



## **CASE UPDATE – THE PALESTINIAN 6**

### **The Israeli Military Commander's rejection of the objection by Palestinian NGOs is legally flawed and fails to justify their designation as "unlawful associations"**

22 September 2022

On 17 August 2022, the Israeli Military Commander in the West Bank rejected an objection filed by five leading Palestinian human rights and civil society organizations against the declaration of the groups as "unlawful associations", under the 1945 Emergency (Defense) Regulations. The organizations are Addameer, Al-Haq, Bisan Center for Research and Development, Defence for Children International – Palestine, the Union of Palestinian Women's Committees.

READ the Military Commander's response ([Hebrew](#)) ([English](#))

The objection was submitted in February 2022; it detailed, in-depth, the illegality of the declarations, international criticism of Israel's actions against the groups, and the organizations' crucial human rights and humanitarian work. The Union of Agricultural Workers' Committee was declared unlawful prior to these designations, and was not a part of this particular process.

READ the objection ([Hebrew](#)) ([Introduction in English translation](#))

The objection follows the Israeli authorities' repeated refusal to reveal the alleged "evidence" against the organizations, and, as such, it demands a complete cancellation of the decision.

The Military Commander's response is unsubstantiated and fails to provide any new information to justify the declarations and the rejection of the objection.

First, the organizations argued that the declarations are illegal, as they are based solely on secret evidence, and thus, there is a total denial of due process. The Military Commander rejected this argument, claiming that: "there is an accepted and long-standing practice, both in the law applicable in the region, in Israeli law, in the relevant rules of international law, and in other legal methods, which allows for administrative decisions to be made (...) based on administrative undisclosed evidence."

As argued by the groups in the objection, international law rejects the sweeping use of secret evidence, as a guarantee of due process. The right to due process is enshrined in various international human rights treaties, including the International Covenant on Civil and Political

Rights (ICCPR), which Israel ratified. The ICCPR stipulates that as a minimum guarantee, everyone shall be entitled to be informed in detail of “the nature and cause of the charge against him.” See also Article 3(1)(d) common to the Geneva Conventions. An inherent element of due process, as established by international law is the principle of “equality of arms,” which requires that neither party is put at a disadvantage in presenting its case by being denied access to the core of the evidence upon which the case is based. The Military Commander clearly stated, in several instances, that the core of the declarations is based on confidential intelligence information that cannot be revealed and thus, the Military Commander is violating norms of international human rights and humanitarian law.

This fundamental legal violation was reaffirmed by widespread international criticism and public calls for Israel to reveal the evidence it allegedly holds, including by the UN Human Rights Committee in its concluding observations on Israel issued in May 2022, and by the American Bar Association, which stated the following in a letter to the Israeli Prime Minister: “[p]rocedural rights guaranteed under international law would suggest that authorities should disclose to those organizations or their counsel the evidence on which the allegations are based to permit them to prepare a proper legal defense”.

The Military Commander justified his reliance on secret evidence by claiming that “[t]he [Israeli] Supreme Court has recognized time and time again, the possibility of the administrative authorities, including the Military Commander, to base its decisions on classified information, including in relation to measures with not lesser severity than the aforementioned declaration, based on secret evidence. [These decisions include those] such as administrative detention, demolition of terrorists' houses, restriction and supervision orders and more.”

By this assertion, the Military Commander essentially claims that he can rely solely on secret evidence, simply because he is an administrative authority (while in fact, he is an “occupying authority”). This position is even more drastic than that taken by the Israeli Supreme Court. While the Supreme Court allows the state and the military to rely on secret evidence, especially where Palestinians’ rights are concerned, it has prescribed some procedural guarantees to counterbalance the total denial of access to secret evidence. The Military Commander revealed none of the evidence in these cases and offered no guarantees, and thus he failed to adhere to even the most minimal requirements of due process.

The Military Commander also failed to adequately address the objectors’ argument that a conflict of interest taints the whole objection process. The Military Commander himself is the decision-maker who issued the declarations, and he is the same person who decided to reject the objection. The Commander claimed that within the objection process, he does not serve as a quasi-judicial tribunal to examine the decision, but rather the purpose underlying the objection process is to “hear the arguments of the objecting party [and] to enable the bringing of all the relevant information in order to make an informed decision”. Thus, according to the Military Commander, there is no conflict of interest. This response affirms that not only were

the organizations not given any chance to defend themselves, but they were not offered an opportunity to object to the declarations before an independent entity in the first place.

Lastly, the Military Commander claimed, once again, that the organizations "act on behalf of" and are an "arm" of the "Popular Front for the Liberation of Palestine". However, besides repeating this general, unfounded accusation, the commander did not provide any details concerning the alleged illegal activities carried out by the organizations. The Military Commander failed to point to any specific illegal activities, illegitimate engagements, or misuse of funds or when and by whom the alleged illegal activities were carried out.

Despite the Military Commander's failure to provide any justification for his decision to outlaw the organizations, mere hours after he rejected the objection, the Israeli military raided, vandalized, and sealed the offices of the Palestinian 6 organizations and the Health Work Committees. The international community must condemn these actions and take immediate, concrete measures against them in order to protect Palestinian civil society.

*The objection was submitted by the groups' legal team – Adalah-The Legal Center for Arab Minority Rights in Israel, by Adalah Attorneys Dr. Hassan Jabareen, Adi Mansour and Rabea Eghbariah, and the offices of Attorney Michael Sfard and Attorney Jawad Boulus.*