



**ADALAH BRIEFING PAPER:
RESTRICTIONS ON HUMAN RIGHTS ORGANIZATIONS AND THE LEGITIMATE ACTIVITIES OF ARAB
POLITICAL LEADERS IN ISRAEL**

Submitted to the European Parliament, Committee on Foreign Affairs,
Sub-Committee on Human Rights in advance of its hearing on
"The Situation of NGOs and civil society in Israel," 23 June 2010

Adalah is pleased to present this briefing paper to the members of the European Parliament Sub-Committee on Human Rights.¹ This paper will address three issues:

- (1) Three pending bills that seek to severely limit and delegitimize the work of human rights organizations in Israel;
- (2) Criminal indictments and Knesset investigations opened into the legitimate political activities of Arab parliamentarians; and
- (3) Recently-enacted laws and pending bills that restrict the political participation of Palestinian Arab citizens of Israel and their parliamentary representatives.

I. Three pending bills that seek to severely limit and delegitimize the work of human rights organizations

1. Bill on disclosure requirements for recipients of support from a foreign political entity – 2010² ("The NGO Funding Bill")

This bill received the support of the government on 14 February 2010 and passed a preliminary vote in the Knesset plenum on 17 February. Its provisions threaten the work and even the existence of human rights NGOs by:

- Defining civil society groups that work to influence public opinion or governmental policy as engaging in "political activity," and requiring them to register with the Registrar of Political Parties;
- Forcing representatives of civil society groups to state in every private and public platform related to their advocacy work that their organizations receive funding from "foreign political entities" (foreign governments). Should they fail to do so, principal activists within these groups would face fines and imprisonment for up to a year;
- Revoking the tax-exempt charity status of NGOs promoting policy change so that they would have to pay taxes on donations or other income, thereby threatening the ability of donors to support their work;
- Making it compulsory for organizations to register their members' identity numbers and addresses, information that could also be disclosed to the public, potentially allowing for harassment.

While the declared purpose of the bill, as stated in its explanatory notes, is "to increase transparency and repair loopholes in legislation in relation to the financing of political

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activity in Israel by foreign political entities,” it is superfluous since every non-profit organization in Israel is already required under Israeli law to list its donors and other financial information on its website and to report annually to the government, specifying whether foreign governments have donated money.³

2. *The Associations (Amutot) Law (Amendment - Exceptions to the Registration and Activity of an Association) - 2010 (“The Ban on Universal Jurisdiction Bill”)*

This bill was introduced by nineteen MKs on 8 February 2010 seeking to outlaw associations which provide information to foreigners or are involved in litigation abroad against senior Israeli government officials and/or army chiefs for war crimes.⁴ The bill would prohibit the registration of any NGO if “there are reasonable grounds to conclude that the association is providing information to foreign entities or is involved in legal proceedings abroad against senior Israeli government officials or IDF [Israeli military] officers, for war crimes.” An existing NGO would be shut down for such activity.

As this bill essentially seeks to conceal information or suspicions of a crime, it completely contradicts the customary norms of law. It constitutes a dangerous step against human rights organizations and anyone who opposes war crimes. The legislation seeks to restrict the freedom of expression and freedom of association of these organizations, and creates public de-legitimization of their educational, legal and public role.⁵

The text of the bill refers directly to the Goldstone Report as follows, using it to justify its provisions, “The UN’s one-sided and controversial report by Judge Goldstone, on the IDF’s [Israeli military’s] actions in Gaza during “Operation Cast Lead”, brought Israel to an unprecedented low in terms of publicity.” It further states, “It is very troubling that... we find that Israeli NGOs and associations, through passing of information (mostly incorrect and even fraudulent) to foreign authorities who are our enemies, and through public agreement or approval that Israel is guilty of war crimes... The underlying assumption behind this bill is that this type of activity must be made illegal.”

3. *Bill on “Prohibition on imposing a boycott - 2010” (“The Ban on BDS Bill”)*

Twenty-four MKs from the government coalition and the opposition introduced this new bill on 15 June 2010, which proposes to outlaw any activities promoting any kind of boycott against Israeli organizations, individuals or products.⁶ The bill targets Israelis, the Palestinian Authority, Palestinians and foreign governments and individuals, and seeks to impose heavy fines, economic sanctions and entry bans on supporters of boycott activities.

This bill was proposed after a decision was taken by the Palestinian Authority in the West Bank to cut all business ties with Israeli settlements and to boycott their produce, and in response to a growing academic boycott of Israeli universities. It targets all supporters of the boycott, divestment and sanctions (BDS) movement.

The explanatory notes to the bill state that, “This law aims to protect the state of Israel in general and its citizens in particular from academic, economic and other boycotts, which are imposed as a result of any ties to the state of Israel... the assumption is that a citizen or resident of the state shall not call for the imposition of a boycott on his own country or of its allies ...”

If passed, these three proposed bills will criminalize the activities of many NGOs in Israel and seriously damage their financial viability, as well as their ability to function in their legitimate capacity as human rights defenders in Israel.

- ***Analysis – Why now?***

Following the publication of the Goldstone Report in September 2009, human rights NGOs in Israel faced an increasingly hostile attack in which government ministers, MKs and right-wing NGOs have partaken.⁷ The situation even deteriorated to the point that in February 2010 some Israeli lawmakers discussed the possible establishment of a parliamentary committee to investigate the activities of some human rights organizations. Government spokespersons have called human rights groups “a strategic threat.”

In parallel, a particularly virulent campaign of incitement has been launched in recent months by a radical, right-wing Israeli group, Im Tirtzu – The Second Zionist Revolution, aimed at delegitimizing the New Israel Fund (NIF) and human rights organizations it supports in Israel. Im Tirtzu seeks to influence Israeli public opinion against human rights organizations in Israel for providing information to the Goldstone Mission and supporting universal jurisdiction cases against Israeli political and military figures. In the current political climate, the extremist right-wing rhetoric espoused by some ministers and MKs, as well as groups such as Im Tirtzu and the NGO Monitor, constitutes dangerous incitement against human rights organizations based in Israel, particularly those that defend the rights of Palestinians in the OPT.

CASES TO WATCH: AMEER MAKHOUL & DR. OMAR SAEED

On 27 May 2010, the State Prosecution filed indictments against Ameer Makhoul, the Director of the Arab NGO network, “Ittijah”, and a human rights defender, and Dr. Omar Saeed, a medical researcher and political activist. Dr. Saeed is charged with contact with a foreign agent and the delivery of information to an enemy. Mr. Makhoul is accused of assistance to the enemy in time of war and aggravated espionage. Both men vehemently deny the charges. Their arrests and interrogations were undertaken in gross violation of their fundamental due process rights. Prohibition orders were imposed on meeting with lawyers, in the case of Dr. Saeed for 16 days and in the case of Mr. Makhoul for 12 days following their arrest. Total gag orders were placed on the two cases by the court preventing media coverage. Severe interrogation methods were used by the General Security Services (GSS) against Mr. Makhoul, which caused him both psychological and physical harm. Over the entirety of his detention, up to 26 May, the GSS rejected requests for Mr. Makhoul’s medical records and for an independent doctor to examine him. Both men remain in prison. Adalah is part of the legal defense team representing Mr. Makhoul and Dr. Saeed and is gravely concerned over the severe infringements of their rights, which contradict Israeli and international law.⁸ Exaggerated accusations in indictments have become common practice in security cases against Arab citizens of Israel, aimed at justifying the complete isolation, gag orders, prohibition on meeting with legal counsel, and the use of illegal methods of interrogation.

II. Criminal indictments and Knesset investigations into the legitimate political activities of Arab Members of Knesset (MKs)⁹

1. The Indictment of MK Mohammed Barakeh (Head of the Democratic Front for Peace and Equality, "al-Jabha" or "Hadash")

MK Barakeh has been a member of parliament since June 1999. He was criminally indicted in November 2009 on four counts of allegedly assaulting or insulting a police officer and a right-wing activist during four different demonstrations against the Separation Wall in the OPT, the Second Lebanon War, and the October 2000 killings of 13 Arab citizens of Israel. MK Barakeh has attended hundreds of demonstrations at which he mediated between protesters and the police. Often soldiers turn violent against the demonstrators, and in some cases MK Barakeh was assaulted and submitted complaints to the authorities, which were subsequently closed.¹⁰

The Inter-Parliamentary Union (IPU) Committee on the Human Rights of Parliamentarians affirmed in March 2010 that leading and participating in demonstrations is an integral part of the parliamentary mandate. It noted its concern that the charges were brought against MK Barakeh years after the events, and that complaints filed on his behalf against persons who attacked him and other protestors were not investigated. It emphasized that it would examine the possibility of sending an international observer to the relevant proceedings.¹¹

The case is being heard by the Magistrates' Court in Tel Aviv.¹² In April 2010, the court summarily rejected Adalah's motion challenging the illegality of joining together four different charges into a single indictment.¹³ Adalah argued that the joinder stood to substantially harm the legal defense of MK Barakeh and undermine his parliamentary immunity rights, as well as his right to a fair trial. Today, 23 June, Adalah filed a petition to the Israeli Supreme Court to sever the offenses. Hearings will continue on 24 June.

2. The Indictment of MK Said Naffa – National Democratic Assembly-Balad

MK Naffaa has been an MK since April 2007. On 26 January 2010, the Knesset House Committee voted to lift his parliamentary immunity to allow the Attorney General to criminally indict him for various offenses surrounding a visit he made to Syria, considered an "enemy state" under Israeli law.¹⁴ Three years ago, MK Naffaa arranged for a group of 280 Druze religious clerics to make a pilgrimage to holy sites in Syria after they were repeatedly refused a permit by the Interior Minister. MK Naffaa argues that the clerics were unfairly and arbitrarily denied their religious freedom. MK Naffaa is also accused of contact with a foreign agent. According to one of his assistants, who was interrogated by the GSS, MK Naffaa discussed the feud between Fatah and Hamas with Talal Naji, a Syrian leader of the Popular Front for the Liberation of Palestine, and attempted to meet with Khaled Meshal, head of Hamas in Damascus. MK Naffaa denies meeting either man.

MK Naffaa maintains that his visit was entirely political in nature and that the Knesset's actions are designed to prevent him from fulfilling the role as an MK. Adalah represented MK Naffaa at a hearing held before the AG and senior officials from the State Prosecutor's Office in March 2009. The State Prosecutor recently informed Adalah that MK Naffaa has been indicted.

3. *The Detention of Four Arab leaders: The Gaza Freedom Flotilla*

On 31 May 2010, four Palestinian Arab citizens of Israel were arrested from the *Mavi Marmara*: three political leaders – Mr. Muhammed Zeidan, the Chairman of the High Follow-up Committee for Arab Citizens of Israel; Sheikh Raed Salah, Head of the Islamic Movement in Israel; and Sheikh Hamad Abu Daabes, Head of the Islamic Movement in Israel (southern branch) – and Ms. Lubna Masarwa of the Free Gaza Movement and Al Quds University.¹⁵

The police prosecutor asked to remand the four, arguing that a range of criminal offenses could apply, including conspiracy to commit an offense, and possession and use of weapons. He further contended that it was the state's policy to detain citizens of Israel who had participated in the flotilla. The prosecution furnished no evidence to demonstrate that any of these four individuals had participated in or bore responsibility for any attack on Israeli naval soldiers. The legal defense team made a range of additional arguments, including that since the incident took place in international waters the Israeli courts had no jurisdiction to hear the case, and that the detention was prima facie illegal, as the law requires those arrested to be brought before court within 24 hours whereas they were detained for 40 hours. The four were released on 3 June 2010 under restrictive conditions: a week-long house arrest, a 45-day foreign travel ban, and the posting of a NIS 150,000 bond.¹⁶ To date, no indictment has been filed against them.

4. *Attempts to Revoke the Parliamentary Privileges of MK Haneen Zoabi*

MK Haneen Zoabi was elected to the Knesset in 2009. She is the first woman to be elected to the Knesset as a representative of an Arab political party. She participated in the Gaza Freedom Flotilla and was a passenger on the *Mavi Marmara*. As MK Zoabi enjoys parliamentary immunity, she was not detained but she was subjected to an extensive interrogation. She was one of the first eyewitnesses to describe what had happened on the boat. Her description of the attacks contradicts the Israeli government's official version of the events¹⁷ and she has called for an international, independent inquiry into the attacks.

On 7 June 2010, the Knesset House Committee voted to revoke MK Zoabi's parliamentary privileges. If approved by the Knesset plenum, she stands to lose her diplomatic passport, any privileges in overseas travel enjoyed by MKs, and the right for the Knesset to cover her legal fees should her immunity be revoked for the purposes of criminal prosecution.

The House Committee's decision followed several stormy sessions in the Knesset¹⁸ during which MK Zoabi was branded by fellow parliamentarians as a "terrorist" and "traitor," and subjected to racist and overtly sexist remarks, as well as physical threats. Various Israeli ministers and MKs have called for the revocation of her Knesset membership, for her to be criminally prosecuted, and even for her Israeli citizenship to be revoked, as proposed by Interior Minister Eli Yishai.¹⁹ She has also received dozens of death threats. No Israeli government official has spoken out in support of her rights to life, liberty and freedom of expression.

III. Recent laws and pending bills that restrict political participation rights

1. Revocation of citizenship on the grounds of disloyalty

On 28 July 2008, the Knesset approved *The Citizenship Law (Amendment No. 9) (Authority for Revoking Citizenship)—2008* which allows citizenship to be revoked on the grounds of “breach of trust or disloyalty to the state.” “Breach of trust” is broadly defined and even includes the act of residing in one of nine Arab and Muslim states which are listed by the law, alongside the Gaza Strip. No criminal conviction is required. There are numerous threats from members of the governing coalition to use this law against Arab political and civil society leaders who have been accused of or indicted for security offenses.

2. The right to participate in Knesset elections

Several changes made to the *Basic Law: The Knesset (1958)* substantially restrict the rights of Arab citizens of Israel to participate in the political process. An amendment from 1985 added Section 7(A) to law, which provides that, “A list of candidates shall not participate in the elections for the Knesset if its aims or actions, expressly or by implication, point to one of the following: (1) denial of the existence of the State of Israel as the state of the Jewish people; (2) denial of the democratic nature of the state; and (3) incitement to racism.”

Amendments in 2002 changed Section 7(A)(1) to read as, “denial of the existence of the State of Israel as a Jewish and democratic state” and added Section 7(A)(3), “support for armed struggle by a hostile state or a terrorist organization against the State of Israel.” as an additional basis for disqualifying candidates and candidates’ lists. This law was used to seek to disqualify Arab candidates and political party lists from running in Knesset elections for 2003, 2006 and 2009.

Most recently, on 30 June 2008, the Knesset approved an amendment to *The Basic Law: The Knesset (Candidate who Visited a Hostile State Illegally)*, which denies the right to be a candidate for election to the Knesset to any citizen who has visited “enemy” states – such as Syria, Lebanon, Iraq and Iran – without permission from the Interior Minister during the seven years prior to the election. The explanatory notes emphasize that the law was formulated in response to recent visits by Arab MKs to Arab states. The law constitutes a flagrant violation of the right to be elected and in practice applies almost exclusively to Arab MKs.²⁰

3. “Loyalty bills” targeting Arab parliamentarians

This series of bills were proposed on 1 April 2009. A proposed amendment to *The Basic Law: The Government—Loyalty Oath* stipulates that upon taking up the office of minister, all ministers must make an oath to the state as a “Jewish, Zionist and democratic state” and to the values and symbols of the state. Ministers are currently required to make an oath only to the state of Israel. Two similar recently-proposed bills seek to impose loyalty oaths on MKs. Both bills seek to amend *The Basic Law: The Knesset*. The first requires all MKs to make an oath to the state as a “Jewish, Zionist and democratic state” and to the values and symbols of the state. The second requires MKs to swear allegiance to Israel as a “Jewish and democratic state.” The law seeks to consolidate the provisions of *The Law of Election (1969) (Amendment 46)—2002*, which state in section 57 that a candidate who wishes to run for election to the Knesset must declare as follows: “I commit myself to uphold the loyalty for the State of Israel and to avoid acting in contradiction with Section 7(A) of *The Basic Law: The Knesset*.”

RECOMMENDATIONS

In response to the severe and sustained attacks on the political rights and freedoms of human rights defenders and Arab parliamentarians in Israel, as detailed in this briefing paper, Adalah makes the following recommendations to the European Parliament's Sub-Committee on Human Rights:

Proposed bills against human rights organizations

- Closely monitor the progress of the proposed bills by continuous consultation with human rights organizations;
- Given the serious threat that the proposed legislation represents to human rights organizations in Israel, issue a public statement or declaration of concern about the bills before they are debated again in the Knesset;
- Publicly raise concern and condemn any threats and attacks against human rights defenders or organizations;
- Regarding the cases of Ameer Makhoul and Omar Saeed issue statements of concern about the denial of their fundamental due process rights during interrogation, and monitor future proceedings, including by trial observation, to ensure that they receive their full fair trial rights.

Arab Members of Knesset

- Hold a special hearing with Arab MKs in order to hear directly from them about the issues raised in this briefing paper as well as other parliamentary concerns;
- Consider sending observers to attend and monitor the upcoming trials of Arab MKs;
- Urge the Israeli parliament to respect and uphold the political rights and freedoms of all of its members, in particular Arab MKs, as the elected representatives of the Arab national minority in Israel.

Recent discriminatory laws and bills against political participation rights

- Closely monitor any attempts by Israel to revoke the citizenship of Arab citizens of Israel, including parliamentarians, on the grounds of "disloyalty" and speak about publicly against it;
- Closely watch any attempt to prevent or disqualify Arab MKs in future elections for travel to so-called enemy states;
- Monitor the progress of "loyalty bills" targeting Arab parliamentarians and political leaders and issue statements against them before they are debated again in the Knesset.

ENDNOTES

¹ Adalah (“Justice” in Arabic) is an independent human rights organization and legal center based in Israel. It works to promote and defend the rights of Palestinian Arab citizens of Israel and Palestinians living under occupation in the OPT before Israeli courts. Adalah is a member of the Euro-Mediterranean Human Rights Network (EMHRN). Contact: Rina Jabareen, Esq., International Advocacy Director, rina@adalah.org

² Bill. no. P/18/2081, passed preliminary reading in the Knesset by a 58-11 majority. An English translation of the bill is available at:

<http://www.adalah.org/newsletter/eng/feb10/docs/Unofficial%20English%20translation%20of%20NGO%20legislation.pdf>

³ The Association for Civil Rights in Israel (ACRI) has cautioned against the “misuse of (purported) transparency and reporting mechanisms for the purpose of negatively impacting the legal and legitimate activities of individuals, groups or bodies of various sorts; against utilizing these tools to eliminate and silence political or ideological opponents.” See ACRI position paper on the bill, 23 February 2010, available at: <http://www.acri.org.il/eng/story.aspx?id=706>

⁴ Bill no. P/18/2456. An English translation of the bill is available at:

<http://www.adalah.org/newsletter/eng/apr10/bill.pdf>

⁵ See Adalah, *The Proposed Bill to Conceal Information Constitutes an Admission by its Proponents that Israel has Committed War Crimes*, 29 April 2010, available at:

http://www.adalah.org/eng/pressreleases/pr.php?file=29_04_10_2. The Directors' Forum, a coalition of human rights organizations in Israel, described the bill as “the direct result of irresponsible leadership that is doing all it can to undermine democratic values and the institutions ... the Supreme Court, a free press, and human rights organizations. A public sphere without these institutions operating independently of the government is a public sphere that is crippled and anti-democratic at its core.” The Forum’s response to the bill is available at:

http://www.adalah.org/eng/pressreleases/pr.php?file=29_04_10. A joint statement against the bill was also published by the Observatory for the Protection of Human Rights Defenders (a joint programme of FIDH and OMCT), The Center for Constitutional Rights, Redress and the EMHRN. See Joint Public Statement, *Israel: Proposed bill seeks to outlaw human rights NGOs based in Israel working on accountability issues in the Occupied Palestinian Territory*, available at: http://www.adalah.org/eng/docs/JointStatement_Israel.pdf

⁶ An English translation of the bill is available at: <http://www.jnews.org.uk/news/new-bill-seeks-to-outlaw-boycott-both-of-settlements-and-of-israel>

⁷ The Goldstone report was dismissed by Israel as politically motivated and one-sided. See Israeli Ministry of Foreign Affairs, *The UNHRC fact-finding mission led by Richard J. Goldstone - investigation or politics?*, available at:

<http://www.mfa.gov.il/GazaFacts/Goldstone/israel-gaza-faq-goldstone-mission.htm>

⁸ See Adalah’s Special Report on Ameer Makhoul and Dr. Omar Saeed, available at:

<http://www.adalah.org/eng/political/political.html>

⁹ Adalah is currently representing MK Mohammed Barakeh, MK Said Naffaa, and the four Arab leaders detained in connection with the Gaza Freedom Flotilla. Adalah is also advising MK Haneen Zoabi.

¹⁰ See Adalah, *Urgent Intervention on Behalf of MK Barakeh Demanding Criminal Investigation into Security Forces Personnel who Assaulted Anti-Wall Demonstrators*, 25 April 2005, available at:

http://www.adalah.org/eng/pressreleases/pr.php?file=05_04_29

¹¹ Inter-Parliamentary Union (IPU) communication, on file with Adalah.

¹² Crim. File 12318-12/09, *The State of Israel v. Mohammed Barakeh* (case pending).

¹³ See Adalah, *Tel Aviv Court Rejects Defense Motion concerning Illegality of Joining Four Different Charges in One Indictment against Arab MK Mohammed Barakeh*, 21 April 2010, available at:

http://www.adalah.org/eng/pressreleases/pr.php?file=21_04_10.

¹⁴ Adalah, *Knesset Committee strips Arab MK Sa’id Naffaa of his parliamentary immunity; Attorney General to criminally indict him for political offenses surrounding his visit to Syria; Adalah to represent MK Naffaa*, 28 January 2010, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=28_01_10

¹⁵ Adalah and the Meezaan Center for Human Rights in Nazareth represented the four before the Magistrates’ Court in Ashkelon. See Adalah, *Magistrates’ Court Orders One Week Remand of Arab Political Leaders who Took Part in the Gaza Freedom Flotilla*, 2 June 2010, available at:

http://www.adalah.org/eng/pressreleases/pr.php?file=02_06_10_2

¹⁶ See Adalah, *Magistrates’ Court Orders Release of Detained Delegation of Arab Leaders from the Gaza Freedom Flotilla with Restrictive Conditions; Defense Team Examines Possible Appeal*, 3 June 2010 available at:

http://www.adalah.org/eng/pressreleases/pr.php?file=03_06_10

¹⁷ See for example: <http://english.aljazeera.net/programmes/rizkhan/2010/06/20106136375951921.html>; and <http://www.israeli-occupation.org/2010-06-13/democracy-now-interviews-haneen-zoabi-video/>

¹⁸ See Knesset members attack on MK Haneen Zoabi, available at:

<http://www.youtube.com/watch?v=KBUxZnHb2ig>

¹⁹ See, e.g., “Dangerous Incitement,” *Haaretz Editorial*, 7 June 2010, available at: <http://www.haaretz.com/print-edition/opinion/dangerous-incitement-1.294595>

²⁰ The law was preceded by an Order for the Extension of the Validity of Emergency Regulations (Foreign Travel) (1948) (Amendment 7)—2002, which removed the exemption for MKs to lawfully travel to “enemy states,” as defined by Israeli law.