

**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND
ALL FORMS OF DISCRIMINATION**

Written intervention submitted by
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Al-Haq and Adalah would like to draw your attention to Israel's recently-amended ***Civil Wrongs (Liability of the State) Law*** (hereafter: the amended law). The amendments to the law, which passed the Knesset by a 54-15 vote on 27 July 2005, proclaim that the State of Israel is not civilly liable "for damage sustained in a Conflict Zone due to an act performed by the security forces." The amended law makes it all but impossible for Palestinians to submit claims for compensation to the Israeli courts as a result of illegal actions carried out by Israeli forces, including acts of negligence. Under the amended law, compensation is denied to Palestinian residents of the Occupied Palestinian Territories (OPTs), as well as Arab citizens of states classified by Israel as "Enemy States," which clearly constitutes discrimination on the basis of national origin.

Under the amended law, the state shall not be civilly liable for damage sustained by: anyone considered a citizen of an "Enemy State" (unless he is legally present in Israel); anyone considered an activist or member of a "Terrorist Organisation"; or anyone who incurred damage while acting as an agent for or on behalf of an individual from such a state or organisation. The law targets citizens of an "Enemy State," even where there is no connection between the nationality, alleged activities or organisational membership of the individual, and the way in which the damage occurred. Further, the terms "Terrorists" and "Terrorist Organisations" are so broadly defined by Israel as to include not merely those who carry out armed attacks against Israeli civilian targets, but also those who non-violently support the struggle for the Palestinian right to self-determination and the end of Israel's occupation of the OPTs.

The amended law further states that claims regarding incidents which took place in a declared "Conflict Zone" and in which Israeli forces acted or were present in the context of a conflict, are also prohibited. A Conflict Zone is an area outside Israeli territory which is declared as such by the Minister of Defence; such declarations may be made retroactively. By granting the power to declare areas as "Conflict Zones," even if no "act of war," has actually taken place there, the Compensation Law strips Palestinian civilians from the OPTs injured therein of their right to compensation, sending a dangerous message that their lives and rights have no value. The amendments seek to terminate accountability for the Israeli military's activities in the OPTs, discourage investigations and the indictment of those responsible for deaths and injuries, even in cases of violations of international law, including damages caused by random or deliberate opening of fire, torture and abuse, and looting and theft of civilian property.

In a meeting of the Israeli parliament's Constitution, Law and Justice Committee held on 20 July 2005 during the drafting of the amended law, a representative of the Ministry of Justice, referring to the potential impact on Israeli settlers in the OPTs, explicitly stated that "... the intention is that [the amended law] will not apply to Israeli citizens." Such a reference speaks volumes of the intention to discriminate against Palestinian residents of the OPTs. In short, the amended Compensation Law precludes the vast majority of Palestinians residing in the OPTs from receiving compensation for injury caused by the Israeli occupying forces.

The prohibition of racial discrimination is, of course, a fundamental tenet of public international law, and is upheld in the UN Charter itself. The principle of non-discrimination is also found in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The prohibition of discrimination is not just limited to racial discrimination, but also includes discrimination on the grounds of national origin and political or other opinion. These grounds are explicitly referenced in Article 26 of the ICCPR, which guarantees all people equality before the law and states that they are entitled to equal protection of the law. The specific exclusion of claims from individuals based on their nationality or opinion is a grave violation of this fundamental tenet of international law.

It should be noted that there are three exceptions provided for in the law. First are instances in which a detainee/prisoner is harmed whilst in the custody of an Israeli agent (provided that the detainee/prisoner "did not again become an activist or member of a Terrorist Organisation and did not act on behalf of or as an agent for any such organisation"). The second exception is for claims resulting from bodily or property harm resulting from road accidents involving a member of the Israeli security forces in very limited circumstances. Finally, those claims in which the member of the security forces responsible for the resulting damages has been convicted in a final verdict by an Israeli court of offences pertaining to the incident causing harm will also be considered, again in very limited circumstances.

However, these exceptions do not provide for any meaningful opportunity for Palestinians to obtain compensation for wrongs committed by the Israeli military. Investigations into violations by Israeli security forces against Palestinians have thus far been infrequent at best. As documented by the Israeli human rights organisation B'Tselem, from the beginning of the Intifada to June 2005, there were only 108 investigations into instances of Palestinians killed by Israeli forces. Of those, only 19 indictments were issued, and two convictions. Further, the idea that compensation for past incidents may be contingent upon one's future actions is a blatant rejection of the tenet of responsibility for unlawful acts. Regardless of what actions may take place in the future, Israel remains responsible for the unlawful actions of its agents and must remain accountable for them.

The exceptional nature of such remedies under the Compensation Law is further emphasised in the provisions detailing the establishment of a committee authorised to propose payment to claimants. This committee, the composition and powers of which are determined by the Minister of Defence, is specifically mandated to provide *ex gratia* payment under "special circumstances" only.

Under the Oslo Accords, Palestinians are already effectively precluded from taking civil action against Israelis in Palestinian courts. Under Article III of Annex IV of the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), Palestinian courts and judicial authorities do not have jurisdiction regarding actions by the State of Israel, its organs, agents, or statutory entities. With the passage of the amended Compensation Law, Palestinians will have no effective judicial recourse in either Palestinian or Israeli courts to address wrongs committed by Israeli forces in the OPTs. This law will impact not merely all Palestinians in the OPTs injured from this time onward, but all those injured since the outbreak of the current Intifada, since the law applies retroactively to September 2000.

Consequently, Palestinians injured by the Israeli military in the OPTs will in practice be denied their fundamental right to a remedy under international law. This right, which is customary in nature, is upheld, *inter alia*, in the UDHR, the Fourth Hague Convention

Concerning the Laws and Customs of War, the ICCPR, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The duty to provide reparation (the substance of the relief afforded) was also upheld by the Permanent Court of International Justice in the *Chorzów Factory* case:

It is a principle of international law and even a general conception of law, that any breach of an engagement involves an obligation to make reparation [...] Reparation is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.

Clearly, the amended Compensation Law is a breach of many of Israel's obligations under international law. It denies the right to a remedy, discriminates against Palestinians, and enables *de facto* impunity for Israeli security forces who commit violations of international human rights and humanitarian law. Al-Haq and Adalah therefore urge the Commission on Human Rights to condemn this law and call upon Israel to revoke it.