



Brussels, 7 January 2012

EMHRN Note ahead of the EU-Israel Informal Human Rights Working Group meeting
(15 January 2013)

In view of the EU-Israel Informal Human Rights Working Group meeting on 15 January 2013, the Euro-Mediterranean Human Rights Network (EMHRN) would like to draw your attention to several human rights violations committed inside Israel. The EMHRN calls on the European Union (EU) to address the below-mentioned violations related to the rights of the Palestinian Arab minority; the rights of Palestinian prisoners and detainees in Israeli prisons; the rights of refugees and asylum seekers; and the question of rule of law and access to justice (for further information on those violations see ANNEX I). Moreover, the EMHRN calls on the EU to ensure prompt action by the Israeli government to respect its obligations under international human rights law (IHRL).

In addition, the EMHRN would like to provide the following general recommendations:

1. The EU-Israel Informal Human Rights Working Group should address the full range of Israel's international legal obligations. The Working Group should therefore not only address Israeli human rights violations inside Israel but also **Israel's human rights and international humanitarian law (IHL) violations in the occupied Palestinian territory (OPT)**. Excluding Israel's obligations towards the OPT from the human rights dialogue dangerously echoes Israel's own position that it has no human rights obligations towards the Palestinian population in the OPT, a position which has been rejected by UN human rights bodies¹. While Israeli violations in the OPT are addressed in the political sub-committee with Israel, this forum is more tainted by political consideration.
2. In line with the revised European Neighbourhood Policy (ENP) which calls on the EU to "reinforce human rights dialogues" and the objective of the EU-Israel ENP Action Plan to work together to "promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law", the EMHRN calls on the EU to continue to insist on the immediate establishment of a **full-fledged human rights sub-committee** with Israel.
3. The annual human rights dialogue should be extended to a **full day**, as recommended by the EU Guidelines on human rights dialogues, and should **produce clear commitments for Israel** to abide by its international law obligations. In between the annual meetings of the Human Rights Working Group/Sub-committee, regular follow-up meetings should be held between the EU delegation and the Israeli authorities to ensure implementation of Israel's obligations under international law. The EU should consider inviting international law experts to these meetings.
4. The EMHRN commends the decision of the European External Action Service (EEAS) and the EU delegation in Tel Aviv to **consult with civil society organisations (CSOs)** in Brussels and in Israel ahead of the EU-Israel Informal Human Rights Working Group. We call on the EEAS and the EU Delegation to debrief CSOs after the meeting with their Israeli counterparts. We also call on the EU delegation in Israel and the OPT to ensure that Palestinian organisations are also consulted and debriefed given their important expertise on several human rights issues related to the OPT which should be on the agenda of the EU-Israel Informal Human Rights Working Group, among others the rights of the Palestinian prisoners and detainees.

¹ Israel's position that its international human rights treaty obligations do not apply in the OPT has been rejected by the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child, and by the International Court of Justice.



5. The EMHRN calls on the EU to raise at its upcoming meeting the human rights concerns reflected in 2012 UN reports related to the human rights situation on Israel, including the February UN CERD concluding observations²; the UN CAT List of Issues of June³; the UN Human Rights Committee (ICCPR) List of Issues of August⁴; and the List of issues of the UN Committee on the Rights of the Child⁵. The EMHRN also calls on the EU to raise its concerns regarding Israel's decision not to cooperate with the UN Human Rights Council and the OHCHR.

1. The Palestinian Arab Minority

1.1 The dispossession and displacement of the Arab Bedouin in the Naqab – The Praver Plan

On 11 September 2011, the Israeli government approved the “Praver Plan” for the regulation of the settlement of Arab Bedouin citizens of Israel in the unrecognised villages in the Naqab (Negev) in the South of Israel. The “Praver Plan” was developed without any consultation of the Arab Bedouin or other Arab community leaders. If implemented, it would lead to the forceful displacement of at least 70,000 Bedouins. As such, it would violate the basic rights of the Arab Bedouin including their right to dignity and the right to preserve their way of life and culture. It will also dispossess them from their ancestral land and discriminate between Arab Bedouin and Jewish citizens in land and planning in the Naqab.

In January 2012, the government introduced the proposed “Law for the Regulation of Bedouin Settlement in the Negev” (The Praver Plan Law), which is meant to serve as the implementing arm of the government-approved Praver Plan. The Praver Plan Law aims to legislate “a resolution of the settlement of the Bedouin population”, and “regulate Bedouin land ownership claims” within five years.⁶ The Praver Plan Law sets conditions and requirements for land claims and compensation, and formerly restricts Arab Bedouin citizens in the Naqab from living on or using the land in certain areas by preventing the establishment of any Arab Bedouin towns or compensation of land outside of a specifically demarcated area. It also empowers the Prime Minister, together with the Israel Land Authority (ILA), to take extensive administrative measures to evict Arab Bedouin residents and demolish the homes of those who refuse to leave. In issuing and executing demolition orders, the ILA is permitted to employ “reasonable force and to receive assistance from the police forces.” At the same time, the Praver Plan Law severely restricts the process of judicial review for demolition and eviction orders.⁷ Several UN bodies spoke out against the Praver Plan in 2012.⁸

² UN Committee to End Racial Discrimination Concluding Observations on Israel, 9 March 2012, <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>; See also Adalah, “UN Calls on Israel to End Racial Discrimination,” 15 March 2012, <http://adalah.org/eng/?mod=articles&ID=1530>

³ UN Committee Against Torture, List of Issues Prior to Reporting for Israel, 12 July 2012, <http://www2.ohchr.org/english/bodies/cat/reports2013.htm>

⁴ UN Human Rights Committee, “List of issues prior to the submission of the fourth periodic report of Israel,” 31 August 2012. <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR.C.ISR.Q4.pdf>; See also Adalah “UN Human Rights Committee Releases List of Issues for Israel, Asks Key Questions about Palestinian Citizens of Israel,” 18 September 2012, <http://adalah.org/eng/?mod=articles&ID=1831>

⁵ UN Committee on the Rights of the Child, List of Issues Prior to Report for Israel, 18 October 2012, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.ISR.Q.2-4.pdf>; See also Adalah, “UN Committee on Child Rights Questions Israel's Policies Against Palestinians,” 25 October 2012, <http://adalah.org/eng/?mod=articles&ID=1856>

⁶ The Law for the Regulation of Bedouin Settlement in the Negev (2012) is available in Hebrew at: http://www.tazkirim.gov.il/Tazkirim_Attachments/41151_x_AttachFile.doc

⁷ See Adalah, “A Briefing Paper: Understanding the Praver Plan Law.” April 2012: <http://adalah.org/images/praverlawweb.pdf>

⁸ In February 2012, the Special Rapporteur on Adequate Housing, Raquel Rolnik, monitored dispossession and demolition in the Naqab and noted “the implementation of a strategy of Judaisation and control of the territory.” In March 2012, the UN Committee on the Elimination of Racial Discrimination (CERD) called on Israel to withdraw the proposed implementing legislation of the Praver Plan, on the grounds that it was discriminatory. In August 2012, UN Human Rights Committee (HRC) included in its list of issues a call on Israel to explain whether it envisaged withdrawing the proposed Praver Plan



While the Praver Plan Law is not currently pending in the Knesset, implementation has begun and is ongoing, as reported by Adalah - The Legal Center for the Arab Minority Rights in Israel⁹:

1. There has been an increase in the number of houses demolished by Israel. In 2011, around 1,000 homes were demolished; in 2012, hundreds of homes have been demolished so far and protestors were arrested, even in recently recognised villages such as Bir Hadaj.¹⁰
2. Since the approval of the Praver Plan, the government has announced several plans that will displace over 10,000 Arab Bedouin to make way for new forests, military centres, and Jewish towns and cities.
3. Over the last months, Israel has establishment a new “Authority for Regulating Bedouin Settlement in the Negev” and a new specialised police force to implement Praver.
4. Arab Bedouin citizens living in the unrecognised villages, and even the recently-recognised Abu Basma villages, have reported increased harassment through such harsh policies as dramatic increases in water prices, threats of school closures, construction of barriers to access roads, and imposition of fines on shepherds for grazing in pasture lands.
5. There has been an increase in demolition orders and fines for un-permitted building in recently-recognised (Abu Basma) villages.
6. Israel has dismantled the Abu Basma Regional Council (the governing body of the recently recognised villages and responsible authority for some services in the unrecognised villages), delaying elections for another five years.

EMHRN would also like to draw the attention of the EU to the police brutality during home demolition operations in the Naqab. Adalah is currently representing 10 people (Arab and Jewish citizens of Israel) on 15 criminal indictments for protesting against home demolitions in the Naqab.

EMHRN calls on the EU to urge Israel to recognise and promote the Arab Bedouins’ right to ancestral land and to traditional livelihood in the Naqab, to halt home demolitions and forced displacement, and to stop the implementation as well as withdrawing the proposed Law for the Regulation of the Bedouin Settlement in the Negev (Praver Plan Law, 2012).

1.2 Discriminatory Laws and Bills against the Palestinian Arab Minority

The absence of an explicit guarantee of the right to equality and non-discrimination in Israel’s Basic Laws or ordinary statutes leaves the Palestinian Arab Minority in Israel vulnerable to discrimination.

Law. See Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, “Preliminary remarks on the mission to Israeli and the Occupied Palestinian Territory – 30 January to 12 February 2012.”, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11815&LangID=E>; Adalah Press Release, 15 February 2012, http://www.adalah.org/eng/pressreleases/14_2_12.html; UN Committee on the Elimination of Discrimination (CERD) Concluding Observations on Israel, 9 March 2012, CERD/C/ISR/CO/14-16, <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>; Adalah, “UN Calls on Israel to End Racial Discrimination,” 15 March 2012, <http://adalah.org/eng/?mod=articles&ID=1530>; UN Human Rights Committee, “List of issues prior to the submission of the fourth periodic report of Israel (CCPR/C/ISR/4) adopted by the Human Rights Committee at its 105th session, 9-27 July 2012”, 31 August 2012, <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR.C.ISR.Q4.pdf>; see also Adalah “UN Human Rights Committee Releases List of Issues for Israel, Asks Key Questions about Palestinian Citizens of Israel,” 18 September 2012, <http://adalah.org/eng/?mod=articles&ID=1831>

⁹ For more information, see Adalah Briefing Paper, Key Concerns Regarding the Rights of Palestinians in Israel and the OPT, Submitted to the EU for the 2012 ENP Progress Report, 7 November 2012, http://adalah.org/Public/files/English/International_Advocacy/ENP/Adalah-Submission-for-EU-ENP-2012.pdf.

¹⁰ See Adalah, Residents Prohibit Posting of Home Demolition Orders; 19 Arrested, 28 November 2012, <http://www.adalah.org/eng/?mod=articles&ID=1872> and Negev Coexistence Forum for Civil Equality website: www.dukium.org



The current constitutional situation has allowed Israel to enact laws that discriminate against the Palestinian Arab Minority. Adalah found that during the Netanyahu government and the 18th Knesset (2009-2012), **20 of 31 legislative bills** targeting the rights of Palestinian citizens of Israel and Palestinian residents of the OPT were enacted into law.¹¹

Of particular concern is the recent decision (11 January 2012) of the Israeli Supreme Court to uphold the "Citizenship Law", which severely restricts Palestinian Arab citizens of Israel from living together in Israel with their Palestinian spouses from the OPT or from "enemy states" defined by the law as Syria, Lebanon, Iran and Iraq. In 2012, the UN CERD repeated its call on Israel to revoke the Citizenship Law and to facilitate family unification.¹² In 2012, the Supreme Court also dismissed Adalah and ACRI's petition to declare the "Nakba Law" unconstitutional, rejecting arguments that it violates the rights of freedom of speech and equality, and severely infringes on Arab citizens' rights to preserve their history and culture. The Court ruled that the case was premature, as the state had not yet applied the law to any of the petitioners by cutting their budgets.¹³

EMHRN is also particularly concerned about the following two laws:

- The "Admissions Committee Law", which legitimises "admission committees" and the use of the "social suitability" criterion to determine whether to accept or reject individuals who wish to live in nearly 475 small community towns built on state land in the Naqab and Galilee.
- The "Anti-Boycott Law" which imposes sanctions on any individual or entity who calls for an economic boycott of the settlements in the West Bank or of Israel, severely undermining freedom of expression and association in Israel. On 10 December 2012, the Israeli Supreme Court issued an order nisi (order to show cause) asking the State to justify the legality of the "Anti-Boycott Law" within four months.

EMHRN calls on the EU to urge Israel to repeal discriminatory laws against the Palestinian Arab minority, in particular, the "Nakba Law", "the Citizenship Law", "the Admissions Committee Law", and the "Anti-Boycott Law", and cease the further introduction and enactment of such potentially discriminatory legislative proposals.

1.3 Harassment of the Arab Political Leadership

The political leadership of the Palestinian Arab minority in Israel faces sustained and severe attacks and harassment from Israeli government officials and incitement from extreme right-wing members of the Knesset (MKs), the Israeli Parliament. These attacks violate the Arab citizens' rights to genuine political participation; the MKs' freedom of opinion and expression, freedom of association and peaceful assembly; and the right to equal protection of the law and non-discrimination before the law.

On 11 December 2012, the ruling Likud party submitted a motion to disqualify MK Haneen Zoabi, the first Palestinian Arab woman Member of the Knesset to be elected on an Arab political list, and her party, Balad (NDA), from the general elections (set for 22 January 2013). Although several other

¹¹ See "New Discriminatory Laws in Israel - Updated October 2012," which lists over 31 recently-proposed and enacted discriminatory laws and bills in Israel,

http://adalah.org/Public/files/English/International_Advocacy/Discriminatory-Laws-in-Israel-October-2012-Update.pdf

¹² UN Committee on the Elimination of Racial Discrimination, [Concluding observations of the Committee on the Elimination of Racial Discrimination – Israel](#) (March 2012), p. 4. "UN Calls on Israel to End Racial Discrimination," Adalah Press Release, 15 March 2012, <http://adalah.aiforms.com/eng/?mod=articles&ID=1530>

¹³ Adalah and ACRI, "Israeli High Court Ignored the Chilling Effect Already Caused by the "Nakba Law"", 5 January 2012, <http://adalah.org/eng/?mod=articles&ID=1188>



motions to disqualify Balad as well as the Arab political party Ra'am-Ta'al were submitted by extreme right-wing MKs, this was the first time that a large mainstream party submitted such a motion. The Central Elections Committee accepted the motion and disqualified Zoabi, after which it required the Supreme Court's approval. The main justification used to disqualify MK Zoabi was a claim that she was supporting a terrorist organisation, through her participation in the Gaza Freedom Flotilla in 2010. However, Zoabi was never accused of any criminal offence in this regard. Following the Supreme Court hearing, which was attended by a panel of nine judges, on 30 December, all nine judges unanimously cancelled the Central Elections Committee decision to disqualify MK Zoabi. However, two cases regarding MK Zoabi are still pending before Supreme Court; one against the Knesset for revoking her privileges, and a second one brought by right wing MK Ben Ari calling on the Attorney General to indict her for her participation in the flotilla.

Other charges against Arab MKs include those against MK Muhammad Barakeh stemming from his participation in demonstrations in 2005 and 2006 and against MK Said Naffaa who is charged with traveling to Syria, assisting Druze leaders to travel to Syria and contacting a foreign agent. MK Naffaa therefore risks a sentence of 15 years in prison. Both cases are currently being defended by Adalah.¹⁴ This harassment takes place in the context of four years of discriminatory laws being enacted, and a growing risk that Arab parliamentarians and parties will gradually be excluded from the democratic process.

EMHRN calls on the EU to urge Israel to ensure the rights of Arab citizens of Israel to political participation, and to take steps against the severe attacks and harassment of Arab members of Knesset.

2. The rights of Palestinian Prisoners and Detainees in Israeli Prisons

According to B'Tselem, as of the end of November 2012, there were 4,432 Palestinian "security prisoners and detainees" in Israeli prisons, including 178 administrative detainees; 177 child prisoners (21 under 16). The total monthly number of prisoners has remained relatively steady in 2012. There are currently four Palestinian prisoners on hunger strike in Israeli prisons: Ayman Sharawna; Samer Issawi; Ja'far Ez el-Din and Tareq Qa'adan.¹⁵ Sharawna and Issawi were previously released in the October 2011 prisoner exchange deal and subsequently re-arrested. On 22 November 12, Ja'far Ez el-Din was rearrested after having been released from administrative detention in June following the May agreements, after a prolonged hunger strike in protest against his administrative detention.

2.1 Implementation of the May 2012 agreements between the Israeli Prison Service and Palestinian prisoners on hunger strike, including concerning family visits, solitary confinement, administrative detention, punitive measures and access to health

On 14 and 15 May, an agreement was concluded between hunger-striking Palestinian prisoners and detainees and the Israeli Prison Service (IPS). Its written and oral provisions included the release of hunger-striking administrative detainees whose lives were in danger at the end of their current terms; ending the use of long-term solitary confinement for "security" reasons for 19 prisoners; renewal of family visits from the Gaza Strip and alleviating restrictions for families from the West Bank; ending punitive measures such as night raids and restrictions on access to legal counsel and

¹⁴ For more information on these cases see <http://www.adalah.org/eng/Articles/1895/Tel-Aviv-Magistrates-Court-Begins-Hearing-Defense> and <http://www.adalah.org/eng/Articles/1896/Nazareth-District-Court-Rejects-Demand-to-Cancel>

¹⁵ For more information on Ayman Sharawna, see <http://www.addameer.org/etemplate.php?id=542>; for more information on Samer Issawi see <http://www.phr.org.il/default.asp?PageID=116&ItemID=1679>.



education; improvement of conditions of incarceration including medical care; and limiting the use of administrative detention as a whole.

Despite some progress regarding the above-mentioned issues, the Israeli policy has not changed, as detailed below:

1. Release of five hunger striking administrative detainees whose lives were in danger at the end of their current term

Of the five detainees concerned, only Samer al-Barq is still being held in administrative detention in Israel, although according to an agreement reached with the prison authorities, he was supposed to be transferred to Egypt after ending his strike on 22 October 2012. As of December 2012, this agreement has not been respected.

2. 19 prisoners in long-term isolation for "security" reasons would be moved out of isolation within 72 hours

Eighteen prisoners were effectively removed from isolation following the conclusion of the agreement. Dirar Abu Sisi, held for an extended period in isolation at the time of the agreement, has still not been transferred to the general prison population as of December 2012. His solitary confinement was renewed for six additional months in June 2012 on the basis of confidential evidence not available to him or his lawyer. An additional prisoner, Awad Saidi, had been placed in isolation in April 2012 and as of December 2012 he was still in isolation under a six-month isolation order.

The use of solitary confinement as a punitive measure is still on-going. The IPS has claimed that the agreement does not include the prisoners held in solitary confinement when ordered by the IPS authorities as a disciplinary measure or in order to maintain prison security and order.

3. Family visits for first degree relatives to prisoners from the Gaza Strip (denied since 2007) and for families from the West Bank who have been denied visits based on "security" reasons would be reinstated within one month

Prior to the agreement, approximately 300 prisoners from the West Bank were not allowed family visits. After the agreement there has been a partial renewal of visits for relatives from the West Bank whose access to the prisons was previously denied. The family visits for Gaza prisoners being held in Israeli prisons were suspended for three weeks during and after the recent attacks on Gaza. As of 3 December 2012 they have recommenced. Most of the permits were for one-time visits. Some families are still not allowed to visit their relatives based on vague "security" reasons.

Regarding prisoners from Gaza the International committee of the Red Cross (ICRC) resumed its family visit programme in July 2012. According to information provided by Addameer, 359 (out of a total of 444 detainees¹⁶) have been visited by 585 family members¹⁷. Israel limits the visiting permits to the prisoners' parents and partners, despite the fact that the understanding in the agreement was for visits by first-degree family members; yet brothers and sisters, sons and daughters of the prisoners are prevented from visiting their relatives. Nearly half of the Palestinian prisoners from Gaza have not had a family visit and for those who have, it was a one-time occurrence.

¹⁶ Data from Addameer as of 1 October 2012: <http://www.addameer.org/etemplate.php?id=528>

¹⁷ See Addameer, Submission for 2012 ENP progress report (November 2012).



4. The Israeli intelligence agency guaranteed that there would be a committee formed to facilitate meetings between the IPS and the prisoners in order to improve their day-to-day conditions

Improvements to basic imprisonment conditions, including better medical care and ending the excessive use of punitive measures, including collective punishment - such as night raids, fines, denial of permission to buy extra food and supplies, denial of family visits and restrictions on access to legal counsel and university education (denied since the summer of 2011, and confirmed by the Israeli High Court in December 2012) - has yet to occur.¹⁸ Palestinian prisoners continue to complain about the quality of medical care provided to them, and threaten to resume massive hunger strikes if there is no improvement. Additionally, the IPS continues to deny entry of independent doctors to hunger strikers and visits have been enabled only through prolonged court processes. Transfer of hunger strikers to civilian hospitals is also prevented despite a clear need to provide specialised care not available in the IPS medical facilities.

5. New administrative detention orders or renewals of administrative detention orders for the Palestinians currently in administrative detention would be limited, unless the secret files, upon which administrative detention is based, contained “very serious” information

While there has been a decrease in the number of administrative detainees since the agreement in May (from 302 administrative detainees in May 2012 to 178 in November 2012), Israel continues a policy of administratively detaining Palestinians without charge or trial in violation of the prohibition on arbitrary detention, torture and inhuman or degrading treatment and punishment. Detaining administratively this number of prisoners for long periods still seems excessive. The administrative detainees and their lawyers have no access to the evidence based on which their detention is determined, making it likely that the Israeli security authorities are still detaining Palestinians against whom there is no evidence that can stand scrutiny or trial, which seriously threatens their right to a fair trial.

EMHRN calls on the EU to urge Israel to:

- **Release or prosecute all administrative detainees, in accordance with international fair trial standards for internationally recognisable offenses that they allegedly committed.**
- **Restrict its use of administrative detention in accordance with international law. Administrative detention may only be resorted to in exceptional circumstances, when there is no other alternative, in a proportionate manner and with due respect to fundamental safeguards. Such safeguards include the rights to have prompt access to a lawyer, to have an independent medical examination, to notify relatives and to receive visitors.**
- **Respect its commitments according to the agreement of May 2012, including in terms of improving the detention conditions and allowing non-restricted family visits for prisoners from the West Bank and the Gaza Strip.**
- **Amend current legislation related to solitary confinement in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards, as recommended by the UN CAT.**
- **Allow non-restricted access of independent physicians to prisoners, in particular to hunger striking prisoners.**

¹⁸ In the discussion of the agreement, the hunger strike committee was told that access to university education was not included in the written agreement because the case was already being brought before the Israeli High Court and the IPS would adopt the High Court's decision. The High Court has recently upheld the case, and a second hearing will allow the court to reconsider. For further information see Adalah, [Reversing Prior Precedent, Israeli Supreme Court Rejects Palestinian Prisoner Rawi Sultany's Appeal to Continue his Higher Education Studies in Prison](#) (26 December 2012).



2.2 Torture and ill treatment

In Israeli Security Agency (ISA or Shabak) facilities, testimonies taken by human rights organisations in past years indicate clear patterns of torture and/or cruel, inhuman and degrading treatment (CIDT) of Palestinian detainees. Both the UN Committee against Torture (CAT) and the UN Committee on Human Rights (HRC) in 2009 and 2010 respectively, have expressed concerns regarding Israeli practices that may constitute torture and/or CIDT.

This pattern is made possible by the fact that the absolute prohibition of torture enshrined in international law has not been adopted in Israeli domestic law. Moreover, following a Supreme Court judgment of September 1999, torture is under certain circumstances permissible as “defence of necessity” as provided in Israel’s Penal Law. In its ruling, the Israeli Supreme Court referred to “ticking time-bomb” situations where torture is a “lesser evil”. The “defence of necessity” thus provides justification and consequently exemption from criminal liability to torturers in these perceived situations, in violation of Article 2(2) of the CAT and the very purpose of the Convention. The judgment still stands more than 14 years after the Committee first explained to Israel the inapplicability of this defence and in defiance of subsequent and repeated recommendations by the CAT; the Human Rights Committee; and the UN Special Rapporteur on Torture.¹⁹ An essential guarantee against torture lies in assuring that a detainee is brought promptly before a judge after his arrest and has frequent access to judicial oversight over the nature of the interrogation. The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law - 2006 and its subsequent amendments drastically weaken this protection. Originally enacted as a temporary arrangement for 18 months, with the declared intention of incorporating its provisions into a permanent anti-terror law, the law is periodically extended by the Knesset and currently lasts through the end of 2012. Last but not least, its ISA interrogators are not obliged to record by video or audio the interrogation of security detainees.

Medical staff is often a passive accomplice of ISA in torture practices, in violation both of the CAT and of medical ethics. Doctors fail to properly document injuries and report them to their superiors; they knowingly return detainees to their ISA interrogators, they transfer medical information to interrogators without the consent of the detainees; and they prioritise the requirements of the ISA agent over the well-being of the detainees. The Ministry of Health formed a “Committee for Medical Staff to Report Harm to Detainees under Interrogation” whose effectiveness is yet to be established.

EMHRN calls on the EU to urge Israel to:

- **Enact a clear, absolute and specific prohibition of torture in domestic laws;**
- **Remove the “necessity defence” as a possible justification for the crime of torture;**
- **ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer;**
- **Extend the legal requirement of video recording of interviews of detainees to those accused of security offenses;**
- **Ensure that measures designed to counter acts of terrorism are in full conformity with International Human Rights law;**
- **Introduce legislation expressly prohibiting medics' participation in abuse/torture, legislation introducing documentation and reporting of torture, as well as protection of whistle-blowers;**
- **Adhere to the CAT Optional protocol.**

2.3 The “Unlawful Combatants Law”

¹⁹ See PCATI report, Accountability Still Denied, January 2012, http://www.stoptorture.org.il/files/PCATI_eng_web_0.pdf



Israel passed the 'Unlawful Combatants Law' in 2002, and amended it in 2008. Gazans who are detained under this law are neither entitled to the status of a prisoner-of-war, under the Third Geneva Convention, nor are they entitled to a civilian detainee status under the Fourth Geneva Convention. This law practically strips detainees from any rights and protections provided for by IHL and human rights law. The UN Human Rights committee has expressed its concern about the “continued application and declaration of conformity with Basic Laws by the State party’s Supreme Court, of the Detention of Unlawful Combatants Law as amended in 2008”²⁰. The Committee also regretted “the absence of information on the possibility for a detainee to challenge any decision of postponement”.

According to this Law, persons who are suspected of having taken part in hostile activities against Israel, 'directly or indirectly', or carried out hostile activities against the security of Israel can be considered 'unlawful combatants'. The Law lends broad powers to Israeli regular courts, which can order arrest, convict and/or detain any suspected person for unlimited periods of time without providing evidence or allowing for adequate legal representation.

Moreover, the Law grants full authority to the Israeli Military Chief of Staff, or his deputy, to order the arrest of any person based on mere suspicions that he/she could be an 'unlawful combatant', even without requiring the presence of the subject before the military commander who issues the arrest warrant. According to the latest information received from the Al Mezan Center for Human rights, following the liberation of Mahmoud Sarsak on 10 July 2012, there are currently no other cases of detention under this law.

EMHRN calls on the EU to urge Israel to immediately abolish the “Unlawful Combatants Law” and its amendments, which seriously violate the fair trial standards of international law by allowing arbitrary detention of persons from the Gaza Strip for unlimited periods without trial or charge.

2.4 The military legislation applicable to Palestinian minors

As of 30 September 2012, 189 children, of which 28 are under the age of 16, are held in Israeli military detention, according to B'Tselem.²¹

Despite welcomed amendments to the military orders in 2009 and 2011, which created a juvenile military court and purported to raise the age of majority from 16 to 18 in the military courts, Israeli authorities continue to violate the rights of Palestinian minors (under the Convention on the Rights of the Child and Israel’s Youth Law) at all stages of the process, including arrest, interrogation, trial, and imprisonment. Further amendments to the military legislation are required to provide Palestinian minors with the same protections provided under Israel’s Youth Laws. This includes:

- Children continue to be interrogated without the benefit of legal advice or the presence of a parent. This right exists for Israeli minors according to Israel’s Youth Law.
- Contrary to Israeli law, which requires that every minor detainee must be brought before a judge within 24 hours, and for those under the age of 14, to be brought before a judge within 12 hours, the rules in the OPT permit postponement of a minor’s appearance before a judge until the fourth day (the eighth day until August 2012) of his detention. It is during this period that most cases of abuse are documented. The Israeli military recently announced that it would shorten the duration of detention for minors. The amendment, which will go into effect in April 2013, stipulates that minors under 14 must be brought before a judge within 24 hours

²⁰UN Human Rights Committee, [Concluding observations of the Human Rights Committee – Israel](#), July 2010.

²¹ See B'Tselem webpage, Statistics on Palestinian minors in the custody of the Israeli security forces, http://www.btselem.org/statistics/minors_in_custody



of detention, and minors aged 14-18, within 48. For interrogation purposes, this period may be doubled – to 48 hours and 96 hours, respectively.²²

- The age of criminal responsibility in Israel and in the OPT is 12, and minors younger than that are not subject to criminal proceedings. Israeli law, however, provides additional special protections to minors younger than 14 – such as prohibiting holding them in detention or in prison, and placing limitations on filing an indictment against someone younger than 13. These protections do not exist in military law. The only limitation in military law states that imprisonment of a minor younger than 14 shall not exceed a period of six months. Nevertheless, since the establishment of the military youth court in November 2009, the treatment of children under 14 has improved, as reported by B'tselem.²³
- Minors over the age of 16 may be kept with adults, provided that doing so benefits the minor, and that adults do not have access to minors during sleeping hours. This is highly problematic and can be very damaging later on in life.
- Arrest and incarceration continues to be the sole mean of coping with offenses committed by minors – rather than as a last resort.

EMHRN calls on the EU to urge Israel to:

- **Cease from applying a discriminatory legal system to children based on race or nationality. In this regard, Israel should, as required by Israel's Youth Law, prohibit the imprisonment of Palestinian minors living in the OPT under the age of 14; ensure that they are brought before a judge within 24 hours; and ensure that a parent is present during their interrogation and that they can consult with an attorney in an orderly manner that respects the minors' rights.**
- **Promote alternatives to detention and find solutions offering alternatives to imprisonment.**

3. Rights of asylum seekers and refugees arriving in Israel

The EMHRN calls on the EU to follow up on the discussions that took place at the EU-Israel Informal Human Rights Working Group meeting in June 2012 regarding the rights of refugees and asylum seekers.

EMHRN would like to draw particular attention on the following Israeli policies and developments:

- Israel denies Sudanese and Eritrean asylum seekers arriving via the Sinai access to individual procedures of refugee recognition (RSD), while giving them 'temporary humanitarian group protection'. As a consequence, they can all be deported as a group when the group protection is removed, without individual examination of their claims. Over the past months this is happening in practice to all South Sudanese, with approval of the Israeli courts²⁴. This raises concerns regarding Israel's *non-refoulement* obligations, which entail not to return asylum seekers to places where they fear for their safety, including the threat of potential torture or ill treatment, as well as its will to genuinely assess the refugee status of applicants. Secondly, lacking refugee

²² For further information, see B'Tselem, [Israeli military shortens maximum detention period for Palestinian minors in occupied territories](#) (23 December 2012).

²³ In the first half of 2011, no minors younger than 14 were convicted of stone throwing. Furthermore, the Youth Court significantly shortened the period of incarceration for minors under 14 who were convicted. In 2010, the longest period of imprisonment for a minor in that age group was nine days. This is compared to sentences of up to two months in prison during the period before the youth court was established.

²⁴ On **7 June 2012**, The Jerusalem District Court rejects a petition by human rights groups against a decision by the Israeli Minister of Interior, Mr. Eli Yishai, to end the collective humanitarian protection for this group and start procedures for their expulsion. Yishai welcomed the ruling, calling a first step in deportation of other groups from Sudan and Eritrea. On 10 June 2012, Israeli immigration police commence arrests of South Sudanese in Eilat and central Israel. As of 15 June, some 300 have already been arrested. The UNHCR has reported grave human rights violations in Sudan and recommended that asylum seekers not be returned. Refugees from both countries enjoy protection in most states in the developed world.



recognition, those under temporary humanitarian group protection have no permission to work, and no access to essential social and health services (bearing in mind that many are victims of torture).

- In line with this, the Israeli army has, in violation of international law, been systematically turning back potential refugees attempting to enter Israel through the Egyptian border without any assessment of their need for protection and in full knowledge that they are vulnerable to human traffickers in the Sinai, prolonged detention in Egypt and, in the case for example of Eritreans, forcible return to their country where they face torture and other violations. Furthermore, the Israeli authorities have also undertaken the construction of a 240-kilometer border fence with Egypt's Sinai region.²⁵
- The Law to Prevent Infiltration (January 2012) provides for the automatic detention of all "infiltrators", i.e. all those entering illegally Israel, regardless of whether these are asylum seekers or vulnerable persons such as minors, for three years without trial, or indefinite detention if they come from "enemy countries" such as Sudan. The law falls short of Israel's international legal obligation under the Convention relating to the status of refugees. Over 2,000 men women and children, including victims of torture and slavery, are currently being held under authority of the law, and the government intends to jail thousands more, including families and children in the near future. In October 2012, six human rights organisations filed the petition on behalf of themselves and five Eritrean asylum seekers to overturn the Law²⁶.
- To implement the law, Israel started in June 2012 the construction of a detention facility near the Israeli-Egyptian border with a capacity of up to 25,000 people for "infiltrators" to be managed by the Israeli Prison services. Conditions in existing migrant detention facilities are sub-standard and access to judicial, social and medical services is extremely limited.
- On 10 June 2012, the Ministerial Committee on legislation voted in favour of a proposed government bill to criminalise assistance to asylum seekers. The bill aims at increasing penalties for Israelis found guilty of employing, harbouring or transporting migrants or Palestinians illegally residing in Israel, raising the maximum penalty to a five-year jail sentence and imposing a NIS 5 million fine on persons found assisting migrants.
- The last months have seen a sharp rise in racially motivated street violence and public incitement against African refugees and asylum seekers.

EMHRN calls on the EU to urge Israel to:

- **Urge Israel to develop and adopt, in partnership with Israeli and international civil society, a comprehensive asylum policy and, accordingly, legislation to guarantee its implementation in accordance with the 1951 Refugee Convention Relating to the Status of Refugees, to which Israel is a signatory;**
- **Urge Israel to revoke the amendment passed in January 2012 to the Prevention of Infiltration Law, in light of its violation of the rights of refugees and asylum seekers as stipulated in international law;**
- **Eliminate practices, from law and from practice, that contravene Israel's obligations under the 1951 Refugee Convention, including Hot Return and an exceedingly restrictive application of the refugee definition, which effectively undermine Israel's commitment to the norm of *non refoulement*;**
- **Urge Israel to stop the practice of turning back migrants at the Egyptian border without any assessment of their protection needs, also in direct violation of its obligations under international law;**

²⁵ See Human Rights Watch article with Hotline for migrants and Physicians for Human Rights - Israel, 28 October 2012, <http://www.hrw.org/news/2012/10/28/israel-asylum-seekers-blocked-border>

²⁶ See Press Release, Refugees and Rights Organizations Petition High Court to Overturn Law to Prevent Infiltration, October 2012, <http://www.acri.org.il/en/2012/10/04/petition-to-overturn-law-to-prevent-infiltration/>



- **Raise its concern regarding the Israeli plan to construct a mass-detention facility for migrants, asylum-seekers and refugees – including vulnerable persons – near the Israeli-Egyptian border, in parallel with the border fence which is currently being built, and request guarantees that they be protected from automatic and prolonged detention and retain their right to legal counsel.**

4. Rule of Law: restrictions to access to justice and effective remedy for Palestinian victims of Israeli violations of IHRL and IHL

The EMHRN calls on the EU to address the erosion of the rule of law, one of the deep democracy benchmarks of the ENP²⁷, including the lack of access to courts and effective remedy at its upcoming meeting with Israel. Notably, the EU's ENP Review document adopted in May 2012, stresses the importance of maintaining "the rule of law". The EU stated in this context that, "throughout the neighbourhood more efforts are needed to ensure respect of the rule of law ... with guarantees for equal access to justice and respect for due process and fair trial standards".²⁸

The culture of impunity, which is seriously restricting access to justice and remedy for the Palestinian population in the OPT, has been widely documented by Israeli, Palestinian and International organisations. These organisations have observed the lack of independent investigations into complaints of torture and ill-treatment, the Israeli Military's chronic failure to conduct independent, prompt, transparent and effective investigations into cases where there is reasonable suspicion of committing violations of international law in the context of its military and law enforcement operations in the OPT, and restrictions to Palestinians' ability to file compensation claims and the almost total impunity given to violent settlers.

4.1 The absence of investigation and prosecution for torture offenses

From 2001 to 2011, over 750 complaints of torture and other forms of cruel, inhuman and degrading treatment of Palestinian detainees were submitted by victims to the Israeli Attorney General. According to the Public Committee Against Torture in Israel, none of the complaints of torture and ill treatment by security detainees received and processed by the Israeli authorities between 2001 and 2011 led to a criminal investigation.²⁹ Despite the persistent recommendations of the UN Committee Against Torture and the UN Human Rights Committee³⁰ that Israel should fully investigate complaints of torture, Israel remains indifferent.³¹ This was recently confirmed by the UN Human Rights Committee's Special Rapporteur who noted that in the intervening two years since the

²⁷ See EC, "Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions," 15 May 2012, http://ec.europa.eu/world/enp/docs/2012_enp_pack/delivering_new_enp_en.pdf (describing the new "more for more" policy. "The elements that characterise a **deep and sustainable democracy** include: free and fair elections; freedom of association, expression and assembly and a free press and media; **the rule of law** administered by an independent judiciary and the right to a fair trial; fighting against corruption; security and law enforcement sector reform (including the police); and the establishment of democratic control over armed and security forces." (p. 11)

²⁸ See EC, "Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions," 15 May 2012, p.7, http://ec.europa.eu/world/enp/docs/2012_enp_pack/delivering_new_enp_en.pdf

²⁹ PCATI report, Accountability Still Denied, January 2012, http://www.stoptorture.org.il/files/PCATI_eng_web_0.pdf

³⁰ UN Committee Against Torture, [Concluding observations of the Committee against Torture – Israel](#), June 2009. UN Human Rights Committee, [Concluding observations of the Human Rights Committee – Israel](#), July 2010.

³¹ PCATI, Adalah, PHR-Israel and Al MezanCenter for human Rights [reports to the UN human rights committee on Israel's Practices of Torture and Ill-Treatment of Palestinian Prisoners](#), June 2012, and [Report to the UN committee against torture on Israel's lack of compliance with the Convention Against Torture](#), March 2012.



adoption of the Human Rights Committee's Concluding Observations, no measures have been taken to implement them³².

PCATI describes the Israeli inquiry process as follows: "In practice, the Attorney General has delegated his authority to a senior official within the State Attorney's office, who is not legally empowered to dictate the fate of complaints against the Israeli Security Agency (ISA). This official in turn automatically and comprehensively refers complaints to a preliminary inquiry, conducted by the Inspector of Interrogee Complaints (IIC) - himself an ISA agent – in a formula which ultimately guarantees the absence of credible, independent investigations into complaints of torture and ill treatment."

In November 2011 the Attorney General pledged to create a permanent post in the Ministry of Justice for conducting investigations and to transfer the post from the ISA agent. In August 2012, the Israeli Supreme Court dismissed a petition submitted by PCATI and five other NGOs demanding effective accountability mechanisms in complaints of torture, though in the ruling, the court strongly criticised the manner of examination of complaints against ISA interrogators and the failure to investigate even a single one out of the hundreds of complaints filed over the past decade.³³ PCATI reports that to date this has not changed.

EMHRN calls on the EU to urge Israel to:

- **Ensure independent, thorough and prompt investigations into complaints of torture or other forms of cruel, inhuman and degrading treatment against Israeli security agencies and ensure that those found guilty are punished and that compensation is provided to victims and their families, in accordance with Israel's obligations under international human rights law.**
- **Transfer the post in charge of conducting preliminary inquiry into complaints from the IIC to the Ministry of Justice.**

4.2 Lack of proper criminal investigations and prosecution into violations of international human rights and humanitarian law committed by Israel in the OPT

Israel has a legal obligation to investigate and prosecute those responsible of violations of international human rights and humanitarian law.³⁴ In April 2011, after 10 years of almost total impunity³⁵, the State Attorney's Office announced that a Military Police Investigation Unit would be

³²[Interim report of the Special Rapporteur for follow-up on concluding observations of the Human Rights Committee \(August 2012\)](#) pp. 2 [Assessment criteria-C1-Reply/action not satisfactory-Response received but actions taken do not implement the recommendation] pp.5-6 (Follow-up analysis on paragraph 11-Committee's evaluation:C1)

³³HCI 1265/11, The Public Committee Against Torture in Israel et al. v. The Attorney General Petition for Granting of order nisi (Decision delivered 6 August 2012).

³⁴The fourth Geneva Convention requires that states parties investigate and prosecute against the persons suspected to have committed any grave breaches of the Convention. Grave breaches include killing or wilfully causing great suffering or serious injury to body or health of civilians and destruction of property in the absence of military necessity. Other acts are criminalised and must be suppressed by states parties, but are not described as grave breaches. The International Covenant on Civil and Political Rights requires that victims of violations be given effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. The Human Rights Committee adds that the right to remedy entails the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies (Human Rights Committee, General Comment no. 31, 15, at p. 178) and has held that failure to investigate human rights violations and prosecute the perpetrators can in itself amount to a violation of the Covenant. The UN General Assembly has also affirmed the legal duty to investigate, detain, and prosecute violators of international humanitarian and human rights law.

³⁵In 2000, following the outbreak of the second Intifada, the Military advocate general (MAG) declared that the reality in the territories had become an "armed conflict" and hence that military police investigations were only initiated in cases in which there is a suspicion of criminal behaviour by the soldiers. The change of policy resulted in a drastic drop in the number of investigation launched by the Military Police.



opened automatically in every case in which a soldier killed a Palestinian civilian who was not taking part in hostilities in the West Bank, but not the Gaza Strip.

While we welcome this decision, it is insufficient to have a real impact on impunity as long as those investigations into alleged violations of International Law opened are not conducted in accordance with international standards of independence, impartiality, effectiveness, thoroughness and promptness. Moreover, the announcement indicates that the policy change is dependent on the security circumstances. This means that renewed security tension could lead to the policy's reversal and a return to the situation in place over the past ten years.³⁶

Israeli, Palestinian and international organisations have highlighted grave structural and operational deficiencies of the Israeli investigations into alleged violations of international law in the OPT. First, the independence and impartiality of the Israeli investigations are severely compromised by the fact that all these inquiries are carried out by army commanders or by the military police. Second, these inquiries are overseen by the MAG, whose office cannot be considered a disinterested party as it provided legal advice to Israeli forces on their choice of targets and tactics during Israel's offensive attack on the Gaza Strip in 2008-09, also known as 'Operation Cast Lead'. Third, the decision to open a criminal investigation is based on so-called operational debriefings, which are conducted for the purposes of evaluating lessons learned for the military itself, and not to investigate the possibility of criminal behaviour. Fourth, Israeli investigations generally look into violations resulting from deviations from orders and do not examine the legality of the orders themselves. However, most of the harm to civilians, property and civilian buildings during Operation Cast Lead for example was a result of policies determined at the senior government and army levels, with the approval of the MAG. Several of these shortcomings in Israel's investigation process have been confirmed in the 2010 and 2011 reports of the Committee of independent experts in international humanitarian and human rights laws mandated by the UN Human Rights Council to monitor and assess domestic proceedings by Israel and the Palestinian Authority from an international law point of view.³⁷

These deficiencies are for example reflected in the record of investigative procedures carried out in the last four years in the context of 'Operation Cast Lead'. Of the approximate 150 procedures initially opened, only three indictments were filed in relation to ordinary crimes. As of 2012, the sum of Israeli domestic accountability for Operation Cast Lead amounts to three indictments and three cases of purely disciplinary action within the military. Killing or injuries committed since Operation Cast Lead have neither led to proper investigation by Israel, including the military campaign, conducted by Israel between 14 and 21 November 2012, code named "Operation Pillar of Defence". According to the information available to Israeli and Palestinian Human Rights organisations monitoring the situation in the Gaza Strip there exists grave suspicion that violations of IHL were committed by Israel during this operation, including direct targeting of civilians and civilian objects – including houses, media offices and vehicles -, indiscriminate and disproportionate attacks, and a failure to take all feasible precautions in attacks and in the choice of methods and means of warfare.³⁸ Final numbers from the Palestinian Center for Human Rights in Gaza highlight that civilian victims amount to 59% of the persons killed and 98% of the injured.

³⁶ See B'Tselem Press Release, Change in military investigation policy welcome, but it must not be contingent on the security situation, April 2012, <http://www.btselem.org/press-release/6-april-11-change-military-investigation-policy-welcome-it-must-not-be-contingent-secu>

³⁷ For the 2010 Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance and the 2011 report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9.

³⁸ For further information on individual cases, please refer to the websites of Al Haq (<http://www.alhaq.org/>), Al Mezan Center for Human Rights (<http://www.mezan.org/en/>), B'Tselem (<http://www.btselem.org/>) and Palestinian Center for Human Rights (PCHR) (<http://www.pchrgaza.org/portal/en/>). Please note that Adalah, Al Mezan Center for Human Rights and PCHR have demanded in a letter to the Israeli Military Advocate General and the Attorney General that a criminal



On 19 November, PCHR, Al Mezan and Adalah have already submitted one demand to the Military advocate General to open a criminal investigation into the suspicion of war crimes by the Israeli military following the killing of 10 Palestinian civilians, including 8 members of the Al-Dalu family, in Gaza on 18 November 2012.

The international community, including the EU, has failed to hold Israel accountable for these violations. The lack of impartial and effective investigations into past crimes raises concerns that victims of crimes in the present conflict may be left without access to justice and reparation. It is imperative that the international community ensures accountability in the present context, in order to prevent further tragedy.

EMHRN calls on the EU to urge Israel to fully comply with its obligations under international law to conduct investigations in line with international standards into the alleged violations of international law committed in the OPT and that those who ordered or committed them are prosecuted. If these investigations do not take place promptly, the EU should support further actions through international accountability mechanisms.

4.3 Restrictions to Palestinians' ability to file compensation claims

International humanitarian and human rights law requires all states to remedy, including through adequate financial compensation, the consequences of illegal acts carried out by entities or persons acting on their behalf, including violations of human rights.

Until 2002, Palestinian residents of the OPT were able to sue Israel for negligent or unlawful acts carried out on its behalf that caused them bodily injury or property damage. The Torts law exempted the state from paying compensation in cases where it was proved that the damage resulted from "combat action". However, as Israeli courts chose to narrowly interpret the expression "combat action", the effect of the exemption was relatively minimal.

Since 2002, Israel has introduced several legal, monetary and physical obstacles to limit Palestinians' ability to file compensation claims, fundamentally denying Palestinian victims' legitimate right to an effective judicial remedy:

- The definition of "combat action" in the Torts Law was expanded in 2005 and 2012 to exempts the Israeli Army from civil liability for any "act to combat terrorism, acts of hostilities, or uprising, and acts intended to prevent terrorism, acts of hostilities or uprising if it is by nature a combat action given the overall circumstances, including the goal of the action, the geographic location, and the inherent threat to those carrying out the act."
- An amendment to the Torts Law in 2005 exempts Israel from liability for harm to anyone identified as member of, or activists in, a "terrorist organisation". The immunity does not depend on the circumstances in which the person was injured, or where the injury took place. The amendment did not define what constitutes a "terrorist organization," nor the level of connection with the organisation required for a person to be considered a member or activist.
- According to the Torts Law, a tort claim may not be filed unless the injured person gave written notice regarding the incident within 60 days from the time it occurred before filing the claim, even if the authorities were aware of the incident or were given oral notice of it. The amendment allows the filing of late notice in exceptional cases.

investigation be opened into the suspicion of war crimes by the Israeli military following the killing of 10 Palestinian civilians, including 8 members of the Al-Dalu family, in Gaza on 18 November 2012. For further information see: <http://adalah.org/eng/?mod=articles&ID=1869>.



- According to the Torts Law, the suit must be filed within two years from the time of the act, as opposed to the seven years under regular law. The court may extend this period for an additional year (or three years in the event the plaintiff is a minor at the time of the act), if the court is convinced that the plaintiff was unable to file his or her claim earlier.
- Most claims for compensation filed by Palestinian residents of Gaza Strip are dismissed after the claimants and/or their witnesses from Gaza fail to appear before the court because the state, a party in the case, denies them entry permits.³⁹ According to PCHR, since 2007, not a single Palestinian from Gaza has been granted a permit to appear in court in Israel.⁴⁰
- Israeli courts often require claimants to pay a court insurance fee before the case can begin. While this is a discretionary fee applied by the court, in practice, this fee is always applied to Palestinian claimants. The exact value of the fee is not fixed, and it is determined on a case-by-case basis by the court. The amounts demanded are far beyond the means of ordinary Palestinians, and so high that even donor-funded legal aid organizations can pursue only a handful of the most egregious cases.⁴¹

The serious monetary, legal and physical obstacles on Palestinian to access compensation have seriously curtailed Palestinian access to justice⁴². This development has begun to receive recognition by authoritative international bodies. The Committee on the Elimination of Racial Discrimination, in its recent periodic review of Israel's human rights record, took note of the monetary and physical obstacles faced by Palestinians seeking compensation before Israeli tribunals for loss suffered, in particular as a consequence of the 'Operation Cast Lead'.⁴³

EMHRN calls on the EU to urge Israel to remove serious monetary, legal and physical obstacles hindering Palestinians from bringing civil claims and thus allow Palestinians living in the OPT to present any civilian claims in order to obtain reparation for damages caused by security or military forces.

4.4 Impunity for settler violence

³⁹On 27 September 2012, Adalah submitted a petition to the Supreme Court against the Ministry of Defense, the Ministry of the Interior and other administrators arguing that Israel's policy of refusing to issue entry permits to Palestinian residents of Gaza filing tort claims against the Israeli military is illegal. <http://www.adalah.org/eng/?mod=articles&ID=1840>.

⁴⁰See PCHR, [Israel High Court of Justice vacates verdict in Cast Lead Case: Appoints New Panel of Judges and Orders Case on behalf of 1,046 victims be Re-heard](#).

⁴¹For further information about amounts see PCHR, [Israel High Court of Justice vacates verdict in Cast Lead Case: Appoints New Panel of Judges and Orders Case on behalf of 1,046 victims be Re-heard](#).

⁴² As an example, within this 60 day limit, PCHR submitted 1,046 requests for reparation on behalf of 1,046 victims of Operation 'Cast Lead' to the Compensation Officer at the Israeli Ministry of Defense. of 1,046 submitted complaints, 1,020 have been ignored, while 24 have only been addressed in an interlocutory manner. Only two civil complaints have resulted in any form of remedy (see http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=8709:israeli-military-court-continues-to-provide-cover-for-ifs-crimes-&catid=36:pchrpressreleases&Itemid=194 and http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=8778:in-the-second-case-of-its-kind-pchr-succeeds-in-ensuring-reparation-for-the-family-of-two-victims-of-the-israeli-offensive-in-gaza-&catid=37:pchrnews-&Itemid=30)

As a result of the failure to respond to the overwhelming majority of reparation requests, PCHR filed 100 tort cases before Israeli civil courts within the 2 year statute of limitations, relating to the interests of approximately 626 victims, and paid the initial court fees. However due to financial burdens, PCHR was unable to file complaints on behalf of the remainder of the victims. For 12 of these cases, PCHR paid the required financial guarantees. 30 of the cases were cancelled because the guarantees were not paid. A further 3 cases were rejected by the Israeli court. The remaining 67 cases are still pending. For further information see Written statement submitted by the Palestinian Centre for Human Rights to the UN general Assembly, 11 June 2012: <http://unispal.un.org/UNISPAL.NSF/0/37B37AAE777A240285257A4D00550626>

⁴³ Committee on the Elimination of Racial Discrimination, —Concluding observations of the UN Committee on the Elimination of Racial Discrimination: Israel, adopted 28 February 2012 (80th session, 13 February - 9 March 2012), published 9 March 2012, UN doc. no. CERD/C/ISR/CO/14-16, 27, p. 7.



Israeli settlers have perpetrated various forms of violence against Palestinians in the OPT, damaging their lands, their persons and their property. In recent years, settlers have carried out violent acts under the slogan “price tag.” These are acts of violence aimed at the Palestinian population (and Israeli security forces) and include blocking of roads, throwing stones at cars and houses, making incursions into Palestinian villages and land, torching fields, uprooting trees, and other damage to property. They generally follow actions by Israeli authorities that are perceived as harming the settlement enterprise, or follow Palestinian violence against settlers. In its latest review, the CERD Committee expressed its concerns in this regard.⁴⁴

As the occupying power in the West Bank, Israel is obligated to maintain public order and protect the safety of Palestinian residents. In one of its ruling, the Supreme Court ruled that “protecting the security and property of the local residents is one of the most basic obligations placed upon the military commander in the field.” The judges added that the defence establishment must “give clear, unequivocal instructions to the forces that are deployed in the field” and must also “allocate forces to protect the property of the Palestinian residents”⁴⁵. However, security forces do not always deploy in advance to protect Palestinians from settler violence, even when such violence could be anticipated. In some cases, rather than restricting violent settlers, Israeli security forces impose restrictions on the Palestinians.

In addition, according to data collected by Yesh Din, the Israeli settlers act with virtual impunity: 91% of investigations into crimes committed by Israelis against Palestinians and their property are closed without indictments being issued. Furthermore, 84% of the investigation files are closed because of the investigators' failure to locate suspects and evidence.⁴⁶ As such, Israel is failing to meet its obligation under international law to maintain an effective law enforcement system to hold accountable Israeli civilians who commit violence against Palestinian civilians in areas subject to its military occupation.

EMHRN calls on the EU to urge Israel to ensure that the Palestinian occupied population in the West Bank is granted full protection from settler violence and effective legal remedies, including reparation and compensation, when victims of settler attacks.

⁴⁴ “About the increase in racist violence and acts of vandalism on the part of Jewish settlers in the Occupied Palestinian Territory targeting non Jews [...] and about information according to which 90 per cent of Israeli police investigations into settler-related violence carried out between 2005 and 2010 were closed without prosecution.” The Committee further expressed its alarm in relation to “reports of impunity of terrorist groups such as Price Tag, which reportedly enjoy political and legal support from certain sections of the Israeli political establishment.”, UN CERD Concluding Observations on Israel, 9 March 2012, p. 8, <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>.

⁴⁵ HCJ 9593/04 Murar et al. v. IDF Commander for Judea and Samaria et al.

⁴⁶ Yesh Din, Police fail to investigate ideological crimes committed by Israelis against Palestinians, 27 March 2012, <http://www.yesh-din.org/postview.asp?postid=205>



ANNEX I: Further reading on the issues raised

1. The Palestinian Arab Minority

1.1 The dispossession and displacement of the Arab Bedouin in the Naqab – The Praver Plan

- Adalah, [Residents Prohibit Posting of Home Demolition Orders; 19 Arrested](#) (28 November 2012).
- Adalah Briefing Paper, [Key Concerns Regarding the Rights of Palestinians in Israel and the OPT, Submitted to the EU for the 2012 ENP Progress Report](#) (7 November 2012).
- Adalah Briefing Paper, [Understanding the Praver Plan Law](#) (January 2012).
- Adalah, [Four Reasons to Reject the Praver Plan](#) (January 2012).
- Adalah, [Analysis of the Praver Plan](#) (October 2011).

1.2 Discriminatory Laws and Bills against the Palestinian Arab Minority

- Adalah, [Supreme Court hears NGOs' position on "Anti-Boycott Law," issues order nisi from "order to show cause" mandating state to justify law, and expands judicial panel](#) (11 December 2012).
- Adalah Briefing Paper, [Key Concerns Regarding the Rights of Palestinians in Israel and the OPT, Submitted to the EU for the 2012 ENP Progress Report](#) (7 November 2012).
- Adalah, [New Discriminatory Laws and Bills in Israel](#) (update June 2012).
- Adalah Briefing Paper, [Key Concerns Regarding the Rights of Palestinians in Israel and the OPT, Submitted to the EU for the 2012 ENP Progress Report](#) (7 November 2012), p. 4-6.
- Adalah press release, [Israeli Supreme Court Upholds Ban on Family Unification](#) (January 2012).

1.3 Harassment of the Arab Political Leadership

- EMHRN statement, [EMHRN condemns the elections committee's decision to disqualify Knesset member Haneen Zoabi from running for election in Israel](#) (21 December 2012).
- Adalah, [Central Elections Committee Disqualifies MK Haneen Zoabi from Running in the Upcoming Israeli Elections](#) (19 December 2012).
- Adalah, [Responses to Central Elections Committee \(CEC\) against the Disqualification of Arab Political Parties and MK Haneen Zoabi in the Israeli Elections](#) (17 December 2012).
- Adalah, [Elections Q & A: The 2013 Israeli Elections and Arab Parliamentarians](#) (11 December 2012).
- Adalah Briefing Paper, [Key Concerns Regarding the Rights of Palestinians in Israel and the OPT, Submitted to the EU for the 2012 ENP Progress Report](#) (7 November 2012).

2. The rights of Palestinian Prisoners and Detainees in Israeli Prisons

2.1 Implementation of the May 2012 agreements between the Israeli Prison Service and Palestinian prisoners on hunger strike, including concerning family visits, solitary confinement, administrative detention, punitive measures and access to health

- Adalah, [Reversing Prior Precedent, Israeli Supreme Court Rejects Palestinian Prisoner Rawi Sultany's Appeal to Continue his Higher Education Studies in Prison](#) (26 December 2012).
- Addameer, [Submission for 2012 ENP progress report](#) (November 2012).
- Physicians for Human Rights, [Submission for 2012 ENP progress report](#) (November 2012).



- Addameer and Al-Haq, [Remaining Hunger striker held in limbo while his health continues to deteriorate](#) (26 September 2012)
- Addameer, Al-Haq, and Physicians for Human Rights, [Doctor and Lawyer visits to hunger strikers reveal mistreatment by Israeli Prison Service](#) (8 August 2012)
- Adalah, PHR-Israel and Al Mezan, [Solitary Confinement of Prisoners and Detainees in Israel Prisons](#) (June 2011). See also the position of the UN Special Rapporteur on Torture, calling for prohibition of solitary confinement, see [Interim report of the Special Rapporteur of the Human Rights Council on Torture, Cruel, Inhuman or Degrading Treatment or Punishment, A/66/268](#) (5 August 2011).
- UN Special Rapporteur on Torture, [Interim report of the Special Rapporteur of the Human Rights Council on Torture, Cruel, Inhuman or Degrading Treatment or Punishment, A/66/268](#) (August 2011).
- [Palestinian Human Rights Organisations Council, Report to UN Human Rights Council on the Occasion of Israel's Second Universal Periodic Review](#) (July 2012).
- Addameer, [Submission for the 2012 EU progress report on Israel, Human Rights Violations relating to Palestinian Political Prisoners](#) (November 2012).

2.2 Torture and ill treatment

- [Public Committee Against Torture in Israel, Submission for 2012 ENP progress reports](#) (November 2012).
- Adalah Briefing Paper, [Key Concerns Regarding the Rights of Palestinians in Israel and the OPT, Submitted to the EU for the 2012 ENP Progress Report](#) (7 November 2012).
- Adalah, Al-Mezan Center for Human Rights, Public Committee Against Torture (PCATI) and Physicians for Human Rights – Israel, [Briefing to the UN COMMITTEE AGAINST TORTURE concerning Israel's Universal Periodic Report due in 2013](#) (March 2012).
- Adalah, Al-Mezan Center for Human Rights, Public Committee Against Torture (PCATI) and Physicians for Human Rights – Israel Briefing Note (October 2011): [Human rights of Palestinian detainees and prisoners held in Israel, with relation to the struggle against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.](#)
- PCATI and PHR-Israel, [Doctoring the Evidence, Abandoning the Victim: The Involvement of Medical Professionals in Torture and Ill Treatment in Israel](#) (October 2011).
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