



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



Arab Association for Human Rights
المؤسسة العربية لحقوق الإنسان
האגודה הערבית לזכויות האדם



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The Legal Center For Arab Minority Rights In Israel
המרכז המשפטי לזכויות המיעוט הערבי בישראל

THE EU AND THE PALESTINIAN ARAB MINORITY IN ISRAEL





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EURO - MEDITERRANEAN HUMAN RIGHTS NETWORK

Vestergade 16 - 1456 Copenhagen K - Denmark

Tel: + 45 32 64 17 00 - Fax: + 45 32 64 17 02

E-mail: info@euromedrights.net

Website: www.euromedrights.net

ADALAH - THE LEGAL CENTER FOR ARAB MINORITY RIGHTS IN ISRAEL

94 Yaffa Street, PO Box 8921, Haifa 31090, Israel

Tel: + 972 4 950 1610 - Fax: + 972 4 950 3140

E-mail: adalah@adalah.org

Website: www.adalah.org

ARAB ASSOCIATION FOR HUMAN RIGHTS

POBOX: 224 , Nazareth 16101

Tel:+972(04) 6561923 Fax:+ 972 (04) 6564934

Email: hra1@arabhra.org

Website: www.arabhra.org

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BIBLIOGRAPHIC INFORMATION

Title: The EU and the Palestinian Arab Minority in Israel

Principle Author: Tocci, Nathalie

Main Contributors: Stanus, Nathalie; Rosenberg, Rina; Hesketh, Katie; Zeidan, Mohammed

Corporate authors: Euro-Mediterranean Human Rights Network;

Adalah – The Legal Center for Arab Minority Rights in Israel;

The Arab Association for Human Rights

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T H E E U A N D T H E P A L E S T I N I A N A R A B M I N O R I T Y I N I S R A E L



EXECUTIVE SUMMARY

In the 2005 EU-Israel Action Plan under the European Neighbourhood Policy (ENP), the EU and Israel committed to engage in a political dialogue and cooperate to “promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents”. Five years later, however, not only has the situation of the Palestinian Arab minority in Israel not improved, but it has further deteriorated. Indeed, the minority has increasingly been represented by Israel as a security and demographic threat, legitimising the use of extraordinary measures against it. These have included discriminatory legislation targeting the basic citizenship rights of Arab citizens and demanding loyalty to the Jewish state; ongoing attempts to disqualify Arab political parties and Knesset members from the elections; and the filing of criminal indictments against Arab political leaders for legitimate political activities. The EU displays a critical awareness of the problems that Arab citizens of Israel face – as reflected in the ENP Progress Reports published by the European Commission – particularly with regard to discrimination in the exercise of their civil, political, economic, social, and cultural rights. However, the EU has under-exploited the various instruments at its disposal that would provide it with some leverage:

- The EU has never conditioned its bilateral relations with Israel on tangible improvements in the human right situation in Israel or the Occupied Palestinian Territory (OPT), including the rights of the Palestinian Arab minority.
- All EU institutions, including the European Parliament, have failed to use their declaratory diplomacy to address discrimination against Arab citizens of Israel.
- The EU has mainly engaged in a political dialogue with Israel on the Palestinian Arab minority on the technical level within the framework of the EU-Israel Human Rights Working Group, whose shortcomings limit EU’s capacity to make a tangible difference.
- The EU has attempted to bridge its lack of political support for the Palestinian Arab minority by channelling funds. However, the impact the EU has had on the rights of the minority through assistance has been blunted by the limited amount of funds channelled to Israel (both to the State and civil society organisations) and countered otherwise by the EU’s inability to prevent internal discriminatory practices in Israel from spilling into EU assistance and cooperation programmes.

EU policy towards the Palestinian Arab minority is not fundamentally dissimilar to its policies towards minorities in other neighbourhood countries with which the EU enjoys comparable contractual relations. Indeed, minority rights are not specified in the guiding principles of the EU’s external action. Consequently, the EU has been extremely cautious in pressing third states on minority rights. Further, the EU’s ambiguity towards the tension between the definition of Israel as a Jewish state (or state of the Jewish people) and a democratic state, the lack of clear international law on minority rights and inconsistent internal practices of EU Member States towards their own minorities, all combine to account for the shortcomings of the EU’s policies towards the Palestinian Arab minority in Israel.

The EU has been more active with regard to certain minorities in eastern neighbouring countries or in accession countries. Here, the EU has considered the protection of minorities as critical to regional stability and security. In addition, the political aspirations of these countries to become eventually members of the EU and their membership of the Council of Europe and the Organisation for Security and Co-operation in Europe, has given the EU greater leeway to insist on minority rights protection in these countries.

Besides the imperative for the EU to address the Palestinian Arab minority in Israel as an issue of human rights and democracy, there is the additional imperative of promoting peace and stability that requires a more pro-active EU policy towards the minority. The report therefore argues that the EU should also view the minority through the lens of the Israeli-Palestinian conflict, of which the minority is an essential component. The EU has so far tended to sideline any direct discussion on the minority in the context of the Middle East Peace Process (MEPP). However, with the exacerbation of the conflict following the collapse of the Oslo peace process, Israeli governments have attempted to draw various “negative” links between the Palestinian Arab minority and the Israeli-Palestinian conflict. Recent Israeli governments have insisted that the MEPP ought to be based on Palestinian recognition of Israel as a “Jewish state” and officials have proposed an exchange of populations between Israel and a future Palestinian state, two measures that would legitimise discrimination against Arab citizens and undermine their status as Israeli citizens.

In keeping with its objective to support peace, security and stability in the Middle East based on the establishment of two viable, secure and democratic states along the 1967 borders, the EU must link the minority to the conflict, and implement a rights-based EU strategy towards this latter that includes an enhanced strategy towards the minority. The report argues that the EU-Israel bilateral relationship and the policy instruments within it remain an adequate policy framework for the EU to address the situation of the minority, and that the EU should make greater use of them. Specifically, the EU should:

- Publicly support and promote the full and equal citizenship and minority rights of the Palestinian Arab minority. The EU should further state that the rights and citizenship of members of the minority should be fully guaranteed under any agreement reached between Israel and the Palestinians and that their citizenship is non-negotiable.
- Strengthen its political dialogue with Israel on the Palestinian Arab minority to ensure tangible progress on the ground. The EU should ensure that concerns are raised at the highest political level as well as in all bilateral relations with Israel, including in the fields of education, social cooperation and transport.
- Ensure that appropriate EU assistance funds are devoted to the Palestinian Arab minority, and that the minority benefits from Israel’s participation in research and study programmes. The EU should avoid patterns of discrimination in Israel from being replicated in EU twinning projects and encourage Israel to submit a twinning project aimed at bringing Israel’s anti-discrimination legislation into conformity with the EU Acquis.
- Condition the upgrade of its relations with Israel, including any new bilateral agreement, on tangible improvements in the human rights situation in the OPT and in Israel, including that of the Palestinian Arab minority in Israel. The European Parliament should use its voting power to this end.

I. INTRODUCTION

In 2005, in the jointly-agreed European Neighbourhood Policy (ENP) Action Plan, the European Union (EU) and Israel decided to enhance their political dialogue and cooperation in the field of promotion and protection of human rights. In particular, they agreed to 'Promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents'. However, five years later, the rights of the Palestinian Arab minority in Israel continue to be violated, with a clear deterioration since the election of the current Israeli government in February 2009. In April 2010, the EU concluded in its progress report on the implementation by Israel of its Action Plan in 2009 that 'little progress was registered in the situation of the Arab minority'.¹ Despite this recognition, EU policy concerning the rights of the Palestinian Arab minority in Israel has been weak. The Euro-Mediterranean Human Rights Network (EMHRN) and its working group on Palestine, Israel and Palestinians decided to inquire further into EU policies towards the Palestinian Arab minority in Israel and to try to contribute to their strengthening.

The traditional sidelining of Palestinian Arab minority inside Israel or the "1948 Arabs" and human rights more broadly within the Middle East Peace Process (MEPP) has meant that, when the EU has dealt with this group, it has done so primarily through the lens of EU's declared goal of promoting human rights and democracy in the world (Article 21 of the Treaty on European

¹ European Commission (2010), *Implementation of the European Neighbourhood Policy in 2009 - Progress Report Israel*, p. 3 (available at http://ec.europa.eu/world/enp/pdf/progress2010/sec10_520_en.pdf)



Union).² As a result, attention to the minority has been overshadowed by the regional conflict and by what are perceived by EU actors to be the “graver” human rights violations perpetrated in the Occupied Palestinian Territory (OPT), comprising the West Bank, including East-Jerusalem, and the Gaza Strip.³ The EU’s aspirations to act as a mediator in the Israeli-Palestinian conflict have also increased the EU’s incentives to sideline the rights violations against the Palestinian Arab minority in order not to antagonise Israel.⁴

This report argues that the EU has not put to full use the instruments at its disposal to advance the full and equal citizenship rights and political standing of the Palestinian Arab minority in Israel. Indeed, while acknowledging the problems faced by the minority, the EU has not used conditionality, nor has it engaged in declaratory diplomacy on the issue. The minority has featured in EU-Israel political dialogue, but its importance has been overshadowed by attention devoted to the Israeli-Palestinian conflict, narrowly defined. Finally, the EU has devoted some of its financial assistance to the minority, in particular by supporting civil society projects. However, the impact the EU has had on the rights of the minority through assistance has been blunted by the limited amount of funds channelled to Israel (both to the State and civil society organisations) and countered otherwise by the EU’s inability to prevent internal discriminatory practices in Israel from spilling into EU assistance and cooperation programmes.

² Interviews with European officials, 2010.

³ Interviews with European officials, 2010.

⁴ Ibid.

EU policy towards the Arab citizens of Israel should be informed by a greater awareness of the link between the Palestinian Arab minority and the broader dynamic of the Israeli-Palestinian conflict. If the EU is intent on pursuing peace and stability on the basis of two democratic states in Israel and Palestine, it should engage more actively in strengthening the full and equal citizenship rights and political standing of the Palestinian Arab minority in Israel, making greater use of the instruments at its disposal (conditionality, declarations, dialogue, assistance and cooperation). Acknowledging the link between the minority and the conflict (and peace process) may be viewed by some analysts as a double-edged sword, a strategy that could lend legitimacy to the negative link that has been articulated by various political factions in Israel, which includes the forcible exchange of population and revocation of the citizenship of large numbers of Arab citizens of Israel within the framework of a two-state solution.⁵ Yet, precisely for this reason, factoring in the link between the conflict and the minority is imperative, not because this ought to change the solution backed by the EU, but rather because ignoring this link renders the EU's stated objective of promoting a two-state solution that is based on the principles of democracy and human rights less feasible. Therefore, a systematic EU strategy towards the conflict in support of a rights-based, sustainable and democratic two-state solution in Israel and Palestine must incorporate the rights of the Palestinian Arab minority as full and equal citizens in Israel as an essential component.

With this context in mind, this report assesses EU policy towards the Palestinian Arab minority in Israel. It begins by defining the Palestinian Arab minority and its individual and collective rights. The report then outlines the main human rights violations faced by them, referring to academic, official, and non-governmental sources. It then analyses official EU sources and interview material⁶ in order to explore both what the EU's position on the minority is, and whether and how the EU's conditionality, declaratory diplomacy, dialogue, assistance and cooperation instruments account for the minority. Next, the report explains EU policy towards Arab citizens of Israel and identifies its weaknesses related both to the broader problem encountered in international law regarding minorities and minority rights, and, consequently, in EU law and policy within and beyond Europe. This, alongside the EU's reluctance to take a position on the tension between Israel's definition as a "Jewish" and "democratic" state, go a long way towards explaining the weakness in the EU's policy towards Arab citizens of Israel. Finally, the report argues that, given the link between the Palestinian Arab minority rights and the aforementioned objective of the EU regarding the MEPP, the EU should make more use of the instruments at its disposal to promote equality for Arab citizens of Israel and offers suggestions to this end.

⁵ Ibid.

⁶ Interviews for this report were conducted in Brussels, Tel Aviv and Haifa with officials, academics and civil society actors from the EU and Israel in October 2010.



2. THE CONTEXT: AN OVERVIEW OF THE PALESTINIAN ARAB MINORITY IN ISRAEL

2.1 MINORITIES, MINORITY RIGHTS AND THE PALESTINIAN ARAB MINORITY

The term “minority” is a contested concept. Within international law, as well as in regional legal instruments, there is no authoritative definition of what constitutes a national minority. Nonetheless, working definitions of what minorities are and what they are not have been provided in the legal and political science literatures. A review of this literature suggests there are six defining features of a national minority.⁷ First, a national minority is a community which is settled in the territory of a state, which is smaller in number than the rest of the population of that state. Second, the members of a national minority are citizens of the state. Third, a national minority has ethnic, linguistic, cultural and/or religious features which are different from those of the majority. Fourth, members of a minority are guided by the will to safeguard these features: they are aware of their identity and intent on maintaining and giving stronger expression to it. Fifth, a national minority is most often in a non-dominating position within the governance structures of a state. Sixth, a national minority is a traditional community historically embedded

⁷ Capotorti, F. (1979), *Study on the Rights of persons belonging to ethnic, religious and linguistic minorities*, New York, United Nations; van der Stoep, M. (1994) Keynote address at the Opening of the OSCE Minorities Seminar, Warsaw, (available at <http://www.osce.org/hcnm/13022.html>); Strážnická, V. & Šebesta, Š. (1994), *Člověk a jeho práva (Man and his rights)* Juga, Bratislava; Kymlicka, W. (2006) 'The evolving basis of European norms of minority rights: rights to culture, participation and autonomy', in J. McGarry and M. Keating (eds), *European Integration and the Nationalities Question*, London, Routledge, pp. 35-63.



within the territory of a state, and as such distinct from an immigrant community, even when the members of an immigrant community have become naturalised as citizens of a state.

While the State of Israel does not formally recognise the Arab citizens of the state as a minority and, consequently, does not accord specific rights to them, Arab citizens of Israel are a national minority according to the working definition provided above. This group:

is demographically smaller than the Jewish majority, constituting approximately 20 percent of the population of the State of Israel;⁸

is not in a dominant position, in so far as the dominant identity of the state, both in law and practice, is shaped by the Jewish majority;

was granted citizenship following the establishment of the state in 1948, though until 1966 it lived under military rule that was applied only to this group;

has an ethnic (Arab) linguistic (Arabic) and religious (Christian, Muslim, Druze) identity that is distinct from that of the Jewish majority;

recognises itself as a national group (Palestinian) and, since the first strike to protest against land

⁸ For a historical background of the Palestinian Arab Minority see for example <http://www.old-adalah.org/eng/backgroundhistory.php>

expropriation in 1976, has mobilised to improve its citizenship status within the Israeli system;⁹ is not an immigrant community and its historical homeland is the territory that became the state of Israel after 1948,¹⁰ representing the descendants of those Palestinians who remained within the borders of the State of Israel after the 1948 war. The minority is predominantly concentrated in the Galilee region, the Triangle and in the Negev desert.

The lack of clarity in the legal definition of what constitutes a minority is compounded by the contested legal definition of minority rights. There are two recognisable pillars of minority rights: individual and group/collective rights. The ambiguity lies both in the definition of collective rights and in the relationship between individual and collective rights. A first and uncontested aspect of minority rights is the individual human rights of persons who belong to a national minority, and consequently the imperative not to discriminate against the members of such groups in the protection of such rights.¹¹ A second and contested pillar of minority rights is collective rights: rights that can only be exercised by a group collectively rather than by individuals separately, and that are aimed at protecting the existence of a group and avoiding its subjugation by others.¹² The collective rights of national minorities are normally associated with the right to preserve a separate identity and exercise forms of internal self-determination and effective political participation within a state. Going beyond negative rights of non-interference, collective rights thus include positive rights to assistance, funding, autonomy or official language status.¹³ However, in view of the lack of a legal definition of what constitutes a minority, collective rights are ill-defined and a matter of ongoing debate in law and politics. While the reference point of collective rights is the group, the right as such is enjoyed by 'persons belonging to minorities' (Article 27 of the International Covenant on Civil and Political Rights - ICCPR). But unlike individual human rights, collective rights are exercised by individuals 'in community with the other members of their group' (Article 27 ICCPR) and presuppose the enjoyment of the individual rights.

Thus, we can view the minority's rights as consisting of two components:

1. Individual rights, including civil and political rights, and economic, social, and cultural rights, enshrined in the right of Arab citizens of Israel to non-discrimination vis-à-vis their Jewish Israeli compatriots;
2. Rights exercised by individual Arab citizens in community with other members of the group (Article 27 of the ICCPR) to protect and promote their distinct national identity, including language, religion and culture, and enshrined in the notion of affirmative action including assistance, funding, autonomy or official language status.

9 On 30 March 1976 six Palestinians from the Galilee were killed, triggering the first collective response of the minority through a general strike spanning from the Negev to the upper Galilee in protest to the policy of land expropriations.

10 Jabareen, H. (2002) 'The Future of Arab Citizenship in Israel', in D. Levy and Y. Weiss (eds) *Challenging Ethnic Citizenship*, New York, Berghahn Books, pp. 196-230.

11 This includes civil and political rights on the one hand, and social, economic and cultural rights on the other, as reflected in the two main UN covenants (the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); as well as the International Covenant on Eliminating all forms of Discrimination against Women (CEDAW) and the International Convention on the Rights of the Child (CRC).

12 Sanders, D. (1991) 'Collective Rights', *Human Rights Quarterly*, Vol. 13, No. 3, pp. 368-386; Dinstein, Y. (1976) 'Collective Human Rights and Minorities', *The International and Law Quarterly*, Vol. 25, No. 1, pp. 102-120.

13 Kymlicka (2006) op. cit.

Unlike other minority issues where the primary area of contestation regards claims to internal self-determination, in Israel the state might be more ready to recognise some additional forms of group rights to its Arab citizens than ensure their full equality as individual citizens.¹⁴ This particularity is inextricably tied both to the definition of Israel as a “Jewish and democratic” state¹⁵ and to the Israeli-Palestinian conflict. The definition of the State of Israel is premised on two elements that stand in tension with one another: the “Jewish” and “democratic” elements of the state. The “Jewish” character of the state prioritises the cultural/religious identity of only one group within the state, implying a discriminatory majority-minority ranking. The “democratic” character of the state instead emphasises the equal rights, treatment and representation of all Israeli citizens. Added to this, the Israeli-Palestinian conflict has led to the securitisation of the Palestinian Arab minority, which is increasingly viewed by the Jewish majority as a fifth column within the state. With the deterioration of the conflict, particularly following the demise of the Oslo process and outbreak of the second Intifada and the October 2000 events in Israel, the security-first character of the State of Israel has been reinforced and the Palestinian Arab minority has increasingly come to be viewed as a security and demographic threat. As detailed below, human rights violations and discriminatory practices have increased over the last decade.¹⁶

The problem at stake therefore extends to all those laws and practices in Israel that emphasise the Jewish over the democratic nature of the State of Israel and/or which consider the Palestinian Arab minority a security and demographic threat that justifies recourse to extraordinary legal and political actions. The Declaration of Independence does make reference to the equality of all citizens, but cannot be viewed as a hard legal instrument given that it lacks the status of a constitutional document. On the contrary, the Basic Laws¹⁷ on Human Dignity and Liberty and on Freedom of Occupation, while emphasising the Jewish nature of the state, do not guarantee the right to equality of all citizens without discrimination on the basis of race, religion, national belonging or gender. Consequently, the state has been able to enact numerous discriminatory laws, policies and practices across the spectrum of civil, political and economic, social and cultural rights. The section below briefly maps the main fields of discrimination against Arab citizens of Israel in order to address whether and how the EU does and could act to address these human rights violations through its bilateral relationship with Israel.¹⁸

14 For example, as opposed to other countries with national minorities, Israel recognises Arabic as an official language, allows for the minority’s governance of personal status matters, allows for separate Arabic education and includes a separate Arab education department in the Ministry of Education. But there is a major lack of implementation and in practice this status is not respected. As discussed below, the exercise of these rights is rife with discrimination and double standards however. Such discrimination hinges upon the unequal protection of individual rights.

15 The Declaration of the Establishment of the State of Israel, 14 May 1948, available at www.knesset.gov.il/docs/eng/megilat_eng.htm. Relevant Basic Laws are available at www.knesset.gov.il/description/eng/eng_mimshal_yesod1.htm.

16 UK Task Force on issues facing Arab citizens of Israel (2010), Key Facts, available at <http://www.uktaskforce.org/resources/key-facts.php>; The Israel Democracy Institute (2010), Israeli Democracy Index 2010, available at <http://www.idi.org.il/sites/english/events/ThePresidentsConference/Pages/2010DemocracyIndex.aspx>

17 The Basic Laws constitute, together with several general rulings, the equivalent of a constitution of the State of Israel.

18 For in-depth analyses of the Arab minority in Israel see, among others, the reports by Adalah (www.adalah.org), the Arab Association for Human Rights (www.arabhra.com), the Mossawa Center (www.mossawacenter.org), the Association for Civil Rights in Israel (www.acri.org.il), Sikkuy (www.sikkuy.co.il) and Mada (<http://www.mada-research.org/?Languageld=1>). For an academic perspective see Jamal, A. (2009) ‘The contradictions of state-minority relations in Israel: The search for clarifications’, *Constellations*, Vol. 16, No. 3, pp.493-508, p. 497; and Jabareen, H. (2002) *op. cit.*

2.2 THE SITUATION OF THE PALESTINIAN ARAB MINORITY IN ISRAEL

Firstly in terms of civil rights, discrimination against the Palestinian Arab minority is embedded in Israel's citizenship laws, including the Law of Return (1950) and the Citizenship Law (1952). These laws allow any Jew in the world the possibility of immigrating to Israel and gaining citizenship, while denying this right to the Palestinians who were forced to leave their homes in 1948. Discrimination in citizenship rights has increased with the escalation of the Israeli-Palestinian conflict from the second Intifada onwards. Hence, the Citizenship and Entry into Israel Law prohibited the granting of any residency or citizenship status to Palestinians from the OPT who are married to Israeli citizens in 2003. In 2007, the Knesset amended this law again, banning citizens/residents of several countries which Israel defines as "enemy states" – Lebanon, Syria, Iran and Iraq – from family unification with Israeli citizens inside Israel.¹⁹ Numerous United Nations (UN) human rights treaty bodies have repeatedly called on Israel to revoke this law.²⁰ Finally, another 2008 amendment to the Citizenship Law further restricted citizenship rights, allowing the revocation of citizenship in the case of a "breach of trust" or disloyalty to the state, without requiring a criminal conviction. While the Law of Return discriminates against Arab citizens of Israel on its face, the Citizenship Law has a disparate impact on them, as they are in practice the primary target of discrimination in this law.

Second, the Palestinian Arab minority suffers from discrimination in political rights and effective political participation.²¹ While Arab citizens are allowed to vote and run for the Knesset, and although the minority is adequately represented in numerical terms, in practice its political weight is curtailed by its exclusion from important national debates and decision-making. The minority's representatives are marginalised in the formulation of key public policies and they have never been a part of the governing coalition.²² Marginalisation and under-representation in decision-making at the governmental national and local levels and in the civil service is also particularly acute for Arab citizens of Israel.²³ Furthermore, elected Arab Members of the Knesset (MKs) have increasingly been subject to police investigations, harassment and criminal indictment for engaging in legitimate political activities. Right-wing political parties and MKs have repeatedly attempted to disqualify Arab political parties and politicians from participating in Israeli parliamentary elections.²⁴ To date, efforts to disqualify Arab political parties under the Basic Law – The Knesset, Section 7A on the grounds of "denial of the existence of the state as Jewish and democratic" or "supporting the armed struggle of terrorist organisations" have

19 The Israeli Supreme Court upheld the validity of the ban on family unification law in 2006. New petitions are pending against the law. For further information see <http://www.old-adalah.org/eng/famunif.php>

20 See e.g., Concluding Observations of the Human Rights Committee – Israel, CCPR/C/ISR/CO/3, 29 July 2010, para. 15; Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD) – Israel, CERD/C/ISR/CO/13, 14 June 2007, para. 20; and CERD's special decisions under the urgent action procedure of 2003 (Decision 2/63) and 2004 (Decision 2/65).

21 Kamm, S. (2003) op. cit.; Adalah (2010), Special Report: 10 Discriminatory Laws, available at <http://www.old-adalah.org/eng/10.php>

22 Jamal, A. (2009) op. cit., p. 497.

23 CEDAW (2005) Third Periodic Report. Israel. 33rd Session, July 2005, available at <http://www.un.org/womenwatch/daw/cedaw/reports.htm#i>. And CERD 2007, op. cit.

24 See for example Adalah (2010), Adalah Briefing Paper: Restrictions on Human Rights Organizations and the Legitimate Activities of Arab Political Leaders in Israel, available at <http://www.old-adalah.org/newsletter/eng/jun10/docs/bp.pdf> (accessed on 5 January 2011).

failed. However, this nationalist and ideological law attempts to restrict the ability of Arab political leaders to advocate fully for the equal rights of their constituency in a democratic state. The political marginalisation of the minority is also exacerbated by other measures. For example, the Regional Councils Law (amendment in 2009), which allows for the indefinite postponement of the first election of a Regional Council, has been applied to the Arab villages in the Naqab (Negev), and in practice ensures a government-appointed Jewish Israeli authority in the Regional Council.

Third, Arab citizens of Israel are subject to discrimination at the economic, social and cultural levels.²⁵ A principal aspect of socio-economic discrimination concerns land and property expropriations.²⁶ Land expropriation started soon after the creation of the State of Israel and reached a peak under the military administration of the Palestinian Arab minority from 1948 to 1966. According to the Absentee Property Law (1950) and other similar laws and programmes such as the Israel Lands Administration Law (1960), the National Planning and Building Law (1965) and the Agricultural Settlement Law (1967), Arab land has been expropriated by the Israeli government and used almost exclusively for the benefit of Jewish citizens.²⁷ Recently, the Israeli Land Administration Law (2009) and the 2010 amendment to the Land Acquisition for Public Purposes Ordinance (1943) have further intensified discrimination against Arab citizens in land and housing. The former allows the state to privatise and sell property confiscated from Palestinians, exchange “state land” with the Jewish National Fund, and make land allocation subject to the approval of Zionist institutions. Today 93 percent of all land in Israel is under direct state control, 13 percent of which is owned by the Jewish National Fund, which sees its mandate as leasing and settling land solely for Jews.²⁸

Discrimination in the protection of economic, social, and cultural rights is also evident in the provision of public services.²⁹ Generally, state budget allocations for town planning, infrastructure, public utilities, services and education is considerably below average for Arab towns. Per capita budget allocations are significantly lower for Arab citizens than for their Jewish counterparts. In the 2008 development budget, for example, Arab citizens were allocated 944 millions of New Israeli Shekels (NIS): 7.6 percent of the total despite their 20 percent share of the population.³⁰ Discrimination in the allocation of state resources is also based on two amendments to the Absorption of Discharged Soldiers Law and the Economic Efficiency Law. The former grants discharged soldiers benefits in higher education, implicitly discriminating against Arab citizens,

25 See for example Haider, A. (2006, 2007, 2008) Equality Index of Jewish and Arab Citizens in Israel, Haifa, Sikkuy. For more information see also: Adalah (2010), NGO report to the UN Committee on Economic, Social and Cultural Rights regarding Israel's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), available at http://www2.ohchr.org/english/bodies/cescr/docs/ngos/Adalah_Israel45.doc

26 Regarding such discrimination in the Negev, see, for example, Human Rights Watch (2008), Off the Map. Land and Housing Rights Violations in Israel's Unrecognised Bedouin Villages. vol. 20, No. 5 (E), March 2008.

27 Palestinian citizens are excluded from approximately 13 percent of “Israel lands” owned by the Jewish National Fund (JNF), which includes much of the land expropriated from Palestinian refugees under the Absentees Property Law and properties acquired by the JNF prior to 1948. See Adalah (2007), Report to the CERD in Response to the List of Issues Presented by Israel, 1 February, p. 3.

28 Adalah (2010) op. cit.

29 Mossawa Centre (2008a), The Economic Status of Arab Citizens of Israel: An Overview, available at <http://www.mossawa.org/files/files/File/Reports/2008/Overview%20economic%20status.pdf>; Mossawa Centre (2008b); Adalah (2010) op. cit.

30 Ibid., Mossawa Centre (2008a).

who (with the exception of the Druze and some Bedouin men) are exempt from military service. The latter allows the government to classify towns and other areas as “National Priority Areas” (NPAs), which can benefit from additional public funds. In practice, Arab towns and villages are excluded by the Israeli government from NPAs and thus enormous financial benefits that are afforded almost exclusively to Jewish citizens of the state.³¹ Particularly acute is the problem of the “unrecognised” villages in the Negev.³² Considering these villages to be “illegal settlements”, the state does not provide public services (e.g. electricity, drinking water, sewage, health and educational services), and is seeking to evacuate the villages, including by demolishing homes. Amongst those who are most severely affected by the lack of services in the unrecognised villages are Arab Bedouin women citizens of Israel.³³ These women face triple discrimination as members of the national minority, as women, and as women in Arab society.

Finally, Arab citizens are discriminated against in terms of education and employment.³⁴ In education, government support for public education in Arab schools is significantly lower than that provided for Jewish schools, leading to classroom shortages and inadequate facilities, as well as poor teacher training.³⁵ This underfunding has led to a gap in the qualifications and skills acquired by Jewish and Arab students, with clear repercussions for the economic status of the Palestinian Arab minority. It has also led to a significantly lower level of Arab students studying at higher education institutions compared to their Jewish counterparts.³⁶ Further, the state education system places great emphasis on Jewish history, religion, culture and literature in school curricula (the 1953 State Education Law, as amended in 2000), which contrasts starkly with the exclusion of Palestinian history and cultural heritage. As stated by Amal Jamal, ‘Palestinian citizens of Israel were educated as Israeli Arabs, whose history starts in 1948 and whose rights stem from their Israeliness’.³⁷ This gap in educational attainment generally increases when the condition of Arab Bedouin women is taken into consideration.³⁸ Arab Bedouin women citizens

31 Of the areas listed as NPAs, 535 are predominantly Jewish and only 4 Arab. In a petition brought by Adalah, in 2006 the Supreme Court obliged the state to cancel NPAs. To date the state has failed to implement the court’s ruling. On 20 June 2010, after four years of non-compliance by the state and additional litigation, Adalah filed another motion for contempt of court to the Supreme Court against the Prime Minister due to the government’s failure to implement the court’s decision and the resulting perpetuation of discrimination against Arab citizens of Israel. A court hearing is scheduled for 2 February 2011.

32 Approximately 60,000 Bedouins in the Negev live in 40 “unrecognised” villages. See Adalah (2009), ‘Suggested Questions for the UN Human Rights Committee considering Israel’s Compliance with the ICCPR’, 10 August, p. 11; available at www2.ohchr.org/english/bodies/hrc/docs/ngos/ADALAH_Israel99.doc. See also Human Rights Watch (2008) op. cit.

33 See CEDAW (2005), Concluding comments: Israel, CEDAW/C/ISR/CO/3, 5-22 July 2005, para. 39; and Adalah (2005), UN CEDAW Issues Concluding Observations on Israel, Emphasizing 14 Areas of Concern Regarding Israeli Violations of Rights of Palestinian Women; available at http://www.old-adalah.org/eng/pressreleases/pr.php?file=05_08_08 (accessed on 5 January 2011).

34 See Shlomo Swirski Noga Dagan-Buzaglo (2009), Separation, Inequality and Faltering Leadership. Education in Israel. Tel Aviv: Adva Center; Roffe-Ofir S. (2010), Just 6% of public sector employees are Arab, available at <http://www.ynetnews.com/articles/0,7340,L-3884796,00.html> (accessed 26 October 2010); Lis J. (2010), Knesset panel slams lack of Arabs in government agencies, available at <http://www.haaretz.com/print-edition/news/knesset-panel-slams-lack-of-arabs-in-government-agencies-1.288283> (accessed on 26 October 2010); Adva Center (2008), The Adva Center annual report, Israel: A Social Report, available at http://www.adva.org/uploaded/The%20Adva%20Center%20short%20annual%20report%20english_1.pdf (accessed 26 October 2010).

35 Organisation for Economic Cooperation and Development (2010) ‘Israel’, OECD Reviews of Labour Market and Social Policies, 25 May.

36 Central Bureau of Statistics (2010), Statistical Abstract of Israel 2010, available at http://www1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html?num_tab=st08_50&CYear=2010 and http://www1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html?num_tab=st08_57&CYear=2010

37 Jamal, A. (2009) op. cit. p. 496.

38 CEDAW (2005) op. cit.

are particularly vulnerable and marginalised due to their disproportionately high school drop-out rates and low representation in higher education institutions.³⁹ This is due in large part to the state's failure to fulfil its duty to provide accessible compulsory, educational facilities.

In terms of employment, in 2009 the proportion of Arab public employees was 6.7 percent, significantly lower than the 10 percent target for 2010⁴⁰ and well below their relative population share. More broadly, Arab citizens are concentrated within the labour market in lower-paid occupations, and suffer from a considerable gap in earnings⁴¹ and an unemployment rate that is significantly higher than that of the Jewish majority. Transport problems are an important cause of unemployment for Arab citizens (in particular for Arab Bedouin citizens in southern Israel). Inequalities in employment opportunities have a strong gender dimension as well. The low rate of Arab participation in the workforce can also be attributed to the significantly lower rate of Arab women's participation.⁴² A mere 2 percent of employees within the civil service are Arab women.⁴³ Obstacles to employment include the use of the military service criterion in awarding jobs; limited employment opportunities in Arab towns and villages; a shortage of state-run day-care centres for children (only 10% of Arab children receive formal childcare, compared to an average of 45% for the rest of the population)⁴⁴; and the near total absence of public transport from Arab towns and villages to central cities. This low level of workforce participation among Arab women has broader economic repercussions. On the whole, poverty in Israel is disproportionately concentrated among the Palestinian Arab minority: whereas over 20 percent of households live below the poverty line in Israel, this figure rises respectively to 50 percent and 80 percent for Arab and more specifically Bedouin families.⁴⁵

39 CEDAW (2005) op. cit.

40 As set in the Law for Fair Representation of Arabs and Women in Governmental Offices.

41 As noted by Jabareen, in 2007 the hourly wage of Arab males is 30 percent lower than that of Jewish men with the same level of education. There is a 23% difference between the wages of Arab and Jewish women. See Jabareen, Y. (2010) *The Employment of Arabs in Israel*, The 18th Caesarea Forum, June 2010, available at <http://www.idi.org.il/sites/english/events/TheAnnualEconomicForum/Pages/EconomicConference2010.aspx>. Furthermore, Adva notes that the average monthly wage of Arab urban salaried workers stood at 67 percent of the average wage. See Adva Center (2008) op.cit.

42 E.g., according to figures published in January 2008 by the Israeli Ministry of Industry, Trade and Labour, in 2006 the rate of participation of Jewish women was almost 70.6 percent, which contrasts sharply with the meagre rate of 22.4 percent among Arab women. See Adalah (2009) op. cit, p. 5.

43 See Adalah (2009) op. cit, p. 3.

44 OECD (2010) op. cit.

45 Ibid.



3. EU POLICY TOWARDS THE PALESTINIAN ARAB MINORITY IN ISRAEL



The EU views the Arab minority in Israel through the lens of its declared goal of promoting democracy and human rights through its external action. Viewed from this angle, the EU addresses the Palestinian Arab minority as part of its concern for democracy and human rights in one of its foremost partners. In this respect, the EU policy towards the Palestinian Arab minority is not fundamentally dissimilar to its policies towards minorities in other third states with whom the Union enjoys comparable contractual relations. In some cases, such as the Armenian minority in Georgia or the Russian or Gagauz minorities in Moldova, the EU is more active. In other cases, such as the Berber minority in Morocco or the Copt minority in Egypt, the EU is significantly less engaged. In all cases, however, the EU's policy towards minorities and minority rights is rather weak. In what follows, we begin by presenting the EU's position on the Palestinian Arab minority in Israel and then turn to examine how the EU has made use of its policy instruments in order to further its goals and position towards the minority.



3.1 THE EU'S POSITION ON THE PALESTINIAN ARAB MINORITY IN ISRAEL

While not adopting a policy towards the Palestinian Arab minority as such, since the late 1990s the EU has displayed an awareness of the problems it has faced. Both at EU and member-state level, European diplomacies based in Israel and in Brussels follow the situation of the minority.⁴⁶ This awareness is apparent in the EU-Israel Action Plan and EU's documents within the framework of the European Neighbourhood Policy.

In its first "Country Report" on Israel published in 2004,⁴⁷ the Commission affirmed that "Arab citizens of Israel" were subject to discrimination in several areas of law and practice. The report does not refer to Arab citizens of Israel as a national minority and does not address the collective rights of the group. However, it does acknowledge and provide data on individual human rights violations and discrimination against Arab citizens of Israel. As a consequence, in the EU-Israel

⁴⁶ Apart from the EU delegation in Israel, member state embassies that follow closely the minority include Belgium, France, Germany, Ireland, the Netherlands, Poland, Sweden and the UK. Other member states, while aware of the situation of the minority, are less engaged, devoting almost all their attention to issues which they view as being directly tied to the Israeli-Palestinian conflict. Interviews with European officials, October 2010.

⁴⁷ European Commission (2004) European Neighbourhood Policy. Country Report Israel, Staff Working Paper, SEC (2004) 568, Brussels. Available at http://ec.europa.eu/world/enp/pdf/country/israel_enp_country_report_2004_en.pdf

Action Plan adopted in 2005, the rights of minorities are amongst the very few specific human rights issues addressed (alongside disabled people and gender equality), and on which the parties agreed to engage in a political dialogue to “promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents”.⁴⁸

Since the publication of the Action Plan, the European Commission has repeatedly raised its concerns regarding the situation of the Palestinian Arab minority in its successive progress reports on the implementation of the Action Plan by Israel.⁴⁹ The Commission’s language has neither consistently hardened nor softened over the years. The Commission views the situation of the Arab citizens of Israel as unsatisfactory, addressing the manifold aspects of discrimination in the domains of land allocation, housing, planning, economic development, investment in social infrastructure, and has called on Israel to redress the effects of discrimination in terms of relative levels of poverty, gender inequality and educational attainment.

An analysis of these positions in the context of the EU’s broader approach towards Israel brings to light three main characteristics. First, the Palestinian Arab minority features in EU official discourse only in the context of the ENP and the EU’s bilateral policy towards Israel therein. In no other dimension of EU policy – and more precisely of EU policy towards the Israeli-Palestinian conflict – is the situation of the minority tackled.⁵⁰ No link is established in words or in action by EU institutions between the Israeli-Palestinian conflict and the Palestinian Arab minority in Israel. A second and related characteristic is that the European Commission is the only EU actor that has paid regular attention to the minority (see section “A deafening silence: Declaratory diplomacy” for more information). Third, and as a consequence of the above, although the minority and its problems are recognised by the EU, the Palestinian Arab minority in Israel is not considered a priority. Because of a lack of time, resources and political capital, other topics in the Israeli-Palestinian conflict and EU-Israel relationship take precedence. Moreover, while the European Commission has acknowledged the minority’s problems, such acknowledgement has taken a back-seat to the priority of deepening bilateral cooperation with Israel. As we shall see below, these characteristics shape the non-deployment by the EU of its various policy instruments in the case of the Palestinian Arab minority in Israel.

48 EU-Israel Action Plan, p. 4. Available at http://ec.europa.eu/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf

49 See European Commission (2006), Progress Reports on implementation of the European Neighbourhood Policy. Israel; European Commission (2008), Progress Reports on implementation of the European Neighbourhood Policy. Israel, European Commission (2009), Progress Reports on implementation of the European Neighbourhood Policy. Israel, European Commission (2010), Progress Reports on implementation of the European Neighbourhood Policy. Israel. These documents are available at http://ec.europa.eu/world/enp/documents_en.htm

50 EU policies towards the conflict include actions targeting the OPT (i.e. financial assistance and two Common Security and Defence Policy (CSDP) missions EUPOL-COPPS and EUBAM-Rafah) and actions tailored to the diplomatic MEPP (i.e. EU declarations, the role of the EU Special Representative for the MEPP and the EU’s role in the Quartet). See Euro-Mediterranean Human Rights Network (2009), Active but Acquiescent: The EU’s Response to the Israeli Military Offensive in the Gaza Strip, May 2009, available at http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2009/3812.html

3.2 THE EU'S POLICY INSTRUMENTS AND THE PALESTINIAN ARAB MINORITY

The EU has four instruments at its disposal with which to seek to influence the status and situation of the Palestinian Arab minority: conditionality, declaratory diplomacy, political dialogue, and financial and technical assistance. In all four cases the EU has circumscribed its role and impact. The Union, acting alone, does not have the power to comprehensively overhaul the situation of the minority. However, the limitations of the EU's impact can be attributed to its political choice to under-exploit the instruments at its disposal. On the one hand, the EU argues that it "saves" these instruments for allegedly graver conflict issues, although in practice on these issues, too, the EU's words are rarely followed by concrete action. On the other hand, and as we shall see in section 4, engaging more actively on the minority would entail tackling politically sensitive issues such as the Jewish nature of the State of Israel in a context in which the EU is under-equipped legally and politically. In other words, EU institutions prefer to use their "political capital" with Israel for a denunciation of rights violations in the OPT.⁵¹

3.2.1 A common tale: The absence of conditionality

In principle the EU could use the instrument of conditionality to exert influence on Israel to improve the situation of the Palestinian Arab minority. As is well known, the EU's Association Agreement with Israel includes essential element (Article 2) and non-execution (Article 79) clauses, which could be used by the EU to justify more strict requirements, EU monitoring and benchmarking, on the grounds of Israel's violations of the human and democratic rights of Arab citizens of the state. However, in practice the essential element clause is a dormant instrument of conditionality. The EU has never considered activating Article 2 as an instrument of conditionality vis-à-vis Israel even in response to the gravest violations of international humanitarian law,⁵² believing dialogue (when it comes to strategic and economic partners) to be preferable to direct pressure.⁵³ Article 2 in the EU-Israel agreement does refer to general principles of democracy and human rights: '(r) elations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement'. The article thus covers the rights of Arab citizens of Israel insofar as it asserts that democracy and human rights should guide Israel's internal policy. However, and following common practice in the EU's external agreements, the EU-Israel Association Agreement mentions neither Arab citizens in particular nor minority rights in general (or any other specific human rights). Both EU law and common practice suggest that the EU is unwilling and highly unlikely to mobilise Article 2 as an instrument of conditionality in order to influence Israel's policies towards its Arab citizens.

51 This is true not only of the Council and Commission, but also of the European Parliament, where the institutional complexities, political divisions, and the concern of being accused of anti-Semitism have led to the sidelining of the minority. Interview with European official, 2010.

52 See Euro-Mediterranean Human Rights Network (2006), A Human Rights Review of the EU and Israel 2004-2005, Brussels; Euro-Mediterranean Human Rights Network (2007), Third Annual Review on Human Rights in EU-Israel Relations, Brussels (available at http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2007/3619.html); Euro-Mediterranean Human Rights Network (2009), Active but Acquiescent: EU's Response to the Israeli Military Offensive in the Gaza Strip, op.cit.

53 Interview with European official, 2010.

Some view the suspension of the upgrade process as a form of conditionality towards the state of Israel.⁵⁴ However, not only is the upgrade frozen because of the stalled MEPP (and not because of human rights issues, including the rights of the minority), but also the fact that EU-Israel agreements have been signed or are under negotiation on agriculture, aviation and police cooperation since 2009, suggests that the upgrade is frozen more in name than practice.

3.2.2 A deafening silence: Declaratory diplomacy

Unlike conditionality, declaratory diplomacy is a commonly-used EU instrument deployed in response to problems of human rights and democracy in third countries. Indeed, there are a plethora of EU Presidency, High Representative, European Council and Council of Ministers declarations, as well as European Parliament (EP) resolutions on the manifold events and aspects of the Israeli-Palestinian conflict.⁵⁵ However, EU declaratory diplomacy has not been used to address the situation of the Palestinian Arab minority in Israel in general, or to respond to proposed and enacted legislation that discriminates against the minority, particularly since 2008, or to condemn expressions of racism by Israeli officials against Arab citizens of the state. Insofar as the minority is viewed as an internal Israeli matter on which the EU has limited say, the minority has fallen between the cracks of the EU's declaratory diplomacy.⁵⁶

The European Council has repeatedly mentioned the MEPP, but has never referred to the minority or the state's discrimination against it in its conclusions. None of the multiple references made by the European Council to Israel and the Israeli-Palestinian conflict has ever mentioned or drawn a link to internal issues in Israel. Similarly, the Council of the European Union has been evasive on the topic, generally shying away from expressing itself on the domestic affairs of a partner country.⁵⁷ The Council has merely endorsed the Commission's positions referring to the rights of the non-Jewish minorities of Israel.⁵⁸ The only remark it has made in relation to the Palestinian Arab minority was in December 2008, when it stated in the context of the upgrade of relations between the EU and Israel that the proposed sub-committee on human rights (see below) would, 'examine matters of common interest relating to (...) the rights and protection of minorities'.⁵⁹

54 The European Parliament's Committee on international trade (INTA) is also delaying ratification of an agreement on pharmaceutical products (Agreement on Conformity Assessment and Acceptance - ACAA). Interview with European official, 2010.

55 Between 2000 and August 2010 a search of the Council's database reveals that the Middle East Peace Process is taken into account in almost all Foreign Affairs Council Meetings. There have instead been around 53 EP motions for resolutions regarding the conflict and EU-Israel relations, five of which regard Israel specifically (see <http://www.europarl.europa.eu/RegWeb/application/registre/searchResult.faces>).

56 Interview with European official, 2010.

57 Interview with European official, 2010. It should be noted however, that on specific internal Israeli matters such as the NGO Funding Bill (which would place restrictions on NGOs in Israel that receive EU funding), the Commission and Parliament, have been vocal. This suggests that rather than a rule against speaking out on partner countries' domestic legislation, the EU does intervene when it considers its interests to be at stake.

58 European Commission (2003), Communication on Reinvigorating EU Actions on Human Rights and Democratisation with Mediterranean Partners, Strategic Guidelines, COM/2003/0294final.

59 Council of the European Union, Council Conclusions -Strengthening of the European Union's bilateral relations with its Mediterranean partners', External Relations Council meeting, Brussels, 8-9 December 2008.

Even more surprising is the fact that the European Parliament, known for its forthright stance on human rights issues, has not addressed the situation of the Palestinian Arab minority in any significant manner. The EP's public register contains only two motions for resolutions and a few written questions addressing Palestinian citizens of Israel.⁶⁰ The most recent motion concerned the incident of the "Gaza Freedom Flotilla" of 31 May 2010 and the threats issued against MK Haneen Zoabi, in which the EP called upon Israel to 'stop political persecution of Israeli Arab Members of Knesset, and fully protect their rights as elected representatives'.⁶¹ The flotilla incident was the spark for some members of the EP to address, albeit cursorily, the political rights of Arab MKs.⁶² The second motion, from 2008, regarding Israel's participation in Community Programmes (which was ultimately "frozen" in response to the deterioration of the situation in the OPT), emphasises the imperative for the effective participation of the Palestinian Arab minority in the various domains of EU-Israel cooperation. This second motion is particularly interesting insofar as it upholds both the right of non-discrimination and the need for affirmative action to combat existing discriminatory practices. The EP 'stresses the importance of full access on an equal footing for all students, researchers, other individuals, companies and organisations based in Israel to projects under Community programmes'. It also 'calls, however, for project criteria giving preference to disadvantaged and less developed regions, such as the Galilee and Negev areas, and ensuring non-discrimination vis-à-vis Arab citizens of Israel'.⁶³ No specific recommendations were made however regarding what such criteria might be or how precisely EU institutions could act to ensure that the Palestinian Arab minority is duly represented in the fields of EU-Israeli cooperation. The low profile of the minority in the EP is due to a variety of reasons, ranging from a widespread lack of knowledge of the minority and the concentration of time and resources to what the EP deems to be the Israeli-Palestinian conflict *stricto sensu*.⁶⁴

3.2.3 An occasional subject: Political dialogue

Another instrument commonly used by the EU to influence the human rights laws and practices of third states is political dialogue. The problems pertaining to the Palestinian Arab minority have been pinpointed as a subject of EU-Israel dialogue. The EU has affirmed that the institutionalised forums for political dialogue between the EU and Israel established in the framework of the Association Agreement – the Association Council, the Association Committee, the sub-committee on political dialogue and cooperation and the informal working group on human rights – provide for 'a continued discussion with the Israeli side on human rights situations of

60 See the EP's public register at the following link:

<http://www.europarl.europa.eu/RegWeb/application/registre/advancedSearch.faces>.

61 European Parliament (2010) 'Motion for a Resolution to wind up the debate on the statement by the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy pursuant to Rule 110(2) of the Rules of Procedure on Israeli military operation against the humanitarian flotilla and the Gaza blockade', Brussels, 14 June 2010.

62 See for example <http://www.old-adalah.org/newsletter/eng/jun10/docs/bp.pdf>

63 European Parliament (2008), Motion for a Resolution to wind up the debate on statements by the Council and the Commission pursuant to Rule 103(2) of the Rules of Procedure by Véronique De Keyser on behalf of the Committee on Foreign Affairs on the conclusion of a protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, on a framework Agreement between the European Community and the State of Israel on the general principles governing the State's of Israel's participation in Community programmes, Brussels, 3 December 2008. Even if it has not been adopted, the motion underlines the awareness of the situation amongst several Members of the EP (MEPs).

64 Interview with European official, 2010.

common concern, in particular the protection of the Palestinian population and Israeli Arab minority'.⁶⁵ For example, in response to a written question in the EP, the Council responded that political dialogue would address specific developments of relevance to the Arab citizens, such as the 'Nationality and Entry into Israel Law - Temporary Order'.⁶⁶

These mechanisms for EU-Israel political dialogue do increase the scope for the EU to engage Israel in discussion on the situation of Arab citizens. However, they are marred by four pitfalls.

First, as mentioned above, while the rights of minorities are a topic of political dialogue, the human rights language used in the Action Plan is very vague and generally worded. It does not detail specific actions expected from Israel nor benchmarks criteria to evaluate the progress made by Israel in this regard.⁶⁷ Other references in the Action Plan which indirectly relate to the Palestinian Arab minority are few and far between.⁶⁸ As such they are inevitably vague and open-ended. The weakness and the general character of these direct and indirect references to the Palestinian Arab minority in the Action Plan make the effective monitoring of Israel's human rights violations and achievements by the EU very difficult.

Second, while some Neighbouring Countries have agreed to the establishment of a human rights sub-committee, institutionalising regular dialogue on human rights, including in some cases on minority rights, Israel has objected to and rejected the formation of such a sub-committee. A human rights sub-committee had been proposed in the framework of the upgrade of EU-Israel relations in 2008.⁶⁹ The Commission had proposed that the sub-committee, meeting for one day once a year, would deal with questions of democracy, human rights, fundamental freedoms, combating anti-Semitism, the fight against racism and xenophobia and discrimination, with further topics to be agreed by the parties. However, with the freezing of the upgrade process in the aftermath of the Israeli military offensive in the Gaza Strip (27 December 2008 - 18 January 2009), the establishment of the sub-committee remains pending. In view of Israel's unwillingness, the Union has not succeeded in de-linking the establishment of the human rights sub-committee from the wider upgrade of EU-Israel relations.⁷⁰ In past meetings of the informal working group on human rights the EU has indeed voiced its concerns regarding the Palestinian

65 Council of the European Union (2009), Relations with Israel - Adoption of the European Union's position for the Association Council's Ninth meeting, Luxembourg, 15 June 2009, Brussels, 12 June 2009, available at <http://register.consilium.europa.eu/pdf/en/09/st10/st10709-re03.en09.pdf>

66 Written Question E-3942/03 by Daniel Cohn-Bendit to the Council on Temporary Nationality and Entry into Israel Law, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2003-3942+0+DOC+XML+V0//EN>

67 For more information see EMHRN-FIDH Note in view of the EU-Israel Political Subcommittee Meeting - 28 October 2008, available at http://www.euromedrights.org/files.php?force&file=Palestine-Israel-wg/2008_10_EMHRN_FIDH_note_for_EU_IL_pol_subcommittee_494115228.pdf

68 Other areas of identified dialogue which are relevant to the Palestinian Arab minority include: the 'evaluation and monitoring of policies from the perspective of gender equality', the need to promote the values of 'democracy, rule of law and respect for human rights', the possibility of Israel joining the optional protocols related to international conventions on human rights, 'education about the importance of tolerance and respect for all ethnic and religious groups', the imperative of 'combat[ing] hate crimes, which can be fuelled by racist and xenophobic propaganda in the media and on the Internet', and more broadly the need to '[s]trengthen the legal framework at all levels to combat racism and xenophobia, including Islamophobia' (EU-Israel Action Plan, op. cit., page 5)

69 Commission of the EC (2008), 'Proposal for a Council Decision on a Community Position in the Association Council on the implementation of Article 73 of the Euro-Mediterranean Agreement establishing an Association between the European Communities and the Member States, of the one part, and the State of Israel, of the other part', Brussels, 15 October, COM(2008) 646 final.

70 Interview with European official, 2010.

Arab minority, and the parties have discussed issues such as affirmative action programmes in the fields of education and public employment, land allocation, and the unrecognised Arab Bedouin villages. However, the working group is not institutionalised (but rather ad hoc⁷¹) and not political-diplomatic in nature,⁷² it does not allow or consider the input of member states,⁷³ and meets alongside the working group on international organisations, thereby reducing the salience of human rights issues overall.⁷⁴ The working group meets for a four-hour meeting just once a year at directors' level, which impedes a comprehensive, in-depth, high-level and sustained dialogue over the problems faced by the Palestinian Arab minority. Moreover, there is a lack of effective follow-up on questions raised by the working group (despite proactive civil society involvement⁷⁵). While the EU delegation in Tel Aviv has regular contacts with Israeli civil society organisations (CSOs) on the ground, including Arab CSOs, they are not systematically invited to specific briefings or debriefing ahead or after these meetings.⁷⁶

Third, since 2009, based on a gentlemen's agreement between the EU and Israel, human rights violations in Israel, including the rights of the Palestinian Arab minority, are only addressed in the informal human rights working group, and not at the political sub-committee level, which now focuses only on the conflict and issues pertaining to the OPT. A separation of these discussions from each other (rights in Israel and politics in the OPT; Palestinian citizens of Israel and Palestinians in the OPT) consolidates the artificial barrier drawn between the two by the EU.

Fourth, although minority rights is a designated subject of dialogue, the Israeli delegation participating in the informal working group on human rights does not include Arab citizens or involve formal consultation with Arab political leaders and civil society organisations before or after the meetings. In other words, Arab citizens of the state are an object of rather than a subject in this dialogue. The EU delegation and member-state embassies in Israel have attempted to rectify this problem by engaging in informal dialogue with civil society actors from the Arab community.⁷⁷ This dialogue has allowed European diplomacies to engage in a valuable monitoring exercise of the situation of the minority.⁷⁸ However, the scope of this engagement is often limited to the largest and most well-known Arab organisations, which benefit from EU

71 However, it is important to underline that the working group has met every year since 2006 while the political subcommittee did not meet in 2006 and 2009.

72 One may argue that the difference between the working group and the sub-committee is semantic more than substantive, given that the latter would not increase the frequency of the meetings or the level of participation, or alter the agenda of the discussion. However, the difference between the sub-committee and the working group lies in the more political nature of the former. Whereas in the working group the EU raises concerns to which Israel provides administrative answers, in the case of the sub-committee the debate would acquire a more political nature and the situation of the minority would be acknowledged by the EU at the political-diplomatic level. Interview with European official, October 2010.

73 Interview with European official, 2010.

74 Ibid.

75 See for example Euro-Mediterranean Human Rights Network, Note in view of the Fifth Meeting of the EU-Israel Working Group on Human Rights, 18 August 2010, available at http://en.euromedrights.org/index.php/news/emhnr_releases/67/4672.html

76 This differs from the good practice followed by the European Commission in Brussels of systematically consulting and debriefing European and International CSOs ahead and after the meetings of the working group.

77 Notably the British, French, German, Belgian and Swedish embassies. Interview with Mohammed Darawashe, Abraham Fund, Tel Aviv, October 2010.

78 Interview with European official, 2010. Monitoring has also included the presence of European diplomats to trials in Israel, notably that of Ameer Makhoul in 2010. The Dutch embassy has been particularly active in this regard.

funding, and tends to take place, on an ad hoc basis,⁷⁹ almost exclusively in Tel Aviv. There are only few and far between exceptions to this rule.⁸⁰

3.2.4 Assistance and cooperation: The paradoxes of a developed economy with a development problem

A final channel of potential EU influence on the situation of the Arab citizens of Israel concerns the inclusion of the minority in the manifold aspects of EU assistance to and cooperation with Israel. In terms of assistance and cooperation, Israel stands apart from all other EU neighbouring countries both to the east and to the south. Indeed, as a developed economy, Israel does not and has never received development assistance from the EU. By contrast, and precisely because of its developed status, Israel, unlike most other neighbours, participates in myriad EU programmes. Notably, Israel has been associated since 1996 to the EU's Framework Programme for Research and Technological Development (FP). This Janus-faced particularity has had a number of repercussions on the EU's approach to the Palestinian Arab minority.

EU assistance: A large share of a small pie

The absence of EU development assistance to Israel means that the overall share of EU funds channelled to Israel is small. Member-state embassies channel no or very limited funds to Israel, as Israel does not fall under the remit of development agencies.⁸¹ At EU level, the main financial instrument at the EU's disposal in Israel is the European Neighbourhood Partnership Instrument (ENPI), which allocates in 2007-2013 a mere €14 million to Israel, i.e. approximately €2 million a year. In sharp contrast, EU assistance to Georgia or Moldova stands at €301.9 million and €482.8 million respectively. Within the ENPI, there are a number of funding programmes, including Partnership for Peace, Local and Regional Cultural Activities, Cross Border Cooperation, Euromed, Cooperation in Urban Development and Dialogue, and technical assistance programmes – Taiex and Twinning – that are aimed at supporting public administration and approximating Israeli laws and procedures to EU norms. Under a different budget line, Israel is included in the European Instrument for Democracy and Human Rights (EIDHR), which unlike the ENPI provides assistance directly to civil society (rather than to or through state authorities). The overall budget of the EIDHR is significant: approximately €100-140 million per year. However, considering that this instrument has a global rather than regional or country-specific reach, its applicability to Israel is again very small, at around €1.2 million per year.⁸² Finally, Israel is eligible for funds from

79 Interview with European official, 2010.

80 Ibid.

81 Interviews with European officials, 2010. Several EU embassies fund small projects in Israel through their own budgets. The average size of these projects ranges from €20,000 to 100,000 for a duration of 1-2 years. In the case of Spain, the few funds directed to Israel (and the Palestinian Arab minority) are channelled through the Spanish NGO ACSUR. In the case of Sweden, the development agency SIDA funds only projects in/on the occupied territory, although some of these foresee Israeli participation, including the participation of Arab citizens.

82 Interviews with European officials, 2010.

the European Investment Bank (EIB) under the Facility for Euro-Mediterranean Investment and Partnership (FEMIP). However, Israel's developed economic status and the Facility's emphasis on inter- rather than intra-state projects means that FEMIP has limited relevance to the problems of the Palestinian Arab minority. A final financial instrument available to the EU in conflict situations is the Instrument for Stability (IFS). To date, no project under the IFS has been financed in Israel.

The limited size of EU assistance to Israel results in limited funds being channelled to the Palestinian Arab minority, which reduces the impact of the EU. As a consequence, while the EU cannot have a macro-level impact on the situation of the minority through its financial support, it can launch specific initiatives and conduct pilot projects. Within these confines, the EU has financed a number of projects under the ENPI and the EIDHR. Where these budget lines specifically target democracy and human rights, the Palestinian Arab minority has fared relatively well.⁸³ In other programmes, however, such as twinning projects, we note the inherent difficulties entailed in including the minority due to the fact that the primary beneficiary and lead actor in these projects is the State of Israel.

European Neighbourhood Partnership Instrument

In the context of the ENPI, to date Israel has participated in four twinning projects. Two of these projects have dealt with data protection⁸⁴ and veterinary standards and are thus unrelated or of marginal relevance to the Palestinian Arab minority as such. The other two projects focus on transportation and equal employment opportunities, and could thus potentially address the situation of the minority. The twinning projects on transport and equal opportunities highlight both the potential and the limitations of the EU's engagement with the problems of the Palestinian Arab minority.⁸⁵

In the case of the twinning project on transportation, concluded in the fall of 2010, the Israeli partner was the Ministry of Transport, which liaised with the French Institut Des Sciences Et Techniques de L'Équipement Et De L'Environnement pour Le Développement.⁸⁶ The fiche identifying the priorities of the call included the mobility needs of specific groups, notably the Palestinian Arab minority and Orthodox Jews. However, the project focused exclusively on strengthening the institutional capability of the Ministry of Transport, insofar as the latter asserted that this approach would offer the greatest added value for the twinning. No specific task designed to tackle the transportation problems of the Arab and Orthodox Jewish communities was carried out.⁸⁷

83 See Annex I. As evident from the projects marked by * and ** in Annex I, the number of projects dealing either directly or indirectly with the minority's problems, including gender-related problems, is significant. Naturally, this list constantly changes over time as projects come to an end and new ones are approved. But it serves as a rough indication of the share of EU attention and funds channelled to the minority.

84 The project on data protection could have an impact on the Palestinian Arab minority given that issues of privacy are critical in the managing of security-related issues.

85 These projects were carried out with a budget of approximately €1 million each.

86 Delegation of the EU to Israel, Project fiche - Institutional Twinning for Strengthening the Capacity of the Ministry of Transport to Provide Quality Public Transport for Urban Regions in Israel, available at http://ec.europa.eu/delegations/israel/projects/list_of_projects/200751_en.htm

87 Telephone interview with twinning consultant, Haifa, October 2010.

By contrast, the twinning project on equal opportunities, which is still ongoing, features the Israeli Equal Employment Opportunities Commission (EEOC) as the Israeli partner, working in cooperation with the Northern Ireland Equal Opportunities Commission. Arab citizens are represented in the EEOC.⁸⁸ Arab civil society was instrumental in encouraging the EEOC to submit a proposal for a twinning project to the EU.⁸⁹ The project is aimed at enhancing the capacities of the EEOC by focusing on good practice among employers, awareness-raising, information and strategy. The project has also established a consultation mechanism with civil society actors, including Arab groups. The project does face difficulties that arise from a lack of trust in the EEOC among Arab citizens of Israel, since they face severe discrimination in employment, which to date, has not been tackled by the EEOC.⁹⁰ However, unlike the other twinning projects, the EEOC project has heard Arab voices and is gathering information aimed partly at tackling the problems of the minority. The EEOC twinning project is thus, to date, an exception in relation to the other projects, which emphasises how the identity of the Israeli partner is of the essence. It may provide the EU with some leverage with which to influence the situation of the minority.

In the same way as the EU can and does press for gender mainstreaming, it can also press for minority mainstreaming and, once projects are proposed by the Israeli partner, the EU can recommend tasks within the project fiches that expressly tackle the problems of the minority. However, twinning projects ultimately have to be proposed by the Israeli state authorities. Hence, only if the latter are inclined to engage in twinning and to do so in a manner that is sensitive to the minority (as in the case of the EEOC), can EU twinning serve to benefit the latter.

Also under the ENPI, a number of projects have instead targeted specifically peace, democracy, human rights and human development. Within these projects, the Palestinian Arab minority, while not the main focus of EU attention, has featured as an issue of EU concern. Of the 44 projects listed on the webpage of the EU Delegation to Israel (see Annex I), 16 cover minority issues, including women's empowerment, rural development and territorial planning, social cohesion, inequality and employment. The funds devoted to these projects have been relatively steady over the years, amounting to approximately 30 percent of the total.⁹¹ A more detailed examination of the list allows to identify different levels of EU involvement with and contribution to minority issues. In the case of projects devoted to governance, democracy, human rights and support for economic and institutional reforms, projects dealing with minority issues represented 34 percent of the total. In the case of human development projects, four out of the five projects cover gender issues especially in the employment sector, an area of particular need for Arab women. In terms of rural development, territorial planning, agriculture and food security, the only listed financed project – Ciudad – concerned the Strengthening the Capacity of Local Authorities for Ecological Modernisation and was implemented in Shafa-Amr, an Arab municipality.

88 Since 2009 one of the 8 regional directors of the EEOC is an Arab citizen; 2 of the 22 members of the advisory committee are Arab representatives from Arab civil society (from Mossawa and Sikkuy respectively). The EEOC has determined four priorities of its work, of which the Arab minority is one.

89 Interview with Jafar Farah, Mossawa Centre, Haifa, October 2010.

90 Telephone interview with twinning consultants, Haifa, October 2010.

91 Figure calculated on the basis of the list of projects available on the Delegation to Israel's website: http://ec.europa.eu/delegations/israel/projects/list_of_projects/projects_en.htm (accessed on 22 July 2010). For the list of projects, see Annex I.

European Instrument for Democracy and Human Rights

The focus placed on the Palestinian Arab minority in the EIDHR is considerable, though there have been fluctuations in funds channelled to projects dealing with the minority over the years. This specific focus is possible because of the EIDHR's mandate on democracy and human rights, and, within it, its attention to minority and gender issues, which feature frequently in the EIDHR's strategy papers and resulting calls for proposals. This casts the EIDHR in contrast to other instruments, such as the IfS, which are exclusively devoted to conflict issues.⁹² To give an idea of the EIDHR's emphasis on the minority, projects in 2009 that addressed the Palestinian Arab minority received approximately 19 percent of the total budget of projects in Israel, significantly more than the 8.5 percent in 2007-2008, but significantly less than the 70 percent of EIDHR funds to Israel in 2000-2006.⁹³ These wide fluctuations depend both on the varying priorities set out in the multi-annual programmes and the specific calls for each year,⁹⁴ and on the quality of proposed projects submitted for funding. While in the period 2002-2004 one of the four thematic priorities was "Combating racism and xenophobia and discrimination against minorities and indigenous people", minority issues became a sub-priority in the 2005-2006 multi-annual programme (under the label "Advancing equality, tolerance and peace"). In the Strategic Paper for the period 2007-2010, minorities were considered under different calls falling under democracy and the rule of law.⁹⁵ Likewise in the 2011 - 2013 Strategy Paper, minority rights do not constitute a priority area as such, but does fall into one of the five identified priority areas (on human rights and democratic reform).⁹⁶

An overview of EU assistance programmes suggests that where budget lines relate to peace, democracy, human rights and human development within the ENPI and the EIDHR, a consistent share of approximately 30 percent is devoted to the problems faced by the Palestinian Arab minority. Moreover, within these budget lines, the EU and its member states have increasingly ventured beyond the classic (and much-criticised)⁹⁷ people-to-people projects aimed at contact between Jews and Arabs, and has moved, albeit cautiously, towards supporting projects aimed at the transformation of the internal Israeli context based on recognition of the structural inequalities between Jewish and Arab citizens. These projects have tackled a wide range of issues such as equal planning and housing rights, urban development, civil rights and democratic participation, human rights defenders, gender, equal employment opportunities, environmental issues and educational and cultural initiatives directed at combating racism,

⁹² Interview with European official, 2010

⁹³ These percentages were calculated from sources presented in European Commission, The European Instrument for Democracy and Human Rights (EIDHR) - Compendium 2007-2009, available at http://ec.europa.eu/europeaid/what/human-rights/documents/enpi_compendium_2007_2009_en.pdf and http://ec.europa.eu/europeaid/what/human-rights/documents/updated_report_by_location_en.pdf

⁹⁴ Calls are issued both by the European Commission in Brussels and by the EU Delegation to Israel.

⁹⁵ See European Commission (2001), European Initiative for Democracy and Human Rights Programming Document 2002-2004; European Commission (2006), European Initiative for Democracy and Human Rights Programming for 2005 and 2006; European Commission (2007), European Instrument for Democracy and Human Rights Strategy Paper 2007-2010.

⁹⁶ Minorities feature under objective 2 of the 2011 - 2013 EIDHR Strategy paper. See European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper for the period 2011-2013, 21 April 2010, available at http://ec.europa.eu/europeaid/what/human-rights/documents/eidhr_strategy_paper_2011_2013_com_decision_21_april_2011_text_published_on_internet_en.pdf

⁹⁷ See Challand, B. (2011) 'Coming too late? The EU's mixed approaches to transforming the Israeli-Palestinian conflict', in N. Tocci (eds) *The EU Civil Society and Conflict*, London, Routledge, forthcoming.

xenophobia and discrimination.⁹⁸ However, given the limited funds channelled to Israel (i.e. approximately €3 millions yearly), of which a substantial share is devoted to twinning and Taiex, the overall amount of funds dedicated to these projects can at most kick-start important initiatives, but cannot impact on the situation of the minority at the national level.⁹⁹ Put simply, while the minority's share of the pie is fairly large, the absolute size and relevance of such share is very circumscribed.

EU cooperation: Reflecting internal discrimination in Israel's participation in research and development

Israel maintains a strong partnership with and participation in many EU cooperation programmes.¹⁰⁰ Key amongst these is the EU's Framework Programmes, which have become the second largest funder of research in Israel after the Israel Science Foundation. In the Sixth FP, a total of 783 Israeli project proposals were accepted.¹⁰¹ In the Seventh FP, due to expire in 2013, 603 Israeli projects and 968 projects with Israeli participation were accepted, for a total value of these projects amounting to €4.3 billion as of November 2010.¹⁰² The Palestinian Arab minority, however, is not duly represented in Israel's participation in the EU's Framework Programme.¹⁰³ This lack of representation is due to a plethora of reasons. Some cite the EU's cumbersome bureaucratic procedures, a problem that is faced not only by the minority but by all scholars who participate in FP. More specific reasons that act to hinder the participation of Arab scholars in the FP include the relatively low level of interconnectedness between Arab scholars and their European counterparts, and the lack of information of EU programmes in Arab departments and colleges in Israel.¹⁰⁴

This problem was posed to the Commission in 2008. In a three-pronged written question, a member of the EP asked whether the EU had information about the participation of the Palestinian Arab minority in FP (and if so, what kind of information), what importance was attached to the problem of the Palestinian Arab minority's participation in such programmes, and whether specific efforts (and if so, what kind of efforts) were being made to involve the minority in EU-funded programmes.¹⁰⁵ In response the Commission replied: '(p)articipation

98 Interview with Ali Haider, Sikkuy, Haifa, October 2010.

99 Interview with Mohammed Darawashe, Abraham Fund, Tel Aviv, October 2010.

100 Israel participates in the EU's space programme Galileo, and in educational programmes such as 'Tempus' and 'Erasmus Mundus'. Negotiations are ongoing regarding Israel's participation in Europol. Furthermore, Israel has expressed interest in participating in the CIP (Competitiveness and Innovation Programme), Customs 2013, Fiscalis 2013, Marco Polo, Youth, MEDIA 2004, CULTURE 2007 and Hercules. Israel has also expressed the interest in cooperating with several European agencies and/or bodies, for example the EEA, Enia, EUROJUST, ECPOLE, ESA, etc. See EMHRN (2007), Third Annual Review on Human Rights in EU-Israel Relations, op.cit.

101 ISERD (2006), Israel and the European Framework Programme for Research and Development - Looking Ahead: the Seventh Framework Programme 2007-2013, available at www.cogeril.de/dateien/Israel-EU_FP.pdf

102 See statistics provided by ISERD at www.iserd.org.il/images/public/About/FP7/statistics/011110_fp7_stat.pdf

103 The Framework Programme is the EU's financial tool to support research and development activities covering almost all scientific disciplines. FPs are proposed by the European Commission and adopted by Council and the European Parliament and have been implemented since 1984 covering a period of five years. Currently FP7 is due to expire and be replaced by FP8 in 2013. For more information about FP7 see http://cordis.europa.eu/fp7/home_en.html

104 Conversation with Sharon Pardo, Ben-Gurion University, Tel Aviv, October 2010.

105 Written Question P-3372/08 by André Brie to the Commission. Subject: Participation by the Arab citizens of Israel in EU programmes in which the State of Israel takes part.

of Israel in EU programmes concerns the EC's Research and Technological Development Framework Programmes. (...) the selection of projects, including FP7, is solely based on scientific excellence. Statistics are not available on the ethnic background of the researchers taking part in the projects.¹⁰⁶

This response, corroborated by interviews, reveals an important reality.¹⁰⁷ Israel contributes to and participates in EU programmes governed by general EU rules and criteria. Emerging from a consensus amongst member states and EU institutions, these rules and criteria exclude the ethnic, linguistic or religious background of beneficiaries. As elaborated in the next section, this exclusion stems from reasons that go well beyond EU policy towards Israel, and that are rooted in the EU's approach towards minorities and minority rights in general.

Even if the FP is a cooperation programme aimed at enhancing the European research area (and not at improving research capabilities among disadvantaged groups), there are some means for the EU to take affirmative action. For example, within the "Capacities Specific Programme" of FP7 – Research Potential for Convergence Regions (REGPOT) – activities are intended to benefit poorer regions. Affirmative action is articulated in socio-economic rather than minority terms. Nonetheless, to the extent that minority groups are often (not always) discriminated against also in socio-economic terms, these calls could disproportionately benefit disadvantaged minority groups. This, for example, could apply to the Palestinian Arab minority in Israel, whereby the Galilee (excluding the Triangle area in the center of the country with a very large number of Arab citizens of the state) has been designated as an eligible area in REGPOT. However, of the projects financed by the EU under this call for proposals, none have been granted to Arab organisations to date. Insofar as the purpose of scientific cooperation is that of enhancing the European research area (and not capacity-building in Israel), neither FP in general nor specific initiatives such as REGPOT can be used to favour explicitly the participation of the minority. However, the EU can try to mitigate the anomaly whereby no Arab entities benefit from such programmes by engaging more actively in awareness-raising of its programmes in these regions. Doing so may at least reduce the extent to which discrimination against the Palestinian Arab minority in Israel spills into Israel's participation in FP.

¹⁰⁶ P-3372/08EN, Answer given by Mrs Ferrero-Waldner on behalf of the Commission, 14 July 2008.

¹⁰⁷ Interviews with European officials, 2010.



4. EXPLAINING EU POLICY TOWARDS THE PALESTINIAN ARAB MINORITY

As noted above, while the EU has displayed an awareness of and concern for the situation of the Palestinian Arab minority, in practice it has not set forth effective policy instruments in the context of its bilateral relationship with Israel to contribute to the advancement of their rights. One explanation for this disparity can be traced back to the EU's ambiguity towards the competing tensions between the definition of Israel as a Jewish state (or state of the Jewish people) and as a democratic state, and the implications thereof for the rights and citizenship status of Arab citizens of Israel. Another explanation is the lack of clear international law concerning minority rights, alongside the divergent minority rights practices within EU member-states, which have brought about a set of inconsistencies within EU policies in which the EU's stance towards the Palestinian Arab minority in Israel can be located. It is also by understanding the potential as well as the limitations of the EU's minority policies that we can explain the EU's positioning towards Arab citizens of Israel and reflect on whether and how these policies might be strengthened.



4.1 THE EU, ISRAEL AND THE “JEWISHNESS” OF THE STATE

Israel’s Declaration of Independence, several Basic Laws, state authorities, and the vast majority of Jewish Israeli political, social, economic actors and scholars, as well as public opinion define Israel as a “Jewish and democratic” state. While most Jewish Israelis believe that these two elements are compatible, when asked to prioritise them, 31 percent classify the Jewish component as more important, while only 20 percent ascribe greater importance to the democratic component.¹⁰⁸ The debate on Israel’s nature as “Jewish” and “democratic” was born with the very inception of the State of Israel. However, it has acquired increased

¹⁰⁸ 43 percent consider both parts of this definition (“Jewish” and “democratic”) to be equally important. Israel Democracy Index 2010, op. cit. p. 7.

saliency in recent years.¹⁰⁹ The question of the Jewishness of the state has also been recently elevated in 2010 as a condition imposed by the Israeli government in the MEPP, whereby Prime Minister Netanyahu has demanded that Palestinian Authority's (PA) President Mahmoud Abbas recognise Israel as a "Jewish state", or the "State of the Jewish people"¹¹⁰. The PA rejected the demand on several grounds, crucial amongst which are the implications of such recognition for the right of return of the Palestinian refugees (a final status issue) and for the rights and status of the Palestinian Arab minority in Israel.¹¹¹

On this ongoing and intensifying debate of crucial importance both for the MEPP and for the Palestinian Arab minority the EU, to date, has taken a backseat. The EU had acknowledged the existence of this debate prior to the official Israeli demand for the recognition of Israel as a Jewish state. On several occasions, the Council has referred to the issue when describing Israel's position.¹¹² Beyond merely reporting it, an EP delegation to Israel in July 2010 reportedly discussed the question at length with Israeli counterparts.¹¹³ However, the EU itself has never taken a position on the matter. The furthest the EU has gone was in 2003, when the Commission implicitly acknowledged the tension between the Jewish and the democratic nature of the state. By referring to 'the issue of reconciling the declared Jewish nature of the state with the rights of Israel's non-Jewish minorities',¹¹⁴ the Commission implicitly recognised a tension between the Jewish nature of the state and democratic rights of non-Jewish citizens, while at the same time viewing it as reconcilable (i.e. not insurmountable). In no other official document has the EU taken a position in this debate. Given the inextricable link between the definition of Israel as a Jewish state (or the state of the Jewish people) and the citizenship status and rights of the Palestinian Arab minority, the relative weakness in the EU's approach towards the latter can be partly attributed to its preference to avoid the issue, which goes to the ideological core of the conflict. The EU has repeatedly pronounced its stance towards the nature of the future

109 Ruth Gavison (1999), 'Jewish and Democratic? A Rejoinder to the 'Ethnic Democracy'', in *Debate Israel Studies*, Vol. 4, No. 1, Spring, 1999, pp. 44-72; Alexander Yakobson and Amnon Rubinstein (2003), *Israel and the Family of Nations: Jewish Nation-State and Human Rights*, Shoken (all arguing that Israel can be Jewish and democratic and these two components do not contradict one another); Sammy Smooha (2002), 'The model of ethnic democracy: Israel as a Jewish and democratic state', in *Nations and Nationalism* vol. 8 (4) 2002, 475-503; Oren Yiftachel (2006), 'Ethnocracy', in *The University of Pennsylvania Press*, 2006 (arguing that Israel should be defined as an ethnocracy rather than a democracy); Nadim N. Rouhana (1997), 'Palestinian Citizens in an Ethnic Jewish State: Identities in Conflict' in Yale University Press, 1997 (arguing that for a genuine coexistence to occur, Israel must discard its character as a Jewish state and transform itself into a democratic civil state, which would provide Arab and Jewish citizens alike the same dimensions of identity); Azmi Bishara (1993), 'On the Question of the Palestinian Minority in Israel', in *Theory & Criticism* vol. 3, 7, 1993 (Hebrew) (seeking a far-reaching liberalisation of the Israeli state by redefining it as a state of its citizens, as well as re-defining the citizen-Palestinian community itself as a national minority that possesses collective rights).

110 AFP, 'Israel push demand for recognition as 'Jewish state'', 12 September 2010, available at <http://www.france24.com/en/20100912-israel-push-demand-recognition-jewish-state>

111 Kershner, I. (2010) 'Abbas Rejects Calling Israel a Jewish State', *New York Times*, 24 October, available at <http://www.nytimes.com/2009/04/28/world/middleeast/28midwest.html>

112 For example see Council of the EU (2006), 'Meeting of the Committee on Political Affairs, Security and Human Rights of the Euro-Mediterranean Parliamentary Assembly', Brussels, 6 March 2006, p. 6 (available at <http://register.consilium.europa.eu/pdf/en/06/st07/st07806.en06.pdf>); and Council of the EU (2004), 'Commission Staff Working Paper ENP Country Report: Israel', Brussels, p. 5 (available at <http://register.consilium.europa.eu/pdf/en/04/st09/st09921-ad05.en04.pdf>).

113 Council of the EU (2010), Meeting of the EP's Committee on Development (DEVE) on 21-22 June 2010 and 1 July (extraordinary meeting) summary record, Brussels 2 July 2010, p. 10 (available at <http://register.consilium.europa.eu/pdf/en/10/st11/st11813.en10.pdf>).

114 Commission of the European Community (2003), 'Communication from the Commission to the Council and the European Parliament. Reinforcing EU actions on Human Rights and democratisation with Mediterranean partners, Strategic Guidelines', 21 May 2003, p. 5, available at http://europa.eu.int/eurlex/en/com/cnc/2003/com2003_0294en01.pdf, (emphasis added).

Palestinian state, calling for such a state to be viable, territorially contiguous and committed to the principles of democracy and non-violence. By contrast, the EU has not spoken out on the nature of the state of Israel: its “Jewish” and “democratic” character and the relationship between the two. Embedded in the EU’s unwillingness to tackle this issue may be part of the explanation for the EU’s relatively weak stance towards the Palestinian Arab minority in Israel.

In other words, the debate on the Jewish nature of the State of Israel is inextricably tied to the plethora of questions surrounding the collective and individual civil, political, social, economic and cultural rights of the Arab minority in Israel. The EU has avoided taking a clear stance maybe because it considers it inappropriate to do so, because of the imperative not to antagonise Israel, or simply because of a lack of intra-EU agreement on what such position should be. The absence of a clear and expressed EU’s view has translated in a weakly articulated position towards the Palestinian Arab minority and in the absence of a clear-cut policy towards the minority as such.

4.2 THE EU, MINORITIES AND MINORITY RIGHTS

Beyond Israel-specific factors, more general legal and political reasons help to explain the weakness of the EU’s approach towards the Palestinian Arab minority. The EU’s approach to the Palestinian Arab minority cannot be explained without reference to the lack of an international and EU legal framework on minority rights, coupled with divergent intra-EU practices. Patchy law and divergent practices have in turn given rise to a series of inconsistencies in the EU’s enlargement and external action, of which the EU’s approach to the Palestinian Arab minority is part.

4.2.1 Legal ambiguities

The weakness of EU policy on national minorities is partly due to the ambiguity in the definition of national minorities and minority rights in international law (see section 2.1) and EU law. The absence of an EU legal definition of minorities and minority rights has given rise to stark inconsistencies. Within the enlargement process, for example, the Copenhagen political criteria, announced by the European Council in 1993, replicated the internal principles of the EU, enshrined in former Article 6(1) of the Treaty on EU (TEU). The single exception concerned minority rights, which was added as a separate item in the list of political criteria, alongside individual human rights, democracy and the rule of law, though it was not part of the founding principles of the EU listed in Article 6(1).¹¹⁵ This inconsistency has been partly resolved through the Lisbon Treaty. Through its revision in Lisbon, the TEU homogenised the internal principles of the EU (now Article 2) and the conditions for membership of the EU (Article 49). Both now include minority rights.

¹¹⁵ De Witte, B. (2002), ‘Politics Versus Law in the EU’s Approach to Ethnic Minorities’, in J. Zielonka (ed.) *Europe Unbound*, London, Routledge, pp.137-60.

While resolving this inconsistency, what remains unclear within EU law is what precisely minority rights consist of. The 1993 Copenhagen criteria distinguished individual human rights from minority rights, suggesting an EU understanding of the latter which also (if not primarily) includes collective rights.¹¹⁶ However, Articles 2 and 49 of the TEU include minority rights as part of human rights: 'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities' (emphasis added).¹¹⁷ In other aspects of EU law, the individual rights component of minority rights is also given precedence. For example, EU law only calls for non-discrimination (Article 13 of the TEU; Council Directive 2000/43; Council Directive 2000/78; Council Decision 27/11/2000), including specifically non-discrimination on the grounds of belonging to a national minority (Article 21 of the Charter on Fundamental Rights). In other words, EU law remains ultimately vague (as does international law) on what precisely is encompassed within minority rights.

4.2.2 Divergent practices within the EU

Alongside the lack of legal clarity (and partly because of it), the weakness of the EU's minority rights policy is also explained by patchy and divergent minority rights practice within the EU. The Union's practice internally has been characterised by ad-hocism and inconsistency.¹¹⁸ Internally, EU minority rights protection varies widely, from forms of internal self-determination granted to minorities in member states such as Belgium (e.g. the German community) or Spain (e.g. the Basque and Catalan communities) to a quasi-negation of minorities and minority rights in member states such as France or Greece. It is precisely because of this that within EU programmes of which Israel is also part – e.g. the Framework Programme for Research and Technological Development – the EU has shied away from including rules and criteria that favour the participation of national minorities. As argued by a European official, attempting to insert such criteria would entail opening a Pandora's box that most member states, driven by different interests and policies, would be quick to hermetically seal.¹¹⁹ Insofar as FP rules apply across the board to participating countries (i.e. member states and selected associated countries) and most member states would categorically reject affirmative action for the benefit of minorities, FP rules do not and are unlikely to be revised to ensure the effective participation of national minorities.

¹¹⁶ The Copenhagen criteria called for 'stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union'.

¹¹⁷ See also De Witte, B. (2009), *The EU and the International Legal Order: The Case of Human Rights*, unpublished paper.

¹¹⁸ Hughes, J. and Sasse, G. (2003), 'Monitoring the Monitors: EU enlargement conditionality and minority protection in the CEECs', Schiffbrücke, European Centre for Minority Issues.

¹¹⁹ Telephone conversation with European official, July 2010.

4.2.3 Foreign policy implications

The EU's legal ambiguities and divergent internal practices spill into and are magnified within the domain of enlargement and of EU external action. The EU's weakness in pursuing a clear-cut minority rights policy is evident within the accession process. In the eastern enlargement, the financial instrument PHARE did not have a separate budget line for minority protection. The closest budget line regarded "civil society and democratisation", which accounted for a mere one percent of total PHARE funds.¹²⁰ The same can be said of current enlargement rounds. Despite the saliency of the Kurdish problem in Turkey, for example, the Commission avoided tackling the problem separately from its general human rights policy towards Turkey. While considerable attention is paid to the Kurdish problem in the EU's Progress Reports on Turkey, most issues are articulated through the language of individual human rights.¹²¹

However, the EU has been somewhat more proactive in the context of the accession policy, in which minority rights are included as criteria for entry, than it has beyond the confines of enlargement. In EU law, minority rights are not specifically mentioned within the guiding principles of the EU's external action, which include democracy, human rights and international law (Article 21 TEU). Consequently, the EU has been extremely cautious in pressing third states on minority rights through the policy instruments at its disposal. When it has done so, two conditions have generally applied. First, the EU has perceived a security and stability imperative to act. The EU has acted on minority issues when it has considered that not doing so would imperil wider regional stability and security, with repercussions on the EU itself.¹²² Second and equally important, within the realm of external action, the EU has tended to take a proactive stance when the third state in question has been relatively dependent on or has identified with the EU, and in particular when it has been an aspirant EU member. Hence, in the neighbourhood, a clear division can be traced between the eastern and the southern partners. In the former case, the political aspirations of the neighbours eventually to be accepted into the enlargement process, as well as their membership of the Council of Europe¹²³ and the Organisation for Security and Co-operation in Europe¹²⁴ (OSCE), has given the Union greater leeway to insist on minority rights protections, albeit articulated in terms of individual rights. The same instruments and conditions do not apply in the

120 Sasse, G. (2006) 'National Minorities and EU Enlargement: External or domestic incentives for accommodation', in J. McGarry and M. Keating (eds) *European Integration and the Nationalities Question*, London, Routledge, pp.64-84.

121 In the 2009 Progress Report on Turkey, for example, the Commission devoted 18 pages to human rights, including minority rights. Of these, several issues concerned the rights of persons belonging to national minorities (e.g. the freedoms of expression, association and assembly, religion, the freedom from torture and ill-treatment, the right to property, non-discrimination, the access to justice). By contrast, less than a page was specifically devoted to group rights and a further three pages were devoted to individual rights problems of the Kurdish community in the south-east (e.g. cultural rights and internally-displaced persons). The relative lengths of these sections highlight how the Commission is far more comfortable discussing minority issues through the language of individual rather than collective rights. See: European Commission (2009) *Turkey 2009 Progress Report*, Communication from the Commission to the Council and the European Parliament, Enlargement Strategy and Main Challenges 2009-2010, Brussels, COM(2009) 533, http://ec.europa.eu/enlargement/candidate-countries/turkey/key-documents/index_en.htm

122 See footnote number 158 for more information.

123 As member of the Council of Europe, many eastern neighbours are also signatories of the Framework Convention for the Protection of National Minorities (FCNM). For a list of signatories of the FCNM see <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=&DF=&CL=ENG>. By contrast, no non-member of the Council of Europe has adhered to the FCNM. See <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=&DF=&CL=ENG>

124 The post of the OSCE High Commissioner on National Minorities was established in 1992 to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE participating States.

southern Mediterranean. However, and as detailed below, EU's policies towards the Palestinian Arab minority in Israel, while weak, are stronger than those towards other minority groups in the southern Mediterranean region (and comparable to those towards minorities in Lebanon).¹²⁵

Delving into the detail of EU instruments and practice towards minority rights within the ENP and external action more broadly, the protection of minority rights (including the individual rights of persons belonging to minority groups) has rarely, if ever, been articulated as a condition whose non-fulfilment would be (or has been) followed by the infliction of a punishment (sanctions) or the withdrawal of a benefit (ex post conditionality).¹²⁶ Since 1991 the "human rights clause" (or essential element article) was included in agreements with third states. It is now present in over 150 agreements in all regions of the world. The clause normally refers to human rights in general, at most making reference to the Universal Declaration of Human Rights. Only in the case of the Western Balkans (whose Stabilisation and Association Agreements are expected to spill into the enlargement process) is the language more detailed.¹²⁷ But never has the EU included specific minority rights (nor other specific human rights) provisions within a human rights clause. Furthermore, the EU has demonstrated its reluctance to use the clause to unilaterally suspend signed agreements.¹²⁸ The EU has never suspended, in whole or in part, any of its agreements with its Mediterranean partners in response to a state's violations of human rights. In this respect, the EU's reluctance to exert conditionality in the context of the EU-Israel association agreement in order to influence the situation of the Palestinian Arab minority is no exception. Moreover, according to the EU, the principal aim of the essential element clause in EU agreements, both with Israel and with other third countries, is to create a legal basis for positive engagement on human (including minority) rights by issuing declarations, engaging in institutionalised dialogue, and funding particular human rights initiatives.¹²⁹ However, the EU has been reticent on minority rights in the forms of positive engagement as well.

¹²⁵ The higher quality and organisation of the Palestinian Arab minority's civil society compared to that of other minorities in the southern Mediterranean neighbourhood accounts for this difference.

¹²⁶ Commission (2001), *The EU's Role in Promoting Human Rights and Democratization in Third Countries*, pp. 8-9; Commission (2003), *Reinvigorating EU Actions on Human Rights and Democratization with Mediterranean Partners*, p. 11.

¹²⁷ In the case of Bosnia, for example, the 2008 Interim Agreement with the EU makes reference not only to the Universal Declaration but also to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Helsinki Final Act, the Charter of Paris for a New Europe, and the respect for international law, including full cooperation with the International Criminal Tribunal for the former Yugoslavia. See, for example, Article 1 of the Interim Agreement on Trade and Trade-Related Matters between the European Community, on the one Part, and Bosnia and Herzegovina, on the other Part, July 2008.

¹²⁸ Bartels, L. (2005), *The Application of Human Rights Conditionality in the EU's Bilateral Trade Agreements and Other Trade Arrangements with Third Countries*, Brussels, available at <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=23557#search=%20conditionality%20>

¹²⁹ See Communication (Com (2001) 252 final) on 'The European Union's Role in Promoting Human Rights and Democratization in the Third Countries', May 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003DC0294:EN:NOT> and Bartels (2005) *op. cit.*

In its declarations, the EU has typically either avoided the subject altogether or it has dealt only with its individual (rather than collective) human rights component. Similar to the EU's silence in its declaratory diplomacy on the Palestinian Arab minority in Israel, there have been very rare public declarations by the Council of the EU, the EP or the Commission on minority issues elsewhere in the neighbourhood.

As for dialogue, while the EU's guidelines for human rights dialogues do not specifically mention minority rights, they do consider "combating all forms of discrimination" as a priority issue to be included on the agenda of every dialogue meeting.¹³⁰ In the context of the ENP, within the human rights sub-committees with Morocco, Tunisia, Lebanon, Jordan and Egypt the EU has not targeted minority rights as a whole, but has rather focused on individual rights problems framed within the context of non-discrimination. In Israel's case, as in the case of other EU neighbours, when such dialogue does take place, it is generally articulated in terms of non-discrimination, empowerment of underrepresented groups and the pluralism of civil society, rather than the protection of minority rights as such.¹³¹

These differences can be traced to the different degrees to which minority issues appear as subjects of political dialogue in the ENP Action Plans. In this respect, while cautious towards minority issues in all third states, the EU has been marginally more active in the eastern neighbourhood than in the southern Mediterranean. Of the twelve Action Plans with neighbouring countries, five do not mention the terms minority or minority rights at all, while in at least two of them, minorities do exist and are discriminated against (the Copts in Egypt and the Berbers in Morocco). Moreover, when minorities are mentioned, there is a clear difference in the language used by the EU in the case of Eastern Europe and the southern Mediterranean. Hence in the case of Armenia, for example, the EU calls for 'respect for the rights of persons belonging to national minorities'¹³² and the 'right of national minorities to receive education in their native languages within the secondary education system'.¹³³ In the case of Georgia, the EU calls both for 'respect for rights of persons belonging to national minorities' and for the signature and ratification of the European Charter for Regional or Minority Languages.¹³⁴ With Moldova the EU goes further still, advocating 'appropriate response to conclusions and recommendations of relevant Council of Europe structures and experts on state of compliance by Moldova with the Framework Convention for the Protection of National Minorities', putting

¹³⁰ EU guidelines on human rights dialogues with third countries – Update, p.6, available at <http://www.consilium.europa.eu/uedocs/cmsUpload/16526.en08.pdf>

¹³¹ Information based on informal debriefings provided by EU officials to civil society organisations in Brussels.

¹³² EU-Armenia Action Plan, p. 12, available at http://ec.europa.eu/world/enp/pdf/action_plans/armenia_enp_ap_final_en.pdf

¹³³ Ibid., p. 37.

¹³⁴ EU-Georgia Action Plan, p. 13, available at http://ec.europa.eu/world/enp/pdf/action_plans/georgia_enp_ap_final_en.pdf

'in place and implement(ing) legislation on anti-discrimination and legislation guaranteeing the rights of minorities, in line with European standards'; and 'amend(ing) the law on religious denominations to bring it in line with the requirements of the European Convention on Human Rights and with relevant Council of Europe recommendations'.¹³⁵ Likewise, in the case of Ukraine, the Action Plan goes beyond references to 'the rights of persons belonging to national minorities, non discrimination on grounds of gender, and on political, religious and ethnic grounds' to also call for 'designing relevant legislation and effectively protecting the rights of persons belonging to national minorities, based on European standards', and 'cooperation between government authorities and representatives of national minorities'.¹³⁶ By contrast, in the case of the southern Mediterranean, the most explicit language is used in the cases of Lebanon and Israel. With regard to Lebanon, the EU has simply called for the 'protection of rights of minorities, marginalised populations and non-citizens'.¹³⁷ In the case of Israel, the Action Plan has called for the promotion and protection of 'rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents'.¹³⁸ The Action Plan for Egypt includes cooperation 'to combat all forms of discriminations', whereas in the case of Morocco vague references are made only to linguistic and cultural rights.

Finally, regarding funding, the same argument can be made of the relative funds allocated by the EU to minorities in eastern and southern neighbouring countries. In the case of the EIDHR, for example, in 2006-2008, 14 percent of all EIDHR funds to Georgia were channelled to the region of Samtskhe-Javakheti, in which the Armenian minority in Georgia is concentrated, although the Armenian minority comprises just 4.5 percent of the Georgian population. By contrast, in the case of Morocco, Egypt or Lebanon, no EIDHR project has been identified which deals specifically with minority issues. In the case of Israel, we see how in this respect the Palestinian Arab minority fares relatively well, enjoying a relatively high share of the EIDHR's attention (i.e. 19 percent of the EIDHR's funds to Israel in 2009), along with several eastern neighbouring countries.

¹³⁵ EU-Moldova Action Plan, 9 December 2004, p. 6-7, available at http://ec.europa.eu/world/enp/pdf/action_plans/moldova_enp_ap_final_en.pdf

¹³⁶ EU-Ukraine Action Plan, p.6, available at http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf

¹³⁷ EU-Lebanon Action Plan, p. 3, available at http://ec.europa.eu/world/enp/pdf/lebanon_enp_ap_final_en.pdf

¹³⁸ EU-Israel Action Plan, p. 3, available at http://ec.europa.eu/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf

5. JUSTIFYING A MORE ACTIVE ENGAGEMENT TOWARDS THE PALESTINIAN ARAB MINORITY: PEACE AND STABILITY IN THE REGION

As mentioned at the outset of section 3, the EU has tended to view the Palestinian Arab minority in Israel exclusively through the lens of democracy and human rights promotion within a partner country. This lens is certainly a valid perspective. Yet there is another optic through which the EU could and should view the minority, which adds a critical sense of urgency to this matter. This optic is the Israeli-Palestinian conflict, of which the minority is an integral component. As a part of the Palestinian people that also includes the Palestinians in the West Bank (including East Jerusalem), the Gaza Strip and the Diaspora, the Palestinian Arab minority in Israel is directly affected by the course of the conflict and any form of settlement reached as a result of the MEPP. Core issues including the future borders of the State of Israel and the prospective Palestinian state, the areas that may be included in a possible land-swap between the two, the return or otherwise of the Palestinian refugees and internally-displaced Palestinians, and the political, legal and ethno-religious character of the State of Israel, all have profound and concrete implications for the rights, status and future of the Palestinian Arab minority in Israel, their homeland.



While the Palestinian Arab minority in Israel is not an official party to the negotiations and has not been represented as a national group by either the Palestine Liberation Organisation (PLO) or by Israel, its highest representative body, the High Follow-up Committee for the Arab Citizens in Israel, has historically called for an end to the Israeli occupation and an Israeli withdrawal from all territories occupied since 1967; the establishment of an independent sovereign state for the Palestinian people with its capital in East Jerusalem; a guarantee of the right of return of the Palestinian refugees based on relevant international resolutions; and protection of the collective and individual rights of Arab citizens of the State of Israel, including political participation rights and the right to develop their national identity in Israel¹³⁹.

While the Palestinian Arab minority in general, and its political leadership in particular, has always viewed itself as an integral part of the Israeli-Palestinian conflict, international actors, including the EU, have generally tended to sideline any direct discussion on the minority in the context of the MEPP. They have tended to focus more narrowly on the “core” conflict issues related to the settlements, borders, Jerusalem, security and stability. An exception is the “positive” link that

¹³⁹ The High Follow-up Committee for the Arab Citizens in Israel, Definition and Objectives, October 2005 (Arabic), available at <http://arab-lac.org/?i=194>

was articulated at the height of the Oslo peace process between the Palestinian Arab minority and the conflict, whereby the minority was presented by some analysts as “a bridge” between Israelis and Palestinians in the West Bank and the Gaza Strip.¹⁴⁰

In contrast, recent Israeli governments have attempted to draw various “negative” links between the Palestinian Arab minority and the Israeli-Palestinian conflict, in the context of a deteriorating Israeli-Palestinian conflict and stalled peace negotiations. With the exacerbation of the conflict following the collapse of the Oslo peace process, the Palestinian Arab minority has been discursively represented in Israel as a security and demographic threat to the state of Israel, legitimising the use of extraordinary measures against it. As and when the conflict has degenerated – from the second Intifada and the October 2000 events¹⁴¹ to the second Lebanon war (2006), the Israeli military offensive in the Gaza Strip (2008-2009) and the Gaza Freedom Flotilla incident (2010) – the minority has increasingly voiced its criticisms of Israel’s actions.¹⁴² When it has done so, the Jewish majority has entrenched its perceptions of the Palestinian Arab minority as an enemy within, enabling the government to rally political momentum in favour of a cementing and intensification of discriminatory laws and measures against it.¹⁴³ Hence, beyond the “demographic” logic that underpins them, the government has also resorted to the logic of “security” to justify a series of discriminatory laws such as the 2003 ban on family unification between Arab citizens of Israel and Palestinian residents of the OPT; the 2008 law allowing for the revocation of citizenship in cases of a breach of trust or disloyalty to the state; and the flood of discriminatory legislation demanding loyalty to the Jewish state.¹⁴⁴ Hence the overwhelmingly and sometimes vehemently negative reaction by the Israeli authorities and mainstream media to the minority’s proposals for democratic reform, including through the “Future Vision for the Palestinian Arabs in Israel”, the “Haifa Covenant” and the “Democratic Constitution”, despite the acceptance articulated within these documents of the two-state solution and the existence of the state of Israel.¹⁴⁵ Hence also the range of discriminatory and sometimes violent practices of

140 Ilan Saban, (2005), “Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel,” in *International Law and Politics*, Vol. 36 pp 885-1002, available at http://law.haifa.ac.il/faculty/lec_papers/saban/NYUmr.pdf

141 During the period of 1 to 8 October 2000, thirteen Arab youths in the Triangle and Galilee areas were killed by Israel Police forces. The killing of the youths and wounding of hundreds of other among the Arab population were carried out by police officers during protests by Arab citizens and a general strike declared by the High Follow-Up Committee for Arab Citizens in Israel. The general strike was announced for 1 October 2000 in protest against the killing of Palestinians in various locations in the OPT. For more information please see Adalah’s Special Report on October 2000 Killings, available at www.old-adalah.org/eng/october2000.php.

142 Cook, J. (2010) ‘Israel’s Palestinian Minority Thrown into a Maelstrom’, *Middle East Report Online*, 16 June.

143 The 2010 Israel Democracy Index for example reveals that 62 percent of the Jewish sample feel that as long as Israel is in conflict with the Palestinians the view of Arab citizens on foreign and security matters should not be taken into account. *Israel democracy Index*, op. cit. p. 22.

144 See Adalah (2010), *New Discriminatory Laws and Bills in Israel*, available at www.old-adalah.org/newsletter/eng/nov10/docs/ndl.pdf.

145 See for example Adalah (2007), *The Democratic Constitution*, available at http://www.adalah.org/eng/democratic_constitution-e.pdf

the state against the Palestinian Arab minority, from Israel's fatal shooting of 13 Arab citizens of Israel during the October 2000 demonstrations, the Akko (Acre) events of 2008,¹⁴⁶ to the repeated attempts to disqualify Arab political parties and MKs from elections, and the filing of criminal indictments against Arab political leaders for their legitimate political activities.¹⁴⁷

More specifically, Israel has drawn two "negative" links between the Palestinian Arab minority in Israel and the conflict that warrant particular attention, given their potentially grave implications for the minority. The first is the Israeli insistence, voiced by Prime Minister Binyamin Netanyahu, that the resumption of the MEPP should be conditioned on the Palestinians' recognition of Israel as a "Jewish state", and not merely its recognition of the existence of the State of Israel, which it has previously acknowledged.¹⁴⁸ Recognition of Israel as a state of the Jewish people would implicitly but directly delegitimise the citizenship status of Palestinian Arab citizens and entrench and legalise their inferior citizenship status as non-Jews. It would also give legal and ethical justification to laws and measures that discriminate against Palestinian Arab citizens and even call into question their very future in such a state, which is their homeland.

The second link is the proposed exchange of populations between Israel and the West Bank, advocated at different times, among others, by Israel's Foreign Minister Avigdor Lieberman in his address to the UN General Assembly on 28 September 2010, thereby shifting the peace narrative from "land for peace" to "exchange of territories and populations".¹⁴⁹ This proposal, which has increasingly become part of the mainstream Jewish Israeli political discourse, would effectively turn the citizenship of large numbers of Palestinian citizens of Israel – according to Lieberman "at least half"¹⁵⁰ – into a subject of the peace negotiations, rendering it temporary and conditional.¹⁵¹ In such a scenario, the borders of Israel would be redrawn so as to exclude Arab citizens from the state while including as many of the West Bank Jewish settlers as possible.¹⁵²

¹⁴⁶ Five days of violence erupted on 8 October 2008 after an Arab citizen drove through a predominantly Jewish neighbourhood during Yom Kippur.

¹⁴⁷ See Adalah (2010), Adalah Briefing Paper: Restrictions on Human Rights Organizations and the Legitimate Activities of Arab Political Leaders in Israel, available at <http://www.old-adalah.org/newsletter/eng/jun10/docs/bp.pdf>

¹⁴⁸ See footnotes 110 and 111

¹⁴⁹ Foreign Affairs Minister Lieberman's statement to the UN General Assembly on 28 September 2010 is available at <http://www.un.org/en/ga/65/meetings/generaldebate/View/SpeechView/tabid/85/smid/411/ArticleID/244/reftab/234/t/Israel/Default.html>

¹⁵⁰ Dan Ephron, Interview with Avigdor Lieberman for Newsweek, 21 December 2010, available at <http://www.newsweek.com/2010/12/21/avigdor-liberman-israel-s-most-popular-politician.html>

¹⁵¹ Dov Waxman (2010) 'Netanyahu's Deal-Breaker', Foreign Policy, 7 September; 'Israel FM proposes redrawing border', Al Jazeera, 19 September 2010, available at <http://english.aljazeera.net/news/middleeast/2010/09/20109191584276104.html>. The newly released "Palestine Papers" reveal that Israel asked for some of its Arab citizens to be transferred to a new Palestinian state during earlier rounds of negotiations before Lieberman's tenure as Foreign Minister of Israel. Editorial. See "The Palestinian papers: Pleading for a fig leaf," 23 January 2011, available at <http://www.guardian.co.uk/commentisfree/2011/jan/23/palestinian-papers-fig-leaf-editorial>

¹⁵² Thus, for example, the 200,000-300,000 Palestinian citizens of Israel who live in the Triangle region in central Israel would remain on their land but lose their citizenship status as a result of negotiations to which they are not an official party.

Polis of Arab citizens of Israel conducted on the subject indicate that they are overwhelmingly opposed to such a step.¹⁵³ Nor is such a scenario merely political posturing; indeed training exercises by the police, home command and emergency services were reportedly carried out in the Arab-majority Wadi Ara area in central Israel in October 2010 in preparation for potential protests that could accompany a forcible exchange of population.¹⁵⁴ The various pieces of legislation demanding oaths of loyalty to Israel as a "Jewish state" subscribe to the same logic. The popularity of such proposals among the Jewish Israeli public has been borne out by public opinion polls, including a recent poll by the Israel Democracy Institute which found that 53 percent of the Jewish Israeli public believes that the state is entitled to encourage Arab citizens to emigrate from the country.¹⁵⁵

Since prominent members of the Israeli government have drawn a direct link between Arab citizens of Israel and the MEPP, proposing to that end various policies that threaten the minority's rights and citizenship, the international community in general, and the EU in particular – both as a key player in the region and as a member of the Quartet – cannot continue to sideline the violations of the rights of the Palestinian Arab minority in Israel in its overall policy towards the MEPP. The outcome of any negotiations between Israel and the Palestinians will inevitably have major implications for Arab citizens of Israel, and the EU must not allow the MEPP to result in the restriction or denial of their rights or the negotiation of their citizenship status. Any deal to end the conflict that involves the sacrifice of the rights of Arab citizens will lack credibility and rule out the achievement of a stable, sustainable and democratic two-state solution, a declared objective of the EU in the region.

Some European officials fear that drawing a link between the minority and the conflict could result in the EU "buying into" the logic of right-wing groups in Israel, which are intent on raising issues of the minority (e.g., population transfer, "ethnic conflict", security and the "demographic threat") as an agenda item of the MEPP in order to stymie or to derail the process.¹⁵⁶ Others still argue that linking the minority to the conflict would distract the EU's attention from what they believe to be the most acute manifestations of the conflict (gross violations of international humanitarian law within the OPT), and that the EU's current approach to the Palestinian Arab minority is, all things considered, adequate.¹⁵⁷

153 Yousef Rafiq Jabareen, Population Exchange in the Framework of an Agreement between the Palestinian Leadership and Israel: The attitudes of the Palestinians in Israel, presented at a study day held by the Arab Association for Human Rights, 12 December 2007 (Arabic). According to a survey of Arab citizens of Israel conducted by Dr. Jabareen, as many as 88.9 percent of those polled were opposed to an exchange of population deal that would leave areas of Wadi Ara, a predominantly Arab region in central Israel, within the borders of a future Palestinian state, in exchange for the inclusion of Jewish settlements in the West Bank within the final borders of the State of Israel.

154 The Association for Civil Rights in Israel (ACRI) sent an urgent letter to the Prime Minister on 12 October 2010 to demand clear assurances that the government is not and will not carry out a transfer of the Arab population in light of the exercises. See 'ACRI Demands Clarification on Alleged Transfer Exercise', 12 October 2010, available at <http://www.acri.org.il/eng/story.aspx?id=781>

155 The Israel Democracy Institute, Israeli Democracy Examined (Abstract), November 2010, p. v, available at http://www.idi.org.il/PublicationsCatalog/Documents/Book_71114/madad_2010_eng_abstract.pdf

156 Interview with European official, 2010

157 Interview with European official, 2010

We disagree. Viewing the Palestinian Arab minority from the perspective of human rights as well as conflict resolution entails no contradiction. On the contrary, these two perspectives are mutually reinforcing. Engaging with the minority's problems is not only (although it is also) part of the EU's democracy and human rights approach to Israel. It is also (but not only) part of a comprehensive EU strategy towards the resolution of the Israeli-Palestinian conflict.

In other cases, the EU and organisations such as the OSCE have done precisely this. For example, the EU's enlargement policy towards Central and Eastern Europe included an explicit focus on minority rights working in tandem with the OSCE High Commissioner on National Minorities because of the perceived peace and security imperative of reinforcing minority rights protection in the region. The 1995 Stability Pact for Eastern Europe is a case in point.¹⁵⁸ The EU's pro-active engagement with minority issues in Central and Eastern Europe through the Stability Pact and the accession process had a predominantly "security" rationale, which found policy form through a "legal" human rights agenda aimed at enhancing the individual and collective rights of minority groups.¹⁵⁹ Alone, neither the "security" nor the "legal rights" track suffices. Viewing the Palestinian Arab minority only through a security lens induces Israel to reinforce the articulation of the minority as a threat. Viewing the minority only through a legal rights track reduces the EU's political incentives to engage with the issue. It is only by merging the rights and the political tracks that the political imperative to engage with the minority emerges in full light, inducing the EU to fully use the policy instruments at its disposal within its bilateral relationship with Israel to address the problems of the minority.

¹⁵⁸ The 1995 Stability Pact required the candidate countries to settle their most salient minority problems before opening accession negotiations. Although the Pact was a political and non-legally binding document, its inbuilt incentives promoted agreements between Slovakia and Hungary (1995) and later between Romania and Hungary (1996) on minority and border problems. It also entrusted the OSCE with a monitoring role.

¹⁵⁹ Kymlicka (2006) *op. cit.*, p. 52-54.

6. CONCLUSIONS AND RECOMMENDATIONS

In the context of its declared goal of promoting democracy and human rights through its external action, the EU displays an awareness of the problems of Arab citizens of Israel, particularly when it comes to the manifold aspects of discrimination in the enjoyment of their civil, political, economic, social, and cultural rights. This awareness has mainly come to light in the context of the European Neighbourhood policy and its instruments. Yet such awareness and concern have translated only into weak or weakly-implemented policy instruments. Conditionality has never been considered an adequate policy mechanism with which to influence the situation of the Palestinian Arab minority. All EU institutions, including the European Parliament, have failed to use their declaratory diplomacy to address discrimination against the Arab citizens of Israel. While the EU has addressed these rights in its political dialogue with Israel, mainly at the level of the informal human rights working group, this last has important shortcomings¹⁶⁰ which limit EU's capacity to really make a difference. The EU has attempted to bridge this gap by channelling funds into civil society activities regarding the situation of the minority, and instruments such as the EIDHR have been particularly active in this regard. However, as noted by a European official, financial support cannot compensate for the lack of political support to the Palestinian Arab minority.¹⁶¹ While several projects funded under the ENPI have addressed directly or indirectly the rights of the Palestinian Arab minority, the fact that the total amount of these funds is very small limits their overall impact.

¹⁶⁰ As argued on pages 27-30 of this report.

¹⁶¹ Interview with European official, 2010



EU's policies towards the Palestinian Arab minority inside Israel are not fundamentally different from EU's policy towards other minorities. The EU's ambiguity regarding the tension between the definition of Israel as a Jewish state (or state of the Jewish people) and as a democratic state, on the one hand, and the lack of clear international law concerning minority rights on the other, concur to explain the weakness of the EU's policies towards minorities.

However, we believe there is a twofold imperative for the EU to engage more actively with the Palestinian Arab minority. First, the EU's acknowledgement of the minority's problems, as expressed by the European Commission and in commitments made in the EU-Israel ENP Action Plan to promote and protect rights of minorities give rise to this imperative. While these commitments are rather general and made only in the context of political dialogue, they do exist and should be taken seriously. Second, the link between the Palestinian Arab minority in Israel and both the Israeli-Palestinian conflict and a sustainable peace process aimed at a viable and democratic two-state solution requires greater engagement from the EU. EU actors should conceptualise and recognise members of the Palestinian Arab minority as equal citizens of the state as an important factor in the conflict, as well as in its resolution. By combining a human rights and democracy approach together with a conflict resolution approach, rather than viewing these two approaches as competing and separate, the need to engage more proactively with the Palestinian Arab minority in Israel emerges.

We call upon EU actors to acknowledge the centrality of the rights, citizenship and political status of the Palestinian Arab minority within any EU strategy aimed at promoting peace, security and stability in Israel-Palestine. The EU's strategy towards the conflict should include an enhanced strategy towards the minority. Such a strategy would include an explicit focus on the Palestinian Arab minority within the context of the EU-Israel bilateral relationship, aimed at promoting the minority's full and equal citizenship rights and minority rights in Israel. As expressed by one European official, 'There will not be peace with neighbours if there is no peace at home'.¹⁶² The EU's strategy towards Israel and the Israeli-Palestinian conflict must be based on recognition of this fact.

RECOMMENDATIONS

This report argues that EU-Israel bilateral relationship and the policy instruments within it provide an adequate policy framework for the EU to address the situation of the minority. The following recommendations are tailored to mainstream the Palestinian Arab minority within the EU-Israel bilateral relationship as part of a comprehensive EU strategy towards Israel and the Israeli-Palestinian conflict:

1. Declarations:

The European Council, the Council of Ministers, the EU High Representative and the European Parliament should make use of EU's declaratory diplomacy to take position on principle issues to prevent human rights violations and to protect and support the full and equal citizenship rights and minority rights for the Palestinian Arab minority. Among others, they should condemn all expressions of racism by Israeli officials against Arab citizens of Israel, and deplore recent political trends and legislative bills which threaten the most basic political and civil rights of members of the minority, including attacks on their elected political representatives¹⁶³.

Given Israel's insistence on recognition of Israel as a "Jewish state", the EU could follow the lead of international bodies such as the UN Committee on the Elimination of Racial Discrimination (CERD) which has stated that the definition of Israel as a Jewish nation state should not "result in any systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights".¹⁶⁴

In relation to the MEPP, the EU should state that the citizenship and minority rights of the Palestinian Arab minority in Israel should be fully guaranteed and protected as part and parcel of any agreement reached between Israel and the Palestinians and that their citizenship is non-negotiable. The EU should continue to promote Israeli democracy and withhold its support from any proposal that undermines the democratic character of Israel as a state for all its citizens and legal residents.

¹⁶² Ibid.

¹⁶³ For more information see <http://www.adalah.org/newsletter/ara/sep10/EU-Israel%20Informal%20Human%20Rights%20Working%20Group.pdf>

¹⁶⁴ CERD (2007), Concluding Observations on Israel, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/424/79/PDF/G0742479.pdf?OpenElementa>

2. Dialogue:

a - Technical human rights dialogue and civil society participation

- The establishment of the human rights subcommittee: The EU should continue to insist on the establishment of a human rights sub-committee, de-linking the issue from the overall upgrade process.
- Human rights working group: In the interim, the EU should continue and strengthen its human rights dialogue with Israel on the rights of the Palestinian Arab minority in the context of the human rights working group. Meetings should be extended to a full day, as recommended by the EU Guidelines on human rights dialogues.¹⁶⁵ The meetings should produce clear commitments for Israel, and in between these meetings, regular follow-up meetings should be held to ensure implementation of Israel's commitments, especially recommendations made by UN human rights treaty bodies as they relate to the Palestinian Arab minority in Israel.¹⁶⁶
- Involvement of civil society organisations: For the discussions of the human rights working group and the prospective subcommittee to be effective, the EU must ensure close cooperation and consultation on key issues of concern with relevant civil society actors, particularly human rights organisations, in a consistent and transparent manner. The agenda, the protocol and the minutes of these meetings must be made publicly accessible.
- Expert meeting: As suggested by the EU Guidelines on human rights dialogues, the EU should also consider setting up an expert meeting on anti-discrimination and affirmative action measures to address this issue in depth with civil society organisations, and consider inviting Israeli authorities, including Arab representatives, to encourage a real debate on this issue in Israel.

b - Political coherence

Concerns about violations of the rights of the Palestinian Arab minority should be raised by the EU at the highest political level, including during EU-Israel Association Council and political subcommittee meetings, meetings of EU and EU member states' representatives with Israeli officials, and bilateral meeting between members of the European and national parliaments and their Israeli counterparts.

¹⁶⁵ For further information please refer to pages 27-30 and 42-43 of the present report.

¹⁶⁶ This would include, for example, the Concluding Observations of the Human Rights Committee – Israel, CCPR/C/ISR/CO/3, 29 July 2010; the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD) – Israel, CERD/C/ISR/CO/13, 14 June 2007; the Concluding Observations of the Committee on the Elimination of Discrimination Against Women, expected 2011; and the Concluding Observations of the Committee on Economic, Social and Cultural Rights expected 2011.

c - Human rights mainstreaming

In accordance with the EU Guidelines on human rights dialogues which call on the EU 'to intensify the process of integrating human rights and democratisation objectives ("mainstreaming") into all aspects of its external policies', the EU should ensure that relevant EU-Israel subcommittees address discrimination against the Palestinian Arab minority. The relevant subcommittees include, among others, Social and Migration Affairs;¹⁶⁷ Research, Innovation, Information Society, Education and Culture¹⁶⁸; Transport, Energy and Environment¹⁶⁹. The same should apply to the high level seminars organised on education and training¹⁷⁰ and other fields. Links should be established between these subcommittees and the human rights working group/subcommittee.

d - ENP Progress reports

- While successive European Commission progress reports on the implementation by Israel of its Action Plan have consistently raised concern regarding the rights of the Palestinian Arab minority, the European Commission should recognise a deterioration of their rights in its next progress report covering 2010. The European Commission should highlight the flood of discriminatory legislation that has been introduced and/or enacted by the Knesset in 2009 and 2010; the criminal indictments and other punitive measures pursued against Arab members of the Knesset in 2010; the lack of accountability for the October 2000 killings (2010 marked the 10th anniversary of the events); the displacement and dispossession of lands from the Arab Bedouin in the unrecognized villages in the Naqab (Negev), among other concerns.
- In general, the progress report should include clear recommendations to Israel, and conclusions on measures to be taken by Israel in the absence of progress on human rights or any further deterioration in their protection.

e - Visibility

The EU should increase the international visibility and domestic status of the Palestinian Arab minority by engaging, in Israel and in Europe, with their representatives, including civil society, the political leadership and businessmen. The EU could regularly invite civil, political and business representatives to Brussels, including to the European Parliament, to member-state parliaments, foreign ministries and chancelleries. EU and member-state governmental and parliamentary delegations visiting Israel should ensure regular meetings with representatives of the minority, including in the Galilee, the Triangle and the Naqab (Negev).

¹⁶⁷ EU-Israel Action Plan, op. cit., p. 8

¹⁶⁸ Ibid., p. 22.

¹⁶⁹ Ibid., p. 17.

¹⁷⁰ These seminars are based on the Joint Declaration of Mr. Jan Figel, Commissioner for Education, Training, Culture and Youth European Commission and Prof. Yuli Tamir, Minister of Education State of Israel of July 2008 (available at http://ec.europa.eu/education/external-relation-programmes/doc/jointisrael_en.pdf). Such seminars took place in 2009 and in November 2010. At this last meeting, the EU delegation raised concerns on the specific issue of the participation of the Arab minority in exchange programs (Erasmus Mundus and Tempus). Information from EU official, January 2011.

3. Cooperation:

a - Research and education:

- In order to promote the “full access on an equal footing for all students, researchers, other individuals, companies and organisations based in Israel to projects under Community programmes”¹⁷¹, and remedy “the relatively low level of interconnectedness between Arab scholars and their European counterparts, and the lack of information of EU programmes in Arab”¹⁷², the EU Delegation in Israel should provide more information regarding the seventh and upcoming Framework Programmes (particularly calls such as REGPOT designed for convergence regions¹⁷³) to Arab researchers and scientists. It should organise or sponsor training sessions in colleges and universities to enhance Arab participation in the European research area. In this respect, although not part of FP7, the Mediptikar workshop in Kfar Kara in 2009 is a positive case to build on¹⁷⁴.
- Beyond the EU level and given the lack of “ethnic quotas” in the FP, Erasmus Mundus, Tempus and similar research and study programmes, member states should adopt affirmative action measures to assist Arab citizens of Israel in obtaining scholarships to study in their respective countries and participate in bilateral research projects.

b - Assistance

- Twinning projects financed under the ENPI
 - 1 - The EU should avoid patterns of discrimination in Israel from being replicated in EU twinning projects:
 - The EU should build on the example of the Equal Employment Opportunities Commission (EEOC) project by establishing regular civil society dialogue with Jewish and Arab organisations to identify projects aimed at tackling disparities in Israel.
 - The EU should specify, as part of the project requirements, the need for projects to ensure that civil society has an effective and ongoing consultative role in these projects. The European Commission should take this recommendation into account in the context of the revision of its financial instruments for external relations.¹⁷⁵

171 European Parliament (2008), Motion for a Resolution on the conclusion of a protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, on a framework Agreement between the European Community and the State of Israel on the general principles governing the State of Israel's participation in Community programmes, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B6-2008-0616+0+DOC+XML+V0//EN&language=EN>

172 Interview with Dr. Sharon Pardo, Ben-Gurion University, October 2010.

173 For more information see pages 34-35 of this report.

174 A joint Israeli-Palestinian (including Arab citizens of Israel) workshop on research and innovation was organised in Kfar Kara under the Mediptikar programme in 2009. Interview with EU Delegation in Israel, Tel Aviv, October 2010.

175 Specific reference is made to the public consultation titled “What funding for EU external action after 2013?”, available at <http://ec.europa.eu/development/how/consultation/index.cfm?action=viewcons&id=5240&lng=en>.

- The EU should encourage Israel to ensure, when relevant, that the project benefits the Palestinian Arab minority inside the state.
 - Once projects are proposed by the Israeli project partner, the EU should recommend tasks within the project fiches that expressly tackle the problems of the Palestinian Arab minority.
- 2-** The EU should encourage Israel to submit a twinning project aimed at bringing Israel's anti-discrimination legislation into conformity with EU Acquis in this field (Article 13 of the TEU; Council Directive 2000/43; Council Directive 2000/78; Council Decision 27/11/2000, Article 21 of the Charter on Fundamental Rights of the European Union).
- Project financed under budget lines related to peace, democracy, human rights and human development within the ENPI and the EIDHR:

The European Commission should ensure that appropriate funds are devoted to the Palestinian Arab minority. To do so, it should at least continue, or possibly further develop, its good practice of devoting a share of approximately 30 percent of the funds to this issue, either directly or indirectly.

4. Conditionality:

a - Conditioning the upgrade

- The EU-Israel upgrade process is formally frozen although in practice the EU's cooperation with Israel has been enhanced since June 2009 in several sectors. The EU's "business as usual" approach disregards a range of discriminatory Israeli policies and human rights violations in Israel proper and in the OPT, signalling EU acquiescence or non-objection to these policies. The EU should condition the upgrade of its relations with Israel, including any new bilateral agreement, to tangible improvements in the human rights situation in Israel and the OPT, including the rights of the Palestinian Arab minority.
- The European Parliament could also make use of its voting powers to express its disagreement with Israeli policies, and condition its approval of any new EU-Israel cooperation agreements to tangible improvements in the human rights situation in Israel and the OPT. Among others, the EP should also continue to condition its assent vote on the conclusion of a protocol to the EU-Israel Association Agreement on a framework Agreement between the European Community and the State of Israel on the general principles governing Israel's participation in Community programmes.

b - Future EU-Israel Action Plan

- Were the upgrade process to formally resume through the adoption of a new EU-Israel Action Plan, the EU should ensure that the chapter on "shared values" is substantially strengthened, in particular the objective to "promote and protect the rights of minorities, including enhancing political, economic, social and cultural opportunities

for all citizens and lawful residents". What in the current Action Plan reads as a general objective, should be translated into concrete, detailed and sequenced priorities for action, including priorities tailored to the protection of the rights of the Palestinian Arab minority in Israel. These priorities should include benchmarks referring to international standards. The EU should also encourage Israel to mainstream the rights of the Palestinian Arab minority in other fields of cooperation covered by the Action Plan, including in the fields of social cooperation (social situation, employment and poverty reduction) education and transport.

Under the objective to "promote and protect the rights of minorities", the EU should insist on the inclusion of the following action points¹⁷⁶:

- Guarantee to persons belonging to national minorities the right to equality under the law and equal protection of the law, and prohibit any discrimination based on national belonging;
- Adopt adequate special measures, including the just and fair allocation of state budgets, land and other resources, in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to national minorities and those belonging to the majority.
- Provide effective mechanisms for the prevention of and redress for any action which has the aim or effect of dispossessing persons belonging to national minorities from their lands.
- Ensure that Israel's domestic legislation is in line with the international legal covenants that Israel has ratified, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Rights of the Child, and the International Covenant on Eliminating all forms of Discrimination against Women; and encourage Israel to ratify the Optional Protocols to these conventions.
- Implement the recommendations of UN human rights treaty bodies as they relate to the rights of the Palestinian Arab minority,¹⁷⁷

¹⁷⁶ For further recommendations regarding action points (or items) on other human rights issues, see EMHRN-FIDH Note in view of the EU-Israel Political Subcommittee Meeting – 28 October 2008, available at http://www.euromedrights.org/files.php?force&file=Palestine-Israel-wg/2008_10__EMHRN__FIDH_note_for_EU_IL_pol_subcommittee_494115228.pdf.

¹⁷⁷ See footnote number 166.

ANNEX I

LIST OF EU FINANCED PROJECTS TO ISRAEL UNDER ENPI AND EIDHR¹⁷⁸

Conflict prevention

- Crack in the Wall*
- Engaging Israel's Palestinian-Israeli and Jewish Youth and Young Adult Population in New Media Innovative Educational Initiative**
- Keeping the options open for final status in Jerusalem*
- Pest Management Sans Frontières: Palestinian-Israeli-Jordanian Cooperation for Environmentally Friendly Pest Management*
- Simulating the Arab Peace Initiative*
- The Arab Peace Initiative and Israeli-Palestinian Peace: the political economy of a new period*
- The Heart of the Matter*

Governance, democracy, human rights and support for economic and institutional reforms

- "A Seat at the Table". An action to map the obstacles to equality between Jewish and Arab-Palestinian Citizens in government ministries policy and to develop inclusive practices for shaping equality policies.**
- A comprehensive Framework for Arab Education in Israel: Goals, Legal Status and Pedagogic Council**
- Access to Lands Advocacy Project**
- Advancing Implementation of the Or Committee Recommendations in the field of Planning and Land for the Arab Minority**
- Bedouin Women-Men Roundtable Discussions**
- Combating and Preventing Torture and Ill-Treatment of Palestinian Prisoners held in Israeli Prisons and Palestinian Civilians in the Occupied Palestinian Territories (OPT)*
- Creating a dialogue of Human Rights: Development of a cross cultural mode towards the empowerment of disadvantaged residents in Lod, Amman, East Jerusalem**
- Enhancing Rights to Education in the Arab Palestinian Community in Israel - Arab Teacher Training**
- Fostering the Next generation of Human Rights Leadership in Israel**
- Home Demolitions and the Law*
- Human Rights Defender*

¹⁷⁸ See http://ec.europa.eu/delegations/israel/projects/list_of_projects/projects_en.htm, accessed on 22 July 2010

- Investigation of Israeli Security Forces Personnel*
- Legal Aid to Combat Land Takeovers from Palestinians in the South Hebron Hills*
- MachsomWatch*
- Mainstreaming Local Development into the Work of Civil Society Organizations in Israel, in order to Mainstream Gender into Local Development*
- Preserving Ties: Territorial Contiguity and the Right to Movement*
- Preventing Torture Through Accountability*
- Promoting Equality in Planning for the Arab Minority through Due Representation in State Planning Institutions**
- Sharikat Haya ``Life Partners``**
- Strengthening Data Protection in Israel (Twinning project)
- The Unrecognised Village in the Negev, Southern Israel**
- Towards Sustainable Democracy: Reinforcing Respect for Human Rights and Democracy while Delegitimising Racism**

Human development

- Equality for Women in Israel: Adopting a Holistic Approach*
- Gender- and Minority-Mainstreaming of the Israeli National Budget**
- Job Opportunities for Arab Women in agriculture**
- Taking the Opportunity: Furthering Equality in Employment*
- Women and Employment Project*

Infrastructure, communications and transport

- ENPI Info & Communication- Region South - Israel- Production of a six-episode TV documentary series 'The Ambassadors'
- Institutional Twinning for Strengthening the Capacity of the Ministry of Transport to Provide Quality Public Transport for Urban Regions in Israel (Twinning project)
- Multi-sectors
- Euromed Youth III



Rural development, territorial planning, agriculture and food security

- Strengthening the Capacity of Local Authorities for Ecological Modernisation

Social cohesion and employment

- “Football: Our common ground” - Promoting coexistence between Israeli and Palestinian youth through football**
- DocEUmmunity
- Strengthening the Capacity of The Equal Employment Opportunities in Israel* (Twinning project)
- The Israel Jordan Integrated Emergency Medical System Concept
- Upholding Labour Rights in the Middle East

() directly tackles the Palestinian Arab minority**

(*) indirectly tackles the Palestinian Arab minority

PROJECT BACKGROUND

The present report is the fifth in a series meant to assess the instruments deployed by the European Union (EU) in order to promote and protect human rights in the framework of its relations with Israel. The report is published by the Euro-Mediterranean Human Rights Network (EMHRN), a network of more than 75 human rights organisations, institutions, and individuals committed to universal human rights and based in 28 countries of the Euro-Mediterranean region.

The EMHRN was established in 1997 as a civil society response to the Euro-Mediterranean Partnership. Its main objectives are to:

- Support and publicise in the Euro-Mediterranean and Arab regions the universal human rights principles as outlined in the international human rights instruments.
- Strengthen, assist, and co-ordinate the efforts of its members to monitor States' compliance with the principles of human rights and humanitarian concerns in the relations between the EU and their partners countries in the Middle East and North Africa.
- Support the development of democratic institutions, promote the rule of law, human rights, gender equality and human rights education, and to strengthen civil society in the Euro-Mediterranean region and beyond.

The EMHRN considers that human rights are universal, indivisible, interdependent and interrelated. They are closely linked to the respect for democratic principles and concern the whole of the Euro-Mediterranean and Middle East region. The EMHRN therefore promotes networking and cooperation between human rights NGOs and activists as well as the wider civil society in the whole region.

The EMHRN believes that the Euro-Mediterranean Partnership and the EU relations with the Arab world have provided the region with instruments that when efficiently implemented can enhance promotion and protection of human rights and democratic principles as well as strengthen civil society.

In this context the EMHRN established Working Groups on several human rights issues relevant to the Barcelona process and the region, one of these being the Working Group on Palestine/Israel and the Palestinians (PIP).

The current PIP Working Group consists of human rights activists from the following organisations:

- Acsur – Las Segovias (Spain)
- Adalah – The Legal Center for Arab Minority Rights in Israel (Israel)
- Al-Haq (The West Bank, Palestine)
- Al Mezan Centre for Human Rights (Gaza, Palestine)
- Arab Association for Human Rights (Israel)
- B'Tselem – The Israeli Information Centre for Human Rights in the Occupied Territories (Israel)
- Bruno Kreisky Foundation (Austria)
- Committee for the Respect of Freedoms and Human Rights in Tunisia (Tunisia)
- Federation of Associations for the Defence and the Promotion of Human Rights (Spain)
- Greek Committee for International Solidarity (Greece)
- Palestinian Centre for Human Rights (Gaza, Palestine)
- Palestinian Human Rights Organisation (Lebanon)

- Public Committee Against Torture in Israel (Israel)
- Rehabilitation and Research Centre for Torture Victims (Denmark)
- Tunisian Association of Democratic Women (Tunisia)

Following the recommendations of the EMHRN's 6th General Assembly, the PIP Working Group has engaged in a project that reviews the EU's human rights obligations and commitments in relation to Israel on an annual basis.

The current report was outlined during meetings of the Working Group in the course of 2009 and 2010 at which the members of the PIP Working Group considered it urgent to deal with the deteriorating human rights situation of the Palestinian Arab minority inside Israel.

Numerous agreements concluded between the EU and Israel within the context of the "Barcelona Process" (now the Union for the Mediterranean, UfM) contain provisions that bind both parties to "respect human rights and democratic principles". The Association Agreement signed between Israel and the EU in 1995 governs a range of political, economic, and cultural cooperation issues. The European Neighbourhood Policy, conceived in 2003, and the resulting EU-Israel Action Plan also contain various human rights commitments, including those that concern minority rights. Nevertheless, violations by Israel of the rights of Arab citizens of the state are rarely addressed in official EU documents, with the almost sole exception of working documents produced by the European Commission on the implementation of the EU-Israel Action Plan (the progress reports).

This report, like its predecessors, is meant to bring added value to current human rights work being conducted in Israel and the Occupied Palestinian Territory by serving as a human rights guide with which to evaluate the EU's relations with Israel. The present review may also be used proactively as a means of building capacity to understand EU human rights mechanisms and share information, and as an advocacy tool.

The principal author of this report is Nathalie Tocci, Senior Fellow at the Istituto Affari Internazionali in Rome, Italy, with the research assistance of Benedetta Voltolini. Other main contributors were Nathalie Stanus of the EMHRN, Rina Rosenberg of Adalah, Katie Hesketh of Adalah, and Mohammad Zeidan of the Arab Association for Human Rights. The report has also benefited from valuable contributions and comments from Maysa Zorob of al-Haq and member of the EMHRN Executive Committee, and other members of the PIP Working Group.

The project was steered by:

- Rina Jabareen, Adalah – The Legal Center for Arab Minority Rights in Israel
- Mohammad Zeidan, Arab Association for Human Rights

The research conducted for the purpose of this report draws from both primary and secondary sources, as well as information collected through interviews with relevant actors.

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LIST OF ABBREVIATIONS

ACAA	Agreement on Conformity Assessment and Acceptance
CEDAW	International Covenant on Eliminating all forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CIP	Competitiveness and Innovation Programme
CoE	Council of Europe
CSDP	Common Security & Defence Policy
CSOs	Civil Society Organisations
EEA	European Environment Agency
EEOC	Equal Employment Opportunities Commission
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights
EMHRN	Euro-Mediterranean Human Rights Network
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Partnership Instrument
EP	European Parliament
ESA	European Space Agency
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
FEMIP	Facility for Euro-Mediterranean Investment and Partnership
FP	Framework Programme for Research and Technological Development
GNP	Gross National Product
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Convention on the Rights of the Child
IfS	Instrument for Stability
ISERD	Israeli-EU Research Directorate
JNF	Jewish National Fund
MEPP	Middle East Peace Process
MEPs	Members of the European Parliament
MKs	Members of the Knesset
NIS	New Israeli Shekel
NPAs	National Priority Areas
OECD	Organisation for Economic Cooperation and Development
OPT	Occupied Palestinian Territory
PA	Palestinian Authority
PLO	Palestine Liberation Organisation
REGPOT	Research Potential for Convergence Regions
TEU	Treaty on the European Union
UN	United Nations



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

الشبكة الأوروبية – المتوسطية لحقوق الإنسان

Vestergade 16 - 1456 Copenhagen K - Denmark

Tel: +45 32 64 17 00 - Fax: +45 32 64 17 02

E-mail : info@euromedrights.net

Website: www.euromedrights.net



Adalah The Legal Center for Arab Minority Rights in Israel
عدالة المركز القانوني لحقوق الأقلية العربية في إسرائيل
עדאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל

94 Yaffa Street, PO Box 8921, Haifa 31090, Israel

Tel: + 972 4 950 1610 - Fax: + 972 4 950 3140

E-mail : adalah@adalah.org

Website: www.adalah.org



المؤسسة العربية لحقوق الانسان
Arab Association for Human Rights-HRA
האגודה הערבית לזכויות האדם

PO BOX: 224 , Nazareth 16101

Tel:+972(04) 6561923 - Fax:+ 972 (04) 6564934

E-mail : hra1@arabhra.org

Website: www.arabhra.org