

Diakonia submission to the EU-Israel Informal Human Rights Working Group meeting May 2014

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With this note, Diakonia's Resource Centre on International Humanitarian Law would like to contribute substantively to the deliberations of the EU-Israel Informal Human Rights Working Group. The submission is particularly focusing on the rule of law as a fundamental basis for, and component of, human rights protection. The submission is based on the attached report: **Rule of Law: A Veil of Compliance in Israel and the oPt 2010-2013.**¹

This submission is focusing on policies and practices of Israel in the occupied Palestinian territory (oPt). As these policies and practices fall under the judicial overview of Israeli courts, this submission underlines Israel's human rights obligations vis-à-vis all persons brought under its jurisdiction or effective control.² Diakonia refers to other contributors to comment on policies and practices implemented in Israel.

Recommendation 1: The scope of the Working Group's deliberation must encompass treatment of *all* persons brought under the jurisdiction or effective control of the State of Israel.

The objective of the EU-Israel ENP Action Plan is to work together to "promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law". As the attached report submits, and as submitted repeatedly by contributors to the Informal Working Group in the past³, Israel's obligations to comply with human rights also bind Israeli authorities and courts when exercising control and jurisdiction over the occupied Palestinian territory. To exclude these policies and practices from the Working Group may give the impression that the EU is acquiescing to Israel's position that Israeli courts are not bound by human rights standards in relation to the oPt.

¹ Rule of Law: A Veil of Compliance in Israel and the oPt 2010-2013 at http://www.diakonia.se/en/IHL/News-List/Rule_of_law_report/

² Rule of Law: A Veil of Compliance in Israel and the oPt 2010-2013, n1, Page 29

³ See, e.g. EMHRN Note ahead of the EU-Israel Informal Human Rights Working Group meeting (15 January 2013) <http://www.euromedrights.org/eng/wp-content/uploads/2013/01/2013-01-EMHRN-note-ahead-of-the-EU-Israel-Human-Rights-Working-Group-meeting.pdf>

This is contrary to the conclusions of the below-mentioned human rights treaty bodies⁴ and contrary to the universal applicability of human rights.

To assess human rights compliance of only practices and policies affecting Israel in the Informal Working Group on Human Rights, and those affecting the OPT in the Sub-Committee on Political Dialogue and Cooperation contributes to a distorted and politicized picture of Israel's compliance with the *shared values*. The subjects and addressees of these two assessments remain the same – Israeli authorities and courts.

A comprehensive assessment by the Informal Working Group would not prejudice the EU's policy regarding the territorial limitations of Israel, as such an assessment would not entail the Working Group's recognition of Israel's practices and policies in the oPt as part of its sovereign powers. Rather, it would merely reflect the full extent of the human rights obligations of Israel, whether territorial or extra-territorial, vis-à-vis all persons brought under its jurisdiction or effective control.

Recommendation 2: The Working Group must emphasise that rights of the protected population in the occupied Palestinian territory stem both from human rights law and international humanitarian law and perform the assessment accordingly.

The report helps to clarify that while rule of law and independent judiciary must be guaranteed to all persons under the jurisdiction or effective control of Israel, the Informal Working Group must base its assessment of rule of law in relation to Israeli practices and policies in the oPt on both human rights law and international humanitarian law, as applicable in the context of an occupation. The *EU Guidelines on Promoting Compliance with IHL* confirm that it is important to distinguish between international human rights law and IHL, and that promotion of compliance with IHL is part of the founding principles of the EU.

⁴ Rule of Law: A Veil of Compliance in Israel and the oPt 2010-2013, Page 29

Recommendation 3: The Working Group must insist on the *independence* of the Israeli judiciary, not only as a general political commitment, but also as an applied principle in its judicial oversight over Israel's policies and practices implemented in the oPt.

The Israeli High Court of Justice exercises judicial oversight over the Israeli policies and practices in the oPt, as elaborated on in the report. In order to uphold the *shared values*, the EU must insist that Israeli legislation and judicial infrastructure allow for independent application of Israel's obligations under international law and that its High Court of Justice address alleged violations of IHL based on international law standards, instead of using domestic law to trump the provisions of the Geneva Conventions⁵ and selectively misapplying IHL when it serves to (a) deny Palestinian sovereignty over natural resources; (b) exploit the occupied territory; and (c) rationalize settlement establishment and expansion.⁶

Recommendation 4: Establish a formal and transparent human rights dialogue between EU and Israel

The transformation of the informal dialogue into a formal dialogue is long overdue and Diakonia reiterates earlier recommendations made in this regard, in particular those expressed in the EMHRN/APRODEV report "EU Israel Relations: Promoting and Ensuring Respect for International Law"⁷ with references to the EU Guidelines on human rights dialogues.⁸

For further details, we refer to the attached Report and remain at your disposal in case of queries. We wish the Informal Working Group constructive deliberations on the fundamental issues before it.

For further information, please contact:

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⁵ Rule of Law: A Veil of Compliance in Israel and the oPt 2010-2013, n1, Page 17, footnote 75.

⁶ Rule of Law: A Veil of Compliance in Israel and the oPt 2010-2013, n1, Page 18

⁷ See Page 59 – 60 at http://www.aprodev.eu/files/Palestine_Israel/emhrn-aprodev%20report%20eu-israel%20relations%20-%20promoting%20and%20ensuring%20respect%20for%20international%20law.pdf

⁸ http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf

Annex: Background on Diakonia

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Diakonia is a Swedish non-governmental development organisation, created in 1966 by five Christian denominations. Diakonia works in partnership with over 400 civil society organisations in more than 30 countries in Africa, Asia, the Middle East and Latin America. We work with a long-term and rights-based perspective to advance democracy and human rights, social and economic justice, gender equality, and peace and justice. Diakonia's vision is for every human being to live in dignity in a just and sustainable world, free from poverty. Together with our partners, our mission is to change unfair political, economic and social structures that generate poverty, oppression and violence.

We work in strong partnership with local organisations to empower people to demand their rights and hold duty bearers to account. This strategy provides the legal framework and tools to pursue change and empowers the rights holders to be agents of change. Our motto is therefore "People changing the world". Diakonia uses a holistic perspective of long-term development, humanitarian work and advocacy, and all three components are interlinked.

Diakonia has long experience as a humanitarian actor in various parts of the world, guided by the principles of "Do no Harm" and "good humanitarian donorship". International law, including IHL and IHRL, is part of our identity and core mandate, being the central component in one of our thematic areas; Conflict and Justice.

Diakonia's IHL Resource Centre

Diakonia started implementing the International Humanitarian Law programme in 2004 with the aim to increase respect for and further implementation of international law, specifically IHL, in the Israel-Palestinian conflict. By raising awareness of IHL within Israeli and Palestinian societies and the International Community and by advancing IHL's implementation in this conflict, we hope to contribute to the improvement of the humanitarian situation in the occupied Palestinian territory and promote peace. This includes promoting knowledge and respect for IHL toward a change of policies among decision makers regarding IHL and to improve accountability for the benefit of society and victims.