



האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في إسرائيل
The Association for Civil Rights in Israel



www.acri.org.il

Researched and written by: Tal Dahan
Hebrew version edited by: Inbal Green
Cover design: Oso Bayo
English translation: Adina Sacks
English version edited by: Yoana Gonen

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Introduction

Every year, the Association for Civil Rights in Israel (ACRI) publishes an annual report, *The State of Human Rights in Israel and the Occupied Territories*. Published just before International Human Rights Day, the report surveys the human rights situation over the past year in Israel, in the Occupied Territories, and in any place where human rights are violated by Israeli authorities. With this report, ACRI sounds a warning call regarding some of the more egregious human rights violations; notes areas of improvement – insofar as they exist; seeks to draw attention to certain human rights infringements that have not garnered media attention and public awareness; and points out to key processes underway in the field of human rights that are leaving their mark on Israel's citizens and residents.

Much of the 2011 report deals with **liberty** in its various manifestations. In the first section of the report, we address the violation of the right to liberty in the strictest, most literal sense – the physical restriction of a person's movements, either through incarceration or through restrictions imposed on freedom of movement. The right to liberty – the right to be responsible for one's own life, to have exclusive control over it, and to move freely from place to place – is perhaps the most basic of human rights after the right to life. This right is denied from many in Israel and in the Occupied Territories – sometimes arbitrarily, abusively, for prolonged periods of time, or unnecessarily. Those injured by rights violations often come from already disadvantaged population groups: refugees and asylum seekers, migrant workers and their children, Palestinians in the Occupied Territories, and residents of East Jerusalem. The voices of those who are locked behind bars or left on the other side of checkpoints is not heard in the public discourse or in the media, and to a large extent, for the majority of Israel's citizens they are “invisible,” as if they didn't exist at all.

From physical restraints, the report moves to spiritual shackles. “No man has power over the spirit to imprison the spirit,” said Kohelet, the preacher of Ecclesiastes (Ecc. 8:8). Nevertheless, there are those who certainly try to imprison the spirit. In recent years in Israel, we have seen repeated attempts to reign in liberty in its broader sense – including individual liberties such as freedom of expression, freedom of association, freedom of political activity, and even freedom of opinion and thought. These threats on liberty include the harassment of protesters, “warning talks” with social and political activists, anti-democratic legislation threatening to limit individual liberties and harm the rights of minorities, attempts to harm the legitimate and necessary activities of those who criticize the government and of human rights organizations, and the threat of lawsuits wielded against those who wish to publicly voice criticism. Aside from constituting a pointed attack on the liberties of specific individuals, what these tactics have in common is that they create a “chilling effect,” a deterrent that undermines the public ability and motivation to hold an extensive, poignant, and free political discourse regarding the most fundamental issues of Israeli society – the kind of discourse without which a democratic country cannot exist.

The citizens of a democracy do not always choose to exercise their freedom to take to the streets and protest. It is not a rare occurrence that most of them are satisfied with just placing their choice in the ballot box once every few years, and with that ends their participation in the democratic process. But a substantive democracy is not only characterized by the constitutional limitations placed on governmental authorities: in a substantive democracy, the citizens are partners to the political process, making their voices heard and influencing policies as a matter of routine. The social protest that swept Israel last summer, known as the “tent protest,” proved that massive numbers of Israeli citizens had not given up on their right or their desire to participate in the public discourse, and to level criticism at government policies in contexts that required change. So too with other social protests we have witnessed over recent years, in which various organizations, activists, professionals, artists, intellectuals, and ordinary citizens who care and have had enough have taken an active part. These all testify to the power inherent in Israel’s civil society, and to the fact that there are people who believe that change can be generated. The backdrop of many of these protest movements is the continuing erosion of social rights in Israel, a result of the socioeconomic policies of consecutive Israeli governments over the last twenty-five years. The final section of the report examines this more closely.

In the summer of 2011, Israeli society proved that it exhibits independent and critical thinking regarding the government and its policies. It demonstrated that both individuals and groups within it have the initiative and the ability to take their fate into their own hands and to protest and fight for their rights. In the face of the racist and divisive legislation introduced in Knesset, a rare solidarity has been forged – between Arabs and Jews, between residents of the center and of the periphery, between students and mothers, between the homeless and the middle class. In the struggle for social justice, different groups in Israel cast aside the walls and cultural dividers with which they were familiar and stopped blaming one another – the rich, the poor, the unemployed, the migrant workers, the Arabs, the Jews, the immigrants; from here on in, they began to turn their criticism and their demands towards the body that is responsible for ensuring our rights: the government. A new awareness seems to have permeated large segments of the Israeli population, namely that the violation of human and civil rights never stops in one place. An aggressive policy that stomps forward while leaving behind the weak, the excluded, the foreigner, the occupied, those furthest from the spotlight and who do not enjoy PR attention – this policy will eventually harm all of us, because it is not grounded in the recognition of human rights and the value of human dignity. And when some of us in a society are worth less than others then, ultimately, we are all worth less.

At present, decision-makers are not displaying willingness to implement a policy that will reflect the messages expressed by the social protest. The recommendations of the Trajtenberg Committee, appointed by the government in response to the protests, are disappointing. They do not reflect any fundamental or profound change in policy in areas such as housing, health, welfare, employment, or education. Moreover, the anti-democratic initiatives that were being led by the government on the eve of the social protest have returned – this time with even more force. Did this summer of social change simply vanish into thin air?

Either way, it is still too early to assess the implications of the social struggle that took place only a few months ago, or the ways in which it will continue. We can only hope that in next year's report, we will be able to report the direct achievements of this struggle and its meaningful ramifications on securing social rights in Israel. But even now, it is impossible to ignore the deep, positive significance of this past summer's protest: massive civilian participation in a non-violent protest seeking to advance equality and social justice; curiosity and a desire to better understand complicated socioeconomic issues, without accepting old dogmas as sacrosanct; and the awakening of a lively and open public debate regarding fundamental issues in our life here. These are deep processes that carry a message. In order to realize their full potential, we must strive not only to continue them, but also to expand them and apply them to additional issues, over the Green Line and beyond other conceptual roadblocks and barriers of conscience that separate us from this basic right: the right to liberty.

Behind Bars: Violation of Human Liberty in its Strictest Sense

Prison Conditions

*"Prison walls do not have to differentiate between the prisoner and his humanity [...] a prison must not turn into a paddock, and a prison cell must not turn into a cage."*¹

Arrestees and prisoners comprise one of the groups most vulnerable to infringement and violation of their basic rights. The prisons and jail facilities in Israel are totalitarian institutions, and every aspect of prisoner life within them is tightly controlled and monitored. Under such conditions, there is grave concern for the possibility of human rights violations.

Israel's *Basic Law: Human Dignity and Liberty* establishes the state's obligation to protect the right of every human individual to life, bodily integrity and human dignity. That human rights do not cease at the gates of the penitentiary is a principle that has been affirmed and reaffirmed over many years of Supreme Court decisions. The obligation to provide inmates with basic living conditions and to preserve their human dignity is further enshrined in International Humanitarian Law, to which Israel is committed.²

The Annual Report of the Public Defender's Office for the years 2009-2010, published in August 2011,³ noted **certain improvements** in prison conditions over recent years for both arrestees and convicted prisoners. Inmates no longer sleep on the floor;⁴ and since early 2008, when responsibility for jail facilities was transferred from the police to the Israel Prison Service (IPS), some improvement has been felt in the holding conditions for arrestees.

Despite these, the report still points to a number of severe violations of human rights occurring within the walls of Israel's prisons and jails. For example, in some of the prison facilities, inmates are still held under harsh physical conditions with severe crowding and poor ventilation, and sometimes under especially poor hygienic and sanitary conditions including pollutants, dampness, mold, infestation and exposure to the elements. Some facilities exhibit a shortage of basic equipment; deficient provision of medical care; insufficient infrastructure for rehabilitation and a lack of social workers; only partial realization of various prisoner rights, such as the right to communicate with family, the right to meet with one's attorney, and the right of access to the courts. Furthermore, there are occurrences of disproportionate punishment, such as handcuffing prisoners to their beds, and collective punishment.

¹ HCJ 540/84 Yosef vs. Head of Central Prison of Judea and Samaria, 40 (1), 567,573.

² Par.10 (1) of the Covenant on Civil and Political Rights, signed and ratified by Israel, states that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (see also: Universal Declaration of Human Rights, Par. 5; International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

³ Periodic Report of Prison and Detention Conditions in IPS prisons and in Israel Police Jails for 2009-10. Ministry of Justice- the Public Defender's Office, Aug. 2011, <http://tinyurl.com/cssq6sx> (Heb), IPS response to the report on Ministry of Justice website: <http://tinyurl.com/cx5cq8y> (Heb) (summary in English, http://www.idi.org.il/sites/english/ResearchAndPrograms/NationalSecurityandDemocracy/Terrorism_and_Democracy/Newsletters/Pages/32nd%20Newsletter/3/3.aspx).

⁴ In light of HCJ ruling on petition submitted by ACRI and Physicians for Human Rights – Israel. HCJ 4634/04 **Physicians for Human Rights vs. Minister of Internal Security**, 12.2.2007 <http://www.acri.org.il/he/?p=1756> (Heb).

The authors of the report highlight the **severe overcrowding** in Israeli prisons: the average living space per prisoner is approximately 3 square meters, whereas the standard in advanced countries (even if not always met) is 8.8 square meters per prisoner. In 2010, following an appeal from ACRI, the Clinic for Prisoners' Rights at the Academic Center for Law and Business (Ramat Gan) and Physicians for Human Rights,⁵ prison regulations were modified so that the minimal living space per prisoner was set at 4.5 square meters. This area (which includes the washing and bathroom facilities in the cell) is still considerably lower than the internationally accepted standard, and these regulations only apply to newly built facilities. Similarly, the report notes that following political pressure exerted by members of the Knesset's Interior Committee, the Ministry of Internal Security issued a memorandum of law of its intention to anchor in legislation the minimum living conditions that prisoners are entitled to. This legislation, however, is not being promoted quickly enough.

Today **there is inadequate external oversight** over what goes on behind bars in Israel. It is true that several bodies do exist to which inmates can turn, both within the Israeli Prison Service and without, so for example both Israeli prison and jail inmates can submit petitions to the district court, they can submit complaints to a Prisoners' Complaint Officer who works within the Comptroller's Office of the Ministry of Internal Security, and they can appeal to the Ombudsman's Office of the Inspector General. Despite these options, there is no single body that has the requisite components necessary to handle prisoner complaints thoroughly and effectively, and to provide the appropriate supervision over prison conditions. Any such body should be independent, with sufficient authority and ability to factually investigate complaints in-depth. It should have sufficient staff with the appropriate training and expertise in all relevant fields to handle such complaints (including medical professionals).

A bill initiated by ACRI and Physicians for Human Rights⁶ seeks to establish an independent and effective Commissioner's Office for Prisoner Complaints and Prison Oversight. According to the proposed legislation, the Commissioner's Office would work to promote, respect and protect the rights of all inmates; it would have the authority to investigate prisoner complaints regarding their living conditions and the behavior of prison guards during their course of duty; it would hold inquiries into matters related to prison conditions, and the welfare and rights of inmates; and it would make regular visits to detention facilities and monitor the conditions prevailing there. The proposed legislation was introduced into Knesset during August 2010 by MK David Azoulay and several other MKs, but since then it has not been advanced.

Arrest of Debtors⁷

In November 2008, the Knesset approved the second and third readings of Amendment No. 29 of the Execution Office Law, which initiated a reform of Israel's Execution Office (charged with collecting arrears). Most of the amendment's provisions came into effect six months after passage. **The amendment makes it much more difficult to arrest an individual**

⁵ Petition of the organizations to Minister of Internal Security, 19.11.2009, <http://www.acri.org.il/he/?p=2286> (Heb).

⁶ Proposed bill: Commissioner for Prisoner Complaints and Prison Oversight, 2010, <http://knesset.gov.il/privatelaw/data/18/2208.rtf> (Heb).

⁷ Prepared with assistance from Att. Ela Alon of the Public Interest Law Program, Faculty of Law, Tel Aviv University.

because of a debt he or she owes: only if all five of the conditions established by the amendment are met can such an arrest warrant be issued. As such, the amended law recognizes that incarceration is a serious infringement of a person's basic right to liberty and dignity. Furthermore, it recognizes the problematic nature of sending a person to jail solely because they owe money, and it ensures that such means will only be utilized as a last resort after all other avenues have been exhausted.

With the enactment of Amendment No. 29, the arrest of delinquent debtors has dropped significantly. According to the annual report of the Enforcement and Tax Collection Authority,⁸ in 2010 there were only 17,469 requests for arrest warrants that were authorized, compared with 204,278 authorized requests in 2008 and 100,437 such requests in 2009. According to the report, 771 debtors were arrested in 2010 for a period exceeding 30 days. As of May 2011 and for two years henceforth, arrest of delinquent debtors will have ceased entirely (except for those refusing to pay alimony and child support payments.)

Despite the significant improvements brought about by this reform, there are still two major problems regarding the treatment of debtors: lack of representation in execution proceedings and the limitations imposed on their freedoms.

Lack of representation

As of the end of 2010, the Execution Office has approximately 3 million open case files relevant to some 980,000 debtors. Most of these debtors (89%) are private citizens, while most of those owed (some 60% of the creditors in 71% of the cases) are corporations: banks, telecommunications companies, local authorities, etc. Naturally, the corporations have the resources to afford representation by legal counsel whereas the private individuals, especially those ensconced in debt, may not be able to afford to hire an attorney. According to the annual report, **95% of the debtors in these cases lacked legal representation, whereas only 6% of those owed were without legal counsel.** Of the 17,575 lawyers who worked within the Execution Office, some 90% represented the side of the creditors.

With the enactment of Amendment 29, the Execution Office Law now requires that debtors be informed when an arrest warrant has been issued against them, and inform them that they can turn to the Legal Aid Department of the Justice Ministry for free legal assistance from the state. This step is necessary, but it is insufficient to ensure the individual's right to legal representation, for several reasons:

- Many of those in need of Legal Aid do not meet the eligibility requirements established by the department. These requirements are highly restrictive, and include an examination of family income and of assets.⁹ Even when the debtor owns no property, his family's monthly salary may put him over the cutoff for eligibility. For example, a family of three in which the two parents earn a gross monthly salary of 5,692 NIS is not eligible for Legal Aid; at the same time, it should be clear that such a family in debt would not be able to afford the cost of legal representation.

⁸ **Annual Activity Report 2010**, Israel Enforcement and Collection Authority, May 2011. The report (Hebrew) is available at: <http://tinyurl.com/d6g3f92>

⁹ The eligibility conditions are published on the Justice Ministry website: <http://www.justice.gov.il/MOJHeb/SiuMishpati/ChapesMeyda/Zakaut.htm>

- Unlike criminal affairs, in which the state must appoint a public defender in any case where the prosecutor seeks a prison sentence,¹⁰ the Execution Office only needs to **inform** the debtor of the possibility of receiving Legal Aid.
- In the message to the debtor, the only contact information given is the Internet website of the Legal Aid department; it's hard to imagine that all debtors would have access to the Internet or know how to use it.

Moreover, the law only requires that a person be informed of the Legal Aid option at the stage where an arrest warrant has already been issued against him. In earlier stages of the proceedings, most debtors are simply unaware that the possibility exists, and thus they do not obtain representation. The Israel Bar Association has instituted a project called *Schar Mitzvah*, providing free legal aid in civil matters to low-income individuals who do not meet the eligibility requirements of the Legal Aid Department. In 2010, the project received approximately 11,000 requests for assistance,¹¹ most of which were related to bankruptcy, Execution Office proceedings, receivership and debt settlement. Even when this number is added to the number of people receiving Legal Aid from the state,¹² the number of debtors without legal representation is miniscule compared to the overall number of debtors – close to 1 million. Over recent years, the War on Poverty Movement has appealed several times to the Courts Administrator (at the time when debt collection fell under its auspices) and to the head of the Legal Aid Department requesting that the warning notice issued by the Execution Office (and prior to that, any court notices sent to the defendants) should include an attached notice informing the debtors of the possibility of obtaining Legal Aid from the state. These appeals have been to no avail. More recently the War on Poverty Movement and the Law Program in Service of the Community at Tel Aviv University have appealed the matter to the Minister of Justice, but have received no response.

Without representation in these proceedings, most debtors are unable to defend themselves and are faced, almost automatically, with inflated debts at the Execution Office. The corporations take advantage of this, as well as the fact that owing to their heavy caseload, Execution Office staff don't carefully examine corporate claims to determine whether they meet all the requisite standards, including appropriate evidentiary support. For example, in one case where the defendant was represented by the Legal Aid department in Haifa,¹³ the claim by the Pelephone company was dismissed after it became clear that the company didn't have even the minimal evidence necessary to press its claim. Having a debt prosecuted by the Execution Office (especially one that could have been eliminated or greatly reduced with appropriate legal representation) can have severe consequences for the individual, who in any case is having great difficulty meeting his expenses. Such treatment impacts directly on the individual's right to live in dignity.

¹⁰ Article 15A of the Criminal Justice Law

¹¹ Nurit Roth, **Signs of the Crisis: Requests for Legal Aid by the Needy up by 36% in One Year** (Hebrew), TheMarker 26.5.2011. <http://www.themarker.com/law/1.647215>

¹² According to our estimates, based on statistics of files opened at the Bureau for Legal Aid between 2008-2010, there are between 20,000 and 24,000 such cases per year

¹³ **Pelephone Lawsuit for Early Repayment of Charges and Billing Fee due to Non-Payment of Standing Order is Rejected** (Hebrew), in: A Time for Aid, Journal of the Bureau of Legal Aid, Vol. 1, Summer 2011.

Other restrictions on freedom

According to Amendment 29 of the Execution Office Law, a creditor can request that certain restrictive measures be imposed upon the debtor. In addition to financial constraints, these include limitations on the debtor's personal freedom, including his/her holding of a driver's license, a passport, and his/her ability to leave the country. According to the annual report of Israel's Enforcement and Collection Authority, in 2010 there were 2,314,595 requests submitted for imposing restrictions on debtors, of which 84% were approved. **This represents a tremendous number of restrictions, and for hundreds of thousands of individuals, their right to liberty was substantially infringed** owing solely to monetary obligations. From complaints received by ACRI, we've seen how the limitations imposed upon the debtors hurt their ability to earn a livelihood and to refund their creditors. As such, these harmful measures help no one. Moreover, because of the huge number of requests, it is safe to assume that the Execution Office has no real possibility of exercising legal discretion over each and every request submitted (unless there is a well-reasoned objection filed against it.) All too often, the Execution Office serves as a rubber stamp.

The Occupied Territories

In the Occupied Territories, the violation of the rights of suspects, arrestees, and prisoners occurs on a massive scale, at every stage of the criminal process. The period of arrest is prolonged and discriminatory; close relatives are not informed; arrestees are prevented from meeting with their lawyers;¹⁴ the rights of arrested minors are severely violated; there are severe deficiencies and failures in preserving the basic rights of arrestees that underlie due process in the military courts;¹⁵ prison conditions for security prisoners are inadequate; the external monitoring of cell conditions for GSS detainees is insufficient;¹⁶ administrative detention is employed; complaints of abuse and torture are not sufficiently investigated¹⁷ – the number of rights violations could fill (and have) entire reports, and are beyond the scope of this report. Here we will focus on two subjects – prolonged, discriminatory arrest periods and administrative detention. The treatment of minors by the military court system will be discussed later in the report in the chapter dealing with the rights of children.

¹⁴ Dr. Maya Rosenfeld, **When the Exception Becomes the Rule: Incommunicado Detention of Palestinian Security Detainees**, Public Committee against Torture in Israel, October, 2010.

http://www.stoptorture.org.il/files/When%20the%20Exception%20Becomes%20the%20Rule_0.pdf

¹⁵ Lior Yavne, **Backyard Proceedings: the Implementation of Due Process Rights in the Military Courts in the Occupied Territories**, Yesh Din, December 2007.

<http://www.yesh-din.org/site/images/BackyardProceedingsEng.pdf>

¹⁶ Members of the Public Defender's Office and the Israeli Bar Association who serve as "official monitors" of the prisons are not permitted to visit cells where GSS detainees are being held, rather only officials of the State Prosecutor's Office and the Ministry of Justice. For more, see ACRI's correspondence with the State Prosecutor's Office, 2009-2010 (Hebrew), <http://www.acri.org.il/he/?p=18009>

¹⁷ The Public Committee Against Torture in Israel and other human rights groups, including ACRI, submitted a petition to the Supreme Court in the matter – HCJ 1265/11, **PCATI et al v. Attorney General**. The petition (Hebrew) is available on the website of HaMoked: <http://www.hamoked.org.il/files/2011/114020.pdf>

Prolonged and Discriminatory Arrest Periods

Two local residents of the Hebron area get into a brawl and are arrested. The first, a Jewish resident of Kiryat Arba, is immediately questioned by a police officer and, in accordance with the law, is already brought before a judge the next morning at Magistrate's Court in Jerusalem. At the hearing, the court decides to release the accused on bail pending trial – the charges are not especially serious and the accused has claimed self-defense. Whereas the second resident, a Palestinian resident of Hebron is arrested and incarcerated for a period of eight days before he is finally brought before a military court judge at the Ofer Military Camp (the Military Court of Judea.) He is questioned for the first (and only) time, on the seventh day after his arrest. The court accedes to the police request and extends the remand of the suspect for an additional ten days.¹⁸

ACRI's position is that insofar as the settlement enterprise is itself illegal, the differential treatment of residents is a blatant violation of international law and flagrantly violates the human rights of Palestinian residents of the territories. The harm suffered by the Palestinians due to the occupation has been exacerbated many times over by the presence of Israeli settlements in the territories, and is aggravated even further by the **institutionalized, discriminatory regime** that differentiates between Palestinian residents and the Israelis who live in the area. This regime, which has developed over the years of occupation, gives absolute preference in all walks of life to the interests of the settlers over those of Palestinians, and is characterized, among other things, by two separate judicial systems for two separate peoples.

In criminal proceedings, those Israelis living in the Occupied Territories fall under the domain of Israeli law and the jurisdiction of the Israeli court system, so an Israeli suspected of a crime enjoys the protection of his/her rights enshrined in Israeli law and supported by the precedents of Israeli case law. On the other hand, Palestinians living in the Occupied Territories live under a regime of martial law, enacted by the Israeli Military Commander of the territories (security legislation). This is a far more severe judicial system. Any Palestinian suspected of a crime is tried in military court, by judges who make up part of the military. Thus, two people living next to one another are differentiated and treated entirely differently, and all for one reason – their national ethnicity. The fact that **two separate judicial systems exist in the territories, one for Jews and one for Palestinians**, violates International Law, the fundamental principles of modern law, common sense, and good conscience. It is wrong, violating both human dignity and basic human rights. It should be noted – this separation of legal systems is preserved even in cases of security crimes and even in criminal offenses that are unrelated to the security of the territories.

One huge discrepancy between the two legal systems is in the arrest period of individuals suspected of having committed a crime. The security legislation operative in the territories establishes a period of arrest that is excessive and inconsistent with the obligation to respect the individual's right – including a suspect's right – to freedom from incarceration. The extended periods of arrest imposed on Palestinian residents harm their most basic rights: the right to liberty, to due process, to human dignity, and to equality. Many times, the arrested individual is denied further liberties; for example s/he may be prevented from meeting with an attorney. Thus an arrestee can find himself totally isolated from the world for long intervals of time, without judicial oversight over the arrest or the

¹⁸ It should be noted that this example only refers to discrepancies in the law; in actuality, the discrimination is far more severe, and cases where settlers are arrested for these sorts of violations are exceptional.

subsequent investigation. In the absence of any supervision or monitoring, there exists a growing fear that the investigating authorities may mistreat arrestees, and may use improper investigative methods including torture.

In 2010 two Supreme Court petitions were filed against the discriminatory arrest practices in the territories. In one of the petitions, filed by ACRI, Yesh Din, and the Public Committee against Torture in Israel,¹⁹ we asked the court to compare the duration of the arrest period applicable to Palestinian residents of the territories with the arrest period of Israeli residents living in the same territories. In light of these petitions, the State announced in January 2011 that it intended to amend security legislation to somewhat shorten the arrest period for Palestinians,²⁰ but it later backtracked and asked to postpone implementation of the promised shortened periods until January 2012.²¹ Though the promised changes represent an improvement, they are far from satisfying: first, the discrimination between the treatment of Israelis and Palestinians remains firmly in place; and second, for a long list of offenses defined as “security related” (e.g. participation in an “illegal” demonstration),²² the shortened arrest periods do not approach those recommended.

Aside from the period of arrest, there are other systematic differences in the treatment of Israelis and Palestinians. For example, in military court **the extended remand of an arrested suspect is the rule and not the exception** – the arrest of a Palestinian suspect is almost always extended. Illustrative of this point, in 2007 volunteers of the Yesh Din organization were present at 118 hearings for the extended arrest of a Palestinian suspect for the purpose of completing the investigation. Out of all these, only one suspect was released.²³ Volunteers of the organization Justice Without Borders observed proceedings in the Military Court for Minors between April 2010 and March 2011. In these, only 6% of the accused were released on bail, while all the remaining suspects were held in custody until the end of proceedings against them.²⁴

Administrative Detention and Control Orders

"It is only possible to counter the opposition's charges when they are known; it is impossible to argue with a sphinx."²⁵

The law practiced in the Occupied Territories allows the holding of a person arrested

¹⁹ HCJ 4057/10 **ACRI v. Commander of IDF Forces in Judea and Samaria**, see ACRI's website (Hebrew): <http://www.acri.org.il/he/?p=2664>. An additional petition was submitted by Att. Smadar Ben-Natan on behalf of the Prisoners Ministry of the Palestinian Authority. The two petitions will be heard simultaneously.

²⁰ For a table (Hebrew) that describes the situation today and the government proposals see: <http://www.acri.org.il/he/?p=2665>.

²¹ The state recently submitted an update announcement, in which it claimed logistical and budgetary difficulties in implementing the amendment, and asked to be able to update the court once again in December 2011.

²² For more on demonstrations in the Occupied Territories, see Freedom of Speech in the Occupied Territories below

²³ **Backyard Proceedings**, see fn. 15.

²⁴ Att. Smadar Ben-Natan, **All Guilty! Observations in the Military Juvenile Court 2010-11**, No Legal Frontiers, July 2011, <http://nolegalfrontiers.org/en/reports/77-report-juvenile-court>

²⁵ Comments of Justice M. Landau in HCJ 111/53 **Kaufman v. Minister of the Interior**, P.D. 7 534, 541 (1953)

through an administrative order for a period of up to six months. The order can be renewed indefinitely, each time for a period of an additional six months. In fact, **a person can be imprisoned for years** in administrative detention, on the order of a single individual, without any effective or in-depth judicial supervision – for any such judicial oversight occurs **without due process for the detainee, and without him able to exercise his basic right to defend himself from the charges leveled against him.**²⁶ As of August 2011, Israel is holding some 270 Palestinians in administrative detention. Between the months of January and August 2011, Israel held an average of 230 administrative detainees in custody.²⁷

Administrative detention enables the state to arrest individuals arbitrarily. As such, it violates the most basic and fundamental principles of due process and is incompatible with a basic commitment to the values of human rights. Administrative detention relies on **classified material**, where in most cases it is not only the evidence that is kept from the accused and his/her attorney, but also the charges themselves. The danger that an administrative detainee poses can only be inferred by his past actions or by the future intentions that are attributed to him, and this without the state having to prove those actions or intentions beyond a reasonable doubt, as they would have to do in a criminal trial. There is probably no greater injury to due process than to deny the right of the accused to face his accusers and to answer the charges leveled against him. A person who doesn't know the details of the charges against him and who hasn't seen the evidence on which these charges rest, can only grope in the darkness – he has no real opportunity to defend himself. Under these circumstances, the chances for error on the part of the government are much higher, and a dangerous door is opened for the abuse of powers and false imprisonment.

With administrative detention, even if there is formal judicial oversight, it cannot serve as a guarantee against arbitrary arrest, error on the part of the prosecution, or the abuse of draconian powers. Under these circumstances, not even the fairest judge can ensure justice – his/her hands are tied, and in many cases the judge serves, despite the best intentions, as a “rubber stamp” of the decisions of the security services. As such, administrative detention can be best described as a “bypass route” circumventing normal criminal procedure, and as a more “comfortable” means for the government to imprison certain individuals, when it does not hold the proper evidence to prove its accusations.

The norms of International Humanitarian Law, to which Israel is committed, authorize the use of administrative detention solely as a preventative measure, and then only under exceptional circumstances.²⁸ Israel's widespread and routine use of administrative detention

²⁶ For a detailed account of the severe defects in the use of administrative detention in the OT, and on the process of judicial oversight over these detentions, see: **Without Trial: Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law**, B'Tselem and HaMoked, October 2009 http://www.btselem.org/download/200910_without_trial_heb.pdf

²⁷ The figures are taken from the B'Tselem website: http://www.btselem.org/administrative_detention/statistics It should be noted that from these statistics it is possible to see a significant decline in the number of Palestinian administrative detainees over the past two years.

Administrative detention within Israel is moored in the Emergency Powers Act (Detention) 5739-1979; Detention of Israeli citizens in accordance with this law is utilized extremely rarely. An additional arrangement, far more draconian, is enshrined in the Internment of Unlawful Combatants Law, 5762-2002, which has been interpreted by the Supreme Court as arranging for the administrative detention of foreign nationals suspected of engaging in combat or in acts of terror against Israel. As of today, a few dozen individuals have been detained under the provisions of this law. See: **Without Trial**, fn. 26, p. 45.

²⁸ For a more detailed discussion see: **The Basis for Administrative Detention in International Law**, B'Tselem website: http://www.btselem.org/administrative_detention/international_law

in the Occupied Territories, together with its sweeping denial of the minimum guarantees needed to ensure due process, do not meet the criteria of International Law. Thus they are **prohibited – both legally and morally**. The time has come to end the use of this measure, and demand that the authorities stick to the basic rule that a person's liberty may not be violated except under a fair criminal procedure and due process, in which the accused has full opportunity to defend himself.

Administrative Control Orders

Administrative control orders enable the state to subject a person to various restrictions on his freedom of movement: to place him under house arrest, prevent him from leaving the country, to limit his movement to a specific area or community, or to restrain him from entering a specific area or community. While administrative detention orders are utilized almost exclusively against Palestinians living in the Occupied Territories, control (restraining) orders are employed only against Israeli citizens. For example, in August 2011, control orders were issued against 12 right-wing activists, residents of the Yitzhar settlement in Samaria. According to published accounts,²⁹ these orders were issued in light of information received by the GSS regarding a group of extreme right-wing activists living in the Yitzhar area involved in the arson of mosques and the torching of Palestinian property.

Even if control orders are less draconian than administrative detention, we should not turn a blind eye to the extremely problematic nature of these “alternatives to arrest.” As with administrative detention, administrative control orders are issued **on the basis of confidential material, without a trial, and without granting people a fair chance to confront the allegations against them**. Such conduct causes far-reaching damage to basic human rights, and opens the door to the arbitrary abuse of power by the state. We recognize that there is an urgent need to enforce the law in the territories and to prevent acts of violence against Palestinians, but law enforcement must take the high road: it must make the necessary efforts to obtain evidence, to arrest suspects, to investigate them, and to prosecute them criminally if sufficient evidence exists.

Far from Sight, Far from Mind: “Foreigners” in Custody

“The arrest and incarceration of any person is humiliating and debasing for said individual, whether they are an Israeli citizen or a foreign worker. Arrest represents a personal affront to the dignity of the plaintiffs, the negation of their liberty, and the loss of their physical comfort and well-being; it engenders feelings of confusion, fear and helplessness for days on end, certainly when the detainee is held in a foreign country where he is spoken to in language incomprehensible to him.”³⁰

Illegal aliens in Israel are people who came here – sometimes legally, sometimes not – and who, for any number of reasons, ended up without legal residency status. Among them are:

²⁹ See, for example: Yaakov Lappin, 'Extreme right-wing activists' banned from Yitzhar, The Jerusalem Post website, 2.8.2011: <http://www.jpost.com/NationalNews/Article.aspx?id=232041>

³⁰ AC (TA) 064152/07 *Postilachi v. State of Israel*, judgment rendered 13.7.2011

refugees and asylum seekers who've escaped war and persecution in their native countries; migrant workers who entered Israel legally and later lost their eligibility for temporary residence (either through their own fault or because of changing rules made by the Interior Ministry); and people without citizenship who cannot be expelled from Israel because no other country is willing to take them. They live in Israel without legal status – they are not permitted to hold jobs, they are not insured by public health insurance, they are not eligible for social rights, and they are vulnerable at all times to arrest and deportation. Often they can find themselves held in detention for months on end. We will examine a number of the issues related to the incarceration of illegal aliens.

Detention – the Rule Rather than Exception

As Israeli law enforcement officials see it, the best way to get rid of illegal aliens in the country is by incarceration until deportation. This is manifestly evident in Amendment 9 of the Entry to Israel Law, 1952, which was passed by the Knesset in 2001. The amendment establishes a detailed mechanism for issuing deportation orders and arrest warrants. As opposed to criminal arrest, where in order to deprive an individual of his liberty authorities must obtain a court order as soon as possible, the arrest specified in Amendment No. 9 is administrative detention. The arrest warrant is signed by an official of the Interior Ministry, known as the “Border Control Commissioner”, and it is valid for an unlimited period of time – it doesn't need to be renewed or extended. As opposed to criminal arrest, where release is the rule and continued remand is the exception, when it comes to migrants, the opposite is the case. Article 13A(b) of Amendment 9 establishes that “an illegal alien will be held in custody until his departure from or expulsion from Israel, unless he is released on bail, with a bank guarantor or other suitable guarantor.” That is to say, that the general rule is to keep illegal aliens under arrest, while the exception is for the Border Control Commissioner or for the Custody Tribunal for Illegal Aliens³¹ to order the release of the individual on bail, under one of the causes provided by law.

Prolonged and Sometimes Indefinite Detention

According to the Entry into Israel Law, one of the causes for releasing illegal aliens from arrest is if they've already been held for a prolonged period, and if the State has been unable to carry out their deportation within sixty days. According to a Supreme Court decision, if an alien is not deported during the sixty days of his arrest, he must be released from arrest at the end of that period, provided that the delay in deportation was not due to lack of cooperation on his part, and that he poses no threat to state security, public safety or public health. Exceptions can be made if there is “a strong public interest of real weight requiring the continued remand of the alien in custody for a period that does not exceed what is reasonable.” This ruling reflects two principles: one, that there needs to be balance between the state's interest to deport illegal aliens and their right to liberty; and two, that the ultimate and only goal of such incarceration is to facilitate deportation, and therefore in the absence of any effective deportation mechanism, there is no place to hold such a person under arrest.

The above notwithstanding, there have been numerous cases where **illegal aliens have been held in custody for many months and even, in some cases, for years**. Such is the case for “stateless” individuals who lack citizenship and for whom there is no country willing to accept them; for people who have difficulty arranging their documents that would allow for

³¹ For more on the Custody Tribunal for Illegal Aliens, see the section “Conduct of the Custody Tribunal”

their deportation; and also for foreign citizens seeking political asylum in Israel. Regarding this last class, the Ministry of the Interior is quick to define their status as aliens who are “uncooperative” with the deportation process, and thus ineligible to be released from custody. Over recent years, the courts have repeatedly ruled that the continued arrest of these individuals for prolonged periods is an inappropriate solution to the problem. For example:

- In a January 2007 ruling on petitions filed by ACRI on behalf of three stateless individuals, the Tel Aviv Administrative Court stressed that there is no point in imprisoning illegal aliens who can not be deported: "Such conduct is unfair to individuals lacking citizenship and is inappropriate, because despite the fact that they are illegal aliens (and in this case, that they acquired a false identity), there is no point to holding them in custody, where they will sit for long months, until it becomes clear that there is no way to deport them. The incarceration of illegal aliens is not intended as a punishment, but as a means to ensure deportation. Once deportation becomes impossible, there is no justification for their continued incarceration."³²
- A man sentenced to Israeli prison for illegal residency without a permit, was forced to remain in jail for a period of ten months beyond his prison sentence, because he did not have the valid documents to allow for his deportation to Jordan, and because he had no legal residency status in the PA. In September 2008, the Supreme Court ruled that the state must act voluntarily to release foreign prisoners at the end of their prison sentences, even if there is seemingly no where to deport them to: "It is difficult to accept the situation where a person remains incarcerated and deprived of his liberty for a prolonged period, stemming from problems with his transfer to another state or [foreign] authority," stated the court ruling. "State authorities should consider formulating rules for handling these difficult cases, where there is a question of where a prisoner will be transferred after serving his sentence [...] Holding a prisoner in custody for an extended period after having served his sentence, for the sole reason that it is difficult to arrange his immigration to an accepting country, is a problem that requires a speedy institutional solution, and if necessary, the active intervention of the state. This is to ensure the release of a prisoner who has already served his sentence as soon as is possible, deriving from the basic right to human liberty, which the state is obligated to respect as part of its duties as the governing authority."³³
- In March 2011, an African woman was released from custody, after she had been held in various detention centers for seven years (!). Owing to difficulty in determining her country of origin, it was impossible to deport her to said country.³⁴ Mart Dorfman, an adjudicator at the Custody Tribunal for Illegal Aliens, ruled that such a situation could not continue, and instructed that she be released. In his decision, Dorfman sharply criticized the conduct of the authorities regarding this woman, and regarding the failures of the Immigration Police and the Population Authority that handled the case.

³² AP (TA) 2887/05 **Alexeyev v. Minister of Interior**, judgment rendered 29.1.2007. For more on the petitions, the court writs, and the decision (in Hebrew), see: <http://www.acri.org.il/he/?p=1739>.

³³ HCJ 6558/08 **Anonymous v. Coordinator of Activities in the Territories**, judgment rendered 10.9.2008 (in Hebrew): <http://elyon1.court.gov.il/files/08/580/065/r05/08065580.r05.htm>

³⁴ Dana Weiler-Polak, **Illegal Alien Released after being Imprisoned for Seven Years** (in Hebrew), Haaretz, 21.3.2011, <http://www.haaretz.co.il/news/education/1.1167783>.

Detention of Asylum Seekers and Refugees³⁵

Both international conventions and the guidelines of the UN High Commissioner for Refugees (UNHCR) establish a number of rules regarding asylum seekers. First, the right to apply for political asylum is a basic human right, available to all. Furthermore, the fact that an asylum seeker entered a country illegally cannot serve as a pretext for their arrest. Asylum seekers cannot be arrested for extended periods while their application is being examined, and any arrest of an asylum seeker as a means of deterring other refugees from entering the country is strictly prohibited. Despite these rules, the State of Israel views those refugees and asylum seekers knocking down her gates as, first and foremost, infiltrators residing in Israel illegally. The starting assumption of the state is that arrest orders and deportation orders must be issued for these people immediately. The execution of the deportation order is delayed until their application for recognition as a refugee has been fully examined, or until the government decides what is to be done with citizens of the country from which the refugee arrived.³⁶

The State of Israel has no law regulating the status of asylum seekers and refugees and various attempts to enact such a law have been met with government resistance. The increasing number of asylum seekers arriving in Israel over recent years has forced the state, albeit belatedly, to formulate new rules and mechanisms for handling asylum seekers entering the country. Nevertheless, these are still being formulated and have not yet been enshrined in legislation. Moreover, in an attempt to reduce this phenomenon, the state has begun employing **various draconian deterrence measures, including the incarceration of many asylum seekers**, among them small children and infants. Many are detained for prolonged periods. According to the statistics of the Hotline for Migrant Workers, in August 2010 there were 1,042 asylum seekers being held for periods exceeding 60 days in the Saharonim and Givon Detention Centers, administered by Israel's Prison Service. Of these, 415 had been in detention for more than a year. As of September 2011, the Hotline for Migrant Workers reported that within the Givon Detention Center alone, there were 61 detainees being held in custody for more than a year.³⁷

Currently, the Israeli government is in the process of approving plans to build a huge new detention center in the south of the country – **the largest holding facility for migrants in the western world** – which can house tens of thousands of “infiltrators” and their children.³⁸ It is a draconian and immoral plan that flies in the face of Israel's obligations under International Law and which undermines the basic principles of Israeli law. Moreover, many studies indicate that asylum seekers held in custody suffer psychological injury, with especially high rates of depression and post traumatic stress, and that the severity of their

³⁵ For a more detailed discussion, see: **The Detention of Asylum Seekers and Refugees**, Refugees' Rights Forum, June 2008, http://www.hotline.org.il/english/pdf/Detention_paper_021809_Eng.pdf.

³⁶ Some 85% of asylum seekers arriving in Israel are citizens of Eritrea or Sudan – countries to which Israel does not deport people, as a rule.

³⁷ The figures are from the report of the Hotline for Migrant Workers, which will be published soon. The Hotline was unable to obtain accurate figures for 2011 regarding Saharonim Prison, and a Freedom of Information application that the organization sent to the prison went unanswered.

³⁸ Telem Yahav, **Coming Soon: Mega-Prison for 10,000 Refugees** (in Hebrew), Yedi'ot Aharonot, 11.10.2011. In November 2011, five human rights organizations, including ACRI, submitted their objections to the building of the facility to the National Council for Planning and Building: on ACRI's website (in Hebrew): <http://www.acri.org.il/he/?p=17495>.

mental illness is proportionate to the length of their confinement.³⁹ It is important to remember that many asylum seekers have already experienced severe trauma in their home countries and on their way to Israel, and consequently may suffer from psychological problems even before they are arrested. As such, they are even more vulnerable psychologically to the negative effects of incarceration.

On 28 March 2011 the government introduced its "**Infiltration Bill**,"⁴⁰ which it tabled in the Knesset. (A similar bill, which had passed its first reading in the previous Knesset was not promoted due to public opposition.) Two days later, on the last day of the Knesset's winter session, the bill passed its first reading in the plenum. The stated aim of this proposed bill is **to deter refugees and asylum seekers from coming to Israel, and the means of doing so is through draconian punishments and the incarceration of refugees and asylum seekers who've already entered into Israel**. If the bill is passed into law, it would allow for the blatant violation of human rights. The bill defines an "infiltrator" as anyone who enters Israel other than through an official border crossing. It makes no distinction between security infiltrators (agents of an enemy government or terrorist organization), refugees, asylum seekers, or migrant workers. Among its provisions, the proposed law would have asylum seekers and their children confined for a minimal period of **three years** (and not 60 days as is currently written in the Entry into Israel Law), and under certain conditions, it could hold them in custody indefinitely. It would make criminally liable anyone helping or providing shelter to refugees and asylum seekers, with a criminal sentence of up to five years in prison. Repeat "offenders" providing aid or shelter would be subject to 15 years imprisonment. This bill, which is being debated in the Interior Committee in preparation for second and third readings, egregiously flouts the most basic principles regarding the protection of asylum seekers and their proper treatment.

The State of Israel certainly has the right to protect the integrity of its borders, to establish rules regarding entry into the country, and to monitor those who come knocking on its gates. But as a country that was established, in part, to grant a home to Jewish refugees, and as a country that was closely involved in the drafting of the 1951 Convention Relating to the Status of Refugees, it must take into account the moral and legal obligation not to imprison refugees and asylum seekers, rather than seeking to punish them.

Arrest of Stateless Persons

Stateless persons are people who either never acquired citizenship, or who lost their citizenship at some point in their lives due to political changes in their country of origin, or whose citizenship was revoked by their home country. In response to a petition filed by ACRI, the Tel Aviv Administrative Court ruled in January 2007 that the Ministry of the Interior must formulate a clear policy with clear criteria regarding the handling of stateless persons, so that they can apply to the appropriate authorities and attempt to arrange their legal status before they are arrested.⁴¹ The UNHCR, the international body charged with overseeing the covenant on refugees and the covenant on stateless persons, also has stressed that, as a rule, countries should refrain from arresting stateless persons. According to the UNHCR,

³⁹ Yaniv Fenig and Dr. Ido Lurie, **The Impact of Imprisonment on the Health of Asylum Seekers** (in Hebrew), Physicians for Human Rights, <http://www.acri.org.il/he/wp-content/uploads/2011/11/tma46appendix.pdf>.

⁴⁰ Prevention of Infiltration Bill (Actionable Offenses) (Amendment No. 3 and Temporary Order) 5741-2011.

For more on the bill and ACRI's position toward it, see: <http://www.acri.org.il/en/?p=1865>

⁴¹ AP (TA) 2887/05 **Alexeyev v. Minister of Interior**, see fn. 32.

the absence of identifying documents, illegal residency, and lack of cooperation on the part of the person's home country in validating his/her identity are not sufficient reasons to justify the arrest and incarceration of stateless persons.

Nevertheless, **the policy established by the Ministry of the Interior utterly ignores the ruling of the Tel Aviv Administrative Court and the guidelines of the UNHCR.** Instead, the policy formulated for handling stateless persons was directed at law enforcement officials, with the assumption that the stateless person in question was already under arrest. There were no guidelines for what a stateless person could do to try to arrange matters, no outlines for arranging their status in Israel if deportation proved impossible. Instead, there was the very general statement, "each case will be examined individually." This stands in complete contradiction of the court decision, which ruled that stateless persons should be encouraged to apply to the Israeli authorities to arrange status for themselves and avoid a pointless arrest. Rather, the starting assumption of the government's policy is that stateless persons must be arrested, so that the Interior Ministry can examine the matter – a process that takes months – while they are in custody.

In April 2010, ACRI once again petitioned the Administrative Court, demanding that the inadequacies of the government policy be corrected, and that a procedure be established for handling the requests of stateless persons, similar to the existing procedures for examining applications for asylum. In September 2010, the court ruled that the Ministry of the Interior must publish within 90 days its new guidelines for handling stateless persons. As of today, these guidelines have yet to be published.

Conduct of the Custody Tribunal

"As an attorney who defends human rights in Israel, the chaos which prevails at the Custody Tribunal is particularly disturbing to me, as it harms the basic human rights of those people whose fate it decides [...] The tribunal only discusses matters relating to foreign nationals. In the vast majority of cases, the people in question have no family members in Israel or Israeli acquaintances. They are not Hebrew speakers [...] They are not familiar with Israeli law – even in its most general terms. A portion of them come from dictatorships, where the idea of protected human rights is almost unheard of. Often, they can not afford to hire the services of an attorney, and sometimes they don't even know how to contact an Israeli lawyer. Given these circumstances, we are talking about people whose voice cannot be heard by the public or by the Israeli government. [...] Packed in behind the gates of various "custody centers", they are very far from both the eye and the mind of the Israeli public."⁴²

The Custody Tribunal for Illegal Aliens is a quasi-judicial appellate review, convened in the prisons where illegal aliens are being held. The job of the tribunal is to examine the decisions of the Border Control Officer regarding the arrest and detention of illegal aliens. By law, every detainee is supposed to be brought before the tribunal within four days of his/her arrest.⁴³

⁴² Yuval Livnat, **The Arrest and Release of the Foreigner Who Refused to Identify Himself**, (in Hebrew) Ha-Mishpat 15(1), September 2010: <http://tinyurl.com/d6tqtz7>.

⁴³ Up until 2008, the maximum period for judicial oversight over detention by the Custody Tribunal was 14 days. Following the petition of ACRI, HaMoked, and the Hotline for Migrant Workers, the law was amended and the period was shortened.

In an article published in September 2010, Dr. Yuval Livnat reviewed the troubling defects in the conduct of the Custody Tribunal.⁴⁴ Ostensibly, the tribunal is a judicial body, though with limited powers. The adjudicators are not judges – not in terms of how they are chosen, the duration of their tenure, or their wages – nor are they subject to the review of the Judges Ombudsman (rather they are subject to disciplinary hearings before the Civil Service Commission.) Because the workings of the Custody Tribunal are not expressly prescribed by law, serious injury is done to the fundamental rights of the disadvantaged people whose cases they adjudicate. For example, the right to legal representation is routinely violated: the tribunal is accustomed to holding proceedings without the presence of detainees' counsel; attorneys representing the detainees are not informed of the dates of these proceedings and do not receive copies of the complaints against their clients filed by the Interior Ministry. Some proceedings are held without the presence of the detainee and without hearing his/her words, and the tribunal is privy to review documents, copies of which are not available to the detainee. Thus a decision may have been rendered in a detainee's case without his presence, and sometimes without him even knowing the result. The sessions of the Custody Tribunal are held in detention facilities – closed areas sometimes within prisons for convicted felons. That being the case, the public cannot enter these facilities and thus cannot observe the proceedings. This arrangement negates the constitutional principle of trial in public and its underlying rationale – that the eye of the public helps maintain the integrity of the judicial process and the public's confidence in the court system.

The Public Defender's Report for the year 2009-2010 also points to defects in the conduct of the Custody Tribunal.⁴⁵ The report reveals that the adjudicators have difficulty in handling their caseload, with approximately one hundred cases heard per day, and that while waiting for their cases to be heard, detainees are held in inappropriate conditions. Another important point raised by the report is that because of detainees' difficulties with the language and lack of representation, they often don't understand the proceedings and the decisions made regarding them, nor are they aware of their legal rights. "When an official supervisor entered one cell," describes the report, "every detainee handed him the protocol of their last hearing and asked him to explain what it said, what would become of them, and they begged for help because there was no one else there to help them."

The Custody Tribunal adjudicators are appointed by the Justice Minister on the recommendation of a committee. Their terms are limited, and any extension of that term is subject to the discretion of the authorities and dependent upon their satisfaction with his/her performance. The law declares that tribunal adjudicators are subject to no authority other than the Law, but is that really the case? Regarding the tribunal's lack of independence and regarding its basic failures in fulfilling its duties, former tribunal adjudicator, Att. Dan Libreti, recently came forward with harsh words at a seminar for judges held in May 2011.

⁴⁴ **The Arrest and Release of the Foreigner Who Refused to Identify Himself**, see fn. 42.

⁴⁵ **Prison and Detention Conditions in IPS prisons and in Israel Police Jails**, see fn. 3, p. 71.

For examples of defective conduct of the Custody Tribunal, see also: Dana Weiler-Polak, **Judge rebuked for sending Sudanese refugee to Chad**, Haaretz, 5.1.2011, <http://www.haaretz.com/print-edition/news/judge-rebuked-for-sending-sudanese-refugee-to-chad-1.335269>; and Dana Weiler-Polak, **Israel detains Eritrean refugee for 18 months because he couldn't prove his identity**, Haaretz, 24.5.2011: <http://www.haaretz.com/print-edition/news/israel-detains-eritrean-refugee-for-18-months-because-he-couldn-t-prove-his-identity-1.363634>.

In his lecture, Libreti emphasized that tribunal adjudicators are required “on a regular basis to face a series of pressures that ordinary judges are not accustomed to.” He reported on the irregular work environment and work conditions that the adjudicators labor under: hearings held in rooms totally inappropriate for court proceedings with no separation between the defendants and the judge; a lack of stenographers, so that the adjudicator must manage the proceedings and listen to the defendants and their counsel, all the while typing their words; an inability to set hearing dates in advance; and the requirement that the adjudicator communicate directly – without any intermediaries – with the state authorities. “By all accounts this is an abnormal and undesirable situation,” reported Libreti, “but it is inevitable considering the working conditions and the resources allotted by the state to the tribunal.”

Libreti also noted the contempt that state authorities hold for the Custody Tribunal. “This is evident in the total disregard that the executive authorities show for the rulings of the tribunal, along with the harsh and unbridled statements that they make to the media.” In his summation, Libreti emphasized the **need to ensure the independence of the tribunal and of its work**: “In its current format, the tribunal might be considered functional, but it is certainly not desirable. As of today, the tribunal is umbilically dependent upon the executive authority (the Interior Ministry) regarding appointments of adjudicators and the payment of salaries. The term of an adjudicator is limited (up to ten years) with no chance of professional advancement. Under the desired circumstances, the tribunal would function with full judicial independence, free of the executive authority. The fact that the tribunal is part of the executive authority does not make its job any easier, and does not convey enough weight to its decisions. Experience shows that at times of increased friction, when the tribunal instructs the executive authority with a ruling that is “inconvenient”, the executive does not hesitate to ignore the tribunal’s decision. Over the years, we have been increasingly exposed to the intentional non-compliance of various executive authorities with the tribunal’s rulings, including the Ministry of the Interior, the Israel Prison Service, and even the State Attorney’s Office within the Ministry of Justice. [...] I believe that, for the good of all parties involved, the natural and proper place for the Custody Tribunal is within the authority of Israel’s court system.”

Arrest and Detention of Minors

Until early March 2011, the Interior Ministry had refrained from detaining the children of migrant workers living with their parents in Israel. But since then, the National Immigration Authority has begun arresting migrant workers together with their small children – toddlers and sometimes even babies – and holding them at the “Refused Entry Facility” at Ben Gurion Airport until deportation. We will elaborate on this below, in the section on the incarceration of minors. These children, together with minors who are themselves migrant workers or refugees seeking asylum, are being held in detention in Israel, either together with their parents or by themselves.

Just Like Adults: Arrest and Interrogation of Minors

The dictates of common sense, reflected both in Israeli law and International Law, demand that whenever the treatment of minors is on the agenda, the primary consideration guiding authorities should be the welfare of the child. Consequently, among the rights protections

granted to juveniles is the obligation of the State to not arrest any minor suspected of a crime, unless no other alternative exists. The arrest of a minor is to be utilized only as a last resort by the authorities, and not as a routine tool for investigative purposes. Article 37 of the Convention on the Rights of the Child states that, “[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

The logic behind this is obvious, and it is with good reason that the legislature chose to dedicate a separate law addressing the appropriate means for arresting, investigating and adjudicating cases involving children and adolescents. The experience of arrest is very difficult for anyone – all the more so for a child, where the consequences could be disastrous for his/her mental health. The anxiety associated with arrest can lead to severe post-traumatic stress, and minors who have been arrested are known to be at a much greater risk for a variety of psychological symptoms and disorders, such as: depression, confusion, nightmares, insomnia, bed-wetting, behavioral changes, sudden academic deterioration, and more.⁴⁶ Moreover, if the parents were present during the arrest, the child may have witnessed their parent’s helplessness in the face of the authorities. This can cause severe injury to the sense of existential security that parents are supposed to impart to their children, and undermine the child’s trust in the world and in humanity.

The Youth Law⁴⁷ establishes norms and rules for handling the arrest and investigation of minors suspected of having committed a crime. These rules were designed to guide the authorities in their handling of juveniles, to ensure that such treatment takes into consideration their special needs, and that it reflects the provisions of the International Convention on the Rights of the Child as well as Israel’s *Basic Law: Human Dignity and Liberty*. As such, **there is an absolute prohibition on arresting any child suspected of having committed a crime until s/he has turned 12, the age of criminal responsibility in Israel. As a rule, adolescents between the age of 12 and 18 are supposed to be interrogated only while in the presence of their parents or other close family member, and only by special child investigators. Similarly, it is prohibited to interrogate minors at night, and police are not allowed to handcuff children except in the isolated, exceptional cases that are detailed in the law. The use of violence is absolutely forbidden in any investigation.**

Despite the aforementioned, human rights organizations have reported **numerous cases where the police have deviated from the norms and rules prescribed by the law** – both in criminal matters and other matters, such as those related to immigration and civil status. In certain cases, the exceptions have become the rule. For some children, the protections enumerated in the Youth Law simply do not apply.

⁴⁶ See for example the appeal of 60 prominent experts on children and youth to the Prime Minister and the heads of Israel’s law enforcement agencies regarding the arrest of juveniles in East Jerusalem, November 2010; for excerpts of the letter: <http://www.crin.org/resources/infodetail.asp?id=23605>
In response, the Office of the President of Israel wrote: “The President shares your opinion that regarding all arrest, detention, and interrogation procedures employed against children and youth in East Jerusalem, the authorities must adhere to the law and employs means that cause as little harm as possible.”

⁴⁷ Youth Law (Adjudication, Punishment and Methods of Treatment), 5731-1971.

Minors in the Occupied Territories

"During my entire interrogation, the interrogator did not let me go to the bathroom, even though I really had to go. They didn't bring me food, or even water. I was really tired from the interrogation and from being beaten. So I preferred to tell the interrogator that I did throw stones in 2007. Then he ordered me to sign my confession. I signed a paper that was written in Hebrew. I didn't know what it said. At the time, I just wanted to put an end to the interrogation and the beatings, especially since it was the first time I'd been arrested."⁴⁸

According to the organization Defense for Children International (DCI),⁴⁹ each year there are approximately 700 juveniles from the Occupied Territories, age 12 and up, who are arrested and brought to trial. Most are accused of throwing stones. Between the months of January and September 2011, there were, on average, 206 Palestinian minors incarcerated in Israeli jails per month, 38 of whom were between the ages of twelve and fifteen.⁵⁰

As described above,⁵¹ there are two separate legal systems operative in the Occupied Territories – one for Israelis and one for Palestinians. The difference between these two legal regimes is also evident in how they address juveniles suspected or accused of committing a crime. The treatment of Palestinian minors, unfortunately, has been **one continuous flagrant violation of due process and the principle of protecting the welfare of the child**. This runs counter to the norms of International Law which are applicable both in Israel and the Occupied Territories, and causes tremendous injury to the children in question.

In general, criminal procedure as it applies to Palestinian minors does not afford them the basic rights enshrined in Israeli law that do apply to Israeli minors living in the territories. And so, while Israeli youth living in the territories are tried in "normal" criminal courts within Israel, their Palestinian counterparts are tried for identical offenses in the military courts that operate in the territories. Israeli law forbids sentencing children under the age of 14 to prison, while Palestinian youth are given active prison sentences beginning at age 12. The interrogations of Israeli minors involved in serious crimes are all documented and recorded (except for cases involving state security), whereas with Palestinian minors, they are not.

In this context, it is important to address **two changes that have taken place over the last two years**: in November 2009, the Juvenile Military Court was established in the territories, and in September 2011 the age of majority – the age at which a person can be tried as an adult – for Palestinians was raised from 16 to 18, in order to match that of Israelis living in the territories.⁵² These changes represent first steps in the effort to minimize the violation of the rights of Palestinian juveniles arrested by Israeli authorities. However, as of the writing of this report, the influence of these changes has been extremely small: most of the material provisions designed to ensure that Palestinian minors receive special treatment have not yet been amended, and Palestinian youth continue to suffer the systematic violation of their

⁴⁸ From the testimony of 'Omar Hamamreh, who was arrested at age 15, as presented on the B'Tselem website: <http://www.btselem.org/minors/2011-no-minor-matter/testimonies>

⁴⁹ **Detention Bulletin**, Defence for Children International – Palestine Section, September 2011, http://www.dci-palestine.org/sites/default/files/detention_bulletin_sep_2011.pdf.

⁵⁰ See also the figures of B'Tselem, broken down for juveniles under age 16 and over age 16, according to the type of arrest/detainment, http://www.btselem.org/statistics/minors_in_custody

⁵¹ In the section of the report entitled, "Prolonged and discriminatory arrest periods"

⁵² For a link to the order to raise the age of majority, see ACRI's website (in Hebrew): <http://www.acri.org.il/he/?p=16951>.

rights in criminal proceedings, and blatant discrimination when compared with Israeli youth of the same age, living in Jewish settlements.⁵³

Arrest: Typically, children are taken from their homes by soldiers, often in the middle of the night, and without their parents being allowed to accompany them. Of the 50 minors who spoke with the organization B'Tselem, 30 were arrested this way.⁵⁴ According to the report of the DCI,⁵⁵ relying on the testimony and affidavits of 40 Palestinian minors brought before the military court system, every one of them had been handcuffed during their arrest, and in 90% of the cases, their eyes were covered as well. An additional report of the DCI,⁵⁶ based on the testimonies of 45 minors, revealed that 62% of their arrests occurred at night, between the hours of midnight and 5AM, and their interrogations usually took place when they were sleep deprived, as they were not given the chance to sleep between the time of their arrest and the interrogation.

Investigation: Despite many complaints of improper interrogation methods used to pressure Palestinian youth under questioning, the parents of said minors are not allowed to be present during their interrogations, neither are these interrogations recorded. Of the 50 youth interviewed by B'Tselem,⁵⁷ 19 reported that they had experienced violence and threats during their interrogation, and 23 told of how for many hours they were deprived their basic physical needs, such as food, water, and access to the bathroom. According to the DCI report,⁵⁸ 70% of the juveniles testified that they had been kicked and beaten, 55% complained of threats, and 50% complained that their confessions had been forced, extracted through the pressure tactics and intimidation employed by their interrogators. They complained of other injuries as well, such as verbal abuse and humiliation, being forced to sign documents in Hebrew, solitary confinement, and the threat of sexual abuse.

In the courts: When minors are brought before the courts in Israel, the prevailing approach toward them is rehabilitative/therapeutic, and thus the tendency of the court is to refrain from imposing prison sentences. The military courts, however, take a punitive approach. Prison sentences – even for minors – are the rule, and only in exceptional cases will the court be satisfied with probation, not to mention even lesser sentences. According to statistics compiled by B'Tselem,⁵⁹ between the years 2005 and 2010, prison sentences were handed

⁵³ See ACRI's appeal to the Chief Military Advocate General (in Hebrew) from 1.11.2011: <http://www.acri.org.il/he/wp-content/uploads/2011/11/minors011111.pdf>.

⁵⁴ Naama Baumgarten-Sharon, **No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing**, B'Tselem, July 2011, http://www.btselem.org/download/201107_no_minor_matter_eng.pdf

⁵⁵ **In their own Words: A report on the situation facing Palestinian children detained in the Israeli military court system, 1 July to 31 December 2010**, Defence for Children International – Palestine Section, January 2011, <http://www.dci-pal.org/English/Doc/Press/JANUARY2011.pdf>.

⁵⁶ **In their own Words: A report on the situation facing Palestinian children detained in the Israeli military court system, 1 January to 30 June 2011**, Defence for Children International – Palestine Section, July 2011, <http://tinyurl.com/clgwpmw>.

For additional examples, see: **All Guilty! Observations in the Military Juvenile Court 2010-11**, fn. 24; Amira Hass, **Arrest Procedures for a Juvenile in a-Nabi Saleh: Against the Law, without being Accompanied by a Lawyer or Parent (in Hebrew)**, Haaretz 8.4.2011, <http://www.haaretz.co.il/news/politics/1.1170569>; Elior Levy, **Video: 11-year-old Palestinian stone-thrower arrested**, Ynet, 27.2.2011, <http://www.ynetnews.com/articles/0,7340,L-4035104,00.html>

⁵⁷ **No Minor Matter**, see fn 54.

⁵⁸ **In their own Words**, see fn 55.

⁵⁹ **No Minor Matter**, see fn. 54 above.

down in 93% of the cases where minors were convicted of throwing stones, with the sentences ranging from several days to up to 20 months. Nineteen of these children were beneath the age of 14 when they were sent to prison, whereas Israeli law clearly forbids the imprisonment of children at this age. According to the report of the organization Justice without Borders,⁶⁰ in 98% of the cases they examined, convicted minors were sentenced to active prison sentences, and in 100% of the cases they received additional probationary terms. In 96% of these cases a fine was also imposed which, if not paid, would require the convicted to spend additional time in jail.

Since June 2010, ACRI, Yesh Din and DCI have appealed numerous times to the Chief Military Advocate General⁶¹ demanding the repair of the severe rights violations suffered by Palestinian children during criminal proceedings in the territories, and that the MAG eliminate the blatant discrimination these children suffer as compared with Israeli minors. Included in these appeals we have demanded the following: the raising of the age of majority for Palestinians from 16 to 18; that the MAG determine not to imprison any juvenile under the age of 14; that the period awaiting trial be shortened, with the approval of the Chief Military Advocate General, from two years to one year; that interrogations of juveniles be scrupulously documented and recorded; and that the right of a parent to be present at their child's interrogation be anchored. As mentioned above, recently the age of majority for Palestinians was raised from 16 to 18, but the remaining violations of the rights of juveniles are yet to be corrected. In response to our appeal, the MAG replied that their staff is working on this subject, but an estimated time for completing that work has not been set. ACRI and its partner organizations are continuing their work toward a real improvement in the human rights of Palestinian minors tried in the military courts of the Occupied Territories.

Minors in East Jerusalem

"The first time, they came into my bedroom and dragged me out of bed to the police station in the Russian Compound [...] They cuffed me using plastic ties and fastened them very hard behind my back. [...] The second time, they arrested me the same way, except they didn't wait for me to put on my shoes, and took me barefoot [...] A few minutes into the car ride, they slapped me a few times 'on account', that's what one of the soldiers told me. [...] My third and last arrest [...] I was standing at the entrance to my house with my father standing close by. I was taken, or more accurately, I was kidnapped by special unit police officers and soldiers in black uniforms. They also attacked my father who was trying to free me from them, and when he asked if he could accompany me or bring me to the station himself, they wouldn't even answer him. The two soldiers who escorted me held me with two hands from both sides, as if they had caught a murderer. [...] As we drove off, the soldiers harassed me; they swore at me all the time and pressed me very hard into the door of the jeep."⁶²

⁶⁰ **All Guilty!**, see fn. 24 above.

⁶¹ The text of the letter can be found on:

http://www.dci-palestine.org/sites/default/files/acri_2nd_letter_to_mil_adv_gen-26jun2011-eng_2.pdf.

⁶² From the testimony of A.D., age 14.5, from the Baten el-Hawa in East Jerusalem. The testimony was collected on 24.1.2011 by Mahmoud Qarae'en of ACRI. For additional testimonies of children arrested in East Jerusalem see the movie "Childhood Remnants" of the Wadi Hilweh Information Center – Silwan, Jerusalem, <http://www.youtube.com/watch?v=36hLSj5RQEE>.

In recent years, there has been increasing tension and friction in the Palestinian neighborhoods of East Jerusalem where settler groups are active. The express purpose of the settlers is to “Jewify” these neighborhoods and they are accompanied by close body guard protection and private security forces. More than once, the frequent altercations between settlers and the local Palestinian residents have ended in violence, in arrests, and criminal proceedings – mostly carried out against the Palestinian locals.⁶³ Some of the most severe and troubling complaints lodged by Palestinians regard the arrest of children, some of whom are beneath the age of criminal responsibility. In 2010 alone, the Israeli police arrested some 1,200 minors in East Jerusalem on suspicion of throwing stones.⁶⁴

From the information that has reached ACRI and our colleagues, we find that **the police have chosen the most problematic of measures for dealing with children suspected of throwing stones, so much so that police actions may sometimes break the law and their own internal regulations.** The police’s attitude towards the Youth Law – turning its exceptions into norms, and readily breaking the law when inconvenient – renders the law meaningless, and prevents minors from enjoying the protections that the law was supposed to grant them.⁶⁵

Arrest - the rule rather than exception

Both Israeli law and the orders of National Police Headquarters state that, in general, it is preferable to serve a suspect with a summons rather than to detain or arrest him. When dealing with a minor, it is all the more important to meticulously abide this order, to allow the minor time to prepare himself mentally for questioning, and to enable his parents to make arrangements so that they can accompany him and be present at his interrogation.

In practice however, detention and arrest, which were supposed to have been exceptional measures, have become the routine norms for dealing with minors suspected of throwing stones. In the vast majority of cases, even if the minor is suspected of a crime committed weeks earlier (and therefore there is no cause for calling him in for question in any other than the usual way) the police still choose to detain the suspect at his house and bring him to the police station for questioning. The use of this drastic step raises the concern that the

⁶³ For more on the conduct of the police in East Jerusalem, see: Att. Nisreen Alyan et al, **Unsafe Space: The Israeli Authorities' Failure to Protect Human Rights amid Settlements in East Jerusalem**, ACRI, September 2010, <http://www.acri.org.il/pdf/unsafe-space-en.pdf>;

see also: **Rising Violence and Rift in Police Handling of Palestinians in Jerusalem**, ACRI, June 2011, <http://www.acri.org.il/en/wp-content/uploads/2011/05/E-jlem-police-ACRI-report-May-2011-Eng.doc>

⁶⁴ According to the figures of DCI, between November 2009 and October 2010, there were 1,267 criminal files opened against Palestinian juveniles in East Jerusalem on suspicion of throwing stones. **Voices from East Jerusalem: the Situation Facing Palestinian Children**, Defense for Children International – Palestine Section, August 2011, <http://tinyurl.com/6845uph>; see also: Avi Issacharof, **Police open criminal files against 1,000 East Jerusalem minors this year** (in Hebrew), Haaretz, 1.12.2010, <http://www.haaretz.co.il/hasite/spages/1201539.html>

⁶⁵ For more details, see: the appeal of ACRI, B’Tselem, and the Wadi Hilweh Information Center to the Minister of Internal Security, dated 25.10.2010, (in Hebrew): <http://www.acri.org.il/he/?p=2606>; Att. Nisreen Alyan, **Violations of the "Youth Law" (Adjudication, Punishment, and Methods of Treatment) – 1971 by the Israeli Police in East Jerusalem**, ACRI, March 2011, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1007.pdf;
Naama Baumgarten-Sharon, **Caution: Children Ahead – The Illegal Behavior of the Police toward Minors in Silwan Suspected of Stone Throwing**, B’Tselem, December 2010, http://www.btselem.org/download/201012_caution_children Ahead_eng.pdf.

police are trying to intimidate Palestinian youth in order to deter them from repeating the acts of which they are suspected.

Arrest and interrogation at night

According to law, the arrest and interrogation of minors is supposed to take place during daylight hours, save for highly exceptional cases. Despite this, many of the arrests and detentions of children in East Jerusalem are carried out at night. We know of many cases where minors were arrested or detained between 3AM and 5AM and, after waiting for several hours, brought in for questioning during the early morning hours, exhausted.

The police, in trying to justify this practice, have used generalizations such as "operational considerations" and "considerations for the good of the investigation."⁶⁶ These excuses are not legally acceptable and cannot be used as a pretext for voiding the law of its content. Following repeated queries by ACRI, there has been a decline in nighttime arrests over recent months, which is proof that the police do have other means which are less harmful and which do not entail breaking the law.

Interrogation without the presence of a parent

Regarding minors, there is an obligation incumbent upon the authorities to allow parents to be present during the interrogation of their child. The law notwithstanding, this obligation is routinely violated – the police tend to take advantage of the exceptions established by law,⁶⁷ utilizing them widely and in thoroughly unexceptional circumstances. The result is that in many cases, parents are not present at their children's interrogations – in part or in full. The testimonies of Palestinian minors reveal that in some case, when their parents are present during part of the investigation, any attempt on their part to say something is construed as an obstruction of justice or interference in an investigation, and they are forced to leave. In other cases, the questioning of the suspect begins while taking the minor to the station in the police car, where parents are not allowed to be present.

This combination of arresting children in the dead of the night, interrogating them while they are afraid and exhausted, and not allowing their parents to be present creates a convenient (and dangerous) platform for extracting false confessions from children, and causing them psychological damage. Any police interrogation conducted under such circumstances is unacceptable and illegal, and constitutes an abuse of police powers towards a weakened population at their most vulnerable time. Another blatant violation of the law gleaned from accounts of children, is that these interrogations are conducted by normal police officers, instead of the special child and youth investigators as required by law.

⁶⁶ Reply of the police to ACRI from 14.11.2010. Similar explanations were given in an interview with the Jerusalem Police Central Unit Commander, Shimshon Nachum; Eli Osherov, **Jerusalem Central Unit Commander: In the past year we've foiled six large criminal attacks** (in Hebrew), Ma'ariv, 5.4.2011 at: <http://www.nrg.co.il/online/54/ART2/229/351.html>.

⁶⁷ The exceptions are listed on p. 8-9 of the report **Violations of the "Youth Law"**, see fn 65, above, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1007.pdf.

Use of handcuffs

By law, the handcuffing of juvenile arrestees is allowed only under exceptional circumstances after all alternative methods at achieving the same result have been exhausted. Even then, the restraints may remain on the minor's hands only for the shortest time necessary, and with consideration for the child's age and the impact that being handcuffed could have on his physical and mental well-being. The handcuffing of a detained (i.e. not arrested) minor is prohibited. Despite the clear dictates of the law, many of the minors arrested and detained in East Jerusalem report that they were handcuffed while being taken to the police station and sometimes within the station itself. Such practices are illegal and unjustifiable. Moreover, the handcuffing of a minor who is a suspect (and is presumed innocent until proven guilty), especially when he is arrested and cuffed near his home in sight of his neighbors and acquaintances, creates a terrible stigma and tremendous humiliation, and may injure his human dignity.

Violent arrests in public

Some of the arrests of minors in East Jerusalem, carried out by undercover policemen, take place in public areas and sometimes employ harsh violence. From complaints received by ACRI, we've found that at least some of the arrests were not immediately preceded by disturbances or instances of stone throwing; rather the children were arrested while sitting, as usual, at their door, or while playing in the streets and alleys of the neighborhood – the only playgrounds available to them. Sometimes arrests were made without notifying the families until after the minor arrived at the police station, of course without the accompaniment of a parent or close family member. Even worse, in some instances the minors were beaten by undercover cops during their arrest, for all passers-by to see.⁶⁸

Children under the age of 12 (age of criminal responsibility)

Although both the law and police procedure expressly prohibit the arrest of children under the age of 12 (the age of criminal responsibility), children even younger than 12 have been detained and arrested in East Jerusalem. At the time of arrest or detention, the police do not always trouble to find out the age of the suspect, and in many cases the police only discover that the juvenile is under the age of criminal responsibility after they have arrived at the police station. But even then, the police treat these children exactly as they do older suspects: they detain them for long hours, handcuff them, threaten them, shout at them, and do everything in their power to extract information from them about the goings-on in their neighborhood. Thus, for example, the Haaretz news website reported in May 2011 about the detention of a 7-year old boy (!) from Silwan.⁶⁹

⁶⁸ See, for example: Amira Hass, **Teen hospitalized with fractured skull after violent Nakba Day arrest**, Haaretz, 27.5.2011, <http://www.haaretz.com/print-edition/news/teen-hospitalized-with-fractured-skull-after-violent-nakba-day-arrest-1.364305>. In a written reply, the police rejected the claims of the article.

⁶⁹ Nir Hasson, **Police detain 7-year-old Palestinian boy and accost relatives, family members say**, Haaretz, 29.5.2011, <http://www.haaretz.com/news/national/police-detain-7-year-old-palestinian-boy-and-accost-relatives-family-members-say-1.364828>.

Additionally, we have especially troubling testimonies indicating that several children under the age of 12 have fallen victim to harsh police violence – in some cases while they were being arrested in their own neighborhoods, and in other cases within the walls of the police station.⁷⁰ Even if we accept the police claim that it was necessary to detain these children – which, as mentioned above, is clearly against the law – there is no excuse for using violence of any type against arrestees, especially children.

We do not know of anyone within the government who is keeping track of or demanding statistics about the frequent use of the exceptions to the Youth Law. Moreover, all the complaints which have been filed with the Police Internal Affairs division regarding the mistreatment of minors have been closed on one pretext or another, sometimes without any investigation at all.⁷¹ The situation is so bad that in many cases of police violence against Palestinian minors, the families of the children choose not to file a complaint with Police Internal Affairs for lack of trust in the system.

It is certainly the duty of law enforcement authorities to protect the peace and to prevent the throwing of stones in East Jerusalem, but the pervasive police practices described above run totally counter to the laws which set out the required means for investigating and arresting juvenile suspects, laws which apply to East Jerusalem as well as to the whole of the country. Such police conduct is unacceptable. It shows not even the slightest effort to deal with the complex reality of life in East Jerusalem, a reality which brings children to throw stones in the first place. The taking of a heavy hand against these children does nothing to dispel tensions or advance a solution to the underlying problems of the region; rather it further exacerbates an already problematic situation.

Minors Who Are citizens of Israel

The improper practices used in the interrogation of juveniles, disregarding both their rights and their welfare, are not unique to the Occupied Territories and East Jerusalem. They are spreading to the rest of Israel. For example, in September 2011 six juvenile residents of Jaffa – two of them beneath the age of criminal responsibility – were arrested with systematic disregard for the protections afforded minors under the law and police procedure. These children were taken from their homes and out of their schools by detectives in civilian clothes, were interrogated without the presence of their parents, in Hebrew- not their mother tongue, and were asked to sign documents in Hebrew. Fingerprints were taken, also from one of the children who had not reached the age of criminal responsibility, and mug shots of the minors were taken, despite a prohibition on photographing children under the age of 14.⁷²

⁷⁰ See, for example: Omri Efraim, **11 year old Silwan boy: "Undercover cops bound and beat me"** (in Hebrew), Ynet, 3.3.2011, <http://www.ynet.co.il/articles/0.7340.L-4036859.00.html>.

⁷¹ Letter from the the National Council for the Child to the Police Commissioner from 29.11.2010; also **Caution: Children Ahead**, fn 46 above, p. 19-20. As of the writing of this report, we know of no case with a different outcome.

⁷² Letter of ACRI to the Police Commissioner and the Legal Advisor of the Tel Aviv District Police (in Hebrew), 20.9.2011, <http://www.acri.org.il/he/?p=16839>. See also, Yaniv Kubovich, **Israel Police question six children for hours without parents present**, Haaretz, 9.9.2011, <http://www.haaretz.com/print-edition/news/israel-police-question-six-children-for-hours-without-parents-present-1.383125>;

In one instance reported on the Ynet news website,⁷³ a 13 year-old boy suspected of theft was arrested and interrogated for ten hours without the presence of his parents, while suffering intimidation and threats. The boy, as cited in the article, reported that: "they handcuffed me and told me they would beat me if I didn't start talking. They banged on the tables and wouldn't give me a glass of water. They told me that if I didn't talk they would take me to the sharks at Abu Kabir. They showed me a jail cell and told me that I would be there all night if I didn't cooperate." In another case, reported by the organization Honenu,⁷⁴ when discussing the cases of three minors arrested at the Shvut Ami outpost, the judge of the Petah Tikva Magistrate's Court scolded the police. "I take a very serious view of police conduct," the judge was reported as saying, "when minors are arrested and interrogated without first notifying their parents."

Unaccompanied Minors

"Unaccompanied minors" are juveniles without status, young asylum seekers or young migrant workers residing in Israel alone. Some arrived in Israel without any parental escort, while others came here either with parents or relatives who have since passed away or abandoned them. Even when the authorities have no intention of deporting these minors, they still may find themselves incarcerated for long periods of time, until a solution for them can be found. In August 2011, there were 60 such girls and boys held in the custody of Israeli Prison Service jails, 13 of whom had been held for upwards of six months.⁷⁵

ACRI and the Hotline for Migrant Workers have conducted several legal proceedings regarding the incarceration of unaccompanied minors. Subsequently, it was determined that any unaccompanied minor arrested would be entitled to full legal representation at the expense of the state, provided by the Bureau of Legal Aid. Unfortunately, the Bureau of Legal Aid rarely submits appeals to the courts regarding the decisions of the Ministry of Interior or the Custody Tribunal when they decide not to release an unaccompanied minor from detention, even when there is no intention or possibility of deportation.

Following an additional court action led by ACRI and the Hotline for Migrant Workers, this time held in the Supreme Court,⁷⁶ the state finally formulated guidelines for handling unaccompanied minors that would incorporate the provision of social services along with detention. Unfortunately, these guidelines are rarely implemented, and most of the minors remain in jail.

In July 2009, following police operations that netted the arrest of refugees and migrant workers together with their children, ACRI and the Hotline for Migrant Workers initiated

⁷³ Gili Haimov, **Two Nightmarish Days at the Police Station for Youth Suspected of Theft** (in Hebrew), mynet, 12.6.2011, <http://www.mynet.co.il/articles/0.7340.L-4080691.00.html>

⁷⁴ Yishai Karov, **Three Arrested Youth from Shvut Ami are Released** (in Hebrew), Arutz 7, 11.5.2011, <http://www.inn.co.il/News/News.aspx/219560>

⁷⁵ Gili Cohen, **High Court disapproves, but refugee girls still held in jails**, Haaretz, 15.8.2011, <http://www.haaretz.com/print-edition/news/high-court-disapproves-but-refugee-girls-still-held-in-jails-1.378645>.

⁷⁶ AA 4878/05 Anonymous v. Minister of the Interior, judgment rendered 6.11.2008. For more details and the writings of the court (in Hebrew), see: <http://www.acri.org.il/he/?p=1377>.

legislation to ban the detention of minors for the purpose of deportation. The bill⁷⁷ was introduced into Knesset by MK Nitzan Horowitz and others. Even though the proposed legislation was not advanced in Knesset, it sparked a debate in the Knesset's Committee on the Rights of the Child, which subsequently held talks with various government offices. In light of this, the procedure for handling minors in detention was amended. The amended procedure now states that: children under the age of 14 years will not be detained in custody; as a rule, minors will not be held in custody for a period of more than three weeks; minors between the ages of 14-16 will be transferred to boarding schools or youth villages; and minors between the ages of 16-18 will be handed over to guardians or to custodial parents from the community. Unfortunately, the amended procedure has only been implemented in part, and the starting point remains where it was before. In the absence of any other alternative, minors under the age of 14 are still held in jail by default, even when there is no intention of deporting them from Israel. The Bureau for Legal Aid has petitioned the Supreme Court against the incarceration of unaccompanied minors in IPS detention facilities, and the petition is still pending.

Detention before Deportation⁷⁸

Until early March 2011, the Interior Ministry had refrained from detaining the children of migrant workers living with their parents in Israel. But as of then, **the National Immigration Authority began arresting migrant workers together with their small children – toddlers and sometimes even babies⁷⁹** – and holding them until deportation at the “Refused Entry Facility” at Ben Gurion Airport (which is usually reserved for the short-term detention of persons refused entry into Israel). According to a publication of the National Immigration Authority, several renovations were carried out at the airport facility to make it suitable for holding children. Though the rooms were barred and locked, the walls were painted appropriately, decorated with cartoon characters, and stocked with a selection of toys. This facility holds on average some 270 women and children per month.⁸⁰

It stands to reason that with regard to young children, there should be clear and strict rules to ensure that an arrest will only be carried out when no other option exists, and that such arrest should be carried out with the utmost care to minimize any psychological damage to the child. (Such rules could include: a ban on the use of force, on chases or hot pursuit, on handcuffing family members; limiting the length of detention; preventing the separation of children from their parents; ensuring proper medical care, etc.) Unfortunately, **to date, the Immigration Authority has published no procedures regarding the arrest and deportation of children.**⁸¹ In response to an appeal from March 2011 submitted by the

⁷⁷ Protection of the Rights of Youth in Custody Bill (Amended Legislation) 5769-2009; for the text (in Hebrew) see: <http://www.knesset.gov.il/privatelaw/data/18/1557.rtf>.

⁷⁸ For a broader discussion (in Hebrew), see: AP (Center) 29231-08-11 Matias v. Minister of the Interior, <http://www.acri.org.il/he/?p=15980>.

⁷⁹ See, for example: Yuval Goren, **The Secret Expulsion of the Babies** (in Hebrew), Yedi'ot Aharonot, 30.5.2011, on the website of Physicians for Human Rights, <http://tinyurl.com/d9kmqpd>.

⁸⁰ Talila Neshet, **Ministry wants in-house medical care for illegals held at airport**, Haaretz, 22.8.2011, <http://www.haaretz.com/print-edition/news/ministry-wants-in-house-medical-care-for-illegals-held-at-airport-1.379920>.

⁸¹ AP (Center) 29231-08-11, see fn 78 above, Paragraphs 37-38. See also: Liat Schlesinger, **Out of Bounds** (in Hebrew), nrg-Ma'ariv, 25.6.2011, <http://www.nrg.co.il/online/1/ART2/252/851.html>. The response of the Ministry of the Interior appears in the article.

organizations Israeli Children, The Hotline for Migrant Workers, and ACRI, the Director General of the Immigration Authority replied that all the staff of the Immigration Authority are aware of the situation and carry out their duties regarding children with added care. Unfortunately, a review of the cases handled by ACRI and its colleagues reveal a very different reality, with **a repeated pattern of heavy-handed and aggressive behavior on the part of the Interior Ministry**: mothers together with their children are arrested in a swoop of panic and confusion; fathers are not informed about the arrest proceedings or the date of deportation; Interior Ministry officials exert great pressure on the mothers and coerce them unfairly into signing their consent to leave Israel immediately. It should be added that the “Refused Entry Facility” at the airport is not properly equipped to hold mothers with their children, and six months into operation, it still provides no medical services.⁸²

The following case illustrates this sad reality. In August 2011, four-year old Ofek was arrested together with her mother Nancy.⁸³ A petition submitted by ACRI on behalf of the two and on behalf of Ofek’s father, Christopher, enumerates the many deficiencies that occurred during the arrest procedures: Ofek’s arrest was threatening and traumatic, escorted as she was by armed police officers with attack rifles; the Interior Ministry did not bother to inform Christopher that his daughter had been arrested and that they intended to deport her immediately, nor did they request his consent to the deportation as required by law; Nancy was prevented from contacting a lawyer, though she explicitly requested to do so; and the Interior Ministry did not offer Ofek the services of the Legal Aid Bureau, as the law requires in the arrest of a child. Moreover: the Interior Ministry held Nancy and Ofek in a facility with inadequate conditions;⁸⁴ and despite the fact that Ofek was sick, no one examined her medical condition, and she was loaded onto a trans-Atlantic flight only hours after her arrest. The Interior Ministry took advantage of the incredible pressures on Nancy, they deceived her, and led her to believe that by signing her “consent” to leave the country as soon as possible, she would be able to do so under her own power. Furthermore, though the adjudicator knew that she had obtained legal representation, her hearing at the Custody Tribunal was held without the presence of her lawyer.

A sovereign state has the right to decide who may enter its borders and the authority to expel aliens residing illegally within those borders. However, it does not have the authority to routinely arrest children and infants. As long as the State of Israel seeks to deport parents together with their small children, it must adopt the proper procedures so that arrest is not the default option, but rather a last resort. Such arrangements have been adopted in many countries around the world.⁸⁵

⁸² AP (Center) 29231-08-11, see fn 78 above, Paragraph 40. See also: **Ministry wants in-house medical care for illegals held at airport**, fn 80 above.

⁸³ Ofek’s story is told in AP (Center) 29231-08-11, see fn 78 above, and was further reported in the media. See also: Yossi Zilberman, **Drama at Ben Gurion Airport: 4-Year-Old Girl about to be Deported is Taken off the Plane** (in Hebrew), mako-Hadashot 2, 17.8.2011, <http://tinyurl.com/conbe2a>; and Omri Ephraim, **PM's wife appeals to Yishai over child's deportation**, Ynet, 25.8.2011, <http://www.ynetnews.com/articles/0.7340.L-4109806.00.html>.

⁸⁴ During the proceedings regarding Nancy and Ofek, the judge of the Administrative Court in Petah Tikva, Shaul Manheim, criticized the decision to incarcerate Ofek in the Refused Entry facility, and ordered her release that very night so that she would not have to spend one more minute there; Talila Neshet, **Court criticizes imprisonment of children at Lod for the purpose of deportation** (in Hebrew), Haaretz, 19.8.2011, <http://www.haaretz.co.il/news/education/1.1374234>.

⁸⁵ See AP (Center) 29231-08-11, see fn 78 above, Paragraph 53.

Freedom of Movement

The Occupied Territories

Over the last eleven years, since the outbreak of the second intifada in September 2000, serious restrictions on freedom of movement have been imposed on Palestinians living in the West Bank. But owing to a significant improvement in the security situation, over the last three years some of those restrictions have been relaxed – checkpoints and roadblocks within the West Bank have been opened or removed, including key roadblocks such as Hawara,⁸⁶ and Palestinians have once again been permitted travel via certain specific roads. Nevertheless, **many of the restrictions and obstacles remain in place**, continuing to constitute a burden on the lives of residents and a severe injury to their rights. Among the restrictions: the Separation Fence, which cuts deep into the West Bank and continues to be built against a backdrop of destroyed Palestinian lands and crops, and the separation of these lands from their owners; the “permits regime” that restricts free passage through the Separation Fence; restrictions on free passage between the West Bank and the Jordan Valley; sweeping restrictions on the free movement of Palestinians on the main roads of Hebron; not to mention the many roadblocks that they must constantly confront, including hastily constructed surprise checkpoints.⁸⁷ We will address some of these subjects below.

Since the beginning of the restrictions on Palestinian movement, human rights groups, ACRI among them, have been working to reduce the serious damage that these limitations have imposed on every aspect of Palestinian civilian life. Amongst other activities, ACRI has worked tirelessly in an attempt to get Israel to set definitive rules regarding what is allowed and what is prohibited when it comes to setting restrictions on Palestinian movement. Nevertheless, despite our many appeals to the authorities and many petitions filed over the years with the Supreme Court, these have yielded almost no limitations to the power of the Military Commander in the territories, with the exception of a general statement — far from useful as an effective guideline — that the restrictions on Palestinian movement must meet the test of proportionality.⁸⁸ If that weren't enough, after court proceedings that lasted more than six years, the Supreme Court recently approved the draconian travel restrictions that have been in place for more than a decade, banning Palestinians from traversing the center

⁸⁶ See, for example: Chaim Levinson, **IDF to remove major West Bank checkpoint to enable Palestinian movement**, Haaretz, 11.2.2011, <http://www.haaretz.com/print-edition/news/idf-to-remove-major-west-bank-checkpoint-to-enable-palestinian-movement-1.342612>.

⁸⁷ According to the UN's Office for the Coordination of Humanitarian Affairs (OCHA), in September 2011, there were 522 roadblocks and checkpoints of various kinds in the West Bank, and in addition to these, since the beginning of 2011, there have been an average of 495 roving, surprise checkpoints erected each month. The resulting restriction in traffic flow has forced 200,000 local residents to travel to neighboring cities and then make their way home via alternative roads, which are two to five times longer than the direct route. In 10 out of 11 central cities in the West Bank, one or more of the entrances to that city is blocked to Palestinian traffic. See: **Movement and Access in the West Bank**, September 2011, http://www.ochaopt.org/documents/ocha_opt_MovementandAccess_FactSheet_September_2011.pdf; on restrictions on Palestinian free movement, see: **Background on the restriction of movement**, B'Tselem website, http://www.btselem.org/freedom_of_movement.

⁸⁸ For example, in two petitions submitted by ACRI concerning the prohibition of Palestinian traffic at the Beit 'Awwa Junction road and on Route 443: HCJ 3969/06 **Head of Deir Samit Village Council v. Commander of the IDF Forces in the West Bank** (judgment rendered October 22, 2009) and HCJ 2150/07 **Beit Sira Village Council Head v. Minister of Defense** (judgment rendered March 5, 2008); for more on these decisions see: <http://www.hamoked.org/Document.aspx?dID=Documents1482>.

of Hebron.⁸⁹ Essentially, these restrictions are really just segregation on the basis of national ethnicity, and they amount to a “forced transfer” of protected residents.

Here are some relevant issues from the past year:

Restrictions on movement in Hebron

Hebron is the only West Bank city with an Israeli settlement right in the middle of it. For years now, following the establishment of pockets of settlement in the city and the military operations carried out in the name of protecting those settlements, Palestinian residents in the center of the city have suffered **the severe violation of some of their most basic human rights**. These include: extreme restrictions on their freedom of movement – the closure of main roads to Palestinian vehicles and, on some, the restriction of all Palestinian movement; the closure of stores on these roads; the placement of roadblocks within the city where the army carries out vigorous inspections; and many other obstacles as well. These have all contributed to the paralysis of Palestinian commerce and life at the center of the city, have created inhuman conditions, and have led to a mass exodus of residents. Those who have remained in the area are forbidden from walking the streets of their own city, are unable to pull up in front of their homes in their cars, and some aren't even allowed to leave the doorways of their own homes. Downtown Hebron, which was once a bustling commercial center teeming with life, has become a ghost town.⁹⁰

The restrictions imposed on Palestinian movement in Hebron are part of the larger segregation policy implemented at the heart of this crowded Palestinian city. This practice is tainted with discrimination and is patently illegal, critically injuring the human rights of Palestinian residents. Furthermore, it represents a flagrant violation of the obligations of the Military Commander under the rules of International Law. Human rights groups, including ACRI, have tried to change this using all legal means at their disposal: they have repeatedly appealed to the state Attorney General as well as to the Minister of Defense and his deputy on multiple occasions. They have even attached an affidavit written by security experts, explaining how it would be possible to protect the safety of the settlers while at the same time allowing the Palestinian population to live in the area.⁹¹ Unfortunately, all these efforts have been of no avail.

A petition to the Supreme Court submitted in 2004 by the Hebron municipality and by dozens of its residents remained pending for more than six and a half years. Finally, in June 2011, the court rejected the petition in a terse ruling,⁹² that made no mention of the severe violation of human rights suffered by the Palestinians. The court did not call anyone to task for the extreme injury to Palestinian freedom of movement, to the extent that people were forbidden to step outside the doors of their own homes and were forbidden to ride in the

⁸⁹ HCJ 11235/04 **City of Hebron vs. the State of Israel**, judgment rendered 6.6.2011, decision (in Hebrew) at: <http://elyon1.court.gov.il/files/04/350/112/n44/04112350.n44.htm>.

⁹⁰ For more, see: Ofir Feuerstein, **Ghost Town: Israel's Separation Policy and Forced Eviction of Palestinians from the Center of Hebron**, B'Tselem and ACRI, May 2007, http://www.btselem.org/download/200705_hebron_eng.pdf; more recently, see: **17 years after Goldstein Massacre, Hebron city center paralyzed**, B'Tselem website, 3.3.2011, http://www.btselem.org/hebron/20110303_hebron_17_years_after_goldstein_massacre.

⁹¹ See, for example, ACRI's appeal to the Attorney General (in Hebrew) dated 27.8.2006, <http://www.acri.org.il/he/?p=1814>.

⁹² HCJ 11235/04 **City of Hebron vs. the State of Israel**, see fn 89 above.

streets of their city simply because of their ethnic origin, the same prohibited criteria that was used to prevent them from opening their stores, i.e. their source of livelihood.

The stated reason for the court's rejection of the petition was astounding: the court wrote that "at the current time the petitions before us have been exhausted, and there is no room to continue discussing them further." How can such extreme violations of human rights be "exhausted", violations that trample human dignity, which have remained intact over the last decade with barely any changes, and which have remained in effect over the last six and half years while the petition was still pending? Only the court knows the answer. Ultimately, the meaning of this ruling is that, as of now, **the prohibition imposed on Palestinians from walking and/or driving on the streets of their city, in favor of the free movement of Israelis in the city, now has the approval of the Supreme Court.**

The "Permit Regime" in the Seam Zone

Since construction began on the Separation Fence, Palestinians living within the "seam zone" – the area between the Separation Fence and the Green Line – have been required to hold personal permits in order to continue living in their homes and maintaining their daily lives. Palestinians whose farmland is located within the seam zone must obtain permits, not only for themselves but also for their hired workers, in order to be able to reach their lands and cultivate them. To obtain these essential permits, Palestinian residents have to go through seven levels of bureaucratic hell; and because the permits are valid only for a limited period, they have to constantly renew them and prove over and over their ownership of the lands in question. And so, the "permit regime" that reigns over Palestinians engulfed by the Separation Fence has turned them into **illegal aliens while living in their own homes and on their own land**. This is a gross violation of their basic rights, first and foremost the right to freedom of movement, the right to one's livelihood, the right to a dignified existence, and the right to family life. The permit regime adds yet another layer of discrimination against the Palestinians as opposed to their Jewish counterparts who are free to move about the seam zone without any permits – even if they have no connection whatsoever to the place.

In April 2011, eight years after HaMoked and ACRI submitted their petitions against the "permit regime," the Supreme Court finally ruled against those petitions.⁹³ While the court accepted the state's arguments that the "permit regime" served valid security purposes, it did not accept the position of the petitioners, who claimed that security needs of the area could have been answered with less injurious means. For example, security checks could have been stationed at crossing points that transverse the barrier, or obstacles could have been placed along the Green Line to prevent entry into Israel. With its decision, **the Supreme Court has given its stamp of approval to systematic, institutionalized discrimination that drastically affects human rights**, and whose true purpose is not to increase security but to dispossess Palestinians of their land.

⁹³ HCJ 9961/03 HaMoked – Center for the Defense of the Individual v. State of Israel; HCJ 639/04 ACRI v. Commander of IDF Forces in Judea and Samaria; Court judgment and papers regarding the petition (in Hebrew) on: <http://www.acri.org.il/he/?p=1316>.

Route 443

Route 443 is a major thoroughfare that passes through the Occupied Territories, which in the past served as the main artery between the city of Ramallah and its neighboring villages to the west. Since the end of 2000, with the beginning of the second intifada, and after several shootings took place on the road, the IDF began preventing Palestinians from driving on it. Since 2002 the road has been totally closed to Palestinian traffic, and has been used exclusively by Israelis. In March 2007, ACRI petitioned the Supreme Court on behalf of six Palestinian villages that line the side of the road, demanding that the sweeping prohibition on Palestinian traffic be rescinded. The petition argues that the closure of the road to Palestinians causes severe harm to the basic rights of local residents, that the decision was made without legal authority, and that the closure constitutes illegal discrimination on the basis of national ethnicity.⁹⁴

In December 2009, the court returned its decision on the petition. The court accepted the petitioners' argument that **the Military Commander's decision** to bar the road to Palestinian traffic and make it serviceable only to Israelis **lacked the proper authority, and was disproportionate**. At first, the ruling was perceived as a victory for the rule of law and human rights, but the implementation of the decision led to the opposite conclusion – that the decision was a farce, a shallow veneer of the rule of law and human rights. A close review of the of the Supreme Court decision reveals an intolerable discrepancy between its declarations regarding Israel's obligation to respect International Law and protect the human rights of the Palestinians as opposed to the vast discretion it gave to the Israeli army regarding how to implement its decision. Indicative is the court's shrill refusal to intervene in the matter of the Beitunia crossing, though it is clear to all that without the opening of this crossing, the opening of Palestinian traffic to Route 443 is practically meaningless.

Not surprisingly, the **IDF also chose a narrow interpretation of the decision**, one that renders the ruling (that it is forbidden to close the road to Palestinian traffic) practically meaningless. The arrangement instituted by the IDF gives **the mere appearance of allowing Palestinian traffic on Route 443**: There are only four entry and exit ramps to the road available to Palestinians, two where it is only possible to get on the road, and two where it's only possible to get off. Even this limited use of the road is not possible in practice, because the checkpoints on the service roads leading to 443 operate only partially and irregularly. Those checkpoints, which enable entry to and exit from the road, are often closed for long stretches of the day and they are often closed all night – a clear contradiction of the army's explicit obligation to keep the checkpoints open 24 hours a day, 7 days a week, without restriction on crossing times. Additionally, the inspections carried out at the checkpoints, both for vehicles and passengers, are exacting and long, 22 minutes on average, making the crossing an exhausting experience. As a result of these restrictive and heavy-handed policies, Palestinians today rarely use the road. This fact is wielded by various cynical officials to insinuate that the Palestinians have no real need for Route 443.

⁹⁴ HCJ 2150/07 **Ali Hussein Mahmoud Abu Safiyeh v. Minister of Defense**. Judgment can be found on: http://elyon1.court.gov.il/files_eng/07/500/021/m19/07021500.m19.pdf. For background on Route 443 and on the judgment, see: **Route 443: Fact Sheet and Timeline**, ACRI website, <http://www.acri.org.il/en/?p=726>.

The Gaza Strip

Over the last year and half, following the events of the Gaza Flotilla on May 31, 2010, Israel has decided upon a series of measures designed to ease the closure on the Gaza Strip. According to the organizations Gisha⁹⁵ and B'Tselem,⁹⁶ Israel today allows the entry of all types of goods into the Gaza Strip, except for those materials it defines as “bi-purposeful” (materials that have civilian uses but which can also be used in the production of weapons.) Building materials are allowed into the strip in limited quantities. Until May 2011, Israel allowed the export of goods from Gaza in small amounts, but that has since been halted. Each month, some 3,000 Palestinians exit Gaza via the Erez Crossing into Israel or the West Bank. Most of these are either sick patients and their escorts or merchants.

Egypt's decision to open the Rafah Crossing also helped significantly to improve the situation in Gaza. Nevertheless, **the consequences of Israel's blockade still reverberate** throughout Gaza Strip and are reflected in the difficult economic situation. Israel continues to deny all access to Gaza by sea or by air, and its continuing harsh restrictions on exports have left Gaza **isolated, with no possibility of genuine economic development.**

The Jordan Valley⁹⁷

Four checkpoints separate the Jordan Valley from the remainder of the West Bank: Hamra, Tayasir, Yitav, and Ma'ale Ephraim. Travel restrictions imposed on Palestinians at two of these checkpoints – Hamra and Tayasir – limit the contact of tens of thousands of Palestinians living in the Jordan Valley with the rest of the Palestinians living in the West Bank.⁹⁸ The inspections carried out at these checkpoints are rigorous, and transit through them takes a long time, especially during rush hour. According to army procedure, Palestinian vehicular traffic in and out of the Jordan Valley through these checkpoints is prohibited; only Palestinian residents of the valley driving their own cars registered in their names may pass through these crossings. As such, passengers riding alongside the driver are forced to get out of the car and transverse the crossing by foot, even when they are mothers carrying infants, children, sick patients, the elderly, or people with disabilities. Close relatives living in other parts of the West Bank cannot visit their loved ones in the Jordan Valley by private car. Palestinians living in the Jordan Valley who are not officially registered in the Population Registry as residents of the valley are not allowed to enter or exit the area by car at the official checkpoints. Buses are also not allowed passage through the checkpoints, as they are vehicles that are not registered in the name of their drivers.

These difficulties have forced local residents to find "creative" solutions on a daily basis, in order to try to lead normal lives. For example, when driving their children to school, Palestinian parents drop off their kids on one side of the checkpoint and transfer them to a

⁹⁵ **The Gaza Cheat Sheet • Real Data on the Gaza Closure**, November 27, 2011, Gisha website, http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf

⁹⁶ **The Siege on Gaza**, B'Tselem website, http://www.btselem.org/gaza_strip/siege.

⁹⁷ For more on the subject of the Jordan Valley, see the Action-A-Day campaign, created by ACRI in cooperation with Bimkom – Planners for Planning Rights, B'Tselem, and Friends of the Earth – Middle East (FoEMR) on ACRI's website, <http://www.acri.org.il/en/?p=2466>.

⁹⁸ The two other checkpoints – Yitav and Ma'ale Ephraim – have been opened in recent months to the free passage of Palestinians.

waiting taxi on the other side. Their income suffers owing to their inability to transfer merchandise and goods, and sometimes their health suffers as well. The only alternative to passing through these checkpoints is to travel from the Jordan Valley to the West Bank via Jericho – a route that is three to four times longer.

It is important to note: these are **internal checkpoints**, between two zones located entirely within the Occupied Territories, and not at the entrance to Israeli territory. Moreover, entry into the Jordan Valley can be negotiated through other less convenient roads. As such, it seems that there is no real security justification for the placement of these checkpoints between the Jordan Valley and rest of the West Bank.

In April 2007, in response to an ACRI appeal to the Minister of Defense, we were informed that the travel restrictions between the Jordan Valley and the West Bank would be lifted by the end of May 2007. However, aside from the easing of a few restrictions, most of the limitations were left in place, particularly those concerning the prohibition of Palestinian traffic through checkpoints. Additional appeals by ACRI to the Defense Minister have remained unanswered,⁹⁹ as have appeals by activists in the "Action-A-Day" campaign,¹⁰⁰ and the queries submitted by Knesset members Zahava Gal-On, Amir Peretz, and Nachman Shai.

Another serious blow to freedom of movement in the Jordan Valley stems from the fact that Israel prevents the local population from making use of most of the land in the region. According to a report by B'Tselem,¹⁰¹ after these areas were classified as "state lands", military firing zones, and nature reserves, and after portions were allocated for the building of future settlements, Palestinians today cannot build, reside on, or make use of approximately 77.5% of the lands in the region.

In East Jerusalem

The Separation Fence

The Separation Fence has **physically disconnected over 100,000 residents of East Jerusalem – those living in neighborhoods beyond the barrier – from the rest of Jerusalem where their lives are centered.** The main access roads leading to this cut-off population pass through two checkpoints north of Jerusalem, Qalandiya (Atarot) and Shu'afat Regional Council. Residents of the northern Jerusalem neighborhoods must pass through both these checkpoints on their way into the city — to work, school, medical institutions, etc. — and must transverse them once again on their way back home. Together with them pass all Palestinians who have permits to enter Israel. The lines at these crossings are tremendously long, and the conditions, intolerable. Following a petition to the Supreme Court protesting the route of the Separation Fence through the region,¹⁰² the state promised to make passage through the Qalandiya checkpoint easier. In practice, however,

⁹⁹ ACRI's appeal to the Minister of Defense (in Hebrew), 15.5.2011, <http://www.acri.org.il/he/?p=17975>.

¹⁰⁰ See fn 97 above.

¹⁰¹ Eyal Hareuveni, **Dispossession and Exploitation: Israel's Policy in the Jordan Valley and Northern Dead Sea**, B'Tselem, May 2011, http://www.btselem.org/publications/fulltext/dispossession_and_exploitation.

¹⁰² HCJ 6080/04 **Dr. Ahmad Bader Miselmani et al v. The Prime Minister**, was submitted by ACRI. For more on the judgment and court papers, see (in Hebrew): <http://www.acri.org.il/he/?p=1872>.

residents still suffer from long delays, and routinely have to wait between one and two hours both when they leave in the morning and when they return in the evening.

Another serious problem, which has become commonplace over the last year, is the closing of the Qalandiya checkpoint, which can remain closed to traffic for long hours or even days at a time, in clear contradiction of the commitments made by the state to the Supreme Court to keep the checkpoint operative 24 hours a day. At RC Shua'fat, a similar pattern is evident – **arbitrary closures of the checkpoint** are frequent and incidents of harassment against local residents have been recorded. The frequent closure of the checkpoints completely disrupts the lives of residents, and violates their right to freedom of movement as well as their right to livelihood, to receive medical treatment, to study and more.

Besides the negative impact on their daily lives and on their ability to realize their basic rights, the Separation Fence has also contributed to the economic deterioration of East Jerusalem. According to a report published by the UN's Office for the Coordination of Humanitarian Affairs, "In East Jerusalem, the barrier is transforming the geography, economy and social life [...] certain West Bank neighborhoods and suburbs that were once closely connected to East Jerusalem are now walled out, with previously flourishing residential and commercial centers closing down."¹⁰³

In August 2011 the Supreme Court rejected two petitions against the route of the Separation Fence running through areas of East Jerusalem, the village of Walaja, and the a-Sheikh neighborhood.¹⁰⁴ In both matters, the Court held that the route of the Separation Fence showed proper balance between concerns for the human rights of residents and the security interests of the state.

Barriers and Restrictions on Movement

The Palestinian residents of Jerusalem are regularly forced to deal with restrictions on movement, which interfere with the routine of life and impinge upon human rights. One of their main complaints is that the police, despite the obligation to respect equality, does not maintain a single law for Jews and Arabs. On Israeli holidays or when one of the many city events takes place, **the police block entire streets and public areas to the Palestinians, but allow the Jewish public to pass through.** These discriminatory roadblocks severely damage the freedom of movement in neighborhoods that are already characterized by winding and narrow roads. The roadblocks create heavy traffic, delay the Palestinian residents, and force them to reach their destinations using alternate, long and circuitous routes, which quickly become jammed. Moreover, the discrimination severely damages the residents' right to dignity and evokes feelings of frustration and bitterness.¹⁰⁵

¹⁰³ **Barrier Update**, UN Office for the Coordination of Humanitarian Affairs (OCHA), July 2011, http://www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf.

¹⁰⁴ HCJ 7136/09 **Kuasami v. Ministry of Defense**, judgment rendered 22.8.2011, <http://elyon1.court.gov.il/files/09/360/071/n12/09071360.n12.htm> (Hebrew); and HCJ 9516/10 **Walaja Village Council v. Commander of IDF Forces in Judea and Samaria**, judgment rendered 22.8.2011, <http://elyon1.court.gov.il/files/10/160/095/n13/10095160.n13.htm>. On the impact of the route of the Separation Barrier on life in the Walaja region and on the petition against the route, see: **Walaja – Village Under Siege** (in Hebrew), Ir Amim, November 2010, <http://www.ir-amim.org.il/Uploads/dbsAttachedFiles/walaga.pdf>.

¹⁰⁵ **Unsafe Space: The Israeli Authorities' Failure to Protect Human Rights amid Settlements in East Jerusalem**, see fn 63 above.

Another example of limitation on Palestinian movement is the use of restraining orders issued by Home Front Command, the police or the courts, which effectively remove certain Palestinians from parts of the city. A study conducted by Al-Quds Center for Social and Economic Rights¹⁰⁶ reveals that from 2009 to early May 2011, Israeli authorities restrained 122 residents from entering the borders of the Old City, the Temple Mount and other East Jerusalem neighborhoods. These included schoolchildren, students, clergy, social activists and human rights activists.

According to the Criminal Code, if evidence is collected against a person pointing to his involvement in a crime, he may be restrained from entering a certain geographical area. With completion of the investigation, however, the state must decide whether to file charges against the accused and allow him to defend himself against the charges in court, or to close the case and lift the restrictions against him. The systematic restraint of East Jerusalem residents points to a different phenomenon – a pattern of behavior by the authorities whose sole purpose is to pressure and threaten the local population. This clearly deviates from the normative behavior allowed under criminal law.

¹⁰⁶ **The Jerusalem center: A detailed list of deportees by 122-Aqsa Mosque and the old town**, Jerusalem Center for Social & Economic Rights, 15.5.2011, <http://tinyurl.com/bn262c8>.

Imprisoning the Spirit: Violations of Freedom in its Broadest Sense

Freedom of Expression

The Right to Demonstrate

“It’s a shame that the police force, which represents the State, does not follow the course set by the courts [...]. From the legal perspective on basic civil rights, the right to demonstrate is not contingent upon the subject or purpose of the demonstration. The police bear responsibility for allowing every single person to demonstrate, regardless of the cause. I do not see the need for the district court to re-explain to the police that they are bound to follow the rulings made by the Supreme Court some thirty years ago. The respondents may continue to demonstrate without any interference, and the police, after internalizing the content of this ruling, will assist the respondents and their associates to demonstrate whenever they wish to do so.”¹⁰⁷

In a democracy, the freedom to express a range of differing opinions – in words and in actions – is a necessary requirement for creating a rational discourse on the pressing issues of the day. Furthermore, demonstrations allow citizens to express their opinions and to influence decision makers and fellow citizens. Freedom of expression is particularly important in that it allows socially disadvantaged groups, which usually do not benefit from access to the media and central ruling powers, to have their voices heard. Demonstrations are also a means of “letting off steam” in a controlled and democratic manner, thereby preventing use of illegal and even violent channels of protest.

During the social protests that swept over Israel in the summer of 2011, first tens of thousands, then hundreds of thousands, took to the streets in huge protests all across the country. In praise of the authorities, these protests can be said to have been, in general, amazingly orderly, with the police and local authorities cooperating and providing appropriate aid, as is to be expected in a democratic country. But the test of freedom of expression is not in instances where public support is sweeping and broad. Rather, it is determined in “difficult cases,” where a handful of demonstrators express shrill, maddening and infuriating messages that are not accepted by the bulk of society. Often, instead of fulfilling their important role of maintaining the freedom of protest and ensuring its implementation, the authorities thwart legitimate civilian protest activities, while deterring those who take part.

Police officers masking their faces or lacking name tags

According to police regulations, a uniformed officer must wear a name tag at all times, and even present photo identification to any citizen who requests to see it. The requirement also applies to a police officer who is wearing a coat or a bullet proof vest, or to an officer who is wearing both civilian and police dress details. Despite this, we are witnessing more and more occurrences in which police clash with protesters without wearing name tags, or remove the name tags from the lapels of their shirts, usually in advance of an unbridled,

¹⁰⁷ Jerusalem District Court ruling rejecting the police appeal against the release of demonstrators without any restrictive conditions. PP 14677-02-11 **State of Israel v. Beninga**, decision rendered 16.2.2011.

violent assault under the cover of anonymity, or, worse – officers carrying out police duties while masking their faces. For example, during the social protests in Tel Aviv in the past summer, many police officers were observed not wearing name tags. According to filmed accounts, during these protests there was a group of people acting in a provocative manner who were presumed to be undercover police officers, and yet they refused citizen requests for identification.¹⁰⁸ During the preceding months, there were many incidents in which police officers at demonstrations or taking part in other routine police activities wore masks to conceal their faces: in dispersing a demonstration in the Sheikh Jarrah neighborhood in East Jerusalem, at a home demolition in the Bedouin village of Al-Araqib, while serving eviction orders in Silwan, in evacuating the Havat Gilad outpost, and during the demolition of houses in Lod.¹⁰⁹

The police hold a monopoly over the use of force in the State, and they are granted far-reaching powers and authority. The obligation to keep their identity known is intended, amongst other things, to deter the police from abusing that authority. An officer who does not wear a name tag, or worse, who covers his face with a mask, might under the cover of anonymity act without restraint and beyond what is legally permissible. The presence of masked police officers at a demonstration violates the foundations of democracy by instilling fear and dread in the protesters and by creating a chilling effect on freedom of expression and freedom of protest.

In June 2011, in the face of repeated violations of the legal provision requiring police to identify themselves, the Knesset passed first reading of a bill,¹¹⁰ which seeks to deal with this phenomenon by imposing disciplinary and criminal accountability on officers violating the provision. The bill is being debated in the Interior Committee in preparation for its second and third readings. Although we do not dispute the pressing need for this proposed legislation, we are troubled by the sad reality that necessitates turning to the legislature or the courts, to enshrine rules and instructions that ought to be self-evident in a democratic society. True, that just as the obligation to self-identify was previously added to police regulations, we could add new provisions of law prohibiting police officers from acting under cover of anonymity or resorting to uncontrollable violence. But before the law book becomes a sad mirror image of reality, an effort should be made to have the police follow the existing laws, and to carry out its appointed role in protecting the freedom of expression.

Release of demonstrators under restrictions

Many times, protesters who are arrested by the police are required to agree to various stipulations as a condition of release, such as distancing themselves from the location of the protests, or promising not to participate in demonstrations in the near future. In some cases,

¹⁰⁸ ACRI's appeal to the Commander of the Tel Aviv Regional Police (in Hebrew), 26.9.2011, <http://www.acri.org.il/he/?p=16827>. Photos and video clips in which policeman can be seen without identification tags can be viewed on the blog **Every Officer Has a Name**, <http://policenametag.tumblr.com>.

¹⁰⁹ For more details and sources, see ACRI's appeal to the Police Commissioner (in Hebrew), 22.3.2011, <http://www.acri.org.il/he/?p=1922>. From the response of the Legal Advisor's Office of the Police, we see that the police stand behind their practice of covering their faces, though only under "appropriate circumstances", and that if there isn't a proper working procedure regulating this practice, they intend to promote one. The response is in Hebrew: <http://www.acri.org.il/wp-content/uploads/2011/08/police170411.pdf>.

¹¹⁰ Proposed Amendment to the Police Code (obligation to wear tags and identify oneself), 5771-2011. For the text of the proposed amendment and further discussion (in Hebrew): <http://www.acri.org.il/he/?p=14762>. See also MK Nitzan Horowitz's speech on the subject (in Hebrew), <http://www.youtube.com/watch?v=-qbaX4OCdTc>

the conditions are too all-encompassing, and are not commensurate with the reason of the arrest. They disproportionately infringe upon the individual's freedoms of speech and freedom of protest. ACRI's position is that **there is no place to impose restrictive conditions requiring the arrestee to remove himself from the protests, thus infringing his freedom of speech, unless there is a real danger ("near certainty") of that person's disturbing the peace.** The courts also stressed this principle in several rulings last year. For example:

- The Jerusalem Magistrate's Court ordered the release of demonstrators on bail, without the additional restrictions that were sought by the police. The ruling stated that: "It is forbidden to condition the applicants' release on stipulations that injure their right to express their opinions and freedom of expression. If the applicants participate in future actions that create a provocation or violent confrontation, or if they commit any crimes, they can always be arrested; but it is forbidden to condition their release on requirements like those made by the police."¹¹¹
- In September 2011, a demonstration of social activists was held under the Tel Aviv municipality building. Dozens of protesters were arrested, and the police requested that eight of them be released on restrictive conditions, included bail the amount of 5,000 NIS cash, a personal guarantee, third party guarantors, and "distancing themselves from the city of Tel Aviv and from any area in which a tent was erected in the framework of the social protest in question, and from any place in which there is a gathering or demonstration in connection with the protest in question." The Magistrate's Court ruled that these conditions were too far-reaching, and that bail of 500 NIS, a self-guarantee, and a third party guarantee for a total of 3,000 NIS would suffice: "Why prevent the defendants from entering Tel Aviv? There is no reason for that. After weighing the circumstances and the offenses attributed to the defendants, (as stated – misdemeanors), whether spraying water at the police or throwing eggs in their direction, I don't believe we're talking about offenses or acts that justify removing the defendants from the activities of the social struggle in which they have taken part, thus bringing the curtain down on their part in the play of democracy, which of course is legal and legitimate."¹¹² Only one of the respondents, who was charged with punching an officer in the jaw, was restrained from entering the Rothschild Boulevard tent city and banned from participating in demonstrations for sixty days.
- During the dismantling of the standing structures in the protest tent city in the Jesse Cohen neighborhood of Holon, three members of the tent city were arrested: one was taken from his mother's home on the morning of the dismantling and brought to the police station in handcuffs, and the two others were arrested at the site during the dismantling itself. ACRI filed an appeal with the Tel Aviv Magistrate's Court protesting the restrictive conditions under which they were released.¹¹³ The court accepted ACRI's complaint and significantly shortened the duration of the restraining

¹¹¹ AK 48236-03-011 **Vardi et al v. State of Israel**, decision rendered 27.3.2011, (in Hebrew): http://www.nevo.co.il/psika_html/shalom/SH-11-03-48236-254.htm.

¹¹² BSA (TA) 18299-09-11 **State of Israel v. Nisan**, decision rendered 8.9.2011.

¹¹³ AK 22343-09-11 **Musari v. Israel Police - Ayalon Region**, decision rendered 13.9.2011. About the decision (in Hebrew): <http://www.acri.org.il/he/?p=16558>. In a number of additional appeals filed by ACRI on behalf of social justice protestors released from arrest on restrictive conditions, the police agreed to reduce the scope of the conditions. These appeals can be viewed (in Hebrew) on: <http://www.acri.org.il/he/?p=14592>.

condition on the two from the tent city. In the case of the third appellant, who was arrested for violating his release conditions, the court ruled that he would be released on condition of distancing himself from the protest tent city in Holon for ten days, rather than from all of Holon for sixty days as requested by the police.

Harassment of the protest encampments

Putting up a protest tent city is an exercise of the basic right to freedom of expression. The law does not prohibit the establishment of a protest tent in public spaces, and in any debate on whether or not to dismantle a tent city, the authorities must weigh the interests of freedom of expression against any harm caused by such a protest site. Municipalities may set limiting conditions for the establishment of a tent city, but these should be reasonable and should not sabotage the protest. Such reasonable conditions could include, for example, the requirement that the tent city be in a location where it will not endanger the occupants or the public, that the site will maintain adequate sanitation, and that the demonstrators will be required to restore order at the end of the protest as it was before.

During the social justice protests in July - September of this year, we witnessed the ambivalent behavior of the authorities toward activists in various protest encampments around the country. On the one hand, some mayors made an effort to allow the protests to occur as planned and sometimes also expressed support and even actively aided the protesters. On the other hand, ACRI received numerous complaints about the attempts of some mayors, with the assistance of law enforcement agencies, to harass protesters – sometimes even in those same cities. Harassment techniques included: serving evacuation orders to the tent cities, breaking down tents and confiscating equipment, removing protest banners, leveling fines at protesters, and at times even arresting activists – all of which violate the right to freedom of expression and freedom of protest. Below is a sample of some of the incidents that ACRI handled. These individual examples are indicative of a broader trend:

- Levinsky Park, Tel Aviv – a protest tent erected by the residents of the Neve Sha'anani neighborhood was dismantled several times by the municipality's Green Patrol inspectors who even confiscated their equipment.¹¹⁴
- City Hall Plaza, Beit She'an - Jackie Levy, the Mayor of Beit She'an, ordered the eviction of the protest encampment and even received the aid of the police, claiming that the activists were waging a battle against him personally.¹¹⁵ Following a petition filed by ACRI at the Nazareth District Court on behalf of four city residents, the Beit She'an Municipality was obligated to allow the establishment of the protest tent city and to return the equipment they had confiscated to the demonstrators.¹¹⁶
- Rambam Square, Ramat Gan – residents of the tent city reported repeated harassment from the municipality. It was reported that the inspectors tore down protest signs, ripped some up and confiscated others. Later, the municipality even

¹¹⁴ ACRI's appeal to the Mayor of Tel Aviv-Jaffa, dated 26.7.2011, (in Hebrew): <http://www.acri.org.il/he/?p=14458>. Following ACRI's intervention, the tent protest continued to function as planned.

¹¹⁵ ACRI's appeal to the Mayor of Beit She'an, dated 31.7.2011, (in Hebrew): <http://www.acri.org.il/he/?p=14721>. Despite our intervention, the municipality continued to evacuate the protest tents.

¹¹⁶ PA 1695-08-11 **Zohar v. Jack Levy, Mayor of Beit She'an**, (in Hebrew): <http://www.acri.org.il/he/?p=14877>.

- fined one participant of the tent city for hanging an ad that was characteristic of "political protest," and a complaint was filed with the police against another protester, apparently for hanging a banner.¹¹⁷
- Shalom Park, Yahud: Municipal inspectors raided the tent city at night, dismantled it and confiscated equipment. Following ACRI's intervention, they did not dismantle the tent city again, but municipal inspectors tore down protest signs.
 - City Hall Plaza, Bat Yam: Participants in the protest tent city received orders to evacuate within 24 hours, on the grounds of needing to maintain order and cleanliness.¹¹⁸
 - Nachsholim Beach: Environmental activists and residents of the Carmel shore who established a beach tent city to protest a plan to build a vacation resort in the area received a warning from the Israel Lands Administration, ordering them to evacuate the tent city within 48 hours. Following a petition filed by ACRI,¹¹⁹ the Supreme Court issued a temporary injunction forbidding the evacuation of the tent city until a decision was made in response to the request for an interim order. After that, the parties reached an agreement that the tent city could continue functioning until 10/16/2011, and the petition was lifted.
 - Poleg Junction: Netanya municipality inspectors appeared without advanced warning, and began to dismantle the tents and destroy the equipment that was in them, without even holding an eviction order.¹²⁰
 - Be'er Sheva: Following governmental approval of the Praver Implementation Outline,¹²¹ a group of Bedouin residents of unrecognized villages in the Negev established a protest tent city. The tent city was established with police authorization, in the area of Soroka Hospital, adjacent to other tent cities which were established as part of the social justice movement. About two weeks after its establishment, the members of the tent city received an administrative order from the municipality, ordering its demolition within 24 hours. This case was particularly infuriating, as the nearby protest tent cities, which had been active for about three months prior, received no eviction notice or administrative demolition order. The municipality had even acknowledged its support of the other tent cities, and encouraged their actions.¹²² Following a request submitted by ACRI to the Be'er Sheva Magistrates Court, acting as the Local Affairs court,¹²³ an agreement was reached between the

¹¹⁷ ACRI's two appeals to the Mayor of Ramat Gan, dated 10.8.2011 and 12.8.2011, (in Hebrew): <http://www.acri.org.il/he/?p=15238> ,<http://www.acri.org.il/he/?p=15253>. Following ACRI's intervention, the harassment of the protest and its protestors ceased.

¹¹⁸ ACRI's appeal to the Mayor of Bat Yam, dated 5.9.2011, (in Hebrew): <http://www.acri.org.il/he/?p=16105>. Following ACRI's appeal, the eviction order was not carried out, and the tent city was not dismantled.

¹¹⁹ HCJ 6807/11 **Arad v. Israel Lands Administration**, (in Hebrew): <http://www.acri.org.il/he/?p=16771>.

¹²⁰ ACRI's appeal to the Mayor of Netanya, dated 25.9.2011, (in Hebrew): <http://www.acri.org.il/he/?p=16811>. Following ACRI's appeal, the municipality announced that it would not evacuate the tents until Rosh Hashanah.

¹²¹ For more on the Praver Implementation Outline, see the section in this report "Housing Shortage in the Arab Community" below.

¹²² Ilana Curiel, **Eviction Order for Bedouin Tent, Happy New Year for Social Justice Tent** (in Hebrew), Ynet, 5.10.2011, <http://www.ynet.co.il/articles/0,7340,L-4131895,00.html>

¹²³ BBN 9102-10-11 **Alokili v. Be'er Sheva Local Council for Planning and Building** (in Hebrew) <http://www.acri.org.il/he/?p=16983>.

parties. The agreement was given the force of a court ruling, and accordingly, the protest tent city was allowed to operate until 10.25.2011.

As noted, the establishment of a protest tent city is one expression of the fundamental right to freedom of expression. However, even freedom of expression can be limited if there exists a clear and imminent danger of harm to the public peace. The courts set the parameters to determine this balance, including the duration of the protest and degree of damage caused to the wider public: as the duration of the protest persists, the court will lean toward allowing the city to evacuate it. Thus, on 9.18.2011, the Administrative Affairs Court in Tel Aviv rejected a petition by several organizers of the social protest movement against the evacuation of the tent cities in Tel Aviv.¹²⁴ The court ruled that the eviction orders issued by the municipality were in accordance with the law, and struck the correct balance between the freedom to protest and the maintenance of public order. The court allotted time for the activists to voluntarily evacuate the tent city, authorizing the municipality to evacuate them after that time had passed.

Limiting the Freedom of Political Activists

In recent years we have been witness to an unacceptable phenomenon in which state authorities make “warning phone calls” to political activists, in which they attempt to gather information on political activists and to deter the types of protest they deem unfavorable to the government or to the political majority. This is a worrisome misuse of power reminiscent of the behavior of secret security forces in dark, totalitarian regimes. These warning calls are intended to send a clear message to activists, even if it is not always stated explicitly, that the activities in which they are engaged have marked them in the eyes of the government, and that they would be better off halting their activities.

For example, in December 2009 an Arab citizen who was active in Hitchabrut-Tarabut, a Jewish-Arab movement for social and political change, was summoned for questioning at the Hadera police station regarding his regular political activities. When he arrived at the station, he was questioned by an officer of the GSS who asked him various odd questions. The questions related to the protest in which he participated, his source of income, his opinions on war and peace, the organizations and movements in which he was active, the identity of his friends, his connections in the territories, and more.¹²⁵ In another similar case, an Arab student who participated in a demonstration against "Operation Cast Lead" was summoned for questioning with a GSS man. His interrogation also focused on his political activities.¹²⁶ In another case, two activists from the movement "Anarchists against the Wall," who had been arrested in connection with the social justice protests, were visited by a GSS agent named "Rona." In the course of the discussion, it was made clear to them that the

¹²⁴ ATM 18742-09-11 **Shapir v. Ron Huldai, Mayor of Tel Aviv-Jaffa**, (in Hebrew): <http://go.ynet.co.il/pic/news/18742-09-11.pdf>.

¹²⁵ ACRI's appeal to the Attorney General, 31.12.2009, (in Hebrew): <http://www.acri.org.il/he/?p=2353>. In a response dated 9.6.2010, Att. Raz Nizri of the Attorney General's Office claimed that the activist “was summoned for a meeting with a GSS officer in order to clarify information pointing to his involvement in violent disruptions of public order [...] and not as claimed [...] his political activities, which were not discussed at all during the questioning; and in any case, there is no basis to the claim that purpose of the investigation was to show Mr. [...] that the GSS “had its eye on him” in order to deter him from social and political involvement.” To view the entire response (in Hebrew), see: <http://tinyurl.com/cjf4ry2>.

¹²⁶ ACRI's appeal in the matter to the Attorney General, from 4.8.2010, which until today has not received a substantial reply.

GSS was aware of their activities, and if they acted illegally or in a manner that endangered the state, the GSS would “enter the picture.” Another left-wing activist was invited for a “friendly chat” at the GSS. There, “Rona” emphasized that she wanted what was best for him, and therefore, she was “warning” him lest he become implicated.¹²⁷ Another activist, Yonatan Shapira, was also invited to a conversation at the GSS, where he was asked about protest activities in which he had participated and about his political stances on various issues that were a matter of public controversy.¹²⁸ From the opposite end of the political spectrum, right-wingers have sounded complaints about the GSS investigation of their rightist statements and expressions of free expression, for example, the waving of political signs by the IDF’s Kfir Brigade during its swearing-in ceremony at the Western Wall.¹²⁹

A similar phenomenon takes place in East Jerusalem, where activists have been known to be invited to “warning” investigations by the police. Apparently, the goal of these investigations is to deter activists from participating in protests or in social, communal, or political activities. In addition, the investigators encourage their subjects to leak information about the political activities of others. One blatant example of this phenomenon is the Jawad Siyam incident. Siyam, a social activist from Silwan, was summoned to a “warning” investigation by the Jerusalem police in January 2010.¹³⁰ More than a year later, in March 2011, the Jerusalem police again interrogated him, during which he was told that if he did not stop his activities, he would be expelled from the city. A few days later, one of the lead investigators leaked confidential information about Siyam to the media – information that had not been revealed to Siyam nor to his attorney.¹³¹

These complaints and well-known incidents reveal a pattern of behavior, where state authorities routinely interrogate activists about their attitudes and political activities, gather information about them, and try to glean from them information about other activists. At the same time, **the GSS makes it clear that it is warning them, trying to deter them, and “keeping an eye on them,”** i.e. it is aware of their activities and watching them.

In a democracy, every individual is entitled to take part in political, social and community activities as he or she sees fit. There is no need for any person to explain their political views or beliefs to anyone else. Of course, when a person is suspected of breaking the law, or when there is information linking him to violent action, it may be necessary to summon him to the police station for questioning and to consider taking further action against him. **But if he has broken no laws, it is impermissible to “call him to order” or try to deter him with threats, explicit or implied, because such activity is detrimental to citizens.** The truth about the GSS “friendly chats,” which are meant to “confirm or dispel” suspicions about illegal protest activity, is that they detract from a person’s standing as a free citizen in a country governed by civil laws. In addition, these tactics create a dangerous chilling effect that weakens the public’s will and ability to hold a free, lively, and contentious political discourse.

¹²⁷ ACRI’s appeal to the Attorney General, 5.4.2011, (in Hebrew): <http://www.acri.org.il/he/?p=17475>.

¹²⁸ Amira Hass, **Conscientious objector Yonatan Shapira questioned by Shin Bet**, Haaretz 20.7.2010, <http://www.haaretz.com/print-edition/news/conscientious-objector-yonatan-shapira-questioned-by-shin-bet-1.302896>.

¹²⁹ Amihai Attali, **How Religious Zionist leaders interfered in choosing the next head of the GSS** (in Hebrew), nrg-Ma’ariv, 30.3.2011, <http://www.nrg.co.il/online/1/ART2/227/291.html>.

¹³⁰ ACRI’s appeal to the Police Legal Advisor, 22.2.2010, (in Hebrew): <http://www.acri.org.il/he/?p=2458>.

¹³¹ ACRI’s appeal to the Commander of the Jerusalem District Police, 1.3.2011, (in Hebrew): <http://www.acri.org.il/he/?p=5575>. In response, the police replied that “we found no basis to support the claims made in your letter against the Israeli Police.”

Moreover, it is surprising that a participant in a demonstration or protest activity, even one involving disturbances, would be a matter for the GSS. The Israeli police typically handle civilian disturbances of the peace. There is no connection between civilian protests and the GSS, whose province is the security of the state. According to the law, **in a democracy, a covert authority such as the GSS does not have the authority to monitor the political activities of civilians, unless one of two conditions is present:** first, if the activity in question threatens the security of the state, its democratic rule and its institutions; or second, if the activist displays exemplary subversive characteristics. For example, any legal political activity by a civilian that challenges Israel's self-definition as a "Jewish state" should not involve the GSS. Only if the activity is subversive, i.e. secretive in character, and only if a real suspicion exists that the activist seeks to threaten the very existence of democracy and constitutes a real danger, should the GSS become involved.¹³²

The GSS' handling of these issues sends a very dangerous message – that certain demonstrations and political statements are considered "subversive" or as threats to state security, and that anyone participating in one of these demonstrations perceived by the state as "problematic", will find themselves "in its crosshairs."

Freedom of Expression in the Occupied Territories

"We have the means of dispersing demonstrations and are simply waiting for something to happen. And then what I call 'boredom shooting' begins. You are standing on the roof of a house in the blazing heat of July. You have no shade. It's 10:30, then 11:30 and nothing is happening, and you have a lot of weapons in your flak jacket. Suddenly someone is standing behind some tree. He doesn't have a stone in his hand, nothing. But if he is standing behind a tree, he is hiding and that's a good enough reason to shoot at him. But perhaps he is hiding because he has seen soldiers? The gas canister missed his head by a few centimeters. Only afterward did I work it out - the demonstration had not even started but the demonstrators had to have gas canisters shot at them. And the Border Policemen - they stand and fire gas canisters with a launcher that can hold six canisters; they stand below and fire all the time so that nothing will begin to happen. Not to even allow a possibility that any kind of protest will begin."¹³³

According to International Law, which also applies to the Occupied Territories, the right to demonstrate is an integral part of freedom of expression, and extends to every person. Section 21 of the International Covenant on Civil and Political Rights, of which Israel is a signatory, establishes the right to demonstrate and states that no restrictions may be placed

¹³² For links to ACRI's appeals to the Attorney General regarding this, and to his reply, see fn 127 above. See also the response of the Attorney General's Office from 9.6.2010 (in Hebrew), regarding the judicial basis under which the GSS may act in this sort of case: <http://tinyurl.com/cjf4ry2>. Amongst other statements, the response claims that "the GSS has no policy or tactic whose purpose is to prevent citizens from taking place in protests or any other political activity. The ideas expressed in your letter – that it is the right of all individuals to participate in protests and political activity as they see fit, without the need to make explanations to the ruling government, and certainly without these activities being held against them – are ideas that are totally accepted by the GSS.

¹³³ Testimony of R., a soldier in the reserves, as presented in Amira Hass's article, **Creating a Flashpoint: Testimony from a soldier in the reserves sent to disperse a demonstration in the West Bank before it even started**, Haaretz, 16.9.2011, <http://www.haaretz.com/print-edition/features/creating-a-flashpoint-1.385689>.

on the exercise of that right, "other than those [...] which are necessary in a democratic society in the interests of national security or public safety."¹³⁴

In practice, however, Israeli authorities routinely deny Palestinian residents of the Occupied Territories their right to freedom of expression and their right to demonstrate. This is a result both of the military legislation prevailing in the West Bank,¹³⁵ and the way in which Israeli security forces act against demonstrations and protesters in the territories.

As a rule, rallies and demonstrations in the territories are defined as illegal assemblies even when they are of a non-violent character, and as such, most are dispersed by Israeli security forces. Palestinian protesters are met with violent and intolerant treatment by security forces, who commonly use excessive means in dispersing the demonstrations. Injuries are common, and occasionally, fatalities are recorded as well.¹³⁶

One such example involves the residents of the Nabi Saleh village in the Ramallah district. For about two years running, the villagers together with Israeli and international activists have held weekly demonstrations, protesting two injustices: first, the land grab by the residents of Halamish, the nearby settlement, who have taken over land belonging to the village; and second, the continued restrictions on villagers' access to their agricultural lands and to the Al-Kus Spring, which supplied their water needs up until 2006. Security forces disperse these demonstrations regularly, employing excessive and unwarranted force.¹³⁷ In some cases they use harsh violence against the demonstrators, including beatings with batons, shoving, kicking and punching. Sometimes they employ stun grenades, pepper spray, and the illegal and dangerous launching of tear-gas grenades at point-blank range. From a B'Tselem report, we learn that both police officers and border police break up these demonstrations before they've ever started, even when the demonstrators have taken no violent actions. Villagers are prevented from reaching the spring, which is the object of the protest. Two other means that security forces used to thwart the Nabi Saleh protests include declaring the area a closed military zone,¹³⁸ and setting up barriers that preclude the possibility of reaching the area, thus thwarting the demonstration.

The security forces' handling of the Nabi Saleh demonstrations is the example that proves the rule: civilian demonstrations in the territories are considered "public disturbances" and not legitimate instances of civil protest. Like criminals, the demonstrators must be removed. The Police Commissioner hinted at a possible change in thinking when, in September, he suggested that Palestinian demonstrations should be handled the same way as the [social justice] protests in Tel Aviv.¹³⁹ However, any change in policy, if indeed such was decided

¹³⁴ For more on the right to protest in the Occupied Territories, see ACRI's appeal to the Minister of Defense, 8.9.2011, (in Hebrew): <http://www.acri.org.il/he/?p=15129>.

¹³⁵ Order No. 101 – Regarding Prohibition of Incitement and Hostile Propaganda. The text of the order can be found on the No Legal Frontiers website, <http://nolegalfrontiers.org/en/military-orders/mil06>.

¹³⁶ See OCHA's Protection of Civilians Weekly Reports, <http://www.ochaopt.org/reports.aspx?id=104>.

¹³⁷ Naama Baumgarten-Sharon, **Show of Force: Israeli Military Conduct in Weekly Demonstrations in a-Nabi Saleh**, B'Tselem, September 2011, http://www.btselem.org/sites/default/files/201109_show_of_force_eng.pdf. ACRI's appeal to the Commander of Border Police in the West Bank, June 2011, (in Hebrew) <http://www.acri.org.il/he/?p=16493>; Amira Hass, **Creating a Flashpoint**, see fn 133 above.

¹³⁸ For other examples of the use of Closed Military Zone orders for the purpose of restricting protest, see ACRI's appeal to the Commander of the West Bank Brigade and the Commander of the Border Police in the West Bank regarding the village A-tawana, 5.9.2011, (in Hebrew): <http://www.acri.org.il/he/?p=16094>.

¹³⁹ Yaakov Lappin, **Danino: Mass protests likely following Palestinian UN bid**, Jerusalem Post, 12.9.2011, <http://www.jpost.com/NationalNews/Article.aspx?ID=237642>.

upon, has not yet been registered in the field, and Palestinian demonstrators continue to be injured in weekly demonstrations in clashes with Israeli security forces.¹⁴⁰ The duty of the State of Israel, as an occupying power, is to respect and protect the Palestinians' right to freedom of expression. It must allow demonstrations, marches and rallies, even when they are directed against the military regime. It is forbidden to limit the exercise of freedom of expression and the right to demonstrate, except in cases where there is a near certainty that they would cause severe harm to national security.

Legislation Restricting Liberty

Over the past two years in Israel, there has been an increasingly disturbing trend of anti-democratic legislation being introduced into Knesset. For the most part, these are bills that threaten to infringe upon our basic freedoms which are also the foundations of our democracy – freedom of expression and of dissent, freedom of association and free political activity, and even freedom of opinion and thought. The main – though certainly not the only – casualties of these bills, some of which have government support, are Israel's Arab minority and those whose opinions do not find favor with the political majority in the Knesset at this time. Other bills grant law enforcement authorities with far-reaching and even dangerous powers that reduce the personal freedom of all of us. The most blatant examples are addressed below.¹⁴¹

Freedom of Expression

The "Boycott Law"

In July 2011, the Knesset plenum passed second and third readings of the "Boycott Law,"¹⁴² which allows sanctions to be taken against those who call for a boycott of Israel. The initiators of the law did not try to conceal the purpose of the bill, which is to prohibit protests against the occupation through the use of boycotts – the withdrawal from commercial or cultural activity with the settlements. Those who publicize a call for boycott, as defined by the law,¹⁴³ would be liable to civil damages (claims for compensation, including a demand for compensation without proof of damage) from those who might be harmed – economically or otherwise – by the boycott. Additional sanctions, which could apply to companies, organizations and NGOs violating the law, would limit their ability to participate in state tenders, and limit the possibility of obtaining various forms of financial support from the state. Thus, for example, factory owners who publicly declare that they will not purchase supplies produced in the Occupied Territories could be deprived of benefits.

¹⁴⁰ For example, we see in OCHA's weekly reports that during the week between October 26 and November 1 of 2011, there were 20 Palestinians injured in demonstrations against their restricted access to their lands and against the route of the Separation Barrier, see:

http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2011_11_04_english.pdf.

¹⁴¹ For more on some of these proposed laws, see also: Ronen Wodlinger and Tal Dahan, **Chapter 3: Government Institutions within Project Democracy – Fighting for the Ground Rules**, ACRI, October 2010, <http://www.acri.org.il/he/wp-content/uploads/2011/08/democ-chap3-en.pdf>.

¹⁴² Prevention of Damage to the State of Israel by Means of Boycott Law, 5771–2011. For the text of the law, see: http://www.acri.org.il/en/wp-content/uploads/2011/06/boycott_prohibition_bill_27june2011-ENG.doc.

¹⁴³ For more on the legal implications of this law, see **The Anti-Boycott Law: Questions and Answers**, ACRI, July 2011, <http://www.acri.org.il/en/?p=2806>.

The "Boycott Law" is another link in the chain of legislation that the political majority in Israel has recently tried to enact in an attempt to neutralize the minority that opposes its views. The law discriminates against individuals with certain political viewpoints, and severely undermines a legitimate and non-violent means of protest that is widely accepted throughout the world (including Israel). In so doing, it injures the freedom of speech, freedom of protest, and freedom of association. Petitions to the Supreme Court against the legislation are still pending.

The "Nakba Law"

The "Nakba Law,"¹⁴⁴ which passed second and third readings in the Knesset plenum in March 2011, empowers the Minister of Finance to reduce the budget of any state-funded or supported body that marks Israeli Independence Day as a day of mourning, or which denies the existence of Israel as a Jewish and democratic state. The reduction in the budget could be three times as large as the amount allocated by the state to the organization. The law severely infringes upon freedom of political expression, artistic freedom and the right to demonstrate. It seeks to restrict specific types of expression which are not currently in favor with the political majority.

It is in the primary interest of Israeli society to hold an active public discourse that is open and free and delves into the difficult, complicated political issues that touch upon those central questions that Israel must deal with. The immediate result of the "Nakba Law", however, is a chilling effect on large portions of the society. In its wake, many academic bodies, educational and cultural institutions, local authorities and other state-funded groups will question whether or not to hold conferences, performances or other events that raise the issue of the Nakba, since these might ultimately result in having their budgets slashed. Indecision over holding such an event, in itself, constitutes self-censorship, and a severe infringement of freedom of expression and democracy.

Although the law is neutrally worded, and it applies equally to the activities of Arabs and Jews, as well as to Jewish and Arab supported and sponsored institutions, it is clear that its aim is primarily directed at Israel's Arab citizens who seek to express narratives and interpretations of historical events that differ from those of the Jewish majority. The law thus violates the right of the Arab minority to equality, and ignores the State's obligation to recognize the culture of national minority groups and their narratives as part of their larger right to self realization and their right to preserve their culture. The attempt to delegitimize an entire population of Israeli citizens, and to label them dangerous and disloyal to the state, violates their right to human dignity.

In May 2011, ACRI and Adalah petitioned the Supreme Court against the law.¹⁴⁵ The petition is still pending.

¹⁴⁴ Officially known as the Budget Foundations Law (Amendment No. 40 – Reducing Budget or Support for Activity Contrary to the Principles of the State) 5771-2011. For a translated text of the law, see: http://www.adalah.org/upfiles/2011/discriminatory_laws_2011/Nakba_Law_2011_English.pdf. For more on the law, see: <http://www.acri.org.il/en/?p=2208>.

¹⁴⁵ HCJ 3429/11 **The Alumni Association of the Arab Orthodox School in Haifa v. the Minister of Finance**. For the text of the petition and court documents, see (in Hebrew): <http://www.acri.org.il/he/?p=11916>.

Libel without Proof of Damages

Two bills¹⁴⁶ recently approved by the Knesset's Constitution, Law, and Justice Committee and slated for a first reading in the plenum seek to significantly increase the compensatory amount that the courts may award in libel lawsuits – even when damage to the claimant has not been proven – from tens of thousands of shekels (as defined in the law currently) to hundreds of thousands of shekels. No one disputes that a person's good name and reputation should not be defamed. However, **these bills threaten to upset the delicate balance between the right to one's good name versus freedom of speech and freedom of the press – both fundamental and necessary principles in a democracy.** If passed, the provisions of these bills will encourage people of means to file false claims demanding exaggerated monetary compensation, thereby casting a chilling effect on freedom of speech in the public arena.¹⁴⁷ Without a doubt, fear of such claims will deter the mainstream media – entrusted with providing information to the public – and may even bring about an end to investigative journalism and reporting. Even worse, the broader public discourse may be affected, as bloggers, employees, organizations, and citizens participating in public debate on social issues may exercise self-censorship for fear of incurring damages of exaggerated sums. As opposed to the media, these smaller groups don't enjoy even the minimal financial backing that would allow them to handle claims of defamation.¹⁴⁸

It should be noted that these bills are redundant and unnecessary: the courts are already empowered to award significant compensatory damages without limitation, and they do so in practice when convinced that a plaintiff was caused harm (including non-financial harm), even if the plaintiff is unable to prove the scope of the damage. This fact highlights our concern that the primary purpose of the proposed legislation is to deter, to silence and to censor, and not to compensate those whose reputations have been damaged.

The proposed legislation disrupts the delicate balance between two important fundamental rights. Knesset members should exercise added caution before they lend support to these defamation laws, which could have a paralyzing effect on freedom of speech and on participation in the public discourse.

Freedom of Association

Several recently proposed bills deal with the activities of human rights organizations and social change groups. The bills include restrictions regarding the receipt of donations from any "foreign state entity." These restrictions reflect an **attempt to undermine the legitimacy and integrity of the organizations**, and essentially mark their activities as illegitimate and subversive. In February 2011, a law that shortens the period for reporting

¹⁴⁶ Proposed Amendment to Prohibition against Slander Law (Amendment – non-united causes and adding remedies) 5770-2010; and Proposed Amendment to Prohibition against Slander Law (Amendment – compensation without proof of damages) 5770-2010. The two proposals were unified into one piece of legislation. For the text of the legislation (in Hebrew), see: <http://www.acri.org.il/he/?p=17014>.

¹⁴⁷ This is the phenomenon known worldwide as SLAPP (Strategic Litigation Against Public Participation) – the use of lawsuits or the threat of lawsuits in response to criticism or public activity, whose outcome (and sometimes intention) is to impose a chilling effect on critical individuals, in order to silence them and remove them from the public arena.

¹⁴⁸ Att. Avner Pinchuk, **How to Silence the Social Justice Protests** (in Hebrew), TheMarker, 6.10.2011, <http://tinyurl.com/658wsw>.

donations from foreign state entities, and under certain conditions requires publicizing the identity of the donors, passed its second and third readings.¹⁴⁹ In November 2011, two additional bills were proposed, one seeking to limit donation amounts¹⁵⁰ and one seeking to impose an income tax¹⁵¹ on human rights organizations that receive funds from any “foreign state entity”. Both were approved for promotion with an overwhelming majority in the Ministerial Committee on Legislation.

It is important to note that existing legislation already requires transparency on the part of nonprofit organizations and the reporting of all their contributions, including those received from foreign state entities. The wording of the new proposed legislation, and the exceptions prescribed therein (e.g. exempting organizations that receive funding from the state) clearly underscore that **the purpose of the legislation is to target only certain civic activities, especially the activities of peace groups and human rights organizations.** The bills do not impose any restrictions on support received from non-state foreign sources. For example, right-wing movements and settler groups that receive funding from private donors from abroad are not limited by this law. Palestinian organizations and organizations promoting the rights of Palestinians are particularly vulnerable to the law’s restrictions on donations from foreign countries, because in the vast majority of cases they do not receive any funding from Israeli government sources, and their access to local foundation resources is relatively limited.¹⁵²

In addition to the proposed legislation, a number of unsuccessful attempts were made last year to establish a parliamentary investigative committee to examine the financing of human rights organizations and left-wing organizations.¹⁵³ The attempt to interfere in the activities of organizations dealing with human rights, through the use of discrimination and dark insinuations, **undermines the very foundations of democratic society.** Freedom of expression and freedom of association, as well as pluralism of opinion, thought and political activity, are among the necessary conditions for the existence of a democratic state. Necessary too is the exercise of our freedom to criticize government, to monitor its actions and to protect those who may be harmed by those actions. The democratic idea prohibits the narrowing of political participation, social activism, religious practice or any other voluntary involvement that benefits a portion of the nation’s population. It should be clear that political power may not be used to exclude those with contradictory opinions from the political playing field.

¹⁴⁹ Obligation of Revelation regarding those Funded by a Foreign State Entity Law, 5771-2011. For the text of the legislation (in Hebrew), see: <http://www.acri.org.il/he/?p=16627>.

¹⁵⁰ Proposed Amendment to the NGOs Law (Amendment – Prohibition of Support from Foreign State Entity to Political NGOs in Israel), 5771-2011. For the text of the law (in Hebrew), see: <http://www.acri.org.il/he/?p=1557>.

¹⁵¹ Proposed Amendment to the Income Tax Ordinance (Taxation of Public Institutions that Receive Donations from Foreign State Entities), 5771-2011. For the text of the law (in Hebrew), see: <http://www.acri.org.il/he/?p=1525>.

For more on these pieces of legislation, see also: <http://www.acri.org.il/en/?p=3712>

¹⁵² **New Discriminatory Laws and Bills in Israel**, Adalah, July 2011, http://www.adalah.org/upfiles/2011/New_Discriminatory_Laws.pdf.

¹⁵³ See for example, ACRI’s response to the removal of these items from the Knesset agenda, 22.2.2011, (in Hebrew), <http://www.acri.org.il/he/?p=169>.

Individual Freedoms and Rights in Criminal Proceedings

"Law of Physical Contact"

This proposed bill,¹⁵⁴ which passed its first reading in May 2011, would allow the police to conduct arbitrary bodily searches in places of entertainment – clubs, pubs, card halls, sport arenas – and their immediate surroundings, **even when there is no suspicion** that the searched person has committed, or is about to commit, a criminal offense. The proposed bill provides a wide opening for humiliation and discrimination on the basis of origin, nationality and other criteria. Experience shows that granting powers of enforcement without clear criteria for their use leads **to stigmatization and discrimination against citizens on the basis of origin, skin color and outward appearance**. If the bill is approved, it is reasonable to assume that the main victims will be those belonging to minority groups, such as immigrants and Arabs, and those with dark skin.

Apart from the violation of the right to privacy, dignity and equality, granting such authority to the police upsets the nature of the relationship between the individual and the government of the state of Israel. A person in a democratic state has the fundamental right to walk down the street or to spend time in a recreational area and to be left alone – without living under constant fear of police harassment. He has the right to know that the law enforcement authorities are permitted to interfere in his actions only if there is specific and reasonable justification for it.

Expanding the Powers of Municipal Inspectors

In August 2011 the Knesset passed a law¹⁵⁵ authorizing municipal inspectors to assist the police in preventing violent crimes within a given local authority, thereby significantly expanding their powers. Among their new powers were: the ability to ask someone for identification, to conduct a physical search when there is any reasonable suspicion of the individual carrying weapons, and to hold a suspect until the arrival of the police. While the legislation that passed in Knesset is significantly trimmed down relative to the originally proposed bill, and although it has been narrowed to apply to just 13 local authorities, and only for a trial period of two years, the decision to transfer core police functions to municipal authorities reflects a serious and problematic tendency of the state to shirk its responsibility to provide necessary services to its citizens. Placing responsibility on local authorities to prevent violence and maintain public order may also produce conflicts of interest and the politicization of law enforcement services, and deepen the gaps between the various regional authorities.¹⁵⁶ In addition, the broad discretion granted by the law to an inspector to exercise his powers even in a case of suspected **future** violent crime, leaves an opening to profiling and discrimination based on origin, nationality and other prohibited criteria.

¹⁵⁴ Powers for the Protection of Public Safety Bill (Amendment) (Police Powers to Conduct Searches to Prevent Violence) 5771-2011. For the text of the legislation (in Hebrew), see: <http://www.acri.org.il/he/?p=12594> .

¹⁵⁵ Law to Make Urban Law Enforcement and Monitoring Effective in Local Authorities (Temporary Order) 5771-2011. For the text of the law (in Hebrew), see: <http://www.acri.org.il/he/?p=15099>.

¹⁵⁶ For criticism leveled by MKs during debate on the bill, see for example the press releases of the Interior and Environmental Protection Committees, 6.7.2011 and 1.8.2011, (in Hebrew):

<http://portal.knesset.gov.il/com5pnim/he-IL/Messages/6-7-11a.htm> and <http://portal.knesset.gov.il/com5pnim/he-IL/Messages/1-8-11a.htm> .

Counterterrorism Bill

Acts of violence – including those that are religiously, ideologically or politically motivated – are severe violations of a person's basic right to life and to physical integrity. The duty of the State of Israel, like every country, is to fight terror and to protect its inhabitants and citizens from severe acts of violence. Even so, the measures at its disposal in this struggle cannot be without limits. **Precisely because Israel is a democratic state, it must fight terrorism in a manner consistent with the fundamental principles of democracy and of human rights.**

The Counterterrorism Bill,¹⁵⁷ which passed its first reading in the Knesset in August 2011, fails to adequately confront this task in a manner befitting a democratic state in the 21st century. Instead of adopting proportionate norms, the proposal seeks to perpetuate and "normalize" those same anti-democratic measures and procedures that are currently allowed for by emergency legislation and by draconian defense ordinances that were instituted during the British Mandate. It would replace these emergency provisions and instead enshrine them in the permanent law of the State of Israel. Passage of the law would cause severe and irreversible injury to human rights in Israel, which we will have cause to regret for generations to come.

The proposed bill 0.159 sets broad and sweeping new rules, which draw the circle of criminality much wider and are liable to turn law-abiding citizens and organizations (with no connection whatsoever to violent acts) into "terrorists." The bill grants the executive branch unchecked, draconian powers to use harsh measures against individuals and organizations – all this without **trial, on the basis of mere suspicion, and without establishing the minimal guarantees for the defense of the accused's rights.** The bill opens the door for improper state intervention in the country's political discourse and in the freedom of association of its citizens.

Among the injurious measures included in the bill are the following:¹⁵⁸ enshrining in permanent law the anti-democratic authority to arrest people and hold them indefinitely in administrative detention; the widespread use of confidential materials in various proceedings, ranging from administrative detention to proceedings for declaring a group a terrorist organization, forfeiture of property proceedings, and more; and normalizing draconian powers used in investigating security suspects (such as holding a remand hearing in the absence of the suspect, and even hiding from the suspect the court's decision to extend his detention.) These unchecked powers could lead to the use of illegal interrogation methods, including torture, and could bring about the conviction of innocent men and women.

Extending Detention through End of Legal Proceedings

Extending Detention through the end of Legal Proceedings can destroy a person's life. It can cause him to lose his job, plunging his family into financial crisis, disrupt his

¹⁵⁷ Counterterrorism Bill, 5771-2011. For the text of the bill (in Hebrew), see: <http://www.acri.org.il/he/?p=1821>

¹⁵⁸ It must be stressed here that this is only a partial list of the extremely problematic nature of the proposed law. Ibid for link to the complete ACRI position paper on the subject.

professional progress, force his separation for an unspecified period from his family, and much more. All this can occur before he is given a chance to plead not guilty in court, and **before it has been determined that he indeed committed the crimes attributed to him in the indictment**. There are certain circumstances that necessitate depriving an individual of his liberty during trial, but care must be taken that such is only the case when it is absolutely **necessary**, and only if this step is the sole means of either allowing the legal proceedings to take place, or of preventing serious danger to public safety.

The proposed bill,¹⁵⁹ which is being debated in the Knesset's Constitution, Law and Justice Committee in preparation for its second and third readings, seeks to establish a "presumption of danger" attributed to suspects of property crimes (burglary of a private residence or car theft). That is to say that as a rule, such suspects can be arrested and detained until the end of proceedings, without the state having to prove that they represent a specific danger to public safety. Under current law, the presumption of danger is only applicable in crimes that severely and specifically endanger the public safety, such as murder, sexual offenses, serious violent assault, drug trafficking and so on, and not with respect to property crimes. The proposed bill further seeks to establish a "presumption of escaping the law," which allows for the detention of illegal migrant workers accused of serious crimes, fearing that their release from detention would cause them to flee from justice - without having to prove that suspicion on an individual basis.

The bill threatens to **severely violate the principle of "presumption of innocence,"** which states that a person is innocent until proved guilty. If the bill is passed, defendants who have not yet been proven guilty might lose their liberty for months, even years. It seems that the sole purpose of the proposed legislation is to make detention that lasts until the end of the process into a punishment that will deter property violators, regardless of the degree of danger they present to the public. This move flies in the face of constitutional principles, and may very well lead to the unjust punishment of the innocent. There is no dispute that burglary and theft are serious offenses that deserve significant punishment, but an individual must only be punished after he has been proven guilty in a fair criminal trial.

Binding Caregivers

Imagine for a moment a country where an employee is forbidden to leave his employer. In such a country, an employee who did decide to leave his employer – either because he hadn't been paid his wages or had been paid less than what he was promised, or because his employer fired him, or because the employer simply passed away, or because the employee found work for a different employer under better terms – would lose his legal residency standing, and be detained, arrested and deported.

In March 2006, the Supreme Court accepted the petition of the Worker's Hotline, the Hotline for Migrant Workers, ACRI, and other human rights groups, who demanded the nullification of the practice that binds migrant workers in Israel to their original employers.¹⁶⁰ The Court

¹⁵⁹ Proposed bill for criminal proceedings (authorization execution detentions) (Amendment No. 7) (Presumption of attempt to flee the law and presumption of dangerousness) 2008. For full text of proposed law see: <http://www.acri.org.il/he/?p=17452> (Heb).

¹⁶⁰ HCJ 4542/02 *Foreign Workers' Hotline v. Government of Israel*, <http://www.acri.org.il/he/?p=17452> (heb). The petition was submitted via the Law and Welfare Clinic, Tel Aviv University in the names of the following organizations: ACRI, Physicians for Human Rights, Adva Center, and *Mechuyavut*.

ruled that the binding arrangement turns the workers into the serfs of their employers, violates their dignity as human beings, and "is tantamount to a form of modern slavery [...]"¹⁶¹ "How can persons in authority in our country think that they can treat in this way women and men who only want to provide for their families?," the Supreme Court justices wondered. "We are overcome with shame."

Shame? They're not even blushing! In May 2011 the Knesset passed, by a majority of 26 supporters against six opponents, the second and third readings of an amendment to the Law of Entry into Israel, which binds immigrants and immigrant caregivers to their employers.¹⁶² This amendment, which has been called "the binding law" and "the slavery law," was passed despite the protests of human rights groups and leading intellectuals, academics and law experts,¹⁶³ despite criticism leveled at the practice in the U.S. State Department's reports on human trafficking,¹⁶⁴ and despite the explicit 2006 ruling of the Israeli Supreme Court.

The law imposes a range of limitations on the issuance of work permits to migrant workers in the field of nursing care in Israel. Thus it **maintains the practice of binding migrant workers, the same practice nullified by the Supreme Court**, and even establishes more severe measures. The law declares that a migrant worker providing nursing care may work for a limited number of employers and may not exceed that number; and that the worker may not voluntarily leave her last employer – even if her rights are being violated or if she has fallen victim to abuse by her employer or his/her family. In addition, she is required to work solely within the geographical area established by her work visa when she came to Israel. Another example of the binding policy lies in restricting workers to a specific sub-field within the care-giving industry, such as elder-care or childcare. Immigrant workers who violate these restrictions risk losing their work permits and their legal status, and thus become subject to arrest and deportation.

The upshot of this law is that for lack of any alternatives, migrant workers in the nursing field may be forced to continue **working for abusive employers**, and may be exposed to further exploitation and oppression. Moreover, the violation of such fundamental freedoms – freedom to choose where and for whom to work, and to decide when to leave one's job or region of residence – gravely undermines the dignity of the workers, and once again illustrates the attitude of the State of Israel toward migrant workers residing here – namely as objects who are to be used for a particular purpose, rather than as human beings with rights and desires.

¹⁶¹ For more on modern slavery see: Att. Sigalit Zohar, **Slavery: Modern Versions and the Struggle against it**, A Time for Aid, Journal of the Legal Aid Bureau, Edition 1, Summer 2010, <http://www.justice.gov.il/MOJHeb/SiuaMishpati/newsLetter/Chukati/Avdut.htm> (Heb).

¹⁶² For the text of the law as well as position papers prepared by *Kav L'Oved* Worker's Hotline, Hotline for Migrant Workers and ACRI see: <http://www.acri.org.il/he/?p=13429> (Heb).

¹⁶³ Appeal by academics and intellectuals to the Prime Minister and to the Chairman of the Knesset ahead of the plenum vote on the second and third readings of the law, May 2011, <http://www.acri.org.il/he/wp-content/uploads/2011/07/kvila120511.pdf> (Heb). Appeal by senior legal figures to Knesset Chairman ahead of the vote in the Interior Committee, March 2011, <http://www.acri.org.il/he/wp-content/uploads/2011/03/kvila270311.pdf> (Heb).

¹⁶⁴ **Trafficking in Persons Report 2011**, U.S. Department of State, June 2011, <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

Declaration of a State of Emergency

A declaration of a state of emergency has been continuously in effect in Israel since the establishment of the State.¹⁶⁵ The state of emergency has two main implications: first, it authorizes the government, and in certain urgent situations, the Prime Minister, to make emergency regulations that have the power to override any law of the Knesset, for a period lasting three months. The Supreme Court has already reviewed and established in the past that granting this power **severely violates democratic values and the principle of separation of powers**, and that it is reasonable only in circumstances when the country is in dire circumstances – security or otherwise – that physically preclude access to the Knesset building or the functioning of the Knesset.¹⁶⁶

Second, there are laws whose validity is conditional upon existence of a state of emergency. These laws allow the imposition of **severe restrictions on the freedoms and fundamental rights of citizens** – the freedom of expression, freedom of association, the right to strike, the right to property and more – which run counter to the Basic Law: Human Dignity and Liberty. Until recently the most common use of emergency regulations was not in relation to matters of state security, but rather to allow the issue of "confinement orders" to workers on strike. These orders effectively infringe upon the freedom of workers to strike, a liberty that the Supreme Court had declared a basic right even before passage of the Basic Law: Human Dignity and Liberty (and which gave constitutional protection to the "freedom to strike".)

In 1999 ACRI petitioned the Supreme Court¹⁶⁷ to revoke the Declaration of a State of Emergency. Over a dozen years later, the petition is still pending. In a number of hearings that were held on the petition, the justices have advised the Justice Ministry to advance the necessary legislative amendments to abolish the Declaration of a State of Emergency,¹⁶⁸ but those are progressing painfully slowly.¹⁶⁹

In September 2011, the media reported a story about a "contingency plan" of the Department of Homeland Security to enact emergency regulations around the expected application of the PA to the United Nations to recognize a Palestinian state.¹⁷⁰ The program's aim was to enable police to deal with the detention and mass arrest of suspects in large public disturbances. In practice, it would have given police a green light to make arbitrary mass arrests of those taking part in violent protests, both Jews and Arabs, in Israeli

¹⁶⁵ Since passage of the Basic Law: New Government, 1992, any such Knesset declaration is limited to emergency situations and may be in place for up to one year. However, since passage of the law, the government simply re-declares a state of emergency each year.

¹⁶⁶ HCJ6971/98 *Paritzky v. the Government of Israel*, Ruling no. 53(1), 763 (1999), http://www.nevo.co.il/psika_word/elyon/9806971.doc (Heb)

¹⁶⁷ HCJ 3091/99 *ACRI v. Knesset*, <http://www.acri.org.il/he/?p=1854> (Heb)

¹⁶⁸ See for example press release on the ACRI website, 8.9.2004, <http://www.acri.org.il/he/?p=927> (Heb)

¹⁶⁹ See updated notices posted by ACRI and the State Attorney in 2008 and 2009, <http://www.acri.org.il/he/?p=1854> (Heb). In early October 2011 Supreme Court President Hon. Dorit Beinich ordered the state to submit an updated report on the status of the legislation within 45 days.

¹⁷⁰ Tomer Zarchin, **Renewed Emergency Ordinances will harm Rights of Detainees**, Haaretz 18.9.2011, <http://www.haaretz.co.il/news/politics/1.1476436> (Heb); Tomer Zarchin, **Strong objections by Lawmakers regarding planned Emergency Ordinances**, Haaretz, 19.9.2011, <http://www.haaretz.co.il/news/politics/1.1477308> (Heb); **Emergency State**, Haaretz Editorial, 19.9.2011, <http://www.haaretz.co.il/articles-and-opinions/editorial-articles/1.1477202> (Heb) .

territory, and to collectively deny them detainees' rights. According to the principles of the program, as published by the media, the police would be given, among other things, the authority to detain a suspect for up to nine hours instead of three as permitted by law today; to bring a detainee before a judge within 48 hours instead of up to 24 hours as permitted today; and to allow the detainee to meet with a lawyer within 48 hours after the arrest, rather than as soon as possible and without delay, as required by law today.

Although the program was ultimately not implemented, it is a concrete example of the potential for serious violation of basic constitutional rights that any Declaration of a State of Emergency entails. In our view, there is no justification for establishing procedures for a state of emergency under circumstances that could be planned for ahead of time, and without the existence of a real emergency situation precluding the possibility of a legislative process in the Knesset. The law enforcement system must prepare the appropriate forces to deal with disturbances, without giving up on the basic rights that are intended to protect each and every one of us from the possibility of false arrest.¹⁷¹

¹⁷¹ ACRI appealed to the Attorney General requesting to table the plan, 19.9.2011, <http://www.acri.org.il/he/?p=16735> (Heb). In response, the Attorney General informed the government that if they did not cease declaring states of emergency, they would be required to secure approval from the AG first for any such declaration. Further he suggested the government consider immediately replacing the temporary ordinances with a proper law or cancelling them altogether. However, ACRI maintains that mass demonstrations set for pre-scheduled times, are situations that the authorities can appropriately plan for in advance. Even in the worst case scenario, it is unrealistic to expect that access to the Knesset may be blocked and the government crippled as a result of such demonstrations.

Social Rights: The People Demand – The Government Turns a Deaf Ear

The summer of 2011 was undoubtedly the summer of social rights. At last, the right to housing, the right to education, the right to health, the right to live with dignity, and workers' rights have been given their rightful place in Israeli public discourse – even if they have not (as yet) gained a foothold in terms of recognition by Members of Knesset and policy makers.

The social protest characterizing summer 2011 was triggered by the **ongoing erosion of Israeli citizens' social rights, stemming from the socioeconomic policies of consecutive Israeli governments** in the past twenty-five years. The State's increasing shirking of its commitment to safeguard fundamental socioeconomic rights for the general public, alongside the gradual privatization of social services, gave rise to huge disparities in the quality of services provided to various population sectors. This transformed social rights into a commodity, available only to the degree that the citizen is able to pay for it. In the sixth chapter of our Democracy Report, published in July 2011, we extensively discussed the state of social rights. Here we will briefly summarize the main points¹⁷², referencing the protest's achievements to date.

Poverty and Disparities

Ostensibly, Israel enjoys a favorable financial situation. The country's economy survived the global crisis relatively unscathed; unemployment is not overly high; and growth figures are impressive. In fact, however, only a small number of Israelis truly benefit from the fruits of this growth. **One in four Israeli citizens lives in poverty** – an astounding statistic, twice as high as the average for Western countries – and the sum total of impoverished Israelis comes to 1.77 million individuals.¹⁷³ The situation is even worse in the case of children, of whom approximately 850,000 – representing more than a third of all Israeli children – live in poverty. The poorest sectors in Israel are the Ultra-Orthodox and Arabs.¹⁷⁴ Of the 34 members of the OECD (the international organization of developed countries, aiming at economic cooperation and development), Israel is ranked 33rd on the poverty scale.¹⁷⁵ Surveys show that a high percentage of the population is compelled to cut down on their consumption of basic goods, including food and medicine, and some even suffer ongoing food insecurity.

¹⁷² For further elaboration and complete references for the data compiled in this section, see: Ronen Waldinger and Att. Tali Nir, **Chap. 6: Social Rights**, ACRI, July 2011, excerpted from **The Democracy Project 2010-2011**, <http://www.acri.org.il/he/wp-content/uploads/2011/08/democ-chap6-he.pdf>. (Heb); See also: ACRI position paper submitted to the Trajtenberg commission, Aug. 2011, <http://www.acri.org.il/he/?p=15486> (Heb); Info sheet on the ACRI website, **What happened to us?**, July 2011, <http://www.acri.org.il/en/?p=3004>; **A developed nation?** Aug 2011, <http://www.acri.org.il/he/?p=15342> (Heb).

¹⁷³ Miri Endeweld et al, **Poverty and Social Gaps in 2010, Annual Report**, National Insurance Institute, November 2011, http://www.btl.gov.il/English%20Homepage/Publications/Poverty_Report/Pages/default.aspx (link to previous annual reports, 2010 not yet available in English).

¹⁷⁴ See also: **Fischer: Haredi Poverty increased by 50% over the past decade**, Ynet, 22.3.2011, http://failedmessiah.typepad.com/failed_messiahcom/2011/03/haredi-poverty-increased-by-50-percent-over-the-past-decade-345.html.

¹⁷⁵ **Society at a Glance 2011- OECD Social Indicators**, April 2011, <http://tinyurl.com/5v8ny2c>.

Israel's level of inequality is the highest of all developed countries. As of 2011 it lies in fifth place with regards to inequality in income.¹⁷⁶ In the years 2002-2009, the Gini index, measuring inequality in income, grew by 5.8%. In other words, the lowest deciles' slice of the nation's income declined, while top decile's percentage rose.¹⁷⁷

In general, **economic disparities in Israel follow ethnic, national, and cultural lines**: the bottom 20% consists largely of Arabs and Ultra-Orthodox Jews, and also includes a high proportion of the elderly and of single-parent families. The relative gaps between Jews of European origin and those of African/Asian origin, and between immigrants from the 1990s and longer-term residents, still exist, and in some cases are actually growing. Income gaps are also reflected in the wide disparities in indices of health and education.

In the 1990s and at the turn of the millennium the Israeli middle class began to feel the pinch too. This was reflected in, amongst other things, soaring house prices, escalating educational costs, greater expenditure required for medical services; and, on the other side of the coin, a constant erosion of wages and a paucity of decent working conditions. Fundamental rights such as healthcare, education and adequate housing were transformed into a commodity, available only to those able to afford it.

One significant result of these changes was the **impoverishment of some strata of the Israeli middle class**, this class's shrinkage, and the widening of gaps within it.¹⁷⁸ It is no coincidence that the 2011 social protests were led by young middle-class individuals, and that, unlike previous protests, it did not arise from society's weaker sectors. Unlike in the past, many "poor-middle-class" employees, despite holding academic degrees and a skilled trade, struggle to exercise their own right and that of their families to education, health and adequate housing, and fail to meet their basic desire for a reasonable standard of living. Thus, the recent social protest, taken together with protests by doctors, teachers, social workers and others, reflect feelings of frustration present within more and more sectors of the population.

The Right to Work and Workers' Rights

Israel's average unemployment rate is considered low, relative to all developed economies worldwide. However, this figure does not encompass the entire picture when it comes to the Israeli labor situation, for the unemployment rate is calculated according to the number of those actively seeking work in the four weeks preceding the survey. This excludes all those not seeking employment for various reasons, including due to obstructions within the labor market itself¹⁷⁹ – including Ultra-Orthodox Jews, Arab women,¹⁸⁰ people with disabilities, and those who have despaired of ever finding a suitable job. **The actual rate of participation in**

¹⁷⁶ Ibid

¹⁷⁷ Dr. Shlomo Swirski, Ety KonorAttias and Hala Abu-Khala, **Israel, A Social Report- 2010**, Merkaz Adva, Dec 2010, <http://www.adva.org/uploaded/annual2010.pdf>.

¹⁷⁸ For more on definitions of "middle class" and data on the shrinkage of this sector, see **Chap. 6: Social Rights**, from **The Democracy Project 2010-2011**, see fn 172.

¹⁷⁹ For further discussion see for example: Interim Report of the Employment team of the Yonah-Spivak Committee (the social protests' expert committee), **Chap. 4: Toward equal opportunity and alignment in the job market**, <http://j14.org.il/spivak/?p=532> (Heb). Team Leader: Nadia Ismail. Att. Tali Nir of ACRI was a member of the team.

¹⁸⁰ For more of obstructions preventing Arab women from entering the job market in Israel, see for example Att. Nasreen Alyan: **The double glass ceiling**, 8.3.2009, <http://www.acri.org.il/he/?p=2069> (Heb).

the labor force is relatively low, standing at around 57% of the population¹⁸¹ as compared with the corresponding rate in developed countries, averaging 66.1%.¹⁸²

Many employees in Israel work for **low wages and under exploitative conditions**, and are deprived of their legally due social benefits. Among the chief causes for this situation are the disregard by many employers of their obligations and also an insufficient number of satisfactory regulatory mechanisms. In 2008, the most recent year in which the National Insurance Institute published data, 40% of the employees earned less than half the national average wage, which stood at NIS 8,165.¹⁸³ There also exist in Israel significant wage differentials between workers from different population groups and also according to gender and sector. Women earn on average a salary 66% that of men,¹⁸⁴ and the average wage in Arab cities is 33% lower than that in Jewish localities.¹⁸⁵

Another important contributing factor to the low salary levels of many employees and to their lack of job security is a **pattern of “indirect employment”** – i.e. hiring through employment agencies or service providers. The percentage of contract workers in Israel ranges from 5% to 10% of all employees, compared with 1.5% in other developed countries,¹⁸⁶ and in the public service sector this jumps to 20%.¹⁸⁷ In general, the employment status of workers hired through employment agencies is considerably lower than that of other salaried employees. This type of employment allows employers to evade their responsibility for workers’ rights, and is part of a deliberate government policy designed to weaken the position and status of employees. Indirect employment was particularly widespread in the past in the area of unskilled services and jobs, and among the weaker groups in the labor market: migrant workers, women and new immigrants. In recent years this trend has expanded, such that indirect employment now includes – without any justification – even steady professional positions: teachers, social workers, central functionaries in government ministries, and more.

When it comes to enforcement of worker rights, the situation in Israel is still dire, notwithstanding the additional personnel and budget for this area granted in recent years to the Ministry of Industry, Trade, and Labor. A mere 45 inspectors oversee Israel’s approximately 2.8 million employees,¹⁸⁸ while according to the OECD index, in order to monitor labor laws in the field, one inspector is required for every 10,000 workers.¹⁸⁹ This indicates a **shortfall of over 230 inspectors**; or, in other words, the number of inspectors currently stands at only one-sixth of what it ought to be. Moreover, 99% of the Ministry of

¹⁸¹ Bank of Israel data, 2008, <http://www.bankisrael.gov.il/firsteng.htm>.

¹⁸² **Society at a Glance 2011**, see fn 175.

¹⁸³ National Insurance Institute data, 2008, as presented by Dr. Shlomo Swirski, Ety Konor Attias and Hala Abu-Khala, **Employees, Employers and the National Income Pie- Annual Report- 2010**, Merkaz Adva, April 2011, <http://www.adva.org/uploaded/annual2010.pdf>.

¹⁸⁴ Collection of data for International Women’s Day, Central Bureau of Statistics, 6.3.2011, http://www.cbs.gov.il/reader/cw_usr_view_Folder?ID=141.

¹⁸⁵ Jacques Bendelac, **Average Wage and Income by Locality and by Various Economic Variables**, 2008, NII, Sept 2010. <http://www.btl.gov.il/English%20Homepage/Publications/Surveys/Pages/default.aspx>.

¹⁸⁶ **Private employment agencies, temporary agency workers and their contribution to the labor market**, International Labor Organization, 2009, <http://tinyurl.com/bs39swb>.

¹⁸⁷ Uri Pensirer, **Hiring immigrant contract workers and service providers**, Knesset Research and Information Center, Feb. 2011, <http://www.knesset.gov.il/mmm/data/pdf/m02784.pdf> (Heb).

¹⁸⁸ Ibid

¹⁸⁹ **OECD’s review of labor market and social policy in Israel**, 2010, <http://tinyurl.com/dyo4ye7>, p. 97.

Industry's enforcement operations are carried out in "blue collar" workplaces. With regards to the other professions, though they, too, suffer systematic violation of workers' rights, there is no enforcement whatsoever.

Given these figures, it is not surprising that a high percentage of Israelis (39%) believe that their income level is insufficient for their basic existence.¹⁹⁰ This data may further explain why in recent years, **having a job in Israel does not necessarily raise an individual out of a state of poverty**. It turns out that the average "profile" of a poor individual in Israel is not, as we might expect, an unemployed person, but rather a salaried employee with a post-high school education.¹⁹¹ According to the most recently published Poverty Report, the rate of working families among the poor stands at no less than 49%; and in most of the families who joined the poor sector in 2009, the head of household is employed.¹⁹² In 2010 this figure rose to 50.6%, with the severity of the poverty increasing for these families.¹⁹³

Discrimination in employment, including in hiring, continues to represent an **obstacle to the integration of various population groups into the labor market, especially Arabs**. For example, employers continue to utilize the criterion of military service, even when this latter is not relevant to the work itself.¹⁹⁴ This occurs despite the laws prohibiting discrimination in respect to religion and nationality, and despite the court ruling that such actions constitute indirect discrimination against Arab citizens. Recent attempts have been even made through legislation to strengthen the use of the military service criterion. In May 2011, the Knesset's Constitution, Law and Justice Committee debated a bill¹⁹⁵ that would give preference, in the case of two candidates with identical qualifications applying for the same civil service position, to the candidate who formerly served in the IDF. This proposal violates the Equal Employment Opportunities Law and contravenes outright the Civil Service Law, which requires affirmative action in civil service appointments of Arabs. Besides Arab citizens, the bill threatens other minority groups which also suffer from discrimination in hiring and representation in the civil service: Ultra-Orthodox Jews, women who are religious or were married young, immigrants, and people with disabilities.

In the past decade, **eligibility criteria for unemployment benefits have been tightened, and the unemployment benefit has been reduced**. Consequently, the number of those entitled to unemployment benefits is much reduced, and even these few now enjoy a minimal social safety net. For example, in 2010 only about 27% of the unemployed were eligible for unemployment benefits. Relative to the OECD's standards, the budget allocated to Israel's employment service is particularly low, representing less than 0.02% of its

¹⁹⁰ **Society at a Glance 2011**, see fn 175.

¹⁹¹ Yael Branovsky, **Profile of the new poor: Salaried employee, father to 1-3 children**, Ynet, 8.11.2010. <http://www.ynet.co.il/articles/0.7340.L-3981439.00.html> (Heb). Similar article in English, <http://www.ynetnews.com/articles/0.7340.L-3981263.00.html>.

¹⁹² **Poverty and Social Gaps in 2009, Annual Report**, National Insurance Institute, November 2010, http://www.btl.gov.il/English%20Homepage/Publications/Poverty_Report/Pages/oni2009.aspx.

¹⁹³ **Poverty and Social Gaps in 2010, Annual Report**, National Insurance Institute, November 2011, http://www.btl.gov.il/English%20Homepage/Publications/Poverty_Report/Pages/default.aspx (link is to previous annual reports, 2010 not yet available in English).

¹⁹⁴ See for example petition by ACRI to the director of the Courts Administration regarding tenders for administrative positions within the court system, which included requirement of past army service, 24.1.2011, <http://www.acri.org.il/he/?p=15>. As a result of the petition, this requirement was removed and the tender conditions amended.

¹⁹⁵ Proposed bill State service (appointees) (Amendment- affirmative action), 2009. Full text of bill and further discussion can be found at <http://www.acri.org.il/he/?p=12561> (Heb).

GDP,¹⁹⁶ compared with an average of 0.4% in OECD countries (i.e. twenty times that of Israel). Following permanent budget cuts in the Employment Service's budget, the State currently provides almost no professional training. Ministry of Finance officials do everything they can to **debilitate the Employment Service**, to cause it to fail and become completely ineffective. The goal is clear: to justify their intention to privatize it, and to restore the Wisconsin Plan, cancelled by the Knesset.¹⁹⁷

The Right to Health¹⁹⁸

Israel suffers from significant health gaps – between various population groups, between residents in the periphery and those in the country's center, and between the poor and comfortable middle-class sectors. To cite some examples: Arab women's life expectancy is three years lower than that of Jewish women; infant mortality is higher among poorly-educated women; and the reported number of severe physical disabilities is approximately twice as high in disadvantaged socioeconomic communities as compared with upper class communities. Diabetes is four and five times as common among poor people and those of Ethiopian descent respectively than in the general population, and around twice as high for Arabs as for Jews. The life expectancy of a Ra'anana resident is six years longer than that of a Be'er Sheva resident, and eight years longer than someone living in Nazareth.¹⁹⁹ These appalling disparities are simply a cruel reflection of the socioeconomic gaps within the State of Israel, and largely stem from **differences in the social and environmental conditions that nurture health**: nutrition, housing, water and sewage systems, education level, income and quality of environment. Inequality of access to health services, and their quality and availability, also influence the gaps in health indices for various population segments. The poor and excluded populations, suffering from socioeconomic hardship, social and geographical marginalization and "poverty of health", barely ever get their voices heard. Their unique needs are left behind.

When it comes to medical care in hospitals for acute illness, the Israeli public health system is still considered one of the best and most advanced in the Western world; but powerful forces are steadily eroding this. The process of **privatization of Israel's health system** has accelerated greatly since the late 1990s. Since that time, the real budget for the public services basket decreased by around 40%. **Insufficient government investment** in the area of health manifests itself, amongst other things, in hospital conditions: number of beds per thousand persons, doctors and nurses – all have decreased relative to the mid-

¹⁹⁶ In 2010 the GDP reached an all time high of 809.4 billion NIS. Budget for the Employment Service that year was 137 billion NIS. This represents approx 0.017% of the GDP data taken from the open budget site. <http://budget.msh.gov.il> (Heb).

¹⁹⁷ See for example statements by MKs and Director of the Employment Authority during a hearing in the Knesset's Labor, Welfare and Health Committee, 3.8.2011, <http://www.knesset.gov.il/protocols/data/html/avoda/2011-08-03.html>, for more on the Wisconsin Plan, see: <http://www.acri.org.il/en/?p=719>.

¹⁹⁸ For further discussion see also: Interim Report of the Healthcare Team of the Spivak Yonah Committee (the social protests' expert committee), Team leaders, Dr. Dani Filk and Prof. Nadav Davidovitz, <http://j14.org.il/spivak/?p=532>. On the team was Rami Adut, Right to Health Coordinator at ACRI.

¹⁹⁹ For more information and data on health gaps, see also website of the Public Network for Health Equity in Israel <http://www.equalhealth.org.il> (Heb). ACRI is an active member of the Network. See also: Barbara Swirsky (Ed.), **Working Today to Narrow the Gaps of Tomorrow: Goals for Decreasing Health Disparities**, Adva Center, Physicians for Human Rights, ACRI, the Galilee Society and Tene-Briut, Feb. 2010, <http://www.adva.org/default.asp?pageid=1002&itmid=602>.

nineties,²⁰⁰ and are now significantly lower than the average for OECD countries.²⁰¹ Israel is now at the lowest rank (25th) amongst developed nations in terms of investment in health.²⁰²

At the same time as cuts were made in government funding of the health system, a **steady increase has been recorded in private expenditure** for healthcare services: co-payments for medications, tests of various sorts, visits to specialists within the public health framework, and purchase of private (“complementary”) insurance offered by the Health Maintenance Organizations or by private insurance companies. The public share of national expenditure on health fell from 75% in the 1990s to 62% in 2010 (the OECD average is 72%), while the private share rose from 30% in the mid 1990s to 38% in 2010 (the OECD average is 28%).²⁰³ As a direct result of this privatization process, whereby responsibility for financing health services is transferred from the collective to the individual, the **gaps between rich and poor have widened** in terms of access to health services.

One of the highest and heaviest expenditures by households in the realm of healthcare is **dental care**,²⁰⁴ which is not included in the health basket. Already from an early age sizeable differences are noticeable in the dental health of children from different social strata.²⁰⁵ Expenditure in this area is particularly large for adults, and elderly members of the lower economic deciles are forced to give up completely on dentistry, due to its exorbitant cost. In many cases, this situation leads to serious dental problems, to the point of loss of teeth.²⁰⁶ In this context it is important to note that, at the initiative of Deputy Health Minister Yaakov Litzman, and as a result of actions taken by the Public Coalition for Dental Care, of which ACRI is a member,²⁰⁷ a public dental service for children was launched last year. The service has since been enlarged to include children up to the age of ten, and is planned to expand further to include children and adolescents up to age eighteen. Our challenge now is to extend public dental care to the most impoverished and neglected age group – the elderly.

Discrimination against the elderly is one of the most charged and complex issues currently facing Israeli society. From a health perspective it can be stated that Israel of the early 21st century **is not implementing the elderly population’s right to health**. With the exception of hospitalized nursing care for acute medical conditions, the HMOs are not responsible for **inpatient nursing or for nursing care** in the home and in the community at large. Some of this care is provided by the Department of Health, some by the social welfare systems, and some not at all, with the elderly individuals’ families forced to seek such care in the private market, to the extent that they can afford such a thing. Israelis who for their

²⁰⁰ Ari Shavit, **Health, Market and Social Democracy**, Haaretz 10.3.2011, <http://www.haaretz.co.il/hasite/spages/1219550.html> (Heb).

²⁰¹ OECD health data – **How does Israel Compare**, 2008, <http://www.oecd.org/dataoecd/19/59/45554884.pdf>.

²⁰² **Society at a Glance 2011**, see fn 175.

²⁰³ **Interim Report**, Spivak-Yonah Committee Healthcare team. See fn 198.

²⁰⁴ Guy Navon, Dr. Dov Chernichovsky, **Dental Health: The Burden on Households**, Taub Center, May 21010, <http://taubcenter.org.il/index.php/publications/discussion-papers/health/dental-health-the-household-expense/lang/en/>

²⁰⁵ Tuvia Horev, Jonathan Mann, **Oral and Dental Health- The Responsibility of the State towards its Citizens**, Taub Center, July 2007 <http://taubcenter.org.il/index.php/publications/discussion-papers/health/oral-and-dental-health-the-responsibility-of-the-state-towards-its-citizens/lang/en/>.

²⁰⁶ Research conducted through the Taub Center estimates that over 50% of the elderly population in Israel is without teeth at all. Also see fn 205.

²⁰⁷ See website for Public Coalition for Dental Care, <http://info.org.il/teeth4all/>

entire lives have paid income tax, national insurance fees and health tax, fees which were supposed to have financed their healthcare services, find themselves abandoned in old age, with no real recourse in the face of their nursing care needs. The problems are many: home nursing hours (up to 20 hours per week) are inadequate; a large proportion of the middle class fail the eligibility requirements for institutionalization at State expense; even those entitled suffer long waiting periods until their rights are implemented; co-payments by the elderly and their families sometimes total thousands of NIS a month; and the splitting of responsibility between HMOs and the Ministry of Health harms the coherence and coordination of medical care, creating bothersome inconvenience for the elderly patient and the family.²⁰⁸ In response to a private bill on the subject which passed its preliminary reading earlier this year,²⁰⁹ Deputy Health Minister Litzman recently suggested broad reform in the nursing care sector, including the regulation of hospitalization and nursing care for all sectors of the population. Such reform would be financed out of Israeli citizens' pockets through an increase in health tax.²¹⁰

In recent months, the public's attention was drawn to the doctors' and interns' fight for better wages and decent working conditions. These struggles are important in terms of raising awareness; but, alongside positive ideas about medicine in the periphery, the doctors' representatives also proposed harmful moves that could potentially widen health gaps, such as introducing private medical services into public hospitals.²¹¹ It is conceivable that the agreement with the doctors, or the interns' struggle, could actually lead to improvements in the public health, if, for example, the State could encourage doctors to work in the periphery or to remain within the public health system rather than defecting to private practice. Nonetheless, improving the working conditions of doctors represents only one element – and the least critical, at that – of the required changes.

Ensuring the right to health requires **channeling attention and resources specifically into day-to-day community medical care, public health, chronically ill patients' fight to survive, the infrastructure and environment affecting our health, socioeconomic inequalities, and social exclusion**. Locally available health services, preventive health services and information systems specifically tailored to different populations, expansion of public health system services, elimination of poverty, elimination of environmental hazards and more – all these tremendously affect our health. Towards this end, a commitment is needed from the government to establish **a multi-year program to reduce health disparities**, based on quantitative goals, and to invest in the resources required for its success.²¹²

²⁰⁸ See: **10 Failures in Treatment and Hospitalized Nursing Care in Israel and Directions for Resolution**, Coalition for Inclusion of Hospitalized Nursing Care in the Health Fund Baskets. July 2011, <http://www.acri.org.il/he/wp-content/uploads/2011/08/siudi0711.pdf> (Heb). ACRI is a member of the Coalition.

²⁰⁹ Proposed Law: State Health Insurance (Amendment- Transfer of hospitalized nursing care to health fund responsibility) 2009. The bill, put forward by former MK Haim Oron, was promoted by the Coalition for Inclusion of Hospitalized Nursing Care in the Health Fund Baskets. For full text of the law + elaboration, see: <http://www.acri.org.il/he/wp-content/uploads/2011/08/siudi0711.pdf> (Heb).

²¹⁰ Dan Even, **Deputy Health Minister Yaakov Litzman proposes a comprehensive reform in the realm of nursing-care insurance**, Haaretz, 7.8.2011, <http://www.haaretz.com/print-edition/news/health-ministry-pushing-bill-to-increase-nursing-care-eligibility-1.377505>.

²¹¹ See ACRI's position paper plus additional materials regarding private medical services: **Private medical services- clear and present danger to healthcare**, April 2011, <http://www.acri.org.il/en/?p=2360>.

²¹² See Public Network for Health Equity website, <http://www.equalhealth.org.il> (Heb).

The Right to Housing

Every person is entitled to housing characterized by privacy, adequate living conditions, and access to employment sources, infrastructure and social services. It is the State of Israel's obligation to ensure **affordable housing** for all – housing that the individual can afford without jeopardizing other essential needs.²¹³ The State's **long-term policy of shirking its responsibility towards the right to shelter**, expressed mainly in its privatization of this responsibility, along with the significant cuts made in the housing assistance budget and a lack of protection for tenants and borrowers, has resulted in a situation whereby increasingly fewer Israeli citizens and residents are able to exercise this basic right.

In recent years the government **slashed the housing budget drastically**. According to figures released by the Association for Distributive Justice, the Ministry of Construction and Housing's share within the State budget dropped from 4.5% in 1999 to only 1.6% in 2008.²¹⁴ The ministry's budget decreased accordingly in that period by 56%, and continued to plummet in the 2011-2012 budget. The combination of a significant reduction of State involvement in the housing market together with a sharp rise in housing prices has led to a situation whereby housing prices are currently far beyond the reach of large segments of the population. Chief among those affected are families with medium and low incomes, who represent the lion's share of apartment renters.

In the OECD's most recent report on the impact of housing market policies on the economy, in the section dealing with state limitations on rent and with leasing terms, Israel holds the second lowest rank.²¹⁵ The **absence of regulatory mechanisms for the rental market** leaves renters exposed to sharp, swift price hikes. According to figures released by the Institute for Structural Reforms, 20% of Israeli households already spend more than 50% of their disposable income on rent.²¹⁶

The non-implementation of National Outline Plan 35's provisions regarding the inclusion of affordable housing in outline plans, accompanied by the non-implementation of the law regarding the allocation of public land for public housing and affordable housing,²¹⁷ together contribute to the fact that **lands assigned for construction do not incorporate housing suiting the needs of all population sectors**. In August 2011, the Knesset approved

²¹³ For a broader look at affordable housing see blog of the Coalition for Affordable Housing, of which ACRI is a member, <http://israelaffordablehousing.blogspot.com> (Heb), and <http://www.acri.org.il/en/wp-content/uploads/2011/07/housingrightsdoc.pdf>.

²¹⁴ Revital Brinelstein, **Public Housing Budget Slashed 56% in a Decade**, Ynet, 17.8.2010, <http://www.ynet.co.il/articles/0,7340,L-3936941,00.html> (Heb).

²¹⁵ Housing and the Economy: Policies for Renovation, OECD, 2011, <http://www.oecd.org/dataoecd/42/11/46917384.pdf>.

²¹⁶ Dror Marmur, **A roof over one's head is too much to ask for**, Globes, 26.1.2011, <http://www.globes.co.il/news/article.aspx?did=1000618213> (Heb).

²¹⁷ Paragraphs 12 and 14 of National Outline Plan 35 establish that the planning authorities must assess the need and scope of affordable housing for any significant neighborhood expansion or urban renewal planned. However, to date, most of the plans that sought to include affordable housing targeted to populations requiring such assistance, ran into problems, including objections by the Attorney General. In a similar vein, an amendment to the Israel Lands Authority Law introduced in 2009 determined that one of the Authority's roles is to allocate land for affordable housing and for public housing.

the **National Housing Committees Law**,²¹⁸ mandating the convening of national housing committees responsible for fast-track approval of outline plans for housing, as applied to neighborhoods containing 200 housing units and above built primarily on state-owned lands. Following a letter from the Coalition for Affordable Housing, in which ACRI is a member, and in light of public pressure resulting from the summer's social protest, the law authorizes the National Housing Committee to establish a program of provisions for affordable housing, including fixed housing prices and determinations regarding who is entitled. Although this represents a precedent-setting level of authority in the area of planning law, the Knesset refrained from taking the next step: to legally **obligate** the establishment of such provisions. In practice, therefore, if clear provisions are not set for affordable housing, the National Housing Committees Law will signify the transformation of the large land reserves in the country's heartland into homogeneous neighborhoods populated exclusively by the wealthy. Instead of reducing the gaps, the current polarization will simply increase and worsen.

Public housing in Israel has hit rock bottom, currently numbering only 63,500 apartments and 12,000 sheltered housing units.²¹⁹ The rest of those eligible for public housing are referred to apartments in the private sector, and given financial assistance to rent there. But the level of assistance has decreased and been eroded, and does not correlate with real housing prices in many areas in the country.²²⁰

The aforementioned trends lead to extremely harmful social phenomena. A family that spends more than 30% of its income on housing does so at the expense of other basic needs like food, medicine and education. In addition, the absence of a policy of social integration in residential neighborhoods creates geographical isolation, where there is **polarization, division and physical separation** between affluent populations and those of more limited means. Such separation results in increasing social gaps, such that while some cities and neighborhoods suffer from under-allocation of resources and services, other more well-off regions actually receive an over-allocation of resources. Reduction in the daily contact between the various cultural groups in society also provides fertile breeding ground for stigma and prejudice to grow in. Moreover, separation leads to alienation and social unrest, as the excluded groups develop a sense of not belonging to the greater society.

The Housing Shortage in the Arab Community²²¹

The above states the housing problems facing the Israeli public in general, but the housing shortage suffered by the Arab community is even more critical, and bears its own unique characteristics. This shortage is a direct result of **long-standing discrimination** in the areas of land, planning, and allocation of housing resources. Notwithstanding the explicitly call by the Or Commission (the official commission of inquiry convened to examine the events of October 2000) for the Arab public to be assigned "lands based on egalitarian principles and

²¹⁸ The Planning and Building Law for Accelerating Residential Housing (Temporary Order) 2011. The text of the law as well as the Coalition's position re: affordable housing can be found here: <http://www.acri.org.il/he/?p=13423>.

²¹⁹ Itai Fidelman, **Considerations in Public Housing in Israel 1998-2011**, Knesset Research and Information Center, October 2011, <http://www.knesset.gov.il/mmm/data/pdf/m02936.pdf> (Heb).

²²⁰ According to the State Comptroller's report 61B for 2010, the real value of government housing stipends has devalued due to increases in housing prices by 25% - 30% and lack of readjustment of those stipends. <http://tinyurl.com/bt5766w> (Heb), pp. 692-693.

²²¹ For further discussion see: Att. Auni Bana, **The Housing Shortage in the Arab Population in Israel**, ACRI, July 2011, <http://www.acri.org.il/he/?p=15109> (Heb).

models, just as in other sectors,” the State of Israel has sat idle. At present, the Arab local authorities’ area of jurisdiction totals less than 2.5% of the State; yet, despite the rapid growth of the Arab population – multiplied seven times over since 1948 – since the founding of the State this population’s land reserves have been reduced by around half. **The State does not promote proper planning in the Arab communities**, and for most of these there is currently no updated outline plan to enable residential construction in accordance with the population’s needs. The process of preparing and approving such plans for Arab towns has been stretched out over many years now.

Lack of government programs that can meet, even minimally, the Arab population’s housing needs greatly reduces the housing options available to the Arab population. These needs include the creation of new Arab neighborhoods or communities, new suitable public construction, and other similar programs of assistance such as those enjoyed by the Jewish population. **No Arab citizens sit on the land and planning decision-making bodies**, foremost among them the Israel Land Council.²²² In the absence of Arab representatives, there is no guarantee the interests and needs of the Arab settlements and citizens will be properly taken into account as they ought to be, or that their voices will be heard.

In addition to these problems, racism is on the rise within Israeli society, coming to the fore, amongst other things, in attempts to **bar Arab citizens from Jewish residential areas**. Thus, for example, admission criterion in communal settlements might include elements such as embracing Zionist values and military or national service. Also, certain rabbis and other figures have repeatedly called on Jewish Israelis to not rental or sell their apartments to Arabs.

In this context it is important to note the **Admissions Committee Law**,²²³ passed in the Knesset plenum in March 2011, which represents a “license to discriminate” and to “filter out” any “undesirable” neighbors – chiefly, Arab citizens – from the communal settlements and the residential extensions of kibbutzim and moshavim. A High Court appeal against the law is pending,²²⁴ filed by ACRI along with The Abraham Fund Initiatives and residents of the Misgav region’s communal settlements, following the issue of an interim injunction against the State. The appeal will be heard before a panel of nine judges.

Instead of getting to the roots of the housing shortage and providing adequate and appropriate solutions, the State of Israel has in the past year intensified the policy of **home demolitions** in Arab villages and in the Arab neighborhoods of mixed cities, especially Lod and Ramle. In one example, following home demolitions in December 2010 in Lod, dozens of civilians, including children, were left homeless, lacking all aid and housing solutions.²²⁵

Israel continues adamantly to refuse to recognize dozens of Bedouin communities in the Negev. These communities, most of which existed pre-State, are currently home to

²²² ACRI’s petition on this subject remains pending in the Supreme Court. HCJ 8318/10 ACRI v. Government of Israel, <http://www.acri.org.il/he/?p=16915> (Heb).

²²³ The Law to Amend the Cooperative Society’s Ordinance (8) 2011. For text of the law and a broader discussion see: <http://www.acri.org.il/he/?p=97> (Heb).

²²⁴ HCJ 2311/11 Sabach v. The Knesset. For petition and Court journals see: <http://www.acri.org.il/he/?p=12905> (Heb).

²²⁵ Hassan Shaalan, **60 Homeless in Lod: “They treated us like animals”**, Ynet, 14.12.2010, <http://www.ynet.co.il/articles/0,7340,L-3998914,00.html>, (Heb).

more than 80,000 Arab citizens, who suffer from severe deprivation and neglect.²²⁶ The “Praver Plan for regulating Bedouin settlement in the Negev”, government approved in September 2011, represents yet another step in the State’s policy of extreme discrimination and neglect of one of the most disadvantaged populations in Israel.²²⁷ The plan’s significance, which was drawn up in direct contravention of the wishes of the representatives of the unrecognized villages and without seeking their opinion, is **the entirely unjustified displacement of around 30,000 people from their homes and lands, in flagrant violation of their historical proprietary rights to their own lands**. The plan also unequivocally defies the recommendations of the Goldberg Committee, which determined that the Bedouins in the unrecognized villages have been the victims of ongoing injustice which must be rectified. Although the government adopted the Goldberg Committee’s recommendations in January 2009, and the Praver plan was defined as their implementation, in practice the plan is completely antithetical to the recommendations’ central tenet: to grant the villages the greatest possible degree of recognition. Even villages recognized a decade ago, situated in the Abu Basma Regional Council, still currently lack outline plans to allow legal construction, and are still subject to a policy of house demolitions. Such a policy renders void any recognition of these villages, for the very purpose of said recognition is to enable municipal planning and regulation of these communities.

The Right to Education

The budgets for Israel’s education system are **permanently short**. In the past decade, 250,000 study hours were cut, only 100,000 of which have been returned in the past two years.²²⁸ The average expenditure per Israeli pupil, across all educational levels, is **lower than the average for developed countries**. For example, in terms of spending on primary education (which includes both public and private expenditure), Israel is ranked 26th of the thirty-four OECD countries.²²⁹ The results of the education budget cuts are reflected in teachers’ salaries, which are exceedingly low in relation to the Western world; in the decline in status of the teaching profession; and in a marked drop in student achievement. Despite a certain increase seen in the most recent survey, Israeli students still score below average in the international PISA tests.²³⁰ Likewise, we find **tremendous gaps** in educational achievement between different segments of the population: Jewish versus Arab, central versus peripheral, and different socioeconomic strata. For example, in 2009 the percentage of students receiving the matriculation certificate stood at 66% in well-off communities, 47.3% in development towns, and 34.4% among the Arab minority. Raanana’s matriculation rate was twice that of Lod (76% versus 37%).²³¹

Arab communities lack thousands of classrooms, and as a result their students are forced to

²²⁶ For further discussion see: Att. Rawia Aburabia, **Principles for recognition of Bedouin villages in the Negev**, May 2011, ACRI, <http://www.acri.org.il/he/?p=11932> (Heb).

²²⁷ See ACRI’s response to approval of the Praver Implementation Outline, <http://www.acri.org.il/he/?p=16425> (Heb), for further discussion see Att. Rawia Aburabia, *ibid.*, and <http://www.acri.org.il/en/?p=3321>

²²⁸ Lior Dattel, **Knesset Research Center: “In order for the Ministry of Education to fulfill its goals it needs an additional 9 billion NIS”**, *The Marker*, 30.11.2011, <http://www.themarker.com/markets/1.592649>, (Heb).

²²⁹ **Society at a Glance – 2011**, see fn 175.

²³⁰ International achievement exams to assess comparative levels of learning of 15 year olds. See comparative positions of participating countries here: <http://www.pisa.oecd.org/dataoecd/54/12/46643496.pdf> (Heb).

²³¹ Info sheet: **P is for Periphery**, ACRI, <http://www.acri.org.il/he/?p=15949> (Heb).

study under severely crowded conditions. The average number of pupils per class in the Arab education system is thirty-two, as compared with around twenty-eight for the Jewish education system.²³² Arab education also suffers from a severe dearth of professionals, such as attendance officers, guidance counselors and educational psychologists. Clearly a direct link exists between the lack of proper study frameworks, which meet the students' needs, and the school's dropout rate, especially when it comes to students from disadvantaged groups and a harsh socioeconomic background. Indeed, in almost all age groups (primary and secondary grades), the dropout rates among Arab students are double those of the Jewish students. The problem is particularly acute in the Negev, where school dropouts stand at 70% of students.²³³ Such gaps in education hold great significance, for today's educational achievements will largely determine the children's future chances of admission to post-high school education and positions in the labor market.

Withdrawal of proper government funding of public education has led to a **mounting privatization** of the education system. Thus, parents who can afford it are spending more than in the past for semi-private schools or supplementary education for their children. The level of private expenditure on education is constantly rising. In 2007, for example, private spending on education was estimated at a sum of 13.4 billion NIS, compared with 12.6 billion NIS the previous year – an increase of 6%.²³⁴ Privatization processes within the education system threaten its very core value – equal opportunities for every child regardless of parental means – and create, in practice, two education systems within the public education system. Instead of fighting against social stratification, privatization reinforces the existing situation. The inescapable conclusion is that the current process of privatization will not only uphold existing social gaps but, in the near future, cause them to widen further.

The Right to Welfare Services

The social workers' strike earlier this year and their struggle for better wages and working conditions highlighted the issue of the **terrible condition of Israeli welfare services**, and constituted a further aspect of the escalating struggle for social justice. Through the social workers' protest the public became aware of the enormous burden resting on their shoulders and the meager wages received. Figures published in 2009 indicate that welfare services are short of over a thousand employees.²³⁵ In addition, **large disparities** exist between the welfare services provided by different local authorities, and thus the needs of different sectors are met to widely varying degrees.²³⁶ For example, in 2008, the average number of cases handled by a social worker in the Jewish sector was 375 (a very high number in and

²³² ACRI appeal to Minister of Education 22.7.2010, <http://www.acri.org.il/he/?p=2572> (Heb).

²³³ Dropout statistics refer to 2007-2008. Katie Hasket and Sawzan Zaher, **New data on accessibility of education to Arab students in Israel and ability to fulfill their right to education**, Adalah Quarterly Online Newsletter, Issue #63, August 2009, http://www.adalah.org/features/education/EDUCATIONAL_ACCESS_HEBREW.pdf, (Heb).

²³⁴ Ami Zadok and Omer Schwartz, **Parents' payments to the education system**, Knesset Research and Information Center, March 2009, <http://www.knesset.gov.il/mmm/data/pdf/m02277.pdf>, (Heb).

²³⁵ Michal Greenberg, **Report: 100 families to each case worker**, Maariv-nrg, 30.4.2009, <http://www.nrg.co.il/online/1/ART1/884/435.html> (Heb).

²³⁶ Shlomo Swirsky and Yael Hasson, **Personal welfare services in an age of austerity**, Adva Center, August 2008, <http://www.adva.org/UPLADED/hafratrevacha.pdf> (Heb).

of itself), while a social worker in the Arab sector had to handle 502 cases: a difference of more than 30%.²³⁷

The past two decades have seen **many elements of the welfare services privatized** – from telephone answering services, through institutions for children and adults, to the fostering process for children removed from home. Supervision of privatized services is poor, and is itself partly privatized too. Consequently, numerous complaints about service are received, among them instances of harm to clients themselves.²³⁸

The Right to Water

Water is not a commodity, it is a fundamental right. This is also clearly stated in the Water Act, under which “every person has the right to receive water and to use it.” Human existence requires accessible clean water, and the relationship between water on the one hand and health and a reasonable standard of living on the other requires no further elaboration here.

For decades, the State of Israel subsidized the price of water so as to ensure the realization of this right. But early 2010 saw a discontinuance of this subsidy, and further ancillary costs piled on top of the price of water, for example: costs for water development projects, political agreements, and the upkeep of the dozens of water and sewage corporations. As a result, **water prices rose by tens of percentage points.**²³⁹ At the same time, the cut-off point for receiving water at lower prices was greatly tightened, such that many citizens now find it difficult to keep up their payments to the water corporations. Complaints received and data compiled by ACRI demonstrate that, in many cases, practices by water corporations contravene the prescribed procedures. They cut off the water supply without consideration of the customers’ social situation, and without first allowing them to appeal the decision or spread out the payment in installments.²⁴⁰

The Social Protest

The picture painted by the various sections of this report is one of Israeli citizens who are exposed to a direct and constant violation of their basic rights, social rights, and right to equality. This situation also harms Israeli democracy: both in its substantive aspect – that is, in constituting a genuine democracy – and in its stability and ability to preserve itself and grow stronger.²⁴¹

²³⁷ Dana Weiler-Polak, **The situation in the Arab sector is more dire: 1 case worker handles 502 cases**, Ynet, 7.3.2011, <http://www.haaretz.co.il/hasite/spages/1218952.html> (Heb)

²³⁸ See for example, **State Comptroller’s Report 59B, 2008**, regarding deficiencies in the running of dormitories for youth at risk and mentally disabled wards. <http://tinyurl.com/cvoj9xy> (Heb), p. 941 onwards.

²³⁹ **Report of State Committee of Inquiry on Management of Israel’s Water Resources**, March 2011, p. 30, <http://elyon1.court.gov.il/heb/mayim.htm> (Heb).

²⁴⁰ For further data see ACRI’s appeal to the Knesset Public Petitions Committee, 14.11.2011, <http://www.acri.org.il/he/wp-content/uploads/2011/11/water141111.pdf> (Heb). See also ACRI website: <http://www.acri.org.il/he/?p=15047>, (Heb).

²⁴¹ For more on the link between social rights and democracy see **Chap 6: Social Rights from The Democracy Project 2010-2011**. (Fn 172)

The social protest or “tent protest” of the past summer, culminating in huge demonstrations across the country, proved that all is not yet lost. In an impressive display of solidarity, active democracy, and empathy, the Israeli public made a loud call for social justice. Additionally, other social struggles we have witnessed over recent years, involving organizations, activists, professionals, and “ordinary” citizens tired of the situation and who care enough, testify to the fact that Israeli civil society is powerful and boasts members who believe change is possible.

The depths to which we have fallen are a consequence of the State’s evasion from its responsibility towards the rights of its citizens and residents. **Improving Israel’s social rights situation requires a profound shift in perception and in socioeconomic policy; localized corrections are not enough.** However, it seems that current policymakers are unwilling to implement the messages conveyed during the protest. The recommendations of the Trajtenberg Committee,²⁴² appointed by the government in response to the protest, are disappointing. They do not reflect a fundamental, profound policy shift in the areas of housing, health, welfare, and employment. At the end of the day, the committee's report focused on calling the government to implement decisions of which some were already enshrined in law. Only in a small number of areas are substantial goals for change set, and the report lacks any recommendations for, or addressing of, the specific problems of disadvantaged populations located in the geographical and economic periphery and suffering from discrimination. In the vast majority of areas in which recommendations were made they are very partial; and these, even if implemented, might well not be enough to bring about the profound change in social services demanded by hundreds of thousands last summer.

Thus, for example:²⁴³

- The report contains no shift in perception regarding the **right to housing**, and omits any recommendation requiring the government to take significant practical steps in this area. The recommendations do not impose a concrete obligation to provide for affordable housing in the new plans, except in regard to some State-owned lands. In addition, no reference is made to the difficulty many families experience in taking out a mortgage and in laying their hands on a sum representing 40% of their apartment’s total worth. The committee completely overlooks the subject of housing discrimination, or that of selection mechanisms such as admission committees, and proceeds to establish criteria which prevent the Arab population from benefiting from affordable housing projects. Moreover, the committee fails to provide a solution to the problem of public housing, and its recommendations call, in effect, for the latter’s elimination.
- **In the area of employment**, the question of job development remains unaddressed, though the committee does note the current job scarcity. No recommendations either are made for change in salaries and pensions, so that Israeli employees might have a decent

²⁴² The committee’s recommendations were published end of September 2011, <http://hidavrut.gov.il> (Heb). The recommendations were approved by the government on 9.10.2011, <http://www.pmo.gov.il/PMO/Communication/Spokesman/2011/10/spoketrach091011.htm> (Heb)

²⁴³ For further discussion see ACRI’s response to the Trajtenberg Committee Report, 27.9.2011, <http://www.acri.org.il/he/?p=16832> (Heb). See also position paper submitted by ACRI to the Trajtenberg Committee while in progress, outlining measurable goals and concrete recommendations to bolster social rights in Israel, <http://www.acri.org.il/he/?p=15486> (Heb).

standard of living; and the committee's recommendation that the government step up its enforcement of implementation of workers' rights is conditional on agreement between the Ministry of Finance and the Ministry of Industry, Trade and Labor. In regard to the issue of independently contracted workers, the committee makes no recommendation for a transition to direct employment of civil servants, and only loosely recommends legislation placing the responsibility for workers' rights on the contractor, in accordance with an agreement between government, the Histadrut and the economic organizations.

- **In the area of health**, no recommendations are made for a government program to reduce gaps in health, or for any increase in the health services budget. In fact, the committee makes no mention of the need to strengthen public health services or to advance the implementation of the right to health, apart from some inadequate recommendations regarding inpatient nursing care.

- **Regarding the social safety net**, no recommendations whatsoever are made for the State to expand its support for the underprivileged – for instance, by updating subsistence benefits to actually provide a decent standard of living, or by expanding unemployment benefits or strengthening welfare services.

- **In the area of education**, no mention is made of the budget increase needed to counteract the system's budget erosion, the shortage of classrooms in Arab educational frameworks, and the increasing privatization in schools. The committee's recommendation for free education for children aged 3-4 years is actually an implementation of a pre-existing law from 1984. Moreover, rather than insisting upon the law's immediate application, the committee has given the government three full years to carry it out.

- **Regarding the issue of privatization**, the committee suggests establishing a government commission to review the subject and to suggest ways to strengthen regulation and supervision. However, no recommendation is made for the State to delineate the boundaries when it comes to privatizing social services, and to announce particular social services off-limits to privatization. There is not even a recommendation for the establishment of a set rules requiring, in this area, advance publication of any intent to privatize.

- The committee does not address the specific problems of marginalized populations in the geographic and economic periphery.

- The committee does not address the Arab sector's unique problems, which are a direct result of long-term institutionalized and systematic discrimination and neglect.

Furthermore, **conspicuous by its absence from the Trajtenberg Committee report is the word "rights"**. This omission indicates that social rights are still perceived among the decision makers as a form of charity rather than justice, as commodities rather than a set of basic rights that democratic and developed countries owe to each and every resident, no matter whom. Particularly disappointing is the fact that the committee did not recommend the enactment of the **Basic Law: Social Rights**, which would have given these rights the legal mooring they require.²⁴⁴

²⁴⁴ For more on the need for enshrining in legislation the Basic Law: Social rights and for proposed legislation put forward by ACRI see: <http://www.acri.org.il/he/?p=16800> (Heb).

The struggle for social justice in Israel is still in full swing. At the time of writing, it appears that the public outcry has yet to breach the corridors of power. In the first week of its winter session, the Knesset already managed to reject the proposed Basic Law: Social Rights, as well as a host of other social legislation.²⁴⁵ Whether the “tent protest” of summer 2011 will be marked down in Israel’s collective memory as a transformative event or merely as a fleeting episode, only time will tell. It largely depends on every single one of us.

²⁴⁵ **Proposal Basic Law: Social Rights did not pass preliminary reading; Knesset Chairman supported it**, Ynet 2.11.2011, <http://www.ynet.co.il/articles/0,7340,L-4143056,00.html> (in Hebrew); Moran Azoulay, **Commotion in the Knesset: the coalition overturned social laws**, Ynet, 2.11.2011, <http://www.ynet.co.il/articles/0,7340,L-4143134,00.html> (Heb).