

Speech at the Awards Ceremony:  
Herman Schwartz Human Rights Prize and the New Israel Fund Human Rights Defenders Prize

By Neta Ziv <sup>1</sup>

It is a true pleasure to address this audience, celebrating Human Rights Day and the awarding of the Herman Schwartz Human Rights Prize and the New Israel Fund Human Rights Defenders Prize to two of the most distinguished public interest lawyers in Israel. I want to thank Professor Schwartz for his lifelong dedication to human rights in Israel, and to the NIF for its firm and unwavering support of these causes, a stance that is not always easy to maintain.

Dan Yakir and Hassan Jabareen are both pillars and stars within this professional community. They are both graduates of the NIF Civil Liberties Law Fellowship, established by Professor Herman Schwartz. They have both been working for over two decades in Israel's leading human rights organizations. They have served as role models and sources of inspiration for many lawyers, men and women, Arab and Jewish, gay and straight. They have each made a remarkable contribution to the development and strengthening of human rights law in Israel.

I have known Dan and Hassan for many years. We began our professional careers as young human rights lawyers over twenty years ago. Our work has experienced ups and downs during those years. There have been peaks and times of happiness, of celebrated victories and achievements, and successes in court, in the Knesset and in public opinion. There have also been times when we have been sad, disappointed and frustrated. We have debated whether it was right to go to court, what works, what we had done wrong. But, all in all, we felt safe. Obviously there were issues of controversy between us and the government and our opponents, but practicing human rights lawyering in Israel was accepted as a constituent part of the Israeli polity. The rules of the game were clear, and both sides acknowledged them as an integral part of the democratic process, more or less. We practiced with a feeling that, despite contentious battles, there was an understanding that human rights organizations and their lawyers were necessary for the wellbeing of our young democracy, that they were imperative to our democratic fabric.

Unfortunately, this may no longer be the case.

Over the last two years, since Im Tirtzu launched its ferocious attack on the NIF, we have seen far too many initiatives with the direct objective to quash this fine balance and destroy this delicate socio-political fabric. We have seen initiatives to establish parliamentary committees of inquiry against human rights organizations and to curtail their sources of funding. We have witnessed the sanctions imposed on protestors in Israel and the Occupied Palestinian Territory, the abuse and physical harm done to protesters at Sheikh Jarrah in East Jerusalem and to those participating in the protests in Ni'lin and Bil'in against the Separation Wall. Demonstrators who try relentlessly to defend human rights are subject to intimidation, harassment and arrest. These sanctions accompany parliamentary measures that aim to impose limitations on freedom of the press and to restrict access to courts. All have become a regular occurrence.

Human rights organizations have put a lot of effort into obstructing these moves. Naturally, these are defensive activities, periodic reactions to initiatives of this sort. This is understandable, but I wish to suggest a change in approach and to put forth an idea that I had hoped we would never need to use in Israel. This may be the time to think about introducing the concept of Human

---

<sup>1</sup> The author is the Director of the Cegla Clinical Law Programs, Faculty of Law, Tel Aviv University.

Rights Defenders as a recognized category and status worthy of protection, and to connect these anti-democratic measures to the set of protections recognized in international human rights law pertaining to human rights defenders.

In 1998, the UN General Assembly adopted *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*. This declaration, known as the Declaration on Human Rights Defenders, recognizes the legitimacy of human rights activity and the need for this activity and those who undertake it to be protected. The Declaration codifies the international standards protecting human rights defenders around the world. Under the Declaration, a human rights defender is anyone who works for the promotion and protection of human rights, encompassing professional as well as non-professional human rights workers, volunteers, journalists, lawyers and anyone else engaged in a human rights activity.

A Special Rapporteur has been appointed to monitor compliance with the Declaration and define states' obligations towards human rights defenders.<sup>2</sup> The set of rights recognized as necessary for the defense of human rights includes the rights to freedom of association, freedom of peaceful assembly, and freedom of opinion and expression, as well as the rights to access information, to provide legal aid, and to develop and discuss new ideas in the area of human rights.

Indeed, all of these rights are familiar to human rights activists, both as individuals and organizations. However, given the recent attacks on human rights organizations through restrictions on their funding, I would like to focus on that aspect.

In the commentary to the Declaration, issued by the Special Rapporteur in July 2011,<sup>3</sup> we see that the right to association includes the right to access funding. Chapter IX of the commentary relates to "The right to access funding". It refers us to Article 13 of the Declaration, which states, "Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means..."

The right to receive funding has been clearly elaborated by the Rapporteur: "[I]n order for human rights organizations to be able to carry out their activities, it is indispensable that they are able to discharge their functions without any impediments, including funding restrictions."<sup>4</sup> Moreover, the commentary addresses the origin of the funds, stating that, "[T]he Declaration protects the right to receive funding from different sources, including foreign funding... given the limited resources available for human rights organizations at the local level, legal requirements of prior authorization for international funding have seriously affected the ability of human rights defenders to carry out their activities. In some cases, they have seriously endangered the very existence of human rights organizations... *The mandate has recommended that Governments allow human rights defenders, in particular NGOs, access to foreign funding as a part of international cooperation, to which civil*

---

<sup>2</sup> Introduction, Special Rapporteur on the situation of human rights defenders:

<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>

<sup>3</sup> 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 [hereafter: "Commentary"]:

<http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

<sup>4</sup> Commentary, p. 95.

*society is entitled to the same extent as Governments. The only legitimate requirements imposed on defenders should be those in the interest of transparency...*"<sup>5</sup>

I have underscored these sections because they directly pertain to human rights organizations in Israel. But it is important to realize that these directives are part of a comprehensive, detailed commentary that attempts to combat situations in which human rights defenders find it hard to operate. To be sure, in Israel we are still not at the stage where human rights defenders are at direct risk of being harmed due to their activities, but over the last two years we have been moving all too quickly in that direction.

Hence, I wish to alert everyone to the fact that we must be aware of the context in which human rights defenders find themselves at growing risk due to their work and activities. At the same time, I wish to draw attention to the possibilities of making use of instruments in international human rights law that have been designed to address the unique needs of human rights defenders, lawyers included. The unique status of human rights defenders, and a specific and designated set of rules that apply to them vis-à-vis the state, may embody new ideas. For example, human rights defenders often document victims' testimonies, and at times are required to reveal the information they have gathered. Can we claim that they have a unique privilege, similar to that granted to lawyers, which permits them to refuse to reveal information that might harm their sources?

Beyond specific details of this sort, I believe that we need to begin constructing and using the status of human rights defenders within our human rights language and action. It is necessary to introduce it into the public discourse, to use it in the law, including international human rights law, and in general to take steps that may enable the human rights community to move from a defensive to an assertive, proactive stance. Whatever the human rights situation is, there is a critical need to ensure the preconditions for creating an environment that enables human rights defenders to carry out their work freely and safely.

I believe the human rights community in Israel and its supporters will continue to fight for a better and more just Israel. We are a solid community with talented and courageous leaders. Two of them are being recognized here tonight for their decades of relentless and tireless work. This, too, is a sign of strength. Dan and Hassan, you have served as beacons for many of us in the human rights community. I applaud your work and congratulate you on the awards.

---

<sup>5</sup> Commentary, p. 96 [emphasis added].