



## Situation Report

# The State of Human Rights in Israel and the OPT **2014**

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



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# Situation Report: The State of Human Rights in Israel and the OPT

## 2014

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## Introduction

The events of the summer of 2014, and what followed in its wake, marked a fault line - some might say even an earthquake - in Israeli society. On June 12, three Jewish teenagers - Gilad Sha'er, Eyal Yifrah and Naftali Frenkel - were abducted in the West Bank, and their bodies were located two and half weeks later. This abduction and murder spawned a wave of militancy and led to calls for revenge on social networks. This wave reached a peak with the murder of a sixteen-year old Palestinian from East Jerusalem - Mohammed Abu Khdeir.

An escalation in the Israeli-Palestinian conflict immediately followed these events - two months of intense fighting in the Gaza Strip and rocket attacks on Israel - all of which has taken a heavy physical and emotional toll. Civilians on both sides of the conflict were subjected to violations of their rights to life and physical integrity as well as their rights under international humanitarian law. Over 2,000 lives were lost in Gaza, and thousands more were injured. In Israel, seven civilians were killed by rocket attacks, and 67 soldiers were killed in combat.

Even following the end of the fighting, quiet was not restored. At the time of writing, daily incidents continue to occur in Jerusalem, and the city is far from calm. The new reality in East Jerusalem is characterized by almost daily violence, clashes between residents and police and critical interruptions to the daily routine of residents, even those who are not involved in the disturbances.

While the security situation around us is concerning, its implications for Israeli society are equally troubling. During the summer of 2014, and still today, we witnessed the fragility of Israeli society and its democracy. The tendency to suppress criticism and controversy in times of emergency caused severe harm to freedom of expression. The silencing of voices that deviated from the national consensus, and especially the labeling of critics as “unpatriotic” or showing disloyalty to the state, is extremely troubling. Many voices warned that this violation of freedom of expression constitutes a clear and present danger to Israel’s democracy. The Jewish majority could not accept the identification of Israel’s Arab minority (and its historical, national, social and familial love) with the Palestinian residents of Gaza. As a result, we witnessed a frightening escalation in racism, incitement to violence and silencing against the Arab minority - a trend that spread throughout a large proportion of the Jewish public and was reflected in both public and virtual spaces. This racist public environment was at times further bolstered by senior government officials, whether by act, omission or silence.

These phenomena did not form in a vacuum. They are the result of ongoing processes in Israeli society that have taken place over several years (some of which we illustrated in previous versions of our annual “Situation Report”). These processes include the growing trend towards nationalism, extremism and fear of the other; the conditioning of rights on obligations - primarily the duty of loyalty to the state; the weakening of democratic values and the values of human rights; and the notion that a man is not an individual entity entitled to equal right, but should be judged according to his ethnicity, gender or class. These processes are endangering the future of Israeli society.

Beyond the security incidents and their implications, a series of harmful trends continued to manifest themselves in 2014: the cruel detention policy for refugees and asylum-seeker; discriminatory planning policies and home demolitions in the Negev; discrimination, neglect and police misconduct in East Jerusalem

neighborhoods; the forced eviction of Palestinian residents of Area C; violations of freedom of expression for Palestinians in the West Bank; increasing privatization in the field of education; and more.

Nevertheless, it has seemed possible at times to see the first indications of positive change, particularly in the area of social rights. Though the budgetary priorities of the State of Israel have not changed, certain social and economic policies hinted at the beginning of a new way of thinking, including the establishment of the German and Alalouf Committees, the references to affordable housing in new legislation and legislative instructions to prohibit disconnecting water from vulnerable populations. These positive changes were not created from thin air, but are the results of years of hard work by organizations, groups and individuals. Thanks to the long-term struggle of dedicated activists, this year witnessed some fine achievements for both transgender rights and for the rights of workers to unionize.

In order to promote change, it needs to first be understood that change does not happen overnight. In all walks of life, change occurs through foundational work - from the political level, through to the government bureaucracy, to the courts, the media, opinion makers, and in the education system – all in order to strengthen ideas and encourage policies which promote equality, human rights and democracy. Despite the erosion of these values over time, Israel possesses strong foundations that are committed to democratic values and human rights. These foundations must be strengthened, and despite the difficulties, we can draw encouragement and inspiration from the struggles of groups and communities that insist on their rights and ultimately achieve great successes. We are committed to continuing our long-term struggle based on the values that guide us. We will not give up on democracy, human rights and Israeli society.

**Sharon Abraham-Weiss**

Executive Director

Association for Civil Rights in Israel

## Freedom of Expression

### Violations of Freedom of Expression during Operation Protective Edge

In times of crisis, war and emergency, there is an increased tendency to silence disagreements and criticism. Emotions run high, and intolerance towards expressions that contradict the majority opinion increase – particularly towards expressions that are perceived as “unpatriotic” or as expressing disloyalty to the state. During the summer of 2014, from the beginning of the military escalation in early July, this tendency manifested itself in particularly violent and threatening ways. During this period, many commentators contended that the infringement of freedom of expression rose to the level of a threat to Israeli democracy.<sup>1</sup>

This phenomenon that we encountered over the past year raises significant questions concerning the limits of freedom of expression, particularly in the age of the internet and social media, and with regard to the relationship between the majority and the minority. These questions pertain, among other things, to the fine line between freedom of expression and incitement; to the blurring of the boundaries between the private and public spheres and between private life and office life; to “citizen enforcement” on social networks; and more. These issues deserve a comprehensive analysis, which exceeds the framework of this report. However, we shall restrict ourselves herein to a brief review of some of the interrelated manifestations of violations of freedom of expression that occurred during the summer's conflict.

**A public climate of intolerance, persecution and incitement:** Since the kidnapping and murder of the three Israeli teenagers Gilad Shaar, Eyal Yifrah and Naftali Fraenkel and the teenager Mohammed Abu Khdeir from the Shuafat neighborhood of East Jerusalem, social networks became a platform for aggressive confrontations between the right-wing and left-wing and between Jews and Arabs. This confrontation escalated even more so after the commencement of the fighting in Gaza. Expressions that were deemed harsh or contentious soon led to silencing attempts. Several online groups took it upon themselves to monitor expressions on social networks and report “leftist” remarks; some of these groups were removed from Facebook following user complaints, but others remained active or were reopened.<sup>2</sup> Artists and journalists who spoke against the actions of the military and the state during the fighting were subjected to much anger, and even those who did not publicly express an opinion but are perceived as leftists were subjected to abuse. Gila Almagor, Gideon Levy, Orna Banai, Amnon Abramovich, Rona Kenan and others were

<sup>1</sup> See, for example: Yohanan Plesner, “[A Red Alert for Israeli Democracy](#),” *The Israel Democracy Institute*, 27 July 2014; Moshe Negbi, “[Strong Operation, Weak Democracy](#)” [Hebrew], *Haaretz*, 27 July 2014; Itamar B.Z., “[Escalation](#)” [Hebrew], *The Seventh Eye*, 4 August 2014; Yossi Sucary, “[Before Democracy Gives Up on Us](#)” [Hebrew], *Haaretz*, 7 August 2014; Ofra Edelman, “[Protective Edge Marked a New Record in Silencing Criticism of the War](#)” [Hebrew], *Haaretz*, 8 August 2014.

<sup>2</sup> Oded Yaron and Or Kashti, “[‘Israel-Hating’ Facebook Posts Leading to Firings, Disciplinary Actions](#),” *Haaretz*, 28 July 2014; Oded Yaron, “[Facebook Removes Two Right-Wing Groups Acting to Fire Protective Edge Opposers](#)” [Hebrew], *Haaretz*, 29 July 2014.

slandered and cursed on social networks and on the street, and some of them even received murder threats.<sup>3</sup>

This public climate of intolerance was bolstered by comments by public officials that participating in protest events related to the fighting in Gaza was illegitimate or even dangerous.<sup>4</sup> For example, Minister of Public Security Yitzhak Aharonovich, who is charged with ensuring the right of Israeli citizens to demonstrate and protest, was quoted by the media as acting to put a stop to demonstrations against the fighting.<sup>5</sup> The mayors of Haifa and Lod – two mixed cities with significant Arab populations – also tried to prevent demonstrations in their cities against the fighting.<sup>6</sup> In addition, Foreign Minister Avigdor Lieberman and Communications Minister Gilad Erdan sought to end broadcasts of the Al Jazeera network in Israel.<sup>7</sup>

**Violence Against Demonstrators:** In light of the incitement and intolerance within the public discourse, it is perhaps unsurprising that anti-war demonstrations were marked by violent assaults on protesters by organized groups of nationalists thugs. During several demonstrations that took place in Tel Aviv and Haifa, right-wing activists cursed and threatened left-wing activists, ripped their signs, threw eggs, stones and bottles at them and even assaulted and beat them.<sup>8</sup> In this context, it is worth reiterating that a key component of the police's obligation to protect freedom of expression is a duty to protect the safety of demonstrators. Police forces did position themselves between left-wing and right-wing demonstrations, but they failed to protect demonstrators after the demonstrations disbanded.

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<sup>3</sup> See, for example: Gideon Levy, "[I Don't Regret My Words Even for One Moment](#)" [Hebrew], *Mako – Channel 2 News*, 17 July 2014; "[Orna Banai Responds: I Was Misunderstood](#)" [Hebrew], *Walla*, 22 July 2014; Dana Weiss, "[Gila Almagor Is Not Apologizing: I Am Being Lynched](#)" [Hebrew], *Mako – Channel 2 News*, 26 July 2014; David Verthaim, "[Demonstrators to Amnon Abramovich, Who Is Disabled and Holds Chief Of Staff Citation: 'Traitor, Terrorist'](#)" [Hebrew], *Walla*, 30 July 2014; Eli Ashkenazi and Ben Shalev, "[Israeli Singer Cancels Concert over Political Death Threats](#)," *Haaretz*, 31 July 2014; Nati Tucker, "[Dorner Rejects Complaints Against Gideon Levy: Freedom of Expression Is Intended to Protect Uncommon Opinions](#)" [Hebrew], *Haaretz*, 19 August 2014.

<sup>4</sup> For more, see ACRI's letter to the Attorney General, dated 27 July 2014: <http://www.acri.org.il/en/2014/07/24/leaders-free-speech/>.

<sup>5</sup> Israel Broadcasting Authority, "[If We Have to – We Will Occupy the Gaza Strip](#)" [Hebrew], 19 July 2014.

<sup>6</sup> An [announcement](#) [Hebrew] on the Facebook page of Yona Yahav, Mayor of Haifa, 18 July 2014; Israel Broadcasting Authority, "[Haifa Mayor to Police: Prevent Demonstrations of Arabs in the City](#)" [Hebrew], 18 July 2014; Municipality of Lod, "[Unity in Lod Council Meeting](#)" [Hebrew], 6 August 2014.

<sup>7</sup> Ophir Dor, "[Erdan Competes with Lieberman: Orders to Remove Al Jazeera Network from the Air](#)" [Hebrew], *Calcalist*, 22 July 2014.

<sup>8</sup> See, for example: Yarden Skoop, "[Right-Wingers Attack Leftists in Tel Aviv Demonstration](#)," *Haaretz*, 13 July 2014; Itai Amikam, "[Violence Against Leftist Protesters in Tel Aviv: 'The Streets Are Filled with Fear and Terror'](#)" [Hebrew], *Mako-Channel 2 News*, 13 July 2014; Jackie Khoury, Zafir Rinat and Roy Chicky Arad, "[Hundreds of Right-Wing Activists Attack Leftist Demonstrators in Haifa; Confrontations also in Tel Aviv](#)" [Hebrew], *Haaretz*, 19 July 2014; Adi Ben Hur, "[One of the Thugs Wanted to Attack Me, Too. I Looked Too Leftist](#)" [Hebrew], *Mida*, 27 July 2014; Yael Marom, "[Once Again: Left-Wing Activists Assaulted After a Demonstration Against the War](#)" [Hebrew], *Sicha Mekomit*, 27 July 2014.



**Arrests of demonstrators and the filing of indictments:** There was a clear double standard in the attitude of the police towards the anti-war demonstrations that took place throughout Israel during that turbulent period. On one hand, it appeared that the police had implemented an intentional policy of reducing violent friction with demonstrators; on the other hand, the police conducted mass arrests – in about one month, approximately 1,500 demonstrators were arrested, some of them minors. Almost all those arrested were Arabs, detained after demonstrations in Arab communities. Indictments were filed against some 350 of them for disturbing public order, unauthorized assembly, disorderly conduct in a public place and violence against person and property.<sup>9</sup> According to the NGO Adalah, which represented some of the arrested demonstrators, many demonstrations were dispersed without cause and in contravention of the law, and the police conducted pre-emptive and illegal arrests, even of minors.<sup>10</sup>

In this context, it is worth noting that in recent years, we have borne witness to a series of indictments against demonstrators that have been founded on flimsy and sometimes even preposterous grounds. This phenomenon is reflected in the multitude of acquittals, the expungement of indictments under the court's recommendation and the mounting criticism voiced by the courts with regard to law enforcement authorities. Over the past two and a half years, 54 demonstrators have been acquitted and 40 indictments annulled – and this is only in the cases that ACRI managed to identify.<sup>11</sup> In many cases, police forces have made hasty and baseless decisions to declare demonstration as “illegal assemblies”, resulting in unnecessary escalation and additional “offenses”. In light of the large number of unnecessary indictments, a legislative memorandum was amended by the Ministry of Justice in August that sought to transfer the authority to file an indictment in demonstration-related offenses from the Police Prosecution to the State Prosecution.<sup>12</sup>

**“Policing” of Online Discourse:** A pre-existing and concerning phenomenon that escalated during the summer in the summer was **the summoning of citizens for questioning following expressions on social networks.**<sup>13</sup> For example, in February 2014, a photographer living in East Jerusalem was summoned for questioning after he published a status on Facebook calling the

<sup>9</sup> Nir Hasson and Yaniv Kubovich, “[Israel Police's War Against Arab Protesters](#),” *Haaretz*, 16 August 2014. For more about the treatment of Arab demonstrators, see also the chapter on the rights of the Arab minority in this report.

<sup>10</sup> Hassan Shaalan and Ahiya Raved, “[Well Known Israeli Arab Leader Arrested for Involvement in Riots](#),” *Ynet*, 7 July 2014; Adalah, “[110 Palestinian Citizens of Israel Remain in Detention after Largest Wave of Arrests Since October 2000](#),” 8 July 2014; Hagar Shezaf, “[Following Wave of Protests, Israel Arrests Scores of Arab Activists, Minors](#),” *972 Magazine*, 23 July 2014; Adalah, “[Adalah to AG: Investigate Serious Violations in Police Practices Against Palestinian Arab Demonstrators in Israel During the Summer of 2014](#),” 18 September 2014.

<sup>11</sup> See, for example: Ilan Lior, “[Israel Police to Drop Charges Against Daphni Leef, Other Social Justice Activists](#),” *Haaretz*, 1 April 2014; Yedidya Ben-Or, “[Charges Against Youth Who Protested Release of Terrorists Dropped](#)” [Hebrew], *Arutz Sheva*, 17 August 2014. For a list of the acquittals and annulments see ACRI's letter to the Attorney General, dated 29 June 2014: <http://www.acri.org.il/he/31839> [Hebrew].

<sup>12</sup> [Memorandum of Criminal Procedure Law \(Amendment No. 62 – Temporary Order\) \(Amendment\), 5774-2014](#) [Hebrew]. See also: Revital Hovel, “[Justice Ministry May Wrest Authority to Indict Protesters from Israel Police](#),” *Haaretz*, 14 August 2014.

<sup>13</sup> In addition to the examples listed below, see: Adi Samarias, “[Dangerous Statuses](#)” [Hebrew], *The Hottest Place in Hell*, 12 August 2014.

Jerusalem mayor “the mayor of the occupation.”<sup>14</sup> In April, an Arab resident of Lod, was interrogated and released to house arrest after he published a Facebook status speaking out against the drafting of Arab Christians to the Israeli military.<sup>15</sup> In early July, a resident of Be'er Sheva and a resident of Rishon LeZion, who are both right-wing activists, were questioned for distributing articles against Arabs on the internet,<sup>16</sup> and an Arab student was questioned and remanded to house arrest after he published a Facebook invitation to a protest assembly in the village of Lakiya in the Negev.<sup>17</sup> During Operation Protective Edge, a Jewish poet from Be'er Sheva was arrested after he published harsh and vitriolic statuses calling upon IDF soldiers fighting in Gaza to turn their weapons against government ministers and the wealthy;<sup>18</sup> an Arab resident of Jaffa was questioned on suspicion of inciting racism on Facebook;<sup>19</sup> a Palestinian was arrested after publishing statements against Israel and Jews on Facebook,<sup>20</sup> and an indictment was filed against a Palestinian resident of the West Bank for publishing a status defaming the commander of the IDF's Golani Brigade.<sup>21</sup> Although there were Jewish citizens who were summoned for questioning as a result of their online activity, the majority of those summoned were Arabs.

Indeed, there are cases where expressions on Facebook rise to the level of unlawful incitement, particularly in the case of pages with a declared racist purpose, which can serve as a platform for hate speech and as a tool for organizing violent action.<sup>22</sup> There is nothing wrong with investigating cases that raise suspicions of criminal offenses. However, in most of the aforementioned cases – which rise only to the level of criticism and protest – there was no criminal aspect to the expressions themselves, and police had no grounds to summon, detain or arrest anyone. **The mere act of summoning a citizen for interrogation, even if it does not lead to an indictment, can create a severe chilling effect on freedom of expression**, particularly when it is used much more frequently against Arabs and against those who express views that deviate from the stance of the majority. It must also be noted that discourse on social networks is informal and can be strongly influenced by emotions in the heat of the moment, particularly during tense periods.

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<sup>14</sup> Nir Hasson, “[Palestinian Quizzed \[sic\] for Calling Barkat ‘Mayor of the Occupation’ on Facebook](#),” *Haaretz*, 21 February 2014.

<sup>15</sup> Adalah, “[Arab Citizen Placed under Five Days House Arrest for Facebook Post Against Recruitment of Christian Arabs into the Israeli Army](#),” 2 May 2014.

<sup>16</sup> Srugim, “[Two Right-Wing Activists Questioned for Suspicion of Incitement](#)” [Hebrew], 3 July 2014.

<sup>17</sup> The NGO Adalah filed [an appeal](#) [Hebrew] against the decision to release him from arrest under restricting conditions.

<sup>18</sup> Yuval Barak, “[Reported: Poet Arrested for Protest Poem Against the War in Gaza](#)” [Hebrew], *Israel Social TV*, 10 August 2014; Linor Alaluf, “[Shmuel Yerushalmi Arrested](#)” [Hebrew], *Walla*, 19 August 2014.

<sup>19</sup> Ido Ben Porat, “[Arab from Jaffa Questioned on Suspicion of Incitement on Facebook](#)” [Hebrew], *Arutz Sheva*, 21 August 2014.

<sup>20</sup> Pre-Charge Detention (TLV) 45866-07-14 [State of Israel v. Ashraf Sluman](#) [Hebrew] (decision granted on 23 July 2014).

<sup>21</sup> Gili Cohen, “[Israeli Military Court Indicts Palestinian Who Criticized IDF Commander on Facebook](#),” *Haaretz*, 5 September 2014.

<sup>22</sup> This is the case, for example, with the indictment against the owner of the page “Al-Yahud Gang.” See: Nadav Neuman, “[The Price of Violence: Indictment Against Founder of ‘Al-Yahud Gang’ Page](#)” [Hebrew], *Globes*, 5 August 2014.

As explained by Tel Aviv Magistrates' Court Judge Itai Hermelin:

*"This is a period of security and social tension, which inflames passions and compels people to express themselves, at times belligerently and in a manner that offends the feelings of others. Still, in a democratic country that sanctifies freedom of expression, there is no place to arrest people for expressions alone, so long as there is no incitement to commit an offense or an explicit call to harm another person."<sup>23</sup>*

**Private citizens also took part in the "policing" of online discourse during the conflict, particularly employers,** who "took responsibility" for their employees' expressions and levied punitive sanctions against them. Because this phenomenon involved Arab employees almost exclusively, we will expand upon it in the chapter on the rights of the Arab minority. Instead, we shall note here a similarly concerning phenomenon: the practice of large and prominent companies adopting regulations that prohibit their employees from expressing political opinions on social networks, and threatening their employees with disciplinary action should they violate these regulations.<sup>24</sup>

It is worth reminding that freedom of expression is vital to the existence of a democratic society. The true test of freedom of expression is not the acceptance of statements that are widely agreed upon, but rather in accepting those that are harsh, contentious and difficult to bear. A society's commitment to freedom of expression is tested particularly in times of war and social and national rifts.

## Freedom of Expression in Academia

The trend of stifling criticism and voices that are not in the majority during Operation Protective Edge also affected institutions of higher education. Instead of encouraging a critical discourse and calling for tolerance, some university heads chose to take an active part in the policing of discourse on campus **and punished students for online expressions that they or other students deemed inappropriate.** For example, the Hadassah College temporarily suspended an Arab student who expressed joy over the injuries of Israeli soldiers on her Facebook page. The student was also removed from the honor student program, a scholarship granted to her was retroactively denied and a complaint against her was filed to the police.<sup>25</sup> It was further published that two Arab students from Ariel University and the Technion would face disciplinary hearings stemming from statuses that they posted on Facebook after the kidnapping of three Israeli teenagers.<sup>26</sup> Bar-Ilan University rebuked a lecturer who expressed

<sup>23</sup> Pre-Charge Detention (TLV) 45866-07-14 [State of Israel v. Ashraf Sluman](#). See above, n20.

<sup>24</sup> See, for example: Ido Kenan, "[Cellcom CEO Against Extreme Political Expressions by Employees](#)" [Hebrew], *Room 404*, 21 July 2014; Ido Kenan, "[Bezeq Warns Employees from Problematic Expressions on Social Networks Regarding Operation Protective Edge](#)" [Hebrew], *Room 404*, 22 July 2014.

<sup>25</sup> Hila Weissberg and Haim Bior, "[War Puts Employees' Freedom of Speech to the Test](#)," *Haaretz*, 30 July 2014.

<sup>26</sup> Yarden Skoop, "[Israeli Universities to Reprimand Arab Students over 'Pro-Kidnapping' Posts](#)" *Haaretz*, 3 July 2014. The article brings the response of Ariel University: "Ariel University is disgusted by these remarks and takes them very seriously, therefore the student has been summoned for disciplinary action according to the university's rules."

concern for the victims on both sides of the conflict in an email sent to students,<sup>27</sup> and permitted students to transfer out of the course of a “leftist” lecturer who wrote against the operation on his personal Facebook profile.<sup>28</sup> The Tel-Hai College threatened to fire a teaching assistant who published strongly-worded statuses against the fighting in Gaza on Facebook; after conducting a hearing, it was decided not to fire him and settle for a reprimand.<sup>29</sup>

**Even more concerning is the fact that several higher education institutions dissuaded and even threatened students from expressing themselves online.** For example, the Tel-Hai College, Ben-Gurion University and Tel Aviv University announced that, if necessary, measures would be taken against students who expressed themselves in a manner that is “extreme,” “offensive” or “inappropriate.”<sup>30</sup> Instead of instructing the universities to refrain from violating the freedom of expression of students and professors, the Council for Higher Education called upon students to maintain “moderation and restraint”.<sup>31</sup> Many faculty members opposed restrictions on freedom of expression and the stifling of voices that deviate from the majority.<sup>32</sup>

Institutions of higher education do not bear any legal or public responsibility for the expressions of their faculty, staff, or students. It is not their business to police private expressions and discourse that take place off-campus, particularly when the remarks have nothing to do with the academic institution and campus life, and when they are not intended to damage the institution and its academic activity.

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<sup>27</sup> Subsequent to that, the university announced that “in light of the looming threat facing freedom of expression in different contexts during the recent period,” it will not take measures against the lecturer. To read ACRI’s letter to the Dean of the Faculty of Law, dated 30 July 2014, and the dean’s response, dated 31 July 2014, see:

<http://www.acri.org.il/en/2014/07/31/bar-ilan-gaza/>.

<sup>28</sup> Yarden Skoop and Chaim Levinson, “[Bar-Ilan Allows Some 30 Students to Replace Course of ‘Leftist’ Lecturer](#)” [Hebrew], *Haaretz*, 24 July 2014. The article brings the university’s response, according to which a student who requested to replace the course because of the lecturer’s opinions was authorized to do so because it is an elective course, and that “the university has no interest in the private opinions of lecturers, as long as they remain private. Just like a lecturer is allowed to have his private opinions, students have the right to choose with whom to study.”

<sup>29</sup> Yael Branovsky, “[Teaching Assistant Rebuked for Comparing IDF to Nazis](#),” *Israel Hayom*, 18 September 2014; Haggai Matar, “[Tel-Hai College Will Not Fire Teaching Assistant Who Spoke Against Operation Protective Edge](#)” [Hebrew], *Sicha Mekomit*, 16 September 2014. The latter article brings the response of the college, according to which “it is the right of every person to express his opinions, whatever they may be, but it is important to state these remarks in an appropriate, cultural and dignified manner.”

<sup>30</sup> An [announcement](#) on the Facebook Page of Tel-Hai College, dated 28 July 2014; Ido Kenan Jonny Silver, “[Ben-Gurion University: We Follow Staff and Students on the Web](#)” [Hebrew], *Haaretz*, 27 July 2014; Lior Dattel, “[Recruited Academia: Massages for Soldiers at Ono Academic College; TAU Against Extremists](#)” [Hebrew], *TheMarker*, 27 July 2014.

<sup>31</sup> For ACRI’s letter to the Council for Higher Education, dated 24 July 2014, the council’s response, dated 29 July 2014, and ACRI’s response, dated 30 July 2014, see: <http://www.acri.org.il/he/32272>. For an English translation of ACRI’s initial letter, see: <http://www.acri.org.il/en/2014/07/28/uni-gaza/>. See also: Or Kashti, “[CHE to Students: ‘Maintain Restraint’ in Political Expressions](#)” [Hebrew], *Haaretz*, 31 July 2014.

<sup>32</sup> Or Kashti, “[Academic Faculty Organizations Against Monitoring Student and Faculty Expressions on the Web](#)” [Hebrew], *Haaretz*, 29 July 2014; Or Kashti, “[350 Faculty Members to University Heads: Resume the Struggle for a More Open and Pluralistic Society](#)” [Hebrew], *Haaretz – Blogs*, 4 August 2014; Yarden Skoop, “[Anti-War Academics Hold Conference at Tel Aviv University](#),” *Haaretz*, 27 August 2014.

Even during periods of relative calm, certain universities impose **severe restrictions on the freedom of expression of students with regard to controversial issues**. For years, the University of Haifa has disproportionately employed various decrees and regulations that restrict the free expression of minority groups on campus. The oppressive array of restrictions does not apply to commercial activity or the activity of the student union, which is almost entirely controlled by one student faction. The university suspended the activity of the Balad student faction after it held a closed meeting with the secretary of the Balad party without authorization on Holocaust Memorial Day. This year, the Dean of Students also thwarted, for the third time, an attempt by Arab students to commemorate the Nakba Day on campus. In protest of the refusal to hold a conference on this issue, the student factions Hadash and Abnaa el-Balad conducted a protest vigil. In response, the university suspended their operations<sup>33</sup> and removed the leaders of these factions from campus. Following Adalah's appeal to the courts, the university agreed to allow the students to return to their studies on the condition that they promise not to organize or participate in unauthorized political activities until the date of their disciplinary hearing.<sup>34</sup> The university eventually reduced the length of suspension for the activity of the Hadash and Abnaa el-Balad factions.<sup>35</sup> In March 2014, ACRI filed an appeal to the Supreme Court concerning the authority that Haifa University has granted itself to completely suspend public activity on campus for an undefined period of time. Prior to ACRI's still pending appeal, the university had employed this authority every year, most recently during Operation Pillar of Defense in late 2012.<sup>36</sup>

During the year, the Knesset's Education, Culture and Sports Committee discussed restrictions on freedom of speech in universities. Both right-wing and left-wing students voiced complaints against the Hebrew University during the committee discussion.<sup>37</sup> The committee announced that it would continue to review the matter, calling attention to the fact that the university heads did not attend the discussion, and therefore were not able to comment on these complaints. Following appeals by many students as well as harsh criticism over

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<sup>33</sup> ACRI's letter to the president of the university, dated 14 May 2014: <http://www.acri.org.il/he/31463> [Hebrew]; Adalah, "[Haifa University Suspends Two Arab Students for Organizing a Commemoration for Nakba Day on Campus](#)," 19 May 2014; Yarden Skoop, "[Haifa University Suspends Activity of Leftist and Arab Factions on Campus](#)" [Hebrew], *Haaretz*, 15 May 2014. The article brings the university's response, according to which "the Dean of Students asked the students in advance [...] to not hold an event without authorization, and even warned them several times that such an action would lead to measures taken against them. Despite that, the student factions of Hadash and Abnaa el-Balad chose to hold a public activity, against regulations and without authorization [...] The university will not accept anarchy and will not ignore incidents of blatant violations of its decisions."

<sup>34</sup> Motion 29042-05-14, [Masalha v. Haifa University](#) [Hebrew]; the [judgement](#) [Hebrew] that anchors the agreement between the parties, dated 20 May 2014; Adalah, "[District Court Cancels Haifa University's Decision to Expel Arab Students](#)," 20 May 2014.

<sup>35</sup> Adalah, "[Following Adalah's Appeal to Supreme Court: Haifa University Withdraws Decision to Prevent Arab Student Clubs' Activities on Campus](#)," 8 June 2014.

<sup>36</sup> Civil Appeal 1775/14 [Minsky v. Haifa University](#) [Hebrew].

<sup>37</sup> The Knesset, "[University Representatives Absent from Discussion on Freedom of Expression on Campuses](#)" [Hebrew], 28 May 2014; The Knesset, [Protocol No. 195 of the Meeting of the Education, Culture and Sports Committee](#) [Hebrew], 28 May 2014. See also <http://www.acri.org.il/en/2014/05/12/hebrewu-censor/>.

the conduct of the academic institutions, the Council for Higher Education conducted a discussion in June 2014 concerning public activity on campuses. The CHE published its position, which stated that “a recognized institution of higher education shall not prevent or restrict the right of a student to conduct a public activity, including organizing and demonstrating on any issue,” except in specified situations.<sup>38</sup> However, in light of the conduct of some of the institutions over the summer, it appears that they have still not incorporated into practice the idea that freedom of expression is not a privilege but a basic constitutional right, and that institutions of higher education have an essential role in protecting this right.

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<sup>38</sup>The Council for Higher Education, [Decision No. 765/12](#) [Hebrew], 10 June 2014, p. 5.



## The Right to Life and Bodily Integrity

The recent escalation of the Israeli-Palestinian conflict during the summer of 2014 took a high physical and psychological toll on all involved. Citizens on both sides of the conflict suffered violations of their rights to life and bodily integrity, and both were subject to violations of their rights under international humanitarian law.<sup>39</sup> In the Gaza Strip, more than 2,000 people were killed – including men, women and children – and thousands more were wounded.<sup>40</sup> Israeli citizens and residents were exposed to daily missile attacks; more than 4,500 rockets and mortars were fired towards Israel, and seven Israeli civilians,<sup>41</sup> among them a 4-year-old child, and 67 soldiers were killed during the fighting in Gaza.<sup>42</sup>

Although Israeli civilians benefited from the enhanced protection offered by the Iron Dome rocket interception system, the attacks seriously hampered their daily routines and sense of security, particularly in the Gaza Envelope region and in the south of the country. Additionally, civilians were forced to pay an economic price stemming from the conflict owing to property damage and lost income.<sup>43</sup> Thousands of residents from the Gaza Envelope region were forced to evacuate their homes and spend long weeks with relatives or on host kibbutzim. The state eventually took responsibility for evacuating residents who wished to leave the area and finding alternative housing solutions only a few days before the end of the fighting.<sup>44</sup>

Especially concerning are reports that emerged during this period regarding **the state's failure to provide adequate shelter, which primarily affected populations from the socio-economic periphery**. For example, a representative of the Home Front Command admitted in a hearing of the Knesset Internal Affairs Committee that 27% of Israelis did not have access to adequate protective shelter. Among those without adequate shelter were Gush Katif evacuees, immigrants from the former Soviet Union, Negev Bedouins, and other groups residing in caravan housing or other temporary accommodations.<sup>45</sup> In the same hearing, claims were made regarding the existence of faulty shelters in ultra-Orthodox schools in Ashdod, and disabled persons living in public housing

<sup>39</sup> See for example the news release from Human Rights Watch at the outbreak of the fighting, [Palestine/Israel: Indiscriminate Palestinian Rocket Attacks](#), 9.7.2014.

<sup>40</sup> We will describe the harm to residents of the Gaza Strip at length later on, in the chapter on Human Rights in the Occupied Territories.

<sup>41</sup> [Summarizing 50 Days of Combat in Numbers](#), mako-Channel 2 News, 26.8.2014 (in Hebrew).

<sup>42</sup> **Operation Protective Edge: Names of the 67 soldiers killed**, IDF website, 31.8.2014. <http://www.idf.il/1133-20978-he/Dover.aspx> (in Hebrew).

<sup>43</sup> Later on we will describe the harm done to workers' rights during the hostilities, in the chapter on Workers' Rights.

<sup>44</sup> Gili Cohen, Jonathan Lis and Shirly Seidler, [Many Residents of the South Are Leaving Their Homes, but the Cabinet Has Not Yet Discussed an Evacuation Plan](#), Haaretz, 25.8.2014; Nir Hasson, [Defense Ministry Evacuates 400 Families from the Gaza Envelope to Youth Hostels Across Israel](#), Haaretz, 25.8.2014 (links in Hebrew).

<sup>45</sup> [Home Front Command in Internal Affairs Committee Meeting: "27% of the population has no shelter"](#), press release on the Knesset website, 29.7.2014. See also Local Call website, [Who Does the State Choose to Protect, and Who Less So?](#), Edi Zansker, 21.8.2014 (links in Hebrew).

who were unable to reach a protected space since they did not possess reinforced rooms.<sup>46</sup> There are severe disparities between the access to shelters in Jewish and Arab towns due to, among other reasons, the budget crises suffered by Arab local authorities.<sup>47</sup> It was also reported that the supply of portable shelters, which the Home Front Command was supposed to provide to towns in the south, ran out near the beginning of the fighting, and that municipal officials who requested such shelters for their communities were directed to seek donations from non-profit organizations and philanthropic foundations.<sup>48</sup>

The state's neglect of two "invisible" populations – **Bedouin citizens in the Negev and migrant workers** – was especially pronounced during this time. In both recognized and unrecognized Bedouin villages, there is neither an organized infrastructure of shelters nor any temporary means of protection. Many of the residential buildings are temporary structures which provide no protection from missiles. This situation led to physical damage and psychological trauma during the hostilities. Despite repeated inquiries by residents and human rights organizations, and an appeal filed by ACRI to the High Court of Justice, the state refused to take responsibility for providing even temporary shelter solutions for residents of Bedouin villages.<sup>49</sup> Tens of thousands of migrant workers in the south spent long hours each day in unprotected agricultural areas. Most of these migrant workers also live in caravans and improvised structures without protected spaces. While the cabinet decided to transfer more than NIS400 million for the benefit of residents of the south, the Ministry of Defense refused to allocate any funds for the protection of agricultural areas, claiming a lack of funding.<sup>50</sup> Only after a migrant worker from Thailand was killed by a mortar strike did the Ministry of Finance transfer funding for shelters for agricultural workers.<sup>51</sup>

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<sup>46</sup> [Protocol No. 371 of the Internal Affairs and Environment Committee](#), Knesset website, *ibid*. See also: Ilana Curiel, "[Hiding Under the Blanket](#)": [Handicapped without shelter in Beer Sheva](#), *ynet*, 14.7.2014 (links in Hebrew).

<sup>47</sup> Meirav Arlosoroff, [Shelter from the War? For Israel's Arabs, Not So Much](#), *Haaretz*, 23.7.2014.

<sup>48</sup> Lior Dattel, [Residents on Gaza Border Bemoan Lack of Bomb Shelters](#), *Haaretz*, 5.8.2014.

<sup>49</sup> Orly Vilnai: [Foreign Workers Abandoned in the South](#), *Haaretz* 23.7.2014; [MK Michal Rozin: The state is responsible for the safety of foreign workers](#), press release on the Knesset website, 15.7.2014 (links in Hebrew).

<sup>50</sup> [The writing was on the wall](#), Worker's Hotline website, 28.7.2014, and MK Michal Rozin's comments from the Knesset plenum on 16.7.2014 (The Knesset Record, booklet 35, meeting 159), <http://bit.ly/11r3RuA>, page 43 (in Hebrew).

<sup>51</sup> Yaniv Kovovich, Shirly Seidler, and Jonathan Lis, [A Thai Foreign Worker is killed by a Mortar Shell at the Hof Ashkelon Council](#), *Haaretz*. 24.7.2014.



## Arab Minority Rights

### Incitement and silencing

Racism against minority groups in Israel, and specifically against Arab citizens, is not a new phenomenon. In ACRI's 2013 human rights situation report, we noted with concern dozens of racist incidents against Arabs that took place throughout Israel – including degrading public statements, instances of segregation and exclusion, racist graffiti and shocking violent attacks.<sup>52</sup> The Coalition Against Racism in Israel's 2013 report indicated a significant rise in the level of racist incidents against Arabs, alongside a decrease in the overall number of racist incidents in Israel.<sup>53</sup>

The first half of 2014 saw a continuation of the “usual” phenomena of discrimination and exclusion against Arab citizens of Israel,<sup>54</sup> as well as the continuation of more severe “price tag” attacks. For example, car tires were slashed and abusive graffiti was sprayed in Jaljulia, Jish, Yokneam, Fureidis and other communities.<sup>55</sup> It is worth noting that in September 2014, thanks to the work of the Coalition Against Racism in Israel, the Knesset approved the Minister of Finance's precedent-setting regulations that allowed Arab citizens who are victims of “price tag” attacks to receive compensation for damages caused to their property.<sup>56</sup>

Racism against the Arab minority in Israel reached a disturbing peak during the summer of 2014 in the aftermath of the murder of Gilad Shaar, Naftali Fraenkel and Eyal Yifrach as well as Mohammed Abu Khdeir from East Jerusalem. This heightened state of racial tension continued throughout Operation Protective Edge in Gaza and the missile attacks on Israel. The fragility of Israeli democracy and society were thus exposed - in a robust democracy and a healthy society, the state and the controlling majority should understand the need of a minority to preserve its national identity, heritage and culture, and protect its right to freedom of speech and political freedom. However, during this period of escalation in the Arab-Israeli conflict, **the Jewish majority could not accept the Arab minority's**

<sup>52</sup> [2013 Situation Report – Human Rights in Israel and the OPT](#), ACRI, *ibid*, pages 20-27.

<sup>53</sup> Shahin Nassar, et al, [2014 Racism Report](#), Coalition Against Racism in Israel, March 2014. The report reviews the period from March 2013 – February 2014.

<sup>54</sup> For example: Roy 'Chicky' Arad, [Tel Aviv landlady rejects Arab tenant, citing 'problems with the neighbors'](#), Haaretz, Feb 27, 2014; Chaim Levinson, [Israeli contractor plans Jewish-only residential project in Jaffa](#), Haaretz, Jan 28, 2014.

<sup>55</sup> Hassan Shaalan, ['Every Arab is a criminal' written at entrance to Jaljulia](#), ynet, March 11, 2014; Eli Ashkenazi, [Vandals slash tires of 40 cars in hate crime in northern Israel](#), Haaretz, April 3, 2014; Netanel Katz, [Yokneam: "Price Tag" scratched into car owned by Arab](#), Arutz 7, April 27, 2014 (in Hebrew); Ahiya Raved and Hassan Shaalan, [Yet another 'price tag' attack: 'Close mosques, not yeshivot'](#), ynet, April 29, 2014; Eli Ashkenazi and Jack Khoury, [Hate crime in northern Israel: Two more Arab cars vandalized](#), Haaretz, April 30, 2014; Hassan Shaalan, [Two suspected 'price tag' attacks: Arab women attacked; cemetery vandalized](#), ynet, May 2, 2014; Hassan Shaalan, [Vehicle vandalized, tires slashed in 'price tag' attack](#), ynet, May 4, 2014.

<sup>56</sup> Property Tax and Compensation Fund Law (payment of compensation following violent actions stemming from the Israeli-Arab conflict), 2014. See [Protocol no. 420 from Finance Committee Meeting](#), Sept 11, 2014, Knesset website; [Regulations passed allowing property damage compensation for Arab citizens harmed by price tag attacks](#), Press release at the Coalition Against Racism in Israel website, Sept 16, 2014 (links in Hebrew).

**historical, national, social and familial identification with the Palestinian residents of Gaza.**<sup>57</sup> As a result, there was a **frightening increase in incidents of silencing, racism and incitement** against the Arab minority. This escalation was expressed in public and virtual spaces throughout broad sectors of the Jewish population. The public atmosphere of racism was further supported on occasion by the authorities – either through action, inaction or silence – as will be detailed below.

In early July, following the murder of the Jewish teenagers and the Palestinian teenager from East Jerusalem, a wave of angry demonstrations by Arab citizens broke out in locations throughout the country.<sup>58</sup> Concurrently, reports emerged of groups of nationalist Jewish thugs assembling in places where Arabs work or live, and threatening them with calls of “death to Arabs” and similar racist and inciting chants. Such aggressive gatherings occurred in Pardes Hanna, Jerusalem, Nazareth Illit, Iron Junction and other places.<sup>59</sup> The Coalition Against Racism and the New Israel Fund conducted a sample study of online discourse in early July, which revealed that over one quarter of Internet users who commented on the conflict called to revoke the citizenship of Arab citizens participating in the demonstrations, and almost one quarter called for an economic boycott of Arab businesses. Only 6% of this sample group called for demonstrations of restraint and moderation.<sup>60</sup> Foreign Minister Lieberman added to this trend by calling for a boycott of Arab businesses that had participated in a general strike to protest the operation in Gaza;<sup>61</sup> in a survey conducted in late July, 67% of respondents stated that they ceased shopping in Arab towns or stores.<sup>62</sup>

During the fighting in Gaza, incidents of **violence and incitement** against Arab citizens multiplied both on the streets and online. Social media was awash with racist statements like “death to Arabs,” and multiple pages appeared dedicated to publishing derogatory and violent content. Facebook groups such as “The Shadow’s Lions” and the “al-Yahud Gang” served as forums for incitement, racism and the coordination of violent actions.<sup>63</sup> In some cases, the pages were

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<sup>57</sup> See for example: Thabet Abu Rass, *The Israelis are my brothers; the Palestinians are my brothers*, Haaretz, Aug 4 2014 (in Hebrew). In addition, see opinion piece published by human rights organizations, including ACRI, in Haaretz on July 25, 2014 ([bit.ly/1rHQbIX](http://bit.ly/1rHQbIX)): “The Jewish public must understand that Arab citizens of Israel are part of the Palestinian nation, and many of them have family members in the Gaza Strip. The Arab public naturally identifies with the members of its nation – seeing the photos of civilians killed, many of them women and children, and the vast devastation in the Gaza Strip, the Arab citizens feel anger and loss, which is not being expressed at all in public discourse or in the media.”

<sup>58</sup> Hassan Shaalan and Raanan Ben Zur, [Vehicles damaged and torched in Qalansuwe: “Are you Jewish?”](#), ynet, July 5, 2014 (in Hebrew); Ahiya Raved, [Israeli bus pelted with stones; one passenger lightly hurt](#), ynet, July 7, 2014; Mati Siver, [Riots spreading: “Like the war in Iraq”](#), ynet, July 7, 2014 (in Hebrew).

<sup>59</sup> See examples and links in ACRI’s inquiry to the attorney general, July 10, 2014: <http://www.acri.org.il/en/2014/07/13/curb-riots/>

<sup>60</sup> [50% of the discussions on the internet concerning escalation of violence in the past week call frevocation \[sic\] of citizenship economic boycott of Arab citizens](#), Press release on Coalition Against Racism in Israel website, July 19, 2014 (updated Aug 5, 2014).

<sup>61</sup> Jack Khoury and Jonathan Lis, [Lieberman urges Israelis: Boycott businesses of Arabs striking over Gaza op](#), Haaretz, July 21, 2014.

<sup>62</sup> Ilanit Hayut, [67% of Jewish consumers in Israel: we will boycott Arab stores](#), Globes, July 30, 2014 (in Hebrew).

<sup>63</sup> Hilo Glazer, [Rampaging right-wing troops: “I feel inside that leftists need to be destroyed, shot, burned and killed”](#), Haaretz, July 24, 2014 (in Hebrew); [Israel 2014: racism and persecution online](#), Mako-News2, July 30, 2014 (in Hebrew).

closed following user complaints, and some even led to criminal investigations and indictments for incitement to racism and violence.<sup>64</sup> On the streets, there were angry protests and Arab citizens were exposed to harassment, threats and even physical violence.<sup>65</sup> The threatening presence of organized groups such as Lehava (a Hebrew acronym for “preventing assimilation in the holy land”) was especially noticeable in public discourse and in actions taken against Arab citizens.<sup>66</sup> In locations throughout Israel, Arab citizens reported experiencing apprehension at work, a fear of speaking Arabic in public places, and a fear of walking in the streets and using public transportation.<sup>67</sup> Though there were also racist attacks by Arabs against Jews during this period,<sup>68</sup> these were sporadic incidents, while the violent attacks by Jews against Arabs contributed to a pervasive and threatening public atmosphere against a minority group.

The silencing of and incitement against the Arab population was manifested this year through two worrisome, relatively new and connected phenomena: the **“policing” of discourse on social networks** by Jewish citizens on the one hand and **sanctions (including terminations) against Arab workers** who “dared” to express identification with Palestinian victims in Gaza or criticize the

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<sup>64</sup> Oded Yaron, [Citing incitement, Facebook closes page of group that fights intermarriage](#), Haaretz, July 22, 2014; [Violence has a cost: Indictment against “al-Yahud Gang” page owner](#), citation 22 above; Ilana Curiel, [Charges filed against Beer Sheva man on suspicion of incitement against Arabs on Facebook](#), ynet, Aug 28, 2014 (in Hebrew).

<sup>65</sup> See for example: [As War on Gaza Escalates so too Does Violence and Incitement Against Arab Citizens in Israel and anyone Who Voices Their Opposition to the War](#), Mossawa Center, 20.7.2014; Shay Fogelman et al, [Incitement on Facebook, fear of walking on the streets, persecution at work. Have we reached a crisis point in Arab-Jewish relations in Israel?](#) Haaretz, July 31, 2014 (in Hebrew); Nadav Tzantziper, [Red Light / Calls against Maharan Radi](#), ynet, Aug 5, 2014 (in Hebrew); Eli Ashkenazi, [Two indicted for assaulting Arab teen who had befriended Jewish girl](#), Haaretz, Aug 12, 2014; Dana Yarezi, [President Rivlin: “Incitement against Mahmoud and Moral is outrageous and worrisome](#), Walla, Aug 17, 2014 (in Hebrew); Dana Yertzi, [Disturbances at the “disputed wedding”: six rightist activists arrested](#), Walla, Aug 18, 2014 (in Hebrew). For a list of reports of racist incidents see: <http://he.kifaya.org.il/> (in Hebrew)

<sup>66</sup> Yael Freidson and Mandy Grozman, [Courts: Lehava can demonstrate outside the Jewish-Arab wedding](#), nrg, Aug 17, 2014 (in Hebrew); Avi Itzkowitz, [Following the mixed wedding: protest shifts](#), mynet, Sept 3, 2014 (in Hebrew); Gilad Kariv, [Before Lehava burns us all](#), Haaretz, Sept 2, 2014 (in Hebrew). In early September 2014, eight organizations petitioned the High Court of Justice against the attorney general and the state attorney with a request to bring Lehava activists to court on charges of incitement to racism and incitement to violence. The petition was filed by the Israel Religious Action Center, on its behalf as well as on behalf of the Coalition Against Racism in Israel, the Mossawa Center, Abraham Fund Initiatives, Our Heritage, Ossim Shalom, The Hotline for Refugees and Migrants, and Keshet in Arad. HCJ 5977/14 Israel Religious Action Center v. Attorney General, <http://bit.ly/1yk18z4> (in Hebrew). See also: [Israel Religious Action Center \(IRAC\) in cooperation with the Coalition Against Racism \(CAR\) submitted a petition to the Supreme Court, against the Attorney General](#), Press release on the Coalition Against Racism in Israel website, Sept 19, 2014.

<sup>67</sup> See for example: [Incitement on Facebook, fear of walking on the streets, persecution at work. Have we reached a crisis point in Arab-Jewish relations in Israel?](#), citation 65 above; Asma Agbaria-Zahalka, [Mom, don't speak Arabic near Jews](#), mako, Aug 4, 2014 (in Hebrew); Ilan Lukatch, [Israeli Arabs having difficulty absorbing the hostility: “I couldn't handle the hatred.”](#) mako-News2, Aug 15, 2014 (in Hebrew).

<sup>68</sup> For example: Vehicles damaged and torched in Qalansuwa: “Are you Jewish?” [Israeli bus pelted with stones; one passenger lightly hurt](#), citation 59 above. It must be noted that after the end of the fighting in the end of September, a Jewish man, Netanal Arami, was murdered in what was considered an accident, but turned out later to be a nationalistically-motivated murder. See: Avi Ashkenazy, released for publication: [Road Accident- Nationalistic Attack](#), Walla, 26.11.2014.

army and the state, on the other. The chapter covering freedom of expression discusses the topic of intolerance of criticism and opinions or statements which deviate from the majority during times of crisis and war. However, it is important to note here that the silencing was largely directed towards the Arab minority. As well as undermining freedom of speech, these phenomena demonstrates a dangerous attitude that seeks to **delegitimize opinions and feelings held by the Arab population**, and even to delegitimize the group's very existence in the public sphere and Israeli society.

For example, employees and customers pressured employers to fire Arab workers who expressed opinions against the fighting in Gaza, against the State of Israel or against the IDF.<sup>69</sup> Some employers tracked their employees' activity on social networks and fired Arab workers for the opinions they expressed online. During the summer, dozens of Arab workers were fired or suspended from both public and private workplaces – at local authorities, hospitals, and more.<sup>70</sup> In some cases, workers who apologized or appealed to the labor court were taken back at work.<sup>71</sup>

This wave of sanctions against workers for their online statements was directed only against Arab workers; we have not been informed of a single termination of a Jewish employee for statements or opinions expressed on social media, despite the fact that websites were overflowing with extreme and racist statements against Arabs.<sup>72</sup> Furthermore, the Employment (Equal Opportunities) Law forbids employers from discriminating against workers due to their views, unless their opinions undermined their job performance. As a rule, employers are not responsible for statements made by employees in their private lives outside of work, and they are prohibited from spying on them or interfering in their lives outside of work.<sup>73</sup> If an employee's statements posted on social media constitute

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<sup>69</sup> [67% of Jewish consumers in Israel: we will boycott Arab stores](#), citation 62 above.

<sup>70</sup> See for example: Noam Amir, [Tzfat: Municipal worker suspended due to statements on Facebook](#), Maariv, July 21, 2014 (in Hebrew); Or Kashti, Eli Ashkenazi and Nir Hasson, [Workplaces discipline Israeli Arabs for Facebook posts against Gaza incursion](#), Haaretz, July 23, 2014; ["Death to Arabs" "14 soldiers killed – may they multiply amen" – fire workers because of Facebook?](#) citation 25 above; Sharon Mandel, [Express opinions against the IDF and Israel – and be fired](#), Kikar Hashabbat, July 31, 2014 (in Hebrew); Haggai Matar, [Wave of war firings: court returns employee to work who was fired on suspicion of incitement on Facebook](#), Local Call website, Aug 14, 2014 (in Hebrew); Iris Lipshitz-Klieger, [Labor Dispute](#), Yedioth Ahronoth, Aug 26, 2014 (in Hebrew). See also the inquiry by ACRI and other organizations to the Ministry of Economy and the Equal Employment Opportunities Commission, July 28, 2014 and the Commission's response, July 30, 2014: <http://www.acri.org.il/he/32332> (in Hebrew); and Adalah's inquiry to the Equal Employment Opportunities Commission, July 31, 2014: <http://bit.ly/1zDIG3L> (in Hebrew).

<sup>71</sup> See for example: Revital Hovel, [Arab nurse suspended from Sheba for Facebook post to be reinstated](#), Haaretz, July 31, 2014; [Wave of war firings: court returns employee to work who was fired on suspicion of incitement on Facebook](#), citation 70 above; LDJ 26396-08-14 [Rawashde v. Mor-Mar](#) Ltd. (ruling dated Aug 26, 2014 – in Hebrew).

<sup>72</sup> See for example the comparison between the lack of response to the statements made by sports journalist Ofira Asayag, who called for turning Gaza into a soccer field, and the firing of Abed Nahfawi, the Bnei Yehuda team masseur, who expressed grief over the death of children in Gaza. Tami Uzan, [What's the problem with the firing of Bnei Yehuda's masseur?](#), Walla, July 31, 2014 (in Hebrew).

<sup>73</sup> Employees in the public sector (government, government entities, local authorities, law enforcement authorities, etc.) are protected by special restrictions, and they can be brought to disciplinary trial for conduct improper to their position, including racist statements. For more information, see: [Between incitement and silencing: handling severe statements on the Internet](#), ACRI, July 2014 (in Hebrew): <http://bit.ly/1AZhBfy>

incitement – for example, a clear call to violence – the employer may file a complaint against the employee with the police, and it is the role of the police to determine whether the statements constitute a criminal offense.

Many public figures – including President Reuven Rivlin, Minister of Justice Tzipi Livni, Minister of Health Yael German, Knesset Speaker Yuli Edelstein, MK Isaac Herzog and former Minister Moshe Arens – stood up against this disturbing phenomenon of violence and incitement.<sup>74</sup> In early July, the Ministry of Justice even established a hotline for reports in Arabic and Hebrew of statements of incitement. In contrast, the silence from the prime minister and the ruling party's senior ministers was deafening. Their failure to condemn the incitement and violence against Arabs clearly demonstrated their acceptance and even legitimization of these ugly phenomena.

It is important to remember that the recent attack on Arab citizens by other Israeli citizens did not take place in a vacuum – the atmosphere that enabled such actions and attitudes developed over years. This atmosphere was nurtured by politicians who promoted legislation and policy under the slogan “no loyalty – no citizenship,”<sup>75</sup> and encouraged treating Israeli-Arabs as second-class citizens at best, and as enemies at worst. This year we were once again witness to attempted legislation that targeted – explicitly or implicitly – the Arab minority:

- The “Nation-State Law” bill, in its various formulations,<sup>76</sup> seeks to enshrine the definition of Israel as the nation-state of the Jewish people in a basic (constitutional) law. Such a definition is likely to open the door to justifying discriminatory and racist policies against non-Jews in Israel. The very fact of constitutionally defining the state as a Jewish state creates a hierarchy between Jewish citizens – to whom the state supposedly “belongs” – and non-Jewish citizens – to whom the state supposedly does not “belong” – thus excluding and discriminating against the Arab population, at least at the declarative level.
- The Governance Law, which was passed by the Knesset in March 2014, raised the electoral threshold, harming minority representation in the Knesset, primarily of the Arab and ultra-orthodox populations.<sup>77</sup>

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<sup>74</sup> Knesset plenum, July 15, 2014 (Knesset minutes, booklet 35, session 158), Minister Tzipi Livni's speech on the organization Lehava, page 51, <http://bit.ly/1vsAtC8> (in Hebrew); [President Rivlin: “Incitement against Mahmoud and Moral is outrageous and worrisome](#), citation 65 above; Ido Ben Porat, [Yael German: strengthening Mahmoud and Moral](#), Arutz 7, Aug 17, 2014 (in Hebrew); [Knesset speaker: We mustn't let boisterous minority take over the discourse](#), Press release on the Knesset website, July 28, 2014; Sharon Mandel, [President Reuven Rivlin condemns racism against player and gets cursed at](#), Kikar Hashabbat, Aug 6, 2014 (In Hebrew); Moshe Arens, [Beware of anti-Arabism](#), Haaretz, Aug 18, 2014 (in Hebrew).

<sup>75</sup> For more information, see: Ronen Wodlinger and Tal Dahan, [Situation Report: Status of Democracy \(2010-2011\): Chapter Two: The Arab Minority](#), ACRI, October 2010; [October 2009: Citizens are not enemies](#), ACRI, September 2009 (in Hebrew).

<sup>76</sup> Proposed Basic Law: Israel – the Nation-State of the Jewish People. For the wording of the bill and ACRI's position, see: <http://www.acri.org.il/he/33369>. Also see: Aeyal Gross, [All signs point toward ethnocracy, not democracy, in Israel](#), Haaretz, Nov 16, 2014; Amir Fuchs, [The nation-state bill is bad for the Jews](#), Haaretz, Nov 19, 2014 (in Hebrew).

<sup>77</sup> [Knesset Elections Law \(amendment no. 62\), 2014](#) (in Hebrew). ACRI's position: <http://www.acri.org.il/he/28451> (in Hebrew), Adalah's position: <http://bit.ly/1vZ9nlK> (in Hebrew), the Mossawa Center's position: <http://bit.ly/1vt0oYD>. There are those who argue that raising the electoral threshold will not undermine minority representation if implemented



- The bill to exempt young families' first home purchases from value-added tax states that the degree of the benefit is contingent on having performed army or national service, which discriminates against Arabs, the ultra-orthodox, persons with disabilities and other population groups.<sup>78</sup>
- The bill seeking to revoke the status of Arabic as an official language of Israel<sup>79</sup> seeks to undermine the status of Arab citizens and their right to language and culture, and to exclude them from the public sphere.<sup>80</sup>

The general poor treatment of Arab citizens is also reflected in the treatment of their leaders. In late July 2014, the Knesset Ethics Committee decided to **suspend MK Haneen Zoabi** from all plenum and committee deliberations (excluding votes) for six months, due to her statements on the kidnapping of the three Jewish teens. This is the most severe sanction that the Knesset Ethics Committee has ever enforced for any statements, and the first time that a member of Knesset has been punished for statements that did not constitute a threat, incitement, profanity, slander, humiliation, defamation or contempt. An examination of the Knesset Ethics Committee's decisions shows that the committee has avoided handing out punishments for the many extreme statements made by members of Knesset – all of them Jewish – some of them directed against MK Zoabi herself. MK Zoabi, together with ACRI and Adalah, petitioned the High Court of Justice against the committee's decision.<sup>81</sup>

**The Israel Police's treatment of demonstrators** during Operation Protective Edge is another example of the state's discriminatory treatment of Arab citizens. During demonstrations against the fighting that were held throughout Israel, some 1,500 protesters were arrested, almost all of them Arabs.<sup>82</sup> In one instance, the arrest documentation for eight Arab citizens, residents of Tel Sheva, included a section on stone-throwing – an offence that is only applicable in the Occupied Territories and not in Israel.<sup>83</sup> Indictments were filed against some 350 of those

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gradually, and there are those who argue that it will even benefit the Arab population, see: Gideon Rahat and Ofer Kenig, [Proposed Basic Law: The Government \(amendment – change in the system of government\), and proposed Basic Law: The Government \(amendment – increase in governance and rise in the electoral threshold\)](#), Israeli Democracy Institute, March 18, 2013 (in Hebrew); Arik Bender, ["Raising the electoral threshold will help the Arab parties,"](#) nrg, Feb 10, 2014 (in Hebrew).

<sup>78</sup> This law, called "0% VAT," will be further discussed in the chapter on the right to housing. For more information on the problematic nature of connecting rights to obligations in general and army service in particular, see: [Situation Report: Status of Democracy \(2010-2011\): Chapter Two: The Arab Minority](#), citation 76 above.

<sup>79</sup> Jonathan Lis, [Right-wing MKs aim to make Hebrew Israel's only official language](#), Haaretz, Aug 25, 2014.

<sup>80</sup> Jonathan Lis, [Rivlin against the law to revoke Arabic as an official language: it's a provocation](#), Haaretz, Sept 1, 2014 (in Hebrew); Amnon Beer-Sulitzeanu and Thabet Abu Rass, [Coexistence, not by force](#), ynet, Sept 2, 2014 (in Hebrew); Zvi Bar'el, [The real threat in Israel has been discovered](#), Haaretz, Sept 3, 2014; Avraham Burg, [Linguistic Apartheid](#), Haaretz, Sept 7, 2014 (in Hebrew).

<sup>81</sup> HCJ 6706/14 MK Haneen Zoabi v. Knesset Ethics Committee. See the petition and the table reviewing statements by MKs which were discussed by the Ethics Committee and the punishments meted out at the ACRI website: <http://www.acri.org.il/he/33060> (in Hebrew).

<sup>82</sup> [Israel Police's war against Arab protesters](#), citation 9 above.

<sup>83</sup> Revital Hovel, [The Police arrested eight Israelis under a military law which only applies in the territories](#), Haaretz, July 14, 2014 (in Hebrew).

arrested, none of them Jewish – despite the fact that many Jewish demonstrators acted violently.<sup>84</sup>

A further example of the “marking” of Arab citizens is the special treatment they receive during security checks at the airport. Following a petition filed by ACRI in 2007 against discrimination in the airport security screenings,<sup>85</sup> certain changes were made to the security check at Ben Gurion Airport. This year the state announced a new system for checked baggage, which reduces the scope of the public nature of the security screening in an attempt to reduce the humiliation this can cause to Arab citizens.<sup>86</sup> Early reports indicate that the new system has brought certain improvements, primarily in the public examination of passengers’ luggage before departures at Ben Gurion Airport.<sup>87</sup> However, the system does not apply to other elements in the security screening process, including the hand baggage examination and questioning of passengers, the security screening at domestic airports, the questioning of Arab citizens returning to Israel on Israeli airlines, or the examination of Arab passengers at overseas airports.<sup>88</sup> In addition, other problems with the security checks remain.<sup>89</sup> As a matter of principle, these changes do not solve the foundational flaw in the examination method: **the treatment of national origin as a criterion for deciding the scope of a security check, and the treatment of all Arab citizens as potential threats simply because they are Arabs.**<sup>90</sup>

Against this grim backdrop, it is important to note **the efforts of civil society organizations to calm the atmosphere and call for reconciliation and dialogue.** For example, the Tag Meir forum initiated condolence visits to the Abu Khdeir family from Shuafat after their son’s murder.<sup>91</sup> In addition, during Operation Protective Edge and afterwards, a number of joint conferences for Jews and Arabs were held throughout the country.<sup>92</sup> While these are positive steps, fighting racism must be the responsibility of state authorities, including the Ministry of Education.

After the events of the summer, the Minister of Education announced that the first week of the new school year would be dedicated to combating racism.<sup>93</sup> The

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<sup>84</sup> [Adalah to AG: Investigate serious violations in police practices against Palestinian Arab demonstrators in Israel during the summer of 2014](#), citation 10 above; [Israel Police's war against Arab protesters](#), citation 9 above. In the article, the police response is quoted as follows: “the police “enforce disturbances equally... the police allow freedom of expression and protest and even engage in dialogue with local leadership with the goal of calming the atmosphere, but also handle violent disturbances decisively and with zero tolerance.”

<sup>85</sup> HCJ 4797/07 Association for Civil Rights in Israel v Israel Airports Authority. For court documents: <http://www.acri.org.il/he/1778> (in Hebrew).

<sup>86</sup> State response in HCJ 4797/07, April 2014: <http://bit.ly/1y0sZFB> (in Hebrew).

<sup>87</sup> Amira Hass, [After years of humiliation, Israeli Arabs say getting better treatment at airport](#), Haaretz, March 26, 2014.

<sup>88</sup> [After years of humiliation, Israeli Arabs say getting better treatment at airport](#), citation 87 above; [Humiliating treatment of ACRI employee at the Ben Gurion Airport security check and by El Al](#), Press release on ACRI website, May 5, 2014 (in Hebrew).

<sup>89</sup> For details, see ACRI's response in HCJ 4797/07, May 2014, <http://bit.ly/1HLqgUG> (in Hebrew).

<sup>90</sup> For more information, see [ACRI's response in HCJ 4797/07](#), citation 90 above.

<sup>91</sup> [Condolence Visit to Abu Khdeir Family](#), Israel Social TV, July 7, 2014.

<sup>92</sup> See for example: [Emergency Jewish-Arab Conference: Haifa against racism and violence](#), Aug 7, 2014 (Facebook event – in Hebrew); Chen Peter, [Report: Galilee Conference: How do you fight racism after the war?](#), Israel Social TV, Sept 18, 2014 (in Hebrew).

<sup>93</sup> [Education Minister Piron: 1st week of school will be dedicated to fight against racism](#), Press release on Knesset website, Aug 12, 2014.

Ministry of Education also wrote new lesson plans on subjects such as “verbal violence online and incitement to racism” and “public discourse during war”.<sup>94</sup> However, teachers and educators argued that the material was insufficient.<sup>95</sup> It appears that the Ministry of Education has recently come to understand that its lesson plans do not sufficiently deal with the deep-rooted and dangerous phenomenon of racism. We have been informed that the ministry intends to continue implementing curricula against racism throughout the year, combined with educational activities developed by the Ministry of Justice.<sup>96</sup> The Education Ministry marked “The Other is Me Week” in November by launching a new website with a sharper name: From Tolerance to Racism Prevention and Coexistence.<sup>97</sup>

The Ministry of Education’s efforts, and the inherent implication that ministry officials publicly recognize the importance of educating against racism, are of the utmost importance. However, in order for these efforts to bear fruit, they must coincide with **a holistic educational process geared towards democratic values, human rights and coexistence**. Education towards these values must be incorporated into education for all age groups, all educational streams in Israel and all components of the educational process – from kindergarten to higher education and teacher training institutions – and be implemented in the various courses of study. Such a process requires providing teachers-in-training with tools for the proper educational handling of racism in the classroom and the school. A holistic educational process also requires harnessing the potential of informal education and youth movements in the fight against anti-democratic and racist values.<sup>98</sup>

Education towards coexistence requires exposing students in the Jewish education system to the history and narrative of the Arab minority in Israel, and reinforcing Arabic language study. Various committees set up by the Ministry of Education have submitted recommendations on civics education and education towards coexistence.<sup>99</sup> Adopting such recommendations would constitute a significant contribution towards the fight against racism in Israeli society. Recognizing the importance of education against racism must be reflected in budgetary allocations: today, the amount invested in education towards democratic values is almost nearly symbolic. In order to meet this challenge, there must be an increase in the budget of the Civics Department in the Ministry of Education - which bears the responsibility to lead the educational struggle against racism - and additionally in all the departments that are operating in this field.

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<sup>94</sup> Or Kashti, [Ministry of Education planning new program to fight racism](#), Haaretz, Aug 24, 2014 (in Hebrew).

<sup>95</sup> See above, n94. Yarden Skop, [Jerusalem teachers warn of increase in racism after Gaza war](#), Haaretz, Aug 31, 2014.

<sup>96</sup> Revital Blumenfeld, [Due to the events of the summer: Ministry of Education launches program to fight racism](#), Walla, Nov 17, 2014 (in Hebrew).

<sup>97</sup> <http://cms.education.gov.il/educationcms/units/ui> (in Hebrew)

<sup>98</sup> For more information, see ACRI’s inquiry to the Education Minister, Aug 13, 2014: <http://www.acri.org.il/he/32500> (in Hebrew).

<sup>99</sup> “[Being Citizens](#)” report at the Ministry of Education Civics and Coexistence Department (in Hebrew); [Report of the Public Committee of Education towards Coexistence between Jews and Arabs in Israel – Summary](#), on the Common Ground – Promoting Education for Democracy and Coexistence website of Abraham Fund Initiatives and the Center for Educational Technology (in Hebrew).



## Bedouin citizens in the Negev

2014 began on an optimistic note for the rights of Bedouin citizens in the Negev, with the freezing of the **Prawer Plan**.<sup>100</sup> The stated goal of the plan was to regulate the issue of settlement in the Negev, but in practice it sought to regulate the issue of land ownership in the Negev by appropriating hundreds of thousands of dunams of Bedouin land. The plan further sought to force a unilateral settlement on Bedouin residents of unrecognized villages. The planned settlement involved concentrating the Bedouin citizens into a limited and predefined area, while uprooting dozens of villages and forcibly evicting more than 40,000 residents from their current residences. In December 2013, after the Prawer Plan was already in advanced stages of legislation, the prime minister decided to freeze it.<sup>101</sup> This decision was precipitated by extensive criticism and opposition to the plan, and an intense campaign led by the Bedouin residents and human rights organizations.

However, our optimism later faded as it became clear that **even after the freezing of the legislative process, the principles underlying the process continued unabated: a one-sided and discriminatory planning process** that ignore the reality on the ground and the Bedouin historical affinity to the land; and a primary goal to concentrate the Bedouin population into a small area. This policy undermines the rights of Bedouin citizens to equality and dignity, and to their right as a “native minority” to preserve their unique culture and way of life.<sup>102</sup> Some of the planning processes even involve forcibly evacuating Bedouin villages in order to establish new Jewish communities on the same land. The following are some examples:

- In July of this year, the National Planning and Building Council approved the establishment of five new small communal villages in the Greater Arad region (instead of the seven new communities included in the original plan), including four Jewish communities and one community that is meant to concentrate the area’s Bedouin residents. This plan would cause significant damage to the unrecognized villages in the area.<sup>103</sup> Social and environmental organizations, representatives of local residents, and even government entities have issued warnings about the financial, environmental and social consequences of the program. In addition to the impact on the Bedouin residents, the construction of new communities in the area intended for selective population groups is likely to weaken existing cities and communities such as Arad and Be’er Sheva, increase inequality and cause significant harm to open areas.<sup>104</sup> This plan was

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<sup>100</sup> The Prawer Plan was the basis for the Bill to Regulate Bedouin Settlement in the Negev, 2013, which was discussed at the Knesset and afterwards frozen. For more information on the plan and the bill, see the [Situation Report, State of Human Rights in Israel and in the Occupied Territories, 2013](#), citation 52 above, pages 23-27.

<sup>101</sup> Amit Segal, [A Surprising End: The Prawer Plan to regulate Bedouin settlement in the Negev is frozen](#), Mako-News2, Dec 12, 2013 (in Hebrew).

<sup>102</sup> On the rights of native minorities, see: Shoughry-Badarne, Bana, [Rights of the Arab Population in the Negev](#) (Position paper submitted to the Goldberg Committee), July 2008, pages 3-6 (in Hebrew).

<sup>103</sup> For details on the harm to villages and other problems with the plan see Bimkom – Planners for Planning Rights and ACRI’s inquiry to the National Planning and Building Council, June 2014 (bit/ly/15LWT67); Nili Baruch, [The government is promoting Judaization of the Negev by force](#), TheMarker, June 29, 2014 (in Hebrew).

<sup>104</sup> See for example the position of the Ministry of Finance, Ministry of Environmental Protection, Ministry of Transportation and the Israel Nature and Parks Authority from meeting

promoted despite the fact that alternate solutions exist that could meet the demand for housing in the Negev.<sup>105</sup>

- In a scheduled amendment to the master plan for the Be'er Sheva metropolitan area, the state is seeking to forcibly concentrate the ten thousand Bedouin residents of the unrecognized village Wadi al-Na'am into the southern part of the town Segev Shalom. The village's local committee, together with ACRI and Bimkom – Planners for Planning Rights and the Negev Coexistence Forum for Civic Equality, submitted a petition to the High Court of Justice, claiming that the plan does not meet the residents' cultural and social needs and ignores their aspirations to have their village recognized as an independent rural agricultural village – a status that would allow them to preserve their way of life. In the past, the planning authorities have rejected similar plans due to the dangerous proximity of the planned neighborhood in Segev Shalom to Ramat Hovev, among other reasons.<sup>106</sup>
- A partial regional master plan for the Ramat Tziporim area sought to forcibly transfer several shepherding communities in the Negev Mountains to a new settlement. In deliberations conducted at the Subcommittee on Principle Planning Matters in 2014, the committee partially accepted the opposition submitted by ACRI and Bimkom – Planners for Planning Rights,<sup>107</sup> and agreed that the plan does not sufficiently meet the needs of all of the Bedouin communities in the area, who seek to preserve the different social and cultural elements of their intimate communities. It was therefore decided that alongside the promotion of Ramat Tziporim, the committee would examine, with residents' participation, the possibility of establishing an additional settlement point for the Bedouin communities in the area.<sup>108</sup>

On a positive note, the planning authorities recommended that the government establish a **new Bedouin community called Rahma**. In practice, this is a process of recognition of an unrecognized village, after years of campaigning by the village's residents. The community, proposed to be established in the Yerucham area, is intended for the Bedouin community living in the area, which numbers more than 1,000 people. This planning process is to be conducted in coordination with the area's residents.<sup>109</sup> We are hopeful that the government

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no 535 of the Subcommittee on Principle Planning Matters on June 17, 2014; the proposal of the Minister of Environmental Protection representative and a representative of the Minister of Finance from meeting no. 571 of the National Planning and Building Committee on July 1, 2014, page 11. The protocols of the committee meetings are found on the Ministry of Interior's website: <http://bit.ly/12c9v47> (in Hebrew). See also: Nimrod Bousso, [Despite criticism: establishment of five new towns in Arad outskirts approved](#), TheMarker, July 1, 2014; Nimrod Bousso, [Beer Sheva City Hall: The 10 towns plan will deepen social polarization in the south](#), TheMarker, July 1, 2014; Yael Darel, [Despite green opposition: the plan to establish a new chain of towns in the Arad area approved](#), Calcalist, July 1, 2014 (links in Hebrew).

<sup>105</sup> Yonatan Yifrah, [Beer Sheva Metropolitan Area – Housing Reserves Report](#), Society for the Protection of Nature in Israel, June 2014 (in Hebrew).

<sup>106</sup> HCJ 1705/14 **Labad Abu Affash v. the National Planning and Building Council**. Court documents: <http://www.acri.org.il/he/32038> (in Hebrew).

<sup>107</sup> Opposition at ACRI's website: <http://www.acri.org.il/he/?p=27270> (in Hebrew).

<sup>108</sup> Protocols from meeting no. 535 of the Subcommittee on Principle Planning Matters on June 17, 2014, citation 104 above.

<sup>109</sup> Protocols from meeting no. 571 of the National Planning and Building Committee on July 1, 2014, citation 104 above, pages 306.

accepts the National Planning and Building Council's recommendations and decides to establish the village.

Alongside the many harmful planning processes, home demolitions continue unabated.<sup>110</sup> Over the past two years, the trend of self-demolitions has grown: the Israel Lands Administration threatens residents with lawsuits, which would inevitably result in the burden of demolition costs, and so many residents prefer to anticipate the move and demolish their homes themselves. According to data provided by the Negev Coexistence Forum for Civic Equality, 70% of structures demolished in the Negev during the first half of 2013 were demolished by the structures' owners.<sup>111</sup> Statements released by the Israel Lands Administration indicate that this trend has continued into 2014 as well.<sup>112</sup>

The discriminatory treatment of Bedouin citizens in the Negev is also demonstrated by the condition of the 11 Bedouin villages that were recognized by the state over the past decade, and which together form the Al-Qasum and Neve Midbar regional councils. Three reports published this year by the Negev Coexistence Forum for Civic Equality together with the Activestills photographers' collective, by Bimkom and by the Adva Center<sup>113</sup>, all indicate that **recognition of the villages has had practically no effect on the poor conditions**: they continue to suffer from a lack of services and infrastructure such as cleaning services, roads and connection to electricity and water, and they have limited ability to sustain development. Even after recognition and planning of the villages, residents have almost no ability to obtain building permits, and some of the home demolitions carried out in the last year took place in these recognized villages.

The neglect and abandonment of the Bedouin citizens in the Negev, and their treatment as an invisible population, was most clearly and tragically visible this year during Operation Protective Edge. Bedouin villages – both recognized and unrecognized – **have no permanent bomb shelters and lack even portable shelters or any kind of temporary protective infrastructure**. A large portion of residential structures in the villages are temporary, many of them tin shacks and cabins, which can in no way protect their residents from rockets. This absence of even the most basic protective facilities resulted in victims and casualties – two

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<sup>110</sup> For data on home demolitions, see Spokesperson's Announcements on the website of the Israel Land Authority, <http://bit.ly/1Crlqvl> (in Hebrew), and the website of the Negev Coexistence Forum for Civic Equality: [http://www.dukium.org/?page\\_id=11916](http://www.dukium.org/?page_id=11916).

<sup>111</sup> [House Demolitions in the Negev 2012/2013](#), the Negev Coexistence Forum for Civic Equality, February 2014. See also: Yanir Yanga, [In the past year the number of home demolitions in Bedouin villages has doubled](#), Walla, March 17, 2014 (the article addresses 2013) (in Hebrew).

<sup>112</sup> [Revolution in fighting illegal construction in the Negev: 28 structures demolished, 13 of them by the squatters themselves](#), announcement on the Israel Land Authority website, Sept 16, 2014 (in Hebrew); [Rare win in enforcement in the Negev: 18 squatters in the Negev decide to return land to the state in order to avoid lawsuits](#), announcement on the Israel Land Authority website, Sept 10, 2014 (in Hebrew).

<sup>113</sup> Yotam Ronen (photography) and Michal Rotem (investigation), [Between Discrimination and Abandonment: The Bedouin Recognized Villages and the Jewish Settlements in the Negev](#), Negev Coexistence Forum for Civil Equality and Activestills, March 21, 2014; Nili Baruch and Shuli Hartman, [Why is there no development? Barriers to developing in the recognized Bedouin villages in the Negev and how to remove them](#), Bimkom – Planners for Planning Rights, August 2014 (in Hebrew); Noga Dagan-Buzaglo, [The Abu-Basma Villages: A Decade of Underdevelopment](#), Adva Center, August 2014; Tzafir Rinat, [The state recognized 11 Bedouin villages in the Negev, but that doesn't mean that they have obtained services](#), Haaretz, May 29, 2014 (in Hebrew).

sisters were injured, one of them seriously.<sup>114</sup> A few days after later, a Bedouin man was killed, and 4 of his family members were injured, among them his young son and his baby daughter who was injured seriously.

Despite repeated inquiries from the residents and human rights organizations to the Home Front Command and other authorities both during Operation Protective Edge and during previous rounds of fighting, the state has failed to implement adequate shelter solutions for the village residents, neglecting their right to life and bodily integrity. This refusal took place at the same time that the state was making efforts to provide immediate shelter solutions – primarily mobile shelters – for residents of neighboring Jewish communities, some of them without public shelters or permanent shelter infrastructure. Even more concerning – because the unrecognized villages are not demarcated as settled areas on maps or in master plans of the Negev, a fear arose that village areas would be defined by the Iron Dome System as “open areas” and that rockets fired in their direction would not be intercepted.<sup>115</sup>

The High Court of Justice partially rejected the petition filed by the residents and organizations during the fighting, in which they demanded temporary shelters be immediately supplied to the villages. The court did rule, however, that the matter of long-term readiness must be clarified.<sup>116</sup> It should be noted that after a Thai migrant worker was killed by a mortar shell, the state rushed to allocate budgets to protect agricultural workers, but the Bedouin residents in the Negev did not receive similar treatment.<sup>117</sup>

A just and feasible solution to the issue of unrecognized villages and Bedouin residents of the Negev requires, first of all, recognition that the Bedouins are citizens with equal rights. The government must recognize the unrecognized villages. In addition, it must recognize the Bedouins’ property rights to their lands in the Negev and establish a fair mechanism to clarify their land ownership claims in a manner that takes into consideration the many years of historical connection that the Bedouin citizens have to the land.

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<sup>114</sup> See for example: Ahmed Abu Swiss, [Bedouin in the Negev: “We have no shelters, we have been abandoned”](#), Walla, July 15, 2014 (in Hebrew); Yanir Yagna, [Father of the sisters injured in the Negev: “We are alone, we have no shelter.”](#) Walla, July 15, 2014 (in Hebrew); Haim Levinson et al, [Man killed in rocket strike on Negev Bedouin community](#), Haaretz, July 19, 2014; Or Kashti, [Bedouin community between a rock and a hard place](#), Haaretz, July 25, 2014; Shirly Siedler, [Without shelters, Israel Electric Corp stops working in the Bedouin sprawl during the war](#), Haaretz, Aug 29, 2014 (in Hebrew).

<sup>115</sup> Shirly Siedler et al, [Bedouin in south unprotected from rocket fire](#), Haaretz, July 16, 2014.

<sup>116</sup> HCJ 5019/14 Labad Abu Affash v. Chief of the Home Front Command. For the court documents and partial ruling: <http://www.acri.org.il/he/32058> (in Hebrew). The petition was filed by ACRI on its behalf and on behalf of the Bedouin residents, the Regional Council of Unrecognized Villages, Physicians for Human Rights, the Negev Coexistence Forum for Civic Equality and Bimkom – Planners for Planning Rights.

<sup>117</sup> [Foreign worker from Thailand killed by shell near greenhouses in Hof Ashkelon Regional Council](#), citation 51 above.

## Distributive justice: investigative committee to distribute income in the Negev

During the summer of 2014, three investigative committees published recommendations on income distribution between the regional councils and local authorities in the Negev.<sup>118</sup> The committees were established in July 2013 with the goal of examining the boundaries of the various local authorities, the income from various income-generating areas in the Negev, and how income is distributed between authorities in the same area. This was part of the policy enacted by then-Minister of the Interior Gideon Saar to reduce **inequality between strong and weak authorities** by examining elements of income and land.<sup>119</sup>

Despite the investigative committees' important role in promoting distributive justice for the Bedouin communities in the Negev, **their original makeup included no Arab representatives**. Only after a petition filed by ACRI to the High Court of Justice was an Arab member added to each of the three committees.<sup>120</sup>

The distribution of areas that generate non-residential property taxes in the periphery in general, and the Negev in particular, are usually the result of government policy. Over the years, policy has tended to establish financial infrastructure in strong local authorities – all of them Jewish. **Today, the Arab local authorities rarely obtain government property taxes**. For example, in 2009 the vast majority of government property taxes (99.8%), were transferred to Jewish and mixed local authorities; only 0.2% of government property taxes were transferred to Arab local authorities, which are home to some 15% of the total population (and of this, the majority was paid to one city – Nazareth).<sup>121</sup> Local authorities in the south receive a significant portion of the total national payments of government property taxes (some 31.5%), due to the fact that significant infrastructure belonging to the Ministry of Defense and the Israel Electric Corporation is located in the south. Regional councils with small populations spread out over vast lands and the majority of government areas and facilities in the Negev receive the bulk of these payments. The weak local authorities in the Negev rarely obtain this income and the Arab local authorities receive none at

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<sup>118</sup> Accountability – Investigative committee on the borders and income distribution from income-generation areas in the south (Wallerstein Committee), July 2014; Accountability – Investigative committee on the borders and income distribution from areas without municipal statuses in the south, July 2014 (Fattal Committee), July 2014; Accountability – Investigative committee on the borders and income distribution from income-generating areas in Ramat Negev (Razin Committee), August 2014. All three reports, along with a map and presentation of findings, are located on the website of the Ministry of Interior website.

<sup>119</sup> Minister of Interior Gideon Saar: “A real decrease in inequality between strong local authorities and weak local authorities can only be implemented using land resources and income-generating areas. The map must change and become a more just map which will strengthen the weak local authorities.” Quoted from [Minister of Interior established three investigative committees to examine borders and income distribution in southern Israel](#), press release on Ministry of Interior website, July 11, 2013 (in Hebrew).

<sup>120</sup> HCJ 8501/13 **Association for Civil Rights in Israel v Minister of Interior**. For court documents, see: <http://www.acri.org.il/he/29652> (in Hebrew)

<sup>121</sup> Shiri Spector-Ben Ari, [Income Distribution between Local Authorities \(Property Taxes and Betterment Levies\), sections 9a and 9b of the Municipalities Order and Implementation Difficulties](#), Knesset Research and Information Center, July 2013 (in Hebrew).



all.<sup>122</sup> In addition to the lack of infrastructure or other public facilities within the boundaries of the Bedouin towns in the Negev, there is not a single industrial zone or tourist area which generates property taxes. These communities are located in the two lowest divisions of the socio-economic scale in Israel.<sup>123</sup>

The investigative committees recommended several changes to the distribution of income from government property taxes and to the jurisdiction areas of local authorities in the Negev. Interior Minister Saar adopted most of the recommendations with a few changes, the most prominent of which was making the receipt of 15% of the income from nonresidential property taxes contingent upon the local authority's success in collecting more than 50% of the residential property taxes within its boundaries. **Following the recommendations, the 14 weakest local authorities in the Negev, including Bedouin councils, are meant to obtain overall additional income amounting to some NIS 50 million, which will be deducted from the property tax income of the local councils of Ramat Hanegev and Tamar.**<sup>124</sup>

We welcome the action taken by the interior minister to promote distributive justice between local authorities in the Negev, of which the committees' recommendations are the first steps. In light of the historical inequality in income distribution and allocation of public resources between the local authorities in the Negev in general, and between Jewish local authorities and Arab local authorities in particular, the committees' recommendations and interior minister's decisions are vitally important. However, an initial examination of the recommendations raises questions as to the nature of the criteria at their foundation, which partially rely on income distribution agreements prematurely drawn up between the regional councils and some of the local councils in the Negev, none of which include an Arab local authority. The division of income needs to be based on equal and relevant criteria, and in a manner that ensures a just distribution between strong and poor local authorities in the Negev, and which promotes distributive justice by acknowledging the different needs of local authorities, their population sizes and the extent of their crises.<sup>125</sup>

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<sup>122</sup> [Income Distribution between Local Authorities \(Property Taxes and Betterment Levies\), sections 9a and 9b of the Municipalities Order and Implementation Difficulties](#), citation 121 above.

<sup>123</sup> Arik Mirovsky, [Saar declares: Regional councils in the Negev to lose property tax income to the cities](#), TheMarker, Aug 18, 2014 (in Hebrew).

<sup>124</sup> [Characterization and Classification of Geographical Units by the Socio-Economic Level of the Population, 2008](#), Central Bureau of Statistics, July 2013.

<sup>125</sup> For more information, see the inquiry by Sikuy, ACRI, Abraham Fund Initiatives, the Injaz Center and the Arab Center for Alternative Planning to the Razin Committee, June 2014: <http://bit.ly/1zFy4I3> (in Hebrew).

## The Right to Housing

### Affordable housing: progress, but not enough

In the past year, three major government planning laws have included references to affordable housing, due in part to the work of human rights and planning rights organizations.<sup>126</sup> The references to affordable housing at this early planning phase are a significant step and could have far-reaching and positive implications for the housing situation in Israel. Possible outcomes include an increase in the supply of apartments available to middle and low-income families, an increase in the social diversity in housing complexes and a reduction in patterns of socioeconomic segregation in housing. This, in turn, could reduce the marginalization of people with limited means towards regions of concentrated poverty.

**The Planning and Building Law:**<sup>127</sup> In March 2014, the Knesset authorized a series of comprehensive changes to the existing Planning and Building Law, which included a series of structural reforms to the planning system. Over the course of the hearings on the amendment, several new provisions were adopted that had not previously been included in the government bill. These changes obligated the authorities to make reference to affordable housing considerations in all planning processes. It was decided that in every master plan that includes at least 100 housing units, a restriction shall apply such that at least 20% of the units must be small apartments, as defined by law. It was also determined that the District Committee for Building and Planning would have the authority to grant additional construction rights to developers constructing buildings for long-term rental under special conditions, including controls on rent increases and the right to a rental contract, renewable for five years. These provisions were submitted as a special new addition to the law, which was wholly dedicated to “attainable housing.” It was decided that the Israel Land Authority shall publish an annual minimum target for the marketing of affordable housing units on state land. Despite this progress, the amendment does not give adequate authority to municipalities, and does not provide of meaningful change for middle and low-income families because of the definition of affordable housing as long-term rental housing at market prices.

**The NHC Law**<sup>128</sup>: The National Housing Committees (NHC) Law, which came into effect in August 2011, allows for the establishment of special temporary planning committees which can rapidly advance broad plans for residential construction, primarily on state land, while bypassing regular planning procedures. (At that time Prime Minister Netanyahu referred to the law as the

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<sup>126</sup> Organizations which are members of the Coalition for Affordable Housing and the Forum for Responsible Planning work on this issue along with other organizations; ACRI is a member of both coalitions. For the list of organizations in the Coalition for Affordable Housing see the Coalition’s blog, <http://israelaffordablehousing.blogspot.co.il>. For the list of organizations in the Forum for Responsible Planning, see <http://www.acri.org.il/he/26587> (links in Hebrew).

<sup>127</sup> [Planning and Building Law \(Amendment No. 101\), 5774-2014](http://www.acri.org.il/he/28579). For more on the law and position papers, see: <http://www.acri.org.il/he/28579> (links in Hebrew).

<sup>128</sup> Planning and Building Procedures Law for the Acceleration of Residential Construction (Temporary Order), 5751-2011. For more on the law and position papers, see: <http://www.acri.org.il/he/?p=13423> (link in Hebrew).

“supertanker” of real estate, which would reduce housing prices.) In the wake of the social protest movement in summer 2011, changes were made to the law such that the NHCs would have the authority – but not the obligation – to promote affordable housing. Nevertheless, the NHCs have not utilized their new authority, and the social objectives of the law – providing housing solutions to socio-economically diverse populations, by offering apartments of various sizes and types – have become a dead letter.<sup>129</sup> In December 2013 an amendment to the law was published,<sup>130</sup> granting the scheme an extension and expanding the NHCs’ authorities. In the wake of scathing public criticism of the NHCs’ disregard for its social objectives, the law was also amended to include new references to affordable housing. It was determined that at least 25% of apartments in each national housing plan must be “attainable”: i.e. small apartments, apartments dedicated to long-term rental or reduced-price apartments for eligible renters. Deviating from this quota would be possible only under conditions set forth by the law and with the authorization of the Interior Minister’s. Additionally, in national housing plans that relate to eviction-and-construction, at least 10% of the apartments must be affordable.

It should be noted that the Court for Administrative Matters in Jerusalem recently accepted two appeals that were filed two years ago by the Coalition for Affordable Housing. These court rulings found that the National Housing Committees in Jerusalem had to reconsider the plans it had advanced for the Malkha and Mashua neighborhoods in the city. Among other things, the court ruled that the committee’s justification for not exercising its power to designate land for affordable housing was not based on persuasive or factual reasoning, but on an improper premise put forth by the committee members. As such, the court held that the committee members had missed the purpose of the law, which is not only to promote planning, but also to advance affordable housing that is suitable for low-income families and young couples.<sup>131</sup>

**The Construction in Preferential Housing Compounds Law<sup>132</sup>:** The Construction in Preferential Housing Compounds Law, which the Knesset passed into law in late July 2014, creates a special planning procedure the objective of which is to efficiently advance residential construction plans in land areas the state declares to be preferential housing compounds. A new committee, The National Committee for Planning and Construction in Preferential Housing

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<sup>129</sup> Tal Dahan, [Human Rights in Israel – Situation Report 2013](#), the Association for Civil Rights in Israel, December 2013, pages 43-44. Rulings are being awaited on appeals submitted by member organizations of the Coalition for Affordable Housing on this issue to the Administrative Matters Court in Jerusalem. For details, see: <http://www.acri.org.il/he/21496> (link in Hebrew).

<sup>130</sup> [Planning and Building Procedures Law for the Acceleration of Residential Construction \(Temporary Order\) \(Amendment\), 5754-2013](#) (link in Hebrew).

<sup>131</sup> Administrative Petition 44796-05-12 Bimkom – Planners for Planning Rights v. National Housing Committee, Jerusalem District; Administrative Petition 29375-07-12 Bimkom – Planners for Planning Rights v. National Housing Committee, Jerusalem District. (Judgment 24.11.2014). For the court documents and judgment: <http://www.acri.org.il/he/21496>.

<sup>132</sup> [The Law for Advancing Construction in Preferential Housing Compounds \(Temporary Order\), 5754-2014](#). For more on the law and position papers, see: <http://www.acri.org.il/he/30257>. For more on the law: Nimrod Bousso, [Preferential Housing Compounds Law Passed: Committee Will Have Power to Quickly Approve Plans for Thousands of Housing Units](#), The Marker, July 29, 2014 (links in Hebrew).



Compounds (CPCPHC), will be granted broad powers to advance these plans. This law was presented to the public as a step towards solving the housing problem in Israel and implementing the national rental housing project, but its original wording included no reference to social goals or affordable housing. Over the course of the hearings in the Internal Affairs Committee, and in response to public pressure, amendments were made to the law's wording. Among other amendments, it was determined that at least 30% of the apartments in every compound would be slated for long-term rental with controls on rent increases, and that half of these apartments would be slated for subsidized housing for eligible renters. However, in exceptional cases, the law allows the state to set a lower percentage target for such housing. Attempts by social organizations and Knesset members, particularly MK Orly Levy-Abekasis, to insert a clause into the bill obligating the committee to designate a portion of the apartments for public housing did not succeed. The absence of such a clause drew severe public criticism in light of the dwindling supply of public housing.<sup>133</sup>

These legislative amendments that promote affordable housing are important but have a limited effect. On their own, they are not able to sufficiently bolster the supply of low-cost housing, for sale or rent, which is suited to the incomes of different families in different Israeli communities. It remains to be seen whether and how these policies will be implemented in practice (in some cases, as noted, the law leaves a loophole through which the state could avoid designating apartments as affordable housing units), and solutions must be put in place that will not only deal with accelerating planning, but also with providing a diverse mix of housing solutions. The Israel Land Council's plan to allocate land for building housing units to be sold at a price below market value ("target price") is an example of such an initiative currently under consideration<sup>134</sup>. The enactment of this initiative would indicate movement in a positive direction, providing that the plan incorporate housing solutions for a variety of populations, including low-income families, the middle class, the Arab population and those eligible for public housing.<sup>135</sup>

## Public Housing Law implemented for the first time, fourteen years late

The Public Housing Law (Purchase Rights), 1998 (henceforth: "The Public Housing Law")<sup>136</sup> was designed to serve a social objective of the highest order: enabling public housing tenants to purchase their apartments at a discount, thereby providing low-income populations an opportunity to acquire capital which can be passed on by inheritance, as a vehicle for social mobility and a means of escaping the cycle of poverty. The law was also intended to mend the historical wrong caused to families that had immigrated to Israel during the 1950s, mostly from Arabic-speaking countries, who were placed in public housing projects in

<sup>133</sup> See for example Nimrod Bouso, [The MKs Gave In: Lapid's Planning Body Will Not Be Required to Provide Public Housing](#), The Marker, July 23, 2014 (link in Hebrew).

<sup>134</sup> Nimrod Bouso, [Target Price Program Approved: Will Apply to Apartments Worth up to NIS 2 Million](#), The Marker, July 9, 2014. The Housing Ministry's website for the program: <http://www.lamamatar.co.il> (links in Hebrew).

<sup>135</sup> The Coalition for Affordable Housing's position, <http://israelaffordablehousing.blogspot.co.il/2014/07/97.html> July 9, 2014 (link in Hebrew).

<sup>136</sup> [Public Housing Law \(Purchase Rights\), 5759-1998](#) (link in Hebrew).

poverty-stricken neighborhoods and development towns in Israel's periphery. A key component of this law was that income from apartment sales was to be allocated to the renewal of the public housing supply in Israel, by constructing or purchasing new apartments.

However, this just and important law was never implemented. It was frozen several months after its legislation, by way of the Omnibus Bill (a budget allocation mechanism), and has remained frozen ever since. Only in early 2013, fourteen years after its enactment, did the law finally go into effect. However, despite this delay, the government initially refrained from implementing it, and the intervention of the High Court of Justice was required in order to compel the state to implement the law.<sup>137</sup>

Included in the law is a mechanism according to which the funds received from apartment sales would be used to purchase new apartments. These new apartments would be directed towards those eligible for public housing who are currently waiting for an apartment, some of whom have been waiting for many years. However, the government decided to amend the law such that a portion of the income from the apartment sales can be redirected to other purposes. If this amendment passes, it will significantly harm the supply of public housing and the right to housing for low-income families. In response to public pressure by Knesset members and social activists,<sup>138</sup> the government has, as of now, revoked this plan, and begun selling apartments to eligible tenants. In September 2014 it was reported that the Housing Minister had instructed, for the first time in many years, that new public housing units be purchased from the funds raised through this scheme.<sup>139</sup>

Nonetheless, it is clear that funds raised by selling discounted apartments to eligible tenants will not suffice to meet the existing need for public housing, and therefore additional budgetary resources are required. The Committee for the Eradication of Poverty led by Eli Alalouf (the Alalouf Committee), which was appointed by the Minister of Welfare, recently recommended directing NIS 1.63 billion annually to alleviating the housing crisis for families living in poverty. This money would be used, among other things, to purchase 700-1,000 new apartments per year to bolster the supply of public housing.<sup>140</sup> However, as of yet, no funds have been allocated in support of this recommendation, and its implementation appears unlikely.

The sphere of public housing has been in decline for many years. Apart from the shortage of apartments and the long waiting list for eligible tenants, the public housing system is rife with problems including the insufficient maintenance of apartments, evictions, allocations of apartments for public institutions in excess of

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<sup>137</sup> HCJ 519/13 [Ran Cohen v. The Minister of Construction and Housing](#) (link in Hebrew).

<sup>138</sup> See for example: [Finance Committee Approves Regulations for Sales of Public Housing Apartments to Eligible Tenants – After Housing and Finance Ministries Rescind their Plan to Use Funds for Publishing Expenses](#), notice on Knesset website, March 19, 2014 (link in Hebrew).

<sup>139</sup> Nimrod Bousso, [Housing Minister Instructs Amidar to Purchase 200 Apartments for Public Housing](#), The Marker, Sept 2, 2014 (link in Hebrew).

<sup>140</sup> **Report of the Committee for the Eradication of Poverty in Israel – Part 1: Plenary Report** (henceforth: “**Alalouf Committee Recommendations**”), July 2014, <http://bit.ly/1pDwc5M>, pages 25-32 (link in Hebrew).

Housing Ministry regulations, and difficulties faced by the tenants in having their rights upheld by the housing companies.<sup>141</sup>

## Infringing on the right to housing equality

In the past year, there has been a high-profile public discussion on the **Zero VAT Bill**, which seeks to offer a value-added tax (VAT) benefit to individuals purchasing a first apartment from a contractor such that they will be charged 0% VAT.<sup>142</sup> While the intention behind the bill is positive – enabling those who do not own an apartment to acquire one at a reasonable price – the bill raises a number of serious concerns. Experts in the field have expressed concern that such a law, contrary to its intentions, would ultimately cause prices to rise rather than fall. Additionally, the bill contains unacceptable discrimination as it stipulates that the extent of the tax benefit is conditional upon having performed military or national service.<sup>143</sup> This approach links military service to a social benefit that is being offered years after being discharged from the army, and without any evidence that the economic situation of those who served in the army is inferior to that of those who did not serve. Offering benefits that are contingent on military service will primarily harm those who, due to religious or national considerations, disability or other social reason were legally exempted from such service. This stipulation will increase discrimination against entire population groups: Arabs, ultra-orthodox Jews, persons with disabilities and new immigrants who arrived after the age of military conscription. The bill also discriminates on the basis of socio-economic status by providing solutions for a relatively small and secure group within the population. Such a solution will not help those most in need – those who have difficulty raising the initial capital to purchase a new apartment from a contractor, public housing tenants and apartment renters.

Human rights organizations and jurists alike have criticized the bill's inherent violation of the right to equality<sup>144</sup>. Even Eyal Yinon, the Knesset Legal Advisor wrote:

*“Although the objectives that form the basis of the bill [...] are worthy objectives, the manner in which these objectives are implemented in the*

<sup>141</sup> For further discussion of the public housing situation see: Vardit Dameri-Madar and Shani Rabinowitz: [House without Justice: A Peek into the Back Alleys of the Public Housing and Mortgage Market in Israel](#), YEDID, December 2012; Doron Tzabari, [The Seven Circles of Public Housing Hell](#), Hama'arechet with Miki Haimovich, Reshet; State Comptroller, [Annual Report 64a](#), Oct 15, 2013, pages 301-356 (links in Hebrew).

<sup>142</sup> [Value-Added Tax \(Tax Benefit for Purchase Transactions of Eligible Residential Apartments\) Bill, 5754-2014 \(link in Hebrew\)](#). The bill passed its first reading in the Knesset in July 2014 and is currently being discussed in the Finance Committee.

<sup>143</sup> The bill sets forth that anyone who performed military or national service shall be eligible for a VAT exemption for apartments worth up to NIS 1.6 million, but anyone who did not perform military or national service shall receive this exemption only for apartments worth up to NIS 950,000. In the original bill this latter value was NIS 600,000, but the sum was changed after hearings in the Knesset.

<sup>144</sup> Position papers of the Coalition for Affordable Housing and additional organizations: <http://www.acri.org.il/he/31802> (link in Hebrew); [Adalah's response to the VAT exemption for military veterans purchasing an apartment](#), on the website of Adalah – the Legal Center for Arab Minority Rights, March 12, 2014; the Mossawa Center's position: [Mossawa staff advocate in the Knesset against discriminatory housing tax bill](#), May 14, 2014; Barak Medina, [State-Sponsored Discrimination](#), Haaretz, May 20, 2014, (link in Hebrew).

*bill does not sufficiently take into account constitutional limitations stemming from the right to equality. This must be noted especially in light of the bill's attempt to address the problem of housing prices in Israel, which is not an issue specific to any one sector, but rather impacts all citizens of the state.*<sup>145</sup>

A further infringement on the right to housing equality occurred during the past year as a result of the judicial ruling on the matter of **Acceptance Committees for Closed Communities**. The Acceptance Committees Law<sup>146</sup> allows residents of hundreds of small communities, which were established on state lands, to “filter” those seeking to live in their community. This is despite the fact that these communities possess no special cultural or other designation justifying such a “filtering” mechanism. While the law's language prohibits discrimination on the basis of nationality, personal status, parents or worldview, the vague criteria of “suitability to community life” and “matching the socio-cultural fabric” allow communities to reject “unwanted” population groups such as Arabs, persons with disabilities, older people, Jews from Arab countries, Ethiopian Jews, religious Jews, single parent families, same-sex couples and more.<sup>147</sup> In September 2014 a majority of an expanded panel of judges from the High Court of Justice rejected petitions against the law submitted by human rights organizations, based on the claim that these petitions were not yet “legally ripe” to be raised because the law has not yet been implemented.<sup>148</sup> Although the Court left an opening for invalidating the law in the future, the ruling in practice authorizes the discriminatory and humiliating mechanism of acceptance committees, and impedes the struggle against housing discrimination.<sup>149</sup>

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<sup>145</sup> Letter from Eyal Yinon, Legal Advisor of the Knesset, to MKs Moshe Gafni and Stav Shaffir, July 7, 2014.

<sup>146</sup> Amendment of the Communal Associations Order (No. 8), 5771-2011. For ACRI's position, see: <http://www.acri.org.il/en/2011/03/23/petition-to-the-hcj-to-disqualify-acceptance-to-communities-law/>.

<sup>147</sup> For more on the acceptance committees and the harm they entail see: [Human Rights in Israel – Situation Report 2013](#), see above, n52, pages 5-8.

<sup>148</sup> HCJ 2311/11 [Uri Sabach v. the Knesset](#) (link in Hebrew). The appeal was submitted by ACRI together with the Abraham Fund Initiatives and residents of the community settlements in the Misgav region (the Misgav Future group). For more and for the court's documents: <http://www.acri.org.il/en/2014/09/17/setback-housing/>. The appeal was heard together with HCJ 2504/11, which was submitted by Adalah and other organizations.

<sup>149</sup> For criticism of the ruling see: Aeyal Gross, [Acceptance Committees Ruling: The Judicial Passivism of Grunis Wins](#) Haaretz, Sept 18, 2014 (link in Hebrew).

## Workers' Rights The right to unionize

The Supreme Court of Israel recognizes the right to unionize as a human liberty, and as a foundation stone of democratic society in Israel.<sup>150</sup> In the working world, a natural imbalance of power exists between employer and employee, and individual workers have only limited bargaining power with respect to their employers. The primary course of action in response to this power differential is for workers to form unions, which are meant to negotiate with employers on behalf of all employees. Until the 1980s, the number of union members in Israel rose steadily, and at its height, counted over 80% of all workers among its ranks.<sup>151</sup> Since the mid-1980s, and especially during the second half of the 1990s, the number of unionized workers fell to approximately one-third of the work force by the early 2000s,<sup>152</sup> and only approximately one-quarter of wage workers during the current decade.<sup>153</sup>

In the past few years it **appeared that the trend was reversing**, due to – among other reasons – the establishment of the Koach LaOvdim Democratic Workers' Organization, which primarily unionizes workers in disadvantaged sectors, including contract workers. 2014 was a watershed year, during which the number of unionized workers rose for the first time in three decades.<sup>154</sup> According to reports from Koach LaOvdim, in 2013 there was a 60% rise in the number of new union members, and the number of workers represented by the organization reached some 20,000.<sup>155</sup> In 2014, the workers unionized by Koach LaOvdim included butchers at various chicken factories throughout Israel, crane

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<sup>150</sup> See for example, **New General Labor Federation v National Labor Court HCJ 7029/95**, ruling 51(2) 63.

<sup>151</sup> Cohen, Yinon, Yitchak Haberfeld, Guy Mundlak, and Ishak Saporta. 2004. "Union Density and Coverage: Past, Present, and Future." *Labor, Society and Law* 10: 15-49, page 18 (in Hebrew). Most of those who retained membership in the Histadrut prior to 1995 did so not for reasons connected to the right to unionize or workers' rights but rather out of necessity – in order to receive services from Clalit Health Services. This was not voluntary membership based on connection to the workplace and the interests of the worker as a worker, as is characteristic of workers' unions. In 1995, when the National Health Insurance Law was passed, which disconnected membership in the Histadrut from the right to receive health services from Clalit, there was a consequential significant drop in the number of members of the Histadrut. See:

Itai Svirski, [Moving to Bottom-Up Representation: A Comment on Gomes And Prado, "Flawed Freedom of Association in Brazil," from the Perspective of the Developing New Unionism in Israel](#), *Comp. Labor Law & Pol'y Journal* Vol. 32. (2011), pp 915-923.

<sup>152</sup> Haberfeld, Yitchak, Yinon Cohen, Guy Mundlak, and Ishak Saporta. 2010. "Union density in Israel

during the 2000s: years of stagnation". *Labor, Society and Law* 15: 533-549, see pages 537-539 (in Hebrew); **Survey of views of wage laborers on labor relations, unions, strikes and labor disputes and job security**, Ministry of Industry, Commerce and Employment, Labor Relations Unit, November 2003 (in Hebrew).

<sup>153</sup> Efraim Davidi, [The workers are organizing](#), Walla, June 16, 2013 (in Hebrew); Mickey Peled, [Workers' Committees Revolution](#), Calcalist, April 13, 2014 (in Hebrew).

<sup>154</sup> Mickey Peled, [Workers' Committees Revolution](#), *ibid.* See also, Naama Zifroni, [Are we witness to the resurrection of the dead](#), Eretz Acheret, February 2014 (in Hebrew).

<sup>155</sup> Post on the Koach LaOvdim Facebook page, Jan 1, 2014, <http://on.fb.me/1p3jq6F> (in Hebrew). ACRI's employees are also organized through Koach LaOvdim.



operators,<sup>156</sup> cleaners at Tel Aviv University and employees of the Kavim bus company.<sup>157</sup> Some of the most prominent new union members include workers from the ultra-orthodox sectors and employees in the education industry. The New General Labor Federation (the Histadrut) established workers' committees at the insurance company Migdal and the database company Ness Technologies, the car rental companies Avis, Albar and Eldan, First International Bank of Israel and the mobile phone company Partner Communications.<sup>158</sup>

The new unions also boasted some impressive and precedent-setting achievements. For example, last year, through Koach LaOvdim, the first collective agreement in the kosher slaughter industry in Israel was signed with the contract workers employed at the Of HaNegev plant;<sup>159</sup> for the first time, a collective agreement was signed with Bedouin workers in home day care centers;<sup>160</sup> for the first time, a collective agreement was signed at a privatized non-profit mental health organization;<sup>161</sup> and a collective agreement was signed at the Open Democratic School Jaffa.<sup>162</sup> The Histadrut signed the first collective agreements with several large employers, including Clal Insurance, Meuhedet Health Services<sup>163</sup> and Pelephone – the first collective agreement in the mobile phone industry.<sup>164</sup> The National Organization of Preschool Aides, represented by the Histadrut and the organization Itach-Maaki – Women Lawyers for Social Justice, signed a collective agreement to ensure that the aides who work with special-needs children not be fired every summer.<sup>165</sup>

Employers are often hostile to workers who unionize to attain greater recognition of their rights, and attempt to prevent the formation of unions. In the past year, **there were several court rulings which strengthened workers' right to unionize, including:**

- The High Court of Justice rejected a petition by employers' organizations and upheld the ruling of the National Labor Court, which forbade the employer (Pelephone) from expressing an opinion during the initial stage of workers' organization and limited the ability of the employer from acting to counter unionization attempts. The High Court agreed with the National Labor Court that "the expression of an opinion by the employer or its

<sup>156</sup> On working conditions and unionization in that industry, see: Hila Weisberg, [Crane operators establish national union: "We work in sub-conditions and endanger our lives,"](#) TheMarker, Aug 27, 2014 (in Hebrew).

<sup>157</sup> Shay Niv, [A win for Koach LaOvdim: Kavim recognizes the union,](#) Globes, March 12, 2014 (in Hebrew).

<sup>158</sup> Mickey Peled, [Workers' Committees Revolution,](#) *ibid*; [Workers of all three major cellular companies unionize,](#) Local Call website, June 25, 2014 (in Hebrew).

<sup>159</sup> [First collective agreement in the kosher slaughter industry: butchers at Of HaNegev sign collect agreement,](#) Koach LaOvdim website, Sept 23, 2014 (in Hebrew).

<sup>160</sup> Roy (Chicky) Arad, [A first: collective agreement with Bedouin caretakers in home day cares,](#) Haaretz, Sept 4, 2014 (in Hebrew).

<sup>161</sup> [A first: Collective agreement in mental health privatized non-profit,](#) Koach LaOvdim website, Sept 8, 2014 (in Hebrew).

<sup>162</sup> [Collective agreement signed at the Open Democratic School Jaffa,](#) Koach LaOvdim website, July 21, 2014 (in Hebrew); [Teachers at Open Democratic School Jaffa sign collective agreement,](#) Local Call website, July 17, 2014 (in Hebrew).

<sup>163</sup> Mickey Peled, [Workers' Committees Revolution,](#) see above, n157 above.

<sup>164</sup> In late 2013. Shay Niv, [Collective agreement signed at Pelephone; what did the workers get?](#) Globes, Dec 17, 2013 (in Hebrew).

<sup>165</sup> [Itach-Maaki and the National Union of Preschool Assistants Newsletter for the new school year,](#) Itach-Maaki – Women Lawyers for Social Justice (in Hebrew); National Organization of Preschool Aides Facebook page: <http://on.fb.me/1vtwrt6>.

representative on the unionization or its impact entails the placement of unfair pressure and influence on the workers.” However, the justices emphasized that the High Court is not interested in excessively interfering in labor relations, and left room for future changes to the rule.

- The Tel Aviv District Labor Court instructed Hot Mobile to pay the Histadrut NIS 1,000,000 in compensation, finding that Hot had severely restricted its workers’ right to unionize. The company attempted to cause three of the five workers’ leaders to be fired, blocked workers’ access to the Histadrut’s website, and used deception and threats in order to discourage workers from unionizing and to direct workers into the organization which they preferred.<sup>166</sup>
- The Tel Aviv District Labor Court ruled that the Hal Yiska slaughterhouse in Or Yehuda undermined its workers’ right to unionize by thwarting a workers’ assembly, preventing some of the workers from working, hiring strikebreakers and applying pressure and even violence. The court ruled that the company must pay the unionized workers and Koach LaOvdim NIS 150,000 in compensation (the sum was later reduced by 4% following a ruling of the National Labor Court).<sup>167</sup>
- The Tel Aviv District Labor Court handed down a number of decisions against the insurance company Migdal for harassment of its unionizing workers. The court ruled that the company must cease contacting workers about issues relating to the union, forbade the company from employing temporary workers in place of striking workers, and also forbade the company from deducting 30% from the wages of workers who took part in the partial strike.<sup>168</sup>
- In the wake of a strike and other steps by 70 unionized butchers, the Milouoff company ceased its contract with a contractor which provided the butchers, and began employing strikebreakers in their stead. Following the submission of a court petition, the Haifa District Labor Court instructed Milouoff to return the 70 butchers to work. The court further instructed both Milouoff and the contractor to negotiate with the workers regarding their wages and working conditions, including the possibility of their being hired directly by Milouoff. This meant that the company which hired the contractor was also obligated to participate in this negotiation directly. This precedent-setting ruling recognizes the rights of unionized contract workers – not only with regards to the contractor company, but also with regards to the company who ordered the service of the contractor.<sup>169</sup> An appeal on this decision is pending in the National Labor Court, which decided to deliberate further on the obligation of a company which hired a

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<sup>166</sup> CD (TA) 15478-05-14 [New General Labor Federation v. Hot Mobile Ltd](#) (ruling dated Sept 23, 2014, in Hebrew); Haim Biur, [Court ruling: Hot Mobile to pay NIS 1,000,000 for severely subverting workers’ union](#), TheMarker, Sept 28, 2014 (in Hebrew).

<sup>167</sup> CD (TA) 27800-01-14 [Koach LaOvdim - Democratic Workers’ Organization et al v. Tal Hal Yiska Ltd](#) (ruling dated June 8, 2014, in Hebrew) +National Labor Court Ruling.

<sup>168</sup> CD (TA) 13125-12-13 [New General Labor Federation v. Migdal Insurance Company Ltd.](#) ([ruling dated Dec 18, 2013](#); [ruling dated Jan 27, 2014](#); [ruling dated Feb 24, 2014](#) – links in Hebrew).

<sup>169</sup> CD (Haifa) 21365-08-14 [Koach LaOvdim - Democratic Workers’ Organization v. HaMeir Ltd](#) (ruling dated Aug 21, 2014, in Hebrew); [Win for butchers at Milouoff: all 70 butchers will return to work](#), Koach LaOvdim website, Aug 22, 2014 (in Hebrew).

contractor to participate in the negotiations, and on the matter of the strikebreakers.

## Compensation for wages lost during Operation Protective Edge<sup>170</sup>

During the summer of 2014 – while rockets were being fired towards Israel and fighting occurred in Gaza – many workers suffered significant financial damage. Shopping and leisure outings decreased and many businesses experienced a significant decline in income.<sup>171</sup>

Many business owners were compelled to reduce workers' hours or resort to forced vacations and even firings. Other workers – mostly women – were compelled to stay home with their children.<sup>172</sup>

During the initial phase of fighting, many workers were forced to deal with significant **uncertainty regarding their rights**.<sup>173</sup> The Ministry of Economy released a very partial compilation of questions and answers on workers' rights during conflict, however in the absence of any formal arrangements; this did not provide any clarity as it only constituted a series of conjectures based on regulations that had been passed following earlier military operations. The Ministry also did not make clear which restrictions applied to which employers (such as the ban on forced vacations or deduction of vacation days when the worker has no remaining vacation days). As a result, many employers inadvertently broke the law, and workers' rights were impinged. Only on August 12, after over a month of fighting that caused severe damage to workers' wages, did the Ministry publish an official announcement on the intention of the Minister of Economy to expand the General Collective Agreement to include compensation for workers who live in the south; and only on September 14 did the Minister issue the order itself (henceforth: "the Expansion Order")<sup>174</sup> – approximately one month after the end of the fighting, and at a time when many workers had not received salaries for August and September.

Those who suffered the most from this uncertainty were those workers who already worked under uncertain conditions: **hourly workers, daily workers,**

<sup>170</sup> By Attorney Michal Tadjer, Kav LaOved - Worker's Hotline.

<sup>171</sup> See for example: Haim Biur, [Survey: Two-thirds of businesses suffered decrease in activity since Operation Protective Edge](#), TheMarker, Aug 21, 2014 (in Hebrew). [CEO of Israel Tourist & Travel Agents Association \(ITTAA\): We cannot cope with this situation and we are going to collapse](#), Press Release on Knesset Website, July 28, 2014 (in Hebrew); [Nights at tourist hotels January-July 2014](#), Press Release on the Israel Bureau of Statistics Website, Aug 25, 2014 (in Hebrew); Ilanit Hayut et al, [Protective Edge leaves a deep mark after 50 days of fighting](#), Globes, Aug 28, 2014 (in Hebrew); Roi Yerushalmi, ["Everyone passed on going out to dinner."](#) ynet, July 18, 2014 (in Hebrew).

<sup>172</sup> See for example: [Chair of the Committee on the Status of Women and Gender Equality, Aliza Lavie: There is a 100% gap between men and women in going to work at this time in the Gaza Envelope area, because the one who earns less stays with the children in the protected room](#), Press Release on the Knesset Website, July 23, 2014 (in Hebrew).

<sup>173</sup> See for example: [Chair of the Foreign Affairs and Defense Committee, MK Zeev Elkin: Residents of the south suffer from the security situation and financial uncertainty – an absurd situation](#), Press Release on the Knesset Website, July 14, 2014 (in Hebrew).

<sup>174</sup> Order for the Expansion of the General Collective Agreement regarding Worker Compensation – Operation Protective Edge, Sept 14, 2014, Ministry of Economy website, <http://bit.ly/1t8v1ac> (in Hebrew).



**shift workers, and other workers who have irregular relationships with their employers.** The Collective Agreement was only intended to apply to those workers represented by the Histadrut – state workers and monthly salaried workers. According to Kav LaOved – Worker’s Hotline, at least half of the workers in the areas covered by the agreement were not employed in the manner required by the provisions, and so experienced significant challenges in receiving their regular wages during Operation Protective Edge. Testimonies from those workers who contacted the organization for assistance indicated that many employers, including some in the public sector, refused to grant any compensation for workers employed on an hourly, daily or shift basis. The employers argued – justifiably, from their perspective – that the existing agreement did not apply to these workers and does not define the method of calculation for their wage loss compensation, and that there is no certainty that the employer will receive fair compensation from the Tax Authority for payment to these workers. Fair employers, and those willing to take risks, paid daily, hourly and shift workers their average wage, and requested reimbursement from the Tax Authority. It is not yet known whether they will receive reimbursement. Despite an inquiry by the Forum for the Enforcement of Worker Rights<sup>175</sup> to the Ministry of Economy, as of the end of October, the Ministry has not yet published on its website any information or clarification about the implementation of the Expansion Order for workers who are employed in accordance with common employment patterns in the market.

There are several additional problems that the Expansion Order does not address. For example, the order instructs employers to grant compensation to workers from southern Israel who lost work days because of Home Front Command instructions to stay home with their children, but does not address workers who are not parents, and whose employers reduced their wages during the fighting due to a decrease in available work. These employers can apply for compensation due to decreased income, by comparing their income this year to that of last year,<sup>176</sup> but according to the existing agreement their workers will not receive any solution or compensation for decreased wages.

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<sup>175</sup> The Forum for the Enforcement of Worker Rights’ inquiry, Aug 17, 2014, <http://www.acri.org.il/he/32528>. The forum members include ACRI, Itach-Maaki – Women Lawyers for Social Justice, Kav LaOved – Worker’s Hotline, The Workers Rights Clinic at Tel Aviv University and the Women’s Lobby.

<sup>176</sup> See the form for filing a compensation claim for “indirect damage” from Operation Protective Edge, Tax Authority website, <http://bit.ly/1ufrc9f>.

## The Right to Dignity

### The Alalouf Committee

For many years, Israeli governments have avoided dealing with the critical need for a strategic and thorough re-examination of the fight against poverty. In striking contrast to the social and political progress taking place in other countries, the actions of the government represent an abandonment of the those people living in poverty in Israel. In practice, Israel's socioeconomic policies in recent decades have **allowed the state to dramatically retreat from its responsibility to uphold the social rights of its citizens** and residents. These policies have dismantled the social safety net and caused a significant increase in poverty and inequality in Israel.

In Israel today, some 20% of families and some one-third of children are defined as living in poverty,<sup>177</sup> and among Arabs and ultra-orthodox Jews, 50% or more of households live below the poverty level.<sup>178</sup> The poverty rate in Israel is almost double that of the OECD average, and the highest of any OECD country.<sup>179</sup> Especially concerning is the upward trend in the poverty rate among families with one or two working adults.<sup>180</sup> The level of subsistence benefits provided, most notably the income support benefit and the child benefit, are determined in a completely arbitrary manner. They are not based on any calculation of an amount sufficient for the basic subsistence of an individual or family, and do not in any way correspond to a set standard of living in dignity.<sup>181</sup>

Against this backdrop, the appointment of the Committee for the Fight against Poverty (the Alalouf Committee)<sup>182</sup> in late 2013 was welcome news. However, despite the good intentions of the committee members, the recommendations published by the committee in 2014 were disappointing.<sup>183</sup> The committee's suggestions addressed the severe poverty rates in various ways, such as increasing income support for certain recipients; increasing the old-age benefit; raising the budgets of social service departments; broadening the eligibility criteria for rent assistance and increasing the amount of assistance; increasing the public housing supply; establishing additional early-childhood day care and other centers; increasing the list of those eligible for exemption from medical

<sup>177</sup> Miri Endeweld, et al, [Poverty and Social Gaps in 2012, annual report](#) ("Poverty Report"), National Insurance Institute of Israel, February 2014. See also: [Israel 2014: 1 in every 5 students is forced to work](#), Press release on the Knesset Website, June 8, 2014.

<sup>178</sup> Dan Ben-David, [State of the Nation Report – Society, Economy and Policy 2014](#), Taub Center for Social Policy Studies in Israel, page 36 (2011 data) (in Hebrew).

<sup>179</sup> [Society at a Glance 2014 – OECD Social Indicators, Highlights: ISRAEL](#), OECD, 2014.

<sup>180</sup> Hila Weisberg and Lior Dattel, [Israel's poverty rate dropped in 2012, report says](#), Haaretz, Dec 18, 2013.

<sup>181</sup> For more information, see: ["No such Thing": The Israeli standard for basic subsistence \(in dignity\) and the income support benefit](#), ACRI, October 2013 (in Hebrew).

<sup>182</sup> The Elalouf Committee's website (in Hebrew): <http://www.milhamabaoni.org/>

<sup>183</sup> [Recommendations of the Elalouf Committee](#), citation 140 above. See also the reports of the subcommittee: <http://bit.ly/ZnaXjo> (in Hebrew). For more information, see: [The Elalouf Committee: Missed opportunity for basic and deep policy change](#), Press release on the ACRI website, June 23, 2014 (in Hebrew)

payments; broadening eligibility for free dental care to teenagers and senior citizens; and additional important recommendations.

**However, the committee's recommendations do not include a demand for significant structural policy change**, such as: halting the budget deterioration and privatization of public services; amending regressive tax policy; significantly developing jobs at fair market wages; decreasing indirect employment, which creates a large strata of poor workers in the labor market in general, and the public service specifically; and ending the trend of transforming basic rights such as housing, health and education into consumer products to be purchased with private funds.<sup>184</sup>

Moreover, **there are serious concerns that even the relatively modest recommendations of the Alalouf Committee will not be implemented.** As of late November, some five months after the committee's recommendations were released, the government is yet to conduct deliberations on the recommendations, much less adopt them. The Alalouf Committee emphasized that implementing the recommendations depends on "the development and funding of a stable and guaranteed budgetary framework for at least the first five years of the program."<sup>185</sup> However, the minister of finance has refused to directly address the need for additional budgets to decrease poverty, and has only promised that the committee's recommendations would be implemented gradually, without addressing specific amounts or timetables.<sup>186</sup> In early October, the Ministry of Welfare announced that in 2015, some of the recommendations would be implemented, including increasing the income support benefits for some 190,000 senior citizens living in poverty; work grants to single-parent families; establishing centers for claiming social rights; funding professional training for poor workers; increasing the budget for public housing maintenance; establishing early-childhood centers; and increasing the budget for contact hours at elementary and middle schools in socioeconomic divisions 1-4.<sup>187</sup> It appears that the remaining recommendations, including increasing the public housing supply and increasing the budgets of social service departments, will not be implemented.

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<sup>184</sup> These processes are described extensively in Tali Nir, [Between Realization and Dehydration – How Israeli Governments Drained Social Services](#), ACRI, April 2012 (henceforth: "[Between Realization and Dehydration](#)").

<sup>185</sup> [Recommendations of the Elalouf Committee](#), citation 140 above, page 13.

<sup>186</sup> Omri Efraim, [Social budget? "The war on poverty must be more seriously addressed."](#) ynet, Sept 29, 2014 (in Hebrew); The Forum for the Struggle against Poverty's response on the website of Rabbis for Human Rights: <http://rhr.org.il/heb/2014/09/18106> (in Hebrew).

<sup>187</sup> [Implementation of the Elalouf Committee Report will begin in 2015](#), Ministry of Welfare website, Oct 6, 2014 (in Hebrew); Mickey Peled, [Ministry of Finance finds NIS one billion to implement Elalouf report](#), Calcalist, Oct 7, 2014. However, see also: Mickey Peled, [State simultaneously increases and cuts financial assistance to poor families](#), Calcalist, Nov 11, 2014 (links in Hebrew).

## Cutting off essential services – electricity and water

### *Electricity*

*“The right to water and the right to electricity, without which life in our times is very difficult and nigh impossible, must be considered basic social rights and part of the right of every person to live in dignity as decreed by the Basic Law: Human Dignity and Liberty.*

*It cannot be said that today, living without electricity is living in dignity, and certainly when it comes to the society in the State of Israel.”<sup>188</sup>*

Electricity is a basic commodity required for healthy and dignified human subsistence, and in cases of difficult medical conditions or extreme weather, it becomes vital. Last year, the Haifa Magistrates Court ruled that in a modern country, electricity is a basic right and that living without electricity violates the human right to live in dignity.<sup>189</sup> International law considers electricity a condition for fulfillment of the right to health and the right to life.<sup>190</sup> **Therefore, each person, regardless of his/her financial circumstances, must be eligible to receive electricity to meet his/her basic needs.**

Today, **various practices involving the disconnection or restriction of electricity to customers who are in debt are not properly regulated.** Instead of collecting debts through measured procedures – such as the court system and the Enforcement and Collection Authority, the Israel Electric Corporation disconnects and restricts electricity supply to debtors at their own discretion, based on internal guidelines which are unavailable to the public.<sup>191</sup>

From a legal perspective, the Israel Electric Corporation has been granted legal authority<sup>192</sup> to disconnect electricity to customers who have accumulated debt. The law requires the Electricity Authority (the regulatory body which oversees the Israel Electric Corporation) to prepare criteria for restricting electricity supply, and requires the minister of infrastructure to prepare regulations for implementing the law. However, the criteria set forth by the Electricity Authority and the regulations prepared by the minister of infrastructure<sup>193</sup> are insufficient: they are technical, addressing timelines and warning procedures prior to disconnection, while ignoring material aspects that impact the rights of the debtors. They overlook the manner in which discretion may be exercised on decisions about restriction or

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<sup>188</sup> Civil case (Haifa) 19120-03-13 **Yelizarov v. Israel Electric Corporation Ltd.** (ruling dated July 13, 2014 – in Hebrew) (henceforth: “**Yelizarov case**”).

<sup>189</sup> **Yelizarov case**, citation 187 above. Civil case 13054-11-13 **Abu Jabal v. Israel Electric Corporation** ([ruling dated Feb 5, 2014](#) – in Hebrew). In both cases, the plaintiffs were represented by Haifa District Legal Aid.

<sup>190</sup> For more information, see the inquiry by the Tel Aviv University Legal Clinics and ACRI to the minister of infrastructure and the Electricity Authority, July 29, 2014, <http://bit.ly/1pzF7eS> (in Hebrew) (henceforth: “ACRI and Clinics Inquiry”).

<sup>191</sup> For more information, see the [ACRI and Clinics Inquiry](#), citation 190 above.  
<sup>192</sup> [Electricity Market Law, 1996](#), paragraph 17(d) and paragraph 63 (in Hebrew).

<sup>193</sup> [Electricity Market Regulations \(rules, conditions and cases for ceasing supply of electricity – 2003\)](#), paragraphs 3-7, and criteria book, Electricity Authority, July 2014, <http://bit.ly/1uWxsD8>, paragraphs 21(g) and 24(b) (links in Hebrew).

disconnection of supply, how to handle unusual cases, and exceptions to restriction or disconnection from electricity.

In addition to the insufficient regulations and criteria, the Israel Electric Corporation prepared rules, including guidelines on exercising discretion prior to disconnecting electricity for certain customers, such as those who use “lifesaving devices” or Holocaust survivors.<sup>194</sup> However, these rules, which were released following ACRI’s freedom of information inquiry,<sup>195</sup> are incomplete, insufficiently detailed and contain ambiguous definitions. Furthermore, the Israel Electric Corporation has no mechanism for exercising discretion in the disconnection or restriction of electricity for other population groups that are not explicitly mentioned in the regulations, including senior citizens, families with children or persons with disabilities, whose need for electricity is likely to be as great as those groups listed in the rules.

Moreover, **these rules are internal and hidden from the public** – even the population groups explicitly mentioned in the rules and the welfare officers who work with these groups do not know about the rules – and they are not subject to parliamentary or public oversight. The copy of the rules provided to ACRI was redacted so that the method of exercising discretion, as well as who is authorized to do so, remains hidden under the false pretext of being “trade secrets.” This is in clear conflict with the obligation towards transparency that applies to entities like the Israel Electric Corporation.<sup>196</sup>

In the absence of meaningful regulations regarding disconnections of the electricity supply and for methods of debt collection, the act of disconnecting the supply – a harsh and extreme measure – has become the Israel Electric Corporation’s de-facto enforcement tool. According to the corporation’s official position, disconnecting a customer’s electricity is the last stage in the process of collection enforcement, after many other actions have been taken. These actions include sending reminders about the debt, contacting debtors, attempting to reach a payment plan, debt restructuring and installing a prepayment meter or miniature fuse (see excerpts from the response of the Israel Electric Corporation in footnotes).<sup>197</sup> The Israel Electric Corporation states that it differentiates between customers who regularly refuse to pay and customers who are encountering financial difficulties, and that it does not disconnect customers

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<sup>194</sup> Rule 05-03-07 Collection Enforcement – notice prior to/about electricity cut-off.

<sup>195</sup> ACRI request, Dec 16, 2014, and Israel Electric Corporation response, April 3, 2014; clarification request by ACRI, May 15, 2014.

<sup>196</sup> In response to a draft of this report, the Israel Electric Corporation argued that “at the request of ACRI, the Israel Electric Corporation [...] provided it with rules which address collection enforcement [...] The Israel Electric Corporation redacted a few specific details of the rules which address the ranks of authorities and amounts, in accordance with its right by law and its obligations to protect its ability to act effectively and enforce collection.” The Israel Electric Corporation’s complete response to the draft report dated Nov 13, 2014 appears in its entirety on ACRI’s website, <http://bit.ly/12741Z7> (henceforth “Israel Electric Corporation’s response to draft report”) (in Hebrew).

<sup>197</sup> In the [Israel Electric Corporation’s response to draft report](#), citation 195 above, the company claims, in brief, that the Israel Electric Corporation does everything it can to provide the best service to all residents of the country including customers in needy population groups; the company’s authority to disconnect due to debts is enshrined in law and legal rulings; the company acts with sensitivity and uses disconnection as a last resort; by law, the Israel Electric Corporation is not permitted to determine that needy customers receive full exemptions from paying for electricity supply or to supply electricity without collecting payment for such; and that it is not permitted to change or broaden the groups eligible for discounted rates – such changes may only be conducted through legislation.

during unusual weather, holidays, etc.<sup>198</sup> However, each year tens of thousands of private customers are cut off from electricity.<sup>199</sup> Inquiries that have reached ACRI indicate that these cases include cutting off electricity to homes of people living in poverty or with medical conditions requiring connection to the electrical grid.

The Israel Electric Corporation is limited in its capacity to alter this situation, because it does not have the authority to fully exempt needy customers from payments for electricity consumption, or include additional population groups among those determined by law as eligible for decreased rates. Such changes can only be made through legislation. Because electricity is an essential commodity and a basic right, we believe that **the legislature and the Electricity Authority must forbid the Israel Electric Corporation from disconnecting debtors from the electricity supply** as a collection enforcement mechanism, and must at a minimum amend the criteria that regulate disconnections. In recent months, following an inquiry by ACRI, the Electricity Authority has begun to formulate new criteria for the restriction or disconnection of electricity due to debt. This is a welcome intention, and we hope that the Electricity Authority succeeds in establishing an organized, measured and transparent mechanism to offer sufficient protections of the rights of indebted customers.

### **Water**

A similar process of regulating the restriction or disconnection of water to debtors was supposed to be completed during the past year, but as of mid-November, the Knesset Economic Affairs Committee has not yet approved the rules on this issue. In recent years, ACRI has been conducting negotiations with the Water Authority to demand that regulations completely prohibit water corporations from disconnecting customers' water supply, and obligate them to use alternative collection methods such as legal procedures and Enforcement and Collection Authority procedures. A petition to the High Court of Justice, submitted by ACRI on this matter in January 2013, is currently pending.<sup>200</sup>

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<sup>198</sup> Benny Gal, Annual ombudsman's report for 2012, Israel Electric Corporation, April 2013, <http://bit.ly/1z3HtCW>, page 20 (in Hebrew).

<sup>199</sup> In the [Israel Electric Corporation's response to draft report](#), citation 195 above, the company writes: "The Israel Electric Corporation has over 2.6 million customers, for whom some 16 million bills are prepared each year, and despite this during the last 12 months, only some 60,000 customers have been disconnected, which is less than 0.4% of the total accounts each year." According to our calculations, this is some 2% of customers. According to additional data provided to ACRI by the Israeli Electric Corporation via email on Nov 19, 2014, out of some 2.3 million residential customers, some 270,000 are in debt and according to Israel Electric Corporation methods, may be disconnected. Of them, over the last twelve months, some 54,000 were disconnected, which according to our calculations is some 2.3% of all residential customers and some 20% of debtors.

<sup>200</sup> ACRI's petition to the High Court of Justice was filed in January 2013 together with four families who were cut off from the water supply due to debts which they could not pay. The petition demanded that the water corporations be instructed to cease cutting off water to homes until rules are determined on the matter. H CJ 671/13 Mizrahi v. The Governmental Authority of Water and Sewerage, for court document see: <http://www.acri.org.il/en/2013/01/29/disconnecting-water/>. In July 2013, The Legal Aid Department at the Ministry of Justice filed a petition to the High Court of Justice on behalf of ten petitioners, seeking to instruct the Water Authority and the water corporations to avoid cutting off water to customers of limited means who cannot afford their water bills. The petition's arguments included that the water corporations are not authorized to disconnect



As part of the rule-making process regarding water disconnections and restrictions, the Water Authority has released several drafts over recent years, amending the wording time and time again, sometimes due to comments submitted by ACRI.<sup>201</sup> The most recent draft of the rules, which the Knesset Economic Affairs Committee submitted for approval approximately one year ago, included a proposal to forbid the disconnection of water for certain groups, including those who receive various benefits from the National Insurance Institute, Holocaust survivors, etc. However, members of the Knesset Economic Affairs Committee refused to approve the rules and demanded that the Water Authority apply a sweeping rule which would forbid disconnecting any debtors from the water supply.<sup>202</sup> After discussions between the committee chair, MK Avishay Braverman and the Water Authority, the Water Authority announced in November 2014 that the **water corporations would no longer be permitted to make decisions about disconnecting the water supply to residential customers.** Instead, the Water Authority would establish an advisory committee including welfare experts and legal advisors, which would approve or reject requests from water corporations seeking to disconnect customers.<sup>203</sup>

The details of the proposal have not yet been formulated or released; however, we are hopeful that because access to water is inarguably a basic right, the committee's announcement will soon be enshrined in law. We hope that the committee will indeed consist of independent professionals, including experts in the field of welfare, and that they will establish transparent and fair criteria for decision-making. In addition, it is extremely important that the committee uphold all required debtor protections, including the right to be heard, the right to appeal, etc., and that the committee will have the authority to help debtors through payment plans, interest reductions, etc. However, until the new rules are passed through legislation, the water corporations continue to disconnect thousands of families each month who cannot afford the high cost of water.

Aside from water disconnections and the high rates paid for water, **there are various deficiencies and problems in the conduct of the water corporations.** Customers who accumulate debt to the water corporations are forced to deal with the corporations' clerks, who often act insensitively and humiliate debtors. Many debtors are offered rigid payment plans inappropriate to their family's income and which they can therefore not afford. The interest on late debt payments for water is also particularly high, and disproportionately inflates the debt.<sup>204</sup>

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water as a means to pressure customers to pay their debts, and especially not customers of limited means. See the petition on the Legal Aid Department's website: <http://bit.ly/1tAma7l> (in Hebrew) (henceforth: "Legal Aid Petition"). Both petitions are pending.

<sup>201</sup> Water and Sewerage Corporation Rules (cessation or decrease of provision of water and sewerage services), 2013. ACRI's comments on the draft rules:

<http://www.acri.org.il/he/29174> (in Hebrew).

<sup>202</sup> [Economic Affairs Committee Chair MK Braverman decides to postpone deliberations on water rules planned for tomorrow: "I have not received answers to my demand to cease water disconnections."](#) Press release on the Knesset website, March 24, 2014 (in Hebrew).

<sup>203</sup> [Economic Affairs Committee Chair MK Braverman: After a year of deliberations – starting in 2015, we will end water disconnections in Israel](#), Press release on the Knesset website, Nov 17, 2014 (in Hebrew); Dana Weiler-Polak, [Water corporations will not be able to disconnect debtors from water supply](#), Walla, Nov 17, 2014 (in Hebrew).

<sup>204</sup> For examples, see: Alva Kolan and Keren Tamir, [The Right to Water in Israel: Testimony by people living in poverty](#), Association for Civil Rights in Israel, December 2013 (in Hebrew); [Legal Aid Petition](#), citation 199 above.

## The Right to Health

In June 2014, after an entire year of consultation and hundreds of discussions and hearings, the Committee for Strengthening the Public Health System (the “German Committee” – so named after Minister of Health Yael German) published its recommendations.<sup>205</sup> The very establishment of this committee in June 2013 already had great significance: it was the first time that the state initiated a discussion on the future of the health system, and particularly on the boundary between private and public medicine, which has been gradually dissolving in recent years.

Among the committee's positive recommendations were suggestions to allocate budgets to shorten waiting times in hospitals, improve infrastructures and add human resources to the public system; to expand the elective arrangements between hospitals; to encourage the “full-timer” model (a physician who is employed only by the public system); and to increase the availability of health services in the social and geographical periphery. Nonetheless, the committee failed to sufficiently address the need to mend the continuing erosion of the health basket budget (the goods and services covered by the public health system).<sup>206</sup> This topic should have been the starting point for discussions, because without a budget plan the processes for strengthening the public health system cannot be implemented. The committee did suggest mechanisms for updating the budget of the health system,<sup>207</sup> but they are far from sufficient, especially in light of the erosion of the health budget over many years.

A detailed analysis of the committee's recommendations would exceed the scope of this report.<sup>208</sup> Rather, we will briefly discuss the recommendations concerning three issues: private medical services (*sharap*), supplementary insurance policies and medical tourism.

### Private Medical Services (*sharap*)

Sharap is a private medical service that operates inside a public hospital.<sup>209</sup> Among other things, the sharap enables patients to choose a consulting physician and a surgeon and to shorten the waiting period for non-urgent

<sup>205</sup> The Ministry of Health, “[The German Committee Has Publicized its Recommendations](#),” 25 June 2014; “[The Recommendations of the Committee for Strengthening the Public Health System](#)” [Hebrew] (hereinafter: the German Committee Recommendations). See also: Yaron Kelner, “[German Committee: Private Medical Services Will Not Expand to Public Hospitals; NIS 1 Billion Will Be Allocated to Shorten Waiting Times](#)” [Hebrew], *Ynet*, 25 June 2014.

<sup>206</sup> On the erosion of the health budget over the years, see for example: Rami Adut, Dani Filc and Nadav Davidovitch, [No Difference Between Rich and Poor: An Outline for Saving the Public Health System](#), Physicians for Human Rights – Israel and the Association for Civil Rights in Israel, February 2014.

<sup>207</sup> The German Committee Recommendations (see above, n205), articles 97-82.

<sup>208</sup> For a critical analysis of the committee's recommendations, published by ACRI, PHR and the Adva Center in July 2014, see: <http://www.acri.org.il/he/32345> [Hebrew].

<sup>209</sup> For historical background, see: Leah Achdut and Gabi Bin Nun, [The Private-Public Mix in the Health System in Israel: The Case of Private Health Service in Public Hospitals](#), The Van Leer Jerusalem Institute, April 2012.

checkups and surgeries by paying through either private insurance or supplementary insurance. Private medical services are usually provided inside public hospitals after regular working hours, thereby using resources that belong to the wider public – both hospital facilities and the specialty of senior physicians (which was in a way acquired using public infrastructure) – for the benefit of only a small portion of the public: those who can afford it.

The issue of private medical services has been stirring longstanding public and professional controversy. Its supporters claim, among other things, that it can keep the best doctors in the public health system and prevent them from leaving for the private sector, enable a better utilization of existing resources and infrastructures in the hospitals and raising their earnings. Those who oppose the sharap, including human rights organizations, argue that in its essence it contravenes the principles of equality, justice and mutual help, which form the basis of the National Health Insurance Law; enhances the disparities in quality of treatment between patients based on their financial situation; contributes to the loss of trust in the public system; increases the shortage of physicians in the public system; and leads to lengthy waiting periods.<sup>210</sup>

Private medical services were one of the central and most controversial issues that stood before the German Committee. During the year of consultations, many activists and public figures – from social change organizations, the media, the Knesset and the health system<sup>211</sup> – fought against this option in favor of equal public healthcare. This multitude of voices has created a broad front for a strong public healthcare, and together with a critical media, have succeeded in obtaining a positive outcome in the face of powerful forces acting to privatize the public health system. As such, **the German Committee refrained from recommending to expand the private medical services**, which currently operate only in Jerusalem hospitals, to all hospitals in Israel.<sup>212</sup> In addition, the committee recommended the introduction of the “full-timer” model into public hospitals as a public alternative to private medical services, which requires that doctors work in the hospital during the afternoon hours and do not practice private medicine. The committee further recommended the re-examination of sharap at the Assuta-Ashdod Hospital, in consideration of the “full-timer” model recommended by the committee.<sup>213</sup>

In this context, it is important to note **the financial revitalization agreement signed by the state and the Hadassah Hospital** in the middle of this year, following the financial crisis experienced at the hospital. The agreement with

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<sup>210</sup> For more, see: [The State of Human Rights in Israel and the OPT: Situation Report 2013](#) (see citation 52, above) p. 14-17.

<sup>211</sup> Among the organizations that participated in this struggle: Association for Civil Rights in Israel, Physicians for Human Rights – Israel, Adva Center and the Forum for Social Justice (within it, particularly the youth movement HaMahanot HaOlim and medical students from the Hebrew University). About the journalists' struggle, see: Elinor Davidov, “[In Service of the Public](#)” [Hebrew], *The Seventh Eye*, 14 August 2014.

<sup>212</sup> The German Committee Recommendations (citation 205 above), articles 85-86 and 20-23.

<sup>213</sup> The issue of the private medical services at Assuta-Ashdod was at the center of a legal deliberation initiated by ACRI in 2012. The court rejected the petition for technical reasons, due to the delay in filing it. HCJ 2114/12 **Association for Civil Right in Israel v. Government of Israel**. For related legal documents, see: <http://www.acri.org.il/he/20262> [Hebrew].

Hadassah was signed shortly before the recommendations of the German Committee were published. Contrary to the committee's recommendations concerning private medical services, the agreement constitutes an authorization of the sharap (albeit not in a governmental hospital, but a public health institution). The committee appointed to examine the Hadassah crisis (the Gabbai Committee) determined that the sharap was an integral component of the inadequate administration at the hospital and harshly criticized it: "[The sharap] incorporates a significant component of Hadassah's administration problems, including a structural distortion that undermines administrative motivations. This is an entire mechanism that is utilized by some of the hospital's senior physicians and administrators for their personal benefit while generating operational distortions in services and finances."<sup>214</sup> Despite this criticism, the government approved the continuation of private medical services in Hadassah. There is cause for concern that this approval might be interpreted as an authorization of elements of sharap that the courts have unequivocally rejected, such as the option to provide private medical services during the morning hours, when the public hospital is active. Physicians for Human Rights – Israel and the Association for Civil Rights in Israel contacted the Ministry of Health and the Minister of Finance to request that they clarified to hospitals that any future sharap arrangement is required to comply with the regulations set in legal precedents.<sup>215</sup>

### Supplementary Insurance Policies

The supplementary insurance policies offered by the Health Maintenance Organizations (HMOs) provide insured persons (who can afford them) with access to treatments and drugs that are not included in the public health basket.<sup>216</sup> These insurance policies are a type of hybrid between public and private medical insurance: The HMOs – which are charged with implementing the public services – privately sell them to their insured members, under government regulation and supervision. Thus, under a guise of supervised public insurance, the HMOs add layers upon layers of insurance that transforms healthcare into a commodity: those who are able may purchase "supplementary" insurance, and then potentially upgrade to "perfect" and "preferred" and "upgraded" and "peak" versions; and those who can't remain without such insurance. In spite of the increase in the number of people with supplementary insurance over the years,<sup>217</sup> about one quarter of the population does not have any supplementary insurance, and this rate is higher among people living in poverty, including residents of Israel's socioeconomic periphery, Arabs and ultra-Orthodox Jews.<sup>218</sup>

<sup>214</sup> [Report of the Team for Reviewing the Hadassah Crisis](#) [Hebrew], April 2014, p. 15.

<sup>215</sup> Correspondence from Physicians for Human Rights - Israel and the Association for Civil Right in Israel to the Minister of Health and the Minister of Finance, 1.6. 2014, <http://bit.ly/1yvtc3x>.

<sup>216</sup> For more on supplementary insurance policies, see: Tal Dahan, [The State of Human Rights in Israel: Situation Report 2009](#), Association for Civil Rights in Israel, December 2009, p. 49-50; *No Difference Between Rich and Poor*, (citation n206), p. 17-18.

<sup>217</sup> Liora Bowers, ["Hot Issues in Israel's Healthcare System,"](#) *Taub Center*, March 2014, p. 3-4.

<sup>218</sup> Shuli Brammli-Greenberg et al., ["Public Opinion on the Level of Service and Performance of the Healthcare System in 2009 and in Comparison with Previous Years,"](#) Myers-JDC-Brookdale Institute and the Smokler Center for Health Policy Research, May 2011.

The supplementary insurance policies increase the gap in the quality and availability of public healthcare services depending on the financial position of customers. Moreover, the expansion of supplementary insurance reinforces the trend of reducing the basic basket of drugs and services that are provided by the state and diminishes public pressure to its expansion. Since the middle class can afford supplementary insurance, it lacks motivation to employ its political power in order to fight for an expansion of the national healthcare basket that will benefit the entire public.<sup>219</sup>

The enormous budgets of supplementary insurance policies – approximately NIS 3 billion per year – could be funneled to the public health insurance through an increase of just 1% in the health tax. This would ease the financial burden suffered by most households, and enable the provision of a wider healthcare basket that is available to everyone.<sup>220</sup>

Prior to the publication of the committee's recommendations, Minister of Health Yael German made comments critical of the supplementary insurance policies and called to curb them,<sup>221</sup> but eventually the committee supported the enhancement of supplementary insurance in order to minimize private-commercial insurance policies. **Instead of challenging the very existence of supplementary insurance, the committee offered an intricate model of three layers of insurance:**<sup>222</sup> The HMOs will sell a more prestigious and expensive supplementary insurance, in which they will offer physician selection and the option of requesting a second medical opinion. These policies will also offer additional services that are not offered by the healthcare basket. The idea behind this model is that offering prestigious and expensive policies will curb private medicine, because these policies will be limited to the relatively small population that can afford them. However, it is also possible that the opposite could occur and that this could buttress the privatization of the public system.<sup>223</sup> That is, wide sections of the population will perceive the prestigious and expensive policies as something that a family cannot allow itself not to purchase. The result would be a jump in private household expenditure, an increased burden on the middle class and an expansion of private medicine. In any event, this model does not create a barrier between public and private medicine, but rather continues to blend the two by reinforcing supplementary insurance as a bridging solution.

## Medical Tourism

One of the methods Israeli hospitals employ to reduce their financial predicament is offering surgeries to overseas patients who pay a higher fee than Israeli patients. There are hundreds of companies in the medical tourism sector, which

<sup>219</sup> An example of the dilemma created by the supplementary insurance and its negative impact on the public healthcare basket is the debate around the drugs that are defined as "saving and extending lives." For the position of PHR, ACRI and Adva Center, dated 15 May 2014: <http://www.acri.org.il/he/31488> [Hebrew].

<sup>220</sup> For more, see: *No Difference Between Rich and Poor*, citation n206, above.

<sup>221</sup> Hila Weissberg, "[Young Demonstrators Attack German: 'You're Destroying the Health System'; German: 'Curb Private Insurance Policies'](#)" [Hebrew], *TheMarker*, 10 June 2014.

<sup>222</sup> The German Committee Recommendations, citation n205 above, starting at p. 11.

<sup>223</sup> For criticism of the committee's conclusions regarding the supplementary insurance policies, see: Barbara Swirski, "[The German Committee for Strengthening the Public Health System: The Result \(in Overtime\): 2:1 for the Private Health System](#)" [Hebrew], *Adva Center*, 14 July 2014.



bring tens of thousands of medical tourists to Israel each year. This industry's income is estimated at hundreds of millions of shekels per year.<sup>224</sup> The medical tourism industry constitutes an incentive for hospitals and doctors to prefer tourists over Israeli patients, leads to the commercialization of health at the heart of the public institutions and can even cause corruption.<sup>225</sup> Against the backdrop of a shortage in medical infrastructure and human resources within the national health system, medical tourism reduces the availability and quality of the treatment provided to Israeli residents and leads to the extension of waiting times.<sup>226</sup> Even the supporters of medical tourism stressed that it must be arranged and supervised, in order to prevent harm to Israeli,<sup>227</sup> a position that was supported by the State Comptroller.<sup>228</sup>

**The most conspicuously negative recommendation of the German Committee's is the recommendation that medical tourism be allowed to continue in public hospitals in Israel and that it even be expanded.**<sup>229</sup> While the committee emphasized that it is the hospitals' responsibility "to ensure absolute priority is given to the Israeli patient in access to all hospital infrastructure,"<sup>230</sup> it does not establish a mechanism that will guarantee the actual ability of the Health Ministry to supervise medical tourism and prevent resultant harm to Israeli patients. Following the publication of the committee's recommendations, the General Director of the Ichilov Hospital published regulations that indicate that, in practice, nothing has changed: sources inside the hospital continue to prioritize medical tourists over Israelis, and some 70% of the surgeries of medical tourists are performed in the morning hours,<sup>231</sup> contrary to the recommendations of the committee.<sup>232</sup>

In conclusion, despite the positive outcome of the German Committee's deliberations, the solutions it offers are far from sufficient, and there is still work to be done in restoring the public health system to its proper and adequate position.

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<sup>224</sup> Flora Koch Davidovich, "[Data on Medical Tourism in Israel](#)" [Hebrew], *Knesset Research and Information Center*, 22 December 2013; Rina Rosenberg, "[3,000 Medical Tourists Cancelled Arrival in July](#)" [Hebrew], *TheMarker*, 7 August 2014.

<sup>225</sup> See, for example: Ben Hartman, "[Doctors Queried on 'Medical Tourism' Deal](#)," *Jerusalem Post*, 18 May 2014.

<sup>226</sup> See, for example: Shaul Amsterdamski, "[The Accountant General in Severe Report on Medical Tourism: Surgeries Performed at Expense of Israeli Patients](#)" [Hebrew], *Calcalist*, 11 June 2014.

<sup>227</sup> For example MK Yakov Litzman, MK Amnon Cohen and Prof. Rafael Beyar, Director of the Rambam Medical Center: [Protocol of Meeting No. 110 of the Knesset's State Control Committee](#) [Hebrew], 13 May 2014; "Hot Issues in Israel's Healthcare System" citation 217, above.

<sup>228</sup> State Comptroller, [Annual Report 63c for the Year 2012 and Accounts of Fiscal Year 2011](#) [Hebrew], May 2013, p. 647; see also the State Comptroller's remarks in the meeting of the Knesset's State Control Committee on 13 May 2014.

<sup>229</sup> The German Committee Recommendations (citation 205, above) starting at p. 14.

<sup>230</sup> The German Committee Recommendations (citation 205, above) article 33.

<sup>231</sup> Yaron Hoffmann-Dishon of the Adva Center and Ran Reznick, the Health Correspondent of the newspaper Israel Hayom, on the program "[Closing the Account](#)" [Hebrew] with Idan Greenbaum, *Channel 23*, 14 August 2014; Shay Niv, "[Ichilov Director Summoned to Hearing Concerning Medical Tourism](#)" [Hebrew], *Globes*, 17 August 2014. The article also brings the response of Ichilov's Director, according to which for every hour of surgery of a medical tourist in the morning, four hours of surgery are added for Israelis in the afternoon, and that great efforts are made to reduce waiting times for Israelis.

<sup>232</sup> The German Committee Recommendations (citation 205, above), article 32.



One of the most promising outcomes that emerged from the committee is the recommendation to transfer funds from the taxation of private services (including medical tourism) to aid in the reduction of waiting times in the public system. This is a welcome and important recommendation, but it cannot stand alone against the forces of the private market - both those of the commercial system and those that long ago pervaded the core of the public system.

The health section of the budget proposal for 2015, recently presented by the government,<sup>233</sup> also seeks to address the troubling expansion of private health services. Unfortunately, the proposed clauses, some of which were also proposed by the German Committee, **do not solve the problem of the infiltration of private medicine into the public health system**, but rather reflect a middle path by attempting to strengthen the public components and weaken the private ones. For example, the legislative memorandum does not propose to abolish the supplementary insurance policies marketed by the HMOs; nor does it propose to include some of the services offered by these policies in the basic healthcare basket. Instead, it offers to curb the growth in private activity of private general hospitals,<sup>234</sup> by levying fees on the hospitals for activities unrelated to the supplementary insurance. Moreover, the law memorandum differentiates between various types of private medicine – medical tourism, private medicine in private hospitals and the sharap – instead of viewing them jointly as part of the whole of privatization of the public health system.

The appropriate solution for the state of the healthcare system in Israel is to create increased separation between the public system and private medicine and invest budgets in the public healthcare system. In this way, each citizen could realize his or her right to health in an optimal manner. Models aimed at blocking the privatization trend and the blend between private and public have been presented to the German Committee and are currently on the Knesset's agenda. Members of Knesset from both the coalition and the opposition proposed a comprehensive reform of Israel's healthcare services,<sup>235</sup> which intends to enhance public medicine and equality. It has been proposed that dental treatments and nursing care be included in the public healthcare basket; that supplementary insurance policies be abolished; that the selection of doctors within public hospitals be allowed; that vital drugs and services be added to the basic healthcare basket which would be updated regularly; and that sharap and the provision of private medical services through private companies by the HMOs be abolished. The funding source for the services in the public system would be a 1% increase of the national health tax and a renewal of the employers' tax at a rate of 2%.

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<sup>233</sup> [Memorandum of Law for the Economic Plan for 2015 \(Legislative Amendments\)](#), 5744-2014 [Hebrew]. For the comments of ACRI, Adva Canter and PHR for the health section, see: 2.11.2014: [www.http:bit/ly/1zGsSgN](http://bit.ly/1zGsSgN) [Hebrew].

<sup>234</sup> This refers to hospitals that provide all services (as opposed to hospitals that do not provide all services and are not considered general hospitals) and are not public.

<sup>235</sup> [Proposed National Health Insurance Law \(Amendment – Strengthening Public Medicine\)](#), 5774-2014 [Hebrew]. Physicians for Human Rights – Israel, the Association for Civil Rights in Israel and the Adva Center participated in the drafting of this bill, which is based on the alternative that the organizations presented to the German Committee. For more on this alternative, see: *No Difference Between Rich and Poor*, (*supra* note...).

## The Right to Education

### The Right to Education: Collecting Additional Fees from Parents

Compared to other advanced education systems around the world, the education system in Israel receives a low ranking in regard to budget investment, physical conditions in the classrooms and learning achievements. The constant decline in both the scope and quality of public education in Israel is accompanied by a creeping privatization of the education system.<sup>236</sup> This trend of privatization manifests itself in many ways, especially as many parents are forced to take on the state's responsibilities and spend gradually increasing sums out of their own pockets so that their children can receive an adequate education. Among other things, parents must now fund additional learning programs (“*talan*”) and “voluntarily purchase extra services.” Imposing additional fees has become a common practice, and many schools base educational activities on their payment.<sup>237</sup>

Gradually over the years, and particularly recently, an ever-increasing portion of the responsibility of funding education has been transferred from the government to private households. Already in 2007, Israeli households were funding 22% of the overall national expenditure on education,<sup>238</sup> compared to an average of 16.5% in OECD countries and an average of 10.9% in EU countries.<sup>239</sup> By 2013, the rate of private funding jumped to 29%.<sup>240</sup> Indeed, every parent can feel the significance of these figures in his or her pocket. In the past year, as detailed below, **the Ministry of Education approved a wide range of additional household fees, which has resulted in new peak in the privatization of the education system.**

In principle, under Israeli law, parents are not allowed to purchase additional classes for their children within the framework of the school system. Only extracurricular courses that take place after school hours and without the school's involvement can be offered. However, the law's intricate and often unclear provisions are not being enforced – even in the case of clearly prohibited fees. For years, schools have continued to collect **excessive fees from parents with the knowledge and tacit approval of the Ministry of Education.**<sup>241</sup> For example, the State Comptroller found that in 2004-2005, in a sample survey

<sup>236</sup> For more about the budget “dehydration” of the education system and the crawling privatization see ACRI's report “[Between Realization and Dehydration](#)” (citation n184, above)

<sup>237</sup> Yuval Vurgan, “[Parent Payments for 'Additional Learning Programs' \(Talan\) and 'Voluntary Purchase of Services'](#)” [Hebrew] The Knesset Research and Information Center, February 2011.

<sup>238</sup> “[National Expenditure on Education in 2007-2010](#)” [Hebrew], Central Bureau of Statistics, August 2011.

<sup>239</sup> [Education at a Glance 2011: OECD Indicators](#), OECD Publishing, 2011, p. 242.

<sup>240</sup> “[National Expenditure on Education in 2011-2013](#)” [Hebrew], Central Bureau of Statistics, August 2014; Lior Dattel, “[Parents Paying More for Children's Education](#),” *TheMarker*, 19 August 2014; Ruthie Levy, “[Books, Extracurricular Activities and Transportation: Parents Pay Tens of Thousands of Shekels without Asking Questions](#)” [Hebrew], *TheMarker*, 8 September 2014.

<sup>241</sup> For more about the legal situation and the deviations from it, see the petition sections, HCJ 5004/14 Jacklyn Shimshon v The Ministry of Education, beginning from paragraph 14. For more information on the petition, see <http://www.acri.org.il/he/32985>. [Hebrew]

conducted by the Ministry of Education, approximately 80% of the reviewed schools deviated from the authorized collection of fees. In a similar survey in 2009-2010, approximately 51% of the schools surveyed deviated from the authorized fees structure.<sup>242</sup>

Another aspect of this trend of privatization is the developing phenomenon of opening “elite” schools and courses within the public education system. These schools and courses are initiated by parents and local authorities while the Ministry of Education turns a blind eye.<sup>243</sup> In these schools (which are funded by the state – i.e. the general public), the students' parents are required to pay exorbitant fees in contravention of the law, ostensibly for the unique character of the school, but also in order to pay for minimizing class sizes and higher salaries for teachers and administrators.<sup>244</sup> The high fees required by these schools act to prevent local children who live nearby from attending because their parents cannot afford the payments. Such students are thereby forced to attend more remote schools of a lower quality.<sup>245</sup>

Parallel to the phenomenon of paying for “elite” schooling, a prohibitive selection processes to these “unique” schools has developed, which opens the door to discrimination against students for a variety of reasons.

The outcome is **severely damaging to equality and the right to education**, as only wealthy parents can provide their children with expensive education, while the children of parents from socio-economically disadvantaged groups have to make do with a lower quality education. The education system, which is meant to grant every child an equal opportunity to learn and develop regardless of his or her family’s socioeconomic status, has thus become a system that enshrines the existing socio-economic stratification.

Despite declarations concerning the importance of equality and reducing social disparity, the Ministry of Education continues to support and even expand the reliance on out-of-pocket parental payments. As noted above, some of the illegally collected school fees are accrued with the knowledge and silence of the Ministry of Education. Following feeble attempts to stop the collection of prohibited fees and amid strong pressure from parents to allow the practice to continue, including the submission of a legal petition to the High Court of Justice,<sup>246</sup> the Ministry of Education went so far as to publish a new circular concerning payments this year,<sup>247</sup> which among other things:

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<sup>242</sup> State Comptroller, “[Annual Report 62 for 2011 and for the Reports from the Fiscal Year 2010](#)” [Hebrew] (hereinafter: “State Comptroller’s Report 62”), May 2012, starting at p. 592.

<sup>243</sup> For more about the unique schools, see [the petition](#) [Hebrew] in **HCJ 5004/14 Jacqueline Shimshon v. Ministry of Education**, starting at para. 36. For more about this petition, in English, see ACRI’s website: <http://www.acri.org.il/en/2014/10/05/school-fees/>.

<sup>244</sup> “State Comptroller’s Report 62” (citation n242, above) p. 610; the petition in HCJ 5004/14 para. 285.

<sup>245</sup> For example in the case of the Shazar School in Ashdod. See the petition in HCJ 5004/14 (citation n241, above) starting at para. 92, and also Or Kashti, “[The Ministry of Education’s Privatization Bazaar](#)” [Hebrew], *Haaretz*, 5 April 2014.

<sup>246</sup> HCJ 8849/12 **Parents Association of the Keshet Elementary School v. Ministry of Education**.

<sup>247</sup> Circular Concerning Permanent Provisions 74/7(d): “Collecting parent payments and tuition fees in recognized educational institutions that are unofficial and in institutions with an exempt status, collecting parent payments for learning courses at an accelerated level in high

- Raises twofold and threefold the authorized out-of-pocket household payments in elite schools for the academic year 2014-2015 (an amount that could reach almost NIS 8,000 per year for students in the twelfth grade);
- Enables, for the very first time, the collection of fees for matriculation studies and for enhanced studies of the core curriculum;
- Increases the number of learning hours per week that can be purchased with private funds (“talan” – additional learning programs) to a rate of 45% of the curriculum (compared to 15% before the publication of this circular). In elementary school, the maximum sum for these programs was NIS 580 in 2012-2013 and was raised to NIS 3,305 in 2014-2015; in high school, the maximum sum in 2012-2013 was NIS 745, which was subsequently raised to NIS 4,500 for 2014-2015. This constitutes a sixfold increase in “talan” payments.<sup>248</sup>
- For the very first time, it was stipulated that a child's registration to an educational institution is conditional upon the parents' agreement to make the payments.

The changes permitted by this circular were made without submitting a legislative amendment and without authorization from the Knesset's Education Committee. The circular further established a three-year “slimming” programme for schools that had hitherto charged sums that exceeded the permitted amount, but at the same time established a procedure for all schools to gain exemption from this slimming programme by applying to an exceptions committees – thereby thwarting any real attempt to enforce the prohibition on excessive parent payments. Parents from the cities of Ashdod and Ness Ziona, with the support of a number of human rights organizations, filed a legal petition against the new circular. The petition is currently standing in the High Court of Justice.<sup>249</sup>

The authorization granted by the Ministry of Education to significantly increase the collection of private funding for public education constitutes a shirking of the state's responsibility to provide free public education, contributes to the creation of two separate and unequal education systems, and enhances the disparity between students from different socioeconomic backgrounds. Enabling the provision of private education services transforms education from a government investment and basic civil right, to a product sold to the highest bidder.

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school and collecting parent payments in experimental and unique institutions.” This circular was published in March 2014 and an amended version was published in July 2014.

<sup>248</sup> For the relevant articles in the circular and for a table comparing the payments in 2014-2015 (after the new circular came into effect) with the payments in 2012-2013, see the petition in HCJ 5004/14 (citation n241, above), para. 132-137.

<sup>249</sup> HCJ 5004/14 (citation n241, above), The organizations that filed the petition with the parents are Yedid – The Association for Community Empowerment, Hila – For Equality in Education, the Israel Association for Ethiopian Jews and the Association for Civil Rights in Israel. The petitioners are all represented by Attorney Haran Reichman of the Law and Education Policy Clinic at the University of Haifa.

## Refugees and Asylum Seekers

*“Let’s not let the title ‘open facility’ lead us astray.”<sup>250</sup>*

*“Living in Holot means living in darkness. Here there is no life, no future, no hope.”<sup>251</sup>*

2014 was a difficult year for refugees and asylum seekers in Israel. In December 2013, just three months after the High Court of Justice invalidated the Anti-Infiltration Law<sup>252</sup> and instructed that asylum seekers detained at the Saharonim facility be released, the Knesset hurriedly passed an new amendment to the law (hereafter: “the fourth amendment”),<sup>253</sup> which completely lay waste to the court ruling. The new amendment enabled the detention of African asylum seekers in Israel<sup>254</sup> for one year without trial, and allowed for their indefinite incarceration at an “open detention facility.” Thus, the amendment effectively allowed for the **continued detention of asylum seekers without trial** and ensured that leaving Israel would be their only viable option for release.

In December 2013, the Population Immigration and Border Authority began summoning asylum seekers to the Holot detention facility. Over the course of 2014, thousands of people were detained at this facility, including veteran asylum seekers who were forced to leave their friends, apartments, and places of work. **While Holot is officially referred to as an “open detention facility” by the State, in reality it is an isolated detention camp in the heart of the desert,** managed by the Israel Prison Service, and where heavy punishments are given for failing to follow the camp's strict rules. Detainees were required to be present between 10:00pm and 6:00am, and were ordered to present themselves for a head count three times throughout the day. Though they were allowed to leave the facility for several hours, the camp's isolated location and the daily head counts created a situation in which asylum seekers were, in practice, confined to the desolate facility, without opportunity for employment during the endless free time forced upon them.<sup>255</sup>

<sup>250</sup> HCJ 7385/13 [Eytan – Israeli Immigration Policy vs. Government of Israel](#), paragraph 126 of Justice Fogelman’s ruling (link in Hebrew).

<sup>251</sup> Affidavit attached to the petition of the asylum seekers and human rights organizations against detention at the Holot facility – HCJ 8425/13 Anonymous vs. the Knesset. The deliberations on the petition were joined with HCJ 7385/13 (ibid). The court documents (in Hebrew) are available on ACRI’s website: <http://www.acri.org.il/he/29963>.

<sup>252</sup> Anti-Infiltration Law (offenses and judgment) (amendment number 3 and temporary order), 2012 enabled administrative detention without trial for asylum seekers from Sudan and Eritrea for a period of at least three years. The Supreme Court upheld the petition of the Eritrean asylum seekers and human rights organizations, including ACRI, and ruled the amendment unconstitutional and invalid. HCJ 7146/12 [Adam vs. the Knesset](#) (ruling dated Sept 16, 2013) (link in Hebrew).

<sup>253</sup> Anti-Infiltration Law (offenses and judgment) (amendment number 4 and temporary order), 2013.

<sup>254</sup> Asylum seekers in Israel – the vast majority of whom are from Sudan and Eritrea – fled their countries due to persecution, torture and genocide. Israel avoids forcibly deporting them to their countries because it has recognized the danger to their lives, but refuses to recognize them as refugees and does not provide such basic rights as the opportunity to work or health services.

<sup>255</sup> For more information on conditions at Holot, see [principle arguments of the petitioners](#) in [HCJ 8425/13](#), ibid, March 2014, starting at paragraph 15 (link in Hebrew).

In a legal petition filed by asylum seekers detained at Holot and human rights organization, the detention conditions were described as follows:<sup>256</sup>

*“The right to privacy is revoked. The right to make basic decisions about major elements of one’s life is revoked – how to manage one’s day, what to eat and what to drink, where to sleep, with whom to share the space in which one sleeps. This same person who has not been found to have committed any crime is subject to the sanctions of the Israel Prison Service and the Population and Immigration Administration, constant search and discipline authority, oversight over the items s/he carries and the food s/he wishes to consume. That same person who has not committed any crime is subject to sanctions entailing the total revocation of freedom for a period of one month to one year, by virtue of the decision of a clerk, if s/he violates the rules of discipline that s/he is subject to. This same person who has not been convicted of any crime is completely infantilized. S/he is treated like a child – s/he is required to stay in his/her room for a third of the day, not allowed to choose his/her food, not allowed to choose the place in which s/he lives, and receives ‘pocket money’.”*

The policy-makers responsible for the amendment did not hide the fact that **the only goal of detaining the asylum seekers was to break their spirit** and “make their lives impossible” until they agree to sign “voluntary departure” documents and leave the country.<sup>257</sup> And indeed, the hopeless detention at Holot has led to despair, frustration and depression for many asylum seekers. Many preferred to risk returning to their countries or being taken to Uganda or Rwanda – who have not committed to not returning them to their countries – rather than remain detained for an indefinite amount of time. According to Population and Immigration Authority data published in the media, from December 2013 until late August 2014, over 5,700 people “voluntarily” left the country.<sup>258</sup> Minister of the Interior Gideon Saar expressed pride in these statistics<sup>259</sup> and pointed out that “since the new Anti-Infiltration Law was passed, the number of infiltrators leaving Israel has increased to a rate three times that of 2013.”<sup>260</sup>

By forcing asylum seekers to make this decision – returning to their countries of origin, traveling to a third country which has not committed to not returning them to their countries, or indefinite detention – Israel is violating its commitments to international law by circumventing the UN Refugee Convention and the UN Convention Against Torture’s principle of non-refoulement, which set forth that a

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<sup>256</sup> [Principle arguments of the petitioners](#) in [HCJ 8425/13](#), (citation n254, above), March 2014, page 3 (links in Hebrew).

<sup>257</sup> See examples in the [HCJ 8425/13 petition](#) (links in Hebrew), (citation n254, above) starting from paragraph 121.

<sup>258</sup> Ilan Lior, [African asylum seekers await pivotal court move on anti-infiltration law](#), Haaretz, Sept 21, 2014.

<sup>259</sup> See, for example: Ilan Lior, [Record number of African asylum seekers left Israel in February](#), Haaretz, Feb 27, 2014; [Minister of the Interior, MK Gideon Sa’ar, during a debate in the Internal Affairs Committee: “In the last three months of 2014, 4000 infiltrators left willingly”](#), press release on the Knesset website, March 27, 2014.

<sup>260</sup> Press release by the Minister of the Interior Saar after the High Court of Justice ruling on case 7385/13. See also: Omri Efraim and Moran Azulay, [Minister of Interior Gidon Saar, who proposed the Anti-Infiltration Law, “Restrict High Court’s authority; we have been left without any tools.”](#) ynet, Sept 22, 2014 (link in Hebrew).



person cannot be returned to a country where their lives are at risk..<sup>261</sup> Already in 2013, the United Nations High Commissioner for Refugees severely criticized Israel's "voluntary departure" procedure: "Giving ones consent to returning to Eritrea under an ultimatum of "jail or home" ... can't be considered voluntary by any criterion. It is explicitly not voluntary return." The representative of the UN Commissioner for Refugees in Israel said, "**Factually there is no voluntary return from prison because there is no free will.**"<sup>262</sup>

The fourth amendment to the Anti-Infiltration Law has severe repercussions not only for those detained at Holot, but for the entire community of asylum seekers. The fear associated with receiving a summons to the facility invokes feelings of anxiety, uncertainty and helplessness,<sup>263</sup> and many chose to leave Israel out of the fear of detention. For the first time since asylum seekers began arriving in Israel, the situation escalated to the point where mass public protests were held against the way the state was treating them. In late 2013 and early 2014, thousands of people went on strike, marched and protested in Tel Aviv and Jerusalem.<sup>264</sup> In June 2014, hundreds of asylum seekers left Holot on a march of protest and despair. Employees of the Population and Immigration Authority detained them by force, and they were returned to Holot or sent to the Saharonim facility.<sup>265</sup>

Detention at Holot has raised **significant criticism from human rights organizations in Israel and abroad**, as well as from the courts. For example, in August 2014, a court in Switzerland upheld the request of an Eritrean asylum seeker who had spent time in Israel to enter Switzerland due to his fear than in Israel he would not be properly protected.<sup>266</sup> A September 2014 report from Human Rights Watch stated that Israel uses illegal means to force asylum seekers to leave.<sup>267</sup> District courts in Israel criticized the summons process to the facility (issuing "detention orders"), which violates the right to due process since asylum seekers are summoned without the right to counsel, without a hearing,

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<sup>261</sup> For more information, see [HCJ 8425/13 petition](#) (links in Hebrew), *ibid*, starting from paragraph 132. See also: Aeyal Gross, [The blood of the refugees is on our hands](#), Haaretz, March 4, 2014 (link in Hebrew).

<sup>262</sup> Talila Neshet, [UN refugee official slams Israel over Eritrean repatriation](#), Haaretz, Feb 25, 2013.

<sup>263</sup> See [Principle arguments of the petitioners](#) in [HCJ 8425/13](#), *ibid*, March 2014, paragraph 14; also: [The effects of the Anti-infiltration law and detention at 'Holot' on the asylum seeker community in Israel](#), ASSAF (Aid Organization for Refugees and Asylum Seekers in Israel), April 2014.

<sup>264</sup> See for example: Noam (Dabul) Dvir, [Infiltrators protest: 'We're not dangerous'](#), Dec 17, 2013; [Freedom March](#), Israel Social TV, Dec 18, 2013; [Marching to the UN Refugee Agency](#), Israel Social TV, Jan 6, 2014.

<sup>265</sup> Yael Marom and Haggai Matar (photos: Oren Ziv and Yotam Ronen, Activestills), [Thousands of asylum seekers flee Holot, establish a protest camp and are violently arrested](#), on the Local Call website, June 29, 2014 (in Hebrew); John Brown and Michal Rotem, [Gloves on hands, gas, pepper and suffocation](#), on the Local Call website, June 30, 2014, (in Hebrew); Gideon Levy and Alex Levac, [Return to the wilderness: 'If Israel doesn't want us, we will go back to Egypt'](#), Haaretz, July 4, 2014.

<sup>266</sup> Ilan Lior, [Switzerland grants entry to Eritrean asylum seeker fearing detention in Israel](#), Haaretz, Aug 28, 2014.

<sup>267</sup> [Israel: Thousands Coerced Into Leaving the Country](#), press release on the Human Rights Watch website, Sept 11, 2014; Dana Weiler-Pollack, [Israel insists on investing in illegal detainment of refugees](#), Walla, Sept 9, 2014 (link in Hebrew).

Full report: "[Make their lives miserable](#)": [Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel](#), Human Rights Watch, September 2014.

and without any explanation.<sup>268</sup> Only in April 2014, after repeated rulings of the courts for administrative matters, and after a hearing at the High Court of Justice,<sup>269</sup> the Ministry of Interior began to conduct interviews prior to issuing detention orders. However, thousands of asylum seekers who received detention orders without interviews were left in Holot, without the violation of due process in their cases being addressed.<sup>270</sup>

In September 2014, the Supreme Court upheld the human rights organizations' petition against the fourth amendment to the Anti-Infiltration Law,<sup>271</sup> and ruled that the law disproportionately and **illegally violates the rights of asylum seekers**. With a majority of seven justices (with two dissenting), the court ruled that the section of the law enabling the operation of the Holot facility would be invalidated within three months, and that until then, the requirement that detainees present themselves for afternoon head-counts be immediately revoked. In addition, with a majority of six justices (with three dissenting), the court invalidated the section of the law which allowed asylum seekers who entered Israel after the law came into force to be detained for a year at the Saharonim facility. This unusual step, in which the Supreme Court **invalidated two amendments to the Anti-Infiltration Law in less than a year, indicates the severity of the human rights violations perpetrated by these amendments**. However, immediately after the publication of the court ruling, government ministers and members of Knesset declared that they would promote amendments that would "circumvent" the latest ruling as well.<sup>272</sup> In late October, the Ministerial Committee for Legislation approved a bill which would allow the Knesset to re-legislate laws invalidated by the High Court of Justice. Minister of Justice Tzipi Livni announced that she would appeal the committee decision.<sup>273</sup> In the middle of November, the government announced its intention to submit new bill which will seek to legislate the same regulations that the High Court of Justice declared on two occasions to be in violation of the basic rights to liberty and freedom.<sup>274</sup> This law, which was passed on the final day before the dissolution of the Knesset, ignores the principles that were declared by the court and seeks instead to enact a policy that

<sup>268</sup> For more information: The Legal Corner, the Migrant newsletter, Hotline for Refugees and Migrants, ACRI and Physicians for Human Rights, June 2014, <http://the-migrant.co.il/en/node/4>.

<sup>269</sup> Ilan Lior, [Israel's Supreme Court to state: Asylum seekers also deserve due process](#), Haaretz, May 22, 2014. The article addresses the partial ruling handed down in Administrative Appeal 2863/14 Ali vs. Ministry of Interior – Population and Immigration Administration ([partial ruling](#) dated Aug 10, 2014 – link in Hebrew).

<sup>270</sup> Administrative Appeal 2863/14 [Ali vs. Ministry of Interior – Population and Immigration Administration](#) (ruling dated Oct 2, 2014 – link in Hebrew).

<sup>271</sup> HCJ 7385/13 [Eytan – Israeli Immigration Policy vs. Government of Israel](#) (ruling dated Sept 22, 2014 - link in Hebrew). As said above, the deliberations on the petition were joined with HCJ 7385/13, which was submitted by asylum seekers together with the Hotline for Refugees and Migrants, ACRI, ASSAF (Aid Organization for Refugees and Asylum Seekers in Israel), Worker's Hotline, Physicians for Human Rights, and ARDC (African Refugee Development Center). The Refugee Rights Clinic at Tel Aviv University and The Clinic for Migrants' Rights at the College of Law and Business also participated in representation.

<sup>272</sup> Ilan Lior and Shirly Seidler, [Saar: Consider amending Basic Law: Human Dignity and Liberty to restrict High Court intervention](#), Haaretz, Sept 22, 2014 (link in Hebrew); Jonathan Lis, [Rightist MKs pledge to restrict High Court after asylum seeker law overturned](#), Haaretz, Sept 23, 2014.

<sup>273</sup> Jonathan Lis, [Panel approves bill granting Knesset power to overrule High Court](#), Haaretz, Oct 26, 2014. For ACRI's stance, see: <https://www.acri.org.il/en/2014/10/25/circumvent/>

<sup>274</sup> Ilan Lior, [Amendment to Anti-Infiltration Law: Detention at Holot for a limited period, detainees will be counted once a day](#), Haaretz, Oct 27, 2014 (link in Hebrew).

violates the rights of the asylum seekers to the greatest extent that the court will endure.

The insistence of the government and the Knesset to stick to “more of the same” and continue to promote harmful “solutions” is saddening and puzzling. In addition to severely violating the human rights of refugees and asylum seekers in Israel, it is becoming clear to the general public<sup>275</sup> that **detention is ineffective, and does not provide a solution to the valid complaints of the residents of south Tel Aviv** and other places where asylum seekers congregate.<sup>276</sup> This year, the Movement for Freedom of Information revealed that the cost of constructing the Holot Detention Facility was some NIS 323 million (USD 92 million), and approximately NIS 100 million (USD 29 million) is required to operate it each year.<sup>277</sup> These millions of dollars could have been invested in **solutions that would benefit both the asylum seekers and the veteran Israelis**, and prevented crowding tens of thousands of asylum seekers into poor and neglected neighborhoods. For example, asylum seekers could be issued work licenses and be encouraged to work in places with labor shortages; incentives could be provided to employers to hire them; and they could be provided them with access to health, welfare and education services throughout Israel. At the same time, we must invest in the improvement of the services, infrastructure, and personal safety in south Tel Aviv.<sup>278</sup> As Supreme Court Justice Yitzchak Amit wrote:

*“This could have been a beautiful hour in which Israel found humane solutions for the infiltrators who are already living with us. Perhaps the half a billion shekels which the state has invested in locating, removing, isolating and placing in prison-like conditions a few thousand out of the tens of thousands of infiltrators, could have borne different fruit, had they been invested in the welfare of South Tel Aviv and in finding different solutions for those who have already reached our country.”<sup>279</sup>*

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<sup>275</sup> Nir Amran, [Refugees \(?\) in Israel](#), Institute for Zionist Strategies, July 2014; [A Ray of Hope from Yemini](#), Israel Social TV, February 26, 2014.

<sup>276</sup> For a complete review of the crisis in South Tel Aviv neighborhoods, see: State Comptroller, [Annual Report 64C for 2013 and accounts for fiscal year 2012](#), May 2014, pages 59-130 (link in Hebrew).

<sup>277</sup> [Movement’s information request reveals: the cost of Holot detention facility is some 100 million shekels per year](#), Movement for Freedom of Information website, June 29, 2014 (link in Hebrew).

<sup>278</sup> See for example: Aeyal Gross, [A second chance to get it right for asylum seekers \(and Israelis\)](#), Haaretz, Sept 29, 2014.

<sup>279</sup> [HCJ 7385/13](#) ruling, *ibid*, paragraph 3 of Justice Amit’s ruling (link in Hebrew).

## Transgender Rights

Transgender persons are among the population groups most susceptible to violation of their rights: the right to dignity, the right to life and bodily integrity, the right to employment, the right to health and more. For some 15 years, transgender persons have been conducting a public and legal battle for their rights. **Despite the fact that discrimination and transphobia are still prevalent in society, this struggle has also attained significant achievements, some of them in the past year.**<sup>280</sup>

Transgender men and women frequently experience significant difficulties in both the job admission processes and the workplace. This year, **for the first time, the Equal Employment Opportunity Commission at the Ministry of Economy conducted an official survey concerning the employment of LGBT persons** (lesbians, gays, transgender persons and bisexuals) in Israel. This survey<sup>281</sup> represented the first acknowledgment by a government ministry of employment discrimination against LGBT persons in general and transgender persons in particular.

The survey revealed concerning findings concerning **attitudes towards transgender persons in the labor market**. Compared to lesbians, gays and bisexuals, who also face discrimination, transgender men and women reported experiencing significantly higher rates of discrimination at the stage of job admission (68.7% compared to 19.3%), job searching (65.5% compared to 18.1%) and promotion (63.3% compared to 25.4%).<sup>282</sup> They also reported high rates of harassment and the use of pejorative terms and “humor” at their expense from coworkers and supervisors. Most of the transgender respondents reported that these experiences have impaired their workplace satisfaction, job performance and physical and psychological state. The results of this survey align with the results of similar surveys conducted around the world.<sup>283</sup>

Following the release of the survey's results at the annual conference of the Equal Employment Opportunity Commission, the Lobby for Equality in Employment (headed by MK Michal Rozin) held a meeting in the Knesset in July, together with the Gay Pride Lobby (headed by MK Nitzan Horowitz). The meeting

<sup>280</sup> This chapter was written by Eden Arazi from the Gila Project for Transgender Empowerment. The project's website: <http://www.gila-project.com>.

<sup>281</sup> The survey was conducted by Hana Kupfer of the Equal Employment Opportunity Commission. Ministry of Economy, “[80% of the members of the LGBT community believe that there is discrimination against members of the community in job admission processes](#)” [Hebrew], 26 March 2014.

<sup>282</sup> Ministry of Economy and Equal Employment Opportunity Commission, “Feelings and Experiences of Discrimination of LGBT Persons in the Israeli Labor Market – Summary of Findings” [Hebrew]. There is an online, [earlier version](#) of this summary, with very similar figures.

<sup>283</sup> “[EU LGBT Survey: European Union Lesbian, Gay, Bisexual and Transgender Survey: Results at a Glance](#),” *FRA – European Union Agency for Fundamental Rights*, 2013; “[Headline Findings from our Transgender Online Survey](#),” *Government Equalities Office*, UK, 2011; Jaime M. Grant, Lisa A. Mottet and Justin Tanis, [Injustice at Every Turn: A Report of the National Transgender Discrimination Survey](#), National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

included representatives of LGBT organizations (the LGBT Association and Hoshen) and transgender organizations (the Gila Project for Transgender Empowerment and Ma'avarim - For the Trans Community). The participants discussed strategies to abolish discrimination against transgender persons in the labor market. Ideas included allocating reserved positions for transgender persons within the quota allocated by the public sector for disadvantaged populations; providing educational services for employers and human resource coordinators in organizations; providing benefits to employers who employ transgender persons (as is currently the practice with other population groups); appointing supervisors of employment diversity in government ministries; and employment empowerment programs for young transgender persons, similar to the program funded by the Tel Aviv Municipality and the National Insurance Institute's Fund for Youth at Risk. Following this meeting in the Knesset, a follow-up meeting was scheduled at the Equal Employment Opportunity Commission in order to review the feasibility of those ideas.

Issues relating to discrimination against transgender persons in the labor market have also reached the court this year. Marina Meshel, a transgender woman who worked as a math tutor at the Center for Educational Technology, claimed that she was fired on the grounds of her gender identity and sexual orientation. Meshel stated that it was made clear to her that she had to choose between continuing her work or coming out to her students as a transgender and lesbian woman. A Tel-Aviv-Jaffa Regional Labor Court judge was convinced that Meshel had refused to hide her identity in order to combat prejudice. The judge rejected the claim that Meshel used her position to promote an agenda, while wondering whether a conversation about identity issues would have been forbidden for a heterosexual or cisgender (non-transgender) tutor.

**The court determined that the prohibition against discrimination on the grounds of sex or gender – established by the Equal Employment Opportunities Law – refers not only to a person's biological sex, but also to their gender identity and any deviation from the accepted pattern of norms between biological sex and gender identity.** However, in the end, this innovative ruling did not help the plaintiff, because the judge's opinion was in the minority. The public representatives, who are part of the panel of the Labor Court, believed that Meshel's dismissal was based on legitimate considerations relating to the fact that she included content that was not related to math in her classes.<sup>284</sup>

### **New Directive for Sex Reassignment Procedures**

In May 2014, the Ministry of Health published a directive updating the regulations concerning sex reassignment surgery in Israel and redefining the composition and role of the multi-disciplinary committee for sex reassignment.<sup>285</sup> Over the years, the transgender community has raised many complaints concerning both the standard of care provided for individuals who choose the surgery, and the

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<sup>284</sup> Labor Dispute 791-06-13 [Marina Meshel v. Center for Educational Technology \(CIC\)](#) [Hebrew] (judgment granted on 13 May 2014). For an analysis of this judgement, see: Aeyal Gross, "[Transgenders Still Have a Lot of Work](#)" [Hebrew], *Haaretz*, 16 May 2014.

<sup>285</sup> [Directive No. 16/2014](#) [Hebrew], The Medical Administration, Ministry of Health, 12 May 2014.



conduct of the committee in question, which operated at the Sheba Medical Center.<sup>286</sup> Following pressure from the community, a committee was established in 2008, comprised of representatives of the transgender community and Ministry of Health, in order to examine the regulations for performing sex reassignment surgeries. However, the new committee was disbanded due to substantive disagreements.<sup>287</sup> When the Minister of Health Yael German assumed her position, the community took steps to raise this issue once more. After a series of meetings between community representatives, the minister and senior officials in the Ministry of Health, the new directive was formulated.

Significant changes in the new directive include: severing the connection between the committee and a specific hospital; including members of the transgender community as public representatives that advise the committee; lowering the minimum age for applying to a surgery from 21 to 18; and lowering the minimum period required for living in the chosen gender identity from 2 years to 1 year (and even less with the committee's authorization).<sup>288</sup> **The new directive does not meet all of the requirements of the transgender community, which desires the abolition of the committee in recognition of every transgender person's autonomy over his or her body, but it is still a meaningful step towards such recognition.**<sup>289</sup> This year, for the first time, a person with HIV was also authorized to undergo sex reassignment surgery in Israel, following the intervention of the Minister of Health.<sup>290</sup>

## Police Transphobia

Transgender men and women are among the populations groups most subjected to **incidents of hate crime and violence**.<sup>291</sup> According to the annual report published in August 2014 by the Nir Katz Center for Fighting LGBT-phobia,<sup>292</sup> 15% of the LGBT related cases reported during this year, including severe physical assaults, are related to transgender persons – a high rate relative to the size of this population. The police, who are charged with protecting citizens, were in fact the perpetrators of some of the reported incidents. 2014 began with a vicious assault on a transgender woman by 11 men wearing masks and armed with electroshock weapons and pepper spray. The assailants, ten IDF soldiers and one Border Police officer,<sup>293</sup> were arrested by the police a short time later

<sup>286</sup> Lilach Ben David, "[Victory for the Transgender Community: The Ministry of Health's Sex Reassignment Directive Has Been Updated](#)" [Hebrew], *Sicha Mekomit*, 13 May 2014.

<sup>287</sup> Ofer Aderet, "[Sex-Change in Israel: Gender Trap](#)," *Haaretz*, 22 June 2012.

<sup>288</sup> Ido Efrati, "[Israel to Allow Sex-Change Surgery from Age 18](#)," *Haaretz*, 14 May 2014; "Victory for the Transgender Community" (citation n286, above)

<sup>289</sup> Yael Sinai, "[Another Small Step Towards Gender Freedom](#)" [Hebrew], *Haokets*, 25 May 2014.

<sup>290</sup> Yaara Shapira, "[For the First Time in Israel: A Woman with HIV Will Undergo Sex Reassignment](#)" [Hebrew], *Galei Tzahal*, 19 October 2014.

<sup>291</sup> Throughout the world, hundreds of trans women and men are murdered every year in hate crimes. For more about the statistics, see the website of the [International Transgender Day of Remembrance](#).

<sup>292</sup> The Lesbian, Gay, Bisexual and Transgender Association, "[Report of the Nir Katz Center 2014](#)" [Hebrew]. See also: Gil Fischhof, "[This Year Again: Hundreds of Hate and Discrimination Incidents Against the LGBT Community](#)" [Hebrew], *Gogay*, 15 August 2014.

<sup>293</sup> The response of the Minister of Public Security to a parliamentary question posed by MK Michal Biran: "[Why Is the Assault of a Transgender Women in Tel Aviv Not a Hate Crime?](#)" [Hebrew]. An article on the Mako news website brought the response of the Border



and confined to house arrest shortly after. Following an investigation lasting several days, the case was transferred to the State Attorney's Tel Aviv Branch to decide whether to file an indictment.<sup>294</sup> Members of the transgender community claimed that this is not the first time that transgender persons have been assaulted by Border Police officers, and that this is in fact a "tradition" among the officers.<sup>295</sup> When one of the activists from the transgender community arrived at the Tel Aviv District Police to request a permit for a protest march that was organized following the assault,<sup>296</sup> she suffered humiliating and transphobic treatment from the police officers.<sup>297</sup>

In August, the Jerusalem Magistrates Court instructed the police to apologize in writing to a transgender woman, who came to pray in the women's section of Rachel's Tomb and was removed from there by a female Border Police officer under the pretext that her presence was causing a commotion among the other worshippers. The court further ordered the state to increase awareness about transgender persons as part of police training.<sup>298</sup> This is an important achievement for the transgender community, as up until now there were no clear regulations for respecting the rights of transgender persons in religious spaces.

### Legislation Against Discrimination Based on Gender Identity

In March 2014, the Knesset passed an amendment to the Student Rights Law, such that it included a prohibition on discrimination based on sexual orientation and gender identity.<sup>299</sup> This is the first time that a prohibition on gender discrimination has appeared in Israeli legislation. Two bills proposed in 2013 sought to establish that any mention of a prohibition against discrimination that is already written into Israeli law shall automatically apply to discrimination based on sexual orientation or gender identity.<sup>300</sup> Both bills were approved by the

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Police, according to which "to the best of their knowledge, these are probably conscript soldiers, out of whom only one is serving in the Border Police. 'We condemn and admonish any such behavior, but tying this story with the Border Police is a distortion of the truth.'" The article further brings the response of the IDF Spokesperson, according to which the matter is under police investigation and therefore he is prevented from relating to it. See: George Avni, "[Transwoman: The Border Police Has a Tradition of Beating Up Transgenders](#)" [Hebrew], *Mako*, 9 January 2014.

<sup>294</sup> The response of the Minister of Public Security to a parliamentary question posed by MK Michal Biran (citation n293, above) In his response, the minister promised to make sure that the issue of hate crimes and crimes related to LGBT-phobia is on the agenda in trainings provided to police officers.

<sup>295</sup> These claims and the Border Police response to them are brought in "Transwoman: The Border Police Has a Tradition of Beating Up Transgenders" (citation n293, above)

<sup>296</sup> George Avni, "[The Night Is Theirs: About 1,000 Participants March for the Transgender Community](#)" [Hebrew], *Mako*, 17 January 2014.

<sup>297</sup> George Avni, "[Transphobia in the Police: 'The Officers Called Me a Shemale'](#)" [Hebrew], *Mako*, 14 January 2014. The article brings the response of the police, according to which the complaint was transferred to the Public Complaints Officer and that "if such an event indeed took place, it contravenes all rules of police etiquette and the norms accepted in it [...] We see great importance in protecting this population and its dignity."

<sup>298</sup> Elisha Ben-Kimon, "[The Transgender Woman Was Removed from Rachel's Tomb, the State Will Apologize](#)" [Hebrew], *Mynet*, 7 Septemehr 2014.

<sup>299</sup> [Student Rights Law \(Amendment No. 4\), 5774-2014](#). The bill was proposed by MK Dov Khenin, together with other Members of Knesset.

<sup>300</sup> *The Interpretation Law (Amendment – Defining Discrimination Based on Gender Identity or Sexual Orientation)*, 5773-2013 ([P/19/1953](#) and [P/19/1741](#)). See also: Roe

Ministerial Committee on Legislation and passed the preliminary reading in the Knesset plenum in late 2013, but have not been advanced since then.

### **Changing the Gender Category on the Identity Card**

Currently, any person who wishes to change the gender category on their identity card is required to present a medical certificate, approved by Israel's Ministry of Health, indicating that this person has undergone a sex reassignment surgery.<sup>301</sup> Thus, the Ministry of the Interior permits the changing of the gender category on the identity card only for transsexuals who have undergone sex reassignment surgery. This means that transgender persons who do not wish to undergo sex reassignment surgery, or are currently in the midst of their transition, cannot alter the registration. Transgender persons forced to present an identity card, wherein the gender category is inconsistent with their gender and/or physical appearance, often experience stressful or embarrassing situations and risk exposure to abusive behavior. In September 2014, three transgender women, together with the Israeli National LGBT Taskforce, petitioned the High Court of Justice to request that it abolish the requirement to undergo sex reassignment surgery in order to change the gender category on the identity card.<sup>302</sup> The petitioners claimed that the Ministry of Interior's correlation between a person's genitalia and their gender identity is founded upon wrongful and archaic perceptions, and violates the petitioners' rights to autonomy, privacy, bodily integrity and parenthood.

### **Transgenderers in the Military**

The Israeli military is one of the most advanced militaries in its treatment of transgender persons. Accordingly, the number of transgender men and women who are joining the army or are already serving continues to rise.<sup>303</sup> Earlier this year, a meeting took place between mental health officials from the military, a representative of the Israeli National LGBT Taskforce and Dr. Ilana Berger, who specializes in the treatment of transgender persons. This group succeeded in reaching a series of agreements that are highly important for the welfare of transgender soldiers. Among other things, it was agreed that transgender persons will be able to receive assistance and guidance in their gender transition process during their military service, and that those who began the transition before their induction into the military service will be treated in accordance with their chosen gender.<sup>304</sup>

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Yuldus Rosenzweig, "[Prohibition on Discrimination Based on Sexual Orientation and Gender Identity: Proposed Bill Passes Preliminary Reading](#)" [Hebrew], *Mako*, 18 December 2013.

<sup>301</sup> [Regulation No. 2.6.2001 – Regulation for Changing/Amending Sex Marker Details.](#)

<sup>302</sup> [HCJ 6035/14 Ronit Liran-Shaked v. Ministry of the Interior](#) [Hebrew]. The petition was filed through the Program on Human Rights of the Faculty of Law at Tel Aviv University.

<sup>303</sup> Matan Hetzroni, "[This Is How a Transgender Man Became an Officer in the IDF](#)"

[Hebrew], *Mako*, 19 May 2014.

<sup>304</sup> [A post on the Gila Project's Facebook page](#) [Hebrew], 15 June 2014.

## Freedom of Information

In a democratic country, the information held by government authorities ultimately belongs to its citizens, and its disclosure is required both to monitor and supervise the authorities, and to secure the public's trust in them. Administrative transparency is essential for democratic discourse about issues on the public agenda and in order to guarantee the right of every citizen to formulate an opinion and have influence public policy. According to the Freedom of Information Law (1988), every citizen has the right to obtain information from public authorities concerning issues of both public and private interest. The law also obliges the authorities to publish their standard rules of operation ("administrative regulations") and annual activity reports, and to appoint a freedom of information supervisor, who is responsible for handling freedom of information requests.

Despite the great advancements that have occurred in this area since the law was enacted, and the establishment of the Government Unit for Freedom of Information under the Ministry of Justice in 2012, **many authorities are still not fulfilling their duties.** For example, in 2013, 87% of government ministries published the annual freedom of information report on time, but only 38% of the service subdivisions did.<sup>305</sup> 94% of local authorities do not publish protocols related to municipal tenders on their websites, and 84% of them do not publish their complete financial reports.<sup>306</sup> Two years after Israel joined the US President's Open Government Partnership (OGP), it fully executed only two of the thirteen commitments to the partnership.<sup>307</sup>

It appears that Israeli authorities have not yet distilled an attitude among their employees that "we have no information of our own, but rather everything that we hold as public servants – belongs to the public."<sup>308</sup> This is evident in the fact that the position of freedom of information supervisor in the different authorities is **still not adequately managed:** at times the supervisors perform this role in addition to their main position (usually media relations or public enquiries), they do not have sufficient resources at their disposal, and they don't always receive co-operation from sources within the authority.<sup>309</sup>

One of the main problems in the area of freedom of information is the fact that government authorities operate in accordance with internal regulations, which have a direct influence over citizens' rights and yet are not publicly available despite the law's explicit directive. According to the Unit for Freedom of

<sup>305</sup> Government Unit for Freedom of Information, [Annual Report Concerning the Implementation of the Freedom of Information Law for 2013](#) [Hebrew], Ministry of Justice, July 2014, p. 57.

<sup>306</sup> Galit Avidar, Galia Sagi and Katie Jouk, [Transparency Index for Local Authorities 2013](#) [Hebrew], Transparency International – Israel, May 2014, p. 25 and 31. See also: Efrat Neuman, "[Government Ministries that Did Not Expose Financial Figures Ignored the Justice Ministry's Directive](#)" [Hebrew], *TheMarker*, 4 November 2014.

<sup>307</sup> The Movement for Freedom of Information, "[UnOpen Government: Israel Declared Its Commitment to Principles of Open Government, in Practice Did Almost Nothing to Implement Them](#)" [Hebrew], 7 July 2014. The complete report: Roy Peled and Guy Dayan, [Independent Reporting Mechanism \(IRM\): Israel Progress Report 2012-2013](#) [Hebrew, PDF], Open Government Partnership.

<sup>308</sup> *Annual Report Concerning the Implementation of the Freedom of Information Law for 2013* (citation n305, above) p. 9.

<sup>309</sup> Ido Baum, "[One-Third of Bodies Subject to Freedom of information Law – Ignore It](#)" [Hebrew], *TheMarker*, 13 August 2014.

Information's report, only 42% of government ministries and 17% of service subdivisions make their administrative regulations available to the public.<sup>310</sup>

In many cases, the regulations are only revealed at the behest of civil society organizations, or even by chance – for example when reviewing court judgments. For example, a regulation of the Israel Electric Corporation was only exposed following a freedom of information request filed by the Association for Civil Rights in Israel, and parts of it were redacted.<sup>311</sup> A temporary regulation of the Israel Prison Service (IPS) had been in effect for over two years prior to its publication, and its existence became known only after it was mentioned in court documents.<sup>312</sup> This regulation, which imposes a sweeping prohibition on media interviews by prisoners, severely violates their constitutional right to freedom of expression and contravenes Supreme Court rulings.<sup>313</sup>

Until recently, the IPS relied upon additional unpublished “temporary regulations,” which replaced and/or contravened the commission's orders. For example, “temporary regulations” were instituted that restricted the number of newspapers and magazines that a prisoner may subscribe to and regulated the entry of private therapists to incarceration facilities. This action breached the IPS' obligations, established by court rulings, to publish the commission's orders and its own regulations.<sup>314</sup> Following enquiries from ACRI and the Prisoners Rights Clinic at the College of Law and Business, the IPS published the temporary orders that are in effect.<sup>315</sup> The majority of police regulations are not available for public review, including regulations that might establish the defense of suspects in criminal offenses. This is also the case with the regulation that arranges the use of TASER guns<sup>316</sup> and the regulation concerning the use of “Skunk” vehicles; ACRI's request to review the latter was originally rejected under the claim that it is classified as “eyes-only.”<sup>317</sup> After repeated correspondence, the police agreed to transmit to ACRI the regulation, but it is still not being published publically.<sup>318</sup>

Even Members of Knesset and ministers do not always succeed in their efforts to promote transparency in the halls of government. For example, the attempts by Justice Minister Tzipi Livni and Members of Knesset Nitzan Horowitz and Orit

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<sup>310</sup> *Annual Report Concerning the Implementation of the Freedom of Information Law for 2013* (citation n305, above) p. 13.

<sup>311</sup> See the chapter “The Right to a Dignified Existence” in this report.

<sup>312</sup> Prisoner Petition (Be'er Sheva) 30999-09-13 **Daniel Maoz v. IPS** (judgement granted on 9 December 2013). For more, see ACRI's letter to the ICP 14/5/2014, [www.http://bit.ly/1w6FD6n](http://bit.ly/1w6FD6n)

<sup>313</sup> Prisoner Petition Appeal 4463/94 **Golan v. IPS**, PDI 50(4) 136 (1996).

<sup>314</sup> HCJ 5839/95 **Association for Civil Rights in Israel v. Minister of Police**, AP 3041/08 **Association for Civil Rights in Israel v. IPS** ([decision dated 26 May 2010](#)) [Hebrew].

<sup>315</sup> ACRI's correspondence with the IPC, 2.6.2014, [www.http://bit.ly/15LWXmc](http://bit.ly/15LWXmc)

<sup>316</sup> To read more about the problems with the use of TASER guns, which led to the formulation of the new regulation, see: [Human Rights in Israel and the OPT – Situation Report 2013](#) (citation n52, above) p. 79-80. In a meeting of the Knesset's State Control Committee in late 2013, the police representative stated that the regulation will be provided to anyone who requests it, but did not commit to posting it on the police website ([Protocol No. 44 of the Knesset's State Control Committee](#), 2 October 2013 [Hebrew], p. 55-56); the regulation is currently still not available on the website.

<sup>317</sup> ACRI's letter, dated 28 August 2014, and the police response, dated 1 September 2014: <http://www.acri.org.il/en/2014/08/10/skunk-ej/>.

<sup>318</sup> Regulation- The use and regulation of the Skunk liquid vehicle in dispersing disturbances of the peace (Regulation number: 90.221.111.008). This regulation appears on ACRI's website at <http://bit.ly/15LWXTb>.

Strock to make transparent the discussions of the Ministerial Committee on Legislation – which determines the government's position on proposed bills – have thus far failed.<sup>319</sup> MK Zehava Galon and Justice Minister Livni have been engaged in efforts to apply the principles of freedom of information to the publicly funded Settlement Division of the World Zionist Organization, and yet they faced fierce opposition from the chairman of the Knesset's Constitution, Law and Justice Committee, MK David Rotem.<sup>320</sup> MK Stav Shafir had to appeal to the court in her campaign against the Ministry of Finance and the Knesset's Finance Committee, to increase the transparency of the state budget, a campaign that is still ongoing.<sup>321</sup>

There have also been successes in endeavors to promote freedom of information and transparency in Israel. For example, this year the Justice Minister and the Attorney General completed the process of registering the Jewish National Fund (JNF) as a public benefit company instead of a private company. Thus, the JNF will be required to submit annual reports available for public review and will be subject to the supervision of the Justice Ministry. The JNF, said Justice Minister Tzipi Livni, "which for decades has been maintaining and exercising authorities that are, in part, distinct governmental authorities and receiving billions in public funds, can no longer operate in the dark and will be required to implement a clean and proper financial administration. From now on, the JNF will operate in transparency and under the open eye of public review."<sup>322</sup> Another achievement was the approval of the bill to apply the Freedom of Information Law to publicly funded higher education institutions. The bill, which was proposed by the Movement for Freedom of Information, recently passed its second and third reading in the Knesset.<sup>323</sup>

Many of the achievements in the area of freedom of information are the result of the activity of civil society organizations who work to reinforce administrative transparency in a variety of authorities. These organizations "compel" the authorities to reveal information – often the type of information they were already required to reveal under the Freedom of Information Law – and to make this information accessible, since it is often published in a manner that makes it

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<sup>319</sup> See, for example: "[What Are They Hiding?](#)," *Haaretz* (editorial), 26 June 2014; Jonathan Lis, "[Netanyahu's Office: We Will Not Apply Transparency to the Ministerial Committee on Legislation](#)" [Hebrew], *Haaretz*, 24 June 2014; The Movement for Freedom of Information, "[Ministerial Committee on Legislation Wants to Continue Working in the Dark – Thwarted the Bill to Make its Work Transparent](#)" [Hebrew], 9 February 2014. For more about the efforts to promote the transparency of the committee, see: "[Question Time with Minister of Justice Tzipi Livni](#)" [Hebrew], Protocol of the Knesset Plenum, 15 July 2014, p. 33-37.

<sup>320</sup> Jonathan Lis, "[Constitution Committee: Proposal to Require Transparency of the Settlement Division Was Dropped](#)" [Hebrew], *Haaretz*, 19 March 2014; The Movement for Freedom of Information, "[Following the Request of Hatenua Party: We Received the Budget of the Settlement Division](#)" [Hebrew], 10 September 2014.

<sup>321</sup> Israel Social TV, "[The Rule of the Budgeteers](#)," 9 January 2014; Zvi Zerachia, "[Let's Hope That by Autumn Things Will Be in Order](#)" [Hebrew], *TheMarker*, 19 June 2014; Lilach Weissman and Adi Ben Israel, "[MK Shafir to Globes: Yesh Atid and HaBayit HaYehudi Made a Deal – Passing 0% VAT and in Return Funneling Tens of Millions to Settlements and Religious Councils](#)" [Hebrew], *Globes*, 12 August 2014.

<sup>322</sup> The quote was brought in: Chen Ma'anit, "[JNF Classified as a Public Benefit Company and Will Be Subjected to the Companies Law](#)" [Hebrew] *Globes*, 3 September 2014.

<sup>323</sup> Yarden Skoop, "[The Knesset Approves: Freedom of Information Law Will Apply to Universities and Public Colleges](#)" [Hebrew], *Haaretz*, 4 November 2014.



difficult to understand.<sup>324</sup> In late March 2014, the Justice Minister formulated new regulations<sup>325</sup> that significantly reduced the expenses entailed in obtaining governmental information under freedom of information provisions. Among other changes, these regulations establish that associations working for a public cause will be exempt from the “request fee” and “handling fee” for the first seven hours of processing work. This clause constitutes an acknowledgment of the importance of these organizations' roles in monitoring and supervising elected officials and government institutions. The following are some further examples of achievements from the past year:

- All of the non-confidential regulations of the Police Investigation Division were disclosed following the work of the Public Defense and the Government Unit for Freedom of Information.<sup>326</sup> These regulations pertain, inter alia, to conducting a search, conducting a police lineup, interrogating journalists, senior public figures and Police Investigations Department personnel, interrogating persons with disabilities and informing suspects of their rights before an interrogation. However, as noted above, most police regulations such as the regulations of the Prosecution Division and the Operations Division continue to go unpublished. It is unclear at this time how many of the Investigation Division's regulations remain unpublished.
- Following a petition filed by the organization Gisha – Legal Center for Freedom of Movement, the Coordinator of Government Activities in the Territories (COGAT) published its annual activity reports from recent years.<sup>327</sup> COGAT was required to publish these annual reports since the legislation of the Freedom of Information Law in 2000, but until this petition was filed the unit did not publish even a single annual report. The reports provide illuminating data concerning the mechanism for implementing the Israeli government's policy towards the Palestinian population in the West Bank and Gaza Strip.
- Following the work of the Social Guard organization, seven of the Knesset's committee chairpersons agreed to initiate a nominal documentation of MK votes in the committees. As opposed to votes in the Knesset plenum, which are electronic and almost fully documented, there is currently no requirement in the Knesset regulations to document how members of Knesset vote within the committees.<sup>328</sup>

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<sup>324</sup> In this context, it is important to mention the [Open Budget](#) project of the [Public Knowledge Workshop](#), which makes the figures of the state budget accessible to the public.

Other projects by the Public Knowledge Workshop are [Open Knesset](#) and [Open Pension](#).  
<sup>325</sup> *Freedom of Information Regulations (Fees)*, 5759-1999. For more, see: The Movement for Freedom of Information, “[Freedom of Information Fees Reduced by 80%: Information Request Fee Will Be NIS 20](#)” [Hebrew], 30 March 2014.

<sup>326</sup> Public Defense, “[The Public Defense Recently Received in Digital Media All Non-Confidential Regulations of the Police Investigation Division](#)” [Hebrew], 17 June 2014.

<sup>327</sup> Gisha – Legal Center for Freedom of Movement, “[Following Gisha's Petition: COGAT Will Publish Annual Reports](#),” 28 January 2014. See also: *Annual Report Concerning the Implementation of the Freedom of Information Law for 2013* (citation n305, above), p. 57. The reports on the COGAT website: [Summary of the report for 2011](#); [report for 2012](#); [report for 2013](#) [Hebrew].

<sup>328</sup> The Social Guard, “[An Achievement of the Social Guard: Chairpersons of Knesset Committees Order Nominal Documentation of MK Votes](#)” [Hebrew], 31 December 2013.



- Following a letter to the Attorney General by the Association for Civil Rights in Israel and the Movement for Freedom of Information, supported by the work of the Government Unit for Freedom of Information, a government decision initiated by Justice Minister Tzipi Livni was approved in late December 2013 that requires public bodies to publish their agreements with private bodies concerning the provision of services or use of public resources.<sup>329</sup> The publication of these agreements is essential both in order to increase awareness of individual rights when receiving privatized services and for guaranteeing public review and supervision.
- Following a freedom of information request filed by the Movement for Freedom of Information, the construction and operation costs of the Holot facility in the Negev – where asylum seekers are being detained – were revealed.<sup>330</sup>
- Following a freedom of information request filed by ACRI, the Enforcement and Collection Authority began to publish online the protocols of the “authorization committee” that reviews complaints against execution contractors working for the Execution Office.<sup>331</sup> The execution contractors possess significant powers such as the right to confiscate property, to enter into private residences and even to use force against debtors. It is because of this that stringent and effective supervision is essential to reduce the potential violation of debtors' rights. Before these protocols were published, the public had no information concerning the complaints filed against execution contractors and the measures taken by the authorization committee against them, and there was no opportunity to monitor the committee or review its activity.
- Due to the work of the Movement for Freedom of Information, the Prime Minister's Bureau published for the first time the total expenditure on flights taken by the Prime Minister (for the years 2012-2013). The Israeli army published data concerning the salary of its career officers and the funded pensions of its retired officers for the first time as well. In addition, the expenses of the President's Residence and the Office of the Knesset Speaker for 2013 and the cost of the Knesset delegation to Auschwitz in January 2014 were also made public.<sup>332</sup>

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<sup>329</sup> Government Decision No. 1116, dated 29 December 2013: “[Publication of Authorizations and Agreements Between State Authorities and Private Bodies](#)” [Hebrew], *Prime Minister's Office*. To read the organizations' letter, see: <http://www.acri.org.il/he/24650> [Hebrew].

<sup>330</sup> The Movement for Freedom of Information, “[The Movement's Information Request Revealed: Cost of Holot Holding Facility Is USD 100 Million Per Year](#)” [Hebrew], 29 June 2014. For more about the Holot facility, see the chapter “Refugees and Asylum Seekers” in this report.

<sup>331</sup> For ACRI's letter, dated 11 September 2012, see: <http://www.acri.org.il/he/31441> [Hebrew].

<sup>332</sup> Announcements on the website of the Movement for Freedom of Information [Hebrew]: “[Following the Movement's Request: Netanyahu's Bureau Publishes the Cost of the Prime Minister's Flights](#),” 13 March 2014; “[The IDF First Publishes Data on Salaries of Career Officers and Funded Pensions of Pensioners](#),” 24 March 2014; “[The Expenses of the President's Residence and Knesset Speaker's Office for 2013](#),” 12 March 2014; “[What Was the Cost of the Knesset Delegation to Auschwitz](#),” 13 April 2014.

## The Right to Due Process

### Administrative Procedures Law Memorandum <sup>333</sup>

Administrative law governs the powers and actions of the authorities and their relationship to the residents of the state. It establishes the rights of individuals in their dealings with the government bureaucracy and the obligations of the authorities. Thus, for example, an individual is supposed to be granted the opportunity to present his claims before a decision is made in his case, and to appeal said decision if he so wishes. Authorities are required to operate transparently, and decisions should be based on an adequate factual foundation. The provisions of administrative law are relevant to all areas of citizens' lives: They apply, for example, when a citizen requests an exemption from or reduction of a certain fee; when a citizen wishes to appeal a decision not to grant her a permit she requested; and in the procedure to determine a person's eligibility for benefits. Therefore, administrative law has a decisive effect on the ability of the individual to realize his rights and in limiting the power of government authorities to violate rights.

Currently, Israeli administrative law is not yet wholly regulated by legislation, with large portions stemming from Supreme Court rulings. Other components can be found in specific and unsystematic legislation, in decisions and opinions of the Attorney General and in the internal regulations of different government ministries. Other important administrative arrangements were established in regulations devised by various public authorities (e.g. in the areas of communication, environmental protection and planning and construction), which arranges their activities – and naturally pertain only to the specific authority in question.

**Therefore, the legislative memorandum distributed this year by the Ministry of Justice, which seeks to consolidate the general provisions of administrative law, is of great significance.**<sup>334</sup> Among other things, the memorandum enshrines the basic principles of administrative law and its purposes, lists the authorities to which it applies and arranges key issues such as the powers of the authorities, the procedure for making an appeal to the authorities, the handling of enquiries, conflicts of interest, the right to a hearing and so on. In this sense, this is a praiseworthy endeavor.

However, the bill memorandum contains **several significant problems in terms of its protection of human rights**, particularly the right to due process. The bill is but a modest and limited proposal, both in the scope of the issues it covers and in the manner in which they are arranged. Several important issues remain outside the scope of the memorandum, issues that chiefly pertain to the courts'

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<sup>333</sup> This section is based on ACRI's comments to the Administrative Procedures Law Memorandum, which were written by Dr. Yaacov Ben-Shemesh, Senior Lecturer of the Faculty of Law at Ono Academic College. To read the full document on ACRI's website: <http://www.acri.org.il/he/31823> [Hebrew].

<sup>334</sup> [Administrative Procedures Law Memorandum \(Arranging the Work of the Administrative Authority and Rights of Applicants\)](#), 5774-2014 [Hebrew].

ability to review the authorities' decisions or to intervene when an authority has contravened administrative law.

Even in issues that the memorandum does address, it frequently chooses (from among the different positions that exist in court rulings or the various arrangements that exist in legislation) the more problematic arrangements in terms of protecting of human rights and the right to due process. For example: in many cases, the memorandum fails to obligate the authorities to explain their decisions or to publish their regulations; the sanctions that can be imposed, on authorities that contravene administrative law are feeble and ineffective; and the memorandum also grants the authorities a sweeping authorization to use secret evidence.<sup>335</sup> Moreover, the memorandum seeks – for the first time – to impose on the citizen who turns to the authorities, the obligation to act fairly, which also includes the obligation to disclose all facts related to his case. Imposing this obligation on citizens might further diminish his or her status, and might also lead to an infringement on the right to privacy. In addition, the memorandum phrases this obligation in general, vague terms, in a manner that opens the door to the denial of rights, services or due process for unclear reasons

The bill memorandum also does not address many of the significant challenges presently facing administrative law. In particular, the memorandum does not deal with the legal challenges and danger of human rights violations caused by the trend of increasing privatization and outsourcing of public services. Furthermore, the memorandum does not adequately address the need for public consultation in administrative procedures, particularly when devising policy on key public issues. And finally, the proposed arrangement does not include sufficient reference to the digital age in which we live – the age of computers and internet, emails and smartphones – and there was not sufficient explanation of the procedure for turning to the authority using these devices, nor their role in the publication of administrative decisions and the defined period for making these decisions.

## Use of Classified Materials

*“The allegations of the opposing party can be refuted only when they are known; one cannot argue with a Sphinx.”<sup>336</sup>*

In the framework of the criminal procedure, the right to due process includes, inter alia, the right of a defendant to review investigation materials related to the charges brought against him and to challenge, in a court of law, the evidence and witnesses presented against him. These assurances are intended to ensure that measures shall be taken against a person suspected of involvement in illicit or dangerous activity only after this involvement has been proven in a fair trial.

However, in Israel there are several common proceedings that **enable the authorities to take measures against individuals outside of the criminal procedure, on the basis of classified materials**. These include administrative

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<sup>335</sup> We will expand on this matter below, in the section dealing with the use of classified materials.

<sup>336</sup> HCJ 111/53 **Kaufman v. Minister of Interior**, PD 7 534, 541 (1953).

detention, the revocation of citizenship, the imposition of movement restriction orders and more. The implications for people's lives are immense: in administrative detention proceedings, for example, an individual can be sent to prison for many years without comprehensive and effective judicial review and without even knowing the details of the suspicions against him.

Obviously, **a person who does not know what the claims against him are or what they are based on cannot refute them**, provide an alternative explanation to the "facts" and evidence submitted by the prosecution or effectively defend himself against the allegations; instead, he stands helpless before these allegations. Even the hands of the court remain tied: the best judge, with the worthiest of intentions, cannot aspire to achieve a just outcome when he hears only one side of the story, as "the most important tool for determining the truth is denied."<sup>337</sup> Relying on classified material, without granting the individual an opportunity to challenge it, increases the probability of error on the part of the authorities and of wrongful decisions. It also opens a wide door to arbitrary human rights violations and abuse of government powers.

Beyond the severe infringement on human rights, **excessive secrecy also undermines the foundations of democracy**: it affords unreasonable power to the executive branch and subverts the basic assumption that security and law enforcement authorities act as trustees for the public, and for the public interest of maintaining transparency in government activity.

Many of the proceedings involving confidential materials were established by the draconian defense regulations of the British Mandate.<sup>338</sup> Others were established by laws that are conditional upon the existence of a declared emergency situation, such as the law concerning administrative detentions<sup>339</sup> and the ordinance to prevent terrorism.<sup>340</sup> The "state of emergency" in Israel is, in principle, supposed to be temporary, but in fact it has been in effect since the establishment of the State of Israel.<sup>341</sup>

The Counter-Terrorism Bill,<sup>342</sup> which during the past year was deliberated on in the Knesset's Constitution, Law and Justice Committee, seeks, among other things, **to preserve the broad, routine and wrongful use of classified material in a variety of settings, by enshrining and perpetuating them in Israel's permanent legislation**. These newly legislated powers would include: declaring an organization as a "terrorist organization," proceedings for confiscation of property related to terrorism, and most severe of all – the anti-democratic emergency power to hold people in administrative detention and to restrict their movement through control orders.<sup>343</sup> This power would be bestowed

<sup>337</sup> Itzhak Zamir, "Human Rights and National Security," 23 *Israel Law Review* 375, 399 (1989).

<sup>338</sup> *Defense (Emergency) Regulations*, 1945.

<sup>339</sup> *Emergency Powers Law (Detentions)*, 5739-1979.

<sup>340</sup> *Prevention of Terrorism Ordinance*, 5708-1948.

<sup>341</sup> Following a petition filed by ACRI in 1999, there have been legislative amendment processes in recent years aimed at abolishing of the state of emergency. HCJ 3091/99 Association for Civil Rights in Israel v. Knesset. For court documents related to this case, see: <http://www.acri.org.il/he/1854> [Hebrew].

<sup>342</sup> *Counter-Terrorism Bill*, 5771-2011. More on this bill and ACRI's position, [on ACRI's website](#).

<sup>343</sup> For further details: Tal Dahan, [The State of Human Rights in Israel and the OPT – Situation Report 2011](#), Association for Civil Rights in Israel, December 2011, p. 13-15.

without even a requirement for minimal disclosure of information in each and every case, in order to ensure due process.

Classified material is routinely used in administrative proceedings in the West Bank. Apart from administrative detentions and control orders, this measure is used to **define Palestinians as “GSS blacklisted”** (GSS: General Security Service, or *Shabak*). Tens of thousands of Palestinians in the occupied territories are included in a “blacklist” of security threats,<sup>344</sup> which leads to severe restrictions on their freedom of movement inside the territories and when exiting the territories. A Palestinian defined as “GSS blacklisted” cannot, for example, enter Israel or Israeli settlements for the purpose of work, commerce or to cultivate land that was locked in the “Seam Zone” between the Separation Fence and the Green Line, some of them are prevented from traveling abroad, and so on and so forth. Restrictions on freedom of movement, which is a basic right, also impact the ability to realize other rights and to conduct a proper life. This right is regularly infringed upon **without even a semblance of adequate administrative procedure**: without giving the person advance notice, without just cause and while relying on evidence, materials and suspicions unknown to the accused and without giving him or her any opportunity to refute them. The absence of information about the reason for the travel ban, if and when it shall expire and who to turn to in order to challenge it generates a sense of being in a quagmire and enhances the feeling of Kafkaesque powerlessness among the residents of the West Bank.

In many cases, the travel restrictions imposed on “GSS blacklisted” persons are either unfounded or not updated. **A significant amount of those who succeed in navigating the bureaucratic entanglement and file a request to rescind the ban receive a positive response.** Between 2012 - 2014, the blacklisting was cancelled for some 60% of the applicants assisted by MachsomWatch volunteers, and the organization estimates that the rate is approximately 70% in cases of “GSS blacklisting” that are appealed in court.<sup>345</sup> In some cases, the applicant receives an entry permit but remains on the “blacklist” (such persons are called “interrogation blacklisted”) - this person may face delays and lengthy interrogations at checkpoints. There is no process to appeal this type of blacklisting.<sup>346</sup> It should be noted that when an appeal to cancel the blacklisting

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<sup>344</sup> For a comprehensive review of this issue, see: Sylvia Piterman, [Invisible Prisoners: Palestinians Blacklisted by the General Security Services](#), MachsomWatch, April 2007; Sylvia Piterman, [Invisible Prisoners: Don't Know Why and There Is Nowhere to Turn](#), MachsomWatch, March 2012. In addition to “GSS blacklisted” persons, whose entry into Israel is prevented for reasons of alleged security risk, there are Palestinians whose entry into Israel is prevented as a punitive measure for entering Israel without a permit or with a forged document (in order to make a living (“police blacklisted”) – for a comprehensive review of this issue, see: Haya Ofek, [The Guide for the Perplexed: The Conduct of Israel Police in the Occupied Territories](#) [Hebrew], MachsomWatch, December 2010). Entry into Israel is also prevented because of various financial debts or suspicions of committing administrative offenses (“Civil Administration blacklisted”) and for other reasons. For more, see: [“Opposition to the Bureaucracy of the Occupation,” MachsomWatch](#), 13 May 2014.

<sup>345</sup> “Opposition to the Bureaucracy of the Occupation” (citation n344, above). The figures for 2014 were provided to ACRI by MachsomWatch via email. Two other organizations that work on the issue of permit prevention are HaMoked: Center for the Defence of the Individual and Gisha – Legal Center for Freedom of Movement.

<sup>346</sup> Information provided to ACRI by MachsomWatch via email.

fails in court, the appellant's attorney is also prevented from receiving information about the classified material.

**The time has come to abolish the wrongful practice of denying basic rights on the basis of secret evidence.** At a minimum, if relevant classified material is used in a case, the ramifications of its utilization must be thoroughly reviewed in order to prevent fraudulent proceedings or proceedings used as a "fig leaf." In this context, there is special importance to the requirement that **every individual is provided with enough information to allow him to sufficiently defend himself.** A similar requirement had been established, inter alia, by the European Court of Human Rights in February 2009, which clarified that even in an emergency situation that justifies derogation from the European Convention on Human Rights, defendants must be given a fair opportunity for self-defense in court, lest their liberty be denied.<sup>347</sup> It was further established that even if a mechanism such as a "special advocate" is used (wherein a lawyer reviews all of the classified material on behalf of the suspect, without revealing it to him), the judicial procedure is still not fair so long as the suspect does not receive enough information to allow him to effectively guide the special advocate. The challenge facing the State of Israel – as in other democratic countries – is to confront various security threats while maintaining the principles of justice that are essential for the protection of the rights of each and every one of us.

The use of classified materials could also infringe on the right to due process in contexts that are not security-related, when a government authority bases its decision concerning a citizen's rights on evidence that is not presented before the claimant. Here, too, the use of classified material could severely violate the right to due process, a person's ability to know what the administrative authority considered in their decision-making process, his ability to defend himself against allegations and his ability to challenge said decision. The use of classified material also increases the risk of error in the authority's decisions and prevents public criticism.

Currently, judicial rulings primarily allow the authorities to use secret evidence in specific proceedings, when there is a concrete need to use intelligence information that – if revealed – could damage information sources. However, the Administrative Procedures Law Memorandum, which was discussed above in this chapter, seeks to grant the authorities a **general and sweeping authorization to use secret evidence in administrative proceedings.** Article 31(b) of the memorandum authorizes the administrative authority to base its decisions "on any evidence that has evidential value, even if it is not admissible in court, including secret evidence." The bill memorandum does not oblige the authority to disclose even a minimal amount of information to the individual, which would enable him to know, at the very least, that the secret evidence exists, its general nature, or any other detail that there is no reason not to disclose. Neither does the memorandum establish arrangements to allow those who were harmed by an administrative decision made on the basis of classified information a right to review this information at all.

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A. and Others v. United Kingdom (2009).



## Human Rights in East Jerusalem

### Rising violence and tension

As of November 2014, the city of Jerusalem remains plagued by unrest following a series of violent incidents over the summer and fall. For a few years now, the level of tension and violence in East Jerusalem has been escalating. In July 2014, it finally reached a boiling point. Since then, **violence, near daily clashes, and major disruptions to daily life have become the new reality for neighborhoods in the eastern part of the city.** This new reality has led to increased exposure in the media and among decision-makers whose rulings have the potential to impact the daily life of East Jerusalem residents and their relationship to the State of Israel.

In order to understand the current escalation, it is important to first understand the complexities and difficulties faced by Palestinians in Jerusalem. In June 1967, a large portion of East Jerusalem was placed under Israeli jurisdiction. Its residents gained permanent residency status in Israel, and were thus annexed into the state's legal-bureaucratic system. This annexation contravened international law, and has not been recognized by other countries. The Palestinians see Israeli control of East Jerusalem as an occupation in every respect. Though the state chose to include Palestinian residents within its area of responsibility, thereby obligating the provision of services and rights to all residents, the Israeli authorities often treat them as a security threat. **As a result, all aspects of life in East Jerusalem, in particular residents' dealings with state authorities, are directly influenced by issues relating to the occupation and annexation.**

The Palestinian population of Jerusalem, which today comprises some 37% of all city residents,<sup>348</sup> suffers from an incomprehensible level of neglect: municipal services such as trash collection, road resurfacing and lighting are only minimally provided; the residents suffer from a severe shortage of public buildings and facilities such as schools, public preschools and playgrounds; there is a lack of industrial and commercial zones and few social and cultural institutions. Due to extensive land expropriations and a lack of planning and development by state authorities, the residents build their homes without permits, and are consequently punished for this activity with steep fines and home demolitions.<sup>349</sup> The planning barriers have caused severe problems such as the inability to legally connect to water and sewerage systems and difficulties in erecting public buildings and infrastructure. Data collected by the National Insurance Institute illustrates a

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<sup>348</sup> [Selected Data on the Occasion of Jerusalem Day \(2012-2013\)](#), Central Bureau of Statistics, May 25, 2014.

<sup>349</sup> For more, see for example: ACRI and Bimkom – Planners for Planning Rights inquiry to the Knesset Internal Affairs and Environment Committee, Feb 5, 2012, <http://www.acri.org.il/he/19003> (link in Hebrew); [The Planning Crisis in East Jerusalem: Understanding the phenomenon of "illegal" construction](#), UN Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), April 2009.

discriminatory and neglectful policy, wherein 75% of Palestinians and 82% of Palestinian children in Jerusalem currently live under the poverty line.<sup>350</sup>

Jerusalem experienced a further escalation in the summer following the murders of teenagers Eyal Yifrach, Naftali Fraenkel and Gilad Shaar, and the murder of teenager Mohammad Abu Khdeir from the Shuafat neighborhood. This was later exacerbated by the onset of fighting in the Gaza Strip. On the Palestinian side there were riots, stone-throwing, property damage and clashes with police.<sup>351</sup> Shuafat, Silwan, Isawiya and other neighborhoods became battlefields for long days and nights. Road-blocks and intensive police activity laid waste to routine life in these neighborhoods. The violence also boiled over to West Jerusalem. In early August, two terror attacks were carried out by Palestinians in one day – a vehicular attack in which one person was killed and five injured, and an attack in which a soldier was shot and seriously wounded.<sup>352</sup>

During the same period, **there was also a significant rise in violence and attacks on Palestinians by Jewish Israelis** – a phenomenon that has grown in recent years. For example, during the funeral of the three kidnapped teens, the police rescued at least eight Arabs from an angry mob and arrested 47 people suspected of rioting.<sup>353</sup> In a series of violent incidents over the summer, bus and taxi drivers were attacked, including an Arab bus driver who was assaulted by four people until he lost consciousness.<sup>354</sup> In another instance, a group of young Jews brutally attacked two young Palestinians visiting the Neve Yaakov neighborhood.<sup>355</sup>

Even after the end of fighting in Gaza, quiet did not return to Jerusalem. Palestinians continue to throw stones at the light rail and clashes between the police and young Palestinians continue,<sup>356</sup> as do deadly attacks by Palestinians on Jews in West Jerusalem.<sup>357</sup> More than three months after the end of the fighting in Gaza, Palestinian residents are afraid to visit the city center, and Jewish residents are getting off the light rail far from their destinations in order to avoid Arab neighborhoods.<sup>358</sup> In October, a baby and a 20-year-old woman were

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<sup>350</sup> Miri Endeweld, et al, [Poverty and Social Gaps Report - Poverty and Social Gaps in 2012, annual report](#), National Insurance Institute, February 2014, Table 11, page 35.

<sup>351</sup> See for example: Noam (Dabul) Dvir, [Body of Arab teen found in Jerusalem in possible revenge attack](#), ynet, July 2, 2014; Elior Levy, [Palestinian protesters killed in West Bank anti-Gaza op protest](#), July 24, 2014.

<sup>352</sup> Yossi Eli, [One dead and five injured in a vehicular attack in Jerusalem](#), Walla, August 4, 2014; Yossi Eli, [Soldier seriously injured from gunfire on Mount Scopus in Jerusalem, hunt for the shooter](#), Walla, August 4, 2014 (links in Hebrew).

<sup>353</sup> Aviel Magenzi, [Charges against teens who rioted at the Bridge of Strings](#), ynet, July 2, 2014 (link in Hebrew); Noam (Dabul) Dvir, [Watch: Jewish rioters attack Arab youths in Jerusalem clashes](#), July 2, 2014.

<sup>354</sup> Nir Hasson, [Monument to murdered Palestinian teen vandalized for second time](#), July 13, 2014; Nir Hasson, [Charges filed against three residents of Jerusalem who attacked and beat Arab taxi driver](#), Haaretz, Sept 5, 2014 (link in Hebrew); Ohad Hammo, [Ugly phenomenon in the capital: "Arab driver? You can't work here."](#) Mako, Sept 10, 2014 (link in Hebrew); [Nationalist Violence in Jerusalem](#), July 2014, Ir Amim, August 25, 2014 (link in Hebrew).

<sup>355</sup> Yossi Eli, [Three Jews arrested on suspicion of assaulting Palestinians in Jerusalem](#), Walla, July 30, 2014 (link in Hebrew).

<sup>356</sup> See for example: Nir Hasson, [Stone-throwing slows Jerusalem light rail](#), Haaretz, Oct 12, 2014.

<sup>357</sup> See for example: Yair Altman, [Watch: Hate crime attack on Arabs in Jerusalem with sticks](#), Walla, Oct 14, 2014 (link in Hebrew).

<sup>358</sup> Ofer Petersburg, **Lines of violence**, Yedioth Ahronoth, Oct 19, 2014 (in Hebrew).

killed and seven injured in a vehicular attack carried out by a Palestinian man,<sup>359</sup> and Yehuda Glick, an advocate for expanding Jewish access to the Temple Mount, was severely injured in an assassination attempt.<sup>360</sup> In the Palestinian neighborhoods, the residents continue to suffer from the misuse of the foul-smelling “skunk” liquid<sup>361</sup> and tear gas. Enforcement operations in Palestinian neighborhoods initiated by the Jerusalem Municipality, the Enforcement and Collection Authority and others have raised the level of tension and hostility.<sup>362</sup> In early November, the main entry road to three neighborhoods in East Jerusalem was blocked, which affected the daily routine of tens of thousands of residents who were not connected to recent incidents.<sup>363</sup> In a brutal attack on a synagogue in Har Nof,<sup>364</sup> four more people lost their lives. These incidents are all a part of a cycle of violence with no end in sight.

### **Excessive use of force by the police**

Relations between the police (including the Border Police) and the Palestinian residents of East Jerusalem are characterized by suspicion and hostility from both sides. The police usually enter Palestinian neighborhoods to “impose order,” however the Palestinian residents do not perceive the police as an organization working to protect and serve them. In light of the residents’ experiences, the police are perceived as an occupying, hostile force, that ignore the needs and safety of the residents, do not hesitate to use force against them and who prioritize the interests of the Jewish population of the city.

**Since the rise in tensions last July, the excessive use of force and riot-control measures by Israel Police and the Border Police, often in the heart of crowded residential neighborhoods,** have become routine. The police in East Jerusalem are forced to function in difficult, complex situations, handling frequent disturbances and sometimes even life-threatening situations. It is clear that the role of the police is to preserve order and disperse incidents that threaten the public peace. However, the police are also obligated to adhere to set standards that require them to use the force at their disposal **in a wise, proportional and measured manner.** In particular, it is unacceptable for law enforcement to deal with those who violate the peace in a manner that would cause harm to the wider population.

Since July, there has been increasing evidence of problematic and even criminal action by police officers from various units. ACRI has collected testimonies regarding severe physical violence by the police, including against residents that were uninvolved in riots and that resulted in extended hospitalizations. A particularly horrifying video released in the media shows Border Police officers

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<sup>359</sup> Noam (Dabul) Dvir, [Ecuador woman critically hurt in Jerusalem terror attack succumbs to wounds](#), ynet, Oct 26, 2014.

<sup>360</sup> Nir Hasson, Jack Houry, Gili Cohen and Barak Ravid, [Israeli police kill Palestinian suspect in Jerusalem assassination attempt](#), Haaretz, Oct 30, 2014.

<sup>361</sup> Haggai Matar, [WATCH: Police spray putrid water on Palestinian homes, schools](#), +972 magazine, Nov 15, 2014.

<sup>362</sup> Nir Hasson, [Fines, confiscations and demolitions in East Jerusalem: the authorities are joining forces in punishment](#), Haaretz, Nov 5, 2014 (link in Hebrew).

<sup>363</sup> See ACRI’s inquiry to the Jerusalem District chief of police, Nov 10, 2014: <http://www.acri.org.il/he/33245> (in Hebrew).

<sup>364</sup> Noam (Davul) Dvir, Agencies, [Four people killed in terror attack at Jerusalem synagogue](#), ynet, Nov 18, 2014.

brutally beating teenager Tarek Abu Khdeir while he lay handcuffed.<sup>365</sup> In September, it was reported that the Police Internal Investigations Department had filed charges against one of the police officers.<sup>366</sup> Evidence obtained from various neighborhoods indicates that the police used “**sponge bullets**” in a manner that allegedly contravenes clear police protocols. At least three journalists covering the events (who wore vests which identified them as journalists) were hit by sponge-tipped bullets in the head and shoulder.<sup>367</sup> In early September, Mohammed Sunuqrut, 16, died of his injuries after being shot in Wadi Joz, apparently by a sponge-tipped bullet to the head.<sup>368</sup> The Haaretz website published an article claiming that the police have started using a new kind of sponge bullet which is heavier, more solid and more dangerous than the bullets which have been in use until now.<sup>369</sup>

In the months following the murder of Muhammad Abu Khdeir, the police conducted a broad swathe of arrests in East Jerusalem. According to information reported in the media, during the six weeks between early July and mid-August, some 550 Palestinian residents of East Jerusalem were arrested – approximately one third of them minors.<sup>370</sup> Occasionally, the police carried out the arrests late at night or early in the morning. Evidence collected by ACRI indicates that in some cases the police officers’ faces were covered and they did not wear identification tags – a practice that appears to contravene the law and police protocol requiring

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<sup>365</sup> Omri Meniv and Or Heller, [Watch: Border Police beat cousin of Muhammad Abu Khdeir](#), Nana10, July 5, 2014 (in Hebrew); Nir Hasson, [Palestinians: Severe violence by police in clashes in East Jerusalem](#), Haaretz, July 6, 2014 (in Hebrew).

<sup>366</sup> [Police Internal Investigations Department against policeman, “He beat an arrestee until he lost consciousness,”](#) nrg, Sept 10, 2014 (in Hebrew).

<sup>367</sup> In response to ACRI’s inquiry, the Police Commissioner’s office stated that the disturbances were unusually severe, and during the riots dozens of police were injured and significant damage was caused to public property, and that “extensive use of various means is a direct result of the extent of the incidents, their character and the unusual violence during them, and the means were used in a proportional manner and subject to the appropriate approvals.” It was also claimed that the journalists who were injured violated police instructions to not enter the area. ACRI inquiry, July 16, 2014, and police response, July 17, 2014: <http://www.acri.org.il/he/32024> (link in Hebrew).

<sup>368</sup> Nir Hasson, [Policeman who caused death of Palestinian teen investigated under suspicion of shooting in the head and not the leg](#), Haaretz, Nov 7, 2014 (link in Hebrew).

<sup>369</sup> Nir Hasson, [Haaretz Investigation: The Police have begun using new and dangerous sponge rounds](#), Haaretz, Sept 12, 2014 (link in Hebrew); see also: Nir Hasson, [Palestinian boy critically wounded at Jerusalem protest - apparently by police bullet](#), Haaretz, Nov 13, 2014.

<sup>370</sup> [Some 60 Arabs arrested overnight for disturbances in East Jerusalem](#), Israel Broadcast Authority website, Aug 13, 2014 (link in Hebrew). Provision of the law and orders of the national police headquarters place limitations on investigating minors suspected of criminal activities, and grant them special protections. However, minors from East Jerusalem who are arrested and investigated, usually on suspicion of involvement in stone-throwing, are particularly vulnerable to rights violations. They routinely suffer from the following violations: use of arrest as a routine tool for gathering information, intimidation and deterrence, which is against the law that requires arrest to be used as a last resort for handling minors; investigation without parents present; handcuffing; detainment and arrest of minors under the age of criminal responsibility; use of violence and threats in investigations, etc. For more information, see: ACRI’s inquiry to the Chair of the Knesset Committee for Public Inquiries, Nov 3, 2013, <http://www.acri.org.il/he/29026> (in Hebrew); Tal Dahan, [Situation Report – The State of Human Rights in Israel and the OPT 2011](#), ACRI, December 2011, from page 26; 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 officers to wear identification tags and have uncovered faces (except for in exceptional circumstances). In a response to ACRI, the Israeli Police did not address the specific incidents, but reported that in light of the inquiry, the protocol regarding covered faces was reiterated to all units.<sup>371</sup>

**During October and November, the entrances to three neighborhoods were blocked,** and some 50,000 residents were forced to enter and exit their neighborhoods via side roads congested with traffic.<sup>372</sup> Even worse, evidence obtained by ACRI indicates that in recent months the police have been using a “skunk”<sup>373</sup> truck in an excessive and unreasonable manner, which has caused significant property damage and even physical harm to Palestinian residents. According to testimony by residents from various neighborhoods, the police indiscriminately sprayed the skunk liquid toward houses, people, crowded restaurants and busy streets, harming innocent residents who suffered from the putrid smell for several days. Testimonies indicate that in some cases the skunk liquid was sprayed in an arbitrary manner without any apparent justification, and at times when no civil disturbances were taking place. The Jerusalem Police claimed, in response to an inquiry by ACRI, that use of the skunk liquid in crowded residential and commercial areas was done in accordance with protocol, and there were no flaws in police action in the incidents described in the inquiries.<sup>374</sup>

In order to restore order and security, the police must ensure the security of all city residents and fully adhere to the legal limitations on the use of force. **These limitations are put in place to ensure the respect for the basic human rights of all residents, especially during tense periods.** In the difficult reality of East Jerusalem, police commanders must unequivocally prepare their forces about to avoid using violence and unreasonable force during demonstrations and disturbances. The police commissioner and district chief of police must ensure that police officers who violate the law are prosecuted, and that guidelines designed to protect human rights and human life are enforced. Senior disregard shown by police officials for the testimonies from the field over the course of several long months may be interpreted as granting a free hand to police officers to continue these severe violations of human rights in East Jerusalem.

## The Five-Year Plan

In late June 2014, the government approved a first-ever **five-year plan for East Jerusalem, comprising a total budget of some NIS 300 million.**<sup>375</sup> This plan is an attempt to address the security situation in Jerusalem and promote socio-

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<sup>371</sup> ACRI inquiry to the Police Commissioner, Aug 25, 2014 and police response, Sept 18, 2014, <http://www.acri.org.il/he/32573> (in Hebrew).

<sup>372</sup> See [ACRI inquiry to Jerusalem District Chief of Police](#), Nov 10, 2014, *ibid* (in Hebrew).

<sup>373</sup> “Skunk” is a foul-smelling liquid sprayed forcefully from a police vehicle as a means for dispersing protests. Aside from the foul smell and the nausea it causes, if the skunk liquid comes into contact with eyes it causes pain and redness, itchiness if it touches skin and in case of swallowing, it may cause stomach aches which require medical attention.

<sup>374</sup> ACRI inquiries dated Aug 5 and Aug 8, 2014, and police responses Sept 1 and Sept 18, 2014: <http://www.acri.org.il/he/32429> (in Hebrew).

<sup>375</sup> [The government approves Prime Minister’s plan to add NIS 300 million for socio-economic development in Jerusalem](#), Prime Minister’s Office website, June 29, 2014 (link in Hebrew); Barak Ravid and Nir Hasson, [Cabinet approves plan to tighten Israeli control over East Jerusalem](#), Haaretz, June 29, 2014.



economic development in Palestinian neighborhoods. According to the plan there is a close connection between the extent and level of violence in East Jerusalem and the standard of living in these neighborhoods.<sup>376</sup> Therefore, it was decided that a third of the budget, NIS 95.4 million, would be invested in security, while two-thirds of the budget, NIS 200 million, would be dedicated to improving infrastructure, education, welfare and employment.

Investment in development and infrastructure, as well as education and welfare, is critical for the Palestinian residents of Jerusalem, who suffer from long years of neglect and the continuing violation of their basic rights. The level of the investment (NIS 200 million) will not nearly meet the vast needs, **however this is the largest amount that the Israeli government has committed to invest in East Jerusalem for several years**, and can provide significant improvements. For example, as part of the program, 30 social workers and youth workers are slated to be hired. They will assist in easing the significant workload of East Jerusalem's welfare departments. Despite this, the explanatory section of the plan and analysis of the deliberations prior to its release indicate that **the primary goal of the program is not to fulfill the rights of Jerusalem residents, but rather to tighten Israeli control over East Jerusalem** and strengthen the connection between its residents and the State of Israel.

An inter-ministry team that analyzed the situation in Jerusalem during 2013-2014 determined that the deterioration of security had led to "significant subversion of the State of Israel's ability to govern in territory under its sovereignty, has distanced Israeli visitors from historical sites such as the Mount of Olives cemetery, and has created an intolerable daily routine for the residents living in the area."<sup>377</sup> Following government approval of the plan, Minister of the Economy and Minister of Jerusalem & Diaspora Affairs Naftali Bennett stated in an interview that "today we are extending Israeli sovereignty to united Jerusalem – not with words but with actions."<sup>378</sup> This underlying perspective is laced throughout the entire program, and is clearly evident in the program's detailed clauses and explanatory notes. The program does not contain clear recognition of the Israeli government's obligation to uphold the rights of Palestinian residents of Jerusalem to education, employment, welfare services, etc., but rather determines that Israel has sovereignty and security interests in investing in these areas.

In education, for example, of the NIS 47 million that is meant to be invested in 2014-2018, 18 million – or 38% of the education budget – will be dedicated to increasing the number of graduates of the Israeli matriculation program. This is despite the fact that only a small percentage of Palestinian high school students in Jerusalem even take the Israeli matriculation exams.<sup>379</sup> In addition, NIS 3 million will be invested in improving Hebrew study in schools. By contrast, the budget line for preventing school drop-out is NIS 5.4 million, even though dropping out of school is a significant problem in East Jerusalem, where the drop-

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<sup>376</sup> The government approves Prime Minister's plan to add NIS 300 million for socio-economic development in Jerusalem, Prime Minister's Office website, June 29, 2014 (link in Hebrew), *ibid.*

<sup>377</sup> Security situation in East Jerusalem Team: work summary and recommendations, June 26, 2014, Prime Minister's Office website, <http://bit.ly/1u0MyHi>, section 1 (in Hebrew).

<sup>378</sup> Hezki Ezra, [The Goal: Deepen Israeli sovereignty over East Jerusalem](#), Arutz 7, June 29, 2014 (in Hebrew).

<sup>379</sup> Almost all of the Palestinian students in Jerusalem take the Palestinian Tawjihi exams after 12<sup>th</sup> grade.



out rate for 12<sup>th</sup> grade is some 36%.<sup>380</sup> The authors of the plan are correct when they state that young Palestinian-Jerusalemites who study Hebrew and complete the Israeli matriculation program could more easily integrate into higher education institutions in Israel and the Israeli job market. However, most of the Palestinian population in Jerusalem continues to demand that students study the Palestinian curriculum rather than the Israeli matriculation curriculum. Investing only in the areas of Hebrew study and study towards Israeli matriculation, while neglecting other courses of study which suffer from low quality and lack of funds, reveals the real purpose of this program. Even worse, the program ignores the most basic problem of education in East Jerusalem – **the urgent need to build dozens of new public elementary and high schools in order to deal with the glaring shortage of classrooms.**<sup>381</sup>

As part of this program, an extensive and first-of-its-kind infrastructure survey will take place in the Palestinian neighborhoods, which will assess needs in a variety of areas such as roads, drainage, sewerage and lighting. For decades, the failing infrastructure in these neighborhoods has not met the needs of the growing population. The millions that will be invested through the program will certainly bring a welcome improvement to the quality of life. However, it is a pity that the government chose not to address the basic problem behind the dilapidated infrastructure and the difficulties in development, which is Israel's planning policy in East Jerusalem. It has been Israeli policy for many years to expropriate land in East Jerusalem to develop Jewish-Israeli neighborhoods. Added to this is a series of limitations and bans on construction and development that has been placed on the land that remains for the Palestinian population.<sup>382</sup> The results of this policy are a long-running housing crisis and a constant threat of home demolitions. As long as this planning policy continues, investment in infrastructure and development will not succeed in significantly decreasing gaps. It will not be possible to build public buildings such as schools and welfare departments, and it will not be possible to develop businesses.

## **The water crisis in the neighborhoods beyond the separation wall**

In March 2014, the water supply in tens of thousands of homes in the neighborhoods Ras Khamis, Ras Sh'hadeh and Dahiyat a-Salam and the Shuafat Refugee Camp suddenly stopped. The lives of the residents in Jerusalem neighborhoods beyond the separation barrier became intolerable<sup>383</sup>. After a few days, the water supply partially returned for some of the homes while in others the water supply operated for a few hours per day or at a very low pressure. The residents were forced to purchase bottled water or water in large containers, and

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<sup>380</sup> For more information and testimony of children see ACRI's inquiry to the Chair of the Knesset Education Committee, Feb 9, 2014, <http://www.acri.org.il/he/31558> (link in Hebrew).

<sup>381</sup> For more information, see: Uri Eitan, et al, [Annual Status Report: The Failing East Jerusalem Education System](#), ACRI and Ir Amim, August 2013.

<sup>382</sup> ACRI and Bimkom – Planners for Planning Rights inquiry to the Knesset Internal Affairs and Environment Committee, Feb 5, 2012, <http://www.acri.org.il/he/19003>, [ibid](#) (link in Hebrew); [The Planning Crisis in East Jerusalem: Understanding the phenomenon of "illegal" construction](#), UN Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), April 2009, [ibid](#).

<sup>383</sup> For more information on the Jerusalem neighborhoods beyond the separation wall, see [2013 Situation Report – Human Rights in Israel and the OPT](#), [ibid](#), pages 73-76.

to significantly decrease their water usage for daily needs. Simple tasks such as using a washing machine became impossible.<sup>384</sup>

Years of intentional neglect by the state and the Jerusalem Municipality led the way for the severe water crisis in the Palestinian neighborhoods of East Jerusalem. According to law, it is possible to connect a home to water and sewerage infrastructure only if the home has been built legally. However, without an adequate master plan and planning arrangements, thousands of homes and buildings have been illegally constructed in East Jerusalem neighborhoods. According to estimates from the Jerusalem water company Gihon, the water and sewerage infrastructure in the Shuafat Refugee Camp and the three nearby neighborhoods is appropriate for some **15,000 residents alone**. The exact number of residents living in the area today is not known, but current estimates are some **60,000-80,000 persons**.

In late March, ACRI petitioned the High Court of Justice on behalf of the residents of the neighborhoods and the Jerusalem Suburbs Community Center. The petitioners demanded immediate intervention of the Water Authority, the Ministry of National Infrastructure, the Gihon Water Corporation and the Jerusalem Municipality,<sup>385</sup> in order to immediately restore the supply of water to all of the homes and to find long-term solutions to the area's water infrastructure situation. Following the submission of the legal petition, the water supply improved. During deliberations conducted in early April, the High Court justices agreed that the problem was acute and that it must be solved. Following two extensions granted by the court to the authorities to present their progress, the residents are still waiting for a comprehensive solution.

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<sup>384</sup> For a description of the crisis, see the petition in HCJ 2235/14 **Sanduka v. Israel Water and Sewage Authority**, on ACRI's website, <http://www.acri.org.il/en/2014/03/25/ej-water-petition/>; Jamil Sanduka, [The poverty of West Jerusalem is luxury](#), Walla, March 27, 2014 (link in Hebrew); [Between worlds – Noa reports on her trip to neighborhoods disconnected from water](#), on the Action A Day website, founded by ACRI, April 7, 2014 (link in Hebrew).

<sup>385</sup> HCJ 2234/14 **Sanduka v. Israel Water and Sewage Authority**, *ibid*.

## Human Rights in the Occupied Territories

### Gaza Strip: Suspected violations of international humanitarian law during Operation Protective Edge

Operation Protective Edge, which took place in the Gaza Strip during the summer of 2014, took a heavy toll on the residents of Gaza. **Over 2,000 people were killed**; according to UN estimates, some two-thirds of the deaths were civilian casualties, including 500 children and some 250 women.<sup>386</sup> Though there is disagreement and uncertainty as to the exact figures,<sup>387</sup> it is clear even to Israeli authorities that **a significant proportion** of the casualties were noncombatant civilians.<sup>388</sup> In addition to air strikes, IDF forces conducted ground operations in densely populated areas where Hamas fighters were operating. During these battles, the IDF struck residential neighborhoods with massive fire, using an unprecedented level of artillery.<sup>389</sup> Many people were killed in the attacks, and in some cases entire families were killed in their homes.<sup>390</sup> The attacks also caused massive property damage. According to UN data, some 18,000 homes were destroyed or heavily damaged, and as a result, over 100,000 men, women and children became homeless. Furthermore, hundreds of thousands of people were forced to leave their homes during the fighting when their neighborhoods were bombed.<sup>391</sup> Civilian infrastructure including schools,<sup>392</sup> medical facilities<sup>393</sup> and the electrical grid was also damaged.<sup>394</sup>

<sup>386</sup> **Occupied Palestinian Territory: Gaza Emergency**, United Nations Office for the Coordination of Humanitarian Affairs (Hereafter: OCHA), 4.9.2014, <http://bit.ly/1qhkyT4>; **Gaza Crisis Appeal**, OCHA, 9.9.2014, <http://bit.ly/11HJmK2>.

<sup>387</sup> For example: Anthony Reuben, Caution needed with Gaza casualty figures, BBC News, 11.8.2014; Amir Tivon, [When a 26-year-old is a child: this is how Hamas distorts the identity and number of dead](#), Aug 20, 2014 (in Hebrew); John Brown, [Propaganda plays with the number of casualties in Gaza, and the media falls for it](#), Local Call website, Aug 20, 2014 (in Hebrew); Amira Hass, [How many Palestinian civilians is a single militant worth?](#), Haaretz, Aug 22, 2014; Adi Samarias, [The truth is buried under the rubble of Gaza](#), Hottest Place in Hell, Sept 5, 2013 (in Hebrew); Shimon Cohen, [The left does not have a monopoly on human rights](#), ArutzSheva, Sept 7, 2014 (in Hebrew).

<sup>388</sup> For example, when the fighting began, it was reported that a “senior officer in the General Staff admitted this evening that 50% of the casualties thus far of Operation Protective Edge are not Hamas or Islamic Jihad fighters” (see: Or Heller, Killing of children: the IDF defines the incidents as “the Kfar Kana Scenario”, Nana10, July 16, 2014 (in Hebrew). Official data released by the IDF at the end of the operation counts “over 750 terrorists killed” (<http://www.idfblog.com/ProtectiveEdge>), and PM Netanyahu’s speech at the start of the cease-fire included “some one thousand enemy fighters killed” ([Netanyahu: “It is still unclear whether we have obtained long-term calm.”](#) Walla, Aug 28, 2014, in Hebrew). This shows that even according to Israeli methods, some 1,000 or more of the casualties were noncombatants.

<sup>389</sup> Gili Cohen, [IDF: We fired tens of thousands of shells during the fighting in Gaza](#), Haaretz, Aug 27, 2014 (in Hebrew).

<sup>390</sup> [Families bombed at home, Gaza, July-August 2014 \(initial figures\)](#), B’Tselem.

<sup>391</sup> Gaza Crisis Appeal, *ibid*.

<sup>392</sup> See for example: [The Gaza Cheat Sheet • Real Data on the Gaza Closure](#), Gisha – Legal Center for Freedom of Movement, Nov 5, 2014; [Palestinians in school and psychological counseling: new school year starts in Gaza](#), Walla, Sept 1, 2014 (in Hebrew).

Living conditions in the Gaza Strip were poor even prior to the onset of Operation Protective Edge. For example, it was reported in early 2014 that a severe fuel shortage had led to an unsteady electricity supply, which impacted the water supply, shut down medical equipment, and prevented the proper treatment of waste-water.<sup>395</sup> Severe shortages of medicine and medical equipment were also reported.<sup>396</sup> According to data provided by Gisha – Legal Center for Freedom of Movement, 57% of Gaza’s population suffered from nutritional insecurity, and unemployment in the Strip was at 45% prior to the summer’s conflict.<sup>397</sup> **The damage caused by the fighting to the already impoverished people of Gaza created a humanitarian catastrophe.**<sup>398</sup> According to data from Gisha, more than 70% of the population of the Gaza Strip requires humanitarian aid,<sup>399</sup> and according to UN reports hundreds of thousands of children are in need of psychiatric help to treat the trauma of war.<sup>400</sup>

**There are serious questions regarding Israel’s adherence to the laws of war and international humanitarian law during its conduct in the fighting in Gaza.** As stated above, civilians on both sides were exposed to bombings and attacks during the fighting. However, as a sovereign country, Israel is expected to act according to the rules of international humanitarian law, which is based on **distinguishing between fighters and civilians, and between military targets and civilian targets.** In response to an inquiry by human rights organizations submitted during the early stages of the war, Israel’s attorney general stated that IDF forces are instructed to deliberately attack only military targets and in a proportional manner, and that “significant effort is being made to avoid harming civilians who are not taking direct part in the fighting.”<sup>401</sup> However, when considered in light of the succession of events we will henceforth describe in which civilian sites were bombed and extensive harm caused to civilians (including women, children and families), this response is unsatisfactory. As a result of the unanswered questions, there is a need to examine the engagement policies and the legality of the commands issued during the fighting in Gaza.

<sup>393</sup> See for example: [Trapped medical staff: report from the situation room of the Palestinian Health Ministry about medical staff and facilities that have been harmed during the attack on the Gaza Strip](#), Physicians for Human Rights, July 18, 2014 (in Hebrew); [PHR-IL: All measures must be taken to avoid injuring medical personnel and endangering medical facilities and teams while fighting continue in the Gaza Strip](#), Physicians for Human Rights, July 22, 2014.

<sup>394</sup> See for example: [A humanitarian disaster is emerging before our eyes \(report of an engineer, representative of the Red Cross, on the lack of electricity in Gaza\)](#), HAOKETS, July 31, 2014.

<sup>395</sup> [The Humanitarian Impact of Gaza’s Fuel and Electricity Crisis](#), OCHA, March 2014.

<sup>396</sup> [Palestinian report: shortage of drugs, medical equipment and diesel fuel - worst since blockade initiated in 2007](#), Physicians for Human Rights, June 27, 2014.

<sup>397</sup> [The Gaza Cheat Sheet • Real Data on the Gaza Closure](#), *ibid.*

<sup>398</sup> See for example: [Humanitarian crisis in the Gaza Strip: Appeal to the World Health Organization](#), Physicians for Human Rights, Aug 10, 2014 (in Hebrew); Salah Haj Yehia, [Gaza has gone one thousand years backwards](#), Haaretz, Aug 17, 2014 (in Hebrew); [Gaza Crisis Appeal](#), *ibid.*

<sup>399</sup> [The Gaza Cheat Sheet • Real Data on the Gaza Closure](#), *ibid.*

<sup>400</sup> [Gaza: UN says over 370,000 Palestinian children in need of 'psycho-social first aid'](#), United Nations News Center, 21.8.2014.

<sup>401</sup> Inquiry of the organizations B’Tselem, Gisha, ACRI, the Public Committee Against Torture in Israel, Hamoked – Center for the Defense of the Individual, Yesh Din, Adalah, MachsomWatch, Rabbis for Human Rights, and Physicians for Human Rights, July 21, 2014, Attorney General’s response, Aug 5, 2014, and additional inquiry by ACRI, Oct 6, 2014: <http://www.acri.org.il/he/32152> (in Hebrew).

From the outset, it is important to note that the law is ambiguous regarding what defines a legitimate military target, and specifically, what transforms a civilian site into a military site.

There are also doubts as to **the legality of the use of artillery in populated areas** during the IDF's ground operation. According to reports, the military fired some 35,000 artillery rounds during Operation Protective Edge – four times the number fired during Operation Cast Lead.<sup>402</sup> Hundreds of Palestinians were killed and entire neighborhoods reduced to rubble as a result of the massive artillery bombardment. Some of the most destructive incidents included the fighting in Shejaiya, the bombing of the village of Khuza'a and the use of the Hannibal Directive in Rafah during an incident now known as "Black Friday." The use of artillery fire, which does not allow for precise targeting, in populated urban areas, inevitably damages civilian sites and kills innocent people.<sup>403</sup> It is doubtful whether the use of artillery in this manner can meet the requirement of distinction set forth by the laws of war, and in any case such use violates the principle of proportionality, which requires forces to take careful measures to minimize harm to civilians and their property. According to the principle, forces are expected to consider alternate means to achieve military goals and even to avoid the planned action when there is no way to mitigate collateral damage. It is not clear that all of these measures were taken as required by law during Operation Protective Edge. In order to fully clarify these troubling questions, Israel must effectively, independently, quickly and transparently investigate these exceptional incidents and the policies that guided the fighters during the military operation.

During the fighting, the IDF established a General Staff investigation mechanism, headed by Maj. Gen. Noam Tibon, whose task was to examine exceptional incidents that took place during the military operation. This investigation mechanism operates permanently within the Military Advocate General Corps. According to statements from the Chief Military Advocate General, the mechanism was established in line with the recommendations of the Turkel Commission, which examined the suitability of the IDF's investigatory capacity in response to allegations of violations of the laws of war.<sup>404</sup> This investigation mechanism was responsible for gathering data and clarifying facts, based on which the Chief Military Advocate General would decide whether grounds existed for opening criminal investigations. So far the mechanism has examined dozens of incidents which took place during Operation Protective Edge, and as of the time of writing this report, only two of them have led to criminal investigations: the killing of four children on Gaza beach and the strike on a UNWRA school in which 15 Palestinians were killed. In addition, the Chief Military Advocate General

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<sup>402</sup> [IDF: We fired tens of thousands of shells during the fighting in Gaza](#), *ibid*.

<sup>403</sup> Amos Harel and Gili Cohen, [Massive artillery shelling may have caused numerous civilian fatalities in Gaza](#), Haaretz, Aug 14, 2014 ; Idan Barir, [IDF soldier: Artillery fire in Gaza is like Russian roulette](#), 972 magazine, Aug 5, 2014.

<sup>404</sup> [Operation Protective Edge: Examinations and Investigation](#), press release on the Military Advocate General Corps website, Sept 19, 2014. In addition, see [Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law](#), The Public Commission to Examine the Maritime Incident of 31 May 2010 – The Turkel Commission, Second Report, February 2013, (henceforth: "Turkel Commission Report").



opened criminal investigations into three additional incidents, which did not go through the investigation mechanism.<sup>405</sup>

Though this mechanism may improve some of the shortcomings of the previous process for opening investigations, it does not appear to be sufficient to fix other fundamental flaws in military investigation procedures that human rights organizations<sup>406</sup>, academics and the Turkel Commission<sup>407</sup> have pointed out in the past. Specifically, this mechanism does not solve the problem of the double role served by the Chief Military Advocate General – who is both advisor to the military before and during the fighting on the one hand, and the person responsible for investigating incidents on the other. This structural problem hampers the Military Advocate General Corps' ability to investigate high-ranking decision-makers or examine the legality of commands and instructions issued to combat soldiers.<sup>408</sup>

In August, the State Comptroller announced that he would conduct a review of the decision-making processes in the military and in government echelons during Operation Protective Edge, as well as their investigation mechanisms. A press release on the State Comptroller Office's website announced that the decision to open a review was made "in light of claims raised that the State of Israel violated, allegedly, the rules of international law and does not examine IDF actions as required by international law."<sup>409</sup> However, the wording of the press release leaves it unclear whether the Comptroller intends to investigate the **instructions and decisions themselves** and their compliance with international law (a matter which is not within his area of expertise), or only the decision-making **processes** and the validity of the examination and investigation mechanisms. The Knesset Foreign Affairs and Defense Committee also announced that a group comprising the heads of its subcommittees would conduct an examination of Operation Protective Edge for the purposes of drawing conclusions.<sup>410</sup> Meanwhile, some three and a half months after the end of the operation, the examinations' findings have not been released,<sup>411</sup> and there is no guarantee that the engagement policies in Gaza, and the instructions and guidelines issued by decision-makers, will be examined with the proper seriousness.

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<sup>405</sup> [Operation Protective Edge: Update re Individual Incidents](#), Press release on the Military Advocate General Corps website, Sept 10, 2014. See also: Amos Harel, [Israeli army's Gaza inquiry meant to head off calls for war crimes probe](#), Haaretz, Aug 14, 2014; Amir Buhbut, [At the center of Operation Protective Edge legal investigations: Givati Brigade's actions in Rafah](#), Walla, Aug 31, 2014 (in Hebrew); Yoav Zitun and Roi Kais, [IDF to hold criminal probes into deadly strikes on UN school. Gaza beach](#), ynet, Oct 9, 2014.

<sup>406</sup> Amichai Cohen and Yuval Shany, [The IDF and Alleged International Law Violations: Reforming Policies for Self-Investigation](#), The Israel Democracy Institute, Dec 2011 (link in Hebrew, [English abstract here](#)).

<sup>407</sup> Turkel Commission Report, (citation n404, above).

<sup>408</sup> See [human rights organizations' correspondence with the Attorney General](#), July-October 2014, (citation n401, above).

<sup>409</sup> Review of the decision-making process of the military and government decision-makers during Operation Protective Edge, press release on the State Comptroller's website, Aug 14, 2014, <http://www.mevaker.gov.il/he/publication/Articles/Pages/2014.08.14TzukEytan.aspx?AspxAutoDetectCookieSupport=1> (in Hebrew).

<sup>410</sup> Ron Ben-Yishai, [Knesset committee launches Protective Edge probe](#), ynet, Sept 1, 2014.

<sup>411</sup> According to reports, a first interim report of the Knesset Foreign Affairs and Defense Committee is expected to be released in January 2015. Ron Ben-Yishai, [Knesset committee launches Protective Edge probe](#), *ibid.*



## Palestinians continue to be pushed out of the Jordan Valley

Over the last two years, there has been a considerable increase in the number of **home demolitions within Palestinian communities in the Jordan Valley**.<sup>412</sup> In most cases, these are small communities of shepherds of limited means. According to UN data, between 2012 and 2013, the number of demolitions of Palestinian homes in the valley doubled – from 172 to 390.<sup>413</sup> The demolitions continued during the past year. The residents (many of them children) and their flocks of sheep, are left without roofs over their heads in the hot sun or the freezing cold, and occasionally lose their meager property. **The Israeli authorities have recently started to confiscate or destroy the replacement tents that the residents receive from the Red Cross.** Due to this practice, the Red Cross announced early this year that it would no longer provide tents or humanitarian supplies to the victims.<sup>414</sup>

Home demolitions in the Jordan Valley are a component of the wider policy of the State of Israel against Palestinians living in Area C, which falls under Israeli rule for both security and civil matters.<sup>415</sup> This policy is manifested in a number of ways: the prevention of urban planning for Palestinian villages - an absence that results in unlicensed construction and subsequent home demolitions; the declaration of areas as “state lands”; the closing of areas by designating them as firing zones or nature reserves; the demolition of wells and water cisterns; and more. These measures prevent the Palestinian villages from building and developing and make the lives of residents significantly more difficult. According to statistics from B’Tselem, some **85% of the Jordan Valley is forbidden for Palestinian use**: they are forbidden from being in the area, from building there, and from grazing their sheep there.<sup>416</sup>

The following are a few examples of demolitions carried out in the Jordan Valley in the past year:<sup>417</sup>

- In September 2013, the Civil Administration demolished all of the structures that served as homes and shelter for sheep in the Khallet Makhul community. Even with the help of several organizations, it took over a month to rebuild the structures. Since the demolitions, the residents

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<sup>412</sup> For background on the Jordan Valley, see the B’Tselem website:

[http://www.btselem.org/topic/jordan\\_valley](http://www.btselem.org/topic/jordan_valley)

<sup>413</sup> Amira Hass, [Red Cross stops providing emergency tents to Palestinians in Jordan Valley](#), Haaretz, Feb 6, 2014; **Forced Displacement**, OCHA, 2014, [bit.ly/1kLrGFd](http://bit.ly/1kLrGFd).

<sup>414</sup> [Red Cross stops providing emergency tents to Palestinians in Jordan Valley](#), *ibid*; [The success of transfer](#), Editorial, Haaretz, Feb 6, 2014 (in Hebrew).

<sup>415</sup> For more information on policy in Area C, see: [Acting the Landlord: Israel's Policy in Area C, the West Bank](#), B’Tselem, June 2013; Dror Etkes and QuamarMishirqi-Assad, [KeremNavot: Israeli Settler Agriculture as a Means of Land Takeover in the West Bank](#), KeremNavot and Rabbis for Human Rights, August 2013; [2013 Situation Report – Human Rights in Israel and the OPT](#), ACRI, (citation n52, above) pages 91-97.

<sup>416</sup> [Civil Administration demolishes all homes of KhalletMakhul community in Jordan Valley](#), B’Tselem, Sept 23, 2013 (updated Oct 7, 2013).

<sup>417</sup> The footnotes cite testimony of residents and Machsom Watch volunteers, as well as video clips recording the demolitions.

of Khallet Makhul have begun to prepare a legal appeal to the High Court of Justice in order to prevent their expulsion from the area.<sup>418</sup>

- In early January 2014, the Civil Administration demolished all of the structures within the tiny community of Khirbet Ein Karzaliyah - home to 25 residents, 15 of them minors. After the demolitions, the families received replacement tents from the Red Cross, but just a few days later, the authorities returned to the area, took down the tents and confiscated them. The Red Cross returned and again provided tents to the residents, but in mid-February a Civil Administration bulldozer returned to Khirbet Ein Karzaliyah and began demolishing the tents. Soldiers accompanying the bulldozer cut the cloth walls of the tents with knives to prevent them from being re-erected.<sup>419</sup>
- In late January, the IDF and the Civil Administration demolished all of the structures in Um al-Jamal, located in Ein al-Hilwa in the northern Jordan Valley. The demolitions left some 60 people without shelter, half of them children.<sup>420</sup>
- In May, IDF forces arrived in Abu Al Ajaj with bulldozers. After a 15-minute warning to residents to remove items from their homes, the forces demolished families' homes and sheep pens, leaving only rubble behind.<sup>421</sup>
- In late September, the Civil Administration demolished the internal electrical infrastructure of the community of Khirbet a-Twayel. Civil Administration staff destroyed dozens of pylons and severed their cables.<sup>422</sup>
- In October, the Israeli authorities demolished four homes in the village of Al-Jiftlik.<sup>423</sup> Of all of the Palestinian villages whose entire land is included in Area C, Al-Jiftlik is the only one for which Israel prepared and approved a master plan. However, the plan includes only 60% of the area of the

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<sup>418</sup> Report from the Machsom Watch website, Oct 1, 2013, <http://bitly.com/15w5kCt> (in Hebrew); [Civil Administration demolishes all homes of Khallet Makhul community in Jordan Valley](#), citation 416 above, Report from the Machsom Watch website, October 2, 2013, <http://bitly.com/1xEV0OR>; Report from the Machsom Watch website, July 22, 2014, <http://bitly.com/11YU2Ej>; Report from the Machsom Watch website, Oct 20, 2014, <http://bitly.com/1xT6rGC> (links to Machsom Watch in Hebrew).

<sup>419</sup> [Israeli authorities demolish Palestinian shepherding community in Jordan Valley](#), B'Tselem, Jan 8, 2014.

<sup>420</sup> [Civil Administration demolishes all structures of Khirbet Um al-Jamal, northern Jordan Valley](#), B'Tselem, Feb 20, 2014; [Red Cross stops providing emergency tents to Palestinians in Jordan Valley](#), (citation n413, above); Report on home demolitions on the Machsom Watch website, Feb 10, 2014, <http://bit.ly/1xFuKnv> (in Hebrew).

<sup>421</sup> Report from the Machsom Watch website, May 29, 2014, <http://bit.ly/1xTgPOM>, Report from the Machsom Watch website, June 19, 2014, <http://bit.ly/1HFOj7z> (links in Hebrew); Abu Al Ajaj, Israel Social TV, July 4, 2014 (filming by Machsom Watch volunteers); [Civil Administration demolishes nearly half the homes in community of Id'eis, the Jordan Valley](#), B'Tselem, May 29, 2014; [The Id'eis community in the Jordan Valley: "In just a few hours, the place was in ruins, I swear, like a war zone."](#) B'Tselem.

<sup>422</sup> [Civil Administration destroys power grid in Khirbet a-Twayel](#), the Jordan Valley, B'Tselem, Oct 2, 2014.

<sup>423</sup> Report on the Machsom Watch website, <http://bit.ly/11UcU8> (in Hebrew).

village, and leaves the homes in the remainder of the town in danger of demolition.<sup>424</sup>

With its discriminatory and damaging planning and construction policies in Area C, **Israel is violating the provisions of international law and its obligations as an occupying force in the West Bank** – first and foremost its obligation to ensure the well-being of the local population and to respect its way of life.<sup>425</sup> The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) earlier this year expressed deep concern about the forced eviction of Palestinians in Area C, specifically in the Jordan Valley, and called to end the policy of home demolitions and establish a fair planning regime in the area.<sup>426</sup>

## Detention periods of Palestinian minors

In the West Bank, **there are two separate and different legal systems** – an Israeli legal system and a military legal system. Israelis who live in the Occupied Territories live under Israeli laws and benefit from the rights and budgets granted to suspects as set forth by Israeli law and legal rulings. In contrast, Palestinian residents, living in the same area, are subjected to military law, which is much stricter and employs far more severe measures. It is difficult to imagine a more serious subversion of human rights and dignity than this unacceptable situation, in which people living side by side are differentiated from one another and treated completely differently based on one factor – their national origin.<sup>427</sup>

The distinction between settlers and Palestinians in criminal proceedings greatly affects minors who enter this system: two children, one a settler and one Palestinian, charged with the same crime – for example, throwing stones – will receive fundamentally different treatment by separate legal regimes. The Israeli child will enjoy extensive protections and rights that are granted to minors by Israeli law,<sup>428</sup> and which emphasizes the minor's welfare. Restrictions and obligations are placed on law enforcement regarding the manner in which minors may be arrested, investigated, judged and handled. In contrast, the Palestinian child will receive only limited protections and rights, which are insufficient to ensure the child's physical and psychological well-being.<sup>429</sup> Furthermore, in many cases the criminal law that applies to Palestinian minors is more severe and strict

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<sup>424</sup> Background on the village of al-Jiftlik from the B'Tselem website:

[http://www.btselem.org/jordan\\_valley/al\\_jiftlik](http://www.btselem.org/jordan_valley/al_jiftlik)

<sup>425</sup> For more information, see [2013 Situation Report – Human Rights in Israel and the OPT](#), ACRI, (citation n52, above), *ibid*, pages 97-101.

<sup>426</sup> [United Nations Humanitarian Coordinator calls for halt to the displacement of Palestinians in the Jordan Valley](#), OCHA website, Jan 31, 2014.

<sup>427</sup> For more information, see Limor Yehuda et al, [One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank](#), ACRI, October 2014.

<sup>428</sup> The Youth Law (Adjudication, Punishment and. Methods of Treatment), 1971, includes all of the laws on handling minors in criminal proceedings. In 2008, extensive amendments were made to the law, based on conclusions of the committee to examine fundamental principles in the sphere of the child and law and their incorporation into legislation, headed by Judge Saviona Rotloi ([Report of the Sub-Committee on Minors in Criminal Proceedings](#), Ministry of Justice, February 2003 – in Hebrew).

<sup>429</sup> In international law, there are several documents which address the rights of the child in criminal proceedings, For an extensive survey, see: Naama Baumgarten-Sharon, [No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone-Throwing](#), B'Tselem, July 2011, pages 7-9.

than that which applies to Israeli adults. While in recent years several amendments to military legislation regarding minors have been enacted, the protections granted to Palestinian minors are significantly inferior to those granted to Israeli minors.<sup>430</sup>

Some of the issues regarding the rights of Palestinian minors in criminal proceedings were raised in two petitions to the High Court of Justice against discrimination in detention periods which apply to Palestinians in the territories. The petitions were filed in 2010 by the Palestinian Ministry for Prisoners' Affairs and by ACRI, Yesh Din and the Public Committee against Torture in Israel.<sup>431</sup> During the proceedings, the state attorney announced changes to the periods of detention as set by military legislation, including for minors. In early April 2014, the High Court of Justice provided a partial ruling on the petitions.<sup>432</sup> In their ruling, the High Court justices clarified to the state that, even in light of the changes announced following the filing of the petitions, they are still troubled by three issues, including the detention periods for Palestinian minors. The court instructed the state to reconsider these matters. Recently, Attorney General Yehuda Weinstein announced that he believes that military law should be amended such that military courts may request arrest reports<sup>433</sup> in order to make rulings on requests to arrest minors, as is done for minors in the Israeli legal system. The attorney general clarified that the state should operate according to the premise that "a minor is a minor, no matter where he lives."<sup>434</sup>

## The right to demonstrate in the West Bank<sup>435</sup>

Palestinians in the West Bank, occupied by Israel over 47 years ago, are not masters of their own fate. They have no representation in the regime that rules over them, and they have no ability to influence the decisions that impact the reality of their lives. Therefore, protests are the primary measure that remains for them to demonstrate their autonomy, make their voices heard and protest against the occupation and the many and continued violations of their rights – including property rights, the right to water and shelter, the right to freedom of movement, the right to dignity, and the right to self-determination.

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<sup>430</sup> [One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank](#), citation n427, above.

<sup>431</sup> HCJ 3368/10 **Palestinian Ministry of Prisoner Affairs v. Minister of Defense** and HCJ 4057/10 **Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria**. See court documents of ACRI's petition at: <http://www.acri.org.il/en/2014/04/10/hcj-minors-detention/>

<sup>432</sup> HCJ 3368/10 [Palestinian Ministry of Prisoner Affairs v. Minister of Defense](#) (ruling dated April 6, 2014, in Hebrew).

<sup>433</sup> Arrest reports review the personal circumstances of the accused and possible alternatives to detention.

<sup>434</sup> [Opinion of the Attorney General – authorize military courts in Judea and Samaria to accept arrest reports for minors](#), Press release on the Ministry of Justice website, Aug 19, 2014 (in Hebrew). See also Revital Hovel and Chaim Levinson, [AG: Conduct psychiatric tests of arrested Palestinian minors](#), Haaretz, Aug 19, 2014.

<sup>435</sup> Based on the position paper: Raghda Jaraisy and Tamar Feldman, [The Right to Demonstrate in the Occupied Territories](#), ACRI, August 2014 (in Hebrew). This report will briefly address only violations of freedom of expression and the right to demonstrate in the territories, with an emphasis on 2014. For more information, resources and legal analysis on the current state of freedom of expression according to international law and occupation law in general, and specifically in the West Bank, see the full position paper.

According to international law, which applies in the Occupied Territories, the right to demonstrate is an inextricable part of freedom of expression. The fundamental right to freedom of expression is enshrined in the Universal Declaration of Human Rights<sup>436</sup> and in the International Covenant on Civil and Political Rights, which Israel ratified in 1991.<sup>437</sup> The right to peaceful assembly is also enshrined in the International Covenant on Civil and Political Rights,<sup>438</sup> alongside the obligation of states to allow protests and demonstrations.

**However, in practice, Israeli authorities refuse to grant Palestinian residents of the Occupied Territories the right to freely express themselves and the right to protest and demonstrate.** Civil demonstrations in the territories are considered civil disturbances and not legitimate civil protests, and protesters are treated like criminals who must be dispersed. The violation of the Palestinians' freedom of expression and protest is embodied in military legislation in the West Bank, in the manner in which IDF forces operate in the field when encountering demonstrations and protest actions in the territories, and in the rulings of military courts.

At the legislative level, Order 101,<sup>439</sup> which regulates demonstrations, marches and protest events in the Occupied Territories, effectively serves as a tool to suppress the right to demonstrate in the West Bank. The broad and vague definitions in the order, coupled with its unrealistic demands, have created a situation in which all demonstrations, marches and protest events held by Palestinians in the West Bank are defined as illegal, regardless of their goals or characteristics, and IDF forces automatically have the authority to disperse them.

In the field, almost all demonstrations in the West Bank are dispersed by IDF forces, whether the protest is violent or not. Palestinian demonstrators encounter a violent and belligerent response from security forces, and are faced with an **excessive use of riot control means**. The use of force to disperse demonstrations in the territories is a routine matter.<sup>440</sup> It seems that this pattern of conduct reflects the military's view that demonstrations in the West Bank are disturbances of the peace in and of themselves. Many times, protest events result in injuries – from the inhalation of tear gas, to wounds from “rubber bullets” and sometimes even from live fire – occasionally lives are lost.

In July and August 2014, during Operation Protective Edge, 20 Palestinians were killed and hundreds more injured in clashes and protests throughout the West Bank.<sup>441</sup> In most of the incidents, reciprocal violence was documented between

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<sup>436</sup> [Universal Declaration of Human Rights](#), Dec 10, 1948, article 20.

<sup>437</sup> [International Covenant on Civil and Political Rights](#), Dec 16, 1966, article 19.

<sup>438</sup> In article 21.

<sup>439</sup> **Order 101 Regarding Prohibition of Incitement and Hostile Propaganda**. Full text: <http://www.scribd.com/doc/139419975/Order-101-Regarding-Prohibition-of-Incitement-and-Hostile-Propaganda>

<sup>440</sup> See for example: Sarit Michaeli, [Crowd Control: Israel's use of crowd control weapons in the West Bank](#), B'Tselem, January 2013; ACRI and B'Tselem's inquiry to the deputy state attorney regarding rubber-coated metal bullets, July 30, 2013, <http://www.acri.org.il/en/2013/08/02/acri-btselem-rubber-bullets/>; ACRI's inquiry to the Judea and Samaria Division Commander regarding use of the “skunk”, Jan 23, 2013, <http://www.acri.org.il/he/25560> (in Hebrew).

<sup>441</sup> [13 Palestinians killed by Israeli security forces in West Bank since Operation Protective Edge began: Excessive use of live fire suspected](#), Press release on B'Tselem website, July 29, 2014; [Israel: Shooting Deaths after West Bank Protest](#), Human Rights Watch, Aug 3, 2014; [Protection of Civilians Weekly Report](#), 19-25 August 2014, OCHA. In response to an



the army and protesters, including one incident of live fire by protesters, and many incidents of live fire by the IDF. However, even during periods of relative quiet, injuries to protesters are reported almost every week. For example, in late February 2014, four protesters were injured in Bil'in during a weekly protest against the construction of the separation barrier on village lands;<sup>442</sup> in early April, 12 Palestinians were injured during a demonstration in the Ramallah area in solidarity with Palestinian prisoners interned in Israel;<sup>443</sup> in mid-May, two minors were killed in Bitunya during a Nakba Day demonstration – at least one of them from live fire;<sup>444</sup> in late August, ten Palestinians, four of them children, were injured in the village of Beit Ummar in the Hebron district during routine protests against the expansion of the settlement Karmeit Tzur on village land;<sup>445</sup> that same week and the following week,<sup>446</sup> protesters were injured in Kafr Qadum, where a regular weekly protest takes place against the continued closure of one of the main entrances to the village, which passes through the nearby settlement Kdumim.<sup>447</sup> In October a 13-year-old boy was shot and killed in unclear circumstances in Beit Lafia in the Ramallah district,<sup>448</sup> and one week later a 14-year-old boy was killed during a demonstration in Silwad in the Ramallah district.<sup>449</sup>

In the West Bank, demonstrations often escalate into violence, whether due to provocations on the part of the protesters or on the part of security forces. **It is important to emphasize that international human rights law does not condition the right to demonstrate on the peaceful nature of the protest, but rather obligates military forces to act in any case of violence in accordance with the rules of law enforcement, and subject to standard restrictions on the use of force.**

An additional tool often used by IDF forces to restrict and control demonstrations in the West Bank is the designation of closed military zones, which prohibits entry

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inquiry by ACRI on this matter, the office of the head of the Southern Command stated that the IDF, as a rule, avoids dispersing demonstrations which do not endanger security or public order; that during Operation Protective Edge there was a rise in the severity of disturbances and violence during disturbances; and that use of force is derived from the extent of the threat of the disturbance and is used in a gradual and restrained manner. For ACRI's inquiry and the army's response (in Hebrew): <http://www.acri.org.il/he/32423>

<sup>442</sup> [Protection of Civilians Weekly Report February 25-March 3, 2014](#), OCHA.

<sup>443</sup> [Protection of Civilians Weekly Report April 1-7, 2014](#), OCHA.

<sup>444</sup> [B'Tselem's initial findings on Nakba Day incident at Bitunya: grave suspicion that forces willfully killed two Palestinians, injured two others](#), Press release on B'Tselem website, May 20, 2014; [Use of live ammunition confirmed in Nawarah shooting](#), Press release on B'Tselem website, June 12, 2014.

<sup>445</sup> [Protection of Civilians Weekly Report August 26-September 1, 2014](#), OCHA.

<sup>446</sup> [Protection of Civilians Weekly Report August 26-September 1, 2014](#), above and [Protection of Civilians Weekly Report September 2-8, 2014](#), OCHA.

<sup>447</sup> On the demonstrations in KafrQadum, see on B'Tselem's website: [http://www.btselem.org/demonstrations/kafr\\_qadum](http://www.btselem.org/demonstrations/kafr_qadum). On Murad Shteivi, one of the main activists in the village's protests, see on the Amnesty International website (in Hebrew): <http://bit.ly/1zw9wL7>

<sup>448</sup> [Protection of Civilians Weekly Report October 14-20, 2014](#), OCHA. Jackie Huri, Gili Cohen and Nir Hasson, [13-year-old youth killed from IDF fire near Beit Lafia](#), Haaretz, Oct 16, 2014 (in Hebrew).

<sup>449</sup> [Protection of Civilians Weekly Report October 21-27, 2014](#), OCHA. Gili Cohen and Jacki Huri, [14-year-old Palestinian shot to death near Ramallah; IDF: He lit a Molotov cocktail](#), Haaretz, Oct 24, 2014 (in Hebrew).



into certain areas to those without special permission.<sup>450</sup> Usually, these orders are issued as a preventative measure, before demonstrations are due to begin, and without a concrete assessment of whether a disturbance or an action will constitute a real threat to the security of the area. This tool is even implemented in areas where peaceful nonviolent demonstrations regularly take place.

Palestinian demonstrators in the West Bank are often brought before military courts, whether for violating Order 101 or on suspicion of stone-throwing, incitement to violence or incitement to participate in illegal demonstrations.

In contrast to civilian courts in Israel, which fill a central and vital role in protecting the right to demonstrate, military courts in the West Bank choose to avoid a principled legal deliberation on the applicability and extent of the right to demonstrate in the Occupied Territories, the decision to disperse demonstrations or military conduct during demonstrations.<sup>451</sup>

The State of Israel, as the occupying force in the territories, is obliged to uphold and protect freedom of expression for residents of the West Bank. This obligation is enshrined in both occupation law and human rights law. Israel must allow demonstrations, marches and protests, even when they are directed against the military regime, and freedom of expression and the freedom to demonstrate must not be restricted - with the exception of cases in which there is high certainty that security will be significantly and severely undermined.

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<sup>450</sup> See for example, ACRI's inquiry to the Military Advocate General, Jan 26, 2014, and the response received from the MAG office, April 6, 2014, <http://www.acri.org.il/he/30207> (in Hebrew); ACRI's inquiry to the Judea and Samaria legal advisor, Nov 12, 2012, <http://www.acri.org.il/he/24418> (in Hebrew).

<sup>451</sup> For more information and examples, see [The Right to Demonstrate in the Occupied Territories](#), (citation n435, above).