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Israel/Occupied Territories: Letter to Knesset Members: Do not deny redress to victims of human rights violations

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The Chairman and Members

Constitution, Law and Justice Committee

Israeli Knesset

Amnesty International is concerned by the proposed amendments to the Civil Wrongs (Liability of the State),¹ which the Constitution, Law and Justice Committee of the Knesset will be debating in the coming days.

According to the proposed amendment, “a national of an enemy state or a resident of a conflict zone” will be denied the right to bring claims for compensation against the state before Israeli courts for harm allegedly inflicted by Israeli forces.

As Palestinian residents of the West Bank and Gaza Strip are considered to be residents of a “conflict zone”, the amendments, if passed, will make it virtually impossible for Palestinian residents of the Occupied Territories² to claim compensation from the Israeli State for death, injury or other harm sustained as a result of actions of the Israeli army or security forces in the West Bank and Gaza Strip – even if such actions were unlawful and constitute gross violations of human rights which Israel is treaty-bound to uphold.

In recent years, previous amendments to this law have progressively reduced the possibilities for Palestinian residents of the Occupied Territories to claim compensation from the Israeli State before Israeli courts for harm caused by Israeli forces.

The most recent amendment to the Civil Tort Law³ in July 2002 expanded the definition of “wartime actions” – for which the Israeli State is exempt from paying compensation under Israeli law - to include almost any action carried out by the Israeli army and other security forces throughout the West Bank and Gaza Strip. It also imposed procedural conditions (notably concerning statute of limitation, hearing procedures and evidence requirements) which significantly limited the ability of Palestinians to lodge complaints.

The new proposed amendment would expand the field of exclusion from compensation much further, to such an extent that virtually all of the 3,500,000 Palestinian men, women and children who live under Israeli

military occupation in the West Bank and Gaza Strip would effectively be barred from bringing claims for compensation against the State before Israeli courts.

This amendment violates a fundamental principle of international law according to which States bear the responsibility for any human rights violations committed by their security forces.

Some Israeli government and army officials have claimed that when there is a situation of conflict each party to the conflict should bear the cost of the damages sustained. However, international law contains no such provisions granting states blanket exemptions for human rights violations caused by their armed forces. On the contrary, victims of human rights violations have a right to an effective remedy.

Article 3 of the Hague Regulations of 1907 stipulates that: "*A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces*".

Article 2(3)(a) of the International Covenant on Civil and Political Rights, ratified by Israel on 3 October 1991, states that: "Each State Party to the present Covenant 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."

The right to an effective remedy implies the right to seek and obtain full reparation, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. "In accordance with its domestic law and international legal obligations, a State shall provide reparation to victims for acts or omission which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law" [Principle 15 of the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, adopted by the Commission on Human Rights in its Resolution 2005/35 of 19 April 2005].

Amnesty International urges you to reject the proposed amendment to the Civil Tort Law and to take measures to review the provisions introduced by previous amendments, notably the 2002 amendment which imposes unreasonable restrictions on the right to effective remedy, including reparation, for victims of human rights abuses. These provisions should be brought into line with international human rights law and standards.

Yours sincerely,

Malcolm Smart
Deputy Director
Middle East and North Africa

1 - Law Civil Wrongs (Liability of the State) Law; No 68, of 1952

2 - Excluding East Jerusalem, which is part of the West Bank according to international law but falls under Israeli law by virtue of it having been annexed by the State of Israel.

3 - "Amendment concerning claims arising from activities of the security forces in Judea and Samaria and in the Gaza Strip"