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EMHRN Note in view of the EU-Israel subcommittee on political dialogue and cooperation

The Euro-Mediterranean Human Rights Network (EMHRN) welcomes the upcoming meeting of the EU-Israel subcommittee on political dialogue and cooperation on 5 December 2011. This meeting is an important opportunity to raise concerns and discuss violations of international human rights and humanitarian law committed by the Israeli authorities in the Occupied Palestinian Territory (OPT) comprising the West Bank, including East-Jerusalem, and the Gaza Strip. It is equally an important opportunity to follow up on the discussions that took place in the EU-Israel human rights working group meeting on the 13th of September 2011, which was addressing human rights violations committed by Israel inside Israel.

Since the last meeting of the EU-Israel subcommittee on political dialogue and cooperation in December 2010, Israeli violations of international law in the OPT and Israel have continued and increased. Given the situation, as also reflected in the European Commission's progress report on the implementation of the EU-Israel Action Plan in 2010¹, any improvement or upgrading of EU-Israel relations should remain on hold, pending tangible progress in Israel's respect for international law in the OPT and inside Israel.

The EMHRN calls on the EU to address the following issues at the upcoming political subcommittee:

1. Follow up to the EU-Israel HR working group meeting of 13 September 2011

The EMHRN urges the EU to follow up on the concerns the EMHRN raised in view of the EU-Israel human rights working group meeting which took place in September 2011, namely the increasing attacks against Human Rights Defenders; the continued discrimination towards the Palestinian Arab Minority in Israel; the use of torture and other cruel, inhuman and degrading treatments; and the violations of refugee rights.²

Given some worrying recent developments and new opportunities that have come up since September 2011, the EMHRN urges the EU to raise in particular the following issues in its meeting with the Israeli government:

1.1 Imminent displacement of Arab Bedouin in the Naqab (Negev)

¹ See the [EU-Israel 2010 progress report](#).

² [EMHRN Note in view of the EU-Israel Human Rights Working Group meeting](#) (September 2011).

On the 11th of September 2011, the Government of Israel approved the “Praver Plan” for the regulation of the settlement of Arab Bedouin citizens of Israel in the unrecognized villages in the Naqab (Negev) in the South of Israel. The “Praver Plan” was developed without any consultation from the Arab Bedouin or other Arab community leaders. If implemented the plan would violate the basic rights of the Arab Bedouin including their right to dignity and the right to preserve their way of life and culture. It will also dispossess them from their ancestral land and discriminate between Arab Bedouin and Jewish citizens in land and planning in the Naqab.

According to the Plan, the Arab Bedouin who submitted land ownership claims before the 24th of October 1979 and whose claims were not subsequently rejected by an administrator or a court of law, will receive compensation in the form of up to 50% of the land claimed. Compensation for the remaining 50% of land will only be made available after the initial 50% has been relinquished to the State. Compensation in the form of land will only be given if there is evidence that the owner is living on the land and it is not currently held by the state or another person through agreement with the state. For those who are not living on their claimed land, financial compensation or plots of land will be given that the government will be obliged to develop for the property claimant, subject to the arrangements detailed in the plan.

Those who will be displaced will be settled within a clearly demarcated region in the northern Naqab and not in any other area. If implemented, this plan may result in the forced displacement of 40,000 Arab Bedouin from their homes and villages. With this plan, most of the unrecognised villages would be destroyed.

Legislation to implement the Praver report is expected to be tabled in the Knesset very soon.

The EMHRN calls on the EU to urge Israel to rescind its decision to approve the Praver Report and begin to right the historical wrongs by engaging in a meaningful dialogue with the Arab Bedouin community and the Arab political leadership, and recognise the “unrecognised” Arab Bedouin villages and traditional land ownership in the Naqab.

For further information see:

- Adalah (October 2011): [The Praver Plan and Analysis](#).
- Adalah Press Release (6 September 2011): [Adalah Urges Government of Israel to Reject Praver Report as it Violates the Rights of the Arab Bedouin and will Displace Thousands from their Homes](#).
- Adalah (September 2011): [Nomads Against Their Will—The Attempted expulsion of the Arab Bedouin in the Naqab: The example of Atir-Umm al-Hieran](#).
- Adalah, Article by Dr. Thabet Abu-Ras (April 2011): [The Arab Bedouin in the Unrecognized Villages in the Naqab \(Negev\): Between the Hammer of Praver and the Anvil of Goldberg](#).
- Association for Civil Rights in Israel (ACRI), BIMKOM and the Regional Council for the Unrecognized Villages in the Naqab, Position Paper (May 2011): [Principles for Arranging Recognition of Bedouin Villages in the Negev](#) (includes alternative master plan for the unrecognised villages).

1.2 Detention Conditions of Palestinian Prisoners and Detainees, including children

In October 2011, 1027 Palestinian prisoners detained in Israeli prisons were released in exchange for the release of an Israeli soldier, Gilad Shalit, who was held captive by Hamas for more than five years in Gaza. Around 5,000 Palestinians, classified as “security” prisoners or detainees by Israel, remain imprisoned in Israel. Two of them are detained under the Incarceration of Illegal Combatants Law, and close to 300 are being held in 'administrative detention'.

Since the capture of the soldier Gilad Shalit in June 2006, the detention conditions of Palestinian prisoners and detainees have deteriorated in an unprecedented manner. They are subject to harsher pre-trial detention laws (e.g. lengthy prohibition on meeting with lawyers, proceedings being held in their absence, etc.), interrogations and conditions of confinement than other prisoners and detainees held in Israel (including solitary confinement and restrictions on family visits). In Israeli Security Agency (ISA or shabak) facilities, testimonies taken by human rights organisations in past years indicate clear patterns of torture and/or cruel, inhuman and degrading treatment of Palestinian detainees. There is an insufficient legislative framework to safeguard the rights of Palestinian prisoners and recent legislative initiatives have been enacted that violate their rights. The absolute prohibition of torture enshrined in international law has not been adopted in Israeli domestic law. New legislation restricting meetings between “security” prisoners and lawyers and extending the validity of harsh, special detention procedures for those suspected of security offenses has been enacted. Proposed legislation (the new Counter-Terrorism bill which passed the first reading in the Knesset in August 2011 and the Shalit bills³) would further violate the rights of Palestinians held by Israel. Last but not least, there is insufficient access to remedies: oversight and accountability mechanisms are weak and there is a culture of impunity.⁴ Medics employed in the prison system consistently fail to oppose, document or report suspicions of torture or ill-treatment. Similarly, civilian hospital staff members encountering suspected victims of abuse and/or torture fail to report them as such.⁵

From 27 September to 23 October 2011, about 2,000 Palestinian prisoners staged a hunger strike to protest against their worsening conditions and the extensive use of solitary confinement. After the conclusion of the prisoners swap, as well as the deterioration in the health of some strikers, including political leaders, and their transfer to the Israel Prison Service (IPS) medical centre, the IPS signed an agreement with the prisoners undertaking to respect most of the demands of the strikers, including:

³ A set of bills (the 'Shalit laws') was proposed aiming to collectively worsen Palestinian prisoners' conditions in response to the holding of Shalit – as both a punitive measure and a form of pressure. These bills have still not been removed from the Knesset agenda.

⁴ Over 600 complaints regarding abuse/torture during interrogation have been filed since 2001, but not a single criminal investigation has been opened.

⁵ This failure is due to a lack of legislation, as well as training and guidance from professional bodies such as the Ministry of Health and the Israel Medical Association that should encourage reporting and protection of whistle-blowers.

1. Removing the Secretary General of the Popular Front for the Liberation of Palestine (PFLP) from his permanent solitary confinement and providing him with full medical care;
2. Removal of most Palestinian prisoners from solitary confinement;
3. Renewal of family visits;
4. Cessation of full body-strip searches of prisoners and their families, of nightly raids of cells, and of cuffing during family and lawyers' visits; and
5. Renewal of access to education, Arabic TV and books.

The strike was then called off, with a proviso that the situation would be reviewed by the prisoners after three months. The provisions of the agreement have not yet been respected.

In a separate development, the EMHRN welcomes the decision by the Israeli military to raise the age of juveniles or minors in the military-justice system in the West Bank from 16 to 18 years old. This change aptly conforms the age of minority in the West Bank to the customary age around the world, including in Israel. However, Israel continues to violate many basic rights of Palestinian minors - most of who are suspected of stone-throwing - during arrest, interrogation, trial, and imprisonment. These concerns include arrests in the middle of the night, ill treatment and interrogation in the absence of a parent or lawyer.

The EMHRN calls on the EU to seize the momentum created by the release of Gilad Shalit, the prisoner swap, and the agreement with the Israeli prisoners to urge Israel to improve the conditions of confinement of Palestinian prisoners in accordance with the UN Convention against Torture. In particular, Israel should:

- Respect the agreement it signed with the prisoners and especially end prolonged solitary confinement of Palestinian prisoners.
- Remove its support from the 'Shalit bills' and anti-terrorism bill and refrain from introducing legislation worsening collectively the detention conditions and the access of Palestinian detainees and prisoners to a fair trial and to external scrutiny.
- Introduce legislation expressly prohibiting torture and accede to the Optional Protocol of the Convention Against Torture (OPCAT).
- Introduce legislation expressly prohibiting medics' participation in abuse/torture, and for documentation and reporting of torture, and protection of whistle-blowers.
- Ensure that the Israel Medical Association and/or the Ministry of Health investigate allegations of medical complicity and protect whistle-blowers.
- Establish independent investigation mechanisms, and give access to all facilities at all stages of incarceration.

The EMHRN also call on the EU to build on the positive development regarding the age of minority in the Israeli military justice system and urge Israel, without delay, to bring the provisions of military law in line with those of Israel's Youth Law, including the rules applicable to arrest, interrogation, trial, and penalties.

For further information:

- Adalah, Al-Mezan Center for Human Rights, Public Committee Against Torture (PCATI) and Physicians for HR – Israel Briefing Note (October 2011): [Human rights of Palestinian detainees and prisoners held in Israel, with relation to the struggle against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#).
- Adalah, PHR-Israel and Al Mezan, [Solitary Confinement of Prisoners and Detainees in Israel Prisons](#) (June 2011). See also the position of the UN Special Rapporteur on Torture, calling for prohibition of solitary confinement, see [Interim report of the Special Rapporteur of the Human Rights Council on Torture, Cruel, Inhuman or Degrading Treatment or Punishment, A/66/268](#) (5 August 2011).
- Public Committee Against Torture in Israel (PCATI), *Accountability Still Denied* (November 2011, PDF file attached).
- PCATI and PHR-Israel, [Doctoring the Evidence, Abandoning the Victim: The Involvement of Medical Professionals in Torture and Ill Treatment in Israel](#) (October 2011).
- For more information regarding child detainees see B'Tselem "[Army raises minority age of Palestinians to 18, as in Israel; violation of minors' rights continues](#)" and the B'Tselem report "[No Minor matter](#)" from July 2011.
- ACRI Position Paper (August 2011): [The Counter-Terrorism Bill, 2011](#).

1.3 New bills curtailing freedom of association in Israel

On 13 November 2011, the Ministerial Committee for Legislation approved two new bills intended to significantly curtail the work of human rights organisations in Israel by severely restricting their funding from foreign governments (such as the EU and the UN). The EMHRN fears that the bill would also apply to public funding channelled through European NGOs. If adopted these bills will seriously curtail freedom of association in Israel and stand in stark contrast to the fundamental principles of democracy. They would also breach Israel's international obligations under the 1998 United Nations Declaration on Human Rights Defenders, and in particular its article 13, which provides that "everyone has the right, individually or in association with others, to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means".

- The first bill titled "[The Associations Law \(Amendment – Banning Foreign Diplomatic Entities' Support of Political Associations in Israel\)](#)," was tabled by MK Ofir Akunis (Likud) and backed by Prime Minister Benjamin Netanyahu. This bill attempts to set monetary limitations on funds to Israeli human rights organisations. According to this bill, an Israeli NGO that seeks to influence state policies (deemed to be "political organisations") would not be allowed to receive donations of more than NIS 20,000 (EUR 4,000).
- The second bill is titled "[Bill for amendment of the Income Tax Order \(Taxation of public institutions that receive donations from a foreign state entity\) – 2011](#)," tabled by MK Faina Kirshenbaum (Yisrael Beitenu). This bill seeks to amend the Income Tax Order so that funding from foreign state entities to Israeli NGOs will be subject to a 45% taxation

rate. This is liable to prevent foreign governments from funding such organisations, due to their domestic laws.

Following condemnations from Israeli NGOs and pressure from the EU and the US, Prime Minister Netanyahu decided to postpone the discussion in the Knesset on these two bills. However, according to the latest information available on 23 November 2011, Foreign Affairs Minister Lieberman will still push for the adoption of the Kirshenbaum Bill.

The EMHRN calls on the EU to urge Israel to:

- Clearly and publicly state it will not introduce or vote in favour of those two bills in the Knesset.
- Refrain from introducing or supporting any further legislation and practice which would effectively curtail the freedoms of association and expression in Israel.
- Revoke the Bills on Foreign Funding and on Anti-Boycott, which violate Israel's obligation under human rights law.

For further information see:

- [The EMHRN and Observatory for the Protection of Human Rights Defenders joint letter to the Members of the Knesset](#) (November 2011).
- Israeli NGOs Press Release: [NGOs in Israel: Urgent Call Regarding Severely Restrictive Funding Bills](#) (November 2011).
- ACRI, Press Release: [Government Supports Bills Restricting Foreign Funding to NGOs](#) (November 2011).

2. Israeli violations in the OPT

2.1 Imminent expulsion of Bedouin communities from Area C in the West Bank

In October 2011, the Israeli Civil Administration (CA) published its plan to expel the Bedouin communities living in Area C in the West Bank, transferring some 27,000 persons from their homes. The first phase, which will result in the forcible transfer of 2300 persons to a site near the Abu Dis refuse dump, east of Jerusalem, will be implemented as early as January 2012. These communities currently live in the area of the Ma'ale Adummim settlement and nearby settlements; half of them live in E1, the area designated by Israel for future expansion of Ma'ale Adummim. In the second phase, the CA plans to expel communities from the Jordan Valley. According to the CA's schedule, the plan will be implemented in three to six years.

If implemented, the E1 plan will create urban contiguity between the Ma'ale Adummim settlement and Jerusalem, exacerbating further the isolation of East Jerusalem from the rest of the West Bank, and cutting the territorial contiguity between the northern and southern sections of the West Bank, rendering any viable, contiguous Palestinian State impossible. It would violate the basic rights of Palestinians. This plan also blatantly contravenes international humanitarian law, which prohibits the forced transfer of protected persons, unless the move is

temporary or is necessary for their safety or justified by military necessity. The plan meets none of these conditions.

Therefore, the EMHRN calls on the EU to urge Israel not to implement its plan and to respect its obligations under international law to protect the rights of the Palestinian population.

For more information see:

- [B'Tselem briefing on the forced evictions of Bedouins in Area C](#) (October 2011).

2.2 Lifting of the Gaza closure

The decisions by the Government of Israel to ease some restrictions on the Gaza Strip over the last year and a half have not resulted in any meaningful improvement of the lives of most Palestinians living in the Gaza Strip, whose basic rights continued to be violated. Indeed, the 'ease' has left foundations of the illegal closure policy intact⁶. The EMHRN notes the danger that the current "eased" closure risks becoming institutionalised by the international community if there is no increased pressure on Israel for a full lifting of the closure. Measures to "ease" the closure fall short of addressing the root cause of the human rights and humanitarian crisis, namely the closure itself, and by extension, Israel's occupation of the Palestinian Territory, including the Gaza Strip. Attempts to ease the closure fail to address the illegality and injustice of Israel's closure policy and will not lead to any improvement of the overall human rights situation on the ground.

In light of the recent release of soldier Gilad Shalit, one of the main reasons for Israel's closure policy, the EU should urge Israel to:

- Take immediate actions to put an end to the closure and collective punishment measures imposed on Palestinian civilians in the Gaza Strip.
- Urge Israel to immediately deliver exit permits to patients in need of medical treatment outside Gaza, to ensure access to Gaza's agricultural land and fishing grounds, and ensure the protection of civilians in these areas.⁷

For further information see:

- [NGOs' submissions to the UN Committee on Economic, Social and Cultural rights](#), submitted by Al-Haq and the [2010 report of Palestinian Center for Human Rights submitted to the Un Committee on Economic, Social and Cultural Rights in Response to Israel's Third Periodic Report](#).
- [Submission by Adalah, Al Mezan Center for Human Rights and PHR-Israel in view of the EU-Israel human rights working group meeting](#) (August 2011).

⁶ See the 2010 report "[Dashed Hopes: Continuation of the Gaza Blockade](#)".

⁷ Access to around 35% of Gaza's farmland and 85% of maritime areas for fishing remains restricted by the Israeli 'buffer zone', with devastating impact on the economy and people's rights and livelihoods. An estimated 178,000 people are directly affected. Boundaries of the restricted areas are highly arbitrary and enforced by live fire.

2.3 Accountability for international law violations committed during the Israeli offensive on the Gaza Strip in 2008-2009

Three years after the Israeli offensive “Operation Cast Lead” on the Gaza Strip, Israel (as well as the Palestinians) has failed to conduct investigations that meet the required international standards of independence, impartiality, thoroughness, effectiveness and promptness⁸ into the violations of international law it allegedly committed⁹. These investigations were demanded in the report of the UN Fact Finding mission on the Gaza conflict (the so-called “Goldstone report”) - endorsed by the UN General Assembly and the UN Human Rights Council - and called for by the EU. Several shortcomings have been confirmed in the 2010 and 2011 reports of the Committee of independent experts in international humanitarian and human rights laws mandated by the UN Human Rights Council to monitor and assess domestic proceedings by Israel and the Palestinian Authority from an international law point of view¹⁰. Based on this information, the UN Human Rights Council recommended in March 2011 that the UN General Assembly in September 2011 submit the Report of the UN Fact-Finding Mission on the Gaza Conflict to the Security Council, with the recommendation that the Security Council should refer the situation in Israel and the Occupied Palestinian Territory to the Prosecutor of the International Criminal Court, pursuant to Article 13(b) of the Rome Statute. The General Assembly has not yet followed-up on this recommendation.

In general, the Israeli Military Advocate General (MAG) did not investigate all complaints submitted to it in relation to Operation Cast Lead but it seems to have picked certain cases addressed in the UN Fact Finding Report (the so-called Goldstone report). It officially closed other complaints/cases, while lacking to provide information about the status of many other complaints submitted by NGOs¹¹.

⁸ As reported by various Israeli, Palestinian and international NGOs, independence and impartiality of the Israeli investigations are severely compromised by the fact that all these inquiries have been carried out by army commanders or by the military police. In addition, these inquiries are overseen by the Military Advocate General (MAG), whose office cannot be considered a disinterested party as it provided legal advice to Israeli forces on their choice of targets and tactics during Operation Cast Lead. Moreover, many aspects of these military investigations are carried out in the form of so-called operational debriefings, which are conducted for the purposes of evaluating lessons learned for the military itself, and not to investigate the possibility of criminal behaviour. Further, Israeli investigations as a whole look only into violations resulting from deviations from orders and do not examine the legality of the orders themselves. However, most of the harm to civilians, property and civilian buildings during Operation Cast Lead was a result of policies determined at the senior government and army levels, with the approval of the MAG.

⁹ See the [report of the United Nations Fact-Finding Mission on the Gaza Conflict on human rights in Palestine and other occupied arab territories](#).

¹⁰ For the 2010 [Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance](#) and the 2011 [report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9](#).

¹¹ For instance, Adalah, Al Mezan and Al Haq filed 10 complaints concerning Operation Cast Lead on behalf of victims in Gaza, which are documented in their reports to the Independent Expert Committee. The MAG is ignoring all of Adalah's letters about the status of the investigations, demands for information, and copies of the investigation materials. They are not sending any reasons to the organisations for closing these cases despite many attempts to get this material.

The lack of independent and transparent investigations, together with monetary barriers¹², the 2-year statute of limitations imposed on filing tort (compensation) cases¹³ and the lack of access to Israeli courts for victims, witnesses and lawyers living in Gaza - due to the illegal Israeli closure policy-¹⁴, fundamentally deny the victims' legitimate right to an effective judicial remedy. It allows those allegedly responsible of committing those violations to escape accountability, contributing to a culture of impunity in Israel. Under such conditions, there is a real danger that the basic principles of international law, which aim at securing protection for civilians, will continue to be violated in the future.

The investigation into violations committed during Operation Cast Lead is only one aspect of the broader culture of impunity in Israel, among which are the total impunity for cases of torture and a lack of investigations into cases of settler violence against Palestinians in the West Bank.

The EMHRN calls on the EU to urge Israel to:

- Fully comply with its obligations to conduct independent and credible investigations in line with international standards into the alleged violations of international law committed during Operation Cast Lead. The EU should remind Israel that failing to do so would mean facing further actions by the international community, including the recourse to international criminal justice mechanisms.
- Remove serious monetary, legal and physical obstacles on Palestinians to access justice.
- Refrain from any attacks on protected persons and/or objects in the Gaza Strip and ensure full compliance by international law.

For further information see:

- [EMHRN Joint Open Letter to UN Secretary General on Accountability for Victims of the Gaza Conflict](#) (September 2011).

¹² Israeli courts often require claimants to pay a court insurance fee before the case can begin. While this is a discretionary fee applied by the court, in practice, this fee is always applied to Palestinian claimants. The exact value of the fee is not fixed, and it is determined on a case-by-case basis by the court. With respect to claims for damage to property, the fee usually constitutes a percentage of the value of the property being claimed, however, for death or injury there is no informal guideline. In PCHR's experience this amount is typically set at a minimum of NIS 10,000 (about US \$2800); however, it can reach significantly higher amounts. See PCHR, [Israel High Court of Justice vacates verdict in Cast Lead Case: Appoints New Panel of Judges and Orders Case on behalf of 1,046 victims be Re-heard](#).

¹³ Under Israeli law, a complaint for civil damages must be brought within two years of the date of the incident, or the right to compensation is irrevocably lost. As a result of the illegal closure of the Gaza Strip, and the significant number of victims of Operation Cast Lead, this two-year limit means that the victims are often unable to submit their cases within the required time-frame. Prior to 1 August 2002, the statute of limitations was seven years.

¹⁴ According to PCHR, since June 2007, despite a letter from the court requesting the victims and witnesses' presence, the Israeli military authorities have not allowed a single individual to leave Gaza to appear in court. See PCHR, [Israel High Court of Justice vacates verdict in Cast Lead Case: Appoints New Panel of Judges and Orders Case on behalf of 1,046 victims be Re-heard](#). Adalah filed a petition to the Jerusalem Administrative Court in October 2011 against Israel's policy of preventing Palestinian residents of the Gaza Strip who file tort (damages) lawsuits against the Israeli security forces, and their witnesses from entering Israel in order to appear in court and completing the necessary legal proceedings. See Adalah's Press Release (October 2011): [Adalah Petitions against the Ban on Gaza Residents from Entering Israel to Access the Courts for Tort Cases against the Israeli Security Forces](#).

- [Regarding financial, legal and physical obstacles on Palestinians to access Israeli courts see also PCHR statement](#) (June 2011).
- PCHR, [Genuinely unwilling: an update](#) (August 2010).
- B'Tselem's Report: [Void of responsibility](#) (October 2010)
- Open Society Justice Initiative (August 2010): [Comparative Analysis of Preliminary Investigation Systems in Respect of Alleged Violations of International Human Rights and/or Humanitarian Law](#).