

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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PROTECT THE PROTEST: AGAINST BLANKET BANS OF DEMONSTRATIONS FOR THE RIGHTS OF PALESTINIANS

Amnesty International is concerned about restrictions of freedom of expression and freedom of assembly through blanket, pre-emptive bans imposed on assemblies on the occasion of Nakba Remembrance Day in Berlin and urges the Berlin state government to uphold these human rights for all.

In 2022, the Berlin Assembly Authority (*Berliner Versammlungsbehörde*)¹ pre-emptively banned all demonstrations commemorating the Nakba on and around this day.² Again this year, similar bans have been imposed several times on groups advocating for the rights of Palestinians, specifically a number of demonstrations announced for 15 and 16 April 2023,³ as well as a renewed ban on all assemblies around 15 May, including any replacement events, in the federal state of Berlin.

Amnesty International is concerned about these bans. Although restrictions of freedom of expression and freedom of assembly are permissible under international human rights law under certain circumstances, the authorities must always first seek to protect and facilitate these human rights. Any restrictions must be absolutely necessary and proportionate. Assemblies may only be banned if impending infringements of fundamental, legally protected rights cannot be avoided any other way. Banning an assembly is thereby always a measure of last resort.⁴

In the run up to the Nakba commemorations, Amnesty International therefore called on the Berlin authorities to refrain from imposing blanket bans on assemblies and instead to protect and facilitate the rights to freedom of expression and freedom of assembly in Berlin for everyone.

Nonetheless, comprehensive bans on assemblies around 15 May were imposed. The Berlin police banned the “Demonstration for the fundamental rights to freedom of assembly and freedom of expression on the 75th anniversary of the Nakba” announced for 20 May 2023, including any “replacement events”.⁵ Apart from the blanket nature with regards to time, place and organizers, it is also the reasons for banning the assembly which are deeply problematic under international human rights law because the decision is based on stigmatizing and discriminatory stereotypes of people “from the Arab diaspora, in particular with Palestinian background [...] [and] other Muslim-influenced circles [...] from the Lebanese, Turkish and Syrian diaspora.”⁶

FREEDOM OF PEACEFUL ASSEMBLY

The Berlin police justified the assembly ban on the ground of a “concrete danger to public safety”.⁷ In doing so, reference was made to experience of “comparable assembly situations”⁸ in the past, all of which they deemed comparable on the basis that they were related to developments in Israel and the occupied Palestinian territories and that the expected

¹ The Berlin Assembly Authority (*Berliner Versammlungsbehörde*) is a specific branch of the police in the federal state of Berlin. The terms Berlin Assembly Authority and Berlin police are therefore used interchangeable in this statement.

² Nakba Day on 15 May is a central day of remembrance in Palestinian culture to commemorate the expulsion and flight in connection with the founding of the Israeli state.

³ Palestinian Prisoners’ Day on 17 April is dedicated to the freedom of Palestinian prisoners and support for their rights.

⁴ UN Human Rights Committee (OHCHR), General Comment No.37: Freedom of Peaceful Assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para 37

⁵ Decision of the Berlin State Police Directorate regarding the assembly on May 20 2023 on the theme “Demonstration für das Grundrecht auf Versammlungs- und Meinungsfreiheit zum 75. Jahrestag der Nakba”, 17 May 2023, page 1. Amnesty International has access to the decision. The decision was upheld in summary proceedings by both the Berlin Administrative Court and the Higher Administrative Court of Berlin-Brandenburg (VG Berlin – 1 L 217/23; OVG Berlin-Brandenburg – 1 S 45/23).

⁶ Decision of the Berlin State Police Directorate, page 11

⁷ Decision of the Berlin State Police Directorate, page 1

⁸ Decision of the Berlin State Police Directorate, page 13

participants could be associated with the same “clientele”.⁹ They argued that such a restriction was needed due to criminal acts, including antisemitic acts, at some past “comparable” assemblies.¹⁰ However, this does not justify a blanket ban;¹¹ such a ban is disproportionate. Instead, Amnesty International considers that the police and assembly authorities have a duty during the assembly to ensure that if individuals commit such acts, they are excluded if necessary and to take appropriate action regarding potential punishable statements or actions.

Under international human rights law, it must be established that the assembly itself creates a real and significant risk to public safety, if the latter is to be restricted or even banned.¹² The decision to ban the assembly, however, links the assessed risk to tensions arising from the situation in Israel and the occupied Palestinian territories, and thus a highly complex and dynamic issue, and effectively associates an entire demographic group with violence. The rights of the Palestinian diaspora and their allies to organize and assemble peacefully are in this way subject to seemingly blanket and indefinite restrictions due to the prolonged occupation and the violations of the rights of Palestinians.¹³

Amnesty International therefore urges the police and assembly authorities to give full and careful consideration to less restrictive measures, such as restrictions permissible under international human standards on freedom of peaceful assembly. Demonstrations should generally be facilitated and not banned.¹⁴

FREEDOM OF EXPRESSION IN THE CONTEXT OF ASSEMBLIES

Any restrictions of the right to freedom of expression and freedom of assembly must not only be necessary and proportionate, but also content-neutral. Otherwise, the very purpose of peaceful assemblies as a tool of political and societal participation and as an opportunity to voice opinions in the public domain is invalidated.¹⁵

The right to freedom of expression not only protects the communication of views which reflect a societal consensus, but also explicitly those that might be perceived as alienating or disturbing by some.¹⁶ Indeed, in its General Comment 37 the Human Rights Committee of the United Nations noted that “given that peaceful assemblies often have an expressive function and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection”.¹⁷ Just as this heightened level of accommodation might apply to those who seek peacefully to signal their support for Israeli government policy, so must it also extend to voices that are critical of those policies. They must not therefore be subject to blanket discreditation and breaches of their human rights.

The high number of antisemitic statements and acts in Germany is concerning.¹⁸ Amnesty International clearly opposes antisemitism, racism and any form of group-based hostility and therefore welcomes the fact that the Berlin state authorities are also committed to combatting antisemitic hate speech and antisemitic crimes. Antisemitism, which is a violation of human rights, must be addressed by the authorities.

Together with 104 civil society organizations worldwide, Amnesty International in a public appeal to the United Nations called to respect and uphold basic human rights in the fight against antisemitism.¹⁹ The appeal opposes the use of the IHRA definition,²⁰ which in practice often leads to the blanket classification of criticism of Israel as antisemitic. It highlights

⁹ Decision of the Berlin State Police Directorate, page 11

¹⁰ Decision of the Berlin State Police Directorate, page 4, 5

¹¹ OHCHR, General Comment No.37, paras 19, 22

¹² OHCHR, General Comment No.37, para 43

¹³ Amnesty International, *Israel's apartheid against Palestinians: cruel system of domination and crime against humanity* (Index: MDE 15/5141/2022), 1 February 2022 report, <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>

¹⁴ Human Rights Watch, *Berlin Bans Nakba Day Demonstrations - Undue Interference with Rights to Free Expression and Assembly*, 20 May 2022, <https://www.hrw.org/news/2022/05/20/berlin-bans-nakba-day-demonstrations>

¹⁵ OHCHR General Comment No.37, para 22

¹⁶ OHCHR General Comment No.34: Freedoms of opinion and expression (Article 19), 12 September 2011, para. 11; see also European Court of Human Rights (ECtHR), *Handyside v. UK* (1976), para 49

¹⁷ OHCHR General comment 37, para 32

¹⁸ Amnesty International, *International Report „Germany 2022“*, 28 March 2023, <https://www.amnesty.de/informieren/amnesty-report/deutschland-2022#section-23582185>

¹⁹ Amnesty International, *Global: UN must respect human rights while combatting antisemitism*, 20. April 2023, <https://www.amnesty.org/en/latest/news/2023/04/global-un-must-respect-human-rights-while-combatting-antisemitism/>; see also UN Human Rights Council (UNHRC), *Rabat Plan of Action* (UN-Doc. A/HRC/22/17/Add.4), which confirms that restricting freedom of expression, on its own, is an ineffective tool for combatting discrimination, and that effective protection and the social inclusion of marginalized groups require more comprehensive measures.

²⁰ IHRA, *working definition of antisemitism*, <https://www.holocaustremembrance.com/de/resources/working-definitions-charters/arbeitsdefinition-von-antisemitismus>

instead two alternative definitions of antisemitism which can be used to provide guidance for the outlines of legitimate speech and action in relation to Israel and Palestine. According to these definitions, the call for a “boycott of Israel” which is sometimes heard at demonstrations and has been included by the Berlin police in its decision to justify the ban,²¹ must not automatically be equated with antisemitism on a blanket basis.

RIGHT TO NON-DISCRIMINATION

The recognition of the right of peaceful assembly imposes a corresponding obligation on the authorities to ensure its exercise and also therefore any restrictions of it without discrimination.²²

In their risk assessment, the authorities at various times cite the “strong emotionalization”²³ of the participants due to their “young age”²⁴ and the “considerable emotionalization within the Palestinian diaspora”²⁵ as reasons for the violence to be expected and therefore the ban. However, protest as a form of collective voicing of opinion is – by definition – often an emotive and loud expression of disapproval of a given situation or certain conditions.²⁶ Using this to justify the assessment of a concrete danger is therefore inappropriate. Ascribing this “emotionalization” explicitly to the “Palestinian diaspora” is also a violation of the right to non-discrimination.

The reasons used to justify the ban further include a reference to expected participants as “young people from the Arab diaspora, in particular with a Palestinian background [...] [as well as] other groups with a majority Muslim background including – most likely – the Lebanese, Turkish and Syrian diaspora; mostly adolescents and young adults”.²⁷ To this group it ascribes a “clearly aggressive general attitude and tendency towards violent acts”.²⁸ This stigmatizing labelling of “young people from the Arab diaspora”²⁹ as prone to violence is exemplary of institutionalised racism³⁰ and exposes discriminatory stereotypes and anti-Arab racism intersecting with anti-Muslim racism against a whole demographic group.³¹ The state authorities must reappraise and counteract this in an appropriate and comprehensive manner.

The police also refer to the Berlin district of Nord-Neukölln as a place where “people from the heterogeneous, Arabic-speaking and Muslim community [...] who could spontaneously feel encouraged to attend these meetings” would be expected.³² The decision goes on to link this district and an entire ethnic group living there to a number of antisemitic incidents which happened in 2017 and 2019.³³ While such incidents need to be strictly condemned and should be criminally prosecuted, the fact that offences have occurred in the same district in the past does not suffice to justify an assembly ban. Again, linking individual offences to an entire demographic group reveals discrimination and negative stereotyping of people who are or who are perceived to be Arab and Muslim.³⁴

Freedom of expression and freedom of peaceful assembly must always be interpreted in ways that explicitly protect minorities.³⁵ Amnesty International considers the suppression of Palestinian perspectives in public and political discourse to be a violation of the right to non-discrimination. The expression of frustration, or indeed anger, in the context of assemblies cannot justify general suspicion and the criminalization of people of Palestinian, Arab, Kurdish or Turkish

²¹ Decision of the Berlin State Police Directorate, page 6

²² OHCHR General comment No.37, para 8

²³ Decision of the Berlin State Police Directorate, page 4, compare also pages 7, 9, 11

²⁴ Decision of the Berlin State Police Directorate, page 4

²⁵ Decision of the Berlin State Police Directorate, page 7

²⁶ Amnesty International, Protect the Protest! Why we must save our right to protest (Index: ACT 30/5856/2022), 19 July 2022, <https://www.amnesty.org/en/documents/ACT30/5856/2022/en/>; See also UNHRC, Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, 11 January 2013, UN Doc. A/HRC/22/17/Add.4

²⁷ Decision of the Berlin State Police Directorate, page 11

²⁸ Decision of the Berlin State Police Directorate, page 11

²⁹ Decision of the Berlin State Police Directorate, page 11

³⁰ Amnesty International, Regional overview of Islamophobia in Europe: Submission to the CoE PACE Committee on Equality and Non-discrimination, 21 September 2022, <https://www.amnesty.eu/news/regional-overview-of-islamophobia-in-europe-a-submission-to-the-council-of-europe-pace-committee-on-equality-and-non-discrimination/>, page 1

³¹ The Administrative Court of Berlin takes up the accusation of stigmatization, but ultimately denies its effect stating that “no general categorization of danger of groups of persons with Muslim background or ‘persons of the Arab diaspora, in particular with Palestinian background’ takes place, which could violate Article 3 (3) of the Basic Law”. However, it states that the wording of the police decision was “misleading” in this respect. VG Berlin - 1 L 217/23, page 6

³² Decision of the Berlin State Police Directorate, page 10

³³ Decision of the Berlin State Police Directorate, page 12

³⁴ As the German Institute for Human Rights in their submission to the CERD stated that the “labels ‘Turks’ or ‘Arabs’ are applied as synonyms for Muslims”, in TBB-Turkish Union in Berlin/Brandenburg v Germany, CERD, UN Doc. CERD/C/82/D/48/2010 (2013), para. 8.1.

³⁵ OHCHR General Comment No.37, para 25

origin. In an open letter, prominent Jewish voices from Berlin have also recently highlighted that the majority of peaceful demonstrators must not be held jointly liable in the course of combatting antisemitism or other criminal offences.³⁶

CONCLUSION

The right to freedom of peaceful assembly, together with the right to freedom of expression builds the basis for civic participation. This includes the right to advocate for the rights of Palestinians and to exercise the right to freedom of peaceful assembly accordingly. State authorities must respect, protect and fulfil these rights for everyone, without discrimination.

Amnesty International therefore calls on the Berlin authorities to refrain from blanket bans of assemblies, so that the rights to freedom of expression and freedom of peaceful assembly in Berlin are preserved for everyone. Amnesty International also calls on the Berlin authorities to refrain from measures that directly or indirectly discriminate against groups defined by protected characteristics such as religion or belief, ethnic origin, nationality or migration status.

³⁶ Open Letter, *Gegen Demo-Verbote - Brief von jüdischen & israelischen Berliner*innen*, in Junge Welt, 24 April 2023, <https://www.jungewelt.de/artikel/449425.j%C3%BCdische-berliner-gegen-verbot-pal%C3%A4stinensischer-demonstrationen.html>