



**Adalah Briefing Paper:  
Key Concerns Regarding the Rights of Palestinians in Israel and the OPT  
Submitted to the EU for the 2012 ENP Progress Report**

7 November 2012

Adalah submits this short briefing paper to assist the EU in its preparation of the ENP Progress Report (ENPPR) for 2012. The paper highlights main issues on which Adalah works that are relevant to the progress made on the implementation of the EU-Israel Action Plan concerning the human rights of Palestinian citizens of Israel and Palestinian residents under Israeli occupation in the Occupied Palestinian Territory (OPT) in 2012. This paper discusses the following issues:

**I. Palestinian Citizens of Israel**

1. The dispossession and displacement of the Arab Bedouin in the Naqab
2. Discriminatory and racist laws
3. Harassment of the Arab political leadership

**II. Palestinian Residents under Israeli Occupation in the OPT**

1. Lack of access to courts and effective remedy
2. Discriminatory land and planning policies in Jerusalem
3. Torture and ill-treatment of prisoners/detainees and civilians

It also makes a series of **recommendations** to the EU for the ENPPR for 2012.

**I. Palestinian citizens of Israel**

The EU-Israel Action Plan adopted in 2005 enumerates the “rights of minorities” among the very few human rights to be addressed (alongside disabled people and gender equality) by the parties, and they agreed to engage in a dialogue to “promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents.” (p.4)

The ENPPR 2011 notes that “overall, Israel made progress in implementing the Action Plan,” (p. 2), however, it also states that “as regards to the rights of minorities, progress on the situation of the Arab minority was limited.” (p. 5) In this context, the ENPPR 2011 discusses three issues of concern regarding the Arab minority: (1) “potentially discriminatory” or even “anti-democratic” bills and laws (p. 2 and p. 4); (2) the limited number of Arab citizens employed in the civil service (p. 5); and (3) the Arab Bedouin and the Prawer Plan. Nevertheless, the ENPPR 2011 made **no recommendations** to Israel to better promote and protect the rights of the Arab minority.

In July 2012, the EU-Israel Association Council (AC) statement<sup>1</sup> referred to the ENP Review, adopted in May 2012, and stated that in this context, enhancing “respect for human rights and

<sup>1</sup> Available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/132046.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132046.pdf)

for the rights of persons belonging to minorities stand central to the EU-Israel partnership.” The AC also referred to Israel's obligation to protect the rights of the Arab Palestinian minority, **stressing the “importance to address it as a core problem in its own right,”** and emphasizing the need for Israel **“to ensure the equality of all its citizens.”** The EU also encouraged Israel “to seek equitable and sustainable solutions with regard to the **unrecognised Bedouin villages** in close consultation with the communities concerned.” (para. 22) With this in mind, Adalah has provided information on recent developments in 2012 and urges the EU to make specific recommendations to Israel to protect the rights of Arab and Arab Bedouin citizens of Israel, including the Arab political leadership.

## **1. The dispossession and displacement of the Arab Bedouin in the Naqab**

The ENPPR 2011 (p. 5) discusses the Israeli government's approval of the Praver Plan in 2011, noting that it “proposed the relocation of 30-40,000 Bedouins in the Negev...but without full recognition of land ownership and with limited scope for legalizing construction.” The report also notes that the plan fell short of the Goldberg Commission's recommendation for a “broad recognition of the Bedouin villages” and “was criticized for the limited consultation of representatives of the unrecognized Bedouin villages.” However, the EU did not include any recommendation to Israel concerning the protection of the rights of the Arab Bedouin in its list of recommendations (p. 3-4) in the ENPPR 2011.

In January 2012, the government introduced the proposed “Law for the Regulation of Bedouin Settlement in the Negev” (The Praver Plan Law), which is meant to serve as the implementing arm of the government-approved Praver Plan. The Praver Plan Law aims to legislate “a resolution of the settlement of the Bedouin population”, and “regulate Bedouin land ownership claims” within five years.<sup>2</sup> The Law sets conditions and requirements for land claims and compensation, and formerly restricts Arab Bedouin citizens in the Naqab from living on or using the land in certain areas by preventing the establishment of any Arab Bedouin towns or compensation of land outside of a specifically demarcated area. It also empowers the Prime Minister, together with the Israel Land Authority (ILA), to take extensive administrative measures to evict Arab Bedouin residents and demolish the homes of those who refuse to leave. In issuing and executing demolition orders, the ILA is permitted to employ “reasonable force and to receive assistance from the police forces.” At the same time, the Law **severely restricts the process of judicial review** for demolition and eviction orders.<sup>3</sup>

While the Praver Plan Law is not currently pending in the Knesset, implementation has begun and is ongoing. Since the approval of the Praver Plan, the government has announced several plans that will displace over 10,000 Arab Bedouin to make way for new forests, military centers, and Jewish towns and cities. Furthermore, in August 2012, despite numerous objections from communities and civil society, the Metropolitan Plan of Be'er Sheva was approved.<sup>4</sup> The Metropolitan Plan serves the same aims as the Praver Plan, and provides justification for the expulsion and concentration of Arab Bedouin communities in the jurisdiction of Be'er Sheva into the government-planned towns and recently recognized villages. Examples of how Praver is being implemented now, follows:

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<sup>2</sup> The Law for the Regulation of Bedouin Settlement in the Negev (2012) is available in Hebrew at: [http://www.tazkirim.gov.il/Tazkirim\\_Attachments/41151\\_x\\_AttachFile.doc](http://www.tazkirim.gov.il/Tazkirim_Attachments/41151_x_AttachFile.doc).

<sup>3</sup> See Adalah, “A Briefing Paper: Understanding the Praver Plan Law.” April 2012: <http://adalah.org/images/praverlawweb.pdf>

<sup>4</sup> Official Gazette, 6457 8 August 2012 pg. 5711. See Adalah, “Planning Council Rejects Objections filed against Master Plan for Beer Sheva; Decision Paves Way for Evacuation of Unrecognized Villages in the Naqab, 25 June 2012: <http://adalah.org/eng/?mod=articles&ID=1799>

1. **Increase in Home Demolitions:** In 2011, around 1,000 homes were demolished; in 2012, hundreds of homes have been demolished so far.<sup>5</sup> In the fall of 2012, the homes in Al-Araqib were demolished 4 times in 40 days. On 4 September 2012, 31 homes were demolished in one day, with 7 Arab Bedouin citizens choosing to demolish their own homes to avoid stiff financial penalties.<sup>6</sup>
2. **New government plans to displace thousands of Arab Bedouin citizens:** In October 2011, the government announced a decision to establish seven (7) new Jewish towns, some of them on the land of existing Arab Bedouin villages, such as the plan to build the Jewish town of Hiran on top of the ruins of Umm el-Hieran (pop: 500).<sup>7</sup> In December 2011, the government approved the expansion of Yatir forest over the unrecognized village of Atir (pop: 500),<sup>8</sup> and in March 2012, the government approved the plan for "Intelligence City," a military intelligence complex slated to be constructed partially on the historic villages of 9,000 Arab Bedouin citizens of Israel.<sup>9</sup>
3. **Establishment of new "Authority for Regulating Bedouin Settlement in the Negev" and new specialized police force to implement Praver:** The new government authority has been fully staffed since the summer of 2012. Its employees are charged with implementing the Praver Plan policy of demolition and displacement, and have been active in the unrecognized villages, threatening and coercing the Arab Bedouin to leave their ancestral lands. Additionally, in August 2012, in response to a freedom of information act request from Adalah, the Inspector General's Office of the Israel Police Force confirmed that recruitment was ongoing for a special police force charged with "regulating Bedouin settlement" and implementing the Praver Plan.<sup>10</sup>
4. **Increased Harassment:** Arab Bedouin citizens living in the unrecognized villages, and even the recently-recognized Abu Basma villages, have reported increased harassment through such harsh policies as dramatic increases in water prices, threats of school closures, construction of barriers to access roads, and imposition of fines on shepherds for grazing in pasture lands.
5. **Increase in demolition orders and fines for un-permitted building in recently-recognized (Abu Basma) villages:** The government has begun imposing fines on families for "illegal construction" in the recently-recognized villages. The government considers any building constructed within the last few years "illegal," although the local unelected Abu Basma Regional Council refuses to issue building permits.
6. **Dismantling of the Abu Basma Regional Council before elections:** The Abu Basma Regional Council, the governing body of the recently recognized villages (and responsible authority for some services in the unrecognized villages) has not held elections since its establishment in 2003; the Interior Ministry has appointed all Council members. Following a petition by Adalah and ACRI, the Israeli Supreme Court ordered the Council to hold its first elections by December 2012. However, in October 2012, following the recommendations of a government-appointed Boundary Committee, the Interior Minister decided to divide the Abu

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<sup>5</sup> See Negev Coexistence Forum for Civil Equality website: [www.dukium.org](http://www.dukium.org)

<sup>6</sup> See Israel Land Authority. "Record in fight against illegal construction in the Negev - 26 buildings were destroyed in one day." 4 September 2012:

[http://www.mmi.gov.il/Hodaotmmilnt/show\\_h.asp?key=1214&CodeMaarecet=1](http://www.mmi.gov.il/Hodaotmmilnt/show_h.asp?key=1214&CodeMaarecet=1)

<sup>7</sup> See Association for Civil Rights in Israel. "Stop Government Plan to Build 7 New Settlements around Arad." 14 August 2012: <http://www.acri.org.il/en/2012/08/14/acri-petitions-high-court-to-stop-government-plan-to-build-seven-new-settlements-in-around-arad-at-existing-residents-expense/>

<sup>8</sup> See Adalah, "Adalah & Bimkom Demand Cancellation of Yatir Forest Plan in the Naqab." 30 December 2011: <http://www.adalah.org/eng/?mod=articles&ID=1173>

<sup>9</sup> See Adalah, "Adalah, Bimkom, the RCUV and Arab Bedouin Living in the Naqab File Objection to Plans for Israeli Army "Intelligence City." 25 March 2012: <http://www.adalah.org/eng/?mod=articles&ID=1527>

<sup>10</sup> Correspondence on file with Adalah.

Basma Regional Council into two separate councils. This will delay elections for another five years, the amount of time it will take to implement the Praver Plan.<sup>11</sup>

Adalah is currently representing 10 people (Arab and Jewish citizens of Israel) on 15 criminal indictments for protesting against home demolitions in the Naqab. Adalah is also awaiting a response to a complaint filed to the Head of the Police Investigation Unit in the Israeli Ministry of Justice ("Mahash") in November 2011 regarding police brutality during home demolition operations in Al-Araqib.

Several UN and EU bodies spoke out against the Praver Plan in 2012:

- In February 2012, the Special Rapporteur on Adequate Housing, Raquel Rolnik, monitored dispossession and demolition in the Naqab and noted "the implementation of a strategy of Judaisation and control of the territory."<sup>12</sup>
- In March 2012, the UN Committee on the Elimination of Racial Discrimination (CERD) called on Israel to withdraw the proposed implementing legislation of the Praver Plan, on the grounds that it was discriminatory.<sup>13</sup>
- In August 2012, UN Human Rights Committee (HRC) included in its list of issues a call on Israel to explain whether it envisaged withdrawing the proposed Praver Plan Law.<sup>14</sup>
- In July 2012, the European Parliament passed a historic resolution calling on Israel to stop the Praver Plan and its policies of displacement, eviction, and dispossession.<sup>15</sup>
- In October 2012, the European Parliament Directorate-General for External Policies published a policy brief entitled "Forced displacement looms for Bedouins in the Negev."<sup>16</sup>
- A European Parliament delegation from the Middle East Working Group visited Israel (the Naqab) and the West Bank to monitor the situation of displacement of the Arab Bedouin community (30 October – 1 November 2012).

## 2. Discriminatory and Racist Laws

The ENPPR 2011 (p.1) expressed concern over the "unprecedented number of potentially discriminatory or even anti-democratic bills being tabled in the Knesset", although noting that

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<sup>11</sup> See Thabet Abu Rass. "Segmenting the Naqab (Negev): Israel Redistricts to Postpone Local Elections for Arab-Bedouin." *Adalah's Newsletter*, Volume 97, October 2012:

<http://adalah.org/Public/files/English/Newsletter/97-October2012/Redistricting-Naqab-Dividing-Abu-Basma-Thabet-Abu-Ras.pdf>

<sup>12</sup> See Raquel Rolnik. "Preliminary remarks on the mission to Israeli and the Occupied Palestinian Territory – 30 January to 12 February 2012." OHCHR:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11815&LangID=E>

See Adalah Press Release, 15 February 2012:

[http://www.adalah.org/eng/pressreleases/14\\_2\\_12.html](http://www.adalah.org/eng/pressreleases/14_2_12.html)

<sup>13</sup> UN Committee on the Elimination of Discrimination (CERD) Concluding Observations on Israel, 9 March 2012, CERD/C/ISR/CO/14-16. <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>; See also

Adalah, "UN Calls on Israel to End Racial Discrimination," 15 March 2012, <http://adalah.org/eng/?mod=articles&ID=1530>

<sup>14</sup> UN Human Rights Committee, "List of issues prior to the submission of the fourth periodic report of Israel (CCPR/C/ISR/4) adopted by the Human Rights Committee at its 105th session, 9-27 July 2012," 31 August 2012.

<http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR.C.ISR.Q4.pdf>; See also Adalah "UN Human Rights Committee Releases List of Issues for Israel, Asks Key Questions about Palestinian Citizens of Israel," 18 September 2012, <http://adalah.org/eng/?mod=articles&ID=1831>

<sup>15</sup> European Parliament. "European Parliament resolution of 5 July 2012 on EU policy on the West Bank and East Jerusalem." 5 July 2012: 2012/2694(RSP): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0298+0+DOC+XML+V0//EN>

<sup>16</sup> Pekka Hakala. "Forced displacement looms for Bedouins in the Negev." *Directorate-General for External Policies*. 8 October 2012. DG EXPO/B/PolDep/Note/2012\_310:

<http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=76615>

only a few of these bills became law. The EU specifically noted (p. 5) as “worrying”, the “anti-boycott law”, the “Nakba law”, and the “acceptance to communities law” (“The Admissions Committees Law”), which all became law in 2011. The UN Human Rights Committee also expressed concern about these laws in its 2012 List of Issues for Israel, asking Israel to indicate steps taken to repeal any discriminatory laws, and specifically requesting information on the “anti-boycott law,” the “Citizenship and Entry into Israel Law,” and the “Foreign Funding Law.”<sup>17</sup> The CERD Committee, in its concluding observations in 2012, specifically noted with concern “the enactment of a number of discriminatory laws on land issues which disproportionately affect non-Jewish communities ... Israel Land Administration Law of 2009; the 2010 Amendment to the Land (Acquisition for Public Purposes) Ordinance (1943); the 2010 Amendment to the Negev Development Authority Law (1991); and the Admissions Committees Law (2011),” and strongly recommended that Israel ensure equal access to land and property and to that end, abrogate or rescind any legislation that does not comply with the principle of non-discrimination.”<sup>18</sup>

Adalah has collected discriminatory laws and bills during the Netanyahu government and the 18<sup>th</sup> Knesset, spanning the years 2009-2012. Adalah found that of **20 of 31 legislative bills** targeting the rights of Palestinian citizens of Israel and Palestinian residents of the OPT were enacted into law.<sup>19</sup>

**Developments in 2012** include the following:

1. In 1/12, the [Supreme Court dismissed Adalah and ACRI’s petition to declare the “Nakba Law” unconstitutional](#), rejecting arguments that it violates the rights of freedom of speech and equality, and severely infringes on Arab citizens’ rights to preserve their history and culture. The Court ruled that the case was pre-mature, as the state had not yet applied the law to any of the petitioners by cutting their budgets. (*HCJ 3429/11, The Alumni Association of the Arab Orthodox School in Haifa et al. v. The Minister of Finance, et al issued 01/12*). In 1/12, in a 6-5 decision, the Supreme Court [rejected](#) four petitions, including one filed by Adalah, [seeking to cancel the Citizenship Law, which bans family unification in Israel between Palestinian citizens of Israel and Palestinian residents of the OPT and/or “enemy states”](#) defined by law as Syria, Lebanon, Iran and Iraq. This decision follows the Supreme Court’s 6-5 judgment issued in May 2006, which also upheld the law (*HCJ 466/07, MK Zahava Galon v. The Attorney General, et al.*). In 2012, the UN CERD repeated its call on Israel to revoke the Citizenship Law and to facilitate family unification.<sup>20</sup>
2. Adalah submitted a petition to the Supreme Court in 2011 demanding the **cancellation of new “Admissions Committee Law”** which legitimizes “admission committees” and the use of “social suitability” criterion to determine whether to accept or reject individuals who wish to live in

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<sup>17</sup> See “UN Human Rights Committee Releases List of Issues for Israel, Asks Key Questions about Palestinian Citizens of Israel,” Press Release, 18 September 2012, <http://www.adalah.org/eng/?mod=articles&ID=1831>.

<sup>18</sup> UN Committee to End Racial Discrimination Concluding Observations on Israel, 9 March 2012, <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf> (para. 15). The CERD Committee also noted concern with the adoption of laws and consideration of bills conditioning social and economic benefits on completion of military service, thus excluding non-Jewish communities who are exempted from military service such as Palestinian citizens of Israel, and the adoption of the 2009 Special Amendment No. 6 to the Regional Councils Law (Date of General Elections) (1994), which could considerably restrict the political participation of non-Jewish minorities (para. 16).

<sup>19</sup> See “New Discriminatory Laws in Israel - Updated October 2012,” which lists over 31 recently-proposed and enacted discriminatory laws and bills in Israel.

[http://adalah.org/Public/files/English/International\\_Advocacy/Discriminatory-Laws-in-Israel-October-2012-Update.pdf](http://adalah.org/Public/files/English/International_Advocacy/Discriminatory-Laws-in-Israel-October-2012-Update.pdf)

<sup>20</sup> “UN Calls on Israel to End Racial Discrimination,” Adalah Press Release, 15 March 2012, <http://adalah.aiforms.com/eng/?mod=articles&ID=1530>

these towns. In January 2012, the Attorney General submitted the state's legal response defending the law and asking the Supreme Court to dismiss the petition. A hearing is scheduled on 4 December 2012.<sup>21</sup> *HCJ 2504/11, Adalah, et al v. The Knesset, et al.* The UN CERD called on Israel to revoke the Admissions Committee Law in 2012.<sup>22</sup>

3. Petition to [cancel the "Anti-Boycott Law" enacted in 3/2011](#) filed by Adalah and ACRI on behalf of leading human rights organizations in Israel, as well as associations calling for an economic boycott of the settlements in the West Bank or of Israel. Although Attorney General Yehuda Weinstein considered the law to be on the "red line" of unconstitutionality,<sup>23</sup> the state will still defend the law before the Supreme Court in the hearing scheduled on 5 December 2012. *HCJ 2072/12, The Coalition of Women for Peace, et al v. The Minister of Finance, et al.*

4. Continuing to demand the annulment of amendment No. 113 to the National Insurance Law, enacted in 2010, which states that if a child does not receive vaccinations mandated by the Health Ministry, his/her [state-funded child allowance payments will be decreased](#) by 60 percent. Thousands of Arab Bedouin children may be affected by this law, as the state does not provide reasonable access to health care, particularly in the unrecognized villages. *HCJ 7245/10, Adalah v. Minister of Welfare and Social Affairs*

New laws enacted in 2012 particularly focused on restricting the rights of Palestinian prisoners and detainees (e.g., restrictions on lawyer visits, extension of exemption of audio/video recording of interrogations of "security suspects"),<sup>24</sup> and the right to compensation of Palestinians who were killed or injured by the Israeli military in the OPT.<sup>25</sup> Further, according to a new law passed in 2012 individuals who donate to "Zionist settlements" [in the West Bank] will receive a tax exemption.<sup>26</sup>

### 3. Harassment of the Arab Political Leadership

The ENPPR 2011 did not discuss the severe attacks and harassment of the Arab political leadership or the various ways and means in which their freedom of expression and political participations rights are being restricted. The Inter-Parliamentary Union (IPU), of which the Israeli Knesset is a member, and its' Committee on the Human Rights of Parliamentarians has spoken out in the cases of MK Haneen Zoabi and MK Mohammed Barakeh, and is monitoring their court cases.<sup>27</sup> Further, the UN Human Rights Committee, in its List of Issues to Israel

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<sup>21</sup> See Adalah, "Israeli Attorney General Supports Discriminatory Admission Committees Law." 29 January 2012: <http://adalah.org/eng/?mod=articles&ID=1550>

<sup>22</sup> "UN Calls on Israel to End Racial Discrimination," Adalah Press Release, 15 March 2012, <http://adalah.aiforms.com/eng/?mod=articles&ID=1530>

<sup>23</sup> See Haaretz, "Israel's attorney general says boycott law borders on unconstitutionality." 13 July 2011: <http://www.haaretz.com/print-edition/news/israel-s-attorney-general-says-boycott-law-borders-on-unconstitutionality-1.372916>

<sup>24</sup> See Law to Amend the Israeli Prisons Ordinance (no. 43) (2012) (restricting prisoner meetings with an attorney); n 13 May 2012, Adalah sent a letter to all Members of Knesset urging them to reject the bill. See Adalah's Press Briefing, 23 May 2012: <http://www.adalah.org/eng/?mod=articles&ID=1754>; see also Amendment no. 4 (2008) to the Criminal Procedure Law (interrogating suspects without recording).

<sup>25</sup> Amendment No. 8 (2012) to the Civil Wrongs (Liability of the State) Law 1952, enacted by the Knesset on 16 July 2012.

<sup>26</sup> Law to Amend the Income Tax Ordinance (no. 191) (2012); see also Adalah, "Adalah to Prime Minister and Attorney General: Stop Proposed 35% tax exemption on donations to settlements," 24 February 2012: <http://adalah.org/eng/?mod=articles&ID=1537>

<sup>27</sup> For MK Haneen Zoabi, see Adalah Press Release, 26 July 2010: <http://www.adalah.org/eng/?mod=articles&ID=1111>; for MK Barakeh, see Adalah's Briefing Note:

published in August 2012, requested that Israel “comment on cases where the political leadership of the Arab minority faces continued and severe attacks and harassment, including Members of Knesset (cases of Members of Knesset Sa’id Naffaa, Mohammed Barakeh, Haneen Zoabi and Ahmad Tibi).”<sup>28</sup> The European Parliament also tabled a motion for a resolution concerning the events of the “Gaza Freedom Flotilla” of 31 May 2010 and the threats issued against MK Haneen Zoabi. The EP called on Israel to “stop the political persecution of Israeli Arab Members of Knesset, and fully protect their rights as elected representatives.”<sup>29</sup> Further, the President of the EP also sent a letter to the Speaker of the Knesset, Reuben Rivlin, in which he expressed great concern over the Knesset’s attempts to revoke MK Zoabi’s parliamentary privileges (see below).<sup>30</sup>

Adalah is currently representing MK Haneen Zoabi, MK Dr. Ahmad Tibi, MK Sa’id Naffaa, and MK Mohammed Barakeh.<sup>31</sup> These MKs, as well as all of the political leadership of the Palestinian Arab minority in Israel, face sustained and severe attacks and harassment from Israeli government officials and incitement from extreme right-wing MKs. MK Zoabi has been stripped of some of her parliamentary privileges, and two members, MK Barakeh and MK Naffaa were stripped of their immunity, and are facing criminal indictments for their legitimate and protected political activity. In another case, the Knesset refused to permit the introduction of legislation submitted by MK Tibi seeking to prohibit Nakba denial. These attacks violate Arab citizens’ rights to genuine political participation; the MKs freedom of opinion and expression, free association and peaceful assembly; and the right to equal protection of the law and non-discrimination before the law.

As the EU is well-aware, Israeli national elections are set to take place on 22 January 2013. The Foreign Minister, Avigdor Lieberman, has already announced that he will seek to disqualify MK Haneen Zoabi and the Balad political party from participating in the upcoming elections;<sup>32</sup> Adalah will represent MK Zoabi and Balad. Adalah will also represent any other Arab political leaders and parties subject to disqualification before the Central Elections Committee and if needed, before the Supreme Court in December 2012.

## II. Palestinian residents living under Israeli Occupation in the OPT

The EU-Israel Action Plan notes under the heading of “shared values” that the EU and Israel agree to “work together to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law.”

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[http://adalah.org/Public/files/English/International\\_Advocacy/Arab-MKs/Adalah-Briefing-Note-Defending-Arab-MKs.pdf](http://adalah.org/Public/files/English/International_Advocacy/Arab-MKs/Adalah-Briefing-Note-Defending-Arab-MKs.pdf)

<sup>28</sup> See Adalah “UN Human Rights Committee Releases List of Issues for Israel, Asks Key Questions about Palestinian Citizens of Israel,” 18 September 2012: <http://www.adalah.org/eng/?mod=articles&ID=1831>.

<sup>29</sup> European Parliament (2010) ‘*Motion for a Resolution to wind up the debate on the statement by the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy pursuant to Rule 110(2) of the Rules of Procedure on Israeli military operation against the humanitarian flotilla and the Gaza blockade*’, Brussels, 14 June 2010:

<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2010-0389&language=EN>.

<sup>30</sup> See: [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/d-il/dv/letter\\_buz/letter\\_buzek.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-il/dv/letter_buz/letter_buzek.pdf), 19 July 2010.

<sup>31</sup> See “Briefing Note: Adalah’s Representation of Arab Members of Knesset - Protecting the Right to Political Participation” May 2012 – Updated October 2012:

[http://adalah.org/Public/files/English/International\\_Advocacy/Arab-MKs/Adalah-Briefing-Note-Defending-Arab-MKs.pdf](http://adalah.org/Public/files/English/International_Advocacy/Arab-MKs/Adalah-Briefing-Note-Defending-Arab-MKs.pdf)

<sup>32</sup> “ד"ר בל מפלגת את לפסול מבקשת 'ביתנו ישראל'”, ynetnews, 16 October 2012, (in Hebrew), [http://www.ynet.co.il/Ext/Comp/CdaNewsFlash/0,2297,L-4293040\\_184,00.html](http://www.ynet.co.il/Ext/Comp/CdaNewsFlash/0,2297,L-4293040_184,00.html)

In this regard, the ENPPR 2011 documents numerous human rights violations by Israel and concerns regarding the situation of the Palestinians in the OPT (p. 3, 13-15). Notably however, the issue of torture/ill-treatment of Palestinian prisoners and civilians is not included in the report, although the EU has extensive guidelines on torture,<sup>33</sup> and funds several projects in Israel and the OPT in this regard, including one undertaken during the last four years by Adalah, Physicians for Human Rights-Israel and Al Mezan (in Gaza). Further, issues regarding the erosion of the rule of law, a deep democracy indicator,<sup>34</sup> including the lack of access to courts and effective remedy and Israel's land and planning policies in Jerusalem were also absent from the ENPPR 2011.

Notably, the EU's ENP Review document adopted in May 2012, stresses the importance of maintaining "the rule of law". The EU state in this context that, "Throughout the neighbourhood more efforts are needed to ensure **respect of the rule of law** ...with guarantees for **equal access to justice** and respect for due process and **fair trial** standards ..." (p. 7)

In July 2012, the EU-Israel Association Council statement emphasized the need to maintain the viability of a two-state solution, and expressed deep concern about "marked acceleration of settlement construction, ongoing evictions of Palestinians and the demolition of their housing and infrastructure in the occupied Palestinian territory (oPt), including **East Jerusalem**." The EU also reiterated its call for "the immediate, sustained and unconditional opening of crossings for the flow of humanitarian aid, commercial goods and **persons to and from Gaza**." Further, the EU also expressed concern about "the excessive recourse by Israel to **administrative detention** without charge" and "welcomed the recent agreement reached on conditions of detention in Israeli prisons, and "urged both sides to abide by their undertakings." It is in this context that Adalah provides information on recent developments in 2012 and urges the EU to make specific recommendations to Israel to protect the rights of Palestinians living under Israeli Occupation in the OPT.

## 1. The erosion of the rule of law, the lack of access to courts and effective remedy

### *Civil lawsuits for damages*

Although the Israeli Supreme Court decided in 2006 that Israel may not sweepingly exempt itself from liability in claims for compensation by Palestinians for injuries and damage caused by the Israeli military,<sup>35</sup> numerous policies effectively block them from pursuing these cases and undermine Palestinians' right to a remedy. Obstacles such as a very short statute of limitations in which to file claims is in place (two years, as opposed to seven years for Israeli citizens); prohibitively high guarantee fees are imposed by the courts (for example, in the Samouni family's case, in which dozens of people were killed and injured during Operation Cast Lead in Gaza, the fee required as a guarantee to bring the case amounted to over NIS 1 million (about US \$250,000 or EUR 200,000); and Israel's refusal to issue permits for claimants and their

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<sup>33</sup> EU. "Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment." <http://www.consilium.europa.eu/uedocs/cmsUpload/8590.en08.pdf>

<sup>34</sup> See EC, "Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions," 15 May 2012: [http://ec.europa.eu/world/enp/docs/2012\\_enp\\_pack/delivering\\_new\\_enp\\_en.pdf](http://ec.europa.eu/world/enp/docs/2012_enp_pack/delivering_new_enp_en.pdf) (describing the new "more for more" policy. "The elements that characterise a **deep and sustainable democracy** include: free and fair elections; freedom of association, expression and assembly and a free press and media; **the rule of law** administered by an independent judiciary and the right to a fair trial; fighting against corruption; security and law enforcement sector reform (including the police); and the establishment of democratic control over armed and security forces." (p. 11)

<sup>35</sup> HCJ 8276/05, Adalah, et al. v. The Minister of Defense, et al. (decision delivered 12 December 2006). See "'No Compensation Law' Revoked," Adalah, 2006: <http://www.adalah.org/eng/?mod=articles&ID=1734>.



witnesses to enter the country and appear in court (however, it frequently grants permits for the state's own witnesses). In September 2012, Adalah on behalf of four residents of Gaza, lawyers, the Palestinian Center for Human Rights (Gaza), Al Mezan, and PHR-Israel filed a petition to the Supreme Court against the state's ban on the entry of Gazans for purposes of their court proceedings.<sup>36</sup> The case is pending.

Also notable is a new law passed in July 2012 in which Israel further exempts itself from paying damages to Palestinians from the OPT in tort lawsuits.<sup>37</sup> Provisions of this new law contradict the Supreme Court's ruling from 2006.

### ***Criminal investigations and prosecutions***

Israel conducted "Operation Cast Lead" (OCL) in Gaza from 27 December 2008 to 18 January 2009. Almost four years later, it is abundantly clear that the Israeli military investigations into OCL are incompatible with international standards of independence, effectiveness, transparency and promptness. During OCL, Palestinians were held in cruel, inhuman and degrading conditions during their initial period of detention in Gaza.<sup>38</sup> The UN Fact-Finding Mission on the Gaza Conflict ("the Goldstone Report") concluded that, "the abuse, which required a considerable degree of planning and control, was sufficiently severe to constitute inhuman treatment within the meaning of article 147 of the Fourth Geneva Convention and thus a grave breach of the said Convention that would constitute a war crime." Palestinian, Israeli, and international human rights organizations submitted hundreds of complaints to the Military Attorney General and the Attorney General of Israel demanding the opening of criminal investigations into the killings of civilians, injuries, extensive home and other property damage, the prevention of medical treatment and the use of Palestinian civilians as human shields.

Israel published three reports about the status of its inquiries and investigations into OCL in July 2009, January 2010 and July 2010, primarily to coincide with the timeline set by the UN Secretary General. According to these reports, three indictments were pursued: one case against two soldiers for "conduct unbecoming" (using a nine-year child as a "human shield"), in which the soldiers received suspended sentences and were demoted; another case of manslaughter (see below), and a third case which led to the conviction of a soldier for the theft of a credit card. Other military inquiries have led to two disciplinary actions, a reprimand and a sanction. According to Israel's report of January 2010, a special command investigation will look into allegations that, "IDF forces held the detainees in cruel, inhumane and degrading conditions."

In May 2012, the Israeli military announced that Israel will not press charges against any of those responsible for an airstrike that killed 21 family members (the Samouni family) taking shelter in a home that the Israeli army had declared safe for noncombatants during OCL.<sup>39</sup> Concerning the manslaughter charge noted above, in August 2012, the Israeli media reported that an Israeli soldier was sentenced to only 45 days in jail after he pled guilty to "illegal use of weapons" rather than

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<sup>36</sup> "Adalah Petitions Israeli Supreme Court Against Policy Banning Gazans Entry to Israel which Prevents Access to Courts for their Compensation Cases," Adalah Press Release, 4 October 2012, <http://www.adalah.org/eng/?mod=articles&ID=1840>.

<sup>37</sup> See Amendment No. 8 (2012) to the Civil Wrongs (Liability of the State) Law (1952), available in: [http://adalah.org/Public/files/English/International\\_Advocacy/Discriminatory-Laws-in-Israel-October-2012-Update.pdf](http://adalah.org/Public/files/English/International_Advocacy/Discriminatory-Laws-in-Israel-October-2012-Update.pdf)

<sup>38</sup> See PCATI and Adalah, Exposed: The Treatment of Palestinian Detainees During Operation "Cast Lead," June 2010: [http://www.stoptorture.org.il/files/Exposed-Treatment%20of%20Detainees%20Cast%20Lead\\_June%202010.pdf](http://www.stoptorture.org.il/files/Exposed-Treatment%20of%20Detainees%20Cast%20Lead_June%202010.pdf)

<sup>39</sup> Ha'aretz, "IDF Closes Probe into Israeli air strike that killed 21 members of Gaza family," 1 May 2012: <http://www.haaretz.com/news/diplomacy-defense/idf-closes-probe-into-israeli-air-strike-that-killed-21-members-of-gaza-family-1.427583>.

manslaughter, a charge itself unrepresentative of the gravity of the crime. This case involved the shooting and killing of Raya Abu Hajaj (64) and her daughter Majdi (36), while they were holding a white flag, as documented in the Report of the Fact-Finding Mission.<sup>40</sup>

## 2. Discriminatory land and planning policies in Jerusalem

In September 2012, the National Council for Planning and Building (NCPB) rejected objections filed by Adalah together with the Civic Coalition for Defending the Palestinians' Rights in Jerusalem (CCDPRJ) against the Jerusalem Regional Master Plan.<sup>41</sup> The plan is a continuation of the planning approach that is followed by Israel in occupied East Jerusalem. This approach does not benefit the Palestinian population, but rather seeks to maintain a permanent Jewish majority within the area designated as "united greater Jerusalem." Under the plan, the proposed highways and railways will preclude the development of the Palestinian community in East Jerusalem and will cut the Arab neighborhoods off geographically from one another. These transportation networks will also make it more difficult for Palestinians to reach their land. The plan will also further entrench the settlements in East Jerusalem and the surrounding area, as well as connect them to each other and to cities inside Israel.

In its response, the NCPB claimed that, even though there was basis to the objectors' claim that the plan would serve political goals, the plan's primary aims were not political. The NCPB added that the planners proceeded from the assumption that Jerusalem "will be on the negotiation table in talks between Palestinians and Israelis," and that "the city and regional plan requires flexibility in the case of a possible geopolitical agreement." Therefore, "the Planning Committee holds the responsibility to be open to the needs of the Palestinian population, in preparation for different geopolitical prospects that may be agreed upon in a final status agreement."

The NCBP clearly pointed out that the plan had been adopted on the basis of **preserving the Jewish majority in Jerusalem, aiming to preserve a population split of 30% Arab, 70% Jewish**. The response referred to the continuous rise in the average percentage of Arabs living in Jerusalem. In 1962, 73.5% of the population was Jewish, a figure that had declined steadily to 63.4% by 2008. The NCBP's response mentioned a range of studies and analyses that projected that the percentage of the city's Jewish population would fall from 70% in 1995 to 62-64.4% in 2012, given trends in emigration and natural population increases among both Jews and Arabs in Jerusalem.

As to the objectors' claim that the road network facilitates connections for Jewish settlements only connecting E1, Gush Etzion, Ma'ale Adoumim, and Givat Ze'ev, to the center of Jerusalem, for example, the NCBP responded that a complete road network would be implemented in the case of a peace settlement, to allow free movement of people and goods. With regards to restrictions and land confiscation stemming from the designation of security zones in Jerusalem and its surroundings, the response said that given the security situation, security zones and the limitations they create were inevitable. The NCBP also rejected the objectors' claims that the plan violates international law as it is built on occupied land and violates the rights of the occupied population under the Fourth Geneva Convention, claiming that in this context the status of Jerusalem is a political, not a planning, issue.

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<sup>40</sup> See written statement of the Palestinian Center for Human Rights (PCHR) to the UN Human Rights Council, September 2012:

<http://unispal.un.org/UNISPAL.nsf/47D4E277B48D9D3685256DDC00612265/82DAB140342BB05F85257A750062770B>

<sup>41</sup> See "New Regional Master Plan for Jerusalem will suffocate Palestinian neighborhoods, enable settlement expansion," Adalah Press Release, 13 September 2012, <http://www.adalah.org/eng/?mod=articles&ID=1829>, and "Briefing Paper on the Eastern Ring Road," November 2008, <http://www.adalah.org/Public/files/English/News/Briefing%20Paper%20on%20the%20Eastern%20Ring%20Road.pdf>.

### 3. Torture and ill-treatment of Palestinian prisoners and civilians

Israel currently holds 4,596 Palestinian prisoners classified as “security prisoners” in prisons in Israel.<sup>42</sup> 2012 witnessed a **mass hunger strike** launched by Palestinian prisoners demanding an end to their severe conditions of incarceration and collective ill-treatment.<sup>43</sup> Central to their demands was the abolition of the practices of **prolonged solitary confinement, administrative detention, and the lack of family visits**. Following agreements with the prisoners, Israel took 18 prisoners out of solitary confinement, although two remain; the number of individuals in administrative detention has been reduced to 184 but some orders have been extended beyond one year; and while the ICRC has re-instituted some family visits from Gaza many family members from Gaza, as well as the West Bank, cannot obtain a permit due to undisclosed security reasons. Major problems remain such as daily arrests and incommunicado detention; lack of proper medical treatment, including for several individuals currently on hunger strike; the ban on higher education; violent strip-searching, among others.

In June 2012, in its List of Issues, the UN CAT posed 59 questions to Israel regarding its compliance with CAT, including the lack of definition of torture as a crime in law, whether Israel adequately investigates complaints of abuse in detention, and the state’s failure to use video and audio documentation of interrogations of “security suspects.”<sup>44</sup>

Regarding **Palestinian civilian victims of torture/ill-treatment**, key issues in 2012 concerned the Israeli navy’s ongoing campaign of arrests and assaults against Palestinian fishermen in Gaza, and delays and denials of exit permits for medical patients in need of treatment not available in Gaza, as well as the interrogation and coercion of medical patients and individuals accompanying them by the ISA at the Erez crossing. The Committee Against Torture also posed questions to Israel about acts of cruel, inhumane, and degrading treatment (CIDT) against civilians in the “territory under its jurisdiction,” specifically: checkpoints in the West Bank, the denial of medical permits for Gazans seeking treatment outside of and unavailable in Gaza, and “continued restrictions which prevent Palestinians from Gaza from living with spouses from the West Bank or Israel, or Palestinians from the West Bank from living with spouses from Jerusalem or Israel.”<sup>45</sup>

#### Recommendations

The ENPPR 2011 listed a series of recommendations for Israel (p. 3-4) however, *not even one* suggested that Israel work to better protect the rights of the Arab minority, despite such language in the EU-Israel ENP Action Plan and in the EU-Israel Association Council statement issued in February 2011. Concerning the rights of Palestinians living under Israeli Occupation in the OPT, the ENPPR 2011 did not include any text or recommendations concerning the issues of rule of law/access to courts, discriminatory land and planning policies in Jerusalem, or torture and/or ill-treatment of Palestinian prisoners/detainees and civilians. In the context of ongoing violations of human rights and a deterioration of the rule of law described above, Adalah asks the EU to call on Israel to:

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<sup>42</sup> Addameer, “Addameer Monthly Detention Report – 1 October 2012,” statistics from the Israeli Prison Service. <http://www.addameer.org/etemplate.php?id=528>.

<sup>43</sup> See NGO Update: Conditions for Palestinian Prisoners 6 weeks after agreement ends hunger strike. 27 June 2012: <http://adalah.org/eng/?mod=articles&ID=1806>

<sup>44</sup> See “UN Committee Against Torture Releases List of Issues for Israel: 37 of 59 Questions Regarding Israel’s Compliance with the Convention Against Torture Relate to Issues Raised in NGO Report,” Joint Press Release, 18 July 2012, <http://www.adalah.org/eng/?mod=articles&ID=1814>, and the Committee Against Torture’s “List of issues prior to submission of report,” <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.ISR.Q.5.doc> (.doc download).

<sup>45</sup> See id.

- Recognize and promote the **Arab Bedouin's** right to ancestral land and traditional livelihood in the Naqab, halt home demolitions and forced displacement, and stop the implementation of and withdraw the 2012 proposed Law for the Regulation of the Bedouin Settlement in the Negev (Praver Plan Law);
- Repeal **discriminatory laws** against the Palestinian Arab minority, in particular, the “Nakba Law”, “the Citizenship Law” (ban on family unification), “the Admissions Committee Law”, and the “Anti-Boycott Law”, among others, and cease the further introduction and enactment of such potentially discriminatory draft legislation;
- Ensure the right of Arab citizens of Israel to **political participation**, including for all Arab political parties and Arab political leaders in the upcoming national elections in January 2013, and to take steps against the severe attacks and harassment of Arab members of Knesset;
- Lift all physical, financial and legal obstacles for Palestinians from the OPT, particularly from Gaza, to **access the Israeli courts** in order to effectively pursue their civil tort compensation cases against the Israeli military/security forces; and submit to an independent investigation into suspicions raised by Palestinian, Israeli and international human rights organizations regarding breaches of international humanitarian law (IHL) and international human rights law (IHRL) by the military, in general, and during **Operation Cast Lead**, as no such domestic investigations have been seriously conducted;
- Stop undermining the **Palestinian presence in Jerusalem** through the adoption of land plans that envision the continued existence and expansion of the settlements, restrictive zoning and planning for Palestinian neighborhoods, ongoing demolitions and evictions, as well as other violations of the economic, social and cultural rights of Palestinian residents;
- Cease the use of all **torture and/or ill-treatment** of Palestinian detainees/ prisoners and civilians; i.e. incorporate the crime of torture in Israeli law in conformity with CAT and the ICCPR, and remove any justification of torture, including the “necessity defense”; ensure that complaints of torture are promptly, impartially and thoroughly investigated by an independent body, that prosecutions are initiated and that those found guilty are punished with appropriate sentences, and that compensation is provided to victims and their families; confirm whether the transfer of the Inspector for Complaints against the Israel Security Agency (ISA) to the Ministry of Justice has taken place as announced in November 2010 by the Attorney General; cease the use of administrative detention and the Unlawful Combatants Law and solitary confinement; and allow every patient requiring medical treatment that is unavailable in Gaza access to treatment outside of Gaza without delay.