



**Palestinian Centre for Human Rights  
Submission to the UN Committee on the Elimination of Racial  
Discrimination**

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## 1. Introduction

The Palestinian Center for Human Rights (PCHR) appreciates this opportunity to submit information to the UN Committee on the Elimination of Racial Discrimination, (hereinafter, 'the Committee') in light of the upcoming review of Israel's state report scheduled for 14-16 February 2012.<sup>1</sup>

Israel is under an international legal obligation to apply the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>2</sup> (hereinafter, 'the Convention'), in the occupied Palestinian territory (oPt). This was clearly reiterated by the Committee in its concluding observations in 2007.<sup>3</sup> Israel is thus under a concomitant obligation to report fully on the measures enacted to respect and ensure respect of the Convention in the oPt.<sup>4</sup>

Noting Israel's persistent failure to abide by its legal obligations vis-à-vis the application of the Convention in the oPt, including with respect to reporting duties, this submission will address Israel's discriminatory implementation of the right to justice of the Palestinian people. In particular, this submission will address the right to access justice, the right to equal treatment before the law, and the right to the equal protection of the law, as evidence of practices which discriminate against Palestinian residents of the oPt as a national and ethnic group. These practices are enacted as a result of an official state policy endorsed by the Israeli High Court of Justice (HCJ).

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<sup>1</sup> CERD/ C/ISR/14-16, of 13 January, 2011, available at <http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD-C-ISR-14-16.doc>, accessed on 18 January 2012.

<sup>2</sup> Israel ratified the Convention on 3 January, 1979.

<sup>3</sup> CERD/C/ISR/CO/13, of 14 June, 2007, § 32, available at <http://unispal.un.org/UNISPAL.NSF/0/041AB84D2F05080C85257302004A9963>, accessed on 18 January 2012.

<sup>4</sup> CERD, General Recommendation n.30, *Discrimination Against Non Citizens*, 1 January, 2004, § 5, available at <http://www.unhcr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d>, accessed on 18 January 2012.

The findings in this report are based on PCHR’s legal assistance to civilian victims as well as monitoring and documentation activities;<sup>5</sup> when necessary, information from other sources – such as non-governmental organizations, UN bodies, and so on – has also been incorporated.

## 2. Discrimination and National Justice Systems, as regulated by the Convention

As specified by the Committee, under the Convention discrimination “includes purposive or intentional discrimination and discrimination in effect. Discrimination is constituted not simply by an unjustifiable distinction, exclusion or restriction but also by an unjustifiable preference...on grounds of race, colour, descent, or national or ethnic origin”.<sup>6</sup> Moreover, “differential treatment will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”.<sup>7</sup>

As will be shown, Israeli policies with respect to Palestinians’ access to justice evidences clearly discriminatory characteristics and results in, *inter alia*, a violation of the right to justice.<sup>8</sup>

The Committee has underlined the importance of eliminating discrimination in the administration of justice by acknowledging that “when racial or ethnic discrimination does exist in the administration and functioning of the system of justice, it constitutes a particularly serious violation of the rule of law, the principle of equality before the law, the principle of fair trial and the right to an independent and

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<sup>5</sup> See, PCHR, *Genuinely Unwilling: An Update. The Failure of Israel’s Investigative and Judicial System to Comply with the Requirements of International Law, with particular regard to the Crimes Committed during the Offensive on the Gaza Strip*, August 2010, available at <http://www.pchrgaza.org/files/2010/Genuinely%20Unwilling%20-%20An%20Update.pdf>.

<sup>6</sup> CERD, General Recommendation n.32, *The Meaning and Scope of Special Measures in the ICERD*, 24 September, 2009, § 7, available at [http://www2.ohchr.org/english/bodies/cerd/docs/GC32\\_English.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/GC32_English.pdf), accessed 18 January 2012.

<sup>7</sup> *Ibid.*, § 8.

<sup>8</sup> Relevant provisions regarding the right to justice are contained in the Convention as well as in the International Covenant on Civil and Political Rights, ICCPR. See § 3 below.

impartial tribunal, through its direct effect on persons belonging to groups which it is the very role of justice to protect”.<sup>9</sup>

### 3. The Right to Justice under the Convention and International Law

Under the Convention, and other international human rights law treaties to which it is a state party, Israel is bound by the obligation to guarantee the Palestinian populations’ right to justice on a non-discriminatory basis, including equality of access to justice, equality of treatment and protection before the law.

The Preamble of the Convention affirms that “all human beings are equal before the law and are entitled to equal protection of the law”. Specific provisions spell out the consequent obligation of State parties “to guarantee the right to everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law” (art. 5). This include “the right to equal treatment before tribunals and all other organs administering justice” (art. 5.a) and “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or any other individual group or institution”. (art. 5.b).

The right to justice is also enshrined in the ICCPR<sup>10</sup>, which as confirmed by the International Court of Justice remains applicable “at all times” to the oPt.<sup>11</sup> Under the ICCPR, and in line with the Convention, Israel is required to ensure Palestinians’ right to an effective remedy, including reparation (art.2), the right to a fair trial (art.14), and the right to the equal protection of the law (art. 26).

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<sup>9</sup> CERD, General Recommendation XXXI *on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, A/60/18 of 03 October, 2005, available at [http://www2.ohchr.org/english/bodies/cerd/docs/GC31Rev\\_En.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/GC31Rev_En.pdf), accessed 18 January 2012.

<sup>10</sup> Israel ratified the ICCPR on 3 October, 1991.

<sup>11</sup> ICJ, *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, July 2004, § 111, available at <http://www.icj-cij.org/docket/files/131/1671.pdf>, accessed on 19 January, 2012.

The Committee has specifically pointed out the concomitant application of the Convention and other human rights instruments; the Convention “should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights”.<sup>12</sup>

Moreover, conventional and customary international humanitarian law, IHL, (i.e. art.146 of the IV Geneva Convention of 1949), concurrently applicable in the Israeli-Palestinian context, demands Israel to comply with the obligations to investigate, search for and prosecute alleged perpetrators of international crimes<sup>13</sup> and to enact appropriate legislation.

If responsible for a violation of international law, a state incurs the concomitant civil responsibility to the benefit of the victims since under customary international humanitarian law (and human rights law<sup>14</sup>) “a State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused”.<sup>15</sup>

Therefore Palestinian victims seeking truth and judicial redress in both civil and criminal cases for violations committed by Israel (including its citizens) are entitled to the legal protection afforded by international humanitarian and human rights law, including the Convention and the ICCPR.

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<sup>12</sup> CERD, General Recommendation n.30, op.cit., part I, § 2. Equally for all arrested persons, CERD, General Recommendation XXXI, op.cit., § 23.

<sup>13</sup> International crimes, such as grave breaches of the Geneva Conventions and other war crimes, crimes against humanity and torture, are offences of such seriousness that affect the international community as whole and may be investigated and castigated through the instrument of the universal jurisdiction.

<sup>14</sup> In this sense see UN General Assembly, *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, U.N. Doc. A/Res/60/147 of 16 December, 2005, available at <http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147>, accessed on 21 January, 2012.

<sup>15</sup> International Committee of the Red Cross, ICRC, Rule 150, *Study on Customary International Humanitarian Law*, 2005, available at <http://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>, accessed on 25 January, 2012.

## 4. The right to access justice

The right to access justice on an equal and non-discriminatory basis is essential to a rule of law system, and its violation will fundamentally compromise any justice system.

From its long-standing experience in providing legal assistance to civilian victims on free-of-charge basis, PCHR has consistently claimed that the Israeli authorities systematically discriminate against Palestinians in the exercise of their right to access justice, including compensation. In particular Palestinian victims from the Gaza Strip, including the thousands of victims of Operation *Cast Lead*<sup>16</sup>, are currently faced with a number of significant and discriminatory hurdles which effectively prevent them from accessing justice before Israeli courts, in both civil and criminal cases, in violation of their fundamental rights and Israel's obligations under international law. As recognized by the UN Fact-Finding Mission on the Gaza Conflict, considered in combination with other human rights violations committed in the context of Israel's illegal closure of the Gaza Strip, this may constitute the crime against humanity of persecution.<sup>17</sup>

In pursuing compensation (tort) claims before an Israeli court, residents of the Gaza Strip face a number of obstacles. Two issues in particular evidence a discriminatory character and are therefore relevant to this submission: monetary and physical obstacles.

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<sup>16</sup> Israel's military operations in the Gaza Strip of 27 December 2008-18 January 2009 caused the death of 1,419 people, of whom 1,182 were civilians, and the injury of further 5,300, as well as extensive damages to private and public properties. See PCHR, *Targeting Civilians*, October 2009, available at [http://www.pchrgaza.org/files/Reports/English/pdf\\_spec/gaza%20war%20report.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_spec/gaza%20war%20report.pdf).

<sup>17</sup> Report of the UN Fact Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September, 2009, § 75, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>, accessed on 23 January, 2012.

#### 4.1. Monetary barrier

Based on article 519 of the Israeli civil code, the Court can require the payment of a court insurance/guarantee before court proceedings can begin. PCHR believes that this guarantee is often applied in a discriminatory manner since in practice it is typically activated only against Palestinian claimants.

The imposition of a guarantee is not mandatory, and its exact value is determined on a case-by-case basis by the court. In PCHR's experience, for compensation claims relating to property this amount is generally determined in line with the total value of the property, whereas for death or injury there is no set figure. In the past, approximately NIS 10,000 (about US \$2650) was imposed, however, the guarantee can reach significantly higher amounts. In recent cases brought by PCHR relating to Operation *Cast Lead*<sup>18</sup>, each claimant was required to pay a guarantee of NIS 20,000 (about US \$5,300). If this amount is not paid within 120 days further proceedings are barred.

The imposition of a guarantee per claimant results in the abhorrent situation whereby the greater the violation, the greater the guarantee, and therefore the greater the monetary barrier to justice.

PCHR filed a number of petitions before the Israeli High Court of Justice challenging the decision to impose a guarantee, or requesting a decrease in the amount imposed. In response, the HCJ rejected PCHR's arguments and upheld the regime of guarantees as requested by the state prosecution.<sup>19</sup>

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<sup>18</sup> For instance, the Olaiwa family (9 claimants), the Abdul Dayem family (22 claimants), in PCHR, *Israeli Courts Issues Two Decisions Denying Palestinians Access to Justice, Place Prohibitive Price on Judicial Remedy*, Press releases section, 19 September, 2011, and the Samouni family (62 claimants), in PCHR, *Status of Criminal and Civil Complaints Submitted to Israeli Authorities on Behalf of Victims of Operation Cast Lead*, Fact Sheets section, 18 January, 2012, available at [www.pchrgaza.org](http://www.pchrgaza.org).

<sup>19</sup> PCHR, *Israeli Courts Insist on Decisions Depriving Palestinian Victims of Access to Justice and Judicial Remedy and Making It Impossible*, Press releases section, 12 January, 2012 available at [www.pchrgaza.org](http://www.pchrgaza.org).



The imposition of prohibitively large court guarantee fees – in what PCHR believes evidences a discriminatory manner - creates an insurmountable financial barrier to justice, denying victims' right to access justice in violation of Israel's obligations under the Convention. Few victims in Gaza can afford to pay the court insurance, and are therefore forced to drop their cases.

PCHR represent 1,046 victims of Operation Cast Lead. Civil complaints to the Israeli Ministry of Defense were submitted on behalf of each of these victims, but no effective response was received. PCHR consequently filed 100 compensation cases on behalf of approximately 600 victims of Israel's Operation *Cast Lead*. These cases are now being frustrated by the guarantee fees imposed by the courts. Furthermore, due to financial constraints relating to traditional court fees (distinct from the guarantees), PCHR was unable to pursue compensation cases on behalf of approximately 400 victims of the offensive, for whom a damage complaint had already been submitted.

In effect, the courts are denying judicial remedy under a perceived veil of legitimacy. The message to victims is clear: the doors to justice are closed.<sup>20</sup>

#### *4.2. Physical barrier*

Under Israeli law, in order for testimony to be valid, the victim or witness must be present in court to undergo cross-examination. However, since mid-June 2007,<sup>21</sup> when Israel tightened the closure of the Gaza Strip, the Israeli military authorities have not allowed a single individual to leave Gaza to appear in court, despite a letter from the court requesting their presence. As a result, their cases have been either dismissed and closed or postponed.

Further, PCHR's lawyers – although qualified – cannot enter Israel to represent their clients before the courts. As a consequence, PCHR is forced to work with and hire

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<sup>20</sup> See PCHR, *Status of Criminal and Civil Complaints Submitted to Israeli Authorities on Behalf of Victims of Operation Cast Lead*, op.cit.

<sup>21</sup> When Hamas seized control of the Gaza Strip.

lawyers in Israel (at extra cost). However, clients are not allowed to enter Israel to meet with their lawyer, and all requests made by lawyers to enter Gaza – to meet with clients, visit the crime scene, and so on – have been denied. Necessarily, this affects the lawyers’ ability to represent their clients effectively, thereby undermining victims’ right to access justice, including effective remedy.

#### *4.3. Conclusions on the right to access justice*

The physical and monetary barriers imposed by Israeli authorities fundamentally deny victims’ legitimate right to access justice. PCHR believes that these policies exhibit discriminatory intent in the sense of the Convention and as such must be addressed by the Committee. This is further necessary in light of the position of the Israeli judiciary, the decisions of which endorse the illegal and discriminatory policies of the Israeli governments vis-à-vis Palestinians’ right to access justice.

### **5. The right to equal treatment before the law**

The right to equal treatment before the law ensures justice is effectively available to all without discriminations<sup>22</sup>. In violation of its legal obligations under, *inter alia*, the Convention, Israel discriminates against Palestinians through the following policies: 1) the generalised presumption of guilt of Palestinians under the Israeli judicial system, and 2) the prohibition of family visits for Gaza detainees in Israel.

#### *5.1 The generalised presumption of guilt of Palestinians under the Israeli judicial system*

The right to equal treatment before the law implies that judicial independence and impartiality be not just formal, but concrete, features of the judiciary. This demands, as pointed out by the European Court of Human Rights, “the existence of guarantees against outside pressure” and that “the tribunal must be subjectively free of personal

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<sup>22</sup> See above § 2.

prejudice or bias”.<sup>23</sup> Addressing these concerns on the ground of the Convention, the Committee has specifically held that “States parties should strive firmly to ensure a lack of any racial or xenophobic prejudice on the part of judges, jury members and other judicial personnel” and “prevent all direct influence by pressure groups”.<sup>24</sup> Despite this, PCHR notes the generalised presumption of guilt with respect to Palestinians appearing before the Israeli judicial system and the latter’s subordination to government policies relating to the oPt.

For instance, in delivering a decision which negated three Palestinians right to a hearing prior to their deportation, in violation of Israeli domestic law, Justice Landau affirmed that “they are not worthy of any remedy from this court, which serves as one of the authorities of this state”.<sup>25</sup> This approach of the HCJ is illustrated by its adoption of the “*enemy aliens*” doctrine, which, as argued by the Israeli Attorney General,<sup>26</sup> assumes that every Palestinian will support, directly or indirectly, operations undertaken against the security of the State of Israel, and consequently that all Palestinians should be considered enemy aliens. As held by the HCJ:

“The Palestinian public plays an active part in the armed conflict. Among the Palestinian public there is enmity to Israel and Israelis. Large parts of the Palestinian public - including also persons who are members of the organs of the Palestinian Authority - support the armed struggle against Israel and actively participate in it [...] It follows from this that the residents of the territories - Judaea, Samaria and the Gaza Strip - are enemy aliens.”<sup>27</sup>

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<sup>23</sup> *Findlay vs. the United Kingdom*, European Court of Human Rights, Application No. 22107/93, 25 February 1997, § 73, available at <http://legislationline.org/documents/action/popup/id/8244>, accessed on 25 January, 2012.

<sup>24</sup> CERD, General Recommendation XXXI *on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, op.cit., § 31-32.

<sup>25</sup> *Kaswame v. Minister of Defense* (1980), 35 (3) PD 113, §122, in PCHR, *Genuinely Unwilling: An Update.*, op. cit., p.35.

<sup>26</sup> See for instance the Attorney General’s response, on file with Adalah, in H CJ 466/07, *Gal’on et al. vs. The Interior Minister* (case pending), Ibid., p.36.

<sup>27</sup> H CJ 7052/03, *Adalah vs. The Interior Minister* (decision delivered in 14 May 2006), §12, available at <http://www.icrc.org/ihl-nat.nsf> under Israel, accessed on 25 January, 2012.

Stated even more simply, “they are presumed to endanger national security and public security”.<sup>28</sup>

Moreover, following Hamas’ takeover of the Gaza Strip in mid-June 2007, Palestinians from the Gaza Strip have been collectively classified and punished,<sup>29</sup> in violation of international law (i.e. art. 33 IV Geneva Convention), as residents of a hostile entity. This doctrine is enacted as official state-policy,<sup>30</sup> and was approved by the HCJ in the *Al-Baysouni* case<sup>31</sup>.

Clearly, this HCJ-endorsed position – which holds that all Palestinians are presumed to endanger the State of Israel’s national and public security – raises clear and pressing concerns relating to the effective impartiality of the judiciary vis-à-vis Palestinians and their equal treatment before the law (i.e. in Israeli courts). It also comes into direct conflict with the presumption of innocence, a fundamental tenet of international law.

## 5.2. *The prohibition of family visits for Gaza detainees in Israel*

As of January 2012, there were approximately 465 Palestinian prisoners from Gaza in Israeli detention centers.

International instruments recognizes their right to meet with family members: any prohibition stands in conflict with, *inter alia*, art. 36 and 38 of the *UN Minimum Standards for the Treatment of Prisoners*, and art. 19 of the *UN Body of Principles for the*

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<sup>28</sup> Ibid, §78.

<sup>29</sup> PCHR, *Genuinely Unwilling: An Update.*, op.cit, and *The Illegal Closure of the Gaza Strip. The Collective Punishment of the Civilian Population*, 10 December, 2010, available at <http://www.pchrgaza.org/files/2010/Illegal%20Closur.pdf>.

<sup>30</sup> As means of “economic warfare” and collective punishment, Israel has since reduced the supply of fuel and electricity to the Gaza Strip and the movement of people to and from Gaza. Ministry of Foreign Affairs, *Israel’s Security Cabinet declares Gaza hostile territory*, 19 September 2009, available at

<http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm>.

<sup>31</sup> In this case, the Supreme Court accepted the state’s arguments and established “minimum humanitarian standards” with no basis in law. HCJ 9132/07, *Jaber Al-Basyouni Ahmed vs. The Prime Minister* (decision delivered on 30 January, 2008), available at [http://elyon1.court.gov.il/files\\_eng/07/320/091/n25/07091320.n25.htm](http://elyon1.court.gov.il/files_eng/07/320/091/n25/07091320.n25.htm).

*Protection of All Persons under Any Form of Detention or Imprisonment*. In certain instances, such denial of access may violate article 116 of the Fourth Geneva Convention concerning internees.

In particular, according to human rights law (*inter alia*, articles 17 and 23, ICCPR)<sup>32</sup> the Human Rights Committee, which monitors state parties' implementation of the ICCPR, pointed out that the right to family life is to be granted to all imprisoned persons, notwithstanding the objective restrictions posed by the detention status.<sup>33</sup> In its last periodic review of Israel, the Committee on the Convention against Torture called upon Israel to guarantee that all detainees, including persons accused of security offences, receive family visits.<sup>34</sup> Moreover, any prohibition or restriction, applied on discriminatory basis, can integrate a violation of the Convention in so far as it breaches the principle of equality of treatment before the law<sup>35</sup>.

In this regard, the Committee has clearly stated - on execution of sentences - that "the States parties should guarantee such persons the enjoyment of all the rights to which prisoners are entitled under the relevant international norms, in particular, ..., the right to relations with their families".<sup>36</sup>

Despite the obligations of international law, including the Convention, Israel consistently discriminates against the right of Gaza prisoners held in Israeli detention centers to meet with their family members.

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<sup>32</sup> As well as art.10 of the International Covenant on Economic, Social and Cultural Rights, ICESCR. The Convention on the Rights of the Child, CRC, holds that in all actions concerning children – including those relating to courts of law and administrative bodies – the best interests of the child shall be a primary consideration.

<sup>33</sup> General Comment no 7: *Torture or cruel, inhuman or degrading treatment or punishment (Art. 7)*: 05/30/1982, § 1, available at <http://www.unhcr.org/refworld/category,LEGAL,,GENERAL,,4538840021,0.html>, accessed on 23 January, 2012.

<sup>34</sup> CAT/C/ISR/CO/4, Concluding Observation no. 15, *Basic Safeguard for Detainees*, 23 June, 2009, available at [daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/431/65/PDF/G0943165.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/431/65/PDF/G0943165.pdf?OpenElement), accessed on 23 January, 2012.

<sup>35</sup> See above, § 2-3.

<sup>36</sup> CERD, General Recommendation XXXI *on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, op.cit., § 38 (a).

Since June 2007 – the beginning of the current illegal closure regime imposed on the Gaza Strip – no family members from Gaza have been allowed to visit relatives detained by Israel. From 1969 until that point, family visits were coordinated by the International Committee of the Red Cross, ICRC, “without any logistic or financial assistance by Israel”.<sup>37</sup> This program was suspended on 6 June 2007 as a measure of collective punishment against Gaza prisoners and their families. Unlike other prisoners, those from Gaza have been collectively targeted and discriminated against.

By further endorsing the illegal state policies of collective punishment of the Gaza Strip, the Israeli High Court of Justice has upheld the current general prohibition of family visits. On December 9, 2009, the Court decided that the State has no obligation to allow family visits for Gaza detainees in Israel, and rejected several petitions submitted by their relatives and several human rights organizations.<sup>38</sup>

### *5.3. Conclusions on the right to equal treatment before the law*

Contrary to the general statements made in the state submissions,<sup>39</sup> PCHR notes that Israel is in clear violation of its conventional obligation to ensure the right of Palestinians to equal treatment before the law.

*Inter alia*, the generalised presumption of guilt with respect to Palestinians evidenced by the HCJ and, the “enemy aliens” doctrine, approved at the highest level of the Israeli judiciary<sup>40</sup>, lead to the conclusion that Palestinians right to equal treatment before Israeli courts is violated. Necessarily, this implicates a number of other human

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<sup>37</sup> B'TSELEM, *Barred from contact: Violation of the Right to Visit Palestinians Held in Israel Prisons*, September 2006, page 2, available at [http://www.btselem.org/sites/default/files/publication/200609\\_barred\\_from\\_contact\\_eng.pdf](http://www.btselem.org/sites/default/files/publication/200609_barred_from_contact_eng.pdf), accessed on 23 January, 2012.

<sup>38</sup> HCJ, 5268/08, *Anbar et al. v. GOC Central Command et al.* and HCJ 5399/08, *Adalah et al. v. The Defense Minister et al.*, (decision delivered on 9 December 2009) translated by ADALAH and available at [www.adalah.org/eng/pressreleases/pr.php?file=09\\_12\\_10\\_9](http://www.adalah.org/eng/pressreleases/pr.php?file=09_12_10_9), accessed on 23 January, 2012.

<sup>39</sup> “The right to equal treatment for all persons regardless of their race or ethnic origin is a basic and fundamental principle in Israel. All governmental bodies and judicial apparatus recognize this right, and maintain and uphold equal treatment for all individuals”, CERD/ C/ISR/14-16, op.cit., § 176.

<sup>40</sup> See above § 5.1.

rights provisions, given the centrality of the justice system to the promotion and protection of fundamental rights.

Lastly, unlike other prisoners, the ban on family visits for Gaza prisoners held in Israeli detention centers constitutes a further violation of Israel's obligations under international law, including the Convention, to guarantee the right of Palestinians to equality of treatment before the law.

## **6. The right to the equal protection of the law**

Equality of protection by the law completes the legal regime of guarantees towards a full enjoyment of the right to justice on non discriminatory basis.

It is currently unattainable for Palestinians under the Israeli legal system which discriminates against them on several instances, despite Israel's pressing legal obligations.

In particular, PCHR notes Israel fundamentally violates the right of Palestinians to be protected against increasing racially-motivated settler violence in the West Bank, on the ground and under the investigative and judicial system.

### *6.1. Settler-violence in the West Bank*

PCHR argues that the Israeli legal system is discriminatory and ineffective when it comes to deal with settler violence, often racially-motivated, perpetrated against Palestinians in the West Bank. Such violence includes physical assault, harassment, the takeover of and damage to private property, the obstruction of access to grazing and agricultural land, and attacks on livestock and agricultural land.

Statistics illustrate the increasing rate of such incidents: in 2011 there were 411 settler-attacks, resulting in the death of 3 Palestinian civilians and the injury of a further 183,

compared to 319 attacks, which caused the death of 1 Palestinian civilian and the injury of a further 109, in 2010.<sup>41</sup>

Furthermore, the UN Office for the Coordination of Humanitarian Affairs has calculated that in 2011 nearly 10,000 Palestinian-owned trees, primarily olive trees, were uprooted or otherwise vandalized by Israeli settlers, causing criminal damage and significantly undermining the livelihoods of hundreds of families.<sup>42</sup> Significantly, “of 97 complaints about settler attacks against Palestinian trees, followed up by the Israeli NGO Yesh Din, none (zero) has so far led to the indictment of a suspect”.<sup>43</sup>

More broadly, further statistics reveal that over 90% of Israeli police investigations into settler-related incidents, carried out between 2005-2010, were closed without indictment.<sup>44</sup>

Inadequate follow-up measures, coupled with fear of reprisal and/or intimidation, effectively discourage victims from denouncing such violations: contrary to a specific recommendation by the Committee,<sup>45</sup> they have no choice but to file complaints at police stations located inside Israeli settlements.<sup>46</sup> This also runs against the Committee’s call upon Israel “to increase its efforts to protect Palestinians against such violence”, in accordance with articles 4 and 5 of the Convention.<sup>47</sup>

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<sup>41</sup> OCHA-oPt, *The Monthly Humanitarian Monitor*, December 2011, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2012\\_01\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2012_01_19_english.pdf), accessed on 25 January, 2012.

<sup>42</sup> OCHA-oPt, *Protection of Civilians Weekly Report*, 21 December 2011- 3 January 2012, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_protection\\_of\\_civilians\\_weekly\\_report\\_2012\\_01\\_05\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2012_01_05_english.pdf), accessed on 25 January, 2012.

<sup>43</sup> OCHA-oPt, *Olive Harvest Factsheet*, October 2011, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_oliveharvest\\_FactSheet\\_October\\_2011\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_oliveharvest_FactSheet_October_2011_english.pdf), accessed on 25 January, 2012.

<sup>44</sup> YESH DIN, as reported in OCHA-oPt, *The Humanitarian Impact of Israeli Settlement Policies*, Fast Facts, January 2012, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_settlements\\_FactSheet\\_January\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_settlements_FactSheet_January_2012_english.pdf), accessed on 25 January, 2012.

<sup>45</sup> CERD, General Recommendation XXXI *on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, op.cit., § 10.

<sup>46</sup> OCHA-oPt, *Israeli Settler Violence in the West Bank*, November 2011, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_settler\\_violence\\_FactSheet\\_October\\_2011\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf), accessed on 25 January, 2012.

<sup>47</sup> Concluding Observations on Israel, CERD/C/ISR/CO/13, op.cit, § 37.



In effect, the root cause of the settler violence is Israel's long-standing policy of illegally facilitating the settling of its citizens inside the oPt, and its failure to enforce the rule of law and accountability in response to acts of violence. This has resulted in a pervasive climate of impunity, under state complicity, which is in specific violation of Israel's legal obligations, including art. 6 of the Convention: "State parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination...as well as the right to seek from tribunals reparation... or satisfaction for any damage".

## *6.2. Conclusions on the right to the equal protection of the law*

Besides access to justice and treatment before the law, protection of Palestinians within the Israeli system is not in line either with the international legal standards, including the Convention's set of rules and the Committee's recommendations.

In particular, this claim is reinforced in light of Israel's failure to prevent and punish settler violence in the West Bank: by failing to enforce the rule of law, Israel has allowed, through substantive impunity, the long-standing phenomenon of settler abuses against Palestinians and their right to the equal protection of the law.

PCHR reiterates that the equal and non discriminatory protection of the law is currently unavailable for Palestinian civilians under the Israeli legal system. Recourse must hence be given to international justice mechanisms, including universal jurisdiction.

## 7. Recommendations

PCHR reiterates that Israel's actions are inconsistent with its binding obligations under international law and that its submissions to the Committee, in failing to address the oPt, intend to obfuscate reality, and avoid responsibilities arising under the Convention.

In the light of Israel's failure to abide by the Convention, it is imperative that the Committee take all appropriate steps towards ending Israel's repeated violations of the prohibition of discriminations against the Palestinian people, particularly with regard to the right to justice.

In this regard, PCHR calls upon the Committee:

1. To condemn Israel's persistent refusal to apply the Convention in the oPt and to report on its implementation, despite the Committee's request in its concluding observations of 2007;
2. To clearly condemn Israel's systematic discrimination against Palestinians' right to justice, including access to justice and the equal treatment before the law;
3. To stress the centrality of justice in promoting and protecting other fundamental human rights;
4. In particular, to condemn Israel's long-standing closure of the Gaza Strip and its impact on, *inter alia*, the equal and full exercise of the right to justice, and to demand its full lifting;
5. To condemn and call upon Israel to immediately halt all practices and policies in the Gaza Strip which discriminate against Palestinians' right to access to and equal treatment before the law, including the prohibition for Gaza claimants, witnesses and lawyers to appear before Israeli courts, and the prohibition of family visits for Gaza prisoners in Israeli detention centers;
6. To condemn settler violence against Palestinians in the West Bank and Israel's failure to prevent and punish such abuses, and to demand Israel to take

immediate actions to ensure the equal protection of the law for Palestinian victims, including judicial redress;

7. To demand Israel to ensure full access to justice, including judicial redress, to victims of grave violations of international law and hence to eliminate, if necessary by reforming its legislation, any monetary barrier which may result in the denial of justice;
8. To remind Israel that its discriminatory actions against Palestinians' right to justice, considered in combination with other human rights violations committed under its closure of the Gaza Strip, may constitute the crime against humanity of persecution, as stated by the UN Fact-Finding Mission on the Gaza War;
9. To remind Israel of its legal obligations as Occupying Power to respect and ensure respect of Palestinians' fundamental human rights, including justice, under the Convention and international law;
10. To call upon the international community to abide by its legal obligations (i.e. articles 1 and 146, IV Geneva Convention) to ensure respect of international law in the oPt, including through the exercise of the universal jurisdiction.

The Palestinian Centre for Human Rights (PCHR) is a Non-Governmental Organization (NGO) based in Gaza City. Established in 1995, PCHR is a non-profit company, dedicated to:

- Protecting human rights and promoting the rule of law in accordance with international standards.
- Creating and developing democratic institutions and an active civil society, while promoting democratic culture within the Palestinian society.
- Supporting efforts aimed at enabling the Palestinian people to exercise its inalienable rights with respect to self-determination and independence in accordance with international Law and UN Resolutions.

The work of PCHR is conducted through documentation and investigation of human rights violations, provision of legal aid and counseling for both individuals and groups, and preparation of research articles relevant to issues such as the human rights situation and the rule of law. The Centre also provides comments on Palestinian Draft Laws and urges the adoption of legislation that incorporates international human rights standards and basic democratic principles. To achieve its goals, PCHR has recruited a committed staff of well-known human rights lawyers and activists.

PCHR is an affiliate of the International Commission of Jurists-Geneva, the International Federation for Human Rights (FIDH) – Paris, the Euro-Mediterranean Human Rights Network - Copenhagen, the International Legal Assistance Consortium (ILAC) – Stockholm, the World Coalition against the Death Penalty, and the Arab Organization for Human Rights – Cairo. PCHR is a recipient of the 1996 French Republic Award on Human Rights, the 2002 Bruno Kreisky Award for Outstanding Achievements in the Area of Human Rights, the 2003 International Services Human Rights Award (UNAIS) and the 2009 Human Rights Prize of Andalucia.