



Light of the Israeli Draft Law on Denying Compensation to Palestinians

Accountability

**Of the Israeli
Occupier for
Violations of
Palestinian
Rights**



**BI-HAQ
BAMALLAH
JUNE 1998**

In Light of the Israeli Draft Law on Denying Compensation to Palestinians

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Israeli Occupier for Violations
of Palestinian Rights

By

Mustafa Mar'i
and
Munir Pujara



AI-HAQ
RAMALLAH
JUNE 1998

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DEDICATION

THIS STUDY IS DEDICATED TO ALL VICTIMS OF
HUMAN RIGHTS ABUSES AND TO PALESTINIANS
SUBJECTED TO GRAVE BREACHES OF HUMANITARIAN
LAW BY THE ISRAELI OCCUPATION AUTHORITIES.

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I. Introduction

On 30 July 1997, the Israeli parliament (Knesset) held the first reading of a draft law which would permanently and retroactively exempt Israel of much of its liability for injuries and deaths inflicted by Israeli security forces in the Occupied Palestinian Territories (hereinafter OPTs). On 16 December 1997, the Constitution and Law Committee of the Israeli Knesset held its first session to discuss the draft law.¹

This study aims at discussing the implications the proposed law would have on the responsibility of Israel for violations of human rights and humanitarian law committed by members of its security forces in the territories it occupies. It also aims at explaining the grave consequences of the draft law, if adopted as it is, on Palestinian rights.

Therefore, this study will constitute a basis for al-Haq's urgent interventions with all relevant parties in order to urge every party to take all possible action to guarantee that the draft law in question does not become a law. The urgency of this study stems from the grave consequences this draft law would have on Palestinian rights if it becomes law. Israel is not permitted under international law to exempt itself from responsibility resulting from violations committed by its forces against Palestinians living under its occupation.

This study will discuss the responsibility of the occupying power for violations of the rights of the inhabitants of the territory it occupies. It will also identify problem areas in the proposed legislation that contravenes international law relevant to the responsibility of

¹ This draft law will, once approved by the Committee, be transferred to the Knesset's plenary for discussion and adoption in the second and third readings. Once this happens, this draft becomes law.

occupants vis-a-vis the population of occupied territory. After the clarification of the illegal aspects of the proposed draft law, this study will end with recommendations as to how this law should be fought.

The purpose of this study is not to elaborate on the issue of indemnification as a whole, but rather to study the proposed Israeli legislation in the context of international rules pertaining to compensation, which constitute part of the whole issue of indemnification. However, because the issue of indemnification, which encompasses both restitution as well as compensation for damages caused to victims of military occupation, is crucial to the understanding of the human rights situation in Palestine, al-Haq has encouraged and sponsored Mr. Amir Abdi to prepare a study on this issue.²

As will be made clear below, Israel is not allowed to enact legislation relieving itself from responsibility arising from illegal actions committed by its army and other security agencies³, because this law contravenes applicable international law provisions.⁴ As Knesset

2 Abdi, Amir: *International law and the reparations - Indemnification of victims of occupation: The Palestine Case*: a dissertation submitted in 1995 to the Faculty of Law at Eotvos Lorand University, Hungary.

3 According to Article 1 of the draft law (Definitions), "Israel Defense Forces - including other security forces of the State that acted or act in the [Occupied Territories] under the authority of the commander of IDF forces in the [Occupied Territories], including those who act on their behalf. See Appendix I.

4 On the applicability of human rights and humanitarian law provisions to the Occupied Palestinian Territories, see Chapter II below. Further see Mar'i, Mustafa: *"Guarantees for the Respect of Human Rights in Palestine: Present Problems and Future Prospects"*, a dissertation submitted in 1996 to the Queen's University of Belfast, pp 33-5. See also Bevis, Linda: *"Applicability of Human Rights Law to Occupied Territories: The Case of the Occupied Palestinian Territories"*, (Ramallah: Al-Haq, 1994).

Member 'Abdul Malik Dahamsheh has rightly stated in condemnation of the draft law in question, "Israel cannot conquer and dominate a people, and then deny responsibility for its actions."⁵

According to al-Haq's documentation, not less than 1,635 Palestinians have been killed since the beginning of the Intifada in 1987, either by members of the Israeli security forces or in circumstances where the Israeli authorities were charged with their killing. Data available to al-Haq also suggests that more than 18,000 Palestinians were injured in similar circumstances since 1987. As of the beginning of 1996, Palestinians have already individually filed more than 4,000 claims for more than \$180 million in damages through the Israeli court system.

While payment of compensation could never correct an injury in principle, thus far civil liability for the actions of Israeli soldiers has been the only way in which Palestinians have been able to hold the Israeli government accountable for its abuses. This right must be protected at all costs, not only for those who have already filed claims for such compensation, but also for every Palestinian who wishes to sue the Israeli occupier for his rights to, *inter alia*, compensation.

The occupier is responsible not only for violations of individual rights within the occupied territory, but also for compensation and restitution for the violation of individual and collective rights of the population of the occupied territories. The compensation may include punitive damages, which would help close the gap, since "compensatory damages don't really compensate fully."⁶

5 From a telephone interview with al-Haq dated 1 August 1997.

6 Posner, Richard A., *Tort Law, Cases and Economic Analysis*, (Little Brown and Company, 1982), p 32, cited in Abdi, Amir: *International law and the reparations*, op. cit, p 4.

II. International law on the responsibility of the occupier

Compensation is only part of the larger issue of indemnification which Israel has thus far refused to properly consider or redress. Additionally, indemnification includes restitution, which means the restoration of the situation which would have existed had the wrongful act not taken place.⁷ Israel, as shall be explained below, is under a duty to pay damages to Palestinians for such violations as house demolition, confiscation of land, uprooting of trees, etc.⁸ The individual and collective rights of Palestinians cannot be disregarded. Proper investigations into the violations which occurred during the 30 year-long period of occupation must be conducted, and full reparation must be awarded, including adequate and just compensation.

Compensation to victims of the violence of occupation is a right guaranteed by international human rights and humanitarian law which cannot be legitimately curtailed. There is universal agreement on the guarantees of the right to compensation, that it can not be

7 It is not for this study to address the issue of indemnities as a whole. For a thorough discussion of this matter see: in Abdi, Amir: *International law and the reparations*, op. cit., pp 7-17.

8 For details and thorough discussion of these and other forms of violations of the rights of Palestinians committed by Israeli occupation forces, see al-Haq's publications, including: *A Nation Under Siege*: Al-Haq's annual report on Israel's violations of human rights in the OPTs (Ramallah: Al-Haq, 1989); *Punishing A Nation*, (Ramallah: Al-Haq, 1988), and *Protection Denied*, (Ramallah: Al-Haq, 1991). See also Al-Haq's 1994 annual report "*Awda' motaghairah wa intihakat mostamirah*" (Changing context and continuing violations), (Ramallah: Al-Haq, 1995). See also publications of other local and international human rights organizations on Israel's violations, including those published by Amnesty International and Human rights Watch/ Middle East Watch.

doubted. It is a right which has been consistently guaranteed by customary International law, as well as by the domestic legal systems of every state.⁹ Any attempt to infringe upon this right in such a discriminatory manner conflicts with the international standards of justice.

As a famous Jewish authority has rightly stated more than half a century ago:

*"political, social and economic reconstruction and stability can never be achieved if the innocent victims of aggression and discrimination remain uprooted and despoiled, while other peoples enjoy the fruits of victory and liberation. Clearly, indemnification for losses suffered in consequence of war and persecution is not only a requirement of justice, but also the only sound policy...to pursue if peace and order are to be re-established nationally and internationally..."*¹⁰

III.1. RIGHT OF COMPENSATION UNDER HUMAN RIGHTS LAW:

The International Bill of Rights, as well as other international human rights and humanitarian instruments have identified the right to compensation as a human right.

9 For more details on this, see Abdi, Amir: *International law and the reparations*, op. cit., Part II, pp 19-21.

10 Jacob Robinson, Director, Institute of Jewish Affairs, cited in Abdi, Amir: *International law and the reparations*, op. cit., p 1, quoting from Robinson, Nehemiah, *Indemnification and Reparations, Jewish Aspects*, Institute of Jewish Affairs of the American Jewish Congress and World Jewish Congress, New York (1944), p 7.

The 1948 Universal Declaration of Human Rights deals with the right to compensation in Article 8.¹¹ Major parts of the Universal Declaration of Human Rights are, according to many international lawyers and jurists, part of the customary international law.¹²

The International Covenant on Civil and Political Rights¹³ of 1966 (ICCPR) dealt with the right to reparation in more detail in its Article 2(3).¹⁴ Additionally, Article 6 of the International Convention on the

11 Article 8 of the UDHR states that: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

12 See for example Humphry, J. : *'Human Rights and the United Nations: A Great Adventure.'* (1984), p 65; Meron, Theodor: "West Bank and Gaza: Human Rights and Humanitarian Law in the Period of Transition," *Israel Yearbook of Human Rights*, Vol. 9 (1979), p 112; Bevis, Linda: *"The Applicability of Human Rights Law to Occupied Territories: The Case of the Occupied Palestinian Territories"*, (Ramallah: Al-Haq, 1994), pp 83-90; and Mar'i, Mustafa: *"Guarantees for the Respect of Human Rights in Palestine: Present Problems and Future Prospects"*, a dissertation submitted in 1996 to the Faculty of Law at the Queen's University of Belfast, p 63.

13 Ratified by Israel on 18 August 1991.

14 Article 2(3) states that: "Each state party to the present convention undertakes:

(a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) to ensure that any person claiming such a remedy shall have his right there determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal systems of the state, and to develop the possibilities of judicial remedy;

(c) to ensure that the competent authorities shall enforce such remedies when granted.

Elimination of All Forms of Racial Discrimination of 1965¹⁵ stipulates that "States parties shall assure to everyone within their jurisdiction, ... [*inter alia*] the right to seek from such tribunals just and adequate reparation or satisfaction for **any damage** suffered" ¹⁶ [emphasis added]. Finally, the International Convention on the Rights of the Child¹⁷ of 1989 contains a provision which states that parties shall take measures to ensure "the physical and psychological recovery and social integration of a child victim."¹⁸ This is yet another reason why Israel is under a duty not only to provide just and adequate compensation, but also to offer full reparation for, *inter alia*, Palestinian children who are continuously suffering as a consequence of its illegal and discriminatory policies and practices.

15 Ratified by Israel on 3 January 1979.

16 International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly in 1965, reproduced in 'Human Rights: A Compilation of International Instruments', (United Nations: New York, 1988), article 6, p 61.

17 Ratified by Israel on 4 August 1991.

18 Article 39 of the Convention on the Rights of the Child of 1989.

II.2. RIGHT TO COMPENSATION UNDER HUMANITARIAN LAW:

Article 3 of the Hague Convention of 1907, which became common to all four Geneva Conventions of 1949, and Article 29 of the Fourth Geneva Convention guarantee the right to reparation. In his authoritative comment on Article 29 of the Fourth Geneva Convention, Pictet states that:

The principle of State responsibility further demands that a State whose agent has been guilty of an act in violation of the Convention, should be required to make reparation. This already followed from Article 3 of the Fourth Hague Convention of 1907”¹⁹

Therefore, it can easily be drawn from this that persons who have suffered harm, in any form, in violation of the provisions of the Conventions, are entitled to reparation. Clearly also, the right to compensation is guaranteed by rules which became part of the customary international law. As a result therefrom, all parties to a conflict are bound by the provisions of the said Article 3 regardless of the fact that a party is signatory or not to the aforesaid Hague Convention, or the Geneva Conventions of 1949. It is, thus, of no use for us here to discuss the Israeli position as to the applicability of the Fourth Geneva Convention, as the right to reparation is already guaranteed by international rules of customary nature, to which Israel is bound.²⁰

19 Pictet, Jean S. : *“The Geneva Conventions of 12 August 1949: A Commentary”*, Volume IV, (Geneva: ICRC, 1958), p 210.

20 For a discussion on this issue, see Shehadeh, Raja: *“Occupier’s Law: Israel and the West Bank”*, (Washington, D.C.: Institute of Palestine Studies, 1988), pp xi-xiii.

Further, the Israeli High Court has decided on more than one occasion that Israel is bound by the provisions of the Hague Convention of 1907 because it is part of customary international law. In the Elon Moreh case, the High Court has stated that international customary law constitutes part of the municipal law of Israel, and therefore are binding on the military administration in occupied Palestinian territories.²¹

II.3. COMPENSATION FOR WHAT?

It is clear that according to international law, a state is responsible, and thus is obliged to make reparation, for injuries resulting from its violation of international law rules.²² For example, following the Iraqi invasion and the illegal occupation of Kuwait, the UN Security Council²³ held that "Iraq is liable under international law for any direct loss, ... or injury to foreign governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."²⁴

According to Dinstein,

21 High Court case No. 390/79, in 1 Palestine Yearbook of International Law, 1984, pp 134-157, at 156.

22 Pictet, Jean S. : *"The Geneva Conventions of 12 August 1949: A Commentary"*, Volume IV, (Geneva: ICRC, 1958), p 210. On this see also Wright, Quincy: "The Outlawry of War and the Law of War", 47 AJIL, no. 3, (1953), p 365.

23 The UN General Assembly has taken similar views in this respect. It has reaffirmed that "occupation itself constitutes a grave violation of the human rights of the civilian population of the occupied Arab territories". See UNGA Resolution 40/161/D/4 of 16 December 1985.

24 Article 16 of UN Security Council Resolution number 687(1991).

The obligation of an aggressor state to indemnify the victims of aggression (for the violation of the ius ad bellum) must not be confused with the independent liability of a belligerent party to pay compensation for a breach of the laws of warfare (the ius in bello).²⁵

Therefore, once responsibility of a state for its aggression is determined, its liability to repair all losses sustained as a result therefrom is affirmed. This is distinct from the responsibility of the occupant to indemnify the victims of its acts throughout the period of occupation as far as these acts are in violation of the laws of war. These are distinct liabilities as the legal basis of each is different.

In the Israeli-Palestinian case, it can easily be said that Israel has not left any right guaranteed by international law intact. The Israeli authorities can be easily described as having violated all human rights of Palestinians, whether individual or collective. Amongst these rights, Israel is responsible for the killing and assassination of thousands of Palestinians, including the killing under arrest and as a result of torture and ill-treatment in detention, and various forms of injuries inflicted upon tens of thousands, or probably more, of Palestinians.²⁶

25 Dinstein, Yoram: *War, Aggression and Self Defence*, (1988), p 105. cited in: Domb, Fahia: *Human Rights and War Reparations*, Israel Yearbook on Human Rights, Martinus Nijhoff Publications, Vol. 23 (1993), p 80, cited in Abdi, Amir: *International law and the reparations*, op. cit., p 23.

26 Reports on human rights violations, including those amounting to grave breaches of humanitarian law, and war crimes can be found in almost all reports issued by human rights organizations dealing with the human rights in the Occupied Territories. Of special importance in this respect are the reports of Amnesty International; B'tselem: the Israeli Human Rights Information Center in the Occupied Territories; Human Rights Watch/ Middle East Watch, and al-Haq: the West Bank affiliate of the Geneva-based International Commission of Jurists.

For all of these violations and others, e.g. the denial of the Palestinian people of the right to self-determination and other collective and individual rights, Israel is internationally responsible, and must therefore be held accountable.

III. The proposed Israeli legislation

As has already been illustrated, the Israeli occupier is under the obligation, in accordance with international human rights and humanitarian law, to compensate and provide redress for all victims of violations committed by its forces and agents. In attempting to adopt the draft law in question, the Israeli authorities are trying to legalize an illegitimate action: excepting itself and whoever acts on its behalf from responsibility for actions and inactions constituting breaches of international human rights and humanitarian law obligations.

Not only this, but various aspects of the draft law are also in violation of legal norms and principles constituting part of the Israeli legal system. The proposed law would exempt Israel for the actions of the IDF during the Intifada by imposing unreasonable and discriminatory restrictions and limitations on claims which would be brought by victims of injuries and the families of those who were killed. Israeli courts would be given unprecedented discretion to deny Palestinian tort claims and many victims would be barred from even bringing claims due to the constraints of the new law. In addition, while the current version of the law does not specify that it applies only to Palestinians, the proposed legislation accomplishes this goal by directing its impact solely at incidents occurring in the Occupied Territories. Consequently, the law would preempt the right of compensation for a majority of Palestinian victims. All this will be discussed below in more detail after a discussion of the history of the law. The current section will attempt to address these and other aspects related to the illegality of the draft law.

What is ironic in Israel's position on this issue is that Jews themselves are acutely aware of how crucial the issue of compensation is to victims of human rights violations, in particular grave breaches, as

a result of Jewish experiences in parts of Europe not long ago. Jews were, to a certain extent, compensated for their losses, while Israel is attempting to exempt itself from responsibility for the activities of its forces and agents in the Occupied Palestinian Territories.

The fact is that while Israel rightly stands at the forefront of defending such internationally-recognized principles of justice when it comes to rights of Jews, it attempts to refuse accountability for its continued oppression of the Palestinian people and for the violations of the rights of Palestinians committed during its occupation. This is not acceptable, and must be fought against and stopped by, *inter alia*, the international community, for it stems from illegitimate discrimination.

Al-Haq is of the view that this proposed legislation must be stopped before it becomes law, because Israel, the occupying power, may not under international law deny redress to the victims of its human rights violations in the territories it occupies.

III.1. HISTORY OF THE PROPOSED LEGISLATION

In 1982, an Israeli official inquiry team reviewed the modes of investigating complaints brought by Palestinians regarding allegations of violations of their rights committed by Israelis. In the report it is stated that:

It was found that soldiers who witnessed vandalism by a Kiryat Arba couple did not stop them, did not arrest them for their actions, and did not take their names. Epilogue: according to the report on 25.11.80 by Chief Inspector Steinmits, all the

*files the police had opened in their investigation of the event were closed, on the grounds of offender unknown.*²⁷

This is just an example of how Palestinians were denied the possibility to receive just and adequate reparation or satisfaction.

The draft law which passed the first reading with only a narrow margin of support, with 55 of the 120 Knesset members supporting the bill, and 49 members voting against it, does not represent the first Israeli measure that aims at or results in denying Palestinian victims of Israeli violations of human rights the right to legal remedies.²⁸ The form that this proposed legislation has taken has altered over time, yet the overall purpose of the legislation has not changed. In January, 1996, Shimon Peres, the then Prime Minister of Israel, and his government reportedly met and decided that Israel should completely deny all liability for its actions during the occupation of the West Bank and the Gaza Strip.²⁹

At the time, Attorney General Michael Ben-Yair warned the government that any law which formally granted such a blanket immunity would be rejected by Israeli courts.³⁰ Consequently, the

27 CONCLUDING SECTION OF THE KARP REPORT, Press Bulletin, 7 February 1984, (Israeli Government Press Office), p. 2.

28 Since the 1967 Israeli occupation of the OPTs, Israel has taken a variety of steps that have such an effect, including the withdrawal of the jurisdiction of local courts to hear cases submitted against Israeli authorities and officials, and the closing of files heard before such courts in relation to Israeli violations. See military order No. 841 (West Bank).

29 Segal, Naomi. *"Israel Will Seek to Exempt Itself from Paying Intifada Damages"* 5 January 1996. Jewish Telegraphic Agency. <http://www.jewish.com/bk960105/iinti.htm>

30 Segal, Naomi. *"Israel Will Seek to Exempt Itself from Paying Intifada Damages"*, op. cit.

Israeli Minister reportedly began considering ways to enact legislation which could accomplish the above-mentioned goal without being overruled by Israeli courts.³¹

As mentioned above, the first draft bill recommended forbidding Palestinians from bringing claims for damages in Israeli courts, and provided only for compensation from outside the legal system, through an administrative committee which would distribute limited funds in only the most extreme cases. The draft of this bill which was read by the *Knesset* disguises the intentions of the proposed legislation and the impact which the law would have, should it be enacted.

While the current draft of the law would not explicitly eliminate compensation or blatantly racially discriminate *de jure*, it would accomplish these goals *de facto*. The current draft bill exempts the government from liability in most circumstances and extremely limits the ability of Palestinians to recover damages in the Israeli court system.³² Consequently, the current bill seeks to accomplish the same goals, but within the court system.

Al-Haq, therefore, views the recently proposed legislation as the embodiment of the government's original plans to deny redress to Palestinians. The most recent draft of this proposed law contains provisions which may allow for limited compensation in some circumstances, yet these provisions can be seen as merely tokenistic measures which have been added in order to conceal the true intention of the bill from Israeli courts, and from criticism by the international community.

31 Segal, Naomi. *"Israel Will Seek to Exempt Itself from Paying Intifada Damages"*, op. cit.

32 See Articles 3 to 7 of the draft law, Annex I.

III.2. BASIC PROBLEM AREAS IN THE PROPOSED LEGISLATION

This section will identify the problem areas in this law, and explain why it is illegal under international law, and even in certain cases from the point of view of Israeli domestic law as well.

III.2.a. DISCRIMINATORY NATURE OF DRAFT LAW

The proposed law would only apply to injuries inflicted within the Occupied Territories.³³ Al-Haq believes that this measure has been taken to direct the impact of the law specifically at Palestinian victims. The draft bill which was first proposed explicitly exempted Israelis and tourists from its impact in a racist manner. While the current draft of the bill does not specifically state that it applies only to Palestinians, the vast majority of injuries and deaths inflicted by the IDF in the OPTs were suffered by Palestinians.

In addition, while Israelis can seek alternative compensation from Israeli social insurance and social welfare programs, Palestinian victims will be left without recourse should this draft bill be adopted. The international community should realize that the geographical distinction in this bill was made in order to fulfill the racist intentions of the first bill. Consequently, the proposed legislation violates the guarantees of equality in Israeli law and international law.

Moreover, because the new law does not exempt foreign nationals from its impact, it is important that all countries recognize the danger

33 See Article 1 (Definitions) of the draft law, Annex I.

which this bill poses to their citizens who either have been or might someday be injured in the OPTs.³⁴

However, irrespective of the view of the Israeli law in this respect, international law, as explained above, does not permit Israel to exempt itself from responsibility resulting from or during the “activities” of its armed and security forces in the OPTs.

III.2.b. REDEFINING “COMBATANT ACTIVITY”

The proposed law would exempt the IDF from much tort liability by artificially expanding the definition of “combatant activity” in Israeli tort law.

Currently, Section 5 of the Israeli Torts Law (5712-1952) exempts the State of Israel of liability for the actions of the IDF for injuries resulting from “combatant activity.” The courts have appropriately refused to consider the actions of the IDF during the Occupation, including the Intifada period, as falling within the definition of “combatant activity.” In Civil Petition 623/83 Asher Levi v. State of Israel P.D. 40(7) 477, the Israeli Supreme Court ruled that Section 5 only provides immunity for injuries occurring in the most extreme circumstances of war:

Even in time of war, there are activities, mostly of the army, that do not qualify for an exemption according to Article 5. Only genuine combatant activity, in its narrow and simple sense, such as engaging forces in battle, military attack,

34 The Turkish Embassy has already contacted al-Haq in concern over a Turkish citizen who was injured in the Occupied Territories, and consequently would be affected by this legislation.

*exchange of fire, explosions and the like, in which is manifested the special nature of risks and particularly the implications with its results—it is to these that Article 5 refer.*³⁵

Thus, Section 5 apparently has been used to grant immunity to the Israeli government only in rare situations where the IDF would lack control over its activities due to the extremities of war.

The proposed legislation would expand the interpretation of the courts of Section 5, such that “combatant activity” would apply to activities of the IDF during the Occupation, rather than just extreme actions of war. Al-Haq objects to such an extension, because during the occupation, including the Intifada, the IDF did not lack specific control over its actions as it might in times of war. As the Israeli human rights group Hamoked has pointed out, the IDF was not engaging an enemy army, but acting to control the activities of a civilian population; e.g., dispersing demonstrations.³⁶

Specifically, the proposed law (section 3(a)) would redefine “combatant activity” to include:

*any operational activity of combating or preventing terror and any other activity to safeguard security and prevent hostile acts and insurrection, performed by the Israel Defense Forces in circumstances entailing risk of death or personal injury.*³⁷

35 As cited in the memorandum prefacing the first proposed legislation: *Memorandum of Law Concerning Handling of Suits Arising from Security Force Activities*, p 4.

36 Hamoked, *Response by Israeli Human Rights Organizations to the Memorandum of Proposed Law for the Denial of Compensation to Palestinian Residents of the Occupied Territories Injured by Israeli Security Forces*, p 3.

37 See Annex I.

Al-Haq regards this proposed redefinition of “combatant activity” to be far too broad. It is al-Haq’s firm belief that this new definition would provide the opportunity for Israeli courts to excuse most activity of the IDF during the Intifada.

The Israeli government has repeatedly claimed that the injuries inflicted by the IDF during the Intifada were necessary for the “security” of the State of Israel, and that its soldiers were generally at risk of injury during the Intifada. In fact, in the memorandum attached to the first draft of this bill, the Israeli government prefaced its intention of granting blanket immunity to IDF activities during the Intifada with the claim that IDF soldiers were generally endangered and extreme measures had to be taken for security reasons:

Sometimes [Intifada activity] bore a demonstration-like character, and sometimes it had the character of a one-time, violent and directed activity... Sometimes these kinds of activities were combined and mixed with one another and were difficult to identify as an activity of a certain type, with some of the civilians taking part in the violent acts and some not, and there was never a guarantee that an event that began as a demonstration might not end with more violent measures. This situation brought on special hardships, placed many dangers before the soldiers, and demanded appropriate preparedness.³⁸

Al-Haq believes that such statements by the Israeli government indicate a generalized perception of a threat from all Palestinian activity, even peaceful activity, which could be used to excuse violations of Palestinian rights guaranteed by human rights and humanitarian laws.

38 *Memorandum of Law Concerning Handling of Suits Arising from Security Force Activities*, p 3

Al-Haq is of the view that courts would provide immunity for any action taken by an IDF soldier under the guise of being a security measure, so long as soldiers claim that they were endangered. Consequently, the altered interpretation of the above-mentioned Section 5 could be used to excuse checkpoint soldiers for firing on civilians or IDF members opening fire on peaceful demonstrations.

Throughout the occupation and the Intifada, the Israeli government has addressed its conflict with Palestinians as the maintenance of temporary occupation and the suppression of civil uprising. Palestinian political resistance to occupation was dealt with as criminal activity and terrorism. For instance, political prisoners were not given the rights of prisoners of war, but were charged as criminals. Israel cannot justly reverse its position and address the uprising as an outright war now that it becomes convenient.

Not only this, but international law does not recognize the Israeli criteria at all, which is, generally speaking, based on the giving of permission and pardon for security and armed personnel to commit crimes against international law in the name of taking part in "combatant activity". For example, the rights to life and freedom from torture are guaranteed in the Fourth Geneva Convention in absolute terms.³⁹ Further, violation of the aforesaid guarantees in the form of practicing torture, including judicial torture, sanctioned by Israel,⁴⁰ is considered a grave breach of the Fourth Geneva Convention, and is more importantly in violation of international customary law. This merits international intervention and prosecution,

39 See Article 32 of the Fourth Geneva Convention of 12 August 1949. See also Article 3 common to all four Geneva Conventions, which was invited to the present Conventions from the regulations annexed to the Fourth Hague Convention of 1907.

40 On a full discussion of this matter, see Phillips, Mellissa: *"Torture for Security"*, (Ramallah: Al-Haq, 1995).

whatever the point of view of the Israeli domestic law is on this issue.⁴¹

Additionally, the wide interpretation of combatant activity the Israeli authorities are attempting to legitimize is contrary to the view of international law provisions. According to the ICRC's interpretation of the Fourth Geneva Convention, combatant activity or "military operations"

*must be construed to mean the movements, maneuvers and other action taken by the armed forces with a view to fighting.*⁴²

[Emphasis in original]

Worth mentioning also is the fact that Israel is trying to mislead public opinion, both local and international, by implying that as far as combatant activities are concerned, all action, or in fact abstention from the taking of an action when required to do so, is permissible. This is not true, since even during combatant activity there are limitations and sanctions according to the provisions of the laws of war.

Currently, most of the rules of the laws of war are part of customary international law, and parts of which are rules which have gained the status of *jus cogens*. No state, or group of states are permitted to act in violation of such rules, or agree in any form, including the adoption of legislation, to its violation.

41 See Article 147 of the Fourth Geneva Convention.

42 Letter to al-Haq by J. Moreillon, Director of the Department of Principles and Law at the ICRC, 25 November 1991, quoted in Taylor, Tom: *"Missiles and Dynamite: The Israeli Military Forces' Destruction of Palestinian Homes with Anti-Tank Missiles and High-Powered Explosives"*, Occasional Paper No. 10, (Ramallah: Al-Haq, 1993), p. 40. This interpretation was also approved by Jean Pictet, editor of *"The Geneva Conventions of 12 August 1949: A Commentary"*, Volume IV, (Geneva: ICRC, 1958), p. 300.

III.2.c. COMPENSATION ONLY IF IDF PERSONNEL CONVICTED CRIMINALLY

The immunity granted to the IDF forces under the redefined Section 5 of the Tort Law would not be applicable to cases where an IDF soldier was criminally convicted for the action which is the subject of the tort claim.

Al-Haq believes that this exception would have little impact, however, as the Israeli government has generally refused to investigate activities of the Israeli army and other security agencies throughout the Occupation or to take action against its soldiers for their abuses.⁴³

While al-Haq's documentation shows that at least 1,635 Palestinians have been killed since the beginning of the Intifada in December 1987, according to B'Tselem there have only been 10 cases where IDF soldiers have been charged for wrongful death.⁴⁴ Thus, the exception from immunity for IDF soldiers who have been criminally convicted has no practical meaning for Palestinian victims so long as Israel continues its refusal to properly investigate the actions of

43 According to al-Haq's documentation, complaints submitted by Palestinian victims of IDF and other Israeli security personnel attacks are not properly dealt with and investigated, if they are addressed. Most cases where a complaint was actually investigated and evidence was available, only disciplinary measures are taken. In the very few exceptions where criminal procedures were initiated, very few convictions were achieved, and extremely light sentences were imposed. On this see Al-Haq: *"Nation under Siege"*, op. cit., pp 543-592; B'Tselem: *"The Killing of Muhammad al-Hilu by Undercover Soldiers in Hizmeh Village"*, Press Release dated 28 January 1997, and B'Tselem: *"The Life of a Palestinian is 1 Agora"*, a 1996 Press Release.

44 Statistic given at a press conference held by the coalition of Israeli Human Rights groups in opposition to this proposed legislation on 26 July 1997. Later confirmed by Hamoked.

its soldiers during the Intifada.

Moreover, as the Association for Civil Rights in Israel has pointed out, there is little chance of an investigation and criminal conviction occurring within the one year statute of limitations that the draft bill would establish. Consequently this exception would be meaningless.⁴⁵ Finally, IDF soldiers could only be criminally prosecuted for violating Israeli Military Orders, and victims of injuries will not be able to challenge the validity of those orders.

III.2.d. BURDEN OF PROOF

The proposed legislation would prohibit the Israeli courts from transferring the burden of proof to the State in tort cases against the IDF.⁴⁶ Under current Israeli law, while the plaintiff bears the burden of proof, the courts can transfer the burden of proof to the defendant according to Articles 38 and 41 of the Torts Ordinance. According to the Israeli Ministries of Justice, Defense, and Finance, the courts in fact have often reversed the burden of proof in cases where civilians were injured by the IDF.

According to Article 41, *res ipsa loquiter* ("the matter speaks for itself"), this is done in cases where the plaintiff is not positioned in such a manner to be able to know the exact circumstances surrounding their injuries. Article 38 has been used to transfer the burden of proof to the defendant when the defendant possesses exclusive control over the source of the injury, such as in cases

45 Association for Civil Rights in Israel, *Response of Human Rights Organizations to the Draft Law Denying Residents of the Occupied Territories the Right to Claim Compensation*, p 2.

46 Article 8 (a) of the draft law, Appendix I.

involving the use of weapons.

The application by the courts of these provisions to cases against the IDF have been appropriate. While the plaintiff may have information about the time and place of their injury, they may often be unaware of which IDF soldier inflicted their injury and the exact circumstances surrounding the infliction of the injury (e.g., type of weapon used, commands given by superior officers).

Furthermore, the IDF should be expected to have complete control over the firing of its weapons and accurate knowledge of damages caused by its actions. The State was in a far better position to investigate the actions of its soldiers and the events which occurred during the Intifada, and should not now be allowed to escape liability because of its continued refusal to investigate or document these events.

If the court is stripped of its ability to transfer the burden of proof when necessary, it will be impossible to expose many of the injustices which occurred during the Intifada.

III.2.e. EVIDENCE

The proposed legislation requires that the courts consider the presence of several factors when determining the validity of the claims brought by victims in the Occupied Territories. Specifically, courts will consider the following factors:

- (1) Inclusion of the injured person in the lists of injured persons prepared, at the time of the incident, by the security forces or the civil administration in the region;

- (2) Record of a complaint filed with the security forces or the civil administration or another official person close to the time of the incident;
- (3) Decision given in a judicial or disciplinary proceeding relating to the same incident;
- (4) Any testimony or other document of the security forces or another official person.

Al-Haq believes that the focus of the proposed law on these factors is improper. Many victims of injuries during the Intifada were not treated by hospitals, and, by the Israeli government's own admission, the Israeli civil administration does not possess the reports for many injuries which occurred.⁴⁷ At the time, victims of injuries were often afraid to report injuries or file complaints against Israeli soldiers, or felt that such measures were futile because the Israeli government refused to take action with regards to these issues.

Most importantly, al-Haq objects to the bias reflected by this provision in only trusting Israeli sources of documentation and testimony. It is unjust to prioritize Israeli sources of evidence over other forms of evidence, such as the testimony of Palestinian victims and witnesses, medical reports, documentation by human rights organizations, news reports and camera footage, etc. Al-Haq is concerned because the law does not explicitly protect the right to bring these forms of evidence.

⁴⁷ *Memorandum of Law Concerning Handling of Suits Arising from Security Force Activities*, p 6.

III.2.f. DENIAL OF RECOVERY TO VICTIMS WHO WERE PREVIOUSLY CONVICTED

The proposed law would deny recovery to any Palestinian who has been convicted of terrorist activity or who was involved in hostile activity that resulted in the injury.⁴⁸ Al-Haq believes that both of these prohibitions are inappropriate.

It is unjust to prohibit compensation to an individual based on previous, unrelated offenses. The Association for Civil Rights in Israel has asserted that this new law conflicts with existing Israeli penal laws which guarantee that an individual can only be punished once for an offense.⁴⁹

Also, while the provision of the legislation bars individuals who were convicted of "serious terrorist activity," al-Haq is concerned about how broadly this phrase might be interpreted. Palestinians have been imprisoned solely for membership in political organizations and have been convicted solely on the basis of confessions of others or on secret evidence which could not be challenged. Thus, al-Haq is especially concerned about the loss of the right of redress for Palestinian political prisoners who were convicted without due process.⁵⁰

48 Article 4 (b) of the draft law, Appendix I.

49 Association for Civil Rights in Israel, *Response of Human Rights Organizations to the Draft Law Denying Residents of the Occupied Territories the Right to Claim Compensation*, p 1.

50 On this see previously mentioned al-Haq's annual reports. See also B'Tselem: "Violations of Human Rights in the Occupied Territories 1990/ 1991", Chapter 8, pp 87 - 96.

In addition, al-Haq objects to the denial of redress to individuals whose injuries are suspected to be related to their own “serious hostile activity.” Al-Haq is especially concerned because the draft law does not specify whether the plaintiff victim or the State would bear the burden of evidence in this regard.

Al-Haq is concerned that victims will have to conclusively prove that they were not engaged in “hostile activity” at the time they were injured. This is a legitimate concern, because under current Israeli law the plaintiff bears the burden of proof, and the new law would prohibit the courts from appropriately transferring this burden to the State when necessary.⁵¹

III.2.g. STATUTE OF LIMITATIONS

According to the proposed legislation, victims of injuries would have only one year following their injury or the adoption of the legislation to file a tort claim against the Israeli government.⁵² This restriction is blatantly discriminatory because it permanently reduces the statute of limitations for victims in the Occupied Territories to one year while victims of injuries in Israel maintain a seven-year year statute of limitations.

A one year statute of limitations is far too short and will prevent legitimate claims from being brought. According to human rights organizations’ experience, currently a majority of investigations into injuries and deaths inflicted by the IDF take far more than one year to complete. In addition, such a tight time restriction might not allow

51 For more detail on the issue of burden of proof, see section III.3.d above.

52 Article 6 of the draft law, Appendix I.

enough time for a proper analysis of injuries. Also, since only Israeli attorneys can appear before Israeli courts,⁵³ it will be difficult for Palestinians to gather the appropriate materials and find representation within such a limited time span.

The rationale for setting the statute of limitations at seven years within Israel should also be applied for victims in the Occupied Territories. Al-Haq believes that there is no justification for this discriminatory time constraint. Additionally, where a claim for indemnification is submitted in relation to an injury or suffering resulting from an international law crime, such a limitation never applies. For example, the Fourth Geneva Convention clearly states:

*"No High Contracting Party shall be allowed to absolve itself or any High Contracting Party of any liability incurred by itself or by any other High Contracting Party in respect of breaches referred to in the preceding Article."*⁵⁴

III.2.h. REQUIREMENT OF NOTICE

The new law also requires that future victims (or families of victims) of injuries in the Occupied Territories file a notice of their intention to bring a claim within sixty days of their injury or death.⁵⁵ Al-Haq believes that this provision in the draft law is introduced clearly in an additional attempt to guarantee as few claims as possible by Palestinians in regards to Israeli violations of human rights. Thus,

53 Except before military courts established pursuant to security legislation in the West Bank and the Gaza Strip, which do not have jurisdiction in these matters.

54 Fourth Geneva Convention, Article 148.

55 Article 5 of the draft law, Appendix I.

this restriction, if included in the law once passed, would allow Israeli courts to deny many legitimate Palestinians claims based on this technicality. As a result, a great number of claims would be barred because victims would not be able to satisfy the notice requirement.

It is unfair to expect that every victim will independently know that Israeli law requires them to file a notice within sixty days of their injury. Thus, al-Haq is deeply alarmed by the fact that many victims of injuries will not know of the notice requirement until they consult with an attorney at a time when it may already be too late.

Moreover, it is often difficult or impossible for Palestinians to find an Israeli lawyer within such an extremely short period of time, and consequently many victims may not be able to satisfy this requirement.

According to Article 5 (d) of the draft law, Israeli courts are technically given the ability to make exceptions to this requirement of notice. Nevertheless, al-Haq is of the view that the granting of such broad discretion to Israeli courts on this matter is not sufficient, because this infringes on the right of compensation which is guaranteed by international law. It is unacceptable, and illegal under international law, to grant the courts the authority to deny legitimate claims in contravention to international obligations.

III.2.I. AMOUNT OF COMPENSATION

The amounts of compensation which can be awarded are greatly reduced by the draft law. The new law would limit compensation by basing damages on average salaries in the area in which victims reside.⁵⁶

⁵⁶ For more details on this, see Article 9 of the draft law, Appendix I.

This provision operates in a discriminatory manner because salaries in the Occupied Territories are far less than salaries in Israel. In addition, it remains unclear whether the Finance Minister would define the “average salary” of an area in the appropriate manner.

Additionally, since many Palestinians are employed in Israel rather than the Occupied Territories, their salaries may often be higher than the standard for the area in which they reside. Consequently, the amount of damages awarded often might not even approach the actual salaries lost.

III.2.j. PERMANENT DISABILITY

The draft legislation proposes that Israel completely deny compensation to anyone who suffered less than a ten percent permanent disability.⁵⁷ Al-Haq is gravely concerned due to this denial of redress to thousands of victims who were injured, but not permanently disabled.

Victims of violence inflicted by the IDF have a right to recover damages regardless of the extent of permanent damage. In addition, by viewing injuries solely in terms of the degree of disability, the Israeli government may deny cases involving less tangible forms of injury, such as trauma. According to international law provisions, the occupant must, *inter alia*, compensate for all forms of injury inflicted by its forces on the occupied population.⁵⁸ The right to compensation also applies in cases that do not relate to physical or other forms of injury such as in the case of forced displacement, deportations, both individual and en masse.

57 Article 9 (f) of the draft law, Appendix I.

58 On this see section II.4 above.

III.2.k. LEGAL ASSISTANCE FROM THE PALESTINIAN AUTHORITY

According to the draft law, if the State of Israel can prove in court that the plaintiffs were not given the proper legal assistance from the Palestinian Authority (hereunder PA) while defending a tort claim, then the court would be able to deny that claim. Al-Haq firmly believes that this provision results in punishing innocent victims for bureaucratic problems that may arise between the PA and Israel; a factor that is beyond the control of the victim.

Moreover, since the proposed law would establish a one year statute of limitations beginning from the adoption of law, it is unreasonable to expect that the PA would be able to provide the requisite legal assistance for the vast number of tort claims which would have to be brought within the first year following the adoption of the law.

IV. Final conclusions and recommendations

Al-Haq is not against the drafting of a law to regulate the issue of indemnities, including compensation, in principle. As a matter of fact, the presence of a law that regulates the issue of compensation is necessary to guarantee the right to compensation for victims of the acts, or omissions, of the occupier's forces. However, such a law should be in line with the requirements of the relevant provisions and rules of applicable international law.

Al-Haq's objections are directed against the draft law because it is our belief that its implementation, as it is now, would violate the essential principles upon which humanitarian and human rights law is based in relation to compensation. The combined effect of the various restrictions and limitations imposed on civil suits by this law would bar a vast majority of the compensation claims of Palestinians.

Thus, Al-Haq believes that this legislation could eliminate the possibility of restitution for thousands of Palestinians, a matter which would have grave consequences on the development of international law and practice in this respect. One should always bear in mind that compensation is only the minimum level of indemnities to which victims of violations of the laws of war and of humanitarian law are entitled.

Israel must redress the damages inflicted on Palestinians during the Occupation. Israel must, *inter alia*, pay damages to Palestinians for such violations as house demolition, confiscation of land, uprooting of trees, searching and raiding homes, etc.

Within the context of the final status negotiations, the right to compensation must be fully respected. Israel's attempt to deny

accountability for its actions during the Occupation will render the final status negotiations more difficult. Palestinians cannot be denied redress for the violations of the Occupation. Any attempt to infringe on the individual claims of Palestinians would increase the pressure on the negotiation of collective claims in the framework of the final status negotiations.

THEREFORE, AL-HAQ DEMANDS THAT:

- ♦ ***The International Community*** must apply pressure on the Israeli government to prevent the adoption of this legislation. It is essential that the international community condemn this proposal and demand its withdrawal from the Israeli Knesset's consideration. Al-Haq requests that members of the international community intervene with both the Israeli legislative and executive authorities to voice their concerns about this legislation, with the hope of preventing this legislation from being adopted.
- ♦ ***The Knesset*** must not adopt any form of legislation which would deny redress to Palestinian victims of injuries. Israel cannot deny responsibility for its actions during the Occupation. The Knesset must reject any form of legislation which proposes this. The draft law passed the first reading by the Knesset by only a narrow margin of support, with several members of the Knesset abstaining from the vote. The members of Knesset who have stood against this legislation must continue to hold such a stance and take all steps necessary to defeat this legislation. The Knesset members must realize the danger this draft law poses, and consequently, reject it.
- ♦ ***The Israeli Bar Association*** must continue its efforts to defeat this legislation. The Israeli Bar Association has officially condemned this proposed legislation and the attempts of the Israeli government to exempt itself from liability for the suffering that the IDF and other

security agencies have inflicted on Palestinians. Al-Haq applauds this stance and hopes that the Israeli Bar Association continues and strengthens its efforts to block this legislation.

- ♦ ***The Israeli Supreme Court*** should repeal this legislation should it be adopted. Any form of this proposed legislation would conflict with existing Israeli laws, as well as international law and the internationally-recognized principles of justice. Therefore, if this legislation is enacted, the Israeli Supreme Court is under a duty to declare it unconstitutional.

V. Update on Status of Draft Law

On 20 July 1998, the Israeli government withdrew the draft law for reconsideration after numerous members of the Knesset Law Committee expressed opposition to it. Justice Minister Tzachi Hanegbi and Defense Minister Yitzhak Mordechai, among other Knesset members from Tzomet and Moledet, pressed for a quick passage of the law. However, the bill lacked support from other members of the committee. MK Ruby Rivlin (Likud) said the proposed law threatened “ basic principles of law and justice,” and MK Yossi Beilin (Labor) stated that it was “ monstrous, so terrible it should not appear in law books.”¹ In addition, Mk’s from the National Religious Party, Meretz, and Hadash all opposed the bill.

After discussing the proposed law, the Committee decided that the bill should be withdrawn for rewording and that the Committee will reconvene during the current Knesset recess to further its discussion.

¹ Gideon Alon, “ Government Yanks ‘ Intifada law’ for rewrite”, Ha’aretz, July 21 1998.

Appendices

Appendix I

LAW FOR HANDLING OF CLAIMS ARISING FROM ACTIVITIES OF SECURITY FORCES IN JUDEA AND SAMARIA AND THE GAZA STRIP, 5757-1997⁵⁹

1. Definitions

In this law -

region - each of the following: Judea, Samaria, and the Gaza Strip;

the State - the State of Israel, including the Israel Defense Forces;

Israel Defense Forces - including other security forces of the State that acted or act in the region under the authority of the commander of IDF forces in the region, including those who act on their behalf;

act - includes omission;

minor - a person under eighteen years old;

injured person - a person who suffered bodily injuries as a result of an act committed in the region by the Israel Defense Forces;

court- a court hearing a claim pursuant to section 2; the Council & the Agreement- as defined in the Law Extending the Validity of the Emergency Regulations (Judea and Samaria and the Gaza Strip - Adjudication of Crimes and Legal Assistance), 5728-1967.

59 Draft Law as adopted by the Israeli Parliament (Knesset) on 30 July 1997.
Translated by *B'Tselem*

2. Claim against the State

(a) A claim for damages against the State for damages suffered as a result of an act performed in the region by the Israel Defense Forces (hereafter claim) will be heard in accordance with the provisions of this law.

(b) The provisions of this law shall not apply to a claim to which Chapter 4 of the Law Implementing the Agreement concerning the West Bank and Gaza Strip (Judicial Powers and other Provisions) (Legislative Amendments), 5756-1996, applies, or to a claim for a road accident within the meaning of the Compensation of Persons Injured in Road Accidents Law, 5735-1975, in which a motor vehicle of the Israel Defense Forces, whose registration number or identity of its driver at the time of the accident is known, unless the accident occurred incidental to hostile activity of the injured person against the Israel Defense Forces or civilians.

3. Combatant activity

(a) As regards the applicability of section 5 of the Torts (State Liability) Law, 5712- 1952, in claims under this law, any operational activity of combating or preventing terror and any other activity to safeguard security and prevent hostile acts and insurrection, performed by the Israel Defense Forces in circumstances entailing risk of death or personal injury, shall be considered "combatant activity" unless a person was convicted for intentional infliction of the injury that is the subject of the claim.

(b) The court may determine that the exemption under sub-section (a) is not applicable if it is proven that, under the circumstances of

the incident, special humanitarian reasons exist to justify non-applicability of the exemption.

4. Denial of claim

The court may, for reasons it shall state, deny a claim, wholly or in part, if it is proven that -

- (a) The injury occurred incidental to serious hostile activity committed by the injured person.
- (b) The injured person was convicted of committing a serious terrorist act against the Israel Defense Forces or civilians.

5. Requirement of notice

- (a) A court shall not hear a claim unless the injured person or his or her guardian or another person on his or her behalf gave written notice, in a manner that shall be set forth in regulations, of the act that is the subject of the claim.
- (b) The notice shall be provided within sixty days from the date the act occurred; however, where, because of the health of the injured person or his or her guardian, or other justifiable circumstances, the injured person was unable to provide the notice within the time mentioned above, the notice shall be given within thirty days from the date in which the preventive cause was removed.
- (c) Where the injured person dies and notice had not been given during the deceased's lifetime, and the time for providing the notice

under sub-section (b) has not yet passed, the notice shall be provided by the deceased's dependents or his or her estate or by another on his or her behalf within sixty days of the deceased's death.

(d) Notwithstanding the provisions of this section, the court may, for special reasons that it shall state, hear a claim concerning an act notice of which was not timely provided.

(e) The provisions of this section shall not apply to a claim whose cause of action is an act that occurred prior to the commencement of this law.

6. Limitation of actions

(a) The court shall not hear a claim filed more than a year after the date upon which the cause of action of the claim arose; however, the court may extend this period for an additional period that shall not exceed one year if it is convinced that the plaintiff did not have a reasonable opportunity to file the claim earlier.

(b) In the case of a claim whose cause of action is an act that occurred prior to the commencement of this law, and the period for filing suit has not expired, the times set forth in sub-section (a) shall be counted from the date of the commencement of this law, provided that the period in which the suit must be filed would not be extended were it not for the provisions of sub-section (a).

7. Lack of possibility to defend

If it is proven to the court that the State has been denied a fair

opportunity to defend the claim because the Palestinian Council does not comply with the provisions concerning legal assistance as set forth in Article IV of Annex IV of the Agreement, the court may deny the claim.

8. Rules of evidence

(a) The provisions of sections 38 and 41 of the Torts Ordinance shall not apply in the hearing of a claim under this law.

(b) In reaching a decision on a claim, the court shall consider, *inter alia*, the existence or lack of support for the injured person's version of the circumstances of the incident by one or more of the following:

(1) Inclusion of the injured person in the lists of injured persons prepared, at the time of the incident, by the security forces or the civil administration in the region;

(2) Record of a complaint filed with the security forces or the civil administration or another official person close to the time of the incident;

(3) Decision given in a judicial or disciplinary proceeding relating to the same incident;

(4) Any testimony or other document of the security forces or another official person.

9. Compensation for personal injuries

(a) Compensation for personal injuries in a claim under this law

shall be set forth in a judgment ordering a one-time, capitalized payment.

(b) The judgment for compensation shall be made in accordance with the degree of permanent functional disability of the injured person following the injury suffered at the rate of one percent of the average salary for each percent of the aforementioned degree of disability, multiplied by the number of months the injured person would have earned an income from the time of the incident until he or she reaches the age of sixty-five; where the injured person is a minor - from the age of eighteen until he or she reaches the age of sixty-five.

As regards this section, "the average salary" means the average salary in the area in which the injured person lived at the time of the commencement of this law, as the Finance Minister shall determine by order. The amounts in the order shall be revised on the first of January and the first of July of each year, according to the increase in the consumer price index from the last index published prior to the determination or the previous revision until the last index published prior to the date of the revision.

(c) In addition to the compensation under sub-section (b), the court may order a one-time payment in favor of the injured person for pain and suffering and for medical and rehabilitation expenses, taking into consideration the customary medical and rehabilitation services in the region and their cost.

(d) Where the injured person died, the compensation paid to the dependents shall be calculated according to the provisions of this section, with the necessary changes.

(e) Where the injured person died and did not leave dependents,

his or her estate shall be entitled to compensation in an amount that shall not exceed the amount determined by the Finance Minister and the Defense Minister, upon consultation with the Justice Minister and approval of the Constitution, Law, and Justice Committee of the Knesset.

(f) Compensation will not be ordered under this section if the degree of permanent medical disability does not exceed ten percent, unless the court finds a special reason to justify compensation.

10. Preservation of provisions

(a) The provisions of this law shall not detract from any defense or exemption relating to liability of the State or any of its agencies or any person who acted pursuant to law.

(b) The provisions of this law shall not detract from the provisions of law and defense enactments in the region concerning claims for damages suffered as a result of an act of the Israel Defense Forces in the region.

11. Applicability and transitional provisions

(a) This law shall also apply to claims whose cause of action is an act that occurred prior to the date of commencement of this law, even where suit had been filed prior to the commencement of this law.

(b) This law shall also apply to suits filed with the court prior to commencement of this law and prior to judgment; where judgment

has been given, this law shall not apply to the claim, even where the judgment has been appealed.

12. Implementation and regulations

The Defense Minister is responsible for implementation of this law, and may, upon consultation with the Justice Minister, enact regulations relating to its implementation.

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