



HUMAN RIGHTS
ISRAEL

רופאים לזכויות אדם
PHYSICIANS FOR HUMAN RIGHTS

ארגון לזכויות אדם

Attention:

Asaf Lerner – Commissioner

Public Institutions and Nonprofit Organizations Department

Re: The request to renew our recognition as a public institution under Section 46 of the Income Tax Ordinance - Physicians for Human Rights - Registered Association 580142214

Reference: Letter dated 27 January 2014

We have received the letter from the Tax Authority dated 27 January 2014, which poses questions relating to the recognition of the organization of Physicians for Human Rights - Israel as a public institution for the purposes of tax-deductibility for donors in Israel (known as Section 46A).

Before proceeding with a concrete response to the questions from the Tax Authority, we find it appropriate to state at the outset that we interpret the spirit and content of the letter as another example of the attempts by the State of Israel to damage activity promoting human rights and social justice in Israel. To our great regret, the Tax Authority joins a number of other government institutions to promote a goal that seems to have only one purpose – silencing those voices that fail to align with the agenda of the Israeli government, and make the role of civil society hollow and meaningless.

In our capacity as a human rights organization, our core goal is to take action to protect and respect human rights. The path to implementing this goal runs through activism that strives to change those government policies that lead to the violation of human rights in general, and of the right to health in particular. We have never concealed this, and in our view, this is the essential role of every human rights organizations, in Israel and worldwide. We are proud to present not only a humanitarian facet of our work (as would have been more comfortable for the State of Israel and for the Tax Authority) but also a critical look at such government policy that brings patients to our door (or prevents them from getting to us), and to act to change such policy. We believe that in this activity we fulfill a deeply rooted professional and ethical obligation of the men and women working in medicine, and we refuse to stand aside when we witness the violation of our patients' right to health.

More than 3150 members and volunteers are registered with Physicians for Human Rights - Israel, more than half of them are members of medical teams that routinely provide solutions and medical services to the needy, as well as working to change policy in the field of the right to health. The annual scope of volunteer work exceeds 30,000 hours.

We operate in Israel and in the Occupied Territories, and we believe that every person has the right to health, and that this right is foundational for the realization of other human rights, and is derived from them. The recognition that the right to health is not just a matter of access to medical treatment but that it is an umbrella term for a variety of rights relating to human health lies at the foundation of our work. Beyond a person's right to receive medical treatment, we recognize, among other things, the right to preserve a patient's privacy, the right to protect his autonomy of will, the right to equality and an absence of discrimination in the access to medical treatment, the right to food and potable water, the right to a freedom of movement which makes it possible for a patient to come to the medical institution, and the relation between socio-

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T 03.5133100	F 03.6873029	9 Dror St., Jaffa-Tel Aviv, Israel	ش. درور ٩ يافا تل ابيب ٦٨١٣٥٠٩	רח' דרור 9, יפו-תל-אביב 6813509



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economic status and health. This definition is grounded in the international treaties and ethical codes that bind medical teams. It is emphatically our position that it is the duty of the State of Israel to implement this right equitably for all the populations and individuals under its control: residents of Israel insured under state health insurance, Palestinians in the Occupied Territories, Bedouins in the unrecognized villages in the Negev, prisoners and detainees, people who have no civil status, refugees, and asylum-seekers.

Health is a public goal that is at the very core of the “public goals” that the State of Israel has declared that it wishes to promote. Accordingly, it is only natural that any activity by a physician to promote the right to health would enjoy (as it has enjoyed in the past) state promotion, by means of recognition of a public institution. Therefore, we ask that the association be examined in light of its goals and activities to promote the right to health, and not as part of a trend of harming organizations that do not always agree with the current policy of any specific government. We believe that the full spectrum of the of the organization's activity is founded upon the right to health, and that the State of Israel must continue to encourage and promote this right, which has been ruled by the High Court of Justice to be a component of human dignity.

In the event that the state decides to remove its support from the promotion of the right to health by denying the renewal of recognition of the association for tax purposes, we will, as an organization, and even if this hurts us, continue to act with redoubled energy and from a sense that we have a vocation to fulfill - as we have been doing over the past twenty-five years.

In response to your questions, in detail:

1. As to the request that we supply the full information of persons receiving assistance from the association (including the full name, identification number, address, and so forth): we conduct ourselves transparently and are prepared to provide any relevant information. The persons receiving assistance from the association are the population of Israel and of the West Bank and Gaza Strip territories that is in need medical, administrative, and legal support in the domain of the right to health. However, your request that we give the Tax Authority information about all individuals receiving assistance from the association is not lawfully possible, as the individuals involved are ones who are receiving medical assistance, and this information is confidential and privileged. Furthermore, as is customary in organizations that also provide assistance in disputes with authorities, some of the communication is entered into on the understanding and agreement that the details of such communication shall be held confidential from any third party. Exposing the details of the persons receiving this type of assistance undermines the activities of the association. As a rule, we believe that it is improper to ask an association to convey a list of the individuals it supports to the authorities. In light of this, we wish to know whether this request was also made from other associations and/or public institutions, and whether there are any associations that have given you the lists of the individuals they support.
2. Our financial reports are clear and open to all. Please find attached a balance sheet for the years 2011-2013, prepared and audited by an external accountant. However, your request for “alignment” of the list of individuals receiving assistance from the association and the financial reports cannot be satisfied because, as we said in our response to item 1, we have no intention of providing you with a full list of the individuals receiving assistance

WWW.PHR.ORG.IL

mail@phr.org.il

Physicians for Human Rights–Israel | اطباء حقوق الانسان-اسرائيل

T 03.5133100

F 03.6873029

9 Dror St., Jaffa–Tel Aviv, Israel

ש.ן. דרוור 9 יאפא תל אביב 6813509

רח' דרוור 9, יפו-תל-אביב 6813509



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from the association. Moreover, and by way of further clarification, the great majority of persons receiving aid from the association do not receive financial aid. Rather, they receive volunteer medical service, medicines, and legal and paralegal consultation and support.

3. Please find attached documents relevant to your request.
4. As to your question regarding the goals of the association:
 - i. First, the item quoted in the letter does not appear in the goals section, but rather, in the vision section. When a vision is subjected to limits, this constitutes a limitation on thought, which is something that we hope and believe was not your intention. Second, indeed, within the framework of the association's activity for the right to health, we act very critically in cases in which government policy causes a violation of human rights, and of the right to health in particular. Within this framework and from a deep-seated belief that the right to health cannot be fully realized under military occupation, the organization acts to protect human rights under occupation, and thus to make its contribution to end Israeli control over the Palestinian nation and to promote life in liberty and peace for all people living here. The public goal that is at the foundation of this activity is *health*, and the right to health, which, as we believe, can only be fully realized upon the termination of the occupation.

We hope that the question does not constitute an argument that any action or position opposed to current government policy (to the extent that such a policy actually exists, because we are not aware that “continued occupation of the Territories” or “violation of the right to health” are being part of the stated policy of the present government) cannot constitute a “public goal.”

- ii. We believe that with this activity we fulfill a deeply rooted professional and ethical obligation of the men and women working in the medical field, and we refuse to stand aside when we witness the violation of our patients' right to health. The results of our activity often lead to the correction and improvement of the health status of the citizens and residents of Israel and the Territories, as well as to the changing of processes, regulations, and procedures that violate their right to health.

With all due respect, we are of the opinion that the right to health and its promotion are not a goal that is in great public dispute. There may be disputes about the ways to promote this goal, and it is possible that there might be disputes about the roots of the problem, but this does not bring the goal itself into dispute. Moreover, the term “political struggle” could be interpreted as any struggle whatsoever. Every organization promoting social change and every human rights organization is engaged in a political struggle to promote the values towards which it strives. This is true for the full spectrum of organizations operating in Israel, and is true both for organizations promoting, for example, women's rights and the freedom of speech and for organizations that promote the Judaization of the Galilee or the Negev and supporting the settlements. A political struggle lies at the foundation of any of these organizations.

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T 03.5133100	F 03.6873029	9 Dror St., Jaffa–Tel Aviv, Israel	ש.נ. דרוור 9 יאפה תל אביב 6813509	רח' דרוור 9, יפו-תל-אביב 6813509



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5. In the matter of your question about Israel's responsibility for the health of the residents of the region and of the Gaza Strip.

According to the mainstream in Israeli law, as expressed in consistent rulings by the High Court of Justice, the Territories are under 'belligerent occupation', and therefore "it is the role of the military commander in the region to guarantee the legitimate security interests of Israel and **the needs of the civilian population**".¹

The obligations of the military commander in the area to ensure the normalcy of the living arrangements extend to all aspects of life. This duty also applies to the assorted requirements of the residents, including needs for welfare, hygiene, and so forth.² These obligations go even beyond the satisfaction of immediate and basic needs, and the commander is also required to take care of long-term development and welfare in the region.³

The right to health is recognized as "a universal right which is part of customary international law".⁴ The International Court of Justice has explicitly ruled that the obligations under the International Covenant on Economic, Social and Cultural Rights also apply in the Territories, by force of Israel's control of them.⁵

In terms of principles, morals, and medical ethics, and on the basis of the fundamental principles of the Israeli system, including Basic Law: Man's Dignity and Freedom, it is our position that Israel is obligated in every case, regardless of the specific judicial climate, to provide assistance to people who need medical care, people with no actual state, who are under its control.

In its opinion about the separation wall, the International Court of Justice has ruled that the Oslo Accords did not alter Israel's obligations under International Law, and that it is still considered to be an occupying force in the Territories.⁶

Indeed, the Oslo Accords transferred some of Israel's roles and authorities to the Palestinian Authority. However, due to the effective control Israel has over most of the territory, and its control over the entry and exit from Zone A, Israel remains under International Law in the position of occupier. Therefore, Israel's obligations, in the domain of health in the Occupied Territories, include:

- I. Ensuring every person's right to enjoy "**the highest attainable standard of physical and mental health**".⁷ "Everyone has the right to a standard of living adequate for the

¹ Civil Appeal 5964/92 **Benny Oudeh vs. the State of Israel** (20 March 2002)

² HCJ 10356/02 **Hess vs. Commander of the IDF in the West Bank** (4 March 2004)

³ HCJ 256/72 **Electric Company Jerusalem District vs. the Minister of Defense**, Court Rulings XXVII(1) 124, 138

⁴ Aeyal Gross, Health in Israel: Between a Right and a Commodity, **Economic, Social, and Cultural Rights in Israel**, pp. 437, 445

⁵ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 43 I.L.M. 1009 (9 July 2004), *ibid.*, especially in paragraph 112. See also paragraph 48 in HCJ 7957/04 **Mar'abba vs. the Prime Minister of Israel** (15 September 2004). Israel does not recognize this ruling as binding, but in the matter of Mar'abba it has stated that in lieu of a ruling, one can take as a starting point that the human rights conventions apply, or at the very least, that they carry some weight (*ibid.*, paragraph 27).

⁶ Wall Opinion *ibid.*, paragraphs 75-78

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T 03.5133100	F 03.6873029	9 Dror St., Jaffa–Tel Aviv, Israel	שן. דרוור 9 יאפה תל אביב 6813509	רח' דרוור 9, יפו–תל אביב



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health and well-being of himself and of his family, including food, clothing, housing and medical care...⁸This right is specifically protected in the case of children⁹ and women.¹⁰

- II. **To guarantee the orderly function of the medical institutions in territories under belligerent occupation.**¹¹
- III. **Guarantee that sufficient medical equipment will be in place, including during battles.**¹²
- IV. Actual **physical accessibility** to the basic right **to health**, including in cases of armed conflict. Equal and swift access to medical services.¹³
- V. **Maintaining health as a component of human dignity** - "A person who has no access to elementary medical care is a person whose human dignity has been violated."¹⁴ It is obligatory to act humanely toward the residents of the Occupied Territories, while maintaining their dignity.¹⁵
- VI. **Equality and absence of discrimination in medical treatment** - "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of [...] the right to public health, medical care, social security and social services".¹⁶
- VII. **The obligation to give right of way to medical teams** - This matter was partially organized following an appeal to the High Court of Justice in 1996, where the entrance of vital medical workers was authorized and procedures were defined to permit physicians entrance into Israel in times of closure,¹⁷ and additional easements were offered to physicians who are 'prevented entry due to security reasons' and

⁷ Section 12 of the International Convention on Economic, Social and Cultural Rights (1966) (Treaty 1037), ratified on 3 October 1991

⁸ Section 25 of the Declaration of Human Rights (1948)

⁹ Section 24 of the International Treaty on The Rights of Children (1989) (Treaty 1038), ratified 4 August 1991

¹⁰ The International Treaty to Eradicate All Forms of Discrimination Against Women (1979) (Treaty 1035).

¹¹ Section 56 of the Fourth Geneva Convention on Defense of Civilians during a War (1949)

¹² HCJ 4764/04 **Physicians for Human Rights et al. versus the Commander of the IDF Forces in Gaza** (30 May 2004)

¹³ UN CESCR General Comment No. 14 (2000). "The publications of the Committee for Economic, Social, and Cultural Rights, which is charged with the implementation of the treaty, could serve as a source for interpreting the provisions of the treaty, despite having no binding legal status" - Civil Appeal 9535/06 **Abu Massa'ed vs. Water Commissioner** (5 June 2011)

¹⁴ Right of Civil Appeal 4905/98 **Gamzo Vs. Yeshayahu**, Court Rulings LV(3) 360, 375, C. Mundlek, Social-Economic Rights in the New Constitutional Discourse, **Annual Journal of Labor Law**, VII p. 65

¹⁵ Section 27 of the Fourth Geneva Convention on Defense of Civilians during a War (1949)

¹⁶ Section 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) (Treaty 861) Ratified 3 January 1979.

¹⁷ High Court of Justice 2054/96 **Muqassed et al. vs. Commander of the IDF Forces in Judea, Samaria et al.** (13 January 1998).

WWW.PHR.ORG.IL

mail@phr.org.il

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T 03.5133100

F 03.6873029

9 Dror St., Jaffa–Tel Aviv, Israel

ש.ן. דרוור 9 יאפה תל אביב 613509

רח' דרוור 9, יפו-תל אביב 6813509



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some of them were granted entry within the framework of another appeal.¹⁸ On the difficulties in physicians' entry into Jerusalem, see extensive descriptions in the 2005 PHR report "A Wall At Its Core".¹⁹

VIII. **The duty to grant medical students entry into Israel for study purposes-** The High Court of Justice has recognized the importance of allowing medical students from the Territories to study in Israel as part of the obligation to provide medical services in the Territories. The High Court of Justice noted that "any opening that can be found to promote good neighborliness, certainly in the fields of education and human affairs, should be examined and attempts should be made to try and exhaust it." However, this should be balanced against security considerations and other considerations.²⁰ The entrance of Medical students from the Territories is currently permitted, in principle, within the framework of the ordinary criteria for admitting students, which are primarily concerned with quotas and the absence of an alternative in the Territories.²¹

6. In response to your question about Israel's responsibility for the health of the residents of the Gaza Strip in light of the Paris Agreements:

According to a ruling by the High Court of Justice, "Israel is required to offer help that will make possible the supply of necessary needs of the local population (of the Gaza Strip - E.Z.), which would not be met without it".²² The organs of the state must "fulfill the obligations placed on them by force of the rules of humanitarian international law".²³ These obligations derive "both from the extent to which the State of Israel controls the border crossings between itself and the Gaza Strip, and from the situation formed between the State of Israel and the territory of the Gaza Strip after the years of military rule in the region, as a result of which, at this time, the Gaza Strip has become almost absolutely dependent...".

The Honorable Justice Rubinstein added to the principles of International and Israeli law the norms of Jewish law, which states that every person was created in the image of the divine and that the principle of preserving life must be observed.²⁴

Furthermore, Israel has obligations under International Law to aid and support the assurance of health needs of the residents of the Territories, including the residents of the Gaza Strip, among other reasons under Hague Convention (IV) Respecting the Laws and Customs of War on Land (1907); and the regulations attached to it in Geneva Convention

¹⁸ HCJ 4326/03 **Saffadi et al. vs. Commander of the IDF in the West Bank** (18 March 2004)

¹⁹ The report can be found at the following website <http://www.hamoked.org.il/files/2011/3563.pdf>

²⁰ HCJ 11595/05 **Najer vs. Commander of the IDF in the West Bank** (17 December 2006)

²¹ Existing criteria were determined following High Court of Justice 8242/06 **Salameh et al. vers.s Commander of the IDF Forces in the West Bank**. The procedures according to the Coordinator of Activities in the Territories can be found at http://www.cogat.idf.il/Sip_Storage/FILES/2/4002.pdf

²² High Court of Justice 1169/09 Law Forum for Eretz Yisrael vs. the Prime Minister (15 June 2009)

²³ High Court of Justice 9132/07 Albasyouni vs. the Prime Minister (30 January 2008)

²⁴ High Court of Justice 201/09 **PHR vs. the Prime Minister** (19 January 2019) paragraph VI for the ruling by Justice Rubinstein

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(IV) Relative to the Protection of Civilian Persons in Time of War 1949, the Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977).²⁵

International Law also requires actual physical accessibility to the basic right to health, including in cases of armed struggle and equitable and swift access to medical services.²⁶

7. In reply to your question on the matter of our activity in the Territories that are under the control of Israel. This does indeed include activity in the Gaza Strip. As stated above, by force of the legal and moral obligations of Israel and of ourselves, as physicians and as human beings, with regard to the health of the residents of the West Bank and of the Gaza Strip, we believe that this is a fulfilment of a public goal in the field of health.
8. In response to your request for a specification of this objection of ours that we hold against the use of health and medicine as a means of oppression, control, and personal and collective punishment: the recent and relevant example, which is being discussed currently and in which we are involved, is our objection to the Force Feeding of Hunger-Striking Prisoners Act, a law which is currently being promoted by the Israeli government. This is a classic example of using medicine and physicians (forced feeding) to achieve political goals (breaking the resistance and spirit of the hunger strikes, who are protesting their ill treatment.) Another example, about which we wrote extensively in a detailed report, deals with making exit permits for Gaza patients, which they need to access medical treatment, conditional upon cooperation with the Israeli authorities. This, too, is an explicit example of using health as a means of control. This activity is prohibited under Israeli law.²⁷ Another example is the involvement of physicians in torture and/or in inhumane and degrading treatment of prisoners.²⁸
9. In reply to your question about the organization's participation in the struggle against the separation fence in Bil'in and the fact that "According to media publications, activity at that site included the harming of IDF soldiers and security forces and violations of the laws of the state." This constitutes a selective and most erroneous reading of our activity. Our activity in Bil'in included providing a first aid course for Israeli and Palestinian activists. To the best of our knowledge, there is nothing wrong in providing medical treatment to a person who was wounded under any circumstance whatsoever, and Israel is not of the opinion that a demonstrator who has been wounded is not entitled to medical treatment. Additionally, several medical days were held in Bil'in and in other villages along the separation fence within the framework of the PHR - Israel mobile clinic. It is important to

²⁵ See High Court of Justice 201/09 **PHR vs. the Prime Minister** (19 January 2019)

²⁶ UN CESCR General Comment No. 14 (2000). "The publications of the Committee for Economic, Social, and Cultural Rights, which is charged with the implementation of the treaty, could serve as a source for interpreting the provisions of the treaty, despite having no binding legal status" - Civil Appeal 9535/06 **Abu Massa'ed vs. the Water Commissioner** (5 June 2011)

²⁷ This practice constitutes a clear violation of the provisions of International Humanitarian Law. Section 31 of the Fourth Geneva Convention states that "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."

²⁸ For elaboration on this point see the report, here: <http://www.phr.org.il/uploaded/LehakdimTroofa.pdf>

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clarify that we see our activity not only as medical training or as providing medical assistance, but also as an act of expressing solidarity with the affected population, and in the specific case of the separation fence, a population that has been dispossessed of a large percentage of its lands, that has seen its right to protest sweepingly denied (as you surely know, the State of Israel sweepingly prohibits demonstrations and protest in the West Bank), and the ability of the affected population to access medical facilities has been seriously hurt as a result of the construction of the separation fence.

10. With regard to the quote from the president of Physicians for Human Rights, Dr. Ruchama Marton, relating to activity abroad: this activity includes making reports and presentations on subjects relating to human rights, holding briefings for diplomats and other persons, work with international media, work with local and international organizations to raise awareness among decision-makers in diplomatic arenas worldwide, filing reports for U.N. Special Rapporteurs on the issue of human rights violations, contributions to reports such as the United States State Department Annual Report on Human Rights, and other activities. This activity does not replace activity in Israel and it is often performed due to the fact that in some fields, efforts to work with the relevant entities in Israel have been exhausted. The activity is in line with the need to act to establish an equitable and just society in Israel and to guarantee the right to health.

In reply to the question about the nature and scope of our activity in the Gaza Strip: the activity is indeed extensive and significant. This activity depends on authorization from security entities and on providing entrance permits to the Gaza Strip to medical delegations of physicians who volunteer with the organization. In the course of 2013, seven Physicians for Human Rights medical delegations entered Gaza, and approximately 520 patients received treatment. Additionally, we regularly handle communications relating to freedom of movement for patients from the Gaza Strip, whose request to leave the Gaza Strip for medical treatment has been refused or is being held back by Israel. Furthermore, we regularly work with human rights organizations that operate in the Gaza Strip on issues relating to the struggle against torture and inhumane and degrading treatment. We see this activity as promoting the right to health, which is enumerated in Section 9(2) of the Ordinance, within the framework of the obligations of Israel and of members of the organization, in their capacity of human beings and as physicians, towards the health of the residents of Gaza.

11. Beyond all of the above, and in reply to your question about the general public activity by the association, here follows a brief description - and we can, of course, expand on these if necessary: public activism to respect the right to health for immigrants, refugees, and other persons with no status in Israel, including operating the volunteer clinic, which supplies services to approximately 5,000 people per year via volunteers; activity on the principle of separating questions of health from questions of civil status, and the promotion of "social residency" for persons lacking a civil status and persons hurt by the Citizenship Law; activities for prisoners and detainees right to health; a struggle against the isolation of prisoners (activities conducted simultaneously by the public defense) and public activities to move the health system in the prisons from being controlled by the Prison Service into the hands of the Ministry of Health (a matter that has been discussed by various

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official committees); activities for the right to health of the residents of Israel, including the promotion of a national program to reduce gaps in health between the periphery and the center of the country, between Jews and Arabs, and between the rich and the poor; work with the “Beer Sheba - Health Equality” women's group to promote health equality in the south of the country, public work on the topic of the mental health reform, to guarantee that it is implemented with equality; work in the field of medical ethics, including work to prevent the separation of delivering mothers by ethnic background in hospitals; maintaining hospitals as a neutral place where any person whatsoever can receive medical treatment without fear; activity in the field of regulating experiments on human subjects, including accompanying the struggle of dozens of soldiers against the Ministry of Defense, after they were part of an anthrax experiment which was found to have exceeded the bounds of medical ethics (and which has recently also led to monetary compensation to the soldiers); giving lectures to students on issues relating to the right to health; holding courses and medical training for Palestinian medical teams; promoting alternatives to the imprisonment of the children of immigrants, and similar activities.

In summary, we hope that our answers have been sufficiently clear, and we will be glad to expand upon them as needed. However, in the event that you still decide to refuse us this exemption, we demand a well-motivated reply. We ask that this reply include:

1. The position of the Tax Authority on the matter of tax exemptions for organizations that work for human rights, to end the occupation, and for equal rights for all residents of the country.
2. The position of the Tax Authority on the question of what constitutes a political struggle and what the boundaries are at which the struggle for a change of policy crosses the lines for the Tax Authority.
3. Furthermore, you are surely aware of the fact that over the years, media reports have been published with the recognition for tax purposes and exemptions of associations known to be right-wing organizations, including ones that support and promote the establishment of settlements.²⁹ In light of this, and in the spirit of your letter, we ask that you publish the list of all organizations recognized to be public institutions for the purpose of tax deductions in an accessible and public manner, so that a meaningful discussion can be held about this issue, and so that the public may examine if the rules of the Tax Authority are applied to all organizations in Israel equitably and without bias.

On behalf of the management and the teams of Physicians for Human Rights - Israel

Ran Cohen,

Executive Director

²⁹ See for example: <http://www.mako.co.il/news-money/economy/Article-52846f5f80f7831017.htm>

WWW.PHR.ORG.IL	mail@phr.org.il	Physicians for Human Rights–Israel اطباء حقوق الانسان–اسرائيل		
T 03.5133100	F 03.6873029	9 Dror St., Jaffa–Tel Aviv, Israel	ش. درور 9 يافا تل ابيب ٦٨١٣٥٠٩	רח' דרור 9, יפו–תל-אביב 6813509