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HUMAN RIGHTS DEFENDERS IN ISRAEL AND PALESTINE: A GROUP IN RISK

NOVACT- INTERNATIONAL INSTITUTE FOR NONVIOLENT ACTION.

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INTRODUCTION

Defending human rights is an arduous and courageous task, which has also turned out on a highly risky profession. According to Frontline Defenders, the International Foundation for the Protection of Human Rights Defenders, 158 Human Rights Defenders (HRD) were killed or died in detention in 25 countries during the first 11 months of 2015. Excessive coercive legal measures have been taken in order to restrict several fundamental freedoms across the globe. Countries such as Cambodia, Kazakhstan, Tajikistan, Egypt or Spain have recently passed laws that threaten the rights of freedom of expression and peaceful assembly, inherently connected to the right of defending human rights.

Within this panorama of universalization of repression rather than rights, civil society and social movements have taken the streets using it as a political forum for staking their claim to freedom and dignity.

During the last months of 2015 we have seen a concerning increased on the level of violence in Israel and Palestine. Repression by the Israeli to protests has been in many cases excessive, resorting in many cases to extreme and unlawful measures. The use of lethal force against peaceful protestors have been denounced by human rights organisations, such as Amnesty International, who had documented at least 4 cases of unlawful killings.

The climate of impunity has been perceived as a driver of violence in the occupied Palestinian territory. The UN Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories warned in August 2015 that Israel's settlement expansion and the "climate of impunity" for Jewish settlers are the "root cause" of the escalating violence in the Occupied Palestinian Territory¹.

It is within this context of violence, rights violation and impunity where the role of Human Rights Defenders as peace builders has become of utmost importance. Hence, supporting and protecting Human Rights Defenders it is more necessary than ever in order to achieve a just and lasting peace in the Middle East.

*NOVACT - International Institute for Nonviolent Action,
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¹ UN Committee says "climate of impunity" a driver of violence in the OPT, (10 August 2015) Consulted online on 7th February 2016 <http://www.unmultimedia.org/radio/english/2015/08/committee-says-settler-expansion-and-climate-of-impunity-cause-of-violence-in-opt/#.VrhPSJMrLdQ>

1. THE RIGHT TO DEFEND HUMAN RIGHTS.

Defending Human Rights is not only a moral and legal obligation, it is also a protected right, according to the Declaration on Human Rights Defenders².

The Declaration is not a binding instrument, however, it contains rights and principles included based on other instruments which are binding, such as the International Covenant of Civil and Political Rights (ICCPR). In addition, Human Right Defenders are normally exposed to grave right's violations which can include³:

- a) The right to life: No one shall be arbitrarily deprived of his/her life;
- b) The right to freedom from torture, and inhuman and degrading treatment;
- c) The right to privacy: No one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks upon their honor and reputation. Everyone has the right to the protection of the law against such interference or attacks;
- d) The right to liberty and security of person: No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

Due to this vulnerability and in order to ensure protection for those groups or individuals defending human rights, the European Union published on 2004 de EU Guidelines for Human Rights Defenders.

Acknowledging that the promotion of human rights is one of the pillars of the EU foreign policy, the aim of the guidelines is to *provide practical suggestions for enhancing EU action in relation to this issue*. According to the guidelines, *"Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence"*

² The Declaration's full name is the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" – with this longer title is frequently abbreviated to "The Declaration on human rights defenders". It was adopted by the General Assembly in 1998.

³ Article 19; *The Right to Protest: Principles on protection of human rights*, 2015.

The work of HRD involves in many cases critiques to governmental policies and would imply, among other examples:

- a) documenting violations;
- b) seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support;
- c) combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms; and
- d) mainstreaming human rights culture and information on human rights defenders at national, regional and international level.

EU Heads of Missions and EU embassies in third countries are responsible for the proper implementation of the guidelines and *will remind third countries' authorities of their obligation to implement effective measures to protect human rights defenders who are or could be in danger.*

The Right to Protest, the Right to Freedom of Expression and the Right to Peaceful Assembly are essential rights to the Right to Defend Human Rights. Defamatory domestic laws can jeopardise the exercise of the Right to Defend Human Rights, especially those restricting the rights of peaceful assembly and freedom of expression and right to protest. Any restriction on the exercise of those rights should come from a three-part test of legality, proportionality and necessity.

Freedom of expression is one of the pillars of democracy. Ensuring a free and open debate on matters of public interest, even when this involves criticism of governmental policies, are of crucial importance to democratic societies, as well as for the progress and welfare of the society and enjoyment of other human rights and fundamental freedoms.

The International Covenant on Civil and Political Rights (ICCPR) on its article 19 protects the Right to Freedom of Expression: “*Article 19. 1. Everyone shall have the right to hold opinions without interference.*” The Covenant allows certain limitations to the exercise of the right, stressing that those limitations must be provided by law and be necessary and proportional. However, the application of these limitations needs to be done without interfering or limiting other rights recognized in the ICCPR. For the sake of transparency and clarification, the Siracusa Principles, elaborated in 1984 define these limitation clauses. One of the most common allegations for cutting back the right to freedom of expression is the protection of national security. Siracusa Principles explain in which manner and under which principles those restrictive measures should be applied stressing on its Art 32 that “*The systematic violation of*

human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population”⁴

Appealing to national security as a justification to silence or repress groups or individuals who are denouncing human rights violations would not be, thus, a valid argument when the State calling for these limitations is involved in a systematic violation of human rights, according to the interpretation on limitation clauses provided by the Siracusa Principles.

Likewise, in General Comment No. 34, the Human Rights Committee explicitly stated that *“Extreme care must be taken by State parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information”⁵.*

Those limitations are trying to protect an illegitimate use of the law for the sake of silencing systematic human rights violations. That’s why the role of activists and human rights defenders is the key within democratic societies and that’s why is also crucial to protect them from further abuses and violations.

⁴ Art 32; Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights Annex, UN Doc E/CN.4/1984/4 (1984)

⁵ Human Rights Committee, General Comment No 34, Freedom of Thought, Conscience and Religion (Article 18)

2. CRIMINALIZATION OF THE RIGHT TO DEFEND HUMAN RIGHTS.

2.1. **Applicable Israeli legal framework excessively restrictive and discriminatory in nature**

Israel has been under a state of emergency ever since its declaration of independence.

The state of emergency is an exceptional situation that may be declared by a state to control or cope with a situation that, as its name suggests, can be considered as an emergency or as an exceptional situation. Israel declared a state of emergency on the day of its establishment and has not repealed it to date. The exception has become the norm in this case and has brought the country to the paradoxical situation of a *standardisation of emergency*.

The state of emergency entails a series of restrictions on certain rights, among those, the right to freedom of expression, association and peaceful assembly and right to protest, essential rights to the right of defending human rights. It is extremely important for these emergency measures to be proportional to the threat and time-bound, so we can avoid unnecessary extensions of these restrictions. The current standardisation of the emergency in Israel and of the military Israeli law applied to the oPt had led to a situation of criminalisation of the right to protest. Taking a critical position towards Israeli segregation policies is considered as a threat to the State and the Israeli Government puts a lot of efforts on developing an even more restrictive framework in order to counter and silence these voices. Despite the fact that the criminalisation of protest happens both in Israel and in the oPt, it is important to highlight that Israelis and Palestinians are not treated equally for the very same actions, even if these actions occur at the same time and place, which might be qualified as a situation of apartheid⁶, constituting thus a crime against humanity.

⁶ International Convention on the Suppression and Punishment of the Crime of Apartheid. Adopted by the General Assembly of the United Nations on 30 November 1973

Article II. For the purpose of the present Convention, the term "the crime of apartheid", which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- (a) denial to a member or members of a racial group or groups of the right to life and liberty of person: (i) by murder of members of a racial group or groups; (ii) by the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; (iii) by arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
- (b) deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- (c) any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to

2.2. Legal repression and discriminatory policies within Israel.

Israel boasts of being the only democracy in the Middle East. However, over the last few years it is becoming harder and harder for the Israeli Government to defend such a statement. The use and abuse of violence against peaceful demonstrators, the recent restrictions and excessive control and meddling in the work of human rights organisations, together with the ongoing treatment of the Palestinian people as second-class citizens do not exactly represent the best example ever of democratic and good governance practices.

According to Adalah, a Palestinian human rights organisation based in Haifa and working to promote the rights of the Palestinians citizens of Israel, there are more than 30 discriminatory laws still active⁷. As explained above, several Basic Laws stress the importance of recognising the State of Israel as a Jewish and democratic State, this being a *sine qua non*, for instance, when running for elections, or for an elected parliamentarian or any other kind of public servant. These regulations are obstructing the legitimate right of the Palestinians citizens of Israel to exercise their political rights, as well as their right of freedom of expression and peaceful assembly.

Whenever Palestinians decide to raise their voices to protest against this continuous discrimination, or against the brutal military occupation of the West Bank, or against the brutal and repeated bombings over the illegally blockaded Gaza Strip, they face a brutal police repression.

During the Cast Lead Operation⁸, back in December 2008-January 2009, police and security forces cracked down on peaceful demonstrations, using arrest as deterrent effect. According to Adalah, 832 people were arrested during this time, 34% of which were minors. Out this 832, 80% remained in custody until the end of the proceedings, being 54% minors.

Protests were also joined by Israelis, however, the consequences for them were not as harsh compared to the Palestinian protestors. Looking at the statistics, all

members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association

(d) any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

⁷ Adalah's discriminatory Laws Data Base. Consulted online on 29 December 2015

<http://www.adalah.org/en/law/index>

⁸ According to the PCHR and OCHA reports there were 1,417 victims, 926 of them civilians. 313 of the dead were children and 116 women

the protestors from the Northern District were detained until the end of the proceedings, 94% of them in the Jerusalem District. These two districts have a large Palestinian population. On the other hand, not one of the protestors arrested in the Tel Aviv District, which has a majority of Israeli Jewish residents, was held until the end of the proceedings.

Peaceful demonstrators are detained under the Criminal Procedure (Powers of Enforcement, Detention Law, 1996). They can then be released with no charges, on bail or they can be prosecuted under the Penal Code. The usual charges are participating in a forbidden assembly (Article 151) rioting (Article 152) or assaulting a police officer (Articles 273 and 274).

Likewise, during the summer of 2014, with the so-called Operation Protective Edge in summer 2014 (which killed 2251 Palestinians from the Gaza Strip, 1462 civilians including 551 children) massive demonstrations were held across Israel and the West Bank. Israeli Jewish and Palestinians took the streets to protest the abuses crimes committed during that period. The response from the police and security forces was clear: repression and violence, particularly against Palestinian citizens. Around 1,500 individuals, nearly all Palestinians were arrested within one month in demonstrations that took place mainly in Palestinian communities. A recent report by Adalah documents the use of violence and arrest aimed at deterrence. In the report, Adalah denounces the fact that not only international legal standards have been violated, but also Israeli domestic regulations, specifically the Israel's Criminal Procedure Code and the Youth Act. According to the report *"The police exhibited a complete disregard for the principles and criteria that apply to its authority for preventing and dispersing demonstrations, which are stipulated in rulings of the Israeli Supreme Court as well as Guideline 3.1200 issued by the Attorney General regarding the right to protest "* People were unlawfully arrested and deprived of their freedom, minor were interrogated without their parents, and disproportional amounts for bail were imposed. Furthermore, the courts were fully compliant with the state attorneys, ruling for the most severe sentences, delaying detention of protestors unjustifiably and even expressing their sympathy and support for the war.

Cutting back the right to publicly express different opinions in the street and arresting people who participates in peaceful protests or demonstrations is not the only measure that the Israeli Government has taken for restricting the right of freedom of expression. On December 27th 2015, the controversial law "Transparency Bill", as Justice Minister Ayalet Shaked named it, was voted in the Knesset, passing its first vote. Rather than seeking transparency, it seems that the new bill is an attempt to control and silence the dissent or critical voices through governmental policies. This new bill comes after the freezing of a previous one

proposed and dismissed due to a heavy international and internal criticism. This previous bill intended, for instance, to completely forbid local NGOs deemed to be “political organisations” from receiving any kind of foreign government funding. This new one, the Transparency Bill, appears to be a bit softer, yet the European Union has criticised it warning Israel to be *“very careful about reining in its prosperous democratic society with laws that are reminiscent of totalitarian regimes.”*⁹

The Transparency Bill would be applicable to all local NGOs receiving more than 51% of their funding from foreign governments. These organisations would be obliged to:

- “a) To disclose that the majority of their funding is from foreign government entities including the names of the entities in all publications intended for the public or available to the public, in any visual media that can have written text added, in any written appeal to a public employee or public representative and in any report written and distributed to the public.*
- b) To note in the minutes, for any meeting that has minutes, that the majority of its funding is from foreign government entities, including the names of the countries, in any public meeting with public representatives.*
- c) Representatives of organisations to which the law applies shall be considered lobbyists of the foreign entities. Section 68(a) of the Knesset Law shall apply to them, and they will be required to wear a special identification tag noting that they are representatives of organisations that are funded primarily from foreign government entities.”*

Not complying with these obligations might lead to fines over 29,000 NILS (around 6,700€) for each violation; for example, not wearing the tag in at the Knesset would imply a fine of over 6,700€, nor properly reporting foreign funding another 6,700€...etc.

Human Rights organisations play a key role as watchdog of Israeli policies and practices. Organisations such as Adalah, B’tselem or ACRI, among many others, have been denouncing and exposing Israeli crimes and rights violations for decades. They receive funding for their work on the protection and promotion of human rights, something that normally falls within the responsibility of the State.

⁹Konrad, E. (27 Dec 2015) Israeli gov't votes to support bill targeting left-wing NGOs, Consulted online on 27 Dec 2015 <http://972mag.com/israeli-govt-votes-to-support-bill-targeting-left-wing-ngos/115274/>

These repressive measures taken by the Government of Israel did not silence these critical voices. The myth of the so-called “only democracy in the Middle East” is falling apart and is losing many supporters abroad due to the continuous violations of human rights and abuses of the Palestinian people and for the total lack of respect for Rule of Law and real democracy. Perhaps due to all of these reasons, the Boycott, Divestments and Sanctions campaign, launched by Palestinian civil society in 2005 is becoming increasingly successful. The campaign asks international civil society organisations and people of conscience to impose boycotts and implement divestment actions against Israel, and to maintain these actions until Israel recognises the inalienable rights of the Palestinian people. The demands of the campaign are summarise in three points:

1. Ending Israel’s occupation and colonisation of all Arab lands and dismantling the Wall
2. Recognising the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
3. Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194.

This nonviolent campaign, inspired by South Africa, already has a long list of achievements¹⁰. According to the World Investment Report published by the United Nations Conference on Trade and Development agency (UNCTAD) on June 2015, foreign direct investment in Israel plunged from almost \$12 billion in 2013 to just \$6.4 billion in 2014, the lowest figure in more than a decade. Roni Manos, Israeli economist, attributes this losses to Operation Protection Edge and the boycotts Israel is facing.¹¹ Earlier in February 2015, 63 members of the European Parliament called on the European Union foreign policy chief Federica Mogherini to suspend the EU-Israel association agreement¹². An article published by the Financial Times indicated that BDS could cost Israel \$4.7 billion a year¹³.

This new method of international pressure did not pass unnoticed by Netanyahu’s government, which on April 15th 2015 approved the Anti-boycott Law. The Knesset enacted the new regulation on 2011 with the stated aim of preventing harm to the State of Israel by means of boycott. The law imposes sanctions on any individual or entity that calls for an economic, cultural or academic boycott of Israel’s West Bank

¹⁰ Boycott National Committee, (30 Dec 2015) The BDS Movement 2015: a year review. Consulted on Dec 31 2015 at <http://mondoweiss.net/2015/12/movement-year-review>

¹¹ Abunimah, A. (25 Jun 2015) Foreign Investment in Israel plummets by half since Gaza Massacre. Consulted on Dec 31 2015 at <https://electronicintifada.net/blogs/ali-abunimah/foreign-investment-israel-plummets-half-gaza-massacre>

¹² Deas, M (4 Feb 2015) Dozens of European parliamentarians call for an end to EU-Israel treaty. Consulted on 31 Dec 2015 at <https://electronicintifada.net/blogs/michael-deas/dozens-european-parliamentarians-call-end-eu-israel-treaty>

¹³ North, J. (14 Jun 2015) BDS could cost Israel \$4.7 billion a year. Consulted on 31 Dec 2015 at <http://mondoweiss.net/2015/06/could-israel-billion>

settlements or of Israel itself. It allows entities to sue and to win compensation from individuals or organisations that have called for a boycott. It also permits the Finance Minister to impose severe economic sanctions on Israeli individuals, groups, and institutions that receive state support if they call for or participate in a boycott. Several NGOs challenge the constitutionality of the law, arguing that it violates several fundamental rights, such as freedom of political expression. The organisations argued that the law *“imposes disproportionate civil and administrative sanctions that are contrary to accepted legal principles, because of political statements. [The law] aims at silencing expressions of protest against the government’s policy in areas under its control and thus it restricts, unconstitutionally, the democratic means available to a minority to express its opposition to government policy.”*¹⁴

Boycott actions are legitimate nonviolent measures that individuals are entitled to take in order to express their political opinions. Economic boycotts political motivated must be protected by the right to freedom of expression. The US Supreme Court ruled in favor of economic boycott for political reasons in 1982, in the case of the National Association for the Advanced of Colored People (NAACP) versus Claiborne Hardware Co. The US Supreme Court ruled in that case that economic damages caused by a political boycott are not sufficient grounds for compensation in a civil suit, as long as they are not caused by violent behaviour¹⁵: *“holding that a political consumer boycott is free speech under the First Amendment and protected against common law tort liability for business interference”*.

Canadian Ontario Court of Justice upheld a similar position concluding that *“boycott and picketing activities were lawful in a democratic society which places a high value on free speech”*¹⁶.

2.3. Jerusalem: invisible Walls.

Despite being East Jerusalem an occupied territory, the applicable law is the Israeli one (rather than the martial law, as in the West Bank). Thus, regulations related to freedom of expression and peaceful assembly are not linked to a martial code, as opposed to the situation in the occupied territory in the West Bank.

In general, assemblies, vigils, and demonstrations do not require a permit or a license in advance, unless they entail all of the following three elements: they are held outdoors, there are 50 or more participants, and they include a march and/or a political speech. Whenever the activity does not include all the 3 elements, a permit is not required.

¹⁴ Adalah, Uri Avnery et al. v. Knesset et al *“Concerning the constitutionality of the Law Preventing Harm to the State of Israel by Means of Boycott” Summary of the Decision.* 2015.

¹⁵ NAACP v. Claiborne Hardware Co., 458 U.S. 886, 915-16 (1982)

¹⁶ Daishowa Inc. v. Friends of the Lubicon, 39 O.R. (3d) 620 (Ont. Rep. 1998).

However, the UN Special Rapporteur on Freedom of Expression and Peaceful Assembly clearly states that organisers of protests or demonstrations should not face fines or imprisonment for failing to notify authorities¹⁷

Protests might be dispersed by Police forces under the following circumstances¹⁸:

- When the demonstration was not issued a permit even though it requires one
- When the demonstrators violated the conditions of the permit issued by the police, if such a permit was required
- When the demonstration constitutes a threat to public safety
- When, during the demonstration, violence of any kind erupts on the part of the demonstrators
- When the participants are disrupting public order

Within the recent escalation of tensions, on September 25th 2015, the Israeli cabinet approved to harshen regulations on use of live ammunition against demonstrators. From now on police and soldiers will be able to fire 22 calibre live rounds from Ruger rifles when they judge that not only their own lives are in danger but also those of civilians.¹⁹

This broadens the rules of engagement, leaving a broad margin of interpretation that can lead to an excessive use of force against peaceful demonstrators and to unnecessary use of lethal methods.

According to the Palestinian Center for Human Rights, 33 Palestinians have been killed between October 3rd 2015 and 31st December of the same year, including 5 minors. The oldest one was only 37 years old. Some of them were left bleeding to death²⁰.

These regulations come together with a package of new discriminatory bills that rather than to contempt and prevent violence will create further separation, segregation and discrimination, which will lead to more frustration and violence. Among those measures are the revocation of citizenship on the grounds of "breach of trust", closure of Palestinian neighbourhoods and establishment of minimum sentences for Palestinian stone-throwers.

The right to a citizenship is recognised by Article 15 of the Universal Declaration of Human Rights and revoking this right on the grounds of breach of loyalty constitutes a

¹⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai",

United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 51.

¹⁸ ACRI, The Right to Protest, Consulted online on 1 Nov 2015 <http://www.acri.org.il/en/protestright-subject/east-jerusalem/>

¹⁹ Beaumont, P. (25 September 2015) Israel relaxes live-fire rules against Palestinian stone-throwers. Consulted online on 25 September 2015 <http://www.theguardian.com/world/2015/sep/25/israel-live-ammunition-measures>

²⁰ PCHR Palestinian victims killed by Israeli forces since 02 October 2015. Consulted online on 2 January 2016 <http://pchrgaza.org/en/?p=7492>

flagrant violation of this fundamental rights. Besides, Palestinians residents of East Jerusalem are considered under IHL as protected persons. Both IHL and IHRL prohibit the deportation of protected residents on the grounds of breach of loyalty, and prohibit the occupier from requiring them to swear allegiance to the occupying power.²¹

In the same direction, the closure of certain neighbourhoods of East Jerusalem, such as Issawiyah or Jabal al-Mukabir, constitutes a collective punishment. Adalah, the human rights organisation argued that this policy was illegal even under domestic Israeli law, based on a ruling by the Supreme Court that prohibited indiscriminate and disproportionate measures such as imposing barriers, *"The police's actions are sweeping and arbitrary, and are affecting thousands of residents without any distinction. The police can achieve their security objectives by other means that cause far less of a violation against residents' rights."*²²

On November 2015 the Knesset approved an amendment to the country's civil law establishing a minimum prison sentence of three years for people who throw rocks at Israeli troops, civilians or vehicles. The law proposes custodial sentences for children as young as 12, convicted on "national-motivated offences". Israel's current criminal law prohibits custodial sentences against children under 14 in favor of rehabilitation and reintegration. The law should apply for both, Palestinians and Israelis, but in practice is only addressing Palestinians of Jerusalem and Palestinians citizens of Israel. The law also enables Israel to cancel national health insurance and other social programmes for the parents of an imprisoned minor. This law not only flagrantly violates IHL and IHRL, it also contributes to the strengthening of a structural violence that jeopardise human security of the Palestinian residents and dispels any hopes of a just and lasting peace.

2.4. The Military Court System: legal repression to nonviolent movements and popular resistance in the West Bank.

The Israeli Military Code applicable in the West Bank is only applied to the Palestinian residents, not to the Israeli citizens living in the illegal settlements. This constitutes a serious legal discrimination that might imply a crime of apartheid, defined by the Rome Statute in 2002 *"as inhumane acts of a character similar to other crimes against humanity "committed in the context of an institutionalised regime of systematic*

²¹ Adalah, Revocation of residency status of East Jerusalemites due to security incidents .Consulted online on 2 January 2016 <http://www.adalah.org/uploads/Letter-Revocation-East-Jerusalem-Residents-October-2015.pdf>

²² Adalah, Adalah to Israeli authorities: Closure of Palestinian neighborhoods in Jerusalem, permission to use live fire against stone-throwers are illegal Consulted online 2 January 2016 <http://www.adalah.org/en/content/view/8643>

oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”

Looking at the situation and the daily life of the Palestinian civilian population, it is increasingly difficult not to talk about apartheid in Palestine. Richard Falk (2014), former Special Rapporteur on the Situation of Human Rights in the occupied Palestinian territory since 1967, recalls in his latest report submitted to the Human Rights Council of the United Nations the urgent need to reconsider the question of apartheid and racial segregation policies that Israel carries out in Palestine. Falk calls upon the International Criminal Court to issue an advisory opinion in this regard evaluating the situation of prolonged occupation, since it contains clear elements of colonialism, apartheid and ethnic cleansing.

2.4.1. How does the Military Court System work?

The Military Courts are the living spit of an institutionalised regime of systematic oppression. They have legitimated abusive practices such as the administrative detention for over 48 years. These Courts were established for the purpose of the Emergency Regulations from 1945 and nowadays prevail in the West Bank. In Gaza prevailed until 2005 (being revoked after the disengagement plan) and in Jerusalem Palestinians are subjected to Israeli Civil Law, due to Israel’s *de facto* unlawful annexation.

The military courts judge every year thousands of Palestinian civilians on the basis of the following criminal categories

- a) The Hostile Terrorist Activity category includes involvement in what Israel terms “terror attacks”, military training, weapons offences and weapon trading, but also offences related to membership in “illegal associations” – associations deemed illegal by the Israeli military commander.
- b) Disturbance of public order includes offences such as stone throwing and incitement to violence.
- c) The “classic” criminal offences category includes crimes such as theft, robbery and trading in stolen goods.
- d) Illegal presence in Israel includes the offence of “leaving the Area without permission,” with which Palestinians who enter Israel without permits, usually in search of work, are charged.
- e) Traffic offences committed in the oPt.

According to B'tselem, these are the indictments against Palestinians between 2008 and 2013, depending on the type of violation:²³

<i>Year</i>	<i>Hostile terrorist activity</i>	<i>Public Disturbances</i>	<i>Illegal entry into Israel</i>	<i>Criminal</i>	<i>Traffic</i>	<i>Total</i>
2008	2,584	593	1,771	666	2,706	8,320
2009	1,962	662	1,628	648	3,559	8,459
2010	1,405	707	1,887	629	3,888	8,516
2011	1,123	721	1,180	707	4,904	8,635
2012	1,319	861	1,358	514	3,224	7,276
2013	1,854	886	1,751	604	3,755	8,850

2.4.2. Military Court System and compliance with International Humanitarian Law

The existence of the military courts itself is seen as a legitimate practice of customary international law, standardised by the Fourth Geneva Convention and the Hague Regulations, applicable legal framework in the case of a belligerent occupation.

Art. 43 of the Hague Regulations provides that the occupying power must ensure public order and maintain the pre-occupation legal system in order to prevent the occupying power to act as a sovereign legislator “unless absolutely prevented” (e.g. maintaining law and order). For ensuring this compliance with the new regulations and restoring and ensuring public order and civil life Article 66 of the Geneva Convention stipulates that military tribunals may be established under these three conditions²⁴:

- 1. It must be properly constituted (according to the Constitution or the law)*
- 2. Having a non-political purpose*
- 3. Be located in the occupied territories*

²³ Baumgarten-Sharon, N., Stein, Y. Presumed Guilty: Remand in Custody by Military Courts in the West Bank, 2015

²⁴ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

Israel only fulfils one out of the 3 requirements: being properly constituted. Military courts were established under the terms of the Order regarding Security Provisions, 5730-1970 (Military Order No. 378.) As for the location requirement, the military court system includes several courts of different instances:

1.- In the West Bank:

a) Courts of first instance:

1) The Judea Court is located in the Ofer military base, within the occupied Palestinian territory.

2) The Samaria Court is located at the Saleh military base, within the occupied Palestinian territory.

b) The Military Court of Appeals, the Military Court for Administrative Detention and the Military Court of Appeals regarding Administrative Detention, located in Ofer, within the occupied Palestinian territory.

c) The Military Juvenile Court, operating in Ofer since 2009

Both military courts, Ofer and Saleh located inside Israeli military bases, thus, Palestinian civilians tried in these courts are being judged inside a military base.

2.- Inside Israel: adjacent to interrogation centres of the Israel Security Agency (ISA, formerly known as the General Security Service or by *Shabak* the Hebrew acronym) there are four more branches of the military court. This, once again, constitutes a violating the principle of being located within the occupied territory.

Still, one the most worrying and concerning problems of these military courts is the political use given to them and their systematic violation of International Humanitarian Law and International Human Rights Law.

2.4.3. Repression for defenders and impunity for offenders: unlawful use of the judiciary in the West Bank

*"Palestine's youth are saying: we want all our rights and will accept nothing less"*²⁵

The main function of the Israeli military court system is to prosecute Palestinians who are arrested by the Israeli military and charged with "security violations"²⁶. The legal system is developed to preserve the security values and interests bound and determined by the Israeli Government: the values of Israel as a Jewish and Democratic State. This bumps into the legitimate rights of the Palestinian people to self-determination, right to freedom of association and freedom of expression and peaceful assembly, among many others.

Security-based reasons are used as justification to punish any critical voice to the Israeli occupation of Palestine. Criminalisation of the protest in the West Bank has come to a situation in which people who exercise their rights get punished while those violating them don't.

Amnesty International denounces on its report Trigger Happy²⁷ that *"The frequency and persistence of the arbitrary and abusive use of force against peaceful demonstrators in the West Bank by Israeli soldiers and police-and the impunity enjoyed by perpetrators-indicate that is a policy."* In the report, Amnesty documents the killing of at least 14 people, Palestinian civilians in the context of nonviolent protests in 2013. Following the most recent Palestinian popular uprising the repression of the Israeli Army against protesters have reached alarming levels of brutality and violence. According to the Palestinian Center for Human Rights (PCHR) since October 3rd, Israeli forces have killed 75 Palestinians in the occupied West Bank either in protests, after stabbings were carried out or the Israeli authorities allege stabbing attacks were intended. 57 of the, were less than 25 years old and 18 were underage. Amnesty International denounced that Israel has "carried out a series of unlawful killings of Palestinians using intentional lethal force without justification"²⁸. The human rights organisation has documented in depth at least 4 cases of what could be considered as extrajudicial killings. In some cases, the person shot was left bleeding to death on the

²⁵ Eid, H. (9 Nov 2015) Palestine de-Osloized, Consulted online 13 Dec 2015
<https://electronicintifada.net/content/palestine-de-osloized/14977>

²⁶ Lisa Hajjar (2005), *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, London, The University of California Press, p. 3.

²⁷ Amnesty International (2014) *Trigger-happy: Israel's use of excessive force in the West Bank*.

²⁸ Amnesty International, (27 October 2015) *Israeli forces in Occupied Palestinian Territories must end pattern of unlawful killings*, Consulted online 13 Dec 2015.
<https://www.amnesty.org/en/latest/news/2015/10/israeli-forces-must-end-pattern-of-unlawful-killings-in-west-bank/>

ground and was not given prompt medical assistance. This, as denounced by AI, is a violation of the prohibition of torture and other ill-treatment.

Unfortunately, the disproportionate use of violence is not the only strategy of repression that the Government of Israel uses against the popular nonviolent resistance movement: the arrests have proven to be a very effective measure and to have a strong deterrent effect among the population. Israel carries out a policy of arbitrary arrests and detentions that far from being an isolated practice but a policy of the military authorities of the Government of Israel. According to Addameer, a Palestinian organisation focused on prisoners support and human rights, in December 2015, there were approximately 6800 total Palestinian political prisoners held in Israeli detention and prison centres, compared to about 5900 at the end of September 2015, before the recent escalation. Between 1 October and 31 December 2015, Israeli forces arrested more than 2663 Palestinians including 480 children²⁹.

Many of the arrests carried out are made under the Military Order 101: Prohibition of Incitement and Hostile Propaganda, promulgated in 1967. This military order prohibit Palestinians participation in any assembly or protest. It is considered to be participating in an assembly or a protest when a group of ten or more people gathered in a group whose purpose is to reflect political or jointly on policy. Given that Palestinian families are usually quite numerous, a family drinking tea after dinner and talking about politics may be breaking the law and facing up to 10 years in prison.

Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, following his visit to Israel and the occupied Palestinian Territories in December 2011, said the Military Order Israeli 101 is used by the military Israel to *"restrict the right of Palestinians to freedom of expression and assembly"*. As reported by La Rue, the command "criminalises expression and political activity, including the organisation and participation in protests, attending assemblies or vigils; tenure, agitation or display political flags or other symbols, and printing and distribution of any Material " *having a political significance*. " La Rue criticised the *"vague and change prohibition of freedom expression for political purposes"* and *"considerable scope for discretion"* leaving the order as to use force application to ensure compliance with the order, potentially facilitates situations of abuse of force by the Israeli army.³⁰

²⁹ Addameer, Special Edition Monthly Newsletter: Events of December 2015. Consulted online on 4 January 2016 http://www.addameer.org/sites/default/files/publications/december_2015_newsletter_-_final_0.pdf

³⁰ A/HRC/20/17/Add.2 at para. 77 and 78

The European Union adopted in 2004 the Guidelines on Human Right Defenders³¹. According to the guidelines, *“Human rights defenders (HRD) are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities.”* Following this definition, Palestinian who participate in nonviolent demonstrations against the Wall, the Israeli military occupation or the settlements could be defined as HRD, therefore, they should be treated and protected as such.

However, Palestinians participating in nonviolent demonstrations in the West Bank will be accused of violating Military Order 101 and will be found guilty of committing a “security offence”. They will be sentenced to a term of imprisonment or to the payment of significant fines. Trials at the Military Courts do not respect the right to a due process and most of activities are convicted despite the lack of evidences or independent witnesses. The president of the military court in the occupied territory, Netanel Benishu admitted in 2011 that these courts systematically denied the right of Palestinians to a fair trial³². According to B’Tselem, of 835 Palestinian minors who were arrested and tried in military courts between 2005 and 2010 on charges of throwing stones, only one was acquitted³³. With a conviction rate of 99,9%,³⁴ legal certainty is definitely left out of the room for the sake of Israel’s security.

³¹ EEAS, Ensuring protection – European Union Guidelines on Human Rights Defenders, Consulted online on 4 January 2016 http://eeas.europa.eu/human_rights/guidelines/defenders/docs/16332-re02_08_en.pdf

³² Levinson, C. (15 August 2013) 'West Bank Military Courts Systematically Deny Palestinians the Right to a Fair Trial'

Consulted online on 4 January 2016 <http://www.haaretz.com/news/diplomacy-defense/.premium-1.541727>

³³ B’tselem No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone-Throwing, July 2011, Consulted online on 4 January 2016, <http://www.btselem.org/publications/summaries/2011-no-minor-matter>

³⁴ Baumgarten-Sharon, N., Stein, Y. Presumed Guilty: Remand in Custody by Military Courts in the West Bank, 2015

3. CASE STUDIES.

3.1. Abdallah Abu Rahme

Abdallah Abu Rahme (45) is a former school teacher, Coordinator of the Bil'in popular committee and member of the board of the Palestinian Popular Struggle Coordination Committee³⁵, a nonviolent resistance movement which opposes to the Israeli Military Occupation of the West Bank, the construction of the Wall and the expansion of the settlements, denouncing Human Rights abuses perpetrated by the apartheid system promoted by the Israeli Government in the occupied Palestinian territory.

On October 11 2010, Abu Rahmah was sentenced to sixteen months imprisonment for his prominent role in Bil'in's successful campaign against the construction on of the Wall on its lands. Abu Rahmah was convicted of two charges - incitement and organizing illegal demonstrations, but was cleared of all charges connecting him with direct violence.

Under military law, incitement is defined as "The attempt, verbally or otherwise, to influence public opinion in the Area in a way that may disturb the public peace or public order" (section 7(a) of the Order Concerning Prohibition of Activities of Incitement and Hostile Propaganda (no.101), 1967), and carries a 9 years' maximal sentence.

On May 10th 2012, Abdallah was arrested again next to Betunia check-point, at a nonviolent demonstration commemorating the Naqba day and in solidarity with Palestinian political prisoners, many of them also in hunger strike, protesting against the administrative detention. He was held for few hours and released on bail.

Later on, on February 2013, Abu Rahme was summoned to the court for having obstructed the works of a military tractor and even stopped its work, and following that refused several times to obey to orders given to him by soldiers in the checkpoint.

On October 21st 2014, Abu Rahme has been declared guilty and on December 1st. On February 23rd 2015 the Military Court sentenced him to a four months suspended sentence, to be activated if during the next three years if he would commit any act offense which has an element of violence or an act of disturbing a soldier in the line of his duty; and a fine of 5000 NIS.

³⁵ See Annex 1: Why the PSCC should be considered a Human Rights Defenders organisation?

The sentenced was appealed by Abu Rahme's lawyers³⁶ and an international advocacy campaign was launched in order to support and defend Abdallah's right to protest and freely express himself.

Abdallah was punished for exercising his right to protest and for defending the rights of the Palestinian people in a nonviolent manner.

In 2010 Catherine Ashton recognized him as a Human Rights Defender and The Elders called for his immediate release, calling him a prisoner of conscience, as well as Human Rights organizations such as Amnesty International or Frontline Defenders.

Diplomats from Spain, Malta, UK and EU representatives have attended his trials and the Spanish parliament issued a statement expressing their concern over Abdallah's incarceration. The Parliamentary Intergroup for Palestine considers the Bil'in peaceful struggle against the construction of the Separation Wall, which was declared illegal, as a defense of the primacy of law and international law in the face of arbitrary decisions, which ignore not only the reiterated resolutions of the United Nations' political bodies, but also Israel's own legal organization.

In a statement issued on 13 January 2011, France "deplores the aggravation of the sentence handed down against Abdallah Abu Rahmah during the appeal judgment delivered by an Israeli military court." France joins the United Kingdom in issuing an official statement against the verdict.

Adv. Gabi Lasky, Abdallah Abu Rahmah's lawyer says, *"Israel has tried violent means to hinder and stop the popular unarmed demonstrations in the West Bank. Military courts are instrument of the occupation and their verdicts are devised to help the occupation continue. This decision makes a mockery of the law and justice itself."*

The campaign had a very positive impact on the case development and resolution, not only for bringing awareness about the persecution of HRDs in Palestine but on the ruling itself: the judge claimed that he "did not ignore" the defense's evidence regarding the punishment, i.e. the EU human rights defender declaration and Amnesty International's campaign.³⁷

The proper enforcement of the EU Guidelines for Human Rights Defenders is therefore, a crucial factor for human rights protection. Diplomats, Human Rights NGOs, civil society and policy makers have a responsibility towards HRDs: they can change the balance of power: Abdallah's case has proven that.

³⁶ See Annex 2 with the legal arguments

³⁷ Excerpts from the ruling facilitated by the attorney.

Abdallah's case is not unique. The PSCC alone has granted legal counselling and representation for more than 250 activists and human rights defenders at Military Courts, only during 2015.

3.2. Other relevant cases of Human Rights Defenders

Bassem Tamimi has been recognized as a Human Right Defender by Amnesty International³⁸ and he is a leader of the every Friday protest in Nabi Saleh. He was convicted by an Israeli military court in 2011 for "sending people to throw stones, and holding a march without a permit". As for Abdallah, the conviction was the same: incitement. He has been arrested by the Israeli authorities over a dozen times, at one point spending more than three years in administrative detention without trial.

Daoud al-Ghoul (32) is a HRD from Silwan, a neighborhood in East Jerusalem. On Dec. 2 2014 Israeli police notified Ghoul that he had been barred from Jerusalem's Old City. He was then summoned to a police station and told that he was banned from the entire city of Jerusalem until April 13, 2015, on the basis of a secret file that said he was a danger to public security³⁹, Days after he was also banned from entering the West Bank. Daoud was deported from Jerusalem and banned from the West Bank just through a military order on the bases of a secrete file, there was no court. After been subject to repeated attacks on his freedom and ability to move and live in his homeland, Daoud al-Ghoul, 32, was arrested by Israeli occupation military forces on 25th June in Jerusalem.

No reasons for the detention have been made public, nor were any reasons ever given for the multiple bans on his movement and his forcible displacement from his home. Al-Ghoul is a resident of the East Jerusalem neighborhood of Silwan, but after his expulsion, he was forced to live in Haifa. The attacks on Al-Ghoul began shortly after his return from Brussels, Belgium, where he presented on 17 November 2014 to the European Parliament on the increasing Israeli restrictions and infringements on the work of Palestinian health workers and organizations in Jerusalem, as well as the ongoing ethnic cleansing and threats to Palestinian existence in the city.

Al-Ghoul is an internationally renowned human rights defender who has also participated in the World Social Forum and in numerous international arenas to advocate for Palestinian rights and freedom. The Jerusalem Health Work Committees (HWC) office where Al-Ghoul works was forcibly closed by the Israeli military in May.

³⁸ Amnesty International Public Statement. AI Index: MDE 15/008/2012

³⁹ Staton B (16 Dec 2014) *Illegal at home: The story of Daoud al-Ghoul*; Middle East Eye Consulted online on 5th February 2016. <http://www.middleeasteye.net/news/illegal-home-story-daoud-al-ghoul-623879270>

The organization was established in 1985 to meet the health care needs of the Palestinian. Its Shuafat office in East Jerusalem housed the group's school health programme, which since 1990 has provided medical exams, preventative screenings, health education and vaccinations to Palestinian students in more than 62 schools in Jerusalem.⁴⁰

Khalida Jarrar⁴¹ is considered a major Palestinian political and civil society public figure. She was the director of Addameer Prisoners' Support and Human Rights Association from 1994 to 2006, until she was elected as a Palestinian Legislative Council member. She then became the vice chairperson of Addameer. Khalida Jarrar is head of prisoners' issues in the Palestinian Legislative Council and a member of the National Palestinian Committee for the follow-up of the International Criminal Court.

Khalida was arrested on April 2015 from her own house at 3 am. She was held under an administrative detention in HaSharon prison until the 7th of December 2015, when she was sentenced to 15 months' imprisonment, a 10-month suspended sentence and fined her 10,000 shekels. Jarrar has pleaded guilty to two of 12 charges against her and accepted a 15-month prison sentence, because she does not believe she will receive a fair trial before an Israeli military court. Amnesty International launched an urgent action *"Expressing concern that Khalida Jarrar's guilty plea was made because of the flagrantly unfair military proceedings in her case, which admitted coerced testimony which were later recanted"; and "expressing concern that the detention of Khalida Jarrar, the proceedings against her and her sentence appear to be punitive measures used to suppress her right to free and peaceful expression."*⁴²

Nabi Saleh and Collective punishment

Nabi Saleh is a small village of approximately 550 people, twenty kilometers north west of Ramallah in the West Bank of the Occupied Palestinian Territories. The Israeli settlement of Halamish (also known as Neveh Tzuf) was established on lands belonging to the villages of An Nabi Saleh and Deir Nidham in 1976. In response, the residents of An Nabi Saleh and Deir Nidham began holding weekly demonstrations in opposition to their land's confiscation and expansion of the settlement.

Since An Nabi Saleh began its demonstrations, the Israeli military has brutally sought to repress the non-violent protests, arresting more than 13% of the village, including

⁴⁰ [Arrested Daoud al-Ghoul, from the Health Work Committees in Jerusalem](http://novact.org/2015/07/5440/?lang=en), NOVACT, Consulted online at <http://novact.org/2015/07/5440/?lang=en> 7 Feb 2016

⁴¹ Profile consulted at Addameer's Prisoner's Profile website <http://www.addameer.org/prisoner/khalida-jarrar>

⁴² <https://www.amnesty.or.jp/en/get-involved/ua/ua/2015ua081.html>

children and women. Saleh Hijazi, Amnesty's Campaigner on Israel and the Occupied Palestinian Territories explains *"The soldiers are waiting with tear gas launchers and stun grenades. They start using them, usually aiming directly at people and their houses, as soon as the protesters reach a certain point. If the demonstration carries on after that, the army starts using rubber-coated metal bullets and, in some cases live ammunition, against peaceful demonstrators. The army sometimes also sprays villagers' houses with canons of 'skunk' water, which leaves a bad, lingering smell. They also spray it inside people's homes and on bystanders"*⁴³

Two peaceful protestors were killed on nonviolent protests in the village: Mushtafa Tamimi (28) on December 2009 and Rushdi Tamimi (32) on November 2012.

Mustafa Tamimi was shot in the head at close range by an Israeli soldier during the weekly demonstration in his village with a high force, long range tear gas canister. According to a number of witnesses, backed up by photographs, the canister was fired point-blank, in total contravention of army regulations, from a distance of less than ten meters. Two years after, the Israeli Military closed probe into the killing of Mustafa. The Military Advocate General accepted the soldier's claim that he did not see Tamimi from the jeep and further supported it with the testimony of an expert witness. However, videos and pictures of Mustafa's shooting shows the soldier in a very close range, pointing at him directly, making difficult to support the soldier official version⁴⁴.

Bassem Abu Rahme, from Bil'in was killed under very similar circumstances. He was shoot in April 2009 at the chest by a tear gas projectile. His shooting was also widely covered and documented⁴⁵. Still, the investigation to delimit responsibilities over his killing was closed arguing lack of evidences.

Repression to Israeli anti-occupation activists.

2016 has revealed an increased repression towards Israeli anti-occupation activists. Although small, there is an active opposition to governmental policies in the Palestinian territory within Israel. Beside the restrictions imposed on human rights organisations, we have seen a significant change on the repression that Israeli activists and human rights defenders are facing.

⁴³ Amnesty International, *A tiny village with a big voice*, Consulted online on 5th February 2016 <https://www.amnesty.org/en/latest/news/2013/12/tiny-village-big-voice/>

⁴⁴ Zonszian, M. (5 Dec 2013) *IDF closes probe into killing of Mustafa Tamimi in Nabi Saleh*, +972 Magazine. Consulted online on 5 February 2016 <http://972mag.com/idf-closes-probe-into-2011-killing-of-mustafa-tamimi-in-nabi-saleh/83059/>

⁴⁵ Forensic Architecture, *Reconstructing the death of a Palestinian demonstrator via video analysis*, Consulted online on 5 February 2016 <http://www.forensic-architecture.org/case/bilin/>

The arrest of Ezra Nawi, a well-known Israeli activists have created a great controversy within the Israeli society. Ezra is a member of Ta'ayush, a Palestinian and Jewish activist group that defends the rights of Palestinian farmers in the South Hebron Hills area of the occupied West Bank.

Ezra Nawi was detained days after a Channel 2 investigation on Thursday aired recordings of him discussing how he had informed Palestinian Authority (PA) security forces about Palestinians in the West Bank who were selling their land to Israeli settlers with the knowledge that the PA would subsequently punish⁴⁶ the Palestinians. Details of these arrests were kept from the public by Israeli authorities under gag orders, and the detained persons have been denied access to lawyers. Jerusalem Magistrate Court ordered his released to house arrest. Nawi's lawyer, Eitan Peleg, said denounces that "This is a political, not a criminal investigation."⁴⁷

The very same week, Israeli film-maker Guy Butavia was arrested at Ben Gurion airport. Butavia was also part of Ta'ayush, same as Nawi. Butavia denounces also that *"This is entirely a political arrest. It's whole purpose is to undermine our activity for human rights in the [occupied] territories and against the crimes and criminals of the occupation,"* Butavia states. *"They won't be able to break us."*⁴⁸

⁴⁶ Selling land to Israelies is punished by the PLO Revolutionary Penal Code with capital punishment, although the PA has not signed any execution in the West Bank for more tan 10 years now.

⁴⁷ Hartman, B. (25 Jan 2016) *Jerusalem court releases left-wing activist Ezra Nawi to house arrest*, Consulted online on 5 February 2016 <http://www.jpost.com/Israel-News/Jerusalem-court-releases-left-wing-activist-Ezra-Nawi-to-house-arrest-442665>

⁴⁸ Abunimah, A. (22 Jan 2016) *"They won't be able to break us," says arrested Israeli activist*. Electronic Intifada. Consulted online on 5 February 2016 <https://electronicintifada.net/blogs/ali-abunimah/they-wont-be-able-break-us-says-arrested-israeli-activist>

4. CONCLUSION AND RECOMMENDATIONS.

The international community needs to take urgent and effective measures in order to protect and promote the fundamental human rights of the Palestinian people. Defending and promoting Human Rights is not only a moral obligation, but also a State responsibility, as stipulated in the Outcome Document of the 2005 United Nations World Summit (A/RES/60/1, para. 138-140) and formulated in the Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect⁴⁹:

1. The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
2. The international community has a responsibility to encourage and assist States in fulfilling this responsibility;
3. The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.

Supporting the work of Human Rights Defenders contributes to reinforcing the EU's human rights policies in general. Within the operational guidelines for HRD, EU heads of missions are, among others, requested to contribute to the protection of HRD within the context of the Common Foreign and Security Policy. EU heads of mission are the primary interface between the EU and its Members States. They play an important role in defending the EU Human Rights policies and thus, they should adopt a proactive policy towards HRD. In relation to the obligation of third countries to carry out their obligations to respect human rights, measures that EU Missions could take include:

- i. Promoting respect for human rights defenders in relations with third countries and in multilateral forums.
- ii. Supporting special Procedures of the UN Human Rights Council, including the Special Rapporteur on Human Rights Defenders.
- iii. Promoting practical supports for Human Rights Defenders including through Development Policy.



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⁴⁹ The responsibility to protect, Consulted online on 3 January 2016
<http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>