

# Smadar Ben-Natan

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## EDUCATION

Tel-Aviv University, Buchmann Faculty of Law

PhD candidate, Zvi Meitar Center for Advanced Legal studies

Minerva Center for Human Rights research grant, 2014

**Research title:** Judging the Enemy: Criminal Trials of Enemy Combatants.

Supervisors: Prof. Shai Lavi, Prof. Aeyal Gross.

University of Oxford

MSt. International Human Rights Law (Distinction) 2008-2010

Morris Prize for the best dissertation, 2011

**Dissertation title:** The Honey Trap: The Application of Israeli Law in the Military Courts of the OPT.

**Supervisors:** Prof. Orna Ben-Naftali, Dr. Patricia Sellers

LLB Tel-Aviv University Faculty of Law 1995

Teaching and research assistant for Prof. Chaim Gans 1993-1995

## ACADEMIC PUBLICATIONS

*Inside and Outside Israeli Law: The Application of Israeli Law in the Military Courts of the Occupied Palestinian Territory*

Theory and Criticism, Van-Leer institute (peer reviewed) 2014 (Hebrew)

*Freedom of Speech, Racism and Pornography: a Comment on the Playboy Channel Decision*

In: Hertzog and Shadmy, eds., Blood Money: prostitution, sex trafficking and pornography in Israel, Pardes (2013) (Hebrew)

*Are There Prisoners in This War?*

In: Baker and Matar, eds., Threat: Palestinian Political Prisoners in Israel, Pluto Press (2011)

*Since He is a Patriot*

In Hacker and Ziv, eds., Does Law Matter? Tel-Aviv University Law Faculty Press (2010) (Hebrew, translation to English available)

## WORK IN PROGRESS

### *Constitutional Mindset: The emerging Israeli model of Extraterritorial human rights obligations*

The paper follows the formation process of a possibly unique model for extraterritorial applications of human rights obligations by the Supreme Court of Israel, and situates it in the context of two leading models– the U.S. model and the European model. The process is characterized as a transnational process where the court is affected by the prevailing models, but also by the particular history and nature of the Israeli occupation of the Palestinian territories.

### *Inside and Outside Israeli Law - The Transformation of Law in the Military Courts of the OPT*

A more legal and wider version in English of the article published in Hebrew in a critical theory journal. The article examines the 'merging' process between military law in the OPT and Israeli law in several respects: IHL, IHRL, and law and society. The application of Israeli law completely excludes Palestinian defendants and their lawyers, thus contributing little to their fair trial rights and obfuscating serious violations of such rights. This version will also look at the evolving relation of 'inclusive exclusion' between the two systems of law. The transformation in the relation between the inside and outside of Israeli law is reflective of the growing understanding that the occupation is no longer temporary and its end unforeseeable. It therefore constitutes part of an evolving de facto annexation.

## OTHER PUBLICATIONS

*All Guilty*, Observations in the Military Juvenile Court, No Legal Frontiers (report, 2011)

[http://nolegalfrontiers.org/images/stories/report\\_2011/report\\_en.pdf](http://nolegalfrontiers.org/images/stories/report_2011/report_en.pdf)

*The accused II: the Failure of Investigating and Prosecuting October 2000 Uprising, Adalah*, the Legal Center for Arab Minority Rights in Israel (report, 2011)

<http://adalah.org/eng/Articles/I406/The-Accused-Part-II---Failures-Investigating-2000>

*The applicable law in Israeli military courts* (co-editor) sourcebook for practicing lawyers (Arabic, Hebrew - 2008, English - 2010)

Contributor of op-eds and posts to Ha'aretz, +972 Magazine, Local Talk website:

*Is every child who throws a stone a terrorist?*

<http://972mag.com/is-every-palestinian-kid-who-throws-stones-a-terrorist/98730/>

*Getting guns off the kitchen table – locally and globally*

<http://972mag.com/getting-guns-off-the-kitchen-table-locally-and-globally/89304/>

## TEACHING and TRAINING

**Training of trainers on the Istanbul Protocol for Investigation and Documentation of Torture** (participant)

**Istanbul, Turkey, 2015**

A training of professionals to provide training on the Istanbul Protocol, by the Turkish Human Rights Federation and PCATI, supported and supervised by the European Union.

**Successfully Litigating Human Rights Cases Involving Torture** (trainer)

**Kampala, Uganda, 2010**

Professional Training for lawyers, by Avocats Sans Frontières, Belgium

Training to build capacities of lawyers to identify, challenge and litigate cases of torture.

**The Law and Practice in Israeli Military Courts** (academic manager and supervisor, lecturer)

**Ramallah/Bethlehem, 2008**

Professional Training for practicing Palestinian lawyers, by Machsom Watch (Israeli NGO). The training of five sessions, each of 6 academic hours, ran twice, each time for a group of 35-40 lawyers.

**Ramat-Gan Academic College of law 2004 – 2005** (lecturer)

Course title: "Between Obscenity and Pornography".

The course dealt with the feminist conception of pornography as distinct from conservative-religious conception of obscenity, and discussed legislation and case law from Israel, the U.S. and Canada.

## PROFESSIONAL EXPERIENCE

**2001-2015 Legal Practice- Human Rights, administrative and constitutional law, criminal defense**

Owner and head of an office comprised of four lawyers. Litigation of cases concerning the Occupied Palestinian Territories, criminal and security law, fair trial rights, torture and prisoners' rights, asylum, immigration and family unification, women's rights.

Consultation and representation of human rights NGOs

**2015 Admitted to the ICC list of counsel**

**2011 – 2015 External legal advisor for PCATI – The Public Committee against Torture in Israel**

**2010 – 2015 Co-founder and legal advisor: Gun Free Kitchen Tables**

A feminist gun control initiative highlights domestic violence with security guards guns. Succeeded in 2014 to change Regulations and forbid private guards to take guns home after working hours.

2006 – Awarded for special contribution by the National Public Defender

**1996-2000 Attorney, Avigdor Feldman Law Office (winner of Robert F. Kennedy Human Rights award, 1991)**

The office specializes in Human Rights law, Criminal law, Constitutional law.

I was involved in high-profile human rights and constitutional cases, as well as important criminal cases concerning false confessions.

**1996 Admitted to the Israeli Bar Association**

#### SELECTED CASES:

**SHIN, Israeli Movement for Equal Representation of Women v. Council for Cable TV and Satellite Broadcasting (2003-4)** – represented a coalition of feminist organizations challenging the newly introduced broadcasts of Playboy channel in Israel, in front of an II judges' panel. Petition denied.

[http://elyon1.court.gov.il/files\\_eng/03/320/054/LI4/03054320.II4.pdf](http://elyon1.court.gov.il/files_eng/03/320/054/LI4/03054320.II4.pdf)

**1229/04 State of Israel v. Tali Fahima (2005)** – A young female activist charged with aiding and abetting the enemy after stating she would serve as a human shield to a Palestinian fleeing attempted assassination by Israeli forces.

<http://www.theguardian.com/world/2005/dec/23/israel>

**548/06 State of Israel V. Hussein et al. (2006-2008)** – I Represented Hezbollah combatants captured by Israel, facing criminal charges. Defendants argued for POW status and denied. They were returned to Lebanon in a prisoners exchange before their trial ended.

**HCJ 1651/11 Public Committee Against Torture in Israel (PCATI) v. Attorney General (2012)** - Petition challenging investigation mechanism of torture complaints by the General Security Service (GSS) and the absolute impunity of security service interrogators. The petition resulted in transfer of investigation mechanism from the GSS to the responsibility of the ministry of justice.

**HCJ 5722/12 Abu Ghosh and PCATI v. Attorney General (still pending)** – Petition demanding accountability of GSS interrogators for torture of the petitioner under 'necessity defense procedure'. The petition included amicus brief by prominent experts on torture:

<http://www.stoptorture.org.il/files/Expert%20opinion%20on%20the%20interrogation%20of%20Mr%20As'ad%20Abu%20Gosh.pdf>

HCJ 2775/II Atty. Khaled el-Arej v. Military Commander of the West Bank – Petitioners are Palestinian attorneys, representing defendants in the Israeli military courts. The petition demanded translation of all trial documents into Arabic, and resulted in the translation of all indictments into Arabic and amendment of military law to oblige such translation. Decision:

[http://www.militarycourtwatch.org/files/server/HCJ%20JUDGMENT%20-%20TRANSLATION\(I\).pdf](http://www.militarycourtwatch.org/files/server/HCJ%20JUDGMENT%20-%20TRANSLATION(I).pdf)

HCJ 3368/10 Palestinian Ministry of Prisoners v. Minister of Defense (still pending) – The petition challenged long periods of detention of Palestinians under military law, and resulted in substantial shortening of those periods. It is still pending and awaiting additional shortening particularly with regard to minors. Partial decision:

[http://www.militarycourtwatch.org/files/server/Minister%20of%20Palestinian%20Prisoners%20v%20Minister%20of%20Defense%20\(2014\)%20-%20ENG.pdf](http://www.militarycourtwatch.org/files/server/Minister%20of%20Palestinian%20Prisoners%20v%20Minister%20of%20Defense%20(2014)%20-%20ENG.pdf)

## ACADEMIC CONFERENCES

Columbia-Ono Conference, *National Security and Criminal Justice*, Kiryat-Ono, 2012

The Honey Trap – The Application of Israeli Law in the Military Courts of the Occupied Palestinian Territories

Minerva Center for Human Rights, Tel-Aviv University - *The Israeli Legal Regime in the West Bank*, Tel-Aviv, 2014

Panel: One regime, two legal systems – current state of affairs

Israeli Law and Society Association Annual Conference, 2015

Panel: Military Justice and the State of Emergency: theoretical, Political and Legal Aspects

Lecture: Inside and Outside Israeli law: The Application of Israeli Law in the Military Courts of the Occupied Palestinian Territories

## OTHER CONFERENCE LECTURES AND TRAINING LECTURES

*Deportation with Assurances*

Expert symposium by UK independent reviewer of terrorism legislation, London, 2014

*The Expiry Date of Secret Evidence*

Israeli Institute for Democracy, *Secret Evidence, Counter-Terrorism and Criminal Law*, Jerusalem 2012

*Security Interrogations v. Criminal Interrogations*

Israeli Institute for Democracy, *Interrogation of Terrorism Suspects*, Jerusalem 2011

**Representing Asylum Seekers in RSD Proceedings**

UNHCR and Tel-Aviv University Clinic for Refugees and Asylum Seekers, Tel-Aviv 2013

**Challenging the Use of Evidence Obtained under Torture or Ill-Treatment in Courts: The Legal Framework in Israel and its Military Courts**

Advocats Sans Frontières, *The Role of Lawyers in Combating Torture: In and Outside the Courtroom*, Bethlehem 2009

**In Captivity: Palestinian Prisoners and Detainees**

Diakonia and ASF, *Palestine/Israel: Making monitoring work*, Brussels 2008

**The Case of Tali Fahima and the Targeted Assassinations Policy**

A Different Jewish Voice, *War Crimes and Justice: The Case of Israel*, Amsterdam 2005

**HONORS and ACCOLADES**

2011 - Morris Prize for the best dissertation, University of Oxford

2007 - Cited as one of the 50 most influential women in Israel for 2007 by Forbes Magazine (Hebrew edition).

2006 – Awarded for special contribution by the National Public Defender

2005 – Cited as one of the 50 most influential women in Israel for 2005, by Globes financial magazine.

**LANGUAGES**

**Hebrew** – native tongue, **English** – very good, **Arabic** and **French** – good