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THE ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL

Comments on the Combined Initial and First Periodic Reports Concerning the Implementation of The International Covenant of Civil and Political Rights (ICCPR)

Submitted to the United Nations

Human Rights Committee

July 1998

Contributors

All sections in this report which deal with human rights in the Occupied Territories were written by **B'Tselem**: The Israel Information Center for Human Rights in the Occupied Territories (with the exception of Section 23 - The Protection of the Family which was written primarily by ACRI).

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ACRI - The Association for Civil Rights in Israel - is Israel's leading human and civil rights organization. Since 1972, ACRI has led the fight to protect and promote human rights in Israel and the territories under its control through litigation, education and community outreach efforts. Independent and non-partisan, ACRI is Israel's largest and leading human rights and civil liberties organization and the only one dealing with the entire spectrum of human rights.

Acknowledgments

This report is the result of the combined hard work of the staff of the Association for Civil Rights in Israel:

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We thank our colleagues from other organizations who made important contributions to sections of the report:

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ACRI is grateful to Prof. Eyal Benvinisti, Attorney Danny Zeidman, and Dr. Rassem Hamaisi who provided useful information, and to Yuval Ginbar and Ari Paltiel for their assistance with translation.

CONTENTS

Article 1: Right to Self-Determination

The following remarks concern Article 1 as it applies to the Palestinian people. The report ignores Israel's obligation under Article 1(3) to "promote the realization of the right of self-determination" in the West Bank and the Gaza Strip, which are "non-self-governing territories," despite the fact that Israel bears "responsibility for the administration" thereof, within the meaning of this Article.

The Right of the Palestinian People to Self-Determination

Like any other people, the Palestinian people have the right to self-determination. This right of the Palestinians has been recognized by the United Nations General Assembly in several resolutions. Israel has also recognized that right, or at least the existence of the Palestinian people and its "legitimate rights," within the agreements it has signed with that people's representatives.[1] Since 1993, this dialogue has led to the establishment of limited self-rule in parts of the West Bank and Gaza.

Clearly, the only way to ensure full realization of the right to self-determination, as well as all other human rights of all concerned, is through a negotiated settlement, and not through unilateral actions.

The Current Situation

Despite the fact, noted above, that most Palestinians in the West Bank and Gaza Strip enjoy limited self-rule, the present situation cannot possibly be described as the full realization of the Palestinians' right to self-determination. Under the Oslo Agreements, Israel reserved numerous powers for itself in the autonomous areas as well: responsibility for the Jewish settlements and control of areas in which they are located, sole judicial powers over everything related to Israel in the autonomous areas, control over border crossings to Egypt and Jordan, control over the sea border in Gaza, and responsibility for foreign relations and external security of the autonomous areas. Israel also has the power to veto laws enacted by the Palestinian National Authority (PNA), including amendments or revocation of laws and military commands in force in the autonomous areas, even if such a command relates to powers of the PNA and lies within the areas transferred to the Palestinians.

The judicial powers of the PNA are limited: they do not encompass all autonomous

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[1] See *e.g.*. **Declaration of Principles on Interim Self-Government Arrangements,** signed on 13 September 1993 in Washington, D.C. by the PLO and Israel, Preamble; Article. I; Art. III(1); Art V(2); and a letter from Israel's Prime Minister to the PLO Chairman, dated 9.9.93 and recognizing the PLO as representing "the Palestinian people," annexed to the Declaration. Para. 9 of the Preamble to the **Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip**, signed in Washington, D.C., on September 28, 1995, recognizes Palestinian elections as a "preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements."

areas or all persons residing in or visiting these areas. Israelis are not subject to the laws enacted by the PNA, nor to arrest, detention or to the jurisdiction of Palestinian courts. Israeli jurisdiction over Israelis, on the other hand, is not limited to any area whatsoever; it applies throughout the autonomous areas.

Israel holds powers over residents of the autonomous areas. These powers are, for all intents and purposes, those of an occupying power: Israel may prohibit a resident of the autonomous areas from going abroad or from moving from one area to another; Israel controls the movement of goods and has the ability to impose a sea embargo (as it did, in fact, following suicide attacks in 1996).

Not just the written text of the Accords, but current reality demonstrates that the autonomous areas lack vital components of sovereignty. Israel has blatantly abused its power over the PNA in order to influence it to act in Israel's interest, even when such actions included serious human rights violations, like large-scale arbitrary detentions and torture.

In sum, the continuing Israeli military occupation of these territories has meant the continued denial of the full realization of the Palestinian people's right to self-determination.

Israel's Policies of Denying Palestinians their Rights under Article 1(2) and Consequent Denial of Individual Rights

The Committee has expressed the view that:

> The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.[2]

In the Occupied Territories, Israel's settlement policies have denied Palestinians the right to, "for their own ends, dispose of their natural wealth and resources." These policies have also resulted in the denial of other rights stipulated in the Covenant illustrating the interdependence, emphasised in the Committee's comment, between the collective right to self-determination and the rights of individuals.

Appropriation of Palestinian Lands

Israel has carried out a policy of ever-expanding use of Palestinian-owned lands for the construction of Israeli settlements. Land owned by Palestinians, either as individuals or as a public (*i.e.,* public lands and lands that Israel has declared as public property, or "State lands"), and comprising some 20 per cent of the Gaza Strip and over a third of the West Bank have, in effect, been expropriated from their Palestinian owners and are used exclusively for the benefit of Jewish settlers.

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[2] General Comment 12, adopted at the 21st session of the Human Rights Committee, 4.12.84, para. 1.

Consequent Violation of Individual Rights

Israel's settlement policies have inevitably led to the violation of individual rights as well. Particularly serious is the creation of a dualist, and highly discriminatory legal and administrative system in the Territories, setting apart Palestinians and Jewish settlers, so that ethnic identity determines the extent to which a person may enjoy or be denied rights (see also discussion under Article 2). Jewish settlements, while in theory subject to the authority of the military, are in practice part and parcel of Israel. Jewish settlers enjoy the same full civil freedoms that Jews in Israel enjoy, including total freedom of movement, speech, organisation, participation in local and national (Israeli) elections, social security and health benefits, etc. Above all, a modern, efficient and generous system of zoning, planning, granting building permits and financial support for housing exists for Jewish settlers.

For Palestinian residents of the West Bank and Gaza Strip, even those living a few hundred meters from Jewish settlements, freedom of movement is significantly curtailed (see Article 12). They cannot, obviously, vote to curtail the powers of the Israeli Defence Forces, or enjoy Israel's social security or health benefits. Planning, zoning and issuing of building permits outside the narrow confines of Palestinian towns and villages (*i.e.,* in area C under the Oslo Accords), are under the governance of the Israeli authorities, subject to outdated British zoning plans made in the 1940's, making it almost impossible for a Palestinian to acquire a building permit. Those forced to build without permits face a policy of mass demolition, which has resulted in over 1,800 homes being demolished in the past ten years. In contrast, permits for thousands of housing units and other buildings built without permits in Jewish settlements were granted *ex post factum*.

Such actions are in clear violation not only of Article 1, but also of Articles 2(1,3); 5(2); and 26 of the Covenant.

Article 2: Implementation of the Covenant's Instructions

As will be detailed in the continuation of this report, while certain of the instructions of the convention are adequately respected and implemented in Israel, many are the rights whose implementation is inadequate, and certain of them are even radically violated.

In this chapter we will discuss two serious problems with regard to implementation of the convention's instructions by the State of Israel. One is the lack of observance and non-implementation of the convention in the territories that are under the effective control of Israel. The other relates to the differences between Jews and non-Jews in all that regards citizenship and residency in Israel.

In the following sections, we will refer to the application of various articles of the convention in detail. We wish to draw attention particularly to the section dealing with torture (Article 7), to the broad discussion on the violation of the equal rights of the

Arab citizens of Israel (Articles 26 and 27), to the discussion on freedom of religion and conscience (Article 18), and to the discussion on the protection of the family (Article 23). An important common denominator of these sections is the treatment of non-Jews (and in some cases of non-Orthodox Jews) in Israel.

Applicability of the Covenant to the Occupied Territories

Israel's report to the Human Rights Committee completely ignores the Occupied Territories. This in spite of the clear applicability of the ICCPR, as will be detailed below. Israel's most egregious violations of the Covenant have occurred in the Occupied Territories. The conspicuous absence of an account on the extent to which Israel has implemented the substantive obligations of the Covenant in the Occupied Territories constitute a serious breach of Israel's duty under article 40 to report to this committee.

Israel's duty to implement the Covenant in the Occupied Territories is based on the following considerations:

Language of Article 2(1) of the Covenant

As Professor Thomas Buergenthal points out, the phrase "within its territory and subject to its jurisdiction" in article 2(1) should be read as indicating that a state party must be deemed to have assumed the obligation to respect and to ensure the rights recognized in the covenant **both** "to all individuals within its territory" *and* "to all individuals subject to its jurisdiction."[3]. Various treaty-monitoring bodies have interpreted "subject to its jurisdiction" to mean having "actual authority and responsibility." For example, the UN Committee on the Elimination of Racial Discrimination has stated on more than one occasion that Israel is accountable for the implementation of CERD, in all areas over which it exercises effective control and that its report to the Committee should encompass the entire population under Israel's jurisdiction, including the Palestinian population in the Occupied Territories[4].

Similarly, the European Commission of Human Rights maintained that "within their jurisdiction" was tantamount to "within the state party's effective control" in determining that the Convention applied to the Turkish occupation of Northern Cyprus[5].

Previous Statements of the Human Rights Committee

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[3] Thomas Buergenthal, State Obligations and Permissible Derogations, in L. Henkin (ed.): *The International Bill of Rights: The Covenant on Civil and Political Rights* (Colombia Univ. Press, New York, 1981), p.74.

[4] see, e.g. Concluding observation of the Committee on the Elimination of Racial Discrimination: Israel 30/03/98. CERD/C/304/add.45.

[5] see e.g. Applications No. 6780/74 and No. 6950/75, ***Cyprus vs. Turkey*** 18 Yb. Europe. Conv. Human Rights 82, at 118.

On several occasions the Human Rights Committee has made statements that suggest that under the Covenant, a state bears responsibility for the actions of its agents even outside the borders of the state.

In the Concluding Observations to the USA report in 1995, the Committee stated that "The Committee does not share the view expressed by the Government that the Covenant lacks extraterritorial reach under all circumstances. Such a view is contrary to the consistent interpretation of the Committee on this subject, that, in special circumstances, persons may fall under the subject matter jurisdiction of a State party even when outside that State's territory"[6].

In the case of an Uruguayan citizen who was arrested and ill-treated by Uruguayan security forces in Argentina before being abducted into Uruguayan territory, the Committee observed that "although the arrest and initial detention and mistreatment of Lopez Burgos allegedly took place on foreign territory the Committee is not barred (...) by virtue of article 2 (1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations." Consequently, the Committee determined that "it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory."[7]

In addition to the considerations relevant to the applicability of Covenant, daily practice in Israel is instructive; domestic Israeli courts routinely exercise jurisdiction over the activities of Israel's security forces in the Occupied Territories. Courts hear suits for civil damages for injuries caused by Israel forces. The High Court of Justice has heard petitions regarding virtually all aspects of Israeli action in the Occupied Territories.

The above discussion makes clear that Israel bears an obligation under the Covenant for its activities in the Occupied Territories, and bears a corresponding obligation to report on implementation of the rights under the Covenant with regard to the Occupied Territories. We do not intend to make up for Israel's failure to report by addressing all aspects of civil and political rights in the West Bank and Gaza Strip. Instead this report focuses on some of the most burning issues of human rights in the Occupied Territories: denial of the right to life, torture, denial of the right to liberty, restrictions on freedom of movement, discriminatory residency rights and discriminatory access to natural resources.

Right to a Remedy

Under Article 6 (Paragraphs 152-155), Israel discusses compensation for wrongful deaths by state agents. The report fails to mention a government proposed-bill, which has passed its first reading in the Israeli Parliament that would prevent Palestinians from receiving compensation for the illegal actions of the Israeli security forces. The

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[6] Concluding observation of the Human Rights committee: United States of America, 03/10/95, A/50/40, para. 284.

[7] ***Delia Saldias de Lopez on behalf of Sergio Ruben Lopez Burgos vs. Uruguay***, Number: 052/1979.

bill broadly expands the definition of "combatant activity" to include virtually all actions of the IDF in the Occupied Territories. This bill will effectively prevent thousands of people from receiving compensation for wrongful and negligent actions of the Israeli security forces, which resulted in death and injury.

By granting immunity to the State and its agents for their actions in the Occupied Territories, the bill effectively nullifies the security forces' duty of exercising caution vis-à-vis the civilian population in the Occupation Territories and denies accountability for human rights violations.

Expanding the Definition of "Combatant Activity" and the Resultant Exemption

The bill grants the state a sweeping exemption from liability, by excessively expanding the term "combatant activity."
Current tort law exempts soldiers who injured a person by gunfire or other means from liability if the soldier committed the act in the context of "combatant activity." This exemption applies even if an innocent bystander was injured, and even if the soldier acted negligently and illegally.

"Combatant activity" has been interpreted in Israeli case law as activity directly related to actual war. Israel's Supreme Court noted that only in such circumstances is "it justified to provide immunity from liability for an act, which by its nature and under normal circumstances, is an unjust act," requiring compensation to be paid to the injured person[8].

Therefore, if a soldier injures a person in circumstances that do not justify the injury, and the soldier was not acting within the narrow confines of actual war, the state must compensate the injured person. The government now seeks to turn the narrowly defined exceptional case into a sweeping rule. The proposed law redefines "combatant activity" as follows:

> Any operational activity of combating or preventing terror and any other activity to safeguard security and prevent hostile acts and insurrection, performed by the Israel Defense Forces in circumstances entailing risk of death or personal injury..."[9]

Since every activity of the security forces in the Occupied Territories is to "safeguard security," and almost always contains some risk of death or personal injury, this expanded definition effectively exempts all security forces' activities in the Occupied Territories, and contravenes Israeli case law.

Under current law, a court will not award compensation to a Palestinian injured by a soldier using legitimate force in a life threatening situation. However, a Palestinian injured as a result of negligent or criminal actions can currently sue and receive

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[8] From the opinion of Supreme Court President, Meir Shamgar, in Civ. App. 623/83, ***Levy vs. State of Israel***, PD 40(1) 477, 480

[9] section 3 of the proposed law.

damages. Under the proposed law, the State would also be exempt from compensating victims of negligent or criminal actions on the part of the security forces.

For example, in the course of a search for a wanted person conducted by Border Police in a West Bank house, an officer might mistakenly fire his weapon, injure a child and cause permanent disability. Under the proposed law, the state and the Border Police officer responsible would be exempt from compensating the injured child.

Definition of "Combatant Activity" expanded only when convenient to Israel

It is convenient to the government to define security force operations in the Occupied Territories as combatant activity for the purpose of evading compensation suits. However, the government does not intend to apply this expanded definition uniformly throughout the legal system. Was this the case, for example, Palestinians detained during such operations should be treated as prisoners of war, rather than being tried in Israeli military courts. However, the government proposes to selectively alter the application of combatant activity to apply only when it is convenient for it

Compensation: By Right or By Charity?

Under current law, the State is liable for all injuries its security forces inflict, with very few exceptions. In future the situation will be reversed: in only a very few exceptional cases will the State be held liable for injuries its forces inflict.
The proposed law stipulates that a court *may* grant compensation in special humanitarian cases. Thus, this law will change the nature of compensation from a *right* to an act of *charity*. Insofar as possible compensation is intended not only — to reverse the damage inflicted, but also as a means of holding state agents accountable for their actions. By making compensation a humanitarian gesture rather than a right, the proposed law removes the element of accountability.

Retroactive Application of the Law

The law applies retroactively to injuries suffered before the law enters into force. The law even cancels damage suits which have already been filed, including those in which the hearing has concluded, all evidence has been presented and the sides are awaiting judgment. Retroactive denial of basic rights damages the integrity of the judicial system.

Double Punishment

Another provision of the proposed law enables the court to deny compensation to an injured person previously convicted of "serious terrorist activity." Even where there is no relation between the crime and the injury, a convicted person would be punished again by being denied his or her right to compensation.

A basic principle of penal law stipulates that a person shall not be punished more than once for the same act.

Prejudicial Statute of Limitation

Under existing Israeli law, a damage suit may be filed up to seven years from the date on which the event leading to damages occurred. The proposed law limits the period to one year from the date of damage. This limitation clearly discriminates against persons injured in the Occupied Territories.

Furthermore, the extreme limitation is unrealistic in the context of injuries caused by security forces. The reasons for this are related not to the injured party, but rather to the state. The circumstances in which the security forces caused the injuries, on which the claim must be based, are known by the security forces. The plaintiff needs the findings of the official investigation of the incident to prepare the complaint. However, these investigations take many months. By the time a decision is made as to whether to indict or initiate disciplinary proceedings against a member of the security forces, months and sometimes years pass. The result is unacceptable: delay in conducting investigations into illegal actions, or in charging and trying soldiers involved, will exempt the state from paying compensation.

Reversal of the Burden of Proof

The proposed law abolishes a well-established principle of tort law: where it is shown that the injury was caused by something in the possession of the defendant, the burden of proof is transferred to the defendant. The proposed law establishes a new rule by which the burden of proof cannot be transferred to the defendant, even when the case depends on facts that the plaintiff has no way of knowing: such as the type of weapon from which the bullet was fired, the instructions and training given to the relevant soldiers, and so forth.

Rationale for the Law

In the explanatory notes, the law's proponents argue that the State encounters special evidentiary difficulties in preparing its defense in civil suits relating to security force actions in the Occupied Territories. However, these difficulties stem solely from the State's systematic disregard of its duty to promptly investigate injuries to Palestinians. In many instances, the Police and the Military Police failed to initiate investigations into events in which Palestinians were injured. Although IDF regulations mandate an investigation into every case of death, these investigations were not always conducted. Investigations which were conducted were often characterized by negligence and superficiality, and generally ended with a whitewashing of events rather than exposure of the truth. The State cannot use its past failures as an excuse to evade responsibility to compensate victims.

The explanatory notes to the proposed law point to one legislative purpose: to save state funds. The State's desire to save money cannot justify violation of the fundamental rights to security of person and bodily integrity, property, equality of treatment and equal access to the courts.

Citizenship and Residency (Paragraphs 47-52)

Preface

In its comments to Article 2 (Paragraphs 47-52) the State surveys the ways in which citizenship may be acquired or lost. The matter of residency is surveyed in the State's report principally in the chapter that deals with freedom of movement (Article 12, Paragraphs 328-334). As will be explained below, there is a strong relationship between the method of acquiring citizenship and the receipt of permanent or temporary residence visas, and therefore we will combine our comments on the State's report with regard to these two subjects. Implications of this situation on the right to protection of the family will be presented under our comments to Article 23 of the convention.

Acquisition of Citizenship and Residency

The legal system that regulates acquisition of citizenship and residency in Israel is a complex and unique one. The main–and almost the only–avenue by which citizenship or a temporary or permanent residence visa can be acquired (permanent residency or temporary residency) is by meeting the criteria set out in the Law of Return. According to principles of the Law of Return, every Jew, his or her spouse, and the child or grandchild of a Jew, is eligible to receive Israeli citizenship automatically. (In addition, they are eligible for financial assistance for their absorption into Israeli society.)

The State's report (Paragraph 48) says: "The main difference between Jews and non-Jews in this regard relates to foreign nationals residing abroad who wish to come to Israel and become citizens."

The State repeats this statement at other points in the report (see, for example, Paragraph 708 of Article 26). Clearly this is the direct implication of the Law of Return. However, this not at all the sole implication of the Law, as will be explained below.

The Law distinguishes between the legal status of Jews and non-Jews in Israel. Moreover, whereas the State pursues a clear policy of encouraging and easing the acquisition of citizenship by Jews as much as possible, and of making it difficult for them to lose it, the opposite is true in the case of non-Jews. The policy of the Ministry of the Interior is to make the acquisition of citizenship of non-Jews as difficult as possible, bring about their loss of citizenship, whenever possible. This is the case with regard to non-Jews in general, and to Arabs in particular.

The State adds that: "In any case, the *manner* in which persons become Israeli citizens does not affect in any way the scope of their rights and privileges deriving from citizenship."

This fact is correct. However, the very possibility of becoming a citizen or of obtaining a visa for permanent residency or temporary residency depends on the question of whether the individual in question meets the criteria of the Law of Return, or not. Apart from the instructions in the Law of Return, which grant Jews and their relevant family members the automatic right to immigrate to Israel, there in no provision in Israeli law regarding rights to the acquisition of citizenship, or rights to receive permanent or temporary residency in Israel, even in cases of family unification, such as marriage to a non-Jewish spouse[10].

In Paragraph 59, the State explains the criteria for naturalization and argues that these criteria are based on criteria accepted in more than 100 countries. It is worth emphasizing that, in any case these criteria do not grant, the right of naturalization, but only set out conditions without which citizenship will not be granted. The State neglects to point out that cases of the acquisition of citizenship by naturalization are

[10] The principal exception is the right of a minor whose parents are citizens or were naturalized to become naturalized. There are other marginal exceptions – such as for persons who served in the military, etc.

extremely rare, and that the clear policy of the State is to permit the acquisition of citizenship by Jews others eligible under the Law of Return (family members of Jews, under certain conditions). This policy extends also to spouses of citizens, who received permits for permanent residency only after very many years in Israel. (In this matter, see our comments on Article 23.)

Loss of Citizenship (Paragraph 53)

The State refers to the circumstances, under Article 11 of the Law of Citizenship of 5712-1952, which lead to loss of citizenship by a citizen of Israel, voluntarily or involuntarily. These criteria are applied in a discriminatory manner between Jews and non-Jews (especially non-Jews who came to Israel under the provisions of the Law of Return, and Arabs).

There is a substantial difference between the loss of citizenship by a Jew and the loss of citizenship by an Arab. Jews, as we have stated, can acquire citizenship **automatically** by virtue of the Law of Return, and accordingly, their loss of citizenship is reversible and has no serious implications for them. For non-Jews, on the other hand, loss of citizenship is in almost cases irreversible. Non-Jews do not have the legal right to become citizens or residents, and as a matter of policy, their chances of re-acquiring citizenship or residency are extremely slim.

Although the report states that an Israeli citizen may give up his citizenship in certain circumstances, it should be noted that, apart from certain special circumstances, the agreement of the Minster of the Interior is required for this, and to the best of our knowledge, this agreement is given only in rare cases.

On the other hand, in certain cases, the State uses the mechanism for relinquishing citizenship in order to bring about the loss of citizenship of Arab citizens. In this respect the harshest policy known to us regards the loss of citizenship by Israeli Arab women who marry residents of the Occupied Territories.

Forced "Relinquishment" of Citizenship – Arab Citizens

Marriages between Israeli Arabs and residents of the territories are common. According to custom in Arab society, the woman generally goes to live in her husband's place of residence, and thus when Israeli Arab women marry residents of the territories, they often go to live there. As a condition of receiving a residency permit for territories, which is essential for daily life and for receiving a variety of services, the State routinely requires these women to sign a form whereby they request to relinquish their citizenship, generally without their understanding its implications, and sometimes when they are still minors.

Through this procedure these women, by and large, become stateless. Such women who were widowed or divorced from their husbands and wanted to return to live in Israel, had their requests are denied, as were the requests on the part of their families to reinstate their citizenship, or at least grant them a permanent residency permit. An appeal, is pending that was submitted by the Association for Citizens Rights in Israel

in the name of seven such women. They had returned with their children to live with their families in Israel, after having been divorced or widowed, with nowhere else to go. These women are living in Israel as refugees in their homeland, expecting deportation if discovered, are not allowed to work, they and their children are ineligible for medical insurance or national social security insurance, and their children are not eligible for education services[11].

In our estimation the number of female Israeli citizens who lost their citizenship as a result of this policy is in the thousands. It should be noted that over 100,000 Jewish citizens of Israel live in the territories, in the Jewish settlements, and no step has ever been taken that would cause them to lose their Israeli citizenship. It is clear, therefore, that this policy is based on the fact that the women are Arabs, and on the State's intention that such women lose their citizenship.

Another example of irreversibility of loss of citizenship is that of an Arab citizen who studied in Germany and wished to acquire German citizenship by relinquishing his Israeli citizenship. He applied to the Israeli embassy in Bonn where it was promised him, in writing, that when he wished to return to Israel he would get his Israeli citizenship back. In view of this promise, he asked to relinquish his citizenship. However, when he returned to Israel, not only was his citizenship not restored, but for a long time the Ministry of the Interior did not even agree to give him a permanent residency permit. Only after application to the Association for Civil Rights in Israel, and after a Member of Knesset posed a question to the Minster of the Interior on the matter, was he, "exceptionally", given permanent residence status "because of the letter he was mistakenly given by the Israeli Consul" (and this, too, only a number of months later, after the matter was publicized in the media). The individual's citizenship was not restored to him. It is clear that if he had been a Jewish citizen, then he would automatically have been eligible for citizenship.

This case, too, shows the severe discriminatory practices by the State in all that concerns the citizenship of non-Jews. See also our comments below (to Paragraph 332) with regard to loss of residency status by residents of East Jerusalem.

Loss of Citizenship Due to Entry to an Enemy State

As the State notes, a citizen is liable to lose his citizenship if he leaves Israel illegally for an enemy state[12]. The State notes that revocation of citizenship for this reason is no longer practiced[13]. This statement, at the very least, is inexact. Just last month a case was handled which demonstrates the gross injustice that has resulted from this article in the past.

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[11] High Court of Justice 2271/98 ***'Abad et. al. vs. the Minister of the Interior***, pending.

[12] One of the states noted in the Law for the Prevention of Infiltration (Transgressions and Judgement) 5714-1954. According to the law, these states include Lebanon, Syria, Egypt, Jordan, Saudi Arabia, Iraq and Yemen and also any part of the mandatory Land of Israel that is not a part of Israel.

[13] In another place in the report (Article 13, Paragraph 344) it is stated that this article has not been applied in the last 5 or 6 years.

Ahmad 'Obayid, an Arab citizen of Israel who was born and has lived in Israel his entire life, discovered to his amazement when he applied to the National Insurance Institute in some matter, that his citizenship is not listed in the population registry and that the State authorities regard him as someone who is neither a citizen nor a resident. A few years ago, when he applied to the Ministry of the Interior in some matter, his identity card was taken from him without explanation. When it was not returned, he was told that the delay was caused because "he had been in Jordan." Although he said that he had never been in Jordan, the Ministry of the Interior refused to return his identity card to him and only after the Association for Civil Rights intervened, was his identity card returned.

Recently, when it became clear to him that in the eyes of the State he is not a citizen, he tried to find out the reason for this. The authorities again claimed that his citizenship was revoked a few years earlier "because he had been in Jordan." This occurred without his ever receiving formal notice of the decision to revoke his citizenship, without due process, and without being granted the right to a hearing. After the Association for Civil Rights announced its intention to appeal to the High Court of Justice, the Ministry of the Interior announced that: "The circumstances related to this matter since the beginning of the nineties are not entirely clear and therefore his citizenship would be registered in the population registry." To date, Mr. 'Obayid's identity card has yet to be returned to him.

Even if the law, as a matter of policy, is not applied today, (this, it may be assumed, due to the fact that some of countries mentioned in the law are no longer enemies, namely Jordan and Egypt), it should be noted that the sole purpose of the law and its result has been the revocation of citizenship from Arab citizens. Those persons who are liable to leave illegally for one of these countries are Israeli Arab citizens who have relatives or social, cultural or financial ties in these countries. While prosecution for illegal departure to an enemy country might be justified, there is no justification for revoking the citizenship of someone who has done so[14]. The very fact of this law's existence and every use made of it is unjustified discrimination.

Loss of Citizenship for Furnishing False Information

An additional circumstance for loss of citizenship the State notes is the case in which the acquisition of citizenship was based on provision of false information. This problem exists primarily in the case of those who received the status of *oleh* (Jewish immigrant) by virtue of the Law of Return, based on documents that attest to their being Jewish. We know of many cases, in which people were suddenly required to leave the country within 14 days, often many years after they settled in the country,

[14] The State notes that use has never been made of the article of the law that enables revocation of Israeli citizenship "of a person who has committed an act in which there is a violation of allegiance to the State of Israel." That is, the citizenship would not be revoked from a person who, for instance, was convicted of aggravated treason (and rightly so). However, as opposed to this, citizenship has been taken from persons who departed illegally, in general, it may be assumed, without malicious intentions and in innocent circumstances.

after the Ministry of the Interior reached the conclusion, apparently, that they had furnished false information or relied on counterfeit documents to obtain their immigrant status. This procedure is frequently put into practice when a person appears at a Ministry of Interior bureau in order to obtain some service.

Revocation of citizenship on the basis of a claim that false information was provided is impaired with regard to due process. In at least some of the cases it involves automatic rejection of particular documents which were issued in Russia after 1991. No reason is given to the citizens whose citizenship is revoked, except for receipt of a standard letter which states that the Ministry of the Interior has reached the conclusion that the person in question had not been eligible to receive an *oleh* visa and Israeli citizenship, and that these had been given on the basis of counterfeit documents or false information (no additional detail is given) and accordingly citizenship is revoked. No opportunity is given to counter the State's claims, nor is any opportunity given to inspect the documents that are in the possession of the Ministry of the Interior. In the matter of revocation of citizenship, see also our comments on Article 14, Paragraph 338.

The State notes in Paragraph 52, that the spouse of an Israeli citizen may obtain citizenship through naturalization, even if he or she does not meet the legal requirements for citizenship. In order to set the record straight, we would like to clarify that the law does not grant this exemption, but rather the Minister of the Interior has discretionary power to grant such an exemption to the spouse of an Israeli citizen. In practice, in the case of a non-Jewish spouse (when the Law of Return does not apply) in many cases not only does the Minister of the Interior not grant the exemption, but such spouses find it very difficult even to receive the status of permanent resident. In this matter, see our comments on Article 23.

Residency (Article 12, Paragraphs 328-334)

There is in Israeli law no right to receive the status of residency – permanent or temporary – in any circumstances, apart from circumstances in which there is the right of citizenship as reviewed above. As the State notes in its report, a person who is legally eligible for an *oleh* document is eligible to receive permanent residency or temporary residency. That is, he is automatically eligible for residency, according to his choice.

The State notes (Paragraph 332) that permanent residency is given at the discretion of the Minster of the Interior. It is similarly noted by the State that: "Permanent resident status may also be granted in cases of family reunification and on other humanitarian grounds."

In reality, the declared policy of the Ministry of the Interior is that it does not as a rule grant permanent residency or temporary residency, except in the rarest of cases. In every respect to this domain, in which the Ministry of the Interior exercises an

extremely harsh policy which causes serious damage to the right to protection of the family – see our comments on Article 23.

Provision of Explanations and Due Process

The statement in the report (Paragraph 332) that the minister usually explains his decisions, but is not required to do so by law, is very far from the truth. Based on dozens of cases that have been handled by the Association, we can safely state that almost never is a reason for denial of an application provided, and in those isolated cases in which the decision is explained, the explanation is laconic. Thus, for example, in the case, described above, of Arab women who lost their citizenship, when they requested permanent residency permits, they received the reply that their application was denied because they had relinquished their citizenship.)

Recently there was an attempt in the Knesset to pass a law that would oblige the Ministry of the Interior, like all other government ministries, to explain its decisions. In the discussion that was held in the Knesset on 17.6.98, the Minister of the Interior expressed his firm opposition to amending the law, and enlisted opposition that defeated the proposed law. In his speech before the vote, the minister said, "Today you let them enter with a tourist visa, tomorrow you have to explain your answers to all the odd requests they submit to you. In the end, you are forced to agree that they stay here. In this way all kinds of criminals and terrorists will also enter the country[15]."

Moreover, no other government ministry is so flagrant in its disregard of due process and in the absence of elementary fairness in its treatment of citizens, as is the Ministry of the Interior. As a matter of policy this ministry does not respond to requests and applications, whether good or bad, for months and even years. In this respect, the Ministry of the Interior's disregard of those who apply to it is so severe, that even the State Comptroller complained that the Ministry of the Interior does not reply to her requests.

Residency in East Jerusalem

The Legal Status of Palestinian Residents of East Jerusalem

Some 170,000 Palestinians holding Israeli identity cards reside in East Jerusalem. Since December 1995 Israel's Interior Ministry has been revoking the residency rights of Palestinians in East Jerusalem who at some stage of their lives lived outside the municipal boundaries. Consequently, numerous Palestinians have been required to leave their homes and families.

[15] According to the Saturday Supplement of the *Haaretz* newspaper, 26.6.98.

Following the Six-Day War, in contravention of international law, Israel annexed East Jerusalem, an area of 70 km^2, and applied Israeli law in the annexed territory. Immediately after the war, Israel conducted a census in East Jerusalem and granted the status of permanent resident to every resident of East Jerusalem who was present at the time of the census. Israel also declared that residents of East Jerusalem could receive Israeli citizenship upon request, but for political reasons, most East Jerusalem Palestinians have not requested citizenship.

Israel's Supreme Court held that the Entry into Israel Law applies in determining the status of Palestinian residents in East Jerusalem, and that the identity card issued to them is comparable to the permit to permanently reside in Israel granted under that law. The Court also held that when a permanent resident settles outside Israel, the permanent residency status expires.

In applying the Entry into Israel Law to residents of East Jerusalem, Israel relates to them as immigrants, despite the fact that the families involved have lived in that area continuously, and it was Israel who entered the area, and not vice versa.

The regulations stipulate that a person is considered to have settled outside Israel if he or she remained abroad for more than seven years, received a permit to permanently reside in another State, or became a citizen of another State. The Supreme Court held that residency may also be revoked if other facts indicate that the individual settled outside of Israel, even where the period of residency outside Israel was less than seven years.

The legal status, described above, reflects only a small part of the picture. The Interior Ministry uses unwritten criteria and unclear procedures in revoking residency status. Human rights organizations and attorneys have failed in their attempts to determine the applicable criteria and procedures. The Ministry refuses to publish its criteria for revoking residency permits.

Quiet Deportation of East Jerusalem Residents

In the past, East Jerusalem Palestinians living outside the city borders customarily went to the Interior Ministry's office in Jerusalem to renew their exit permits, thereby restarting the seven-year counting period. The Interior Ministry's policy had been that only a continuous seven-year stay outside of Jerusalem would result in the loss of the right of residency.

In the past few years, however, Israel changed its policy retroactively, and those who have not lived within the Jerusalem Municipality continuously, may lose their right to live in the city, even if they lived outside the city for less than seven years and even if they did not become permanent residents or citizens of another country.

Persons who require the services of the Interior Ministry in a variety of matters, such as replacing an identity card, registering a child, or receiving an identity card for the first time at age 16, are required to provide documentary proof that they live in Jerusalem continuously. This requirement is excessive and unduly severe. Those

unable to provide suitable documentation proving that they have lived in Jerusalem for a considerable (unspecified) number of years continuously are liable to receive a notice that their permanent residency permit has expired[16]. They must then return their identity cards and leave Israel within 15 days. Other family members (children and spouse) whose residency rights depended on the person are also expelled.

Although persons whose residency is revoked are seemingly given a right of appeal, this procedure is carried out in patent violation of the principals of due process: the body considering the appeal is the same body that revoked the residency permit, the documents on the basis of which residency was revoked are not presented, and when the appeal is denied the reasons for denial are not given. As far as we know most appeals are rejected, or requests to appeal are denied.

Israel's residency policy blatantly discriminates between Palestinian residents of East Jerusalem and Israeli citizens. Israeli citizens can leave the country for as long as they like, and always have the right to return. Moving to settlements in the Occupied Territories does not prejudice these rights. Because of the special status of settlements, even foreigners who have permanent residency can move to a settlement without prejudicing their rights. However, Palestinian residents of East Jerusalem who move to the West Bank lose their residency status.

The requirement of proving residency applies equally both to Palestinians who have been living in, for example, the United States, and to those who have been living in the A-Ram neighborhood, which lies only a few kilometers from Jerusalem's municipal borders.

Since the Interior Ministry does not publish its criteria for revoking residency status, East Jerusalem's Palestinians are uncertain about their status. Consequently, many do not utilize services of the Interior Ministry, fearing that their residency in Jerusalem will be questioned and their entitlement to an Israeli identity card will be denied
This quiet deportation is a direct continuation of Israel's overall policy in East Jerusalem since 1967, whose goal is to reduce the number of Palestinians living in the city, and to create a demographic and geographic reality that will preempt any future attempt to challenge Israeli sovereignty in East Jerusalem. This policy contained several measures that left many Palestinians who wanted to remain in Jerusalem with no alternative other than to leave the city:

1. Israel has greatly restricted Palestinians in residential construction, Families who wished to improve their housing are forced to leave, and those who remain face overcrowding due to the serious housing shortage.

2. Prior to 1994, Israel rejected requests for family unification submitted by Jerusalem Palestinian women on behalf of their spouses who are not residents of Jerusalem. The Israeli policy compelled these women to leave the city in order to live with their husbands.

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[16] Amongst other requirements, they are asked to show documents from the wedding day onwards (even if it was many years ago), including rental contracts, water and electricity bills, proof of having received payments from the National Insurance Institute, and more.

Loss of Jerusalem residency status has significant implications. In the first place, residents of East Jerusalem are not subject to the military government, as are residents of the rest of the Occupied Territories.

Secondly, social rights (including the right to National Insurance payments and the right to health insurance) of residents and their dependents are canceled; Finally, their freedom of movement is limited – a non-resident cannot enter Israel and stay there, and of course cannot continue to earn his or her living at a workplace inside Israel.

Like the Ministry of the Interior, the National Insurance Institute also has a policy of re-examining the status of residents of East Jerusalem who apply to it for various reasons. These examinations are conducted with gross invasions of the privacy of residents and violations of their human dignity, and without any honest attempt at arriving at the truth. Here are two cases that were brought before courts in the last year.

In the first case, an appeal was filed with the High Court of Justice against the National Insurance Institute's policy of opening a residency examination for every woman who applies to receive the childbirth grant, a time-consuming examination during which the woman is not entitled to receive the childbirth grant. Three NGO's[17] appealed to the High Court of Justice in the name of a resident of East Jerusalem who had given birth, requesting that the National Insurance Institute pay the childbirth grant and hospitalization costs of every woman who gives birth and presents an Israeli identity card.

In a discussion in the High Court of Justice on 11.1.98, an interim arrangement was arrived at, according to which in cases where both spouses are residents of Jerusalem the childbirth grant will be given immediately. In cases in which only one of the spouses is a resident, an examination of residency will take place, but if the couple gives notice of the pregnancy at the end of the third month, then even if the examination has not finished by the time of the birth, the childbirth grant will be paid. The period of validity and means of implementing this arrangement will be examined and further procedures will be determined accordingly[18].

In a similar matter, a suit was filed with the Labor Court in the name of 11 children who were born in the last three years in East Jerusalem whose right to medical insurance was revoked. When the parents applied to the National Insurance Institute after the birth to receive medical insurance for their children, a long and detailed investigation was automatically begun with regard to the residency of the applicants. As long as the investigation was not terminated, health services were withheld from the children.

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[17] The Association for Civil Rights in Israel, Hamoked - The center for the Defense of the Individual, and the Organization of Physicians for Human Rights.

[18] High Court of Justice 6565/97 ***Hamoked - The center for the Defense of the Individual et. al. vs. The Ministry of Health et. al.*** pending.

After the suit was filed, the National Insurance Institute announced that it would recognize the residency of 9 of the children and the investigation of the two others has not yet ended. At this stage the court is unable to discuss the principles of the claim; i.e. that there is no place to investigate indiscriminately everyone who applies to the Institute, and also that until the investigation is terminated no rights be revoked[19]

Appeals that have been submitted to the High Court in the matter of the practice of revoking the residency of East Jerusalem Palestinians have been denied. An appeal in principle has recently been filed with the High Court of Justice against the Ministry of the Interior's policy in this matter, but the court has not yet discussed it[20].

[19] Labor 1591/98 ***Ahmad Faras Hadad et. al. vs. The National Insurance Institute et. al***. in the regional Labor Court at Jerusalem, pending.

[20] High Court of Justice 2227/98 The Defense of the Individual Focus *et. al. vs.* the Minister of the Interior.

Article 3: Equal Rights for Women and Men[21]

In this section we will refer briefly to some of the problematic issues and questions which arise from the State's report. This section is not an overall review of equality of the sexes in Israel. For a wider discussion see the shadow reports which were submitted to CEDAW.[22] See also relevant references in this report under paragraphs 8 (Trafficking in women), 18, 23, 26 and 27 (Beduin women).

Representation of Women in Religious Bodies (Paragraph 68)

In the religious courts in Israel, only men serve as judges (*dayanim* in the Jewish courts, *qadis* in the Islamic courts, and priests in the courts of the Christian denominations; for convenience we shall refer to all the functionaries as "religious judges"). This has grave ramifications for the status of women involved in litigation in these courts. The religious judges usually have no secular legal training. In the rabbinical courts many of the judges come from the ultra-Orthodox world and are detached from modern life. Consequently, the belief system of many religious judges is not receptive to modern secular lifestyles and does not accept the many changes that have occurred to the status of women in Israel and around the world in recent years. The judges in most religious courts hold conservative views on the role of women in the home and in the family. For example, women who develop independent careers may be considered unfit to have custody of their children, or violence against women by their partners may not be considered grounds for divorce. Some rabbinical courts decline to use the legal tools they have been granted by law to assist women whose husbands will not grant them a divorce. The Islamic courts award particularly low alimony. (See also our comments to Article 23: Protecting the Family).

Non-Governmental Organizations (Paragraph 75)

The description of non-governmental women's organizations is inadequate. No mention is made of grassroots women's organizations that assist and treat women who have been the victims of violence in the family and of sexual violence: these include the assistance centers for the victims of sexual assault, the shelters for battered women, and the centers for preventing violence in the family. The report also fails to make any mention of Arab women's organizations.

Women in Academia (Paragraph 92)

In contrast to the figures for the number of women studying for Ph.D. degrees, one must note the low proportion of women on the senior faculties of the various

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[21] The comments in this section were prepared by the Israel Women's Network.

[22] NGO Reports submitted to the UN Committee On the Elimination of all Forms of Discrimination against Women (CEDAW) 17th session , July 1997, by the Israel Women's Network, and by the Working Group on the Status of Palestinian Women Citizens of Israel.

universities. According to 1997 figures of the Council for Higher Education, only eight percent of senior professors are women.

Women in the Civil Service (Paragraph 96)

The amendment to the Civil Service (Appointments) Law obliges the Civil Service Commission to prepare a program for achieving due representation of women at all levels. Two years after the enactment of the law, no real change can be seen in the appointment of women to positions in which they have historically been under-represented, such as in senior positions in the civil service. The Civil Service Commission has not prepared a genuine program for promoting the due representation of women, and the impression is that the various government ministries do not perceive the legal provisions as obliging them to taken any action; at best they adopt the narrow interpretation that it is only the Civil Service Commission that is obliged by the law to take any proactive measures. A Supreme Court appeal relating, inter alia, to the correct interpretation of the above-mentioned provisions is currently pending.

One of the main obstacles impeding the implementation of the law is the current method of appointment. In many cases, when a senior civil service position becomes vacant the relevant government ministry is entitled to appoint a civil servant to that position without tender, as a temporary appointment pending the staffing of the position by way of tender. In tenders held at a later stage – sometimes many months later – the person who received the acting appointment has a good chance of being awarded the position. In practice this method of appointment serves to evade the possibility of any real competition among candidates through the fairer means of a tender. The actual method of appointment is often injurious to women interested in promotion to senior positions, since the appointments are made by those at the top of the pyramid – men, in the vast majority of cases – and often without considering their obligation to promote women to positions and ranks in which they are under-represented. The Civil Service Commissioner has interpreted his legal obligations in a narrow manner, restricting supervision of appointments to those made by way of tender – an interpretation that is not necessarily mandated by the law. Thus, in many cases, acting appointments serve as an almost certain vantage point from which to receive appointments through tender.

The Prime Minister's Advisor on the Status of Women (Paragraphs 97-98)

Factual inaccuracies: While it is true that Prime Minister Rabin eliminated the entire institution of Prime Ministerial advisors, shortly thereafter he appointed an Advisor on the Status of Women, Nava Arad, who began to prepare a law establishing an Authority for the Status of Women. Prime Minister Netanyahu has also appointed an Advisor on the Status of Women: Emunah Elon. A proposed law for the establishment of an Authority for the Status of Women has also been prepared.

At the United Nations Conference on the Status of Women held in Beijing in 1995, Israel signed the memorandum of action in which the signatories undertook to prepare

a national program for promoting the status of women by the end of 1996. To date, Israel has not acted to implement this undertaking.

The Authority for the Status of Women Law mentioned in the State's report was passed by the Knesset in March 1998. An important aspect of the original proposal was eliminated in the final version – namely, the establishment of a Public Ombudsperson on the Status of Women, a function intended to address complaints relating to discrimination against women in the public and private sectors. The function of Ombudsperson was eliminated from the law following fierce opposition from and political pressure by the State Ombudsperson.

As currently formulated, the proposed law fails to provide the Authority with an appropriate budget, obliging it to rely on the existing limited budget for the Office of the Advisor on the Status of Women. This budget could not possibly permit the Authority to fill all the functions and uphold the responsibilities imposed upon it in the framework of the law.

The Division for Employment and Status of Women (Paragraph 100)

The Division for Employment and the Status of Women in the Ministry of Labor and Social Affairs has failed for many years to fulfill its intended function. The division is completely inactive in the field of discrimination against women, and has taken no action to improve the status of women in Israel in the employment market. The division's work has concentrated exclusively on the field of day care centers. A number of plans prepared over the years by the division for promoting the status of women in employment have never been the subject of serious discussion. Regarding discrimination against women in employment, see also the comments on Paragraph 26: Equality in Law.

Women's Councils in the Local Authorities (Paragraph 101)

The status of Women's Councils convened under the auspices of the mayors and heads of local authorities in Israel is not established by law. Accordingly, decisions on the establishment, authority, fields of activity and budgets of these councils are under the exclusive discretion of the mayor or the municipality. This situation naturally influences the practical ability of the Women's Councils and their influence over the life of women in each city or local authority.

Impact of Marriage on Nationality (Paragraph 103)

See our comments to article 23.

Article 4: State of Emergency

Introduction

Article 4 of the Convention establishes that a state that is a party to the Convention may derogate rights when this is strictly required due to the existence of a state of emergency. As we shall explain below, the existence of a state of emergency in Israel for more than fifty years is inconsistent with Israel's obligations under the Convention, since a state of emergency is not warranted by the current reality in Israel, is not strictly required, and is used to regulate a wide range of matters only some of which relate closely to a state of emergency, many relating instead to the regulation of economic affairs. Moreover, Israel has insufficient guarantees preventing the derogation of basic rights, including the right to life and physical integrity, freedom from unjustified punishment, freedom from slavery, freedom from retroactive punishment and freedom of religion and conscience. As we shall also explain, scrutiny by the legislature of the need to declare a state of emergency does not provide an effective tool for control: in practice the Knesset does not meet its obligations in this respect.

"A State of Emergency Endangering National Life"

A declared state of emergency has existed in Israel since the establishment of the State more than fifty years ago. Such a prolonged and indiscriminate declaration is inconsistent with the provisions of Article 4 of the Convention. The State of Israel does not actually face a constant state of emergency justifying the derogation of rights as detailed in the Convention. The purpose of the derogation of rights established in Article 4 of the Convention is to address exceptional situations in which the State faces a grave and general threat to its actual existence. This refers to such cases as the danger of physical destruction of the population, a threat to the political independence and territorial integrity of the State, or the continuity of national institutions.[23]

Since its establishment, Israel has been involved in several wars which have obliged it to defend its very existence. However, during the periods between wars Israel has functioned as a normal state: there is no real danger to the existence of democratic and governmental institutions and no real danger that territorial integrity will be violated. A declaration of a state of emergency is appropriate for periods of war not exceeding a number of months; it is certainly not appropriate for extended periods of calm, lasting for decades, during which the state functions in a completely normal and routine manner.

It must be stressed that the ongoing declaration of a state of emergency poses a constant threat to human rights; a "sword of Damocles" over the heads of citizens.

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[23] See the rulings of the Human Rights Commission interpreting a similar provision included in Article 15 of the European Convention on Human Rights which interpreted a similar clause in section 15 of the European Human Rights Convention.

Thus, such a declaration exerts what amounts to a chilling effect on the actual enjoyment of rights.

Official Declaration of a State of Emergency

A state of emergency was officially declared in the State of Israel on May 19, 1948. Through 1996 this declaration was in effect. In 1996, the Basic Law: Government came into force and established that the validity of a declaration of a state of emergency shall be limited to one year. In accordance with Article 49 of the above-mentioned law, the Knesset plenum must discuss on an annual basis whether to declare a state of emergency.

It was thought that this mechanism for periodic review by the legislature of the need to declare a state of emergency would prove an effective tool; in practice, however, the Knesset seems not to have met its obligation properly. The Knesset discussions on the renewal of the state of emergency were brief and did not discuss in depth the essential need to continue to infringe basic rights, nor the factual question as to whether there is any justification for the continued existence of a state of emergency. The Knesset plenum voted by a majority to declare a state of emergency again. The main reason behind the repeated declaration of a state of emergency is that to refrain from so doing would lead to the annulment of numerous laws whose validity depends on such a declaration. Again it must be stressed that no evidence was brought forward to justify a continued state of emergency.

Prohibition of the Derogation of Vital Rights

Article 4 of the Convention prohibits the derogation of a number of vital rights, including the right to life, physical integrity, freedom from unjustified punishment and slavery, freedom from retroactive punishment and freedom of religion and conscience. The assumption is that there can be no principled justification accruing from a state of emergency for derogating these rights and that these rights are so basic that their derogation, even in a state of emergency, is unacceptable in a democratic society that respects human rights.

Contrary to the statements included in Paragraphs 111 and 118 of the State's report, Israel does not have an adequate constitutional mechanism for preventing the derogation of these fundamental rights:

1. Paragraph 118 of the State's report may create the impression that the Basic Law: Human Dignity and Liberty constitutes a complete human rights charter. The reality is that Israel does not have a constitutional human rights charter protecting these rights. Thus, for example, there is no explicit constitutional protection of the freedom of religion and conscience, the prohibition of retroactive punishment, or freedom from slavery.

2. Article 50(f) of the Basic Law: Government prohibits the derogation of the right to petition the courts, freedom from retroactive punishment or the right to human dignity. However, the list of rights in Article 4 of the Convention is not

completely synonymous with the rights articulated in the Basic Law: Government. Accordingly, the right to life and physical integrity and the freedom of religion and conscience may, de facto, be derogated.

3. The legal prohibition against the derogation of the above-mentioned rights relates only to the emergency regulations and not to other laws relating to a state of emergency. Thus, for example, there is no constitutional obstacle in Israel to the derogation of the right to appeal to the courts in the Defense Regulations (State of Emergency) or in other arrangements for a state of emergency.

4. There is a contradiction between the derogation of rights in a state of emergency, as established in Article 50(f) of the Basic Law: Government, and the restrictive article relating to emergency regulations established in Article 12 of the Basic Law: Human Dignity and Liberty. The latter provision also permits infringement of the right to life, physical integrity and human dignity through the emergency regulations.

In addition to the fact that the constitutional framework does not guarantee on the normative level rights that may not be derogated, reality shows that the right to physical integrity and the right to human dignity are actually infringed on a routine basis due to the use of torture in Israel. It has been estimated that the General Security Service tortures approximately 85% of the 1,000 - 1,5000 Palestinians it interrogates each year.[24] Thus Israel contravenes Article 4 of the Convention.

"Measures… Strictly Required"

The State of Israel has used the existence of a declared state of emergency to regulate a wide range of fields, some of which relate closely to a state of emergency while many others relate to economic and financial affairs. **The broad application of means taken on the strength of a declared state of emergency (as detailed in the State's report) testifies to the absence of any strict requirement for the presence of these means.** It would seem that the use of emergency measures is not limited to meeting any real security or existential need, but, rather, provides a convenient vessel for applying extensive powers granted to various arms of the Executive branch.

We shall discuss briefly three of the main sources of authority relating to the infringement of rights guaranteed by the Convention in a state of emergency:

The Defense Regulations (State of Emergency) (Paragraph 108)

The State's report glosses over the draconian provisions of the Defense Regulations (State of Emergency), confining its comments to a single paragraph (Paragraph 108). The report offers no explanation as to why Israel believes it is justified to maintain these provisions fifty years after the State's establishment.

[24] See below our comments to article 7.

Despite the name, the Defense Regulations (State of Emergency) are not regulations, but legal provisions for all purposes enacted during the British Mandate in Palestine in response to the state of emergency that applied during the Second World War. These provisions are still valid under Israeli law; once again, their name is misleading in that their applicability is not conditioned on the declaration of a state of emergency.

These provisions derogate basic rights, ostensibly due to the state of emergency, are not subject to any mechanism for controlling their continued implementation and cannot be challenged through judicial review, since the Basic Law: Human Dignity and Liberty cannot be used to annul laws adopted prior to 1992. Thus, it can be seen that internal constitutional law in Israel does not provide legal protection against these provisions.

The provisions established in the Defense Regulations (State of Emergency) constitute a severe infringement of rights protected in the Convention, including freedom of expression, freedom of association, the right to property and freedom of movement. They also grant military commanders and civil servants sweeping discretionary powers to infringe rights.[25] The regulations have served as the basis for the establishment of military courts which may also try civilians accused of infringing the provisions of the regulations.

There is no time limit on the validity of orders issued in accordance with the regulations and orders issued in accordance with the regulations may be exempted from publication.[26] The fact that the authority to issue orders which amount to severe infringements of human rights is granted to military personnel and civil servants rather than to the government and elected public representatives, is grounds for the grave suspicion that this is an improper use of derogative powers to restrict human rights.

The establishment in the Defense Regulations of such sweeping provisions is inconsistent with the obligation in accordance with Article 4 of the Covenant to take only those steps **strictly required** in an emergency situation. Strict requirement demands that less drastic measures be taken to achieve the goal. Accordingly, serious scrutiny of the application of derogative authority is required, particularly given the strength of the infringement of basic rights. The fact that the validity of these regulations is not conditioned on the existence of a state of emergency is also inconsistent with the conditions of the Covenant.

Emergency Regulations (Paragraphs 112-118)

Although the authority to enact emergency regulations is conditioned on the existence of a declared state of emergency, in practice these regulations have been exploited to regulate a wide range of issues not directly related to a security emergency. As

[25] Thus, for example, Regulation 94 prohibits the publication of a newspaper without a permit from the district head of the Ministry of the Interior, while Regulation 94(2) grants the district head extreme and far-reaching powers not to issue such a license "as he shall see fit and without offering any explanation."

[26] Regulation 2(2) of the Defense Regulations (State of Emergency), 1945.

reflected in the State's report (paragraph 115), issues regulated by these regulations range from the transportation of bread through the quantities of water allocated to the agricultural sector. Another example is the 1957 Supervision of Products and Services Act, the validity of which is conditioned on the existence of a declared state of emergency. This law grants the executive authorities sweeping powers to regulate a wide range of matters in the economic sphere.

The main normative characteristic of these emergency regulations is their ability to overturn express legislation of the elected legislature for a period of three months. The danger inherent in these regulations is that the executive may use them to address problems that should rightly be the purview of the elected legislature.

A glaring example of the sweeping use made by the State of the authority to enact emergency regulations relates to the restriction of the right to strike. Emergency regulations are enacted on an almost routine basis whenever there is a threat of a general strike. In the winter of 1997, for example, the Israeli government enacted emergency regulations severely restricting the right to strike of all public sector employees. The government did so in an indiscriminate manner and without making any distinction between more vital and less vital spheres of the public sector. Only after widespread public criticism did the government decide to annul the regulations before three months had passed.

Even if some form of connection may be claimed between the subject of regulation and the state of emergency, it is extremely doubtful whether these regulations are "strictly required" in accordance with Article 4 of the Covenant. Economic issues should usually be arranged through the normal legislative channels, not by an indiscriminate use of a declared state of emergency.

Administrative Detention (Paragraphs 119-123)

Israel's report only addresses administrative detention carried out according to internal Israeli law. There is no mention of the Military Orders allowing administrative detention in the West Bank and Gaza Strip, nor the practice of administrative detention in the Occupied Territories. Israel presents two examples of its use of administrative detention. Both concern the detention of extremist Jews. In fact, nine of the eleven administrative detention orders issued in these circumstances were issued according to the West Bank military order, whose existence Israel does not mention. Only two were issued according to the Israeli law described in the report.

In fact, the vast majority of administrative detention orders (well over 99%) are carried out according to the Military Orders, which are not dependent on a declaration of a state of emergency.

Israel has been in a declared state of emergency since its founding. Even if we accept the existence of a state of emergency as defined by the Covenant, Article 4 does not grant unlimited power to derogate from certain obligations of the Covenant. Even in times of emergency, basic human rights must be protected to the fullest extent possible. Derogations are subject to the principles of necessity and proportionality,

i.e., only measures which are essential may be taken, and even these may only be applied "to the extent strictly required by the exigencies of the situation."

Israel's use of administrative detention does not conform to these requirements. Israel makes sweeping use of its power to detain administratively, holding large numbers of Palestinians and Lebanese for prolonged periods of time.

A complete discussion of administrative detention is included under article 9. We shall confine ourselves here to a brief review of the imposition of administrative detention on the strength of emergency powers. It should be noted that the State of Israel has declared that insofar as the steps it takes are inconsistent with the prohibition against arbitrary arrest established in Article 9 of the Convention, it derogates this right.[27]

The validity of the Emergency Powers (Detention) Law, 1979 is conditioned on the existence of a declared state of emergency. While the enactment of this law eased some of the problems that had previously emerged when this subject was regulated by the Defense Regulations (State of Emergency), this provision constitutes one of the severest infringements of human rights in the context of the state of emergency.[28]

It is clear that the derogation of a person's individual liberty without a fair trial is a grave infringement of human rights. It should be noted that the Supreme Court has interpreted the provision of Article 2(b) of the law as permitting arrest for an unlimited period for as long as continued arrest is justified in terms of state security.[29] It is also evident that the inability to carry out an effective counter-investigation and review of the evidence forming the basis of the arrest is an unacceptable infringement except in the presence of strict requirements in a state of emergency, and should not be condoned in a routine situation.

Conclusion

Paragraph 123 of the State's report notes that "as a matter of political reality, Israel's need for formal state of emergency will abate when it succeeds in concluding and implementing formal arrangements in the region." This claim is contrary to the spirit and letter of Article 4 of the Covenant. Israel's international legal obligation is to take steps to derogate rights only when these are objectively and strictly required. The aspiration should be to reduce cases of the derogation of rights to the narrowest possible circumstances. The cessation of the derogation of rights cannot be conditioned on progress in the political and international arena. The fact that a state of emergency enabling the derogation of basic rights has existed in Israel for over fifty

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[27] See the Declaration of the State of Israel dated October 3, 1991: "In so far as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligation under that provision."

[28] It should be noted that the State of Israel has declared that insofar as the steps it takes are inconsistent with the prohibition against arbitrary arrest established in Article 9 of the Convention, it derogates this right. See the Declaration of the State of Israel dated October 3, 1991: "In so far as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligation under that provision."

[29] D.A. 2/86, ***Anonymous vs. Minister of Defense***, 41(2) P.D. 508.

years only serves to confirm the unnecessary nature of this state of emergency and the lack of a strict requirement evident in the measures noted above.

Article 6: Right to Life

The report gives extremely scant attention to the Open-Fire Regulations which govern the use of gunfire by members of the Israel Defense Forces (para. 148). Theoretically, the regulations are designed to minimize damage and injury and preserve human life. Over the past ten years, however, Israeli security force gunfire has killed 1,251 Palestinians, including 274 children under the age of 17.

According to the regulation, the use of firearms with an intent to kill is only allowed when strictly unavoidable to defend human life. The purported aim of the regulations, however, does not detract from or mitigate Israel's responsibility for deaths which have occurred. In fact, the principle reason for the large number of deaths is a deliberate policy of using lethal force against Palestinians in non-life threatening situations.

Use of excessive force during the procedure for apprehending a suspect

As stated in Israel's report, for the purpose of arresting suspects, the Open-Fire Regulations in force in the Occupied Territories only allow firing at the legs of the suspect, and this only as a last resort. In dozens of cases, B'Tselem was informed by the Israeli authorities that Palestinians were killed after soldiers executed the "procedure for apprehending a suspect". These were not life threatening situations. In many cases no legal measures were taken against the soldiers responsible. Even in those cases where soldiers are tried, they are often convicted of lesser offences and sentences are extremely lenient.

For example: on 16 October 1994, **'Emad Yusuf Muhammad al-Adarbeh**, 22, was killed by IDF gunfire near the city of Halhoul. Testimonies given to B'Tselem's researcher indicate that 'Emad and four others were digging in the area, searching for antiquities. The soldiers arrived at the site and ran after them, while firing in bursts of gunfire in all directions. According to the testimonies, the soldiers did not call out to them to stop. As a result of this gunfire, 'Emad was killed.

Both the official statement of the IDF spokesperson and B'Tselem's testimonies clearly indicate that in this case as well, the open-fire regulations were violated. The procedure for arresting a suspect can be employed only against persons suspected of committing a dangerous crime, a definition which cannot be applied to stealing antiquities. The soldier was tried for causing the death of 'Emad. He was acquitted on this charge, but convicted of unlawful use of firearms. He was sentenced to a probationary sentence of two months' imprisonment for a period of two years. The security forces had the option of refraining from shooting at the risk of failing to arrest a suspect – primarily stone throwers. The security forces often preferred shooting, at the risk of causing deaths and injuries in order to ensure that suspects did not escape

Killing of children

The open-fire regulations prohibit the use of firearms against children. Yet, as stated above, 274 children, 70 under the age of 12, have been shot and killed by Israeli security forces operating according to these regulations. Yet, in many cases those responsible were not brought to justice.

For example, **Sami a-Najar**, 15, was killed on 15 February 1995 by IDF soldiers' gunfire in the al-Fawar refugee camp near Hebron. Testimonies given to B'Tselem indicate that a group of youngsters threw stones at Israeli vehicles traveling along the main Beesheva-Hebron road, and at a passing military jeep. One of the soldiers opened fire at the stone-throwers, who hid behind trees. Sami a-Najar stepped out into the open, was struck by a bullet fired by a soldier, and died. The soldiers left the area without giving a-Najar any medical attention.

The testimonies indicate that the soldiers were not in a life-threatening. The statement of the IDF spokesperson issued in response to this incident confirmed this; it stated only that forces fired at stone-throwers "during demonstrations and stone-throwing that had been taking place in the area." The use of live ammunition is not one of the methods for "dispersing disturbances" allowed by the open fire regulations. It seems, therefore, that the soldiers acted in violation of these regulations. In response to inquiries by B'Tselem, the Military Advocate General's Office wrote that IDF forces opened fire to arrest suspects, which is in accordance with the open fire regulations. No legal measures were taken against the soldier responsible.

Deaths Caused by Rubber-Coated Metal Bullets

The report makes no mention of the Open-Fire Regulations regarding "rubber" bullets. Unlike rubber bullets used in other parts of the world, those used by the IDF in the Occupied Territories are actually a metal pellet covered by a thin layer of rubber. The IDF Open-Fire Regulations in the Occupied Territories permit the use of this ammunition to disperse both violent and non-violent demonstrations. These Regulations prohibit the firing of rubber bullets at a range closer than 40 meters and prohibit firing rubber bullets at children.

From December 1987 until the present, at least 53 Palestinians have been killed by rubber bullets. Of these, half were children: 11 were children under the age of 13 and 15 were children between the ages 13-16. In the past year alone, IDF soldiers have killed six Palestinians with rubber bullets. Of these, five were children 16 and under.

Eight-year old 'Ali Muhammad Jawarish was struck in the forehead by a rubber bullet on November 11, 1997 and died of his wounds four days later. Following his death, a military source was quoted in the media as saying, "it's sad when a child dies, and difficult to say, but he was killed according to the orders." Four months later, twelve-year old Samer Karame was killed under similar circumstances.

Given these statistics, rubber bullets can no longer be considered a legitimate tool to disperse demonstrations. Instead they are a lethal form of ammunition. The IDF must cease the use of rubber bullets to disperse demonstrations.

Military Whitewash and Lack of Accountability

The IDF Spokesperson's Office issues an announcement in death cases of Palestinians. These responses tend to automatically justify the actions of the soldiers responsible. In both of the recent cases in which children were killed by rubber bullets, for example, the IDF immediately announced that the soldiers had acted according to the regulations. This is the case, even though the regulations prohibit firing at children and in one recent case – that of eight-year old Ali Jawarish described above – the child was shot at a range of 15-20 meters, much closer than the 40 meters allowed by the regulations.

It is unfortunate that the report does not provide any data on investigations into incidents of death (paras. 149-151). In fact, the authorities' investigations of deaths of Palestinians are conducted in a perfunctory manner and may drag on for years. The authorities make no effort to locate those involved, and very few soldiers are ever held accountable for killing Palestinians.

Of the 1,328 Palestinians killed by Israeli security forces (1,251 by gunfire and the remainder under other circumstances), B'Tselem knows of only 55 cases in which members of the security forces were prosecuted. In over ninety-five percent of the cases where Palestinians were killed by Israeli security forces, no one was prosecuted for causing their death. Of the 55 cases prosecuted, 19 were convicted of causing death and 14 were acquitted. In the remaining 22 cases, the soldiers responsible were convicted of ill-treatment and causing injury, illegal use of firearms, unbecoming conduct, or negligence in the performance of duty.

The authorities have no better record concerning accountability for the deaths of children. Of the 274 children killed by IDF gunfire, in only twenty-one cases were the soldiers responsible tried. In five of these cases, soldiers were acquitted. In nine cases, soldiers were convicted of illegal use of firearms. In 7 cases, soldiers were convicted of causing death by negligence.

Conclusions

Several hundred Palestinians have been killed in cases in which no one – not even the Israel Defense Force – maintains that soldiers were in mortal danger. Despite this, in the majority of cases, Israel concluded that soldiers acted according to the open-fire regulations and took no measures to punish those responsible. At the same time, the authorities refuse to change the regulations and prohibit the use of firearms in non-life threatening situations.

The large number of killings in non-life-threatening situations leads to either or both of the following conclusions:

Either the system has decided to adopt a lenient approach toward soldiers who deviate from the regulations, and intentionally refrains from holding accountable soldiers who violate these regulations;

Alternatively, if soldiers indeed acted according to regulations intended to be non-fatal and in spite of this hundreds of people were killed, the only conclusion is that the problem is not enforcement of the regulations but the regulations themselves. If this is the case, the urgent need for changes in the regulations is clear.

With regard to compensation of victims (paras. 152-155), a government-sponsored bill to deny Palestinians compensation is currently in an advanced stage of the legislation process. This bill is discussed under Article 2.

Article 7: Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Israel and the UN Committee Against Torture

The Committee Against Torture (CAT) mentioned in paragraph 163 of the State's report, has concluded that the interrogation methods routinely used by the General Security Service (GSS) against Palestinian detainees are "breaches of Article 16 and also constitute torture as defined in Article 1 of the Convention."[30]

Israel has ignored the call by CAT to "cease immediately" the use of these methods.[31] In 1998, CAT reiterated its conclusions, and again called upon Israel to cease its torture practices.[32] However, so far there have been no changes in Israeli practices.

Israeli Interrogation Methods

GSS interrogation methods include prolonged isolation from the outside world;[33] inhuman detention conditions; sleep deprivation for days and weeks on end; sensory deprivation, by covering the detainee's head with a filthy sack and playing loud music, for extended periods; tight shackling of hands and legs for long periods; forcing the detainee to sit, shackled thus, on a tiny chair, or to stand, squat or kneel in painful positions for long periods; exposure to extreme heat or cold for long periods; threats, including sexual and death threats; slaps, kicks and blows; and violent shaking.

Two further facts should be borne in mind:

1. These methods are used **in combination**; thus the suffering increases through the combined accumulation of time and methods; and
2. With the exception of exposure to extreme temperatures, and possibly beating,[34] the State has openly acknowledged the use of all these methods,[35] although it would, obviously, reject descriptions such as "painful."

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[30] **CAT/C/SR.297/Add.**1, para. B(5). Similar conclusions were drawn earlier by the UN Special Rapporteur on Torture, see E/CN.4/1997, 10 January 1997, para. 121, p. 29.

[31] *Ibid.,* para. 8(a).

[32] **CAT/C/ ISR**, 18.5.98 (draft conclusions and recommendations), para. 12(a).

[33] Adult Palestinian detainees suspected of "hostile terrorist activity" may be held without any external contact for up to eleven days. The authorities must then bring them before a military judge for a hearing to extend the detention The authorities may preclude detainees from meeting with their attorney for up to ninety days: Under sections 78 b-d of the Order Regarding Security Regulations, the head of interrogations may, upon a written decision giving reasons, preclude detainees from meeting their attorney for up to fifteen days. A police officer of a rank of Chief Superintendent and above may extend the period for an additional fifteen days. A military judge may extend the period of preclusion for thirty days more, and the chief judge or the on-duty chief judge may extend it for an additional thirty days. No family visits are allowed during interrogation.

[34] The Landau report explicitly justifies "slapping," at para. 3.15.

[35] See *e.g.* the remarks made by Israeli representative Mr. Nitzan to CAT, **CAT/C/SR.296**, 15 May 1997, paras. 8, 20 (sleep deprivation); 17 (shackling); 18 (hooding); 19 (loud music); 27-31 ("shaking"). The State similarly acknowledged the use of these methods in dozens of court cases, including those mentioned in the State's report.

Legislative Provisions Prohibiting Torture, etc. and the "Defense of Necessity" (Paragraphs 146-148)

Under Israeli law, as interpreted by the State Attorney's Office and courts, any or all of the "variety of statutory provisions" which "cover all acts of torture and of cruel, inhuman or degrading punishment" (paragraph 164) may be superseded by the "defense of necessity." This defense also enables GSS interrogators questioning Palestinians to violate the provisions of the Penal code, which prohibit assault, violence, threats, etc. as detailed in the report, and still be immune from prosecution, let alone punishment.[36] For example, in the case of Hamdan, mentioned in the report (paragraph 181), the representative of the State himself described the methods whose use he justified, as constituting "an offence of assault."[37]

In clearer terms, the present legal situation allows GSS interrogators to torture Palestinians with impunity. This point has already been taken up by CAT, which, commenting on Israel's initial report in 1994, stated the following:

It is a matter of deep concern that Israeli laws pertaining to the defenses of 'superior orders' and 'necessity' are in clear breach of that country's obligations under Article 2 of the Convention Against Torture.[38]

The gravity of the danger this legal situation poses cannot be stressed enough. As long as it prevails, any legislation – both present and future – prohibiting torture and ill-treatment is utterly useless in defending Palestinian detainees[39] from torture, as its provisions could at any moment be rendered null and void through the use of the "defense of necessity."

The Landau Commission (Paragraphs 170-174)

The State's report fails to mention the fact that in the report of the Landau Commission, subsequently adopted by the Israeli government, the Commission states the following (having quoted a description of "a ticking bomb situation"):

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[36] This defence is provided by Article 34(11) of the Penal Code.

[37] ***Muhammad 'Abd al-'Aziz Hamdan vs. the General Security Service, HCJ 8049/96***, hearing of 14.11.96, minutes, p. 2. The representative was Att. Shay Nitzan, Senior Deputy to the State Attorney.

[38] CAT/C/SR.184 (28 April 1994), Consideration of the initial report of Israel, para. 43(3)(3).

[39] The GSS has occasionally used a few of the methods against Jewish detainees. For example, Avigdor Askin, arrested for allegedly plotting to desecrate the Temple Mount, contended that his interrogators bound him to a chair and covered his head with a sack for many hours, and at the beginning of the interrogation limited the time he could sleep (see ***Ha'aretz,*** 29 December 1997). Relatives of Margalit Har Shefi, arrested in connection with the Rabin assassination, claimed that GSS interrogators psychologically pressured her to a degree bordering on "psychological abuse," and that the first interrogation session lasted seventy-six hours, during which she was not allowed to sleep (see ***Yediot Aharonot***, 3 December 1995). Nevertheless, GSS interrogation methods have been used almost invariably against Palestinians, and the full range of these methods applied only against Palestinians .

"This is an extreme example of **actual torture, the use of which would perhaps be justified** in order to uncover a bomb about to explode in a building full of people.[40] *[emphasis added]*

In other words, the Commission left the door open for the GSS to use, in such situations, even methods which the Commission itself considered "torture." This is especially serious in view of the recent explicit evocation of the "ticking bomb" justification for torture made in court cases both by representatives of the State and by Supreme Court judges.

It should again be emphasized that whatever precautions the Commission has taken to restrict the use of the interrogation methods that it recommended, methods combining prolonged sleep and sensory deprivation; shackling in painful positions – all applied in combination for days and, intermittently, for weeks; threats and curses; and direct physical violence can only be described as torture, in flagrant violation of Article 7.[41]

Supervision and Review of Interrogation Practices (Paragraphs 175-182)

While the supervisory mechanism described seems quite impressive, it must be kept in mind that **none of these mechanisms has ever questioned either the legality or the legitimacy of the GSS' methods of interrogation, including those that CAT has defined as torture.**

The State Comptroller's Office (Paragraph 177)

As is evident from the report itself, **the State Comptroller looks only for "instances of deviations from the Landau Commission's guidelines," rather than examining the legality of the guidelines themselves.**

The Department for Investigation of Police Misconduct (Paragraph 176)

Since being charged in 1994 with handling complaints against GSS misconduct, the DIPM has not recommended that criminal charges be pressed against even one GSS agent.

Ministerial Scrutiny (Paragraph 178)

It is similarly evident from the report that it is the Ministerial Committee which determined exactly what methods might be used. The report mentioned modifications made in the GSS guidelines in 1993 (paragraph 178). However, no details are given of the "revisions" made in September 1994, in response to terrorist suicide bomb attacks. At the time, the press reported that additional "special permissions," also

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[40] Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activities, Report (Part 1), Jerusalem, October 1987, at para. 3.15.

[41] For HRC cases in which some of these methods, or similar methods have been used see *e.g.* **Esther *Soriano de Bouton vs. Uruguay***, Communication No. R.9/37 (7 June 1978), **UN GAOR** Sup. No. 40 (A/36/40), 1981; ***Juan Teran Jijon vs. Ecuador*,** Communication No. 277/1988 (26 March 1992), **UN GAOR** Sup. No. 40 (A/47/40), 1994.

described as "enhanced physical pressure," were then granted to interrogators for a period of three months. This "special permission" has been continually renewed ever since. From testimonies of detainees it appears the methods of "pressure," both physical and mental, have indeed intensified since that decision was taken.

The case of 'Abd a-Samad Harizat, who died as a result of violent shaking by a GSS agent in April, 1995,[42] exemplifies the above. The government did not dispute that Harizat died as a result of "shaking," but its Ministerial Committee continues to authorize the use of this method to this day. In response to an appeal to the Supreme Court to prohibit the further use of this method,[43] the State replied that this method does not constitute torture, as "the risk expected to the life of a GSS interrogee as a result of shaking is a **rare** risk."[44]

The DIPM concluded that Harizat died as a result of shaking,[45] but decided only to order disciplinary action against the perpetrator.[46] The DIPM did not act to stop "shaking," not even as an interim measure. The Supreme Court, for its part, refused to issue an interim injunction prohibiting the use of "shaking" pending its ruling in the case.[47] The Court has yet to rule in this case and in the ACRI case, almost three years after they were presented. In the meantime dozens if not hundreds of Palestinians have been violently shaken by GSS interrogators.[48]

In a more recent case, that of 'Omar 'Abd al-Rahman Ghaneimat, the DIPM has decided not to press criminal charges, nor to initiate disciplinary action against Ghaneimat's interrogators, despite the fact that tight shackling, enforced squatting and other forms of torture have caused Ghaneimat irreparable physical damage.

Judicial Review (Paragraphs 179-182)

The crucial point regarding the cases of Bilbeisi and Hamdan (paragraphs 180-181) is that in both of these cases the Supreme Court **explicitly allowed the GSS to use "physical force" in their interrogation.**[49] In view of the above, the Court has

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[42] For a detailed analysis of this case see Amnesty International, **Death by Shaking: the Case of 'Abd al-Samad Harizat**, London, October 1995, AI Index: MDE 15/23/95.

[43] ***Association for Civil Rights in Israel vs. the Prime Minister et al, HCJ 4045/95*** **(ACRI case).** In its response, the State Attorney's office claimed that the use of this method is legal under the "defence of necessity," see ***ACRI Case***, Response by the Respondents, 13 December 1995, paras 11, 12, 21, 26, 33, 44-46.

[44] *Ibid.*, para. 27. Emphasis in the original. See also para. 21. The argument is repeated in paras. 28, 34, 35.

[45] **Investigation by the Department of Investigations of Police Misconduct into the Circumstances of the Death of Prisoner Abd al-Samad Harizat**, 7 June 1995, paras. 7-9 (this report was appended as MSh/3 to the State's Response in the case of ***The Public Committee Against Torture in Israel et al. vs. the State Attorney et al., HCJ 5380/95*** (**PCATI case.** The Response is dated 28.9.95).

[46] *Ibid.,* para. 12. This is explained by claiming that the interrogator could not have anticipated the fatal result, and that "the causal link between said interrogator's action and the death" could not be established "to the degree required by criminal law" (para. 11).

[47] ***PCATI Case***, decision of 30.8.95.

[48] During 1996-97, 24 Palestinians whose cases were handled by **Hamoked: Center for the Defence of the Individual**, one of several NGO's defending torture victims, complained of being "shaken." The State has not denied this contention in any of the cases.

[49] This by cancelling, in both cases, earlier injunctions prohibiting the use of such force. See ***Muhammad 'Abd al-'Aziz Hamdan vs. the General Security Service, HCJ 8049/96***, decision of 14.11.96, paras

actually allowed the GSS to torture the two Appellants.

Israel's claim, in the report, that in the Bilbeisi case "the Court emphasized that the investigation could not involve torture" is grossly inaccurate. No mention was made of torture or the prohibition thereof. The Court stated that:

> …it is obvious that the annulment of the interim injunction does not constitute permission to take during the interrogation of the Appellant steps which are not in accordance with the law and with the regulations binding in this matter. We would especially like to draw attention to all the restrictions accompanying the defense of necessity as it is stipulated in Article 34(11) of the Penal Code, in addition to all the restrictions stemming from the binding regulations.[50]

In other words, the Court allowed the GSS to break the law (see above) and use force, "restricting" such use only to the extent that "regulations" restrict it. As we have seen, these regulations allow measures which constitute torture.

Similarly, the GSS representative's contention in the Hamdan case that "the physical measures being contemplated did not amount to 'torture' as defined in the Convention Against Torture" (Paragraph 181) should be read in light of the unequivocal statement by the international body charged with implementing that Convention that such measures ***do constitute torture***. The very fact that Israel admits to using "physical measures" of interrogation is acknowledging that it violates Article 7, which cannot possibly by interpreted as allowing for the use of physical means of interrogation.

The Case of Ziyad Mustafa a-Zaghl (Paragraph 182)[51]

The following facts should be borne in mind:

- The interim injunction was issued only after some Mr. a-Zaghl had suffered 12 days of torture. The State admitted that during Mr. a-Zaghl's interrogation he was subjected to prolonged sleep deprivation,[52] shackling (on a small and slanted chair) for long periods,[53] loud music,[54] enforced squatting,[55] and "shaking."[56]
- According to an **official GSS document** presented to the Court,[57] between 14.3.96, 01:10 hrs, and 25.3.96 10:00 hrs., Mr. a-Zaghl was allowed a total of 22 hours and 20 minutes "rest," *i.e.,* some two hours of sleep for every 24 hours during a period of more than eleven days.

1,6; ***'Abd al-Halim Bilbeisi vs. the General Security Service, HCJ-VR 336/96 (HCJ 7694/95),*** decision of 11.1.96, paras. 1, 4.

[50] *Ibid.*, para. 4(c).

[51] Wrongly cited as "Algazal" in the report.

[52] ***Ziyad Mustafa al-Zaghl vs. The General Security Service, HCJ 2210/96***, Response by State Attorney's Representative, 26.3.96, para. 5.

[53] *Ibid.,* para.7.

[54] *Ibid.,* para. 8.

[55] *Ibid.,* para. 9.

[56] HCJ 2210/96, ***Announcement by the Respondent to an Appeal for and Order Nisi and Interim Injunction***, 24.3.96, para. 9.

[57] *Supra*, n. 23, Annex Msh/1.

The Supreme Court's injunction therefore did not "remain in force throughout the investigation," as the report claims, but was issued only after long days of torture had already taken place. Furthermore, the State decided not to pursue its appeal against the injunction, choosing instead to place Mr. a-Zaghl under administrative detention. The Supreme Court has as yet to reject an appeal by the State against placing limitations on methods of interrogation used in the interrogation of a Palestinian.

In conclusion, Israel admits to using prolonged isolated detention and a large array of psychological and physical means of interrogation. While Israel claims that its laws and regulations prohibit torture and other cruel, inhuman or degrading treatment or punishment, it admits that the regulations under which GSS interrogators work in effect breach these very laws. Israel further claims that, nevertheless, the methods it has used in interrogating Palestinians amount to neither torture nor to other forms of ill-treatment. However, both the Committee Against Torture and the UN Special Rapporteur on Torture have explicitly belied this claim, stating that such interrogation practices amount to torture and must cease immediately.

Solitary Confinement (Paragraph 184)

Incarceration in complete solitary confinement, whether as a form of punishment or in order to protect the prisoner, must be used only in extremely unusual cases. It should be used only as a last resort, when there is no alternative way to achieve the purpose of the confinement, and only for a limited, reasonable, pre-determined time period.

Prolonged incarceration in solitary confinement may be considered an infringement of Article 7 of the Covenant. The current situation in Israel, whereby many persons are incarcerated for long periods in complete solitary confinement, should be examined in accordance with the Committee's interpretation in the light of this Note.[58]

We do not have information on the number of prisoners currently kept in solitary confinement in Israeli jails, or on the duration of their incarceration in such conditions. We are aware, however, of several cases in which prisoners have been kept in solitary confinement for many years. One such example is the case of Mordechai Vanunu, who was kept in complete solitary confinement for more than eleven years until his conditions of imprisonment were modified following prolonged local and international public pressure.

Particular problems emerge when the use of solitary confinement is justified on the grounds that it is necessary for a prisoner's own protection. Many prisoners held in solitary confinement for this reason object to being defined as "requiring protection," and it would indeed seem that in most cases, even if a prisoner faces danger from others, it should be possible to find cellmates who do not pose any such danger. For example, ACRI recently received a complaint from a former policeman who, while in detention (and before being convicted) was kept in complete solitary confinement for two months, allegedly for his own protection. This was in spite of his demand to be released from confinement (since he argued that it would be possible to find many

[58] General Comment 20, Article 6.
[59] Reg. 17(b) of the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Detention), 1997.

prisoners with whom he had not come into contact during his work in the drug squad). Only after ACRI intervened was the detainee moved to a police detention center where he was placed in a cell with other detainees.

Moreover, while both prisoners placed in solitary confinement by way of **punishment** for disciplinary offences and detainees who are placed in solitary confinement for their own protection [59] are given an opportunity to appeal such a decision, no such right is granted to prisoners who are placed in solitary confinement for their own protection.

Holding individuals in solitary confinement for prolonged periods constitutes cruel and inhuman treatment, in violation of the Covenant.

Contacts with the Outside World (Paragraph 185)

Notification of Arrest

The law states that notification of the arrest of a person suspected of serious criminal offenses may be delayed by up to seven days. For persons suspected of security offences, notification of arrest may be delayed for up to 15 days either on grounds of state security (as approved by the Minister of Defense) or in the interest of investigations (as approved by the Commander in Chief of the police).[60]

Despite the obligation to provide notification of the fact and place of arrest, the security forces have not generally done so in the case of detainees who are residents of the Territories. Two different arrangements concerning implementation of this policy have been developed with the security services following Supreme Court petitions filed by ACRI and Hamoked: Center for the Defense of the Individual in 1989 and in 1996, demanding such notification. The more recent arrangement, which has received the status of a court verdict, established that upon arrest of a resident of the territories, the security service must notify the detainee's family regarding the fact and place of the arrest, and must also notify the detainee's attorney[61]. In practice it has emerged that this arrangement is also not being fully respected` in many cases families receive no notification of the arrest of their relative.

Prevention of Meetings with Attorneys

The right to legal representation and the possibility to meet with an attorney are the main tools available to detainees and prisoners to secure their rights and to protect them from torture and abuse. Despite this fact the State's report completely ignores this subject.

It must be emphasized that there is no right in Israel to have an attorney present during interrogation. Moreover, in accordance with the Detention Law, a meeting between a

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[60] Criminal Procedure Regulations (Enforcement Powers – Detentions) 1996, Article 36.
[61] HCJ 6757/95, ***Hirbawi et al. vs. Commander of IDF Forces et al***., (not published).

criminal detainee and his/her attorney may be delayed for up to 48 hours, at the discretion of the officer in charge of the interrogation.[62] In the case of security offences the officer in charge of the interrogation may prevent a meeting with an attorney for up to ten days, and a District Court may extend this period for up to 21 days if it finds that such a meeting is liable to hamper the interrogation or if the prohibition is intended to prevent a crime or to protect human life.

Holding a detainee or prisoner totally cut off from the outside world, and especially depriving him or her of legal counsel, significantly increases the danger of abuse. Those who torture or otherwise ill-treat prisoners or detainees, in particular detainees held on "security" grounds, usually take advantage of their victims' inability to communicate with their legal counsel or the outside world in general.

The Police Investigations Department (PID) (Paragraph 189)

The establishment of the Police Investigations Department in 1992 was certainly an important turning point in the investigation of police personnel suspected of criminal offenses. Responsibility for investigations was removed from the police and transferred to an external body. However, two important problems concerning the work of the PID should be noted:

1. Most of the investigators in the PID are police personnel billeted with the Department. The fact that the PID investigators are actually police personnel creates dependency between the investigators and the system from which they came and to which they may return, possibly impairing the objectivity of investigations. The Association for Civil Rights in Israel has objected to this situation. When the PID was established, ACRI asked the Minister of the Interior to ensure that all staff were civilian employees; to the best of our knowledge, nothing has been done in this respect.

2. More than 80% of investigations of complaints relating to police violence are closed for various reasons - an extremely high proportion. It must be asked whether this phenomenon is due to spurious complaints, objective difficulties in investigation, lack of personnel or, perhaps, more fundamental problems in the functioning of the investigators and the policy of the PID.

In particular, we must note a phenomenon that has become increasingly frequent recently. After complaints filed by citizens against police personnel for alleged violence are closed by the PID (often unjustly and following negligent investigation), the police then promptly indict the complainant for assaulting police personnel. Cases we are processing give grounds to suspect that the police are attempting to deter citizens from complaining about the actions of police personnel.

In one recent example, two young men from the Arab village of ‘Iblin complained that they were violently truncheoned by policemen for no reason. One of the young men sustained injuries to the head and face, lost consciousness and was hospitalized. The PID investigation found that unnecessary police violence had occurred, but was

[62] Criminal Procedure Regulations (Enforcement Powers – Detentions) 1996, reg. 35.

unable to determine the identity of the police personnel responsible. The State Attorney's Office reached similar conclusions after an appeal was filed against the PID's decision. Immediately after the appeal was rejected, the police indicted the complainants for assaulting police personnel; the indictment was only rescinded after ACRI intervened.

Another example concerned a young woman arrested following an argument with a policeman concerning passage along a road blocked to vehicles. The woman was taken to a police station where she objected to being left alone in a room with the arresting officer, who she claims assaulted her. Another policeman attempted to shackle her, to which she objected. While attempting to do so, the policeman banged the woman's head on the table, resulting in her sustaining a deep wound. She fainted and woke to find herself in a pool of blood. The police later took her to the hospital where the wound was treated. Her complaint to the PID was closed due to lack of culpability, after a particularly negligent investigation. Immediately thereafter the police indicted the woman for assaulting police personnel.

Procedures for Complaints and Disciplinary and Criminal Proceedings

Prisons Service (Paragraph 191)

ACRI has received many complaints by prisoners regarding misconduct by wardens, including cases of severe violence. Evidence gathered since the establishment of the DIPM has shown that transferring investigations of police misconduct to a body independent of the police has been a productive step which has had a positive influence on police behavior. However, while investigations of misconduct by the police and the GSS have been transferred to the DIPM, complaints against IPS wardens are still investigated internally, declarations by officials in the Ministry for Interior Security that this will be changed, notwithstanding.

This situation would seem inconsistent with the content of the Committee's General Comment 20 (Article 14), according to which:

Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.

Compensation for Victims (Paragraph 194)

The State must also be held liable for damages in cases where a State employee deviates from the regulations or even commits a criminal offense, and not only when he/she acts in accordance with the regulations.

The Kremnitzer Committee (Paragraph 199)

The report addresses the recommendations of the Kremnitzer Committee, which submitted its conclusions in 1993, and even notes that "at least one prominent independent civil rights group" praised the implementation of the recommendations.

Regrettably, this statement represents only a small part of the complete picture. Only this year (1998) has a monitoring committee begun to oversee the implementation of the Kremnitzer recommendations. According to the Chairman of the Committee, Professor Kremnitzer, this delay was due to the fact that the Ministry of Internal Security did not allow the committee to be convened. As detailed below, the problem of police violence has not been solved, and the implementation of the Committee's report has been partial.

As part of an effort to change the perception of traits desirable in police personnel – with less emphasis on force and more on wisdom, humanity and self-control – the Kremnitzer Committee recommended, among other things, the integration of women into positions of active service on the police force. It appears that the Israeli Police is having difficulty parting from the traditional conception of what a police officer should be, as this recommendation has not been implemented. The number of women serving in detective and patrol positions in the police force continues to be very low: women account for 3% of those employed in detective positions and for 8.5% of those in patrol positions. In 1996 ACRI petitioned the Supreme Court, charging discrimination in the recruitment and placement of women in the police force. This petition is pending[63].

The Kremnitzer Committee also found the most serious instances of police brutality to be directed towards Arabs and other minority groups. As a result, the Committee issued further recommendations seeking to ensure that commanders clearly convey to their subordinates the importance of equality before the law and the rights of minorities. ACRI has long monitored police behavior towards Arabs, as well as towards ultra-Orthodox Jews, foreign workers and homosexuals, and we must regrettably conclude that police personnel continue to treat members of these groups in a cruel and degrading manner on numerous occasions. This raises serious questions concerning the extent to which messages emphasizing equality before the law and the rights of minorities are in fact effectively conveyed to rank-and-file police personnel.

ACRI's "Red Light" project receives and processes complaints of police brutality. Data collected by the project confirms that police are often violent towards detainees, demonstrators, those subject to interrogation and others. The following are examples of complaints processed by the "Red Light" project over the past year:

- A young Bedouin Arab complained that policemen poured boiling water over his back during interrogation (the policemen were prosecuted).
- A young woman who came to the Jaffa police station in order to bring a baby girl to her detained mother, complained that after a dispute emerged between the policemen and herself they chained her and, while she was chained, slapped, kicked and spat on her (the complaint is currently under investigation).
- A foreign worker present in Israel illegally jumped off the roof of a building in order to escape the police, due to his fear of expulsion from Israel. Although the man was seriously injured and his life was in danger, the policemen kicked him while making offensive remarks relating to his Colombian origin.

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[63] *HCJ 2979/*96, ***Ben Giyat et al vs. Minister for Internal Security et al***.

The Kremnitzer Committee further recommended that the Central Police Command review its policy on the use of force during demonstrations. De facto, police behavior has not changed, and demonstrations are often dispersed by means of unnecessary and excessive force. This is particularly true in the actions of the Border Patrol and the Special Patrol Unit in Arab and Bedouin villages. In some such cases, no force was justified, while in others police intervention was justified, but the force used was excessive.

ACRI has investigated a number of incidents of police brutality in recent years in the Arab villages of Rama, 'Iblin, Jedeida and the area belonging to the Bedouin tribe of Tarabin a-Sana'. While complaints were filed concerning the particularly violent behavior on the part of the police in many cases, no disciplinary or criminal proceedings were initiated against the personnel involved.

In April 1998, an ACRI staff member witnessed an extremely violent attack by police officers against Arab residents of the unrecognized settlement of Um a-Sakhli, near the city of Shfar'am. The police were deployed in the village the day after illegal buildings were demolished in accordance with a court order. During the incident, the ACRI staff member witnessed residents being subjected to unprovoked beatings with truncheons. Tear gas and rubber-coated metal bullets were also fired. When the ACRI employee attempted to protect one of the injured residents, she was also beaten with a truncheon. ACRI has complained to the Minister of Internal Security about this incident.

The Public Defenders Office (Paragraph 201)

Public Defenders offices are gradually being established in different parts of the country. While in the Tel Aviv and Central district, such offices have operated for approximately two years, they have only recently been established in Jerusalem and Beersheva. No Public Defenders office has yet been established in northern Israel.

The Minister of Justice has not yet issued the order necessary to enable the Public Defenders Office to represent detainees prior to indictment. The Office therefore represents accused persons only, and unless a court appoints a public defender to represent a detainee, which rarely happens (usually for mentally ill detainees), destitute pre-trial detainees are not represented, and thus cannot properly defend their rights, *e.g.,* under the new Detentions Law.

Involuntary Psychiatric Commitment[64] (Paragraphs 203-213)

Standards and Procedures for Commitment (Paragraph 203)

Contrary to the State's report, and despite the enactment of the Treatment of the Mentally Ill Law, 5751-1991 (hereinafter "the Law"), there does not seem to have been any real change in the protection of the rights of the mentally ill in Israel.

An examination by the State Comptroller[65] reveals that not only has the number of involuntary commitment orders not fallen, but it has actually risen somewhat, both in absolute terms and relative to the size of the population.

Many of those brought under coercion to psychiatric hospitals in accordance with an involuntary commitment order have already signed their consent to voluntary commitment,[66] though it is uncertain whether all those doing so understand the full significance of their "consent." This group of those committed to psychiatric hospital is not included in the government's statistics on involuntary commitment, although as noted, they were actually taken to the hospital by force. We must note that the Law provides no judicial review of the necessity or duration of commitment for patients committed by consent.

Psychiatric Commitment of Minors (Paragraph 205)

Children and youths are routinely committed to psychiatric hospitals contrary to the provisions of the Law.[67] The authority to commit a child or youth rests with the District Psychiatric Committee for Children and Youth, comprised of experts who are supposed to ensure that commitment of a minor takes place solely in accordance with the law. However, although almost three years have passed since the Law was amended, many of these committees are not functional. The State Comptroller found that although 539 children and youth were committed to psychiatric hospitals in 1996, and although the Law states that these cases should have been brought before the Psychiatric Committees for Children and Youth, only a few dozen cases were actually discussed by such committees in that year. Despite various declarations by relevant government ministries, and particularly the Head of Mental Health Services in the Ministry of Health, that this situation must be rectified immediately, no actual change has occurred in this grave state of affairs, to the best of our knowledge.

The result is that there is no administrative or judicial supervision or oversight of the involuntary commitment of children and youth in Israel. There is a real danger that these minors' liberty will be deprived without any examination of their case, and without they or their relatives enjoying the right to appeal against the State's decision to impose involuntary commitment.

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[64] The comments on this section were prepared by Attorney Dori Spivak from The Center for Legal Aid in Human Rights, Faculty of Law, Tel-Aviv University.
[65] State Comptroller Report for the Year 1997. p. 218.
[66] Ibid., p. 219.
[67] For details, see the State Comptroller's Report for 1998, p. 222.

"Urgent" and "Non-Urgent" Commitment (Paragraph 206)

The clear distinction in the Law between "urgent" and "non-urgent" involuntary commitment orders was intended to postpone non-urgent commitment for a period of 24 hours in order to enable the patient to file an appeal against the commitment order. Once such an appeal is filed, commitment is postponed pending the appeal hearing. In practice, the district psychiatrists circumvent this provision by defining the vast majority of involuntary commitment orders as "urgent." Thus, those whose commitment is not actually urgent are denied their right to appeal against commitment prior to its actual execution.

Length of Involuntary Commitment (Paragraph 207)

Contrary to facts stated in the State's report, after an initial hearing in which the District Psychiatric Committee extends a person's commitment by three months, commitment may then be extended each time **by six months**.[68]

As stated in the last paragraph, the 1991 Law established for the first time the authority of the District Psychiatrist to issue a compulsory outpatient treatment order for a patient instead of an involuntary commitment order. The legislature's intention was to reduce as far as possible the restriction of liberty of mentally ill persons. According to the State Comptroller's Report,[69] however, the vast majority of those treated in accordance with involuntary outpatient treatment orders in 1995 and 1996 (99.8% of orders) had previously been committed to psychiatric hospitals. Thus, it seems that although in certain cases an involuntary outpatient treatment order could have been issued from the outset, the District Psychiatrists preferred to issue commitment orders, which were only later replaced by involuntary outpatient treatment orders.

Moreover, in cases when the District Psychiatrists reported that a person failed to attend involuntary outpatient treatment, their usual response was the almost immediate issuing of an involuntary commitment order against that person, infringing the right to due process. The Supreme Court recently criticized the manner in which the State has interpreted the provisions of the Law in this respect, emphasizing the importance of maintaining due process of law in such situations.[70]

Appeals (Paragraph 208)

Although patients appearing before the District Psychiatric Committees have the right to legal representation, the overwhelming majority of patients in such proceedings are not represented. It must be noted that the State does not appoint an attorney for patients appearing before the Committee. This is particularly grave since mentally-ill persons appearing before the Committee have a limited ability to represent themselves

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[68] Treatment of the Mentally Ill Law, 5751-1991, Article 10(c)(2).
[69] State Comptroller's Report for 1998 (p. 220).
[70] Crim. APP 2060/97, ***Vilnachik vs. Tel Aviv District Psychiatrist*** (not yet published).

and to raise claims for the Committee's consideration. Supreme Court President Aharon Barak recently commented that:

> "There is indeed no one more in need of due representation than the mentally-ill person. A mentally-ill person cannot, in most cases, make claims on his own behalf. Of what value is the mentally-ill person's right of argument if he cannot argue on his own behalf?, Thus the mentally-ill person's right of argument also includes his right for a defense attorney to be appointed to argue for him. It may be presumed that the Law's purpose is to recognize the right of argument and representation of the mentally ill…"[71]

It should also be emphasized that patients without representation are not usually able to review medical documents presented to the Committee as the basis for the request for commitment, so that they are effectively denied the right to oppose their commitment. Most seriously of all: despite the fact that all District Psychiatric Committees include a legal expert intended to ensure that involuntary commitment takes place solely in accordance with the Law, in many cases the Committees are unfamiliar with the Law, or choose not to act in accordance therewith. Since the patients are not represented by counsel, they are unaware that there is no cause for commitment in their case, and that were an appeal filed they could be released from commitment.[72]

Level of Proof Required (Paragraph 209)

In many cases, despite the legal rules described in the State's report, the Committees do not act in accordance with the principles established therein (see above: comments on paragraph 208). Often, there is no adequate factual clarification of events which preceded the patient's commitment or facts which allegedly reflect a danger posed by the patient. This problem is particularly severe when the State relies on events from the past that were not examined when they occurred, and in cases when the District Psychiatric Committee can have no effective ability to examine the circumstances.

Court-Ordered Hospitalization in the Context of Criminal Proceedings (Paragraph 211)

The State has not done enough to disseminate the ruling established by the court in App. (TA) 613/95, **Malka v Attorney-General** and to bring this to the attention of all those involved in involuntary commitment proceedings. This verdict has yet to be published, although almost three years have passed since it was given. In many cases,

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[71] Ibid., p. 14.

[72] Judge Savyona Rotlevy of the Tel-Aviv District Court recently made a harsh comment on this matter: "I must again note my astonishment that in many of the small number of appeals filed to this Court against decisions of the District Committee, the State effectively agrees to accept the content of the appeal, thus preventing substantive discussion of the matter, when it is evident on a prima facie basis that the Committee's decision was mistaken. What happens to those mentally-ill persons who are not represented? The State Attorney's Office should attend to this matter so as to ensure that the chairmen of psychiatric committees are instructed to act in accordance with the provisions of the Law."
(App (TA) 3362/98, ***Anonymous vs. The Attorney-General***.)

the State often continues the commitment of a patient despite the fact that he/she no longer poses a threat to others or to himself/herself.

The Association for Civil Rights in Israel receives numerous complaints that police personnel take detainees directly to psychiatric hospitals for involuntary commitment, without a judge's order and without any instruction from the District Psychiatrist. In most cases the hospitals refuse to admit the patient coercively. The police personnel then present the detainee with a choice: to be held in a detention center or to consent to commitment. This situation is naturally unlawful and infringes on the detainee's rights. After ACRI complained to the Legal Advisor of the Police, the procedures were once again forwarded to all police stations. However, ACRI continues to receive complaints showing that this phenomenon has not been eradicated.

We are aware of cases in which the police have arrested "suspects" solely for the purpose of enabling psychiatric examination and diagnosis, without any legal cause for detention. When such detainees are brought to court for an extension of the detention order, the courts sometimes acquiesce to the police request, despite the fact that the Law states (Article 16 of the Treatment of the Mentally Ill Law, 5751-1991) that a judge shall only approve psychiatric commitment of a suspect if a detention order has been issued. A detention order requires causes of detention as defined by the new Detentions Law.

Article 8: Prohibition of Slavery

As noted in Section 218 of the State's report, there is no criminal prohibition in Israel relating to traffic in human beings. While other criminal prohibitions are partially relevant to the prevention of slavery, only kidnapping is a serious felony (punishable by 20 years imprisonment); the other penalties relate to forced labor (one year) and false imprisonment (5 years).

Traffic in Women for the Purpose of Prostitution

The most serious infringement of the prohibition of slavery in Israel is traffic in women for the purpose of prostitution. Although Israel is a party to the Convention for the Suppression of the Traffic in Persons or the Prostitution of Others, the provisions of the Convention have not been fully implemented. Israel has enacted legal provisions prohibiting the soliciting of women to leave Israel for another country for the purpose of prostitution, but there is no general provision, as required by the terms of the Convention, prohibiting the soliciting of women to move from any country to any other country for this purpose. (A bill to this effect has been introduced in the Knesset).

Research carried out by the Israel Women's Network reveals a pattern of importation of women to Israel from the CIS for the purpose of prostitution.[73] Some of these women are coerced to work in prostitution against their will. Indeed, some were unaware, when brought to Israel, that they would be forced to engage in such work.

The IWN study reveals an inadequate response by law-enforcement agencies to the traffic of women. While these agencies act to enforce the law against the women involved (most of whom are in Israel unlawfully), those who procure and "import" the women to Israel are only rarely prosecuted and generally receive light sentences – this despite the fact that, as noted in the State's report, appropriate prohibitions may be found in the penal code. Moreover, the study shows that the police refrain from taking action against the owners of "massage parlors" in which many of these women work due to the useful information they provide about other offenses committed on the premises.

The main police response to the import of women is the action taken by the immigration authorities to expel those present in Israel unlawfully. Contrary to the provisions of the Convention for the Suppression of the Traffic in Persons or the Prostitution of Others, no attention is paid to the fact that these women are the *victims* of offenses, and little is done to enforce the law against those who traffic in women.

[73] Israel Women's Network, Trafficking in Women to Israel and Coerced Prostitution, November 1997.

Foreign Workers

Legal arrangements for the employment of foreign workers create situations that have some of the characteristics of slavery.

There are currently approximately 90,000 foreign workers in Israel who hold work permits.[74] Although these workers come to Israel of their own free will (usually due to economic hardship in their countries of origin), slavery-like conditions emerge during their time in Israel due to the policy whereby foreign workers are "bound" to their Israeli employer, unable to leave and seek alternative employment even if the employer fails to meet his/her legal obligations toward the worker. Several factors combine to produce this "bondage" of workers:

1. Foreign workers' residence permits are conditioned on their continued employment by an employer authorized by the Employment Service to employ that particular worker. Workers who leave their employer, even for justified reasons, become illegal residents subject to arrest and deportation. Israel has no proper procedure enabling foreign workers to leave an employer who has infringed their rights and to find alternative legal employment. This has only been made possible in exceptional cases following the intervention of NGOs that defend workers' rights. It should be noted that the restriction of licensed workers to a particular employer applies to all foreign workers in Israel, regardless of the length of time they have been in Israel.

2. The Ministry of the Interior takes foreign workers' passports on their entry to Israel and holds them for several weeks for administrative processing. The passports are then returned to the employers, who are not prompt about returning them to their owners and who sometimes hold them indefinitely. Although it is a criminal offense to hold a person's passport without their consent, enforcement of this provision by the police or the Ministry of the Interior is ineffective. Only after a petition against the police was filed at the Supreme Court[75] following the accumulation of more than one hundred cases in which foreign workers' complaints of the withholding of passports were not processed, did the police begin to develop procedures for responding to such cases. The practice of withholding passports, both by the Ministry of the Interior and by employers, is still extremely common.

3. The State provides no supervision whatsoever of the recruitment of foreign workers in their countries of origin or of the information they receive. Accordingly, it is not unusual for foreign workers to come to Israel on the basis of false information concerning their promised conditions of employment. Once they are already in the country, their ability to return to their home country

[74] There are also at least another 90,000 workers who live and work in Israel without permits. Our comments in this section relate exclusively to the infringement of rights of foreigners who came to Israel with work permits.

[75] SC 2117/97 ***Platia et al. vs. Israel Police***.

if the conditions do not conform to the promises they received is sometimes restricted, since they often mortgage property in the country of origin in order to come to Israel.

4. Many employers deduct a "guarantee" from foreign workers' wages with the purpose of ensuring that they will remain with that employer through the end of their contract. This, in essence, holds part of their wages as "ransom" for fulfilling the term of employment. Employers assure workers that the guarantee will be returned before they leave Israel. This practice is contrary to the provisions of the Salary Protection Act, 5718-1958 (Section 25), yet no effective steps have been taken to deter employers from such a practice. The result is that workers face strong economic pressure not to leave their employer, even if the latter fails to provide lawful working conditions.

The State's claim in Section 218 that all workers are entitled to protection under the terms of Israeli labor laws relating to hours of work, withholding of payment, minimum wage, etc., is not true with regards to foreign workers. In practice, the ability of foreign workers to leave an employer who violates these provisions is limited, for the reasons explained above. Moreover, the complete absence of effective enforcement against employers who infringe upon the employment rights of foreign workers denies most such workers the right to enjoy the conditions of employment guaranteed by law; indeed, some workers are employed in conditions of grave exploitation.

The Minimum Wage Act

Enforcement of the Minimum Wage Act (Paragraph 218)

As the State's report notes, payment of the minimum wage is required in Israel by law; however this obligation is not effectively enforced. Research by the National Insurance Institute shows that no more than approximately one half of urban salaried employees entitled by

law to receive the minimum wage actually receive this wage.[76] We have no statistics regarding foreign workers, but it must be assumed that their situation is even worse. Our own experience reveals a scarcity of inspectors employed by the Ministry of Labor and Social Affairs to enforce this law.

Prisoners and Detainees (Paragraph 219)

Contrary to the State's report, prisoners are not entitled to receive the minimum wage for their work. In practice, they receive very low pay for their work inside prisons (e.g., maintenance work), and only slightly higher wages (though still below the minimum wage) for work performed for private employers during the period of their

[76] *Non-Compliance with the Minimum Wage Act: Theoretical Aspects and an Empirical Analysis of Explaining Factors in Israel*, National Insurance Institute, 1997.

imprisonment. Moreover, the prison authorities are empowered to require prisoners to work.

Call Up of Vital Workers in a State of Emergency (Paragraph 225)

For many years, the Emergency Regulations have been used to deny the right to strike in the public sector, despite the absence of a genuine state of emergency. This issue is discussed in greater detail in the section addressing Article 4 of the Covenant.

Article 9: Right to Liberty

Administrative Detention (Paragraphs 119-122)

The State's report solely addresses administrative detention carried out inside Israel and makes no mention of the widespread use of administrative detention in the Occupied Territories. Administrative detention in the West Bank and Gaza Strip is carried out according to military orders. These orders empower military commanders to detain an individual for up to six months if they have "reasonable grounds to presume that the security of the area or public security require the detention." Commanders can extend the detention for additional periods of up to six months for similar reasons. There is no limit on the maximum cumulative period an individual can be held in administrative detention.

Many of the provisional safeguards present in internal Israeli law are absent from the system of administrative detention in the Occupied Territories. The Administrative Detention Orders do not provide for mandatory judicial review. Instead, the detainee may appeal a detention or extension of detention order before a single military judge. If the detainee does not appeal, there is no review at all of the detention. Administrative detention appeals are not heard within the 48 hour time-frame required inside Israel. At a minimum, appeals are heard two to three weeks from the filing of the appeal, which may be weeks or even months from the date of detention. Furthermore, there is no periodic review after three months.

In practice, appeals of administrative detention do not constitute even a minimum standard of judicial review. This is due to the fact that virtually all of the information upon which the administrative detention is based is classified and withheld from the detainee and his or her attorney. In most cases, the only information provided to a detainee to explain the detention is that he is "a Hamas activist" [or "a PFLP activist," etc.] The detainee is therefore unable to refute the allegations against him. Judges routinely uphold administrative detention orders on the basis of such classified information.

Israel makes sweeping use of its power to detain administratively, holding large numbers of people for long periods of time.

The Occupied Territories

Over the past ten years, Israel has issued an estimated 18,000 administrative detention orders against an estimated 5,000 Palestinians. Many of these individuals were held for consecutive periods of administrative detention for periods of up to five years. Currently, 90 Palestinians are being held in

administrative detention, including over a dozen who have been held for over two years and one, Mr. Usama Jamil Barham, who has been held for an uninterrupted period of three years and seven months and a cumulative period of four and a half years. In his appeal before a military judge, Mr. Barham's detention order was shortened and was supposed to expire on May 10, 1998. Before he could be released, however, a new extension order for his administrative detention was issued for an additional six months.

Administrative Detention of Lebanese Nationals

Some twenty Lebanese nationals are currently being held in administrative detention inside Israel. They have been held in administrative detention for periods of up to eleven years. In November 1997, Israel's Supreme Court upheld the administrative detention of ten of these Lebanese nationals as "bargaining chips" in negotiations to release missing and captured Israeli soldiers[77]. This ruling effectively sanctions hostage-taking. The State makes no contention that the individuals detained pose any security risk; their detention is entirely a matter of politics.

In its resolution 1998/73, the UN Human Rights Commission reaffirmed that "hostage-taking, wherever and by whomever committed, is an illegal act aimed at the destruction of human rights and is, under any circumstances, unjustifiable."

Israel's pattern of administrative detention, as well as the justifications voiced by the Israeli government, strongly suggest its use as an alternative to punishment, particularly when the security forces do not have enough evidence to charge an individual or they are unwilling to reveal the information they do possess. Administrative detention is not intended to enable states to evade due process of law -- Israel's policy is a patently illegal use of administrative detention.. In some other cases, both Palestinians and Lebanese who have completed a prison sentence will be transferred to administrative detention instead of being released. This practice also suggests the use of administrative detention as additional punishment.

Detainees Awaiting Deportation

In addition to criminal and administrative detainees, there is also a sizable group of detainees held in Israel pending deportation in accordance with deportation orders issued by the Minister of the Interior on the basis of the Entry to Israel Law.[78] These detainees are aliens who are present in Israel illegally; some sought to work in Israel while others sought political asylum.

[77] AAD, 10/94 ***Anonymous vs. Minister of Defense***.
[78] The Entry to Israel Law, 1952.

The law does not provide for any periodic review of detention on the basis of a deportation order.[79] Neither does the law establish any time frame for the duration of the type of detention. It should be noted that in most cases individuals against whom a deportation order has been issued are held in detention without having been given the possibility of release on bail or another alternative to detention. While some of these detainees are kept in separate wings of the IPS facilities, others are kept in police detention centers together with criminal detainees.

A ruling relating to prolonged detention on the basis of a deportation order established that such detention is not punitive but is permissible solely to ensure availability for deportation. In the same case, the Court ruled that the appellant be released from detention.[80] A later Court ruling, however, extended the grounds for detention on the basis of a deportation order by establishing that a person may also be detained on the basis of such an order so as to prevent injury to state security.[81]

This ruling was given in a case in which ACRI appealed, in 1994 on behalf of 30 Iraqi refugees who entered Israel illegally and were held in Israeli prisons on the basis of deportation orders. After the petition was filed, 24 of the appellants were released; however, six remained in detention for security reasons. A year later a further petition was submitted on behalf of the six refugees still in detention, demanding their release.[82] The Court rejected the appeal after finding, on the basis of classified material, that their release would jeopardize state security.

Following the Court's decision, the State Attorney's Office requested that the six be deported to Lebanon, despite Lebanon's refusal to accept the six into its territory and the detainees' claim that doing so this might endanger their lives. Such a deportation would have been in breach of Article 3 of the Covenant. Faced with strong resistance from the petitioners, the State Attorney's Office announced that it would not, for the time being, carry out the deportation. The six are still in prison.

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[79] The only possibility for challenging a deportation order is by way of a Supreme Court appeal; However, detainees rarely exercise this right, due to language difficulties, a lack of awareness of their rights, and an inability to finance legal representation.

[80] HCJ 1468/90***, Ben Israel vs. Minister of the Interior et al***., P.D. 44(4) 149, 152. In this decision the court ruled that:

> The detention is not designed to serve a punitive purpose… its sole purpose is to ensure that the person against whom a deportation order has been issued is available for implementation of the order, if he has not left the country of his own volition, and in order to prevent his fleeing the threat of deportation when this is about to take place… The continued detention of the appellant in these circumstances effectively means his detention for an unlimited period with no prospect of any solution that might put an end to the detention. An individual's liberty, including his liberty to walk freely, is a fundamental right and should be denied solely in accordance with a specific legal provision… once it is established that the continued detention of the appellant cannot serve the purpose for which the detention was permitted in accordance with section 13(c), there is no longer any justification to continue to hold him in detention.

[81] HCJ 5702/94***,Al Tay et al. vs. Minister of the Interior et al.,***P.D. 49(3), 843.

[82] HCJ 7616/96***,Anonymous et al. vs. Minister of the Interior*** (not published).

However, the Court has asked the UN Commission for Refugees to seek urgently another country that would be willing to offer the petitioners political asylum. Despite the long period that has elapsed since this ruling, no solution has yet been found. The six refugees have now been kept in detention for more than four years on the basis of deportation orders.

In January 1998, ACRI petitioned the Supreme Court on behalf of foreign citizens held for extended periods – weeks and even months – while awaiting deportation. In this case the reason for the prolonged detention was essentially bureaucratic. In its reply to the appeal – which adopted the status of a court ruling – the State undertook to implement deportations within two weeks and to establish an administrative committee to discuss cases where it proved impossible to implement deportation within this period.[83]

Detainees at al-Khiam Prison (Southern Lebanon)

The State's report makes no reference to detainees held at the al-Khiam prison in Southern Lebanon. While the prison is formally subject to the control and responsibility of the South Lebanon Army (SLA) commanded by General Antoine Lahad and while Israel denies any responsibility for events at al-Khiam, it is common knowledge that Southern Lebanon is, *de facto,* subject to Israeli control. Israel defines the region as its "security zone." Israeli troops have been deployed there since 1978, and the SLA and the IDF cooperate closely. Moreover, there is evidence that the IDF is directly involved in the management and supply of the prison, and in the transfer of detainees to and from the prison.[84]

In this context it should be noted that in 1983, a state commission of inquiry into the Sabra and Shatilla massacre determined that Israel had "indirect responsibility," as it had failed to take steps to prevent forces allied with Israel from carrying out the massacre.[85]

> Article 2 (1) of the Covenant establishes each State party's obligation to respect the rights in the Covenant and to ensure that all individuals within its territory and subject to its jurisdiction are afforded the rights recognized in the Covenant. Israel's obligations under the Covenant should be understood to cover all actions taken in Southern Lebanon, whether by Israel, or by any person or body acting on Israel's behalf.

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[83] HCJ 199/98***, Laverick et al. vs. Minister of the Interior*** (not published).

[84] The Israeli press has published several articles about events at al-Khiam prison, including testimonies both from former detainees and from soldiers who served at the jail. See *e.g.,* Aviv Lavi, "In Never-Never Land," *Ha'ir*, January 17, 1997; Yosef Algazi, "Testimony from al-Khiyam Prison," *Ha'aretz* supplement, July 25, 1997.

[85] **Commission of Inquiry into the Events in the Refugee Camps in Beirut** ("the Kahan Commission"). The Commission stated, at para. 71:

> … the development of public international moral norms dictates… that not only perpetrators must be held responsible for abhorrent actions, but so should those who could have, and had the duty to prevent them.

The Commission presented its conclusions on February 7, 1983.

100 detainees (including one woman) are currently held at al-Khiam. They are held **for extended periods, without trial, in come cases for as long as twelve years.**

According to press reports, the detainees at al-Khiam prison are housed in poor conditions and are subjected both to torture and to cruel, inhuman and degrading treatment. Since September 1997, detainees at al-Khiam have been denied their rights to family visits, meetings with attorneys, and visits from ICRC staff, as well all other contact with the outside world. These restrictions seem to have been introduced in order to apply pressure for the return of the body of an IDF soldier, Itamar Ilia, who was killed during an IDF operation in Lebanon.[86] While any delay in returning Ilia's body is unacceptable, and attempting to retrieve the body of a soldier is a worthy cause, denying rights from inmates of the al-Khiam prison is not a legitimate means to that end. (Note: at the time of the writing of this report, the Ilia's body was returned to Israel. The principles discussed above still stand.)

One of the Detainees at al-Khiam is Ms. Suha Bishara, a Lebanese citizen who attempted to assassinate General Lahad in November 1988. She has been detained at al-Khiam prison for ten years without trial. During most of this period, Bishara has been kept in total solitary confinement, and has been allowed no visits by her family or by the ICRC. During this entire period, Bishara has been denied the right to meet with an attorney. A petition was recently submitted to the Supreme Court by Attorney Leah Tzemel demanding that Bishara be released.[87]

Detentions Law (Paragraph 229)

The new Detentions Law indeed constitutes a revolution in the rights of suspects and detainees in the State of Israel. It is particularly important against the backdrop of the extraordinary number of arrests in Israel in proportion to the size of the population (approximately 40,000 arrests per annum). The State Ombudsman's report for 1994 drew attention to this situation, stating that defects were found in 40% of all police arrests included in a sample examination. This situation was a clear infringement of Article 9(3) of the Covenant.[88]

For the first time, the new law defines criteria for arrest prior to indictment. The causes are highly restricted, and intended to ensure that arrests will not be used for the purpose of punishing suspects or applying pressure for them to cooperate in interrogation. The first cause of arrest (Article 13(1) of the Law) is based on suspicion that the suspect may attempt to disrupt the investigation. The second

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[86] Yosef Algazi, **Ha'aretz** daily , April 12, 1998, p. A6.

[87] HCJ1970/98**, *Suha Bishara et al. vs. Minister of Defense et al.*** The petition was submitted in March 1998; as of writing this report, however, no date has been set for the petition to be heard In a previous case, Attorney Tzemel filed a petition in the matter of Yasmin 'Afifi who had been detained at al-Khiyam prison without trial for six years. 'Afifi was released from prison the day before the hearing of her petition was due, together with four other women detainees, in what was described as a "humanitarian gesture." See: Aviv Lavi, "In Never-Never Land," **Ha'ir**, January 17, 1997.

[88] See General Comment 8: Pre-trial detention should be an exception and as short as possible.

cause of arrest (Article 13(2)) relates to danger to public security. These are customary causes of arrest consistent with international norms. The legislature rightly chose not to view the severity of the offense, in its own right, as a valid cause for arrest.

In contrast to the first two causes, the third cause of arrest (Article 13(3)) has created serious interpretation problems. The legislature's intention, as declared during the enactment procedures, was to prevent arrests taking place solely for the convenience ofthe police in interrogating persons in conditions of detention. The principle was that it is possible to conduct police investigations without arresting suspects, and that the drastic step of denying a person's liberty should be taken only in cases when there is genuine concern of an attempt to disrupt the investigation or a danger to public security. At the request of the police, the possibility of arrest was countenanced in exceptional cases and for special reasons (as stated in the article), when particular interrogation techniques require the incarceration of the suspect. This exceptional cause of arrest was restricted to five days.

Observations of court proceedings reveal that the police currently request that suspects be detained "for the purposes of interrogation," without offering further explanation. Many judges acquiesce to these requests and continue to permit the detention of suspects "for the purposes of interrogation" without offering special reasons for this as the law requires. In practice, therefore, many suspects are still detained solely for the convenience of interrogation, rather than for the restricted causes defined in the law.

The Israel Police has recently waged an unprecedented attack against the Detentions Law. Pressure on the Ministry of Justice led to the establishment of a committee charged with considering the police demands for amendments to the law. Acquiescing to the police demands would endanger the achievements secured by the new law and would lead to an increase in potential violations of human rights. This would also constitute a contravention of rights protected in Articles 9(3,4) and 10(1) of the Covenant.

The Rights of Prisoners Who are Soldiers

The State's report ignores comment regarding the rights of prisoners who are soldiers performing active military service. The interrogation, arrest and trial of soldiers take place not in accordance with the general Penal Code, but in accordance with the Military Jurisdiction Law, 5715-1955.[89] The most serious infringement of a soldier's rights relates to the duration of initial detention prior to

[89] In some respects soldiers enjoy the same rights as civilians: the laws of evidence in a military court, for example, are identical to those in criminal proceedings in the regular courts. In certain respects soldiers enjoy greater rights than civilians: for example, any soldier tried in a military court is entitled to representation by an attorney from the Military Defender's Office. In other areas, however, soldiers' basic rights are infringed. Thus, for example, if a soldier tried in a military court wishes to be represented by a private defense attorney he may only select an attorney authorized by a special legally-empowered committee to appear before the military courts.

a judicial hearing. The army's current policy, as defined by law, is an infringement of Article 9(3) of the Covenant as interpreted by the Committee.[90]

Until 1982, soldiers could be arrested and held in accordance with the Military Jurisdiction Law for a period of 60 days without a court hearing. In 1982, this period was reduced to 35 days, and in 1993, to 25 days. In 1995, a Supreme Court petition was filed against this legal authority by military defense attorneys and the Association for Civil Rights in Israel. The petition asked the Supreme Court to rule that the period of detention of soldiers prior to a court hearing should be the same as that for civilians: 24 hours.

After the petition was filed the law was amended again in 1996. The period of detention for a soldier pending court hearing is now 8 days, and in July 1998 this will be reduced to 4 days. Discussion of the petition has been completed and a ruling is expected shortly.

The Right to Remain Silent (Paragraph 234)

The possibility that negative deductions will be inferred from the decision of a suspect or defendant to remain silent impairs his/her right to do so.

Notification of Arrest and Meetings with Attorneys (Paragraphs 235-237)

See above in our comments on Article 7, Paragraph 185.

Extension of Detention (Paragraph 240)

The interpretation offered by the State of the considerations applied by judges in extending detention may be consistent with the legal situation and rulings prior to the enactment of the Detentions Law, but it is profoundly inconsistent with the spirit and intent of the new law, which restricts the causes for arrest as detailed in Paragraph 229 of the State's report (Article 13 of the Detentions Law):

1. According to the new law, a judge is not supposed to address considerations relating to the **efficiency** of police investigations, but to ensure the possibility that an investigation can be pursued. Accordingly, the consideration is whether there are grounds to fear the disruption of the investigation by the suspect, and whether special reasons justify interrogation in detention (Article 13(1,3) of the Law).
2. The "severity of the offense" does not constitute a cause for arrest in accordance with the new law. The legislature rightly determined that this consideration

[90] General Comment 2: Paragraph 3 of Article 9 requires that in criminal cases and person arrested or detained has to be brought "promptly" before a judge or other officer authorized by law to exercise judicial power.

should not guide judges in deciding on the extension of detention; they should consider only concern that a specific suspect may endanger public security or that he/she may disrupt the investigation (Article 13(1,2)).

3. In the initial detention the judge is not supposed to apply considerations of public interest, such as general deterrence in the case of common offenses, since this is essentially a punitive consideration. The principle reflected by the law in the restricted causes for arrest is that in initial detention the judge must examine solely whether there is actual justification for pursuing the investigation in conditions of detention.

Restriction of the Duration of Detention (Paragraphs 244 and 258)

The situation, as it presently stands, effectively offers no legal obstacle to the indefinite extension of detention as long as it is approved by the Supreme Court. Although such approval is granted only in unusual cases, this situation is inconsistent with the provisions of Article 9(3) concerning the rights of criminal suspects to be brought to trial within a reasonable period of time. In a recent case, an individual was held in detention for 105 days with the approval of the Supreme Court prior to his indictment. In the context of detention pending completion of legal proceedings (Paragraph 258), a maximum period of detention should also be established that cannot be exceeded even with the approval of the Supreme Court.

Court-Appointed Counsel (Paragraph 246)

The State's description of current reality is incorrect. At present, detainees pending indictment without the means to hire representation do not receive representation from an attorney from the Public Defender's Office. See our comments above on Article 7 (Paragraph 200A).

Detention by Order of a Rabbinical Court (Paragraph. 252)

Regarding the possibility of imprisonment due to refusal to grant a divorce or a *Halitza*, it should be noted that the need for imprisonment is due to the fact that religious law is applied in the area of marriage and divorce, meaning that the husband's consent is required for divorce. The result is that the State is obliged to take grave steps against recalcitrant husbands, such as imprisonment and derogation of other rights. These means are not always effective: there was a famous case in Israel of a recalcitrant husband who spent some thirty years in jail, refusing to grant his wife a divorce, and eventually died in prison (his wife continued to be an *Aguna* throughout this period and never remarried).

The solution to this grave state of affairs is to annul the applicability of religious law to marriage and divorce and to enact civil law permitting divorce without the consent of the spouse.

Detention Pending Completion of Legal Proceedings (Paragraph 256)

The law empowers the courts to instruct that a person accused of certain offenses shall be detained pending completion of legal proceedings, on the grounds that he/she is a danger to the public. In such cases the suspect faces the burden of proving the absence of danger: this gravely impairs the presumption of innocence. The burden of proof that a suspect is dangerous to the public should rest with the prosecution, with its preferential legal tools and power.

Compensation for False Arrest (Paragraph 260)

The right to compensation for the infringement of Article 9 of the Covenant is established in Article 9(5), and notes that compensation must be significant. Article 80 of the Penal Code empowers the criminal court to award compensation to a defendant on account of false arrest. However, the maximum amount stated is extremely low and does not reflect just compensation for the depriving of an individual's liberty (the maximum amount is fixed at 1/25 of the average salary). While detainees may file a civil damages suit and demand a higher amount, this is a lengthy process. The maximum compensation established by law should be increased substantially.

Detention of People With Mental Disability (Paragraph 262)

See our comments to Article 7 (Paragraph 211).

Representation of Suspects With Mental Disability (Paragraph 263)

While it is true that the court appoints a defense attorney when it believes that a person is mentally ill, this attorney represents the suspect solely during detention proceedings in court, and - at the earliest – after the initial 24 hours following detention. Contrary to the statement in the State's report, representation is not provided at all stages of interrogation.

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Article 10: Conditions of Detention

Detainees who Require Special Protection (Paragraph 266)

The State's report notes that after trial, detainees are held in prisons maintained by the Israel Prison Service. While this is true in the majority of cases, the lack of suitable places for prisoners defined as "requiring special protection" means that such detainees are sometimes held for several months in police detention centers, *even after their conviction in court*. Police facilities are not prepared for the extended detention of prisoners: in addition to difficult physical conditions (such as overcrowding and lack of privacy), they offer no possibilities for employment, rehabilitation or social assistance. This problem has been evident for many years, and no solution seems forthcoming in the near future.

Conditions in Detention Centers (Paragraphs 269-271)

The situation described in the State's reports regarding 1994 and 1995 is accurate. Since 1996, however, there seems to have been a deceleration and decline in reforming the conditions of detention. The standards established in the Detentions Law obliged all detention centers to undergo certain adjustments toward meeting the conditions of the law. While not insignificant, the changes actually implemented have not led to substantial repairs of the old, overcrowded buildings in which detention centers are housed in Israel. Immediately after the law began to be implemented, the number of arrests fell; each detainee received his or her own mattress and bed, and there was something of a feeling of improvement in the detention centers. Now, however, things have returned to their former state. Visits to detention centers by ACRI show that the police have not managed to conform to the provisions of the new law in various areas, as will be discussed below.

The regulations and practical policies detailed below constitute infringements of the provisions of the Covenant:

Ventilation and Toilets (Paragraph 272)

a. Article 11 of The UN Standard Minimum Rules for the Treatment of Prisoners[91] states that:

In all places where prisoners are required to live or work,

a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

Addressing the prohibition of cruel disciplinary punishments, Article 31 states:

> Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

Many detainees in Israel are held in cells that have no windows, ventilation or natural light. The regulations enacted in accordance with the Detention Law did not adopt the international standards noted above, and failed even to require that when new detention cells are built, they are constructed so as to provide natural light and ventilation.[92]

b. In cases where it is suspected that detainees may attempt to conceal evidence, it is permitted to incarcerate them in cells without toilets or water.[93] Incarceration in such conditions is not subject to any time limit. In practice, detainees are held in cells without toilets or water even where no such suspicion is claimed. At the detention facility in Rehovot, for example, detainees requiring protection are sometimes held for several days in an empty cell (known as "the chicken coop") that has no beds, sink or toilet.

Sanitary Conditions (Paragraph 274)

Visits ACRI has conducted to detention facilities over the past year (after the new law came into effect) have shown that the police are not observing the progressive and desirable regulations required by the new law:

a. The requirement to paint cells at least twice a year is not being observed. In most facilities the cells were painted in May 1997, when the new law came into effect, but have not been painted again since then.

b. Detainees continue to complain of fleas and rats in the cells.

c. The provision of one bed and one mattress for every detainee has not been

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[91] **Standard Minimum Rules for The Treatment of Prisoners**, ECOSOC resolutions 663 C (XXIV), 31.7.57 and 2076 (LXII), 13.5.77.

[92] Reg. 3(e) of **the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Detention)**, 1997.

[93] *Ibid.,* reg. 7(2).

observed in the Central District; detainees continue to sleep on mattresses on the floor. Some detention centers do not provide detainees with clean blankets.

Daily Exercise (Paragraph 275)

The police have completely failed to observe Regulation 9;[94] detainees are not regularly transferred to a facility with a courtyard after seven days in a facility without a courtyard.

The right to a daily walk in the prison courtyard is generally denied to detainees who have not yet been charged, since many such detainees are incarcerated in police stations where there is no courtyard. Thus, these detainees, who are still presumed to be innocent of any offence, are incarcerated for weeks or even months without seeing daylight and without being able to breathe fresh air. Recently, for example, three minors were held at the Lod police station, for periods ranging from 14 to 55 days, without being allowed out of their cells. Denial of the right to daily exercise is particularly grave in the case of minors.

The violation of the right to a daily walk of detainees pending trial, and particularly of minor detainees, is an infringement of Article 10(a) and Article 10(3) of the Covenant.

The Right to Telephone Calls (Paragraph 276)

In addition to the points noted in the State's report, it should be emphasized that security detainees,[95] security prisoners[96] and administrative detainees do not usually have the right to telephone calls, except in extremely unusual cases and then only subject to the approval of the Commissioner of the IPS or his deputy. Regarding criminal detainees who have not yet been charged, the law grants interrogators discretion in permitting telephone calls.[97] In practice, the police prevent all detainees who have not yet been charged from using the telephone. "Seasoned" detainees and those with good legal representation take the opportunity during hearings on the extension of their detention to ask the judge for permission to use the telephone; such permission is sometimes then granted.

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[94] Regulation 9. Of the **Criminal Procedures Regulation (Enforcement Powers - Detentions) (Conditions of Detention)**, 1997.

95 **Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Detention)** 1997, reg. 22(b)(3).

96 The Supreme Court approved a sweeping policy that denies security prisoners the right to telephone calls. ***PPA 1076/95, State of Israel et al. vs. Quntar et al***. (not published).

97 During the drafting of the law the Knesset rejected ACRI's position that the law should provide general permission for detainees to use the telephone, and that prohibition should be seen as an exception in cases where there was concern that the investigation would be impaired.

Visitation Rights (Paragraph 277)

Detainees

Most detainees who have been charged or are in the process of trial are held in police detention facilities rather than in IPS facilities. Conditions for family visits in most of these facilities are extremely inadequate: there are no rooms designed for visits and no facilities for the comfort of family members waiting outside (i.e., no shelters to protect visitors from sun or rain, no benches, no toilets, no drinking water facilities, etc.)

In the case of detainees awaiting prosecution, the law empowers the investigating officer to permit visits at his/her discretion. In practice, however, the police prevent any visits to detainees pending prosecution (with the exception of meetings with attorneys). We believe that the situation of each detainee should be examined, and only visits by family members who are liable to harm the investigation should be denied. When the investigating officer prohibits visits, the reasons for so doing must be recorded.

Detainees who do not receive visits are often effectively deprived of the possibility of receiving essential items such as clothes, underwear and toiletries. This problem is particularly severe in the case of detainees who are residents of the Territories, foreign workers, tourists and others who have no relatives in Israel. While the new Detentions Law obliges the detention facility to supply these items after 24 hours of detention,98 this does not actually happen in many cases.

Palestinian Prisoners and Administrative Detainees from the Occupied Territories

The State's report discusses at length the question of the right of administrative detainees to family visits. However, no mention whatsoever is made of numerous problems unique to Palestinian prisoners and administrative detainees from the Territories. Such problems considerably restrict the right to visits.

For many years the authorities carried out a policy of completely preventing family visits during closures of the Territories. In addition, rigid criteria were used which significantly restricted the possibility of receiving entry permits to Israel for the purpose of visiting imprisoned relatives.[99] Following a Supreme Court petition filed by ACRI, this policy was changed and most of the restrictions revoked.[100] However, the military authorities continue to prevent certain relatives from entering Israel for "security reasons," thus effectively preventing visits to the particular detainee or prisoner concerned, which may result in detainees receiving no family visits at all. In some cases there is room to suspect that the power to prevent entry to Israel is exploited as a means of punishing or applying pressure on the detainee or prisoner.

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98 Reg. 6(e) of **the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Detention)**, 1997.

99 Some of these criteria were inconsistent with the provisions of reg. 11 of **the Emergency Powers Regulations (Detentions) (Conditions of Administrative Detention**), 1981. Thus, for example, the criteria excluded grandparents, as well as siblings of certain ages.

100 HCJ 1981/97 ***Kan'an et al. vs. The Commander of IDF Forces in Judea and Samaria***.

The warden of a jail where administrative detainees are held is empowered to permit visits to an administrative detainee by a person other than a first-degree relative.[101] In practice, however, such visits are almost never permitted. Thus, for example, a request by a number of administrative detainees to permit a visit by activists from the "Open Doors" group, with whom they had been corresponding, was denied.

Furloughs (Paragraph 279)

In addition to the comments in the State's report, it should be noted that the classification according to which prisoners are allowed furloughs is often based on classified material to which the prisoner has no access or opportunity to respond. In many cases the result is that prisoners have no idea why they have been denied the right to furloughs. The only path by which to appeal against the denial of furloughs is to submit a prisoner's petition to the District Court. In such cases a judge at the District Court examines the classified information, but without disclosing it to the prisoner or to his/her attorney.

Security prisoners are usually placed in the category of those not entitled to furlough.

Discrimination Against Groups of Prisoners

The following three paragraphs relate to examples of discrimination against groups of prisoners – in infringement of Article 2(1) of the Covenant.

Conjugal Visits (Paragraph 281)

Security prisoners are not entitled to conjugal visits, even if sentenced to long periods of imprisonment.

Although the IPS has declared its intention to enable all prisoners to receive conjugal visits in the long term, in the immediate future (i.e., over the next few years) there does not appear to be any possibility that this right will be applied to security prisoners.

Religious Observance (Paragraph 282)

While some detention centers and prisons have synagogues for Jewish detainees and prisoners, none have houses of prayer for members of other religions (e.g., mosques and churches).

101 *Supra,* n. 97.

Security Detainees (Paragraph 283)

Regulation 22[102] explicitly discriminates between criminal and security detainees: Detainees suspected of security offences may be held in cells without toilets for an unlimited period of time. They do not have the right to a sink in their cell, and their cells must only be whitewashed once a year (as opposed to at least twice a year in cells occupied by criminal detainees). In addition, the regulation establishes that in new cells to be built in the future for security detainees, there shall be no electricity and no tables, benches or shelves.

> Unlike criminal detainees, security detainees are not permitted to keep electric instruments such as kettles or fans in their cells; neither are they allowed to receive or keep books, newspapers, writing implements, games, watches, mirrors or other similar personal effects.

Many of the rights established in the Israel Prison Service (IPS) Ordinance (such as the right to furloughs, rehabilitation, education, and the use of a telephone) do not apply to detainees and prisoners who are defined by the IPS as security prisoners. This includes administrative detainees.

It should be noted that as a result of the enactment of the new Detentions Law, the rights of criminal detainees are now superior to those of administrative detainees. This, despite the fact that the regulations enacted according to the law on administrative detention originally granted preferential rights to administrative detainees, in recognition of their special status.[103]

Conditions of Detention of Detainees Awaiting Indictment (Paragraphs 284-295)

The decision to transfer responsibility for the detention centers to the IPS is a positive one, though to date it remains unimplemented, with the exception of the experiment undertaken at Ohalei Kedar Prison in the Negev. Even now over 80% of detainees in regional police detention centers are detained pending completion of legal proceedings - detainees who, it has been ruled, should receive the same rights as prisoners. This situation prevents the police from providing even detainees awaiting indictment with their lawful rights.

Detainees awaiting indictment do not receive special status as required by Article 10(2a) of the Covenant; indeed, in most cases their living conditions are worse than those of convicted prisoners. At present detainees under interrogation actually suffer from the worst conditions, despite the fact that such detainees have not even been indicted. While the new law attempted to rectify this situation, most detainees awaiting trial are held in police detention centers in which conditions are significantly worse than in the prisons.

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[102] *Ibid*.
[103] **Emergency Powers (Administrative Detentions) Act**, 5739-1979.

Publication of the Rights of Detainees (Paragraph 295)

In all police detention centers a notice details a number of key rights and obligations of detainees in accordance with the new law. However, detainees do not receive a more detailed publication explaining the law and regulations relating to their rights during the legal process and in detention.[104] Many detainees do not have legal representation and are therefore unaware of their right to appeal to the courts against violations of their rights in detention centers – infringements which, as detailed above, are a routine occurrence.

Concerning compliance with the UN standards (paragraph296 of the State's report), see the above comment on paragraph 272.

Conditions of Detention of Minors (Paragraph 302)

Minors are still held in inappropriate detention centers in overcrowded conditions, sometimes without the possibility of walking in a courtyard for months. There are no possibilities for employment, study or physical exercise. On visits to detention centers we also met minor detainees from the Territories who had been transferred from detention centers in Jerusalem to remote detention facilities in Beersheva or northern Israel, thus de facto preventing regular family visits or the receipt of basic hygiene items from them. This situation is a contravention of Article 10(3) of the Covenant.

[104] Unlike the prisons, detention centers are not equipped with libraries.

Article 12: Freedom of Movement

Residents of the Occupied Territories

The State's report makes no mention of the freedom of movement of the 2.7 million Palestinian residents of the West Bank and Gaza Strip. The movement of this entire population – their ability to leave the country and return to the country as well as their ability to move within the country – is severely curtailed.

Travel Into Israel and Between the Occupied Territories

In January 1991, during the Gulf War, Israel closed off the Occupied Territories and cancelled the general exit order which had been in effect since 1972. All Palestinians wanting to enter Israel, travel within the Occupied Territories or travel abroad must first obtain a personal exit permit. In 1993, Israel imposed an overall closure on the Occupied Territories which remains in effect until today, making permits difficult to obtain. The severity of the closure varies. For example, after Palestinian violence against Israelis, the authorities impose a total closure, during which no exit permits are granted, except in exceptional cases. A total closure is also often imposed on the Occupied Territories during Israeli holidays.

The severe restrictions on the freedom of movement of the entire Palestinian population have severe repercussions in a variety of areas:

Inability to Earn a Living

Prior to the closure, over 100,000 Palestinians worked inside Israel. Today, approximately 50,000 Palestinians work inside Israel. During times of total closure, no Palestinians are allowed to enter Israel. Furthermore, a merchant or businessman who is allowed to enter Israel may encounter difficulties obtaining a permit to travel between the West Bank and Gaza Strip for business purposes. The permit system therefore has a drastic effect on the economic well-being of the Palestinian population.

Difficulty Maintaining Family Ties

Families whose members live in different areas of the Occupied Territories – for example in the West Bank and Gaza Strip – are prevented from seeing each other. In some instances, a parent may be separated from a young child for months before he or she can secure the necessary permits to rejoin the nuclear family. In instances of death in the family, individuals encounter difficulties and may be denied a permit to bury a parent or mourn with their family.

Lack of Access to Education

Some 900 Palestinians live in the Gaza Strip and are enrolled in universities located in the West Bank. In March 1996, Israel cancelled all permits for Gaza students to reside in the West Bank and issued a collective prohibition on permits for Gaza students. With minor exceptions, this collective prohibition remains in force. In addition, the

restrictions on access to East Jerusalem prevent students as well as teachers from reaching East Jerusalem schools.

Lack of Access to Health Care

Due to the inadequacies of the Palestinian health system, many Palestinians require advanced medical care from facilities inside Israel. Furthermore, the most advanced Palestinian hospitals are located in East Jerusalem, which is also inaccessible to Palestinians without permits.

Ability to Travel Abroad

All Palestinians wishing to travel abroad – whether by air or land – must obtain an exit permit from Israel. Prior to traveling by air, a Palestinian must first obtain both an exit permit as well as a permit to enter Israel to reach Ben Gurion Airport. To travel abroad by land, a Palestinian reaches the Border Crossing (Allenby Bridge in the West Bank or Rafah Crossing in the Gaza Strip) and purchases an exit permit. A Palestinian may be denied an exit permit for security reasons. No explanation is provided for this denial and there is no opportunity to appeal. In many cases, Palestinians may not know that they are denied until they reach the Border Crossing and request a permit to cross into Jordan or Egypt.

Non-Transparent Procedures

> The criteria for granting permits – whether for entry into Israel, travel between different areas of the Occupied Territories and exit abroad – are unknown to Palestinians. In all cases, Israeli authorities may justify denial of a permit for "security reasons." No explanation is provided for this denial and there is no opportunity to appeal. A Palestinian with such a security denial has no freedom of movement whatsoever.
>
> In many cases concerning requests for permits human rights organizations are able to obtain exit permits after an initial request by the individual is denied. This phenomenon of granting permits more leniently when the request comes from human rights organizations suggests that initial requests for travel permits are not thoroughly scrutinized and permits may be denied in a random and baseless manner.

Freedom of Movement Within the State of Israel (Para. 318)

The extreme and wide-ranging powers to restrict freedom of movement included in the Defense Regulations (State of Emergency), 1945 are administrative rather than judicial provisions. These powers rest with a military officer who may even be a low-ranking officer (although according to IDF regulations these powers have been granted only to generals responsible for IDF Commands or Corps commanders). Hearings before a legal officer take place only after the issuing of a temporary instruction for a period of 14 days: there is no hearing prior to the issuing of the order. Moreover, the basis for these hearings is established only in the basis of internal guidelines.

Thus the order restricting freedom of movement is issued not by a judicial tribunal but by an IDF officer. The order is not even brought before a judicial tribunal for ratification after its issue. While the person receiving the order is entitled to submit an appeal to the Supreme Court and the scope of judicial review has been extended in recent years, the Supreme Court refrains from intervening in the vast majority of cases in which human rights have been violated on the basis of security considerations.

Restrictions on the Right to Leave Israel (Paragraphs 321-323)

Here, too, the power to prevent a person leaving Israel on security grounds rests with an administrative body (the Minister of the Interior) rather than a judicial one. The law does not establish any hearing prior to this decision; neither is there any provision for the ratification thereof by a judicial tribunal. The technical option of filing a Supreme Court petition is virtually meaningless since in the vast majority of cases, as noted above, the Supreme Court refrains form intervening in decisions of the authorities relating to security matters.

In addition to the comments included in the State's report, divorced fathers are routinely the subject of stay of exit orders renewed on an annual basis until the youngest child reaches the age of 18. This practice is intended to ensure payment of child support, even in cases when there are no grounds to suspect that the father intends to leave Israel permanently or for an extended period.

The State's report refrains from mentioning the *de facto* restrictions that in many cases prevent foreign workers leaving Israel. This restriction is due to the fact that the passport of a foreign citizen with a work permit is usually not held by him or her. Foreign workers who arrive in Israel with entry and work permits do not receive their passports after passing through border control. The passports are held by the Ministry of the Interior for several weeks for administrative processing (stamping with permits). After completing processing the Ministry of the Interior forwards the passports to the employers rather than to the workers themselves. The employers sometimes hold the passports and refuse to return them to the workers. Although holding a person's passport unlawfully is a criminal offense, the police make almost no efforts to enforce this provision (see our comments to Article 8).

Entry to Israel by Permit

Tourist's Permit (Paragraph 329)

In a considerable number of cases in recent years tourists in possession of a tourist visa have been detained at the airport and subjected to humiliating interrogation by representatives of the Ministry of the Interior, under suspicion that they have come to Israel with the intention of working illegally. Some individuals have even been held in detention for many hours and subsequently deported without being allowed to enter the country. In many cases the interrogations relate not to any specific and individual suspicions against the individual concerned, but rather to the fact that they belong to a particular category based on country of origin or external appearance.

Discretionary Powers of the Ministry of the Interior (Para. 334)

As noted in the State's report, the Minister of the Interior has wide-ranging discretionary powers to grant, refuse, cancel or extend permits for stays in Israel. At present, the only case in which the Minister must explain his decision is in canceling the permit of a person present lawfully in Israel. As can be seen from the State's report, in all other cases no explanation is offered of the Ministry of the Interior's decision; only if the person concerned specifically requests an explanation is one provided, and even then the explanation is highly general, without any detailed information behind the decision and without any hearing before or after the decision is taken.

Israel's immigration policy is restricted to Jews and their relatives, under the Law of Return. The Ministry of the Interior does not publish the criteria it uses in granting residence permits, despite the fact that as early as 1994 the Supreme Court ruled that the Ministry of the Interior must prepare and publish clear criteria concerning the status of permanent resident.[105]

Although Israel has signed the Convention on Refugees, 1950, it does not have any policy on granting political asylum. Only twice over the past twenty years has Israel granted permits to refugees (in both cases this followed a decision by the prime minister). The first case was in the late 1970s, relating to a group of Vietnamese refugees; the second was in the early 1990s relating to a group of Bosnians. The Association for Civil Rights in Israel was obliged to petition the Supreme Court on behalf of 30 Iraqi citizens who arrived in Israel illegally and sought refuge due to the mortal danger they faced in Iraq. The refugees were detained for several years pending deportation. The Supreme Court did not discuss the claims relating to the request for asylum, but following its ruling 24 refugees were released and given temporary permits.[106] Six Iraqi citizens are still in detention after the Supreme Court upheld the authorities' claim that they constitute a security threat.

Residency

See our comments to Article 2: Citizenship and residence.

The Right to Choose One's Place of Residence

The State does not address this subject, which is guaranteed in Article 12(1) of the Convention. Since the entry permits granted to foreign workers are conditioned on their remaining with a specific employer (see our comments to Article 8), these workers do not in practice enjoy the right to choose their place of residence, despite the fact that they are in Israel lawfully. Since their lawful presence in Israel applies only as long as they work for the employer referred to in the permit, they are compelled to live in the place and in the accommodation determined by that employer.

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[105] H.C.J. 1689/94 ***Harari et al.vs.Minister of Interior***, 94 (4) Takdin Elyon 597.
[106] H.C.J. 4702/94, ***El-Tai et al. vs. Minister of Interior***, 49 (3) P.D. 843

Article 13: The Deportation of Aliens

According to its wording, and as interpreted by the Committee,[107] Article 13 applies only to deportation procedures against persons legally present in the State. Such procedures are almost unknown in Israel, since deportation orders are issued against those whom the State believes are present in Israel illegally, regardless of whether they entered illegally, entered legally but their residence permit has now expired, acquired their residence permit fraudulently, contravened the conditions of their residence permit, or has had their residence permit revoked.

In this context we respectfully wish to note a deficiency in the Covenant, which imposes no procedural obligations on a state relating to the process of derogating a residence permit or of deporting a person present illegally in that state. In this section we shall discuss the process of deportation in general, as the State does in its report, without distinguishing between those present legally or illegally. This is due to the fact that once a deportation order is issued, the residence permit of an individual is automatically no longer valid and therefore deportation procedures are the same for all.

The State's description of the process of deportation of persons present in Israel without a valid residence permit is far removed from reality. As we shall detail below, these procedures are rife with arbitrary decisions and violations of the right to due process.

"Presence Without Permit" (Paragraph 338)

In Paragraph 9 of General Comment 15, it is established that while Article 13 does not apply to those present in a country illegally, if the legality of the entry or presence of a person is the subject of dispute, any decision on a matter leading to his/her deportation must be taken in accordance with Article 13.

Serious problems are encountered in the procedures by which it is determined whether a person is present in Israel without a valid permit. These problems apply to two main groups: foreign workers, and persons who emigrated to Israel according to the Law of Return, allegedly under false pretenses.

Foreign Workers

Due to the government's policy of conditioning the validity of a foreign worker's residence permit on his or her employment with a company who holds a permit for that worker from the Employment Service,[108] a foreign worker who merely leaves his or her legal employer violates the conditions of the residence permit, and becomes an

[107] See General Comment 15, Paragraph 9.
[108] See our comments on Article 8.

illegal alien subject to arrest and deportation. This is true even if the worker was justified in leaving his or her employer due to the latter's failure to maintain proper working conditions, and even if the worker was unaware that his or her employer did not hold a permit for his or her employment.

When workers are found in the employment of an employer who does not hold a permit for them, the workers are arrested and a deportation order is issued. No review is undertaken of the circumstances behind the worker's leaving his or her legal employer, or behind their employment by an employer without a permit, unless an NGO intervenes and demands that the deportation be halted while such a review is conducted. Thus, for example, in August 1997, fifteen Chinese citizens were arrested. As ordered by the personnel company that had brought them to Israel, they were working for an employer who did not have a permit to employ them (the workers were unaware of this fact and believed they were legally employed). Only after ACRI intervened did the Ministry of the Interior examine the circumstances of their employment. This examination lasted three weeks, during which the Chinese workers were held in detention. Eventually the Ministry of the Interior was persuaded that these workers had indeed not been guilty of contravening the conditions of the residence permits. They were released from detention and the deportation orders issued against them were cancelled. As in many other cases, were it not for intervention by ACRI (or other bodies) no such examination would have taken place and the workers would have been deported through no fault of their own.

New Immigrants

As the State notes in its report, one of the causes for the cancellation of a residence permit and the issuing of a deportation order is the finding that a residence permit or immigrant's certificate was obtained under false pretenses. ACRI and other NGOs have received numerous complaints of cases wherein officials from the Ministry of the Interior have reached this conclusion. When this happens, residence permits, and sometimes even citizenship, are revoked, and the person must leave Israel – without any due process.

The complainants were persons who went to the Ministry of the Interior to regulate a bureaucratic matter (such as renewing a passport, registering a marriage, etc.). They all belong to a "suspect" group (i.e., they came to Israel during a particular period when the investigations carried out prior to issuing an immigrant's certificate were not thorough). In each case, the complainants' identity card and passport were taken form them on the spot, and they were required to produce documentation proving their Jewish status; sometimes including documents that could only be obtained in their country of origin. The examination lasted many months, during which these people were left without identity cards or passports.

In some cases it was decided at the end of the examination to revoke the complainant's citizenship, and he/she was required to leave Israel within one week. These people, it should be noted, had lived in Israel for several years. The complainants were not invited to any hearing at which they might have refuted the claims against them. In some cases those involved could not speak Hebrew, did not

understand the process, and were required to sign documents they could not understand.

It should be noted that according to the Citizenship Law, 5712-1952, the Minister of the Interior is entitled to revoke Israeli citizenship "if it has been proved to his satisfaction that citizenship was acquired on the basis of false details" (Article 11). The law does not mandate any procedure, hearing or judicial confirmation to do so. Despite this, the principles of public administration in accordance with Israeli court rulings require the provision of a hearing before a right is derogated.

Deportation Procedures (Paragraph 339)

In practice, deportation procedures are often inconsistent with the provisions of the law or of court rulings as described in the State's report.

Detention Following a Deportation Order

The State notes that a person against whom a deportation order has been issued is detained after such an order is issued. In practice, detention often takes place *prior* to the issuance of a deportation order- after an individual is arrested on suspicion of being an alien solely on the basis of their appearance (Africans or women from the Far East), or due to the fact that they are present in an area in which there is a large concentration of illegal foreign workers. Such arrests take place in the street and even on buses; people are arrested randomly, without any prior information about them. Only after they reach the police station is the question of their identity and the legality of their presence in Israel examined. The information is then forwarded to the Ministry of the Interior, which issues a deportation order.

Alternatives to Detention

The State's report further claims that detention is not automatic, and that it is only used in those cases when it is vital for ensuring the implementation of the deportation order. The Minister of the Interior is required to examine less restrictive alternatives, such a keep a pending deportee under house arrest, the provision of a financial guarantee, the requirement to report periodically to the police, and so on. This is a precise description of the legal provisions and court rulings on this matter, but it is not a faithful description of reality.

The Basic Law: Human Dignity and Liberty, and court rulings interpreting the authority to arrest aliens pending deportation in accordance with the Entrance to Israel Law, require that the authorities choose the least restrictive alternative that will ensure the availability of that person for deportation. In practice, illegal foreign workers are routinely arrested and kept in jail pending deportation, and no other alternative, such as release on bail or house arrest, is considered.

Moreover, when another person approaches the Ministry of the Interior and asks to deposit bail in order to secure the release of a pending deportee and to enable their

voluntary departure, the Ministry of the Interior demands excessive bail ranging from NIS 20,000 to NIS 40,000 (approximately US $5,000 to $10,000), even when it would have been possible to ensure departure from Israel for a much lower bail and/or through other means mentioned above. It should be noted that in cases that have reached the magistrates' courts concerning suspected criminals who are not foreign workers and whom the Ministry of the Interior has announced its intention to deport, the detainees have been released for much lower bail (in the range of NIS 1,000 to NIS 10,000).

In addition to the fact that arrest is often unnecessary, the failure to adopt alternatives to arrest often means that the detainee loses his or her possessions, since, from jail he or she is unable to ensure that they are collected and sold or sent to his or her country of origin. In some cases those deported have spent several years in Israel, maintained a full home and acquired considerable household possessions.

Appeals of Deportation Orders

It is true that the subjects of deportation orders have the right to appeal to the Minister of the Interior within three days. In many cases, however, the deportee does not know that he or she is entitled to such a right. The deportation order stating the foreign citizen's right to appeal deportation is written in Hebrew and English; languages which many foreign workers (particularly from Eastern Europe and the Former Soviet Union) can not read. Moreover, in several cases detainees report that they never received copies of the deportation order, contrary to the regulations.[109] Lastly, the deportation order mentions the right of appeal in a general manner, and does not note what procedure the foreign citizen must initiate in order to file an appeal. In practice, to the best of our knowledge, use of the right of appeal to the Minister of the Interior is extremely rare.

The right to appeal to the Supreme Court against detention and/or deportation (Paragraph 340) is also not open in practice to most detainees awaiting deportation; they are unaware of this right and lack the necessary means to hire legal representation in order to submit an appeal.

Refugees

Although Israel is a signatory to the UN Convention Relating to the Status of Refugees (1951), the State has declared before the Supreme Court (in the Al-Taye case mentioned in the State's report (Paragraph 339) concerning Iraqi citizens) that recognition of a person as a refugee by the UN Chief Commissioner for Refugees does not oblige Israel to grant that person the status of a refugee in accordance with the Covenant.

In the Al-Taye case, the Supreme Court clarified that the State is bound by the prohibition against deporting refugees to a country in which they face danger, or which is liable to send them to a country in which they face danger. However, the Supreme Court authorized the State's policy of continuing to hold refugees due for

[109] Entrance to Israel Regulations, 5734-1974 (Regulation 21).

deportation in detention, due to the danger of state security which could result from their release (a danger substantiated in classified material the petitioners were unable to address). At the end of 1995, 24 Iraqi refugees were released after having been detained for some two years. As of the time of this writing, six Iraqi citizens remain in detention; they have been recognized as refugees by the UN and have been in detention for more than four years.

Conclusion

The subject of the expulsion of persons from Israel due to their illegal presence in the country is regulated in a small number of articles in the Entrance to Israel Law, and in regulations enacted in accordance therewith. While these provisions grant the Minister of the Interior almost unlimited authority to revoke residence permits, issue deportation orders and arrest persons pending deportation, they include no procedural provisions to prevent arbitrary decisions in these matters. The law and its regulations provide for no hearing for persons suspected of obtaining a residence permit unlawfully prior to the revocation of said permit; no hearing to clarify the circumstances behind the contravention of the conditions of a permit; no procedure for claiming and clarifying refugee status; no conditions justifying detention pending deportation; no alternatives to arrest and no process for adopting an alternative; and no judicial review of prolonged detention exceeding a specified period.

The laconic legislative situation and the almost unlimited authority of the Ministry of the Interior, combined with the chronic shortage of personnel responsible for the area of detention and deportation, create fertile ground for arbitrary and unjust decisions by Ministry of the Interior officials which infringe the basic rights of liberty, citizenship and due process.

This situation also creates the possibility of the indefinite detention of persons against whom a deportation order has been issued without judicial review of the deportation order or the arrest, in the absence of a complaint initiated by the detainee. This danger is not only theoretical; it actually materializes, according to numerous cases reaching the attention of NGOs which reveal arbitrary decisions on the revocation of residence permits, revocation of citizenship, detention and deportation.

In recent years these problems have been considerably exacerbated due to the sharp increase in the number of foreign citizens entering Israel. This increase has not been accompanied by the necessary adjustments in legislation and administration to cope with new problems.

Article 14: The Right to Due Process of Law

In this section the right to due process of law is viewed in context of legal proceedings. For additional references to the right to due process of law see Article 2: Citizenship and Residency; Article 12: Freedom of Movement; Article 13: Expulsion of Aliens.

Access to the Courts (Paragraph 372)

A proposed law introduced in the Knesset aims to deny residents of the Occupied Territories the right to file damages claims in Israeli courts relating to injuries sustained as the result of actions by the Israeli Defense Forces in the Territories during the Intifada. See our comments to article 2.

Presumption of Innocence (Paragraph 380)

Various provisions in the Penal Code and other laws impose on defendants the burden to prove that no element of an offense was present in the specific circumstances of the case, thereby impeding the presumption of innocence. For example, defendants found in possession of more than a certain quantity of narcotics are required to prove that they were not holding the drugs for the purpose of trafficking therein

The legal provisions concerning strict liability also impair the presumption of innocence. The Penal Code states that defendants charged of offenses involving strict liability must prove that they acted without criminal intent and without negligence, and that they did everything possible to prevent the offense. While it is not possible to convict such defendants unless the prosecution proves criminal intent or negligence, the mere imposition of liability on a person without the need to prove the mental factor impairs the presumption of innocence.

Another provision impairing the presumption of innocence is included in the new Detentions Law, which establishes a presumption that defendants accused of certain offenses are dangerous, thereby necessitating incarceration. This presumption imposes on the defendant in these cases the burden of proving that there are no grounds for detention

Classified Information (Paragraph 382)

Regarding the revelation of classified information it should be noted that a detainee prior to indictment is not entitled to review the evidence presented by the police when requesting an extension of detention.

Prisoners and their representatives also do not have the right to receive in advance the relevant material to be brought before the Parole Board. In the vast majority of cases the opinions of prison personnel is classified; yet even unclassified material cannot be

obtained prior to the Parole Board hearing. According to the existing regulations relating to the procedures in the Parole Board, only the Board and the State Attorney's Office have the right to receive all material prior to the hearing date.

Meetings Between Detainees and their Attorneys (Paragraph 384)

The Criminal Procedures Law permits prison authorities to postpone a meeting between a detainee and his/her attorney for various reasons, most notably due to concern over the possible disruption of investigative proceedings. The delay is restricted to 48 hours, or 21 days in the case of a detainee suspected of security offenses. While this authority is applied only in extremely rare cases with regard to ordinary criminal detainees, it is quite common in the case of security detainees (see also our comments on Article 7, Paragraph 185).

It must be recalled that in Israel, suspects do not have the right to demand the presence of an attorney in the interrogation room. Moreover, some detention centers do not have proper meeting rooms for attorney-client conferences, so that meetings take place in conditions that prevent confidential discussions between detainees and their attorneys.

The Right to Trial within a Reasonable Period (Paragraph 385)

In addition to the points covered in the State's report, it should be noted that the Supreme Court is empowered to extend all the dates mentioned without limitation. In many cases, the trial of detainees held pending completion of proceedings is not completed within nine months and the Supreme Court uses its authority to instruct the extension of detention for an additional period. The result is that some defendants have been detained for periods of two and *in exceptional cases even three years* pending completion of trial.

It should be noted that according to Regulation 20(a) of the Criminal Procedures Regulations, which is mentioned in the State's report, the minimum period that must elapse between indictment and the commencement of trial, when the indictment is not filed by the Attorney General or an attorney from the State Attorney's Office, is two days, not seven. This is an extremely short period of time in view of the fact that many indictments are filed by the Police Prosecutor, giving them an upper hand. As noted above, defendants may agree to their trial's being heard within a shorter period.

We have learned of cases in which judges have asked defendants, particularly residents of the Territories prosecuted for illegal entry into Israel, whether they agree to be tried immediately, without informing them of their right to opt for a postponement of trial. As a result defendants agreed to a rapid trial without being aware of their rights in this respect.

Appointment of a Defense Counsel by the Court (Paragraph 388)

Concerning the appointment of an attorney for those unable to afford representation, the Minister of Justice has to date ruled that only defendants prosecuted for offenses

incurring a penalty of five years' imprisonment or more are entitled to representation by an attorney from the Public Defenders Office. The Public Defenders Office examines the financial ability of all those who request representation; it is true that there are judges who approve representation by a public defense attorney on the basis of the above-mentioned examination for defendants prosecuted for offenses for which the established penalty is less than five years' imprisonment. Other judges, however, have refused to appoint defense attorneys for such offenses, even after their financial entitlement has been examined by the Public Defenders Office.

Despite the fact that the Public Defender Office Law establishes the in-principle right of detainees who have not been indicted to be represented by an attorney from the Public Defenders Office, and despite the fact that more than two and a half years have passed since the Public Defense Office Law was passed, the Minister of Justice has yet to enact regulations enabling the representation of detainees by an attorney prior to their indictment.

Right to Cross-Examination (Paragraph 390)

The Supreme Court has ruled that a written confession (usually made to a police investigator) is admissible as evidence, even if the witness remains silent during trial and completely refuses to answer questions. This ruling naturally impairs the defendant's right to cross-examination.

Article 18: Freedom of Religion and Conscience

The Invalidity of Israel's Reservation Regarding the Applicability of Religious Law to Matters of Personal Status

In its reservation, the State announces that religious law will apply to matters of personal status in Israel, and that it does not consider itself bound by any provision in the Covenant that contradicts this reservation. This statement by Israel is inconsistent with the freedom of religion and conscience to which all individuals are entitled in accordance with the Covenant, since it conditions the realization of such basic rights as the right to marry on participation in religious ceremonies that sometimes contradict personal beliefs. Those who are unwilling to marry in a religious ceremony are obliged to travel abroad in order to marry, creating difficulties and financial burden.

According to the Committee's General Comment 24, a state cannot make a reservation that infringes the right to the freedom of thought, conscience and religion. One hardly needs to underscore the fundamental infringement of the freedom of conscience and religion that occurs when individuals are required to participate in religious ceremonies that contradict their beliefs and world views. The Committee has recognized this infringement, establishing in General Comment 19 to Article 23 of the Covenant that the freedom of thought, conscience and religion mean that the legislature in each state must enable the existence of civil marriage. Accordingly, the Committee must exercise its authority and determine that Israel's above-mentioned reservation is invalid, and that the absence of civil marriage in Israel violates the right to freedom of thought, conscience and religion as protected by the Covenant.

The application of religious law to matters of personal status also severely injures the status of women and women's right to equality, as detailed in Article 23.

The Orthodox Jewish Monopoly

In General Comment 22 the Committee emphasizes that the right to freedom of thought, religion and conscience is a broad and fundamental right. The Committee specifically notes that Article 18 protects atheistic belief as well as other beliefs, and that it protects the right not to hold or practice any belief or religion. The Committee also notes with concern the tendency to discriminate against religions and beliefs because they are new or represent religious minorities that are viewed with hostility by the dominant religious community. The Committee establishes that in imposing restrictions on freedom of thought, conscience and religion, states must take into account the rights protected by the Covenant, including the principle of preventing discrimination. The Committee emphasizes that it is forbidden to impose restrictions on freedom of thought, conscience and religion the intent of which is discriminatory or which are implemented in a discriminatory manner.

Lastly, the Committee states that the fact that a particular religion is an official or traditional religion and that its believers constitute a majority in the population does not justify discrimination or injury to any of the rights of the followers of other religions or of those who are not religious, as protected in the Covenant.

These comments by the Committee are extremely pertinent to the situation in Israel, where Orthodox Judaism is the dominant religion, and the rights of other denominations, religions, and of those who are not religious at all, are injured in various manners, including through religious coercion, inequality in government allocations, and the prevention of the right to hold religious ceremonies, as illustrated by the examples below.

Prayers at the Western Wall (Paragraph 479)

Various groups within Judaism wish to pray at the Western Wall according to their own customs. These groups include the "Women of the Wall" and members of the Reform and Conservative movements, whose ritual customs – particularly where it concerns men and women praying together – are rejected by Orthodox rabbis. This causes a conflict in respecting various forms of religious observance and has led to outbreaks of violence at the Wall. Numerous committees have discussed this issue; but, as noted in the State's report, no solution has yet been found to resolve this dispute.

Last year as the police dispersed Conservative worshippers who came to pray at the Western Wall, a number of worshippers were beaten.

Recently, two mixed prayer services (combining both male and female worshipers) took place at the Western Wall, organized by the Reform and Conservative Jewish movements. These services were completed in a relatively peaceful manner, although it should be noted that they took place not at the Western Wall itself, but in an adjacent parking lot – an unacceptable solution to the problem. An additional problem is that there are no arrangements enabling these groups to pray at the Western Wall on a regular basis; each prayer service must be coordinated in advance with the police.

Work on the Sabbath (Paragraph 482)

The State notes that the law prohibits Jews from working on the Sabbath (Saturday) while allowing non-Jews to choose their day of rest. The report refrains from noting that, in practice, the State enforces these laws only against Jews.

Over the past two years a very large number of businesses have been prosecuted for opening on the Jewish Sabbath. Indeed, the Ministry of Labor and Social Affairs makes greater efforts to enforce this law than any other labor law, including those relating to equal opportunities and the minimum wage. For many years this law was not enforced; its recent enforcement has created fierce arguments between the secular

public and the religious establishment since secular Israeli Jews attach great importance to their right to use their day of rest for shopping and entertainment.

The motivation behind the enforcement of the law is to oblige the Jewish population in Israel to observe the Sabbath; the proof of this is that it is enforced solely against Jews.

Opening Movie Theaters on the Sabbath (Paragraph 483)

The State notes that local authorities have the power to prevent the opening of businesses on the Jewish Sabbath, including movie theaters, but adds that in many cities movie theaters are open despite the law, and municipal by-laws are not enforced. It is important to note that the purpose of this legislation is purely religious, and that it severely infringes the right of residents of Israel to pursue their own cultural life according to their conscience and perception. The fact that legislation is not currently enforced is immaterial, since the authority to enforce the law exists and could be applied at any time. Those opening movie theaters on the Sabbath are committing criminal offenses and are liable to prosecution.

An arbitrator recently ruled against a movie chain that sought to realize its contractual right to operate movie theaters on the Jewish Sabbath in a shopping mall in Tel Aviv. The arbitrator ruled that the operation of the movie theaters was contrary to the municipal by-laws in Tel Aviv which prohibit the opening of movie theaters on the Jewish Sabbath, and therefore any contract requiring the law to be broken should not be implemented. After this ruling, the by-law in Tel Aviv was changed to permit the opening of movie theaters on the Sabbath.

Public Transportation (Paragraph 484)

The law prohibits the operation of public transportation on the Jewish Sabbath for religious reasons. This prohibition injures mainly those who cannot afford to purchase a car, preventing them from using their day of rest for outings and leisure activities. Very few private buses and taxis run on the Jewish Sabbath, and these do not amount to a substitute for public transportation. The prohibition against the operation of public transport on the Sabbath infringes freedom of movement and impairs the quality of life due to religious motives.

Conversion (Paragraphs 487-488)

The State notes that according to the existing law the secular authorities of the State cannot refuse to recognize the legitimacy of non-Orthodox conversions to Judaism. This statement is inconsistent with the actual situation. In practice the State does not recognize and refuses to register non-Orthodox conversions performed in Israel. A committee established to seek a solution to this problem failed to do so. A proposed law has been introduced in the Knesset which would prevent the possibility of recognition of non-Orthodox conversions performed in Israel. Equally, pending petitions to the Supreme Court and other Israeli courts demand that Reform conversions performed abroad be recognized.

According to Israeli adoption law, adoption is conditioned on both the adopting parents being of the same religion. Consequently, couples who do not share the same religion have almost no prospect of adoption in Israel. Problems are also encountered in the adoption of children who have no religion or whose religious status is uncertain.

Jews who adopt a non-Jewish child abroad and wish to convert him/her encounter numerous obstacles. The rabbinical courts impose various conditions on the family for the conversion of their children which many families are unable to meet, such as: keeping a kosher home, observing the Sabbath, and undertaking to give the child an Orthodox religious education. A pending Supreme Court petition seeks recognition for Conservative conversions performed in Israel for children adopted abroad. Another Supreme Court petition has been filed against the Ministry of the Interior following its refusal to register as Jews adopted children converted in London. There are approximately 5,000 children in Israel adopted in this manner.

Civil Burial (Paragraph 489)

Although a law was passed in 1996 providing for the establishment of civil (i.e., secular) cemeteries, not a single such cemetery has been so established. The government has neither allocated land nor provided budgets for this purpose. To date, there is only one civil cemetery in Israel, located in Beersheva, at a great distance from the areas of residence of most residents of Israel. A Supreme Court petition has been submitted against the Ministry of the Interior for its failure to implement the law.

The absence of a civil burial option means that all individuals must be buried in religious ceremonies; for Jews, this means an Orthodox burial ceremony, even if this is inconsistent with individual conscience and belief. This situation infringes the rights both of secular Jews and of the members of the unrecognized branches of Judaism (Reform and Conservative), who are obliged to be buried in Orthodox ceremonies.

In addition, the burial societies which operate the Jewish cemeteries impose additional conditions that infringe upon the freedom of conscience, such as a prohibition on the use of Latin letters on gravestones. After an appeal was filed on this matter, the Supreme Court ruled that inscriptions in Latin letters should be permitted on gravestones[110]; however, several burial societies still refuse to respect this ruling and continue to prevent relatives from including Latin inscriptions on gravestones. A judge in the Tel Aviv District Court recently rejected a suit filed against a burial society by a person who had been refused the right to include a Latin inscription on a gravestone. The judge argued that since the law now provides for civil burials, a burial society should not be obliged to permit Latin inscriptions in a cemetery under its administration. This represents a double violation of freedom of religion and conscience: not only does the relative have no effective possibility of choosing civil burial, but he/she is even denied the right to include a Latin inscription on the gravestone.

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[110] CA 294/91 ***Kestenbaum vs. Burial Society*** P.D. 46(2) 464.

The Pork Laws (Paragraph 420)

The State notes that many local authorities have passed laws prohibiting the sale of pork and other pig products, but it claims that these laws are not enforced. This is inaccurate: a number of shops selling pork have been prosecuted for doing so, and the sale of pork is prohibited in almost all parts of Israel.

The prohibition against the sale of pork was established purely due to religious motives, and it infringes upon the freedom of religion and conscience insofar as it obliges those who are not religious to refrain from eating pork for religious reasons. Moreover, for many Israeli citizens – particularly recent immigrants from the CIS – pork forms an integral part of their diet. This prohibition obliges such citizens to change their lifestyles without justification. Additionally, the prohibition against the sale of pork infringes upon the freedom of vocation of shopkeepers and producers, for purely religious motives.

Approximately two years ago a court ruling annulled the municipal by-law preventing the sale of pork in Netanya on the grounds that the by-law was an infringement of both freedom of religion and freedom of vocation. Following this case, the Attorney General issued a directive to prosecutors stating that in deciding whether to prosecute for the sale of pork, the composition of the local population should be taken into consideration. In spite of this, the State's claim that these laws are not enforced is inaccurate, as noted. For example, one may quote a recent ruling by the Ashkelon Magistrates' Court convicting twelve shopkeepers of breaking the municipal by-law prohibiting the sale of pork. The convicted shopkeepers were each fined NIS 2,000 (or 40 days imprisonment) and had to sign undertakings not to repeat the offense. An appeal filed against this ruling at the District Court is currently pending. It should be noted that most of the population of Ashkelon is secular, and that approximately 25% of the local residents originate from the CIS and are in the habit of eating pork.

Prohibition Against the Sale of Leaven at Passover (Paragraph 492)

As in the case of pork, the prohibition against the sale of bread and other leavened products during the Passover holiday infringes upon freedom of religion and conscience insofar as it obliges people who are not religious to refrain from eating a wide range of products for religious reasons. Although the prohibition is against displaying leaven, and not against its consumption, this prohibition effectively creates a situation wherein people cannot purchase basic food items for an entire week due to religious considerations which may be inconsistent with their beliefs and conscience.

Funding and Support of Non-Orthodox Institutions (Paragraph 496)

The budget that the Ministry for Religious Affairs directs to the Arab community is the lowest compared to all other governmental ministries. Less than 2% of its total budget goes to non-Jewish sects - Muslims, Christians and Druze - although the population of these groups totals 20% of the entire Israeli population.

In August of 1995 the Ministry for Religious Affairs published a plan aimed at a more balanced distribution of resources to accommodate the religious needs and to fund the religious courts of the non-Jewish sects in Israel. The purpose of the plan is to gradually proportionally equalize allocations between non-Jewish and Jewish religious sects. This would be accomplished both by significantly increasing the budgets to the non-Jewish religions and by building up an infrastructure for religious services. The plan included, among other things, the creation of religious councils, the financing and renovation of holy places and improvement of the status of religious clergy. Although three years have passed since the plan was published, it has basically not been implemented yet, and the huge gap between the budget that the Ministry directs to Jews and the budget that it directs to non-Jews has not changed.

Adalah - The Legal Center for Arab Minority Rights in Israel, has petitioned the High Court of Justice against this discrimination in budget allocations, representing leaders of the Christian, Muslim and Druze communities. In a hearing in January 1998, the Court instructed the parties to negotiate a financial arrangement that would accommodate the needs of the different religious sects.[111]

An important issue not dealt with within the framework of the abovementioned plan, is that of the management of the property of the Muslim *Waqf* (religious governing council) and the attitude with which places that are held holy for Muslims are treated by the Israeli authorities (i.e., public buildings, mosques and cemeteries.) Since its creation, the State has assumed control of both Muslim holy places and the Muslim *Waqf*, throughout the country. Today, Muslims have no control over these properties, and they are the responsibility of local municipalities. In some cases, local municipalities have abandoned these places, not preserving their sacred status. In some cases, the neglect of these places by the authorities amounts to desecration of holy sites. The oversight of Muslim religious property by the State is not accepted by Muslim citizens, and they demand to regain control of these places and to set guidelines for the protection of mosques and cemeteries.

In summary, the State's claim that the status of religious minorities in Israel is satisfactory is far removed from the reality.

Concerning discrimination in allocations to non-Jewish institutions as opposed to Jewish ones (Paragraph 467), see our comments to Paragraph 736 (Article 27).

The State's claim that allocations are made equally to the different Jewish denominations is inaccurate. Traditionally, the State provided no support whatsoever for non-Orthodox movements, and all funds were provided solely for Orthodox institutions. Following Supreme Court appeals filed by the Reform and Conservative movements, the criteria for support were changed so that these groups also received a measure of funding during the period 1993-1996. In 1997, however, the criteria were changed again, resulting in the almost total cessation of funding for the non-Orthodox movements. In 1997 and 1998, for example, the Reform movement received *no*

[111] HCJ 240/98 ***Adalah et al vs The Minister for Religous Affairs et al*** (pending).

support from the State. A Supreme Court petition has been filed by the Conservative movement against discrimination in allocations to its religious institutions.

Articles 19-20: Freedom of Expression and Prohibition of Incitement

Introduction (Paragraph 498)

As the State's report notes, freedom of expression is not guaranteed as such in the existing basic laws in Israel. Although Supreme Court judges have stated (in the rulings mentioned in the State's report) that freedom of expression is implicitly covered in Basic Law: Human Liberty and Dignity, this position has yet to be established unequivocally in court rulings.[112] If freedom of expression is not included in the basic law, this means that judicial review cannot strike out laws infringing freedom of expression. Even if freedom of expression is included in the basic law, it is still not possible to strike out existing laws; as we shall discuss below, a number of sections in Israeli law constitute a substantive infringement of freedom of expression.

As the State's report notes, a memorandum has been prepared by the Ministry of Justice for a Basic Law: Freedom of Expression and Association; to date, however, the government has not tabled a government bill on this matter before the Knesset.

Limitations on Freedom of Expression (Paragraph 501)

Some of the limitations on expression are excessively and unjustifiably broad. Secrecy for reasons of state security applies to a wide range of cases, some of which are unjustified. For example, there is an indiscriminate prohibition against publishing the deliberations of the Ministerial Committee for Security Matters, as well as all the deliberations of the Knesset Foreign Affairs and Defense Committee (unless specific permission has been granted in a given case). This indiscriminate prohibition means that discussions relating to important policy issues are withheld from the public even in cases when disclosure would not endanger state security.

Prosecution for "Sedition" (Paragraph 504)

Legislation restricting freedom of expression is very extensive. After the assassination of Prime Minister Yitzhak Rabin the prosecution reacted harshly, sometimes excessively so, to extremist statements. Thus, for example, the leaders of the "Zo Artzenu" ("This is Our Land") movement were prosecuted for calling for civil disobedience and for inviting the public to participate in demonstrations for which they had intentionally not sought a permit. They were indicted for violating Section 133 of the Israeli Penal Code, which proscribes "sedition."[113]

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[112] SC 453/94, ***Israel Women's Network vs. Government of Israel***, PD 45(5) 529.

[113] Section 136 of the Penal Law (formerly Section 59 of the Mandatory Criminal Code Ordinance of 1936) defines "sedition" rather broadly: "(1) to bring into hatred or contempt or to excite disaffection against the State or its duly constituted administrative or judicial authorities, or (2) to incite or excite inhabitants of Israel to attempt to procure the alteration otherwise than by lawful means of any matter by law established, or (3) to raise discontent or resentment amongst inhabitants of Israel, or (4) to promote feelings of ill-will and enmity between different sections of the population." (See Laws of the State of Israel (L.S.I.), special volume, 1977, at 45). Note that Section 137 provides that truth is not a valid defense. Section 138, however, provides that positive intention on behalf of the speaker (such as an intention to provide constructive criticism of the government) will be a valid

Licensing of the Press (Paragraphs 505-507)

The licensing arrangements for newspapers mentioned in the report infringes freedom of the press and expression in Israel. A public committee (the Zadok Committee) established by the Minister of Justice and the Minister of the Interior recommended that these arrangements be modified, but the government has refrained from tabling a bill to this effect before the Knesset. The Association for Civil Rights in Israel filed a Supreme Court petition calling for the annulment of the Press Ordinance, but the Court recently rejected the petition.[114] While the authorities rarely exercise the powers arising from the licensing requirements, such cases have occurred; ACRI has represented several newspapers affected by such steps.

Cross- Ownership (Paragraph 516)

Despite the legal arrangements mentioned in the State's report in the context of the Second Television and Radio Authority, there is still a potential danger to freedom of expression in Israel due to the increasing presence of over-concentration and cross-ownership of media organs by a small number of commercial bodies.

Freedom of Information (Paragraph 518)

As the report notes, a key problem in the field of freedom of information is the lack of response often encountered in attempts to obtain information held by the authorities. The approach taken by the Ministry of the Interior to requests for information is a particularly problematic example of this.

The new Freedom of Information Law will indeed promote citizens' rights to access to information, though we must note that the law includes various exceptions; institutions relates to national security, for example, enjoy an indiscriminate exemption from the obligation to provide information.

Another significant deficiency in freedom of information in Israel relates to the review of court rulings and files. A committee headed by Judge Gross recommended that citizens be enabled to inspect court rulings and files, but the committee's conclusions have not been implemented or included in the Freedom of Information Law.[115]

Censorship of Television Broadcasts (Paragraph 520)

The independence of broadcasting organizations in Israel is not fully respected; on occasion there has been concern that the authorities have intervened in the content of broadcasts. One example of such intervention concerned a program in the series "Cards on the Table" which presented an open discussion of homosexuality among young people and was due to be broadcast on Educational Television, which is subject to the administrative control of the Ministry of Education. The Minister of Education ordered that the broadcast not be aired.

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defense.

[114] SC 6652/96, ***Association for Civil Rights in Israel vs. Minister of the Interior***.

[115] ACRI has filed a Supreme Court petition on this matter; HCJ 5917/97 ***Shimshi vs. Minister of Justice*** .

After many months the program was eventually screened, after the Supreme Court accepted an appeal filed by ACRI and other organizations against the Minister of Education's order.[116]

Journalistic Confidentiality (Paragraph 522)

The confidentiality of journalistic sources is at present not protected by legislation, and it is important that this situation should be changed.

Sub Judice Rules (Paragraph 523)

The S*ub Judice* rules included in the Courts Law, 1984 entail excessive and undesirable restriction of the principle of freedom of expression. Court cases in Israel are heard in front of professional judges, not juries, and it can be safely assumed that judges are able to distinguish between the information presented to them in court and external and immaterial information gathered from the media. Moreover the courts (and the Supreme Court in particular) discuss important matters that are the subject of considerable public debate, and the rules restrict such debate. Although the *Sub Judice* rules have to date been interpreted in a restricted manner, the law itself should be amended in the light of the above.

Contempt of Court

As noted in the report, contempt of court is defined as a criminal offense, except in cases of "honest and polite" criticism. This requirement of "politeness," which grants judges preferential status in comparison to other public officials, is unjustified and constitutes an excessive restriction of freedom of expression.[117]

The Prevention of Terrorism Ordinance (Paragraphs 534-535)

Albeit rarely, the prosecution has used Section 4(a) of the Prevention of Terrorism Ordinance, which prohibits the publication of expressions that encourage and praise terrorist acts:

1. Individuals who performed a kabalistic prayer for the death of Prime Minister Rabin, expressed satisfaction with the death of Rabin, sprayed graffiti such as "Peres is next" and "Peres the follower of Hitler," or expressed the hope that Peres and Arafat would die, were indicted under Section 4(a) of the Prevention of Terrorism Ordinance of 1948, which proscribes "praise for acts of violence".[118]
2. Rabbi Ido Elba was convicted of an offense under the Prevention of Terrorism

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[116] ***The Society for the Protection of Personal Rights vs. Minister of Education Culture and*** Sport (Not Yet Published)

[117] See MC (Jer.) 84/96, ***Spiro vs. State of Israel***, where these provisions were interpreted narrowly, albeit in the context of the establishment of conditions for release on bail.

[118] Section 4 reads:

> "A person who - (a) publishes, in writing or orally, words of praise, sympathy or encouragement for acts of violence calculated to cause death or injury to a person or for threats of such acts of violence; ...shall be guilty of an offence..." (note 30 above). The Israeli Penal Law contains even broader provisions that were invoked after the assassination in the context of violent speech. Thus, the distribution of leaflets showing Rabin in SS uniform was deemed by the Prosecution to constitute a violation of Section 216(a), under which it is prohibited to "behave[…] in a disorderly or indecent manner in a public place"

(see L.S.I. Special Volume, at 63).

Ordinance after writing a pamphlet discussing the Jewish religious laws relating to the killing of non-Jews. The court ruled that the publication was racist and directed against the Muslims in Hebron.[119]

3. The journalist Muhammed Jabarin was convicted after publishing articles in the Arabic-language press which the courts determined as expressions of praise for the Intifada.[120]

In the latter two cases, the Supreme Court upheld the convictions after appeal. Despite the fact that the decisions were unanimous on these issues, the President of the Court has recently approved a petition for a rehearing of the issue before an enlarged panel. It is to be hoped that the rehearing will provide an opportunity for in-depth examination of the relationship between the right to free speech and the wide and vaguely defined penal provisions proscribing speech.

Issues not Included in the State's report

Restriction of Freedom of Expression of Civil Servants

Section 117 of the Penal Code, 1977 excessively restricts the freedom of expression civil servants and the freedom of information of the public, establishing that the provision of information on the part of a civil servant without legal authority is a criminal offense. The section has not been amended despite the fact that a public committee recommended that the present wording be annulled. It may be assumed that the section will be interpreted differently following the enactment of the new Freedom of Information Law; despite this, it is desirable to amend the wording of the section, restricting the prohibition to cases that damage security interests or cause other substantive damage. This section was recently used as the basis for issuing a civil injunction prohibiting the distribution of a book written by a former senior officer of the Israel Navy.

Freedom of Expression in Local authorities

Infringement of freedom of expression is not uncommon on the municipal level, among other methods, through the use of municipal by-laws to prevent statements that are considered undesirable by the local authority (e.g. by-laws relating to notices on municipal billboards, or to the display of banners on the balconies of private homes.

[119] Crim. App. 2831/95, ***Elba vs. State of Israel*** (Sept. 26, 1996) (unreported).
[120] Crim. App. 4147/95, ***Jabarin vs. State of Israel*** (Oct. 20, 1996) (unreported).

Artistic Freedom

Actual or attempted infringements of artistic freedom and artistic expression on religious or moral grounds are occasionally encountered in Israel. During the preparations for an official event celebrating Israel's jubilee anniversary, for example, the Batsheva dance troupe was asked by senior government officials to modify the dancers' attire, which was considered "immodest." Shortly thereafter, during the swearing-in ceremony at the Knesset for the State President, it was decided that women would not sing, in response to a demand from some Members of Knesset who view public singing by women as opposed to Jewish religious law.

These restrictions on freedom of expression on state occasions are inconsistent with the general principle of artistic freedom that applies in Israel.

Article 21: Freedom of Assembly (The Right to Demonstrate)

Protest Vigils (Paragraphs 539-540)

Although the regulations (and the State's report) state that peaceful protest vigils do not require a police permit, our experience reveals a substantial discrepancy between the technical legal requirements and the instructions given to police personnel in the field. Many police personnel interpret the prohibition on illegal gatherings[121] as implying the indiscriminate prohibition of all types of gatherings, and thus believe they are justified in dispersing any gathering that does not have a police permit, including peaceful protest vigils.

We receive countless complaints from groups that wish to hold protest vigils and encounter opposition from the police, whether in the form of a demand by the police that the demonstrators request a permit, or actions by the police to disperse a vigil after it gathers on the grounds that it constitutes an illegal gathering.

Protection of Demonstrators (Paragraph 544)

The duty incumbent on the police to protect demonstrators is not confined to demonstrations with a permit, but should also apply in the case of protest vigils, which do not require police permits. This obligation is unclear to many police personnel. ACRI is often called upon to intervene to ensure that police personnel protect demonstrators from others who seek to assail them.

The Use of Force (Paragraphs 546-547)

During 1994 and 1995 violence by the police at demonstrations and humiliation of demonstrators by the police was a common phenomenon. Among the complaints we processed during this period were numerous complaints by ultra-Orthodox Jews complaining of humiliating and derisive treatment by police personnel during the "Sabbath demonstrations" on Bar Ilan Street in Jerusalem. Police behavior included pulling the demonstrators' earlocks, forcing them to be photographed and to travel in police vans on the Sabbath, removing hats and skullcaps from their heads, etc. During the same period police personnel also behaved violently toward demonstrators at right-wing protests against the Oslo Accords. We received complaints relating to serious violence, unnecessary use of truncheons and horses, and spurious arrests.

Many of these complaints have never been properly investigated due to the fact that police personnel (despite the regulations) did not wear identification tags on their uniforms, so that it proved impossible to locate them. In addition, it has emerged that

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[121] Article 151 of the Penal Code.

there is no body inside the police or elsewhere charged with investigating allegations of improper policy for the use of force in dispersing demonstrations. Accordingly, unlawful orders from district commanders relating to the "treatment" of demonstrators have never been addressed by those to whom we have turned (including the Police Chief Commissioner, the Public Complaints Unit, the Police Investigations Unit, etc.)

Concerning police violence toward Arabs, see our comments to article 7.

Article 22: Freedom of Association

Non-Profit Organizations (Paragraph 552)

The law grants the Registrar of Non-Profit Organizations ("the Amutot Registrar") considerable authority in refusing to register the name of a non-profit organization, inter alia, if the proposed name is liable to be misleading. The Registrar used this authority in 1991 in refusing to register a non-profit organization under the name "The Israeli-Palestinian Organization for Human Rights," on the grounds that this name implied confirmation by the State of Israel of the existence of a State of Palestine. The Supreme Court reversed the Registrar's decision, establishing that it constituted a violation of the freedom of association and freedom of expression.[122]

Prohibited Association (Paragraph 558)

As noted in the State's report, the authority to declare that a group of persons constitutes a prohibited association in accordance with Regulation 84 of the Defense Regulations (State of Emergency), 1945, is administrative rather than judicial. In other words, this authority rests with the Minister of Defense. Not only is this authority not given to a judicial body, but no procedure is established for a hearing prior to such a declaration banning an association; neither is any procedure established for judicial review of such a decision, with the exception of the available option of appealing to the Supreme Court.

Terror Organizations (Paragraph 559)

The above comments also apply with regard to the government's authority to declare an association of persons to be a terror organization in accordance with the Prevention of Terror Ordinance, 5708-1948.

Professional Associations (Paragraph 565)

The comment in the State's report that the Israeli Bar is the only professional body to which an attorney is entitled to belong is inaccurate. There is no impediment to an attorney's being a member of additional legal professional organizations. The problem lies in the condition established in the law that the pursuit of the legal profession is conditioned on membership in the Israeli Bar. This is an unjustified infringement both of the freedom of association and of the freedom of vocation.

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[122] C.A. 4531/91, ***Nasser et al. vs. Amutot Registrar***, 48(3) P.D. 294.

Political Parties (Paragraph 586)

The authority of the Registrar of Political Parties not to register a political party opposed to the character of the State of Israel as a Jewish state is a serious infringement of the freedom of association, the freedom of expression and the democratic process. It is true that the Supreme Court overturned an attempt to disqualify a political party whose manifesto advocated the characterization of the State of Israel as a state of all its citizens and that all citizens are entitled to equality. The Court ruled that this did not contradict the Jewish character of the State;[123] however this legal provision denies political parties the opportunity to attempt to convince citizens through democratic means to change the Jewish character of the State.

[123] M.L.A. 2316/96, ***Isaacson vs. Parties Registrar***, 50(2), P.D. 529, 549.

Article 23 - Protection of the Family

Family Reunification in Israel

This Chapter should be read in connection with, and against the background of our comments on Article 2 regarding citizenship and residency.

The right to family unification is one of the central rights which Article 23 is designed to protect.

Israel's report indirectly mentions its obligations to family reunification in Paragraph 332: "Permanent resident status may also be granted in cases of family reunification and on other humanitarian grounds." This should be seen as an admission that family unification is seen by Israel to be on the human rights agenda of Article 23, while at the same time demonstrating its conscious refusal to recognize such unification as a right.

Israel's hesitation to address this issue is especially glaring in light of Israel's severe violations of the right to family unification. This right is not grounded in law, with two exceptions: the right of unification for first degree relatives of individuals covered by the Law of Return, and minor children of citizens.

Israel's citizenship and entry laws give the Interior Minister or his representatives the authority to approve or reject requests for citizenship, residency, and entry into Israel. However, the Interior Ministry uses its authority in capricious and discriminatory ways that causes severe damage to the right of family unification. Even the most basic right, that of a citizen wishing to be with his or her non-citizen spouse, is not respected by the Ministry. The victims of this policy tend to be, overwhelmingly, Arab citizens of Israel and other legal residents seeking unification. Specifically, the victims are those not protected by those clauses in the Law of Return mentioned above. Furthermore, many obstacles are placed in the path of Jewish citizens of Israel who marry non-Jews and wish to bring them to Israel.

Israel's policy regarding the implementation of the right to family reunification, both within Israel and abroad, is in violation of Article 23 of the Covenant, and contradicts the Committee's position, as expressed in General Comment 19:

> "The right to found a family implies, in principle, the possibility to procreate and live together.... Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons."

Not only does Israel not meet the above standards, it is carrying out a deliberate policy aimed at *preventing* the unification of families of non-Jews, or families with non-Jewish members.

Criteria for Family Unification

Until recently, the Ministry had no official guidelines specifying those instances where family unification would be granted in those cases not explicitly mentioned in the Law of Return. Following criticism from the High Court and several reminders,[124] the Ministry finally drafted such guidelines. The Ministry of the Interior announced the following:

> The Ministry of the Interior grants visas and permits for permanent residency only in exceptional cases, and those shall be according to the following criteria:
>
> A. The spouse of an Israeli citizen or legal resident of a recognized marriage (residents must be residing in Israel). The status of permanent resident shall be granted after an examination period of five years and three months, from the day that a decision is made regarding the family unification. During this period temporary residence permits shall be granted according to the procedures of family unification.
> B. An elderly and single parent of a citizen or permanent resident in Israel, who has no other children or a spouse outside Israel.
> C. A minor child in the custody of the parent who received the right to permanent residency or Israeli citizenship, if that custody has been continuous for two years prior to the applicants arrival in Israel.
> D. Special and exceptional cases on humanitarian grounds, or when the State of Israel has a special interest in granting permanent residency."[125]

The right to family unification is not recognized under any circumstances for non-married family members. Therefore, a person wishing to bring his non-spouse domestic partner, or same-sex domestic partner into the country, does not have that right. This is especially problematic in those cases where the couple cannot marry because the State of Israel does not allow them to marry, for example when the couple are of different religious faiths.

In addition, the State will not allow the unification of an adult (daughter or son) with his or her parent except in rare cases.[126] This policy was confirmed by the High Court when it denied a petition from a woman of Burmese origin who was married to an Israeli citizen to bring her children to Israel.[127]

In General Comment 19 (Paragraph 2) the Committee specifies that the definition of a family changes from place to place, and asks that States parties report their definition of a family within their territory, as well as specify the legal protections entitled to the family as an entity.

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[124] HCJ 1689/94 Juli Harrari et al vs. The Minister of Interior. Ruling dated 25/12/94 (not published).

[125] These criteria were included in a letter that was sent to ACRI on 11.1.98. To this day the criteria have not been made public in any way.

[126] According to the following criteria: A senior parent, a widower, who does not have other children.

[127] The woman has asked that her children, aged 19 and 24, be allowed to reside with her in Israel. Her request was denied by the Ministry of Interior, and the Ministry's policy was confirmed by the High Court of Justice. HCJ Juli Harrari (supra n. 124).

Israel discusses its definition of the family in Paragraph 591 of its report, stating that Israeli law recognized different kinds of families. These include common law spouses, same sex couples, and single parent families. The State also supports, in some cases, the extended family. It is unclear how the State reconciles its definition of the protected family, which in any case includes partners, parents, children and brothers, with its policies on family reunification. After all, the most elementary aspect of protecting the family must be in allowing its members to be together.

Bureaucratic Red Tape

Any request for family reunification must be approved by the Interior Ministry. There are no procedures regulating how these requests are handled, from the moment of their submission until they are approved. Applicants for family reunification do not know how long it will be before their request is decided on, or according to which criteria. In many cases, the treatment of requests is held up for years without any reason or explanation given regarding the delay.[128]

Applications for family unification are often accompanied by documents verifying the relationship in question, such as marriage certificates, letters and photographs. However, in the case of Arab citizens seeking family unification with non-citizens (usually residents of the Occupied Territories), far more extensive documentation is required. The relevance of many of these documents, is not clear.[129] In many cases, the request is not considered until all of the documents are presented. After all of the documentation is presented, the waiting period begins.

During this waiting period, residents of the Occupied Territories are not given an entry permit into Israel. This means that years may pass, and often do, during which the married couple is physically separated.[130] When the non-citizen applicant is not from the Occupied Territories, a tourist visa is granted during the waiting period. This means that the spouse is denied the right to work, as well as other basic rights, and is also forced to apply periodically for a visa renewal - which may not be granted. The policy of the Interior Ministry, to discriminate between residents of the Occupied Territories and other foreign nationals during the waiting period, is prejudiced and unreasonable.

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[128] ACRI has received dozens inquiries regarding unification cases that have not been answered. in other cases the request is denied with no explanation, and probably for unreasonable considerations, such as a criminal history of the Israeli spouse, the spouse being divorced, etc. There are quite a few couples who have been waiting for more than five years for their request for family reunification to be granted.

[129] Such requests include: a residential lease for the previous seven years; water, electricity and telephone bills and municipal tax; proof of national insurance payments; wedding photographs (with the bride, groom, and family members in them); certification of good character from the authorities of the applicant's state ; a valid entry visa to Israel; etc.

[130] This practice usually relates to Arab citizens who marry residents of the Occupied Territories. ACRI has received so many cases of Israeli Arabs or residents of East Jerusalem whose request for family unification has not been granted for years, that we have had to refrain from taking on any more such requests. Our careful estimation is that there is at least a total of many hundreds, if not some thousands, of such cases.

After the request for family unification is granted - a process that can take months or years - the Interior Ministry follows a 'staged policy' during the next five and a quarter years.[131] This, according to the publicly stated policy of the Ministry, is intended to appraise the sincerity of the marriage, the intention to settle in Israel, and to verify that there is no criminal intent or security risk in allowing the spouse to remain in the country. If the applicant receives permanent residency, after more than five years of waiting, another three years will have to pass before the Minister decides to award citizenship. See our comments on Paragraph 52 of the State's report.

This policy is blatantly unreasonable. First, the lengthy waiting period and its attendant uncertainty can significantly harm the family life of the couple under consideration. The temporary nature and instability of his or her status make it difficult for the foreign national to integrate into life in Israel, and severely diminishes employment opportunities. Second, the Interior Ministry's policy does not take the circumstances of each case into account. For example, there is no distinction made between newlyweds and couples who have been together for a long time, or couples with children. It does not stand to reason that such a lengthy time is necessary to examine the sincerity of the latter.[132]

If the foreign spouse is in Israel illegally, the Interior Ministry operates under the assumption that the marriage is fictitious, and demands that the foreign partner exit the country before the request for unification can be considered. The Ministry's rationale for this policy is that the foreign applicant must leave Israel in order for the sincerity of the marriage to be evaluated. However, the essence of this evaluation is not clear, and the Ministry does not inform the couple how long they will be forced to wait before entrance back to Israel is granted. In fact, the Ministry does not guarantee that the spouse will be allowed to return at all. In addition, the Ministry refuses to record the marriage until the citizenship of the foreign partner is finalized. This has many consequences, such as the couple’s rights with the National Insurance Institute, and the registration of the couple’s children.

A petition on this subject to the High Court against the Ministry of Interior is in the final stages of preparation. The petition regards the family unification of Arab citizens

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[131] When a request is granted in principle by the Ministry of Interior, it is processed according to a policy that was set in internal ministry procedures, but was never published. According to these procedures, the petitioner must pass a probationary period of five years and three months before the foreigner spouse is granted permanent residency. From the day of granting the request and for 27 months, the foreigner spouse may stay in Israel as a temporary resident. He / She must renew the request every few months. Thereafter, and for another three years, the foreigner spouse is granted a temporary residence permit , allowing them also the benefit of health insurance. This permit must also be renewed every few months.

[132] Furthermore, the waiting period only begins after approval for family unification (which, as stated above can be given years after the request was filed), even if the applicant was living in the country with his partner for years before approval was granted. (Unless that person was in Israel legally as a temporary resident, in which case up to two and a quarter years can be deducted.) Additionally, the applicant will receive temporary status and the waiting period of five and a quarter years will begin, only if on the day of the request's approval for family unification the foreign partner is legally in Israel according to a visitor's visa given before the request was approved.

with non-Jewish foreign nationals. Unfortunately, in previous judgments the High Court has validated the Ministry's policies.[133]

The Expansion of These Policies Over the Past Two Years

In the past, the policies described above were implemented against non-Jewish citizens and residents, who requested family unification with non-Jewish loved ones. Over the past two years, the Interior Ministry has been implementing this policy also towards Jewish citizens of Israel who marry non-Jews and want their spouse to live in Israel. On the surface, it would appear that such tactics against Jews would violate the Law of Return, which states that a Jew may bring non-Jewish relatives to Israel. Seeking to overcome this obstacle, however, the Ministry has adopted an argument according to which the Law of Return does not apply to citizens of Israel, but rather only to Jews immigrating to Israel.

The goal of this new policy seems to be the same as that of the measures directed against non-Jewish Israeli citizens: to make it difficult for non-Jews to enter the country or to acquire citizenship. Following a High Court petition in a case involving the family unification of non-Jews married to Jewish citizens,[134] the Ministry now refuses to deal with any requests to register the marriage of Jews and non-Jews. The Ministry claims that it is waiting for the ruling of the petition to be handed down.

Family Unification in the Occupied Territories

An even more serious situation exists for Arabs in the Occupied Territories whose requests for family unification are systematically turned down.

Israel does not recognize the rights of Palestinian residents of the Occupied Territories to family reunification. Instead, Israel views the granting of family reunification as an act of kindness on its part. Given that marriages between Palestinians from the Territories and Palestinians from the Diaspora are common, Israel's policy forces thousands of Palestinians to live apart from their spouses, and for their children to live apart from one of their parents. This separation is difficult for family members. It damages the fabric of the family as a unit, as well as its individual members, prevents parents from raising their children together, and makes the establishment of normal family patterns more difficult. The only option open to most Palestinians in the Territories married to non-residents of the Territories who wish to live together, is to leave their homes, parents and country, and emigrate.

Israel's refusal to grant family reunification is based on political-demographic considerations. In connection to these, a ceiling of 2,000 permits for family unification are granted per year, a figure that does not come close to addressing the needs of the population. Israel and the Palestinian Authority have on their respective desks over 13,000 requests for family reunification, from the West Bank alone.

[133]HCJ 2950/96 Hanna Musa et al V. Minister of the Interior, HCJ 3497/97 Kamela V. Minister of the Interior.
[134]HCJ 3648/97 Israel Tameska et al V. Minister of the Interior et al.

Leaving the quota as it is means that all of the requests will be granted only in the year 2006; requests filed today will only be considered in nearly a decade.

Israel does not allow family members who have requested unification to remain inside the Territories, nor does it generally grant entrance visas for visits. As a result, families will be forced to wait for months and years for their request to be approved, with their families remain divided.

Loss of Citizenship as a Result of Marriage to Residents of the Occupied Territories

In General Comment 19, the Committee clearly stipulates that State parties must ensure that there is no discrimination on the basis of gender regarding the loss of citizenship as a result of marriage. Israel has acted in violation of this provision, in taking away the citizenship of Arab women, citizens of Israel, who marry Palestinians from the Occupied Territories, and go to live there. The State has taken advantage of the fact that in Arab society women go to live with their husbands, and has forced the women to give up their citizenship when they have asked for residency in the Occupied Territories. Such residency status in the Territories is essential to these women, if they are to receive basic services in their new homes.

These women were signed on to requests asking to give up their Israeli citizenship without their knowledge, against their will, and without consent having been granted. However, when these women have divorced their husbands and asked to return to Israel, they face official obstacles. Their requests to have citizenship returned to them are denied. The family unification requests made by these families, Arab citizens of Israel, are also denied. As a result, these women are living with their children in Israel illegally and without any rights. Their matter is now before the High Court.[135]

Invalidity of Israel's Reservation to the Covenant in Matters of Personal Status

Israel has presented the following Reservation to the Covenant:

> With reference to Article 34 of the Covenant, and any other provision thereof to which the present reservation may be relevant, matters of personal status are governed in Israel by the religious law of the parties concerned. To the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law.

In accordance with its reservation, the State has announced that the report to the Committee does not deal with marriage, divorce, or alimony, neither in law nor in practice. As will be elaborated below, Israel's Reservation, at least in part, has no validity according to the rules of the Covenant and the interpretation of the Committee.

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[135] HCJ 2271/98 ***A'abed et al V. Minister of the Interior et al.***

The use of religious law for matters of personal status in Israel has two main interconnected features. First, Israel has no provision for civil marriage, and only religious marriages are possible. This is, in itself, a violation of freedom of conscience and belief, the right to marry, and the principle of equality. Second, matters related to personal status (i.e., marriage, divorce, property division, custody, alimony, child support, and in some cases inheritance) are adjudicated according to the religious law of the parties concerned. This means that jurisdiction falls within the religious courts of the various religions, rather than in civil court.

In some cases it is possible to have legal proceedings on family matters in civil court. This possibility depends on one's religion and legal circumstances. However, this also violates freedom of conscience, and, moreover, is harmful to women's right to equality. Religious law and the religious courts discriminate against women, and are harmful to children since the decisions of the religious courts are affected by religious and traditional concerns separate from the civil court's concern with the best interests of the child.

Israel's Reservation does not meet the criteria of the Committee's instructions regarding the content and extent of reservations in general. In General Comment 24 (Article 19) the Committee determined that:

> Reservations must be specific and transparent, so that the Committee, those under the jurisdiction of the reserving State and other States parties may be clear as to what obligations of human rights compliance have or have not been undertaken. Reservations may thus not be general, but must refer to a particular provision of the Covenant and indicate in precise terms its scope in relation thereto.

Israel's reservation to the Covenant is broad and not at all clear. The Reservation refers to matters of personal status, but it does not define matters of personal status. Are they confined to marriage and divorce, or perhaps they include alimony, child support, custody, and property division? The Reservation has bearing on many Articles in the Covenant, such as those which relate to equality, freedom of thought, conscience and belief, the right to marry and the right to equality in marriage. However, Israel does not specify which of these Articles it is taking reservation to, the extent of its reservation to each Article, and the consequences resulting from the reservation. Therefore, the Committee is authorized to determine that Israel's Reservations are not valid.

Furthermore, in contradiction to General Comment 24 (Article 20) Israel did not specify which legislation is in violation of the Covenant, specify dates for changing the legislation, nor explain why the legislation can not be changed.

In the conclusion to Comment 24, the Committee determined that countries must remove their reservations as soon as possible, and report to the Committee which steps have been taken to reconsider the reservations. Thus far, Israel has not only refrained from withdrawing its Reservation, but has made no effort to reconsider the need for it. Naturally, the State's report does not contain anything on steps taken to remove its Reservation.

Even if the Committee determines that Israel's Reservation to the Covenant is applicable regarding matters of personal status, it must then nullify the Reservations regarding other issues such as the lack of civil marriage in Israel. As mentioned in the State's report, Israel does not have civil marriage. From its report, Israel seems to think that its Reservation includes this aspect as well. However, that Reservation is invalid, because it violates the freedom of religion and conscience as well as the right to marry - all rights that can not be reserved (see General Comment 24.) According to General Comment 19 (Section 4) freedom of belief forces the State to allow both religious marriage and civil marriage:

> ...the Committee wishes to note that such legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant; thus, for instance, **the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages**….

The Right to Marry and Civil Marriage (Paragraph 595)

The Covenant determines that the right to marry a spouse and form a family will be recognized for men and women of legal age. The State of Israel is committed, according to the Covenant, to allow the existence of civil marriage according to civil law within its borders. This is both to allow all those interested in marriage to exercise that right, and to protect the freedom of belief and conscience promised in the Covenant. For information on how the lack of civil marriage harms the freedom of belief and conscience, see our comments on Article 18.

Israel's lack of civil marriage prevents many people from exercising the right to marriage: couples from different religions cannot get married in Israel; couples prevented from getting married on religious grounds, such as 'bastards' [the illegitimate child of a married woman] or a divorced woman and a "Cohen"; and people whose religious practices are not recognized by the religious establishment.[136] Additionally, many couples who are able to get married in Israel refuse to have a religious marriage for reasons of freedom of belief and conscience. These couples, along with couples who cannot be married in Israel for the reasons explained above, are forced to travel abroad to get married. This is often not possible, for financial reasons or because one of the partners cannot exit the country.

Although we do not have exact statistics on the number of Israeli couples who get married each year in civil marriages outside of Israel, it appears to be a significant phenomenon that is growing. From the Central Bureau of Statistics we learn that in the period 1974-1994, the Jewish population grew by 53 percent. At the same time, the number of couples getting married in religious ceremonies fell by 8 percent. ACRI receives daily inquiries from many people interested in the possibility of non-religious marriage.

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[136] And so, for example, many of the recent immigrants from Russia, who arrived under the Law of Return, are not Jews or are not recognized as Jews by the rabbinical establishment, and therefore cannot be married in Israel.

The Authorities of the Religious Courts and the Civil Courts in Marriage and Divorce

As stated above, marriage and divorce in Israel can only take place according to religious law and within the religious courts. Various matters of family law (personal status) are also discussed according to religious law and within the religious courts, in proportions that vary according to each religion. This causes severe harm to the equality of women in divorce proceedings and matters related to divorce, as well as harm to the interests of children, as stated in Article 23 (4) of the Covenant.

Only men are allowed to be judges in the religious courts.[137] The religious laws practiced in Israel are usually, though not always, discriminatory towards women. In the rabbinical courts, women are not even allowed to testify.

For Muslims, the entire range of issues related to marriage and divorce, with the exception of property division, is under the sole authority of the Shari'i courts. Muslims are prohibited from turning to the civil Court of Family Matters on issues of custody, child support, alimony, and paternity suits.

For Christians, the religious courts have a monopoly on marriage, divorce, and alimony for the wife.

Jews may turn to the civil Court of Family Matters on any issue, except the actual marriage and divorce. However the law stipulates that if a petition for divorce is submitted to the rabbinical court, and additional issues related to the divorce are bound up in the petition (such as property division, custody, child support and alimony) then the religious court will have the sole authority to discuss the petition and the issues raised in it cannot be transferred to a civil court.

The Druze religious courts have a monopoly only over marriage and divorce. However, because of strong social conventions, the entire range of issues related to divorce is generally brought before them.

The "Race for Jurisdiction" Among Jews

The rabbinical court and the civil courts exercise dual authority on property division, alimony, child support and custody. As a result, as well as the "binding principle" mentioned above,[138] there is a phenomenon of "racing for jurisdiction," where both sides hurry to file a petition for divorce from the court most convenient for them. This has negative effects: for example, the couple do not exhaust mediation and reconciliation efforts for fear that their partner will beat them to court, or fictitious claims are submitted in court, designed only to prevent the spouse from using the court of his or her preference.

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[137] The religious judges do not have to have any secular legal education. As far as Muslim Qadis are concerned, there are no minimum requirements for the position.

[138] The question of which court is to be used is then determined only by the question of which court was approached first. If the husband (as is usually the case) files with the rabbinical court first, and `bound' property issues, custody and child support with his suit, then that court decides; if his spouse was first in filing a petition, then the case will be discussed in the Court of Family Matters.

The Court for Family Matters (Paragraph 590)

As noted in the State's report, in 1995 the law establishing family courts was passed. This law was meant to concentrate all of the authorities connected to family matters, which had previously been separated into various civil courts, under one authority. The law determined that is would not change the division of responsibility between the civil and religious courts. However, a ruling handed down recently by the family court stated that it had the authority to discuss alimony and property division, although the husband had previously filed for divorce and bound those issues in his petition to the religious court. This would end the race for jurisdiction. Following the court's ruling, the Knesset quickly passed an amendment to the law of family courts, stipulating that they could not discuss an issue raised previously in religious court, thus restoring the situation to the prior status quo enabling the race for jurisdiction.

Harming Women

Placing matters of personal status under religious law tends to work against women, although occasionally men are victims of this situation as well. As noted above, it represents a severe violation of women's right to equality in marriage and divorce, and of the children's welfare, as stated in Article 23 (4) of the Covenant:

> States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

In its comments on this (General Comment 19) the Committee stated that:

> Such equality continues to be applicable to arrangements regarding legal separation or dissolution of marriage. Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited..."

Marriage and Divorce

Jews

According to Jewish law, a divorce must be granted by the husband to the wife in the form of written permission, a '*get*.' Hence, the woman is dependent on her husband's agreement to divorce. Although there are sanctions that can be taken against the husband to convince him to give the divorce, including imprisonment for up to six months, it is impossible to force him to grant a divorce. As a result, many woman remain '*agunot*', “chained women.”

It is true that, in principle, the woman also has to agree to grant her husband a divorce, but under Jewish law, the significance of a woman’s lack of agreement is totally different for the man. Children born to a woman from a man who is not her legal husband are bastards, a status that carries with it severe stigma as well as legal

sanctions in Judaism.[139] This is not the case for children born to a man from a woman who is not his legal wife. Also, a man has the option of asking for special permission to marry a second wife. Although such permission is rare - only eleven are granted on average per year - the process of asking for permission is often used as a means of pressure on the wife during the divorce process. The man, therefore, has a superior position vis-à-vis the woman when it comes to divorce, and it is often used to extract concessions in related areas, like division of property, alimony, child support, and custody.

Muslims

The Muslim religious code also discriminates against women in matters of marriage and divorce. Although a woman's permission is necessary for marriage, according to Muslim law the father or brother of the woman can sign the marriage agreement on her behalf. This opens the door for forced marriages, in which the woman has not given her real consent.

Muslim law allows the husband to divorce his wife by saying "You are divorced" three times. Although such a divorce is considered immoral in Muslim society, as well as a violation of civil law, it is still religiously valid and accepted as such by the courts.

Division of Property (Paragraph 613)

As stated above, division of property is to be discussed in religious courts. For Muslims, this is true in every case. For Jews, such issues are discussed in religious courts if the husband has bound this issue up in a petition for divorce filed there first. And for Christians, religious courts rule on property issues by mutual consent of the parties.

As the State writes in its report, the civil law stipulates that the property acquired during marriage belongs equally to both sides, and will be divided as such. Namely, there is no meaning to the question of which name the property is registered under, or who accumulated income. This law is on the books to benefit women, particularly in families with a traditional division of labor in which the woman is not working or works in the home, taking care of her husband and raising their children. The husband is then free to progress in his career and increase his earning ability. The religious traditions of non-Jews do not accept this ruling, and property belongs to who ever is registered as owning it, or who accumulated it, according to general property laws. In addition, the religious courts assign the woman a fixed sum of money: the dowry with Muslims, and the '*Ketuba*' with Jews.

The State's report mentions the ruling of the High Court in 1994 (the *Bavli* case) where it was determined that the religious courts are bound to the principle of equality in all matters not related to personal status, like division of property, and they must rule according to civil law, and not religious law if it discriminates against women.[140] The report does not mention that this ruling caused a public uproar among the

[139] For example: bastards cannot marry, unto the seventh generation, except with other bastards.
[140] HCJ 1000/92 ***Bavli v. Rabbinical court***.

religious court judges, or that, in practice, the judges often refuse to act according to it. They continue to use discriminatory religious law. After over four years of such behavior, the High Court recently issued an injunction against the rabbinical court, ordering it to inform the High Court if it intends to implement the ruling.

Article 24: The Protection of Children[141]

The Right of Children to Participate in Processes Affecting their Lives

Hearings for Children in Legal Proceedings Affecting their Lives (Paragraph 622)

The State's report claims that children have the right to a hearing in custody proceedings affecting their lives. In practice children's right to a hearing in proceedings affecting their lives is restricted, and its application varies according to the personal attitude of the presiding judge. There is no legislative obligation on the court to hear the minor or establish his/her position in custody proceedings, and no definition of the weight to be attached to such position if expressed. Court rulings state that the minor's position should be established in proceedings relating to divorce, and that the minor's position has greater weight the greater the age of the minor (form the age of 15 years, the minor's position is to be given decisive weight). However, courts vary widely in their approach to this issue: while some judges summons minors to establish their position, many confine themselves to clarifying the minor's position through a welfare officer or a court expert.

The Juvenile Law[142] grants judges considerable discretion regarding hearings for minors. In many cases juvenile courts reach their decisions without such a hearing. It should be noted that the law does not establish an obligation to clarify the minor's position in any other manner is s/he is not summonsed to court. The courts also enjoy extensive discretion in deciding whether to give hearings to minors in other proceedings, such as adoption (as noted in the State's report) and proceedings in accordance with the Capacity and Guardianship Law.

Separate Representation for Minors in Proceedings Affecting their Lives

The State's report ignores the question of the right of children to separate legal representation in proceedings affecting their lives. Legislation in many countries recognizes the right of children to separate representation in such cases, and separate representation through an *ad litem* guardian or attorney is provided in such countries as a routine matter. Israel has yet to recognize the need for separate representation of children.

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[141] The comments in this section were written by The National Council for the Child. It does not aim to cover all the issues raised by the State's report, and is confined to a number of selected issues.

[142] Juvenile Law (Protection Proceedings), Articles 8, 9.

Appointment of an *ad litem* Guardian

The law empowers the courts to appoint an *ad litem* guardian, but does not establish any guidelines as to the considerations to be applied by the court in so doing, nor as to the function and authority of such a guardian. Neither do any clear arrangements exist for financing the work of an *ad litem* guardian. In practice the courts very rarely appoint *ad litem* guardians for minors.

The Legal Status of Children in Proceedings Affecting their Lives

The law does not establish clear provisions concerning the legal status of a child in proceeding affecting his/her life. Several legal provisions[143] allow minors to address the court regarding the amendment of decisions or measures to be taken. The court is also empowered at its discretion to add the minor as a respondent in a request.

Representation by an Attorney

There are no clear or consistent instructions regarding the representation of a minor by an attorney. The right of a minor to legal representation in proceedings relating to psychiatric commitment was only recently established.[144] The clarification of legal arrangements for legal representation in the psychiatric field alone only served to underline the evident need to regulate this area as a whole.[145] No official body in Israel addresses the issue of separate representation, and there are no guidelines or instructions concerning the function and training of a person representing a minor.

Psychiatric Commitment and Treatment of Minors (Paragraph 636)

As noted in the State's report, Amendment 11 to the Juvenile Law, passed in 1995, established a series of checks relating to the psychiatric commitment of minors, including the establishment of special psychiatric committees for children and youths.

These committees were intended to supervise and review psychiatric commitment, preventing the situation hitherto whereby many minors were committed unnecessarily, and acting to find community alternatives to psychiatric commitment. Some three years after the law was passed, the Ministry of Health has still not enabled the full operation of this amendment. The State Ombudsman's report for 1997 reveals a grave state of affairs: to this day, the psychiatric committees for children and youth still do not operate as required by the law. As a result, children and youths continue to be committed to psychiatric institutions unlawfully. (On the subject of psychiatric commitment, see also our comments on Article 7).

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[143] E.g. Article 3(d) of the Family Courts Law; Article 14 of the Juvenile Law.

[144] As part of Amendment 11 to the Juvenile Law (Protection Proceedings).

[145] Recently, in F.C. 23860/95, Judge Jifman of the Ramat Gan Family Court established basic principles on the right of children to separate representation, including the right of minors aged 15 and above to separate representation by an attorney.

Protection of Children in Criminal Proceedings

Children as the Victims of Crime (Paragraph 648)

As reflected in the State's report, the amendment to the penal code[146] passed in 1989 established a clear norm that offenses relating to the injury and abuse of children were to be considered serious criminal offenses. This legislation led to an increase of hundreds of percent in the reporting of the injury and abuse of children. Sentences also became markedly more severe.

The increasing use of criminal tools in addressing offenses against children has emphasized the need to develop policy and legislation regarding the rights of minors who are the victims of offenses, including the establishment of victims assistance programs. In particular there is a clear need for legislation defining the right of the child and family to information about the legal process, hearings for minors and their families, consideration of their position in decisions relating to the penal code, and the establishment of clear provisions for compensating minor victims.

Corporal Punishment (Paragraph 651)

Further to the comments in the State's report concerning the rejection of the government's proposed law that would have established legal defense for parents or teachers applying corporal punishment, it is most instructive to note the development of court rulings in this field. A consistent change has been seen in the position of the courts regarding the legitimacy of the use of corporal punishment. In 1953 the supreme Court established that a parent or educator are entitled to discipline and punish a child physically, provided that this does not exceed what is reasonable.[147] In recent years the courts' position on this question has gradually shifted; one turning point was a ruling in which Judge Pilpel of the Beersheva District Court ruled that:

> "A minor is considered a "human;" accordingly, his beating negates his basic human rights, and the parent has no right to do this.[148]"

Minor Witnesses (Paragraph 652)

Israeli law provides effective protection for many minor witnesses, either through the Amendment of the Laws of Evidence Law (Protection of Children) (which applies to sexual and violent offenses against children by their parents), or through the Criminal Proceedings Law, which enables evidence in cases relating to sexual offenses to be taken through closed-circuit video.

However, these progressive arrangements do not apply to all cases in which children are required to give evidence. Many children are still obliged to give full evidence in court and to face primary and cross examination, even in cases involving children who were the witnesses or victims of crimes in the family. Thus, for example, a child who

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[146] Amendment 26 to the Penal Code (Minors and Incapacitated Law), passed in 1989.
[147] 71/53 in the matter of Dalal Rasi. P.D.(7)790.
[148] Appeal 1059/96.

witnessed an act of violence in the family (even murder is required by Israeli law to give evidence in court and receives no protection.

Special Education (Paragraph 656)

Special Education for Arab Children

The States' report ignores the grave state of the special education system in the Arab sector. A public committee issued a report last year[149] reflected this grave situation, noting that most Arab children with disabilities do not study in frameworks that are appropriate to their needs; many are obliged to remain in the home.

The few special education schools that exist in the Arab sector fail to meet minimum criteria for educational framework. Children of different ages and diverse disabilities study in the same class, and there is a severe shortage of professionals to provide treatment.

Following strong public pressure the Ministry of Education announced last year its intention to redress this situation, and appointed a "five-year committee" for Arab education, including special education. However, the committee has refrained from submitting its recommendations for many months. (For a detailed discussion on discrimination against Arab children in education, see Article 27).

This situation infringes the right of these children to equality, both in terms of their national origin and in terms of their disability. This constitutes a violation by Israel of its undertakings in accordance with Articles 2, 24 and 26 of the Convention.

The Integration of Children with Disabilities in Regular Education Frameworks

The State notes in its report that the Ministry of Education's policy is to integrate children with disabilities in regular education frameworks as far as possible. In contrast to this declarative policy, and despite its legal obligations, the Ministry of Education does not provide children integrated in regular classes with the professional and therapeutic assistance to which they are entitled and which can ensure the success of integration. Thus the authorities effectively lead to the failure of integration.

The State's report claims that the Ministry of Education's integration policy is expressed in particular in the context of children with sensory disabilities. In contrast to this statement, deaf children whose language is sign language are almost never integrated in regular classes.

Infringing the rights of children with disabilities to be integrated in regular education frameworks, and failing to meet their special needs, constitute a serious violation of

[149] The Public Committee to Examine Comprehensive Legislation Concerning the Rights of People with Disabilities, appointed by the Minister of Justice and Minister of Labor and Social Affairs; report dated July 1997.

their right to equality, are a form of discrimination on the grounds of disability, and as such violate Israel's undertakings in accordance with the Convention.

Placement of Minors Outside the Home (Paragraph 658)

The State's report discusses the placement of children in boarding schools, but ignores the placement of children in foster families. Approximately 2,000 children are currently placed in foster families in Israel. The State Ombudsman's report for 1997 notes numerous defects in the selection process and in the preparation and supervision of foster families. The report also criticizes the fact that to date the subject of foster care has not been regulated through legislation.

Educational Disparities (Paragraphs 659-662)

See our comments to article 26 (Paragraphs 704-707) and to article 27.

Article 25: Access to the Political System

The Right to Participate in the Knesset Elections (Paragraphs 674-676)

Israeli law imposes a significant restriction on the right of a list of candidates to participate in the Knesset elections, prohibiting the registration or participation of a party if it negates the existence of the State of Israel as "a Jewish State" (as phrased in the Political Parties Law) or as "the State of the Jewish people" (as phrased in the Basic Law: Knesset).[150] This is a significant restriction, above all, for Arab parties or joint Arab-Jewish parties that seek to define Israel as the state of all its citizens, and not as a uniquely Jewish state.

Some ten years ago the Supreme Court discussed a petition against the decision of the Elections Committee for the Twelfth Knesset to approve the participation of the Progressive List for Peace, an Arab-Jewish list, which had some members who expressed views negating the definition of the State of Israel as the state of the Jewish people.[151] By a narrow margin of 3 to 2, the Court upheld the decision of the Elections Committee to permit the participation of the list, due to the lack of sufficient evidence showing that the list negated the existence of the State of Israel as the state of the Jewish people. Justice S. Levin, one of the judges taking the majority position, established as a "minimum definition" for a Jewish state, negation of which would deny a list the right to participate in the elections, the following elements: the existence of a majority of Jews in the state; granting preference to Jews over others in returning to their country; and maintaining mutual relations between the State and Diaspora Jews. The explanatory comments of Justice S. Levin and the other majority judges show that a list that negates these views on the ideological level, even if it does not seek to undermine the physical existence of the State of Israel, may find itself disqualified from participation in the elections.[152]

To date, no list has been disqualified from registration as a party or from participation in the Knesset elections on the basis of its negating the existence of Israel as a Jewish state. However, a list including in its manifesto, for example, the annulment of the Law of Return, which grants preference to Jews in entering Israel (if this position were a central part of the manifesto and if the party had a concrete program for realizing this objective) would ostensibly be unable to be registered as a party or to participate in the Knesset elections.

This provision seriously restricts the right of those voters who support alternative positions – and particularly Arab citizens of Israel, for whom the moniker "Jewish

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[150] This restriction is included both in the Political Parties Law (Article 5) and in the Basic Law: Knesset (Article 7(a)).

[151] E.A. 2/88, ***Ben Shalom et al. vs. Central Elections Committee for the Twelfth Knesset et al.***, P.D. 43(4) 221.

[152] On the basis of Article 7(a) of the Basic Law: Knesset. According to the ruling, the interpretation of Article 7(a) of the Basic Law: Knesset will also apply to Article 5 of the Political Parties Law.

state" symbolizes a personal disenfranchisement from the collective the state is supposed to serve and represent – to have their views represented in the political system.

The Right to Participate in Local Elections (Paragraph 680)

As the State's report notes, the right to elect local government has been recognized as a basic right in the rulings of the Supreme Court. However, tens of thousands of Israelis cannot exercise this right, since they live in "unrecognized settlements" in the Negev, with a total population of between 60,000 and 80,000. The term "unrecognized settlements" refers to dozens of Arab settlements in the Negev which are not recognized by the State on the municipal or planning levels. On the municipal level, these settlements are not recognized as places of residence, and have no local government -- even though thousands of people live there (for more detailed discussion of the unrecognized settlements, see the comments to Article 26, Paragraphs 714-716).

The vast majority of unrecognized settlements in the Negev are located in territory defined as *gelili* ("regional"), i.e., territory not included in the jurisdictional area of any local authority, and thus without any local government. These citizens are completely denied the right to participate in and influence local government, i.e., to vote and to be elected to local government and to maintain a democratic system of self-management on the local level. It should be recalled that some of the unrecognized settlements in the Negev have been in existence since even before the establishment of the State of Israel.

In General Comment 25 (Article 11), the Committee determined that countries that are a party to the Covenant must take effective steps to ensure that their citizens can realize their right to vote for local government. **By refraining from recognizing these settlements, whether as independent local authorities or as part of existing local authorities, the State of Israel denies citizens who live in these settlements the basic right to local government, contrary to its obligation in accordance with Article 25 of the Covenant.**

A small number of unrecognized settlements lie within the borders of a regional authority. The residents have the legal right to vote for the regional authority in accordance with the Local Authorities (Regional Councils) Order, 5718-1958, as residents of the "residual zone," (i.e., the area within the regional council not included in the (recognized) settlements). However, the registered address of the residents of the unrecognized settlements in the Negev is the tribe to which they belong, rather than their place of residence. Accordingly, it seems that their names do not appear in the electoral register of the regional council. These residents cannot therefore realize their right to present candidates or to vote in the elections for the regional council and the head of the council, and are thus denied the right to participate in local government. In this case, too, the State contravenes its above-mentioned obligation to take effective steps (in this case, to register the address as within the regional council)

in order to ensure that residents of the regional authority entitled to participate in the elections to the council will be able to realize their right.[153]

Civil Service (Paragraphs 686-688)

Regarding the representation of Arabs and women in the civil service and the enforcement of equality laws in the field of employment, see our comments to Article 26.

[153] In the past, a similar situation applied in the unrecognized settlements in the Galilee region of northern Israel, whose residents were not registered as residents of the Misgav Regional Authority, but of other local authorities, thus denying them the right to vote and to be elected to the regional council in which they resided. In 1991 a petition was filed to the Supreme Court against the Minister of the Interior following which their right to vote and to be elected to the regional council was recognized SC 3115/91, ***Su'ad et al. vs. Minister of the Interior et al***.

Article 26: Equality Before the Law

Introduction

Our comments on Article 26 and the State's report on equality include a general overview of Israel's protection of the right to equality from a variety of perspectives including specific groups who are particularly discriminated against (e.g., homosexuals, people with disabilities, etc.). (. Apart from this, these comments primarily concentrate on the right of equality of the Arab minority in Israel, this minority being the protected group suffering from the most serious discrimination, and whose right to equality receives the least protection. Gender discrimination shall be reviewed as a separate subject(see our separate reference to Article 3). See also our comments to Article 2 (citizenship and residence) and to Article 27.[154]

The Reality of Discrimination

The State's report describes the general legal situation in Israel while systematically ignoring both the reality and occurrence of discrimination in Israel and the public atmosphere which contributes to and supports discrimination. The failure to address these subjects contravenes the directions of the Committee in General Comment 18, according to which:

> "…the Committee wishes to know if there remain any problems of discrimination in fact, which may be practiced either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination."[155]

One of the harshest expressions of the reality of discrimination in Israel is the discriminatory attitudes and pervasive racism towards Arab citizens held by most of the Jewish population. Recent research conducted among Jewish youth indicated that about a third of them declare themselves to be racist or state that they hate Arabs. Two-thirds are opposed to granting full rights to Arabs, and support the cancellation of their representation in the Knesset.[156]From this data it is clear that there is need for forceful action on the part of the State to change these attitudes, both by means of education and by public action, in order to combat the growing atmosphere of racism and discrimination in Israeli society.

However, not only is such action not being taken, but, on the contrary, senior officials in the government and local authorities actually contribute to this public atmosphere. For example, the Deputy Minister of Education recently reacted to an initiative to

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[154] For a comprehensive survey see also: Adalah - The Legal Center for Arab Minority Rights in Israel. **Violations of Arab Minority Rights in Israel.** A Response to Israel's Report on the Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination. March 1998.

[155] General Comment 18, Section 9.

[156] Research performed by Carmel Institution for Social Research for the Ministry of Educational in 1994 was published in Memad Issue 8, Dec. 1996, and research made by Dr. Nili Keren, Hila Zelikovitz and Yair Doron of the Hebrew University, Jerusalem and the Kibbutzim Seminar College.

establish a bilingual (Hebrew and Arabic) school in northern Israel (the first in the North and the second in the country) by stating that it was more important to cooperate with religious Jews and new immigrants than it was to deal with Arabs. He said that Israel's problem does not lie in the relations between Arabs and Jews but amongst the Jews themselves.

In another case this year, when an Arab Member of the Haifa City Council was nominated to the key Education position in the Haifa Municipality, many of the other members of the City Council opposed his nomination by saying that an Arab could not fill such an important position. In the end, this member was not appointed to the position, but following the dispute that arose, another Arab council member was ultimately given the appointment.

The lack of effective action to eliminate such practices and attitudes of discrimination in Israel form a clear violation of the State's obligation under Article 26 of the Covenant which states, amongst other things, that

> "…the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination of any ground."

The Committee emphasizes, in its interpretation of this Article, the State's obligation:

> "The obligation under the Covenant is not confined to the respect of human rights, but that State parties have also taken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the State parties to enable individuals to enjoy their rights."[157]

Equality Commission

An Equality Commission should be set up in Israel which would be responsible for this subject (similar to the US Commission on Civil Rights in the US Department of Justice). One of the roles such a body would play would be to initiate and promote legislation ensuring and protecting equal rights. It would also focus on enforcement of existing laws and would examine ways of combating occurrences of discrimination and racism. Later in this section we shall examine various aspects of the ongoing action taken by the State against discrimination against the Arab minority.

The Status of the Right to Equality in Israeli Law (Paragraphs 691-696)

As noted in the State's report, despite the recognition of the right to equality in Court rulings and in legislation, the protection of this right is limited. In those cases where the matter is expressly formulated in legislation, the obligation to equality on the part of the State is qualified. Legal protection, if it exists at all, is limited and does not apply to legislation adopted before June 1994. Protection against discrimination in the private sector is confined almost exclusively to matters of employment. Court rulings and legislation referring to the right to equality and the prohibition against discrimination on the basis of belonging to a suspect class, refer virtually only to

[157] General Comment 3.

gender discrimination. The right to equality on the basis of national origin has so far not enjoyed protection by the Courts, and the Arab minority is systematically subjected to ingrained discrimination, both by individuals and by the State, including through legislation. The State takes no action to enforce the prohibitions against discrimination fixed in the law (see our comments below on employment discrimination) and does nothing to eliminate discrimination against minority groups.

Supreme Court Rulings

The State's report states that the right to equality is well established and enjoys broad protection in the rulings of the Supreme Court. It should be emphasized that the recognition given by the Supreme Court to the right to equality refers solely to the obligation of the State to act equally towards all citizens, and not to the obligation of private bodies to do so.

Also, with regard to the State, this obligation applies only where the law does not explicitly define arrangements which, *de facto*, permit discrimination. Since there is no legal protection of the right to equality, the right retreats before an explicit law which states otherwise. The Women's Equal Rights Law, to which the State's report refers in Paragraph 693, is an example of this: it obligates the State to treat men and women equally, but this obligation is qualified in certain areas, particularly where religious law is applied to marriage and divorce. Discrimination in the field of marriage, divorce and the family is the principal field in which discrimination against women is sanctioned by law.

This fact has significant consequences concerning the Arab minority, since a long list of laws produce discrimination, *de jure* or *de facto*, against Arab citizens of Israel. Among these are, for example, the Law of the Return, 1950, which discriminates against Arab citizens in all matters of citizenship and residency (see our comments on Article 2), or the Law Regarding Absentee Property, 1950 (see our comments on Paragraph 712).

Supreme Court rulings, as noted above, have mainly focused on gender discrimination, and in this field it must be noted that impressive achievements have been made.[158] In contrast, there is not a single case in which the Supreme Court has accepted a claim of discrimination on the basis of national origin. The Court has not been ready to critically examine relevant distinctions between Jews and Arabs, or to develop suitable judicial tools to cope with the difficulty of proving discrimination (i.e., recognizing and regarding the Arab minority as a "suspect class," which would warrant a heightened level of scrutiny by the Court as the US Supreme Court did with African-Americans).In contrast to what appears in the State's report, the Supreme

[158] Nonetheless, when the principal of equality came into conflict with the religious beliefs of some groups the Supreme Court gave preference to these groups in an effort to avoid confrontation with them. In 1994, the Supreme Court rejected the petition of a group of orthodox women who wished to pray together in a religious quorum (minyan) at the Western Wall (a forum of worship unacceptable to the ultra Orthodox when practiced by women, and the women were rejected from the area by the Rabbi of the Wall.

Court, at least until now, has not awarded effective protection against discrimination to the Arab minority in Israel. The following are a few examples:

Arab residents of the town of Nazareth alleged in their petition to the Supreme Court that land confiscated from them to build government offices in the center of town was taken from them specifically because they were Arabs. They argued that it would have been possible to use government lands, lands of the Jewish National Fund, or land declared to be abandoned assets. The Court decided that the onus lay on the petitioners to prove that their being Arabs was the sole reason for requisitioning the land specifically from them. One of the Judges stated explicitly that he was convinced that it was possible to implement the plans to establish the government buildings in Nazareth without harming the land of the residents of Nazareth, but that the Court should not interfere with the judgment of a public authority except if it was convinced that the choice was made in an arbitrary manner, capriciously and with the intention of doing harm.[159] It is obvious that only very rarely would the petitioners have evidence of this kind. Petitioners in such cases can show data regarding the availability of alternative land for the same goal, or that the majority of land requisitions were made from Arabs. However, if the Court is not ready to examine critically such situations and to place the burden on the authorities to prove they did not discriminate and that they had convincing reasons for their actions, there is no effective legal possibility of combating discrimination.

In a petition concerning Government policy permitting only Jewish citizens of Israel to purchase apartments in the Jewish Quarter of the Old City of Jerusalem, the Supreme Court rejected the petition of an Arab who had formerly lived in that area, and decided that the goal of restoration of the Jewish Quarter was justified, and that, therefore, the preference for Jews in this situation was not discrimination.[160]

The Court also rejected a petition which sought to overturn the discriminatory allocation of economic benefits on the basis of army service. The petition specifically contested the allocation of such economic benefits to Yeshiva students although they do not serve in the army while Arabs, who also do not serve in the army, were denied such benefits. The Court refused to find that such a policy was, in fact, discriminatory. The Court ruled that Jewish Yeshiva students have a special status, which justifies awarding them these benefits. The fact that this ruling implies that only Arab citizens are not entitled to such benefits, was not sufficient to make the Court think that the result caused, and the practice that led to it, was problematic discrimination.[161]

In a petition that dealt with discrimination in the classification of Jewish and Arab localities as "development" and "front-line" localities and the resulting allocation of resources for expanded school days,[162] the petitioners claimed that giving preference to localities defined as front-line and development localities in the operation of an expanded school day resulted in far fewer Arab localities receiving such benefits. The

[159] S.C. 30/55 Judgment I/1261.
[160] S.C. 114/78 Judgment 32(2)800.
[161] S.C. 200/83 Judgment 38(3)113.
[162] S.C. 3491/90 Judgment 45(1)221, S.C. 3954/91 45(5)472.

long school day was operated in Arab localities to a significantly lesser extent than their proportion of the population.

The Court ruled that a relevant distinction exists between localities defined as front-line or development localities and other areas, and that therefore there was no unlawful discrimination in this case. The Court even emphasized the fact that although no Arab locality was included amongst the development localities, there are Arab localities defined as front-line. Yet even this fact did not cause the Court to critically examine the use of the said criteria, despite their discriminatory impact.

In light of such examples, it is not surprising that only a very few cases were brought to the Supreme Court, and that legal discussion of discrimination against Arab citizens of Israel has been minimal. While there has been a modest increase in the number of cases submitted to the Court recently concerning discrimination against the Arab minority, it is still impossible to point to a change in the trend of Court rulings.

The Right to Equality in Light of Basic Law: Human Dignity and Liberty (Paragraph 695)

The State explains that the question of whether the Basic Law includes recognition of the right to equality, has not yet been ruled upon. It is important to emphasize, however, that even if the Supreme Court rules that the right to equality - at least the right not to be discriminated against on the basis of gender, nationality, race, etc. - is protected by the Basic Law: Human Dignity and Liberty (a ruling that, it should be reiterated, has *not* yet been given), even then, the possibility of condemning discriminatory laws will only apply to laws enacted after the Basic Law was enacted (June 1994). Therefore, the Basic Law does not help in the case of existing laws (enacted before the relevant date), which cause or sanction discrimination, reviewed below.

"A Jewish Democratic State"

An additional dilemma is implied in the intention clause in the new Basic Laws. For example, Article 1A of the Basic Law: Human Dignity and Liberty states that: "this law has the purpose of protecting the dignity and freedom of man, in order to fix in the Basic Law the values of the State of Israel as a Jewish democratic State.. Such purpose clauses have not yet been interpreted by court rulings, but the symbolic aspect implied in the definition of the State of Israel as a Jewish state is problematic in ensuring equality for the Arab minority as a religious and national minority in Israel.. Also, the fact that the State views itself as a Jewish State finds expression in many additional aspects of law and policy, in a way that discriminates against the Arab citizens of the State.

Elimination of Discrimination in the Private Sphere (Paragraph 696)

Lack of Legislation

The State's report notes that protection against discrimination in the private sector exists only where expressly formulated in legislation. The report does not state, however, that the existing legislative protection is extremely limited.

In general, there is no protection in Israeli Law against discrimination in the private domain by private actors. The sole field in which there exists legal protection against discrimination by private bodies is that of employment, and in this field there is a serious problem of lack of enforcement (see our comments below concerning employment discrimination, Paragraphs 699-702).

The lack of legislation prohibiting discrimination in the private domain is a clear violation of the State's obligation under Article 26 of the Covenant.

The following section uses two examples -- discrimination in the sale of products, provision of services, and access to public spaces, and discrimination in housing -- to illustrate how the lack of an absolute legal prohibition against discrimination contributes to serious discrimination in Israel, particularly against the Arab minority.

Discrimination in the Sale of Products, Provision of Services and Access to Public Spaces Open to the General Public

There is no law in Israel that totally prohibits discrimination in the sale of products, provision of services and access to public spaces open to the general public("public accommodation"). There does exist a prohibition against unreasonable refusal to sell products under government price control,[163] but this prohibition is limited to the goods themselves and does not apply to discrimination at the entrance to places of entertainment such as pubs, discotheques or swimming pools.

Discrimination in access to places of entertainment is widespread, and is primarily directed against the Arab minority. This is in addition to humiliating treatment and discrimination suffered during security checks. There is also a significant incidence of discrimination against persons having an Eastern appearance - in other words, discrimination on an ethnic basis, in addition to discrimination on the basis of national origin. The following are several examples of the cases we have dealt with in the past two years:

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[163] According to section 22 of the law of supervision of products and services, 1958. However, it should be emphasized that in a case where a large food store demanded that women coming to the store wear modest long clothes as a condition for purchase in the places, and the Ministry of Industry and Commerce was asked to interfere because the food chain broke the law by making sale of products under supervision conditional upon conditions forbidden by law, the Ministry refused to do so and based its lack of involvement on that the law was intended to make technical commercial arrangements in matters relating to the sale of products but was not intended to supervise the enforcement of the rights of the citizen of the kind of discrimination by sex in the sale of products under supervision.

- A group of Arab children, accompanied by their swimming instructor, came to a private swimming pool for a swimming lesson which had been arranged in advance. When they arrived, they were told that the Pool Committee had decided that they did not want to let Arabs into the pool.

- An Arab wished to join a sports club, and was asked to bring a recommendation from a member of the club. After he said that he did not know any of the members of the club, his membership application was turned down. Three months after applying for membership in the club, another Arab had still not received a reply on the status of his application. In contrast, Jewish candidates were accepted for membership immediately without being asked to bring recommendations.

- Two Arab lawyers wished to enter a large shopping mall in Jerusalem. The guard who checked their car made them park far away from the building, and requested that they identify themselves. After they presented their identification documents, the men were made to wait for a security officer to authorize their entry to the place.

- Arab students who wished to enter a large discotheque were not permitted to enter, after having been told that the place was a members-only club. However, other people entered freely without displaying a membership card.

Individual court rulings indicate that the courts will recognize a certain amount of protection against discrimination in the private domain, particularly concerning access to places open to the general public. A clear example is a ruling handed down by the Jerusalem Magistrate's Court to an Arab family which was awarded a modest compensation of 10,000 NIS after they were refused entry to a water park.. The Court ruled that the water park's discriminatory practice violated its contractual obligation of good faith and fair dealings.

In order to bypass a previous ruling of the Supreme Court which ruled that the principle of good faith does not obligate equal treatment during the course of negotiations,[164] the Court ruled that media advertisements to visit the park were directed at the general public and constituted a good faith offer by the water park. The cancellation of this invitation at the last minute, specifically to the Arab family, violated the principle of good faith implicit in all contractual offers. The Court also ruled that such behavior also violates the obligation of the private sector to uphold the rights to human dignity, including the right not to be humiliated on the basis of national origin.[165]

From all angles, there are no clear rulings in this field, and certainly there is no suitable protection against discrimination in the existing legal situation, where there is growing discrimination, particularly against the Arab minority.

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[164] ***Beit Yules ruling*** 22/82 P.D. 43(1) 441.
[165] C.A. (Jerusalem) ***11258/93 Na'amana vs. Kibbutz Kalya***.

Discrimination in the Field of Housing

An additional area in which the lack of a clear prohibition against discrimination is prominent is that of housing. Besides the institutionalized discrimination practiced by the State and other bodies having a public nature,[166] there is rampant discrimination against Arabs in the selling and renting of apartments, both by individuals and by contractors selling apartments as part of their business. This phenomenon is particularly widespread in those towns having a mixed Arab-Jewish population. For example, we dealt with a case in which a contractor refused to sell an apartment to an Arab who was a resident of the mixed town of Lod, since he had intended the building for Jews.[167]

Arab students studying in the Universities of Jerusalem or Tel Aviv, at a distance from their permanent homes in Arab settlements, encounter great difficulties in finding apartment owners who will agree to rent them housing. A survey performed by the Gallop Institute in December 1997 demonstrated that 60% of the citizens of Israel are not willing to rent apartments to Arabs.[168]

Affirmative Action (Paragraph 697)

The State's report indicates that the State recognizes the principle of affirmative action, by allocating increased resources to needy groups. Recently, two pieces of legislation were enacted to ensure due representation of women -- in the civil service, and in the appointment of women to the Boards of public companies. Indeed, the only legislative recognition of the principle of affirmative action relates to due representation of women, against the backdrop of gender discrimination.

And yet, the principle of due representation which these laws are meant to establish has not taken hold in Israeli society. The composition of various State-appointed bodies does not reflect an effort to ensure due representation of women, other than the presence of a token female representative, appointed for appearance's sake. The experience of women notwithstanding, initiatives to establish similar legal standards for due representation for Arabs have failed.[169]

Apart from the above-mentioned legislation concerning women, the State's report also notes an example of State-sponsored affirmative action for Arabs:

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[166] For a discussion of institutionalized discrimination in the field of housing, see our comments concerning Paragraph 712.

[167] The association expressed its willingness to represent the applicant in the legal actions, but explained the lack of certainty involved in such actions, and that almost certainly he could not be sure that as a result of the legal action he would receive the specific apartment he desired. Because of this, the applicant chose to purchase the apartment through a trustee, in order that the contractor would not know that the real purchaser was an Arab. When he became aware of this, the contractor refused to register the rights in the Arab purchaser's name, and only agreed to do so after the involvement of the association.

[168] Findings of the review were published in Galei Zahal and the newspapers Ma'ariv and Yediot Aharonot on 16.12.97.

[169] The bill of MK Azmi Bishara to ensure suitable representation of Arabs in government companies, in planning and building committees, in the broadcasting authority and in the national parks authority.

First, the Civil Service Commission has enacted an affirmative action program to increase the representation of Arabs in the Civil Service. It should be made clear, however, that this is a very small scale program when compared to the entire Civil Service and when taking into account the drastic under-representation of Arabs therein. For a detailed discussion of this program and of the general subject of equality in employment, see our comments to Paragraph 699-701. Also, see our comments on the subject of participation in public life in the section dealing with Article 27 of the Covenant (Paragraphs 724-728).

From this, , and also from the State's report (without any additional details or reference) it is clear that apart from the limited legislation concerning the due representation of women in the public service and in government companies, no progress has been made in Israel of the implementation of principle of affirmative action to rectify under-representation of groups historically discriminated against, and in particular, regarding the disproportionate allocation of resources, particularly towards the Arab population. For more on this subject, see our comments to Paragraph 739.

Israel as a Jewish and Democratic State (Paragraph 698)

The State's report states that the State of Israel aspires to be simultaneously a Jewish state and a democratic state, and that this aspiration also finds expression in its Basic Laws. We have already referred to the problematic nature of this definition in the Basic Laws in our comments concerning Paragraph 695. The State's report also notes that:

> In several areas of law and practice [...] the State distinguishes between the Jewish and non-Jewish population in different ways that derive from Israel's fundamental identity as a Jewish state.

The laconic reference to "distinction" between Jews and non-Jews (i.e., Arabs) does not, however, express the fact that clear discrimination exists against the Arab minority.

Despite the fact that Israel had already made an obligation in its Declaration of Independence that, along with its definition as a Jewish State, it would maintain equality of rights for all its citizens without regard to religion, race and sex - it has not fulfilled this obligation. The "Jewish" nature of the State of Israel and its institutions, has, in many cases, taken priority over the "democratic" nature of the State. One of the major reflections of this is the lack of equality and enfranchisement of the Arab minority in Israel. The definition of Israel as a Jewish State and the reality of life in the shadow of the Jewish-Arab conflict has turned the Arab minority in Israel - a national, religious, cultural and linguistic minority - into a minority discriminated against in all fields of life, subject to methodical and institutionalized discrimination, and a victim of discrimination and frequently, racism.

The discriminatory implications of the Law of the Return, which is referred to by the State, go far beyond granting citizenship to Jewish immigrants. The law causes discrimination against Arabs in the field of citizenship and residence. It also causes

great harm to rights protecting the family (primarily of Arabs, but also, for example, of Jewish citizens who marry non-Jews, etc.). On this matter see our comments below on the subject citizenship and residence.

The status given by law to the Jewish Agency and to the Jewish National Fund, referred to in the State's report, cause serious discrimination against the Arab minority in the arena of housing and development of localities. See our comments on Paragraph 712.

Also, the obligation of the State to "the policy of closing the gaps in treatment between the Jewish and non-Jewish sectors, and to ensuring equality of social and political rights for all of its citizens" does not meet the test of reality. It is true that in the period of office of the former government, during the years 1992-96, there was a certain improvement concerning the allocation of resources to the Arab sector, and a trend could be discerned, even if not adequate, of reduction of gaps produced during many years of discriminatory policies. However, this trend has been halted during the period of office of the present government. See, for example, our comments on the subject of development budgets for local authorities (Paragraph 740).

It should be noted, that it is inappropriate to speak of "non-Jewish sectors," when this term refers only to the Arab minority, which, despite the fact that they constitute groups having a religious or cultural nature (Moslems, Christians, Druze, Bedouin), form a national minority having a distinct identity. Ironically, it is these distinct characteristics and this identity which is also the common denominator causing discrimination.

Discrimination in Employment (Paragraphs 699-702)

The State's report does not provide any data concerning discrimination in the field of employment, apart from well-detailed data concerning the integration of women in the employment market, in reference to Article 3 of the Covenant.[170] In contrast, there is a prominent absence of data regarding discrimination against other groups, principally Arabs, or characteristics (such as discrimination on the basis of age). This is in spite of the directives of the Committee which require reporting of the actual situation on the ground (see the beginning of this section).

The State refers to discrimination against Arabs in employment in only one place in its report: in Paragraph 726 (Article 27) concerning the Civil Service. In this section we shall introduce some data on this matter which is available to us. It is obvious that the State has the tools and the resources to make a more thorough examination of the subject. Such an examination is essential in order to combat the reality of discrimination.

From surveys conducted amongst the Jewish public during the 1980s, it is apparent that 65.2% of Jews support preference for Jews in positions in the public service; 60.1% of Jews are opposed to the application of laws that would forbid discrimination

[170] For our comments concerning discrimination against women in employment, see our comments on Article 3.

against Arabs in the field of employment; and 68.2% of Jews are opposed to being under the supervision of an Arab in their place of work.[171]

The percentage of Arabs in blue collar jobs, which have both low status and low wages, is somewhat higher than their percentage in the work force and their educational level. It was found, for instance, that in 1990, 3.3% of Jewish workers were engaged in construction work, as compared to 18.6% of all Arab workers. In contrast, 31% of all Jewish workers were employed in the public service as compared to 19.5% of all Arab workers. 10.8% of the all Jewish workers were employed in the field of finance and business services, compared to 3.9% of all Arab workers.[172]

According to research conducted recently, in the last decade there has been a significant reduction in the employment of Arabs in industrial factories. Research was conducted in forty industrial factories located close to Arab localities. It was found that half of the factories employ no Arab workers. Even in those factories which do employ Arab workers, there exists a negative attitude to their employment and they are not placed in white collar, higher level jobs. Only two of the forty factories examined employed Arabs as production managers.[173]

In an April 25, 1997 article in the newspaper 'Tel Aviv,' a journalist report of a study he had conducted over a four month period. During that time, he had sent out identical resumes to a wide range of available jobs which were advertised in the press (e.g., architect, engineer, secretary, chemist, salesman, etc.) The resumes reflected identical job skills and qualifications (apart from army service), however one was from an Arab and the other was from a Jew. In nine out of ten cases in which one of the candidates received a reply (in many cases - the letters went unanswered), the Jew was invited to an interview and the Arab did not receive a reply. In the tenth case, the Arab was offered a job -- a laborer's position.

Arab Workers in the Civil Service

The data presented in the State's report regarding the integration of Arabs in the Civil Service, in government offices and in local authorities, point to severe discrimination. In Paragraphs 726-727 , the State indicates that out of approximately 56,000 State employees, only 2,357 of them are Arabs - i.e., 4.2% and a percentage which is much lower than their percentage in the population (approximately 20%). It should be emphasized that out of these, approximately 31% are employed in Arab localities, in positions which, in most cases, can only be filled by Arabs (i.e., in units of the Finance, Religious Affairs, Education, Labor and Welfare Ministries).

A prime example of this situation is the employment patterns of the National Electricity Company, a government company having a monopoly over the supply of

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[171] Noah Levine-Epstein, Maged el Haj and Moshe Semionov, The Arabs in Israel in the work market, page 50. Floresheimer Institute for Policy Research, Jerusalem, April 1994.

[172] Ibid, p. 14. The data used for the research were taken from the yearbook of the Central Statistical Office, 1992.

[173] The research of Prof. Binyamin Volkinson from the University of Michigan with the aid of Ruth Even Stein, the Golda Meir Institute for Research into Work and Society in the University of Tel Aviv. An article on the findings of the research was published in the Ha'aretz newspaper on 27.3.98.

electricity in Israel. Out of 13,000 workers at the electricity company, only six (6) are Arabs. The electricity company claimed that this is due to the fact that company employees must undergo a security check "because of the responsibility of the company towards the national strategic infrastructure of the State of Israel." Over a year ago, the company announced that it had removed the strict limitations concerning security screening that had been in force in the past, and that the majority of posts were now open to Arabs, but so far nothing has changed in the composition of employees in the company (the company claims that this is because of overall reductions in manpower).[174]

For more detailed data concerning the integration of Arabs in the Civil Service, see our comments to Paragraphs 726-727.

Salary Differentials Research conducted by Bar Ilan University[175] found large salary differentials between men and women, between Jews and Arabs, and between Ashkenazim and Sepharadim: some of these differences arose from differences in education, experience and hours of work, but a large segment was also a result of discrimination:

- Jewish men earn 28% on average more than Jewish women, 57% of the difference arose from discrimination.
- Arab men earn 24% more than Arab women, 68% of the difference arose from discrimination.
- Jewish women earn 28% more than Arab women, 47% of the difference arose from discrimination.
- Jewish men earn 33% on average more per hour than Arab men, 41% of the difference arose from discrimination.
- Ashkenazi women earn 16% more than Sepharadi women, 27% of the difference arose from discrimination.
- Ashkenazi men earn 21% on average more per hour than Sepharadi men, 44% of the difference arose from discrimination.

[174] According to ***Ha'aretz*** daily, 17.2.98.
[175] Shoshana Newman, Gender Versus Ethnic Wage Differentials and Discrimination among professionals - Methodological considerations and Evidence from Israel (Bar Ilan University).

Discrimination on the Basis of Age

In spite of laws prohibiting discrimination on the basis of age, many job openings advertised in the press indicate a maximum age (sometimes also a minimum age). A random check of "situations available" published in the weekend newspapers on March 20, 1998 showed about 140 advertisements containing age limitations, most of which defined a maximum age of the candidate for a variety of positions.[176]

Discrimination due to age is also institutionalized and in the Civil Service there are many incidences of age limitations, which are even established in the formal regulations: recruitment to the police is limited to age 35, recruitment to the prison service is limited to age 40. It should be emphasized that these limitations apply to all positions, including professional positions such as lawyers or clerks. After extensive correspondence over many years with the State Attorney General with a request that directives be issued on the subject of the illegality of age limitations in the Civil Service, ACRI petitioned the Supreme Court against the use of age restrictions in the police force, the prison service, the VAT branch and the Knesset Guard.[177]

"Army Service" as a Criteria for Employment (Paragraph 699)

In addition to the description of prohibitions against discrimination fixed by the Equal Employment Opportunities Law, the State's report says that:

> The prohibition of workplace discrimination in law applies not only to explicit discriminatory practices, but has also been interpreted to apply to terms of employment which are non-discriminatory on their face but in fact amount to impermissible discrimination, such as requiring previous military service (which very few Arabs perform) when such a requirement is not relevant to the job in question.

It is not clear what is meant by the statement that the law has been interpreted in this way, since, to the best of our knowledge, no ruling has been given concerning employment practices which discriminate indirectly (although there have been a number of mentions of this subject in rulings on this matter). It is obvious, however, that this is the correct and appropriate interpretation of the law. It is particularly surprising that the State should say that the requirement of army service as a criterion for employment is unlawful discrimination against Arabs. We agree with the statement that this practice is in contravention of the prohibition against discrimination on the basis of national origin state in the Equal Employment Opportunities Law, ,however it is unclear whether this interpretation has been determined by the courts or any other official body. Furthermore, the use of the criterion of army service is very widespread, and is a common discriminatory device used against Arab candidates. In many cases, the use of this criterion is made with the specific intention of preventing Arab applicants from applying.

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[176] A check made by the lawyer Gila Stopler of the Association for Civil Rights in Israel.
[177] S.C. 6778/97. The Association for Civil Rights in Israel.

A random check of the "situations available" adverts in the press indicates many job postings such as salesmen, sales managers, software engineers and secretaries which require army service..[178] We do not know of any case in which the Enforcement Division of the Ministry of Labor and Social Affairs has prosecuted an employer who demanded this requirement.

Furthermore, the State itself engages in this form of discrimination. For example, in the "situations available" adverts published by the Registrar of Associations in the Ministry of the Interior, there was a requirement for Arabic- or English-speaking lawyers who had done army service. It should be emphasized that in this case discriminatory intent is clearly apparent, since it is obvious that the natural candidates for a post requiring knowledge of Arabic are Arabs, it is well known that these candidates do not meet the requirement of army service, and it is clear that such a requirement is, in any event, not relevant to the position. An Arab lawyer, who contacted the offices of the Registrar of Associations and asked if there was any point in him submitting his candidacy in the light of the fact that he did not meet the requirement of army service, was told not to apply.[179]

An additional criterion which causes employment discrimination is the preferential treatment of veterans of combat army service, which, in addition to discriminating against Arabs, discriminates against women, who, because of Army policy, do not serve in combat positions. In this case as well, the State uses this criterion to discriminate in employment. For example, the Civil Service Commission has, for some time, been examining its employment plan, in order to determine situations in which preference is given to veterans of combat units when they are accepted into the Civil Service. This, despite the fact that it was warned, as stated above, that such preference is discriminatory against women and Arabs who do not perform such service.[180]

Another example of this discriminatory policy is the use of the combat service criterion by the Israeli Police Force to give preferential rank and salary to new recruits, causing serious discrimination against women in the police force.. Recently, the police force announced that it intended to cancel this policy, during legal actions resulting from a petition by the Association for Civil Rights in Israel against discrimination in the Israel police force. However, it is not known how this change in policy will be implemented.[181]

The Enforcement Division of the Ministry of Labor and Social Affairs (Section 700)

The Equal Opportunities Branch of the Enforcement Division of the Ministry of Labor and Social Affairs has been responsible for enforcing the Equal Employment Opportunities Law since 1996. The Division has authority to investigate and to file

[178] For example, advertisements published in the newspaper Yediot Aharonot on 31.10.97.

[179] Attorney Gila Stopler of the Association for Civil Rights in Israel corresponded in this matter with the Office of the Registrar of Associations.

[180] The Association for Civil Rights in Israel has been corresponding for an extended period in this matter with the Civil Service Commissioner..

[181] S.C. 2979/96 ***Pnina Ben Giat et al vs. the Minister for Internal Security et al***. (pending).

bills of indictment against employers who violate the law. The Division is not authorized to file civil suits nor to represent injured parties in civil suits.

There are 83 inspectors in the Enforcement Division responsible for the enforcement of various labor laws.[182] **Of these, two inspectors are responsible for enforcing the Equal Employment Opportunities Law, in all of its aspects (discrimination on the basis of gender, parenthood, age, national origin, etc.).**

Since 1996, the time at which the Division began its work in its present configuration, not one bill of indictment has been filed against an employer for violation of the Equal Employment Opportunities Law. During the preceding period, responsibility for enforcement of the law had been given to the Employment and Status of Women Division.[183] To the best of our knowledge, the only indictments relate to publication of blatantly discriminatory job advertisements – those using male-specific language. These bills of indictment were resolved by the imposition of modest fines on the employers.

Our experience is that review of simple complaints filed with the Enforcement Division drag on for many months, and, as stated, there is not even one case in recent years in which sanctions were taken against the employers. We are also not aware of any pro-active, informational or educational activities conducted by the Enforcement Division to educate employers about their legal obligations, and to inform employees about their rights.

The Case of Orit Katsir

In 1995 the Association for Civil Rights in Israel directed a complaint to the Enforcement Division of the Ministry of Labor and Social Affairs regarding the policy of the State airline El-Alby which only pilots who were veterans of the Israeli Air Force were eligible to apply for jobs as El-Al pilots. ACRI's complaint was submitted in relation to the case of Orit Katsir, an Israeli woman employed as a commercial pilot in the United States. It claimed that El-Al's policy represented unlawful discrimination on the basis of gender, since at that time women could not be pilots in the Israeli Air Force.

In October, 1995, the State Comptroller, in her capacity as Ombudsman, determined that El-Al's policy constituted unlawful discrimination in violation of the Equal Employment Opportunities Law. In February 1996, the Association for Civil Rights in Israel filed a civil suit in the name of Orit Katsir with the Tel Aviv Labor Court. In June 1998, during the suit's proceedings, El-Al announced that it had hired Orit Katsir, after announcing, several months previously, a change in policy on its part. It

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[182] Response of Minister of Labor and Social Affairs Eli Yishai in the *Knesset* on 24.3.98 to interrogatory by M.K. Anat Ma'or.

[183] Prohibition against discrimination on the basis of age and national origin is the result of a relatively new amendment to the law, and until this amendment, enforcement of the law related only to discrimination on the basis of gender, parenthood and personal status.

is not known to us if, during this entire four-year period the Enforcement Division of the Ministry of Labor and Social Affairs took any action in this matter.

The Association for Civil Rights in Israel has submitted various other complaints to the Enforcement Division of the Ministry of Labor and Social Affairs, however we are unaware of any case in which any actions were taken against an employer.

In our estimation, and as is apparent from the data presented herein, the Equal Opportunities Section of the Enforcement Division of the Ministry of Labor and Social Affairs lacks the financial resources and is without sufficient legal authority to efficiently enforce the prohibition against discrimination in employment.

Legal Claims

Relatively few legal (civil) suits were filed in matters of employment discrimination. We are aware of some 15-20 rulings in this area, the large majority of which relate to gender discrimination, and a few which relate to age discrimination. We know of only one suit, recently filed, that relates to discrimination due to national origin. We estimate that, at the most, only a few dozen claims have been filed over the years, and there are few legal decisions on this subject.

The small number of claims and rulings is both the result of a lack of knowledge by workers about their rights, and of the difficulty of handling these complex claims, both financially and personally. As a result, even though the law in the area of equal employment opportunities is indeed a good and progressive law, the norms determined by the law are not applied in reality.

Equal Employment Opportunities Commission

In light of what has been said, and in light of the real existence of discrimination, there is an vital interest in the establishment of an Equal Employment Opportunity Commission, with appropriate and sufficient legal authority and resources, which would be able to investigate complaints in an effective manner: to initiate investigations, to issue instructions to employers, to act to heighten the awareness of workers of their rights and of employers of their obligations, to initiate research into the subject, etc. Such a Commission would be similar to existing Commissions such as those in the United States of America (the Equal Employment Opportunities Commission) and in Canada (the Human Rights Commission).

Employment Service Law (Paragraph 701)

The State's report notes that the Employment Service Law also prohibits discrimination in employment on the basis of age, sex, race, religion, nationality and so forth, and does so especially with regard to the activity of the Employment Service in sending job applicants to potential employers. However, in spite of this prohibition, the Employment Service itself aids employers in discriminating against candidates for employment. In the job advertisements it publicizes, the Service notes discriminatory requirements that the employers indicate – we are particularly aware of age limitations – filters candidates it refers according to these requirements, and does not inform employers of the illegality of such requirements. Thus, for example, in one case being handled by ACRI, a woman was told in the Employment Service offices that she could not present her candidacy for a job in the Value Added Tax offices because the position was limited to candidates up to the age of 32. (In the wake of our intervention, the requirement was canceled, although the candidate was not hired for the position.) In a letter that the Employment Service sent to ACRI, the Legal Counsel for the Ministry of Labor and Social Affairs admitted that the Service does not filter out discriminatory age requirements.
In some Employment Service bureaus, entrance to children and babies is prohibited, a fact which prevents mothers from using the Employment Bureaus, and which hinders their ability to receive unemployment benefits. In a number of Employment Service bureaus, employees have refused to consider the special needs of women undergoing fertility treatment when referring them to places of work.

Educational Disparities (Paragraphs 659-662, Article 24; Paragraphs 704-707, Article 26)

Regarding the goals of education and its content, see our comments on Article 27.

During the previous government there were indications of initial progress in changes in policy and in the positive attitude of the Ministry of Education towards the Arab educational system. This was especially clear with regards to infrastructure investments and to increases in the allocation of teaching hours, which were desperately needed. Indeed, the State's report discusses the improvement that was made during the previous government, in the years 1992 to 1996. Today, however, we are witnessing not just a halt in this positive momentum, but also a significant retreat in these investments. In 1997, the development budget of the Ministry of Education allocated to the Arab population has decreased by some 20% relative to 1995 and 1996. If this retreat continues, it may cause a deterioration in the Arab education system to such an extent that the chances of ever narrowing the disparities between it and the Jewish educational system will evaporate.[184]

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[184] Aluf HarEven & As'ad Ganem, **A look back and a look forward, Equality & Integration**, The government's policy towards the Arab citizens of Israel from June 1996 to June 1997 and outlines for policy towards Israel's jubilee. Sikkuy - The Association for the Advancement of Equal Opportunities.

Deterioration can be observed in the following domains: building of schools, development of educational programs,[185] number of teaching hours, professional supervision, special education programs, and preschools.

Indeed, as the State's report indicates in paragraph 707, at the end of 1997 the Minister of Education appointed a special committee, which included several Arab educators, to examine the Arab educational system and to prepare five-year plan. Until now, the work of the committee has borne no fruits, and one of its Arab members has resigned his post in protest of the committee's rejection of his proposals without due consideration. It should be stressed that according to many Arab educators, the needs of the Arab educational system are well known to the Ministry of Education, and what is needed is not the establishment of a committee, but the allocation of additional resources and personnel. In fact, the State admits in its report that the Arab educational system receives less funding from the government than the Jewish educational system.

In light of the State's recognition of the historical disparities between the Jewish system and the Arab system, the Ministry of Education should have instituted an affirmative action program for Arab education for the purpose of achieving qualitative equity. However, even today the Ministry of Education continues to discriminate against the Arab educational system in many areas.

In the latest report of the Israeli State Comptroller, the 48th such report, the State Comptroller concludes that the decisions on special budgets for municipalities and schools are not made according to clear and publicly known criteria, and there is no body responsible for ensuring that the allocation of the budget is made in an equitable manner. The State Comptroller's report goes on to say that the disparity between the educational positions required by the regulations of the Ministry of Education, and the educational positions that exist in fact is particularly large in the Arab towns and villages. For example, in the Arab sector the Ministry of Education has funded only 35% of the budget needed for psychologists, as opposed to its funding of 70% in the Jewish sector. Another example is that in spite the fact that dropout rates in the Arab sector are much higher than those in the Jewish sector, the Ministry of Education has funded only 30% of the budget needed for the positions of School Attendance Officers (who are in charge of preventing school dropout) in the Arab sector, as opposed to 46% in the Jewish sector.

The following section details some of the areas in which disparity and discrimination against the Arab educational system in Israel exist.[186]

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[185] At the beginning of 1997 the Ministry of Education has completely halted the work of teams that were in the process of developing educational programs and educational materials for the topics that are particular to the Arab educational system, such as Arabic language, Arabic literature and expression, Islam, Arabic culture and heritage etc.

[186] Large disparities exist also in the domains of kindergarten education, special education, qualified personnel for teaching, etc.

Infrastructure in the Arab Educational System

In the unrecognized settlements of the Bedouin communities in the Negev, children are compelled to walk several kilometers daily to reach their school bus pickup spot. They must then travel several dozen kilometers in order to reach their school. The distance from home to school is one of the reasons for the high dropout rates, especially for Bedouin girls. Among the Bedouin, as girls grow up, their families recoil from sending them to distant schools (see our comments to Article 27). The education laws require that the State open schools for any number of students above a certain minimum, and requires the provision of proper transportation arrangements for students. However, the Ministry of Education and the local educational authorities violate these laws with regard to the Bedouin population in the Negev.

There is a shortage of approximately one thousand classrooms in the Arab educational system. Since the current policy of the Ministry of Education does not adjust the rate in which classrooms are built to the birth rate, the shortage of classrooms might worsen in the coming years. As a result of the shortage of classrooms, there is a serious problem of overcrowding in the existing classes, and many of the students study in ill-fitting structures, such as rented rooms, dangerous asbestos-filled structures and so on. In the schools in the unrecognized Bedouin villages, children study in buildings that are not connected to water and electrical lines. A survey of the physical needs in Arab schools indicates that 33% of the classrooms in Arab schools are not fit to be used as classrooms; approximately 37% of Arab schools do not have libraries; and approximately 80% of Arab schools do not have lecture halls and gymnasiums.

Educational Welfare Services

The level of education in a society is affected by the socio-economic level of its population. An abundance of research and data indicate that Arab towns and villages are at the bottom of the socio-economic scale in Israel. As a result, the Arab educational system is at the lower end of the scale of Israeli educational institutions. According to data from a 1995 report of the National Insurance Institute, 60% of the Arab children in Israel live beneath the poverty line.

Several years ago the Central Bureau of Statistics issued a publication rating the municipalities in Israel according to the socio-economic status of their population. The socio-economic status was determined by factors such as: the financial assets of the residents, quality of housing, the equipment in the house, car ownership, level of education, characteristics of employment and unemployment, and various socio-economic difficulties. The socio-economic index was composed of ten levels, ranging from level one, which represented the lowest socio-economic status, up to level ten, which represented the highest status. All but one of the Arab municipalities in Israel were located in the first to fifth levels. In the two lowest levels Arab municipalities constituted the majority of municipalities. Only one of the Arab municipalities was located in the sixth to tenth levels. In spite of this data, none of the Arab municipalities is included in the Educational Welfare Programs of the Department of

Education and Welfare Services in the Ministry of Education, which is in charge of the advancement of the weak populace in Israel A petition asking the Supreme Court to order the Ministry of Education to offer these programs to the Arab community[187]

School Dropout, Eligibility for Matriculation Certificates and Higher Education

Dropout rates among Arab students are very high, considerably higher than those of their Jewish counterparts.

Age	Dropout Rates Among Arab Students	Dropout Rates Among Jewish Students
9-15	9%	4%
16-17	40%	10%

(data taken from the State Comptroller's Report for 1996)

Despite the magnitude of the problem of school dropout in the Arab sector, Arab schools receive fewer funds than Jewish schools for the purpose of dealing with dropouts. For example, only 25% of Arab schools have educational counselors compared to 75% of Jewish schools. In addition, only 32% of Arab schools have psychological counselors as opposed to 91% of Jewish schools.

The educational system serving the Bedouin in the Negev is the worst in the Arab education system as a result of years of neglect and of discriminatory policies waged against this education system generally and, in particular, against the children in the unrecognized villages (regarding the unrecognized villages, see our comments to Article 26, Paragraphs 714-719). The backwardness of the Bedouin education system in the Negev is best illustrated by the data regarding eligibility for matriculation certificates and the data regarding dropout rates. In 1995, only 6% of the Bedouins of the relevant age group were eligible for a certificate of matriculation, as opposed to 22% among the Arabs as a whole and 40% of the Jewish student population. Dropout data reflects a similar disparity. In 1995, 67% of the Bedouin students dropped out of school before reaching the 12th grade. Among the Arabs as a whole, the dropout rate was 43%.[188] In 1996, according to Ministry of Education data, 45% of the relevant age group of the Jewish population was eligible to receive a certificate of matriculation, as opposed to 23% of the Arab population generally and only 5.9% of the Bedouin population.

Arab students make up only approximately 5% of the student body in Israeli universities. Arab students who apply for acceptance at the universities encounter difficulties in the entrance exams as a result of the low level in the Arab educational system. Only about a third of the Arabs who apply to the universities are accepted and start their studies, as opposed to 63% of the Jews.

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[187] HCJ 2814/97 ***The Follow Up Committee for Arab Education in Israel vs. Ministry of Education.***

[188] Data taken from the Report of the Committee for the Examination of the Bedouin Education System in the Negev, commissioned by the Minister of Education and submitted on January 16, 1998.

Citizenship and Residency (Paragraph 708)

The discriminatory implications of the Law of Return, of which the State makes mention, deviate far beyond the granting of citizenship to Jewish immigrants. The law discriminates against Arabs in the area of citizenship and residency. It also does serious damage to the protection of the family (principally among Arabs, but also, for instance, for Jewish citizens married to non-Jews, etc.) See our comments to Article 2 on the matter of citizenship and residency.

Military Service and Subsequent Entitlements (Paragraphs 709-710)

The State's report says, "Recently, it was decided that non-Jewish women can volunteer for national service, and as a result they are eligible to receive the benefits given to such volunteers." It should be noted that this decision was taken only after the Association for Civil Rights in Israel appealed against a policy of the State which did not allow Arab women and men who are exempt from military service – both Jewish and non-Jewish – to volunteer to perform alternative national service and thus be eligible for the benefits given to such volunteers. This, in contrast to the accepted option of such service for Jewish women who have received exemption from military service for religious reasons.[189] As a result of this appeal, the State announced that it had changed its position and that from it would now be possible for Arab women to volunteer for national service. On the other hand, the State announced within the framework of the pending legal proceedings, that it maintains its position that the existing legal situation does not allow men who are exempt from military service to volunteer for national service (as opposed to ACRI's position that not only is there no impediment to such service in the existing legal situation, but that it is obligatory according to principles of equality). The State Attorney General agreed that this situation is a cause of discrimination, and announced that the possibility of changing the situation by legislation would be examined. In June 1998, the question was discussed by the Government, which decided to pass it on for discussion in the Ministers' Committee. In a recent discussion by the Government, some of the Ministers expressed opposition to the possibility of opening national service to Arab men, explaining their opposition by claiming "security risks."[190]

Benefits Given on the Basis of Military Service (Paragraph 711)

As noted in the State's report (Paragraph 708), the vast majority of Arab citizens do not serve in the IDF. The Ministry of Defense's policy is not to draft them into the army because of the fact that Israel's military conflicts are with Arab states. In its report, the State claims that:

> Because the policies of exemption from military service draw a clear distinction on the basis of national origin, benefits granted to released soldiers have been

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[189] High Court of Justice 9173/96 ***Aeyal Daniel et. al. vs. the Director-General of the National Insurance Institute et. al***, (pending).

[190] ***Ha'aretz*** daily, 8.6.98.

scrutinized closely to ensure that the fact of military service justifies the benefit in question.

The facts that follow thereafter testify to the fact that this is not the case. The State itself denotes a long line of financial and other benefits that are granted to discharged soldiers which have no direct connection to military service and which create unjust discrimination against Arab citizens. Thus, for example, the State notes that military service gives the right to student scholarships, and, indeed, the weight given to military service in applications for grants is such that there is almost no chance that someone who did not serve in the military will receive such a grant.[191]

The State also notes that according to the criteria of the Ministry of Housing, discharged soldiers are eligible for advantageous mortgages. Since most of the Arab population does not serve in the military, the eligibility of most Arab families for mortgages is about a third lower than that of families in which one of the spouses served in the military. For example, a married couple with three children who buys an apartment in the city of Akko[192] is eligible – if one of the spouses served in the IDF – to a mortgage of NIS 118,000 (as of June 1998). If neither of the spouses served in the IDF, the mortgage to which they are entitled will amount to NIS 78,000.

As can be seen above, the criterion of military service is a basis of and an excuse for discrimination against Arab citizens in all areas of life. (See our comments above on the use of the criterion of military service in the area of employment, Paragraph 699.)

Housing and Land (Paragraphs 712-713)

The planning and land policies of all Israeli governments have been focused on two goals: absorption of Jewish immigration, "*aliya,"* and distribution and dispersal of the population. Absorption of *aliya* has been, and continues to be, one of Israel's main goals. Dispersal of the population is considered to be a strategic security interest, combining settlement with security. These two "national" goals do not take into consideration the Arab minority population of the country. Furthermore, a significant part of the lands allocated for the fulfillment of these goals was originally owned by Arabs.

Discrimination between Jews and Arabs in the matter of land is a wide and complex subject which cannot be fully covered here. We shall therefore only describe several of the main factors of this problem - the appropriation of lands which were under Arab ownership; the function of Zionist institutions in the management of State lands; and the Absentee's Properties' Law and its consequences.

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[191] According to the criteria of the Ministry of Education, Culture and Sport, which were presented in correspondence between the ministry's legal counsel and *'Adalah* – The Legal Center for Arab Minority Rights in Israel.

[192] Akko is considered, according to definitions of the Ministry of Construction and Housing, a development town, which entitles larger mortgages than in the center of the country. In the past, the only holders of eligibility for housing in development towns were military veterans (or someone who had a family member who served in the I.D.F.).

The State's report's admits that:

> Over the course of Israel's history, serious disparities between the Jewish and Arab populations in the availability of housing and of land for development have become entrenched. A significant part of the problem derives from expropriation of land in the aftermath of the war of independence.

Land appropriation from Arab citizens is one of the factors -- in a long list of factors -- which have contributed to this, the harshest form of discrimination against the Arab minority: discrimination in land and housing. The precise scope of the lands which the State appropriated from its Arab citizens is not known. Different estimates figure around 40%-60% of the lands which were under Arab ownership have been appropriated by the State.[193]

In 1952, Israel's Defense Forces evacuated two Arab villages, Ikrit and Birem, situated near the border with Lebanon. The inhabitants of these villages were told that they are evicted "until military operations in the village cease." After several weeks had passed, and the IDF did not allow the inhabitants to return to their villages, residents petitioned the Supreme Court [194]which recognized the right of the uprooted villagers to return to their homes. However, during the proceedings, the IDF destroyed the two villages (except for the church, which still stands) and so prevented the implementation of the ruling. A special Ministerial committee recommended, in December 1995, that the uprooted residents of Ikrit and Birem be allowed to rebuild the villages as a communal settlement. However, after the current government came into office, it prevented the implementation of these recommendations. In a hearing held recently in the Supreme Court, of a petition submitted by the inhabitants of Ikrit, the government claimed that the decisions of the previous government do not obligate it. The Supreme Court issued an order requiring the government to explain the legality of its position.[195]

In 1976 the government decided to confiscate large areas of land in the Galilee so that they could be annexed to Jewish settlements. While a third of the properties confiscated were owned by Arabs, only a tenth of these lands were allocated for the needs of the Arab inhabitants of the Galilee.

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[193] Uzi Benziman and Atalla Mansour**, SUBTENANTS - The Israeli Arabs, Their Status and the Policy Towards Them**, Keter Publishing House 1992, Pg. 165, quoting Henry Rozenfeld, "The Class Status of the Arab Minority in Israel", Research and Critique Notebooks No. 3. Haifa, December 1997, Pg. 21.

[194] HCJ 51/64 ***Daud vs. The Minister of Defence and others*** (unpublished).

[195] ***Haaretz*** daily, 3.7.98.

Management of Land in Israel and the Status of the Zionist Institutions[196]

The State's report (Paragraph 713) states that:

> Only 7% of all land in Israel is privately owned, 4% by Arabs and 3% by Jews. The remaining 93% is managed by the Israel Lands Administration (ILA) on behalf of the owners of the land: the Keren Kayemet Leyisrael, an organization funded by private Jewish donations (10% of ILA-managed land); the Development Authority (10%) and the State (80%). The ILA has, over the years, leased or transferred significant land holdings for development of Jewish towns and settlements, while for the most part new Arab localities have not been established through similar arrangements except for the eight Bedouin towns established in the southern Negev region.

As this implies, the vast majority of lands in Israel are managed by the Israel Land Administration (ILA). Additionally, most of these lands are owned by the State. The State's report does not explain, however, that ingrained in the system of land management in Israel is blatant discrimination against the Arab minority. One of the main causes of this discrimination is the involvement of the Zionist institutions in land management and the founding of new localities, as they operate only for the benefit of the Jewish population. These institutions, which were founded and operated before the establishment of the State, continue to operate today, and to fulfill governmental functions, even as they act in violation of the principle of equality to which the State is legally bound.

It should be noted that according to the Israel Land Administration Law, ownership of State land must not be transferred, and these lands may only be leased for long periods, most commonly 49 years. Therefore, the popular use of the term "to buy" with reference to an apartment or land, actually means the long-term lease of property which continues to be owned by the State or by the JNF ("Keren Kayemet Leyisrael").

As stated in the State's report, the owner of 10% of the lands managed by the ILA is the Jewish National Fund (JNF) ("Keren Kayemet Leyisrael").[197] According to the by-laws of the JNF, the JNF's main purpose is to purchase lands for the purpose of settling Jews on these lands. This purpose has been interpreted to mean a prohibition of the lease of JNF lands to Arabs. The JNF acts in accordance with these policies to this day. According to the covenant signed between the government and JNF, JNF lands will be managed by the ILA according to the JNF by-laws, that is, JNF lands will not be leased to non-Jews. The result is that the ILA, a statutory organ, officially acts according to a policy that discriminates Arab citizens.

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[196] For a more comprehensive discussion of land confiscation from the Arab citizens and the management of State lands, see David Kretzmer, **The Legal Status of the Arabs in Israel**; Westview Press (1990) 61-66, 90-98; Joshua Weissman, **Property Law**, General Part (1983) pp. 212-213.

[197] It should be noted, that many of the lands owned by the JNF were previously owned by Arabs, declared absentees' property, and sold by the State to the JNF.

Furthermore, according to the abovementioned covenant and as enacted in the Israel Land Administration Law, 1960, half of the members of the Israel Land Council, the body outlining the policy of the ILA, are representatives of the JNF. The result is that the representative of a body whose stated purpose is to act for the benefit of Jews only, may determine the decisions of the organ managing the lands for the State.
There has never been an Arab member on the Israel Lands Council, the members of which are appointed by the government, according to the recommendations of the Minister of National Infrastructure and the Minister of Finance. ACRI has written several times to both the government and the ministers prior to the appointment of the current Council in 1997, and several times thereafter, requesting that Arab citizens, constituting approximately 20% of the population, have appropriate representation on the Council, but to no avail. This lack of representation persists despite the fact that there are empty seats on the Council. The current Council consists of only 18 members, while the law allows for a maximum of 24.

In light of this situation, it is not surprising that the activities of the ILA ignore the needs of the Arab population. Particularly unfortunate is the fact that, as mentioned in Paragraph 712 of the State's report, the ILA has never allocated lands for the purpose of founding any new Arab locality. This, in spite of the fact that the Arab population has grown six-fold since the establishment of the State. At the same time, the ILA has allocated lands for the development and founding of dozens of Jewish settlements, including approximately ten new cities.

The seven Bedouin towns mentioned in the State's report were founded as a "replacement" for settlements whose inhabitants were evacuated. Therefore, the allocation of land for their founding does not constitute the foundation of new settlements (see our comments to Article 26, Paragraphs 714-719).

The following case exemplifies the JNF's discriminatory land policy:

> Last May, an Arab woman, a Haifa resident, wanted to buy an apartment. She signed a preliminary contract with the owner of the apartment, and paid a deposit. However, when her attorney checked the necessary procedures at the Land Registration Office, the parties were surprised to learn that the apartment, leased from the ILA, (See our comments concerning discrimination in housing, above) had been transferred to the ownership of the *Himanuta*, a subsidiary company of the JNF, without the knowledge of the lesees, or any of the tenants in the building (including an Arab family). Himanuta refused to consent to the transfer of the long-term lease to an Arab buyer in view of its policy, as a subsidiary of JNF, not to lease apartments to Arabs. After many attempts to resolve the problem were unsuccessful, the buyer and the owner were compelled to void their signed contract. The Jewish Agency and the Zionist Federation.

Two more organizations with great influence in the domain of lands and housing are the Jewish Agency for Israel and the Zionist Federation, two organs that operated before the establishment of the State, specifically for the purpose of settling Jews and the establishment of a Jewish state. Naturally, these organs act to further the interests of the Jewish people and especially the settling of Jews. These organs also received statutory

status.[198] Covenants between the State and these organs, allocated to them (especially the Jewish Agency) functions and powers of a governmental nature, such as the founding and funding of new localities and the development of infrastructure. In order to realize these functions, the ILA allocates State lands to the Jewish Agency.

The case of the Kaadan family is a typical case, exemplifying the grave discriminatory consequences arising from the fact that the functions of founding new localities and settling them, have been taken from the State, and are being fulfilled by these organs. Adel and Iman Kaadan wanted to buy a house in the town of Katzir, which is being build in the area of Wadi Ara, not far from their present home. They currently live in the Bakaa-el-Garbia where the quality of services and infrastructure is much lower. Katzir was built by the Jewish Agency over ten years ago on State lands. Part of the town was built by the Ministry of Housing and marketed directly by it. In another part of the town, lands are being allocated on which individuals may build independently. Allocation of this land is being conducted by the Jewish Agency and a cooperative association, which, together, were allocated State lands for this purpose. Their consent is needed for every buyer. When the Kaadan family came to the offices of the local council, it was explained to them that the policy of Katzir is not to accept applications from Arabs[199] ACRI, on behalf of the Kaadans, petitioned the Supreme Court against the ILA, the Ministry of Housing, and others. In the petition, the Supreme Court was asked to determine that the policy by which new localities are founded by the Jewish Agency and by which State lands are allocated to organs whose express policy is to discriminate against Arabs, is illegal. The proceedings have been going on for three years, since its submission to the Court in 1995. In a recent hearing in the Supreme Court, the Chief Justice urged the parties to try and reach a compromise, and emphasized that it is advisable to reach a compromise that guarantees proper housing to the family, without forcing a ruling on the case. If attempts to reach a compromise fail, the court will rule in the matter.

Obviously, a solution to the specific problem of the Kaadan family will not bring resolve the question of the legality of the current system of land allocation, which discriminates against Arab citizens.[200]

The nature of the interrelationship between the State which is supposed to serve all its citizens, and the Zionist institutions which operate only for the benefit of the Jewish population and are not bound by the principle of equality which binds the state; the status accorded these institutions in various statutes; the transfer of governmental powers and resources from the State to organs whose express purposes are sectarian,

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[198] The World Zionist Organization-Jewish Agency (Status) Law, 1952.

[199] In a previous case in 1994, Taufic Jabareen asked to buy an apartment in the part of Katzir where apartments at that time were being built and marketed directly by the Ministry of Housing. Mr. Jabareen was invited to the committee examining requests to purchase land in Katzir, where he was told that his request could not be entertained, because the settlement has been build on land transferred to the Jewish Agency, and the Agency's regulations stipulated that Arabs could not be accepted into its settlements. Mr. Jabareen, who is an attorney, corresponded with government's authorities for several months, threatening to petition the Supreme Court. Finally, his request was accepted, probably because it referred to apartments directly marketed by the Ministry of Housing, which put the State directly in a difficult legal situation.

[200] HCJ 6698/95 ***Kaadan vs. Israel's Land Administration et al***., (pending).

and therefore discriminatory - all these constitute a clear violation of the State's obligation to guarantee equality to all its citizens, and, accordingly, constitute a blatant violation of Article 26 of the Covenant.

Law Regarding Absentee Property

One of the principal means by which lands belonging to Arabs have been expropriated is the Absentee Property Law, 1950. Under this law, Arab residents who had left Israel for Arab countries during the period following Israel's declaration of independence were declared absentees, and their property was declared absentee property. The definition of absentees also included those Arabs who had been "absentees" and later returned to Israel. Thus, the property of "present absentees," estimated at some 75,000, was also expropriated.[201]

During the 1980's and early 1990's, the property of dozens of Palestinians in East Jerusalem was declared absentee property.[202] These declarations were made secretly, on shaky legal grounds such as a single affidavit, which later often turned out to be false. Palestinian "absentee" property was passed on from the Custodian of Absentee Property to the Development Authority which, in turn, passed the property on to *"Himanuta",* a subsidiary of the Jewish National Fund mentioned above, whose declared policy has been to refrain from placing property at the disposal of Arabs.

Himanuta and the Development Authority have almost invariably made expropriated Palestinian property available, for a symbolic fee, to private organizations registered by settlers who invaded the property. As it turned out, these organizations have played a crucial role in procedures leading to the declaration of the property as "absentee property." Settler organizations would identify the property, which would then be declared "absentee property," on the basis of information brought to the attention of the Custodian by these organizations. On several occasions, the affidavits which served as the basis for the declarations of the property as "absentee property" were drafted by attorneys working for the settler organizations. Often the Palestinian owners of a piece of property, or their families, would be made aware of the declaration of their property as "absentee property" only after the settlers had already invaded their property.[203]

The follow case illustrates the way in which Jewish organizations have taken over the property of Palestinians in East Jerusalem. In 1991, members of the *El'ad* organization invaded a complex of several apartments in the village of Silwan, which

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[201] Kretzmer, supra note 196 ,(p. 57).

[202] With the annexation of East Jerusalem to the Israel following its occupation in June, 1967, the Absentee Property Law became valid in East Jerusalem. Until 1977, the Government's policy was to refrain from declaring as absentee property any property whose owners resided in East Jerusalem or elsewhere in the occupied territories; where the property was managed by an authorised representative (usually a relative); and where it was inhabited. Where it was proved that property declared absentee fell under one of the above categories, the declaration was annulled. In 1997, however, this policy was changed. (see Proposed Government Resolution on Government Policy regarding Absentee Property in East Jerusalem, presented to the government by the Ministry of Justice, 19.4.1993).

[203] Findings of the Commission for the Examination of Buildings in East Jerusalem, 10.9.1992. The Commission was headed by the then Director General of the Ministry of the Interior, Hayim Klugman.

is situated downhill from the Old City of Jerusalem. The owner of the property, which had been in the possession of the 'Abassi family for generations, was the late Hussein Musa al-'Abassi, who had lived in the building all his life, as had some of his children. Hussein 'Abassi and those of his children who lived in the building were never considered absentees, although some of his other children, who had left for Jordan, were.

After the 'Abassi family had initiated court procedures,[204] it emerged that the property was declared absentee property, probably in 1987 (the declaration document carries no date), without the family's knowledge, and based on an affidavit which turned out to be false, according to which the owners of the building are absentees. It is thought that an affidavit was probably drafted and submitted to the Custodian of Absentee Property by the El'ad Association. Even from that affidavit it is clear that not all the owners of the building were absentees. The building was nevertheless declared absentee property in its entirety, without any examination of the facts, and sold to the Development Authority, which then rented it to El'ad under a protected tenancy without informing the owners.

The case resulted in the District Court ruling that the building had been declared absentee property illegally, and that officials for the Custodian of Absentee Property and the Israeli Land Authority who had handled the cases had not acted in good faith. The Court also ruled that the house was jointly owned by Hussein Mussa al-'Abassi and the Custodian of Absentee Property, the latter gaining ownership of those apartments previously owned by members of the family who had become absentees. An appeal was served to the Supreme Court against the ruling.[205] Despite the clear ruling by the District Court, the Supreme Court Justices suggested, at a hearing on May 26, 1998, that the case be referred to arbitration, either by the State Attorney or by any other agreed arbitrator. Counsel for the 'Abassi family opposed the suggestion, and the Court decided that the case should be referred to the State Attorney, who was requested to inform the Court of his position regarding the possibility of settling the case out of court.

Members of the El'ad organization inhabit the property to this day, the request for ejecting them having been stayed pending a final decision regarding the ownership of the property.

The 'Abassi building was not the only one in Silwan invaded by members of the El'ad organization. El'ad members have invaded in the same way, and with government backing, the house of the Qar'in family and the house of Muhammad Samarin.

The Absentee Property Law constitutes a serious and cumbersome threat in the case of property not declared absentee property as well, since it allows the Custodian of Absentee Property to halt procedures for the sale of property, even non-absentee

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[204] The family requested the Jerusalem Magistrate's Court to order the eviction of El'ad members from the property (C.M.19168/91). The family also appealed to the Jerusalem District Court to declare that the building is the private property of the 'Abassi family, heirs to the deceased (C.M 895/91).

[205] C.A. 7908/96

property, and bars a person officially declared "an absentee" or his or her heirs from transferring property rights, or, for instance, receiving a building permit.[206]

Past and present government actions aimed at declaring property as absentee property under the Absentee Property Law, and the continued use of this law are blatantly unjust. The law should deny the government the authority to declare property absentee property, and should allow the return of property so declared to its rightful owners, *i.e.,* family members, heirs and legally authorized representatives,[207] especially in cases where property is only partially "owned" by the Custodian for Absentee Property, with non-absentee family members sharing ownership with the Custodian. It should be noted that many of those declared absentees live in Jordan, which is no longer considered an enemy of Israel.

The Bedouin Community

Land and Planning Policy for Bedouins (Paragraphs 714-716)

It is unclear what the State's assertion (Paragraph 714) that the conflict between the Bedouin and the State over ownership of land and residency rights has recently begun to appear much closer to resolution is based upon. After the War of Independence, the remaining Bedouin in the Negev were assembled and moved to the northeastern portion of the Negev desert, an arid area known as the barrier region. The more fruitful, western Negev areas were designated for Jewish settlement. On land which had previously been a source of livelihood for the Bedouin, the State realized its policy of dispersal of the Jewish population.[208] As a result of the confiscation and the lack of legal recognition of Bedouin ownership as creating proprietary rights, the Bedouin in the Negev were deprived of most of the lands which they had held since before the establishment of the State. These lands were registered in the name of the State and its organs.

In the Sixties, the State allowed the Bedouin to submit claims to an Officer empowered to decide regarding lands for which they claimed title. This procedure was "*ex gratia*" since the State did not, anyway, recognize the Bedouin's rights of title to the lands that had formerly been in their possession. Claims were submitted for some 750,000 dunams of land.[209] The vast majority of these claims have still not been ruled upon by the officer in charge.

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[206] As it is necessary to produce evidence of ownership in such cases, and this is impossible where a property may be declared absentee property. Thus there are, for instance, lands in the Har Homa/Jabal Abu Ghneim area whose owners are residents of the West Bank town of Beit Sahur. Many of them are considered absentees. While at this stage the government has not yet acted to take hold of these lands, the owners are precluded from receiving permits for building on these lands.

[207] Where such property has not been sold to *bona fide* third parties (which does not include the Development Authority, Jewish National Fund, Himanuta and the settler associations, which have rented "absentee" premises in a protected tenancy for extremely small sums of money, in blatant violation of the principles of proper administration.

[208] Porat, 390-396, 436-438.

[209] Ben David, p. 13.

The policies of the governments of Israel on the subject of Bedouin settlement and planning are characterized by harsh discrimination. While the policy with regard to the Jewish population was that of dispersal, the policy with regard to the Bedouin population was to concentrate them in the most limited area possible. This policy is well documented in the literature.[210] Thus, at first all the Bedouin who had resided throughout the Negev were concentrated in the barrier region in the northeastern Negev, an arid area which did not meet the subsistence and grazing needs of its Bedouin residents.[211] But even in this area the Bedouin's rights of possession of the land were not recognized, and the Bedouin were not allowed to raise permanent settlements in a manner consistent with their way of life.

Since the middle of the Sixties, the policy of the governments of Israel has been to concentrate all of the Bedouin citizens in the Negev in seven towns that were planned by the government. This policy is still expressed in the latest statutory program relating to the Negev area which is pending before the National Committee for Planning and Construction. The Committee is currently at the phase of taking decisions on objections to the plan.[212] The policy of concentration of the Bedouin community in towns has been implemented by the carrot-and-stick method. The "carrot" is granting the Bedouin community the possibility to purchase lots at subsidized prices in the towns and to arrive at a compensation arrangement with the State on their unsettled land claims outside of the town. The "stick" avoids recognizing Bedouin settlements that are outside of the planned cities, and makes the lives in the unrecognized settlements intolerable through aggressive enforcement of the planning and construction laws with regard to "illegal" construction in these settlements. This includes fines, imprisonment and razing of houses, and also means the withholding of essential services to these settlements, including connection to the water and electricity networks, health, education, and social welfare services. In spite of these pressures, however, only about half of the Bedouin population of the Negev has agreed to move to the towns. The remaining Bedouin citizens have clung to their unrecognized settlements, in spite of the difficult conditions in which they live.

As stated in the State's report, the Bedouins demand that they be allowed to live in village settlements that fit their lifestyle, and that their settlements be recognized by the State (Paragraph 715). The State claims that its position was, "to find a workable solution within the framework of the law which will not force upon the Bedouins a housing situation inimical to its traditional way of life, but will also not involve a duty to create local government institutions and fund infrastructure in every place where members of the Bedouin community wish to live."

As if the cost of establishing government institutions and infrastructure for small and scattered settlements were the consideration that prevented recognition of the existing Bedouin village settlements, the State's claim reflects the discrimination that is at the base of the planning and settlement policy of the State with regard to the Bedouin. The inefficiency of small settlements was raised only with regard to Arab settlements, while reality proves that this consideration has not prevented the establishment of

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[210] Porat's article, cited above.
[211] Porat, 437.
[212] This is Regional Planning scheme "*Mamam*" 4, amendment no. 14, which was ordered on 20.10.94.

many small Jewish settlements. In the Beersheva region alone, in which the vast majority of the Bedouin live in the unrecognized settlements of the Negev, there exist 104 small Jewish settlements, in which the average population of each is 340 persons. The total Jewish population in small villages in the Negev is 35,400 persons.[213]

According to the State's data (Paragraph 715), there are over 100 unrecognized settlements with a total a population of 50,000 Bedouins. A planning approach for the Bedouin community equal to that of the Jews would require recognizing all the Bedouin settlements as legal villages. The result of this harsh discrimination against the Bedouin in the planning and settlement policies is that tens of thousands of citizens of the State live in unrecognized, substandard settlements, without essential services and without local government.

Among the unrecognized settlements of the Negev are settlements that existed before the establishment of the State, which number hundreds and even thousands of residents, such as the settlements of Al-Said, Abu-Kaf and Darjat in the Negev.

The State's claim that the remaining unrecognized Bedouin settlements, beyond the eight settlements in the Galilee which have been recognized, are small concentrations "mostly composed of single families" (Paragraph 716) is misleading. The unrecognized settlements in the Negev are many and varied, and some of them are larger than the average Jewish village settlement.

With regard to the eight Bedouin settlements that were recognized in the Galilee, it should be noted that the decision to recognize them is still far from full implementation for these settlements, which still do not have prepared planning schemes which will allow legal building. Even in those settlements which have been recognized, , administrative destruction and demolition orders are still issued for new construction which takes place without a permit (in the absence of an planning scheme).

In contrast to the impression which might be created from the State's report, there has been no appreciable change in the government's policies on the subject of recognition of Bedouin settlements. In Paragraph 716, the State mentions the Ministry of Housing's plan to establish additional settlements. This is a program that was announced by the previous government's Minister of Construction and Housing in August, 1995. This program has not won any public mention by the present government, and there are no signs of plans to adopt it. As indicated above, the new planning scheme for the southern region, which is today at the stage of approval and discussion of objections before the National Committee for Planning and Construction, still expresses a policy of settling the Bedouin of the Negev in seven towns, and there is no plan in the scheme to recognize the Bedouins' village settlements. Furthermore, the ministry which has the authority to establish new settlements, to recognize settlements and to prepare planning schemes is the Ministry of the Interior. Accordingly, any programs existing in the Ministry of Construction and Housing have no impact as long as the government does not adopt them and as

[213] Annual Statistical Report of the Negev 1997, data corrected for 1995.

long as they are not mentioned in mandatory decisions and statutory planning schemes. Until now, the recommendations of the Parliamentary Committee, which also are mentioned in the report (Paragraph 716), to establish additional village settlements for the Bedouin in the Negev have not been implemented.

The Minister of National Infrastructure, who chairs the Ministers' Committee on Bedouin Affairs, has announced on various occasions at the Knesset recently, that there is a plan to establish four to five new settlements for the Bedouin community in the Negev. This plan represents a continuation of the policy of concentrating the Bedouins in towns. If this program is adopted, beyond adding to the number of towns, there will be no recognition of the Bedouin's right to live in small village settlements, as do their Jewish neighbors.

The Situation of the Bedouin Towns in the Negev (Section 717)

The budget data quoted in the State's report relates to the budget of the previous government (the years 1993-1995). The report does not relate at all to the budget of the present government with regard to the Bedouin sector. Moreover, the budget data should be divided into the budget allotted for resolving the land claims of the Bedouins who move to the towns, and the development budgets. Regarding the Ministry of Housing's recommendations for equalizing allocations for infrastructure in Bedouin local authorities to the level of investment in Jewish authorities mentioned in the report (Paragraph 717), the report does not relate at all to implementation of these instructions.

Actually, the condition of the infrastructure in the towns, in all areas, is far lower and does not even approach the accepted standard in comparable Jewish settlements in the Golan. Each town was established without a sewage system. Only recently has work begun to establish a sewage system in Rahat, and also to a limited extent in Hura and Kasayfa. Connection to electricity was made only after some of the neighborhoods were populated, and most of the town has no street lighting. The streets in the town are narrower than the norm. There is a lack of public buildings such as community centers, libraries, playgrounds, public parks, sports fields and other institutions, which are the norm in every orderly settlement in Israel. The existing schools suffer from lack of classrooms and equipment (see our comments regarding education, above). Similarly the towns were established without any employment infrastructure, so that most of the residents are forced to work outside the settlement. There is a serious problem with regard to employment for women. In the ranking of local authorities in Israel according to social and economic level which was published by the Central Bureau of Statistics in 1995, the Bedouin towns of Rahat and Tel-Sava were ranked as the two lowest of 180 authorities.[214]

[214] Report of the Society for the Aid and Defense of Bedouin Rights on the Situation of Bedouins in the Negev, 1997, pp. 5-6.

Agricultural Projects (Paragraph 717)

In 1995, the Ministry of Agriculture made public a plan for agricultural development in the Negev, known as "Negev with Growth," and included assistance in infrastructure for planting orchards, establishing fish ponds, planting olive trees, establishing greenhouses, and preparing the land. The program entirely ignored the Bedouin settlements. The Bedouin were given assistance only in the area of establishing greenhouses in the city of Rahat. And even this aid was limited to those with financial means, since investment of private funds was required, on a scale that only a few Bedouins could achieve.

Government Steps "To Improve the Level of Social Services and Quality of Life" (Paragraph 719)

The steps noted in the State's report relate only to the recognized towns. None of the unrecognized settlements (populated by 50,000-80,000 citizens in the Negev) are connected to electricity. They suffer from a severe lack of accessible health care clinics, general medical services and preventive medicine, and have no investment in the area of employment (Sections A, B, and C of Paragraph 719). Regarding the serious problems that exist in the area of education (Section D), see our comments on the state of education in the Bedouin settlements, above.

People with Disabilities (Paragraph 720)

The legislation mentioned in the State's report is minimalist, sectarian legislation that reflects the common approach in Israel: an approach which principally consists of the provision of aid and not recognition of rights to equality and dignity. Even this legislation, as the State also admits in its report, is not enforced and not implemented properly.

The report ignores the governmental policy regarding the right of people with disabilities to live in the community The government's policy severely damages their right to equality, as well as their right to dignity: the authorities refer people with disabilities by the thousands to residence in institutions. In a report submitted by a public committee in July 1997,[215] it is reported that some 80% of people with mental retardation not living at home live in institutions, and that more than 50% of people with emotional disabilities who are hospitalized in psychiatric hospitals live there because of the absence of solutions in the community.

A meaningful step forward was taken a few months ago, when the Knesset passed the Law for Equality for Persons with Disabilities.[216] The law was passed after an extended struggle and against the backdrop of the reality described above. The original law that was proposed to the Knesset was comprehensive legislation that declares the right of people with disabilities to equality and dignity in the principal areas of life. However, the law that was passed is only the first part of the proposed

[215] The Public Committee for the Examination of Comprehensive Legislation on the Subject of the Rights of People with Disabilities, p. 62.

[216] Equal Rights for Persons with Disabilities Bill 5758-1998.

bill. Important parts of the bill are still being discussed in the Legislation, Law and Justice Committee of the Knesset, and one may hope that the government will act energetically for the complete adoption of this important legislation.

Discrimination against the Arab Minority in other Fields not Mentioned in the State's Report

Compensation for Victims of Hostilities

Two laws stipulate that the State is required to compensate victims of hostilities.[217] These laws provide for the compensation of any person who incurs bodily or property damage (or their families, in case of death) as a result of terrorist acts such as murder, the planting of bombs or acts such as setting fire to cars or damaging them, **as long as these acts are aimed at Jews**.

Arabs who fall victim to acts of murder or terror performed by Jews, are not entitled to any compensation, according to the position of the National Insurance Institute (in the case of bodily damage) and of the Tax Authority (in the case of property damage). Such a policy constitutes blatant discrimination against Arab citizens attacked for political or racist motives where Jews attacked by Arabs for similar motives are compensated.

In May 1998, Kheiri 'Alkam, a Palestinian resident of East Jerusalem, was stabbed to death in the Mea She'arim neighborhood in West Jerusalem. This was the sixth case in which an Arab was stabbed in that neighborhood. Investigation by the police revealed that the stabbing was motivated by political-racist reasons. While Jews stabbed by Arabs for such motivations (or their families) are entitled to compensation from the State, the declared policy of the National Insurance Institute in this case is that 'Alkam's widow and orphan children are not entitled to any compensation.

In another case, three female Arab students, living in a Jewish neighborhood in Jerusalem have suffered over the last year from a series of attacks, including an arson attack on their apartment door, and death threats. ACRI has requested that the Property Tax Authority compensate the students for the damages they have suffered, but the Authority refused on the grounds of the aforementioned policy.

Various attempts to change the laws have met with government opposition. Very recently, the Minister of Labor and Social Affairs has repeated his opposition to a change in the policy.[218]

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[217] Reparations for Victims of Hostilities Act, 1970, which awards compensation for bodily harm to victims of "hostile harm," the latter being defined *inter alia* as "harm caused by hostilities by an organisation hostile to Israel or by hostilities which took place in support of one of them, in their service or at their behest or in order to forward their goals;" and Property Tax and Compensation Fund Act 1961, which awards compensation for damage to property incurred as a result of "acts of war… or as a result of other hostilities against Israel…" (Section 35 of the Act).

[218] Announced in the Knesset plenary on 3.6.98, according to *Ha'aretz* newspaper, 4.6.98.

It should be noted that residents of the Occupied Territories who have fallen victim to hostilities inside Israel aimed at Jews have not been compensated, despite the fact that any other person, including a tourist present in Israel, has been compensated for similar damage suffered. Recently, the government has announced that it has decided to change this policy, but we are unaware of any legal steps taken to implement this decision.[219]

[219] Letters exchanged between Physicians for Human Rights in Israel and the State Attorney. See also the Minister's announcement in the Knesset plenary on 3.6.98, according to *Ha'aretz* daily, 4.6.98.

Article 27: Rights of Minorities to Culture, Religion and Language

Defining Minority Groups and Populations (Paragraphs 721-723)

Article 27 of the Covenant addresses the rights of ethnic, religious and linguistic minorities. The use of the expression "ethnic minorities" is intentionally broad-based and includes national minorities. Article 27 protects the rights of religious minorities to observe the precepts of their faith; the right of linguistic minorities, to use their own language; and the right of national minorities, to preserve their national culture. The State's report relates primarily to the religious and linguistic aspects of the Article, and refrains from discussing the distinctive national and ethnic character of the Arab minority as a single distinct national group in Israel with a common national and cultural identity. In general, the State's report tends to present the Arab minority in Israel as a collection of religious sub-groups (see Paragraph 723, for example), rather than as a single national group as noted above. This approach reflects official government policy toward the Arab minority, and is inconsistent with the Committee's interpretation[220] according to which the existence of the rights protected in Article 27 depends on the ability of the minority as a group to preserve its national culture and identity.

Arab citizens currently comprise approximately one-fifth of the total population of the State of Israel. As distinct from the Jewish majority, these citizens constitute a national and cultural minority (Palestinian Arabs), a religious minority (both Muslims and Christians) and a linguistic minority (Arabic). Almost all members of this population are indigenous residents of the area, representing those Arab residents who remained in their homeland following the 1948 war when the majority of the Arab residents of what became the State of Israel fled and/or were expelled.

Israel's Declaration of Independence guarantees complete civil and political equality without discrimination on the basis of race, religion and sex, and calls on the Arab residents of Israel to take part in building the State, with representation in national institutions. However, alongside this promise of equality the new State was also defined as "a Jewish State in the Land of Israel," a definition that suggests a distinction between Jews and non-Jews as citizens of the State (see Paragraph 721 of the State's report).

Contrary to the impression created by the first part of Paragraph 27 of the State's report, the tension between Israel's self-definition as a Jewish State and its declared commitment to democracy and to equality between Jews and Arabs is not a theoretical one. This tension has overshadowed and characterized the State's approach toward the Arab minority in Israel since its establishment, and has been overtly reflected in government policy, in Knesset legislation and in the rulings of Israeli courts.

It should be emphasized from the outset that the State's report concentrates on presenting statistics concerning the government's activities among the Arab minority, without offering comparative data relating to governmental activities among the Jewish majority, in terms of financial investments or in terms of the existing gaps between both populations in various

[220] General Comment 23, Para. 6.2

fields. In the absence of such comparative data, the report cannot provide a full picture of the level of allocations enjoyed by the Arab minority in comparison to the Israeli population as a whole (see, for example, Paragraphs 737, 740, 741).

National Symbols

Israel's national flag, anthem and emblem are overtly Jewish in character, and Arab citizens, understandably, find it difficult to identify with these symbols, particularly given the historical background of Israel's establishment in the wake of the 1948 war. During its fifty years of statehood, Israel's leaders have not yet considered the development of symbols that could be shared by all the citizens of the State, Jews and Arabs alike. The State Ombudsman recently supported the composition of an additional national anthem that would be suitable for both Jewish and Arab citizens.

Education

In accordance with Article 27 of the Covenant, Israel is obliged to enable Arab citizens, as a national minority with a different identity from that of the majority, to develop its own national identity as it sees fit, free of any pressure or dictates from the majority. The education system is a key agent in the development of the cultural identity of the younger generation and in inculcating national and social values. Accordingly, the educational system for the Arab minority should enjoy an autonomous status and be directed by Arab educators and professionals, so as to enable the Arab minority to control the development of its own national identity, including the transmission of this identity to the younger generation. This would be consistent, for example, with the manner in which the State-Religious educational system in Israel inculcates Orthodox Judaism among that sector of the population. The present format of Arab education in Israel may be seen as a violation by Israel of its obligation to enable the Arab minority to develop its national identity as it sees fit, contrary to the comment in Paragraph 659 of the State's report.

Arab education in Israel is the responsibility of the Arab Education division of the Ministry of Education and forms part of the general education system, which is directed primarily by Jews. Arab educators believe that this prevents the possibility of promoting the development of the cultural identity of Arab students and of expressing the distinct needs and characteristics of Arabs in such areas as Arab language, cultural and national identity, history and heritage. The claim in Paragraph 732 of the State's report that the curriculum in Arab schools is directed by the local authorities under the supervision of the Ministry of Education is incorrect. Local authority is purely technical; all substantive matters are determined by the Ministry of Education.

Two key factors proscribe the development of the Arab educational system. The first is the overall control exerted over the Arab educational system by the Jewish system, which has prevented the Arab population from controlling the goals and objectives of education, and has denied it the right to direct the educational system according to the collective and individual interests of the Arab community. The second factor is the discrepancy in resource allocation between Arab and Jewish education, which has created significant gaps between the qualitative level of Arab and Jewish education, to the latter's advantage. This has had a very negative impact on Arab students, as, in spite of their lower quality of education, they have been subjected to the same demands of the same Ministry of Education and society in general, particularly in terms of standardized national examinations, post-secondary studies and job

market demands. The Arab educational system still suffers serious problems in various areas due to neglect and systematic and institutionalized discrimination. Although the Ministry of Education is aware of these discrepancies (see, for example, Paragraphs 660, 707 of the State's report) it continues to ignore the need to remedy this situation in many respects, and continues to allocate resources in a manner that discriminates against Arab education.

In terms of discrimination in the allocation of resources, the past two years have seen the end of modest progress which was made toward narrowing the gaps over the preceding four years. Accordingly, it is not surprising that the data in the State's report (e.g., Paragraph 707) relate to the period from 1993-1996 – the period of office of the previous government. The report effectively ignores the regressive trends of the past two years, which completely contradict the good intentions declared in the State's report concerning the condition of Arab education in all areas. For further details on discrimination in the allocation of resources to Arab education, see our comments to article 26.

The State's report ignores the substantive issue of educational **content** and methods of teaching, although these constitute the core of Article 27.

The Goals of Arab Education

The goals of Hebrew and Arabic education differ widely, reflecting the lack of symmetry in majority-minority relations in Israel. While the focal point of Hebrew (i.e., Jewish) education is Zionist and national, the Arab education system is denuded of any Palestinian Arab character. Professor Majd Al-Haj of Haifa University describes this situation in the following terms:

> "Official policy makers have sought since the establishment of the State to strengthen the religious and cultural dimension of the Arab education system, rather than the national Arab dimension. This policy reflects the view that the Arabs constitute a "security threat" and a potential source of instability. The policies adopted have formed an integral part of the broader policy for controlling the Arab minority in Israel."[221]

The State Education Law defines the goals of education for Jewish children in the following terms: "To base education on Jewish cultural values, scientific achievements, love of the homeland and loyalty to the State and People of Israel, on awareness of the memory of the Holocaust and Heroism, on training in agricultural work and crafts, on pioneering training and on the desire to build a society based on freedom, equality, tolerance, mutual assistance and love of humanity." While the Arab education system exists *de facto*, its existence is not defined in any law, unlike the two principal Jewish education systems (State and State-Religious) whose existence and operation is clearly defined in the State Education Law.

The only legislative acknowledgment of the existence of non-Jewish education appears in Article 4 of the State Education Law which establishes that "the Minister shall determine the curriculum of any official educational institution. In non-Jewish educational institutions, the

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[221] Majd Al-Haj, "Education toward Multi-Culturalism in Israel in the Light of the Peace Process," in: *Multi-Culturalism in a Democratic and Jewish State*, Tel Aviv University, p. 705. See also: Ian Lustik, *Arabs in the Jewish State: Israel's Control of a National Minority*, Austin University of Texas Press, 1980.

curriculum shall be adapted to their special conditions." Accordingly, the goals of national education for the Arab minority are determined by the Minister of Education as follows: "To base education on the foundations of Arab culture, scientific achievements, the desire for peace between Israel and its neighbors, the love of the Land and loyalty to the State of Israel by emphasizing common interests and by emphasizing the uniqueness of the Arabs in Israel, on a recognition of Jewish culture, on respect for creative work and the desire for a society based on freedom, equality, mutual assistance and love of humanity."[222] There is no overt or implied recognition of the fact that the Arab community in Israel is a national minority that forms an integral part of the Palestinian people; this situation contrasts sharply with the fact that national education is the foundation of Jewish education. Thus, for example, Arab students are educated not to a love of the country as their homeland, but as the homeland of the Jewish people.[223] Textbooks in Arab schools do not include the work of the most important Palestinian poets, such as Mahmud Darwish, Samih Al-Qasem, Shaqiq Jahshan and others.

The Monitoring Committee for Arab Education, which operates under the auspices of the Arab local authorities in Israel with the aim of advancing and improving educational institutions and standards among the Arabs in Israel, recently proposed alternative objectives for Arab education reflecting the aspirations of the Arabs themselves. According to these objectives, "the purpose of State education in Arab schools is to base education on the values of Palestinian, Arab and human culture; on the special connection with the members of the Palestinian people; on strengthening Palestinian historical memory; on the brotherhood of the nations; on the right to citizenship and equality with the Jewish people in Israel, on the basis of equality and mutual respect."

The differences between the objectives of Arab education as established by the government and those proposed on behalf of the Arab public are not confined to the education system itself, but reflect a more general attitudinal pattern from the Ministry of Education toward the Arab population in the educational and cultural spheres. This applies, *inter alia*, to the field of cultural activities mentioned in Paragraph 446 of the State's report. The different emphases in these two definitions also reflect different approaches to the prioritization of values and cultural aspirations. Prof. Majd Al-Haj made the following comment on the perception of educational goals:

> "While education in Arab schools has served as a mechanism for the control and dominance by Hebrew culture, no real attempt has been made to expose Jewish students in Hebrew schools to Arabic culture. Instead, a strong emphasis has been placed in Hebrew schools on national and Jewish content. We may conclude that to date the Ministry of Education has adopted a policy of education to ethnocentrism rather than multiculturalism in the Hebrew schools; and to controlled multiculturalism in the Arab schools… Education to multiculturalism demands that the Arab citizens be viewed not only as a cultural minority, but also as a national minority that seeks equality in the State of Israel on both the individual and the collective levels."[224]

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[222] [**Internal comment].**

[223] Thus, for example, teachers have been instructed not to address issues relating to national identity, such as land, national heritage, etc/ Samir Mari, *Arab Education in Israel*, Syracuse, Syracuse University Press, 1978.

[224] Al-Haj, "Education to Multi-Culturalism," op. cit., p. 711.

A clear example of the perception of the education system is the discrepancy between the study of the Arabic language and the study of Hebrew. Arabic is not a compulsory subject for Jewish students,[225] whereas Arab students must study Hebrew. Moreover, there is a clear trend in Arab schools toward an increase in the study of Hebrew at the expense of the students' mother tongue. The curriculum still allocates Hebrew the central position in terms of the number of hours studied. The average number of weekly hours devoted to Hebrew language and literature in Arab academic post-elementary schools is 2.5 greater than the average number of hours devoted to these subjects in the Jewish sector.[226]

A comparison between the teaching of Hebrew in Arab schools and the teaching of Arabic in Jewish schools reflects a profound asymmetry. In teaching Hebrew in the Arab schools, an emphasis is placed on exposing Arab students to the culture and heritage of the Jewish students, and to developing their Israeli citizenship. In Jewish schools, considerable attention is devoted to teaching Hebrew as a catalyst for national renewal, strengthening national identity and promoting a sense of dignity, whereas the goals of Arabic teaching in Arab schools have always been confined to inculcating the language *per se* and have rejected any national content.[227]

The teaching of Arabic in Jewish schools, meanwhile, aims to provide a purely superficial knowledge of Arabic language and literature, mainly to serve instrumentalist needs and to enable superficial communication with Arabs from a perspective dominated by security considerations. Moreover, some of the selected texts used in Arabic studies are presented in a biased manner liable to reinforce existing stereotypes against Arabs held by Jewish students.[228]

Pressure from the Arab population in recent years has led to relatively minor changes in the curriculum which still fails to meet the needs and expectations of the Arab population.

Involvement in Public Life

The data presented below reflects the profound under-representation of Arab citizens in the civil service and government in general, and in senior positions in particular. While the steps taken to remedy this lack of representation are to be welcomed, they are extremely modest given the scope of the problem. Moreover, the little progress that has been made has halted over the past two years. The seriousness of this situation demands that a comprehensive plan be prepared for coping with the profound discrimination against members of the Arab minority in the civil service, including to promote their active integration in positions. No such plan is currently being considered, and such changes do not appear to form part of the national agenda.

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[225] Indeed, the number of Jewish students studying Arabic is extremely low. In 1992, for example, three thousand Jewish 12th graders studied Arabic – just 5% of the total umber of students in that grade (Israel Statistical Yearbook, 1992).

[226] See the study by Dr. Yuval Dror and Yaakov Lieberman of the Kibbutz Education Research Institute at Oranim Seminar, 1996.

[227] See: Majd Al-Haj, **Education among Arabs in Israel: Control and Social Change**, Jerusalem: Magnes, 1996.

[228] Ibid.

The Knesset and Political Parties (Paragraph 724)

The comments in the State's report should be extended to note that during fifty years of statehood the representation of the Arab minority in the Knesset has never been converted into real political power capable of securing equal rights for Arabs. The delegitimization of the Arab minority has meant that the political power of Arab Members of Knesset has been largely neutralized; this contrasts, for example, with the position of the religious Jewish parties, which have held the balance of power between the two main parties, Likud and Labor, thus acquiring political power far in excess of their relative influence in the population or in the Knesset.

Under the previous government, three Arabs served as deputy ministers (one was a Druze). The fact that the present government does not include a single Arab minister or deputy minister is further evidence of the severe retrogression in the process of closing gaps between Jews and Arabs – a process that began during the period of office of the previous government but which has been halted under the present government.

Judges (Paragraph 725)

The State's figures show that of 419 judges, 19 are Arabs (including Druze). Most Arab judges serve in magistrates' courts, one in a regional labor court, and four in the district courts. Thus the proportion of Arabs among judges is 4.5%, though they constitute approximately 20% of the total population. No Arab judge has ever served on the Supreme Court, although the Committee for the Appointment of Judges recently announced that an Arab judge[229] will soon receive a temporary appointment as an acting Supreme Court judge.

Involvement in the Civil Service (Paragraph 726)

The State's report notes that of the approximately 56,000 employees in government ministries, 2,357 are Arabs ("members of the minorities"). Thus the proportion of Arabs in government ministries is 4.2%, while, as noted above, Arabs constitute some 20% of the total population. It should also be noted that approximately 31% of Arab employees are employed in positions within Arab localities, most of which could only be staffed by Arabs (in units affiliated with the Ministries of Finance, Religious Affairs, Education, and Labor and Social Affairs).

The State's report goes on to describe in great detail the breakdown of these 2,357 employees in the various government ministries. The report states that of the 2,357, 1,370 (or 58%) are physicians and nurses employed in the health care system. Another 316 are employed in the Ministry of Religious Affairs, most of them as *qadis* (Moslem religious judges). The report does not, however, provide any comparative statistics for Jewish employees.

In most government ministries the proportion of Arab employees is less than one percent (e.g., Ministry of Finance, Civil Service Commission, the Ministry of Internal Security, the Foreign Ministry, the Israel Lands Administration, the Ministry of Industry and Commerce, the Ministry of Justice, the Ministry of Housing and Construction). In the Prime

[229] Judge Rahman Zueibi of the Nazareth District Court.

Minister's Office, the Ministry of Education and the Income and Property Tax Division, the proportion of Arab workers is in the range of 5% - 6.5%.[230]

In most of the government offices in Jerusalem, where the executives are located, there are no Arab employees whatsoever. This is true of the Ministry of Finance, the Ministry of Energy, the Ministry of Housing and Construction, the Ministry of Health, the Ministry of Religious Affairs, the Ministry of Internal Security, the Ministry of Justice, the Ministry of Labor and Social Affairs, the Ministry of the Interior, the Ministry of Transport, and the Ministry of Communications. The **Office of the State President, which includes some forty employees, also does not have a single Arab worker.**[231]

As the State's report notes, no Arab citizen has ever been appointed Director-General or even Deputy Director-General of a government ministry.

Affirmative Action Program to Recruit Arab Employees to the Civil Service

The State's report describes in great detail the program to recruit 160 Arab employees to the civil service. While the plan was commendable, its scope and content were extremely limited and could make almost no impact on the severe under-representation of Arabs among civil service employees. The program was not intended to be a comprehensive response to the problem; rather, its main goal was to pave the way for change – a goal which, in hindsight does not appear to have been achieved.

The program included a very small number of positions, mainly at intermediate and junior levels, and mainly outside the government offices in Jerusalem. Only a very small minority of the positions included in the program were ones that do not relate directly to the Arab sector, or that constituted a breakthrough in terms of the types of positions generally held by Arabs in government ministries. It is interesting to note that a survey by the Civil Service Commission showed that almost ninety percent of some 400 candidates for positions under the program had educational qualifications one or two grades ahead of those required for the position – this in itself is an indicator of discrimination.[232]

It should also be noted that the program was initiated in 1993, and the first two stages were implemented during the period of office of the previous government. This was also the period when most of the Arab employees not included in the affirmative action program were employed. The present government froze implementation of the third and final stage of the program after it came to office. Only after there was fierce public criticism was it decided to complete the program.[233]

The State's report claims that the decision of the Civil Service Commission "during this period" (the reference appears to be to the affirmative action program) to publish tenders for

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[230] The figures are from the Civil Service Commission and updated to the beginning of 1996.

[231] Aluf Hareven, **"Full and Equal Citizenship?" The Arab Citizens of Israel on the 50th Anniversary: Civic Achievements together with Critical issues of Civic inequality and Prospects beyond the year 2000**. Sikkuy, The Association for the Promotion of Equal Opportunities.

[232] Yitzhak Reiter, **The Integration of Arab Graduates in the Civil Service**, Ya'ar Jews and Arabs (1996). The author was appointed by the government in 1993 to head a public committee to promote the integration of Arabs in the civil service.

[233] supra note 184, p. 28.

civil service positions in Arabic-language newspapers led to an increase in the number of Arab ("minority") candidates during this period. In the interests of accuracy, it should be noted that the decision of the Civil Service Commission to translate tenders into Arabic was taken in January 1994, under the previous government, and was formalized in the official regulations.[234] At the beginning of January 1997 ACRI learned that the Civil Service Commission had once again begun to issue tenders in Hebrew-only. An initial complaint to the Commission on this matter met with the response that budgetary considerations prevented the publication of tenders in Arabic. Only after ACRI pointed out the legal obligation to publish tenders in Arabic did the Civil Service Commission once again begin to do so.

Continued Need for Improvement (Paragraph 727)

As the State's report admits, there is indeed room (considerable room) for improvement in the current situation, not only in terms of the representation of minorities in government ministries in general, but specifically in terms of their representation in senior positions. In this respect the statistics speak for themselves: **out of 641 officials on the Executives of government companies, just three are Arabs. Out of 1,059 members of the Boards of Directors of government companies, only 15 are Arabs. Of the 101 leading government companies, only 10 include Arab citizens on either the Executive or the Board of Directors**.[235]

The report mentions the appointment of the Ambassador to Finland and the Consul-General in Bombay, both of which took place under the previous government. The report also notes that under the previous government an Arab citizen served as a Consul-General in the USA. Once again, this fact only serves to emphasize the retrogressive developments that have emerged under the present government, following a number of steps taken by the previous government to begin to change this situation.

Arab Representation in the Israel Prison Services (Paragraph 729)

The pride taken by the State in the representation of "minorities" in the Israel Prison Service – 23.5% among the IPS in general and 13.6% among officers – is ironic given that employment in the IPS is considered to have extremely low status, which probably explains the relatively high proportion of Arabs in the Service.

The Arabic Language (Paragraphs 732-735)

Language is a vital expression of the identity of any society or group, and is crucial in the development of cultural identity and for the inculcation of that group's heritage and history. In the case of groups that constitute national minorities, such as the Arab minority in Israel, language is of particular importance as a feature distinguishing the minority group from the majority population. Failure to recognize the unique symbols, language, heritage and literature of the minority is tantamount to the imposition of the majority culture and values on that minority, thus denying the minority the right to meaningful equality and full partnership

[234] Civil Service Rules (Appointments) (Tenders, Examinations and Tests) (Amendment), 5755-1995, RB 5680, 5755.

[235] Aluf Hareven, supra note 231.

in the life of society as a whole. This situation is particularly acute in the case of the State of Israel, which defines itself as the ethnic state of the Jewish majority.

As the State's report notes, the *de jure* situation since the establishment of the State of Israel is that Arabic is an official language alongside Hebrew. However, this formal status is not reflected in numerous vital areas of public and private life. For example: primary and secondary legislation is published in Hebrew only, as are the rulings of the Israeli courts. The Hebrew language also dominates all contacts between citizens and the official authorities.

The claim in Paragraph 734 of the State's report that the status of the Arabic language is respected in public life does not reflect the real situation. The theoretical possibility of using Arabic cannot be realized in most cases. Most government documents, including application forms and other material intended for use by all citizens (such as National Insurance claim forms, health care services, taxes, legal advice and so on) are all available in Hebrew only. A similar situation applies in the context of ordinary civic institutions such as banks, insurance, civil contracts and so on - despite the fact that a substantial proportion of Arab citizens, particularly minors and the aged, are not fluent in Hebrew.

The State's report also ignores the fact that several laws in Israel require knowledge of the Hebrew language without establishing an equal approach towards Arabic. The Citizenship Law (which applies to Arabs, who are not included in Israel's Laws of Return) demands "a certain knowledge" of Hebrew from a person applying for Israeli citizenship. The Consumer Protection Order enacted on the basis of the Consumer Protection Law requires Hebrew-language labeling on imported or domestic goods, but makes no similar requirement regarding Arabic. The Israel Bar Law requires that attorneys have a command of the Hebrew language.

It should be emphasized that the dominance of Hebrew in civic and public life has meant that a command of this language is a vital precondition for professional success for professionals among the Arab population whose work entails extensive contacts with the authorities or with Jewish businesspeople.

In contrast to the vital status of Hebrew among Arab citizens of Israel, Arabic is seen as a marginal and insignificant language by the Jewish majority. English is strongly preferred as a second language. Professor Ilana Shohami of the School of Education at Tel Aviv University made the following comment in this context:

> "Linguistic policy in Israel is motivated by ideology. Officially, Israel is a bilingual state: Hebrew and Arabic. In practice, however, only the Hebrew language is promoted, while Arabic serves only the Arab citizens of Israel. The official two-language policy is adhered to only in the most restricted manner. Israel is *de facto* a mono-lingual state, and the ideology held by the majority of the population is 'One nation - one language.'"[236]

The practical significance of the fact that Arabic is an official language is the obligation imposed on state authorities to use this language in their various activities in a manner equal to the use of Hebrew. This obligation is not properly observed; indeed, the government ministries virtually ignore it. There are very few Arabic road signs, either on inter-urban roads or within cities (see Paragraph 735 of the State's report). Only after a Supreme Court

[236] According to an article in *Ha'aretz*, September 18, 1995.

petition at the end of 1993 did the Haifa Municipality agree to add Arabic-language inscriptions to the municipal signs in the city within two years. Although more than two years have passed, the Haifa Municipality has still not fully met this obligation. The government recently undertook to add Arabic signs on inter-urban roads after a Supreme Court petition was filed by the organization 'Adalah.[237] While the government has recently begun to implement this commitment, it has been done slowly and negligently. Many of the new Arabic signs include orthographic and other errors; moreover, the Arabic letters are significantly smaller than those on signs in Hebrew and English, making it difficult for drivers to read the signs from a reasonable distance.

As the report states, there are Arabic-language television broadcasts in Israel; however, Arabic-language television has a highly marginal status. Israel has two television channels, one State-controlled and one commercial. The percentage of Arabic broadcasts on the commercial channel (Channel Two) is just 2.5% of total broadcast hours, none of which is during prime viewing hours. On the State channel, too, the proportion of Arabic-language broadcasts is much lower than the proportion of Arabs in the population; again, Arabic programming is not screened at prime time.

Although the Arab population constitutes approximately one-fifth of the total population of the State of Israel, there is no university in Israel in which Arabic is the primary language of studies. Accordingly, Arab academics are obliged to obtain professional training in a foreign language, usually Hebrew. This impedes the development of the Arabic language in the various professional fields. The establishment of a university requires complex organizational procedures and significant financial resources. Given the difficult socio-economic status of the majority of Arab locales, the Arab minority cannot be expected to promote such a project without significant government support.

Regarding the Arabic-language press (mentioned in Paragraph 733 of the State's report), it should be emphasized that these newspapers are privately-owned and receive no funding or financial assistance of any kind from the government.

As the report notes, the Supreme Court has discussed the status of the Arabic language in Israel as it relates to constitutional issues of freedom of expression. The Supreme Court has recognized the right to language as a constitutional right. However, the Supreme Court has not discussed the status of Arabic in Israel from the vantage point of the right to equality; nor has it addressed the fact that the failure of the authorities to use Arabic not only infringes upon freedom of expression, but it also discriminates against those who speak this language, violating their right to equality. Accordingly, the formal status of Arabic has yet to receive the necessary protection in the rulings of the Supreme Court.

Religion (Paragraph 736)

See our comments on discrimination in the allocation of resources to the non-Jewish religious communities in the context of Article 18.

[237] ***Adalah vs. The Minister of Infrastructure***.

Allocation of Resources to Local Authorities (Paragraphs 739-740)

Since the establishment of the State, all government ministries in Israel have blatantly discriminated against Arab locales in the allocation of resources in comparison to allocations to Jewish locales. The State's claim in Paragraphs 739 and 740 regarding the increase in budgets for Arab locales and the absence of cuts is imprecise. In mid-1996, immediately after the present government came into office, many government ministries informed the Arab local authorities that allocations approved for 1996 would be reduced or canceled. In 1997, for example, the budget of the Ministry of Commerce and Industry for the Arab sector was cut so severely as to reduce funding to the level it had been at five years earlier in 1992 (from a budget of NIS 20 million in 1995 to NIS 8.1 million in 1997). The Ministry of Agriculture's 1997 budget for the Arab sector was cut by 67.7% , while the Ministry of Health's 1997 budget for this sector was cut by 41.5%.[238]

The Ministry of Interior's budget for the local authorities indeed increased in 1997, but this increase is based on an agreement designed to cover the deficits of local authorities signed following a prolonged strike by these authorities at the end of 1996. Both the regular and the development budgets for the local authorities were cut in 1997.[239]

Planning, Construction and Areas of Jurisdiction (Paragraph 741)[240]

Since the establishment of the State of Israel hundreds of new residential locales have been established for the Jewish public. By contrast, excluding the establishment of Bedouin towns in the Negev and the granting of recognition for a number of previously unrecognized locales, not a single new Arab locale has been established. Indeed, over the years the area of jurisdiction of the Arab local authorities has been reduced. Regarding the claim in the State's report that the government decided in January 1996 to establish eight Arab locales, it should be clarified that this refers to a government decision to recognize locales that already exist *de facto*, but which had never been recognized as locales by the government. Although more than two years have passed since the decision to recognize these villages, the decision has not resulted in any actual changes. On the subject of the unrecognized locales, see also our comments to Article 26.

Lands around the Arab locales that used to belong to the residents of these locales have been confiscated for public use or for security purposes, and yet are presently used for neither purpose. As a result, there is no legal possibility of new construction and expansion within the existing locales, whether this be for housing, public buildings, educational or cultural needs or the creation of employment (e.g., industrial zones). In many Arab locales, land owned by the residents lies within the areas of jurisdiction of adjacent Jewish locales, particularly regional authorities; by contrast, no Arab authority includes land owned by the residents of adjacent Jewish locales. By way of example, Upper Nazareth (a Jewish city) has a population of 40,000 and a total area of 40,000 dunams. Nazareth (an Arab city) has a population of 60,000 and a total area of 14,000 dunams. Within the city of Nazareth there is an enclave of 570 dunams which formerly belonged to residents of Nazareth and was confiscated in the 1950s for public needs. After the city of Upper Nazareth was founded, this enclave was included in the area of jurisdiction of the new city. The enclave currently

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[238] Statistics according to: Summary Report of the Government Ministries for 1997, Office of the Prime Minister's Adviser on Arab Affairs.

[239] supra note 184, pp. 14-17.

[240] Thanks to Dr. Ghassem Khamaisi for his helpful comments on this section.

includes a Jewish-owned hotel and an unused army facility. Attempts to transfer this enclave to the area of jurisdiction of Nazareth have so far proved unsuccessful.

Paragraph 741(b) of the State's report claims that the areas of jurisdiction of several Arab locales have been increased but since it does not name these locales, this information cannot be verified. However, a report issued by Sikkuy in 1997 established that the majority of applications for changes in the areas of jurisdiction of Arab local authorities are rejected; those that are accepted lead to extremely minor and insignificant changes. The failure to expand outline plans and areas zoned for construction impedes the long-term planning and development of the Arab locales and creates a severe shortage of land for construction, which, in turn, leads to an increase in the cost of such land. The result is that it is extremely difficult for residents, particularly young couples, to purchase plots for construction.

As noted in Paragraph 741(d) of the State's report, the State has approved a number of outline plans for the Arab locales in recent years. However, most of the plans approved over the past five years were initiated more than ten years ago, reflecting the fact that there have been no changes in recent years in terms of expanding areas of jurisdiction or areas zoned for construction (Sikkuy Report, 1997). It is important to emphasize that, in this respect, the responsibility for preparing outline plans rests with the Ministry of the Interior. The long delays in approving the outline plans mentioned in the State's report results in a situation wherein once the plans are finally approved, they no longer meet the current needs of these locales. The hiatus between planning, on the one hand, and approval and implementation, on the other has led to the emergence of new problems requiring new planning approaches.

Moreover, an important question in terms of the outline plans is what they actually contain. Some of the approved outline plans are inconsistent with the needs of Arab locales. While in the Jewish locales population dispersion and the expansion of areas of jurisdiction are geopolitical objectives that complement the professional planning approach, planning for the Arab locales is limited to meeting urgent needs of the population within the existing area of jurisdiction, thus preventing the actual development of the locales. As a general rule, the government adopts a policy of concentration in the case of the Arab population, contrasting with the policy of dispersion applied to the Jewish population.

As mentioned in Paragraph 741(h) of the State's report, it is true that the government has allocated land for construction in a number of Arab locales. However, these allocations were relatively limited in scope, were not provided in the right locations, and were offered at particularly high prices. In practice, these allocations have not led to any structural change or to any real solution of the building and housing crisis in the Arab locales.

The State's report ignores the particular problems faced by the Arab residents of mixed cities (Jaffa, Ramle, Lod, Akko and Haifa), who constitute approximately ten percent of the total Arab population. Ongoing neglect by governmental and municipal authorities and the absence of land allocations for construction, on the one hand, and the refusal by Jewish residents to sell or rent property to Arabs, on the other, have created a serious housing crisis in the Arab neighborhoods of the mixed cities. This situation effectively perpetuates the existing gap between poor Arab neighborhoods and well-kept Jewish neighborhoods in these cities. Thus, the Arab residents of the mixed cities face double discrimination, on the local and national levels. A special housing project planned for a deprived Arab neighborhood in Lod has still not been implemented, despite repeated promises by the government to commence

implementation; indeed, the budget earmarked for the project has actually been used to finance development work in the Jewish neighborhoods.

National Priority Areas (Paragraph 741)

The State's report claims that the government has classified many Arab locales as class "A" priority areas entitled to priority in development programs. The fact is that on February 15, 1998 the government reclassified the national priority locales and regions in Israel. The decision provided for the allocation of extremely significant incentives and benefits for those locales declared to be national priority areas. This government decision grossly discriminated against the Arab locales in Israel.

Firstly, the government upgraded 17 locales that were not previously priority areas to grade "A" priority areas; all 17 locales are Jewish. Secondly, the government upgraded 11 locales from grade "B" priority status to grade "A" status; again, all these locales are Jewish. Thirdly, out of the total of 34 locales classified as priority areas, 14 Arab locales were removed from the list. Fourthly, many locales received benefits from the Ministry of Education, Culture and Sport, yet the Arab sector was not included in the sectors entitled to such benefits, despite the fact that this sector has the greatest need for benefits in education, both due to the poor state of the educational system and in terms of the socio-economic status of the Arab locales.

The discrimination against the Arab locales is particularly blatant in cases when the government decision granted priority status to Jewish locales in areas where there are also Arab locales of lower socio-economic status. Thus, both in geographic and in socio-economic terms the government completely ignored the needs of the Arab locales.

The result of these changes is that of 429 locales currently included in grade "A" priority areas, there are just four Arab locales, with a total population of 10,000 residents. The 45 locales classed as grade "A" priority areas for the purposes of education do not include a single Arab locale.[241] A petition was recently submitted to the Supreme Court by 'Adalah, the Legal Center for the Rights of the Arab Minority, on behalf of the Supreme Monitoring Committee for Arab Affairs in Israel.[242]

The Bedouin Community and Culture (Paragraphs 746, 747)

The Status of Women

In its discussion of cultural rights, the State's report refers to the Israeli policy of refraining from interfering in the Bedouin customs of polygamous marriage and the genital mutilation of young women. It is remarkable that the State chose to note its *lack* of involvement in these customs as the only examples of its meeting its obligation under Article 27 to ensure the rights of the Bedouin to maintain their own culture.

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[241] *National Priority Areas*, Office of the Prime Minister, Coordination and Monitoring Division, Jerusalem, April 26, 1998.

[242] SC 2773/98, ***Supreme Monitoring Committee for Arab Affairs in Israel et al. vs. Prime Minister***; pending.

The fact that the State chose to include these customs under the rubric of "cultural rights," and the content of its comments, reflect an unacceptable approach to various customs, all of which result in injury to women, on the grounds of "cultural relativism."

The appropriate place to discuss the custom of polygamous marriages in the report is in the context of Article 23, relating to the protection of the family and the principle of equality within the family in marriage and divorce. Female genital mutilation should be discussed under Article 24, in the context of the right of minors to protection without discrimination **on the basis of gender or national origin**.

Polygamous Marriages (Paragraph 746)

The State describes the phenomenon of polygamous marriage and notes nonchalantly that although polygamy is a criminal offense in Israel, the State does not enforce this law among the Bedouin.

Since marriage and divorce take place in accordance with religious law, and since Muslim men are permitted to marry up to four women, the possibility of polygamy exists with regard to all Muslim men in Israel. However, as the State's report notes, the Israeli legislature has imposed criminal sanctions on polygamy, establishing a maximum penalty of five years' imprisonment for this offense.[243]

A recent survey carried out at in the psychiatric ward of Soroka Hospital in Beersheva reflected the numerous problems inherent in this phenomenon and the intense suffering caused to women and children due to fierce internal disputes within the family over limited economic resources and the husband's love. It was found that an increasing number of Bedouin women are taking anti-depressants due to problems resulting from this situation.

Polygamy is particularly common among Bedouin in the south of Israel and is currently spreading, due, *inter alia,* to the failure to enforce criminal sanctions for this offense. Even in cases when the law is enforced, the maximum penalty is not imposed.

Female Genital Mutilation (Paragraph 747)

In its report, the State describes the custom known as "female circumcision," noting that it does not intervene in order to supervise or prevent this custom among Bedouin tribes – despite the fact that as the report itself notes, "…all of the women recorded bleeding and pain… several required medical attention, and all reported pain during intercourse in the months after marriage."

The investigation mentioned in the State's report was of extremely limited scope, including only a small group of Bedouin women. Even if one accepts the findings of this survey, according to which the phenomenon exists only on a marginal scale and the physical injury is minimal, failure to take action to prevent the phenomenon still constitutes an abrogation of the State's obligations according to the Covenant. The State must initiate surveys and act through educational, public and legal channels against any injury to young women resulting from this

[243] Article 176 of the Penal Code, 5737-1977.

custom. All means possible should be taken to prevent this phenomenon, which has both serious physical and mental ramifications, from occurring.

A proposed amendment to the Penal Code has been tabled before the Knesset calling for strict punishment of any mutilation of the genitalia of a minor, and for doubling the penalty in the case of other acts of violence, so that the punishment for such offenses could be as high as 14 years' actual imprisonment.

Dropout of Girls from School (Paragraph 745)

The State notes that cultural perception regarding the status of women prevents young women from leaving the locale in order to study or work. Accordingly, few young Bedouin women continue into post-secondary education. Given the cultural restrictions on girls' leaving the locale as they grow older, the State's policy minimizing the establishment of schools in the unrecognized locales contributes significantly to the fact that girls drop out of school before reaching the senior grades.[244] The discrepancy between the proportion of boys and girls in school is particularly noticeable in the unrecognized locales, where there is a dearth of schools, so that local children are forced to leave the locale in order to continue their studies.

Imposition of an Urban Lifestyle

Since Israel's establishment the State has enforced a policy of concentrating the Bedouin population. Some Bedouin have been forced to leave lands they held; a process of enforced urbanization has been imposed on them, and the policy has been to deny granting legal status to rural settlements (see our comments to Article 26, Paragraphs 714-719). These policies constitute a clear violation of the obligation in accordance with Article 27 to enable the Bedouin to maintain their own culture, particularly in view of the comment in Paragraphs 3.2 and 7 of General Comment 23, to wit:

> "..the right to enjoy a particular culture may consist in a particular way of life which is closely associated with territory and use of its resources, especially in the case of indigenous peoples, and that right may include traditional land-associated activities."

Land and agricultural occupations (herding and growing wheat and barley) are central components of the Bedouin culture and way of life. In addition to the financial value of land and flocks as a means of production, whether as a primary source of income or as an ancillary farm meeting the needs of the household, land and flocks also have cardinal social and cultural significance. The flock plays a central role among the cultural symbols and beliefs of the Bedouin, as expressed in various indigenous ceremonies and customs. Livestock constitute the focus of family life and culture, and is an element in social stratification and social interchanges through gifts and ceremonies. This is illustrated by the fact that even Bedouin who move to towns continue to maintain small herds in yards by their houses. Land is a symbol of honor, security and stability and has a unique social value in establishing relations of social stratification.[245]

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[244] Girls constitute 44% of students in the Bedouin education system in the Negev (as of 1995), but the proportion of girls falls in each subsequent grade: 47% of kindergarten students are girls, while in the 11th and 12th grades girls constitute only 35% of students (Katz Report, p. 6).

[245] Yosef Ben-David, *Bedouin Agriculture in the Negev: Policy Proposals*, Jerusalem Israel Research Institute, 1988, pp. 61-62; Aref Abu-Rabia, *The Negev Bedouin and Livestock Rearing*, UK, 1994, pp. 2-3. Yosef Ben-

The long-standing policy of Israeli governments since 1948 of moving the Bedouin off their land, concentrating them in towns and urbanizing this population is thus in complete contradiction to the State's obligation to enable the Bedouin to maintain their culture. Not only has the State not taken any positive legal steps to protect the rights of the Bedouin to maintain their traditional lifestyle, as required by Paragraph 7 of General Comment 23, but it has even taken positive steps to **hinder** and completely prevent the maintenance of a land-related way of life.

Since Bedouin culture is so closely related to the land and associated traditional occupations, the transfer of the Bedouin to towns effectively prevents their continuing to maintain this culture. Researcher Ben-David notes some of the phenomena encountered in the Bedouin towns: rising delinquency; the emergence of a new type of urban poverty; population density; and the geographical proximity of sub-groups and tribes that formerly had hostile relations, leading to tension and disputes; the dissipation of the positive aspects of the extended family system; and the rapid disappearance of Bedouin heritage. Ben-David concludes that urban settlement is inconsistent with the unique character and needs of the Bedouin, and that in the towns "damage continues to be caused to social orders and basic traditional values that have proved more deeply-rooted than was anticipated when the Bedouin towns were planned."[246]

The refusal to recognize rural Bedouin settlements, in which residents continue to maintain a traditional way of life, and the use of pressure (such as house demolitions and the withholding of vital services) with the objective of causing the Bedouin to move to the towns, severely hinder the Bedouin's ability to maintain this traditional way of life and to preserve their dignity.

Moreover, it must be noted that the urbanization plans for the Bedouin were prepared without any involvement on the part of the Bedouin themselves, for whom the plan was intended. In practice, these plans were imposed on the Bedouin through the various methods noted above (i.e. house demolition and the denial of vital services) in order to accelerate the process of urbanization. This is inconsistent with the Paragraph 7 of General Comment 23:

> "the enjoyment of the right to exercise cultural rights, including a particular way of life associated with the use of land resources, may require methods to ensure the effective participation of members of minority communities in decisions which affect them."

Although there has recently been a slight improvement and sporadic efforts to promote dialogue between the planning authorities and Bedouin representatives, there is still no structured or systemic participation by Bedouin representatives in the relevant planning processes.

David, *Dispute in the Negev: Bedouin, Jews and Land*, The Center for Research into Arab Society in Israel, 1996, pp. 14-17.

[246] Yosef Ben-David, *The Settlement of the Negev Bedouin: Policy and Reality, 1967-1992* (Jerusalem Israel Studies Institute), 19, 32. Ben David, *Bedouin Agriculture in the Negev*, op. cit., pp. 1-2.