching, and religious discourse.²² Importantly, international protection of the right to freedom of expression applies not only to information and ideas that are favourably received or regarded as inoffensive, but also to those that offend, shock or disturb the state or any sector of the population.²³ The UN Human Rights Committee has stressed that the right to freedom of expression is essential for the promotion and protection of human rights.²⁴ The European Court of Human Rights has recognized the particular importance of protecting the right to freedom of expression of human rights defenders and those representing civil society organizations when addressing matters of public interest.²⁵
25. The right to freedom of expression has an individual and a social dimension.²⁶ According to the Inter-American Court the right to freedom of expression “requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others”.²⁷
26. Article 6 of the Declaration on Human Rights Defenders particularly affirms the right of everyone to know, seek, obtain, receive and hold information about all human rights.²⁸ The UN Human Rights Committee has observed that, in relation to Article 19 of the ICCPR, the right to freedom of expression encompasses “the expression and receipt of communications of every form of idea and opinion capable of transmission to others [including] discussion of human rights”.²⁹ Critically, the Declaration on Human Rights Defenders highlights the right of human rights defenders to develop and discuss new human rights ideas and principles, and to advocate for their acceptance.³⁰ The UN Special Rapporteur on the situation of human rights defenders has also highlighted the crucial importance of the rights to freedom of expression and association to the work of human rights defenders, as without these they would not be able to perform their monitoring and advocacy work to promote and defend human rights, including by discussing and developing new human rights ideas.³¹
27. The right to freedom of association, provided in Article 22 ICCPR, allows for individuals to form or join formal or informal groups to take collective action to pursue a common goal. The Declaration on Human Rights Defenders outlines particularly the rights of individuals to form, join and participate in civil society organizations, associations or groups to promote or defend human rights.³² It also articulates the importance of civil society organizations being able to freely exercise the rights to freedom of association and expression, including through activities such as seeking, obtaining and disseminating ideas and information; advocating for human rights; engaging in governance and the conduct of public affairs; accessing and communicating with international human rights bodies; and submitting proposals for policy and legislative reform at the local, national and international levels.³³ To enable individuals to do this, states must provide an adequate legal framework for the establishment of groups and organizations and ensure an environment that enables them to carry out their work without undue interference by the state or third parties.
28. While the rights to freedom of expression and association are not absolute, international human rights law requires states to ensure that any restrictions imposed on these rights are adequately prescribed by law, in accordance with the principle of legality, and are necessary and proportionate to a legitimate aim. Under international human rights law, restrictions on the right to freedom of expression must be narrowly construed: Article 19(3) ICCPR provides that “the right to freedom of

²² Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of Opinion and Expression), 12 September 2011, UN Doc. CCPR/C/GC/34, para. 11.

²³ Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of Opinion and Expression), 12 September 2011, UN Doc. CCPR/C/GC/34, para. 3; see also, European Court of Human Rights, *Handyside v. United Kingdom*, judgment of 7 December 1976, para. 49.

²⁴ Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of Opinion and Expression), 12 September 2011, UN Doc. CCPR/C/GC/34, para. 3.

²⁵ European Court of Human Rights, *Vides Aizsardzibas Klubs v. Latvia*, Application No. 57829/00, 27 May 2004, para. 42.

²⁶ UN Special Rapporteur on the Situation of Human Rights Defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011, www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf#page=57&zoom=100,0,104

²⁷ Inter-American Commission on Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, OC-5/85 (1985), para. 30, as cited in Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5, 7 March 2006, para. 78.

²⁸ Declaration on Human Rights Defenders, Article 6.

²⁹ Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of Opinion and Expression), UN Doc. CCPR/C/GC/34, 12 September 2011, para. 30.

³⁰ Declaration on Human Rights Defenders, Article 7.

³¹ Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/66/203, 28 July 2011, paras 29, 43 and 56.

³² Declaration on Human Rights Defenders, Article 5.

³³ Declaration on Human Rights Defenders, Articles 6, 7, 8.

opinion and expression... may... be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals”.

29. This means that such measures must be established in terms that are sufficiently precise and clear to allow their consequences to be reasonably foreseeable by those affected by them. Even when it is demonstrated that a measure regulating or interfering with the right to freedom of expression and association pursues a legitimate aim, the measure must respond to a pressing social need and be proportionate in pursuit of its aim. Measures restricting the work of civil society organizations and individuals must be as unobtrusive as possible, with due regard to the significance of the interests at stake.
30. The UN Human Rights Committee has called on states to be cautious and not to adopt measures that might criminalize the work of human rights defenders in its General Comment No. 34 on Article 19 of the ICCPR (freedom of opinion and expression). The Committee called on state parties not to invoke treason laws or provisions relating to national security to “suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute... human rights defenders, or others, for having disseminated such information”.³⁴
31. Therefore, legal means aimed at narrowing the scope of human rights defenders’ freedom of expression and association are in contravention of Israel’s obligations under international human rights law, which protects human rights defenders’ right to make peaceful public calls, including calls to boycott private corporations. The Law for Prevention of Damage to State of Israel through Boycott of 2011 makes it a civil wrong to call for a boycott of any entity because of its affiliation to Israel or to a territory under its control, including entities operating in illegal settlements in the Occupied Palestinian Territories. A 2017 amendment to the Entry to Israel Law prohibits granting an entry visa to Israel (and therefore to the Occupied Palestinian Territories which are under Israeli control) to anyone who knowingly published, or operates within an organization who knowingly published, a call for a boycott as defined under the 2011 law. Both the Law for Prevention of Damage to State of Israel through Boycott of 2011 and the 2017 amendment to the Entry to Israel Law contravene with Israel’s obligations under international human rights law.
32. Amnesty International submits that the right to freedom of expression for human rights defenders is essential for safeguarding the public’s right to know, and the ability to hold states and non-state actors to account. Furthermore, Amnesty International submits that arbitrary restrictions on human rights defenders’ freedom of expression and association seriously undermine their ability to perform their work. Therefore, Amnesty International believes that, as part of states’ obligations to protect human rights defenders and promote an enabling environment for their work, they must refrain from harassing or sanctioning human rights defenders for their peaceful activities, such as the ones performed by Human Rights Watch and Mr Omar Shakir.

OBLIGATIONS OF STATES TO PROTECT HUMAN RIGHTS DEFENDERS AND PROMOTE THEIR WORK

33. States have particular obligations to protect human rights defenders and to promote their work.³⁵ The Declaration on Human Rights Defenders provides that States have a prime responsibility “to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”,³⁶ and that States must take all necessary measures, including through providing effective protections under their national law, to ensure their protection against any “violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action” resulting from the legitimate exercise of their rights to defend and promote human rights.³⁷ States must comply with their obligations to refrain from interfering with the right to express critical views, and adopt measures to protect the expression of critical views. Further, human rights defenders have the right to “benefit from an effective remedy” when their rights are violated.³⁸
34. The UN Special Rapporteur on the situation of human rights defenders has recommended that states develop public policies and specific institutional mechanisms to, when necessary, provide physical and psychological protection for

³⁴ Human Rights Committee, *General comment No. 34*, UN Doc. CCPR/C/GC/34 (2011), www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf, para. 30.

³⁵ As derived from States’ primary responsibility and duty to protect all human rights as established in Article 2 of the Universal Declaration of Human Rights, Article 2 of the International Covenant on Civil and Political Rights (ICCPR), Article 3 of the Committee on the Elimination of Discrimination against Women (CEDAW) and Article 1 of the Charter of the UN.

³⁶ Declaration on Human Rights Defenders, Article 2.1.

³⁷ Declaration on Human Rights Defenders, Article 12.

³⁸ Declaration on Human Rights Defenders, Article 9.

human rights defenders, as well as material resources to that end.³⁹ The European Court of Human Rights has recognized the vulnerable situation that those who criticize the government may find themselves in vis-à-vis the authorities, and has found states responsible for human rights violations when they failed to adequately protect human rights defenders.⁴⁰ Similarly, the Inter-American Court of Human Rights has determined that states must establish special measures of adequate and effective protection for human rights defenders at risk, which must be suitable to deal with the dangers facing an individual and must be able to produce the results for which they were conceived.⁴¹

35. States must also publicly recognize the important role and contribution of human rights defenders and civil society organizations to the advancement of human rights. This includes the provision of an adequate legal framework that enables them to carry out their work without undue interference by state or non-state actors.⁴²
36. Different human rights bodies have found that visa regimes and procedures have often placed undue obstacles on human rights defenders who need to travel to another state for the purpose of their human rights work.⁴³ The UN Human Rights Committee has noted in this regard that representatives of international organizations and NGOs, journalists and human rights defenders should be allowed to enter and carry out their work in another country and be guaranteed the right to freedom of expression in the conduct of their work.⁴⁴
37. Amnesty International is of the view that the denial of access and deportation of human rights defenders based on the exercise of their right to freedom of opinion and expression, while practising peaceful human rights work, is contrary to the UN Declaration on Human Rights Defenders and violates states' obligations under international human rights law to respect and protect the rights to freedom of expression and of association.
38. Amnesty International submits that the Israeli District Court's decision to confirm the Israeli authorities' decision to de facto deport a non-national human rights defender solely based on their use of peaceful tools to advance human rights is an unreasonable and disproportionate restriction on Mr Omar Shakir's rights to freedom of expression and association.
39. Amnesty International is concerned that the revocation of the work permit of a Human Rights Watch staff member will similarly pose undue obstacles to the work of other human rights groups, including Amnesty International, and the ability of human rights defenders to operate in Israel and the Occupied Palestinian Territories, making it increasingly difficult to maintain an open, safe and thriving space for them to advocate for human rights in the region.
40. Amnesty International is of the view that the policies of Human Rights Watch that led in part to the revocation of Mr Omar Shakir's work permit are forms of expression protected under international human rights law and standards. If the decision of the District Court is not overturned, it can be expected that the Minister of Interior's policy will significantly limit and undermine the ability of human rights defenders and civil society organizations to continue operating in Israel and the Occupied Palestinian Territories.

CORPORATE RESPONSIBILITY TO UPHOLD THE RULES OF INTERNATIONAL HUMAN RIGHTS LAW

41. The UN Guiding Principles provide the most authoritative statement of the human rights responsibilities of companies, based on international human rights law.⁴⁵ They were adopted by the UN Human Rights Council in 2011, and have been endorsed by governments and business associations. Since 2011, states have been developing national action plans to give effect to them, and businesses have been developing policies to embed them across their operations.⁴⁶ While the UN Guiding Principles are not legally binding on companies directly, they are being integrated gradually into national laws and policies.
42. Under the UN Guiding Principles, companies have a responsibility to respect all internationally recognized human rights wherever they operate in the world.⁴⁷ The responsibility to respect human rights requires companies to "avoid causing or

³⁹ Report of the UN Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/25/55, 23 December 2013, paras 84 and 131.

⁴⁰ European Court of Human Rights, *Gongadze v. Ukraine*, no. 34056/02, judgement of 8 November 2005, para. 170.

⁴¹ Inter-American Court of Human Rights, *Human Rights Defender et al. v. Guatemala*, 28 August 2014, para. 157.

⁴² Report of the UN Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/25/55, 23 December 2013, para 62-72.

⁴³ UN Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society, to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", July 2011, p. 53; Organization for Security and Co-operation in Europe, Guidelines on the Protection of Human Rights Defenders, 2014, para. 81.

⁴⁴ Human Rights Committee, Concluding Observations on Uzbekistan, UN Doc. CCPR/C/UZB/CO/3, 7 April 2010, para. 24.

⁴⁵ OHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc. HR/PUB/11/04, 2011.

⁴⁶ Business and Human Rights Resource Centre, Company Policy Centre, Company Policy Statements on Human Rights, www.business-humanrights.org

⁴⁷ UN Guiding Principles, Pillar II, The Corporate Responsibility to Respect Human Rights.

contributing to adverse human rights impacts through their own activities and address such impacts when they occur.”⁴⁸ If a company identifies that it may cause or contribute to human rights abuses, and that it cannot prevent these abuses, the only possible course of action is not to undertake the relevant activity.

43. As part of their human rights due diligence responsibilities, corporations must also seek to understand the point of view of critics and opponents, including human rights defenders, and identify the way in which corporate operations may undermine a safe and enabling environment for defenders. The UN Special Rapporteur on the situation of human rights defenders has considered that “the responsibility of corporations to respect human rights not only entails a negative duty, to refrain from violating the rights of others, but also a positive obligation to support a safe and enabling environment for human rights defenders in the countries in which they are operating.”⁴⁹
44. Amnesty International has been campaigning on issues connected to business and human rights since the 1990s. Our research and campaigning on corporate accountability cover companies around the world. We investigate the role of companies in human rights abuses around the world. We advocate for accountability for businesses implicated in human rights abuses, as well as for changes on the ground and in people’s lives, and wider changes to the laws, policies and practices needed to address the root causes of bad business behaviour. Amnesty International supports the UN Guiding Principles, which state that companies must respect human rights wherever they operate. We have focused on a wide range of business sectors, regions, and human rights abuses, including the Bhopal disaster, oil pollution in the Niger Delta, labour rights in the Gulf and the global arms trade.⁵⁰
45. In Israel and the Occupied Palestinian Territories, Amnesty International has conducted research on companies operating in or with Israeli settlements in the Occupied Palestinian Territories, such as the leading digital tourism companies which dominate the global online tourism industry and are widely used by foreign visitors to Israel.⁵¹ Amnesty International’s investigation found that these companies unavoidably contribute to sustaining a situation which is deemed unlawful under international law, as well as a regime that is inherently discriminatory and abusive of the human rights of Palestinians. Amnesty International called for businesses to comply with their responsibilities to respect international humanitarian law and human rights, and specifically to cease all activities in illegal Israeli settlements, including in East Jerusalem.⁵²
46. Every situation of occupation is different in certain aspects. The existence of settlements is what makes the risks associated with doing business in the Occupied Palestinian Territories distinctive and particularly acute. Given these circumstances, any business activities by companies inexorably and unavoidably contribute to serious violations of international humanitarian and human rights law.
47. Amnesty International’s approach, in researching the involvement of business in human rights abuses and advocating for the respect of international law and the UN Guiding Principles, is an approach adopted and shared by many other human rights organizations worldwide. Calling on companies operating in or with Israeli settlements to cease operations is in line with international standards on corporate responsibility, which include requiring corporations to respect the rules of international humanitarian law and human rights.
48. Amnesty International submits that it is up to individuals and organizations to determine which peaceful strategies to use in furtherance of human rights. We believe that advocating for boycotts, divestment and sanctions is a form of free expression that must be protected. Advocates of boycotts should be allowed to express their views freely and take forward their campaigns without harassment, threats of prosecution or criminalization, or other measures that violate the right to freedom of expression.
49. Therefore, Amnesty International submits that calls on companies to respect international law and abide by the UN Guiding Principles, such as those calls made by Human Rights Watch and its representative in Israel and the Occupied Palestinian Territories, Mr Omar Shakir, is protected by the right to freedom of expression under international human rights law. These calls are for companies to respect international law, they are not and should not be interpreted as a call for boycott. Even if the Israeli authorities do take the view that such activities amount to calls for boycotts, advocates of such calls must be allowed to express their views freely.

⁴⁸ UN Guiding Principles, Principle 13(a).

⁴⁹ Report of the UN Special Rapporteur on the situation of human rights defenders, UN Doc. A/72/170, para. 58.

⁵⁰ Amnesty International, “What we do”, www.amnesty.org/en/what-we-do/

⁵¹ Amnesty International, *Destination: Occupation: Digital tourism and Israel’s illegal settlements in the Occupied Palestinian Territories* (Index: MDE 15/9490/2019), January 2019.

⁵² Amnesty International, *Destination: Occupation*, (Campaigns, January 2019) <https://www.amnesty.org/en/latest/campaigns/2019/01/destination-occupation-digital-tourism-israel-illegal-settlements/>

CONCLUSION

50. In conclusion, Amnesty International submits that upholding the District Court's decision to confirm the authorities' decision to de facto deport Mr Omar Shakir, which has been solely based on his use of peaceful tools to advance human rights and his activities as a human rights defender, will be an unreasonable and disproportionate restriction on his rights to freedom of expression and association in contravention of Israel's obligations under international human rights law.