



Situation Report

The State of Human Rights in Israel and the OPT **2012**

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

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The State of Human Rights in Israel and in the Occupied Territories 2012

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Introduction

The starting point for everything laid out in these pages is human rights. Humans' rights, not the rights of the state. Human rights are the objective, and women and men – each and every one of them – are the target. The state is not an end in itself; when it fulfills its role, it is a means to secure human rights. But when the state fails in this role, it is a central cause for violations of human rights. Alongside individuals stand human rights organizations, who seek to ensure that the state fulfills its role of defending human rights, achieving these rights and promoting them.

In every country, in every society, at any given moment in modern history and everywhere on earth, the relationship between the state and the people it rules – and even more so, between the state and the rights of these people – is intricate and dynamic. The struggle for human rights never ends. In the unique reality that is Israel and the Occupied Palestinian Territories, the situation is all the more delicate. This report seeks to offer an up-to-date image of this complex reality. We should stress: "human rights violations" is not an abstract legal construct. When human rights are harmed, human beings are harmed. This report is dedicated to them and to their rights.

The concept of a substantive democracy developed out of the belief that the state exists for the people, and not the opposite. From this viewpoint, the moral basis of democracy hinges upon the realization of human and civil rights – out of a recognition of the value of human life and dignity, liberty, equality between all human beings, and that any person, by virtue of being human, is entitled to fundamental rights. A democratic country is therefore meant to be a body that serves its citizens, a body in which the citizens are partners. Their rights, their needs, their wishes should be the top priority and guide the state in defining its policy in various areas. But principles are one thing and reality another: In Israel, the picture that emerges is one of a regime that is declaratively committed to these principles, yet in many areas it simply ignores or belittles the human rights of the people under its rule.

The State of Israel continues to privatize more and more judicial and law enforcement powers - powers that are at the core of its unique position as the only player allowed to use force against the individual. Transferring these powers to private hands displays an inherent misunderstanding of the state's role and carries with it a huge potential for possible human rights violations. The state collects a considerable amount of personal information about its citizens through computerized systems, without giving enough thought to issues of privacy. Moreover, these systems are often built by clerks in government offices, sometimes under the guise of being a "pilot program," and are only then brought for debate by elected officials in the Knesset. In the realm of freedom of expression, there is similarly an enormous gap between the authorities'

declared duties and the reality on the ground. For example, despite positive statements by senior police officials, police officers continue to use unacceptable practices when dealing with protesters, such as imposing illegal conditions for approving demonstrations, illegally dispersing demonstrations, performing arrests without sufficient cause, and using violence.

When it comes to social policies, the government continues to ignore the voices expressed during the large-scale social protests of the summer of 2011. The government's policies do not reflect the recognition of the right to water (water!) as a basic right and ignores the growing plight in recent years since the privatization of water suppliers and the significant price hikes that affect families and individuals from all communities and age groups. On the issue of housing too – which was at the very heart of the 2011 protests – the state continues to show contempt for the growing number of people who cannot provide adequate housing for themselves and their families.

Even when an effort is made to advance rights or reduce discrimination, it is sometimes done without taking into account the needs or characteristics of the relevant community. This approach undermines the goodwill intended and the resources invested, and it ultimately means that the inequality and gaps remain. The state has been advancing a master plan for Arab towns over the last decade, after decades of neglect and discrimination in planning and building. But the plans do not meet the needs of this community, fail to take into account unique aspects of the Arab sector (such as private ownership of land) and do not take into consideration future development, and so they offer no solution to the housing crisis.

When it comes to minorities or those who are not citizens, the dismissive and indifferent attitude often turns aggressive and even belligerent. This was particularly true in 2012 for refugees and asylum seekers. The Law to Prevent Infiltration came into effect, and the authorities began detaining asylum seekers for extended periods of time. The state deported asylum seekers from South Sudan, refused entry to asylum seekers who were knocking on its gates, and continued to build the world's largest detention facility for migrants. Rather than coming up with a coherent policy and solutions that would promote the rights of both the asylum seekers and Israeli citizens living in areas that became a focal point for the asylum seekers, the government and the Knesset got carried away by arbitrary and extremist legislation, in the hope that if they pursue the "infiltrators," prevent them from working, lock them up and "make their lives miserable," the "problem" would go away. The racist remarks made by Members of Knesset, ministers, officials, public figures and others about asylum seekers and the organizations assisting them, reached an all time low, becoming wild incitement that spurred on violent incidents.

In the Negev, the government continues to advance planning procedures, in particular the Praver Plan, through an approach that ignores the rights of the Bedouin citizens, their connection to the land, their way of life, and their wishes, and instead seeks to impose a one-sided solution. The state's aggressive attitude toward its Bedouin citizens reached new extremes this year in two incidents of severe police violence in the village of Bir Hadaj: police fired stun grenades, tear gas,

and rubber bullets at civilians, and on one occasion live ammunition was even fired into the air. This was apparently the first incident of severe police violence against a civilian population in Israel since the October 2000 riots, when police fire killed 12 Arab citizens of Israel.

In East Jerusalem – rife with tension, points of friction, and frequent disruptions of public order – there are many incidents of police violence toward Palestinian residents. As a result, the residents cannot possibly view the Jerusalem District Police as a body that protects and serves them. As far as they are concerned, police is a hostile and alienated entity, which usually uses its powers against them, ignores their needs and security concerns, and prefers the interests of the city's Jewish population. Complaints filed by Palestinian residents of the city to the Police Internal Investigations Department are frequently handled improperly and inadequately, a fact that compounds the rift and mistrust between the residents of East Jerusalem and the authorities.

The most extreme expression of the regime's belligerence is of course the occupation of the West Bank. Israel, which defines itself as a democracy, continues to control the lives of millions of people living under military rule, who are devoid of any voice or influence over the political system that decides their fate, people whose basic rights are trampled upon on a daily basis. In the past year, legislative initiatives that stood out were those seeking a "de facto" annexation of the Occupied Territories and those seeking to bolster the existence of two systems of law in the Occupied Territories: a civil Israeli rule of law for Jews living in settlements and a military rule for Palestinians. Where two separate and discriminatory rules of law exist, there can be no justice.

Civilians in Southern Israel and the Gaza Strip were once again this year exposed to the fatal consequences of a military conflict. Hamas' deliberate targeting of Israeli civilians continued, and Israel's military operation in November 2012 caused fatal injuries of uninvolved civilians in Gaza. Israel's closure of the Gaza Strip, which causes significant and ongoing damage to its residents, also continued. And so, civilians in Israel and in Gaza once again found themselves exposed to violations of their right to bodily integrity and other human rights.

Even in the face of contempt, callousness, and aggression, the struggle to promote human rights does bear fruit. Each achievement is a cause for optimism and for continuing the struggle. For some time, there has been a positive trend in the Health Ministry to reduce disparities in healthcare. One of the most significant and welcome developments is the extension of the free dental healthcare plan for children up to the age of 12, as well as plans to reduce disparities in the quality of healthcare services between the center of the country and the periphery. Such developments prove that when the authorities want to bring about change and invest the necessary resources – there are results.

Recent years have also seen the start of a positive trend to reduce the gaps between people with disabilities and other populations. There have been many positive developments in legislation, law, and society when it comes to the right of disabled people to full integration in all areas of life. The

progress in healthcare and in disability rights are also proof of the power of human rights organizations, private individuals, and all the partners in the many struggles to promote human rights and social change.

We invite you to read this report, get a sense of the situation – and join the struggle.

Freedom of Expression: The Right to Demonstrate

Violations of the Right to Demonstrate by Local Authorities

During the social protests of the summer of 2011, local authorities at times expressed their support and actively aided the demonstrators, and at other times harassed them¹. As the summer of 2012 approached, several local authorities seemed to decide to take preventive measures against them – to set limits in advance on plans to protest, particularly on setting up protest tents. It is ACRI's view that some of these limitations were unlawful and exceeded the powers of a local authority².

In May 2012, for example, Tel Aviv municipal inspectors dismantled Tamir Hajaj's protest tent in Rabin Square on the grounds that he had no permit to place it there³. When Hajaj applied to the municipality for a permit, however, he was sent from office to office, subjected to a variety of onerous demands, and finally given a permit with restrictive conditions. Aside from the burdensome demands, it is also troubling that the conditions set by the municipality were not uniform across all the protest sites in the city, suggesting that municipal decisions about this were influenced by the subject and location of the protest.

ACRI petitioned the Tel Aviv Administrative Court on behalf of Hajaj and other activists⁴. The petitioners argued that while the municipality has the authority to evacuate a tent if it causes a public nuisance or hazard so severe that this outweighs the freedom of expression of the

¹ See Tal Dahan, *The State of Human Rights in Israel and the OPT 2011*, ACRI, December 2011 <http://www.acri.org.il/en/wp-content/uploads/2011/12/ACRI-State-of-Human-Rights-2011-ENG.pdf>, pp. 45-47.

² On the power of a local authority vis-à-vis the right to demonstrate, see Nira Shalev, *A Legal Guide to Protection of the Right to Protest*, Chapter 5: "Power of the Local Authority", ACRI, <http://www.acri.org.il/he/?p=20521> (Hebrew). The Administrative Court in Tel Aviv denied a petition filed by ACRI and stated that the local authority has the right to require a permit for a protest tent and may immediately evacuate any tents without a permit. ACRI believes that this ruling is in error, and is appealing to the Supreme Court.

³ *Petition against Tel Aviv Municipality's Repressive Protest Tent Policies*, ACRI, 3 June 2012, <http://www.acri.org.il/en/2012/07/03/tlv-repressive-protest-tent-policies>; Asaf Shtull-Trauring, *Petition: Tel-Aviv municipality using red tape to stifle Israel's social protest*, Haaretz, 3 July 2012, <http://www.haaretz.com/news/national/petition-tel-aviv-municipality-using-red-tape-to-stifle-israel-s-social-protest-1.448623>

⁴ Administrative Appeal 6095-07-12 *Hajaj v. Tel Aviv Municipality*. The petition and ruling: <http://www.acri.org.il/he/?p=22440> (Hebrew).

protestors, it does not have the authority to demand a permit prior to the placement of such a tent. The petition also argued that the municipal policy is a serious encroachment on freedom of expression, and that the city has no authority to regulate protest within its limits or to determine its location, timing, or duration. This argument takes on greater validity in light of the new municipal policy that mandates a permit for “a demonstration, rally, ceremony ... and any other activity for purposes of expressing an idea, opinion, value, belief, or outlook on life” – directives that were revealed during the course of the hearings on the petition: According to the Tel Aviv-Jaffa municipality, a permit is required for holding any event of this type in a public space, and the conditions for receiving the permit include “reimbursement of expenses” to the city, deposit of collateral, and insurance.

The Court denied the petition, and ACRI filed an appeal.

The Jerusalem municipality adopted procedures similar to those in Tel Aviv. According to the new procedures⁵, municipal permission to protest is contingent upon the receipt of various permits, but even protest tents that receive a permit will not be allowed to remain for more than one day and will be permitted only in certain locations; placing a protest tent opposite the home of the prime minister requires a bank guarantee of NIS 12,000 and agreement to various limiting conditions. In Jerusalem, too, ACRI and several social protestors petitioned the Administrative Court following evacuation of a protest tent in the city’s Independence Park and confiscation of personal equipment that belongs to the activists⁶. In light of ACRI’s intent to appeal to the Supreme Court regarding denial of its petition against the Tel Aviv municipality, this petition was withdrawn.

The municipalities of Kfar Saba and Modi’in joined those of Tel Aviv-Jaffa and Jerusalem in toughening their policies against protest tents within their city limits⁷.

⁵ “Procedures of the Jerusalem Municipality for Protest Activity in Public Space in Jerusalem”, Jerusalem municipality website, 24 June 2012, http://www.jerusalem.muni.il/jer_sys/muni/messages/item_news.asp?msg_id=15757&cat=6&sec_id=44 (Hebrew).

⁶ Administrative Appeal 44331-07-12 *Ben Avraham v. Jerusalem Municipality*, <http://www.acri.org.il/en/2012/07/24/jerusalem-municipality-confiscates-demonstrators-equipment-to-prevent-waste-of-public-money/>.

⁷ Social protest activists in Modi’in claimed that the city spread fertilizer with glass shards where they had planned to set up a protest encampment. The city claimed that the fertilizer was placed as part of their regular maintenance work in the park, but that it had nothing to do with the glass shards. See Or Kashti, *Social protest activists: Modi’in municipality spread fertilizer with glass on the encampment site*, H’aretz, 2 July 2012, <http://www.haaretz.co.il/news/education/1.1746139> (Hebrew); Ruthie Busidan, *Modi’in: Glass shards awaited the social protest demonstrators*, mynet, 5 July 2012, <http://www.mynet.co.il/articles/0,7340,L-4250988,00.html> (Hebrew). Although the Kfar Saba municipality allowed a protest tent within the city limits, it announced in advance that the encampment would have to be removed after a month: *Kfar Saba municipality*:

Freedom of protest and the right to demonstrate are core to freedom of expression, which is a fundamental right. One problem with local authorities imposing limitations is that they may differ from place to place: While one local authority may be generous in allowing protest, another may impose restrictions. Furthermore, the diverse limitations imposed by local authorities on those wanting to set up a protest tent transform the right to demonstrate into a privilege for those with enough free time, resources, and finances to cope with the municipal bureaucracy, thereby preventing broad and equal access to the freedom to protest.

Police Practices that Violate the Freedom to Demonstrate

Despite commendable statements made by senior police officials about the vital role of the police in safeguarding freedom of protest, these declarations are still far removed from reality. As the summer approached, the police seemed to be gearing up for a tougher approach to the mass demonstrations that took place the previous summer. This could be seen, for example, in police interrogations of activists as well as incidents of arrest and police brutality, particularly during the months of May and June⁸. The death of Moshe Silman, a social justice activist who set himself on fire at a Tel Aviv demonstration in July 2012, and public criticism of how the police handled demonstrations the previous month marked a watershed, after which the police acted with greater restraint, even at demonstrations that lacked the necessary permit or violated the conditions of the permit.

Below are several practices used by the police at times that undermine the freedom to protest.

The raccoon – The “raccoon” is a military vehicle with intelligence gathering equipment. It was used by the police for the first time this year during social justice demonstrations. Police use of this equipment and their practice of filming the participants of demonstrations deepen the concern that the state is engaged in surveillance of its citizens and collecting information about their views. It is not clear what use was made of the data⁹. In a meeting with ACRI representatives in July 2012, Police Commissioner Yohanan Danino expressed reservations about how the raccoon was used and promised that it would not happen again.

The only city in the Sharon region that allowed social protest tents within the city limits, Kfar Saba municipal website, 1 August 2012, <http://www.kfar-saba.muni.il/?CategoryID=255&ArticleID=3762> (Hebrew).

⁸ See below and also Amir Fuchs, *The Putinization of the Right to Demonstrate*, Israel Democracy Institute, 2 July 2012.

⁹ Avner Pinchuk, *He is focusing on her, as you can see*, HaOketz website, 10 July 2012, <http://tinyurl.com/95hkp54> (Hebrew).

Summoning activists to police interrogation – In recent years, there have been increasing number of incidents in which the police or General Security Service summon left- or right-wing social and political activists for “warning talks”. Those summoned were asked about their views, activities, other activists, and also personal information. Beyond the collection of information, the intent of these talks was to make it clear to the activists that they are being watched and had better desist from their activities. Moreover, ACRI heard for the first time this year about activists who were interrogated by the police to elicit information about future protests. In June 2012, more than ten activists were summoned, and several were told that the goal was to clarify their protest plans for the summer¹⁰. Following ACRI’s appeal to the Police Commissioner and public outcry, the Commissioner cancelled the summonses and clarified that any police officer who tries to dissuade activists from realizing their right to demonstrate would face disciplinary action¹¹. The Minister of Internal Security also expressed opposition to this police practice.

Conditioning a permit to demonstrate on illegal and unreasonable demands – In repeated incidents, the police conditioned permission to demonstrate upon burdensome and illegal demands such as obtaining approval by the local authority¹² or undertaking to ensure public safety during the event – a function that police officers, not demonstrators, are supposed to perform. These demands are onerous for the organizers of demonstrations, and sometimes prevent them from realizing their legitimate right to demonstrate. Occasionally the police have gone a step further and sought to interfere in the content of the protest: A demonstration in Be’er Sheva, for example, was made conditional upon not holding “signs that besmirch Israel’s name¹³”; and a demonstration of youth from the Bnei Akiva movement was conditioned upon not holding signs reading, “The Temple Mount is in our hands”.

¹⁰ Yaniv Kubovich and Ilan Lior, *Israel Police summons social protest leaders to help 'prepare' forces for summer rallies*, Haaretz, 12 June 2012, <http://www.haaretz.com/news/national/israel-police-summons-social-protest-leaders-to-help-prepare-forces-for-summer-rallies-1.435788>.

¹¹ “Clarification to Protesters Summoned to a Police Station”, ACRI, 13 June 2012, <http://www.acri.org.il/en/2012/06/13/protesters-summoned-by-police/>.

¹² In response to clarifications requested by ACRI, the Police Legal Counsel confirmed that conditioning a demonstration permit upon the approval of the local authority is illegal.

¹³ Letter from ACRI to the Police Legal Counsel, 20 May 2012, <http://www.acri.org.il/he/?p=21939> (Hebrew). The response of the police to the incident as reported on the Haaretz website: “In this case, while some of the conditions imposed by the police station do not conform with the principles ... Nevertheless, the police are authorized to prohibit signs that carry messages of incitement or sedition”. See Or Kashti, *Be’er Sheva police made protesters promise not to denigrate Israel’s name*, Haaretz, 5 July 2012, <http://www.haaretz.com/news/national/be-er-sheva-police-made-protesters-promise-not-to-denigrate-israel-s-name-1.448894>.

The reason for these incidents seems to be the erroneous interpretation by some district and regional police commanders of the laws pertaining to demonstrations and protest activity. In February 2012, ACRI wrote to the Police Legal Counsel, asking him to clarify the legal issues and circulate guidelines to the district commanders that they must adhere to the law and – as befits the task of the police in a democratic country – safeguard the constitutional right to freedom of expression and protest, ensuring it can be realized¹⁴. The response of the Police Legal Counsel has not yet been received.

Dispersing demonstrations without cause – Police have at times unlawfully declared that a demonstration is “an illegal gathering” or demanded to see a permit even when a permit is not required by law. This has happened repeatedly at different times and places throughout Israel¹⁵, suggesting that Israeli police officers lack information about – or incorrectly interpret – the law and rulings on this subject. ACRI brought this matter to the attention of the Police Legal Counsel in May 2012, but no response has been received.

Unidentifiable police – According to the Police Ordinance, an officer in uniform must wear a name tag at all times. This obligation was intended, inter alia, to prevent police officers from abusing their authority under the cover of anonymity. In clashes with demonstrators, however, police officers have been seen not wearing an identifying name tag and even covering their faces. Following letters from ACRI to the Israel Police and its Legal Counsel¹⁶, the Attorney General recently informed ACRI of new directives issued by the Police Commissioner: officers must operate with name tags and faces exposed, as required by law, when working to restore public order. The subject of name tags also came up at a July 2012 meeting between ACRI and the Police Commissioner, who confirmed that a directive to wear name tags was issued. Directives are not enough, however. The law must be enforced and police officers who operate without name tags – and the commander who issued orders not to wear them – should face disciplinary action. The Knesset’s Internal Affairs Committee is in the process of preparing a law in this spirit (ahead of its second and third readings)¹⁷.

Plainclothes police – Last summer’s demonstrations saw a dramatic rise in the use of plainclothes police for documenting, filming, and even arresting participants. The presence of plainclothes police in demonstrations and the covert documentation of key activists at these events give the

¹⁴ ACRI’s letter to the Police Legal Counsel, February 2012, <http://www.acri.org.il/he/?p=19403> (Hebrew).

¹⁵ For numerous examples in 2010-12, see ACRI’s letter to the Police Legal Counsel, 7 May 2012, <http://www.acri.org.il/he/?p=21360> (Hebrew).

¹⁶ These appear on ACRI’s website: <http://www.acri.org.il/he/?p=23880> (Hebrew).

¹⁷ Police Ordinance (Obligation to Wear Tags and Be Identified) – 2011: <http://www.acri.org.il/en/knesset/obligating-police-officers-to-wear-name-tags/>.

worrying impression that police are keeping their eyes on participants. The presence of plainclothes police can also be provocative, and their exposure may precipitate unnecessary clashes with demonstrators. Furthermore, plainclothes police officers – like those who cover their faces – may feel they have free rein, unfettered by the law.

In a meeting with ACRI in July 2012, the Police Commissioner confirmed that, in general, plainclothes police are not needed for ensuring order at a demonstration, and if they are used, it is for purposes unrelated to the demonstration, such as catching pickpockets. However, the plainclothes police are not occupied with finding and catching pickpockets, but rather document, film, and sometimes arrest demonstrators. Furthermore, while preventing crime and ensuring public order and safety at demonstrations are important and legitimate, they do not justify the use of plainclothes police at a demonstration, as these goals can be attained with uniformed police. ACRI recently approached the Police Commissioner about this matter again to ask him to take effective measures to put an end to this practice.

Detention and arrest of demonstrators – Dispersing a demonstration without legal grounds is not only a violation of freedom of expression, but is often accompanied by the detention and arrest of demonstrators, undermining their liberty and basic rights as well. The power to detain and arrest activists is often exercised before less drastic measures that could have been used to restore public order, turning these harsher measures into tools to repress legitimate dissent.

Police brutality – Police have used disproportionate force toward demonstrators in various events. Information based on complaints received by ACRI and other sources indicates that the police have used violence against demonstrators, sometimes without cause, threatened to arrest them without authority, and handcuffed them without following regulations. Several complaints were filed with the Police Investigations Department (PID), and there have been reports that PID is placing one police officer on trial and recommending indictment of another. No decision was yet made on other complaints.

In the words of one participant in the social protest demonstration in Tel Aviv on 12 May 2012: “Two policemen held me, one on each arm, they twisted my arms behind my back, handcuffed me ... pushed my back and head down and dragged me using great force ... I kept telling them, ‘I’m not resisting [arrest], don’t use violence’, but they continued to use great force and pushed my head and back toward the floor and caused me great pain ... For two days I lay in bed with horrible back pains”. Another reported, “A police officer just decided to catch me and throw me onto the road ... then he threw me again onto the opposite sidewalk ... the woman he flung me into was thrown back by the blow and hit the road face-first.”¹⁸

¹⁸ Complaints received by ACRI appear in its letter to the commander of the Tel Aviv police district and the head of PID on 31 May 2012. In response, the police argued that it acted to ensure the demonstration could be held as planned, and that after its conclusion several demonstrators started to block the road and be disruptive. PID

During that same period, a complaint about police brutality in Jerusalem toward ultra-Orthodox demonstrators was published in the media¹⁹. Adalah also reported severe police brutality toward Arab citizens demonstrating outside the Ramle Prison in solidarity with security prisoners on a hunger strike. In its appeal to PID, Adalah reported that the police used Taser guns against bound detainees, hit bound detainees with spikes and fists, kicked them, sexually abused several detained women, and used racist and degrading language²⁰.

At a meeting with ACRI in July 2012, the Police Commissioner emphasized the commitment of the police to protect freedom of expression and protest. It is the job of the senior levels of the police force to ensure that this approach filters down to the lower ranks, from commanders to beat cops, and not merely make do with declarations.

responded that they cannot address a general complaint, but only specific complaints submitted by the demonstrators who were injured. For ACRI's letter and the responses, see <http://www.acri.org.il/he/?p=21653> (Hebrew).

¹⁹ Avi Chaim, *Demonstrations in Jerusalem: Police Brutality*, Arutz 7, 6 June 2012, <http://www.inn.co.il/News/News.aspx/239145> (Hebrew).

²⁰ Adalah: Legal Center for Arab Minority Rights in Israel, *Illegal Arrest of 17 Demonstrators*, 17 May 2012, <http://adalah.org/heb/?mod=articles&ID=1220> (Hebrew).

Refugees and Asylum Seekers: The Crisis Escalates

"They should all be deported. The fault lies with the organizations that submit petitions²¹."

"The Sudanese are a cancer in our body²²."

"The threat of the infiltrators is more serious than the Iranian threat²³."

"Our country has been destroyed because of the infiltrators – it's an invasion and it must be stopped.²⁴"

"Until we have the possibility to deport them, I will imprison them and make their lives a misery²⁵."

Tens of thousands of asylum seekers currently live in Israel²⁶. Most of them come from Eritrea and Sudan, and cannot be deported due to the danger they face in their countries of origin. On the one

²¹ MK Danny Danon, quoted in: Jonathan Lis, *Israeli MK engage in stormy debate over African asylum seekers*, Haaretz, May 21, 2012 <http://www.haaretz.com/news/national/israeli-mks-engage-in-stormy-debate-over-african-asylum-seekers-1.431728>

²² MK Miri Regev, quoted in: Neri Brenner, *Clashes erupt during south TA protest; migrants attacked*, Ynet, May 24, 2012 <http://www.ynetnews.com/articles/0,7340,L-4233509,00.html>

²³ Uri Buskila, chairperson of the Forum of Deputy Mayors, *Deputy Mayors: Help Us on Illegals and Social Justice*, Israel National News, June 29, 2012 <http://www.israelnationalnews.com/News/Flash.aspx/243680#.UMbz8IMzqO1>

²⁴ MK Michael Ben Ari, quoted in: Hezki Ezra, *Recycling Industry – Without Foreign Workers*, Israel National News, May 13, 2012 (Hebrew) <http://www.inn.co.il/News/News.aspx/237892>

²⁵ Interior Minister Eli Yishai, quoted in: Omri Efraim, *Yishai: Next phase – arresting Eritrean, Sudanese migrants*, Ynet, August 16, 2012 <http://www.ynetnews.com/articles/0,7340,L-4269540,00.html>

²⁶ For estimates of the number of asylum seekers and their distribution around Israel, see: Dr. Gilad Natan, *Geographical Dispersion of Infiltrators and Asylum Seekers in Israel*, Knesset: Research and Information Center, April 2012 (Hebrew) <http://www.knesset.gov.il/mmm/data/pdf/m02844.pdf>

It should be noted that even according to official Israeli data, most of the foreign citizens present in Israel are neither "infiltrators" nor asylum seekers, but rather tourists whose visa has expired and who are present in the country unlawfully, or migrant workers present lawfully in Israel (and whom Israeli continues to bring to the country). See also: *Statistics on Foreigners in Israel*, Population and Migration Authority, August 2012 (Hebrew); the figures in the report are accurate as of June 2012.

hand, they are entitled to collective protection and hold permits entitling them to be present in Israel. On the other, the state does not examine their asylum requests and treats them as undocumented migrant workers, rather than as asylum seekers. Although the state has promised the Supreme Court²⁷ that it will not take steps against those employing asylum seekers, the residency permits they hold specifically state that these are not work permits, and many asylum seekers are unable to work. This policy forces the asylum seekers into poverty and distress and encourages them to concentrate in disadvantaged areas where they can afford accommodation. The concentration of asylum seekers in neighborhoods and towns whose residents already suffer from official neglect adds to the distress in these areas and leads to friction. This year, these tensions reached new heights.

Racism and Incitement

The prevalent attitude toward African asylum seekers in Israel in 2012 was one of racism and xenophobia. A new nadir was reached in terms of racist statements by Members of Knesset, government ministers, officials, public figures, army and police officers, physicians, rabbis, and neighborhood activists, among others. In many cases, the statements clearly incited others to violence, fueling a series of violence incidents. Over the course of the year, Israeli citizens burned, beat, cursed and looted on a scale and in a manner never seen before. Molotov cocktails were thrown at the homes of asylum seekers and at a kindergarten in the Shapira neighborhood of Tel Aviv²⁸; apartments of foreign citizens in Jerusalem were torched²⁹; three Eritrean asylum seekers were stabbed in the Shapira neighborhood³⁰; and a demonstration against so-called “infiltrators” in

²⁷ HCJ 6312/10 *Kav LaOved v Government of Israel* (ruling dated January 16, 2012). The petition and the ruling (in Hebrew) may be viewed on ACRI’s website:

<http://www.acri.org.il/he/?p=2563>

²⁸ Yaniv Kubovich, *Molotov cocktails thrown at homes of African refugees in south Tel Aviv*, Ha’aretz, April 27, 2012

<http://www.haaretz.com/news/national/molotov-cocktails-thrown-at-homes-of-african-refugees-in-south-tel-aviv-1.426877>

²⁹ Oz Rosenberg, *4 injured in suspected arson attack on Jerusalem migrants*, Ha’aretz, June 4, 2012

<http://www.haaretz.com/news/national/4-injured-in-suspected-arson-attack-on-jerusalem-migrants-1.434266>

³⁰ Yaniv Kubovich, *African migrants lightly wounded in Tel Aviv stabbing*, Ha’aretz, July 31, 2012

<http://www.haaretz.com/news/national/african-migrants-lightly-wounded-in-tel-aviv-stabbing-1.454970>

the Hatikva neighborhood of Tel Aviv descended into a display of unbridled violence, including smashing of shop windows and physical attacks on foreign citizens³¹. A small number of assailants were indicted following these incidents³².

The report "Cancer in Our Body"³³, published by the Hotline for Migrant Workers, summarizes "six months of incessant incitement against African asylum seekers" (January-June 2012). The precise account of each statement and incident highlights the intensity of the incitement and hatred. The report reviews the allegations leveled at the asylum seekers – that they are infiltrators, criminals, spread diseases, and constitute a demographic and security threat – and shows that most of these are completely detached from reality³⁴. The report suggests a connection between incitement by public figures and senior government officials and incidents of violence and hate crimes against African migrant workers and asylum seekers – incidents that before this year were an exceptional and unusual phenomenon.

It is very easy to understand the anger and frustration of Israeli citizens who live in poor and neglected areas. Asylum seekers who do not hold work permits live in overcrowded and unsanitary conditions, exacerbating the deprivation that already exists in these areas. However, incitement and violence are not the solution. The arrival of asylum seekers in Israel is not a new phenomenon, and due to the conditions in their countries of origin they will continue to arrive, although numbers may fall following the construction of the fence along Israel's southern border. The Israeli government should accept this fact and develop proper and suitable long-term solutions that address the distress and rights of the residents of the neighborhoods and of the asylum seekers.

³¹ Ilan Lior and Tomer Zarchin, *Demonstrators attack African migrants in south Tel Aviv*, Haaretz, May 24, 2012 <http://www.haaretz.com/news/national/demonstrators-attack-african-migrants-in-south-tel-aviv-1.432262>

³² *Israeli minors charged with robbing, beating African migrants in Tel Aviv*, Haaretz, May 31, 2012 <http://www.haaretz.com/news/national/israeli-minors-charged-with-robbing-beating-african-migrants-in-tel-aviv-1.433625>

³³ Elizabeth Tsurkov, *Cancer in Our Body – On Racial Incitement, Discrimination and Hate Crimes against African Asylum Seekers in Israel, January-June 2012*, Hotline for Migrant Workers, June 2012 http://www.hotline.org.il/english/pdf/IncitementReport_English.pdf

³⁴ See, for example: Sigal Rozen, *Police distort crime data, inciting violence against refugees*, +972 Magazine, May 19, 2012 <http://972mag.com/police-distortion-of-crime-data-encourages-rising-violence-against-refugees/46236/>;

Dr. Gilad Natan, *Geographical Dispersion of Infiltrators and Asylum Seekers in Israel*, Knesset: Research and Information Center, April 2012 (Hebrew) <http://www.knesset.gov.il/mmm/data/pdf/m02844.pdf>;

PHR-Israel responds to comments by Prof. Rafi Carasso labeling African migrants as a "pool of diseases," statement on the website of PHR-Israel (Hebrew), <http://www.phr.org.il/default.asp?PageID=52&ItemID=1501>;

The Infiltration Prevention Bill – Lies and Reality, ACRI website, February 4, 2010 <http://www.acri.org.il/en/2010/02/04/the-infiltration-prevention-bill-lies-and-reality/>

The government should allow asylum seekers to work³⁵ and to rent apartments and receive welfare and health services from the public system. Israel must also implement a genuine procedure to examine asylum requests and recognize refugees. At the same time, the government must work to strengthen weakened areas and allocate resources to ensure that the residents of the neighborhoods enjoy the security and public services to which they are entitled.

As detailed below, the government and the Knesset have chosen a very different course of action. They hope that by persecuting asylum seekers, denying them work, imprisoning them, and “making their lives a misery,” to quote Interior Minister Eli Yishai³⁶, the “problem” will disappear. Instead of formulating orderly policies and solutions, the government and the Knesset have been swept up in a wave of arbitrary and extreme proposed legislation that do nothing to solve the problems, and which are liable to violate both the rights of asylum seekers and the basic rights of Israeli residents.

Legislation

Over the past year, the Knesset has repeatedly served as a platform for incitement against asylum seekers and the organizations that assist them. Members of Knesset have not only made statements that foster hatred and fear³⁷, but have also acted to restrict the rights of refugees and asylum seekers through legislative initiatives.

The Prevention of Infiltration Law³⁸ - The Knesset passed this law at its second and third readings in January 2012. Among other provisions, the law states that asylum seekers and their children who enter Israel via the Egyptian border may be imprisoned without trial for a period of at least three years, and in certain cases indefinitely. In June 2012, the state began to implement the new

³⁵ Appeal from human rights organizations to the prime minister, May 20, 2012. See: Asher Zeiger and Yoel Goldman, *As migrant crisis deepens, PM promises ‘responsible solution,’ slams racist tone of protests*, The Times of Israel, May 24, 2012 <http://www.timesofisrael.com/netanyahu-says-no-place-for-tel-aviv-violence/>

The Police commissioner and the Tel Aviv District Police commander recommended the same approach. See: Yaniv Kubovich, *Israel Police chief: Letting migrants work would reduce crime*, Haaretz, May 20, 2012 <http://www.haaretz.com/news/national/israel-police-chief-letting-migrants-work-would-reduce-crime-1.431382>

³⁶ Eli Yishai, op. cit.

³⁷ Tsurkov, op. cit.

³⁸ Prevention of Infiltration Law (Jurisdictional Offenses) (Amendment No. 3 and Temporary Provision), 5772-2012. For ACRI’s position, see ACRI’s website <http://www.acri.org.il/en/2012/01/10/draconian-infiltration-law-passes-final-reading/>

law. At the beginning of October, some 2,000 women, men and children were being held in incarceration camps³⁹ under the terms of the law. The government plans to imprison thousands more asylum seekers (see below for further discussion of the incarceration plan).

The Prevention of Infiltration Law effectively deprives thousands of individuals of their right to liberty, and denies them any legal protection. Israeli law previously permitted the imprisonment of a person without trial only if the action was intended to enable their deportation. The new law permits administrative detention for extremely protracted periods of people whom it is impossible to deport, merely in order to deter other asylum seekers from entering Israel. The law makes no distinction between refugees, asylum seekers and migrant workers, and does not provide any alternative response to any of these distinct groups. The law infringes both refugees' rights and Israel's moral and international obligations.

Will employing asylum seekers be made a criminal offense?⁴⁰ - Two bills laid before the Knesset in June 2012 seek to reinforce the penalization of Israeli residents who knowingly or unknowingly assist asylum seekers by providing employment, accommodation or transportation. The proposals passed their preliminary readings and unified in preparation for the first reading. During the discussions in the Knesset Internal Affairs Committee, it was decided that the prohibition will apply only to employment, and not to the provision of accommodation or transportation.

Such proposed legislation mislead and even harm the Israeli public in two ways: In the manner in which the laws portray asylum seekers and the current reality in Israel, and in the attempt to turn law-abiding residents into criminals merely because they wish to act in a humane and generally inoffensive manner. Such proposals will not solve the problems. Prohibiting the employment of asylum seekers will merely lead to a further deterioration in their situation and that of the residents of the neighborhoods where they live. Moreover, such bills encourage racial profiling and discrimination against people of African appearance, including those who hold permits or are Israeli residents or citizens.

Refusal to Approve Asylum Requests

³⁹ From a petition filed against the law by human rights organizations, including ACRI: HCJ 12 / 7146 *Anonymous v Knesset*, see ACRI's website <http://www.acri.org.il/en/2012/10/04/petition-to-overturn-law-to-prevent-infiltration/>

⁴⁰ Proposed Law: Unlawful Presence (Prohibition of Assistance) (Legislative Amendments) (Amendment – Stricter Penalization of Unlawful Accommodation, Employment and Transportation), 5772-2012, and Proposed Law: Unlawful Presence (Prohibition of Assistance) (Legislative Amendments) (Amendment – Stricter Penalization of the Letting of an Apartment and Accommodation in Return for Persons Unlawfully Present), 5772-2012. For ACRI's position on these laws, see ACRI's website (in Hebrew): <http://www.acri.org.il/he/?p=23068>.

The political asylum system in Israel has undergone changes in recent years. In particular, powers have been transferred from the UN High Commissioner for Refugees to the Interior Ministry⁴¹. A report published by the Hotline for Migrant Workers in March 2012 reviewed the processing of asylum requests by the Interior Ministry⁴². The report paints a depressing picture, including violations of the right of claim of asylum seekers; unfair, humiliating and threatening treatment during asylum interviews⁴³; and biased, selective and unprofessional research concerning the asylum seekers' countries of origin. The report determines that the procedure for granting asylum in Israel is inconsistent with the standards established by the Convention relating to the Status of Refugees.

Statistics concerning the recognition of refugees by the Interior Ministry are equally disturbing. During a period of over two years, the report states, the ministry's committee has only made two recommendations to grant refugee status to applicants; one of these recommendations was accepted and the other rejected. Thousands of other applications were all rejected. The authors of the report emphasize that it is very possible that not all the asylum seekers meet the terms of the convention and are entitled to political asylum. However, compared to other countries, the rate of recognition of asylum seekers in Israel is exceptionally low, in a manner that casts doubts on the capacity of Israel's political asylum system.

The Deportation of Asylum Seekers from South Sudan

At the beginning of 2012, the Interior Ministry cancelled the collective protection granted to citizens of South Sudan following the declaration of independence of the new state. Human rights organizations petitioned the Jerusalem District Court⁴⁴ against the deportation of these asylum

⁴¹ It should be noted that this system is irrelevant to citizens of Sudan and Eritrea, who constitute the majority of asylum seekers in Israel. Citizens of these countries are present in Israel on the strength of temporary collective protection. The Interior Ministry refuses to examine individual applications for asylum and to ascertain whether citizens of these countries are entitled to refugee status.

⁴² Yonatan Berman, *Until our hearts are completely hardened: Asylum Procedures in Israel*, Hotline for Migrant Workers, March 2012 http://www.hotline.org.il/english/pdf/asylum_procedures_2012_eng.pdf

⁴³ Asylum interviews form part of the procedure for the examination of asylum applications, and are intended to clarify the applicant's factual claims.

⁴⁴ Administrative Petition 53765/12 ASSAF - *Aid Organization for Refugees and Asylum Seekers in Israel v Interior Minister*. For further details about the petition, see <http://www.acri.org.il/en/2012/03/29/ngos-petitioned-and-the-collective-deportation-of-south-sudanese-is-suspended/> The petition was submitted through the Refugee Rights Program at Tel Aviv University.

seekers, arguing that the situation in South Sudan remained unsafe and that the deportees would face danger to their well-being and security. The petition described in detail the harsh conditions in South Sudan – instability, the risk of renewed conflict with Sudan, violent internal conflicts between different tribes, severe famine and human rights violations⁴⁵. In June 2012, the court accepted the position of the Foreign Ministry, which claimed that the situation in South Sudan no longer poses a danger, and rejected the petition⁴⁶. The court ruling formalized an undertaking by the state to enable citizens of South Sudan to submit individual asylum applications and to examine these applications properly and fairly.

In the weeks after the court ruling, dozens of citizens of South Sudan were arrested ahead of deportation. The Hotline for Migrant Workers reported complaints of immediate arrest, with just ten minutes' notice for the asylum seekers to pack their belongings. It was also reported that the authorities shackled the legs of some, including women and children⁴⁷. After the deportation, it was reported that some of the belongings of South Sudan citizens remained at the airport in Israel⁴⁸. In several instances, children and adults who were deported from Israel to South Sudan subsequently died of malaria⁴⁹.

⁴⁵ For further discussion about the situation in Sudan, see Administrative Petition 53765/12 ASSAF, note 44 above. See also: Reuven Ziegler, *Ending the Collective Protection of South Sudan "Subjects" and Their Planned Deportation – Two Legal Problems* (Hebrew), Israel Democracy Institute, April 2012.

The Knesset Research and Information Center also noted the difficult situation in the new nation in a document published in March 2012. The author of the document also notes that Israel does not have a procedure regulating the issue of collective protection. In past examples of the removal of protection, the members of the group were given a longer period before being obliged to leave Israel. In the conclusion, the author notes: "During the preparation of this document, professional sources questioned whether, given the humanitarian situation in South Sudan, the State of Israel should properly terminate the collective protection for South Sudanese citizens in Israel." Dr. Gilad Natan, *Terminating the Collective Protection for Asylum Seekers from South Sudan*, Knesset – Research and Information Center, March 2012 (Hebrew) <http://www.knesset.gov.il/mmm/data/pdf/m03026.pdf>

⁴⁶ For further details about the petition, see ACRI's website: <http://www.acri.org.il/en/2012/06/07/court-rejects-petition-against-deportation-of-south-sudanese/>

⁴⁷ Sigal Rozen, *Current Report: Detention and Deportation of South-Sudanese Refugees from Israel*, Hotline for Migrant Workers, July 2012 <http://www.hotline.org.il/english/pdf/SouthSudaneseInDetention070412Eng.pdf>

⁴⁸ Omri Ephraim and Shiri Hadar, *South Sudanese deported, belongings left in Israel*, Ynet (Hebrew), August 23, 2012 <http://www.ynet.co.il/articles/0,7340,L-4272271,00.html>

⁴⁹ Bradley Burston, *If you do only one thing for Israel this year, let it be this*, Haaretz, October 9, 2012 <http://www.haaretz.com/blogs/a-special-place-in-hell/if-you-do-only-one-thing-for-israel-this-year-let-it-be-this.premium-1.468894>

Pointless Arrests

At the beginning of 2012, the state began to enforce the Prevention of Infiltration Law and to arrest asylum seekers who enter Israel across the Egyptian border, including women, children, refugees and victims of rape and torture⁵⁰. As noted above, most of the asylum seekers who come to Israel are citizens of Eritrea and Sudan; they may not be deported to their countries of origin, where they face mortal danger. Their arrest is therefore not intended for the purpose of deportation, but solely to deter other asylum seekers from entering Israel. Such detention is contrary to Israel's obligations in accordance with the Convention relating to the Status of Refugees and is inconsistent with international standards, according to which the detention of migrants must be "essential and proportionate" and must be based on an individual examination⁵¹.

The conditions at Saharonim and Ketsiot, the two incarceration facilities used in recent years, are harsh and unsuitable. The facilities are severely overcrowded and provide inadequate access to medical, social and legal services. In addition, Israel prepared to expand the facilities for the incarceration of refugees in the Negev with a planned facility that will be the largest compound in the world for holding migrants⁵². The National Planning and Building Council recently approved the government's request to lower further the already poor standards in the original plan for the construction of the compound. Detainees are now to be held in tents rather than permanent structures, and the population of the compound will begin before all the vital services have been established. The net result is that thousands of asylum seekers and children will be incarcerated in conditions that will be more extreme than those currently provided in Saharonim Prison and Ketsiot Prison⁵³.

⁵⁰ *Detention of Sinai Torture Victims for 3 Years under the Anti Infiltration Law*, statement on the website of the Hotline for Migrant Workers, July 15, 2012

<http://www.hotline.org.il/english/pdf/AntiInfiltrationLawForTortureVictimsEng071512.pdf>

⁵¹ According to Amnesty International, see: *African Asylum Seekers Arriving in Israel via the Sinai Desert*, Refugees Rights Forum, August 2012: <http://tinyurl.com/bpp4p9a>

⁵² Telem Yahav, *Coming soon: Mega-prison for 10,000 refugees*, Yediot Acharonot, October 11, 2011 (Hebrew). In November 2011, five human rights organizations, including ACRI, submitted their objection to the construction of the facility to the National Planning and Building Council (Hebrew): <http://www.acri.org.il/he/?p=17495>

⁵³ An appeal against the amendments was submitted to the National Planning and Building Council on August 15, 2012 by ACRI, the Hotline for Migrant Workers, PHR-Israel, Amnesty International, and ASSAF - Aid Organization for Refugees and Asylum Seekers in Israel (Hebrew): <http://www.acri.org.il/he/wp-content/uploads/2012/08/tma46-2.pdf>

Knocking on the Fence: The Treatment of Asylum Seekers across the Border

In August 2012, the media reported⁵⁴ that human rights organizations had learned of instances in which the Israel Defense Forces entered Egyptian territory, arrested people heading toward the Israeli-Egyptian border, and handed the detainees over to the Egyptian security forces. Since there are grounds to suspect that Egypt will not respect the rights of these detainees, and will deport them to their country of origin, Israel's actions are contrary to the principle of non-refoulement. This key principle in the Convention regarding the Status of Refugees establishes that a person must not be forced to return to a state where he will face danger of persecution or other grave human rights violations.

In September 2012, Israel refused to allow 21 asylum seekers who reached the fence on the Israeli-Egyptian border to enter its territory. The asylum seekers were left by the fence for approximately one week in intense heat. The media reported that the Israeli soldiers guarding the border were given orders to provide these individuals with "as little water as possible"⁵⁵. A delegation of human rights activists sought to deliver equipment to the group, but the authorities denied them access⁵⁶. The High Court delayed its decision on a petition demanding that the individuals involved be permitted to enter Israel⁵⁷. Eventually, three of the asylum seekers (two women and a boy) were allowed into Israel and immediately imprisoned; the others were sent back to Egyptian territory⁵⁸,

⁵⁴ For example: Elad Benari, *Report: IDF Arresting Illegal Aliens in Sinai*, Arutz Sheva, August 10, 2012 http://www.israelnationalnews.com/News/News.aspx/158789#.ULj-huQ6_To

Rights groups: IDF catching African migrants inside Egyptian territory, Haaretz, August 10, 2012 <http://www.haaretz.com/news/diplomacy-defense/rights-groups-idf-catching-african-migrants-inside-egyptian-territory-1.457447>

⁵⁵ Gili Cohen, *African migrants trapped between fences on Israel-Egypt border*, Haaretz, September 4, 2012 <http://www.haaretz.com/news/diplomacy-defense/african-migrants-trapped-between-fences-on-israel-egypt-border-1.462708>

⁵⁶ Gili Cohen, *Police bar Israeli doctors' NGO from accessing Eritrean refugees trapped near border*, Haaretz, September 6, 2012 <http://www.haaretz.com/news/diplomacy-defense/police-bar-israeli-doctors-ngo-from-accessing-eritrean-refugees-trapped-near-border-1.463176>

⁵⁷ HCJ 6582/12 *We Are Refugees Association by State of Israel – Defense Minister*. For the text of the petition (in Hebrew), see: <http://tinyurl.com/cvyypep>

⁵⁸ Tomer Zarchin and Talila Neshet, *High Court to Israeli NGO: State does not have to address partial acceptance of African migrants*, Haaretz, September 11, 2012 <http://www.haaretz.com/news/national/high-court-to-israeli-ngo-state-does-not-have-to-address-partial-acceptance-of-african-migrants-1.463703>

in all probability by use of force⁵⁹. The court deleted the petition without clarifying what had become of the appellants⁶⁰. Over the following weeks, several similar incidents were reported⁶¹.

Human rights organizations, jurists and the UN High Commissioner for Refugees all argue that Israel's refusal to allow such individuals to enter its territory is a violation of its obligations under the Refugees Convention. Israel has the right to construct a fence, but the presence of a fence does not exempt the state from its responsibilities. When people are knocking on the fence in fear of their lives, Israel must examine whether they are in danger. If they are, they must be permitted to enter.

The State of Israel has the right to protect its borders, to establish rules for entry, and to inspect those entering its territory. However, any means it employs must take into account the moral and legal obligation to refrain from imprisoning or punishing refugees and asylum seekers. The processing of asylum seekers certainly presents Israel with complex challenges, but Israel is not the only Western country that is coping an influx of asylum seekers⁶². In order to develop appropriate solutions, Israel must face reality. The asylum seekers will not be leaving Israel over the next few years, and Israel will be obliged to accommodate them and to meet its obligations in the fields of employment, welfare, health and education in accordance with the Convention regarding the Status of Refugees. Israel must apply an effective but fair mechanism for the individual examination of applications for asylum.

⁵⁹ Talila Neshet, *Eritrean migrants tell of IDF violence at Israel-Egypt border*, Haaretz, September 11, 2012: <http://www.haaretz.com/news/diplomacy-defense/eritrean-migrants-tell-of-idf-violence-at-israel-egypt-border-1.464325>.

⁶⁰ Ruling (Hebrew): <http://elyon1.court.gov.il/files/12/820/065/s03/12065820.s03.htm>

⁶¹ *Israel: Asylum Seekers Blocked at Border*, Statement on Human Rights Watch website, October 28, 2012: <http://www.hrw.org/news/2012/10/28/israel-asylum-seekers-blocked-border>

⁶² Asylum seekers migrate to many countries around the world. The heaviest burden is borne by Third World countries that border countries from which the asylum seekers flee.

Privatization: What's the Limit?

"Privatization is not a magic wand, of course, and cannot provide grounds for the state to shirk its obligations⁶³."

"... The power to exercise coercive force to deny or restrict liberty is given to the state by virtue of a metaphorical 'social contract' that is made between it and the citizens living in it... This power that was entrusted to the state as the agent of the political community lies at the very heart of the government's sovereign functions, alongside the power to maintain an army, a police force and courts. The transfer of these functions from the state to a private enterprise undermines the justification that underlies the exercising of the power and amounts to a refusal by the state, albeit only a partial one, to play 'its part' in the social contract. It makes the state a bystander that does not seek to realize independent goals of its own⁶⁴."

The state has certain functions that are core to the authority of the state, including the use of force given the great potential for infringing on human rights. Only public arms of the state may therefore legitimately exercise these powers. Introducing private, particularly economic, factors to the performance of these functions undermines the public's constitutional rights; and so, some powers and functions must not be privatized.

In light of the privatization of social services over the last two decades, however, more and more powers of law enforcement and the judiciary have been privatized, including tax collection, policing, and prosecution. A recent addition to this list is a proposal to privatize the powers of the court through the use of mandatory arbitration conducted by a lawyer in private practice. These forms of privatization erode the public legal system and increasingly narrow the role of the state with troubling implications for human rights.

⁶³ Justice Melcer in HCJ 1083/07 *Israeli Medical Union v. Ministry of Health*, (PD 24 May 2012), <http://elyon1.court.gov.il/files/07/830/010/k23/07010830.k23.pdf> (Hebrew).

⁶⁴ Justice Arbel in HCJ 2605/05 *Academic Center of Law and Business, Human Rights Division v. Minister of Finance*, ("the prison privatization case") http://elyon1.court.gov.il/files_eng/05/050/026/n39/05026050.n39.htm.

Privatizing Police Powers⁶⁵

Over the past twenty years, the privatization of police powers and functions has escalated in Israel. Like the privatization of social services – health, education, and welfare – the privatization of police services was also preceded by a long process of cutbacks to funding these services⁶⁶, which resulted in the inability of the police force to meet growing demands within the budget it was allocated. Over the last two decades, for example, the number of police forces deployed in police stations around the country has remained unchanged, although the population in most major cities of Israel has doubled⁶⁷.

There are several reasons for the privatization of police powers: (a) the inability of the police to cope with its diverse roles given the resources at its disposal – this has undermined the personal security of citizens, hence many responsibilities, powers, and functions were subcontracted to private firms; (b) the growth of some local authorities, which led to their desire to make up for the slack in the functioning of the police force; and (c) neo-liberal discourse, which views police work – like other public services – as a commodity that can be provided more efficiently by the private sector applying the rules of a free market economy⁶⁸.

In addition to the Israel Police, a variety of bodies now perform a range of diverse tasks, from securing and guarding sites to engaging in what are clearly police functions. We review below examples of privatized police functions, such as private municipal police, and securing Jewish sites in East Jerusalem. We then consider the problems and human rights violations this privatization leads to.

Municipal Policing: Private security guards and expanded powers of municipal inspectors

⁶⁵ ACRI will soon issue a comprehensive report on privatization in the area of law enforcement written by Atty. Anne Suci. This chapter is based on the draft report.

⁶⁶ See Tali Nir, *Between Realization and Dehydration: Israeli Government's Methods for Draining Social Services*, ACRI, April 2012, <http://www.acri.org.il/en/2012/07/11/between-realization-and-dehydration/>.

⁶⁷ Yaniv Kubovich, *Not enough police forces patrolling Israeli streets, report says*, Haaretz, 23 May 2012, <http://www.haaretz.com/news/national/not-enough-police-forces-patrolling-israeli-streets-report-says-1.432016>.

⁶⁸ For an analysis of the privatization of the police force, see Erella Shadmi, *Fortified Land: Police and Policing in Israel*, Hakibbutz Hameuchad, 2012, chapter 4.

Over the past twenty years or so, dozens of municipalities –Haifa, Hadera, Holon⁶⁹, Rosh Ha'ayin, Rishon Le'Zion⁷⁰, Rehovot, the local council of Pardesiya⁷¹, and others – have adopted a range of models for patrolling and policing their towns: integrated police units, municipal policing, private policing, a volunteer police force, security patrols, etc. (These are not related to the “Municipal Policing” pilot program discussed below.) Every local authority adopts its own model and no law regulates their activity or supervision. The policing units are composed of municipal inspectors, patrol officers who are municipal workers, guards working for private security firms, or volunteers who operate independently or in coordination with the police. Funding for these units is often provided by a monthly security fee paid by the residents⁷².

Municipal security forces were originally hired to work as security guards⁷³. These private guards and patrols were not given police powers or enforcement authority, and were ostensibly allowed only to deter and report. Over time, however, they became in some localities a kind of “private municipal police force” of security guards and armed patrols. They now engage in all aspects of policing, including the protection of property within the city limits, the prevention of break-ins, violence and vandalism, and the handling of undocumented workers. They patrol, set up checkpoints and control points, search vehicles, and even pursue suspects. They take part in enforcement activities on a daily basis as they carry out detentions, searches, demands for identification, and even arrests. They perform this activity with the knowledge and even support of the police even though, as noted, they are not authorized to exercise police powers.

When the city of Holon hired mobile armed patrols, the High Court of Justice ruled in 2009 that the municipality has no legal authority to employ such patrols for the prevention of terrorist activity, and therefore it has no authority to levy fees for these services⁷⁴. Following pressure from local

⁶⁹ Holon municipality, *Security Patrol* (slideshow), <http://tinyurl.com/ctckhb8> (Hebrew); Shirley Moreh, “The Security Patrol uncovers: Undocumented workers, vandalism, and noise”, *mynet*, 15 July 2009, <http://www.mynet.co.il/articles/0,7340,L-3746710,00.html> (Hebrew).

⁷⁰ Website of the Rishon Letzion Security and Public Safety Company, <http://rlz-bitachon.co.il/?CategoryID=188>; Tal Tannenbaum, *Not a quiet night: A night patrol in Rishon Letzion with the Security Company*, NRG-Maariv, 25 July 2011, <http://www.nrg.co.il/online/54/ART2/263/228.html> (Hebrew).

⁷¹ Website of the Pardesiya local council, private police, <http://www.pardesia.muni.il/service/bitahon-herum/Pages/privat-police.aspx> (Hebrew).

⁷² Imposition of this fee is regulated by a circular issued by the Director General of the Interior Ministry 4/2002, “Bylaws regarding the fee for guards and security services”.

⁷³ See Shadmi, *Fortified Land*, op. cit., chapter 4.

⁷⁴ HCJ 06/7186 *Melinovski vs Holon Municipality* 29 December 2009, <http://www.nevo.co.il/psika.html/elyon/06071860-t31.htm>

authorities, the Knesset passed an amendment to the Municipalities Ordinance⁷⁵ in March 2011 that allowed local governments to continue to employ municipal patrol units and charge the residents for them. The regulations issued in light of this amendment⁷⁶ do not clearly delineate the boundaries of this activity, and open the door to private policing units that lack training and supervision, but engage in a broad range of activities that had previously been considered core to police work.

Parallel to the deployment of private security forces in dozens of local authorities, all operating without uniformity, authorization, or supervision, an attempt was made to create and regulate a joint police unit that would be composed of municipal police and inspectors. In August 2011, the Knesset enacted the Law to Make Urban Law Enforcement and Monitoring Effective in Local Authorities (Temporary Order)⁷⁷. This law gave legal underpinning to a pilot policing program in 13 local authorities for a two-year period. In this program, municipal inspectors work alongside police officers, but the inspectors are authorized to demand identification from people, detain individuals engaged in violence, and conduct a search of anyone suspected of carrying a weapon. In certain “high-risk” locations – public parks, commercial areas, beaches, parking lots, open-air events, and recreation areas – the inspectors are authorized to exercise these powers even in the absence of a police officer.

In May 2012, four more cities were added to the pilot program⁷⁸, and more can be expected to join. After every wave of violence, bills are submitted to the Knesset to extend the powers of the municipal inspectors and guards, and mayors call for them to be given more authority⁷⁹.

Bestowing police powers on municipal inspectors does not evoke the same concerns as giving such authority to entirely private bodies, such as guards hired by security firms. Inspectors are civil servants who are accountable to the municipality, the Civil Service Personnel Code applies to them, and a public official is supposed to oversee and scrutinize their work. Nevertheless, these two

⁷⁵ Amendment to the Municipalities Ordinance (Temporary Order) – 2011. This temporary order is valid until 31 December 2013.

⁷⁶ Municipal Regulations (Enforcement and Protection of Public Safety in a Local Authority) – 2011.

⁷⁷ For ACRI’s position on this bill, see <http://www.acri.org.il/en/2011/08/22/knesset-roundup-summary-of-summer-session-2011/>.

⁷⁸ On 16 May 2012, the Knesset’s Internal Affairs Committee approved the Order to Make Urban Law Enforcement and Monitoring Effective in Local Authorities (Temporary Order) – 2011, amending it to add the municipalities of Be’er Sheva, Afula, Ramle, and Shfaram to the program.

⁷⁹ For example, in the wake of violence between neighborhood residents and asylum-seekers in south Tel Aviv, Mayor Ron Huldai announced his intent to establish municipal patrols (Ilan Lior, *Tel Aviv plans new public-order patrols to aid beleaguered cops*, 15 May 2012, <http://www.haaretz.com/news/national/tel-aviv-plans-new-public-order-patrols-to-aid-beleaguered-cops-1.430477>).

phenomena – expanding the authority of the inspectors and the hiring of private security guards – have a similar purpose: relegating the power for public safety and security to low-cost agencies whose personnel have less rigorous training and supervision than the police.

Securing Jewish Sites in East Jerusalem⁸⁰

Approximately 2,000 Jewish settlers live in dozens of enclaves in the heart of Palestinian neighborhoods throughout East Jerusalem. Since the early 1990s, some 350 armed guards employed by a private security firm have patrolled these enclaves with the goal of ensuring the security of the Jewish residents. The activity of this unit is financed by the Ministry of Construction and Housing at a cost of tens of millions of shekel.

The presence of private security guards whose job is to protect the Jewish from the Arab residents creates much tension, beginning with their very role: Unlike the police, these guards are not under orders to provide a service to all the residents, but only to protect some residents from others. Operating in such a sensitive location exposes them daily to tense interactions with the residents, and they are confronted with complex situations that necessitate decision-making about the use of force and weapons. Security guards are not police and have not been trained to engage in policing functions in situations of confrontation, nor are they equipped to handle emergencies. As a result, their conduct can escalate tension and has even ended in the firing of weapons. Such conduct can cause severe harm and even death⁸¹.

The use of private firms to secure these enclaves persists despite objections raised over the years by government officials and the police, and even though a committee appointed to examine this issue stated unequivocally that the authority for security in East Jerusalem must remain in the hands of the police⁸². Furthermore, for twenty years, these security guards have operated in East Jerusalem without any legal authority. Only in 2010 did the Minister of Internal Security authorize

⁸⁰ For further information, see 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>, pp. 12-15; and ACRI's petition against the use of security guards: HCJ 8001/11 *Jawad Siyam v. Government of Israel*, <http://www.acri.org.il/en/2011/10/31/petition-deployment-of-private-security-guards-in-e-jerusalem-is-unlawful/>.

⁸¹ Samer Sarhan, a Silwan resident, was fatally shot by a security guard in September 2010. See, for example, Liel Kyzer, Nir Hasson, and News Agencies, *Palestinian shot dead by Israeli guard in East Jerusalem, sparking riots*, Haaretz, 22 September 2010 <http://www.haaretz.com/news/diplomacy-defense/palestinian-shot-dead-by-israeli-guard-in-east-jerusalem-sparking-riots-1.315144>

⁸² The Or Commission was appointed in 2005 to examine the subject of providing security for the enclaves in East Jerusalem by the Ministry of Construction and Housing.

the work of the security guards by virtue of the Authority for the Protection of Public Security Law. The intent of this law, however, was not to authorize private guards to engage in perimeter security operations, provide armed escorts, or maintain public order, as security guards are called upon to do in East Jerusalem.

In response to the petition submitted by ACRI on behalf of Palestinian residents of East Jerusalem, the state argued that the security guards do not replace police, but supplement them, and that the role of the guards is no different from the tight security employed at malls, public places, or highly sensitive venues⁸³. In practice, however, rather than the police being the main body on site ensuring adherence to the law and resolving violent conflict, this role has been taken on by the private guards, with the police often serving as the auxiliary force⁸⁴. The petition is still pending.

Mandatory Arbitration Bill – A step toward privatizing the courts

Adjudicating civil disputes is an important component of maintaining public order, regulating social behavior, ensuring the rule of law, equitably distributing rights and obligations, and safeguarding human rights. Furthermore, rulings in civil lawsuits have the potential to bring serious harm to an individual in various realms – property rights, the right to dignity, the right to due process, etc. Control over such sensitive areas is currently at risk of privatization.

A government bill⁸⁵ that passed its first reading in July 2011 and is being deliberated in the Knesset's Constitution, Law and Justice Committee would allow the courts to compel litigants in some civil lawsuits to have their case adjudicated by an attorney in private practice. According to the bill, the president or deputy of the Magistrates' Court could forward civil lawsuits to an

⁸³ H CJ 8001/11 *Jawad Siyam v. Government of Israel*, para. 52-53 of the preliminary response of the state from 8 January 2012.

⁸⁴ See, for example, a letter dated 25 March 2010 from Izzi Lehrer, head of the Security Division in the Ministry of Construction and Housing, to the Director General of the Ministry: "The police seem to rely too much on the civilian guard unit even in situations with which the civilian unit was not designed to cope and is incapable of doing so." The letter was appended to the aforementioned petition H CJ 8001/11 *Jawad Siyam v. Government of Israel*.

⁸⁵ The Courts Bill (Mandatory Arbitration) (Temporary Order) – 2011. For more about this, see *Privatizing the Courts – Denying Access to Justice*, ACRI, 3 September 2012, <http://www.acri.org.il/en/2012/09/03/mandatory-arbitration-bill/>. Also see a position paper on this issue prepared by ACRI attorney Anne Suci for the Van Leer Jerusalem Institute's Yaakov Chazan Center for Social Justice and Democracy, *Privatization without Limits: The Case of the Mandatory Arbitration Bill*, April 2012, http://hazan.kibbutz.org.il/hafrata/niir_emda_borrot_hoba_-_sopi_-_30_4_12.doc (Hebrew); and the position paper of the Clinic for Social Change in the Academic Center of Law and Business, June 2011, <http://www.clb.ac.il/uploads/borerut.pdf> (Hebrew).

arbitration process conducted by a private attorney without needing permission from the litigants themselves. While judges in Israel undergo a strict selection process and are bound by a long list of restrictions intended to ensure their impartiality, the main condition for appointing lawyers as arbitrators would be seven years of experience. Furthermore under this bill, such arbitration would not have to follow the rules and procedures by which courts of law must abide.

This bill seeks to resolve the problem of an over-burdened court system, but it actually serves to privatize the judiciary, as the state shirks its basic obligations and roles, blurring the border between the private and public. A comparison with other countries reveals that the form of mandatory arbitration described in this bill exists nowhere else in the world. Even in countries where cases are forwarded for arbitration, the litigants maintain the right to access the public legal system⁸⁶.

This bill harms the right of access to the legal system and undermines the following specific rights: to an independent and impartial judge, due process that adheres to procedures and rules known in advance, parity between the parties, and the prevention of an arbitrary decision. The bill also harms the right to equality, as it would apply only to lawsuits under NIS 2.5 million: Compelling “small” cases to enter into arbitration would remove weaker groups from the legal system, against their will. The judiciary is considered a fair, independent and impartial system, but this bill would tarnish its image and reduce public confidence in the judiciary, the rule of law, and state enforcement.

Many jurists, including past and present Supreme Court justices, have voiced strong opposition to this bill. Current Supreme Court President Asher Grunis, for example, wrote that the bill “undermines the independence of the judiciary, the right to due process, and the right to present one’s case before a court. The bill is unconstitutional and will not achieve its aim.”⁸⁷ Even Justice Dorit Beinisch expressed objection to this bill while she served as Supreme Court President⁸⁸. In the Knesset’s Constitution, Law and Justice Committee, some Knesset members voiced grave reservations about the implications of this bill⁸⁹.

⁸⁶ Suci, *Privatization without Limits*, op. cit.; also Anne Suci, *Even in America, they didn’t try to privatize the courts yet*, *Calcalist*, 7 September 2012, <http://www.calcalist.co.il/local/articles/0,7340,L-3582324,00.html> (Hebrew).

⁸⁷ Press release of the Constitution, Law and Justice Committee on the Knesset website, 5 September 2012, <http://knesset.gov.il/huka/News.asp?NewsID=629> (Hebrew); Aviel Magnezi, *Neeman’s Arbitration Law: Even the lawyers are opposed*, *Ynet*, 3 September 2012, <http://www.ynet.co.il/articles/0,7340,L-4276430,00.html> (Hebrew).

⁸⁸ Aviad Glickman, *Beinisch versus Neeman: Mandatory Arbitration will harm the courts*, *Ynet*, 15 September 2011, <http://www.ynet.co.il/articles/0,7340,L-4122484,00.html> (Hebrew).

⁸⁹ For example MK Isaac Herzog, as quoted in the press release of this committee on 5 September 2012 (footnote 87 above): “So add more money to the budget of the judges. For this you ruin an entire system? You can’t force

The judiciary in Israel has clearly been over-burdened over the past three decades. Some estimates say that the judicial caseload (the number of cases per judge and number of judges relative to the population) is twice as high in Israel as in most western countries⁹⁰. Although this burden causes severe delays in adjudicating cases and harms the right to access the courts, the privatization of the judiciary is not a legitimate solution to the problem.

As with other forms of privatization, the government plans to invest large amounts of money outside the public system rather than investing in the civil service itself, which is in dire need of support. Before privatizing the judiciary on the grounds that it is inefficient and ignores the rights of citizens, it should be properly funded and made more efficient. The number of judges should be increased and the budget should enable them to handle the caseload. Also, paralegals and law clerks can be employed, the fast track for deliberation can be expanded, the maximum amount allowed for adjudication in small claims court should be raised, etc. All these steps can be taken with the funds that the state wishes to invest in privatization.

arbitration on citizens just because someone doesn't know how to manage the system! ... There will be horrible situations of conflict of interest and we'll never know about them. This is privatization of the judiciary."

⁹⁰ For more on this and other sources, see Suci, "Privatization without Limits", op. cit.

Right of Access to the Courts: Imposing Court Costs on Public Petitioners

In August 2012, the High Court of Justice denied a petition filed by ACRI, Physicians for Human Rights – Israel, and the Adva Center asking the court to disallow private medical services in the new public hospital planned for Ashdod⁹¹. In an unusual decision for public petitions, the court also imposed NIS 45,000 in court costs. In the thirty year history of ACRI as a public petitioner, this is only the second time court costs were imposed on it when a petition was denied⁹².

This unusual demand to pay court costs was preceded by similar rulings in recent months in which relatively high fees were imposed on public petitioners⁹³:

In August 2012 – the day these court costs were imposed in the matter of private medical services in Ashdod – the High Court also imposed court costs of NIS 18,000 on Prof. Shmuel Kaniel. Kaniel petitioned the court to compel the state to adopt the Sheshinski Committee recommendations on the distribution of profits from Israel's natural gas and oil reserves in their entirety, and to impose higher taxes on the gas companies⁹⁴. This petition was denied as were the petitions of several gas companies that had called for rescinding the law that would raise the tax rate on them. The court costs imposed on the companies were particularly high – NIS 125,000 to the Ministry of Finance and another NIS 125,000 to the Knesset, per company. While it is common to impose real costs on

⁹¹ HCJ 2114/12 *Association for Civil Rights in Israel vs. Government of Israel* (ruling dated 15 August 2012). For the court documents and decision, see <http://www.acri.org.il/he/?p=20262> (Hebrew).

⁹² The first case was in 1989 – HCJ 528/88 *Avitan v. Israel Lands Authority*, PD 43 (4) 297 (1989), in the matter of discrimination against Jews seeking to purchase property in a Bedouin township; this was not a public petition but submitted in the name of a specific petitioner.

⁹³ Some examples appear in Tomer Zarchin, *NGOs shocked by High Court's imposition of NIS 45,000 in court costs*, Haaretz, 17 August 2012, <http://www.haaretz.com/print-edition/news/ngos-shocked-by-high-court-s-imposition-of-nis-45-000-in-court-costs-1.458867>. The article also presents the reaction of the court spokeswoman: "The High Court of Justice imposes court costs in every case based on its merits and circumstances. Among the cases cited are petitions that the court refused to hear as other legal remedies were not yet exhausted, respondents had not been added to the petition, and so forth. In other cases, the court has ruled to reduce the court costs imposed – see, for example, HCJ 4620/11 in which a majority of the justices ruled to lower the court costs on a public petitioner, from NIS 25,000 imposed by the District Court to NIS 12,000. For commercial, not public, petitioners, higher costs are imposed."

⁹⁴ HCJ 3734/11 *Dudian v. Israeli Knesset*, (ruling dated 15 August 2012), <http://elyon1.court.gov.il/files/11/340/037/c14/11037340.c14.pdf> (Hebrew). It should be noted that the total amount of court costs is also a function of the number of respondents to the petition. In the case of private medical care in Ashdod, court costs were set at NIS 15,000 per petitioner; in the case of Prof. Kaniel, a fee of NIS 3,000 was imposed on each.

commercial firms that file petitions with potentially significant financial consequences, Prof. Kaniel is a public petitioner appealing to the court in the name of the principles of the right to equality and the protection of public assets. The court took this into consideration, but still imposed very high court costs.

In July 2012, the High Court of Justice set court costs of NIS 15,000 on the Ometz Movement, which had petitioned to compel the Attorney General and Police to open a criminal investigation into the procedure used to appoint a Chief of Staff ("the Harpaz affair")⁹⁵.

In March 2012, the High Court summarily dismissed a petition filed by Prof. Yossi Yona, Dafni Leef, and other social protest activists against the privatization of maintenance work on the railways, and the petitioners were charged NIS 30,000 in court costs⁹⁶.

A public petition is one filed by an organization or individual that seeks to protect human rights, strengthen the rule of law, and eliminate government corruption or illegal activity by any authority. It resembles a class action suit, but the petitioner in a class action expects to receive monetary recompense if the petition is granted, whereas a public petitioner to the High Court has no vested interest other than improving the situation. In many public petitions, human rights organizations serve as the voice for those who cannot stand up for themselves because they have no resources to seek legal aid or they fear the repercussions of being at the forefront of a public issue.

Two tracks exist in recent years: On the one hand, the High Court usually maintains its traditional policy of not charging courts costs to public petitioners even if the petition is denied. On the other, more and more cases are forwarded to the Administrative Courts, where some District Court Judges have been imposing significant court costs when a public petition is denied, as if it were a civil suit on a financial matter. In one case, ACRI appealed a decision about court costs to the Supreme Court, which cancelled the fee, but did not establish a binding precedent in the matter.

In August 2012, in response to a Supreme Court appeal filed by Gisha: Legal Center for Freedom of Movement, Justice Uzi Vogelman established an important legal principle concerning the criteria for imposing costs when dismissing public petitions in Administrative Courts, which reflects what had been customary until recently in the High Court⁹⁷. "This Court," wrote Justice Vogelman, "has recognized more than once the importance of petitions filed by 'public petitioners' as a means to

⁹⁵ HCJ 4567/12 *Ometz Movement v. Attorney General* (ruling dated 15 July 2012).
<http://elyon1.court.gov.il/files/12/670/045/104/12045670.l04.pdf> (Hebrew).

⁹⁶ The petition was dismissed for reasons of time lags, the existence of alternate channels of relief, and the fact that no earlier appeal was filed. HCJ 1802/12 *Yona v. Ministry of Transportation, National Infrastructure and Road Safety* (ruling dated 14 March 2012).

⁹⁷ Administrative Appeal 4620/11 *Kishawi v. Minister of the Interior* (ruling dated 7 August 2012),
<http://elyon1.court.gov.il/files/11/200/046/m14/11046200.m14.pdf> (English).

advance the rule of law and constitutional principles, and to rectify fundamental flaws in public administration. The Courts have exercised restraint in imposing court costs on public petitioners to avoid deterring them from taking legal steps for the public good.” Nevertheless, several Supreme Court justices recently expressed their reservations about petitions from public entities – the imposition of court costs in the case of private medicine in Ashdod is one reflection of this.

Imposing large court fees on public organizations and public petitioners has two negative impacts:. First, it has a deterrent and chilling effect, reducing the number of public petitions and narrowing the field of human rights violations and social injustices that would be adjudicated by the courts⁹⁸, thereby undermining access to the courts of disadvantaged groups and dashing their hope of seeing justice done. And, second, most civil society organizations have a limited budget; the imposition of high court fees would undermine their activity. One can only hope, then, that Justice Vogelmann’s approach will be the one that prevails among Supreme Court Justices.

⁹⁸ See the views of human rights lawyers in “NGOs shocked by High Court’s imposition of NIS 45,000 in court costs”, *Ha’aretz*, op. cit.; and Tomer Zarchin, “Israel’s High Court waving a ‘black flag’ over rights groups’ petitions, experts say”, *Ha’aretz*, 19 August 2012, <http://www.haaretz.com/news/national/israel-s-high-court-waving-a-black-flag-over-rights-groups-petitions-experts-say-1.459299>. Note that in the latter article, a different view was expressed by the Israel Democracy Institute, namely, that the recent imposition of high court fees does not proscribe the filing of public petitions to the High Court, but only reduces their number, which will ease the caseload and ultimately enhance the efficiency of and access to the court. See also Levi Inbar and Mordechai Nadiv, “Imposing Court Costs on Public Petitioners to the High Court: Are all the Gates Locked?” Israel Democracy Institute, September 2012. A similar view was expressed by Supreme Court Justice Noam Solberg – see Hila Raz and Noam Solberg, “The Inflation of Rights Reduces Their Value”, *Haaretz*, 18 October 2012, <http://www.themarker.com/law/1.1845577> (Hebrew).

The Right to Privacy⁹⁹

Advanced information technologies can contribute significantly to the public good and to individuals. However the introduction of such technologies should be conducted carefully: It is important to examine alternatives, weigh up the benefits against the harm to the right to privacy, and of course abide by the law. In recent years, the use of information technology in Israel is increasing and in turn, violating the right to privacy and the basic principles of a democratic country. Authorities and senior clerks often build unconstitutional mechanisms under various guises for the purposes of collecting and tracking information, thereby determining facts on the ground. Only once these mechanisms are already in operation – and consequently violating basic constitutional rights – do they submit a bill for approval by the Knesset, which is tailor-made for their criteria.

At times the mechanisms for collecting information are billed as a “pilot” whose success is predetermined – and the constitutional and ethical discussion by the Knesset is conducted in the shadow of a practical fait accompli. Excluding the violation of human rights, this practice harms the rule of law and the Knesset’s sovereignty. The following are several recent initiatives that exemplify this method.

The Biometric Database

Israel has been in the process of establishing a biometric database that will include fingerprints and facial scans of all Israeli citizens and residents. Due to the public struggle against the database¹⁰⁰ and opposition by Knesset members, the government withdrew its original plan and proposed delaying the decision whether to launch the database by two years, during which it would operate a “pilot”. This “pilot” was designed to examine the biometric system’s technical aspects, but in fact predominantly to demonstrate its necessity. The Knesset warmly welcomed the agreement: The presumption that the very existence of the biometric database will be conditioned on the pilot’s

⁹⁹ This chapter is based on: Avner Pinchuk, *When the government breaks the law*, Eretz Acheret, Issue no. 64, April 2012, <http://www.pratiut.com/2012/07/blog-post.html> (Hebrew).

¹⁰⁰ To read about the biometric database and the struggle against it: See <http://www.acri.org.il/he/?cat=113> (Hebrew).

success enabled many Knesset members to drop their opposition to the bill, which was approved in the plenum by a large majority.

However, it turned out the “pilot” was designed so that most of the issues it examined were not at all related to the question of its necessity, but rather to technical aspects that were supposed to be examined anyway. Before the experiment even began, a governmental paper defining the investigation determined that the database is necessary and that there is no point in examining alternatives.¹⁰¹

In February 2012, the Association for Civil Rights in Israel (ACRI), the Digital Rights Movement and two other groups filed a petition to the High Court against the biometric database and against the “pilot.”¹⁰² The petition argued, inter alia, that the “pilot” was not designed to examine alternative solutions; it also doesn’t examine whether the database is preferred to its alternatives – and if so, how much – and regardless, does not enable the evaluation of the advantages and disadvantages of each alternative. Furthermore, no measurements of success or reliability of the results were defined. The “pilot” was designed solely for the sake of appearances, making the biometric database a reality that will be very hard for the Knesset to change.

In a discussion in July, High Court justices levied sharp criticism of the “pilot.”¹⁰³ They said the absence of a directive guiding the “pilot” plan excludes the possibility of a genuine investigation, emphasizing that an acceptable directive should include clearly defined measures for success and failure, examine the very necessity of the database, and determine feasible alternatives. Following the court’s position, Interior Ministry representatives announced their intention to amend the pilot, and as of November 2012, discussions were continuing to approve a new version of the directive.

National Medical Record

For several years, the Ministry of Finance and Ministry of Health have been advancing an initiative called the “National Medical Record” – a computerized database that will make highly sensitive medical information accessible in thousands of computer stations in hospitals, clinics and HMO

¹⁰¹ <http://www.acri.org.il/he/wp-content/uploads/2012/07/hit1516appendix5part3.pdf>, Clause 19. The document was submitted to the court by the Interior Ministry within the framework of a discussion of ACRI’s petition along with others, of the biometric database, H CJ 1516/12 Nahon v. Knesset <http://www.acri.org.il/he/?p=1750> (Hebrew).

¹⁰² Ibid. H CJ 1516/12 Nahon v. Knesset.

¹⁰³ *The High Court strongly condemned the Interior Ministry’s preparation for the biometric database “pilot,”* ACRI press release July 23, 2012 <http://www.acri.org.il/en/2012/07/23/hearing-on-biometric-database/>

branches. Certainly, the integration of information technology in the health services system can make a significant contribution to improving medical treatment and helping prevent mistakes and tragedies, but a centralized system of medical records also endangers the medical privacy of millions of patients.

In 2004, the Health Ministry's director-general appointed a committee¹⁰⁴ to determine the legal and ethical guidelines for operating an electronic national medical record. The committee's findings were supposed to constitute the basis for a Knesset bill, but it turns out that the leaders of the Health and Finance Ministries already had a detailed plan to implement the National Medical Record that was designed according to bureaucratic needs, disregarding patients' privacy.¹⁰⁵ In the meantime, the National Medical Record was being built under the guise of "pilots." One of the "pilot's" operators was asked what they learned from its execution regarding information security and protecting medical privacy. The response was that it did not occur to them to evaluate this issue. Even worse, it became clear that they did not even carry out the basic instructions determined by the Protection of Privacy Law in Database Management.

The Health Ministry's "pilots" continue and will continue to create an irreversible reality, institutionalizing a severe violation of medical privacy for all Israeli residents, according to a plan that has not been discussed by the public and its representatives. Simultaneously, attempts to develop ethical and legal arrangements for the initiative have been neglected.¹⁰⁶ In the last year, the Health Ministry has taken another step towards completion of the system and has directed all national health institutions to fit their information systems to a uniform standard, so as to enable their correlation.

"A City without Violence"

In the context of the "City Without Violence" project, the Ministry of Internal Security is working to hook up public spaces to a network of surveillance cameras. Hundreds of cameras are already

¹⁰⁴ Prof. Avinoam Reches headed the committee, who is head of Israeli Medical Association Ethic Committee, in which experts and medical and legal organization representatives participated, including an ACRI representative.

¹⁰⁵ Avner Pinchuk, *National Medical Record The Hippocratic Oath in the Shadow of Bureaucrats and IT Experts*, April 8, 2011: <http://www.acri.org.il/en/2011/04/08/the-hippocratic-oath-in-the-shadow-of-bureaucrats-and-it-experts/>

¹⁰⁶ After it became clear a "scarecrow" was made for the benefit of the Health Ministry's one-time use, Prof. Reches notified head of the project's ethic committee of his resignation from the position he filled devotedly for seven years. "The Ministry is acting unilaterally," he wrote to its director-general....I am personally convinced that the computerized system of this kind is important and necessary, but there are many implicit threats to a patient's privacy that to the best of my knowledge have not been solved."

positioned throughout cities, and their number continues to grow,¹⁰⁷ despite findings from international studies that cast doubt on their effectiveness in preventing crimes. The recorded information captured by the cameras is transferred to giant databases that store them for years and years. In effect, the Israel Police is building an invasive and dangerous tracking system without any judicial authority or public scrutiny. If that were not enough, the police also transfer authoritative powers to dozens of local authorities, thereby enabling each one of them to operate these video surveillance systems within their jurisdiction as they see fit.

The discussion initiated by the Justice Ministry's Public Defender two years ago concluded that the police's video surveillance system violates constitutional human rights, and that the purpose behind the cameras should be anchored in law, restricting its use according to reasonable and measurable principles. However, the Ministry of Internal Security ignored this and continued as it pleased and, in 2011, even issued a huge tender to purchase the video surveillance systems.¹⁰⁸

In May 2012, the Knesset Science Committee emphasized that there is still no legally determined authority to position cameras. The committee called on the Ministry of Justice to regulate the issue through preliminary legislation, and on the Ministry of Internal Security to stop stationing cameras until the project is legislated.¹⁰⁹ In October 2012, the Information, Technology and Justice Authority of the Justice Ministry published guidelines regarding the video surveillance system. The Authority stresses that "protection of public privacy must be a central consideration in planning and executing the video surveillance system." While these guidelines are important, they cannot replace the legislative regulation of this issue.¹¹⁰

The Public Transportation "Smart Card"

¹⁰⁷ See for example: ACRI press release on surveillance cameras December 5, 2011 <http://www.acri.org.il/he/?p=18159> in Hebrew; *Patrolling and cameras: What the authorities do at night*, May 5, 2012, Ynet <http://www.ynet.co.il/articles/0,7340,L-4224990,00.html> (Hebrew).

¹⁰⁸ November 16 tender – framework for establishing a technological system, sensory cameras and urban command and control centers: <http://tinyurl.com/cz2o5sk>

¹⁰⁹ Protocol from the Science and Technology Committee meeting May 2, 2012 <http://www.knesset.gov.il/protocols/data/rtf/mada/2012-05-02.rtf> (Hebrew); Committee press release: <http://portal.knesset.gov.il/Com13mada/he-IL/Messages/02-05-2012a.htm>

¹¹⁰ Database registrar directive no. 4/2012: Use of security and surveillance cameras and photo database, Ministry of Justice website, Oct 21, 2012 <http://tinyurl.com/bwg8aam> (Hebrew).

The “smart card” recently introduced into Israel’s public transportation system (“Rav-Kav”) also serves as a public tracking system. In accordance with the Transportation Ministry’s directives, all public transportation operators collect personal and sensitive information from each passenger that purchases a smart card: identifying data, welfare entitlement or disability entitlement, details of educational institutions, etc. The smart card has a digital chip that holds the passenger’s information, which is scanned every time a person gets on a bus. This is how each travelers’ footprints are documented. Personal information is stored in the databases for a long period of time and transferred between various entities, without basic guarantees that the right to privacy is being protected.¹¹¹

In October 2010, the government submitted a Knesset bill¹¹² requesting that current practices be retroactively authorized without any mention of the sensitivity of the information being held and its protection, and without asking whether there is even the necessity to collect such sensitive information for the purpose of public transport. Knesset members that discussed the bill in early 2012 levied severe criticism against the Transportation Ministry’s conduct. They demanded the ministry implement major changes to the bill and the invasive practices they instituted, and to revise the bill for additional discussion.¹¹³ Nevertheless, in this case as well, the Knesset will find it difficult to put the genie back in the bottle. Millions of passengers already hold “smart cards” that were designed and created without taking privacy into consideration.

¹¹¹ For more information see ACRI’s petition to the Knesset Finance Committee, January 2012: <http://www.acri.org.il/he/?p=19026> (Hebrew).

¹¹² Traffic Ordinance Bill (No. 100), operating license and smart card 2010. For draft of bill and ACRI position <http://www.acri.org.il/he/?p=19307> (Hebrew).

¹¹³ Protocol of the Finance Committee discussion, January 9, 2012 <http://www.knesset.gov.il/protocols/data/rtf/kalkala/2012-01-09-06.rtf> (Hebrew); Press release from January 10, 2012 <http://portal.knesset.gov.il/com3kalkala/he-IL/Messages/01100112.htm> (Hebrew).

Arab Minority Rights

Planning and Building

Spatial planning affects communities, societies and basic human rights. Planning procedures determine how space will be utilized, where infrastructures will be built, including transportation, water and sewage; where public buildings will be constructed, such as schools and clinics; the quantity permitted to be built in a specific area; how tall these structures can be, how wide the roads will be; and which territories will remain green, open areas. The distribution of land resources, planning policies and the approach to planning, or lack thereof, largely determine the quality of life and the range of opportunities offered to populations and communities – often in an unequal manner.¹¹⁴ Poor planning can infringe on various basic human rights, beyond the right to housing: accessibility to health services and education,¹¹⁵ the right to employment, the right to equality and the right to dignity. In contrast, thoughtful planning, especially planning that takes demographic and cultural issues into consideration, can be the central means with which to manage societal issues, promoting social values, basic principles of justice, and advancing the rights of various communities.¹¹⁶

The Arab minority in Israel has been subject to systematic discrimination for years when it comes to lands and planning.¹¹⁷ For decades, the State of Israel has refused to advance master plans in

¹¹⁴ On the relationship between planning and human rights, see Bimkom – Planners for Planning Rights www.bimkom.org and the Arab Center for Alternative Planning www.ac-ap.org.

¹¹⁵ For example, the Lod Valley Regional Council refuses to provide transportation for children from Abu Labda, a neighborhood located inside the council, who study in Arab schools in Ramla, because the neighborhood has no planning status. ACRI has appealed to the Tel Aviv Administrative Court on behalf of several children – *Petition No. 12-07-33556 Abu Labda (minor) and brothers v. the Lod Valley Regional Council* <http://www.acri.org.il/he/?p=22798> (Hebrew).

¹¹⁶ For more information on social considerations in planning proceedings, primarily regarding the discrimination of Arab towns, see ACRI's request to participate as amicus curiae in: Administrative Petition No. 3542/11 Subcommittee of the National Council of Planning and Building v. the Ar'ara Regional Council <http://www.acri.org.il/he/?p=20960> (Hebrew).

¹¹⁷ Note that discriminatory planning is just one aspect of the discrimination against the Arab minority in the field of planning and housing. Other aspects include the shortage of lands and narrow territories of jurisdictions due to land expropriation; house demolitions; the absence of governmental housing plans in Arab towns, including public construction and financial benefits (housing grants, mortgages, benefits for couples and youth, etc.); the exclusion of Arab citizens from towns, neighborhoods and housing initiatives through discriminatory tenders, admission

most Arab communities that would regulate existing construction and facilitate legal residential construction in accordance to the communities' specific needs and unique characteristics. Most residents of Arab communities are barred from attaining permits to build legally. With no other choice, and lacking any residential alternatives, many Arab citizens of Israel are forced to build their homes without permits, which leaves them under constant duress, fearing their homes will be demolished.

Sustainable and egalitarian planning must not be detached from past injustices and the large gaps in conditions between Arab and Jewish communities. Historic discrimination against the Arab population in the allocation of land and housing should compel the government to assume even greater responsibility for the Arab population every time it promotes a housing plan, in order to rectify years upon years of discrimination. However, the government and the planning authorities continue to perpetuate the gaps. The unwillingness to take the Arab community's unique cultural needs into account further widens the gaps and the inequality between Arabs and Jews when it comes to planning.

At the start of 2000, the head of planning in the Interior Ministry launched a wide-ranging initiative to "advance master plans in the non-Jewish sector." A report published by Bimkom-Planners for Planning Rights and the Arab Center for Alternative Planning closely examined the project and its results.¹¹⁸ According to the report, this is the first comprehensive government plan designed for the Arab sector since the establishment of Israel, which has led to the approval of more than 30 master plans. The Interior Ministry's decision to allocate financial and planning resources is in and of itself deserving of recognition. The report also specifies that throughout the process, the discourse about planning and the concept of rights to planning assumed a central role in public debates among Arab citizens, and that a noteworthy number of Arab professionals became part of the staff of planners that prepared the local master plans.

Despite this fact, the organizations determine that "it is difficult to point to a planning breakthrough in Arab communities in the wake of the Interior Ministry's project. The problems and distress that existed before remain, and are even more acute." The initiative was supposed to be concluded within a few years, but even after 12 years, the process is still continuing, and until now, updated master plans have only been approved for half the communities. Despite the expedited

committees and the military service criterion; refusal to lease or sell apartments to Arabs and more (some of these issues are expanded on in the chapter addressing the right to housing). Discrimination against the Arab population regarding land and housing are known facts, accounted for by, inter alia, public bodies, including the Or Commission. For more: Auni Bana, *Housing Crisis in Arab Community of Israel*, ACRI info sheet July 2011 <http://www.acri.org.il/he/?p=15109> (Hebrew).

¹¹⁸ Auni Bana, Reem Swaid, Cesar Yehudkin, *Master Plans in Arab-Israeli towns: 2012 Situation Report*, Bimkom-Planners for Planning Rights <http://tinyurl.com/cfwekuz> (Hebrew).

planning processes and the additional allocation of residential areas in many Arab communities, thousands of existing residential units still lack appropriate planning solutions – and without being able to regulate their legal status, they remain exposed to the threat of demolition. In addition, most updated master plans still lack the crucial addition of industrial and commercial zones, and no significant changes have been made within the municipal boundaries of the local Arab authorities.¹¹⁹

The report raises an important point of comparison between master plans of five pairs of communities, Arab and Jewish, which are similar in location, size and other features. The differences in approach to planning are obvious: Master plans for Jewish communities are conducted out of a “generative planning” approach, which utilizes the maximum resources at its disposal in the space it is developing, and with the prospect of a significant expansion of that population, among other things, due to migration from other communities. When it comes to master plans for Arab communities, the approach is “regulative planning,” which offers basic solutions for the population according to its growth rate, and at times, even below – failing to take into consideration the option that the population will grow even more as a result of migration; and without allocating sufficient land provisions or providing opportunities for local development in the space surrounding the community. Likewise, in all the cases examined (except for small communities within the boundaries of regional councils), the scope of the industrial and commercial zones per capita in Arab communities is less than in Jewish ones – sometimes as much as half of the area, and the building percentages are also low. The result: Arab communities face a shortage of sources of income and the absence of a suitable economic infrastructure.

Even those Arab communities in mixed Arab-Jewish cities, such as Ramla, Lod, Acre, Haifa and Jaffa – are discriminated against, as the government has neglected their planning for decades.¹²⁰ Valid master plans for these communities are partial and outdated, and usually do not permit for their expansion, such that many residents suffer from a crisis in housing: residential density, low quality housing and building without permits. Since investment in infrastructure is insufficient, it is common to see dilapidated buildings and neglected roads in these neighborhoods, as well as a shortage of public institutions, public parks, a weak education system, and a lack of health and

¹¹⁹ Interior Ministry’s response, as reported by Ynet: “Planning institutions are not the entrepreneurs of the construction plans. Local authorities or private authorities submit the construction and development plans, and it is up to the planning institutions to examine whether the plans address the population’s needs, in accordance with infrastructures such as transportation and sanitation. To the best of our knowledge all construction plans for Arab communities that were submitted to the planning institutions were discussed and approved – to the extent that there is the required infrastructure of sanitation, water, sewage and roads <http://www.ynet.co.il/articles/0,7340,L-4218414,00.html> in Hebrew.

¹²⁰ See for example: Shatil – Mixed Cities Projects: http://www.shatil.org.il/files/mixed_cities_english.pdf; Ramla Planning Survey, June 2004 <http://www.bimkom.org/publicationView.asp?publicationId=57> (Hebrew).

welfare services. Some of the Arab neighborhoods are not even recognized by the government and thus get no mention in urban plans.

Thus, for example, the Gan Hekal neighborhood in Ramla has over 2,000 residents, but no banks, no post offices and no government or municipal offices. There are no national insurance branches, community centers or commercial centers; no green areas, playgrounds or parks; no family health center branches or clinics, except for one tiny HMO branch that only operates a few hours a day. There are over 1,000 residents in the Kerem Eltofah neighborhood in Lod living in severe residential density, but the planning authorities ignore their existence. The city's master plan designates the neighborhood's land, among other things, for residential units, and conditions development and construction on the preparation of a detailed plan for the neighborhood – but unlike the Jewish neighborhoods in the city, no such plan was drafted for over 20 years. The void in planning forced residents to build unregulated residential units. The neighborhood is neglected and lacks basic urban infrastructures, services and public buildings. The only public plot that could have been utilized for construction of a community center or public park is slated to be appropriated to make way for construction of the city's police station.¹²¹

The shortage of services and public buildings in Arab towns increases the need for accessible and frequent public transportation, since residents are forced to leave the boundaries of their neighborhood or town in order to meet their basic needs: getting to school, work, health clinics, the post office, national insurance branch, or to their community center.¹²² The planning oversight and minimal investment in infrastructures means that public transportation is meager and inadequate. Some Arab towns have not had any public transportation services for years on end. According to an investigation by Sikkuy – The Association for the Advancement of Civic Equality in Israel, 82 percent of Arab towns with over 10,000 residents (not including mixed cities) do not have internal bus lines. While most of these towns do have intercity lines that pass through the main highway at the entrance to the town, or intercity bus lines that stop inside the town, in both cases there are less than five buses serving the town, and they only provide partial accessibility.¹²³ Those most affected by this situation are residents who do not own private cars: women, children, the elderly, and low-income families.

¹²¹ In August 2012, the residents of Kerem Eltofah, together with ACRI and Bimkom, appealed to the Central Administrative Court against the plan to construct the building. Petition No. 158/12 <http://www.acri.org.il/he/?p=23453> (Hebrew).

¹²² *On the connection between public transportation and social services* <http://www.reut-institute.org/he/Publication.aspx?PublicationId=4081> (Hebrew).

¹²³ On public transportation in Arab-Israeli towns, see Sikkuy <http://www.sikkuy.org.il/mun/tahbura2012.html> in Hebrew and TheMarker <http://www.themarker.com/news/1.1822606> (Hebrew).

Sikkuy points optimistically to the efforts and the budget allocations made in the last five years by the Ministry of Transport: Its annual budgetary investment for public transport in Arab towns, including East Jerusalem, amounts to NIS 250 million. Likewise, the ministry has invested NIS 100 million in development of public transportation in 13 Arab towns, within the framework of the Prime Minister's five-year plan. The Ministry of Transport has announced that in the last three years, investment in public transportation services in Arab towns is greater than in Jewish towns, in an effort to narrow the gap that developed over many years.¹²⁴ At the same time, Sikkuy notes that a significant gap still exists in accessibility to public transportation in Arab towns when compared to Jewish towns. The organization also notes objective difficulties such as infrastructure problems, narrow roads and preventing public transportation from passing through the towns. "After years of neglect and the government's failure in this field," the organization concludes, "significant change in the field demands a massive undertaking by the Ministry of Transport, the Ministry of Finance, the Ministry of Interior and local Arab authorities."

Exclusion of Arabic Language from the Public Sphere

Arab citizens of Israel are a national, cultural and lingual minority. One of the main facets of their unique cultural identity is Arabic. It is the state's responsibility to honor its usage, based on the right to dignity, and the right of the Arab minority to preserve its national identity and its distinct cultural features. The fact that Arabic is one of Israel's official national languages reflects the recognition of this right. The High Court affirmed the state's obligation in this matter, ruling that the municipalities of all mixed cities are obligated to ensure all city signs are written in both Hebrew and Arabic.¹²⁵

It is important to note that Arab-Israelis are not only a national minority, but also an indigenous minority that lived here before Israel was established. This status was recognized, inter alia, by the Or Commission report.¹²⁶

¹²⁴ See also: "Campaign for Promotion of Public Transportation in Arabic is Launched," message on the Prime Minister's Office website, October 21, 2012 <http://www.pmo.gov.il/BranchesAndUnits/hamigzar/Pages/transportation.aspx> in Hebrew.

¹²⁵ H.C. 4112/99, *Adalah, et. al. v. The Municipalities of Tel Aviv-Jaffa*, filed by Adalah and ACRI: <http://www.adalah.org/eng/?mod=articles&ID=617>

¹²⁶ Official Summation of the Or Commission: <http://reut-institute.org/en/Publication.aspx?PublicationId=3482>

International law anchors the rights of minorities in general, and the rights of indigenous minorities in particular – chief among them the right to equality, to property and to preserving one's cultural character¹²⁷ – in a series of treaties and declarations that Israel has undertaken.

Despite this obligation, Arabic is absent from many public spaces in the country, and there are attempts to “erase” the language from some communities. The eradication of Arabic from the public space violates the rights of Arab citizens of Israel to equality and dignity, as well as their right to benefit from public services and facilities like their fellow citizens. Following are several examples from recent years:

The previously mentioned ruling regarding signs in mixed cities¹²⁸ took place in 2002, however it is still not being implemented fully in all cities, especially in Upper Nazareth. In January 2011, the ACRI and Adalah – The Legal Center for Arab Minority Rights, submitted a contempt of court order after several of its appeals to the municipality went unheeded. As a result, the municipality started developing a plan for implementing the court ruling.

Over the years, several bills requesting to annul Arabic's status as an official language were submitted to the Knesset. Some of them called for Hebrew to be the only official language in Israel, attributing a special status to other languages, but denying them official status.¹²⁹

The Tel Aviv Municipal Council recently rejected a proposal by one of its members to add Arabic captioning to the city's logo. According to reports, the mayor objected due to concerns of growing “ethnic polarization.”¹³⁰ It is important to note that Haifa and Acre are the only mixed Arab-Jewish cities in Israel whose municipalities include Arabic in the city logo.¹³¹ In another case, the University of Haifa was accused of omitting Arabic captions from the institution's newly designed

¹²⁷ For more on indigenous minority rights, see: *ACRI Position Paper on the Rights of the Bedouin Population in the Negev, July 2008* <http://www.acri.org.il/he/?p=1910> (Hebrew)

¹²⁸ Op. city HCJ 4112/99, *Adalah v. Tel Aviv-Jaffa Municipality*, see footnote 125.

¹²⁹ For example: Language Bill 2012 (Hebrew): <http://www.knesset.gov.il/privatelaw/data/18/4385.rtf>; Hebrew as Official language of State of Israel Bill 2009 (Hebrew): <http://www.knesset.gov.il/privatelaw/data/18/1088.rtf>; Draft Basic Law, Nation State of the Jewish People 2012 (Hebrew): <http://www.knesset.gov.il/privatelaw/data/18/3541.rtf>.; See also, Jonathan Lis, *Lawmakers seek to drop Arabic as one of Israel's official languages*, Haaretz, August 4, 2011: <http://www.haaretz.com/print-edition/news/lawmakers-seek-to-drop-arabic-as-one-of-israel-s-official-languages-1.376829>

¹³⁰ Ilan Lior, *Tel Aviv censors speech by Arab City Council Member*, Haaretz August 6, 2012: <http://www.haaretz.com/news/national/tel-aviv-municipality-censors-speech-by-arab-city-council-member-1.457450>

¹³¹ Hofit Cohen, *Remove Arabic caption from Holon city logo*, Ynet, August 16, 2012 <http://www.mynet.co.il/articles/0,7340,L-4268847,00.html> (Hebrew).

logo. The university claims its logo was always solely in Hebrew, and that individuals interested in adding captions in Arabic or English are free to do so.¹³²

In many public transportation facilities, Arabic does not exist, or is not sufficiently displayed. For example, Israel Railways provides the names of stations in Hebrew, Arabic in English, but the announcements are only made in Hebrew (with the exception of an announcement in English ahead of the airport stop). Even the regular signs and the electronic signs in the train stations and inside the trains – which help travelers to orient themselves with the routes, travel times and options to switch trains – are written solely in Hebrew (and sometimes in English). It is important to remember that many of the train stations are located in mixed and Arab cities, so the need for Arabic is obvious.¹³³

A directive by “e-government” determines that government websites must cater to Hebrew, Arabic and English speakers, but many are not accessible in Arabic.¹³⁴ For example, the Welfare Ministry’s website only exists in Hebrew. According to the Mossawa Center, 17 out of 43 government websites are listed solely in Hebrew.

Aside from the violation of Arab citizens’ right to equality, their lack of access to services, and the discomfort inflicted on them, the exclusion of Arabic from the public space infringes on the dignity of a fifth of Israel’s population and generates a feeling of discrimination and alienation, testifying to their inferior status and damaging their feeling of belonging in Israeli society. On the symbolic level, the absence of Arabic delegitimizes the presence of Arabs in the public space. This sets a precedent for additional ways of eliminating the presence and visibility of Arabic, such as

¹³² Revital Hovel, *Faculty demands return of Arabic to University of Haifa’s logo*, Haaretz May 21, 2012 <http://www.haaretz.com/news/national/faculty-demands-return-of-arabic-to-university-of-haifa-s-logo.premium-1.431588>

¹³³ In response to appeals by ACRI and Shutafut-Sharakah, the Director-General of Israel Railways said that it is customary throughout the world to operate a PA system “in the local language” and that adding other languages will make the ride “loud and noisy” for the passengers. He also stated that the Israel Railways website has information in Arabic and is preparing to install supplementary systems of information for passengers. ACRI is maintain correspondence with the management, and as launched a public campaign with Shutafut-Sharakah on the issue <http://www.acri.org.il/he/?p=23948> in Hebrew; See also Ron Gerlitz, *Next Stop, Arabic*, Haaretz September 13, 2012 <http://www.haaretz.co.il/opinions/1.1822897> (Hebrew).

¹³⁴ *Arabic – not on government websites*, Mossawa press release, April 17, 2012 <http://www.mossawa.org/default.php?lng=1&dp=2&fl=21&pg=6> (Hebrew); Noam Barkan, *New Immigrants? Nothing to look for on government websites*, Israel Army Radio website, February 15, 2012 (Hebrew) <http://glz.co.il/PrintNewsArticle.aspx?newsid=99503>

prohibiting coworkers from speaking to each other in Arabic in a workplace,¹³⁵ or barring Arabs from entry into clubs and other entertainment spots.¹³⁶

The Unrecognized Villages

The basic rights of tens of thousands of Israeli citizens to health, education, housing, dignity and equality are violated every day. These citizens, Bedouin Arabs, live in over 30 unrecognized villages in the Negev. The state refuses to recognize them, to regulate their municipal services and planning,¹³⁷ or to provide them with most basic infrastructures and services, such as providing water and sewage, roads, telephone lines and electricity.¹³⁸ Educational, welfare, health and employment services in these unrecognized villages are extremely limited.

In the absence of planning, all construction in unrecognized villages is done without permit, so these residents live under constant threat of their homes being destroyed. In 2011, more than 1,000 homes in unrecognized villages were demolished, and such demolitions continued in 2012.¹³⁹ In two different incidents, demolition orders issued for Bir Hadaj ended in police brutality against residents: police shot tear gas, stun grenades and rubber bullets, and in one of the

¹³⁵ For a few examples, see: Jack Khoury, *Parents claim that Kfar Sava hospital bans teaching staff from speaking in Arabic* <http://www.haaretz.com/news/national/parents-claim-that-kfar-sava-hospital-bans-teaching-staff-from-speaking-in-arabic-1.431165>

¹³⁶ For example, residents from Arab towns next to Kiryat Ata petitioned the High Court of Justice through the Galilee Society, after the municipality began collecting entrance fees for non-residents to a park in its territory. The petitioners claim the point of collecting fees is to prevent the entry of Arab residents, since those are most of the people who visit the park from outside the city. For more on the petition: Jack Khoury, *Israeli Arabs, rights groups say Kiryat Ata discriminates in park fees*: <http://www.haaretz.com/news/national/israeli-arabs-rights-groups-say-kiryat-ata-discriminates-in-park-fees-1.424264>; See also ACRI's petition to Kiryat Ata mayor, April 15, 2012 <http://www.acri.org.il/he/?p=20859> (Hebrew).

¹³⁷ For more on unrecognized villages: ACRI Attorney Rawia Aburabia position paper, May 2011: <http://www.acri.org.il/en/wp-content/uploads/2011/09/Prawer-Policy-Paper-May2011.pdf>

¹³⁸ See for example, press releases from the Knesset Health Committee: *Bedouin in unrecognized villages live in sub-par conditions*, January 2012 (Hebrew): <http://knesset.gov.il/spokesman/heb/Result.asp?HodID=8677>; *At least 60,000 Israeli citizens are not connected to water or sewage*, January 2012 <http://knesset.gov.il/spokesman/heb/Result.asp?HodID=8683> (Hebrew).

¹³⁹ Haya Noah, *Report on House Demolitions of Arab Bedouin in the Negev*, Negev Coexistence Forum, January 2012 http://www.dukium.org/heb/wp-content/uploads/2012/03/Demolitions_Report_2011-Heb-with-summry.pdf in Hebrew; Negev Coexistence Forum 2012 statistics on house demolitions http://www.dukium.org/heb/?page_id=7680 (Hebrew).

incidents even live ammunition.¹⁴⁰ This was apparently the first case of severe police violence against Israeli citizens since the events of October 2000, when police killed 12 Arab-Israelis.

The history of Israel's treatment of Bedouin citizens of Israel and of unrecognized villages is characterized by the proliferation of authorities, committees, bodies, decisions and plans, none of which have brought about the change necessary in Israel's policy on Bedouins in the Negev. There has been some progress in planning policies geared towards recognition of several villages since the end of the 1990's, such as, inter alia, the 2008 Goldberg Commission's call to "recognize as many villages as possible."¹⁴¹ However, the Prawer Plan approved by the government in September 2011¹⁴² and the 2012 Memorandum of Law to Regulate the Bedouin Settlement of the Negev¹⁴³ currently on the table impose a unilateral solution that perpetuates the policy of discrimination, ignores the reality on the ground and disregards the rights of tens of thousands of Bedouin citizens who have a historic connection to the land.

The Memorandum's stated goal is to regulate the issue of property ownership in the Negev, but in fact it is designed to concentrate the Bedouin in a restricted and predetermined area. The practical consequences are the uprooting of dozens of Bedouin communities and the evacuation of over 40,000 residents. The destroyed Bedouin communities are to be replaced by industrial zones, a military base and a Jewish settlement.

The Memorandum addresses two central issues: Forced evacuation of unrecognized villages and the transfer of tens of thousands of residents to recognized towns, as well as imposed regulations regarding the land. In the handling of both issues, the government is ignoring the facts on the ground and failing to seriously consider alternatives, especially the recognition of unrecognized

¹⁴⁰ In the second incident, 30 students were hospitalized for tear gas inhalation shot into the school. The police told ACRI "an officer has been appointed to examine police conduct, including the use of force," See: The police fired live ammunition while distributing demolition orders in Bir Hadaj, ACRI press release October 18, 2012 <http://www.acri.org.il/he/?p=24153> (Hebrew); Yanir Yagna *Clashes erupt in Bedouin village as Israel's Interior Ministry distributes demolition orders*, Haaretz <http://www.haaretz.com/news/national/clashes-erupt-in-bedouin-village-as-israel-s-interior-ministry-distributes-demolition-orders.premium-1.477304>; *Extreme Israeli violence in recognized Bedouin village of Bir Hadaj*, ACRI press release, November 12, 2012 <http://www.acri.org.il/he/?p=24398> (Hebrew). It should be noted that Bir Hadaj was recognized 10 years ago, though the last step in the bureaucratic process of drafting master plans has yet to be completed, so building permits are still unattainable.

¹⁴¹ The Goldberg Commission for Arranging Recognition of Bedouin Villages in the Negev, report on Minister of Housing and Construction website http://www.moch.gov.il/odot/rashut_beduim/Pages/goldberg.aspx (Hebrew).

¹⁴² Government decision no. 3707 from September 11, 2011 <http://147.237.72.239/PMO/Secretarial/Decisions/2011/09/des3707.htm> (Hebrew).

¹⁴³ Memorandum of the Law http://www.tazkirim.gov.il/Memorandum_Archive/Attachments_2012/41151_x_AttachFile.doc (Hebrew)

villages,¹⁴⁴ out of a clear intention to expel the residents. The plan's implementation deprives the residents of their constitutional rights to property, equality and dignity.¹⁴⁵

The Memorandum's working assumption is that 70,000 residents living in unrecognized villages are intruders without any rights to the land. The government is ignoring the fact that most of these villages have historic significance, and existed years before the Israeli state was established, as well as the fact that the other villages are home to displaced Bedouin who were forced off their lands by the Israeli military rule in the 1950's. The government also ignores the countless legal precedents, reports and studies that point to the Bedouin's intrinsic connection to the land and their ownership of the lands in question,¹⁴⁶ as well as their status and rights an indigenous minority.¹⁴⁷

The majority of the Bedouin community objects to the arrangements proposed by the Praver Plan and the Memorandum, an objection echoed by international bodies as well. In March 2012, the UN Committee on the Elimination of Racial Discrimination called on Israel to cancel its plan to legislate the Praver Plan.¹⁴⁸ In July 2012, the European Parliament called on Israel to stop the Praver Plan and the policy of displacement and expulsion.¹⁴⁹

¹⁴⁴ See for example the program proposed by Bimkom – Planners for Planning Rights and the Negev Regional Council of Unrecognized Villages *Alternative Master Plan for all the Unrecognized Bedouin villages*, 2012 <http://eng.bimkom.org/Index.asp?ArticleID=147&CategoryID=101&Page=1>

¹⁴⁵ For more see: Rawia Aburabia and Suhad Bishara, ACRI and Adalah reservations about the Memorandum of Law <http://www.acri.org.il/he/?p=20738> (Hebrew); See also *I am Invisible because you refuse to see me*, Adalah campaign against the Praver Plan <http://tinyurl.com/cab69r2> in Hebrew; On Praver Plan, see Negev Coexistence Forum: <http://www.dukium.org/eng/?p=1517>

¹⁴⁶ See for example, Oren Yiftachel, Sandy Kedar and Ahmed Amara <http://tinyurl.com/c5kz8th>; *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages*, Human Rights Watch, March 2008, http://www.hrw.org/sites/default/files/reports/iopt0308_1.pdf.

¹⁴⁷ For more information see: Rawia Aburabia, *Principles for Arranging Recognition of Bedouin Villages in the Negev*, May 2011 <http://www.acri.org.il/en/wp-content/uploads/2011/09/Praver-Policy-Brief-FINAL-ENG.pdf>, under the headline, "Who determines international law?"

¹⁴⁸ *Adalah launches campaign to stop Praver Plan*, Adalah online press release July 2012 <http://adalah.org/eng/?mod=articles&ID=1589>; *Concluding observations of the Committee on the Elimination of Racial Discrimination – Israel*, March 9, 2012 <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>, para 20.

¹⁴⁹ *European Parliament Condemn Home Demolitions and Praver Plan*, Adalah press release: <http://www.adalah.org/eng/?mod=articles&ID=1861>; *European Parliament resolution of 5 July 2012 on EU policy on the West Bank and East Jerusalem*, <http://tinyurl.com/cqtfzkl>.

Alongside the promotion of the Praver Plan, the government is also advancing other planning procedures in the Negev with the same dismissive approach to Bedouin rights, adding a new layer to its disregard for the community: Forced demolition of Bedouin towns to make way for the establishment of new Jewish towns in the same geographical space. In October 2011, the government decided to build seven Jewish villages in the Mevo'ot Arad area. The plan translates into the destruction of five Bedouin towns and the expulsion of their residents.¹⁵⁰ In September 2012, the Subcommittee on Appeals rejected the petition filed by Adalah and Bimkom on behalf of the residents of Umm al-Hiran against the decision to demolish the village's homes and replace it with the establishment of a Jewish town called Hiran.¹⁵¹

The government should shelve the Praver Plan, recognize the unrecognized villages, and affirm the Bedouin community's right to property in the Negev as a binding measure that leads to the implementation of a historically just solution for this population. Honest communication should be conducted on the basis of this recognition with the intent of working toward a solution that advances these principles.

¹⁵⁰ Residents of unrecognized villages, together with an Arad resident, ACRI, Bimkom and the Negev Coexistence Forum petitioned the High Court of Justice against the plan. HCJ 6094/12 *Abu Alkiyan v. State of Israel*. The High Court rejected the petition, enumerating that there is still no operative decision to establish the towns, so the petition is premature. To see petition and ruling <http://www.acri.org.il/he/?p=23413> (Hebrew).

¹⁵¹ Adalah press release, September 25, 2012 <http://adalah.org/heb/?mod=articles&ID=1321> in Hebrew.

Rights of East Jerusalem Residents

Palestinian residents of East Jerusalem, by virtue of their status as permanent residents, are legally entitled to all the services and benefits to which Israeli citizens are entitled (with the exception of the right to vote in elections to the Knesset). In reality, however, the situation is quite different. For decades, the Israeli authorities have not provided adequate resources for the upkeep of East Jerusalem or the development of its services and infrastructure. As a result, living conditions in East Jerusalem are substandard and most residents of these neighborhoods cannot access the most basic services, reflecting a serious violation of their right to an adequate standard of living.¹⁵²

In ACRI's experience, when officials show a sincere interest in improving the living conditions of East Jerusalem and when they engage the local residents in dialogue and cooperation, improvements take place: This was evident, for example, with regard to postal services¹⁵³, sanitation and welfare services¹⁵⁴, and assigning street names¹⁵⁵. Most of these improvements, however, are not the result of government initiatives, but of legal battles by organizations and local activists. Furthermore, the changes are a drop in the ocean and cannot close the gaps after four decades of neglect.

One of the main problems of East Jerusalem Palestinians is the conduct of the police. In an area suffused with tension, much of the friction and public disorder are the outcome of violence by the police toward the residents, including minors¹⁵⁶. As a result, the Palestinian residents do not view

¹⁵² For more information, see, for example, *Jerusalem Day 2012: Unprecedented Deterioration in East Jerusalem* <http://www.acri.org.il/en/2012/05/16/poverty-in-east-jerusalem/>.

¹⁵³ *Umm Kulthum, ACRI, and the Postal Service in East Jerusalem* <http://www.acri.org.il/en/2012/10/21/umm-kulthum-street/>.

¹⁵⁴ *ACRI's East Jerusalem Project* <http://www.acri.org.il/en/2011/03/07/acri%e2%80%99s-east-jerusalem-project-ronit-sela/>.

¹⁵⁵ *Umm Kulthum, ACRI, and the Postal Service in East Jerusalem* <http://www.acri.org.il/en/2012/10/21/umm-kulthum-street/>.

¹⁵⁶ For more information and examples, see *Review of police activity in the Jerusalem District last year: Violence, distrust, and the deterioration of police attitudes toward Jerusalem's Palestinian population*, ACRI, June 2011 (Hebrew); *Ahead of Jerusalem Day: Police Treatment of Palestinians in East Jerusalem*, <http://www.acri.org.il/en/2011/05/31/ahead-of-jerusalem-day-acri-documents-police-treatment-of-palestinians-in-east-jerusalem/>; Nisreen Alyan, *Violations of the Youth Law (Adjudication, Punishment and Methods of Treatment) – 1971) by the Israeli Police in East Jerusalem*, ACRI, March 2011; *Police Violations of Rights of Minors in East Jerusalem*, <http://www.acri.org.il/en/2011/06/01/police-violations-of-rights-of-minors-in-east-jerusalem/>; letter from ACRI to the Commissioner of the Jerusalem Police concerning the conduct of the Police on Land Day, 5 April 2012 <http://www.acri.org.il/en/2012/04/05/police-conduct-land-day-events/>. Also see: Oz Rosenberg, *Israeli policemen suspected of robbing Palestinian workers in Jerusalem*, Haaretz, 25 May 2012

the Jerusalem District Police as an institution that protects and serves them. In the eyes of the residents, the police are generally hostile and alienated; they wield their power against the locals, are indifferent to the needs and security of the residents, and favor the city's Jewish population.¹⁵⁷ Indeed, victims of violent crimes or their family members often fail to lodge a complaint with the Police Investigations Department (PID) because they lack faith in the system. Thus, the proper handling of complaints by PID is particularly important. But as we shall see below, these complaints are often dealt with inadequately and inappropriately, which only widens the rift and exacerbates the distrust between East Jerusalemites and the authorities.

Improper handling of complaints about police brutality

In May 2011, Sharif Abed, a resident of Issawiya in East Jerusalem, happened to drive into this neighborhood during a stone-throwing incident. Several policemen on the scene stopped the car, violently dragged him out of it, threw him to the ground, and beat and kicked him.¹⁵⁸ Abed experienced severe pain, had to be hospitalized, and was handcuffed to the bed for three days.

ACRI asked PID to investigate the incident, and appended documentation from a home video camera¹⁵⁹ that supported the claim of police brutality. PID later announced that it was closing the case on the grounds that "no offense was committed". ACRI appealed to the State Prosecutor, who, after viewing the video, instructed PID to re-open the investigation. However in June 2012, more than eight months later, PID announced that the case was now closed on the grounds of "lack of public interest". An ACRI representative examined the file and was astonished to learn that the case had been opened and closed without any investigation, and that no material was added to what had been submitted with the appeal – the complainant's testimony, the medical records, and

<http://www.haaretz.com/news/national/israeli-policemen-suspected-of-robbing-palestinian-workers-in-jerusalem-1.433692>; Oz Rosenberg, *WATCH: Israeli policeman beats a bound resident of East Jerusalem*, Haaretz, 9 October 2012 <http://www.haaretz.com/news/national/watch-israeli-policeman-beats-a-bound-resident-of-east-jerusalem-1.468953>; Guy Peleg, *WATCH: The video clip that incriminated the Border Policemen*, MAKO – Channel 2 news, 7 November 2012 <http://www.mako.co.il/news-law/legal/Article-5568b6a876cda31004.htm> (Hebrew).

¹⁵⁷ *Review of police activity in the Jerusalem District last year: Violence, distrust, and the deterioration of police attitudes toward Jerusalem's Palestinian population*, op. cit.

¹⁵⁸ The story of Sharif Abed and the film clip documenting the incident appear in Nir Hasson, *Rights group seeks to reopen files involving illegal Israeli Police conduct in East Jerusalem*, Haaretz, 13 August 2012 <http://www.haaretz.com/print-edition/news/rights-group-seeks-to-reopen-files-involving-illegal-israel-police-conduct-in-east-jerusalem-1.457741>.

¹⁵⁹ This video can be viewed on the Hebrew site of Haaretz, *Police who arrested a 7-year-old Palestinian boy will not be put on trial*, 13 August 2012 (Hebrew) <http://www.haaretz.co.il/news/law/1.1799994>.

the video documenting the incident. The police officers suspected of wrongdoing were not interrogated, relevant parties were not questioned, and no witnesses were summoned to shed light on the incident. Even though no investigation was conducted, PID waited eight months before again closing the case, now on different grounds. In July 2012, ACRI submitted a second appeal, claiming negligence in how PID handled the complaint. The decision is still pending.

The case of Sharif Abed is but one example of many cases of PID's improper handling of complaints submitted by East Jerusalem residents.¹⁶⁰ Below we list several troubling patterns of conduct in investigating complaints, as evident from cases in which ACRI was involved:

Closing a case after an inadequate investigation - PID investigations often appear to have been haphazard and negligent, with meager efforts invested to get at the truth. Many cases are closed on the grounds of insufficient evidence or lack of guilt following a cursory investigation or none at all. More than once, witnesses who could clarify the circumstances of the incident are not summoned, or suspects are summoned to an interrogation long after the incident has happened, and a proper investigation cannot be conducted.

Examples of problematic investigations in cases in which ACRI was involved include: police officers under suspicion were interrogated months after submission of the complaint; a case was closed after only one interrogation in addition to the complainant's testimony; PID investigators failed to procure video documentation of the incident, which would have clearly supported or refuted the complainant's contentions; witnesses who could corroborate the complainant's claims were not summoned; police officers who witnessed the incident were not interrogated.

Virtually automatic acceptance of the version given by the police officers suspected of wrongdoing - In some cases, the claims of the police officers under investigation are given excessive weight, and PID accepts these versions without due investigation of their veracity. This happens even after multiple complaints from different people about the same officers and even when the complainants' claims are substantiated by medical documentation. In various cases: a police officer suspected of assault was asked only three questions; police officers under suspicion were not questioned about a complaint against them, and claims were made that they coordinated their stories after the incident; a police officer under suspicion was not asked to explain inconsistencies between his written report and his testimony under interrogation; and a case was closed simply because the officers denied all the complaints against them.

¹⁶⁰ Such as an investigation of a complaint filed by Wahid a-Rawidi, which appears on B'Tselem's website *Appeal against closing an investigation into beating of Silwan resident by Border Police officer*, 26 July 2012 http://www.btselem.org/beating_and_abuse/20120725_appeal_on_wahid_a_rawidi_assault. ACRI appealed the decision to close the file of the complaint submitted by a-Rawidi.

The need to conduct a proper investigation and not automatically accept the versions of the police officers is even more important in light of the conspiracy of silence among police officers regarding claims of police brutality.¹⁶¹

Closing an investigation even when the evidence corroborates the claims of the complainant -

More than once when an investigation reveals findings that support claims of police brutality, PID chooses to close the case. For example, a case was closed for lack of evidence even though the investigation turned up considerable evidence corroborating the claims of the complainant as well as substantive contradictions in the suspects' versions of events. Another case was closed for lack of evidence despite the contradictions in the police versions, the unconvincing testimony explaining the circumstances of the complainant's injury, and the lack of evidence that would undermine the complainant's version. A polygraph did not invalidate the complainant's version, and the police refused to be tested.

PID decisions not to launch an investigation into illegitimate methods of crowd dispersal on the grounds of "lack of public interest" -

In many cases in East Jerusalem, the police used force and extreme measures to disperse demonstrations in the heart of densely crowded residential neighborhoods resulting in injuries from blows, tear gas, and rubber-coated bullets, as well as emotional trauma.¹⁶² Note that the Or Commission, which investigated irregularities in police methods used in the dispersal of demonstrations in October 2000 that led to the death of thirteen Israeli citizens, stated that PID should play a central role in ensuring the administration of justice with regard to police officers involved in such incidents.¹⁶³ It appears, however, that these incidents are not always handled properly. For example, no investigation ensued on the grounds of "lack of public interest" after police fired life-threatening rubber-coated bullets at the head of a

¹⁶¹ See, for example, the words of Herzl Sbiro, former head of PID, as quoted in the media in response to the question of whether police officers who witness police brutality in which they did not take part would tell the truth: "Not a chance, not a chance. I can count on the fingers of one hand the number of times a police officer reported a criminal offense by a fellow officer on the use of force. You know what – not even on the fingers of one hand. It's a conspiracy of silence. Not that the police officers conspired prior to the incident, but afterwards they'll remain silent and not tell the truth about the use of force against a civilian." Gidi Weitz, *Under fire from all sides*, Haaretz, 31 December 2010 <http://www.haaretz.com/weekend/magazine/under-fire-from-all-sides-1.334515>

¹⁶² See, for example, the aforementioned ACRI letter concerning the conduct of the Israel Police on Land Day: <http://www.acri.org.il/en/2012/04/05/police-conduct-land-day-events/>; *Review of police activity in the Jerusalem District last year: Violence, distrust, and the deterioration of police attitudes toward Jerusalem's Palestinian population*, ACRI, June 2011 (Hebrew) under the title *Police conduct during public disturbance*; *ACRI: The Police must open an investigation into the death of the infant Mohammed abu-Shara from Issawiya*, press release on the Hebrew ACRI website, 4 October 2010 <http://www.haaretz.co.il/news/law/1.1236796>.

¹⁶³ *State Commission of Inquiry Report on Clashes between the Security Forces and Israeli Citizens in October 2000* ("the Or Commission"), August 2003, Part 6: Summary and Recommendations http://elyon1.court.gov.il/heb/veadot/or/inside_index.htm (Hebrew).

woman who did not take part in violent activity and was a significant distance from it – despite the horrifying result (the woman lost her eye) and the fact that the Jerusalem District Operations Division noted that rubber-coated bullets had been used without authorization and contrary to Border Police procedures. In another incident, a decision was made not to launch an investigation (again for “lack of public interest”) into police officers who violently assaulted Silwan residents by the indiscriminate use of pepper spray, inter alia.

Police forces in Jerusalem do have to cope with sensitive and complex situations. Nevertheless, the police must behave reasonably and judiciously in discharging their duties. Decisions by PID not to launch an investigation or to close the file on an incident that ended in dire consequences are infuriating as they reflect a tolerance of police brutality against innocent civilians. The message this conveys to police officers is dangerous, contemptuous of the lives and safety of East Jerusalem residents, and intimates that they may freely use extreme measures to ensure public order.

Improper handling of complaints from minors - The aforementioned failings in police investigations also apply to complaints about police brutality toward minors, but additional problems relate to PID’s investigation of complaints submitted by minors.

The arrest and interrogation of minors are supposed to be carried out cautiously, adhering to the regulations and special rules in the Youth Law (Adjudication, Punishment and Methods of Treatment) – 1971. However information reaching ACRI and colleagues in other organizations suggests that the police engage in particularly problematic procedures toward children suspected of throwing stones in East Jerusalem, even defying the law and official procedures in some cases. These include the arrest of children during the night, the detention of children under 12 years of age (the age of criminal culpability), and the interrogation of minors without their parents present. Some arrests of East Jerusalem children carried out by undercover squads or covert detectives take place publicly and sometimes involve the use of handcuffs and considerable violence.¹⁶⁴

More generally, PID is authorized to deal with complaints for which the penalty is one year or more in prison. An investigation may reveal, however, that although officers may have violated the Youth Law, the offense is punishable by less than a year in prison and therefore not within the purview of PID. For such cases, PID is obliged to take steps to transfer the complaint to the Israel Police’s Department for Complaints from the Public.¹⁶⁵ However, ACRI has knowledge of cases in

¹⁶⁴ For more, see Tal Dahan, *The State of Human Rights in Israel and the OPT 2011*, ACRI, December 2011 <http://www.acri.org.il/en/wp-content/uploads/2011/12/ACRI-State-of-Human-Rights-2011-ENG.pdf>, pp. 26-30; Violations of the Youth Law (Adjudication, Punishment and Methods of Treatment) – 1971 by the Israeli Police in East Jerusalem, op. cit.

¹⁶⁵ As mandated in Order No. 06.03.03 of the National Police Headquarters with regard to the investigation of police officers by the police and the Police Investigations Department (PID), and it conforms to administrative procedures, which state that when a complaint erroneously reaches an authority not authorized to handle it, that authority must

which PID refrained from investigating such complaints, but did not transfer them to the Department for Complaints from the Public. Thus, on the grounds of insufficient evidence or lack of guilt, PID closed various cases concerning: the detention or arrest of minors, the youngest of whom was only 7 years old; the interrogation of minors in the middle of the night and without a parent present; and handcuffing a minor during transport to the police station.

One example of many: A, a 16-year-old, submitted a complaint to PID stating that on his way to his grandfather's house he encountered a wedding march in the Old City of Jerusalem when three Border Police officers assaulted him, threw him to the ground, and beat him with their batons. As a result, one finger on his left hand was broken, he had a bloody nose, and he sustained injuries to his head and contusions all over his torso. His complaint to PID was closed on the grounds of insufficient evidence; in the rejection letter, he was told that "an analysis of the evidence and various versions in the evidentiary material lead to the conclusion that the chance of conviction in this case is not likely." And yet the evidentiary material in this file reveals, in addition to A's testimony, medical certificates and photographs from the day of the incident that reflect his injuries as well as testimony from the operations officer who witnessed the incident, explicitly stating that he saw police officers strike the minor with their batons while he was prostrate on the ground. According to this testimony, "This was part of conducting an arrest while caught up in anger, [but] it may have been possible to overpower the suspect in other ways." The testimony of the police officers who are suspects in the case provides no reasonable explanation for their use of excessive force against the minor, while inconsistencies undermine the credibility of their version and corroborate that of the minor.

In the past year, ACRI appealed several PID decisions to close the investigations of complaints submitted by East Jerusalemites. In some cases, PID altered its decision in the wake of ACRI's intervention and the officers were put on trial; in other cases the Ministry of Justice claimed that "[ACRI's] appeal notifications are not accurate, and do not reflect the full picture and background of the incidents".¹⁶⁶ In March 2012, ACRI wrote to the head of PID concerning PID's handling of complaints from East Jerusalem minors,¹⁶⁷ but no response has been received yet.

take the initiative to transfer it to the party that has authorization for it (parag. 2B of the Administrative Procedures Amendment (Decisions and Reasoning) – 1958).

¹⁶⁶ The response of the Ministry of Justice quoted in Haaretz: *Police who arrested a 7-year-old Palestinian boy will not be put on trial*, Nir Hasson in Haaretz, 13 August, 2012 <http://www.haaretz.co.il/news/law/1.1799994> (Hebrew).

¹⁶⁷ Letter to the State Prosecutor and head of the Police Investigations Department (PID): <http://www.acri.org.il/he/wp-content/uploads/2012/11/mahash-minors270312.pdf> (Hebrew).

Rights of People with Disabilities¹⁶⁸

Significant gaps exist between people with disabilities and other people in all areas of life: education, employment, housing, economic condition, and so forth. These gaps prevent over one and a half million people with disabilities in Israel from integrating fully in every facet of life. In recent years, however, a modest but positive tendency has been seen toward the narrowing of these gaps in some fields, and initiatives have been launched in the legislative, legal and social spheres relating to the rights of people with disabilities. In this chapter, we review some key milestones from the past year.

Ratification of the Convention on the Rights of People with Disabilities - In September 2012, the government of Israel ratified the International Convention on the Rights of People with Disabilities (CRPD).¹⁶⁹ The convention was adopted by the United Nations in December 2006, and signed by Israel in 2007. The convention establishes an accepted international standard for the way in which a society and state should treat people with disabilities, and imposes detailed obligations on the state: Not to discriminate against a person on the grounds of disability; to make all buildings and services accessible; to integrate children with disabilities in regular education; and to offer all people the possibility of independent or supported housing in the community. The ratification of the convention is an important and natural step that complements the equality legislation enacted in Israel, particularly the Equal Rights for People with Disabilities Law.

Accessibility: One of the main obstacles preventing the integration of people with disabilities is the lack of access in the public domain. In recent years Israel has made significant progress in this respect, particularly through the enactment of the accessibility regulations over a period of several years, which are subject to the approval of the Knesset Welfare Committee.¹⁷⁰ In 2011, accessibility regulations were approved for existing public buildings; these regulations became effective as of

¹⁶⁸ Written with the assistance of Esther Sivan, executive director of Bizchut – The Israel Human Rights Center for People with Disabilities. Thanks also to Attorney Yotam Tolub of Bizchut.

¹⁶⁹ *Convention on the Rights of People with Disabilities*. The English and Hebrew text of the convention may be viewed on the website of the Ministry of Justice: <http://tinyurl.com/cdv2cfo>. See also: *Israel Ratifies Convention on Rights of Persons with Disabilities*, Ynet, November 9, 2012 <http://www.ynetnews.com/articles/0,7340,L-4279940,00.html>

¹⁷⁰ Update on the accessibility regulations, May 2012, on website of the Commission for Equal Rights of Persons with Disabilities, Ministry of Justice (Hebrew) <http://tinyurl.com/cyhfjev>. See also: Bizchut website, *The Right to Access* <http://bizchut.org.il/en/rights/the-right-to-access>

June 2012.¹⁷¹ According to these regulations, “in any existing building in which a public service is provided, adaptations must be made regarding the structures, infrastructures and surroundings of the building in order to render the building accessible to people with disabilities.”¹⁷² However, in June 2012 the Equal Rights for People with Disabilities Law was amended, postponing the deadline for ensuring access to public buildings by several years. According to the amendment, all public buildings under private ownership will only be required to be fully accessible by November 2017. Public-owned buildings must be accessible by the end of 2018, and buildings owned by local authorities by the end of 2021.

The work of the Knesset subcommittee devoted to this subject, headed by MK Ilan Gilon (Meretz), focused this year on the enactment of regulations for the accessibility of services. The objective of these regulations is to ensure that services themselves – and not merely buildings – are accessible to people with all types of disabilities. Bizchut and the Forum of Civil Society Organizations for Accessibility ensured that the regulations included the adaptation of police interrogations, courts and quasi-judicial forums, as well as the adaptation of welfare and employment services in incarceration, detention and imprisonment facilities, among other areas. Rights organizations for people with disabilities are demanding that the state complete the enactment of the accessibility regulations.¹⁷³ A petition on this subject submitted in 2008 is still pending; the state is required to report to the petitioners and the court once every two months on the progress made in enacting the regulations.

Access in education - Following a petition submitted to the High Court by Bizchut on behalf of the Horizon for Our Children association,¹⁷⁴ blind and visually impaired children will begin to receive accessible study materials starting next year. Matriculation examinations will also be made

¹⁷¹ See statement submitted to Fifth Conference of State Parties of the UN Convention on the Rights of Persons with Disabilities by Ahiya Kamara, Israel Commissioner for Equal Rights of Persons with Disabilities, September 12, 2012

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Fpapersmart.un.org%2Fcrpd%2Fsites%2Fpapersmart.un.org.unicef%2Ffiles%2Fisrael_position_paper_-_accessibility_2012_.doc&ei=atK-UJeJJ-7M0AXkplDYAw&usg=AFQjCNHko0dJ7tZdPgppFv39zQYF_6Qj0g

¹⁷² *Guide to Accessibility in Existing Buildings*, Commission for Equal Rights of Persons with Disabilities (Hebrew): <http://tinyurl.com/byksn2q>

¹⁷³ HCJ 5833/08 *Accessibility for Israel Association v Minister of Transportation*. The petition was submitted by the Accessibility for Israel Association, joined by 12 additional organizations.

¹⁷⁴ HCJ 8536/11 *Bizchut – The Israel Human Rights Center for People with Disabilities v Ministry of Education*. For details and for the content of the petition, see (Hebrew) <http://bizchut.org.il/he/?p=929>. See also: Dana Weiler-Polak, *Visually impaired students lack suitable study materials, says petition to High Court*, Haaretz, November 21, 2011 <http://www.haaretz.com/print-edition/news/visually-impaired-students-lack-suitable-study-materials-says-petition-to-high-court-1.396684>

accessible, and the Ministry of Education will be responsible for providing and funding textbooks in Braille. Although the petition is still pending, the Ministry of Education has already undertaken steps to make the necessary adaptations; the Ministry of Justice will monitor this process. Since June 2012, parents of a child with a disability enjoy the possibility to register their child earlier than usual for their chosen educational institution. The purpose of this early registration is to enable the school or kindergarten to make the necessary physical adaptations to which any child with disabilities is entitled.

Mental health - In May 2012, after years of public action and following a High Court petition submitted by Bizchut in 2005 on behalf of various organizations and public figures,¹⁷⁵ the government of Israel took a historic decision to reform out-patient and in-patient services in the field of mental health.¹⁷⁶ According to the decision, from July 2015 mental health services will be included in the health services basket, along with all the health services provided by the HMOs in accordance with the National Health Insurance Law. By this date, the HMOs are supposed to develop out-patient services around Israel in order to meet the needs of all those requiring mental care. According to an agreement between the finance and health ministries, the introduction of the reform will be accompanied by an increase in the budget earmarked for mental health services.¹⁷⁷

In November 2012, the director-general of the Ministry of Health announced his intention to close the privatized psychiatric institutions due to the difficulty in inspecting these institutions, and to transfer the patients to public hospitals. The announcement was made after a serious scandal was revealed involving abuse and neglect at the Neve Yaakov private psychiatric institution.

Disability allowances - Following a struggle by the Knesset Public Complaints Committee, the allowance for children with severe disabilities was increased by NIS 600. The National Insurance Institute also announced a series of improvements in disability allowances, including an increase in the allowance for people with mental problems and retardation.¹⁷⁸

¹⁷⁵ HCJ 5777/05 Bizchut – *The Israel Human Rights Center for People with Disabilities v Minister of Health*.

¹⁷⁶ Government Decision No. 4611 dated May 10, 2012 (Hebrew) <http://tinyurl.com/crfsko>. See also: Suzanne Cannon, *Reform in Mental Health Care Gets Underway*, Bizchut website, May 6, 2012: <http://bizchut.org.il/en/283>

¹⁷⁷ It should be noted that a number of issues regarding the mental health reform remain unresolved, such as the deductible to be paid by recipients of services. For example, see: *The Private-Public Blend is Harmful to Health*, Health Experts Committee of the Social Protest Movement (the “Spivak-Yona Team,”) (Hebrew), July 2012 <http://j14org.il/spivak/?p=664>

¹⁷⁸ *Benefits Totaling Approx. NIS 200 Million for Recipients of Disability, Special Services and Disabled Child Allowances*, notice on the website of the National Insurance Institute (Hebrew) <http://www.btl.gov.il/About/newspapers/Pages/hatavotNechim.aspx>

The Right to Housing: What Changed?

The social protest in the summer of 2011 was launched with one tent symbolizing the housing distress of young people in Israel. Even when the protest grew to include other social issues, housing always remained core to the movement, and for good reason: In recent decades, fewer and fewer Israeli citizens and residents have been able to realize their basic right to adequate and affordable housing as a result of government policies. This is manifested, inter alia, in the drastic cuts to the Ministry of Housing budget, including funds for housing assistance, the deteriorating situation of public housing, and the failure to protect tenants.¹⁷⁹

The recommendations of the Trajtenberg Committee, established by the government in response to the protestors' demands, did not solve the housing problems. Although the committee adopted their social discourse, its recommendations did not engender any changes in the right to housing.¹⁸⁰ The Committee did not compel the state to obligate the provision of affordable housing in new housing starts, with the exception of state construction tenders on state lands; it did not address the difficulty many families have in getting approval for a mortgage; it did not make any proposals about the problem of public housing; it completely ignored the issues of discrimination in housing and screening mechanisms such as "admissions committees"; it did not relate at all to the unique housing problems of Arabs in Israel; and it set criteria that will prevent Arab citizens from benefiting from affordable housing projects.

Accordingly, government endorsement of the housing chapter in the Trajtenberg Report in March 2012¹⁸¹ did not bring about any significant improvement in the situation of low- or middle-income families, and in some respects made their situations worse. A year on from the social protest, and nothing has changed: More and more families are finding it difficult to keep up with their mortgage payments; no change has been made in regulating the rights of tenants or encouraging the construction of rental housing; affordable housing remains a slogan, not a reality; public housing is about to be disappear entirely; and housing discrimination continues.

¹⁷⁹ For more, see *The State of Human Rights in Israel and the OPT 2011*, pp. 68-71, <http://www.acri.org.il/he/wp-content/uploads/2011/12/State2011.pdf>.

¹⁸⁰ *The Coalition for Affordable Housing: The Trajtenberg Recommendations – A Big Disappointment*, ACRI, 27 September 2011, <http://www.acri.org.il/he/?p=16866> (Hebrew).

¹⁸¹ Government Decision 4428-4436 dated 18 March 2012.

The Elimination of Public Housing

Over the past two decades, public housing has hit rock bottom. The pool of apartments available has been severely reduced and is unable to meet the needs of those eligible, while the waiting period gets longer and longer. Eligibility criteria have become more stringent and problematic, leaving many people with housing problems outside the roster of eligibility. Families are being evicted because of debt or life changes that mean they are no longer eligible, and not enough is done to find alternative arrangements for them.

One core demand of the social protest movement was that the government rehabilitate the public housing program – increase the pool of housing units and ensure their availability in diverse neighborhoods. The Trajtenberg Committee rejected this demand, preferring the privatization model in which – in place of public housing – the state gives financial assistance to eligible applicants to rent a home in the private market. The one good tidings in adoption of the housing recommendations of the Trajtenberg Committee was the raise in rent assistance up to NIS 3,000 a month to those eligible for public housing. However, this amounts to a modest budget hike of only 15 percent – a pittance to a budget that had been slashed in half in 2003 and then further deflated by 30 percent. Furthermore, no mechanism was created for linking the assistance to the real cost of housing.

Another blow to public housing this year was the plan to cancel the Public Housing Law (Purchase Rights). This worthy and just law, which allowed long-term public housing tenants to purchase the apartments in which they have lived, was enacted by the Knesset in 1998, but frozen by the Economic Arrangements Law ever since. This year, the government suggested (not for the first time) abolishing it entirely.¹⁸² As of November 2012, this law has not advanced in the Knesset.

Some hope for public housing came in the form of a bill that would allocate 5 percent of all homes in projects constructed on state land to public housing.¹⁸³ In addition to increasing the supply of public housing, this bill would also ensure that low-income families would be integrated into every neighborhood and city, enabling them to raise their socio-economic level by having better access to quality education, infrastructure, and services. This bill was tabled by 32 Knesset members from every faction and had the support of the Housing and Construction Minister Ariel Atias. Under pressure from the Finance Ministry, however, the government opposed its passage, and it was

¹⁸² The text of the bill: <http://tinyurl.com/cwo8xq7> (Hebrew). ACRI's comments: <http://www.acri.org.il/he/?p=22736> (Hebrew).

¹⁸³ Public Housing Law (Increased Supply) – 2012. For the text of the bill and the position of the Forum for Public Housing, of which ACRI is a member, see <http://www.acri.org.il/he/?p=23080> (Hebrew).

rejected by the Ministerial Committee on Legislation in July 2012. An appeal submitted by Minister Atias has not yet been deliberated.

Affordable Housing¹⁸⁴

In August 2011, the National Housing Committees Law was enacted. This law allows for the creation of short-term special planning committees to expedite major housing developments by circumventing normal planning procedures.¹⁸⁵ In the wake of the social protest, the law was amended slightly and the concept of affordable housing was introduced, but the final version of the law is still inadequate: It fails to establish minimal requirements for the construction of affordable housing or public housing of any type, even for the disabled, and does not provide the authorities with budgetary or administrative tools to encourage such construction.

It is now clear that even the small gains mandated by law were not implemented: Since the law was passed, not a single National Housing Committee used its authority to designate land for affordable housing; in effect, this power was ignored. Thus, when a plan was presented to construct a new residential neighborhood in Givat Masu'a, Jerusalem with 482 housing units, no mention was made of the size of the housing unit¹⁸⁶ or the price, and affordable rental housing was not part of it. The plan to add some 400 housing units to the Malha (Manhat) neighborhood also does not mention affordable rental housing. The Coalition for Affordable Housing, in which ACRI is a member, voiced its objections to both plans.¹⁸⁷ Some organizations in the Coalition, including ACRI, submitted two petitions to the Jerusalem District Court with a precedent-setting request that the court undertake judicial review of the National Housing Committee's interpretation and

¹⁸⁴ Affordable or attainable housing refers to suitable housing that an individual can afford without compromising his or her – or the family's – vital needs.

¹⁸⁵ Planning and Building Procedures for Expediting Residential Construction Law (Temporary Order) – 2011. The government claimed that establishing National Housing Committees would reduce bureaucracy and increase the supply of apartments in Israel, thereby alleviating the housing crisis. The Coalition for Affordable Housing of which ACRI is a member sharply criticized the law from the perspective of building rights and transparency and as well as the environmental perspective, noting that it would yield more harm than benefit. On the law and ACRI's position: <http://www.acri.org.il/he/?p=13423> (Hebrew).

¹⁸⁶ This was later added following objections submitted by the Coalition for Affordable Housing. See below.

¹⁸⁷ *National Housing Committees Disregard their Authorities for Affordable Housing*, ACRI, <http://www.acri.org.il/en/2012/05/23/nhcs-disregard-affordable-housing/>.

implementation of the law.¹⁸⁸ The petitions argue that “Judicial review is needed in light of the blatant disregard by this Committee, as well as other National Housing Committees in other districts, of their authority to designate land for affordable rental housing, and its obligation to act on this authority in a reasonable manner. Such disregard for the law contravenes its letter and meaning, as well as the intention of the Knesset.”

Housing Discrimination Continues

The right to choose one’s place of residence and not encounter discrimination is constitutional. The state’s obligation not to discriminate directly or indirectly is self-evident, but the state must also ensure that private parties not practice discrimination. This is particularly salient in light of the many incidents of incitement and racism in recent years, even by public figures who called for not selling or renting apartments to people based on their ethnic affiliation.

Incidents of discrimination in housing have made the headlines this year as well. The most striking became public in early 2012 when Channel 2 television reported that residents of a Kiryat Malakhi neighborhood had signed a pledge not to sell or rent apartments to Ethiopian Israelis.¹⁸⁹ The report also noted that real estate agents promised potential residents that they would live in a neighborhood free of Ethiopians. Also reported were insulting and humiliating remarks about Ethiopian Israelis made by the residents. According to the media report, this phenomenon exists in other towns as well, though perhaps not as blatantly as in Kiryat Malakhi.¹⁹⁰

The exclusion of Ethiopian Israelis in Kiryat Malakhi was roundly condemned by Knesset Members from all parties, but the authorities did not take clear and decisive measures against these manifestations of racism and discrimination in housing.¹⁹¹ In particular, the government refrained –

¹⁸⁸ Administrative Appeal 44796-05-12 *Bimkom – Planners for Planning Rights v. the National Housing Committee in the Jerusalem District*. The petition: <http://www.acri.org.il/he/?p=21496> (Hebrew).

¹⁸⁹ Tomer Zarchin, *Israel Police open probe into alleged racism against Ethiopian immigrants*, Haaretz, 11 January 2012, <http://www.haaretz.com/news/national/israel-police-open-probe-into-alleged-racism-against-ethiopian-immigrants-1.406746>; Tomer Zarchin, *Police probing alleged racism in Kiryat Malakhi*, Haaretz, 12 January 2012, <http://www.haaretz.com/print-edition/news/police-probing-alleged-racism-in-kiryat-malakhi-1.406813>.

¹⁹⁰ Ofer Rosenbaum, *Netanya: Unwilling to lease to Ethiopian Israelis*, mynet, 2 February 2012, <http://www.mynet.co.il/articles/0,7340,L-4184058,00.html> (Hebrew); Yair Harush, *You can’t have an Ethiopian here – it’s a building for Russians* (on discrimination against Ethiopian Israelis in Ashdod), mynet, 12 January 2012, <http://www.mynet.co.il/articles/0,7340,L-4174712,00.html> (Hebrew).

¹⁹¹ It could have been made clear to the neighborhood residents that the agreement was unlawful, for example, and they would not be penalized for breaking it; a police investigation could have been opened against real estate agents

not for the first time – from supporting proposed legislation that would prohibit discrimination in housing and fine those who do not comply.¹⁹²

Furthermore, although the Knesset condemned the discrimination in Kiryat Malakhi, in March 2011 it approved by a large majority the Acceptance to Communities Law, which discriminates against Ethiopian Israelis and other groups as well, but more subtly.¹⁹³ This legislation allows hundreds of communal settlements built on state land to use acceptance committees to screen out those who do not meet the vague criteria of being “compatible with the life of the community” or “compatible with its social-cultural fabric”, even though the residents have no distinctive culture. Thus, the settlements can reject “undesirable” populations such as Arabs, the disabled, the elderly, Mizrahi or Ethiopian Jews, the religious, single-parent families, same-sex couples, etc. Petitions against the Acceptance to Communities Law, including one by ACRI, are pending in the High Court of Justice.¹⁹⁴ During deliberations on the petitions in January 2012, the state representative noted that the Attorney General accepts ACRI’s position that the law prohibits admissions committees for candidates to communal settlements or expansions of kibbutzim and moshavim that are not in the Negev or the Galilee, or settlements that have more than 400 families.¹⁹⁵ Yet the Attorney General continues to defend this discriminatory law.

Another form of discrimination is to designate or market residential projects only to certain population groups – projects located on land meant to serve the entire population. For example, two associations that are marketing apartments in Acre – which is a mixed city – earmarked the project for the religious Jewish public. A petition on this matter filed jointly by ACRI, the Al-Yater Association from Acre, and the Human Rights Legal Clinics at Haifa University was rejected.¹⁹⁶

who engage in discrimination; the law could be amended to allow the Real Estate Registrar to cancel or suspend the license of any real estate agent who engages in discrimination. For details, see ACRI’s letter to the Immigration and Absorption Committee of the Knesset, 10 January 2012, <http://www.acri.org.il/he/?p=19073> (Hebrew).

¹⁹² Prohibition of Discrimination Bill – 2011. For the text of the bill and ACRI’s position, see <http://www.acri.org.il/he/?p=19473> (Hebrew).

¹⁹³ Amendment to the Cooperative Society Ordinance (8) – 2011. For the text of the law and ACRI’s position, see: <http://www.acri.org.il/he/?p=97> (Hebrew).

¹⁹⁴ HCJ 2311/11 *Uri Sabach v. The Knesset*. This petition was submitted by ACRI together with the Abraham Fund Initiatives and residents of the Misgav region’s communal settlements (the “Misgav’s Future” group). For more details and the court documents, see <http://www.acri.org.il/he/?p=12905> (Hebrew).

¹⁹⁵ *An end to the admissions committees in towns in the center of Israel*, ACRI website, 25 January 2012, <http://www.acri.org.il/he/?p=19317> (Hebrew).

¹⁹⁶ Administrative Appeal 25573-03-12 *Association for Civil Rights in Israel v. Israel Lands Authority*. On the petition and court documents: <http://www.acri.org.il/he/?p=20454> (Hebrew). On the ruling: *Haifa Court authorizes discriminatory housing ads*, ACRI, 23 April 2012, <http://www.acri.org.il/en/2012/04/23/housing-discrimination-acre/>.

Although the Court noted that the state must monitor the marketing to ensure it is not discriminatory, the petition to cancel the tender was rejected because it failed to establish that someone who sought to purchase an apartment in that project was turned away.

In addition to these cases, the criterion of military service continues to be used, which discriminates not only against Arabs, but also against the ultra-Orthodox and the disabled. For example, in a January 2012 decision of the Israel Lands Council concerning affordable housing, one criterion for calculating eligibility is service by one member of the couple in the army, national service, civil service, or the reserves;¹⁹⁷ and in May 2012, the government decided that in 2012-15 the Israel Lands Authority would allocate land in Jerusalem without a tender to those serving in Israeli security forces.¹⁹⁸ In programs to ensure basic social rights, the key consideration must be the extent to which the individual is in need of support, not the encouragement of military service. Those who serve in the military should be compensated in other ways.

It should be noted that the Supreme Court ruled that when social-economic benefits are granted, the economic gap between one who served and one who did not serve may be taken into consideration.¹⁹⁹ The court emphasized, however, that this benefit must be reasonable given the circumstances, that military service must not be a prerequisite, and that assistance must be granted to the entire population, with the subsidy for those who served in the military not creating a significant discrepancy between them and the others.

¹⁹⁷ *Adalah Demands Israel Lands Administration Cancel Military Service Requirement for 'Price for the Dweller' Housing Program*, website of Adalah – The Legal Center for Arab Minority Rights in Israel, 7 May 2012, <http://www.adalah.org/eng/?mod=articles&ID=1750>.

¹⁹⁸ Letter from ACRI to the Attorney General, 24 June 2012, <http://www.acri.org.il/he/wp-content/uploads/2012/06/land240612.pdf> (Hebrew); as of October 2012, no response was received by ACRI.

¹⁹⁹ HCJ 11956/05 *Bishara v. Minister of Construction and Housing* (ruling dated 13 December 2006); see also HCJ 11088/05 *Habe v. Israel Lands Authority* (ruling dated 19 August 2010).

The Right to Health: A Plan for Reducing Gaps in Healthcare

The relatively high life expectancy in Israel and its advanced healthcare services conceal profound discrepancies in health - between population groups, residents of the periphery and the centre, and the poor and upper middle class. The discrepancies are a reflection of the socio-economic gaps throughout the state, and they stem mostly from differences in the social conditions that ensure health: nutrition, housing, water and sanitation, education, income and ecology. The inequality in access to health services and the discrepancy in quality and availability also affect the gaps reflected in health evaluations between different parts of the population.

For some time now, a positive change has been underway in plans composed by the Health Ministry aimed at narrowing the gaps in healthcare services. Among other important developments are the expansion of complete dental coverage to children under the age of 12; the opening of a new medical faculty in Safed and numerous attempts to reform nursing. In this report, we chose to focus on plans and attempts to narrow the gaps between the centre of the country and the periphery in healthcare services over the past two years. These include government initiatives as well as campaigns by organizations and local activists. Nevertheless, it should still be stressed that the gaps between the centre and the periphery are but one aspect of inequality concerning healthcare in Israel, and the attempts to reduce them are but one small part of the overall solution.

The Health Gaps between the Center and the Periphery in Figures

The gaps between different parts of Israel can be seen in both the health indicators and healthcare services and their accessibility. For example, the highest life expectancy is in Jerusalem and the center of the country, while the lowest is in the north and south - communities with relatively low expectancy are usually in the periphery. Furthermore, in the south, the north and in Haifa the overall mortality rate is higher than in the centre; infant mortality in the south and north is higher than in Tel Aviv and the center; residents of the south suffer from heart disease and high blood pressure more than residents of other areas; and older residents of the north suffer more than others from diabetes. There are staff and infrastructure shortages throughout the healthcare system and across the country, and the ratios of nurses and hospital beds per patient are significantly lower than in other OECD countries. The number of nurses, physicians and hospital beds per patient is also significantly lower in the periphery than in the centre.

Plans and Initiatives to Narrow Gaps: Governmental and Institutional Plans

Health Ministry targets on narrowing the gaps - A central part of the strategic plan of the Health Ministry for 2011-2014 is the goal to reduce the discrepancies between the center and the periphery. Among the ministry's goals are: Increasing the number of nurses in the south of the country; increasing the number of specialist physicians in the periphery; preferential allocations of high-end technology for the periphery over the centre; and stimulating HMOs to increase their investment in infrastructure and to promote health in the periphery. At this point, the challenge is moving from setting goals to advancing practical plans that would overcome budget barriers and financial interests, and win the support of the entire cabinet.

Changing the capitation formula - The capitation formula is used to calculate the budget allocated to HMOs by the state - over NIS 30 billion a year. The calculation is based upon the number of people insured with each HMO. Until recently, additions to the calculation per person were exclusively aged-based: An HMO would get greater funds for the infants or senior citizens it insured. In early 2011, after a protracted process, the capitation formula was changed to include gender. The change is a significant step that offers at least a partial response to the issue of healthcare discrepancies and it sends a signal to the HMOs and the general public on the intentions of the ministry. However, two years into the launch of the new formula and several flaws are already apparent, creating doubt that a single new parameter added to the formula can bring about real change.

Support tests - By law, the Health Ministry can offer financial support to HMOs and hospitals based upon equitable targets and criteria, known as "support tests." The criteria issued by the ministry in 2012 emphasized the expansion of services in the geographical and social periphery. The additional funds available are relatively low - amounting to NIS 20 million - and their influence on an overall change in policy is low. However, they serve as a good example of the manner in which large institutions can be influenced to encourage investment in the periphery.

HMO initiatives - In the last two years, the two larger HMOs managed to prove that deliberate and focused investment of resources can bring about impressive results in reducing gaps between the periphery and the centre, whether in health indicators (like balancing the diabetes ratio) or in the use of healthcare services (for example, the ratio of medical tests taken). Israel's healthcare system, from local clinics to the Health Ministry, is now deploying the message that local, focused plans should be adopted on a nationwide scale - which can only be achieved through expansive government funding.

Emergency night clinics and front-end emergency rooms in the periphery - Communities that are far away from hospitals must have emergency clinics that operate at night, if only so that patients can make an informed decision whether to travel to the distant emergency room on their own or

to call an ambulance - both of which entail a significant financial outlay. Such centers still do not exist in most communities of the periphery, and their absence is keenly felt by the elderly and patients who do not have their own vehicle. Some of these towns, like Dimona and Yerouham, have found solutions thanks to money raised from foundations and private donors, or with the help of HMOs.

Over the last two years, Deputy Health Minister Yaakov Litzman has promoted a plan to set up "front-end emergency rooms" across the periphery, which would operate in communities far from hospitals and will be capable of providing a initial medical care when needed. Three such centers have already been set up, in Dimona, Arad and Umm al Fahm, and nine are under construction. It was also announced that a front-end emergency room will be opened in Ashdod. The establishment of front-end emergency rooms is indeed praiseworthy, but it cannot solve all the problems as it does not provide a solution for all affected communities. Another problem is that their establishment depends heavily on donations and fundraising. One possible solution is to set up relatively low-cost primary medical services in small communities where people cannot travel far on their own.

The achievements of the physicians' strike - Following a national physicians' strike in August 2011, the Finance Ministry and the Israel Medical Association signed a collective agreement to regulate employment terms for physicians. Some of the terms have a direct effect on the gaps between the center and the periphery: The addition of 1,000 physician posts to public hospitals, with priority to the periphery; a 20 percent pay raise for a physician working in the periphery compared to a physician doing the same work in the centre; and the possibility of an NIS 300,000 personal grant for a physician agreeing to relocate to the periphery. As of November 2012 the number of medical residents willing to apply for the grant is higher than the sum allocated for the purpose, which testifies to the effectiveness of the move and the potential for its future expansion.

Plans and Campaigns by Organizations and Activists

The struggle for equitable distribution of MRI machines - In 2008 the ratio of MRI machines per capita in Tel Aviv was three times higher than the ratio in the south, and seven times higher than the ratio in the north. A group called Equality in Health, organized by women from the south of the country to reduce the healthcare gaps between the centre and the periphery, ran a campaign for equitable distribution of the machines across the country. They were joined by Physicians for Human Rights, the legal clinics in Tel Aviv University, and ACRI.

Following the struggle, the Health Ministry issued licenses for several MRI machines for the social periphery (for example at the Wolfson Medical Center in Holon) and geographical periphery (hospitals in Ashkelon, Safed and Tiberias). However, the actual acquisition of the machines

depends on funding raised by the hospital, largely through donations, and the purchase of several machines meant for the south has been delayed because the hospitals' fundraising efforts are falling short. This is a small illustrative example of the inherent problem of donation-based funding, which influences the gaps between the centre and the periphery: Hospitals are required to raise considerable sums, but hospitals in the periphery are considerably less able to do so than hospitals in the centre.

Elective arrangements at HMOs - "Elective arrangements" are agreements between HMOs and healthcare services providers, which the HMO presents to the insured patient as a list of services from which they can choose. In fact, since the State Healthcare Law does not provide a limit for reasonable distance from the patient's residence and reasonable waiting times, there are occasional serious difficulties that harm the patients and benefit the HMOs. Residents of the periphery are the hardest hit, often finding themselves required to travel great distances or wait for treatment for prolonged periods of time.

Human rights organizations, including ACRI and the Mazor Legal Clinic at the College of Management, have tried for years to change these arrangements. The organizations helped draft a bill on the matter, which was put before the Knesset in 2009. The bill sought to install a measure of distance and waiting times for certain treatments, to limit the HMOs in their ability to move patients between hospitals, and oblige them to make information on the arrangements available and accessible, allowing patients to compare the various choices offered by different HMOs.

The bill did not make it through the Knesset, not least because of opposition from the Health Ministry. In its stead, the ministry offered to make several changes, and in 2011, released guidelines that responded to some of the organizations' demands. The guidelines emphasized the duty of the HMOs to provide services in a reasonable and equitable manner, including such parameters as time, distance and quality. However a year later, some HMOs still have not issued arrangements matching the guidelines.

Professional staff in the periphery - In recent years more and more groups, whether autonomous or supported by human rights and healthcare organizations, have emerged with the aim of reducing gaps in professional staff between the centre and periphery. The groups gather information, publish position papers and conduct public activities to prevent the closure of medical centers and reduce the shortage in medical and nursing staff in these areas in the periphery. Two examples are the above-mentioned "Equality in Health" group and students at Tel Hai College, who have been working over the past year to improve availability of physicians in the northern Galilee region.

Linguistic and cultural availability - The great discrepancies between health indicators along cultural, ethnic and national lines means that healthcare programs and services must be tailor made for groups in the periphery and for populations with linguistic and cultural differences. A

number of organizations have been trying to advance this cause for several years, including Physicians for Human Rights; Yasmin Al-Nageb, an organization of Bedouin women professionals working to increase the availability of health services and tailoring them to the Arab-Bedouin public in the Negev; the Galilee Association, which works to advance the right of the Arab citizens to health; and Tana-Health, an organization that works with immigrants from Ethiopia. Following the struggle of several professionals and academics, the Health Ministry director-general released new guidelines in 2011, putting forth precedent-setting regulations for linguistic accessibility and cultural suitability of healthcare services. The guidelines are due to be implemented over the next two years.

Environment and health in the periphery - Even if it seems that the effects of pollution transgress regional boundaries, there is a clear gap between the centre and the periphery in terms of exposure to environmental pollution. Several polluting installations in Israel are located close to population centers, which leads to increased morbidity rates among the residents. The movement of these plants from the centre to the periphery also increases pollution and morbidity. The Coalition for Public Safety has for years been assisting several organizations devoted to periphery residents' rights to a clean environment and health in such communities as Afula, Arad and Wadi Ara.

Increasing access to quality healthcare services is but one aspect of the change needed in the public healthcare system if morbidity gaps are to be reduced. Additional recommendations are linked other results from socio-economic gaps that affect health, including the low level of access that poor and lower-middle class citizens have to private services, especially vital services that are not included in the basket of healthcare services, such as some mental health services, dental health and long-term hospitalization and nursing home care. Poor and excluded populations are also severely hit by high fees that are applied even to services that are included in the healthcare basket, despite the positive move to cancel a small number of these. Therefore, all patient fees should gradually be cancelled altogether. Furthermore, a mechanism for constant updating of the healthcare services basket should be created and enshrined in law, and the ongoing erosion of the healthcare budget should be stopped, as per a recent instruction by the Supreme Court. Resources should also be invested into preventative and community medicine.

The current Health Ministry is committed to reducing health discrepancies but the success of the plans its suggesting depends on a cross-governmental commitment, which would set quantitative goals to reduce gaps and allocate resources to pursue them. Moreover, increasing health equality requires a broad plan that would address the social, economic, environmental and cultural factors affecting health. A national government-led plan to reduce health gaps must be based on five principles: Allocating a special and separate budget; setting measurable quantitative goals and deadlines; systematic harvesting of data on the gaps in question; production of annual reports on

the gaps and the steps undertaken to overcome them; and cross-community cooperation - between the government, the Knesset, the HMOs and the civil society organizations.

The Right to Water

Water is not just another commodity, but a resource without which life is impossible. The right to water is a basic right derived from the right to life, the right to dignity and the right to health. Regrettably, official Israeli policy does not reflect a recognition of this right, but regards water as just another consumer product.

As part of the reform of the water industry that came into force in 2010, it was determined that water prices in Israel will reflect the full costs required for their supply. The government subsidy was abolished. Since the reform was introduced, water prices for consumers have risen by dozens of percent.²⁰⁰ No restrictions or reduced rates have been announced, and no mechanism has been introduced to reduce the debts of consumers who have difficulty paying their bills.²⁰¹ The resulting distress has affected large sections of the population, including middle-class families and individuals. The situation is particularly grave for those on low incomes, for the elderly and for people with disabilities.

Complaints received by ACRI from around Israel suggest that in many cases, the water corporations do not take into account the exceptional social condition of consumers who encounter difficulties paying their water bills, and disconnect the water supply to their homes. The corporations do not allow consumers to appeal against the debt or to pay in installments.²⁰² This approach is contrary to the Exercise of Authority to Disconnect Water Procedure introduced by the Ministry of the Interior in 2004. The procedure establishes, among other provisions, that water may be disconnected only if a report has not been received from the Welfare Division regarding exceptional hardship facing the resident. In addition, a payment schedule must be arranged with

²⁰⁰ State Comptroller, *Annual Report 63A*, October 2012 <http://tinyurl.com/bopbylx> (Hebrew), pp. 241-285. According to press reports, further price rises are planned for the beginning of 2013. For example, see: Yifat Preiz, *Local Government Center to Supreme Court: Prevent Water Price Hike*, (Hebrew), Globes, November 11, 2012 <http://www.globes.co.il/news/article.aspx?did=1000797281>

²⁰¹ For a review of the privatization of the water industry, see: *Privatization or Deprivation: The Methods Used by the Governments of Israel to Cut Social Services*, pp. 70-71.

²⁰² Examples of the corporations' disconnection policies were given in ACRI's letter to the Knesset Public Complaints Committee, November 2011 (Hebrew) <http://www.acri.org.il/he/wp-content/uploads/2011/11/water141111.pdf>. See also *Water Tariff Failures Exposed by State Comptroller Were Known to Government*, ACRI website, October 17, 2012 <http://www.acri.org.il/en/2012/10/17/water-tariff-failures-published-by-state-comptroller/>

consumers who are unable to pay their debt.²⁰³ In his latest report, published in October 2012,²⁰⁴ the State Comptroller sharply criticized the government policy regarding water. The comptroller also severely criticized the treatment of disadvantaged populations.

In March 2012, the Ministry of Finance informed the Knesset Finance Committee that it would allocate NIS 42 million to increase the water quota for people with disabilities only.²⁰⁵ In June 2012, the Water Authority duly published an announcement that the water quota at the basic rate will be doubled for a limited list of eligible consumers.²⁰⁶ However, no discounts were introduced for other disadvantaged populations. In addition, a fixed sum has been allocated for this purpose; accordingly, there is no guarantee that the discounts will continue to be available in the future.²⁰⁷

The government rejected a proposed law seeking to ensure the introduction of discount water tariffs for disadvantaged consumers.²⁰⁸ The proposed law, which was drafted by ACRI, advocated the establishment of a reduced tariff for recipients of benefits, those on low incomes, and people who require a large quantity of water due to their state of health. The proposed law was promoted by MKs Dov Khenin, David Azoulay, Ilan Gilon and others, but it was rejected in June 2012 by the Ministerial Committee for Legislative Matters.

Over the past year, the Water Authority has published several drafts of rules for water corporations regarding the disconnection or reduction of water services.²⁰⁹ However, the version approved by the Water Authority Council in June 2012, which has currently been tabled for debate and voting in the Knesset, contains a number of problems and difficulties,²¹⁰ mainly due to the failure to recognize the right to water as a basic right.

²⁰³ It should be noted that a small number of corporations apply the provisions of the procedure strictly, or have decided not to disconnect consumers from the water supply.

²⁰⁴ *Annual Report 63A*, footnote 200 above.

²⁰⁵ *Annual Report 63A*, footnote 200 above.

²⁰⁶ *Benefits for Special Populations*, announcement on the website of the Israel Water Authority (Hebrew) <http://www.water.gov.il/HEBREW/MOREINFORMATION/Pages.disabled.aspx>

²⁰⁷ *Annual Report 63A*, footnote 330 above.

²⁰⁸ Proposed Law: Water (Amendment – Discounts for Eligible Populations), 5772-2012 (Hebrew) <http://knesset.gov.il/privatelaw/data/18/4201.rtf>

²⁰⁹ *Water and Sewage Corporation Rules (Cessation or Reduction of Provision of Water and Sewage Services)*, 5772-2012. A draft version of the rules may be viewed on the Knesset website (Hebrew) <http://www.knesset.gov.il/committees/heb/material/data/kalkala2012-07-23-06.pdf>

²¹⁰ ACRI's comments on the draft rules: January 2012 <http://www.acri.org.il/he/?p=19535> and April 2012 <http://www.acri.org.il/he/wp-content/uploads/2012/05/water290412.pdf> (Hebrew)

The transfer of the authority to supply services and commodities from the state to a corporation does not exempt the state from its responsibility to ensure that the entire public enjoys access to these services. On the contrary, such a step by its very nature increases the state's obligation to ensure that corporations do not violate public access to services. Accordingly, decisions relating to the reduction of the water supply, eligibility for disadvantaged consumer status and payment and collection arrangements should continue to rest with public authorities, such as the local authorities – the public body charged with attending to the welfare of residents. The draft regulations proposed by the Water Authority fail to meet this requirement.

Ensuring access to water is a cardinal obligation imposed on the state, even when water is supplied by a municipal corporation. In order to protect the realization of the right to water by all people, without discrimination, thrifty private consumers should pay a realistic rate. In addition, substantial discounts should be established for disadvantaged consumers and should be formalized in law or in regulations. It is important to prohibit the disconnection of consumers from the water supply, and to permit the reduction of the water supply only in cases when the refusal to pay is not due to financial difficulties.

Human Rights in the Occupied Territories: The Occupation Becomes Comfortably Numb

It has been 45 years since Israel occupied the Palestinian territories, and we seem to have gotten used to it. Most of the Israeli population was born after the start of the occupation or just before it, and knows no another state of being, as if the occupation has been there forever. But on the contrary, there is nothing natural, legal or just about the regime of separation and discrimination in place in the Occupied Territories. Thanks to the illusion of a stable status quo, this regime is fast becoming permanent, while the violation of the human rights of the Palestinian residents continues.

The considerable improvement in the security situation over the past few years has seen conditions for the Palestinian residents of the West Bank somewhat improve, especially when it comes to freedom of movement: Roadblocks and checkpoints within the West Bank have been opened or removed, and the movement of Palestinians on certain roads is once again permitted. Last Eid al-Fitr saw tens of thousands of Palestinians given permits to enter Israel, and most visited the beaches of Jaffa, after being barred from them for years. After ACRI repeatedly approached the Defense Minister on the issue, the IDF also announced that it would lift restrictions on movement between the Jordan Valley and the rest of the West Bank²¹¹. This does away with nearly all permanent limitations on the movement of Palestinian vehicles within the West Bank, but other restrictions on freedom of movement are still in place, especially on Palestinian entry into the "seam line" west of the separation barrier, and severe limitations on movement still apply in Hebron. In Gaza there was some improvement following the opening of the Rafah Crossing, which Gazans use to exit to Egypt. But the restrictions remain on importing construction materials, exporting agricultural produce, and movement between Gaza and the West Bank²¹².

Neither the relative quiet nor the occasional lifting of some restrictions can, however, alter the fact that Israel continues to rule over millions of human beings who live under a military regime where their basic rights are constantly violated. The settlement enterprise has created an unacceptable situation whereby the interests and rights of the settlers are given total and utter preference, while the occupied population is denied land and water resources and has its basic rights violated,

²¹¹ *Movement Restrictions in Jordan Valley to Be Lifted Following Repeated Demands by ACRI*, ACRI website 15 October, 2012 <http://www.acri.org.il/en/2012/10/15/jordan-valley-movement-restrictions-lifted/>

²¹² Gisha - Legal Center for Freedom of Movement constantly publish up-to-date data on activity at the crossings into Gaza on their website www.gisha.org

including the right to property, the right to freedom of movement and above all - the right to equality before the law. Forty-five years after the occupation of the territories, Israel seems to be moving further and further away from the principles of international law, which explicitly state that the occupier is meant to hold occupied territory strictly as a temporary custodian and while it is there to be committed to safeguarding the interests and rights of the occupied population.

The Institutional Normalization of the Continuing Occupation

One especially notable development of the past year is the appearance of several processes and legislative initiatives meant to accelerate the "de-facto annexation" of the occupied territories to Israel. For example, the further blurring of the Green Line as far as the Jewish residents of the West Bank are concerned, and the application of Israeli law to the settlements. This has accelerated the trend of applying two different legal systems to the territories: One, a civil Israeli one, for Jews living in the settlements, and the other, a military one, for the Palestinians. Although some of the key initiatives discussed below are yet to come into force, there is little doubt that this trend advanced considerably during the outgoing Knesset, and that Knesset members ignored, whether out of ignorance or intentionally, the fact that international law does not even allow the Knesset to legislate for the occupied territory.

Ban on discrimination according to place of residence - The Prohibition of Discrimination in Products, Services and. Entry into Places of Entertainment and Public Places Law (2000) was meant to advance equality and prevent discriminations on grounds such as nationality, religion, ethnic origin, gender, sexual orientation or political outlook. In July 2012, the Economic Affairs Committee approved for its first reading a proposal to amend the law and include a ban on discrimination based on place of residence. The bill, however, included the occupied territories as part of the territory of the state. The attempt to equate the territories and Israel is fundamentally unacceptable. Ironically, the bill would actually serve to aggravate discrimination by nationality in the occupied territories, as it would apply only to Jewish residents.

Law for the Arrangement of Outposts / Law for Legitimizing the Outposts - In November 2011, two bills were put forward seeking to legitimize the status of outposts built on private Palestinian land. They are the latest in a series of similar bills put before the Knesset with the sole purpose of retroactively legitimizing unauthorized construction on private land in the occupied territories, by confiscating it from its Palestinian owners and providing monetary compensation. Most ministers and MKs supported the bills, but domestic and international pressure forced the prime minister to veto them, seeing them voted down in the Knesset in June 2012. In "compensation" for the failure of the bills, the government reached an agreement with the coalition on the status of houses in the Ulpana Hill and approved the construction of 851 housing units in West Bank settlements.

The bills constituted a step up in the violation of individual rights and defamation of the rule of law in the occupied territories, while demonstratively ignoring earlier rulings by the High Court. In addition, it signaled the institutionalization of a discriminatory regime, dealing a fatal blow to the individual and collective rights of Palestinians residents living under occupation.

There is no occupation: the findings of the Levy Committee - A key instrument in advancing retroactive legitimization of settlements in the Occupied Territories is a committee established in early 2012 and led by retired Supreme Court justice Edmond Levy. Prime Minister Benjamin Netanyahu decided to establish the committee in late 2011, with the goal of advising the government on formalizing the status of illegal outposts already slated for eviction under a ruling by the High Court of Justice. The very establishment of the committee, regardless of its findings, already constitutes "normalization" of the occupation, and the attempt to differentiate between illegal outposts and supposedly "legal" settlements is fundamentally flawed. Both the institutionalized settlement construction and the unlicensed construction in illegal settlements violate international humanitarian law and the human rights of Palestinian residents in the West Bank. Any and all Israeli settlement in the Palestinian territories is against international law. The attempt to cast only construction on privately owned land as illegal, as opposed to construction on public land, also does not correspond to international law. Settlement on private land violates a clear ban in international law on expropriation of private property, while settlement on public land violates the ban on exploiting the natural resources of an occupied territory for the needs and interests of the occupying state.

The committee released its findings in June 2012. Among its conclusions was that the territories of the West Bank are not under occupation, and there is no reason to prevent Israeli Jewish citizens from settling there. It also recommended formalizing the status of the majority of illegal outposts and easing the processes of land acquisition and construction for Israelis in the West Bank. The cabinet is yet to endorse the findings, and the prime minister has reportedly decided to "bury" the report, for fear of international ramifications²¹³.

ACRI believes that a committee cannot alter international law. The Levy Committee findings are legally preposterous, and their sole purpose is to sanctify and exacerbate the long-standing wrongs done by successive Israeli governments in the Occupied Territories. The committee did get one issue right: There is no difference between outposts and settlements as both violate international law and desperately harm the lives of Palestinian residents.

²¹³ *Netanyahu set to bury Levy report on legalizing illegal West Bank outposts*, Chaim Levinson, Haaretz, 15 August, 2012 <http://www.haaretz.com/news/diplomacy-defense/netanyahu-set-to-bury-levy-report-on-legalizing-illegal-west-bank-outposts-1.458264>

A university in Ariel - The plan to upgrade the academic centre in Ariel into a full university that is currently being debated, also constitutes a "normalization" of the occupation, of Israeli presence in the occupied territories, and of the regime of separation. It is another component of de-facto annexation, which tramples human rights and uses land for the benefit of one population while ignoring others.

Pushing Palestinians out of Area C - Area C, which lies under both civil and military Israeli control, constitutes some 60 percent of the West Bank and is home to around 150,000 Palestinians, and all Israeli settlements. Here, Israel engages in a number of practices that severely impede the lives of the Palestinian residents, including: prevention of planning of Palestinian villages and discriminatory enforcement of planning and building laws; the closure of areas by defining them as firing zones or natural reserves; destruction of water cisterns and confiscation of water trackers, etc. These practices effectively push residents out of the area. Israel thus violates the rules of international law concerning its duties as an occupying force in the West Bank, which first and foremost include the duty to protect the interests of the local population and respect their way of life.

Two Separate and Discriminatory Planning Systems - Khirbat Zanuta is a small Palestinian village on the southern slopes of Mount Hebron, home to 150 residents (27 families) who earn their living from husbandry of sheep and agriculture. The village has existed for generations, long before the occupation of the West Bank in 1967. In 2007, the Civil Administration issued demolition orders for most of the homes. The state contends that the structures are illegal, as they were built without permits. In fact, the residents never had the chance to obtain permits, as the village does not have a master plan. The Civil Administration claims that there is no justification for a master plan citing, among other things, the village's small size, the existence of archeological ruins on the premises, and the relatively long distance between the village and the town of Dahariya. If the demolition orders in Zanuta are implemented, the residents will be without a roof over their heads, without access to water and without their livelihood. The demolition of the homes will infringe upon the dignity of the villages, their culture and their manner of life, all in complete contradiction to international law. In 2007, the residents of Khirbat Zanuta and ACRI appealed against the Civil Administration's decision to demolish the village. The appeal is still pending.

The story of Khirbat Zanuta is one of many examples of Israel's planning policy in Area C and its selective law enforcement. In Area C, Israel operates two planning and enforcement systems differentiating between residents on the basis of nationality: One planning system for settlers and another for Palestinians. Most of the settlements have detailed master plans, which allow for construction of public buildings and future growth. Many Palestinian villages and towns in Area C, by contrast, do not have even the most minimal of planning, even those that have existed for decades. At best, they have "boundary plans" that demarcate the boundaries of the village and the main purpose of these plans is actually to limit the area in which construction is permitted to a

bare minimum, while ignoring the state of planning within the given area. The state considers natural growth to be "illegal" expansion. Only a handful of building permits are given out each year.

The building and planning policy of the Civil Administration does not take into consideration the way of life of Palestinian residents in Area C and their best interests, and violates a number of human rights. As mentioned above, any attempt to expand or develop a Palestinian village automatically provokes a demolition order. Moreover, due to the Civil Administration's broad interpretation of the term "structure", any small and vital activity like whitewashing, repairs, covering up an existing water cistern, covering up an existing structure with plastic sheeting or setting up a temporary tent becomes illegal. The lack of planning also affects the provision of basic services for the residents, including infrastructure for water, electricity and sanitation. Many Palestinian residents live off the grid and are forced to buy water from water tankers at exorbitant prices. Under the current situation, residents have two choices: Either go on building on their private lands without permits and thus live in permanent fear of demolition, or move to areas A and B and lose the only asset they have - the family's land.

The discrimination of the Palestinian villages is even more stark in light of the decision by the prime minister and a ministerial team in April 2012 to legalize three settlements, Sansana, Bruchin and Rehalim, defined in the Sasson Report as "illegal outposts." In August 2012, GOC Central Command signed an order confirming Bruchin's outline plan, thereby confirming its legality.

Declaration of Firing Zones - Israel is also seeking to eject Palestinians living in 12 villages in an area known as Masafer Yata, south of Mount Hebron. The residents of these villages have a unique and traditional way of life: Many of them live in or near caves and survive off herding and agriculture. Most of them were born to families residing in this area for many decades, long before 1967. In 1999, the IDF renewed an order declaring the area where they live as "firing zones" issuing expulsion orders on the pretext that the residents are not permanent - ignoring their way of life and ancient farming culture. In November 1999, security forces forcibly evicted some 700 residents.

Immediately after the eviction, ACRI and Attorney Shlomo Lecker filed two petitions to the High Court on the residents' behalf. The court issued an injunction and ordered the state to allow the residents to return to their homes and let their livestock graze on their land while court proceedings continued. These proceedings continued for many years. In July 2012, the State Prosecutor's Office informed the court that "no permanent stay will be allowed" in most of the area declared as firing zones. The decision means the eviction of eight out of 12 villages and the expulsion of some 1,000 people from their homes. The Defense Ministry offered to allow the residents to work their land and herd their livestock on Saturdays and Jewish Holidays, and two additional one-month periods a year. Following the announcement, the High Court ordered to erase the petitions without actually ruling on their substance, but keeping the injunction in force to

allow the residents to live in their villages until November 1, 2012. The petitioners persuaded the court to extend the injunction to 16 December 2012. The court also ruled the petitioners could file new petitions against the position of the Defense Minister. ACRI plans to appeal once again on the villages' behalf.

Around 18 percent of the West Bank (30 percent of Area C) is defined as firing zones. Some 5,000 Palestinians live there, most of them Bedouin and shepherds, two of the weakest and most vulnerable populations in the West Bank. Many other communities lived in these areas before they were closed up. The military orders also limit their access to healthcare and education services, and living without water, sanitation or electricity, along with reduced access to grazing grounds, damages their livelihood.

Demolition of Water Cisterns - Many Palestinians residing in the West Bank suffer water shortages, irregular water supply or have access to poor quality water. The shortages become more severe in the summer months and during arid years. In the last several years, Palestinians lost access to several water sources when entire areas around them were closed for the benefit of settlements or for military purposes, or for direct takeover by settlers. A growing number of families depend on expensive water from water tankers, spending significant parts of their income on buying water. This has severe implications for the residents' lives and basic rights, especially the right to health, to livelihood (due to the need for water for agriculture and animal maintenance), and the right to live in dignity.

In the last three years the Civil Administration and security forces have added to the hardship by destroying water cisterns in Area C due to lack of building permits. Most of the cisterns have been in use for years, so the construction in question is not "new"; at most it constitutes repairing or covering existing cisterns to protect the rainwater they hold from pollution or to due to safety risks. Civil Administration inspectors demolish the cisterns in a manner that makes them completely unusable, going against building and planning laws, instead of destroying only the "new" construction, such as the cover. The demolitions often occur in villages that are not connected to the water grid, where the cisterns are the only water source. The demolition makes the residents' lives intolerable, and they sometimes find themselves forced to leave altogether.

According to OCHA, in the last three years Israeli authorities demolished dozens of cisterns, and between January and October 2012, 26 such cisterns were destroyed. Some examples: In February 2012 the administration destroyed a shack used as living quarters, four goat pens and two cisterns in Ta'ala on in the South Hebron Hills. In April 2012, the village of A-Dik saw four residential homes, eleven animal structures, three agricultural rooms and four water cisterns demolished. Thirty people, 18 of them children, had to migrate and the livelihood of eight families was damaged. In April, Israeli forces demolished 84 structures in Area C, 12 of them water cisterns. The results: Forced displacement of 116 civilians, 55 of them children. In July 2012, four cisterns were

destroyed, one of them under construction. Three of these provided agricultural water for 35 people, 20 of them children.

Violations of International Law

Through its policy in Area C, Israel is blatantly violating the rules of international and humanitarian law by virtue of failing to fulfill the duties it bears as the occupying force in the West Bank. Among these duties, the occupying state has to preserve the situation that existed on the ground before the occupation and look after the well being of its residents, who are considered a "protected" population. The occupying state is not allowed to damage civilian installations vital for the survival of residents in the occupied territory. The occupying force is also obliged to guarantee order, safety, public life and welfare of the protected population in the occupied territory, and to provide for the needs of the residents in all areas of life.

In the context of the planning and building policy, the duties of an occupying force determine that Israel not only needs to recognize all communities on the ground prior to the occupation, but also allow the residents future building and planning that take into consideration natural growth, traditional ways of life and the desire to improve their own well-being. As for water cisterns, since Israel bears the responsibility for the fate and well being of the population, it is obliged to provide water for the residents of the West Bank. Where Israel does demolish water reservoirs for planning purposes, it still must ensure the population affected by the demolition retains access to clean and usable water in quantities sufficient for the population's needs. As for firing zones, the use of occupied territory for general military needs, as in the case of Firing Zone 918, is against international law. International law holds that the occupying force cannot use the territory it is occupying as it pleases, and the military commander must avoid violating the rights of the local residents and their resources unless it is necessary for specific security needs directly concerned with military activity on the ground. International law also prohibits forced transfer of protected residents, except in emergencies, and even then, for temporary periods only.

זכויות האדם בישראל 2012
حقوق الإنسان في إسرائيل 2012
Human Rights in Israel 2012

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



The Association for Civil Rights in Israel (ACRI) publishes the **"State of Human Rights" report** annually to mark International Human Rights Day (December 10). In this report, ACRI reviews the current situation of human rights over the past year in Israel and in the Occupied Territories; warns against particularly severe violations of human rights; notes improvements; sheds light on human rights violations that do not receive public and media attention; and points to the major trends in the field of human rights, which affect every person living in this region.

For forty years, since 1972, **ACRI** has been promoting and protecting human rights, freedom of expression, equality, social justice, the right to housing, to health, to education, human rights in the Occupied Territories, the right to privacy, and more. **All so that we can all talk, think, and live in a reality that respects human rights and safeguards the human rights of every person.** We carry out this work on the streets and in the Knesset, in the courts and in the education system, on social networks and in the media.

As an independent and non-partisan organization, ACRI's funding comes from individuals and funds in Israel and abroad, membership fees, and volunteer work. ACRI's independence and professionalism are also based on our longtime policy of neither requesting nor receiving funding from any Israeli governmental or partisan sources.

We believe that with joint efforts we can establish and enhance the Israeli society's commitment to human rights, so that may live in a more just society. Together, we are creating a wide and sturdy basis of public support for human rights. **You are invited to join us in the struggle for human rights: for our rights.**

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