



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

NOTE ON THE HUMAN RIGHTS SITUATION IN ISRAEL AND THE OPT

In view of the fourth meeting of the EU-Israel Informal Human Rights Working Group

3 September 2009

The Euro-Mediterranean Human Rights Network (EMHRN)¹ is deeply concerned with the deterioration of the human rights situation in Israel and the OPT, constituent of the West Bank, including East-Jerusalem and the Gaza Strip. We hope that the following issues will be discussed during the fourth meeting of the EU-Israel Human Rights working group, due to take place on 3 September 2009:

- I. **The Gaza Strip: The recent Israeli Military Offensive, the Continuing Illegal Closure, and the Role of the International Community**
 - II. **East Jerusalem**
 - III. **Discriminative Laws against Arab Palestinian Citizens of Israel**
 - IV. **Migration and Asylum**
 - V. **Impunity for Torture and Ill-treatment**
 - VI. **Movement Restrictions in the OPT**
 - VII. **Administrative Detention**
-
- I. **The Gaza Strip: The recent Israeli Military Offensive, the Continuing Illegal Closure, and the Role of the International Community**

Operation "Cast Lead"

On 27 December 2008, Israel launched a comprehensive military offensive on the Gaza Strip, codenamed 'Operation Cast Lead'. According to data collected by the Palestinian Center for Human

¹ Amongst its activities the EMHRN established a working group on Palestine, Israel and the Palestinians (PIP WG). The following organizations are currently members of the PIP working group: Adalah (Israel), Arab Association for Human Rights (Israel), B'Tselem (Israel), PCATI (Israel), al-Haq (West Bank), PCHR (Gaza), Al-Mezan Center for Human Rights (Gaza), Palestinian Human Rights Organisation in Lebanon (Lebanon), ACSUR (Spain), Federacion de Asociaciones de Defensa y Promocion de los Derechos Humanos (Spain), Greek Committee for International Democratic Society (Greece), Bruno Kreisky Foundation for Human Rights (Austria), Rehabilitation and Research Centre for Torture Victims (Denmark).

Rights (PCHR), over 1,400 Palestinians lost their lives as a result of Israeli attacks, an estimated 83% of whom were civilians. According to the Palestinian Ministry of Health in Gaza, 5,303 Palestinians were injured, many of whom seriously².

The death and injury of civilians was accompanied by an unprecedented destruction of civilian infrastructures. Investigations conducted by partners of the EMHRN in Gaza indicate that 2,114 houses were completely and 3,242 partially destroyed. In other words, 5,356 houses (7,833 housing units) were rendered uninhabitable, displacing 51,842 individuals. 6,855 *dunums*³ of agricultural land were razed; 875 water irrigation networks, 151 agricultural wells, 40 agricultural water collection pools were destroyed along with 286 economic and 167 industrial premises. The direct losses to Gaza's economic sector, arising solely from this destruction, has been estimated at USD\$ 309,089,188⁴.

However, despite the shocking nature of these statistics, the true extent of the damage inflicted on Gaza in terms of loss of lives and destruction of civilian infrastructures has yet to be identified. The employment figures associated with Gaza's industrial sector are illustrative in this regard. In June 2006, prior to the imposition of Israel's illegal closure regime, 65,000 workers were employed in Gaza's industrial sector. Before the offensive – as a result of the closure – this number had dropped to 35,000. Today, only 1,878 individuals are employed in Gaza's industrial sector⁵. This dramatic increase in unemployment has evident implications on a number of fundamental human rights, including but not limited to the right to work, the right to the highest attainable standard of physical and mental health, and the right to adequate food.

The violations of international law perpetrated by Israeli forces in the Gaza Strip have been widely documented by a number of national and international human rights organizations, as well as by International Organizations, including the United Nations and the Arab League. Investigations conducted by members of the EMHRN in Gaza have found evidence of a significant number of war crimes – often amounting to grave breaches of the Geneva Conventions – perpetrated by Israeli forces. The most significant violations of the laws and customs of war committed during operation Cast Lead include Israel's excessive and disproportionate use of force, its use of human shields, the illegal use of weapons, such as the use of white phosphorous and flechettes shells in densely populated civilian areas, the extensive and wanton destruction of civilian property not justified by military necessity⁶, as well as attacks on civilians, who enjoy special protection under IHL. Attacks on civilians not taking direct part in hostilities that result in deaths constitute wilful killing, a war crime amounting to a grave breach of the Fourth Geneva Convention. The widespread and systematic nature of such attacks during "Operation Cast Lead" may constitute the crime against humanity of murder.

Israel investigations held into human rights violations during the offensive were problematic in that they were performed by the same institution that is accused of committing the offences, namely the Israeli army. Moreover, the Israeli conclusions, published in June, have justified both the fact of the attack and for the most part the manner in which it was carried out. Attempts by Israeli civil society, including soldiers who had taken part in the attack, to testify to human rights violations were

² For Al Mezan Center for Human rights figures see <http://www.mezan.ps/en/details.php?id=8552&ddname=gaza%20destruction&id2>. For B'tselem figures see B'Tselem (2009) *Guidelines for Israel's Investigation into Operation Cast Lead: 27 December 2008 – 18 January 2009* February 2009, p.1. For Al Haq's figures please see <http://www.alhaq.org/pdfs/gaza-operation-cast-Lead-statistical-analysis%20.pdf>.

³ One *dunum* is equivalent to 1000 square meters.

⁴ Information collated for PCHR's Comprehensive Report on the Israeli Offensive, 27 December 2008 – 18 January 2009, unpublished to date.

⁵ Information collated for PCHR's Comprehensive Report on the Israeli Offensive, 27 December 2008 – 18 January 2009, unpublished to date.

⁶ This constitutes a war crime amounting to a grave breach of the Fourth Geneva Convention.

discredited by the Israeli government as unreliable. Israel has refused to date to cooperate with any international fact-finding mission that has attempted to visit the Gaza Strip and Israel with a view to ascertaining the facts. As a result, no authoritative and broadly-accepted account of the events exists to date. The Goldstone report commissioned by UNHRC is scheduled to be published in September and it is to be hoped that it will constitute such an account, since it collected evidence from all parties (Palestinian and Israeli) except for the Israeli authorities.

The Illegal Closure of the Gaza Strip

Operation Cast Lead took place in the wider context of Israel's ongoing, illegal and near complete closure of all of Gaza's crossing points, severely impeding the movement of goods and people into and out of the Gaza Strip. This closure policy - a form of collective punishment in explicit violation of Article 33 of the Fourth Geneva Convention- has been continuously implemented by the Israeli Occupying Power since June 2007, following the Hamas takeover of the Gaza Strip. The impact of the closure is pervasive, indiscriminately affecting each and every one of Gaza's 1.5 million inhabitants, and violating a wide array of fundamental human rights and norms of international humanitarian law.

Despite its legal obligations to provide for the welfare of the occupied Palestinian population of the Gaza Strip, Israel continues to heavily restrict the import of vital goods and services, including basic food stuffs, medicine and construction material into the territory. The delivery of fuel and cooking gas remain far below required monthly needs. The amounts of cooking gas and industrial fuel (used to operate Gaza's only Power Plant), which entered the Gaza Strip in April 2009 constituted only 50% and 70%, respectively, of the monthly needs. Other types of fuel, including commercial benzene and diesel have remained from entering the Gaza Strip since November 2008, except for the delivery of small quantities to some UN facilities and hospitals⁷.

In July 2009, the total amount of truckloads allowed entry into the Gaza Strip constituted only 18% of the pre-siege monthly average, reaching the lowest level since the beginning of the year⁸. As a result, food prices increase and the amount of many market foods, including but not limited to powdered milk, beverages, tea, coffee, jam and several types of canned food items remain restricted. Israel's near complete ban of construction material, including aggregate, cement and iron, into area, continues to prevent the reconstruction of Palestinian homes and other civilian infrastructures destroyed during the recent military offensive. While Israel continues to actively prevent recovery and resumption of normal life in the Gaza Strip, poverty and unemployment rates in the territory have reached unprecedented levels, estimated by PCHR at 80% and 69% respectively⁹.

The EMHRN also wants to express its concern over the **limited access to medical care** by Palestinians, including children in the Gaza Strip, impeding their right to the highest attainable standard of physical and mental health. Israeli occupying authorities continue to deny Palestinian patients in the Gaza Strip permission to leave the territory in order to seek medical treatment unavailable in the Strip, abroad. Since the closure began, approximately 61 Palestinians have died as a direct result of either denial or delay of travel permits, or due to the shortage of medical supplies in Gaza's hospitals¹⁰. In 2009, an average of 51% of patients applying for exit permits to medical care that was not available in Gaza were allowed to exit the Gaza Strip through Erez Crossing, as

⁷ OCHA, the Humanitarian Monitor, April 2009, available at <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/3a64f6fdba71939852575c9004943f5?OpenDocument>.

⁸ OCHA, The Humanitarian Monitor, July 2009; available at http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2009_june_english.pdf.

⁹ PCHR, *The State of Gaza Strip Border Crossings: 11 March 2009 – 31 May 2009*, June, 2009.

¹⁰ Ibid.

compared to an average of 90% in the first half of 2007¹¹. Moreover, the majority of requests received delayed answers from the Israeli authorities, and 73% of these were delayed for more than 7 days¹². Since the Hamas-takeover, the Israeli secret police (ISA) has summonsed some patients for interrogation at Erez Crossing as a condition for access to medical care. During the interrogation patients were asked to provide intelligence in return for access, and if they refused, were turned back to Gaza. Between January 2008 and March 2009, at least 438 patients have been summonsed for interrogations at Erez Crossing, as a precondition for the review of their applications for an exit permit for the purpose of accessing medical treatment outside the Strip. The ratio of the number of interrogations to the total number of applications submitted to the authorities at Erez Crossing has increased from 1.45% in January 2008 to 17% in January 2009¹³.

Intensifying the closure on Gaza is the total ban placed on family visits to the approximately 900-1,000 Palestinian **political prisoners** from Gaza currently being held in Israeli prisons. The ban has been continuously imposed by the Israeli authorities since June 2006, following the capture of Israeli soldier Gilad Shalit.

Last but not least, the EMHRN would also like to raise its strong concerns regarding the restrictions imposed on the freedom of movement of **human rights defenders** (HRDs) living in the Gaza Strip. Israel has frequently declined applications by Gazan HRDs to attend human rights related events in the West Bank and abroad, most of the time based on “security concerns” which are impossible to verify given that the evidence used by the relevant military bodies is not accessible. Since the beginning of siege on Gaza in June 2007 almost no HRD has been allowed to leave the Strip to participate in human rights activities or events. The application process is uncertain because of unannounced rules and procedures decided by the Israeli military. Moreover, many human rights defenders, who received a permit at one moment in time, have afterwards seen their permit refused, putting in doubt the security reasons invoked by Israel. Preventing HRDs from carrying out their work freely is utterly unacceptable and an important reason of concern. It is also all the more counter-productive in the current context of conflict and of political instability in the Palestinian Territory¹⁴.

The Role of the International Community

The international community, and in particular the European Union, plays a key role in the Israeli-Palestinian conflict. The EU is a member of the Quartet, and one of the major donors to the Palestinian people. The EU, and its individual Member States, also enjoys close diplomatic and trade ties with the State of Israel.

The EMHRN believes that Israel’s continued illegal actions – dramatically illustrated by the offensive on the Gaza Strip and the continuing closure – are the result of its impunity. As High Contracting Parties to the Four Geneva Conventions of 1949, the individual States of the EU are under a legal obligation to “ensure respect” for the Conventions “in all circumstances”. The EU has not only failed to hold Israel accountable for its violations of international human rights and humanitarian law, but

¹¹ Ibid.

¹² Figure based on Physicians for Human Rights-Israel casework statistics for 2009. Publication forthcoming.

¹³ Physicians for Human Rights – Israel: <http://www.phr.org.il/phr/article.asp?articleid=715&catid=55&pcat=1&lang=ENG>

¹⁴ EMHRN, Observatory for the protection of human rights defenders and Avocats Sans Frontière Press release, *Gaza: Human Rights defenders in prison?*, 1 October 2008 (<http://www.euromedrights.net/pages/511/news/focus/62124>). Mahmoud Aburhama (Al Mezan Center for Human Rights in Gaza) and Hamdi Shaqura (PCHR) were not allowed to participate in EMHRN working group on Palestine, Israel and Palestinians (PIP) in Brussels on 8-9 November 2008. Israel banned them from travel dozens of times during the past two years; during which they could not take part in significant human rights events; including events organized by the EU. They could not participate in the last five PIP WG meetings.

has further adopted a “business-as-usual” approach despite these violations¹⁵. This is not least demonstrated by the EU’s continued maintenance of preferential trade agreements and close diplomatic relations with Israel, and by its failure to take concrete action to stop Israel’s illegal conduct.

Article 16 of the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts places an obligation on individual States not to aid or assist the commission of an internationally wrongful act. Such aid and assistance includes, *inter alia*, financing the wrongful conduct in question. Article 41 explicitly prohibits States from rendering aid or assistance used to maintain the situation created by a serious breach of international law. By continually covering the financial costs associated with Israel’s illegal actions in the OPT, individual States are in breach of their own international obligations, and acquiescing to Israel’s violations of international law. Donor aid must not be used to relieve the cost of the occupation; specific concrete assurances must be demanded from the State of Israel. These assurances, and the political will necessary to ensure their compliance, must form an integral part of international assistance to the Palestinian people, and must be balanced against continued support for Israel itself.

As the responsible party, Israel must accept the consequences of its actions. The State of Israel is subject to explicit legal obligations: it bears the responsibility for reconstructing and maintaining the Gaza Strip. Bank rolling the occupation without demanding an end to its violations of international law, is equivalent to acquiescence on the part of the international community

The EMHRN stresses that the provisions of international humanitarian law apply regardless of the actions of the other party: international law explicitly prohibits reciprocity. While the EMHRN condemns indiscriminate and thus unlawful launch of rockets on Israel by Palestinian armed groups, this does in no way justify Israel’s violations of international law.

Recommendations

In light of the above, the EMHRN calls on the EU during the upcoming human rights working group meeting to:

- Use the legal and diplomatic tools at its disposal to pressure Israel to abide by its obligations under international law and to uphold its duty not to recognize and not to assist the illegal situation created by its unlawful conduct in the Gaza Strip.
- Request Israel to immediately lift the siege on the Gaza Strip and allow the movement of goods and people into and out of the territory, in accordance with international law.
- Urge Israel to comply with the recommendations of independent investigations conducted by UN bodies, in particular the Goldstone fact-finding mission, whose recommendations will be submitted to UNHRC in September, and to domestically prosecute those who have committed violations of international law. The EU should monitor Israel’s compliance, and should the perpetrators not be prosecuted in Israel, the EU and its Member States should express their support for prosecution in front of national courts, including in those of Member States.

¹⁵ For EU’s role during the Israeli offensive on the Gaza Strip in December 2008 – January 2009, including recommendations see EMHRN, *Active but acquiescent: EU’s response to the Israeli offensive in the Gaza Strip*, May 2009: <http://www.euromedrights.net/usr/00000026/00000027/00000028/00000156/00002935.pdf> .

- Remind Israel that the upgrading of mutual relations is put on hold until Israel abides by its obligations under international human rights and humanitarian law, and to its obligations made in the “peace process”.

II. East Jerusalem

Palestinians are slowly being expelled from Jerusalem under the eyes of the international community. In 2009, Israel continued to create facts on the ground in order to reduce the number of Palestinians living in East Jerusalem while at the same time allowing for an increased Israeli presence. The Israeli authorities are applying a **combination of unlawful strategies and measures** which constitute a sustained, systematic and flagrant breach of international law, and a grievous attack on Palestinian rights rendering negotiations meaningless. These strategies and measures include limiting family reunification permits, revocation of residency rights¹⁶, redrawing Jerusalem's municipal boundaries, home demolitions, enlarging existing illegal Jewish settlements in East Jerusalem and establishing new ones, a policy of discrimination in planning and building as well as land expropriation.

Forced displacement affects Palestinian families in many neighborhoods of East Jerusalem, including, but not limited to Silwan, the Mount of Olives, and Sheikh Jarrah. According to data collected by OCHA¹⁷, from January to July 2009, at least 194 people, including 95 children, were forcibly displaced, and another 107, including 46 children, otherwise affected as a result of house demolitions ordered or carried out by the Israeli authorities in East Jerusalem. Fourty-one structures were demolished over this period. According to conservative estimates, there are currently over 1,500 pending demolition orders in East Jerusalem alone, potentially affecting several thousand Palestinian residents¹⁸. These homes are destroyed under the pretext of lack of building permits, which are virtually impossible to obtain due to a combination of strict and obstructive zoning, planning and administrative requirements imposed by the Israeli authorities in charge. The planning policy in East Jerusalem since its annexation in 1967 is affected by political considerations and infected by systematic discrimination against the Palestinians living there. While extensive building and enormous budget allocations have been the rule in Jewish neighborhoods, the Israeli government has choked development and building for the Palestinian population¹⁹. Since annexing East Jerusalem, the Israeli government has expropriated 24,500 dunams (over a third of the area), which were privately owned by Palestinians.

Of particular concern are recent events in the **Sheikh Jarrah neighborhood** of East Jerusalem. “On 2 August 2009, Israeli forces forcibly evicted nine families from their homes in two buildings, displacing 53 Palestinians, including 20 children. The buildings were immediately handed over to an Israeli settler organization, while the families' belongings were loaded on a truck and dumped in the street near UNRWA's headquarters in East Jerusalem. These events come in the context of settler attempts to construct hundreds of housing units in the heart of this Palestinian neighborhood, placing hundreds of other Palestinians at-risk of future displacement”²⁰.

¹⁶ According to B'Tselem, in 2006, the residency of 1,363 Palestinians had been revoked. The Israeli authorities have refused to give B'Tselem more updated data so far. In June 2008 HaMoked submitted a petition under the Freedom of Information Act, in order to receive data regarding the scope of residency revocation in East Jerusalem between 2005 and 2007. According to the data received, in 2005, 220 permanent residents of East Jerusalem were revoked of their residency; in 2006, 1,360 residencies were revoked; and in 2007, 289 East Jerusalemites lost their residency. The number of revocations in 2006 is unprecedented. By comparison, in 1997, when implementation of the "quiet deportation" policy was at its harshest, "only" 1,067 residencies were revoked. http://www.hamoked.org.il/news_main_en.asp?id=745

¹⁷ Table obtained from OCHA.

¹⁸ OCHA Fact Sheet August 2009, p. 4:

http://www.ochaopt.org/documents/ocha_opt_shiekh_jarrah_english_2009_08_15.pdf

¹⁹ See B'tselem, http://www.btselem.org/english/jerusalem/discriminating_policy.asp

²⁰ OCHA humanitarian monitor July 2009, p.5:

Furthermore, huge new infrastructure projects are underway to support the settlements, including the East Jerusalem ring road and the Jerusalem Light Rail. In addition, the occupying forces have **nearly completed the construction of the Wall/Barrier** as they move to cut Jerusalem off from the rest of the West Bank. Upon its completion, the fear is that the Wall/Barrier will serve as the de facto boundary for the city providing a new pretext for the denial of Jerusalem residency to thousands of Jerusalemites who will be located on the “wrong side” of the Wall/Barrier. Palestinian permit holders are allowed to cross the Barrier into East Jerusalem through only four of the 18 existing checkpoints and only by foot.

The EMHRN is particularly worried about the **resumption of punitive house demolitions in East Jerusalem** since mid-2008. On 17 February 2005, the Minister of Defence had announced a cessation of punitive house demolitions following recommendations by an inquiry team. On 19 January 2009, without giving a convincing explanation, Israel renewed this illegal policy and sealed two of four floors in the house of the family of the perpetrator of the attack at the Mercaz Harav yeshiva in Jerusalem, ‘Alaa Abu Dahim, in which his parents and one of his brothers lived. On 18 March, the Israeli High Court of Justice allowed the State to demolish the home of the family of Husam Dwayat, who used a bulldozer to carry out an attack in the centre of Jerusalem last July. Dwayat’s widow and two small children lived in the apartment.

Recommendations

The EMHRN calls on the EU to urge Israel to immediately cease its illegal practices in East Jerusalem, including the construction and expansion of Jewish settlements and their associated infrastructure as well as punitive house demolitions, which violates international human rights and humanitarian law.

III. Institutional Discrimination against the Palestinian Arab Minority in Israel

Land Reform Law – 2009

On 3 August 2009, the Knesset passed *the Israel Land Administration (ILA) Law*. The new law is extremely prejudicial to the constitutional rights of Palestinian Arab citizens of Israel, and it violates the property rights of the Palestinian refugees as it contravenes international humanitarian law applicable to them and their property. The ILA law is wide ranging in scope and has four main elements:

- a. It institutes broad land privatization. Ownership rights of all residential, commercial and industrial areas will be transferred, along with all lands that have been approved for development, estimated at around 800,000 dunams (200,000 acres). This land includes the property of Palestinian refugees (“absentees” properties), some of the lands of destroyed and evacuated Arab villages, and land otherwise confiscated from Palestinian citizens, which will be sold off. None of these lands will be open to restitution claims in the future.
- b. It permits land exchanges between the State and the Jewish National Fund (JNF), the land of which is exclusively reserved for the Jewish people. 50,000-60,000 dunams of land will be transferred from the JNF to the state, mainly in the cities, and in return, the JNF will receive state land in the Naqab (Negev) area and the Galilee. In the Naqab, the land swap will lead to the development of Jewish towns while the state is working towards evacuating the unrecognized Arab Bedouin villages, and in the Galilee more JNF lands in the area will put further restrictions

on the potential future development of the Arab towns and villages and serve the purpose of “Judaizing” the Galilee.

- c. It allows lands to be allocated in accordance with “admissions committee” mechanisms and only to candidates approved by Zionist institutions working solely on behalf of the Jewish people. Around 80% of the land space in the State is affected (the jurisdiction of the regional councils), and close to 700 *moshavim*, *kibbutzim* and community towns. These settlements have no Arab residents and will continue, through this law, to exclude Arabs from residing in them.
- d. It grants decisive weight to JNF representatives in a new Land Authority Council, which would replace the ILA: 43% of the members of the new Council are to be JNF representatives (6 out of 13), and the same percentage that will be reserved for JNF representatives in its sub-committees. This privilege contradicts principles by which public administration should be administered since the JNF sees itself as a trustee of the Jewish people with its properties distributed exclusively to Jewish people, to the detriment of the land and property rights of Palestinian citizens of Israel and Palestinian refugees.

New Wave of “anti-Arab” Legislative Offensives

The elections held in Israel in February 2009 brought an extreme right-wing government coalition to power. Many coalition parties, including the Likud and Yisrael Beiteinu, ran “anti-Arab” election campaigns. Yisrael Beiteinu’s main campaign slogan was “No loyalty, no citizenship”. With this clearly racist message, the party became the third largest party in the Knesset, the Israeli parliament. Avigdor Lieberman, the head of Yisrael Beiteinu, serves as Deputy Prime Minister and Foreign Minister in the new government. Yisrael Beiteinu now controls the ministries that deal with law enforcement, including the Ministry of Internal Public Security (the Police) and Lieberman recommended the appointment of Ya’akov Ne’eman, the Minister of Justice, who is expected to continue attempts to undermine the power of the Israeli Supreme Court. The Chairperson of the Knesset’s Constitution, Law and Justice Committee is also from Yisrael Beiteinu.

Coalition members began their tenure by launching a flood of “anti-Arab” legislation. Specifically, these bills seek to undermine the ability of Palestinian citizens of Israel to participate in the political life of the country, turn citizenship from a right into a conditional privilege, criminalize political expression or acts that question the Jewish/Zionist nature of the state (e.g., the Nakba Law), and use the criterion of military service²¹ as a justification for discrimination.²²

Extension of the Citizenship and Entry into Israel Law: Ban on Family Unification

On 27 July 2009, the Knesset voted to extend the validity of the Citizenship and Entry into Israel Law (Temporary Order) – 2003 for another year to 31 July 2010, the ninth extension of the law to date. The law, first enacted in July 2003, denies Palestinian citizens of Israel the right to acquire Israeli residency or citizenship status for their Palestinian spouses from the OPT, solely on the basis of their nationality. The law is sweeping in its application and extremely disproportionate to the alleged security reasons cited by Israel to justify its enactment. In May 2006, a 6-5 majority of the Israeli Supreme Court decided to uphold the law.²³ Amendments made to the law in 2007 expanded the ban to include a ban on spouses from “enemy states”, such as Syria, Lebanon, Iraq and Iran, and “anyone living in an area in which operations that constitute a threat to the State of Israel are being

²¹ In general, Arab citizens of Israel are exempt from performing military or national service.

²² For information on these legislative laws, please see the letter sent by Adalah and the Arab Association for Human rights to the Presidency of the EU and the European Commission on 4 June 2009, ahead of the EU-Israel Association Council meeting on 15 June:

http://www.adalah.org/features/var/Adalah_HRA_EU_upgrade_letter_FINAL_4.6.09%5B1%5D.pdf

²³ H.C. 7053/03, *Adalah, et al. v. Ministry of Interior, et al.* (petition rejected 14 May 2006).

carried out.”²⁴ The law flagrantly discriminates against Palestinian citizens of Israel, who are most likely to have non-citizen Palestinian/Arab/Muslim spouses. At the same time, however, the “gradual process” of naturalization for residency and citizenship status for all other “foreign spouses” remains unchanged. The ban on family unification severely violates the fundamental rights of family life, privacy, protection for the child, equality before the law, and protection of minorities. Thousands of families are adversely affected by the law.

Language Rights: Road Signs in Arabic

In July 2009, the Transport Minister made a decision to Hebraize all road signs in Israel, and remove the Arabic names of towns and villages from all road signs in Israel and to replace them with the Hebrew names of the places using Arabic letters, regardless of the common and historical Arabic name of the place. For example, “Jerusalem” would become “Yerushalaim” in Hebrew, English and Arabic, and “Al-Quds” (the Arabic name for Jerusalem) would cease to exist on road signs²⁵. The decision is contrary to an Israeli Supreme Court judgment delivered in 2002 on a petition submitted by Adalah and the Association for Civil Rights in Israel (ACRI), which obliges the municipalities in the mixed cities to add Arabic to the traffic and warning signs as well as other informational signs in areas under their jurisdiction²⁶. For Palestinian citizens of Israel, the name of the town is not a formality, but an integral part of the Arabic language and Palestinian culture. Furthermore, under Israeli law Arabic is an official language in the State, as well as the mother tongue of the national minority, and thus Israel has a duty to maintain and develop Arabic and use it in a way that will ensure its preservation in all areas and at all levels.

Police Brutality against Arab Citizens of Israel

The October 2000 killings cases

On 27 January 2008, the Israeli Attorney General issued a decision to close the investigation files against police officers and commanders accused of killing 13 unarmed Palestinian citizens of Israel and injuring hundreds more during the October 2000 protest demonstrations in Israel. Police, including snipers, used live ammunition, rubber-coated steel bullets, and tear gas, all prohibited by law and even violate internal police regulations. No one has been held accountable for the deaths of the 13 men and the victims and their families have had no remedy.²⁷

Police Violence against Demonstrators Protesting against Israel’s Military Attacks on Gaza

Despite the tragic events in October 2000, the Israeli police and security forces continue to use excessive and brutal force in breaking up demonstrations, including demonstrations for which official permission was obtained in advanced. The targets of disproportionate force by the security forces include minors. The intended effect is to discourage Arab citizens of Israel from exercising their right to freedom of assembly and stifling freedom of opinion and expression. Furthermore, a high number of complaints filed by Arab citizens against police officers are not properly and effectively investigated, and the Ministry of Justice’s Police Investigations Unit (Mahash) lacks independence.²⁸

²⁴ Petitions filed to the Supreme Court of Israel challenging the constitutionality of the law, including a petition submitted by Adalah, remain pending. H.C. 830/07, *Adalah v. The Minister of the Interior, et al.*

²⁵ On 15 July 2009, Adalah sent an urgent letter to the Attorney General demanding the cancellation of the Transport Minister’s decision, to which it has to date not received a reply.

²⁶ H.C. 4112/99, *Adalah, et al. v. The Municipality of Tel Aviv-Jaffa, et al* (decision delivered 25 July 2002).

²⁷ In November 2000, Israel established an official Or Commission of Inquiry to investigate the circumstances of the killing of 13 unarmed Palestinian citizens by the security forces and injury of hundreds of others during protest demonstrations in October 2000. The Commission recommended that the Ministry of Justice Police Investigations Unit (Mahash) investigate the killings. It found the security forces’ use of live ammunition and snipers unjustified in every instance, and found police commanders responsible for the use of excessive force. In September 2005, Mahash released a report in which it recommended no indictments against police officers and commanders.

²⁸ According to information provided by Israel to the UN Human Rights Committee in its Third Periodic Report (CCPR/C/ISR/3, 21 November 2008, Table 10), of 1,273 complaints investigated by the Israeli police into allegations

In a recent example, the Israeli police and security forces detained 715 individuals, mostly Palestinian citizens of the State, during demonstrations against the Israeli military attacks on Gaza of 27 December 2008 to 18 January 2009.²⁹ 34% of these detainees were minors. Of the 203 persons who were detained in custody until the conclusion of proceedings against them, 54% were minors.³⁰ Many instances of police violence against unarmed demonstrators were also documented during the clamp-down on demonstrations. In the Arab village of Kufr Kanna, for example, incidents were recorded of armed police officers using heavy-handed tactics against demonstrators, including striking them on the head and extremities without first attempting to communicate with them, spraying tear gas at protestors' faces, dragging individual protestors away and beating them with arms, helmets and metal batons.³¹ The police then subjected protestors to insults and further beatings while transporting them to police stations, where affidavits reveal that they faced a variety of brutal acts. Some detainees were kicked, punched and spat on upon their arrival, handcuffed using plastic ties, kicked in the face and genital areas, slapped in the face, pulled by the ears, had lit cigarettes stubbed out on their bodies, and subjected to a barrage of insults.³²

Failure to Protect Muslim Holy Sites in Israel

On 16 March 2009, after five years of litigation, the Supreme Court of Israel rejected a petition demanding that Israel promulgate regulations for the protection of Muslim holy sites in Israel, in accordance with the *Protection of Holy Sites Law – 1967*.³³ Around 135 sacred places in Israel have been declared as holy sites, all of which are Jewish.³⁴ The result of this discrimination is the neglect and desecration of Muslim holy sites in Israel: many mosques and other holy sites have been converted into bars, night clubs, stores and restaurants. The court rejected the need for the promulgation of regulations to bind various government ministries in this regard, arguing that defining specific sites as Muslim holy sites was a “sensitive matter.” While the court acknowledged the miserable state of Muslim holy sites and the need to repair them, it further ruled that the State’s commitment to designate a budget of NIS 2 million (approximately US \$500,000) for the maintenance of Muslim holy sites was sufficient. The meager budget committed to by the State will not be sent directly to Islamic committees for them to invest in the protection of the holy sites, but to the Israel Land Administration (ILA) to undertake this task. However, the ILA has done nothing to prevent the desecration of Muslim holy sites; in fact, in many instances it has played an active role in their desecration.

Recommendations

In light of the above the EMHRN calls on the EU to urge Israel to:

of unlawful use of force during 2004, only 49, or 3.8%, resulted in criminal proceedings. Israel did not provide information about how many of those 49 resulted in convictions.

²⁹ Adalah, *Forbidden Protests*, publication forthcoming 2009. According to a poll conducted during the military attacks by the *Haaretz* newspaper, despite pictures from Gaza depicting massive destruction and a large number of wounded and killed, including women and children, 82% of the Israeli public believed that Israel had not “gone too far” in the attacks. *Haaretz*, “Poll shows most Israelis back IDF action in Gaza,” 15 January 2009.

³⁰ Ibid.

³¹ Meezan Center for Human Rights (Nazareth, Israel), *Report on the Anti-Gaza War Demonstrations*, 2009 (Arabic). Available at: <http://www.meezaan.org/1/news-54.html>. The report contains photographic evidence of the injuries sustained by demonstrators.

³² *Op. Cit.*

³³ Adalah submitted the petition in November 2004 in its own name and on behalf of Sheikh Abdullah Nimer Darwish, Sheikh Kamel Rayyan, MK Sheikh Ibrahim Sarsour, and formed MK Abd al-Malek Dahamshe, as well as the Al-Aqsa Association for the Preservation of Muslim Holy Sites. H.C. 10532/04, *Sheikh Abdullah Nimr Darwish, et al. v. Minister of Religious Affairs, et al.* (petition rejected 16 March 2009).

³⁴ A list of the sites in Hebrew is available at: http://www.relignons.gov.il/list_holy_places.htm#top.

- Amend or cancel the Israel Land Administration Law – 2009 in order to bring it into compliance with the principles of non-discrimination on the basis of race, religion and national origin, and ensure that State-controlled land is allocated to Palestinian and Jewish citizens of the State in accordance with the principle of equality. The EU should also raise in its discussions with Israel, as a matter of extreme urgency, the sale of Palestinian refugee property, which is in contravention of both Israeli and international law and threatens to jeopardize future peace negotiations between Israel and the Palestinians, a cornerstone of which is the issue of the refugees and their property.
- Promote and protect the rights of Arab citizens of Israel, especially their rights to citizenship, political participation, and other civil and political rights as stipulated in customary and conventional international law, and refrain from introducing and supporting legislation in the Knesset which restricts and limits the rights of Arab citizens of the State in a discriminatory manner solely on the basis of their national belonging.
- Revoke the ban on family unification. The EU should reiterate its concerns regarding the discriminatory nature of the extended Citizenship and Entry into Israel Law and urge Israel to cancel it.
- Respect the language and cultural rights of Arab citizens of Israel in general, and halt plans to remove the Arabic names of towns and village from road signage in particular.
- Hold police officers and commanders responsible for the October 2000 killings of 13 unarmed Arab citizens of Israel during protest demonstrations to account for their actions and bring them to justice. The State's official announcement that no criminal prosecutions will be initiated thereby granting those who are responsible impunity, makes the involvement of the EU even more crucial. The EU should also call upon Israel to respect the rights of Palestinian citizens of Israel to peaceful demonstration and to freely express their political opinions.
- Provide effective legal protection to Muslim holy sites located in Israel, and act decisively to prevent their further neglect and desecration.

IV. Refugee and Asylum Seekers: “Hot Return Procedure” and Law against Infiltrators into Israel³⁵

There are currently about 17,000 refugees and asylum seekers in Israel. Most of the asylum seekers come from Eritrea (approximately 7,000 among them more than 550 minors) and Sudan (approximately 5,500 among them more than 600 minors)³⁶. The UN High Commissioner for Refugees requests not to deport to these countries due to the tangible danger facing those who return. There are also several hundred asylum seekers in Israel from Congo and the Ivory Coast, countries that are defined as “crisis countries” and whose citizens are entitled to temporary collective protection in Israel.

Approximately 1,500 asylum seekers are currently being held in detention at various imprisonment facilities around Israel. Approximately 10,000 asylum seekers are concentrated in Tel Aviv, Eilat, and Arad, while the remainder is dispersed in moshavim, kibbutzim, and cities. The majority are healthy young men. However, the population of asylum seekers also includes several hundred women and more than 1000 children and minors. Many suffer from trauma as the result of the severe experiences they have undergone.

Israel has recognized only 170 refugees since 1951. Since 2002, an advisory committee to the interior minister (NSGB – National Status Granting Body) is authorized to recommend the acceptance or rejection of asylum requests. Since the committee commenced its operations, there

³⁵ The statistics contained in this section are taken from the Refugee Rights' Forum Website (April 2009 update). See http://www.hotline.org.il/english/pdf/Forum_Refugees_Background_Paper_Eng.pdf

³⁶ The asylum seekers from Sudan include approximately 1500 survivors from Darfur, a region of Sudan which, according to the United Nations, has seen the worst humanitarian crisis in the world in recent years.

has been no increase in the number of asylum seekers whose request has been approved. In 2008, this committee met once and only reviewed 12 requests. Applications of Sudanese and Eritreans are not being considered at this time at all.

The frequent return of African refugees to Egypt, under the very controversial “**Hot Return**” **procedure**, which allows an immediate expulsion for illegal immigrants back to Egypt without granting them access to the Israeli asylum system, despite ample evidences of mistreatment and killings of several refugees by the Egyptian authorities, violates the United Nations Convention on the Status of Refugees to which Israel is a signatory, including the notion of *non-refoulement*, which prohibits States from sending asylum-seekers into life-endangering situations³⁷. The *non-refoulement* principle was declared by the Supreme Court to be part of Israeli domestic law and should be respected as such. In May 2009, the UN Committee Against Torture regrets that this principle has not been formally incorporated into domestic law, policy, practices or procedure³⁸.

Furthermore, the EMHRN express deep concern about the draft “Prevention of Infiltration” Law, approved **by an overwhelming majority of the Knesset during a preliminary reading on 19 May 2009**³⁹. This law foresees sentences of up to five years in prison for people who cross the border into Israel illegally, including refugees, and up to seven years for residents and citizens of States defined “as enemy states”⁴⁰. A further cause of concern is the fact that the same sentences could be applied to the **staff and volunteers of Israeli aid organizations that assist refugees**. This law also anchors into law the “Hot Return Procedure”, representing a flagrant violation of refugees’ basic rights.

Recommendations

Israel bears an obligation to respect the Geneva Refugees Convention, to which it is a signatory, and to elaborate policy that respects its obligations under this convention.

Therefore, the EMHRN calls upon the EU to urge Israel to:

- Abolish the draft ‘Prevention of Infiltration’ Law and introduce new legislation⁴¹ in alignment with the 1951 Refugee Convention and its 1967 Optional Protocol both of which have been signed and ratified by the Israeli government. In particular, Israel should ensure that all asylum seekers who reach Israel enjoy access to a fair procedure for examining their asylum request, regardless of their country of origin.
- Abolish the illegal “hot return” procedure as this policy prevents asylum seekers from realizing their rights and endangers their lives.

V. Impunity for Torture and Ill-treatment⁴²

³⁷ It is estimated that dozens of asylum-seekers have been killed this way in recent years. See FIDH press release on this issue: *Refugees and Asylum seekers in danger! The new “Prevention of Infiltration Law” adopted in violation of refugees’ basic right* (<http://www.fidh.org/Refugees-and-Asylum-seekers-in>), 3 June 2008.

³⁸ UN CAT Concluding Observations on Israel, 14 May 2009, p. 6:

<http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf>

³⁹ On 4 June 2009, the newly elected Knesset voted in favor (59 for and 1 against) of enabling the law proposed by the previous Knesset to continue without interruption to 2nd and 3rd readings. This law will soon go through its second and third readings, the requirements for a bill to pass.

⁴⁰ Including refugees from Darfur, Sudan.

⁴¹ Israeli human rights organisations have drafted a law proposal to this effect called: “Law proposal for recognition of the status of asylum seekers and refugees in Israel, 2009”. See (in Hebrew only): http://www.phr.org.il/phr/files/articlefile_1248259809828.doc.

⁴² See also PCATI's latest reports on the issue: “Ticking Bombs” Testimonies of Torture Victims in Israel, <http://www.stoptorture.org.il/eng/>, “Shackling as a Form of Torture and Abuse”

A general atmosphere of impunity persists in Israel. Since 2001, the Israeli State Attorney's Office has received over six hundred complaints of torture or ill-treatment by interrogators of the Israel Security Authority (GSS/ISA)⁴³, yet has not found cause to order a single criminal investigation into such charges. The State Attorney's decisions to open a criminal investigation are based on the findings of an examination conducted by the "Inspector of Complaints by ISA Interrogees," who is an active ISA agent, answerable to the head of the ISA. He is neither independent nor impartial and his findings are kept secret. This mechanism creates the appearance of a complaints investigation system while actually providing total immunity from criminal liability contributing to an ongoing system of impunity which makes torture inevitable.

In a very limited number of cases, the Complaints Inspector determined that ISA agents had indeed abused an interrogee. However, in these cases, the State Attorney's Office decided to close the file without ordering a criminal investigation on the tendentious grounds established by the 1999 High Court ruling that "ticking bomb" cases exempt the ISA interrogator from criminal responsibility. However, even the High Court ruled that the ill-treatment must be a spontaneous response by an individual interrogator to an unexpected occurrence. In practice, all evidence points to the fact that both the routine abuse and the "special" methods are preauthorized and are used according to preset regulations⁴⁴.

Violence against Palestinian in their daily encounters with Israeli security forces remains an on-going problem. Since September 2000, B'Tselem has submitted 345 complaints for violence - beating, using rifle butts, clubs and other means of injury - against Palestinian detainees by Israeli police, border police, and soldiers. Unlike the complete lack of investigation into ISA ill-treatment and torture, criminal investigations are opened in the majority of these cases. However, perpetrators are rarely held accountable. Of the 345 total complaints, only 14 cases, or 4%, have resulted in an indictment⁴⁵. A further cause of serious concern is the use of violence against Palestinian detainees by the Israeli authorities. During their detention, Palestinians continue to be threatened, verbally and physically assaulted⁴⁶.

The Public Committee Against Torture in Israel (PCATI) together with the World Organization Against Torture (OMCT) submitted an alternative report⁴⁷ to the UN Committee against Torture (CAT) and testified before it prior to its review of the State of Israel's periodic report in May 2009. This report includes an overview of the different methods of torture and ill-treatment used by GSS/ISA interrogators and by soldiers. **The Concluding Observations of the UN CAT are highly critical of Israel⁴⁸ and reflect the harsh reality and the allegations made in numerous complaints of torture and ill-treatment.** PCATI called on the State of Israel to adopt the Committee's recommendations and, first and foremost, draft a law that explicitly outlaws torture, places

<http://www.stoptorture.org.il/en/node/1441>, "Family Matters, Using Family Members to Pressure Detainees"
<http://www.stoptorture.org.il/en/node/1039>

⁴³ What was formerly known as the General Security Service, GSS, is now referred to by Israel as the Israel Security Authority, ISA

⁴⁴ *B'Tselem and Hamoked Supplement information for the consideration of Israel*, submitted to the CAT, April 2009, p.4: http://www2.ohchr.org/english/bodies/cat/docs/ngos/BTselemHaMoked_Israel42.pdf

⁴⁵ For more information Op. Cit., p. 5.

⁴⁶ For further information, please see a report published by PCATI in June 2008 "No Defense: Soldier Violence against Palestinian Detainees". The report focuses on a large number of incidents of violence against detainees after they had been arrested, bound, and no longer present a danger to the soldiers. It reveals that although the phenomenon of violence against Palestinian detainees by soldiers is blatantly illegal, it is reinforced by a weak legal system which conducts only a small number of investigations and legal proceedings that concern cases of abuse by soldiers. <http://www.stoptorture.org.il/en/node/1136>

⁴⁷ PCATI and OMCT, *Israel – Briefing to the UN Committee Against Torture*, Jerusalem & Geneva, April 2009:

http://www.stoptorture.org.il/files/PCATI-OMCT_Israel_Alternative%20report%20to%20CAT_9%20April%202009.pdf

⁴⁸ UN CAT Concluding Observations on Israel, 14 May 2009:

<http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf>

investigations of torture under an independent and impartial body and brings to justice all those who violate the absolute prohibition of torture, a peremptory norm of international law, from which no derogation is permitted.

Recommendations

In light of the above and based on the report of PCATI and OMCT including the recommendations contained therein, the EMHRN calls on the EU to urge Israel to:

- Eliminate the post of the “Official in Charge of GSS Interrogees’ Complaints” and replace it with independent officials who are not related to the GSS/ISA in any way, in order to ensure impartial and effective investigations of complaints;
- Ensure prompt, effective and impartial investigations into all cases of IDF soldiers using violence against or humiliating detainees, and prosecute soldiers and commanders suspected of such acts. Those found guilty must be punished by appropriate penalties which take into account the grave nature of the offences⁴⁹.
- Incorporate into its domestic law a crime of torture as defined in article 1 of the UN Convention Against Torture.

Furthermore, the EMHRN also calls upon the EU to request from Israel to:

- Clarify through legislation that defenses such as “necessity” or “superior orders” shall not apply to those who perpetrate torture and other ill-treatment;
- Instruct the GSS/ISA to cease immediately the application of any means of torture and other ill-treatment, and only use methods of “reasonable interrogation” that fully comply with the Convention;
- Repeal all laws and orders providing for arbitrary, incommunicado or indefinite detention both under Israeli domestic and military law, including *Criminal Procedure (Enforcement Powers – Arrest) Law, 1996*; *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law, 2006*; *Detention of Illegal Combatants (Amendment and Temporary Provision) Law, 2008*; and the relevant sections of (military) Order Concerning Security Provisions (Judea and Samaria) (No. 378);
- Repeal all legal provisions authorizing police, GSS/ISA or IDF commanders to deny detainees access to counsel, both in Israeli and military law;
- Ensure full monitoring and recording of the interrogation of detainees, including by GSS/ISA, through audio and video taping. Resources must be urgently allocated for installing recording systems (audio and video) in all interrogation rooms.

VI. Movement restrictions in the OPT

Freedom of Movement inside the West Bank, including East Jerusalem

Restrictions on Palestinians’ freedom of movement remain one of the most widespread forms of human rights violations in the West Bank. Checkpoints, a number of which are now run by private security companies contracted by the Israeli Ministry of Defense, and various kinds of roadblocks, continue to prevent Palestinians from moving freely within the West Bank, hindering their access to family, places of employment or worship, educational institutions, agricultural lands and markets.

⁴⁹ PCATI and OMCT, Israel – Briefing to the UN Committee Against Torture, Jerusalem & Geneva, April 2009, pp. 18-19: http://www.stoptorture.org.il/files/PCATI-OMCT_Israel_Alternative%20report%20to%20CAT_9%20April%202009.pdf

The Israeli authorities took a series of measures over the course of the past few months to ease the flow of Palestinian traffic in 4 main Palestinian cities. However, as stated by OCHA, “these measures took place in the context of a wider process of entrenchment of some of the mechanisms used to control and restrict Palestinian movement. This process includes, among other elements, the expansion of the “fabric of life” road network and of key permanently staffed checkpoints. While in some cases these measures have eased access, they exact a price from Palestinians in terms of land loss, disruption of traditional routes, and deepening fragmentation of West Bank territory⁵⁰. Moreover, the number of closure obstacles remains constant, with a total of staffed and unstaffed obstacles in July 2009 of 614, compared to 634 in March 2009 and 630 in September 2008⁵¹.

According to data collected by OCHA⁵², out of the 613 closure obstacles within the West Bank territory in June 2009, 68 are permanently staffed checkpoints, 522 unstaffed obstacles (also called physical obstacles, which include roadblocks, earth mounds, earth walls, road barriers, road gates and trenches) and 23 “partial checkpoints”, which are points of control staffed on an ad-hoc basis. In recent years, the number of physical obstructions has gradually risen. In March 2009, there were 541 obstructions in the West Bank. The average monthly total for 2008 (January to September) is 537. In 2007, the monthly average was 459, in 2006 it was 445, and in 2005, 410. In addition to the 613, there are 84 obstacles blocking Palestinian access and movement within the Israeli controlled area of Hebron City, 63 crossing points along the Wall/Barrier, also known as “Gates” which control Palestinian movement into West Bank areas on the west side of the Wall/Barrier, and an average of 70 random (“flying”) checkpoints deployed and later dismantled every week since the beginning of 2009.

At the end of April 2007, the Israeli army announced that, as of May, it would cancel the restriction on Palestinians entering the Jordan Valley. In practice, however, as of June 2009, there are still some checkpoints restricting entry into the area, except for vehicles with permits, and others that allow only pedestrians to enter⁵³.

These obstacles to movement constitute only one of several layers of a complex system of access restrictions applicable to Palestinians, which include, *inter alia*, restrictions on the use of main roads, the Wall/Barrier and its permit regime, closed military zones and nature reserves, and Israeli settlements and adjacent “buffer zones”.

The construction of the planned 705 km long route of the Wall/Barrier in the West Bank, including East-Jerusalem, continues with more than 58% of the 709-kilometre-long Barrier completed, a further 10% under construction and 31.5% planned⁵⁴. Two hundred kilometers have been built since the International Court of Justice (ICJ) issued its Advisory Opinion on 9 July 2004, confirming that the sections of the Wall/Barrier running inside the West Bank, including East Jerusalem, together with its associated gate and permit regime, violate international law. The ICJ called on Israel to cease construction of the Wall ‘including in and around East Jerusalem’; dismantle the sections already completed; and ‘repeal or render ineffective forthwith all legislative and regulatory acts relating

⁵⁰ OCHA, West Bank Movement and Access update, June 2009, p. 6:

<http://unispal.un.org/unispal.nsf/eed216406b50bf6485256ce10072f637/08ee4e6c2bffa9d6852575e60049772c?OpenDocument>

⁵¹ OCHA, West Bank Movement and Access Update, May 2009:

http://www.ochaopt.org/documents/ocha_opt_movement_and_access_2009_05_25_english.pdf and OCHA, The Humanitarian Monitor, July 2009:

http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2009_june_english.pdf

⁵² OCHA, West Bank Movement and Access Update June 2009:

<http://unispal.un.org/unispal.nsf/eed216406b50bf6485256ce10072f637/08ee4e6c2bffa9d6852575e60049772c?OpenDocument>

⁵³ B'Tselem: http://www.btselem.org/english/Freedom_of_Movement/Statistics.asp

⁵⁴ OCHA, Five Years After the ICJ Advisory opinion, July 2009, p. 4:

http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf

thereto⁵⁵. The Court also stated that all states are under an obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by such construction and to ensure compliance by Israel with international humanitarian law as embodied in the Fourth Geneva Convention⁵⁶.

Upon completion of the barrier, 85 % of the route will run inside the West Bank, leaving 11.9 percent of the West Bank (including East Jerusalem), on the west of the barrier or surrounded completely or partially by it. These areas are home to 498,000 Palestinians (222,500 in East Jerusalem) living in 92 towns and villages. As of July 2009, approximately 10,000 Palestinians are located between the Barrier and the Green Line.⁵⁷ Already, access to East Jerusalem, the major health, economic, religious and education centre has been cut off by the Barrier, as well as access to agricultural land in the rural areas.

The Israeli Army continues to prohibit or severely restrict the use by Palestinians of roads, rendering them largely for exclusive Israeli use. Palestinian travel is restricted or prohibited outright on at least 430 kilometres of roads in the West Bank, while Israelis are allowed to travel these sections freely. On at least 137 kilometres, the army prohibits Palestinian travel completely; on the remainder of the forbidden roads, Palestinians with permits or who live in East Jerusalem are allowed travel⁵⁸.

Freedom of Movement between the West Bank and the Gaza Strip

Since the beginning of the current Intifada, Israel has taken various actions to divide the Palestinian population into two distinct entities, by isolating the West Bank from the Gaza Strip. Through various physical and administrative measures, Israel has rendered the movement between the two areas virtually impossible, preventing the territorial contiguity of the Palestinian territory, thus undermining the right of the Palestinian people to self-determination.

Movement between the West Bank and Gaza requires permits, which are only granted to Palestinians in a very limited number of cases. This separation policy has escalated in the past years. Since 2008, the military has taken active measures to locate and expel Palestinians from the West Bank to the Gaza Strip under the pretext that they are "illegal aliens". Israel requires Palestinians wishing to enter Gaza to sign an undertaking never to return to the West Bank. On the other hand, Palestinians from Gaza wishing to enter the West Bank for medical treatment, family visits etc., are required to deposit a large sum of money to guarantee their return to Gaza. Since March 2009, the Israeli government refuses to review the appeals of any person wishing to change their place of abode from Gaza to the West Bank except in three narrowly defined "humanitarian" cases⁵⁹. These measures infringe, *inter alia*, on the ability of Palestinians to raise a family, to choose their residence and to attain the highest possible standard health.

Recommendations

In light of the above, the EMHRN urges the EU to pressure Israel to ensure the freedom of movement of Palestinians within the West Bank, including East Jerusalem and between the West Bank and the Gaza Strip, in accordance with international law.

VII. Administrative Detention

⁵⁵ ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, para. 163.

⁵⁶ Op. Cit., para. 159.

⁵⁷ OCHA, Five Years After the ICJ Advisory opinion, July 2009, p. 18:

http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf

⁵⁸ Figures from B'Tselem: http://www.btselem.org/english/Freedom_of_Movement/Statistics.asp

⁵⁹ See http://www.hamoked.org.il/news_main_en.asp?id=726

Israel's illegal practice of detaining Palestinians without charge or trial for a period of up to six months and indefinitely extendable, also known as administrative detention, remains widespread throughout the OPT. According to the Israeli Prison Service (IPS) figures as at 30 June 2009, there are at least 428 Palestinians being detained in administrative detention, of which 3 are women and one is a child⁶⁰. In May 2009, the UN Committee Against Torture stated that "While the State party [Israel] explains that this practice is used only exceptionally when confidentiality make it impossible to present evidence in ordinary criminal proceedings, the Committee regrets that the number of persons held in administrative detention has risen significantly since its last periodic report"⁶¹. As of December 2008, the vast majority of administrative detainees, were held in administrative detention at least twice⁶².

The EMHRN would like to draw particular attention to the **Illegal Combatants Law**. This law, as amended in August 2008, allows for the detention of non-Israeli citizens falling into the category of "unlawful combatants" who are described as "combatants who are believed to have taken part in hostile activity against Israel, directly or indirectly" for a period of up to 14 days without any judicial review. Detention orders under this law can be renewed indefinitely; evidence is neither made available to the detainee nor to his lawyer and, although the detainees have the right to petition to the Supreme Court, the charges against them are also reportedly kept secret⁶³. On 11 June 2008 the Israeli High Court of Justice ruled that the Incarceration of Illegal Combatants Law is constitutional, in response to an appeal by Palestinians from the Gaza Strip who were held in administrative detention until the completion of the disengagement plan in September 2005.

According to Hamoked and B'Tselem, after the release of two detainees on 18 August, 10 or 11 detainees are still detained under the Illegal Combatant Law. As of early April 2009, 20 Palestinians from the Gaza Strip, arrested during "Operation Cast Lead", are still detained in Israel, 13 of whom in the Shikmah prison in Ashkelon as security detainees, facing charges in Israeli courts, and six of whom in Ketsiot as "unlawful combatants".

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

⁶⁰ Defence for Children International – Palestine Section, *Alternative Report for Consideration Regarding Israel's Third Periodic Report to the UN Human Rights Committee International Covenant on Civil and Political Rights* (1966) (ICCPR), Submitted 29 July 2009, p. 32: <http://www.dci-pal.org/english/doc/reports/AlternativeReport.pdf>

⁶¹ UN CAT Concluding Observations on Israel, 14 May 2009, p.5:
<http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf>

⁶² B'Tselem Annual Report 2008, http://www.btselem.org/Download/200812_Annual_Report_Eng.pdf

⁶³ UN CAT Concluding Observations on Israel, 14 May 2009, p. 4 :
<http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf>

Recommendations

The EMHRN calls on the EU to urge Israel to:

- Examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer.
- Review as a matter of priority its legislation and policies to ensure that all detentions, and particularly administrative detentions in the West Bank and Gaza Strip, are brought into conformity with article 16 of the UN Convention Against Torture.
