

DISTURBING THE PEACE

The Use of Criminal Law to Limit the Actions of Human Rights Defenders in Israel and the Occupied Palestinian Territories



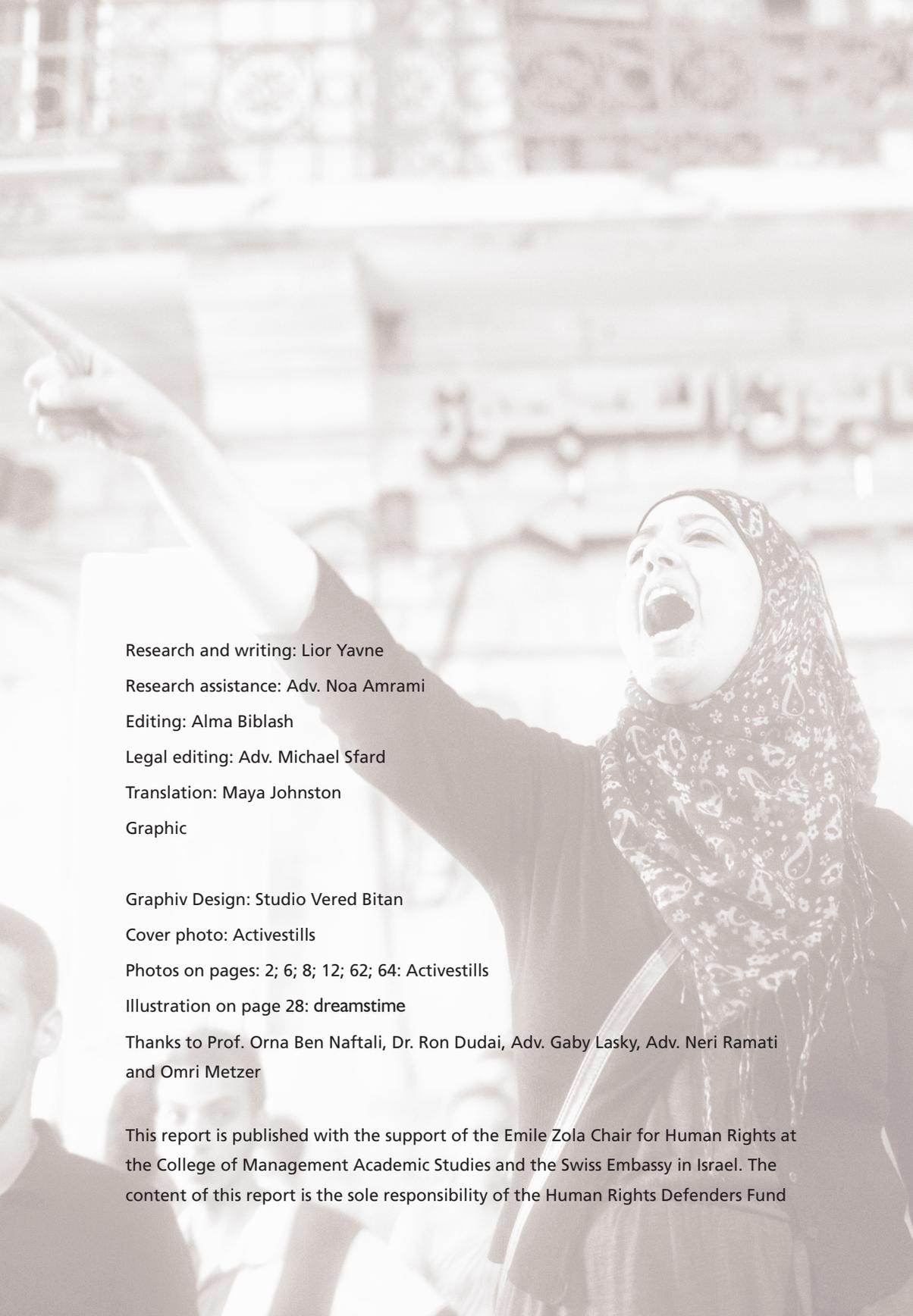
صندوق المدافعين عن حقوق الإنسان
הקרן למגיני זכויות אדם
HUMAN RIGHTS DEFENDERS FUND

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מנדוק המדאפעסן ען חקוקה אלןסאן
הקרן למגיני זכויות אדם
HUMAN RIGHTS DEFENDERS FUND

A woman wearing a patterned hijab is shown in profile, shouting with her mouth wide open and her right arm raised, pointing upwards. She is in the foreground, and the background is a blurred crowd of people at what appears to be a protest or public demonstration. The overall image has a warm, sepia-toned aesthetic.

Research and writing: Lior Yavne
Research assistance: Adv. Noa Amrami
Editing: Alma Biblash
Legal editing: Adv. Michael Sfard
Translation: Maya Johnston
Graphic

Graphiv Design: Studio Vered Bitan

Cover photo: Activestills

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THE HUMAN RIGHTS DEFENDERS FUND (HRDF)

The Human Rights Defenders Fund (HRDF) was established in 2011 amidst increasing violations of the rights of human rights defenders and restrictions on the actions of human rights organizations in Israel and the Occupied Palestinian Territories. HRDF is a response to the attempts to silence protest through legislation, military and police brutality and false arrests and indictments of human rights defenders, and its main goal is to provide financial assistance to human rights defenders who have fallen victim to legal proceedings meant to intimidate them and interfere with their actions. HRDF has thus far financed legal counseling and representation for activists who have been arrested, indicted or sued over their activities on a variety of issues: residents and activists in the neighborhood of Sheikh Jarrah in Jerusalem; activists in the social protests of the summer of 2011; the popular struggle against the separation wall and land expropriation in Bil'in, a-Nabi Saleh, Budrus and other villages in the West Bank; the fight for Bedouin rights in the Negev; and the protest of members of the Ethiopian community against police brutality and racism. HRDF provides human rights defenders with legal tools in an effort to mitigate the chilling effect of the authorities' actions, which may deter defenders from carrying on their activities. More broadly, HRDF seeks to bolster the status of human rights defenders in Israeli public and legal discourse through documentation, research and information dissemination.

This report focuses on the abuse of enforcement powers by the police, the military and the judicial system with special attention to the use of criminal law to constrain the activities of human rights defenders, in other words, the criminalization of human rights defenders. It is based on reports collected by HRDF and cases in which HRDF provided assistance, and presents examples indicative of the clear and consistent patterns of the systematic criminalization of human rights defenders and struggles.



INTRODUCTION

Recent years have seen growing international recognition of the important role played by individuals and organizations who work to promote human rights and assist victims of human rights abuses. These organizations and activists seek to entrench and develop these rights in both democratic and non-democratic countries. They are human rights defenders, and recognition of how important it is that they be able to act freely for the good of all led the UN General Assembly to adopt the Declaration on Human Rights Defenders in 1998.¹

Human rights defenders are free to act in many countries, based on the understanding that their activity is a necessity, even if their criticism is sometimes unpleasant. In many other countries, human rights defenders face serious obstacles, and may be in actual danger. Human rights are violated because powerful entities, be they agents of the state or powerful private entities, wish to promote their interests at the expense of these rights. Defenders often pay for their actions with their liberty, sometimes with their lives. Making false accusations against human rights defenders, sometimes criminal accusations, is a tool that is commonly used to restrict their activities.

The first part of this report briefly reviews the criteria for recognizing the status of human rights defenders, the development of the legal status of human rights defenders and the legal tools formulated to protect them and allow them to protect and promote these rights internationally. The second part of the report focuses on the common practice of using criminal law to harm defenders, and examines how human rights defenders in Israel are criminalized. The report provides examples of cases that have taken place in Israel and in the Occupied Palestinian Territories (OPT) in recent years, in which the authorities used criminal law against defenders in an effort to restrict their freedom and limit their ability to take action.

1 The full title of the Declaration is “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (Hereinafter: **the Declaration on Human Rights Defenders, or the Declaration**). **Link to full text on the OHCHR website:** <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.



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هذا انما اختبار
الذين آمنوا
في

EXECUTIVE SUMMARY

Disturbing the Peace - The Use of Criminal Law to Limit the Actions of Human Rights Defenders in Israel and the Occupied Palestinian Territories

Recent years have seen growing international recognition of the important role played by individuals and organizations who work peacefully to promote, entrench and develop human rights in both democratic and non-democratic countries. In 1998 the UN General Assembly adopted the Declaration on Human Rights Defenders in 1998, which includes a number of protections afforded to human rights defenders in order to enable them to carry out their mission. The Declaration and its various articles have no official status in Israel.

There is no proper public debate about the status of human rights defenders in Israel, and about the rights and obligations associated with this status. Law enforcement agencies, primarily the police, attach no importance to the array of rights given to human rights defenders, which is specifically intended to allow them to carry out their activities. Instead, it often seems that police and military forces on the ground as well as their prosecution arms consider criminal law a legitimate tool for constraining human rights defenders and interfering with their actions. In many cases, courts too choose to ignore the principles of freedom of expression and the role of defendants as human rights defenders.

A litany of bills have been put forward in recent years in a bid to limit human rights organizations' fundraising capabilities, investigate their operations and stigmatize them as "foreign agents". Other bills attack the freedom of expression of activists who operate outside organizations and seek to limit criticism of state authorities and their actions. Another threat to human rights defenders comes from non-parliamentary groups that use strategic lawsuits against public participation (known as SLAPP suits), and threats of SLAPP suits in an attempt to intimidate defenders and prevent public scrutiny.

In recent years, enforcement agencies have shown an increasingly repressive approach toward legitimate, lawful actions by human rights defenders in Israel and in the OPT, and there is a discernable trend toward using false charges and

criminal measures to constrain their activities. Many defenders who take part or play a leading role in demonstrations are criminalized as law breakers. They are often arrested without committing an offense, ordered to stay away from the scene of the struggle as a condition for release and indicted. In the OPT, Israeli activists are removed from locales where regular demonstrations take place in order to prevent partnerships with Palestinian activists and Palestinian defenders are exposed to criminalization measures such as administrative detention and criminal prosecution under security legislation in military courts.

The military and the police conduct false arrests, mostly in routine demonstrations in known locales in Israel and the OPT in order to weaken local leaderships who promote non-violent popular struggles for human rights. Enforcement agencies sometimes attempt to prevent completely legal demonstrations and rallies by using arrests, allegations or indictments on light offenses such as “illegal assembly”. The most extreme measure for criminalizing non-violent activities by human rights defenders are indictments, which result in lengthy criminal proceedings and have serious long-term impacts on the lives of defenders, even if the proceedings end with lenient penalties or acquittals.

Arrests and indictments have a chilling effect on human rights defenders and others in their vicinity and may prevent them from participating in actions and in public debates. Those who fall victim to legal proceedings are forced to devote a considerable amount of time and resources into defending themselves, at the expense of resources meant for their activities. In addition to the direct impact on operations, these criminalization measures undermine the legitimacy of organizations and individuals to promote public causes, weaken the human rights movement in the relevant territory and undermine democracy and the rule of law. Criminalization also has serious financial consequences for both individuals and organizations and impacts their ability to continue to engage in human rights activities, and the targeting of leaders and key activists has broader repercussions for the communities from which they hail and for civil society at large.

The Human Rights Defenders Fund recommends the following minimum measures:

- The Declaration on Human Rights Defenders must be incorporated into domestic law by a legislative act of the Knesset, and a policy that encourages and allows the activities of human rights defenders and cements

the special protections afforded to them must be instituted in the relevant government ministries.

- The attorney general must issue directives to prevent harassment of human rights defenders by law enforcement agencies.
- The attorney general must introduce strict standards with respect to the arrest of protesters who are not suspected of serious offenses, and a mechanism for examining release conditions and draft indictments before they are submitted.



CHAPTER 1: IDENTIFYING HUMAN RIGHTS DEFENDERS

Article 1 of the UN Declaration on Human Rights Defenders sets forth that: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.² As such, the Article stipulates that under the right circumstance, anyone could be considered a human rights defender, but what are the circumstances that confer this title and the protections that come with it on people?

When Hina Jilani was appointed Special Representative of the Secretary-General on Human Rights Defenders, she gave the term a broad interpretation, stating that human rights defenders get their status from their **actions** rather than their **profession** only. A human rights defender is anyone working to promote, protect or develop these rights. The definition is expansive and it is not limited to narrow categories such as journalists, members of organizations, etc.³ This determination has solidified and has since been the main reference point for the question “who are human rights defenders”. A person is a human rights defender through a specific action he or she takes.

BY WHO THEY ARE

As stated, in the right circumstances, anyone can be a human rights defender. Defenders can be individuals involved in a struggle to prevent the plant where they work from shutting down, or members of the union or employees demonstrating in front of the plant.

2 For more on the Declaration, see Chapter 2, below.

3 UN Commission on Human Rights, *Promotion and Protection of Human Rights: Human Rights Defenders. Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani* (23 January 2006, E/CN.4/2006/95. Para. 29.

Human rights defenders can be ordinary people who take action to promote their own rights or the rights of others that need protection, whether as a stand-alone action or on an ongoing basis. They may be people who go out to protest, get petitions signed or use their liberties in any other way to promote human rights in their own society or in others.

Defenders may be journalists who uncover injustice as part of their work, and they may be activists in organizations involved in human rights work. They may be jurists, academics, field researchers, members of the organization's board, or volunteers.

Public servants may also be human rights defenders: individuals who, in their official capacity, take action to protect the rights of those who need such protection. They may be lawyers, social workers and even police and military personnel.

BY WHAT THEY DO

The work carried out by human rights defenders around the world is extremely varied. Some provide legal aid to victims of human rights abuses; some collect and publish information in order to prevent human rights violations; some hold demonstrations and some send e-mails and faxes to the offices of government authorities in a bid to pressure them to take certain actions, or refrain from taking them. Some are organized in groups or associations, and others work as individuals. Professionals may help as part of their work. Government officials may take action to protect human rights as part of their powers. Private citizens may take action to the extent they can, given their free time and qualifications. The possibilities are nearly endless.

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Who do human rights defenders defend? They may defend themselves or others, family members, or asylum seekers in their countries. They may provide protection from the authorities in their own countries, or from the authorities of foreign countries. They defend people in their own communities and societies or in others. Sometimes these communities and societies are hostile to those from which defenders hail.

The rights being defended are also extremely broad: social and economic rights, like the rights to education and health; civil and political rights, like the right of

association and the right to freedom of movement; individual rights like the right to vote, and collective rights like the right to self-determination.

Human rights defenders may be groups or individuals. They may work to promote a large range of rights, or one particular right. The beneficiaries of the activities of human rights organizations may be entire publics or individuals. By definition, human rights defenders approach the notion of human rights from a universal perspective (see below), but some may well decide to focus their activities on promoting protection for the rights of specific sectors or people.

BY THEIR VALUES

So what does set human rights defenders apart from all other people who are working to promote their own, narrow interests? The activities of human rights defenders are informed by the **Universal Declaration of Human Rights**: they share the central notion of the **universality** of human rights. In other words, that everyone, no matter who they are, is entitled to enjoy basic rights regardless of any difference that may arise from any sort of group affiliation. They share the notion that no one should be denied their rights in order to promote the rights of others. Agreeing that human rights are universal is necessary for a person to be considered a human rights defender.

For example, a police investigator who protects victims of sexual violence may be promoting the rights of crime victims in his official capacity. However, if the same investigator uses prohibited measures during suspect interrogations, such as ill-treatment or torture, the investigator cannot be considered a human rights defender. Similarly, a person who works to promote the rights of a certain ethnic or national group while denying the rights of members of another ethnic group, cannot be considered a human rights defender.

However, care must be taken not to misunderstand the universality element in the activities of human rights defenders: human rights defenders act on the understanding that all people have equal rights, but this does not oblige them to **act** for all people. Human rights defenders may select their area of activity and focus on certain rights, certain groups or certain individuals. The requirement for universality is not a requirement of objectivity. It may well be the case, and often is, that defenders deeply identify with the people they are defending, they may not be impartial, they and their families may benefit from the success of their

activities against the violation of their rights. However, so long as their activities meet the basic conditions outlined here, they should not be dismissed as partisan activists operating outside the concept of human rights protection.

Recognition of a person or a group as human rights defenders does not hinge on whether or not their claims are “right” or “wrong”. Even if human rights defenders make subjectively or objectively “incorrect” claims as part of their activities in defending human rights, or if their notions are at odds with dominant thinking in the society in which they are active, their status cannot be denied. What matters is that their activities are carried out as part of the struggle to protect, promote or develop human rights.

Finally, it should be recalled that human rights defenders’ actions are always **peaceful**. According to the Human Rights Defenders Declaration, it is impossible to be a human rights defender and engage in violence, even if the cause is just and worthy.

CHAPTER 2: THE DEVELOPMENT OF LEGAL STATUS AND INTERNATIONAL INSTRUMENTS

THE DECLARATION

On December 9, 1998, the day before the 50th anniversary of the UN Universal Declaration of Human Rights, the UN General Assembly unanimously passed Resolution 53/144, a declaration meant to bolster the capacity of both individuals and organization to work for human rights.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms is the somewhat verbose title of the resolution, which, for the sake of brevity, will be referred to here as the Human Rights Defenders Declaration or the Declaration. The resolution declares the right of human rights defenders to peacefully promote, protect and develop human rights without interference and establishes the duties of the state to help their activities and refrain from impeding them.

The Declaration is the fruit of much effort invested by human rights organizations and activists from around the world for recognition of the rights of individuals and organizations to act freely to actualize human rights. The drafting process took 14 years, from the Human Rights Commission session in 1984 until the Declaration's adoption by resolution of the UN General Assembly in 1998. The strength of the Human Rights Defenders Declaration lies in the fact that it is a unanimous decision passed by the world's nations. Its weakness is that, as the name indicates, it is only a declaration and not an international convention with binding force. As a rule, UN General Assembly resolutions do not have binding status under international law, and this particular resolution did not give the Declaration the kind of "teeth" General Assembly resolutions can give. For example, the Declaration does not establish enforcement mechanisms against

countries that violate the rights enumerated in the Declaration whether through periodic reports, or mechanisms for publicly establishing that violations were made.

Nevertheless, the rights enumerated in the Declaration did not appear out of thin air. As a rule, the rights of human rights defenders are based on rights that were previously expressed in binding international law instruments that have developed over the fifty years since the Universal Declaration of Human Rights was accepted. Rights such as freedom of expression or freedom of association have direct bearing on the ability of human rights defenders to do their work. In many cases, these are the rights violated by countries that aim to curtail the work of defenders.

THE MAIN PROVISIONS OF THE DECLARATION

As stated, the first article of the Declaration states that the right to work for the realization of human rights is vested in each and every one, and the duties and responsibilities relating to the promotion, implementation and protection of human rights lie chiefly with the state.⁴ The state has the duty to allow the activities of those who have taken it upon themselves to work for the protection of individual rights and basic liberties, as stated in the first article. The Declaration also indicates that domestic laws provide the legal framework for the realization of human rights, so long as these laws are in line with the principles of the UN Charter and with other human rights conventions and international agreements acceded by the state.⁵

In the articles that follow, the Declaration specifies the various protections afforded to human rights defenders so that they can carry out their mission. Some of these protections are “ordinary” human rights, vested in all persons, and their extension to human rights defenders creates a double protection for defenders’ rights. Others are “special protections” afforded to human rights defenders. They emanate from “ordinary” rights, but are expressly enunciated because of their important contribution to the ability of the defenders to act. For example, the right to fundraise and the right to file complaints against human rights violations.

4 **Declaration**, Art. 2.

5 *Ibid.* Art. 3.

Within the “ordinary” rights, the Declaration specifies, for example, the freedom to assemble and the freedom to form associations, a critical component in defenders’ ability to carry out their mission by holding meetings and conferences, establishing organizations, joining them or otherwise taking part in their activities, as well as communicating with foreign organizations, both governmental and intergovernmental.⁶ The realization of these rights can take various forms, so long as they are not violent: an assembly at a private house, a protest rally, a mass demonstration and the establishment and operation of organizations.⁷ The right itself carries with it a “positive” element, namely, the state’s obligation to allow anyone interested in doing so to form associations and assemblies with others, as well as to protect such persons and investigate attacks against them. It also carries a “negative” element, namely the state’s (and its agents’) obligation to refrain from any arbitrary interference with the exercise of the right.⁸

Freedom of expression, the “cornerstone upon which the very existence of a democratic society rests”,⁹ is mentioned in Article 6 of the Declaration which deals with the right of all humans to receive, collect and distribute information regarding all human rights and fundamental liberties. This includes the right to investigate, discuss and hold a public debate about the degree to which these rights and liberties are upheld and expressed in “domestic legislative, judicial or administrative systems”.¹⁰ In this context, the Declaration protects human rights defenders’ rights to collect information, investigate and advocate.¹¹ The right to access information encompasses the state’s obligation to make governmental information accessible and to act on the basis of the assumption that sessions, meetings and consultations (their transcripts and content), as well as key documents constitute information that should and will be open and accessible the public.¹²

6 Ibid. Art. 5.

7 UN Office of the High Commissioner for Human Rights (OHCHR), *Commentary to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, July 2011, (Hereinafter: Commentary), p. 25.*

8 **Commentary, pp. 35-37**

9 Inter-American Court of Human Rights, *Ivcher Bronstein case. Judgment of February 6, 2001. Series C No. 74, para. 149.* Quoted in **Commentary, p. 58.**

10 **Declaration, Art. 6.**

11 **Commentary, p. 58.**

12 Ibid. p. 59.

The next article determines the right to establish a develop and discus new ideas in the field of human rights and to advance them.¹³ This article establishes the right of both individuals and organizations to encourage public debate about ideas related to the promotion of human rights, including rights that have not yet been recognized. The logic behind this article is that many rights that are recognized today were not recognized in the past, and experience shows that introducing new ideas in the field of human rights often arouses strong emotions and severe objections among some members of the public. This special protection, which forms a sort of expansion of the right to freedom of expression, was borne of the fact that freedom of expression is needed most when it arouses anger and resentment. Human rights defenders often enrage the societies among which they carry out their work – activists for women's suffrage in traditional societies are a clear example of this¹⁴ – and Article 7 of the Declaration seeks to protect defenders both when they are trying to introduce new ideas in the communities where they are active, and when they seek to establish new ideas that have yet to receive recognition in human rights law.

Articles 8 and 9 of the declaration relate to contact between defenders and the state. Article 8 stipulates defenders' right to communicate with various government bodies about different aspects of their work for the realization of human rights and fundamental freedoms.¹⁵ Article 9 relates to the right to make complaints to the competent authorities and the right to have complaints considered promptly and publically, by an independent, impartial and competent authority, and to receive effective remedy in the form of restoration or compensation, where a violation has been proven. The Article details the various tools for exercising these rights: making complaints about actions taken by the state and its agents to the competent authorities, attending public hearings and judicial proceedings in order to examine whether they meet domestic law and international undertakings; offering and providing legal advice and other support for the protection of human rights.¹⁶

The following articles relate to the duties of government officials. Article 10 relates to the prohibition on taking part in the violation of human rights and

13 **Declaration, Art. 7.**

14 **Commentary, p. 58.**

15 **Declaration, Art. 8.**

16 **Ibid., Art. 9.**

fundamental freedoms, and notes that persons who refuse to take part in human rights violations must not be penalized.¹⁷ Article 11 declares the right to engage in one's occupation and specifies that people whose occupations give them power over the ability of others to enjoy their rights have a duty to respect those rights.

Article 12 provides that a person may peacefully protest against human rights violations and that the state must protect everyone from violence, threats and discrimination as a result of the exercise of the rights enumerated in the Declaration. The article also instructs that everyone is entitled to effective protection under the law for non-violent actions taken for the exercise of human rights, even if said actions decry the actions or omissions of the state and its authorities.¹⁸

Article 13 is an exception in terms of content, as the right it enumerates exceeds what is familiar from previous conventions on civil and political rights. Its provisions derive from the right to freedom of assembly,¹⁹ and it stipulates that anyone, alone or in association with others, has a right to request and receive resources for promoting and protecting human rights, and to use them in accordance with domestic law (as stated in Article 3 of the Declaration).²⁰ In other words, the state must allow any person or group the freedom to seek and obtain resources to fund human rights activities (from sources both inside and outside the state), and to use them for this purpose. The state may not pursue legislative or administrative actions to curtail this sort of activity.²¹ This activity is not limited to the country where the defenders work, but, as stated, extends to foreign sources as well. The logic behind this article is that human rights violations are not an internal matter. Human rights defenders often seek assistance from the international community and from institutions and organizations outside their own countries in order to promote human rights protection and stop abuses, to the degree possible. So, for example, human rights defenders may send reports to UN committees operating

17 Ibid., Art. 10.

18 Ibid., Art. 12.

19 See, The Observatory for the Protection of Human Rights Defenders, *Violations of the Right of NGOs to Funding: from harassment to criminalization (2013)*, pp. 11-13.

20 Article 13 reads: "Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration".

21 **Commentary, p. 96.**

pursuant to international covenants to which various countries are party and to foreign governments that may have influence over the policies of the violating government. They may also contact international human rights organizations or any other body the defenders believe may be of assistance in promoting human rights. The right to be free of threats or fear of retribution on the part of the state due to contact with international organizations has been incorporated into several international human rights instruments in recent years.²²

Other articles in the Declaration stipulate the state's obligation to promote human rights within its territory by making relevant national and international documents available to the public and by establishing suitable state institutions.²³ The state must also promote human rights education, including by training members of the legal profession and the security forces.²⁴ The articles also note the contribution non-governmental organizations make to the promotion of human rights and outline the societal conditions that allow individuals to enjoy their rights.²⁵

THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

In 2000, about two years after the Declaration was accepted, the UN Commission on Human Rights asked the secretary-general to appoint a special representative on human rights defenders.²⁶ Jurist and human rights activist Hina Jilani, from Pakistan, was appointed for the position and served for eight years. In 2008, the special representative position was replaced with the special rapporteur on the situation of human rights defenders, as part of the Human Rights Council's "Special Procedures". Margaret Sekaggya, who had served as chair of the Uganda Human Rights Commission, was appointed to the position.

22 Article 11 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted October 6, 1999, entered into force December 22, 2000); Article 15 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted December 18, 2002, entered into force June 22, 2006); Article 13 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted October 12, 2008, entered into force May 13, 2013). Israel has neither signed nor ratified any of these protocols.

23 **Declaration, Art. 14.**

24 *Ibid.*, Art. 15.

25 *Ibid.*, Arts. 16, 18.

26 [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.61.en?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2000.61.en?Opendocument).

As part of her mission, the special rapporteur has monitored the situation of human rights defenders, received complaints and communications regarding harm caused to human rights defenders around the world, and corresponded with the relevant governments about these issues. The rapporteur has also visited various countries in order to learn about the situation there first hand and published her findings in periodic and thematic reports.²⁷

In recent years, the special rapporteur has published a series of reports describing her activity with respect to specific complaints about harm to defenders, as well as issues such as the connection between large scale development projects and the work of human rights defenders;²⁸ legislation limiting the activities of human rights defenders around the world;²⁹ threats to distinct groups of defenders: journalists, defenders working on land and environment issues, young and student defenders,³⁰ female defenders and defenders promoting women's rights;³¹ threats to the security of human rights defenders and their protection.³² Shortly after her appointment, the rapporteur published her analysis of the mandate and the priorities,³³ followed by an analysis of the rights included in the Declaration along with recommendations.³⁴ In 2014, Margaret Sekaggya retired from the position, and Michel Forst, who had been an independent UN expert on human rights in Tahiti, succeeded her.

27 The reports issued by the special rapporteur and the documents defining the mandate are available at: http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166.

28 A/68/262, *Report of the Special Rapporteur on the situation of human rights defenders*, 5 August 2013.

29 A/67/292, *Report of the Special Rapporteur on the situation of human rights defenders*, 10 August 2012.

30 A/HRC/19/55, *Report of the Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, 21 December 2011.

31 A/HRC/16/44, *Report of the Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, 20 December 2010.

32 A/HRC/13/22 *Report of the Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, 30 December 2009.

33 A/63/288, *Report of the Special Rapporteur on the situation of human rights defenders*, 14 August 2008.

34 A/66/203, *Report of the Special Rapporteur on the situation of human rights defenders*, 28 July 2011.

REGIONAL TOOLS FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS

In a similar trajectory by which the Declaration and the mandate holders (the special representative and the special rapporteur) have integrated into the existing international human rights protection apparatus, regional tools for bolstering the status of human rights defenders and protecting them have also begun to develop in the wake of the Declaration in recent years. These tools were integrated into existing regional human rights protection mechanisms in Europe, Africa and America.

Defenders operating in countries that are part of a regional system (particularly the Inter-American system, the European Union and the African Union), may receive more substantial protection from these mechanisms than they would under the law in countries that have oppressive regimes of varying degrees – even if on the declarative level only. The jurisprudence of regional tribunals, which has steadily grown in recent years, is beginning to be used as a tool for bolstering the status of human rights defenders and making it legally binding, for establishing the provisions of the Declaration and for promoting the ability of defenders to operate within the state.

In the absence of any real willingness on the part of states to introduce substantive laws that would entrench the status and rights of human rights defenders,³⁵ and given the limited capacity of UN agencies, particularly the special rapporteur, to take real action to protect defenders and promote their work, some of the regional systems provide a legal, or financial avenue that supplements and may help the work done by UN agencies.

The European Union (EU)

In 2004, six years after the adoption of the Declaration by the UN General Assembly, the European Council adopted a document entitled Ensuring Protection: European Union Guidelines on Human Rights Defenders. The document mainly concerns

35 Special UN Commission on Human Rights, *Human Rights Defenders: Report submitted by Ms. Hina Jilani, Representative of the Secretary-General on human rights defenders in accordance with Commission on Human Rights resolution 2000/61*. 3 January 2003. E/CN.4/2003/104, para. 56.

the transformation of the principles outlined in the Declaration into guidelines for EU foreign policy regarding third countries, and real support from EU diplomatic missions to human rights defenders working where they are stationed.

The document is based on the definition of human rights defenders that appears in Article 1 of the Declaration (see above). The introduction highlights the main functions of human rights defenders: documenting human rights violations, providing legal, psychological, medical and other assistance to victims and opposing cultures of impunity that cover up systemic, repeated abuses of human rights and fundamental freedoms.³⁶

The main body of the document centers on operational instructions to help protect human rights defenders in third countries: heads of EU diplomatic missions must report on the situation of human rights defenders in their countries of accreditation and missions are required to establish open and active contacts with local human rights defenders. They must also assist UN human rights bodies, including the special rapporteur on the situation of human rights defenders, and provide financial assistance for the development of democratic institutions and state human rights agencies, and more.³⁷

Thus, the European External Action Service operates on behalf of the EU to ensure political support for human rights defenders as part of the dialogue with their countries,³⁸ while the European Commission provides financial and other assistance to human rights defenders who require it. Three hundred defenders at risk received assistance from a European Commission emergency fund between 2007 and 2013.³⁹

As stated, these guidelines are intended for EU foreign policy toward non-member states. In February 2008, the Committee of Ministers of the Council of Europe adopted a declaration that emphasized the responsibilities of member states with respect to human rights defenders working within their own territories:

36 EU Guidelines, Sec. 4.

37 EU Guidelines, Secs. 7-14. In late May 2013, the European Parliament received a summary of research conducted to assess the implementation of the guidelines in EU foreign policy, using test cases in three countries, Kirgizstan, Thailand and Tunisia. The report is available online: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410221/EXPO-DROI_ET\(2013\)410221_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410221/EXPO-DROI_ET(2013)410221_EN.pdf).

38 EuropeAid, *Delivering on Human Rights Defenders* (January-June 2012), P. 5.

39 European Commission, *A strengthened comprehensive EU Human Rights Defenders Mechanism* (2013), P. 5.

encouraging and supporting the activities of human rights defenders, taking effective measures toward protecting and advancing human rights defenders and their work, as well as preventing harm to defenders and investigating such harm.⁴⁰

The African Union (AU)

In contrast to the EU guidelines, which are mostly geared toward promoting protection for defenders working in third countries, African decisions on human rights defenders are directed toward local protection.

The African Charter on Human and Peoples' Rights, which entered into effect in October of 1986, that is, even before the Declaration, allows individuals and organizations to file complaints regarding human rights violations. In 1999, the Organisation of African Unity (later named the African Union) adopted a call to implement the Declaration throughout the continent, in the Grand Bay (Mauritius) Declaration and Plan of Action. The document refers to the Declaration as a "significant turning point" and calls on African governments to take measures toward its implementation.⁴¹ The African Commission on Human and People's Rights took a significant step toward implementing the call in 2004, when it passed Resolution 69 on the Protection of Human Rights Defenders in Africa. Along with reaffirming the commitment of African countries to human rights and to the Declaration, the resolution provided for the appointment of a special rapporteur on human rights defenders in Africa.⁴²

The special rapporteur, Reine Alapini-Gansou, promotes the protection of human rights defenders through participation in conferences and consultations, public statements and dialogue with countries regarding complaints she receives on the treatment of defenders.⁴³ So, for example, between November 2013 and April

40 *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*. Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

41 Grand Bay (Mauritius) Declaration and Plan of Action, Article 19.

42 African Commission on Human and People's Rights, Resolution (69) on the Protection of Human Rights Defenders in Africa www.achpr.org/sessions/35th/resolutions/69/

43 Announcements and publications of the special rapporteur: www.achpr.org/mechanisms/human-rights-defenders.

2014, the rapporteur contacted the governments of the Democratic Republic of Congo, Somalia, Senegal and Sudan with respect to various violations against defenders, including bodily harm, arbitrary arrest, violation of privacy, prohibition on demonstrations and legal harassment.⁴⁴

The Organization of American States (OAS)

Resolution AG/RES 1818 of the Organization of American States, passed in June 2001, established the Human Rights Defenders Unit at the Inter-American Commission on Human Rights.⁴⁵ When the unit was established, its goals were defined as connecting between civil society organizations and the Inter-American Commission on Human Rights, monitoring the situation of human rights defenders in both North America and South America, and coordinating the commission's activities on this issue. As public recognition of the status of human rights defenders grew, along with the need to give defenders and their rights more visibility, the Inter-American Commission on Human Rights decided to turn the unit into the Office of the Rapporteur on the Situation of Human Rights Defenders.⁴⁶ The rapporteur monitors the situation of human rights defenders in Latin America and North America, provides opinions on complaints filed with the Inter-American Commission on Human Rights regarding abuses of defenders' rights, visits various countries and publishes reports.⁴⁷ The combination of the rapporteur's work and the growing jurisprudence of the Inter-American Court of Human Rights on issues related to the protection of defenders creates a substantial regional protection system.

44 Special Rapporteur on Human Rights Defenders. *Activity Report, 55th Ordinary Session, 28 April – 12 May 2014, Paras. 39–40* (www.achpr.org/sessions/55th/intersession-activity-reports/human-rights-defenders).

45 Human Rights Defenders in the Americas: Support for the Individuals, Groups and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas. Resolution adopted at the third plenary session, held on June 5, 2001.

46 www.ishr.ch/news/inter-american-commissions-human-rights-defenders-unit.

47 www.oas.org/en/iachr/defenders/mandate/Functions.asp.

Asia

Unlike other regional systems, the Asian human rights protection system (made up of the Asian Human Rights Charter and the Asian Human Rights Commission), lacks any special mechanisms for the protection of human rights defenders. Despite this, the Asian Human Rights Commission does take action on the issue through public announcements about human rights defenders who fall victim to harassment.⁴⁸



48 Asian Human Rights Commission publications on human rights defenders: <http://www.humanrights.asia/issues/human-rights-defenders>.

CHAPTER 3:

USING CRIMINAL LAW AGAINST HUMAN RIGHTS DEFENDERS

THE DUTY TO REFRAIN FROM CRIMINALIZATION: ARTICLE 12(2) OF THE DECLARATION

*The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.*⁴⁹

The Human Rights Defenders Declaration was unanimously accepted by the UN General Assembly, and in many countries around the world, human rights defenders manage to carry out their work without interference from the state. At the same time, human rights issues, and with them human rights defenders and what they do, are debated within a certain political context. With the increased public visibility of human rights organizations and the penetration of the human rights discourse into the political agenda, both internationally and locally, human rights activists have been associated with politics. This is sometimes the result of political party activism by human rights defenders, who see the political arena as part and parcel of their human rights work. In other cases, individual defenders and organizations are pegged as having a political bias by governments and public bodies who perceive human rights activism as a threat to their interests.

Human rights are also perceived as a yardstick for measuring the legitimacy of a country that is a target of criticism by human rights defenders, a notion aided by the fact that donors from foreign countries and organizations, some of them

⁴⁹ Declaration, Art. 12(2).

government agencies, are involved in funding human rights activity. This results, in turn, in human rights activism often being perceived as intended to bring about a change in government or in the entire regime.⁵⁰

As a consequence, human rights defenders are exposed to attempts to silence them, carried out through harassment and efforts to impede their activities. These attacks may come from “private” political opponents, but they may also come from government agents such as police officers, soldiers or the secret police. They may also come from business people whose businesses are threatened by the defenders’ actions, private security agents, organized crime elements, insurgents, drug cartels and more.⁵¹ One of the most notable obstacles placed in the path of human rights defenders around the world is the use of criminal enforcement tools to harass them, interfere with their work and even prevent it entirely, a practice known as the criminalization of human rights defenders.

WHAT IS CRIMINALIZATION OF HUMAN RIGHTS ACTIVISTS?

The provision that states have a duty to protect human rights defenders from “pressure or any other arbitrary action” in Article 12(2) of the Declaration refers, inter alia, to the common practice of interfering with work of human rights defenders by using legal measures, criminal and others, to constrain them, call their legitimacy and the legitimacy of their actions into question and create a “chilling effect” on their work.

Criminalization is a term used in criminology to describe the process by which behaviors and individuals are turned into crimes and criminals.⁵² Criminalization can take the form of legislation that turns certain behaviors or actions into a criminal offense, or verdicts that find a certain individual has committed a criminal offense. Criminalization may also be other ways by which law enforcement agencies identify individuals, organizations or their actions as having criminal attributes. In this report, the term criminalization refers to the use of criminal

50 Rhodes, *Aspects of Decline of HRDS*, p. 258.

51 Zimbabwe Human Rights NGO Forum, *Who will defend the human rights defenders?* (February 2013), p. 3.

52 Michalowski, R. J., *Order, Law and Crime: An Introduction to Criminology* (New York: Random House, 1985), p.6.

enforcement tools to deter human rights defenders, individuals and organizations alike, from carrying out their mission by falsely charging defenders and through wider policies of using criminal proceedings against them in an effort to interfere with their human rights work.

As international recognition of the role of human rights defenders increased, more attention was focused on their criminalization. In a 2009 report, UN Special Rapporteur on the situation of human rights defenders Margaret Sekaggya noted that states had increased the use of criminal procedures to hamper the work of human rights defenders:

*Defenders are arrested and prosecuted on false charges. Many others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest.*⁵³

The actions that lead to arrests and charges are varied: distributing flyers, applying for permits to hold a demonstration, participating in demonstrations, documenting, investigating and reporting human rights violations and voicing criticism of the authorities.⁵⁴ The charges laid against defenders are also varied and relate to various offenses, some of which are not properly defined under domestic laws (in breach of the principle of legality). These include offenses such as “forming criminal gangs”; “obstructing public roads”; “inciting crime”; “creating civil disobedience”; “threatening the [sic] State security, public safety or the protection of health or morals”; “defamation”; “libel” and “false charges.”⁵⁵ Alongside criminal charges, defenders are often the target of SLAPP suits. Use of this tool against journalists, civil society organizations and other human rights defenders has been on the rise in recent years.⁵⁶ In many cases, legal measures against human rights defenders, individuals and organizations, are accompanied

53 A/HRC/13/22, UN General Assembly Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders*, 30 December 2009, para 31.

54 *Report submitted by Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders*, 14 January 2004, UN Commission on Human Rights, E/CN.4/2004/94, p.14.

55 Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas (2011)*, pp. 33–34

56 **Commentary**, p. 62. See next chapter for more on SLAPP suites.

by smear campaigns intended to undermine the legitimacy of human rights work.⁵⁷

The criminalization of human rights defenders has several outcomes. One such significant outcome is a chilling effect on defenders, who fear enforcement authorities would take legal action against them and they would have to invest time and money in defending against criminal charges at the expense of the resources meant for their work to advance human rights.⁵⁸ Aside from the direct impact on the work, criminalization diminishes the legitimacy individuals and organizations have to promote public goals, weakens the human rights movement and undermines democracy and the rule of law.⁵⁹

57 Inter-American Commission on Human Rights 2011, p. 45

58 Ibid., p. 28.

59 Ibid., p. 3.

CHAPTER 4: THE CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS IN ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORIES

The right to freedom of expression is recognized and protected in Israel. However, in the public arena, human rights defenders are the object of attack, accused of serving interests that are foreign and hostile to Israel. Defenders who play a leading role in demonstrations are criminalized as law breakers, put under arrest and removed from the scene of the struggle. In recent years, enforcement agencies have shown an increasingly repressive approach toward legitimate, lawful actions by human rights defenders in Israel and in the OPT.

In the OPT, a number of military and legal tools restrict the right to freedom of expression and the right of association, including for the purpose of protests. Adv. Tamar Feldman and Adv. Raghad Jaraisy of the Association for Civil Rights in Israel (ACRI) list them: security legislation, (primarily Order No. 101 Concerning Prohibition of Acts of Incitement and Hostile Propaganda), prohibits any gathering of more than ten individuals without a permit from the military commander. If such a gathering revolves around political issues, or issues that may be considered political, dispersal includes excessive use of force and arrests. The courts refuse to consider the legality of the policy and measures that result in the arrest of the demonstrators brought before them, thereby maintaining the status quo.⁶⁰

The criminalization of human rights defenders is carried out through all stages of the criminal proceeding, beginning with the criminalization of freedom of

⁶⁰ Tamar Feldman and Raghad Jaraisy, pp. 3-4; See also, B'Tselem, **The Right to Demonstrate in the Occupied Territories** (Position Paper, July 2010).

expression and freedom of association, continuing with the arrest of demonstrators who make use of these rights, often in activities aimed at protecting and promoting human rights, stipulating conditions for release that prevent people from continuing to act as human rights defenders, and ending, in some cases, with criminal charges for non-violent actions meant to protect human rights. The examples presented in this chapter outline how the law enforcement system is used to restrict and prevent legal activity to protect human rights in Israel and in the OPT.

THE STATE OF ISRAEL AND THE STATUS OF HUMAN RIGHTS DEFENDERS

The basic problem is that they say, around the world, that all the anti-Israel accusations come from inside the country, from former Israelis, Israeli organizations or Haaretz newspaper. These organizations clearly have nothing to do with human rights and they have never said Israel was right [...] these are clearly just terrorist collaborators whose sole purpose is to weaken the Israel Defense Forces and its resolve to protect Israel's citizens.⁶¹

Israel, which is not party to regional human rights bodies, has no official apparatus for promoting the status of human rights defenders and protecting them. The Ministry of Justice did unofficially translate the Declaration in 2009, and it is now available on its website,⁶² but the Declaration and its various provisions have no legal status in Israel.

The issue of the Declaration's status in Israel came to the fore during the mission of the special representative of the secretary-general on human rights defenders in the country. In her report about the mission, Jilani noted government officials had told her that there were plans designed to give civil society a greater role and improve their dialogue with the government.⁶³ However, the State of Israel has

61 Mazal Mualem, "Lieberman: Leftist groups are terrorist collaborators", Haaretz English website, January 11, 2011.

62 <http://index.justice.gov.il/Units/InternationalAgreements/IA/Reports/DohotNosafim/Declaration.pdf>.

63 E/CN.4/2006/95/Add.3, Mission to the Occupied Palestinian Territory, 10 March 2006, Paras. 31–33.

yet to take any official action following the Declaration and Israeli law offers no special protections for human rights defenders.

The Report submitted by the Special Representative of the Secretary-General on her mission to Israel and the Occupied Palestinian Territory

In October 2005, the Special Representative of the Secretary-General, Hina Jilani, came on a mission to Israel, following an invitation from the Government of Israel. Jilani held a week-long visit during which she met with representatives from the Israeli government, the Palestinian government and human rights defenders and listed her main findings in a report submitted to the UN Commission on Human Rights.⁶⁴

Jilani noted that Israel generally respects the rights of human rights defenders; however, the reality of the Israeli occupation of the OPT and the policies and practices that come with it put human rights defenders in this region, be they Israelis, Palestinians or foreign nationals, at grave risk and present serious obstacles to every aspect of their work. These obstacles include restrictions on entry by Israelis into Area A in the OPT, restrictions on the movement of Palestinian defenders inside the OPT, into Israel and abroad and placement of defenders under administrative arrest without fair trial. Jilani stated these measures were “absolutely incompatible with international norms and standards of human rights” and the principles of the Declaration.⁶⁵

The second part of the report focused on the special representative’s findings with respect to the Palestinian Authority.

ATTEMPTS TO SILENCE DEFENDERS THROUGH LEGISLATION AND CIVIL SUITS

The lack of recognition for the special status of human rights defenders and the contribution they make to the democratic way of life enables harassment by interested parties. The experience of recent years has shown that politicians make wide use of legislative procedures in an attempt to restrict the activities of human rights defenders, particularly those affiliated with human rights organizations. Over the past few years, a number of bills have been put forward, all aiming to

64 Ibid.

65 Ibid., paras. 68-71.

hamper the work of these organizations and restrict their ability to fundraise, by investigating their actions and stigmatizing them as “foreign agents” and, as the Minister of Foreign Affairs said, “terrorist collaborators”.⁶⁶

The bills promoted by politicians and approved by the Ministerial Committee on Legislation included severe restrictions on donations made by foreign governments to human rights organizations,⁶⁷ labeling publications and statements made by human rights organizations as serving foreign interests⁶⁸ and restricting the freedom of speech of those who criticise Israel,⁶⁹ call for boycotting products made in settlements or any other type of boycott against the country.⁷⁰ In addition to these, many other bills aiming to undermine the status of human rights defenders and Palestinian citizens of Israel have been submitted and approved for further consideration.⁷¹ Other initiatives were aimed at establishing a parliamentary commission of inquiry into the activities and funding of human

66 Mazal Mualem, “Lieberman: Leftist groups are terrorist collaborators”, Haaretz English website, January 11, 2011; see also: Yuval Shani, *The Duty to Defend Human Rights Defenders, on the Israel Democracy Institute website*: <http://en.idi.org.il/analysis/articles/the-duty-to-defend-human-rights-defenders>

67 In November 2011, the Ministerial Committee on Legislation approved a bill meant to severely restrict the ability of human rights organizations to fundraise. The **Bill to Amend the Income Tax Ordinance (Taxation of public institutions that receive donations from foreign state entities) 5771-2011, introduced by MK Fania Kirshenbaum** (Yisrael Beitenu), instructs a 45% tax on any donation received from a foreign governmental body or a source that receives their funds from a foreign governmental body. A separate bill (**Association Bill (Amendment – Prohibition on Foreign State Entity Support for Political Associations in Israel) 5771-2011**), introduced by MK Ofir Akunis (Likud), was meant to limit such donations to 20,000 dollars only. The two bills were incorporated into one, which was approved for further consideration by the Ministerial Committee on Legislation on November 13, 2011. For ACRI’s position on the incorporated bill see: www.acri.org.il/he/wp-content/uploads/2011/12/amutot0612111.pdf (Hebrew).

68 **Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity 5771-2011, approved by the Knesset Plenum in February 2011. For ACRI’s position, see:** www.acri.org.il/he/2558 (Hebrew).

69 **Anti-Defamation Bill (Amendment: Defamation of Public or State Authorities Bill) 5771-2011**, introduced by Yaakov Katz and others, approved by the Ministerial Committee on Legislation on July 11, 2011.

70 Law on Preventing Harm to the State of Israel by Means of Boycott, 5771-2011, passed by the Knesset on July 11, 2011. The Supreme Court sitting as the High Court of Justice dismissed a petition filed against the law, barring one section, H CJ 4239/11 Uri Avneri et al. v. Knesset et al., judgment dated April 15, 2015.

71 For a roundup of anti-democratic legislation initiatives, updated in August 2012, see: <http://www.acri.org.il/en/2012/08/02/update-anti-democratic-legislation-initiatives/>.

rights organizations.⁷² Some of these bills, such as the “boycott bill” have been passed and are now law.

In addition to attempts at legislation, human rights defenders’ public activities are under a different threat, mostly from non-parliamentary groups, namely, strategic lawsuits against public participation (known as SLAPP suits, and threats of SLAPP suits) in response to statements defenders make about their own work or another public issue. These lawsuits deter individuals and organizations from taking part in the public debate about a specific topic or in general.⁷³

MAIN PATTERNS OF THE CRIMINALIZATION OF DEFENDERS IN ISRAEL AND THE OPT

The criminalization of human rights defenders in Israel focuses mostly on their ability to enjoy the right to freedom of expression. One example is arrests during demonstrations, and, in certain cases, stipulation of conditions for release that prevent defenders from future participation in protests. The security legislation that applies in the OPT prohibits Palestinian defenders, and all other Palestinian residents of the OPT, to participate in demonstrations. Palestinian defenders also fall victim to criminalization methods that are not used against their Israeli counterparts, namely administrative detention and criminal charges laid in the military courts under security legislation. Military court proceedings often rely on classified intelligence information and secret evidence, severely impeding the ability of Palestinian defenders to pursue non-violent action in defense of their own and their colleagues’ rights. It sometimes seems as though this is the precise purpose of the criminalization methods used against them.

Below we present several examples of how human rights defenders in Israel and the OPT are criminalized. These examples are not necessarily the most severe or most striking cases. In fact, most of them reflect the “lighter” end of the spectrum of efforts to criminalize defenders. However, based on reports collected by the Human Rights Defenders Fund and the cases in which the Fund

72 The Knesset Rejects Probe into Left Wing Organization Funding by Landslide, Channel 2 News, July 20, 2011, www.mako.co.il/news-military/politics/Article-bd6a5a7c0974131004.htm (Hebrew).

73 **The Silencer: Libel Litigation as a Threat to Free Speech** (Tel Aviv: ACRI, January 2013).

has provided assistance, the examples presented below reflect clear, consistent patterns in the systematic criminalization of human rights defenders and human rights campaigns as a means to undermine them.

The courts and human rights defenders

In some of the examples presented below, we mention court rulings that accepted the positions presented by human rights defenders who had been arrested or charged, and sometimes harshly criticized the actions taken by law enforcement agencies. It is important to remember that these are not representative examples. As is the case with other issues, the courts do not act as a true oversight mechanism for the actions of law enforcement agencies in Israel and the West Bank. The examples we present here are cases in which the courts saw fit to caution against unreasonable police action, but it is also worth noting that even in cases in which the courts rejected most of the conditions for release sought by the police, they still restricted the freedom of speech and the activity of the defenders brought before them. Israeli courts, both the civilian courts operating inside the State of Israel and military courts in the OPT, refrain from playing their part in the protection of human rights defenders and their work. The justice system generally does not address the known, consistent patterns of criminalizing defenders who are not suspected of violence. Courts often hear charges, and more frequently, requests for detention or conditional release of detainees held over actions related to defending the human rights of individuals, groups and communities, but they usually treat these cases as “ordinary” criminal incidents and fail to identify them as part of a systemic effort to curtail the constitutional right to freedom of expression. The courts do not take this fact into consideration when sentencing defendants, and very rarely use the tools at their disposal to restrain the policy that views criminal law as a tool for constraining non-violent civilian struggles.

FALSE ARRESTS AND ORDERS TO STAY AWAY FROM THE SCENE AS A CONDITION FOR RELEASE

The policies of the Government of Israel both inside the country and in the territories it occupies necessitate extensive activity to defend human rights. This activity takes many forms and defenders use a variety of tools to engage in peaceful actions to promote human rights protection: research and publication,

parliamentary lobbying, escorting victims of human rights abuse to receive medical care and legal assistance, submission of High Court petitions and other legal activity.

The types of action that are most accessible and most commonly used for promoting human rights are organizing and participating in demonstrations, and taking part in “direct action”.⁷⁴ In many cases, this is where law enforcement agencies take action to criminalize human rights defenders as a means for curbing protest and impeding their work. Law enforcement action often takes the form of arrests followed by requests for conditions for the release of activists who were detained or arrested and brought to a police station. The conditions for release dictated by the police officer at the station, or sought by the police in court, prevent human rights defenders from engaging in action for set periods of time, and sometimes keep them away from the physical location of the action.

In many cases, these are false arrests. They are conducted without real grounds and are intended to interfere with the protest, both immediately and over time, through the conditions attached to release from detention, and through the chilling effect of the arrests themselves.

Summer 2014: criminalization to suppress protests during Operation Protective Edge

In the summer of 2014, armed Palestinian fighters launched rockets into Israel, but Operation Protective Edge also saw protests by both Palestinians and Israelis against the military assault on the Gaza Strip, in which many Palestinian civilians were killed by the IDF. These demonstrations ended in the arrest of protesters, even when no offense was alleged. For instance, on the night of September 2, 2014, 14 protesters were arrested in HaBima Square in Tel Aviv, on the claim that the demonstration raised concern regarding “civil unrest”. Twelve of the detainees were released that night on condition they stay away from HaBima Square and Rabin Square in Tel Aviv – where demonstrations are routinely held – for thirty days. Two detainees who the police alleged had assaulted police officers were released after posting bail and ordered to stay at least 100 meters

⁷⁴ The phrase “direct action” refers to non-violent action against a human rights violating body in order to turn the public’s attention to the violations it is implicated in and to promote a rectification of the situation.

away from Rabin Square and HaBima Square for sixty days. No indictments were served.⁷⁵

Gali Ginat, a reporter with Israeli news website Walla!, was also arrested in the same demonstration after filming the violent arrest of a demonstrator on her cell phone camera. Ginat was told by an undercover police officer to stop filming and leave the area. When she did not comply, he pushed her, and detained her for five hours for “assaulting a police officer”. Her cell phone was taken from her, files were deleted and she was conditionally released.⁷⁶

Qawawis: arrests over violation of an invalid order⁷⁷

On the morning of Saturday, January 9, 2013, a few dozen Palestinians, mostly from the village of Yatta in the West Bank, went to cultivate their farmland, located near the outpost of Mitzpe Yair, in the South Hebron Hills. The outpost is partly located on land owned by the Palestinian ‘Awad family. The Palestinian landowners were accompanied by a few Israel activists who volunteered to go with them in order to prevent harassment by settlers and military forces.

Once the landowners and volunteers arrived in the area, soldiers told the Israeli volunteers that they were going to issue a closed military zone order, ostensibly to prevent violent confrontations between the Palestinians and the settlers. Such a step would contravene military orders not to seal off areas to Palestinians as a result of potential settler violence,⁷⁸ and was unnecessary given that there were no settlers in the area at the time. Immediately thereafter, without giving enough time, without making a lawful declaration and presenting a lawfully signed

75 HRDF cases 224, 225.

76 David Wertheim, “Walla news reporter arrested and held for questioning after filming police officers during demonstration, **Walla**, August 3, 2014 (Hebrew), <http://b.walla.co.il/item/2771884> (last accessed April 14, 2015).

77 HRDF cases 120, 121.

78 “[...] Supreme Court jurisprudence determines that during confrontations, the authorities must take action against the aggressor (arresting the aggressor, closing the area to the aggressor etc.) and protect the party under attack seeking to exercise his rights and access his land. Closing the land to the landowners (and to rights holders therein) is possible, as stated, only in the most exceptional circumstances, when there is concrete information regarding a real threat to security should there be no declaration of a closed military zone”. From a document issued by the Legal Advisor for the Judea and Samaria Area, “Commander Information Sheet – Closed Zones”, undated, Sec. 9b.

closed military zone order, the Palestinians were violently removed from the area by the soldiers. Fifteen people, including a one-year-old infant, were arrested and brought to the Hebron police station.

One of the Israeli activists, Omri Metzger, described how the incident unfolded:

About ten Israeli activists joined about seventy people from the 'Awad family and some local activists. On the ridge above us, which leads to the family's land, about twenty soldiers and Border Police officers were waiting for us, with their vehicles. We started walking towards the land, we were spread out pretty widely, and we spread out even more because the children kept pulling to the right. We passed the soldiers pretty quickly. They were confused about the situation. Some were chasing kids mostly; some were yelling at us to stop claiming that we were violating a closed military zone order and some were walking with us and among us. When they called to us that we were violating an order, we demanded to see it. They said the order was on the way and requested we stop. We crossed the field that's beyond the ridge, and above it, the soldiers managed to form a line that blocked us. At that point, some of the police officers who were there told the Palestinians to show IDs. Palestinians who said they didn't have IDs got arrested. [...] A little while after (minutes), the battalion commander signed the order and said, while standing somewhere in the middle of this imaginary line, that we had five minutes to disperse. The arrests continued even before the time he gave us was up, and they had more to do with the confrontation that followed the ID arrests earlier than with the order. It's important to note that the arrests were violent, especially the arrests and attempted arrests of Palestinian women by female Border Police officers.⁷⁹

Nine Palestinians, including a mother and her one-year-old daughter, as well as two minor girls, were arrested and brought to the Hebron police station. Most of the detainees were released in the evening, except the mother, who remained under arrest for two more days before being released (her daughter was delivered to the father in the evening). No charges were laid against the mother.

There were five Israeli activists among the detainees: Daniel Kronberg, Maria Harash, Guy Avny, Neria Biala and Noam Gur. The first four were held until

⁷⁹ E-mail from Omri Metzger, January 9, 2013.

the evening, though the only allegation against them was “violation of a closed military zone order”, which, as stated, was issued unlawfully and was therefore invalid. Thanks to the intervention of Adv. Lea Tsemel, all four were released without conditions. Noam Gur (19) was alleged to have assaulted police officers. She was brought before the Jerusalem Magistrates Court the next day, and released on 3,000 ILS bail, after depositing 1,000 ILS with the court. The conditions of her release included an order to stay away from the Hebron area for 14 days. No charges were laid.

DELIBERATE FOCUS ON KNOWN ACTIVISTS AND LEADERS

Palestinian human rights defenders working to defend their communities from the harm caused by the Israeli occupation in the OPT are the most vulnerable defenders in Israel and in the territories it controls. Prominent defenders are subjected to various administrative measures, from administrative detention⁸⁰ to a foreign travel ban imposed for many years.⁸¹ Criminal enforcement measures are also taken against Palestinian activists, as illustrated in the next example:

Hebron: “This suspect is a recidivist”.⁸²

Issa Amro is a known activist in the popular struggle against the occupation in Hebron. He had worked as a field researcher with the Israeli human rights organization, B’Tselem, in the past. Amro was arrested countless times due to his political activism, but never indicted.

On Friday, June 15, 2012, Amro was arrested at the Allenby Bridge border crossing. He was on his way to the airport in Amman, where he was set to board a flight to Italy for a series of meetings and lectures. Amro remained under arrest for two

80 See, e.g., release by international human rights organization, Human Rights Watch regarding the arrest of Mohammed Othman, <http://www.hrw.org/news/2009/12/04/israel-end-arbitrary-detention-rights-activist>.

81 The executive director of leading Palestinian human rights organization Al-Haq, Shawan Jabarin, was put under a six-year travel ban on the allegation that he is a member of the Popular Front for the Liberation of Palestine, and based on “classified material”. The state allowed Jabarin to travel to a conference in Geneva, as an exception, only after human rights organizations filed a petition to allow Jabarin’s exit. For more information see: <http://www.hrw.org/news/2012/03/02/israel-revoke-rights-defender-s-travel-ban>.

82 HRDF case 65.

days, and then brought before the court, where the police sought conditions for his release. The police explained the background for Amro's current arrest: a demonstration during which a few dozen Israeli and international activists marched on the section of a-Shuhada Street that had been declared off limits to Palestinians, some dressed in clothes traditionally worn by Palestinians. The police provided the following description of the action that led to Amro's arrest:

There are a number of testimonies in the investigation file mentioning [Amro] was seen on the roof of the al-Mukhtaseb family and that when he whistled, dozens of anarchist activists came out of the al-Mukhtaseb house toward a-Shuhada Street. All the women in the demonstration were dressed in traditional Arab clothing, to show their solidarity with the residents. This suspect is a recidivist who keeps repeating this type of activity and has been arrested because of it and released on more than one occasion.⁸³

Adv. Limor Goldstein, who represented Amro, noted that the protest had been staged by Israeli and international activists and so the offense attributed to Amro – violation of the order prohibiting Palestinians from walking on the street – never took place. Counsel added that the protest had been non-violent and that it was only when security forces attempted to arrest some of the people who took part in the event – which, incidentally, does not require a permit according to police directives (and therefore, the offense of unlawful assembly also attributed to Amro did not take place either), that some of the protesters resisted arrest. The Jerusalem Magistrates Court, which adjudicated the case of some of the non-Palestinian detainees, ordered their conditional release, and noted that the action had been peaceful and non-violent. The Military Court Judge, Major Meir Wigiser, decided to make no finding on whether the demonstration had been legal or not at that stage, and ordered Amro's conditional release. He was ordered to post bail set at 1,500 ILS, provide a 5,000 ILS bond from an Israeli citizen, and refrain from participating in illegal demonstrations or entering a-Shuhada Street. These conditions were to be in effect for three months or until an indictment was filed.⁸⁴

⁸³ Police File 251033/12 (Judea Military Court) Israel Police v. Issa Amro, transcripts of session held on June 17, 2012, p. 1.

⁸⁴ Ibid., decision dated June 17, 2012.

DIVIDE AND CONQUER: CRIMINALIZING ACTIVISTS IN ORDER TO SPLIT THE STRUGGLE

In recent years, demonstrations have been held in several Palestinian communities on a regular basis, with Israelis and international activists participating as well. Defenders believe that their presence at these demonstrations reduces police and military violence toward Palestinian protesters. The military and the police, for their part, try to impede the non-violent actions of the Israeli and international activists who participate in the Palestinian demonstrations. The common pattern is arresting defenders and sometimes criminally prosecuting them, as a means of splitting the joint struggle by Palestinian, Israeli and international human rights defenders. In one case, officers from the Judea and Samaria District Police came to the homes of Israeli activists in the early morning, delivering copies of a closed military zone order for the villages where the regular joint demonstrations take place. The orders were valid for several months. Defenders say officers falsely presented the orders as “stay-away orders” from the villages, issued specifically against them.⁸⁵

Susiya: “Left wing activists just cause civil unrest and fan the flames in the area”.⁸⁶

On July 7, 2012, eight Israeli activists arrived at the Palestinian village of Susiya in the South Hebron Hills. The activists arrived together with 15 Palestinians to protest against the state’s plan to demolish homes in the village, and against graffiti that had been sprayed in the village, likely by settlers, that read “death to Arabs”, “revenge”, “price tag” (a code name given settler violence against Palestinians, and sometimes, security forces) and more. The activists demanded that police officers who were on the scene remove the hate speech graffiti. When the officers failed to respond, the activists began erasing the graffiti themselves, in the presence of the police. After one of the hate speech slogans was covered up with spray paint, and the activists wrote “No to violence” next to it, four of them, Daniel Kronberg, Amiel Vardi, Eli E. and Maria Harash, were arrested

⁸⁵ Yehoshua Breiner, “IDF v. Bil’in Protesters: Protesters Receive Deterring Orders at Home”, **Walla, November 11, 2012** news.walla.co.il/item/2584880 (Hebrew).

⁸⁶ HRDF case 72.

for “defacing property”. It was only after the four were brought to the Hebron police station that they were told they were also suspected of forming an “illegal assembly”.

In an urgent motion submitted to the Jerusalem Magistrates Court by counsel for the four detainees, Adv. Lea Tsemel, she noted that the Hebron police tended to keep activists who take part in protests in the area in custody overnight before bringing them to court, though there was no reason why the investigation and the judicial review could not be completed on the same day. The court did not issue an order to bring the detainees before it that night, and the hearing in their matter took place only on the following day.

At the hearing, the police asked to have the activists stay away from the Hebron area for 180 days, saying “left wing activists who show up there just cause civil unrest and fan the flames in the area” which is “volatile and tense”.⁸⁷ In response, Adv. Tsemel noted that according to the video footage taken in the area, there were no settlers there at all and keeping the activists away was merely meant to silence them.

In his decision, Justice Oded Shaham said that the evidence presented by the police raised real doubt as to whether the offense of “illegal assembly” had actually been committed, given the small number of participants. The judge also doubted whether the alleged spray painting of rocks and stones by the detainees constituted an offense. “It is difficult to find justification for the arrest of the Respondents”, the court ruled, and ordered their release on bail and on condition that stay away from Hebron for thirty days. According to the judge, this stay-away condition reflected a balance between the alleged offenses and the fundamental rights to freedom of movement and freedom of expression.⁸⁸ Later, Justice Miriam Lifshits Friebs reduced the parameter of the stay-away order to a one kilometer radius from the community of Susiya and the community itself “in order not to impede the rights to freedom of movement and expression to a degree greater than necessary”.⁸⁹

87 Arrest Hearing 13919-07-12 **State of Israel v. Kronberg et al.**, transcripts of session held on July 8, 2012, p. 2.

88 Ibid., p. 3.

89 Arrest Hearing 13919-07-12 **State of Israel v. Kronberg et al.**, transcripts of session held on July 27, 2012.

A-Nabi Saleh: “Their mere presence is the dangerous element that fans the flames and causes unrest during these demonstrations”.⁹⁰

Five foreign nationals (three from the UK, one from Italy and one from Sweden) were arrested on July 13, 2012, during the weekly demonstration at a-Nabi Saleh. The five detainees and a number of Israeli detainees were brought to the Binyamin police station, where they were interrogated over violating a closed military zone order. The Israeli detainees were released, but some of the foreign nationals were kept in custody, and transferred to the detention facility at the Russian Compound in Jerusalem. Counsel for the detainees, Adv. Gabi Lasky was told that the police were planning to hand them over to the Oz unit for deportation, though Oz enforcers have no powers with respect to foreign nationals who have visas. The five detainees were brought before a judge 36 hours after their arrest. The police related the background for the arrest:

On Fridays, there are demonstrations in the village of [a-Nabi] Saleh, involving stones, Molotov cocktails, etc., which causes harm to the various security forces that arrive to secure and keep the peace in the area. During these demonstrations, various organizations send representatives to take part in the demonstration and express solidarity, and there is nothing wrong with that, but their presence fans the flames, and in some of the demonstrations, there is active participation by activists who ignore the law and the closed military zone. Last Friday, a demonstration of the type I described took place [...]. The Respondents that are here today ignored the closed military zone declaration and started walking toward the forces that had come to prevent the demonstration and illegal assembly in the area, and at that point, they were arrested. They did not physically resist arrest. They were not violent. Their mere presence is the dangerous element that fans the flames and causes unrest during these demonstrations”.⁹¹

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At the hearing, the police said they would pursue an indictment against the detainees if they could not be deported. Stating that the tourists were not suspected of using force, throwing stones or resisting arrest, and that they were all planning to leave the country within the following month, the court ordered

⁹⁰ HRDF case 67.

⁹¹ Arrest Hearing (Jerusalem Magistrates Court) 26675-07-12 **State of Israel v. Khan et al.**, transcripts of session held on July 15, 2012, p. 1.

their release on condition they post their own bail, set at 10,000 ILS each, and that they refrain from participating in any demonstrations anywhere in Israel or the OPT pending their departure from the country.⁹²

Al-Araqib: “Hindering police officers in the performance of their duties does not constitute grounds for detention”.

The long struggle against the demolition of the village of al-Araqib and the evacuation of its residents has been marked by systemic and ongoing criminalization of key activists – members of the Bedouin and Jewish communities alike. The next example is from the early days of the struggle.

On January 17, 2011, near the time of the 9th demolition of the village of al-Araqib, protesters came to the village urgently. Ten activists were arrested and taken into custody on suspicion of hindering police officers in the performance of their duties. One of the detainees was also alleged to have injured a police officer.

Shortly after being taken into custody, the detainees asked to be brought before a judge within 24 hours of their arrest, for a decision whether to release them, based on Section 44 of the Law of Arrests. When Prof. Gadi Algazi’s request on this matter was denied by the Beersheva Magistrates’ Court, he appealed to the District Court. The appeal was accepted and he was released that night.⁹³ The nine remaining detainees were brought before a judge the next day, and the police said they were planning to indict five of them. With respect to the other four, Beersheva Magistrates Court Justice Yaakov Persky noted that: “The Respondent has no plans to indict them or make any sort of motion, other than the statement that they should be released on stay-away conditions”.⁹⁴ The court ordered the immediate, unconditional release of all four, rejecting the police request for a stay-away order from al-Araqib.

With respect to the arrest of the remaining activists, who were to be indicted shortly after the hearing, Justice Persky noted:

92 Ibid., decision dated July 15, 2012.

93 Arrest Appeal (Beersheva) 31671-01-11 **Gad Yaakov Algazi v. State of Israel**, TakDC 2011(1) 9544.

94 Bail Motion (Beersheva) 31678-01-11 **Haya Noah v. State of Israel, Rahat Police**, decision dated **January 18, 2011**.

On the face of it, hindering police officers in the performance of their duties does not constitute grounds for detention, and therefore, there is no justification for filing a motion for remand in custody with respect to the individuals who hindered police officers. As for the offense of injuring a police officer, without making conclusive findings, the matter is different; however, as stated, the evidence is not before me and it was not possible to obtain accurate information during the hearing as to who was suspected of what.

[...]

With respect to the remaining five Applicants, on the face of it, there was room to order their release, as I had instructed yesterday in the matter of the other [Prof. Algazi]. In the context of my decision therein, I was unable to examine the discretion used by the police officer, who presumably weighed their situation against the other. On the face of it, there is cause to wonder why a similar instruction was not given at least in the case of the four out of the five who were alleged to have hindered police officers. At most, one out of the five is expected to be charged in connection with the police officer's injury.

As stated, the evidence is not before me, and the representative of the Respondent is expected to carefully consider the matter of those four out of the remaining five applicants, and spare the Court the need to continue the hearing in their matter. With respect to the four, I repeat my finding that due to the principle of equality, and due to reasonableness, they should, on the face of it, be released just as in the matter of the other.⁹⁵

One of the individuals arrested, Haya Noah, published a detailed testimony about the events of that day in al-Araqib and the arrest. An excerpt from her testimony is provided in Appendix B.

USING THE OFFENSE OF "ILLEGAL ASSEMBLY" TO PREVENT DEMONSTRATIONS AND PROTESTS

Sometimes, to prevent perfectly legal demonstrations and protest rallies, defenders are arrested, and sometimes charged on suspicion of relatively light criminal offenses, which criminalize actions that derive directly from exercising the most fundamental human rights, such as freedom of expression and its

95 Ibid.

derivative rights, such as the right of assembly. This is consistent with trends highlighted by organizations and bodies that monitor the state of human rights defenders around the world – charging defenders with criminal offenses in a manner that violates their freedom of expression and their right of assembly. In Israel, this practice is particularly notable in terms of the use the police makes of the offense of “illegal assembly” under Section 151 of the Penal Code.⁹⁶

Rahat: prosecuted for illegal assembly.⁹⁷

On July 3, 2014, a demonstration was held in Rahat to protest the murder of the youth Muhammad Abu Khdeir, in Jerusalem. Sultan Abu Madigham, Aqel Abu Freh and 'Aziz Abu Madigham – known key activists in the local fight against the demolition of al-Araqib, participated in a peaceful protest rally, holding signs.

Three days later, the three activists were called into the Negev Central Unit. They were arrested and taken into custody. The Beersheva Magistrates Court extended their detention to July 10. During the hearing of the appeal against the arrest, the South District Attorney alleged the three had committed the offenses of illegal assembly and incitement. The police claimed at the hearing that despite the fact that the rally had been peaceful and there had been no public disturbances, the statements the three made during the rally caused the demonstration that was staged the next day, which did involve public disturbances and stone-throwing. The police argued that the rally had been unlawful because more than three people were present and it posed a “threat of breach of public safety and order”.⁹⁸ The investigator presented the court with classified material. The court accepted the detainees’ appeal in part, ordering an extension until the following day and noting that “it cannot be said that there is ample, significant investigative material

96 The relevant section of the Penal Code reads: “At least three persons who assemble for purposes of an offense or assemble for a common purpose, even a lawful one, and act in a manner that gives persons in the area reasonable grounds to suspect that the assembled persons will commit a breach of the peace or that by their assembly itself they will provoke others needlessly and without reasonable cause to commit a breach of the peace, constitute a prohibited assembly. A person who participates in a prohibited assembly is liable to one year imprisonment”. For ACRI’s analysis on the restraints Israeli law places on the use of this offense, see Nira Shaleve, **Legal Guide on the Protection of Freedom of Protest (ACRI, 2013), pp. 29-33, (Hebrew).**

97 HRDF case 245.

98 Arrest Appeal 15505-07-14 (Beersheva District) **Abu Madigham (detainee) et al. v. State of Israel**, transcripts of session held July 8, 2014, pp. 2-3.

with potential to become admissible evidence when the time comes, and which implicates the Appellants and substantiates the allegations made against them”.⁹⁹

The police indicted the three for forming an illegal assembly the very next day, and made the unusual request for this type of offense, to remand the defendants in custody. In the grounds for the motion, the South District Attorney noted that remand was required since the defendants “had shown, through their actions, that they pose a threat to public safety, given the state of security in the country at this time and the violent protests concerning the death of the youth, Muhammad Khdeir”.¹⁰⁰ The court ordered the detainees released, on condition they do not participate in illegal demonstrations.

A few months later, the defense (Adv. Shehadeh Ibn Bari) and the prosecution reached a plea bargain in which the indictments against two defendants were dropped, while the third, Aqel Abu Freh, admitted to “causing a disturbance and an insult in a public place”. Under the agreement, Abu Freh was ordered to provide a 200 ILS guarantee not to commit an offense, and no criminal conviction was entered. And so, the affair that began with indictments and draconian demands for remand of key public activists who act as human rights defenders in their communities because of the minor criminal offense of “illegal assembly”, ended with a whimper.

Sheikh Jarrah: “Dangerous inclination toward restricting freedom of movement”.¹⁰¹

In another example, which is not necessarily representative, the judges of the Jerusalem Magistrates and District Courts expressed a clear position on the arrest of protesters on suspicion of “illegal assembly”. In this case, the police clearly stated that the human rights defenders were arrested and taken to court in order to prevent them from participating in demonstrations in a bid to prevent these demonstrations.

⁹⁹ Ibid., p. 5.

¹⁰⁰ Indictment in CrimC 19089-07-14 (Magistrates Beersheva) State of Israel v. Abu Madigham et al., July 9, 2014. As stated, the phrase “given the state of security in the country”, was stressed as the background for the indictment. The indictment was filed on July 9, 2014, the day after Operation Protective Edge was launched, with the long search for the three Israeli youths who had been murdered in Gush Etzion and the murder of Palestinian youth Muhammad Abu Khdeir in the **background**.

¹⁰¹ Arrest hearing 13624-02-11 (Magistrates Jerusalem).

On February 7, 2011, a few dozen people demonstrated in the square in front of the Jerusalem Municipality building, where a meeting to discuss construction in the city's Sheikh Jarrah neighborhood was taking place. Four of the protesters, activists in the protest against settler takeover of Palestinian houses in the neighborhood, were arrested on suspicion of forming an "illegal assembly". They were brought before the Magistrates Court that same day.

Justice Haim Li-Ran watched a video shot by the police and ruled that the demonstration had 30 participants and that the video footage showed no public disturbance or the beginning of a public disturbance. Based on these findings and on the fact that the evidence did not point to any offense, Justice Li-Ran ordered the four unconditionally released.

The police appealed. In the appeal hearing, held at the Jerusalem District Court before Justice Moshe Drori, the police said that there had been 70 people in the demonstration, not 30, as Justice Li-Ran had said,¹⁰² and that public disturbances erupted later on, particularly in a confrontation between right wing activists and demonstrators. The police demanded that Sara Benninga, a key activist in the Sheikh Jarrah solidarity movement, be ordered to stay away from demonstrations in Jerusalem for 180 days and that she, Zvi Benninga, M.A. and Dorit Argo be prohibited from participating in demonstrations in Jerusalem for 15 days, claiming:

*The grounds of posing danger is present, that is, posing danger to public safety. The Court should give the police tools that would allow for a balance between arrest and stay-away orders, especially given that in this and many other cases, the police do not take the extreme measure of arrest, but seek to have the organizers of the demonstration stay away from participating in other demonstrations for a limited time in order to reduce the potential for recurrent harm to public order.*¹⁰³

In his decision, Justice Drori accepted the assertion made by Justice Li-Ran that according to the evidence presented, the four committed no offense, and severely criticized the police. Justice Drori noted, among other things:

¹⁰² Sections 83 and 84 of the Police Ordinance and the directives issued pursuant thereto instruct that an "assembly" or a "march" with 50 participants or more, held outside and during which speeches are made, requires a permit issued by a police officer.

¹⁰³ Arrest Appeal (Jerusalem) 14677-02-11 **State of Israel v. Sara Benninga et al.**, decision dated February 16, 2011. Quote from the appeal letter submitted by the police and the statements made by the police representative in paragraph 5 (emphasis added).

It goes without saying that in my decision herein, I have made no reference, as is appropriate, to why a certain individual demonstrates, or what the object of the demonstration is, since, from the legal perspective of fundamental civil rights, the right to demonstrate is unrelated to the subject of the demonstration and the police must allow anyone to demonstrate for whatever reason. This duty includes not only protecting the demonstrators themselves, so that they are able to demonstrate, but also protecting them from other demonstrators who oppose their views. This matter has been determined by the Supreme Court back in the Levy Case (HCJ 153/83 Levy v. Commander of the Police South District, IsrSC 38(2) 393). I have found no need for the District Court to explain to the police once more that it must uphold Supreme Court rulings handed down more than 30 years ago.¹⁰⁴

The matter found its way back to Justice Li-Ran's courtroom two months later, when he presided over the detainees' claim for compensation for their false arrest. In his decision, Justice Li-Ran stressed the importance attached to freedom of expression in a democratic society and discussed the care law enforcement agencies must take not to violate the rights of demonstrators. Justice Li-Ran noted:

Moreover, it appears to me that the fact that the competent police officials still find it difficult to internalize and accept the full constitutional meaning of freedom of expression and the derivative right to demonstrate in a democratic society is demonstrable not just in the unnecessary arrest of the Respondents, but also in the nature of one of the conditions sought for their release, i.e., an advance ban on participating in demonstrations for a period of time or in a certain place, regardless of the circumstances [...]. This is a worrying condition which, I am afraid, is motivated by a dangerous inclination toward restricting freedom of movement.¹⁰⁵

Given what the judge described as a "clear violation of a fundamental right", the court ordered payment of the full damages sought, 3,750 ILS and 2,500 ILS in trial costs to each of the detainees.

¹⁰⁴ Ibid., para. 16.

¹⁰⁵ Arrest Appeal (Jerusalem) 13264-02-11 **State of Israel v. Sara Benninga et al.**, decision dated April 10, 2011, paras. 7-8.

INDICTING DEFENDERS FOR THEIR ACTIONS

Criminal indictments served for non-violent protest are located on the far end of the spectrum of the means used for criminalizing human rights defenders. These indictments, which are the harshest tool available to law enforcement agencies for criminalizing defenders for non-violent activity, have an impact that stretches beyond the immediate future. Criminal trials are lengthy, and in addition to the cost aspect, they cast a permanent shadow over the accused defenders, which have a deterring impact, even if the trials result in less severe punishments or, rarely, in an acquittal. We address the chilling effect criminalization has on human rights defenders after the following examples.

Deir Qadis: “Told the demonstrators to sit on the ground, and in response to his cries, they did”.¹⁰⁶

Muhammad Amira is a school teacher from the village of Ni’lin. He is about forty years old, has four children, and is one of the leaders of the popular committee in his village.

Amira was indicted on charges of “incitement and support for a hostile organization”. The indictment is based on the fact that “the Defendant, along with others, disrupted works carried out in the Area by the Civil Administration. The Defendant was urging and inciting the other participants to disturb security forces and disrupt works carried out on site by the Civil Administration”. The maximum penalty for this offense is ten years’ imprisonment.¹⁰⁷ Amira was also

¹⁰⁶ HRDF case 17.

¹⁰⁷ Section 251(b) of the Order regarding Security Provisions No. 1651 defines the offense: A person who (1) Attempts, orally or otherwise, to influence public opinion in the Area in a manner which may disturb the peace or harm public order, or (2) Carries out any action or holds in his possession any object with the intention of executing or facilitating the execution of an attempt to influence public opinion in the Area in a manner which may harm disturb the peace or harm public order, or (3) Publishes words of praise, sympathy or support for a hostile organization, its actions or objectives, or (4) Carries out an action expressing identification with a hostile organization, with its actions or its objectives or sympathy for them, by flying a flag, displaying a symbol or slogan or playing an anthem or voicing a slogan, or any similar explicit action clearly expressing such identification or sympathy, and all in a public place or in a manner that persons in a public place are able to see or hear such expression of identification or sympathy – shall be sentenced to ten years imprisonment.

charged with disturbing a soldier for “hindering security forces in the performance of their duties, after failing to comply with the soldiers’ orders and leave the area of the works, even after the demonstration was declared illegal”.¹⁰⁸

Amira was arrested and indicted after a demonstration in which he participated that took place on June 15, 2011. The demonstration was held on land that belongs to the village of Deir Qadis, to protest works for the erection of the separation fence in the area. Amira was the only person arrested. On the fifth day of his arrest, he was brought before the Judea Military Court at the Ofer military camp. The prosecutor said Amira would be indicted and asked to have his arrest extended pending submission of the indictment.

In the hearing held the next day at the Military Court of Appeals, the military prosecutor said the indictment would be served that same day, and asked Amira be remanded in custody pending the end of all legal proceedings. In response to a question from defense counsel, Adv. Neri Ramati, the military prosecutor specified the actions attributed to Amira in the context of the offense of “hindering a soldier”:

*... He arrived at the site with others, told the demonstrators to sit on the ground, and in response to his cries, they did. The suspect also sat in front of the tractor and refused to evacuate even after the demonstration was declared illegal. Additionally, the suspect, along with others, pushed security forces after they were removed from the tractor, in order to return to sit on it.*¹⁰⁹

At the hearing, after the parties made their arguments, Military Judge Lieut. Col. Ronen Atzmon said that given the arguments, and having reviewed the precedents submitted by the parties, he would not uphold Amira’s arrest. The military prosecution withdrew its request for remand.¹¹⁰ The indictment was served that same day, as stated, on charges of incitement and hindering a soldier. Amira was released on 3,000 ILS bail and an order to stay away from the Deir Qadis area.

108 Case 3197/11 (Judea Military Court) **Military Prosecutor v. Muhammad Amira**, indictment filed June 20, 2011.

109 MiscApp 337/11 (Judea Military Court) **Military Prosecution v. Muhammad Amira**, transcripts of session held June 19, 2011.

110 AA 1819/11 (Judea Military Court) **Muhammad Amira v. Military Prosecution**, transcripts of session held June 20, 2011.

Amira admitted to being present in the area, but pleaded not guilty to the offenses he was charged with. On October 18, 2011, after hearing the evidence and watching a video of the incident, the Military Court acquitted Amira. Among the grounds for the rare acquittal,¹¹¹ the court noted that the elements of the offenses with which Amira was charged had not been proven. The court also noted that considering the fact that Amira had been beaten by soldiers, as captured on the video shown at trial, the prosecution would have done well to avoid laying charges, as abuse of process would apply. The Military Court stressed that the works were conducted illegally:

Throughout the video, until his forceful arrest, the Defendant appeared to be acting calmly and less objectionably than the others present, given the circumstances. He did insist on knowing the purpose of the works, but I have not been convinced that he behaved in a manner that might have disturbed the peace, particularly when the situation involved objecting to an act that, according to the law, can be challenged in writing, and where the legal possibility to do so has been denied the Defendant by the parties carrying out the works [...] Defense counsel's claim that hindering a soldier in the performance of his mission means hindering a soldier in the performance of his mission to uphold the law, rather than to uphold a breach thereof is to be accepted, and therefore, there is no room for a conviction on this offense.¹¹²

A-Nabi Saleh: "Resisted arrest by moving her hands".¹¹³

On June 28, 2013, the weekly demonstration against settler takeover of lands belonging to the villages of Deir Nidham and a-Nabi Saleh took place. About seventy people were in attendance. The demonstration proceeded peacefully and no stones were thrown. During the demonstration, some of the participants walked towards Ein al-Qus, a fresh water spring to which Palestinians have been

¹¹¹ For figures on Military Court judgments in the OPT see for example, Yesh Din, **Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories, December 2007.**

¹¹² Case 3197/11 (Judea Military Court) **Military Prosecutor v. Muhammad Amira**, verdict, pp. 12, 19.

¹¹³ HRDF case 161.

denied access by settlers from the nearby settlement of Halamish, who had taken over the spring in recent years. Three participants were arrested during the demonstration: a Spanish activist, Nariman Tamimi, one of the local leaders of a-Nabi Saleh's struggle, and Rana Hamadah, a Palestinian Canadian, who is a resident of Canada and an activist with the popular struggle. The three were taken to the police station, where the Spanish activist was released, while Tamimi and Hamadah were interrogated overnight on suspicion of disobeying a lawful order (entering a closed military zone) and hindering a police officer.

Under the law applicable in the OPT, Tamimi and Hamadah could be held for up to 96 hours. They were brought before the Military Court at the Ofer military camp two days later. At the end of the hearing, the Military Court ordered their release on their own recognizance, while noting the two were the only people arrested in the demonstration. At the prosecution's request, the court postponed their release until the next day to allow for an appeal.¹¹⁴ The appeal submitted by the prosecution was heard the next day, but the Military Court of Appeals dismissed it and ordered the women's release, partly because the evidence contained no indication of violent or dangerous behavior on their part.

The prosecution filed indictments against both activists the next day, in their presence. Tamimi was charged with disobeying a closed military zone order and Hamadah was charged with the same offense and with hindering a soldier, as she "resisted arrest by moving her hands while the security forces tried to handcuff her", moved the hands of another person whom a police officer was attempting to arrest and cursed the police officer.¹¹⁵ The military prosecution asked the two be remanded in custody. The Military Court rejected the request and ordered the two released to house arrest and payment of a cash bond of 750 ILS.¹¹⁶ Following an appeal submitted by defense counsel for both defendants, Adv. Neri Ramati, the Military Court of Appeals ordered the house arrest to apply only on Fridays, the days on which the a-Nabi Saleh demonstrations take place.¹¹⁷

114 CrimApp 3684/13 (Judea Military Court) **Israel Police v. Nariman Tamimi and Rana Hamadah**, decision dated June 30, 2013.

115 Case 3718/13 (Judea Military Court) **Military Prosecution v. Rana Hamadah**, indictment filed July 2, 2013.

116 Cases 3717/13, 3718/13 (Judea Military Court) **Military Prosecution v. Nariman Tamimi and Rana Hamadah**, decision dated July 2, 2013

117 *Ibid.*, decision dated July 9, 2013.

South Hebron Hills: “Sort of a mission”¹¹⁸

Ezra Nawi is a known key activist in the South Hebron Hills. On March 30, 2013, Nawi was driving his car in the area, when a military vehicle overtook him. The military vehicle proceeded to drive very slowly while in front of Nawi, at a speed of about 10-15 kilometers per hour, but sped up when Nawi attempted to pass him. The driver of the military car let Nawi overtake him shortly before a solid line appeared on the road, so Nawi completed the pass partly crossing a solid line. When Nawi completed the pass, the passengers of the military vehicle ordered him to pull over, and a police officer came out of the military vehicle and issued Nawi a ticket for overtaking on a solid line.

Nawi and other activists assumed that this was not a coincidence, and that these actions were taken for the purpose of harassing them into staying away from the area. This assumption was supported by the fact that three other activists were issued traffic tickets in the South Hebron Hills area on the same day. Adv. Lea Tsemel took on the case at the Jerusalem Traffic Court.

Three long hearings were held in the case, and six witnesses were called to testify. One of them, an officer with the Hebron police, did not appear to give testimony, despite being subpoenaed by both the court and the defenses. Another witness, a reserve army officer who had been the commanding officer in the vehicle, admitted it was “sort of a mission”, and refused to answer questions regarding the mission goal and the orders he had given the driver, for fear, he said, that he would incriminate himself.¹¹⁹

After hearing the witnesses, Justice Miriam Kaslassy of the Magistrates Traffic Court acquitted Ezra Nawi of all charges. Justice Kaslassy found that Nawi “did everything in his power to avoid committing the infraction” and that the military jeep driver “played a significant role in the commission of the infraction”. The verdict stated Nawi should not have been pushed into making the traffic violation. In an unusual move, the court also accepted the argument made by the defense that Nawi should be acquitted due to abuse of process since the prosecution should not have filed an indictment in the first place, and should have at least withdrawn it once the trial started. The court stated that the prosecution’s failure to do so “fundamentally contravened the principles of justice and fairness”.¹²⁰

118 HRDF case 159.

119 Traffic Case 7789-04-13 (Jerusalem Magistrates Traffic Court) **Israel Police v. Ezra Yitzhak Nawi**, transcripts of session held July 16, 2013, pp. 9, 11.

120 Ibid., grounds for decision, dated November 23, 2013, p. 6.

THE CHILLING EFFECT OF CRIMINALIZATION

Handling the activities of human rights defenders – protesters, journalists, activists in movements and organizations and the like – with criminal enforcement tools obviously has a deterring effect. A person would likely hesitate to sign a petition if he or she knew that security forces would find out; a person would reasonably avoid joining a rally or a lawful demonstration if he or she feared detention, arrest and even prosecution. But in addition to the obvious and immediate impacts of criminalization, there are several ancillary issues that increase its chilling effect, whether in practice or in theory.

THE FINANCIAL IMPACT OF CRIMINALIZATION

Legal representation for detainees or defendants is costly. When individual defenders are forced to hire a lawyer, they incur direct costs for legal services but also lose work days (when under arrest, or for court appearances). Not everyone has the means to pay for these costs, and fear of legal costs in defending against criminalization measures (including payment of financial guarantees) may contribute to abstention from participating in human rights struggles.

These difficulties are not confined to individuals only. They are present also when there is an organization that backs activists who have been detained or charged and funds their legal defense. Legal costs are paid at the expense of the organization's operating budget (if such exists), sometimes to a degree that can jeopardize the organization's entire operation. For instance, members of the Sheikh Jarrah solidarity movement have been arrested so many times that legal costs took up nearly the entire budget, threatening to shut down the movement entirely. Gil, a key activist, said:

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The more visible and influential we became, the more arrests were made, followed by indictments and libel suits. At some point, we were putting most of our financial and human resources into covering legal costs, which reached hundreds of thousands of shekels, instead of the purpose for which we established the movement.¹²¹

¹²¹ Documented by Alma Biblash of the Human Rights Defenders Fund (HRDF). Gil's full name is on file with HRDF.

CRIMINALIZATION OF DEFENDERS: THE GENDER PERSPECTIVE

Criminalization of human rights defenders involves specific difficulties for women. The violence and discrimination experienced by women in all areas of life is felt particularly strongly when they face police brutality, interrogation, detention and legal proceedings. Many women who set out to defend human rights report sexual harassment by police and military officials, both in terms of prohibited physical contact at the time of arrest, or during attempts to disperse crowds, as well as statements about their appearance, body or sexuality. During the interrogation and at various other stages of the arrest, female defenders are alone in a room with an interrogator, subjected to his control and authority. Many women feel threatened in this type of situation, all the more so, women who come from traditional societies. Women are naturally more sensitive to privacy issues, such as access to washrooms and showers, physical searches and more, and these sensitivities can be used against them. The financial threat involved in legal proceedings is also more effective when it comes to women, as they earn less.

Manal Tamimi, a Palestinian activist in the popular struggle against the separation wall and the settlements:

My husband and I have four children and we are very active in the popular struggle in a-Nabi Saleh. On January 1, 2015, in the late afternoon (around 4:00 p.m.), as we were driving back into the village from work, with my brother-in-law and my son, a military jeep stopped us and the soldiers ordered us to get out of the car. Some more jeeps arrived later. They separated us and started beating us.

They beat me, called me a whore and a street person. They pushed me, pulled my clothes so that my body was exposed to the men, and tried to take off my head covering. Finally, they tied my hands and legs and put a blindfold on me. When I got into the jeep, with my eyes blindfolded, they made me sit on one of the soldiers' lap. I yelled at them, so they made me sit on the floor with all the equipment. We got to Binyamin Station at around 7:00 p.m., and I was taken into interrogation. At first they interrogated me as if I'd attacked a soldier with a weapon. About an hour later, they said they knew I didn't attack and that I didn't have a weapon, but the interrogation went on for three more hours. The

interrogator told me that in Arab society, a woman who is arrested is considered a dirty woman, that I was bringing shame on my family, my husband, my parents, my children. He said I should take care of my reputation so people wouldn't start saying bad things about me. He said they could leave me alone and help me get my dignity back. They hinted that I could help them and collaborate. They even said they'd get me a permit to enter Jerusalem. I refused. I said my family supported me and that we believe in our struggle. I was released at about 1:00 a.m.”¹²²

Sahar Vardi, a human rights activist, reports:

During the weekly demonstration in a-Nabi Saleh, a few minutes before I got arrested, a soldier who was standing next to me asked: “How big is the Arab cock you’re getting”? When I told this to the interrogator who interrogated me later that day, he asked me why I was even telling him. The soldier probably said it as a form of humiliation or insult in this situation. The interrogator’s reaction was just more of the same.¹²³

Adv. Gabi Laski describes what women she represented have faced during their arrest:

Over the years, I’ve received many complaints about women being taken for invasive physical searches for no reason, reports about sexist language and sexual innuendo amounting to severe sexual harassment both before and after the arrest. On other occasions, you can see police officers touching women’s intimate body parts, and complete disregard for the rule that women should be arrested by female officers. Put together, this points to a factual reality of arrests that involve the harassment and humiliation of women. So far, the issue has not received proper attention from the relevant officials.¹²⁴

Adv. Maysaa Arshid talks about the effects discriminatory treatment has on Palestinian female human rights defenders:

122 Conversation with Alma Biblash of HRDF, May 13, 2015.

123 Conversation with Alma Biblash of HRDF, May 12, 2015.

124 Conversation with Alma Biblash of HRDF, May 5, 2015.

Female human rights defenders who come into contact with regime officials face more than just visible gender based oppression such as sexist and harassing comments, but also hidden patriarchal oppression. In cases I've represented, when the police summon a Palestinian human rights defender to come in for interrogation, or a conversation, the summons is delivered to a different address (neighbors or extended family), in an effort to shame the defender in her own community. In a traditional society, this is considered taboo.¹²⁵

Women defenders who are the mothers of young children and infants face greater difficulties when they are taken from their homes and sometimes held in detention or in prison for a lengthy period of time, as the effects on their children may be extremely harsh. This poses a particular threat to women who wish to protest and to communities struggling to protect their children.

All these practices expose female human rights defenders to many different threats and may deter them from exercising their right to actively participate in protests. Women defenders, therefore, require special protection.

FOCUSING ON LEADERS: HARMING THE COMMUNITY WHILE HARMING THE DEFENDERS

The examples presented in this report and many others point to a policy of targeting key activists in non-violent protests. Whether this policy is the result of decisions made in real time by officials on the ground, or whether the decisions to arrest and indict key activists are made at a higher level, the result is interference with the ability of civil society to nurture a leadership that would promote the protection of human rights. Arresting and indicting key activists because of the role they play in leading non-violent actions harms the defenders and the struggle, but also has the side-effect of encouraging affected communities to choose more violent courses of action.

¹²⁵ Conversation with Alma Biblash of HRDF, May 17, 2015.



CONCLUSION

Human rights defenders in Israel are constantly harassed and constrained by state authorities. In addition to draconian legislative attempts and ongoing efforts to depict them as public enemies, many human rights defenders, particularly activists, are the target of systemic criminalization efforts. Protesters are arrested and detained even when they do not break the law, they are subjected to strict conditions of release and are often indicted simply for their efforts to promote human rights. In this report, we presented examples of how activists working in the OPT have been criminalized, but this sort of criminalization is directed at defenders who are active in many different issues in Israel: the struggle for public housing, the socio-economic protest and more.

There is no proper public debate about the status of human rights defenders in Israel, and about the rights and obligations associated with this status. Law enforcement agencies, primarily the police, attach no importance to the array of rights given to human rights defenders, which is specifically intended to allow them to carry out their activities. Instead, it often seems that police forces on the ground and police prosecutors consider criminal law a legitimate tool for constraining human rights defenders and interfering with their actions. This is most apparent in the struggles waged by the most marginalized groups – Palestinian civilians in the OPT and the Bedouin communities inside Israel. However, other human rights defenders are not immune to harassment through criminal law enforcement.

Given the familiar and consistent patterns of criminalizing defenders who are not suspected of any sort of violence, the judicial system's inaction is particularly disappointing. Courts often hear charges, and more frequently, requests for detention or conditional release of detainees held over actions related to defending the human rights of individuals, groups and communities, but they usually treat these cases as "ordinary" criminal incidents and fail to identify them as part of a systemic effort to curtail the constitutional right to freedom of expression. The courts very rarely use the tools at their disposal to restrain the policy that views criminal law as a tool for constraining non-violent civilian struggles. As part of the general disregard for the status of human rights defenders, courts do not take this status into consideration when setting bail terms or sentencing defendants.

In the current state of affairs, human rights defenders have no protection as such in Israel or in the territories it occupies.

The Human Rights Defenders Fund recommends the following minimum measures:

- The Declaration on Human Rights Defenders must be incorporated into domestic law by a legislative act of the Knesset, and a policy that encourages and allows the activities of human rights defenders and cements the special protections afforded to them must be instituted in the relevant government ministries.
- The attorney general must issue directives to prevent harassment of human rights defenders by law enforcement agencies.
- The attorney general must introduce strict standards with respect to the arrest of protesters who are not suspected of serious offenses, and a mechanism for examining release conditions and draft indictments before they are submitted.
- The attorney general must issue an order that indictments in offenses related to freedom of expression will be served by the State Attorney's Office rather than police prosecution units.



ANNEXES

ANNEX A: THE DECLARATION ON HUMAN RIGHTS DEFENDERS

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Third Committee (A/53/625/Add.2)]

53/144. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly, Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world, Taking note of Commission on Human Rights resolution 1998/7 of 3 April 1998,¹ in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption, Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights, 2 A/RES/53/144 Page 2 3 Resolution 2200 A (XXI), annex. /...

1. **Adopts** the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to the present resolution;
2. **Invites** Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of Human Rights: A Compilation of International Instruments.

ANNEX

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world, Reaffirming also the importance of the Universal Declaration of Human Rights² and the International Covenants on Human Rights³ as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level, Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter, Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources, A/RES/53/144 Page 3 /...

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance, Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms, Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State, Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels, **Declares:**

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights

and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International 2 Covenants on Human R3ights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a nondiscriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving A/RES/53/144 Page 5 /...

their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in

accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.
2. Such measures shall include, inter alia:
 - (a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;
 - (b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.
3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations

among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

ANNEX B: TESTIMONY OF HAYA NOAH

Incidents that took place on January 16 and 17, 2011 in al-Araqib and the arrest – personal testimony (excerpt). By Haya Noah.

Published in Hebrew on Joseph Algazi's blog Defeatist Diary, on January 31, 2011.¹²⁶

[...]

We came back to the village in the afternoon. The bulldozers and trucks finished their work at around 4:00 p.m. and left the area with the police. But later, it turned out that the police had set us up. Less than half an hour later, they came back, through Araqib Valley, which is south of the village. They were shooting rubber and sponge bullets at the people who had started setting up shelter for the night.

In the compound in the valley, there were many people and a lot of children. When they saw the police, they started running into the cemetery. None of the police officers warned them or told them to halt. They shot and wounded men, women and children indiscriminately. You can still see the marks the injuries left on their bodies.

We, those who were around the southern hill of the village, got into our cars. I put a saw that was nearby in the car. We tried to get out of there and we took Muhammad, who is nine years old, with us. We'd gone about 10 or 20 meters, when the police ordered us to halt. I stopped the car right away, and then a bullet was shot at the driver's side window, which luckily, was closed. We were shocked. We got out of the car as we were ordered by Officer A., who was particularly violent. He and others, who weren't wearing identifying tags, pulled us out of the car aggressively while shoving Inbar and Leanna. Our request to take Muhammad, who had started crying, over to the cemetery was denied. He didn't want to leave on his own and he was afraid of the officers. The violence used by the officers was unnecessary and it exceeded what they call reasonable use of force. Even when we were standing next to the car, the police continued to be very aggressive toward us. Aziz and Suliman were ordered to sit on the ground. Everyone, without exception, did what the officers said. The officers said that my car and Aziz' car were "confiscated".

¹²⁶ www.defeatist-diary.com/index.asp?p=articles_new10463&period=7/12/2010-1/2/2011

The officers were aggressive despite the fact that none of us was confrontational. We were taken in Salim's car, which had been confiscated, to the Rahat Police. The officer drove the car recklessly. He went very fast and paid no attention to the car or the trailer that was attached to it. I later found out that the refrigerator that was in the back got broken and other objects as well.

Adv. Salem Abu Madigham, who quickly came to help us and talked to the officers, was also arrested.

The interrogations started when we got to the Rahat police. The officers and some of the interrogators were especially hostile. This is where my fear that one of us would be harmed at the police station grew. The treatment we received was violent, and mostly humiliating.

There were not enough chairs. Hadar and Eliana were told to sit on the floor. Mumtaz was standing in the corner of the room. Some time later, he was sternly told to move to the other side of the room (He had leaned against the wall. The switch got flicked and the light went out). The officers thought he wasn't moving fast enough, so they pushed him and beat him.

Because we did not have much experience with arrests, we worried about what would come next. The clock was ticking. When the lawyers came, they told us what was going to happen, so that managed to relieve some of the terrible stress that was mounting among the activists. The arrival of the lawyers itself helped calm things down, but [Officer A] managed to get into a fight with one of them and told him that he was being detained for questioning too. The insecurity we felt as a result of being denied all basic civil rights got worse when the lawyer was detained by the Rahat Police. I got scared that [A] would lose control. He turned out to be Dr. Jekyll and Mr. Hyde, calm and soft spoken one minute and flying into a rage the next.

Every Tom Dick and Harry at the police station said things like "Why are you helping the Bedouins"? or "Go to the fence (in Bil'in)". The officer who interrogated me, Yigal, boasted that we'd all be taken into custody, including "women, children and infants", as he put it.

While in custody

We had hoped that whole time that someone was looking after things for us. It turned out that that didn't really work out. The lawyer got on the case later, about two hours after we were arrested. At around 10:00 p.m., we were taken to Ohalei Kedar Prison. Hadar and Eliana were put into a prisoner transport vehicle with their hands tied, and maybe their legs too. I had my legs tied.

The experience there was just as bad, though the prison guards were professional. After a long process which included the removal of our cuffs and shoe laces, interviews with the paramedic, the officer in charge and the social worker, who practically asked the same questions, we were taken to a wing that was described as the women's and minors' wing. In reality, they put us in a cell at the end of a hallway in the adult wing. We got catcalled the whole way down the hall. We were taken inside and our world just fell apart.

There were some filthy mattresses on the floor, and five military style wool blankets and that's it. The toilet cell was dirty, and there were cockroaches running around on the filthy floor.

Eliana tried to call the guards' attention to ask for another blanket, but it was no use. We realized other holding cells had intercoms that patch through to the guard, but ours didn't. We communicated by shouting to get the attention of the guard in the command room, and only after that, the intercom would get switched on – or not.

I suggested we cover ourselves in everything we had to reduce contact with the bed and the blankets as much as possible. That's how we got into bed and went to sleep. Hadar suddenly jumped out of bed because a cockroach had landed on her. She turned the mattress over, and put the cockroach in a cup and from there, threw it outside. We went back to sleep in this filthy place, and got a taste of the horrifying experience women and many other people in Israel go through day in and day out.

People kept coming into the wing all through the night. There was hardly a moment of quiet. The cold was bone chilling. Hadar, who got one blanket, covered herself in a mattress. I gave her one of the blankets I was using in the middle of the night. There were cries and shouts all night. One of the detainees asked for warm water in a hoarse voice.

In the early morning, at around 5:30 a.m., a voice that came through the PA system woke us up. Then a prisoner who was distributing hot water came by. We didn't understand why because there were no cups in the room (except for a disposable cup Hadar used to throw the cockroach out), though there was a bag with sugar and some tea bags. The prisoner took back the water bottle he'd put through the slit in the door, though none of us had taken it.

We waited again. At around 7:00 a.m., maybe earlier, they took us down to the entrance. [...] we were put in a holding cell, where we waited for the transport to the court. Then, in a small cell, they body-searched each one of us. They cuffed our hands and legs and took us out to a police car that was waiting outside. We waited for another half hour or so in the stuffy police car, and then the long ride to the court began. We got there at 8:45 before noon [sic]. We were put in the female detainee room. It was small, about 12 square meters, and it was cold and even more humiliating than the cell at Ohalei Kedar. The toilet was separated by a low wall, so cold air flowed into the cell all day. It wasn't possible to sit for long on the concrete benches. Though we were tired, we had to jump and walk around to keep warm.

At around 11:00 a.m., we were taken out of the cell. Before that, we put our hands through the slit in the door and the officers cuffed them. When we came out, they cuffed our legs too. We walked ten steps, maybe less, and we got taken into a tiny room, where we met Salem, who told us what was going on in the village. He said that crowds had come and fires had been lit. Salem said there were still many people there today and that the police didn't come near and that the JNF people weren't working because of the stay order. The news cheered us up. Then, we went out of the room, took a few steps, had our leg cuffs removed, went into the room, put our hands through the slit in the door and had the handcuffs removed. We sat and waited for our arrest hearing.

It felt like we were waiting forever. The whole time, people in nearby cell were screaming and crying "Nahshon", "Nahshon" (a name used for all prison guards, who are members of the Nahshon unit) "get me a cigarette", "what's the time", and the likes.

In the early afternoon, at around 12:30 p.m., we were told to put our hands through the slit and our hands were cuffed again. When we came out of the room, our legs were cuffed again, and they took us to the detention courtroom. They took our handcuffs off before we entered.

Some of us were sitting on the detainee bench, and some of us were standing, and the hearing started. [...] The police prosecutor said that the indictments would be served in an about an hour and there was no point in holding a preliminary hearing. We were sent for a short recess, so the prosecutor could find out whether an indictment was really going to be served. We were handcuffed again. After waiting for about 15 minutes, the hearing resumed and our handcuffs were taken off again. Then it turned out that four of us weren't going to be indicted, and were released. I was happy Hadar and Eliana were going to be released, but sad that I would have to stay under arrest and about how long I'd stay under arrest before being released. We were taken out again, handcuffed, and taken back to the detention room. Hadar and Eliana waited for two hours that seemed like an eternity until they were released.

At 5:30 p.m., the arrest extension hearing took place. It was a different judge this time. I stayed in the detention room. They remembered to take me to the courtroom only at the end of the hearing, and like last time, it was full of activists and friends. I went through the entire cuffing routine again, handcuffs, leg cuffs outside the cell, a slow painful walk to the courtroom and the removal of the handcuffs. The judge said he would extend the detention until Thursday. Our lawyer objected, saying there was no justification to extend. The judge said he would consider the request and make a decision, but only after he went through all the day's dockets.

We were taken back to the cells, and waited again for a long time. Aziz, Suliman and Ahmad were waiting too, but Hamza stayed in the courtroom. At around 8:00 p.m., we were called into the detention courtroom again. This time, because of a blackout, we were led through the back corridors, in pitch dark, to the courtroom. The judge ordered us released on our own recognizance and on condition we stay away from al-Araqib. Aziz objected strongly, and the judge ultimately ordered our release.

We were taken back to the detention facility, where they started organizing the prisoners and detainees to take them back to Ohalei Kedar. Slowly, everyone left, and we were the only ones there, in two different cells. I heard Aziz, or one of the other detainees, getting impatient, as time was going by and no one came to release us. I kept walking the length and breadth of the cell, to measure it, and to pass the time and chase away the bone chilling cold.

Then, at around 9:30 p.m., we were released. Friends, people from al-Araqib and Forum activists were waiting outside. Then, for the first time, I realized that the nightmare was over and that I was getting back my life that was taken away from me for more than 24 hours.

The transition between the two worlds – from being an ordinary citizen who ostensibly has rights and cannot be harmed (which turned out to be completely false) to being a detainee with no rights, who can be held in a cell to sleep in inhuman conditions, who is at the mercy of prison guards and police officers – was very sharp. My world fell apart because it was a false arrest that was only meant to deter us from supporting and showing our solidarity with the people of al-Araqib, who are the victims of a terrible injustice. Dealing with the trial, which is set to begin on February 1, 2011 [sic], will be a burden on our personal lives, and our finances, and is meant to deter activists – all done under the auspices of the law and with police brutality.

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