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EMHRN and Palestinian human rights NGOs recommendations on the new EU-PA Action Plan

The European Union and the Palestinian Authority (PA) are in the process of adopting a new Action Plan to replace the Action Plan agreed upon in 2005. The undersigning human rights NGOs call on the EU and the PA to revise the chapters on democracy, rule of law, human rights and fundamental freedoms in the EU-PA Action Plan in order to reflect the deterioration of the human rights situation in the Occupied Palestinian Territory (OPT) following the political split in 2006 between the authorities in the West Bank (for the purposes of this document, “the PA”) and the authorities in the Gaza Strip.¹

Over the last 5 years, the PA has adopted a pattern of repressive measures aiming at stifling political dissent, generating a sense of intimidation within Palestinian society, turning the latter into what resembles a “police state“ weakening democratic values and the rule of law. Similar measures were adopted by the authorities in Gaza. The undersigning organisations therefore call on the PA to move towards Palestinian reconciliation which has the potential of putting an end to the spiral of intra-Palestinian human rights violations.

As human rights organisations we highlight the need to engage with all relevant actors in the best interests of the civilian population and request that the EU reconsiders its policy as regards the government in the Gaza Strip. Moreover, the EU should not hamper the inter-Palestinian reconciliation process and respect the will of the Palestinian people as expressed through free and fair elections, which are expected in the context of the current unity agreements between Palestinian groups. The EU should continue to provide aid and technical support to any Palestinian unity government.

Palestinian human rights violations are taking place in a context where legal provisions to protect basic human rights like the protection against arbitrary detention, torture and ill-treatment and

¹ As the EU-PA Action Plan covers only actions undertaken by the PA and the EU has no dialogue with Hamas, this note focuses only on violations committed by the PA in the West Bank. Similar human rights violations are attributable to Hamas in the Gaza Strip. Moreover, Hamas has been launching rockets against Israel, in violation of international humanitarian law and has not conducted any investigations into these unlawful acts.

violence against women are lacking. Fundamental freedoms such as freedom of expression, of the press, of association and of assembly have suffered serious regressions during these years both in the West Bank and in the Gaza Strip.

While it is crucial to take into account the considerable restrictions under which the PA operates by virtue of the Israeli occupation², insofar as the PA exercises limited control over parts of the OPT, it is responsible for enforcing the law through effective and lawful measures in accordance with its obligations under International Human Rights Law (IHRL). The Palestinian Authority has voluntarily accepted the obligations under IHRL and has included the respect for human rights in its Basic Laws. The PA has also committed to respect human rights in the Interim Association agreement and European Neighbourhood Policy (ENP) Action Plan with the EU.

In the context of the reviewed ENP³, the European External Action Service (EEAS) is working on a new format for its Action Plans with third countries. In this context, the undersigned organisations would like to make the following general recommendations to be taken into consideration when drafting the new EU-PA Action Plan:

1. In order to for the new Action Plan to be operational and to allow an effective monitoring of the PA commitments it is crucial that:
 - The human rights and democracy objectives of the Action Plan are translated into concrete actions and programmes accompanied by measurable benchmarks of performance and a clear timetable;
 - A review mechanism is established to assess the implementation by the PA of the objectives of the Action Plan.
2. Gender equality should be included as a specific objective as well as mainstreamed throughout the chapters of the Action Plan.
3. The EU should encourage the PA to establish a comprehensive human rights strategy, in close cooperation with Palestinian civil society organisations.
4. In view of establishing a real partnership with civil society organisations, as expressed by the reviewed ENP, the EU should ensure that Palestinian and European civil society organisations are included in the drafting, implementation and evaluation process of the future Action Plan. In this regard, we call on the EU and the PA to ensure a transparent process during the elaboration of the Action Plan and to consult civil society organisations on the drafting of the Action Plan.

² The PA's ability to protect the Palestinian people is severely compromised by its lack of jurisdiction over the parts of the West Bank which are outside of Area A (i.e. 83% of West Bank land and 45% of the Palestinian population of the West Bank) as well as the paralysis of the Palestinian Legislative Council (PLC). Numerous PLC members have been arrested by Israeli occupying forces based on their political engagement, resulting in the difficulty of the PLC to properly adopt required legal reforms.

³ Joint Communication by the High Representative of The Union For Foreign Affairs And Security Policy and the European Commission "A New Response to a Changing Neighbourhood", 25 May 2011, available at http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

In addition, the undersigned organisations call on the EU to ensure that the following non-exhaustive list of action items is included in the new EU-PA Action Plan under the relevant sections:⁴

1. Democracy and rule of law

- Ensure that security services do not delay nor obstruct the implementation of court orders;
- Ensure that decisions of the Supreme Court ordering the release of detainees are effectively and systematically implemented and not neglected by Palestinian security agencies;
- Ensure that former detainees are not re-arrested on the same grounds by a different security agency;
- Take all necessary legislative and administrative measures to establish and implement a clear division of powers between the different branches of government;
- Issue a public decree or law that states that the jurisdiction of military authorities should not be extended to civilians;
- Revise the Penal Code of the PLO in line with modern standards of due process and military court procedures; and
- Ensure that the juvenile justice system comply with the standards of the UN Convention on the Rights of the Child.

2. Human Rights and fundamental freedoms

2.1 Accountability for violations of human rights and international humanitarian law

- Implement the conclusions of UN Fact Finding mission on the Gaza Conflict⁵ and the recommendations of the Palestinian Independent Investigation Commission⁶ ; and
- Set up an accountability and compensation mechanism of redress for all crimes and human rights violations committed.

2.2 Arbitrary arrest and detention

- Ensure that detentions are carried out only for valid criminal or security reasons and are based on arrests warrants issued by the competent authorities;
- Immediately stop the practice of arbitrary detention and arrests; and
- Release all prisoners of conscience and political dissidents arbitrarily detained.

2.3 Torture and ill treatment

⁴ For background information on these violations please refer to the document submitted in September 2010 by 12 Palestinian NGOs, available at: http://www.alhaq.org/images/stories/PDF/Input_from_Palestinian_NGOs_on_EU-PA_Action_Plan_2010.pdf

⁵ Available at <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/factfindingmission.htm>

⁶ For the report of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report: violations allegedly committed by Palestinians, see <http://www.picigr.ps/userfiles/file/EN.pdf> (from p. 27).

- Adopt appropriate legislation which criminalises the practice of torture and other forms of cruel, inhumane, degrading treatments, in conformity with the UN Convention Against Torture;
- Ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that remedies are ensured as a matter of law; and
- Ensure that human rights NGOs have access to detention facilities in line with the Optional Protocol of the Convention Against Torture.

2.4 Dismissal from public services on political grounds

- Adhere to the Provisions of the Civil Service Law in the State's relations with civil servants;
- Immediately stop implementing illegal administrative norms that require the referral of all applications for public service posts to the security agencies for approval; and
- Ensure immediate reinstatement and compensation for all civil servants that have been arbitrarily dismissed.

2.5 Freedom of association

- Implement the provisions of the Charitable Societies and Association Law No.1 of 2000 and its regulations;
- Stop interfering with the management and licensing of associations and charities;
- Reopen all associations which have been closed or dissolved in a manner inconsistent with the provisions of the law; and
- Allow the reinstatement of all forcibly replaced board and staff members of associations and charities.

2.6 Freedom of assembly and expression

- Immediately stop the security services' interference in peaceful gatherings which is undermining Palestinians' rights to freedom of expression and assembly;
- Amend the executive regulations issued in 2000 by the Ministry of Interior to implement Public Meeting Law of 1998, which contradicts the law and abuses the right to peaceful assembly;
- Allow journalists and media agencies to operate freely; and
- Permit the restoring of printing and distributing of newspapers.

2.7 Women's rights

- Implement the commitments taken at the two Euro-Mediterranean Ministerial Conferences on "strengthening the Role of Women in Society" in 2006 and 2009 (commonly known as the Istanbul and Marrakech Plans of Action)⁷. In particular the PA should adopt a national plan of action and ensure that the progress towards the fulfillment of these obligations is reviewed annually.

⁷ The 2006 conclusions are available here: <http://www.euromedgenderequality.org/image.php?id=393> The 2009 conclusions are available here: http://eeas.europa.eu/euromed/women/docs/2009_11_conference_en.pdf

- Build the capacity of the gender units within all ministries.
- Fight discrimination against women:
 - Adopt a Personal Status Law based on equity and justice;
 - Adopt a Family Protection from Violence Law; and
 - Review existing legislation to ensure equality between men and women.
- Fight against gender-based and sexual violence:
 - Ensure the passage into law of the 2011 draft Penal Code ; and
 - Enhance the capacity of the shelters in delivering protection services to women victims of violence
- Increase women's participation:
 - Develop a quota system that could ensure women's representation in government, diplomatic and political life in order to increase their participation in public life and decision-making; and
 - Adopt procedures and policies in order to empower women's role in diplomatic life as well as in peace and security committees.
- Women's rights should also be mainstreamed throughout the EU-PA Action Plan. In particular the PA should:
 - Ensure a social and economic empowerment for women through:
 - The adoption of a social security system that will improve women's status;
 - The promotion of policies that foster the participation of women in economic-related activities ; and
 - The establishment of an official framework that ensures women's access to their inheritance rights.
 - Regarding access to health, the PA should develop better health services in the rural areas, in particular reproductive health services.
 - In terms of access to education, the PA should continue to develop the curriculum (elementary and secondary) to be gender-sensitive.

2.8 Freedom of movement

- Respect freedom of movement and ensure that no Palestinians are refused a passport on security grounds.

2.9 Death penalty

- Formally abolish the death penalty by ensuring the passage into law of the new 2011 draft Penal Code;
- Refrain from applying the Penal Code of the PLO; and
- Review all legislation relative to death sentences, notably the Jordanian Penal Code No. 16.



Addameer Prisoners' Support and Human Rights Association
Sahar Francis
General Director



Aldameer Association for Human Rights
Khalil Abu Shammala
General Director



Al-Haq
Shawan Jabarin
General Director



Al Mezan Center for Human Rights
Issam Younis
General Director



Badil Resource Center for Palestinian Residency and Refugee Rights
Najwa Darwish
General Director



Defence for Children International
Palestine Section
Rifat Kassis
General Director



Ensan Center for Human Rights and Democracy
Shawqi Issa
General Director



Hurryyat - Centre for Defense of Liberties and Civil Rights
Helmi Al-araj
General Director



Jerusalem Center for Legal Aid and Human Rights
Issam Aruri
General Director



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RESEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

Euro-Mediterranean Human Rights Network
Kamel Jendoubi
President



Ramallah Center for Human Rights Studies
Iyad Barghouti
General Director



Women's Centre for Legal Aid and Counselling
Maha Abu Dayyeh
General Director



Palestinian Centre for Human Rights
Raji Sourani
Director