

9 September 2019

To: The Working Group on Business and Human Rights, Special Rapporteur on the Situation of Human Rights Defenders, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Special Rapporteur on the Rights of Indigenous Peoples

## **Appeal for Urgent Action: Syrian Villages and Farms in Occupied Syrian Golan Under Threat While Local Human Rights Organization Targeted**

### **I. Introduction**

The undersigned seek the Working Group and Special Rapporteurs' urgent intervention to prevent the construction of a large energy project in the occupied Syrian Golan ("Golan") and protect Al-Marsad – Arab Human Rights Centre in Golan Heights ("Al-Marsad"), the only human rights organization in the region, from attacks as a result of its work in relation to the project. This appeal respectfully requests that the Working Group and Special Rapporteurs immediately engage the Israeli government to ensure that the basic rights of indigenous Syrians in the Golan are protected and Al-Marsad is not attacked or restricted from exercising its right to investigate and report on human rights issues in the region.

When Israel occupied the Golan in 1967 it forcibly displaced approximately 130,000 Syrians and seized control of over 95 percent of their lands.<sup>1</sup> Syrians have since been confined to five villages. The vast majority of the nearly 27,000 Syrians now living in the Golan remain "undefined" citizens and suffer systematic human rights abuses at the hands of the Israeli government.<sup>2</sup>

Al-Marsad was founded in 2003 to support the Syrian community in the Golan. Its work focuses on documenting and combating Israel's violations of international human rights and humanitarian law. As part of its mission, Al-Marsad seeks to protect indigenous Syrians against occupation-based policies that violate their human rights, including Israel's and its citizens' unlawful utilization of the Golan's natural resources.

A privately initiated energy project is threatening Syrians' human rights rights in the Golan. Al-Marsad has spent much of the last year contesting this project. As a result, agents and supporters of the company behind the project launched a smear campaign to harass and discredit Al-Marsad, its employees, and others associated with the organization. When this campaign failed to stop Al-Marsad's work, the company filed a lawsuit against Al-Marsad under Israel's controversial anti-boycott law. The purpose of this lawsuit is to intimidate Al-Marsad's employees and prevent them from continuing their human rights campaign in opposition to the project.

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<sup>1</sup> See UN ECOSOC, Economic and Social Repercussions of the Israeli Occupation on the Living Conditions of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the Occupied Syrian Golan, ¶ 115, U.N. Doc. A/73/87 E/2018/69 (May 25, 2018); UN HRC, Human Rights in the Occupied Syrian Golan, ¶ 17, U.N. Doc. A/HRC/37/40 (Feb. 12, 2018); Global IDP Database, Profile of Internal Displacement: Syrian Arab Republic, 23 (April, 2005) available at: <https://www.refworld.org/pdfid/3bd98d5d0.pdf>.

<sup>2</sup> Press Release, Majority of Syrians continue to refuse Israeli citizenship, Al-Marsad - Arab Human Rights Centre in Golan Heights (May 2018) available at: <https://golan-marsad.org/majority-of-syrians-continue-to-refuse-israeli-citizenship/>.

Today, the Israeli government continues to advance the energy project while Al-Marsad is attacked by the project's supporters. These actions stand in direct violation of international human rights and humanitarian law and should be of the utmost concern to the Working Group and Special Rapporteurs. Therefore, Al-Marsad, with the support of the undersigned, requests immediate intervention.

## II. Factual Summary

After acceding to the Paris Climate Agreement, Israel promised to increase its reliance on renewable energy, tasking the National Infrastructure Committee ("NIC") with reviewing private company proposals that would help Israel meet its renewable energy goals.<sup>3</sup> Renewable energy projects require the acquisition of natural resources and installing such projects near or on private land is inevitably controversial due to the way they alter the surrounding environment.

Israel has chosen to locate the energy project at issue on indigenous Syrians' limited private lands in the Golan. The project will be located between three of the five remaining indigenous Syrian villages. This was likely a strategic move to avoid resistance, since the population has no effective means to contest the project. In fact, the blueprint for the project was developed without consulting the appropriate representatives of the Syrian community despite the project's negative impacts on the community. Meanwhile, nearby Israeli settlements will not be detrimentally affected.<sup>4</sup>

The company behind the plan is Energix Renewable Energies Ltd. ("Energix"), a publicly traded Israeli company currently valued at over \$500 million.<sup>5</sup> It is one of Israel's largest renewable energy companies. If Energix's project is approved, it will be one of the largest wind energy plants in territory under Israel's control with a total of 31 wind turbines.<sup>6</sup> These turbines, which are permitted to reach a height of 220 meters, will be, by far, the largest structures in the region, anchored to small agricultural plots amongst Syrians' prized farmlands. Energix's project currently faces an all but certain approval by the NIC and the Israeli Cabinet of Ministers. This approval is likely, despite the extensive objections filed with the NIC by Al-Marsad in partnership with the Association for Civil Rights in Israel and Planners for Planning Rights (BIMKOM).

For the past few years, Energix has led what it describes as an "intensive" campaign to promote and develop its project on lands that do not belong to Israel.<sup>7</sup> As part of this campaign, Energix has tried to neutralize opposition from indigenous Syrians living on and around the affected lands, ignoring protestations from farmers' collectives who have the most to lose from

<sup>3</sup> "Government Decision No. 4450: Setting a Guideline Target and Formulating Measures to Promote Renewable Energy Sources, Especially in the Negev and Arava Regions" (Hebrew), Prime Minister's Office, 29 January 2009; 2017 Periodic Report, Alony-Hetz, 68 (2017) available at: <https://www.alony-hetz.com/wp-content/uploads/2018/05/AlonyHetz2017.pdf>; See also Greenwashing the Golan: The Israeli Wind Energy Industry in the Occupied Syrian Golan, Who Profits (March 2019) available at: <https://whoprofits.org/flash-report/greenwashing-the-golan>. Access to illegally annexed Syrian land where air flows are ideal for generating wind-powered electricity is vital to Israel's ability to meet its national energy goals. It is also highly profitable to investors, with expected annual revenues of tens of millions of shekels.

<sup>4</sup> Golan Regional Council, Green Energy Production in the Golan, <https://www.golan.org.il/magazine/july2017/greenwind/> (last visited Aug. 6, 2019).

<sup>5</sup> Energix, Business Overview, <http://www.energix-group.com/Business-Overview> (last visited June 12, 2019).

<sup>6</sup> Periodic Report for 2018, Energix Renewable Energies Ltd., 21 (2018), available at: <http://www.energix-group.com/uploads/1558340078.pdf>; Periodic Report for 2017, Energix Renewable Energies Ltd., 17 (2017), available at: <http://www.energix-group.com/uploads/1543916097.pdf>.

<sup>7</sup> Quarterly Report for the Period Ended on March 31, 2018, Energix Renewable Energies Ltd., 21 (2018) available at: <http://www.energix-group.com/uploads/1543916188.pdf>.

the construction of the project.<sup>8</sup> Indigenous Syrians have strong cultural and historical ties to their land, but the Israeli government denies them the right to live on and farm it outside strict designated boundaries. For this reason, Syrians who have lived off the land for generations have a powerful attachment to the very limited areas they are still permitted to use.

In September 2018, members of the Syrian community asked Al-Marsad to investigate Energix's actions in the Golan. Al-Marsad's investigation revealed that Energix has engaged in a variety of questionable activities in pursuing its project and that the project violates international law.<sup>9</sup> After learning more about Energix's project, at the request of the Syrian community, Al-Marsad began to facilitate informational meetings to educate indigenous Syrians about the impacts that the project may have on their health and human rights. These meetings led to Syrian community members circulating a petition rejecting the project that has now gained 5,540 signatures.

In January 2019, Al-Marsad published a report on its investigation into Energix.<sup>10</sup> In response, agents of, and individuals associated with, Energix launched a campaign to smear Al-Marsad, its employees, and those involved with the organization. The stated purpose of this smear campaign was to force Al-Marsad to close. In March 2019, supporters of Energix's project sent a slanderous letter to Al-Marsad's largest funder lodging personal attacks against Al-Marsad's employees and claiming that Al-Marsad mismanaged its finances. When this did not stop Al-Marsad from disseminating its report and hosting meetings on the project, Energix filed a lawsuit against Al-Marsad.<sup>11</sup>

Energix's suit is based on Al-Marsad's investigative report into Energix's project. In addition to suing for 900,000 ILS (approximately Al-Marsad's annual budget as posted publicly online), one of Energix's demands is that Al-Marsad retract and apologize for all the material it has published regarding the project. The lawsuit alleges that Al-Marsad's report is slanderous and calls for a boycott of Israel, in violation of Israel's widely condemned anti-boycott law.<sup>12</sup> This is the first time a non-profit human rights organization registered in Israel has been sued under Israel's anti-boycott law; thus, it has the chilling potential to set a dangerous precedent for freedom of expression. In line with the smear campaign launched immediately after Al-Marsad's report

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<sup>8</sup> Starting in June 2017, the NIC convened a series of meetings to weigh the merits of Energix's proposal for an industrial scale power plant. Farmers and their cooperatives were repeatedly excluded from the meetings. On June 15, 2017, cooperatives from Sheeta, Al Hafayer, and Ra'bana sent a letter emphasizing the detrimental effects of the wind turbines ahead of the NIC's first meeting to discuss the proposed project. Yet, despite receiving the letter, the NIC did not invite any representatives from the cooperatives, nor were their objections mentioned during the meeting. The farmer cooperatives submitted a second letter on September 7, 2017. The NIC responded, explaining that plans were not final: "Before deciding on a final blue line, we will bring it to the committee for a discussion of the comments, objections and the reservations ... As we promote this project we make it a point to coordinate with all potential stake holders. Of course, along the way you have the right to file objections against the plan, once it is published for comments and reservations." However, the NIC never contacted the farmers' cooperatives and no discussion took place. On December 19, 2017, after NIC published the blueprints for the turbines, the cooperatives sent a third letter. Once again, the NIC failed to respond. The NIC convened again July 30, 2018, but once again failed to invite any cooperative members. See Annex I.

<sup>9</sup> Aaron Southlea & Dr. Nazeh Brik, Windfall: The Exploitation of Wind Energy in the Occupied Syrian Golan, Al-Marsad - Arab Human Rights Centre in Golan Heights, 32-34, 39-50 (Jan. 2019) available at: <http://golan-marsad.org/wp-content/uploads/Windfall-%E2%80%93-The-Exploitation-of-Wind-Energy-in-the-Occupied-Syrian-Golan.pdf>.

<sup>10</sup> See Aaron Southlea & Dr. Nazeh Brik, Windfall: The Exploitation of Wind Energy in the Occupied Syrian Golan, Al-Marsad - Arab Human Rights Centre in Golan Heights (Jan. 2019) available at: <http://golan-marsad.org/wp-content/uploads/Windfall-%E2%80%93-The-Exploitation-of-Wind-Energy-in-the-Occupied-Syrian-Golan.pdf>.

<sup>11</sup> See Annex II.

<sup>12</sup> See Press Release, Israeli Human Rights Groups: The Anti-Boycott Law Harms Freedom of Expression and Targets Nonviolent Political Opposition to the Occupation, Adalah (July 12, 2011) available at: [https://www.adalah.org/uploads/oldfiles/upfiles/2011/12\\_July\\_2011\\_antiboycott.pdf](https://www.adalah.org/uploads/oldfiles/upfiles/2011/12_July_2011_antiboycott.pdf).

was released, the ultimate goal of this legal action seems to not only be to stop Al-Marsad's activities, but to eliminate the only human rights organization in the Golan altogether.

### III. Legal Framework

Since 1967, Israel has occupied the Golan. Israel's occupation violates international law, as does the government's and private companies' ongoing exploitation of the Golan's natural resources.<sup>13</sup> As an occupying power, Israel has obligations to the Golan and its residents under international human rights and humanitarian law that it has utterly failed to meet.<sup>14</sup>

#### A. *The wind energy project*

The Working Group's Guiding Principles on Business and Human Rights ("Guiding Principles") recognize governments' duties to prevent and address human rights violations committed by third parties.<sup>15</sup> Israel, as the occupying power, is responsible for Energix's conduct in the Golan and cannot avoid scrutiny simply because Energix is a private company.<sup>16</sup> Furthermore, Israel has a direct connection to and interest in the success of Energix's project. Energix is implementing a plainly stated and actively promoted government goal in developing renewable energy that will be sold to the State-owned electric company. Also, the NIC reviewed and revised Energix's blueprint for the wind turbines' placement and continues to advance the project through the licensing process. Israel has the power and obligation, under international law, to stop the project from moving forward but fails to do so.

Israel can only be considered "usufructuary" of the public land and property it occupies and thus is obligated to "safeguard" its capital.<sup>17</sup> Although it is able to utilize the "fruits" of the land it occupies,<sup>18</sup> a belligerent occupier is outlawed from pillaging, destroying, permanently altering the character of, and/or excessively using the public immovable property it occupies

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<sup>13</sup> UN GA, The Occupied Syrian Golan, U.N. Doc. A/RES/71/99 (Dec. 6, 2016); UN SC, Resolution 497, ¶ 1, U.N. Doc. S/RES/497 (Dec. 17, 1981); UN GA, Resolution 64/95, ¶ 1, U.N. Doc. A/RES/64/95 (Jan. 19, 2010).

<sup>14</sup> See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 111 (July 9) ("[T]he International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory."); UN HRC, Concluding Observations of the Human Rights Committee: Israel, ¶ 11, U.N. Doc. CCPR/CO/78/ISR (Aug. 21, 2003) (noting that "the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law."). As the occupying power in the Golan, the State of Israel must respect and preserve the rights protected by international law. Nevertheless, the undersigned wish to emphasize that under international law the State of Israel has no legitimate sovereignty over the Golan. UN SC, Resolution 242, U.N. Doc. S/RES/242 (Nov. 22, 1967).

<sup>15</sup> Foundational Principle One says "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." UN HRC, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporation and Other Business Enterprises, John Ruggie – Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 6-7, U.N. Doc. A/HRC/17/31 (March 21, 2011).

<sup>16</sup> See Operational Principle Five calls on States to "exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights." UN HRC, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporation and other Business Enterprises, John Ruggie – Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 10, U.N. Doc. A/HRC/17/31 (March, 21 2011).

<sup>17</sup> Hague Convention on the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 55, 187 CTS 227 (Oct. 18 1907).

<sup>18</sup> United States: Department of State Memorandum of Law on Israel's Right to Develop New Oil Fields in Sinai and the Gulf of Suez, 16 INT'L L. MATERIALS 733, 736-737 (1977); Gamal Abouali, Natural Resources under Occupation: The Status of Palestinian Water under International Law, 10 PACE INT'L L. REV. VOL. 414, 467 (1998).

except where it is “absolutely necessary” for military purposes.<sup>19</sup> Seizure of private property is wholly forbidden; however, “requisitions in kind” are possible for the “needs of the army occupation.”<sup>20</sup> Israel also carries an affirmative “obligation to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory.”<sup>21</sup> An occupying power cannot use the resources of an occupied territory to significantly benefit itself to the detriment of an occupied population or to intentionally link itself to the land. Rather, seizure of public property can only be justified if it is done in the name of and/or for the benefit of the local population.<sup>22</sup> Furthermore, an occupier is to respect, “unless absolutely prevented,” the laws in force in the territory it occupies.<sup>23</sup>

Israel is violating all these core tenets of international humanitarian law in its support for Energix’s project. Israel is illegally facilitating the exploitation of the Golan’s energy resources while allowing Energix to dramatically and permanently destroy occupied land. Energix’s project is not designed to address the needs of indigenous Syrians, but rather to address a State priority for renewable energy at the cost of the indigenous population’s property and cultural interests. Israel is committing these violations of international law through its own civil legal system, which it unlawfully enforces in the Golan.

Under international human rights and humanitarian law, Israel is required to engage and consult the Syrian community as the NIC considers Energix’s project.<sup>24</sup> Syrian Golanis are indigenous persons, members of an Arab minority on territory that is non-self governing. Syrians have an inherent right to sovereignty and self-determination over their natural resources<sup>25</sup> that requires the Israeli government to engage in direct, meaningful consultation with them before their natural assets are exploited.<sup>26</sup> In the course of reviewing and amending Energix’s proposal, Israel should have ensured that the project does not interfere with Syrians’ right to self-determination, nor diminish their cultural rights or their enjoyment of their ancestral lands as an indigenous community.

Article 15 of the International Covenant on Economic, Social and Cultural Rights sets forth the right to take part in cultural life, recognizing the uniquely communal relationship many

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<sup>19</sup> Hague Convention on the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 47, 55, 187 CTS 227 (Oct. 18 1907); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 33, 53, 75 UNTS 287 (Aug. 12 1949).

<sup>20</sup> Hague Convention on the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 46, 52, 53, 187 CTS 227 (Oct. 18 1907).

<sup>21</sup> Case Concerning Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda) ¶248, 2005 ICJ 168 (Dec. 19).

<sup>22</sup> Hague Convention on the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 55, 187 CTS 227 (Oct. 18 1907).

<sup>23</sup> Hague Convention on the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 43, 187 CTS 227 (Oct. 18 1907).

<sup>24</sup> See UN GA, United Nations Declaration on the Rights of Indigenous Peoples, art. 18, 27, U.N. Doc. A/Res/61/295 (Oct. 2, 2007); UN CESCR, General Comment No. 21 Right of Everyone to Take Part in Cultural Life (art. 15, ¶ 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 5, 9-10, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009); UN HRC, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporation and Other Business Enterprises, John Ruggie – Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 19, U.N. Doc. A/HRC/17/31 (March 21, 2011).

<sup>25</sup> U.N. Charter art. 2 para. 2.; UN GA, Universal Declaration of Human Rights, art. 15, U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 1, 999 UNTS 171 (Dec. 19, 1966); International Covenant on Economic, Social and Cultural Rights, art. 1, 993 UNTS 3 (Dec. 16, 1966); World Conference on Human Rights, Vienna Declaration and Programme of Action, ¶2, U.N. Doc. A/CONF.157/23 (July 12, 1993).

<sup>26</sup> See Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, Communication 155/96, African Commission on Human and People’s Rights ¶53, 58 (2001); UN GA, United Nations Declaration on the Rights of Indigenous Peoples, art. 18, 27, U.N. Doc. A/Res/61/295 (Oct. 2, 2007); UN CESCR, General Comment No. 21 Right of Everyone to Take Part in Cultural Life (art. 15, ¶ 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 5, 9-10, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

indigenous communities enjoy with their ancestral lands.<sup>27</sup> In an effort to safeguard the vitality of indigenous cultural life, States should “respect the principle of free, prior, and informed consent of indigenous peoples in all matters covered by their specific rights.”<sup>28</sup> The Committee on Economic, Social and Cultural Rights has called upon States to “prevent the degradation of [indigenous persons’] particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.”<sup>29</sup>

The International Labor Organization’s (“ILO”) Convention Concerning Indigenous and Tribal Peoples in Independent Countries also stresses the importance of protecting the cultural rights of indigenous communities, including the right to use, manage, and conserve their natural resources.<sup>30</sup> Under Article 7 of the ILO Convention, groups like Syrians in the Golan have the “right to decide their own priorities for the process of development as it affects their lives ... institutions ... and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.”<sup>31</sup>

Several other international human rights law instruments and committees stress the importance of States consulting indigenous communities when planning any actions that affect their lands and natural resources. These include the Committee to Eliminate Racial Discrimination (“CERD”),<sup>32</sup> the Human Rights Committee,<sup>33</sup> and the International Covenant on Civil and Political Rights (“ICCPR”).<sup>34</sup>

The World Heritage Committee has emphasized States’ obligation to engage in sensitive, ongoing dialogue with affected groups, recognizing that communities may have competing views

<sup>27</sup> UN CESCR, General Comment No. 21 Right of Everyone to Take Part in Cultural Life (art. 15, ¶ 37 (a), of the International Covenant on Economic, Social and Cultural Rights) U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

<sup>28</sup> UN CESCR, General Comment No. 21 Right of Everyone to Take Part in Cultural Life (art. 15, ¶ 37 (a), of the International Covenant on Economic, Social and Cultural Rights), ¶37, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

<sup>29</sup> UN CESCR, General Comment No. 21 Right of Everyone to Take Part in Cultural Life (art. 15, ¶ 37 (a), of the International Covenant on Economic, Social and Cultural Rights), ¶36, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

<sup>30</sup> ILO Convention No. 169 of 1989 Concerning Indigenous and Tribal Peoples in Independent Countries, art. 15, (June 27, 1989); *See also* International Covenant on Civil and Political Rights, art. 27, 999 UNTS 171 (Dec. 19, 1966).

<sup>31</sup> ILO Convention No. 169 of 1989 Concerning Indigenous and Tribal Peoples in Independent Countries, art. 7 (June 27, 1989).

<sup>32</sup> CERD has stressed that any government decision taken that relates directly to indigenous peoples must first receive those very communities’ informed consent. UN CERD, Report of the Committee on the Elimination of Racial Discrimination: Annex V - General Recommendation XXIII, ¶ 4(d), U.N. Doc. Supplement No. 18 (A/52/18) (Sept. 26, 1997). This rule applies to development and resource exploitation that affects traditional lands. For instance, CERD demanded that Chile “hold effective consultations with indigenous peoples on all projects related to their ancestral lands” and “obtain their consent prior to implementation of projects for the extraction of natural resources, in accordance with international standards.” UN CERD, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, ¶ 22, U.N. Doc. CERD/C/CHL/CO/15-18 (Sept. 7, 2009). CERD also asked Guatemala to “consult the indigenous population groups concerned at each stage of the process” and “to obtain their consent before executing projects involving the extraction of natural resources.” UN CERD, Consideration of the Reports Submitted by States Parties Under Article 9 of the Convention, ¶ 11, U.N. Doc. CERD/C/GTM/CO/12-13 (May 19, 2010). *See also* Mauro Barelli, *Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples: Developments and Challenges Ahead*, 16 INT’L J. HUMAN RIGHTS 1 (2012); UN CERD, Consideration of the Reports Submitted by States Parties Under Article 9 of the Convention, ¶ 14, U.N. Doc. CERD/C/PER/CO/14-17 (Sept. 3, 2009); UN HRC, Concluding Observations of the Human Rights Committee, Chile, ¶ 22, U.N. Doc. CCPR/C/79/Add.104 (1999) (“When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.”); International Covenant on Civil and Political Rights, art. 27, 999 UNTS 171 (Dec. 19 1966).

<sup>33</sup> The HRC has interpreted Article 27 of the ICCPR to include the right enjoy “a way of life which is closely associated with territory and use of its resources,” which may “particularly be true of members of indigenous communities constituting a minority.” UN OHCHR, General Comment No. 23: The Rights of Minorities (art. 27), ¶ 3.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994). The HRC noted that “when planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.” UN HRC, Concluding Observations of the Human Rights Committee, Chile, ¶ 22, U.N. Doc. CCPR/C/79/Add.104 (1999).

<sup>34</sup> Under Article 27 of the ICCPR, “persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” International Covenant on Civil and Political Rights, art. 27, 999 UNTS 171 (Dec. 19, 1966).

and demands.<sup>35</sup> In an analogous case involving an industrial mining project, the World Heritage Committee encouraged continued dialogue about whether or not the project could proceed and ways to mitigate the anticipated harm. Central to the World Heritage Committee's determination was that the mining would alter not only the land itself but also its inhabitant's relationship to the land. Similarly, Energix's project will permanently alter the character of the Syrian community's culture, industries, and ancestral lands; however, these critical concerns were never heard at NIC meetings.

In light of these considerations, it is evident that Israel has failed to comply with its international human rights law obligations while handling Energix's industrial project.

## *B. Targeting Al-Marsad*

Al-Marsad's mission has always been to serve Syrians in the Golan by protecting them against violations of their human rights. Fundamental to this mission is protecting the inalienable right to self-determination, which is enshrined in numerous international law instruments.<sup>36</sup> The right to self-determination encompasses the right to control one's territorial resources, which include natural wind power.<sup>37</sup>

Human rights defenders are integral in any civil society.<sup>38</sup> The Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms ("Declaration") enshrines many protections for human rights defenders. Article 1 of the Declaration holds that "[e]veryone has the right ... to promote and to strive for the protection and realization of human rights and fundamental freedoms."<sup>39</sup>

The Declaration, at Article 6, recognizes the right to: (1) "know, seek, obtain, receive and hold information about all human rights and fundamental freedoms ..."; (2) "publish, impart or disseminate ... information and knowledge on all human rights and fundamental freedoms ..."; and, (3) "study, discuss, form and hold opinions" on human rights issues and to draw public

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<sup>35</sup> UNESCO, Convention Concerning the Protection of the World Cultural and Natural Heritage, ¶ XI(1)(e), U.N. Doc. WHC-99/CONF.205/5Rev (Nov. 19, 1999). When confronted with indigenous opposition by the Mirrar people to uranium mining in the Kakadu National Park in Australia, the Committee stressed that "confidence and trust building through dialogue are crucial for there to be any resolution ... In particular, a more substantial and continuous dialogue needs to be established between the Australian Government and the traditional owner ... the Mirrar Aboriginal people." UNESCO, Convention Concerning the Protection of the World Cultural and Natural Heritage, ¶ XI(1)(e), U.N. Doc. WHC-99/CONF.205/5Rev (Nov. 19, 1999). In that matter, "although Traditional Owners consented to the mine (in accordance with Australian law), and that consent was reaffirmed on subsequent occasions, there is obviously concern by Traditional Owners today." In response, Australia expressed its wish "to work through this issue in a sensitive and responsible way." UNESCO, Convention Concerning the Protection of the World Cultural and Natural Heritage, ¶ IV.10, U.N. Doc. WHC-99/CONF.205/5Rev (Nov. 19, 1999).

<sup>36</sup> U.N. Charter art. 2 para. 2.; UN GA, Universal Declaration of Human Rights, art. 15, U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 1, 999 UNTS 171 (Dec. 19, 1966); International Covenant on Economic, Social and Cultural Rights, art. 1, 993 UNTS 3 (Dec. 16, 1966); World Conference on Human Rights, Vienna Declaration and Programme of Action, ¶2, U.N. Doc. A/CONF.157/23 (July 12, 1993).

<sup>37</sup> International Covenant on Economic, Social and Cultural Rights, art. 1(2), 993 UNTS 3 (Dec. 16, 1966); UNESCO, Universal Declaration on Cultural Diversity annex II ¶14 (Nov. 2, 2001); UN GA, Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem, and of the Arab Population in the Occupied Syrian Golan Over their Natural Resources, U.N. Doc. A/RES/66/225 (March 29, 2012).

<sup>38</sup> UN GA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 12, U.N. Doc. A/RES/53/144 (March 8, 1999).

<sup>39</sup> UN GA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 1, U.N. Doc. A/RES/53/144 (March 8, 1999).

attention to such issues.<sup>40</sup> The Special Rapporteur on the Situation of Human Rights Defenders has noted that “the work of human rights defenders in the field of business and human rights is crucial.”<sup>41</sup> Al-Marsad lawfully and openly investigated Energix’s actions in the Golan then published a report on its findings, engaged in alternative, peaceful actions to disseminate what it learned, and drew public attention to various human rights issues; actions explicitly protected by the Declaration. Al-Marsad’s “crucial” work highlighting violations of international law related to a private business development and questionable business practices has made it a target of intimidation and harassment, despite the fact that such work’s importance is widely noted by the international community.

Article 12 of the Declaration emphasizes that all persons can act peacefully against violations of human rights and that States have an obligation to protect such acts.<sup>42</sup> Articles 2, 9, and 12 describe a State’s responsibility and duty to protect all human rights. This includes acting with due diligence to prevent, investigate, and bring to justice perpetrators of any violation of the rights enshrined in the Declaration and not to persecute those that seek to protect such rights.<sup>43</sup>

In contravention of international law, Israel has done nothing to protect Al-Marsad or its vital work as it faces attacks from a private entity and other individuals. Instead, Israel has spent the last decade setting in place administrative and legislative policies that openly attack and hamper the work of human rights organizations in areas under its control.<sup>44</sup> As a consequence of the lawsuit brought against Al-Marsad, the State judiciary must decide how to analyze these laws and actions,<sup>45</sup> putting Al-Marsad’s very existence in jeopardy.

Freedom of expression has long been recognized as a foundational human right.<sup>46</sup> The Universal Declaration of Human Rights holds that “[e]veryone has the right to freedom of opinion

<sup>40</sup> UN GA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 6, U.N. Doc. A/RES/53/144 (March 8, 1999).

<sup>41</sup> UN GA, Situation of Human Rights Defenders, ¶1, U.N. Doc. A/72/170 (July 19, 2017); *See also* UN HRC, Report of the Special Rapporteur on the Situation of Human Rights Defenders, ¶123-126, U.N. Doc. A/HRC/19/55 (Dec. 21, 2011); UN HRC, Protecting Human Rights Defenders Addressing Economic, Social and Cultural Rights, U.N. Doc. A/HRC/31/L.49 (March 22, 2016).

<sup>42</sup> UN GA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 12, U.N. Doc. A/RES/53/144 (March 8, 1999).

<sup>43</sup> UN GA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 12, U.N. Doc. A/RES/53/144 (March 8, 1999).

<sup>44</sup> Israel has passed numerous laws that severely inhibit the right to freedom of expression in Israel and the territories it occupies, setting a dangerous precedent for future legislation that can further restrict freedom of speech, expression, and association. The laws violate basic democratic principles and their purpose seems to be to silence legitimate criticism and to stigmatize and restrict the activities of human rights organizations. *See* Transparency Requirements for Parties Supported by Foreign State Entities Bill (“NGO funding transparency law”) (July 11, 2016) English version available at:

<https://www.adalah.org/uploads/oldfiles/newsletter/eng/feb10/docs/Unofficial%20English%20translation%20of%20NGO%20legislation.pdf>;  
Entry into Israel (Amendment No. 27) Law, 5777-2017 (March 6, 2017) English translation available at: <http://www.alhaq.org/en/wp-content/uploads/2018/02/P-20-1906.pdf>; Law for Prevention of Damage to the State of Israel Through Boycott “Anti-boycott Law” (2011) English translation available at: [www.adalah.org/uploads/oldfiles/upfiles/2011/boycott\\_law.pdf](http://www.adalah.org/uploads/oldfiles/upfiles/2011/boycott_law.pdf); Association for Civil Rights in Israel and Legal Center for Arab Minority Rights in Israel, Letter to Israeli Knesset to Oppose Entry into Israel Legislation (Jan. 30, 2017) available at: [https://law.acri.org.il/en/wp-content/uploads/2017/02/BDS\\_supporters\\_ban\\_letter\\_-1.pdf](https://law.acri.org.il/en/wp-content/uploads/2017/02/BDS_supporters_ban_letter_-1.pdf); UN OHCHR, Israel: UN Experts Urge Knesset Not to Adopt Pending Legislation that could Target Critical NGOs (June 24, 2016) available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20177&LangID=E>; Press Release, Israel: Human Rights Watch Official’s Deportation Reinstated, Human Rights Watch (April 16, 2019) available at: <https://www.hrw.org/news/2019/04/16/israel-human-rights-watch-officials-deportation-reinstated>.

<sup>45</sup> Israeli courts have shown little regard in the past for upholding international human rights legal principles to protect human rights defenders accused of supporting boycotts against Israel. *See* Press Release, Israel: Human Rights Watch Official’s Deportation Reinstated, Human Rights Watch (April 16, 2019) available at: <https://www.hrw.org/news/2019/04/16/israel-human-rights-watch-officials-deportation-reinstated>; Richard Pérez-Peña, Canceled Lorde Concert Prompts First Use of Israel’s Anti-Boycott Law, THE NEW YORK TIMES, 31 January 2018, available at: <https://www.nytimes.com/2018/01/31/world/middleeast/israel-lorde-concert-boycott-law.html>.

<sup>46</sup> UN GA, Universal Declaration of Human Rights, art. 19, U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 19, 999 UNTS 171 (Dec. 19, 1966); Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(viii), 660 UNTS 195 (7

and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information.”<sup>47</sup> This right is reiterated in the ICCPR at Article 19<sup>48</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination at Article 5.<sup>49</sup> The ICCPR also recognizes the right to be free from “unlawful attacks on [ones] honor and reputation.”<sup>50</sup> Freedom of expression is recognized as a collective right, and is an especially important tool for minorities and indigenous peoples seeking to protect themselves.<sup>51</sup>

Israel systematically curtails freedom of expression in areas under its control, especially amongst human rights organizations that are critical of its policies.<sup>52</sup> With the lawsuit against Al-Marsad, Israel is in a position to go further than it has in the past by allowing a human rights organization registered in Israel to be dragged into a civil proceeding by a law that has received universal condemnation for limiting free expression.<sup>53</sup>

There is little doubt Energix is attempting to silence Al-Marsad and that Israel is facilitating this through its laws and regulations. Israel has effectively endorsed an open assault on Al-Marsad for engaging in legitimate, legal, and peaceful actions as a human rights defender. Moreover, Israel is encouraging the creation of a dangerous precedent that will suppress the fundamental right to free expression, especially amongst human rights organizations in Israel and the territories it occupies.

## IV. Conclusion

The undersigned call on the Working Group and Special Rapporteurs to demand that Israel: (1) prevent Energix’s project from being approved and licensed; (2) provide the Working Group with information regarding the project’s impact on indigenous Syrians and their economic, social, and cultural rights; (3) ensure there is democratic and open consultation with Syrians in the Golan before construction begins on any Israeli natural resource-based development project in the region; (4) protect Al-Marsad and its employees from attacks on their human rights work, including frivolous legal complaints; (5) provide details of the safeguards in place to ensure that Energix’s lawsuit against Al-Marsad proceeds fairly, without political bias or interference, and with proper judicial protections; (6) explain what State instruments and institutions are in place to protect human rights defenders in Israel and the territories it occupies; and (7) explain how Israel’s anti-

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March 1966); *See also* Org. of American States [OAS], American Convention on Human Rights, art. 13, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (Nov. 22, 1969).

<sup>47</sup> UN GA, Universal Declaration of Human Rights, art. 19, U.N. Doc. A/810 (Dec. 10, 1948).

<sup>48</sup> International Covenant on Civil and Political Rights, art. 19, 999 UNTS 171 (Dec. 19, 1966).

<sup>49</sup> Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(viii), 660 UNTS 195 (March 7, 1966).

<sup>50</sup> International Covenant on Civil and Political Rights, art. 17, 999 UNTS 171 (Dec. 19, 1966).

<sup>51</sup> UN HRC, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Frank La Rue, U.N. Doc. A/HRC/14/23, (April 20, 2010).

<sup>52</sup> Amnesty Int’l, Israeli Government Must Cease Intimidation of Human Rights Defenders, Protect them from Attacks, AI index MDE 15/3824/2016 (April 12, 2016) available at: <https://www.amnesty.org/download/Documents/MDE1538242016ENGLISH.pdf>; Amnesty Int’l, Human Rights in Israel/OPT: Review of 2018, AI index MDE 15/9911/2019 (Feb. 26, 2019) available at: <https://www.amnesty.org/download/Documents/MDE1599112019ENGLISH.pdf>; Submission to the 29th Session of the Universal Periodic Review of Israel, May 2018, Front Line Defenders (June 29, 2017) available at: <https://www.frontlinedefenders.org/en/statement-report/upr-submission-israel-2017>.

<sup>53</sup> UN HRC, Concluding Observations of the Human Rights Committee: Israel, ¶22, U.N. Doc. CCPR/C/ISR/CO/4 (Nov. 21, 2014) (expressing concern “at the chilling effect the Boycott Law...may have on the freedom of opinion and expression and freedom of association (arts. 19 and 22).”); *See also* Briefing Paper: On Human Rights Organizations and Legislative Activities of Arab Political Leaders in Israel, Adalah (June 23, 2010); Israeli Human Rights Groups: The Anti-Boycott Law Harms Freedom of Expression and Targets Nonviolent Political Opposition to the Occupation, Adalah (July 12, 2011) available at: [https://www.adalah.org/uploads/oldfiles/upfiles/2011/12\\_July\\_2011\\_antiboycott.pdf](https://www.adalah.org/uploads/oldfiles/upfiles/2011/12_July_2011_antiboycott.pdf).

boycott law does not limit freedom of expression, especially with regards to human rights organizations' work in producing materials and reporting on abuses of internationally recognized fundamental rights.

Respectfully submitted,

**Al-Marsad – Arab Human Rights Centre in Golan Heights**

**In coalition with:**

1. **11.11.11.**
2. **Al-Haq**
3. **Broederlijk Delen**
4. **Cairo Institute for Human Rights Studies**
5. **CIDSE: Coopération Internationale pour le Développement et la Solidarité**
6. **CNCD – 11.11.11.: Centre National de Coopération au Développement**
7. **Center for Research on Multinational Corporations – SOMO**
8. **Coalition of Women for Peace**
9. **Cornell Law School International Human Rights Clinic**
10. **Een Andere Joodse Stem: Another Jewish Voice**
11. **EuroMed Rights**
12. **FIDH: International Federation for Human Rights**
13. **Pax Christi Vaanderen**
14. **Union Syndicale Solidaires**
15. **Who Profits**