



المؤسسة العربية لحقوق الانسان

Arab Association for Human Rights

אלמואססה אלערבייה לחקוק אלانسאן

The Palestinian Arab Minority in Israel

# FROM MARGINALIZATION TO DELEGITIMIZATION

A REPORT ON HUMAN RIGHTS IN A CLIMATE OF HOSTILITY

HRA SUBMISSION TO THE E.U.-ISRAEL INFORMAL WORKING GROUP ON HUMAN RIGHTS

JANUARY 2016

## INTRODUCTION

In recent months, the security and political situation in the State of Israel has witnessed an escalation of violence, leading to thousands of injuries and over 100 deaths of Palestinian Arabs both within Israel and in the occupied Palestinian territory. The State has implemented a wide array of repressive security measures targeting Palestinians in Israel and in the occupied territory; but there is no political resolution in sight. The Arab Association for Human Rights (HRA) has worked to reveal the scope and extent of these developments and their impact on the Palestinian Arab minority in Israel.

The HRA prepared a report in light of these developments, which we intended to present to the European Union-Israel Informal Working Group on Human Rights. But following the E.U.'s announcement of its labeling guidelines for products made in Israeli settlements—in line with the nearly universal opinion of the international community not to recognize the legality or legitimacy of Israeli settlements in the occupied Palestinian territory—the State of Israel severed diplomatic ties with the E.U., particularly with regard to its dealings with the Palestinians. As a result, the working group meetings were canceled, leaving much of the important work on human rights issues unattended.

Yet diplomatic setbacks and political posturing should not take precedence over essential human rights. The HRA presents this report in the hope that it will help shed light on the underreported plight of the Palestinian Arab minority in Israel.

The report addresses a number of key issues that have arisen as a product of the political and security situation, and it places them within the context of an overarching climate of hostility against the Palestinian Arab minority. The report analyzes these developments by reference to international human rights law and, where applicable, international humanitarian law. The report concludes that only compliance with these paramount international norms can guarantee justice, peace, security and stability, and it calls upon the international community to join our effort to make good on its legal and moral commitment to the universal realization of human rights.

Sincerely,

**Mohammad Zeidan**  
**HRA General Director**

## SUMMARY

Early last year, the election of the 20th Knesset ushered in a right-wing resurgence in the State of Israel, led by the incumbent Prime Minister Benjamin Netanyahu. On the eve of the election, Prime Minister Netanyahu warned publicly, “The Arabs are coming out to the polls in droves.”

These words came on the heels of 2014’s Operation Protective Edge, during which the international community witnessed the terrible cruelty to Palestinians of which the State of Israel was more than capable; the prime minister’s words offered a prescient glimpse at how contemptuously his government would treat all Palestinian Arabs, even those within the Green Line.

The developments of recent months have revealed within the State of Israel a belligerent and hyper-militarized mentality, affirming a deeply rooted contempt and disregard for the lives of the Palestinian Arab minority in Israel. The State of Israel has seized upon the outbreak of violence—within Israel, in the occupied Palestinian territory, and abroad—to implement brutal and repressive security measures against the Palestinian Arab minority. However, these must not be viewed in a vacuum, but rather in the context of a climate of hostility against the Palestinian Arab minority that has continued since the State’s inception.

### 1.1 EXCESSIVE POLICING AND USE OF FORCE

Israeli security and police authorities have demonstrated a willingness and an eagerness to use excessive force against the Palestinian Arab minority. Not only individuals suspected of criminal activity, but also Palestinian Arabs partaking in non-violent demonstrations, have been subject to aggressive police action. The police shootings of Fadi Alloun and Asraa Abed, in Jerusalem and Afula, exemplify the depth and breadth of this approach. Although they were suspected by police of criminal activity, video footage showed plainly that neither posed an imminent threat to anyone; their shootings appeared more akin to summary executions than to proper law enforcement. Recently, the security cabinet approved the use of .22 caliber live ammunition against Palestinian Arabs throwing stones in Jerusalem and in the Naqab.

International human rights law requires police to exercise restraint and employ force only as a last resort when strictly necessary and proportionate for a lawful purpose. Where force is unwarranted by the exigency of the situation, the use of lethal force may amount to extrajudicial killing. The staggering amount of casualties in recent weeks demands not only the review of current policies that enabled them, but also the thorough investigation and prosecution of possible violations.

## **1.2 EXCESSIVE AND COLLECTIVE PUNISHMENT**

The Israeli penal system often goes beyond the proper purpose of criminal rehabilitation by imposing sentences on Palestinian Arabs that are both discriminatory and disproportionate. Palestinian Arabs convicted of throwing stones face a minimum of four years' imprisonment and a maximum of twenty. Moreover, the family members of Palestinian Arab offenders are liable to face punitive measures as well, including the withholding of social benefits and the demolition of family houses.

International human rights law requires criminal sentences to be commensurate with the crime and applicable only to the convicted offender. Custodial sentencing should only be employed where absolutely necessary and proportional, and non-custodial measures, such as community service, should be considered—as is the case with Jewish offenders convicted of similar crimes. Moreover, both international human rights law and international humanitarian law prohibit collective punishment. The State must cease immediately the practice of punitive house demolitions and must review its current sentencing policies in light of the principles of necessity, proportionality and non-discrimination. Where miscarriages of justice have occurred, the State must provide just compensation.

## **1.3 PUNITIVE REVOCATION OF RESIDENCY AND CITIZENSHIP**

An especially pernicious form of excessive and collective punishment is the punitive revocation of citizenship or residency rights. The State has moved or threatened to revoke the residency and citizenship rights of Palestinian Arab offenders and even of their families. International human rights law strictly protects the right to nationality—especially when its removal would leave the individual stateless—which is a human right from which many other rights derive. The use or threat of this punitive measure further compounds the ongoing dispossession and displacement of an already disenfranchised minority.

## 1.4 ARBITRARY DETENTION AND SEARCHES

The State has abused its police powers of detention to arrest Palestinian citizens of Israel. Approximately 100 Palestinian Arab activists have been arrested on the basis of false or fictitious charges. Family members of activists and individuals driving the buses on which activists were riding have also been subject to detention. The fact that these arrests were groundless, and implemented shortly before public demonstrations, suggests that they were done simply to prevent activists' participation in demonstrations. The State has also practiced administrative detention—detention on the basis of "security," without any evidence presented and without charge or trial—and has approved the expansion of police search authority to bodily frisk individuals in the absence of reasonable suspicion.

International human rights law requires that all deprivations of liberty be done according to law, when strictly necessary and proportionate for a lawful purpose, and subject to effective judicial review. Detentions on the basis of false or fictitious charges are unlawful per se. Policies such as administrative detention and stop-and-frisk searches are ripe for abuse and arbitrary implementation. The State must not use its permanent state of emergency as a license for the unmitigated abuse of its power.

## 1.5 SUPPRESSION OF FREE EXPRESSION

It is worth noting that many of the aforementioned violations and restrictions have been targeted against Palestinian Arab activists, who have faced increased monitoring on social media, arrests on trumped-up charges and repression of public protests. This has a chilling and repressive effect on the freedoms of expression and assembly in violation of international human rights law. It is especially crucial now to affirm these rights and freedoms as a safeguard against the widespread abuse of human rights we see today.

## 1.6 INCITEMENT TO VIOLENCE AGAINST PALESTINIAN ARABS

Even as the State has cracked down on alleged "incitement" by Palestinians against Jewish Israelis, anti-Arab racism and incitement have proliferated in Israel, including among government and public officials questioning the loyalty and citizenship of the Palestinian Arab minority. This includes the mayor of Jerusalem encouraging civilians to take up personal firearms against 'terrorists.' Vigilante violence has become a worrying trend,

resulting in violent attacks against Palestinian Arabs, Jewish Israelis and at least one foreigner. Israel is responsible not only for State violations of the rights of the Palestinian Arab minority, but also for not adequately preventing such violations by individuals.

## **2.1 IMPUNITY FOR CRIMES AGAINST PALESTINIAN ARABS**

The State of Israel has not demonstrated that it takes seriously the crimes and acts of terrorism perpetrated by Jewish Israelis against Palestinian Arabs. This is an environment in which Jewish extremism and violence, such as “price tag” attacks and related acts of terrorism, can thrive, threatening to deteriorate the security situation.

## **2.2 SUFFOCATION OF CIVIL SOCIETY**

Civil society organizations continue to face the prospect of Israeli legislation aiming to suppress their expression and their survival. Laws intended to label these organizations as “foreign state entities” serve no purpose except to intimidate and to delegitimize them, as well as to cut off their funding. Currently, Israeli law prohibits certain expressions, such as commemoration of the Nakba and supporting a boycott of Israel. The outlawing of the northern branch of the Islamic Movement in Israel sets a dangerous, undemocratic and draconian precedent that suppresses the public life of the Palestinian Arab minority. Not only does this threaten the freedoms of expression and association, but it also eviscerates the ability to act against human rights abuses, leaving the voiceless and the marginalized with few non-violent alternatives.

## **2.3 MARGINALIZATION FROM PUBLIC LIFE**

The Palestinian Arab minority in Israel continues to face discrimination in education, housing, land, infrastructure, and other aspects of daily life. Just prior to the escalation of violence, the Palestinian Arab minority suffered a great blow to their access to education by the State’s severely cutting the funding of Arab Christian schools—while maintaining full or nearly full funding for Orthodox Jewish schools. Meanwhile, Jewish Israeli Knesset members continue to push for the passage of the *Basic Law: Nation-State of the Jewish People*, which would codify the institutionalized privileging of Jewish national interests over those of non-Jewish minorities. The escalation of violence is both a symptom and a reinforcement of the concerted effort to marginalize the Palestinian Arab minority.

## REPORT OF THE ARAB ASSOCIATION FOR HUMAN RIGHTS

Early last year, the election of the 20th Knesset ushered in a right-wing resurgence in the State of Israel, led by the incumbent Prime Minister Benjamin Netanyahu. On the eve of the election, Prime Minister Netanyahu warned publicly, “The Arabs are coming out to the polls in droves.”

These words came on the heels of 2014’s Operation Protective Edge, during which over 2,000 Palestinian residents of the Gaza Strip were killed in the span of 50 days. The international community had just witnessed the terrible cruelty to Palestinians of which the State of Israel was more than capable; the prime minister’s words offered a prescient glimpse at how contemptuously his government would treat all Palestinian Arabs, even those within the Green Line.

The recent escalation of violence, particularly as started in Jerusalem, has captured the world’s attention. While the international community has been rightfully swift to condemn the attacks on Jewish Israelis, the severity of Israel’s response against the Palestinian Arab minority has escaped comparable scrutiny. Yet the developments of recent months reveal within the State of Israel both the profusion of discrimination—which privileges the lives and liberties of Jewish Israelis over the Palestinian Arab minority—and the utter inability to discriminate—treating *all* Palestinian Arabs, in the occupied territory and within the State itself, as if they were potential enemy combatants.

A belligerent and hyper-militarized mentality has taken hold in the State of Israel, affirming a deeply rooted contempt and disregard for Palestinian Arab lives. The following report is a non-exhaustive analysis of the precarious and vulnerable position of Palestinian Arabs, particularly of those within the State of Israel. The first part describes current policies and practices that threaten the Palestinian Arab minority, identifying relevant provisions of international human rights law and, where applicable, international humanitarian law. The second part contextualizes the recent violence and repression within a broader social and political climate that is increasingly hostile to the rights and livelihood of Palestinian Arabs.

## SEVERE AND REPRESSIVE SECURITY MEASURES

### 1.1 EXCESSIVE POLICING AND USE OF FORCE

1. Since September 2015, Palestinians have faced severe violence by Israeli military and police in both the State of Israel and in the occupied territory. Thousands of Palestinians have been injured and more than 100 were killed by Israeli forces in Israel and in the occupied Palestinian territory, including East Jerusalem.<sup>1</sup>

2. Two incidents are highly indicative of the depth and breadth of this approach. On 4 October, 19-year-old Fadi Alloun was shot to death in public view by Israeli police near the Old City of Jerusalem. Video footage reveals Fadi retreating as a mob of bystanders urges the police to shoot him on sight.<sup>2</sup> On 9 October, 30-year-old Asraa Abed was shot and seriously wounded, surrounded by police and security guards, in a bus terminal in the Israeli city of Afula.<sup>3</sup> Although both Fadi and Asraa were claimed by police to be involved in stabbing incidents, video footage of both shootings shows patently that neither posed an imminent threat to anyone. Indeed, investigations by the Israeli Justice Ministry concluded that Asraa had no intention to attack anyone; although she was cleared of any criminal charges, the officers who shot her will face no disciplinary or criminal action.<sup>4</sup> Yet these shootings appear less akin to proper law enforcement than to summary executions.

3. In light of these incidents, and in the current climate of fear and paranoia, the HRA is profoundly troubled by the Israeli security cabinet's recent approval of the use of live ammunition, including .22 caliber bullets, against Palestinian Arabs throwing stones in East Jerusalem and in the Naqab in Israel.<sup>5</sup> The Israeli NGO B'Tselem has documented cases of the use of such ammunition resulting in death.<sup>6</sup> Overzealous policing has produced and will continue to result in undue injuries and deaths—an alarming reality that disproportionately affects Palestinian Arabs.

4. While Israeli forces have the right and the duty to maintain public order and safety, police and security measures must comply with the stringent standards of international human rights law. Even in the occupied Palestinian territory, including East Jerusalem, where international humanitarian law governs, Israeli law enforcement vis-à-vis the

Palestinians must abide strictly by human rights requirements. The human rights at stake in the context of law enforcement include, *inter alia*, the rights to life,<sup>7</sup> to liberty and to security of person.<sup>8</sup> These are the first substantive rights protected by the Universal Declaration of Human Rights,<sup>9</sup> which indicates their profound importance and the need for law enforcement to tread carefully when potentially affecting them. To avoid the arbitrary deprivation of these rights, the following rules are of paramount importance to the lawful exercise of police measures:

- (a) Non-violent means should be attempted first.
- (b) Force must be used only when strictly necessary.
- (c) The use of force must be proportional to lawful objectives.
- (d) Damage and injury are to be minimized when using force.
- (e) Restraint must be exercised in the use of force.
- (f) There shall be no exceptions or excuses for unlawful uses of force.<sup>10</sup>

These international standards underscore the following three rules essential to the protection of human rights, which the Supreme Court of Israel has already accepted into its jurisprudence.<sup>11</sup> First, law enforcement measures must bear a rational connection to a legitimate purpose. Second, police and security forces must pursue those measures by such means as are, in a given situation, the least restrictive to the individual's human rights. Thirdly, any necessary restrictions, such as to life or to liberty, must be proportional to the benefit gained by pursuing such measures. Accordingly, law enforcement officials must exercise great restraint and utilize force only as a last resort. Even where absolutely necessary for a lawful objective, the use of force may nevertheless still be excessive in relation to the benefit gained: thus, deprivations of human rights should always be proportional to the exigencies of a situation.<sup>12</sup>

5. Moreover, the International Committee of the Red Cross has advanced the position that, even in the context of active hostilities, State forces are required under international humanitarian law to pursue a similar least-harmful means approach: "it would defy basic notions of humanity to kill an adversary or to refrain from giving him or her an opportunity

to surrender where there manifestly is no necessity for the use of lethal force.”<sup>13</sup> The Israeli Supreme Court sitting as the High Court of Justice has already accepted this approach as applicable in the context of armed conflict with Palestinian insurgents: “a civilian taking a direct part in hostilities cannot be attacked at such time as he is doing so, if a less harmful means can be employed. Indeed, among the military means, one must choose the means whose harm to the human rights of the harmed person is smallest.”<sup>14</sup>

6. These human rights and humanitarian obligations, which the State of Israel has voluntarily assumed, must inform and limit Israel’s actions vis-à-vis the Palestinians both in the occupied territory and in the State of Israel itself. These principles must strictly and rigidly be adhered to; in particular, no emergency or state of exception can relax the absolute prohibition on the arbitrary deprivation of life.<sup>15</sup> Yet police have shown an eagerness to use aggressive force against non-violent protests by Palestinian Arabs, and lethal force against criminal suspects in the absence of imminent threat. In such cases, the use of force is unnecessary, for the legitimate purpose of law enforcement can be achieved through less harmful means. It is also disproportionate, for the resulting loss of life or liberty or injury to bodily security—three preeminent human rights—vastly outweighs whatever benefits derive from excessive force. Where lethal force is unwarranted by the exigency of the circumstances, the use thereof amounts to extrajudicial killings. The staggering amount of casualties in recent weeks alone demands not only the review of current policies that enabled them, but also the thorough investigation and prosecution of possible violations.

## **1.2 EXCESSIVE AND COLLECTIVE PUNISHMENT**

7. In addition to the brutal and excessive use of force, the Israeli penal system has enacted unduly punitive measures against Palestinians and their family members. The most prominent instance of this is the recent approval of a policy raising the mandatory minimum sentence of stone-throwers to four years, with a maximum sentence of 20 years.<sup>16</sup> This mandatory sentencing regime leaves little room for individualized nuance taking into account personal circumstances, blameworthiness, recidivism or the particular circumstances of the crime in question. The severity of these measures also raises the question of fairness:

though both Palestinian and Jewish Israelis engage in stone-throwing, Arabs are much more likely than Jewish convicts to receive longer criminal sentences.<sup>17</sup> In many cases, Jewish Israelis charged with throwing stones only receive sentences of community service.

8. The penal system often goes beyond its purpose of just retribution or rational deterrence of crime and toward a regime of bona fide collective punishment. Under the new provisions, the parents of minors who throw rocks can be fined and have their National Insurance Institute benefits withheld for the duration of their child's sentence.<sup>18</sup> Furthermore, Israel has continued its policy of demolishing the family homes of convicted Palestinians as a means of reprisal and deterrence; in fact, Prime Minister Netanyahu has demanded recently the expedition of this procedure.<sup>19</sup> The HRA notes further that as far as is known, the policy of punitive demolitions is applied exclusively to Palestinian Arab offenders and their families.

9. Such policies run flagrantly afoul of crucial principles of international law. The centrality of the right to liberty<sup>20</sup> compels sentencing authorities to exercise great caution and restraint in the imposition of custodial sentences. The *United Nations Standard Minimum Rules for the Treatment of Prisoners* affirms that "[i]mprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty."<sup>21</sup> Instead, "the restriction of liberty is justifiable only from the viewpoints of public safety, crime prevention, just retribution and deterrence and . . . the ultimate goal of the criminal justice system is the reintegration of the offender into society."<sup>22</sup> Any decision to deprive an individual of his or her liberty must be a *strictly necessary* (i.e., the least-restrictive means) and *proportional* response to achieve those lawful aims.<sup>23</sup> Sentencing authorities should consider non-custodial measures, or shorter sentences, where appropriate. Thus, the gravity of the offense, and the dangerousness of the offender, must be so great as to make removal from society the only possible means to achieve those lawful purposes in a proportionate manner. This is especially crucial when minors or young people are in question: custodial imprisonment ought to be employed against children "only as a

measure of last resort.”<sup>24</sup> These international standards point toward making custodial punishment the exception rather than the rule; Israel’s approach makes imprisonment *the only rule*.

10. Criminal sentences must be tailored specifically to the particularities of the individual offender and the individual offense.<sup>25</sup> They must also apply exclusively to the individual offender. International human rights law prohibits collective punishment as a violation of fundamental due process guarantees. Regional human rights instruments state this principle more explicitly: the American Convention on Human Rights states that “[p]unishment shall not be extended to any person other than the criminal,”<sup>26</sup> and the African Charter on Human and Peoples’ Rights affirms that “[p]unishment is personal and can be imposed only on the offender.”<sup>27</sup> International humanitarian law, as applicable in the occupied territory including East Jerusalem, forbids collective punishment as well. The Third Geneva Convention relative to prisoners of war prohibits “[c]ollective punishment for individual acts,”<sup>28</sup> while the Fourth Geneva Convention relative to the protection of civilians reaffirms that “[n]o protected person may be punished for an offense he or she has not personally committed.”<sup>29</sup> The United Nations Human Rights Committee has clarified that the guarantee of fundamental principles of fair trial and the prohibition against collective punishment are non-derogable norms of international law.<sup>30</sup>

11. Particularly in punitive house demolitions, a further human right is implicated: the right to adequate housing. Though the State of Israel is bound to “take appropriate steps to ensure the realization of this right,”<sup>31</sup> the policy of punitive house demolitions guarantees its wholesale violation. It is part and parcel of the State of Israel’s ongoing dispossession of the Palestinians. Yet social and economic rights can only be restricted deliberately when strictly necessary and proportional for “promoting the general welfare in a democratic society.”<sup>32</sup> International humanitarian law provides a similar safeguard against it: an Occupying Power is prohibited from destroying real or personal property unless absolutely necessary.<sup>33</sup> In the context of occupied territory, including East Jerusalem, serious violations of international humanitarian law, such as collective punishment and unlawful destruction of property, may amount to war crimes. The HRA submits that even if a

legitimate security interest can be effected through punitive house demolitions, the principle of proportionality—in both the human rights and humanitarian law contexts—weighs immeasurably against it.

12. The State of Israel must cease immediately its demolition of family houses as a form of collective punishment, and it must review its current sentencing policies in the light of international human rights law. Accordingly, where miscarriages or abuses of justice have occurred, it is incumbent upon the State to provide just compensation.<sup>34</sup> Where discrepancies exist between the punishments meted out to Palestinian Arabs and those given to Jewish criminals, the State of Israel must act properly to ensure the equal protection of law to all persons within its jurisdiction.<sup>35</sup>

### 1.3 PUNITIVE REVOCATION OF RESIDENCY AND CITIZENSHIP

13. An especially pernicious form of excessively and collectively punitive measures, which demands its own mention, is the punitive revocation of residency or citizenship rights of Palestinian Arabs. Recently, Israeli Interior Minister Silvan Shalom moved to revoke the citizenship rights of at least six Palestinian Arab citizens of Israel involved or suspected to be involved in “terror attacks.”<sup>36</sup> The minister has moved to revoke the residency of at least 19 Palestinian residents of occupied East Jerusalem.<sup>37</sup> Upon the revocation of citizenship or residency, Palestinian Arabs would lose all social rights that accrue to those statuses, such as national insurance and health benefits, including for their families.

14. Presently, Israeli law permits the revocation of citizenship for convicted Palestinian Arab citizens, while the Palestinian residents of occupied East Jerusalem may have their residency stripped at the interior minister’s discretion. Israeli State officials, including government ministers and Jerusalem Mayor Nir Barkat, have called or moved for the revocation of citizenship or residency of criminal suspects’ family members as well.<sup>38</sup> In fact, Prime Minister Netanyahu announced recently the possibility of revoking wholesale the residency rights of an entire portion of the Palestinian population of occupied East Jerusalem.<sup>39</sup>

15. This extremist measure implicates and obliterates a large number of human rights, only a few of which are mentioned here. First and foremost, the revocation of citizenship from Palestinian Arabs in Israel amounts to the arbitrary deprivation of nationality,<sup>40</sup> as prohibited under international human rights law.<sup>41</sup> The United Nations Human Rights Council Secretary-General affirmed that a State may deprive its nationals of nationality only where said deprivation serves a *legitimate* purpose, is the *least intrusive* means to achieve that purpose, and is *proportional* to the interest protected.<sup>42</sup> Thus, the State of Israel has the burden to prove that revoking the citizenship of its own citizens is absolutely necessary and proportional for its security. Moreover, States have an additional burden when such deprivation will result in an individual's statelessness. The Convention on the Reduction of Statelessness, of which Israel is a signatory, delimits a very narrow and specific set of circumstances in which international law permits the deprivation of nationality resulting in statelessness.<sup>43</sup> However, the U.N. Human Rights Council Secretary-General clarified that even those circumstances are subject to the principle of proportionality, noting further the tremendous difficulty in justifying statelessness on a proportionality analysis.<sup>44</sup> All decisions to deprive an individual of nationality must be made by this analysis, which must include not only the individual's rights, but also those of his affected family. In all cases, this decision must be subject to effective administrative or judicial review.<sup>45</sup> The HRA emphasizes that the revocation of residency from Palestinian residents of occupied East Jerusalem would only compound the dispossession and displacement of an already stateless population.

16. Citizenship and residency statuses are the primary means by which the vulnerable Palestinian Arab minority secures their rights. These rights include, *inter alia*, the rights to social security,<sup>46</sup> adequate housing,<sup>47</sup> standard of living,<sup>48</sup> work,<sup>49</sup> education,<sup>50</sup> family life,<sup>51</sup> health,<sup>52</sup> freedom of movement,<sup>53</sup> including the freedom to leave<sup>54</sup> and to reenter one's country,<sup>55</sup> and the freedom to choose one's own residence.<sup>56</sup> Revocation of these statuses therefore threatens key provisions of international human rights law. Moreover, it encourages a perception among the Israeli public that the citizenship of Palestinian Arabs is inferior and conditional, threatening the spirit of human rights law by reducing the value of the Arab minority. It also violates international humanitarian law, as applicable in occupied

East Jerusalem. The Fourth Geneva Convention prohibits “individual or mass forcible transfers, as well as deportations of protected persons” to other countries, regardless of motive; it may, however, evacuate a given area of the occupied territory for imperative reasons of military necessity—such as for the population’s own security—and it must ensure proper accommodation for displaced persons and guarantee their transfer back to their homes.<sup>57</sup> Furthermore, the Occupying Power must undertake to assist in the reunification of families and to respect the rights of families in all circumstances.<sup>58</sup>

17. Whatever security interest is served by the revocation of residency or citizenship is disproportionately outweighed by the harm inflicted. The Supreme Court of Israel has held that a marginal increase in security can be invalidated by its deleterious effect on human rights;<sup>59</sup> in a case involving a ban on family unification, a majority of justices ruled that the ban’s sweeping and severe nature was too excessive for the security interest at stake.<sup>60</sup> Likewise, revocation of residency and citizenship jeopardizes irreparably the rights of the individuals, families or populations involved, by casting them into a dragnet that has a speculative benefit to security but a definite and disastrous harm to human rights. And in the case of families or communities being displaced for the crimes of other individuals, fundamental guarantees of fairness and due process are also threatened.

18. As far as is known, the policy of stripping citizenship or residency applies exclusively to Palestinian Arabs, and not to Jewish Israelis, despite any security or criminal threat the latter may pose. The State of Israel must ensure that no deprivation of rights, especially the right to nationality, is made by distinction on the basis of race or national origin.<sup>61</sup> Additionally, it is remarkable that the State of Israel would consider the mass expulsion of Palestinian residents of occupied East Jerusalem while actively facilitating the unlawful settlement thereof by Jewish Israelis. This policy smacks of ethnic cleansing and would seem to enable further the *de facto* annexation of occupied East Jerusalem. The HRA reiterates that Israeli sovereignty over East Jerusalem has no international recognition<sup>62</sup> and that the annexation of occupied territory does not alter the rights of its Palestinian residents.<sup>63</sup>

## 1.4 ARBITRARY DETENTIONS AND SEARCHES

19. Palestinians have encountered aggressive and illegal abuses of law enforcement's powers of detention and search. Approximately 100 Palestinian Arab citizens of Israel have been arrested on flimsy or false charges. In particular, Palestinian Arab activists have been arrested on the fictitious charge of "organizing an illegal gathering with the intent to riot." In some cases, the family members of Palestinian Arab activists have been arrested as well, as have the drivers of buses on which activists rode to demonstrations. Adalah, the Legal Center for Arab Minority Rights in Israel, reports that in many of these instances, activists were not questioned or suspected of crimes and were released shortly thereafter, suggesting that the arrests had no factual or legal basis, but were rather aimed at preventing activists' participation in public demonstrations.<sup>64</sup> Samar Azaizy, a young Palestinian Arab citizen of Israel who works with HRA's human rights education initiatives, was arrested just prior to a public demonstration planned in Nazareth; she and other activists were released to house arrest shortly after the protest.

20. Israeli security forces have continued to use administrative detention—the imprisonment without charge or trial—against Palestinian Arabs. Individuals subject to administrative detention can be held indefinitely, without being informed of their charges and without access, by them or by counsel, to classified evidence against them. While this practice is shockingly common in the occupied territory, the HRA takes note of its increasing prevalence, including against Palestinian Arabs with Israeli citizenship or residency. In fact, the State of Israel has enabled this procedure through its declaration, dating to 1948, of a permanent state of emergency. Recently, a 19 year-old Palestinian Arab citizen of Israel from Nazareth was placed into a three-month-long detention. The authorities arrested her in response to text messages and Facebook posts deemed suspicious, although not enough evidence surfaced for a criminal charge.<sup>65</sup> In occupied East Jerusalem, three minors were put as well into three-month detentions; they were questioned, among other things, about their Facebook messages. Neither of the youths had a criminal record.<sup>66</sup>

21. Additionally, the security cabinet approved the expanded authority of police to bodily frisk individuals for weapons in the absence of a reasonable suspicion.<sup>67</sup> This policy, like the

much-aligned “stop-and-frisk” procedure of New York City, permits police to search the bodies and belongings of any individual with nearly absolute license. Rather than limit police search powers according to a specific legal standard, this policy would enable police to search at will—according to their own intuition or prejudice.

22. The HRA cautions that such expansive and aggressive measures amount to the arbitrary deprivation of liberty, in clear violation of international human rights law. Detentions are permissible only when implemented non-arbitrarily and on the basis of lawful grounds and procedure,<sup>68</sup> thus, the arrests of activists and their families, on the basis of fictitious criminal charges, are prohibited. The expansion of police search powers, without a clear legal standard or restriction, may also yield the arbitrary deprivation of liberty. In reviewing a similar policy enacted by the United Kingdom, the European Court of Human Rights affirmed that “there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer.”<sup>69</sup> Moreover, these measures are particularly susceptible to abusive and discriminatory enforcement: the Palestinian Arab minority in Israel and East Jerusalem will be the most subjected to these measures.

23. International human rights law does permit preventive detention for reasons of public security—but these too are governed by the same strict requirements. According to the United Nations Human Rights Committee, preventive detention “must not be arbitrary, and must be based on grounds and procedures established by law, information of the reasons must be given and court control of the detention must be available as well as compensation in the case of a breach.”<sup>70</sup> Although the State of Israel has derogated from this strict requirement, Israel’s practice of administrative detention exceeds the scope of permissible derogation: detention must always be subject to effective judicial review<sup>71</sup> and may never be arbitrary.<sup>72</sup> Additionally, States must never subject individuals to cruel, inhuman or degrading treatment.<sup>73</sup> International humanitarian law, as applicable in the occupied territory including East Jerusalem, also permits administrative detention in imperative, exigent circumstances. However, it must be subject to effective appellate review<sup>74</sup> and must be reserved for exceptional circumstances.<sup>75</sup>

24. The State of Israel has exceeded these legal limits and has crossed the line into arbitrariness and unlawfulness. Detentions on the basis of false or fictitious charges are arbitrary and unlawful per se. Detentions on the grounds of security, especially when indefinite, may be arbitrary by exceeding what could reasonably be necessary and proportionate for security. The withholding of classified evidence prevents effective judicial review and exacerbates the risk of arbitrariness. Additionally, the U.N. Human Rights Committee has stated that prolonged isolation, as occurs in Israel's practice of security detention, may amount to cruel, inhuman or degrading treatment.<sup>76</sup> The State must be mindful that the right to liberty is a foundational human right whose restriction must be done only when absolutely necessary, proportionate and strictly regulated. When necessary, less restrictive and more proportional measures should be considered, and effective judicial review must be guaranteed. The permanent state of emergency Israel reserves for itself may not be used as a license for the unmitigated abuse of its powers.

### **1.5 SUPPRESSION OF FREE EXPRESSION**

25. It is important to note that in many instances the extreme security measures described above have targeted Palestinian Arab citizen activists in Israel. These policies and practices implicate not only the rights to life and to liberty, but also another foundational human right: the freedom of expression. In some cases, Israeli police have used violence and arrest to suppress the lawful expression of Palestinian Arab citizens, such as by targeting public demonstrators. In others, authorities have sought to criminalize political speech itself, such as by arresting Palestinian Arab citizens of Israel for politically oriented Facebook posts, alleged to constitute "incitement to violence or terror." The developments of recent weeks confirm that the State of Israel is and is becoming exceedingly hostile to expressions of political dissent.

26. International human rights law has enshrined the right to free expression<sup>77</sup> and the right of peaceable assembly.<sup>78</sup> These are lawful activities that cannot be restricted or suppressed simply by virtue of their dissenting character. Nor can the Palestinian Arab minority be subject to discriminatory abridgement of their rights to expression and assembly.<sup>79</sup> Any

restriction of free expression or assembly must be done for a legitimate purpose and subject to the strict principles of necessity and proportionality.<sup>80</sup> Indeed, the Israeli Supreme Court sitting as the High Court of Justice has affirmed that freedom of expression “stands at the top of the liberties upon which our democratic regime is founded.”<sup>81</sup> Yet recent experience has shown that the respect of this utmost liberty is conditional upon the expression’s conformity with the prevailing attitudes of the State. Moreover, it is clear that the Palestinian Arab minority has been and will continue to be the most harshly affected by suppressive measures against speech. The State of Israel must bear in mind that the freedom of expression and public protest—even and especially of dissenting views and the expressions of the minority Arab population—is a healthy, necessary and intrinsic aspect of a viable democracy. It is especially crucial now in this time of violence and repression.

## 1.6 INCITEMENT TO VIOLENCE AGAINST PALESTINIAN ARABS

27. It is ironic that at the same time Israeli authorities have used a heavy hand against the expressions of the Palestinian Arab minority, statements of anti-Arab incitement and hatred have proliferated in Israel. Often, these sentiments verge beyond mere contempt and result in literal violence against the Palestinian Arab minority. Crowds of Jewish extremists have stormed the streets of Jerusalem, demanding revenge for Palestinian attacks with such statements as “We have to kill them all, including the Arab Druze in the army” and “Let the people of Israel enter the gates and kill Arabs.”<sup>82</sup> Though the police attempted to restrain the crowd, they did not disperse it, and the crowd successfully assaulted various Palestinian Arabs in the vicinity. Mob violence directed against Arabs has led to the attack or killing of innocent bystanders, including Palestinian Arabs, Jews and at least one foreigner. In the midst of this mayhem, Jerusalem Mayor Nir Barkat called upon Israeli civilians to take up personal firearms against potential ‘terrorists’: “It’s like a military reserve duty.”<sup>83</sup> Mayor Barkat was seen brandishing an assault rifle in the Palestinian-inhabited Beit Hanina neighborhood of East Jerusalem.

28. The HRA stresses that incitement to hatred and violence is contrary to both the spirit and the letter of international human rights law.<sup>84</sup> It is worrying enough that hateful anti-Arab expression should be given free rein in the State of Israel; it is especially troubling that

government officials would be adding fuel to the flames. The State of Israel must take measures against the spread of racial or national incitement, particularly when agents of the State are responsible, and it must do so in a non-discriminatory manner—i.e., including Jewish Israeli incitement to violence against Arabs. States are responsible not only for the acts of their agents, but also for enabling, by omission or encouragement, violations perpetrated by individuals.<sup>85</sup> This is true for both incitement in and of itself and for the violence that erupts because of it. In this intense time of paranoia and anxiety, the State of Israel must be mindful that incitement easily may trigger spontaneous and volatile acts of violence against the Palestinian Arab minority—by both law enforcement and civilians—which threatens, *inter alia*, their rights to life and to security of person. Just as strongly as Israel condemns incitement by Palestinians against Jews, so too must the State protect its increasingly vulnerable and targeted Arab minority.

## A CLIMATE OF HOSTILITY

None of the above occurs in a vacuum. They are only the outward manifestations, as well as the reinforcements, of an increasingly apparent climate of hostility against the Palestinian Arab minority. Regrettably, the attempt to address the most visible and violent symptoms threatens to obscure the broader context in which that violence occurs. The most readily discernible feature of that climate is the State of Israel's 48-year-long military occupation of the Palestinian territory. For nearly five decades and with no end in sight, the occupation regime has enabled, passively and actively, the continued dispossession, displacement, harassment, immiseration and brutalization of the Palestinian people. While the legal status and issues of the Arab minority within the State of Israel are different from those in the occupied territory, their plight is simply a different dimension of the concerted and systematic disenfranchisement of the Palestinian people.

A recent report by the Israel Democracy Institute confirms this dire reality<sup>86</sup>:

- The majority (59.3%) of both Jewish and Palestinian Arab citizens of Israel agree that Palestinian Arabs face discrimination.
- The majority (73.6%) of Jewish Israelis prefer important decisions of security to be made by Jewish majorities, rather than by Arabs, and 53.6% of Jewish Israelis would require Jewish majorities for decisions of governance, society and the economy.
- More than half (56.6%) of Jewish Israelis oppose the inclusion of Arab parties and ministers in government.
- More than half (55.7%) of Jewish Israelis do not believe it is possible for an Arab to identify as Palestinian while remaining loyal to the State of Israel.
- 42.3% of Jewish Israelis believe that Palestinian Arab citizens support the destruction of the State; and 39% believe that Palestinian Arab citizens are a security threat.

It is plainly clear that the Palestinian Arab minority in Israel is unwelcome in its own country. The following section will address only a few issues of discrimination through the lens of international human rights law.

## 2.1 IMPUNITY FOR CRIMES AGAINST PALESTINIAN ARABS

29. Jewish crime targeting Palestinian Arabs is an often-ignored but well-documented phenomenon that has occurred not only in this recent escalation of tension, but also continuously throughout the history of the occupation and the State of Israel itself. These crimes often fall under the rubric of “price tag” attacks, perpetrated by Jewish extremists to retaliate against actions or measures perceived to harm the unlawful settlement enterprise. Such crimes, whether ideologically or racially motivated, occur both in the State of Israel and in the occupied territory; they have gained increasing prevalence in recent months. Very often, Israeli authorities are institutionally unwilling to prevent or to prosecute these crimes.<sup>87</sup> In some cases, the Israeli military has directly facilitated, by omission and by act, attacks by Jewish Israelis against Palestinians.<sup>88</sup> It is against this backdrop, nurtured by inflammatory and racist rhetoric by Israeli political leaders, that Jewish violence against the Palestinian Arab minority can thrive.

30. Racially motivated vandalism and destruction of property regularly beset the Palestinian Arab minority. The most prominent recent instance was the June 2015 arson attack against the historic Church of the Multiplication of Loaves and Fish in Tabgha, Israel. One month later, the homes of the Dawabsheh family in the West Bank village of Duma were firebombed with the residents inside, leading to critical injuries and three deaths, including the death of an 18-month-old infant. The response by Israeli authorities to these vicious crimes, as compared to their handling of Palestinian Arab suspects, is revealing. Though dozens of churches and monasteries have been attacked in recent years, only in June were suspects arrested and charged for these crimes. Despite intelligence linking Jewish suspects to the Duma attack in July, no indictment had been filed until January 2016. Moshe Orbach, a Jewish extremist implicated in both attacks as well as in previous ones, had been released to house arrest.<sup>89</sup>

31. The relative leniency with which the State of Israel treats Jewish extremism and crime has fostered a culture that does not take seriously the threats to Palestinian Arabs’ safety and security. The current spate of Israeli vigilante and mob “justice” only compounds this

stark reality. The State of Israel is obligated not only to refrain from violating the human rights of its Palestinian Arab minority but also to take effective measures to prevent violations by private individuals.<sup>90</sup> The State must guarantee the equal and non-discriminatory protection of the law. This is especially crucial now as violence to the Palestinian Arab minority threatens to exacerbate already heightened tensions. Indeed, the stated purpose of some Jewish extremists has been deliberately to deteriorate the security situation.<sup>91</sup> The past two months have brought about the realization of these extremists' wishes.

## 2.2 SUFFOCATION OF CIVIL SOCIETY

32. Prominent voices in Israeli government and society have been engaged in a sustained effort to undermine local civil society. Organizations that are critical of the policies of the State of Israel, particularly groups that express the concerns of the Palestinian Arab minority, face the brunt of this effort. Tzipi Hotevely, the Israeli deputy foreign minister, ordered Israeli officials "to create a diplomatic dialogue about Israel, putting a red line around the activities of BDS organizations that support the boycott of Israel, working for the [Palestinian] right of return, or slander IDF soldiers and delegitimize IDF soldiers."<sup>92</sup> Increasingly in the rhetoric of public and government figures, criticism of the State amounts to treason and critical voices to a fifth column.

33. Currently, Israeli legislation already penalizes the free expression of critical views. For example, the Nakba is a seminal moment in the history of Palestinian consciousness; the amended Budget Foundations Law withholds funding from public institutions that commemorate it. Pursuant to the Anti-Boycott Law, groups or individuals who advocate a boycott of Israel may face civil sanctions and be subject to monetary damages. Last April, the Supreme Court of Israel upheld the legality of this draconian law.<sup>93</sup> Lawmakers have sought to restrict or to tax donor funding of human rights groups. Recently, the cabinet committee approved a bill that would label such NGOs as "foreign state entities," requiring them to note their foreign funding on all publications, in meetings and writings with public representatives, and on special identification tags worn in the Knesset. Many Israeli

organizations that advocate for human rights issues will be affected by such laws, all of which serve to intimidate and to ostracize these organizations. Such measures would restrict and, in some cases, effectively remove funding for these groups.

34. On 17 November, the State of Israel criminalized the northern branch of the Islamic Movement in Israel. This movement is an integral part of the Palestinian Arab minority in Israel, functioning on a social, political and religious level, with thousands of members and supporters. The Islamic Movement operates many charitable and social welfare programs that serve the Palestinian Arab minority. It is now a criminal offense, punishable by imprisonment, for any organization or individual to belong to the northern Islamic Movement or to assist it in any way. The State of Israel had sought repeatedly to outlaw the movement, despite the lack of evidence linking it with terrorism.<sup>94</sup> The move was a political decision made pursuant to an Emergency Regulation dating to the British Mandate of Palestine. Without any hearing or process, and without presenting any substantive evidence, the State has effectively outlawed and criminalized a great and sizable portion of Palestinian Arab public life. Any land or property owned by the movement is liable to be confiscated and 19 charitable organizations affiliated with the movement have been already shut down.

35. International human rights law protects the freedoms of expression and assembly and permits the restriction thereof only to protect the rights and reputations of others or to ensure security and public order.<sup>95</sup> Even permissible restrictions must be compatible with the object and purpose of protecting human rights. Israel's hostile attitude toward critical groups has essentially undermined that principle, by treating criticism of the State as a national threat and removing dissent from the sphere of public debate. Legislation such as the Anti-Boycott Law have made certain opinions and expressions entirely anathema, while bills that seek to restrict or to label foreign public funding have a chilling effect on free expression. They are also discriminatory, in that they largely target groups critical of State policy while exempting other foreign-funded groups that advance, for example, Israel's unlawful settlement enterprise. This is contrary both to human rights and to the promotion of human rights. Dissenting views are extremely crucial now as a bulwark against the

rampant, systematic abuse of human rights; moreover, the tremendous work of Israeli civil society is an outlet for dissent that may otherwise manifest as violence. By restricting or limiting the non-violent means of resistance, the State has left the voiceless and the marginalized with few alternatives.

36. The recent criminalization of the northern Islamic Movement confirms and compounds these fears. The State of Israel relied on an archaic emergency regulation dating to the British Mandate to suppress a legitimate and inseparable part of the Palestinian Arab minority's public life. This was done without any hearing or presentation of evidence linking the movement to security threats. Indeed, the Israeli security establishment specifically denied sufficient links between the movement and terrorism, cautioning against any measure that would alienate and incite the Palestinian Arab minority. Never the less, the State of Israel has used a political rationale to impermissibly restrict the rights and freedoms of the Palestinian Arab minority. The HRA cautions that this will set a dangerous precedent, moving forward, vis-à-vis the State of Israel's treatment of "undesirable" groups and organizations.

### **2.3 MARGINALIZATION FROM PUBLIC LIFE**

37. The Palestinian Arab minority of Israel faces widespread and systemic discrimination in nearly all aspects of life. The HRA has worked since 1988 to shed light on these issues, which include, *inter alia*, housing, land rights, infrastructure, employment, social benefits, citizenship and criminal justice. According to the most recent poverty report by the National Insurance Institute, the poverty rate of the Palestinian Arab minority stood in 2014 at 52.6%, with a 8% increase in depth and 7% increase in severity since 2013.<sup>96</sup> Last year, a coalition of Palestinian Arab leaders proposed a plan for the State budget to help close the gaps of inequality by allocating resources more equitably, which the government rejected. Recently, the government approved a five-year plan for budgetary resources that, while allocating moneys to the Palestinian Arab minority, comes up significantly short of the proposed plan and contains no monitoring mechanism for implementation.

38. Just prior to the recent escalation of violence in Israel and in the occupied territory, the Palestinian Arab minority suffered a great blow to their access to education. Public funding of Arab Christian schools—which serve a sizable portion of the Palestinian Arab minority, including both Christians and Muslims—was severely cut, leading to a month-long general school strike that resulted in no substantive change to the budgetary allocation. In comparison, Orthodox Jewish schools, many of which do not meet standard educational requirements, continue to receive complete funding by the State.

39. All of this is compounded by the sustained attempts of Jewish Israeli Knesset members to pass the controversial *Basic Law: Nation-State of the Jewish People*. Although different versions of this bill exist, the primary thrust behind all of them is the codification of the State of Israel's national identity as primarily Jewish. In the State of Israel, a civic "Israeli" nationality does not exist.<sup>97</sup> Rather, persons are grouped according to their ethnic or religious "nationalities": Jewish, Arab, Druze, etc. The "Jewish State" bill would subordinate all minority nationalities—particularly the Palestinian Arab minority, which constitutes 20% of the Israeli population—to the Jewish majority. This is problematic symbolically as well as legally, for the State of Israel lacks an explicit constitutional guarantee of equality. Indeed, the *Basic Law: Human Dignity and Liberty* and the *Basic Law: Freedom of Occupation*, which function as a quasi-constitutional bill of rights, subject their rights to "the values of the State of Israel." The Jewish State Law would make clear that those "values" imply the privileged interests of one ethnoreligious group over all others.

40. The Palestinian Arab minority occupies a precarious position that is constantly pushed to the margins of Israeli society. The systemic discrimination experienced by Palestinian Arabs—together with statements such as Prime Minister Netanyahu's regarding Arab voters, and laws designed to privilege Jewish Israelis—serves only to alienate the Palestinian Arab minority. Any assessment of violence must be situated within this context of continuous alienation and disenfranchisement: the pattern of violence and repression is both a symptom and a reinforcement of the Palestinian Arab minority's circumstances.

## RECOMMENDATIONS

On the basis of the above, the Arab Association for Human Rights calls upon the international community to take effective and immediate measures, in their dealings with the State of Israel, to ensure the State abides fully by its obligations under international law. Specifically, we demand that the State:

1. Exercise great restraint and caution when using force in the course of law enforcement, and conduct thorough investigations of all instances of unlawful killings;
2. Bring its criminal sentencing in line with the principles of proportionality and necessity, apply criminal sentences only to the individuals found guilty in a court of law, and cease immediately the policy of punitive house demolitions;
3. Refrain from the revocation of citizenship or residency rights as an individual or collective punishment;
4. Discontinue all instances of arbitrary detention, reevaluate the lawful limits of police search powers, and grant immediate and effective judicial review to all detained persons;
5. Desist from any arbitrary or unnecessary law enforcement measures that suppress the lawful activities and expression of Palestinian Arab activists;
6. Prohibit and prevent all expressions of incitement to violence and discrimination against the Palestinian Arab minority of Israel or the Palestinians of the occupied territory, particularly when committed by agents of the State, and including acts of vigilante violence.

Additionally, the HRA emphasizes that peace, security and stability can only be accomplished by addressing the underlying causes—not just the symptoms—of outbreaks of violence. To that end, we reiterate the absolute imperative to:

1. Take effective measures to prevent and to punish crime perpetrated against Palestinian Arabs both in Israel and in the occupied Palestinian territory;
2. Discontinue the concerted efforts to harass and to restrict the activities and expression of civil society organizations, who are instrumental to the realization of a human rights regime;
3. Guarantee the full equality and empowerment of the Palestinian Arab minority of Israel, including by effecting a more equitable allocation of budgetary resources for the impoverished Arab minority;
4. Restrict any attempt, by the State or by individuals, to alter the status quo of al-Aqsa in Jerusalem;
5. Begin immediately the process of ending the unlawful occupation and settlement of the territories captured in 1967, on the basis of international human rights law, international humanitarian law and the principle of self-determination.

<sup>1</sup> See, e.g., *Funerals Put Spotlight on Israeli ‘Unlawful Killings’*, AL-JAZEERA (31 Oct. 2015), <http://www.aljazeera.com/news/2015/10/west-bank-funerals-palestinian-israelis-killed-151031100457946.html>; *Palestinians Killed in the OTP and Israel Since 1 October 2015*, AL-HAQ (19 Oct. 2015), <http://alhaq.org/documentation/field-updates-2015/971-palestinians-killed-in-the-opt-since-1-october-2015>.

<sup>2</sup> See Nir Hasson, *Israel Police Refuse to Release Body of Killed Palestinian to Family for Autopsy Before Burial*, HAARETZ (11 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.679831>.

<sup>3</sup> See Noa Shpigel & Jack Khoury, *Arab MKs Slam Close-Range Shooting of Knife-wielding Woman*, HAARETZ (9 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.679649>.

<sup>4</sup> See *Palestinian Woman Shot and Injured in Afula Cleared of All Charges*, MA’AN NEWS (28 Oct. 2015), <http://www.maannews.com/Content.aspx?id=768537>.

<sup>5</sup> See Barak Ravid, *Israel’s Security Cabinet Sets 4-year Minimum Sentence for Stone-throwers*, HAARETZ (24 Sep. 2015), <http://www.haaretz.com/israel-news/.premium-1.677421>.

<sup>6</sup> See *Security Forces Must Immediately Cease Use of Ruger Rifle and 0.22 Caliber Bullets*, B’TSELEM (6 Oct. 2015), [http://www.btselem.org/press\\_releases/2015106\\_cease\\_use\\_of\\_022\\_inch\\_bullets](http://www.btselem.org/press_releases/2015106_cease_use_of_022_inch_bullets).

<sup>7</sup> International Covenant on Civil and Political Rights art. 6(1) (1976) [hereinafter “ICCPR”].

<sup>8</sup> ICCPR art. 9(1).

<sup>9</sup> See Universal Declaration of Human Rights art. 3 (1948) [hereinafter “UDHR”].

<sup>10</sup> *Basic Principles on the Use of Firearms by Law Enforcement Officials*, U.N. Doc. A/CONF.144/28/Rev.1, 8th U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 Aug. to 7 Sep. 1990.

<sup>11</sup> Aharon Barak, the former President of the Supreme Court of Israel, explores these principles and Israel’s incorporation of them in *Proportional Effect: The Israeli Experience*, 57 UTLJ 369 (2007).

<sup>12</sup> See HJC 2056/04 Beit Sourik Village Council v. Israel [2006]. In this seminal case, the Supreme Court of Israel sitting as the High Court of Justice invalidated the construction of a security barrier through a Palestinian village, even though the barrier was necessary to achieve a proper security interest, because of its deleterious effect on Palestinians’ human rights. The Court accepted the validity of an alternative route that maximized the protection of human rights while permitting a slight loss in security.

<sup>13</sup> INTERNATIONAL COMMITTEE OF THE RED CROSS, INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW 81–82 (2008).

<sup>14</sup> HCJ 769/02 Pub. Comm. Against Torture in Israel v. Gov’t of Israel para. 40 [2005].

<sup>15</sup> See ICCPR art. 4(2).

<sup>16</sup> See Jonathan Lis, *Ministers Approve Harsher Punishments for Rock-throwers*, HAARETZ (12 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.679938>.

<sup>17</sup> See Yaniv Kubovich, *Jews Throw Stones Too, but Arabs Get Harsher Sentences*, HAARETZ (28 Sep. 2015), <http://www.haaretz.com/israel-news/.premium-1.677685>.

<sup>18</sup> See Jonathan Lis, *Ministers Approve Harsher Punishments for Rock-throwers*, HAARETZ (12 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.679938>.

<sup>19</sup> See Barak Ravid & Nir Hasson, *Netanyahu: Israel Will Expedite Demolition of Terrorists’ Homes*, HAARETZ (4 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.678824>.

<sup>20</sup> ICCPR art. 9(1).

<sup>21</sup> *Standard Minimum Rules for the Treatment of Prisoners*, para. 57, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

<sup>22</sup> *Standard Minimum Rules for Non-Custodial Measures*, U.N. Doc. A/RES/45/110 (1990) [hereinafter “Tokyo Rules”]; see also ICCPR art. 10(3).

<sup>23</sup> See *Report of the Working Group on Arbitrary Detention*, paras. 47, 61, U.N. Doc. A/HRC/22/44 (2012) (explaining that the prohibition against arbitrary detention—which includes the principles of necessity, reasonableness and proportionality—is non-derogable).

<sup>24</sup> Convention on the Rights of the Child art. 37(b) (1990).

<sup>25</sup> See Tokyo Rules at 8.1.

<sup>26</sup> American Convention on Human Rights art. 5(3) (1978).

<sup>27</sup> African Charter on Human and Peoples’ Rights art. 7 (1986).

<sup>28</sup> Geneva Convention (III) Relative to the Treatment of Prisoners of War art. 87, 12 Aug. 1949.

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- <sup>29</sup> Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 33(1), 12 Aug. 1949 [hereinafter “Geneva IV”].
- <sup>30</sup> See *General Comment 29: States of Emergency*, U.N. Human Rights Committee, para. 11, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).
- <sup>31</sup> International Covenant on Economic, Social and Cultural Rights art. 11(1) (1976) [hereinafter “ICESCR”].
- <sup>32</sup> See ICESCR arts. 4, 5; see generally *General Comment 14: The Right to the Highest Attainable Standard of Health*, para. 28, U.N. Economic and Social Council, U.N. Doc. E/C.12/2000/4 (2000).
- <sup>33</sup> See Geneva IV art. 53.
- <sup>34</sup> See ICCPR art. 9(5); see also *Articles on the Responsibility of States for Internationally Wrongful Acts* art. 1, U.N. Doc. A/CN.4/L602/Rev.1, 26 July 2001.
- <sup>35</sup> See ICCPR art. 26; International Convention on the Elimination of All Forms of Racial Discrimination arts. 5(a), (e)(iii) [hereinafter “ICERD”].
- <sup>36</sup> See Ilan Lior, *Israel Plans to Revoke Citizenship of Israeli Arab Terrorists*, HAARETZ (15 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.680714>.
- <sup>37</sup> See Judah Ari Gross et al., *Minister Says Residency of 19 East Jerusalem Terrorists to Be Revoked*, TIMES OF ISRAEL (14 Oct. 2015), <http://www.timesofisrael.com/minister-says-residency-of-19-east-jerusalem-terrorists-to-be-revoked/>.
- <sup>38</sup> See, e.g., *Jerusalem Mayor: Revoke Citizenship of Terrorists’ Families*, HAARETZ (21 Nov. 2014), <http://www.haaretz.com/israel-news/1.627759>; *Expel Family of Beersheba Terrorist to Gaza, Minister Says*, TIMES OF ISRAEL (19 Oct. 2015), <http://www.timesofisrael.com/expel-family-of-beersheba-terrorist-to-gaza-minister-says/>; Patrick Strickland, *Israel to Revoke Jerusalem Residency of Palestinians*, AL-JAZEERA (16 Oct. 2015), <http://www.aljazeera.com/news/2015/10/israel-revoke-jerusalem-residency-palestinians-151015125531507.html>.
- <sup>39</sup> See Barak Ravid, *Netanyahu Mulls Revoking Residency of Palestinians Beyond East Jerusalem Separation Barrier*, HAARETZ (25 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.682276>.
- <sup>40</sup> See, e.g., UDHR art. 15(1).
- <sup>41</sup> See, e.g., UDHR art. 15(2).
- <sup>42</sup> See *Report on Human Rights and Arbitrary Deprivation of Nationality*, para. 4, U.N. Doc. A/HRC/25/28, 19 Dec. 2013.
- <sup>43</sup> See Convention on the Reduction of Statelessness arts. 7(4) & (5), 8(2) & (3) (1961).
- <sup>44</sup> See *Report on Human Rights and Arbitrary Deprivation of Nationality*, para. 4, U.N. Doc. A/HRC/25/28, 19 Dec. 2013.
- <sup>45</sup> See *id.* at para. 31.
- <sup>46</sup> See ICESCR art. 9.
- <sup>47</sup> See *id.* at art. 11(1).
- <sup>48</sup> See *id.*
- <sup>49</sup> See *id.* at art. 6(1).
- <sup>50</sup> See *id.* at art. 13(1).
- <sup>51</sup> See *id.* at art. 10(1).
- <sup>52</sup> See *id.* at art. 12(1).
- <sup>53</sup> See ICCPR art. 12(1).
- <sup>54</sup> See *id.* at art. 12(2).
- <sup>55</sup> See *id.* at art. 12(4).
- <sup>56</sup> See *id.* at art. 12(1).
- <sup>57</sup> See Geneva IV art. 49.
- <sup>58</sup> See *id.* at arts. 26, 27.
- <sup>59</sup> See, e.g., HCJ 2056/04 Beit Sourik Village Council v. Israel [2006].
- <sup>60</sup> See HCJ 7052/03 Adalah v. Minister of the Interior [2006].
- <sup>61</sup> See ICERD art. 5(d)(iii).
- <sup>62</sup> See, e.g., U.N.S.C. Res. 478, U.N. Doc. S/RES/478, 20 Aug. 1980.
- <sup>63</sup> See Geneva IV art. 47.
- <sup>64</sup> See *Israeli Police Acting Above the Law, Taking Brutal Measures to Suppress Legitimate Protest of Palestinian Citizens of Israel*, ADALAH (11 Oct. 2015), <http://www.adalah.org/en/content/view/8652>.

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- <sup>65</sup> See Jack Khoury, *Israeli Arab Placed Under Administrative Detention for First Time in Over a Decade*, HAARETZ (16 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.680703>.
- <sup>66</sup> See Nir Hasson, *For First Time, 3 East Jerusalem Minors Imprisoned Without Trial*, HAARETZ (22 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.681820>.
- <sup>67</sup> See Jonathan Lis, *Israeli Cabinet Backs Bill Allowing Police to Frisk Anyone*, HAARETZ (18 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.681082>.
- <sup>68</sup> See ICCPR art. 9(1).
- <sup>69</sup> Gillan & Quinton v. United Kingdom, 4158/05 para. 85 [2010] ECHR 28 (12 Jan. 2010).
- <sup>70</sup> *General Comment 8: Right to Liberty and Security of Persons*, para. 4, U.N. Human Rights Committee, U.N. Doc. HRI/GEN/1/Rev.1 (1994).
- <sup>71</sup> See *Report of the Human Rights Committee*, para. 317, U.N. Doc. A/53/40 (Vol. 1, 1998).
- <sup>72</sup> See *Report of the Working Group on Arbitrary Detention*, paras. 47, 61, U.N. Doc. A/HRC/22/44 (2012).
- <sup>73</sup> ICCPR art. 7.
- <sup>74</sup> See Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 78, 12 Aug. 1949.
- <sup>75</sup> See OSCAR UHLER & HENRI COURSIER, COMMENTARY ON GENEVA CONVENTION IV 368 (Jean Pictet ed., 1958).
- <sup>76</sup> See *Report of the Human Rights Committee*, para. 316, U.N. Doc. A/53/40 (Vol. 1, 1998).
- <sup>77</sup> See, e.g., ICCPR art. 19(2).
- <sup>78</sup> See, e.g., ICCPR art. 21.
- <sup>79</sup> See ICERD art. 5(d)(viii), (ix).
- <sup>80</sup> See *General Comment 34: Freedoms of Opinion and Expression*, para. 22, U.N. Human Rights Committee, U.N. Doc. CCPR/C/GC/34 (2011); *General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant*, para. 6, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).
- <sup>81</sup> HCJ 606/93 Kidum Entrepreneurship & Publishing Ltd v. Broadcasting Authority [1994].
- <sup>82</sup> Nir Hasson, *Let the People of Israel Enter the Gates and Kill Arabs*, HAARETZ (4 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.678800>.
- <sup>83</sup> Nir Hasson, *Jerusalem Mayor Calls on Civilians to Carry Weapons in Wake of Terror Attacks*, HAARETZ (8 Oct. 2015), <http://www.haaretz.com/israel-news/.premium-1.679383>.
- <sup>84</sup> See, e.g., ICCPR art. 20; ICERD art. 4.
- <sup>85</sup> See *General Comment 31: Nature of the General Legal Obligation on State Parties to the Covenant*, para. 8, U.N. Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).
- <sup>86</sup> See ISRAEL DEMOCRACY INSTITUTE, ISRAELI DEMOCRACY INDEX: SELECTED HIGHLIGHTS (2015).
- <sup>87</sup> See, e.g., VALENTINA AZAROV, INSTITUTIONALISED IMPUNITY: ISRAEL'S FAILURE TO COMBAT SETTLER VIOLENCE IN THE OCCUPIED TERRITORY (Al-Haq, 2013).
- <sup>88</sup> See, e.g., Michael Schaeffer Omer-Man, *IDF Soldiers Escort Masked Settlers Attacking Palestinian Village*, 972 MAGAZINE (8 Jan. 2014), <http://972mag.com/watch-idf-soldiers-escort-masked-settlers-attacking-palestinian-village/85268/>.
- <sup>89</sup> See Noa Shpigel, *Arson Suspect in Galilee Torching Charged with Sedition*, HAARETZ (14 Aug. 2015), <http://www.haaretz.com/israel-news/1.671187>; Isabel Kershner, *Israeli Justice Is Seen to Be Often Uneven*, NY TIMES, 2 Aug. 2015 at A4.
- <sup>90</sup> See *General Comment 31: Nature of the General Legal Obligation on State Parties to the Covenant*, para. 8, U.N. Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).
- <sup>91</sup> See In *'Rebel Manifesto,' Meir Kahane's Grandson Calls to Bring Down State*, TIMES OF ISRAEL (4 Aug. 2015), <http://www.timesofisrael.com/meir-kahanes-grandson-arrested-for-far-right-activity-2/>.
- <sup>92</sup> Harriet Sherwood, *Human Rights Groups Face Global Crackdown 'Not Seen in a Generation'*, THE GUARDIAN (26 Aug. 2015), <http://www.theguardian.com/law/2015/aug/26/ngos-face-restrictions-laws-human-rights-generation>.
- <sup>93</sup> See HCJ 2072/12 Coalition of Women for Peace v. Minister of Finance [2015].
- <sup>94</sup> See Barak Ravid, *Shin Bet Head Says There Is Not Sufficient Cause to Outlaw Islamic Movement*, HAARETZ (2 Nov. 2015), <http://www.haaretz.com/israel-news/.premium-1.683671>.
- <sup>95</sup> See ICCPR art. 19(2), (3).
- <sup>96</sup> See Lidar Gravé-Lazi, *Annual Report Paints Grim Picture of Poverty in Israel*, JPOST (9 Dec. 2015), <http://www.jpost.com/Israel-News/1-in-5-people-living-in-poverty-in-Israel-436770>.
- <sup>97</sup> See CivA 8573/08 Ornan v. Ministry of Interior [2013].