



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان

2 September 2011

EMHRN NOTE

In view of the EU-Israel Human Rights Working Group meeting Tel Aviv, 13 September 2011

In view of the EU-Israel HR WG meeting on 13 September 2011, the EMHRN would like to draw your attention on several human rights violations committed inside Israel. The EMHRN calls on the EU to address these violations at its upcoming meeting with the Israeli authorities, and ensure prompt action on behalf of the Israeli government to respect its obligations under international law.

I. Threats to Human Rights Defenders (HRDs): freedom of association, expression and assembly

In February and July 2011, two new laws have entered into force (the foreign funding law and the anti-boycott law) which seriously curtail the freedom of expression and association of Israeli HR NGOs as well as a broad spectrum of peace and social change groups that operate in Israel and the Occupied Palestinian Territory (OPT).

For more information on the anti-boycott bill, see EMHRN [statement](#).

In addition, four other bills have been tabled in the Knesset targeting NGOs' human rights activities:

1. Bill to close down or deny registration to NGOs involved in prosecution of Israeli officials overseas (the Universal Jurisdiction Bill). Details at p.16 of this [document](#).
2. Bill to close down or deny registration to NGOs questioning the definition of Israel as a Jewish and democratic state. Details at p.16 of this [document](#).
3. Proposal to limit foreign public funding to 'political' NGOs to NIS 20,000 per year (MK Akunis, Likud). [Current version](#).
4. Proposal to impose full tax on NGOs receiving foreign public funding if they are not also receiving Israeli public funding (MK Kirshenbaum, Israel Beitenu). [Current version](#).

Moreover, in recent years and especially since the Israeli military offensive on the Gaza Strip in 2008-2009, the Israeli law enforcement authorities and police have increasingly restricted the right to freedom of assembly. Among others, the police regularly ban, prevent or violently disperse legal demonstrations in East Jerusalem and in the Negev. *See attached a Briefing from Adalah, the Public Committee Against Torture and Physicians for HR - Israel for more information.*

The EMHRN calls on the EU to urge Israel to:

- Revoke the above-mentioned laws and refrain from any further legislation and practice which would effectively curtail the freedoms of association and expression in Israel.

- Use all means at its disposal to defend and protect the freedom of association, expression and assembly of human rights defenders and organisations in Israel in accordance with the UN declaration on HRDs.

The EMHRN also urges the EU to raise the **individual case of Israeli human rights defender and journalist Uri Blau** at their upcoming meeting with Israel. *See ANNEX I for more information.*

II. The Palestinian Arab Minority in Israel

The absence of an explicit guarantee of the right to equality and non-discrimination in its Basic laws or ordinary statutes leaves the Palestinian Arab Minority in Israel vulnerable to discrimination. The current constitutional situation has allowed the State of Israel to enact laws that discriminate against the Palestinian Arab Minority. We count today more than 30 main laws that discriminate directly or indirectly toward the minority. The current Knesset has continued to introduce and enact a flood of discriminatory legislation on a nearly – weekly basis during 2010 and 2011. Three new laws were enacted in 2011 including the Nakba Law and the Admissions Committees Law (see briefing below for more information on these laws).

The EMHRN calls on the EU to urge Israel to comply with the [Concluding observations of the UN Committee on HR](#) (2010) and the [UN Committee on the Elimination of Discrimination against Women](#) (2011) related to the Palestinian Arab Minority.

In particular, Israel should include the principle of non-discrimination and equality in its Basic Laws and other legislation; amend laws which discriminate against the Palestinian Arab minority in Israel and ensure that these laws respect International Human Rights law; refraining from introducing any further legislation that directly or indirectly discriminates against the Arab Minority; ensure that allegations of discrimination brought before its domestic courts are promptly addressed and implemented; revoke the Citizenship and Entry into Israel Law; protect the rights of religious minorities and Arabic language rights; respect the Bedouin population's right to their ancestral land and their traditional livelihood based on agriculture and guarantee their access to health structures, education, water and electricity and take effective measure to eliminate discrimination against Arab Bedouin women.

For more details please see Adalah's [briefing](#) in view of the EU-Israel HR working group meeting, 20 August 2011.

For a list of New discriminatory Laws and Bills see Adalah, [New Discriminatory Laws and Bills](#) June 2011.

III. Torture and other cruel, inhuman and degrading treatments (CIDT)

The vast majority of Palestinians from the OPT arrested by Israel (including children) are detained inside Israel, in clear violation of International Humanitarian Law. Both the UN Committee against Torture ([CAT](#)) and the UN Committee on HR (HRC) in 2009 and 2010 respectively, have expressed concerns regarding Israeli practices that may constitute torture and/or CIDT. In the absence of a law prohibiting torture and independent investigations of claims of torture and CIDT, perpetrators enjoy total impunity.

The EMHRN calls on the EU to urge Israel to comply with the CAT and HRC observations. Among others, Israel should enact a clear and specific crime of torture into domestic laws; remove the “necessity defence” as a possible justification for the crime of torture; ensure

independent investigations into complaints against Israeli security agencies; ensure access to courts for remedies; ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer, an independent doctor and family member; extend the legal requirement of video recording of interviews of detainees accused of security offenses; ensure that measures designed to counter acts of terrorism are in full conformity with International Human Rights law; reinstate the family visit program supported by the International Committee of the Red Cross for prisoners from the Gaza Strip; ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards.

For more information, see a [Briefing of Adalah, Physicians for HR Israel and Al-Mezan Center for HR in view of the EU-Israel HR working group meeting](#), 31 August 2011.

See also the Public Committee Against Torture report on impunity: [Accountability denied: The absence of investigation and punishment of Torture in Israel](#).

For the specific case of Palestinian children detained in Israeli prisons, see B'Tselem, [No Minor Matter Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone-Throwing](#), July 2011.

The EMHRN also urges the EU to raise the following individual case: Mr. Samer Allawi, a Palestinian national and Afghanistan Bureau Chief for the international media network Al-Jazeera, was arrested on 9 August 2011, and has been held and interrogated by Israeli authorities ever since. HR organisations fear for M. Allawi's medical condition (as he suffers from a pre-existing chronic health disease) and are concerned for the conditions and methods of his interrogation and incarceration. The organisations demand that an independent doctor be allowed to visit M. Allawi immediately. *See Annex II for more information.*

IV. Refugees

There are an estimated 33,000 asylum seekers in Israel, mainly from Sudan and Eritrea, with hundreds more arriving each year, seeking refuge from genocide, forced conscription, religious persecution, torture, and systematic rape.

The EMHRN calls on the EU to urge Israel to develop and adopt, in partnership with Israeli and international civil society, a comprehensive asylum policy and related legislation, as well as procedures to domesticate Israel's obligations under the 1951 Convention; Eliminate practices, from law and from practice, that contravene Israel's obligations under the 1951 Convention, including Hot Return and an exceedingly restrictive application of the refugee definition such that the recognition of refugee status becomes extremely rare; not to adopt the Anti-Infiltration Bill, primarily because of the threat it poses to the peremptory international legal norm of *non-refoulement*.

For further information, please find a Briefing prepared by Physicians for HR in Annex III.

For additional background information on Israel's asylum policy see EMHRN, [Israel's Anti-Infiltration Bill: Another Aspect of Asylum Adhocracy](#), June 2010.

V. Follow-up to the UN Fact Finding Mission report (Goldstone report)

More than two years and a half after the end of the Israeli offensive on the Gaza Strip (27 December 2008 - 18 January 2009), Israeli and Palestinian human rights organisations declare that both the Israeli government and the Palestinians have failed to conduct investigations that

are credible, independent and in conformity with international standards, as requested by the UN General Assembly. In September 2010 and March 2011, the reports of the UN Independent Expert Committee mandated by the UN Human Rights Council to assess the Israeli and Palestinian investigations also reported several shortcomings in Israeli investigations.

The EMHRN calls on the EU to urge Israel to fully comply with its obligations to conduct independent and credible investigations in line with international standards into the alleged violations of international law committed during Operation Cast Lead. The EU should remind Israel that failing to do so would mean facing further actions by the international community, including the recourse to international criminal justice mechanisms.

*For further information see, PCHR, [Genuinely Unwilling: An Update](#), August 2010.
B'Tselem, [Void of responsibility](#), October 2010.*

ANNEX I:



Human Rights Defenders / Freedom of the Press in Israel: The case of Haaretz journalist Uri Blau

Below is a request for intervention of the EU and its representatives with regard to Israeli human rights defender and journalist Uri Blau.

The Israeli State Prosecutor's Office is due to issue its decision within the next weeks on whether Haaretz reporter Uri Blau will face charges related to his publication of classified information in 2008.

Blau's case is related to that of ex-IDF soldier Anat Kamm, who leaked military documents regarding advance authorisation of alleged criminal acts by the Israeli army to Uri Blau in his capacity as a reporter for Israeli daily Haaretz.

In 2008 Haaretz published an article by Blau based on Kamm's materials, which dealt with the approval of targeted assassinations of Palestinians in a manner breaching the guidance issued on the matter by the Israeli High Court of Justice.

Despite the fact that the article was passed onto and approved in advance for publication by the military censor, the Israeli secret police (*shabak*) launched a covert investigation and intimidation campaign aimed at exposing and punishing Kamm and Blau.

In 2010 Kamm was identified and questioned by the *shabak* and then secretly arrested. A sweeping gag order was issued to the local press on all aspects of the case. The fact and circumstances of her arrest were only exposed four months later by foreign press, after which the story broke in Israel. ----

Kamm was eventually convicted under the crime of 'espionage' and awaits her sentence.

Following pressure exerted on him by the *shabak* regarding documents he had received, Blau moved to London and remained there until October 2010, after which Haaretz's lawyer reached an understanding with the *shabak* to enable his return to Israel. However, following his return, the State Prosecutor's office declared its intention of pressing charges against him. In May 2011 a court hearing was held in this regard, and the State Prosecutor and Attorney General must now make a final decision on the matter.

The allegations in the article regarding the conduct of the army were never investigated.

Related legislation:

In a related development, an amendment to the Israeli Penal Law ('Amendment: prohibition on use and disclosure of secret information, 2011'), has recently been brought to the Knesset and passed a preliminary vote in March.

The amendment aims to prohibit disclosure of classified security-related information via definition of a felony that is separate from that of 'espionage,' which is the only felony currently relevant to such acts.

The proposed amendment distinguishes between passing on secret information 'with intention to harm state security' (to be punished with a 15-year prison term), and 'passing on secret information with no intent of harming state security' (to be punished with a 10-year prison term). The amendment preserves the current Penal Law section (section 113 c) according to which a seven-year prison term shall be imposed on Israelis who hold, prepare or use classified security-related information that they receive but are not authorized to see.

Until now, this section has never been used against journalists, since publication of secret or leaked documents by the press was never interpreted as belonging to the sphere of 'espionage'. The new amendment, in its new wording, could remove this threshold and introduce the possibility of actual sanctions against journalists who publish sensitive information. Journalists, who depend on the use of materials they are not officially authorized to see for their daily work, may be deterred from publishing such materials for fear of arrest and imprisonment.

The proposed amendment is still in committee work at the Knesset, and it would seem that Blau, if charged, will be indicted under the existing Penal Law (under 'espionage'), rather than under the new amendment (under 'possession of secret information by an unauthorized individual [without intent to undermine state security]'). In either case, he could face a maximum sentence of seven years imprisonment.

Blau's indictment, trial and sentence, if they occur, will be followed anxiously by all other Israeli journalists and will have a serious impact on freedom of the press in Israel. These developments threaten not only Blau himself but may have a 'chilling effect' on others, deterring HRDs and journalists in Israel from doing their work, and threatening freedom of expression and the press in general.

Recommendations to the EU:

- Immediate term: EU representatives should approach Israeli authorities and express concern over these developments both with regard to Mr. Blau himself and more generally, asking for a response in writing.
- Longer term:
 - If there is a decision to indict Blau, the HR Ashton and the EU on behalf of MS, as well as individual MS should issue a strong condemnation, stressing the importance of freedom of the press, of investigative journalism and of protection of journalists who expose human rights violations.
 - In case of a trial, EU representatives should attend it and report back to Brussels and capitals.
- [The original article as published by Uri Blau in Haaretz in 2008.](#)
- [Haaretz report on Kamm's case.](#)
- [Comment by Uri Blau in Haaretz on his situation.](#)
- [Haaretz editorial in defense of Blau.](#)
- [Further analysis.](#)

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ANNEX II:

רופאים לזכויות אדם - ישראל (ע"ר)
أطباء لحقوق الإنسان - إسرائيل
Physicians For Human Rights - Israel



1 September 2011

The Case of Samer Allawi, a Palestinian detainee held in an Israel Security Agency (ISA, *shabak*) Interrogation Center

Health concerns and arbitrary prevention of an independent medical examination

Mr. Samer Allawi, a Palestinian national and Afghanistan Bureau Chief for the international media network Al-Jazeera, arrived in the Occupied West Bank on an annual visit to his parents. On 9 August, following a stay of approximately 20 days, he tried to leave the area for Jordan and was arrested at the Crossing by the Israeli security forces. He has been held and interrogated by Israeli authorities ever since.

He is currently detained at the Kishon Israel Prisons Service (IPS) detention facility in Haifa, and is under interrogation by the Israel Security Agency (also known as *shabak*, formerly known as the General Security Service). No charges have been filed against him to date .

Allawi's attorney Mr. Salim Wakeem has voiced concerns regarding the methods of his interrogation, particularly in regard to the fact that Allawi suffers from pre-existing chronic health conditions. (The nature of the health conditions cannot be publicly disclosed for reasons of medical confidentiality, but their details are retained by Israeli rights group Physicians for Human Rights-Israel.)

Mr. Allawi's attorney was denied access to documentation concerning his medical condition and treatment.

Court protocols from Allawi's hearing dated 22 August indicate that Mr. Allawi was not examined by a physician upon arrival in the detention facility, in contradiction of the regulations of the Israel Prisons Service (IPS), which provide that a detainee should be examined by a medic within 24 hours and by a physician within 48 hours of arriving in a detention facility.

In court protocols from a later hearing dated 28 August Mr. Allawi is documented as saying that since his arrest he has suffered pain that is not treated; that he wasn't examined by a physician since his arrest; that he has used only medications he had with him upon his arrest, and that the IPS has not supplied him with any further medication.

The later court protocols also suggest that the ISA has access to and has reviewed Allawi's medical documentation as part of his interrogation process, but is retaining them along with a series of classified documents that are not revealed to anyone but the court. In response to a query from the lawyer, asking whether Allawi's medical condition had been considered when deciding on detention and interrogation, the ISA interrogator answered in the affirmative, saying

that ". . . there are medical documents from the detention facility physician that refer to the subject of shackling and to the subject of the medical condition of the suspect and the documents were presented to the court".

This statement suggests that medical documents and personnel were used for the purpose of deciding the methods of interrogation in a non-transparent manner, and in contradiction of principles of medical ethics and medical confidentiality.

The answer provided by the ISA interrogator raises concerns that medical issues are reviewed and discussed within the detention system in a manner that mixes medical and security issues and may lead to the exploitation of health for security needs. In January 2011 PHR-Israel appealed to the Israeli Ministry of Health concerning transfer of confidential medical information from IPS doctors to ISA interrogators on forms specifically designed for this purpose. Following this appeal the ISA informed the Ministry of Health that this practice was stopped as it is a violation of the Israeli Patients' Rights Law and of medical ethics. However, in recent medical files of detainees, dated March 2011, PHR-Israel has found different forms designed for the same purpose and again containing confidential medical information. This increases the risk and suspicion of torture and/or cruel, inhuman or degrading treatment as defined by the UN Convention Against Torture, and of complicity of medical personnel in such practices.

The right to receive adequate medical treatment, to be detained in conditions that do not harm one's health and to be examined by an independent physician are enshrined in the IPS regulations, in Israel's Patients' Rights Law and in international standards for the protection of prisoners and detainees.

The fact that these rights are routinely and more easily compromised in the case of Palestinian prisoners interrogated by the ISA calls for special attention. In such circumstances and environment, torture tends to be more prevalent.

- On 25 and 29 August PHR-Israel sent urgent requests to the Chief Medical Officer of the IPS, Dr. Dini Tischler, requesting an immediate visit to Mr. Allawi by a volunteer physician from PHR-Israel, with no response to date.
- On 1 September, PHR-Israel, together with its partners to an EU-funded coalition against torture, Adalah – the Legal Center for Arab Minority Rights and **Al Mezan Centre for Human Rights in Gaza, are set to file a prisoners' appeal to the district court in Haifa on behalf of Mr. Allawi.** In the appeal the 3 organizations will demand that the IPS and the ISA allow a volunteer physician from PHR-Israel to immediately visit Mr. Allawi.

Physicians for Human Rights-Israel, Adalah and Al Mezan request that the case of the detention of Mr. Allawi be raised with the Israeli government in the upcoming EU-Israel informal human rights group meeting in Israel, with specific regard to his medical condition and concerns for the conditions and methods of his interrogation and incarceration, as well as the need for an independent doctor's visit.

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ANNEX III:

רופאים לזכויות אדם - ישראל (ע"ר)
أطباء لحقوق الإنسان - إسرائيل
Physicians For Human Rights - Israel



1 September 2011

Refugees and asylum seekers in Israel

There are an estimated 33,000 asylum seekers in Israel, mainly from Sudan and Eritrea, with hundreds more arriving each year, seeking refuge from genocide, forced conscription, religious persecution, torture, and systematic rape. The main route of arrival is through the Sinai desert and the Egypt-Israel border. Within Israel, asylum seekers are in most cases not recognized as convention refugees. Despite ratifying the UN Convention for the Rights of Refugees in 1954, The State of Israel still does not currently employ a refugee status determination process (RSD). At best, Sudanese and Eritrean asylum seekers may receive humanitarian leave to stay which must be renewed periodically. Coupled with misguided and often inciting messaging by Israeli leaders, refugees and asylum seekers are subjected to intensifying campaigns of violence, expulsion, harassment and discrimination.

1. Legislation

Anti-infiltration bill. The bill passed its first reading in the Knesset plenary on 30 March 2011, in a new version, after a previous version was withdrawn in 2010 following public criticism. Unlike the previous bill, which used security considerations, this time the bill states clearly its real aims: the deterrence of asylum seekers from entering Israel by imposing prolonged detention periods, longer than those possible under Israel's current immigration laws. According to the bill, asylum seekers and their children who enter Israel will be eligible for detention for three years (as opposed to 60 days under regular immigration law). Their detention will only be reviewed after 14 days. If the country of origin can be defined as endangering state security (e.g Darfur in Sudan), release from detention will be impossible, even in the presence of humanitarian needs. This provision is sweeping and not connected to the individual identity of the asylum seeker. If passed, the law will enable criminal trials of any illegal entrant into Israel ('infiltrator') and prison sentences of up to 5 years.

NGOs/civil society aspect: Anyone providing aid or assistance to entrants would also be also liable for 5 years prison.

2. Non-refoulement: Torture and trafficking in the Sinai Desert

In recent months a deeply troubling pattern has emerged on the routes of escape from Eritrea to Israel, as revealed in the course of interviews of survivors after their arrival in Israel. Thousands of refugees, mainly from Eritrea, are held captive by smugglers at torture camps in the El-Arish area (North Sinai desert, Egypt) while en route to Israel. Smugglers demand ransoms of thousands of dollars for the release of each captive. Methods used to apply pressure on the captives' relatives to pay up include systematic violence and torture of the hostages. Smugglers telephone captives' relatives so they can hear the cries of pain over the phone. Survivors report the use of systematic violence, including punching, slapping, kicking, and whipping. Forms of torture include burial in the sand, electric shocks, hanging by the hands and legs, branding with hot metal, as well as systematic rape and sexual abuse. Further details: <http://www.phr.org.il/uploaded/Phr-israel-Sinai-Report-English-23.2.2011.pdf>

'Hot returns' and refoulement

Despite this evidence, Israeli authorities coordinate with Egyptian authorities to prevent entry of asylum seekers into Israel, as well as returning those who already crossed the border to the Egyptian side, in violation of the principle of non-refoulement. Before the revolution of 25 January 2011 in Egypt, the coordination was held at the highest governmental level. After Mubarak's administration was deposed, coordination has been at a low level of Israeli military (IDF) and Egyptian border guards on the border. Israeli soldiers have reported seeing returned refugees being abused, raped, shot and otherwise injured on the Egyptian side; in some cases reserve soldiers have refused to carry out orders for the return procedure. However, the IDF's regular conscripts continue to implement the policy. <http://www.haaretz.com/print-edition/news/idf-reserve-refuses-to-carry-out-return-of-african-refugees-to-egypt-1.357493>

A petition against the returns policy (or as they are called in Israel, 'hot returns') to the High Court of Justice by Israeli HR groups led to a claim by the State that they had stopped the practice. As a result the court did not make a clear decision against it. <http://www.acri.org.il/en/?p=2667>

Despite these claims by the state, Physicians for Human Rights-Israel's Open Clinic still receives dozens of new patients weekly, who are asylum seekers testifying to the continuation of the 'hot returns' practice.

3. Practice within Israel

- Asylum seekers are frequently detained upon arrival or later. A new detention facility is planned by the state, to hold up to 8,000 inmates and enable prolonged detention.
- Only those deemed to have a potentially 'strong claim' for leave to stay are given the right to work.
- Asylum seekers, even if given humanitarian leave to stay, are not eligible for social security or healthcare and are therefore dependent on charities and campaigning human rights groups.
- Asylum seekers have no access to torture rehabilitation services and Israeli authorities are not equipped to provide such services.

4. Torture rehabilitation: Identifying and assisting victims of torture:

Several cases were reported in which asylum seekers detained at *Saharonim* facility were pregnant as a result of rape by smugglers in the Sinai desert, and requested to have abortions, but their requests were not passed on to the relevant authorities. Time was a critical factor in most cases as women were in an advanced stage of pregnancy. The Israel Prisons Service (IPS) takes no steps to locate pregnancies and provide for medical care and/or pregnancy terminations for the women, nor for psychological rehabilitation of victims of rape.

As regards other serious cases of torture suffered by asylum seekers in their country of origin or on their way, there is a need for the Ministry of Health, the Ministry of Welfare and the Ministry of Internal Security to work together in order to establish an official authority that would be in charge of locating and identifying victims of torture and abuse. Such a process would require training of specific hired personnel, which currently do not exist. This creates a situation where asylum seekers who suffer from harsh injuries, physical and/or mental, are not diagnosed and/or treated for long periods of time.

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