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RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية – المتوسطية لحقوق الإنسان

NOTE ON THE HUMAN RIGHTS SITUATION IN ISRAEL AND THE OPT

In view of the EU-Israel Association Council

16 June 2008

The Euro-Mediterranean Human Rights Network and its members in Israel and the Occupied Palestinian Territory (OPT) wish to express their deep concern over the continuing deterioration of the human rights situation in Israel and the OPT. We therefore urge the EU to raise the following issues during its discussions with Israel at the annual meeting of the EU-Israel Association Council:

- I. Humanitarian crisis and siege on Gaza**
- II. Movement restrictions in the OPT**
- III. Institutional discrimination against the Arab minority in Israel**
- IV. Torture and ill treatment of Palestinian security detainees**
- V. Administrative detention**

I. HUMANITARIAN CRISIS AND SIEGE ON GAZA

The escalation of attacks on the Gaza Strip has served to further aggravate the dire situation there following several months of Israel's unlawful measures of collective punishment against civilians in the form of cuts in electricity and fuel supplies as well as humanitarian assistance. Gaza's population is now undergoing a humanitarian crisis unprecedented in the 41 years of Israeli occupation, with poverty and unemployment reaching disastrous levels, and essential health, sanitation and education services deteriorating in an alarming manner.

In response to Israel's decision to cut fuel and electricity supplies to the Gaza Strip, ten Israeli and Palestinian human rights organizations filed a petition on 28 October 2007 to the Israeli High Court of Justice (HCJ), calling for an injunction to prevent the cuts.¹ On 30 January 2008, the HCJ rejected the petition and declared, in poorly argued terms, an end to Israel's "effective control" of the Gaza Strip, and thus to Israel's occupation and its related obligations under international humanitarian law towards Gaza's civilian population. The HCJ decision goes against the almost unanimous position of the international legal and political communities. Indeed, as recently as 22 January 2008, at the 5824th meeting of the UN Security Council, Mr. Lynn Pascoe, UN Under-Secretary-General for Political Affairs, confirmed that the Gaza Strip is

¹ See: <http://www.adalah.org/eng/features/opt/petition%20-%20english.doc>.

still occupied by Israel: *“I must state firmly that the Israeli occupation — including with respect to Gaza — carries clear obligations under international law.”*

On 13 May 2008, ten Israeli and Palestinian NGOs submitted a further petition to the HCJ. The organizations argued that the state had acted illegally by not allowing fuel supplies into Gaza even in the insufficient amount it had committed to do before the HCJ in response to the previous petition since 9 April 2008, and that the humanitarian situation in Gaza had therefore deteriorated. On 5 June 2008, the HCJ rejected the petition on security grounds, contrary to the protections provided by international law, which, while recognizing the right of every state to ensure its security, imposes specific restrictions on the manner in which states exercise this right for the purpose of protecting civilians under occupation or under armed conflict. In particular, the collective punishment of civilians is prohibited, as is the destruction of objects indispensable to the survival of the civilian population.

The EMHRN also wants to highlight its concern over the limited access to medical care to individuals including children who have been injured or killed in the Gaza Strip. The Israeli military (IDF) killed 134 Palestinians (including 30 children and two women) in Gaza between 3 March and June 2008. IDF attacks caused injury to at least 444 people (including 74 children and 19 women) in Gaza. Many civilians in need of healthcare unavailable in Gaza are denied access to hospitals outside by the IDF. At least 30 Palestinians in Gaza have died because of the IDF’s refusal to grant them permits to leave the Strip. Dozens of others have died for reasons directly related to the blockade. On 7 May 2008, the IDF used explosives to destroy the entrance of the house of Majdi Al-Daghma in the Abasan Al-Jadida village, located east of the town of Khan Younis. The explosion killed 33-year-old Wafa Al-Daghma in front of her three children. Wafa was standing behind the door to her house when soldiers detonated explosives and blew up the door. She died from shrapnel wounds to her face and other parts of the body².

Between 3 March and June 2008, the IDF destroyed 106 homes (22 completely demolished) in the Gaza Strip, forcing dozens of families to relocate temporarily or permanently. The IDF expanded the security buffer zone along its border with the Gaza Strip to as deep as 1 kilometer. Farmers and their families have left their homes inside or beside this buffer zone and do not have access to their land located inside this zone. The IDF destroyed over 909 dunams of cultivated land inside Gaza (1 dunam equals 100 square meters) during this period, affecting hundreds of people. In addition, the IDF conducted 43 incursions inside the Gaza Strip. During these incursions, the IDF employed excessive, disproportionate force that claimed the lives of civilians and led to further destruction of civilian property. During these incursions, the IDF arrested at least 274 Palestinians, most of whom were subjected to degrading treatment during detention. Many were then tortured during their interrogations by the Israeli security services.

Intensifying the siege on Gaza is the total ban placed on family visits to the approximately 900-1,000 Palestinian political prisoners from Gaza currently being held in Israeli prisons. The ban was imposed by the Israeli authorities two years ago in June 2006 following the capture of Israeli soldier Gilad Shalit. On 26 May 2008, the ICRC called in a news release for the immediate resumption of the family visits, stating that, “This measure is depriving both detainees and their relatives of an essential life line... People continue to come to our office every day to sign up for

² See: http://www.mezan.org/site_en/press_room/press_detail.php?id=840.

family visits in the hope that the suspension will be lifted... The lack of direct contact with their detained relatives is becoming unbearable.” On 28 May 2008, Adalah – The Legal Center for Arab Minority Rights in Israel submitted a pre-petition to the State Attorney demanding his immediate intervention to enable the families of political prisoners from Gaza to visit their relatives incarcerated in Israel.

Moreover the EMHRN condemns the Palestinian mortar fire on Kibbutz Nir Oz in the south of Israel that occurred on 4 May 2008 and which killed an Israeli civilian and wounded four others.³ Over the past seven years, Palestinian attacks in Israel and the OPT have killed hundreds and injured thousands of Israeli civilians, men, women, and children. We consider that the intentional killing of civilians is a grave breach of international humanitarian law and a war crime that cannot be justified in any circumstances.

The EMHRN calls on the EU to cooperate in order to bring to an end the serious violations of International Humanitarian Law (IHL) that have led to the deterioration of the situation in Gaza to the level of a humanitarian crisis, to uphold its duty not to contribute to the perpetuation of the current situation and to demand the immediate cessation of Israel’s unlawful acts.

The EMHRN calls on the EU to bring immediate diplomatic pressure to bear on the government of Israel, and in particular the Ministry of Justice, to explicitly clarify how the current policy adopted in relation to the civilian population of the Gaza Strip does not constitute a violation of Israel’s obligations under IHL.

II. MOVEMENT RESTRICTIONS IN THE OPT

The Israeli government recently announced that since the end of March 2008, the army had removed 70 physical obstructions – dirt piles, boulders, and blocks – it had placed inside the West Bank. The obstructions were purportedly removed following Israel’s commitment, made in March to US Secretary of State Condoleezza Rice, to reduce restrictions on Palestinian movement in the West Bank. However, investigations conducted by B’Tselem and other human rights organizations indicate that the government’s declaration was no more than sleight of hand.

Most of the physical obstructions mentioned by Israel had, in fact, been breached by local Palestinians or had been removed by the army itself before Israel made its commitment to Secretary Rice. An appreciable number of the obstructions have been placed in the northern West Bank, primarily in the area of Tulkarem, Qalqiliya, and Jenin, immediately after the attack in Dimona, on 4 February 2008, and were removed in the following weeks. Other physical obstructions on the list, many of which had been placed at the entrance to dirt roads leading to private farmland, had little effect on the fabric of life of the general population. However, obstructions placed on vital roads, affecting the entire Palestinian population in the West Bank, were not on the list. Furthermore, at a number of places in the northern West Bank, obstructions that had previously been removed by the residents were moved back into place by army bulldozers. The army then took pictures of these obstructions before removing them the same day or the following day.

³ For further information see: http://www.btselem.org/english/Israeli_Civilians/20080605.asp

Israel further claims to have removed four significant checkpoints in the West Bank, following an agreement reached with the office of the Quartet and its representative, Mr. Tony Blair. However, one of the checkpoints that Israel claimed has been removed – ‘Asira el-Shamaliya, north of Nablus, remains closed at night time. During the day the checkpoint, which was closed in the last year, is indeed open, but soldiers are still present at the location. The status of the Beit-Ha’Arava checkpoint, north of the Dead Sea, has not changed. This checkpoint is still operating on weekends, prohibiting Palestinians from reaching the northern Dead Sea, in order to allow Israelis to use the Dead Sea resorts in the West Bank without any Palestinians being around.

The Rimonim Checkpoint has indeed been removed, as declared by the Israeli authorities. However, the significance of this checkpoint was low, as it had almost no effect on Palestinians’ ability to travel around. Another checkpoint that was, reportedly, removed was the Sheep checkpoint. However, this was not an actual checkpoint but an earth mound that had already been removed. Furthermore, since its removal, the army has placed a flying checkpoint at the junction where it was located.

The EMHRN would further like to stress its concern over the latest HCJ hearing regarding road 443. On 5 March 2008, the HCJ held its first hearing on a petition filed by the Association for Civil Rights in Israel on behalf of six local villages. On the same day the Court issued an interim decision according to which the State must update the Court, within six months, about the development of the bypass roads and the solutions they provide to the local Palestinian community, as well as details of an agreement that the State would offer the Palestinian residents to meet their practical needs in terms of freedom of movement. This decision not only ignores the basic question of the legality of the prohibitions and the decisions taken by the military commander in the area, but also perpetuates the current illegal situation and provides de facto legitimization of it. If the HCJ rejects the petition, its decision would raise serious questions regarding Israel’s adherence to the fundamental principles of international law, and could further facilitate Israeli exploitation of Palestinian land and resources in the OPT for purely economic (rather than security) reasons.

Israel must ensure freedom of movement for Palestinians in the OPT and that their access to health, education, work and adequate standards of living is maintained, as required by international law. We urge the EU to exert pressure on the Israeli authorities to put an end to restrictions on the freedom of movement of Palestinians in the OPT, in accordance with international human rights law and IHL.

III. INSTITUTIONAL DISCRIMINATION AGAINST THE ARAB MINORITY IN ISRAEL

1. Displacement and dispossession of land

a. “Selection committees” monitor applications for housing units in almost 100 agricultural and community towns across Israel, which account for 68.5% of all towns in Israel and around 85% of the total number of villages. Israel Land Administration (ILA) Decision 1015 of 1 August 2004 directs selection committees to apply a number of criteria in deciding whether to support a candidate’s request to live in these towns. The ILA decision’s criteria raise serious suspicions, de facto supported by the practice of selection committees, that the residency applications of Arab

applicants will be rejected, as well as, for example, those of Mizrahi Jews (Eastern Jews), single parents and gay people. These criteria include: (i) that the candidate, “is suited to social life in a small community or agricultural settlement”, and (ii) that the committees should include “a senior official from the settlement agency (The Jewish Agency or The World Zionist Organization)”.

An example of the selection committees’ use of the vague and arbitrary criterion of “social suitability” to exclude Arab citizens from large areas of state-controlled land is provided by the case of Ms. Fatina Ebriq Zubeidat and Mr. Ahmed Zubeidat. They are a young Arab married couple who both graduated from the College of Architecture at the “Bezalel” Academy of Arts and Design in Jerusalem with distinction. Fatina then began a master’s degree in architecture and urban planning at the prestigious Technion Institute of Technology in Haifa, having been awarded a scholarship. After marrying in the summer of 2006, the couple filed an application to live in the community town of Rakefet in the north of Israel. They were seeking a small, uncrowded town with a high level of services where they would be able to build a house as they wished and raise children in the future. The couple was interviewed in March 2006 in accordance with Decision 1015 by a panel that included a representative of the Jewish Agency. The selection committee rejected their application following the interview on the ground that they were “socially unsuitable”. Adalah has appealed the case to the Supreme Court.⁴

b. Around 75,000 Palestinian Bedouin citizens of Israel live in the “unrecognized villages” in the Naqab (Negev) in southern Israel. Israel aims to minimize the already limited amount of land held by Arab Bedouin: while Arab Bedouin make up around 14% of the population of the Naqab, only 0.8% of the land falls within the jurisdiction of seven government-planned towns in the area in which the state wishes to concentrate the Bedouin. Denied official status, the unrecognized villages are excluded from state planning, have no local governing bodies, and receive little-to-no basic services, including electricity, water, telephone lines, or education and health facilities. Israel views their inhabitants as “trespassers on state land,” although many were living on these ancestral lands prior to 1948, and seeks their direct, collective re-location. As Prime Minister Ehud Olmert noted in February 2004: “[The state] will evacuate the unrecognized Bedouin villages in the Naqab in order to settle hundreds of thousands of Jewish people there.” One of the major tools used by the state to evacuate the unrecognized villages is filing evacuation orders against entire villages and *ex parte* home demolition order requests to the courts, which are perfunctorily approved. Israel provides no compensation or accommodation to families following a home demolition. Adalah represents hundreds of Arab Bedouin citizens in the unrecognized villages in home demolition and evacuation lawsuits.

By adopting land allocation and land use policies which are based on demographic considerations and result in Jewish-only, segregated areas, Israel is failing to comply with the principles of nondiscrimination on the basis of race, religion and national origin. The EU should urge Israel to take action to ensure that state-controlled land is allocated to Palestinian and Jewish citizens of the state in accordance with the principle of equality.

The EMHRN also calls upon the EU to urge Israel to cease its policy of land dispossession, home demolition and displacement of Palestinian Arab Bedouin citizens of Israel living in the unrecognized villages in the Naqab (Negev), to recognize these villages and prepare

⁴ For more information, see: http://www.adalah.org/eng/pressreleases/pr.php?file=07_09_23

plans for their development, and to ensure that there are reasonable sources of livelihood for their inhabitants.

2. Housing rights

497 Palestinian families living in the Ajami neighborhood in Jaffa-Tel Aviv are currently being threatened with eviction from their homes. These homes are owned by the state and are rented to Palestinian families. It is estimated that if the eviction orders are executed, some 3,000 people will find themselves homeless – approximately 18 percent of the total Palestinian population in Jaffa, or 16,300 people. 33 families have been evicted since August 2002. The grounds for these eviction orders were based on claims of “building additions” made to properties undertaken by the Palestinian tenants of these properties without receiving approval from the state and without obtaining a permit from the planning and building authorities.

The Palestinian residents of the Ajami neighborhood have suffered from a severe housing shortage for decades. The Palestinian residents live in old and neglected homes consisting of one or two rooms at best. Over time, natural population growth generated the need to find a solution for the accommodation of the growing number of families and their members. The Municipality of Tel Aviv–Jaffa failed to provide appropriate housing solutions for Palestinians in the neighborhood and did not build additional housing units for them. At the same time it refused point blank to issue building permits for tenants over a period of several decades. The Palestinian tenants were therefore obliged to extend their homes by building an extra room here and there, without obtaining proper permits from the planning and building authorities (the municipality). In some cases, given the age of most of the properties, the Palestinian tenants had to repaired roofs and walls that had collapsed or were on the verge of collapse.

Accordingly, the result of years of institutionalized and structural discrimination against the Palestinian population by the municipality was that most of the families were branded “construction offenders.” However, the state’s claims that Palestinian tenants have committed legal violations ignore the fact that the authorities themselves placed the residents in a position in which they were forced to commit planning offences. By neglecting the residents and failing to provide proper solutions to the grave housing crisis they face, the authorities left the residents with no choice but to “break” the law, in the absence of any other alternative⁵.

By issuing such eviction orders, the state of Israel is failing to comply with its international obligations to provide adequate housing for all of its citizens, without discrimination on the basis of race, religion and national origin. The EU should urge Israel to cancel the eviction orders and to take action to ensure that the Palestinian residents of Jaffa are provided with adequate housing in accordance with the principle of equality.

⁵ For further information, please visit:

<http://www.arabhra.org/HRA/SecondaryArticles/SecondaryArticlePage.aspx?SecondaryArticle=1670&Language=2>

3. The Attorney General's decision to officially close the case against police commanders and officers in the October 2000

In November 2000, Israel established the official Or Commission of Inquiry to investigate the circumstances of the killing of 13 unarmed Arab citizens by the security forces and injury of hundreds of others during protest demonstrations in October 2000. The Commission recommended that the Police Investigations Unit (Mahash) investigate the killings. It found the security forces' opening of fire unjustified and deemed the use of live ammunition and snipers unjustified in every instance, and found police commanders responsible for the use of excessive force. In September 2005, Mahash released a report on the investigation in which it recommended no indictments against police officers and commanders. Shortly afterwards, and as a result of public pressure, the Attorney General decided to conduct a review of the decision. In January 2008 he endorsed Mahash's report and announced the final closure of the case against police over the deaths and injuries, with no indictments filed against those responsible for the deaths and injuries of Arab citizens.⁶ The UN Special Rapporteur on Extra-Judicial Executions, Prof. Philip Alston, wrote in his report of 2 May 2008 on the issue of no indictments. Referring to his previous communication to Israel, he stated that this "outcome - and particularly the way in which the interplay of the commission inquiry and Police Investigations Department investigation have produced it - would appear to fall short of the international standards."

The families of the victims, as well as the entire Israeli public, should be entitled to an impartial, thorough investigation. Israel must hold those responsible for these killings and injuries to account for their actions and bring them to justice. The state's official announcement that no criminal measures will be taken against the police commanders and officers responsible for the killing and injury of Arab citizens, thereby granting them impunity, makes the involvement of the EU crucial.

4. Citizenship and Entry into Israel law

The Citizenship and Entry into Israel Law (Temporary Order) (2003), denies Palestinian citizens of Israel the right to acquire residency or citizenship status in Israel for their Palestinian spouses from the OPT solely on the basis of their nationality, thereby preventing them from living as a family in Israel. As a result, thousands of families have been forced to separate, live outside Israel or live illegally in Israel under constant risk of arrest and deportation. Israel used security concerns – sweepingly applied to *all Palestinians* – to justify the law's constitutionality. In March 2007, the Knesset expanded the law to exclude spouses from "enemy states", defined in the new law as Syria, Lebanon, Iraq and Iran, and extended the ban to "anyone living in an area in which operations that constitute a threat to the State of Israel are being carried out," according to the security services. The newly-amended law, which has no parallel in any democratic nation, is valid until 31 July 2008.

On 12 March 2008, Ms. Gay McDougall, the UN Independent Expert on Minority Issues, stated that, "the effect of this discriminatory law is that thousands of Palestinian families must separate, emigrate or live illegally in Israel under constant risk of arrest and deportation" in her report to

⁶ In fact, the AG has filed indictments regarding the October 2000 events only against Arab citizens, including relatives of the deceased. For more information, please see: <http://www.adalah.org/eng/october2000.php>

the 7th session of the Human Rights Council. She further added that, “While States have a prerogative to establish laws governing the acquisition, renunciation or loss of nationality, they must do so within the framework of international human rights law ... Fundamental fairness, including the right to appeal, must be guaranteed in all immigration and citizenship procedures”. An expanded panel of seven Supreme Court justices held a hearing on petitions challenging the law on 5 May 2008. On 6 May 2008, the court issued an order nisi (order to show cause) obliging the state to show cause as to why the court should not strike down the law, within 60 days.⁷

The EMHRN urges the EU to call upon Israel to revoke the ban on family unification. The EU should reiterate its concerns regarding the discriminatory nature of the law and urge Israel to cancel it.

IV. TORTURE/ILL TREATMENT OF PALESTINIAN SECURITY DETAINEES

1. Impunity: Failure to initiate criminal investigations into complaints of torture and ill-treatment; failure to establish an impartial and independent body to investigate these complaints; and failure to bring perpetrators to justice

Torture and ill treatment are facilitated by Israel’s ongoing and systematic failure to adequately investigate complaints of torture or ill-treatment and its corresponding failure to bring to justice perpetrators of torture and ill-treatment. Perpetrators include the soldiers and interrogators directly involved in such violations, as well as their commanders and physicians who fail to adequately document and report injuries incurred by detainees at the time of arrest or while under interrogation, and who allow such individuals to return to the ongoing violent situation. Since 2001, the Israeli State Attorney’s Office has received over five hundred complaints of torture or ill-treatment by interrogators of the Israel Security Authority (ISA, formerly known as the General Security Service, GSS). The State Attorney’s decisions are based on the findings of an examination conducted by a specially assigned inspector who is an active ISA agent, answerable to the head of the ISA. He is neither independent nor impartial and his findings are kept secret. This mechanism creates the appearance of a complaints investigation process while actually providing total immunity from criminal liability, a situation that contributes to upholding the existing system of impunity and makes torture inevitable⁸.

We urge the EU to bring pressure to bear on Israel to ensure that the practice of torture and ill-treatment is stopped immediately, to investigate allegations effectively and punish the perpetrators in order to put an end to the prevailing culture of impunity.

2. Violence during arrest and detention

⁷ For more information, please see: <http://www.adalah.org/eng/famunif.php>

⁸ See PCATI Publications: “Ticking Bombs” and “Family matters” (available at: <http://www.stoptorture.org.il/en/publications>), both describe the ongoing use of torture and ill-treatment by Israel at interrogation, during detention and at the time of arrest. PCATI will be publishing a report on the abuse of detainees by soldiers at the time of arrest.

The arrest of Palestinians from the OPT by the Israeli army and other security forces is all too often accompanied by the use of excessive force, to the extent that it can be classified at times as ill-treatment and even torture. Of course, this phenomenon should be seen in the context of the political, legal and ethical issues concerning the Occupation and Israel's practical control over all aspects of the life of Palestinian civilians.

PCATI's forthcoming report on violence during the arrest of Palestinians focuses on the violence that takes place from the time the detainee is subdued and placed in custody, no longer posing a threat to the arresting forces, until he is brought to a permanent detention facility or released. From this point in time it is absolutely prohibited to harm the detainee in any way. The soldiers are obliged to protect the physical wellbeing and dignity of the detainee. Hundreds of testimonies received by PCATI, however, reveal that the situation on the ground is quite the opposite and that Palestinians who are arrested, manacled and blindfolded are routinely exposed to physical violence and degradation by soldiers. This phenomenon takes place immediately after arrest, during transportation to temporary detention facilities (often in military bases), and in the bases themselves, before transportation to a permanent detention facility.

The phenomenon of violence during arrest is, with a few exceptions, routinely ignored and denied by the IDF and the authorities responsible for it, including the Ministry of Defense, the Knesset and in particular the Foreign Affairs and Security Committee, and the State Comptroller. PCATI's forthcoming report includes a detailed description of the phenomenon of violence during arrest and makes recommendations to all the responsible bodies for its elimination.

V. ADMINISTRATIVE DETENTION

On 28 February 2008, 788 Palestinians were being held in administrative detention in Israel, including three minors and two women. In 2007, the number of administrative detainees averaged around 830 per month, approximately 100 more than the average of the previous year.

First and foremost, administrative detention must be future-oriented, i.e., must aim to prevent a prospective serious threat to security, and is permissible only if lesser measures have been found ineffective, according to international humanitarian law. It is absolutely forbidden to use administrative detention to punish a person for offenses that he or she has ostensibly committed. In hundreds of cases annually, however, the Israeli authorities exploit administrative detention as a rapid and efficient alternative to a criminal proceeding, especially when they do not have adequate admissible evidence to convict the individual, or when they want to conceal the evidence in their possession. Secondly, administrative detention must be subject to judicial review that meets minimal standards of a fair trial. However, in a majority of cases in Israel, the notice given to the detainee is extremely brief, and does not include even the most basic details (period of activity, nature of involvement, etc.) that the detainee might refute. In addition, the authorities generally declare the information provided to the judges confidential, and the judges routinely deny the defense counsel's request for access to the material. Under these circumstances, the detainee's right to mount a defense against the administrative-detention order is an empty formality. The harm caused to the rights to liberty and a fair trial are indicated by the scope of judicial intervention in the decisions of the military commander: in 2006, of 2,934 administrative detention orders (including extensions of existing orders), only 156 (some five percent) were found unjustified and nullified by the military court.

The EMHRN urges the EU to call upon the Israel authorities to provide information on the administrative detainees, for instance on the period of detention of each detainee, and to put an end to arbitrary detentions, respect the right to a fair trial, and provide guarantees that detention conditions comply with international instruments for the protection of basic human rights.