The State of Human Rights 2005

in Israel and the Occupied Territories

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Introduction

The following report has been compiled by the Association for Civil Rights in Israel (ACRI) to provide an overview of the state of human rights in Israel and the occupied territories in 2005. The annual report highlights particularly blatant violations of human rights during the past year, indicates any trends toward improvement, and identifies processes that are currently leaving their imprint on Israeli society.

The past year was characterized by: a combination of serious infringements of the right of Israeli citizens to a dignified standard of living and a disturbing trend toward legislation that undermines human rights; severe human rights violations in the occupied territories; and a further exacerbation of the racist and discriminatory approach toward the Arab minority in Israel.

The government's economic policies have infringed human rights, particularly the right to a dignified standard of living. While few would deny the right to live the last period of one's life in a dignified manner, many elderly people are forced to cut back on food or medication as a result of their economic situation. The government's privatization ideology has been extended beyond the privatization of state enterprises to encompass the privatization of public services, in areas such as health, education, welfare, employment, and the prison system. The prevailing economic policies have also engendered widespread violations of workers' rights, with contracted workers and recipients of guaranteed income benefits being the most adversely affected.

Israel's immigration policies still occupy a high position on the public agenda. In June 2005, the government approved a legislative reform that stiffens requirements for attaining legal status in the country. This latest government decision dovetails with other policy decisions of recent years, such as the denial of legal status to Palestinian spouses living in the occupied territories (on the grounds that they are Palestinians) and the government's ongoing war against migrant workers.

Although exploitation of migrant workers by their employers still exists, the government acts vigorously against the exploited workers, without bringing their employers to justice. Likewise, the rights of workers suspected of unlawful residence in Israel are also being violated; they are, for example, not provided with interpreters for hearings concerning their detention or deportation, and they are not readily granted their right to meet with an attorney.

Discrimination against the Arab minority continues, despite the government's adoption of the Or Commission recommendations. State authorities view Arab citizens as a hostile population group that represent "a demographic problem," and not as citizens entitled to equal rights. Particularly disturbing is the institutionalized discrimination perpetuated by the state's laws and by the ongoing discrimination in the allocation of lands and the establishment of new communities.

In the field of criminal justice, there is an ongoing trend toward legislation that confers sweeping powers to state authorities to violate human rights, without adequate due process guarantees. This growing disregard for human rights is part of a worrying global trend, in which draconian measures are justified in the name of the "war on terror." Another disturbing criminal justice issue concerns the privatization of prisons; as the privatization of prison facilities gathers steam, fears about profit motives taking

precedence over the inmates' rights are proving true.

In the occupied territories, we are increasingly witnessing a grave disrespect toward human life: there are tighter restrictions on the freedom of movement of the Palestinian residents in order to ensure the security of the Israeli settlers; the living space of Palestinian residents is being severely curtailed; the daily life of the Palestinian population has been completely disrupted, and violations of the right to health, education, livelihood, family ties and other rights have become an inescapable part of their reality. Furthermore, attacks perpetrated by the Israeli settlers against Palestinian residents continue to occur and are encouraged by the lax attitude displayed by the law enforcement authorities. The separation barrier – part of which has been constructed and part of which is still under construction – continues to have a debilitating impact on Palestinians living adjacent to it since its route encroaches deeply into Palestinian territory.

In the summer of 2005, both law enforcement authorities and the Israeli public were put to the test by the "disengagement" from the Gaza Strip. Debates in the media and in the public arena – for and against the disengagement – illustrated the difficulty of drawing a line between legitimate protest and rebellion, and between incitement to violence and breaching the law. In some instances, the authorities took disproportionate steps that contravened the right to express political opinions and to protest.

2005 saw impressive progress being made toward legislation to advance the equal rights of people with disabilities, although this was juxtaposed with severe problems in the mental health system that resulted in violations of the rights of the mentally disabled. We also witnessed progress in the recognition of same-sex couples in relation to property and family rights.

Repeatedly, we see the extent to which Israeli society lacks a real understanding of the essence of democracy. It is difficult to overestimate the importance of the educational system in fostering a democratic culture committed to the human rights of all individuals and groups in society.

This report only covers a selection of human rights violations in Israel and the occupied territories; the issues included in the report primarily relate to the past year. To find out more, please visit ACRI's website (www.acri.org.il), which contains in-depth information on each issue, in addition to links to other useful resources and websites.

The Right to a Dignified Standard of Living

The government's economic policies – including benefits cuts, a reduction in levels of housing assistance, and decreased government participation in health and education costs – have pushed more and more elderly people, children, and entire families into poverty and despair. The basic right of Israeli citizens to enjoy a dignified existence is being eroded; most prominent in this context are the growing violations against the right of workers to earn a decent livelihood, as a result of low salaries and the lack of enforcement of worker's protection laws.

A report published by the Taub Center for Social Policy Studies in Israel notes that despite clear references in the 2005 budget and proposed 2006 budget to the objective of strengthening the social fabric, government social spending has actually declined. Economic gaps in Israel have widened, and the condition of the weaker population sectors continues to deteriorate. This situation has been engendered by the imbalance in economic growth coupled with the government's tax policies.

In this section, we describe some of the more serious effects of government economic policy on the right of citizens to enjoy a dignified standard of living.

Privatization and Human Rights

The government's privatization ideology has extended beyond the privatization of state enterprises to encompass government authorities responsible for social services such as health, education, welfare, employment, and prisons. Economic efficiency must not become the most important consideration in these areas, even if privatization were to be proven to increase efficiency, which has not yet been proved.

The trend toward privatization reflects a basic change in perceptions about the government's responsibilities toward its citizens. Privatization implies a preference for the values of economic streamlining over civil rights and, practically speaking, the transfer of responsibilities that clearly lie with government authorities to private companies, some of them foreign. Bringing free market values into the area that lies between the government and its citizens abrogates human rights and converts each one of us from a bearer of rights into a consumer.

In many areas, we are witnessing growing privatization as the government reduces the services that it provides and market mechanisms cut back alternative private services. In its attempt to promote the idea of privatization, the government portrays its role as being that of a regulator, not a service supplier. However, in certain cases where the government was meant to assume a supervisory role and ensure that private companies were adhering to human rights standards, it failed to act as a regulator. In one instance, the government thwarted the passage of a law that would obligate it to ensure that contracting companies grant employment rights to their workers (see below for further details). In another instance, the government refused to apply the transparency principle for a contract specifying its relations with a company that won the bid to construct and operate the country's first private prison (see the section on the privatization of prison facilities).

Psychiatric hospitalization is another area that underwent partial privatization, with private hospitals now sharing the patient load with government hospitals. In the last year it became clear that the Ministry of Health has known for two years that 70 of

the patients residing in private psychiatric hospitals have no clinical need to be there. The only reason that these patients continue to be institutionalized is because of the economic interests of the owners of the hospital. Although the Ministry of Health is charged with supervising these private hospitals and trusted with the health and wellbeing of mentally disabled persons, it has thus far (as of December 2005) not succeeded in transferring these patients to the community frameworks that are supposed to be absorbing them (see the section on the rights of disabled persons).

Privatization of government services is detrimental not only to service recipients but to employees working for the service providers. The conditions of these workers have worsened as their employers strive to achieve economic efficiency.

The Right of the Elderly to a Life of Dignify

The cornerstone of social rights is the state's responsibility for conditions that allow its citizens – even those who are unable to work – to lead a life of dignity. Few would deny senior citizens their right to live the last period of their lives in a dignified manner, and it is the state's duty to ensure this right. Yet, several research reports have shown that the condition of Israel's elderly in many cases is so bad that they have had to cut back on their most basic needs such as food or medication.

In accordance with its economic policy over the last few years, the government has slashed benefits for the elderly. In 2002, the National Insurance Institute (NII) cut its benefits to the elderly and froze the new rates until the end of 2006. At the same time, a freeze was put on supplementary income for eligible recipients. In 2004, the pension age was raised, as well as the minimum age for receiving government old-age benefits.

According to NII data, 27% of Israel's elderly receive income supplements in addition to old-age benefits. In July 2005, the income supplements, together with stipends for the elderly, amounted to NIS 2,052 monthly per person, and NIS 3,052 for couples. Senior citizens are eligible for income supplements if they receive old-age benefits (and are not kibbutz or moshav members), do not own a car (except for medical use by them or their families), and receive a small income only from NII benefits or another source (amounting to no more than 13% of the average wage for individuals or 17% of the average wage for couples). Government benefits for the elderly in Israel are among the lowest of all developed countries.

A 2003 survey by the Brookdale Institute found that economic hardship forces some elderly people to make difficult choices about essential expenditures – for home heating, electricity, medication, medical care, and food. Slightly over a quarter of the elderly (26%) surveyed reported that they had been forced to choose one of these items over another in the past year. Most of these people (64%) cut back on food; 18% with living relatives reported they had stopped phoning them to save money; and 17% said they had stopped visiting their relatives because they could not afford the transportation costs. Within this same group, 8% said they were ignoring problems with their vision or hearing, and 16% were ignoring dental problems, due to economic difficulties.

Social survey data published by the Central Bureau of Statistics (and relevant to the

end of 2003[1]) also indicated that of the 65% of people aged 65 or older in need of prescribed medication, 15% had not purchased the drugs because they lacked the financial means to do so. Difficulties paying for medicine or other types of medical aid are compounded by the lack of government funding for hospitalization in geriatric care units. In this respect, the government denies the elderly their right to health and confers responsibility for ensuring this right to family members.

According to the CBS survey, only a quarter of Israel's senior citizens received a pension income. To improve the situation and reduce the scale of poverty among Israel's elderly, the Adva Center[2] recommended that the government restore, gradually but over a short period, the sums it cut in recent years from stipends and income supplements for the elderly. Doing so would help to relieve their financial distress, raise them above the poverty line, and restore their dignity. Looking further ahead, Adva recommends enlarging stipends for the elderly to help lift another group of elderly out of poverty, and over the long term, it advocates pension coverage for all employees.

Employment and Unemployment

The NII reports a decrease in the number of unemployed persons receiving unemployment benefits, from 45% in 2001 to 20% in 2004. There was also a decline in the number of unemployed people exercising their right to unemployment payments and guaranteed income, as well as in the number of recipients who continued to request these benefits. These declining figures were not a sign that the unemployed were entering the job market; they resulted from stricter eligibility requirements for unemployment benefits. As a result, many people who might have otherwise entered the job market found themselves in even deeper need of guaranteed income benefits. Israel still has a high unemployment rate, as well as a large number of workers who do not earn a decent wage, because simply calling on people to go out and get a job has proved ineffective. Concrete steps must be taken to create opportunities for employment and ensure that wages are substantial enough to ensure a dignified subsistence for workers.

An Unholy Trinity

Recent years have seen a significant increase in the number of Israeli workers hired by employment agencies and sub-contractors. According to this three-way system, a person or company desiring a service contacts a contractor or employment agency that, in turn, contacts job-seekers. These contractors essentially constitute the "service," while the "actual user" is not considered to be the employer of the workers. This system weakens the power of workers since it intervenes in the direct employee-employer relationship and allows employers to enjoy financial benefits at the expense of the employees. Most of the employees on the rolls of these agencies number among Israel's weaker population sectors (most notably older workers and new immigrants).

[1] While the CBS data presented here relate to 2003, they are not likely to have improved in subsequent years since government policy has not changed.

[2] Peleg, Dov, "Poverty, the Elderly, and Pensions: A Proposal Drafted for the Inter-ministerial Committee on the War on Poverty," Adva Center, Tel Aviv (November 2005)

The luckier ones earn minimum wage, and most receive no other benefits, even those required by law. Few are aware of their rights, which is an open invitation to employers to violate them. The situation is especially dire for new immigrants from Ethiopia and former Soviet countries, who are not yet fluent in Hebrew and are unacquainted with the country's legal system. Concern for their livelihood prevents them from complaining about their employers. Very few dare to turn to the Labor Court to demand their legal rights.

According to estimates based on official Industry, Trade, and Employment Ministry data, about 5% of all Israeli workers are employed in this manner (as opposed to 1.5% in Western Europe and the U.S.). Only 4% of Israelis working for employment agencies are covered by a pension insurance plan, in contrast to 60% of all workers in the country.

In the past, employment agencies screened, recruited, and trained workers for employers that needed to fill positions for relatively short periods of time. Over the years, however, they became a channel for human resources for organizations and businesses interested in reducing their employment expenditures. In this way, the leading firms in the economy – including those in the high-profit banking sector – can rely on euphemisms such as "efficiency" and "outsourcing" to relieve them of responsibility for the employment conditions of their work force.

In November 2005, the Knesset rejected a bill to protect the rights of those employed by Israeli employment agencies. The bill – proposed by MK Igal Yasinov (Shinui Party) and initiated by the Forum for the Enforcement of Workers' Rights (of which ACRI is an active member) – was designed to prevent the users of employment agency services from abandoning their responsibility. If the contractor, as is sometimes the case, does not respect the lawful rights of workers – by not paying minimum wage, sick days, overtime, annual leave, etc. – the subcontracted workers can, according to the law, demand these rights from the "actual user" in court. However, the law, as a preventive measure on behalf of workers, encourages the service user to verify, before even signing a contract with an employment agency, that all of the workers' rights will be granted and that the employment "trinity" – the workers, the services users, and the employments agencies/ contractors – will not become a tool for potential infringement of employment rights. The heads of the government coalition instructed its members to oppose this bill. They preferred to adopt the Ministry of Finance position on the issue rather than that of the Ministry of Industry, Trade, and Employment. The explanation is simple: the government is the biggest employer of subcontracted workers in the country. If the bill were passed – after all the efforts made by the government in recent years to relieve itself as much as possible from its responsibility to employees by hiring them via agencies and contractors – it would have to invest resources when signing contracts with agencies, and especially in enforcing the rights of the workers they hire.

The fields of security work and cleaning services are notorious for the use of employment agencies and contractors to hire workers for a third party. ACRI has recently filed a claim in the Tel Aviv Labor Court on behalf of five security workers employed by the Supersol supermarket chain through the Shas service supply company. The employees are demanding NIS 188,721 (with no compensation for withheld salary, linkage to

the dollar, or interest) for wide-scale infringement of their employment rights. The plaintiffs, all immigrants from former Soviet countries, are being denied their lawful rights, among them payment for overtime, sick days, holidays, transportation, and pension fund membership.

Guaranteed Income: For Whom?

In August 2005, the Wisconsin Plan: From Guaranteed Income to Guaranteed Employment went into effect in Israel for a trial period of two years. Employment centers were set up in four locations: Jerusalem; the Nazareth area; Ashkelon and Sderot; and the Hadera area. Guaranteed income recipients in those locations are required to spend 30 to 40 hours a week at the centers to take part in a personalized employment plan. Ignoring the recommendations of the professional members of the Tamir Committee, the government chose to privatize the operation of the Wisconsin Plan. As a result, the centers are operated by foreign, private firms in cooperation with Israeli companies.

While the stated purpose of the plan is to integrate welfare recipients into the workforce, government representatives have made no secret of the fact that the plan is intended as a means of reducing government expenditure on welfare. The goal is not to improve the standard of living for recipients but to relieve the government of responsibility for their welfare.

The employees of the private companies operating the centers are charged with determining whether or not participants meet the criteria for employment – which is a condition for receiving government stipends. If a company employee determines that a participant did not fulfill his or her personal plan, or refused to accept a suitable job, the government stipend for that person will be withheld for one month, sometimes two. The Israeli model of the plan is unique in linking the rewards the companies in charge receive with the savings in government expenditures on welfare payments. Every participant dropped from the guaranteed incomes roll contributes to the profits of the companies, and there is no inherent incentive for the companies to find quality positions for the participants. The result is an obvious conflict of interest between the companies' authority to determine if participants are eligible for government benefits and the profits those companies can make by misusing this authority. Critics of this aspect of the plan worry that the profit motive could lead to the denial of government stipends, which are the only available security net for their recipients.

The Wisconsin Plan is not generating new sources of employment. It is squeezing people into the existing, saturated job market, even though the more immediate issue is the lack of jobs, particularly on the lower rungs of the employment ladder (which hold most of the guaranteed income recipients). In the best of cases, participants will be pushed into unstable, low-paying jobs, thus adding their names to the ever-growing population of the working poor. In the worst of cases, they will be totally stripped of government assistance. While the few who join the work force will be deleted (perhaps only temporarily) from the government's guaranteed income rolls, they are unlikely to be assured of a truly secure income from their jobs.

Indeed, according to figures published by the directors of the Wisconsin Plan three months into its operation in Israel, 11% of the participants (1,980 in number) had taken on jobs. Most are earning minimum wages as secretaries, security guards, cleaners, or in positions in the catering or hotel industries. There are cases of participants being sent to jobs only recently vacated by employees who had not received their salaries – which were, in any case, meager.

Another 5% of Wisconsin Plan participants (about 920 people) have been placed in community service jobs, such as painting the walls of schools and other institutions, assisting the elderly, and clearing litter from beaches. By law, these types of jobs are intended to help participants acquire positive work habits. For most, however, the only habit they instill is getting up on time for work each morning. They provide no other form of useful training. These "service jobs," as participants have learned to refer to them, have proven beneficial to places of employment (which benefit from a free work force) but not to the participants themselves. Participants with job skills, professional experience, or a university degree are required to take on low-level jobs – together with totally unskilled participants – in order to acquire basic skills.

The Commitment to Peace and Social Justice, Community Advocacy, Sot El-Amal (Laborer's Voice), and Yedid organizations have all demonstrated that the Israeli version of the Wisconsin Plan has many shortcomings and poses a constant and serious threat to the rights of participants: the private companies operating the program require participants to sign unauthorized documents; the participants must represent themselves in formal proceedings to appeal the discontinuation of their government stipends, while seated across the table from attorneys for the private companies; participants need to take buses to get to the centers but are not reimbursed for their travel expenses; many participants are too old to find work, or are women who have never worked outside the home, or are chronically ill; little information is available to participants, and there is a serious lack of explanatory material in different languages; the program is not adapted to meet the needs of people of different cultures, most notably Arabs and new immigrants; and there is no special consideration for persons with disabilities.

"Privatization" and "greater efficiency," therefore, are buzzwords that disguise the fact that the government is evading its responsibility for providing welfare services to citizens who are dependent on a social safety net. The government is shifting that responsibility to private companies and instead of providing welfare for many, it is providing profits for a few.

Immigration Policies

Over the past year, Israel's immigration policies continued to be an issue of concern for decision-makers. In June 2005, the government decided to grant legal status in Israel to a small group of children of migrant workers and their families (see below for further details). At the same time, the government decided to reform immigration laws by stiffening rules for acquiring legal status in Israel. The latter decision is consistent with policies in recent years that prohibit Palestinian spouses who are residents of the occupied territories from attaining legal status in Israel, on the grounds that they are Palestinians (see the section on discrimination against the Arab minority). It is also consistent with a war Israel has been waging over the past several years against migrant workers – a war that reached new heights this year with the arrest and deportation of migrant workers' children who were abandoned or orphaned in Israel. According to media reports, the Immigration Police are now preparing for the arrest and deportation of families.

It is important to emphasize that Israel has no clear immigration policy with regard to non-Jews. The policy regarding the formalization of status for relatives in Israel – spouses, parents, and children – changes constantly and is anchored in procedures which are rarely made public. Basic matters – such as granting legal status to those who have decided to make Israel their home, or to refugees or others seeking shelter on humanitarian grounds – are decided not according to standard and publicized criteria; they are left to the discretion of government employees who consult with each other and reach their own conclusions. The only policy that guides the Interior Ministry is the uncompromising preservation of the Jewish character of the State of Israel. The former Minister of the Interior, Ophir Pines-Paz, formed an advisory committee to examine Israel's immigration policies. Headed by Professor Amnon Rubinstein and including several academic experts, the committee is now in the process of clearly outlining Israel's immigration policies. The government that created the committee, however, did not wait for its recommendations before initiating heavy-handed reforms and stiffening conditions for acquiring legal status in Israel. The government acted before it had established a clear immigration policy that takes into consideration the many different aspects of immigration to Israel, the country's obligations to its citizens and residents, and international commitments that Israel is obligated to uphold.

The Population Registry's War of Attrition

A report submitted to the Interior Minister by the ministry's in-house comptroller in 2005 echoed the findings of ACRI's report in December 2004 on the infringement of rights by the Population Registry.[3] According to the comptroller's findings, Population Registry offices in various locations have different ways of handling similar cases, and some of those methods conflict with prescribed guidelines. The comptroller's report also stated that the Ministry was unclear about how to handle certain requests, which resulted in lengthy delays in its responses. The Population Registry, according to the comptroller, does not possess data concerning the number of requests for legal status in Israel nor any indication of whether these requests are increasing or decreasing in number over time. The absence of this information is detrimental to policy-making.

3 Feller, Oded, "The Ministry – Violation of Human Rights by the Ministry of the Interior's Population Registry," Association for Civil Rights in Israel, Jerusalem, 2004.

The comptroller was unable to find an up-to-date file containing all the Population Registry's procedures. These procedures are written, it was learned, by different people, with no coordination of format or language, and they are not uniformly distributed.

Former Interior Minister, Ophir Pines-Paz, agreed that the comptroller's report "paints a sad picture of everything concerning the service that the Population Registry provides to the public." At a Knesset Interior Committee session in January 2005, Pines-Paz said, "My feeling is…that for some issues in the Interior Ministry, there was a policy of attrition. That is, we will try the patience of citizens until they've had enough. If we buy some time, maybe the problem will solve itself. Sometimes it is solved, you know. I really don't like the approach that says – we won't respond because the response we have to give is negative. No. Give a negative response, but a serious one, with a reasoned explanation. If we have procedures we don't believe in, let's do away with them. If we stand behind the Ministry's procedures, and behind its criteria, we have no reason to conceal them. They must be transparent to the public. The public must know what has been decided, what is right and what isn't, what is possible and what isn't. Moreover, the policy must be uniform."

Unfortunately, the past few months have shown that nothing has changed at the Interior Ministry. In response to the criticism, the Population Registry revised its procedures and posted them on the ministry's website. In addition to the full versions of some procedures, the site includes excerpts from others that are followed by Registry employees. Publishing them in this manner is imprecise, even misleading. Population Registry procedures, like those of any similar body, must be published in full. The courts have been critical, in more than one instance, of the ineffective way in which Population Registry procedures are publicized. Their criticism, apparently, has fallen on deaf ears.

The Interior Ministry Takes the Law into Its Own Hands

Decisions (or the lack of decisions) taken by the Population Registry continue to occupy a prominent place on the agendas of the Supreme Court and Administrative Courts. While the abundance of court hearings is proof enough that the rule of law has been seriously violated, an equally serious and unprecedented phenomenon was noted last year. The Interior Ministry, it was discovered, does not honor precedent-setting rulings issued by administrative courts. It did not appeal these rulings, apparently assuming they were non-binding. It has, for example, ignored: a ruling by the Administrative Court of Jerusalem that residents of east Jerusalem who register their children with the Palestinian Population Registry are entitled to request legal status in Israel for those children;[4] a ruling by the Administrative Court of Haifa instructing the Interior Ministry to extend the graduated procedure for common law spouses of Israelis, even of Israelis who are not single;[5] and a ruling by the Administrative Court of Tel Aviv in response to a petition filed by ACRI challenging the legality of an Interior Ministry requirement that foreign national, common law spouses of Israelis who are living in

[4] AdmP (Jerusalem) 822/02 *Gusha vs.Director, District Population Registry Office et al.* (Ruling by the Hon. Y. Adiel, September 1, 2003).

[5] AdmP (Haifa), 1223/04 *Perry vs. Director, Administrative Department for Visas and Foreign Nationals* (Ruling by the Hon. M. Lindenstrauss, September 12, 2004).

Israel without permits must leave the country in order for their request for legal status to be considered.[6]

By ignoring principled rulings issued by the administrative courts, the Interior Ministry virtually destroys any chance of ending illegal practices. The Ministry can simply choose not to appeal these rulings and continue abiding by policies that have been judged illegal.

Criteria for Granting Legal Status to Israeli-born Children of Migrant Workers

In June 2005, the government of Israel decided on a one-time arrangement for "finding a solution, on humanitarian grounds, for the children of migrant workers who were brought to Israel or were born there in circumstances that were beyond their control and, over many years, have become integrated into Israeli society, and whose expulsion from the country would mean relocation to a foreign country with which they have no cultural ties."

The positive aspect of the arrangement is that after years of totally ignoring the issue, the government finally acknowledged the need of these children for legal status. However, the criteria it set for acquiring residency status are so restrictive that the arrangement has failed to achieve its intended aim. The arrangement differentiates between the status of eligible children and the status of their families, and this could in future violate their right to family life if these children decide to marry foreign nationals.

The government criteria stipulate that the children: 1) must have been born in Israel and have lived there continuously; 2) must be aged ten years old or older; 3) must have parents that entered the country legally; 4) must be studying in Israeli schools; 5) must speak Hebrew; 6) and would face "cultural exile" if expelled from the country.

ACRI estimates that the arrangement offers a solution for about 400 of the 1,300 children of migrant workers in Israel (aged 18 and under). Together with the Hotline for Migrant Workers organization, ACRI petitioned the Supreme Court to demand the cancellation of two of the aforementioned criteria – that the children were born in Israel and that their parents entered the country legally – on the grounds that they do not achieve the government's purpose in setting the guidelines. Moreover, the criteria promote inequality since they draw an unfair distinction between children who were born in the country and children who arrived as youngsters, both groups having fully integrated into Israeli society. In ACRI's view, the criteria need only focus on the centrality of the child's life in Israel. If the petition is accepted, 200 children who were not born in Israel, but arrived in the country with their parents, could be granted legal status. The Supreme Court recently handed down an interim injunction prohibiting the Interior Ministry from arresting or deporting the children of migrant workers and their families who do not meet the government's basic criteria for formal residency status. However, the families must submit their residency request by March 31, 2006.

[6] AdmP (Tel Aviv) 2790/04 Rosenberg vs. Minister of the Interior (Ruling by the Hon. A. Fogelman, December 29, 2004).

Continued Infringement of Migrant Workers' Rights

For some 15 years, Israeli authorities have been turning a blind eye to the exploitive employment conditions endured by tens of thousands of foreign workers, including: unsuitable living quarters; withheld salaries; non-payment of overtime wages; below-minimum wage; illegal confiscation of passports by employers; and more.

Lack of Law Enforcement against Employers

While the government vigorously pursues the exploited workers, it does not press any serious charges against their exploitive employers. Laws meant to protect workers are not actively and consistently enforced, and rarely are the fines imposed on employers actually collected. In January 2005, Ephraim Cohen, Director of the Industry, Trade, and Employment Ministry unit with authority for foreign workers, spoke before a Knesset committee session on this issue. According to Cohen, although heavy fines totaling NIS 161 million were imposed on employers in 2004 for hiring workers without a permit or failing to provide decent employment conditions, only NIS 11 million was actually collected, which represents 7 % of the total sum. Moreover, the government has made little use of the primary tool at its disposal – revoking the permits of employers who break the law. According to figures obtained by ACRI, the Industry, Trade, and Employment Ministry revoked 14 such permits between January and August 2004, and another 40 between August 2004 and February 2005. During those same periods, NIS 12,303 in administrative fines were imposed. ACRI filed a petition demanding that the Ministry revoke the permits of employers who violate the legal rights of migrant workers.

Flaws in the Hiring Procedures for Migrant Workers

Following criticism of the employment procedures for migrant workers in Israel (termed the "binding arrangement" because as soon as the employment contract ends, the worker becomes illegal, thus setting the stage for exploitation), and following a petition filed by the Hotline for Migrant Workers, the government published "Guidelines for the Transfer of a Worker from one Employer to Another." The Hotline for Migrant Workers worked throughout the year to improve the guidelines as they were being hammered out. The final version specifically states that workers are not required to obtain "release letters" from their original employers. It also removes the limit on the number of employees that can be transferred from one employer to another and allows for transfer in the case of complaints against any employer. Nevertheless, implementation of the guidelines is problematic, and the clerks in the Population Registry continue to operate as if no revisions have been made.

Moreover, the guidelines are being implemented for employment in the areas of nursing care and agriculture only. In the manufacturing and service industries, the binding" arrangement continues as before. According to guidelines instituted in May 2005,[7] workers hired by manpower agencies for construction jobs are permitted to

[7] Based on the recommendations of a Ministry of Finance report (the Andoran Report), this arrangement is part of a reform drafted and adopted by the government after years of deliberations and only after a petition was filed on behalf of ACRI and other organizations by the Tel Aviv University Law and Welfare Clinic. Although the reform is supposed to cover all migrant workers, it applies only

change employers through their agency and can even periodically move from one agency to another. However, it is already apparent that the procedure falls short of its goals, with the workers now finding themselves bound to a manpower agency instead of to an employer.

The multiplicity of guidelines has generated great confusion among workers. It is not clear which guideline is applicable to which specific worker. Many workers, and in some cases Population Registry clerks and members of the Interior Ministry's enforcement division, are unaware of the different guidelines. The price, as usual, is paid by the migrant workers, who on numerous occasions are arrested after leaving an employer despite the fact that according to the applicable procedure they are entitled to change employers.

Commission Fees and Human Trafficking

The charging of fees for supplying or recruiting work is, according to international law and the laws of many countries, a form of human trafficking, in part because it creates a "debt slavery" relationship between employer and employee. The employees are required to work for long periods under humiliating circumstances to pay back loans and fulfill commitments they made to pay commission fees.

Rather than act against the illegitimate practice of requiring migrant workers to pay commission fees to obtain jobs in Israel, and rather than tighten enforcement against lawbreakers, the Industry, Trade, and Employment Ministry has added insult to injury by amending the employment service law to – for the first time – allow employment agencies, and individuals involved in the process of recruiting migrant workers abroad and in Israel, to charge those workers commission fees. ACRI and the Hotline for Migrant Workers have been lobbying the Knesset to prevent the issuing of regulations which are necessary for the implementation of the amendment.

Protecting the Rights of Persons Slated for Deportation

In the past year, we have witnessed some improvement in court procedures in deliberations on the detention of migrant workers (which take place in special courts that that hear requests by foreign worker detainees to be released on bail until their deportation): the number of judges has been increased; the waiting time for a suspect to be brought before a judge has been reduced to no more than four days; court supervision has been transferred from the Interior Ministry to the Justice Ministry; and a central office (not yet fully functioning) has been created. To some extent, these improvements resulted from directives by the Attorney General in connection with a Supreme Court petition filed by ACRI and the Hotline for Migrant Workers.[8] Nevertheless, some crucial matters have remained unresolved, and the petition is currently pending and undecided.

to those in the construction industry, as mentioned.

[8] The petition was filed in July 2002 to request that the section of the Entry into Israel Law that deals with conditions for the detention and deportation of migrant workers residing in Israel without permits, be amended.

One essential means of preserving the rights of detainees suspected of illegal residence in the country is to provide translation services for hearings on detention or deportation orders. Despite repeated assurances by the Interior and Justice Ministries, no arrangements have been made for these services. Lacking an interpreter, migrant workers have had to remain under detention simply because they did not understand the reason for their arrest and could not speak on their own behalf. Others have been unable to clarify cases of mistaken identity. The issue was the target of harsh criticism in the 2005 Comptroller's report. Arrest-related problems that continued this year stemmed from the lack of uniform court procedures and unreasonable delays in judgments on requests for reconsideration of arrest and detention cases. On more than one occasion, arrested migrant workers, denied their right to meet with an attorney, have had only one opportunity to do so – at the terminal for deportees at Ben-Gurion Airport, and the Immigrant Police have tried to prevent even this meeting from taking place. Following a petition by ACRI and the Hotline for Migrant Workers, the government revised its procedures, and migrant workers slated for deportation are now allowed, with some restrictions, to meet with attorneys at the airport.

Abandoned Minors

Under current policy, the Immigration Police have the authority to detain minors when it becomes apparent that their parents are no longer in Israel. They are sent to detention facilities and then deported to their countries of origin – even if there is no assurance that someone will be there to receive them. About 70 such children have been detained to date, most of whom had been abandoned. Some of these children were deported, and about 20 are still being detained. The detention and deportation of these children stand in direct contravention of Israel's obligation to ensure the rights and welfare of minors residing in the country, even if their parents are not legal residents. ACRI and the Hotline for Migrant Workers have petitioned the Tel Aviv Administrative Court on behalf of two abandoned girls on the grounds that minors must not be deported until a professional body (welfare worker) has determined that the deportation does not harm the child's welfare, and until the child's absorption in the target country has been assured. The petition was rejected, and the two organizations have appealed to the Supreme Court. The Supreme Court began its deliberations in late November with a panel of seven judges, and the petition is pending.

Discrimination against the Arab Minority

Five years have passed since the disturbances of October 2000, which were an expression of the rage and feelings of alienation experienced by the Arab citizens of Israel as a result of the discrimination and systematic oppression they have suffered since the establishment of the state. Two years have passed since the government announced its intention to adopt the findings of the Or Commission, which investigated the events and recommended that the state act to increase equality. However, in practice nothing was done to implement the recommendations. There was no distributive justice in the allocation of state lands, no resources were budgeted to narrow the socio-economic gaps between the Arab and Jewish sectors, and there was no move to amend the police forces' relations with the Arab sector. The Lapid Committee – the ministerial committee that was established to investigate ways to implement the findings of the Or Commission – drained, to a large extent, any substantive meaning from the commission's findings.

One of the Lapid Committee's recommendations was to establish "a governmental authority for the advancement of minority sectors". The Prime Minister's office granted the responsibility for establishing this authority to the National Security Council. The very fact that a security body was chosen for the task of establishing this government authority, which is supposed to promote the needs of the Arab minority, shows that there is no change in the attitude of the government towards the Arab citizens of Israel: the government continues to view the Arab minority as a hostile element in society. The authority has not yet become active but is already clear that it will act as yet another body that will be used to cover up the lack of any real action. The proposed authority will not be able to manage budgets independently; instead it will have to coordinate between various government ministries – not through the means of affirmative action, but rather through increasing the budgets in relation to the previous budget, which was itself discriminatory.

The Police Investigations Department's Inquiry Results in No Indictments

It is not only the declared aim of working towards greater equality between Jews and Arabs that has been abandoned, but the investigation into the Israel Police's modus operandi during the October disturbances also concluded with no charges being brought against the police officers. The Police Investigations Department (PID) announced that the investigations into the killing of Arab civilians by police officers would be closed due to lack of evidence in some of the cases, and the difficulty of identifying the police officers responsible for committing the offences in others.

The report published by the PID makes clear that no lessons have been learned and no changes in approach have been made. Instead of analyzing the events according to a normative framework that should guide police officers dealing with civil disturbances within the boundaries of the state, the PID report is based on a normative framework that governs military operations (which in some cases is based on a ruling that focused on the limits of the authority of an IDF officer); the report reveals a principled approach that is both grave and dangerous, and fails to impose any limitations on what constitutes acceptable actions by the police. While analyzing the evidence, the PID personnel ignored the testimonies of Arab citizens (termed the "locals" in the report, a term that was borrowed directly from the language used in investigations of

the operational behavior of IDF soldiers in the occupied territories) that were recorded during the disturbances, even when the Or Commission found them credible, and even when they appear, uncontested, in the factual section of the PID report. Following the report's publication, ACRI appealed to the Attorney General, drawing attention to the report's inherent deficiencies and flaws and demanding an investigation into the PID's handling of this matter and the moral guidelines directing the PID in its work.

During the last few months, the Israel Police Force has dealt with mass demonstrations against the government's disengagement plan (the withdrawal of Israeli forces from the Gaza Strip and the evacuation of the Gush Katif settlement bloc) and proved, in most cases, that it is possible to act determinedly to ensure public order, to prevent any danger to life or property, to enable the continuation of daily life, and to ensure that traffic lanes remain open, without resorting to the use of live fire. However, even while this report was being written, police officers who were dealing with a demonstration of Bedouin citizens in the Negev made great use of the practice of firing into the air; according to eye-witnesses, not only as a warning mechanism, but also as a scare tactic. 15 Arab citizens, among them pregnant women, required medical attention after they were beaten by police officers.

The police force must respect the freedom to protest and demonstrate regardless of the demonstrator's national identity or ideology, and must not revisit the violent pattern of behavior that led to the deaths of civilian demonstrators in October 2000.

Discrimination in the Name of the Law

One of the most worrying trends for democracy and human rights is the perpetuation of the discrimination against the Arab minority, and its authorization and institutionalization through the enactment of laws.

Tearing Families Apart

In July 2003, the Knesset accepted a temporary order[9], which prevents, in a sweeping fashion, the handling of new requests by Israeli citizens for legal residency status for their spouse of Palestinian origin, and freezes the handling of requests that have already been submitted.[10] The state claimed that it was temporary legislation that was required for security reasons, as it had become apparent that there was a growing number of Palestinians married to Israeli citizens who were involved in terror attacks

[9] A temporary order is a law that is enacted for a specific period of time, specified by the law itself. Thus a temporary order that is valid for a period of a year, for example, will be invalid after a year unless the Knesset decides to extend it.

[10] The temporary order established, in effect, the decision taken in 2002, which determined that the graduated procedure (that is designed to regularize the naturalization process for all foreign national spouses of Israeli citizens, and the status they were entitled to as a result of their marriage) would not apply to spouses of Palestinian origin who are married to Israeli citizens. It should be noted that the aforementioned procedure does not grant the spouses of Israeli citizens automatic citizenship. Foreign national spouses of Israeli citizens are required to complete a multi-staged process that takes at least four and a half years until the individual is granted permanent status. The procedure includes, among other things, an exhaustive check by the authorities of the authenticity of the marriage, and detailed criminal and security background checks. The implementation of the procedure includes a series of obstacles, particularly when the spouse in question is of Arab and/or Palestinian origin.

within Israel. According to the state, the continuation of the graduated procedure of family reunification provides these Palestinians with entry permits to Israel, which they then exploit.

It is clear that the state is using security considerations as a cover for the real purpose of the law – to deal with the "demographic problem" and to avoid an increase in the number of Arabs citizens in the country. This is racist legislation that discriminates between families on the basis of the national origin of one of the members of the couple, and which violates the right to family life, by tearing apart many families in which one of the spouses is Palestinian. Naturally this impacts most severely on Arab citizens of Israel, as it is primarily these citizens who are married to Palestinians.

In response to the enactment of the amendment to the law, a series of petitions were submitted to the Supreme Court demanding its cancellation, on behalf of ACRI, the Adalah organization, other human rights organizations, and members of Knesset. The Supreme Court deliberated on this charged issue with an expanded panel of 13 justices, but has delayed issuing a decision.

The claim that it is a temporary order is false as the freeze has been in force for close to four years and the Knesset is continually extending it without adequate consideration of the state's obligation to protect the right to family life. The amendments that were included in the temporary order of August 2005, that are meant to ease the situation of the applicants, are cosmetic and do not reduce the rights violations in any real sense; in some cases, these amendments even add limitations to the temporary order that did not previously exist. Meanwhile, hundreds of families – women, men and children – are waiting for the court's decision under the constant shadow of possible expulsion from the country and of being severed from their families.

The freezing of the family reunification process is carried out in a sweeping manner as a form of collective punishment against all Palestinians with this status. During the process of enacting the law in the government and the Knesset, no data was presented concerning the involvement of Palestinian spouses in acts of terror; however, the Ministry of the Interior distributed a presentation which included figures on the growing number of requests for family reunification, and a distorted demographic analysis of the number of family members who were granted residency status in Israel as a result of submitted requests. In the context of the Supreme Court hearings, the Attorney General stated that 25 Palestinian spouses were to some extent involved in terror attacks. This is the basis for this racist policy that is endorsed by law.

Concurrently, the Prime Minister ordered the General Security Services (GSS) to freeze the handling of requests for formal status of foreign national spouses, who are citizens of Arab countries. These cases are transferred to the GSS by the Ministry of the Interior for security clearance. The Prime Minister cancelled the directive in response to a petition submitted by ACRI to the Supreme Court.

Discriminatory Compensation for Jewish and Arab Victims of Terror Attacks

In August 2005, an Israeli soldier carried out a terror attack against Arab citizens on a bus in Shfaram. He murdered 4 passengers and injured another 12.

Among other implications of the attack was the issue of discrimination between Arab and Jewish victims of terror with regard to the right to state compensation. According to the current situation, the Compensation Law for Victims of Hostile Acts only applies to victims of hostile acts that were directed against Jews. Over six years ago, ACRI warned of the need to recognize victims of nationalist or racially motivated attacks as victims of hostile acts who are entitled to receive state compensation. Racist or nationalist attacks perpetrated against Arab citizens undermine the democratic character of the state, and as such must be defined as hostile acts that should be compensated by the state. Failure to recognize the rights of Arab victims of hostile acts, in the same way as Jewish victims of hostile acts are recognized, discriminates between one type of blood and another, and severely violates the right to dignity of Arab citizens. In the same year, ACRI represented three Arab students, who suffered injuries as a result of their national belonging.[11] At the time, the Attorney General expressed his opinion that "a solution must be found for the problems of Israeli citizens who were injured by an act directed against them because of their association with a national group". In this spirit it was decided to establish two committees that would be authorized to decide upon matters of compensation related to injuries sustained because of an individual's national identity. The committees were authorized to award victims of this kind of attack compensation at a level they would receive if the injuries were defined in terms of the aforementioned laws. In addition, the Attorney General ordered the government to review the amendments to the law in order to ensure that they include the specified right to compensation for injuries incurred by individuals as a result of their national identity. More than six years have passed and the laws have yet to be amended, despite the submission of more than one draft law, and despite the discussions that have been held on the issue.

Immediately after the terror attack in Shfaram, ACRI approached the Attorney General to request an immediate amendment to the law to ensure that the victims of the attack, and those who suffered bodily injuries or damage to their property as a result of the racist-nationalist attack, are recognized as victims of a hostile act with all that this entails.

The Prime Minister, Ariel Sharon, announced his intention to bring about the amendment to the law, and an amendment to the Compensation Law has been brought before the Knesset for its consideration; if enacted, the amendment would make victims of attacks such as the one in Shfaram entitled to receive compensation. The proposed amendment promotes equality between Jewish and Arab citizens as stated by the draft bill, but it falls short of engendering full equality in the right to compensation for any individual who suffers injuries that are directly related to his or her national identity. ACRI submitted its comments regarding the draft bill to the Ministry of Justice and will continue to monitor the legislative process.

[11] Case 7024/99 Hari v The Property Tax Authority and the Compensation Fund.

Discriminatory Allocation of Land

Just as there has been no improvement in the Israel Police Force's treatment of the Arab population, there has also been no substantive change in the policy relating to the distribution of land to the Arab minority. While the government generously allocates valuable land to Jews only, Arab citizens continue to suffer from institutionalized discrimination and neglect in housing and land distribution. The discrimination against the Arab sector with regard to land distribution, building opportunities and the purchasing of homes or apartments, constitutes ongoing systemic discrimination that is multi-faceted. The discriminatory policy includes: land expropriation; the continual constriction of the legal boundaries of Arab communities; limitations on the usage of land under Arab ownership and/or land that is under the jurisdiction of Arab residential communities; the discriminatory practice of providing financial assistance for housing through the provision of excessive incentives in order to strengthen Jewish settlement in the Galilee and the Negev; preventing Arab citizens from purchasing homes or land in Jewish communities; and preventing the recognition of existing Arab communities and the preparation of outline plans for these communities.

The government and the Israel Lands Authority (ILA), which are theoretically charged with the task of managing Israel's state land for the good of all its citizens, have adopted a clear policy of inequitable land distribution for housing. Thus, for example, according to figures published by the Arab Center for Alternative Planning, in a 5-month period in 2004, the ILA published tenders for land to build some 1,820 housing units in the north of the country. Only around 140 of them were recommended for marketing to Arab communities, despite the fact that the Arab population in the north of Israel constitutes over half the region's population, and despite the severe housing shortage in Arab residential areas in the north.

Institutionalized Discrimination in Housing Rights

The acute housing shortage suffered by the Arab sector has worsened significantly as a result of the lack of any government plans to address the housing needs of the Arab community, such as: the establishment of new Arab neighborhoods or villages and the provision of public housing and financial assistance plans like those enjoyed by the Jewish sector. The government not only fails to initiate new housing projects for Arab communities, but also discriminates against the Arab minority with regard to housing assistance.

In October 2005, for example, the Deputy Prime Minister, Shimon Peres, launched a government development program designed to grant benefits to people purchasing land for housing in the Galilee, with the state proposing unprecedented discounts of up to 90% for land purchased in small communities in the Galilee. Although one might expect that the benefits would be offered equitably to every citizen of the country who is in need of housing, this program does not target the Arab population: of the 104 communities included in the program – towns, villages and kibbutzim – only 4 are Arab communities.

The benefits that are granted to those people who move to the Galilee include: income tax reductions in residential and industrial areas; reductions for leasing land; the participation of the Ministry of Housing in infrastructure development; housing subsidies; and incentives for educators in areas classified as "National Priority Areas."

These benefits were offered exclusively to discharged soldiers (as is well known the majority of Arab citizens do not serve in the army), with no direct connection to their army service. ACRI and Adalah have submitted petitions on this issue.[12]

Communities for Jews Only

The severe housing shortage among the Arab minority sometimes results in Arab citizens deciding to purchase or build a home in "Jewish" residential communities. Five years ago, the Supreme Court issued a precedent-setting decision, which ruled that the state was not authorized to allocate land to the Jewish Agency for the purpose of establishing communities that discriminate on the basis of national origin. The petition was submitted by ACRI on behalf of the Ka'adan family after their request to build a home in the Jewish community of Katzir was rejected solely because they are Arab citizens. It was only last year, after a ten-year struggle, that the Ka'adan family finally signed a leasing contract for the land, enabling them to build their home in Katzir. Although the court ruling engendered extensive public debate on the right to equality for the Arab population, it has not brought about a change in government policies governing land distribution and the establishment of communities.

Other Arab citizens were also refused the right to purchase land, not only in small residential communities, but also in the city of Carmiel, with the claim that the land currently being recommended for tender belongs to the Jewish National Fund (JNF) and is therefore intended for marketing to Jews only (based on an agreement between the JNF and the State of Israel). Three petitions to the Supreme Court relating to this issue are currently pending.[13] The petitioners claim that the ILA, as a public agency established under law, is obligated to respect the right to equality of all citizens and this overrides any obligation it has to the JNF. The rules of good governance prohibit the use of government-granted authority and public resources, both physical and financial, for the promotion of the interests of a single sector of the population, through the designation of land to Jews only. The ILA was granted authority and resources in its capacity as a public agency that must act for the benefit of the public as a whole, and these resources must be used in accordance with this principle.

A Firm Hand against the Negev Bedouin

The residents of the unrecognized villages in the Negev are citizens of Israel; the majority of them have lived in their villages since the establishment of the state, and some were displaced from their historical lands by the government and transferred to their present location. For decades, the state has refused to recognize these villages, which are excluded from official planning and do not fall under any municipal jurisdiction. The state relates to the Bedouin residents as "trespassers" and acts with a

[12] On 27 February 2006, the Supreme Court accepted Adalah's petition on the issue of National Priority Areas. Residents of these areas receive substantial benefits from the government in various fields, including education. The Supreme Court ruled that the government's decision regarding benefits in the field of education must be cancelled, since it discriminates against Arab citizens of Israel.

[13] The court combined the hearing on these three petitions, submitted by ACRI in partnership with the Arab Center for Alternative Planning, Adalah, and the Mossawa Center, and the Abu Ria center, through the Clinic for Human Rights, Tel Aviv University.

firm hand to remove them from the land they inhabit and the fields that they cultivate, in order to concentrate them in existing towns and in residential communities that are in the planning stages. These steps are taken forcibly with no appropriate housing or employment alternatives, no suitable compensation, and without due process. Concomitant to the expulsion of the Bedouin population, the same state agencies allocate large tracks of land to Jewish citizens who settle in "individual farms," and confer responsibility for "safeguarding state lands" to the Jewish regional councils rather than to the original Bedouin residents. This is a discriminatory policy: if, from a planning perspective, there is no justification for a Bedouin community to reside in a certain location, then there is no justification for a Jewish one to settle there.

During the last year, the government's firm policy against the Bedouin population of the Negev became even more severe, with the government intensifying its efforts to concentrate the Arab citizens of the Negev within a limited land area while at the same time energetically developing plans to increase the Jewish population in the Negev.

In 2005, the Knesset enacted an amendment to the Public Land Law that makes it even more difficult for the Bedouin population to prove their connection to the land and/or continue to live on and work the land. The law extends the ILA and other bodies' already expansive authority to expel residents, destroy crops, and demolish homes on land whose ownership is under dispute between the ILA and the Bedouin. The enactment of this amendment undermines the basic tenets of democracy, primarily the right to due process, and adds insult to injury by deliberately ignoring the dire housing and employment situation confronted by the Bedouin residing in the unrecognized villages, and of their right to live a dignified existence.

Among other things, the law grants the ILA clerks the right to carry out searches, interrogations, and to issue eviction orders, while significantly reducing the level of court supervision of these actions. The law bestows on the ILA a separate system for policing, judicial review, and enforcement, parallel to the enforcement system to which all citizens of the state are subject.

In the past year, action against illegal construction in the Negev has intensified (primarily in the form of house demolitions), without providing any alternative housing solutions for those whose houses have been demolished, or for crops destroyed in fields worked by Bedouin on land that is being disputed by the state and the Bedouin. The authorities exploit the powers granted to them as a means of pressuring the residents who are slated to be evicted, especially in villages such as Wadi Al Na'am and Rachma where residents continue to take legal action in the Supreme Court challenging the expulsion notices issued against them, and in villages slated to be replaced by Jewish communities (such as the Jewish communities of Yatir, Hiran, and Omrit which are planned to be constructed in place of the Bedouin villages of Atir, Um Al-Hiran, and Bir el-Mashash).

A blatant example of this discriminatory system of governance is the unrecognized village of Wadi Al Na'am that has been situated in its present site for over 50 years, after its residents were moved there by the state without formalizing the status of the community both from a planning and municipal perspective. Currently the state is trying to evacuate the village without providing the residents with an appropriate

relocation alternative. Over a year ago, the planning authorities rejected an outline plan, prepared by the ILA, which aimed at moving the 5,000 residents of Wadi Al Na'am to the town of Segev Shalom in accordance with the government decision of August 2000. The planning authorities ordered the government to recommend an alternative location in cooperation with the local residents. Despite this, and despite appeals by representatives of the residents (coordinated by ACRI and Bimkom – Planners for Planning Rights) to all the relevant government bodies, they have still not received a substantive reply. The state ignores both its moral and legal obligations as well as the planning authorities' decisions obligating it to provide an appropriate alternative for the residents of the village, and has yet to recommend a viable alternative location for the Bedouin community. At the same time, law enforcement agencies have increased the pace of the issuance and enforcement of house demolition orders without any differentiation between houses that have existed for dozens of years, and houses that have been built in the last few years.

In November 2005, the Supreme Court rejected a petition demanding that the state connect the home of Yousef and Nadia al-Atrash from an unrecognized village in the Negev, to the electricity grid, or to provide their home with electricity via a generator. Enass, the couple's three-year-old daughter, suffers from cancer and requires protection from cold and heat because of the weakened state of her immune system, and also requires medication that must be kept refrigerated. The reason given for the rejection of the petition was that the parents chose to set up their home in an unrecognized village, although they knew that by doing so they would not be able to be connected to basic services. The judges chose to ignore the claims of the petitioning organizations that the right to life overrides any planning or bureaucratic considerations. The judges also chose to ignore that it was not the petitioners who "chose" to set up their home in the unrecognized village, but the state that chose not to recognize the Bedouin community. The rejection of the petition for this reason is especially shocking in light of the fact that Jewish citizens who choose knowingly to set up homes in the occupied territories, in what the government calls "illegal outposts", enjoy a constant supply of electricity, water and other services.

The trend toward legislation conferring wide powers to state authorities to violate human rights, without sufficient due process guarantees, continued this past year. The trend includes laws that allow authorities to take preventive measures that, by their very nature, harm innocent people as well, rather than punish convicted criminals; laws that allow authorities to place restrictions on and punish individuals on the basis of information that is undisclosed – even to the suspects – who cannot therefore defend themselves against it; laws eroding the basic principle that a person is innocent until proven guilty; and laws granting enforcement authorities to bodies that are not part of the official law enforcement system. Although some of the deleterious effects of these laws were moderated by Knesset committees and actions taken by ACRI and other human rights organizations, the increasing willingness to violate human rights "for security reasons" is, in itself, a disturbing trend. This willingness is part of an international trend, which views the goal of fighting terrorism as a justification for draconian measures. The following are other examples of the phenomenon.

Draconian Measures Justified in the Name of the War on Terror

The Justice Ministry proposed legislation seeking, as part of the "war on terror", to combat the financing of terrorism. Similar laws were passed in other countries in recent years, and Israel sought to match its legislation to these laws. The Justice Ministry's proposal granted the government far-reaching powers to violate human rights. Among other things, the proposal sought to allow the government to declare a person as "engaging in terror", on the basis of suspicion alone, thereby placing severe restrictions on his or her ability to conduct financial transactions, and allowing all his or her property to be permanently seized by an administrative decision. The Knesset's Constitution, Law, and Justice Committee worked to improve the legal checks and balances of the law and, in the end, it was determined that many of its most harmful provisions will apply only to suspected terrorists who have no connection to Israel. As a result of opposition to the law and proposals to change its wording, the government preferred to continue operating according to existing draconian measures that are in force under Israel's state of emergency laws, since it did not want the amended proposal to apply to its regular activities. The final version approved still contains infringements on human rights. Among other things, the law stipulates that:

- The definition of a terrorist organization within Israel is based on the government's power (according to existing state of emergency laws) to declare, without due process guarantees, that an organization is a "terrorist" or "unlawful" organization.
- Any person asked to conduct a financial transaction in the course of business, and suspects that the money or property is intended for funding terror, must report to the police or face the penalty of a year's imprisonment. Citizens of democratic countries are not expected to monitor the activities of their clients or suppliers. Ordinary citizens are not qualified to follow-up on their suspicions and determine whether they are justified. The requirement to report might create a culture of over-reporting and suspicion. Naturally, the fear is that this type of suspicion will be turned against Arab citizens and encourage witch-hunting.

Limitations on a Prisoner's Right to Meet with an Attorney

The Knesset passed an amendment to the Prison Ordinance allowing prison authorities to prevent prisoners, under certain circumstances, from meeting with their attorneys. The amendment allows for preventing such a meeting if there is a "substantial suspicion" that it will contribute to a crime that endangers the security of individuals, the public, or the state, or may lead to a disciplinary offence that may severely disrupt the order and operation of the prison. In the first stage (24 hours), the authority to prevent a prisoner-attorney meeting is in the hands of prison services. In the second stage (5 days), district attorney approval is required, and in the third stage, a judge's approval is needed. In certain instances, the amendment allows for concealing the reasons for preventing the meeting.

The authority which the law grants to senior prison service personnel contains enormous potential for abuse. A prison is a "total" institution that controls every aspect of a prisoner's life. To a large extent, the prisoners are dependent on the goodwill of the prison staff. Free and speedy access to legal counseling is an essential tool for preserving the rights of prisoners, as well as an important means by which the public can continually monitor what transpires in prisons. It is inappropriate for authorities in charge of prison services to have control over this essential right to access. Although judicial review is required within several days, even this cannot guarantee that the prisoners' rights will not be unjustly violated, since the authorities are permitted to conceal from the prisoner and his attorney their reasons for denying those rights.

Discrimination against Foreign Nationals Suspected of Committing Security Offenses

The Knesset is due to discuss a proposed government amendment to criminal law procedures that would establish special, discriminatory conditions for ordering the arrest and interrogation of foreign nationals suspected of committing security offenses. The serious consequence of the proposal is that it grants permission to the police and the General Security Service (GSS) to interrogate these suspects while they are isolated from the outside world for a considerable period of time. This is an anti-democratic proposal and constitutes a severe violation of human rights that opens the door to illegal methods of interrogation and false confessions.

If the legislation is passed, it will:

- Allow suspects to be held for up to four days in detention, without being brought before a judge, if "the interrogation demands such." Under the current law as well, a suspect's appearance before a judge can be delayed for up to 48 hours in the case of security offenses if "there is a need for urgent action in connection with an interrogation." The amendment would permit delaying court appearances for foreign nationals suspected of security offenses, even when there is no need for urgent action in connection with the interrogation.
- Allow the courts to hear matters related to these suspects and, in certain circumstances, extend their detention without their presence in the courtroom. This is a blatant violation of a suspect's right to due process and a negation of the basic principle that

persons have the right to be present at legal proceedings that involve them.

- Prevent these suspects from meeting with their attorneys for 50 days following their arrest, in certain circumstances.

The war on terror and security offenses – however serious a threat they represent – cannot justify legislation of this type, which has no place in a democratic system of law. It is worth noting that in 2004, England's House of Lords revoked a law permitting the detention of foreign residents suspected of terror activities on the grounds that it constitutes illegal discrimination.

DNA Databanks

The Knesset also passed an amendment to the Criminal Procedure Law permitting, among other things, DNA testing of every person suspected, accused, or convicted of certain offences. The law allows the authorities to collect fingerprints and biological samples from suspects and defendants completely trampling the principle that a person is innocent until proven guilty. The Knesset's Constitution, Law, and Justice Committee limited the scope of the law by requiring that genetics samples and identity data be destroyed if the suspects or defendants are not convicted within seven years. However, it will be very difficult to ensure that authorities adhere to this requirement.

The creation of DNA databanks is a perfectly legitimate means of helping law enforcement authorities investigate and prevent crime. These databanks can greatly assist the work of the police and even enhance the protection of human rights – those of potential victims and those of persons who would otherwise be subject to needless interrogation. The approved legislation, however, is too sweeping and causes disproportionate (or unreasonable) damage to basic rights.

Violation of Detainees' Rights during the Gaza Disengagement

Prior to the Israeli disengagement from the Gaza Strip, special court facilities were constructed adjacent to detention centers in the southern and central regions of the country. During the course of the disengagement, in August 2005, these facilities were used for hearings on the continued detention of demonstrators who were arrested, many of them minors. Some of what took place in these hearing infringed on the rights of the detainees – attorneys were sometimes prevented from meeting with their clients and deliberations were conducted for scores of detainees at a time, with no separate consideration of individual cases. Legal hearings must be conducted in courts of law, not in makeshift buildings adjacent to prison facilities. Moreover, it became clear during the hearings that these special courts were not solving most of the problems they were created to solve. One factor at work was the complicated, drawn-out procedure for transferring detainees from prison facilities to courtrooms, regardless of whether those courtrooms are 20 meters or 20 kilometers away. Prison Service staff and the police would sometimes save themselves the trouble of following this procedure, and they made false claims to judges that certain detainees were absent because they refused to appear in court.

ACRI contacted the Chief Administrator of the Courts to ask that he put an immediate

end to these special courts located outside prison facilities because they violated the rights of the detainees. The request was rejected and assurances given that little or no use would be made of these makeshift courtrooms. In October 2005, ACRI learned that an internal report by the public defender also warned against the unlawful use of these facilities.

Representation for Detainees of Limited Financial Means

The Public Defenders Law, passed a decade ago, dramatically altered the number of detainees and prisoners with representation in courts of law, thus contributing to justice and protecting human rights. However, the criteria that determine who is eligible to be represented by the Public Defender do not ensure that those who cannot afford to pay for their defense will, indeed, be defended in court. The right to a public defender was limited to defendants whose crimes carried a maximum five-year sentence and to the most indigent detainees and prisoners. (A member of a three-person family was eligible only if the family's combined income was less than NIS 4,666 per month before taxes or its property worth less than NIS 21,000). These are unacceptable conditions that leave many poor detainees with no legal representation.

In 1999, ACRI petitioned against the five-year maximum penalty requirement, arguing that every indigent defendant is entitled to legal representation. In response, the Attorney General issued a directive (recently enacted as a regulation) requiring prosecutors to notify the court when an indigent defendant may be sent to prison if convicted.

At this time, a private law proposed by Knesset members Yitzhak Levi, Eti Livni, and Michael Eitan is in its final stages of deliberation. It stipulates that courts shall not impose prison sentences on defendants who are not represented by attorneys, except for cases in which defendants choose not to be represented. The proposed law has the support of the government and, if passed, will put an end to the shameful situation in which poor people are sent to prison without proper defense by an attorney.

Deliberations on the above-mentioned petition, and on problems arising from the wording of the regulation, were frozen for six months, until the legislative procedures have been exhausted.

Privatization of Prison Facilities

In 2004, the Knesset approved legislation for the privatization of Israeli prisons. Throughout the legislative debate, ACRI, along with several other organizations, vociferously opposed transferring the management of prisons to private bodies. Privatized prison facilities are run in large part according to the financial principles of profit and loss. Transferring authority for so sensitive an area as prison management from the government to private hands is apt to lead to flagrant violations of the basic rights of inmates and to a serious deterioration in the already-low level of service they receive.

Although some of the changes recommended by those opposed to the law were accepted by the legislators, the concept of prison privatization, in and of itself, poses enormous potential for the violation of rights. Following the passage of the law, the Public Security Ministry published a tender for operation of the country's first private prison.

Public interest in this case demands: the full disclosure of information regarding the minimal incarceration conditions to be met by the contracting companies; the scope of rehabilitative and treatment services to be provided to inmates; the type of government supervision of the prison's operation; and the government's options in the event that the private contractor fails to meet the conditions of the tender. However, the contents of the tender have not been made public, raising suspicions that the authorities are shielding themselves from public scrutiny and, instead, are setting their own ground rules. Only after ACRI, through the Human Rights Program at the Tel Aviv University Law School, filed a petition based on the Freedom of Information Law and later appealed to the Supreme Court, did the government agree to publish a significant portion of the text of the first privatization tender for an Israeli prison facility. The appeal is pending and undecided since the Finance Ministry and Prison Service still refuse to publicize the entire contents of the tender. The information that has been made public is unsatisfactory. We know, for instance, that the living space per inmate is smaller than the international standard. Other causes for concern are the fact that no information was revealed about medical care for inmates or about the fines to be imposed on contractors that fail to meet their commitments.

Based on the track record of other privatized services (see, for example, the section of this report on privatized psychiatric hospitals), there is cause for serious concern about the ability of supervisory authorities, as required by law, to guarantee that the rights of inmates are being protected. In November 2005, the winning bidders for the prison tender were announced: Africa Israel Investments Ltd. and Minrav Holdings Ltd. will take on construction of the Beer Sheva facility and control its operation for the first 25 years.

The Academic College of Law in Ramat Gan filed a petition with the Supreme Court in 2005 challenging the legislative amendment allowing for the privatization of prisons. Its basic argument is that privatized prison facilities violate one of the principles of the Basic Law: The Government, that "the government is the executive authority of the state." In this case, governmental authority is being transferred to the contractors and its employees. The petition is pending and undecided. The Court instructed the government to provide a response that states its position on the limits of privatization of public authorities.

Police Brutality and the Police Investigations Department[14]

The Police Investigations Department was created as a means of independently investigating police activities. However, while the agency is officially part of the Justice Ministry, PID investigators continue to be police officers who are temporarily assigned to the PID and then reassigned to the Israeli Police. Since 1992, the Ministries of Justice and Public Security have been discussing the need for a civilian-staffed PID, but no practical steps have been taken in this direction. The Comptroller's 2005 report reveals disturbing data on a large percentage of uninvestigated files: 65% of complaint files on unauthorized use of violence in 2002 and 2003. The Comptroller warns that "such a high rate of uninvestigated complaints of this type, archived with no further

[14] Other sections of the report (see "Discrimination against the Arab Minority" and "Freedom of Expression") address instances of police brutality and the problematic investigation of these events by the Police Investigations Department (PID).

attention…is likely to be interpreted by police officers as a sanction for unacceptable behavior, and by the public as a belittlement of the seriousness of complaints about the unlawful, aberrant use of power…".

Two other disturbing details in the Comptroller's report are that many of the police officers lent to the PID as investigators do not have the required ranks for their investigatory duties, and that many police officers are given job promotions while complaints against them are still being investigated.

In February 2005, in the wake of the Comptroller's report, the Ministerial Committee for Coordination, Administration and Surveillance, chaired by Haim Ramon, submitted a recommendation to the government for converting the PID to a fully civilian body with no connection to the Israeli Police.

Human Rights Violations in the Occupied Territories

The most flagrant human rights violations in the occupied territories during the past period are not new. ACRI receives daily reports of incidents, which reveal: a continuing and increasing level of contempt for human life and property; growing limitations on freedom of movement, and daily violent attacks perpetrated by Jewish settlers which the law enforcement authorities do nothing to avert. This section of the report will deal with only some of the violations that occur every day in the occupied territories.[15]

The disengagement from the Gaza Strip brought about certain changes in rights violations in the area but did not stop them. Israel continues: to control the strip's borders; to prevent almost completely the passage of people from the Gaza Strip to the West Bank; to prevent entry into Israel; to undermine the economic development of the Gaza Strip by limiting commerce between the West Bank and the Strip, and by limiting foreign trade and the movement of workers employed in Israel. Israel continues to control and has exclusive authority over Gaza's air space and territorial waters (except for a narrow strip next to the beach). As long as Israel controls, in practice, exit and entry into the Gaza Strip and does not enable the Gazan population to develop its economy and to sustain itself, it has a humanitarian responsibility to ensure the wellbeing of the civilian population. Since the occupied territories are one territorial unit, Israel must allow movement between the West Bank and the Gaza Strip. The Supreme Court made this clear in its ruling on a case permitting the expulsion of the family members of a person who had carried out a terror attack from the West Bank to the Gaza Strip.

In the months following the disengagement, concurrent to attacks by the Israeli air force which are designed, according to statements made by the Israeli Army spokesman, to prevent the firing of Qassam rockets, a new system of imposing fear and terror on the civilian population in the Gaza Strip has begun. This is the use of sonic booms caused deliberately by the Israeli air force. Physicians for Human Rights – Israel, together with

[15] For additional information on human rights violations in the occupied territories, please refer to ACRI's website: **www.acri.org.il**; further information can be found in the publications and websites of B'Tselem, HaMoked – Center for the Defense of the Individual, and Physicians for Human Rights – Israel.

the Gaza Community Mental Health Program, petitioned the Supreme Court against this practice, which represents a form of collective punishment against Palestinian civilians.

Disrespect for Human Life

Following understandings that were reached by the Israeli government and the Palestinian Authority (herein P.A.) at the Sharm al-Sheikh summit in February 2005, there was a certain reduction in the level of violence in the occupied territories, and the number of people killed. It must be emphasized, however, that despite this reduction, the security forces still killed, between February and November 2005, 118 Palestinians (of whom 33 were minors) in the occupied territories. During this same period, Palestinians killed 9 Israeli civilians (of whom 3 were minors) and 4 security personnel in the occupied territories; within Israel, 16 Israeli civilians (including 2 minors) were killed by Palestinians, and one soldier.

Continuing the Policy of Targeted Assassinations

At the Sharm al-Sheikh summit, the Prime Minister, Ariel Sharon, stated that Israel was freezing its use of "targeted killings" in all other than extreme and rare cases. And indeed between November 2004 and June 2005, no assassinations were carried out by Israel. A B'Tselem report published in May 2005 raised severe suspicions of the practice of covert assassinations while carrying out arrests. According to the report, which examined operations that were referred to by the security apparatus as arrest operations, and which led to the death of 89 Palestinians during 2004, at least 17 of those killed were never defined as wanted by Israel, and at least 43 who were defined as wanted were unarmed, or were not attempting to use their arms against the security forces at the time they were killed. Since July 2005, Israel has reverted to the practice of carrying out "targeted killings", and by the end of November 2005, 21 people had been killed and another 27 injured during "targeted killing" operations. At the beginning of November 2005, the Israeli Chief of Staff, Dan Halutz, and Prime Minister, Ariel Sharon, announced at a Knesset meeting that Israel would continue its policy of targeted assassinations.

It should be emphasized that the assassination policy is a blatantly illegal policy, which contravenes Israeli law, violates international human rights and humanitarian law, and breaches basic moral principles. In the petition against the policy of targeted assassinations that was submitted by the Public Committee Against Torture in Israel (PCATI) and LAW through Attorneys Michael Sfard and Avigdor Feldman, the petitioners stated that "the firing of a rocket at an individual suspected of terrorist activity, at a time when he does not pose any immediate threat to human life, represents an execution without trial. Sniper fire aimed at an individual who does not at that moment represent any concrete danger to another person, is an execution without trial. The booby-trapping of an individual's car, regardless of the level of suspicion against him, is an execution of a person who has not been found guilty of anything and as such is a "liquidation" without trial, and is thus an act of murder. Expanding the concept of self-defense beyond the existence of a concrete and immediate danger, is the most dangerous slippery slope that a government can go down and quickly

leads towards war crimes". Since its submission in January 2002, progress made on deliberating the petition has been extremely slow. In February 2005, the petition was "frozen" due to the state's declaration that it had halted its assassination policy in the context of the Sharm al-Sheikh summit. In response to the renewal of the assassinations, the petitioners requested that the petition be "thawed," but the court has yet to respond.

Human Shields

Another example of the disregard for human life is the use of Palestinian civilians as "human shields" by the IDF during its military operations to conduct arrests in the occupied territories, in the framework of what is termed "the neighbor procedure." According to this procedure, the IDF compels Palestinian civilians who are chosen at random to defend IDF soldiers with their bodies during military operations. Among other things, soldiers have ordered Palestinian civilians: to enter buildings to check if they were booby-trapped or in order to bring the occupants out of the house; to remove suspicious objects from roads; to stand inside houses that soldiers have converted into army posts so that Palestinians will not fire at the soldiers; to walk in front of soldiers in order to shield them from gunfire, while the soldiers hold a gun behind their backs and in some cases even shoot over their shoulders.

In 2002, Adalah submitted a petition against the procedure on behalf of seven human rights organizations.[16] As a result of the petition, the army prohibited the use of the Palestinian civilians as "human shields" and/or as hostages, but permitted the soldiers to seek "assistance" from Palestinian civilians, provided that the commander in the field determined that the act posed no danger to the civilian involved. In August 2002, the Supreme Court issued an interim injunction in response to the petitioners' request, prohibiting the use of Palestinian civilians for this procedure also. In December 2002, the "prior warning procedure" that was authorized by the then-Attorney General, Elyakim Rubenstein, was submitted to the Supreme Court, and in January 2003 the Court limited the injunction and permitted the army's use of the "prior warning procedure." The procedure permits the army to seek "assistance" from Palestinian civilians during the course of its military operations to conduct arrests, provided that two conditions were met: (1) the Palestinian civilian did not refuse the army's request "to assist"; and (2) the commander in the field determined that the act posed no danger to the civilian's life. The procedure permits the army to send a civilian to a house to request that an individual that the army wishes to arrest, or other individuals, leave the house, when the army is ready at any moment to act behind the civilian.

The petitioning organizations submitted an amended petition and demanded the revocation of the procedure. Among other things, the petition notes that the danger to the civilian is already apparent in the wording of "prior warning procedure" which predicts an exchange of fire, and orders the cessation of the use of civilians as "aids" in the event that there is an exchange of fire between the wanted individual and the

[16] Adalah, ACRI, LAW, Physicians for Human Rights – Israel, B'Tselem, The Public Committee Against Torture in Israel, HaMoked – Center for the Defense of the Individual.

military force. The petition provides testimonies of Palestinian civilians who were forced to "assist" army personnel. One of whom is Miflah Masharq, a 35-year-old resident of the Nur Shams refugee camp; on 14 September 2004, Mr. Masharq was ordered by IDF soldiers to search (in the framework of the "prior warning procedure") for his brother, Falah, in houses in his residential area. According to his testimony:

"....the soldiers made me sit for about an hour next to Ahmed's house. During this time the soldiers surrounding the house threw hand grenades inside. After about an hour the commander told me that we were now going to enter Ahmed's house to call Falah. At about 13:00 I entered Ahmed's house and conducted a search. While I was searching through the dirt and ruins, I saw Falah sitting in the corner of one of the rooms of the house. He looked totally exhausted and his face was full of dust and smoke. I said to him: "Falah, give yourself up. Jail is preferable to death". He said: "Come sit here". At that moment a big, dark brown dog came into the house. Attached to the body of the dog was a device in a leather belt. Falah shot at the dog with his weapon, a Kalashnikov. I stayed close to the corner of the room and couldn't move.

At the same time, the soldiers started shooting into the house and throwing hand grenades. Falah and me covered our heads with a blanket during the firing."

In October 2005, the Supreme Court accepted the petition and ordered the IDF to stop using the "prior warning procedure" on account of its being illegal. Among other things, the justices ruled that the conditions governing the procedure – conditions that demand the consent of the local resident and the prevention of any danger to his life – cannot be met. In response to the Court's decision the state submitted a motion requesting an additional hearing before the Supreme Court on the subject.

Military Police Investigations

The disregard for Palestinian human life in the occupied territories is also reflected in the IDF's investigative policy that has resulted, since October 2000, in a minimal number of criminal investigations into the deaths of Palestinians, thereby encouraging a "trigger happy" approach. According to figures published by B'Tselem, between October 2000 and 22 June 2005, only 131 criminal investigations involving shooting by soldiers have been initiated, and only 18 of them led to the filing of indictments. In the same period, 3,185 Palestinians were killed, of whom 645 were minors. Hundreds of those killed were not involved in the fighting against soldiers or Israeli civilians.

Since the beginning of the present Intifada, the Judge Advocate General (JAG) has changed the IDF's policy on this issue; the previous policy determined that a criminal investigation must be opened into every incident involving the death of a Palestinian civilian. With the claim that the present situation is defined as "armed conflict that does not reach the proportions of war," the JAG ruled that criminal investigations would only be initiated in cases in which operational inquiries find that "there is a suspicion of exceptional deviation from the laws governing obligatory behavioral norms."

However, the JAG is only made aware of some of the instances of death, and only

some of the internal inquiries are passed on to the JAG's office. Even those cases that do reach the JAG's office, arrive late, and as a result of the basic inappropriateness of the tools used to investigate the guilt of those involved in the injuring of Palestinians (as opposed to injuries caused to IDF soldiers for example), these inquiries cannot be used for the purpose of deciding whether to open a criminal investigation. In addition, the operational inquiries are carried out by people who are not qualified to carry out a professional investigation, and are themselves part of the military forces whose actions would be the subject of the investigation to be carried out by the Criminal Investigation Division of the Military Police, and therefore the fact that the JAG bases his decision on the findings of the operational inquiries as a condition for opening a criminal investigation, undermines, in practice, the purpose of the criminal investigation – to establish the truth.

In 2003, ACRI and B'Tselem submitted a petition to the Supreme Court challenging this policy, demanding that the JAG order an investigation into every incident in which a Palestinian civilian, who took no part in the fighting, is killed. The response submitted by the petitioners cites statements made by former senior representatives of the military justice system, which relate to the army's tradition of whitewashing and covering up, particularly in regard to the maltreatment of Palestinians. In November 2005, the Israeli Chief of Staff issued an order to the JAG which includes improvements in the reporting system of incidents in which Palestinian civilians are injured, but the procedure falls far short of providing a solution for the serious deficiencies in the investigative system that is detailed in the petition.

Denial of the Right to Compensation

Toward the end of July 2005, the Knesset endorsed amendments to the Civil Wrongs (Liability of the State) Law, which prevents Palestinians from seeking compensation from the state for damages inflicted by the Israeli security forces, even those inflicted outside the context of a military operation, and acts of violence, abuse and looting. The law is applied retroactively to all damages caused since 29 September 2005, and also applies to claims that are currently pending in the courts.

The law sends out a dangerous moral message that the lives and rights of the residents injured in the conflict area have no value, as the court does not provide them with access to an effective remedy, and since those who caused their injuries will face no punishment. The law's provisions in effect dispense with the supervision of army operations in the occupied territories. They encourage the practice of not opening investigations, and of not bringing those responsible for cases of death or injury before the courts, including cases in which damages were caused by the random or deliberate opening of fire, torture and abuse, and looting and theft of civilian property.

ACRI, Adalah, Hamoked, and other human rights organizations submitted a petition to the Supreme Court challenging the law.[17] The petitioners demand that the Supreme

[17] Adalah, HaMoked – Center for the Defense of the Individual, Al Haq, The Palestinian Center for Human Rights (PCHR), B'Tselem, Physicians for Human Rights – Israel, The Public Committee Against Torture in Israel, Rabbis for Human Rights.

Court revoke the law, which blatantly violates the principles of international humanitarian law and international human rights law that apply to the occupied territories, and violates basic rights in contravention of Israel's Basic Law: Human Dignity and Liberty. The Supreme Court recently issued a ruling with regard to the Disengagement Plan Law, according to which the Basic Law: Human Dignity and Liberty also applies to Jewish settlers residing in the occupied territories. The petition demands that the Court rule that the Basic Law also applies to Palestinians in the occupied territories, since any other decision would create a constitutional apartheid regime.

Freedom of Movement – For Jews Only

The separation between Palestinians and Israelis exists on many levels, one of which is the road system that breaks up the occupied territories. According to data published by B'Tselem, 41 sections of these roads, totaling 700 km, are prohibited to Palestinian traffic and only Israelis have free passage.

Freedom of movement for Palestinians was cancelled by law through an order that was issued by the army commander in October 2000 imposing a closure on all of Area A in the West Bank. The situation on the ground has significantly changed over the last few years but the order is still valid and has remained unchanged. In order to ensure the freedom of movement of Israeli settlers who live deep in the West Bank, untenable prohibitions and limitations on freedom of movement were collectively imposed on the Palestinian population, which has destroyed the daily fabric of human, social, and economic life.

The movement of Palestinians throughout the West Bank has been limited to small pockets of land, and only a passageway remains for all "blocks of villages". The exit and entry to and from the Palestinian communities is blocked by cement blocks, dirt piles, ditches, and iron gates or manned checkpoints. In order to leave their defined area, Palestinians must pass through checkpoint after checkpoint, attain a permit to continue onwards or return home if they do not have one. Any man, woman, or child is forced to endure humiliating treatment, and compelled to wait for hours while being uncertain as to if or when they will be allowed to make their way to their ultimate destination – be it for the purposes of a family visit, medical treatment, to reach school, work, or for commercial purposes. Since not all the checkpoints can be crossed in a vehicle (including public transport such as taxis), Palestinian civilians – even if they are handicapped, sick or aged, or if they are carrying a heavy load – are forced to walk dozens or hundreds of meters, and in some cases have to climb mounds of dirt gathered up by the army, until they reach a taxi on the other side that will take them to the next checkpoint; likewise for their journey home. Thus a route that in normal circumstances would only take a few minutes, is liable to take an hour or more, and is liable to cost tens of shekels (a price that most of the population cannot afford). These conditions fatally undermine the ability of the residents of the occupied territories to maintain a livelihood, to work in agriculture, industry, commercial enterprise or services, or to buy or supply merchandise.

Checkpoint Births

One of the most dangerous ramifications of the violation of freedom of movement is the phenomenon of checkpoint births and unsafe homebirths. In August 2005, the United Nations High Commissioner for Human Rights published a report on pregnant Palestinian women who give birth at checkpoints, according to which 61 Palestinian women gave birth at checkpoints between September 2000 and September 2004; as a result, 36 babies died at the checkpoints.[18] The report documents the story of a woman from the village of Salem, in the district of Jenin, who gave birth at a checkpoint while the ambulance that had been called for her was delayed on the other side of the checkpoint. The pregnant women's husband had to cut the umbilical cord with a rock and the baby died. The report also states that in 2005 there was a rise of 7.9% in the number of Palestinian women who gave birth in their homes in the West Bank, as opposed to a 0.5% rise of women who gave birth at home in Gaza.

A debate is currently ensuing as to whether a woman who gives birth at home in Israel is entitled to the birth grant that is paid by the government to women who give birth in hospital. The position of the National Insurance Institute (NII), that was adopted by the court, is that in order to ensure the wellbeing of the women giving birth and their babies, they should be encouraged to give birth in a hospital, which thereby justifies the non-payment of the grant to the women who choose to give birth at home.[19] It is right that this concern for the wellbeing of pregnant women and their babies should be at the forefront of the state's concerns; however, this concern should also extend to women residing in the occupied territories, whose welfare the state is obligated to protect according to international humanitarian law.

Settlements and Settler Violence

The dozens of outposts that were established in the West Bank have resulted in a significant rise in the number of attacks on Palestinian farmers by Israeli settlers. Instead of defending the Palestinian victims from this aggression, the IDF prefers to cause them further suffering by closing off their fields that border the settlements and outposts.

In March 2005, a government report was published on "the unauthorized outposts in the occupied territories" (the Sasson report), exposing the illicit systems employed to erect the outposts and the role that state authorities played in supporting their establishment. The report states that, "the establishment of outposts on private Palestinian land is an intolerable violation of the right to ownership, and it is the duty of the army commander in charge of the area to prevent this." However, the report also made clear that not only did the IDF do nothing to prevent settlers from expropriating land that they do not own, the Civil Administration for Judea and Samaria also allocated private Palestinian land for the establishment of outposts, and the IDF assigned soldiers to protect the illegal residents of the outposts. Even though the report was initiated and published by the government, representatives from the Ministry of Justice and the security apparatus decided to shelve some of its principal

[18] UN Doc A/60/324

[19] Davis v The National Insurance Institute el al.

recommendations that were designed to prevent the establishment of new outposts and to impose sanctions to deter settlers from breaking the law.

In an interview for Channel 7 (a right-wing radio station that is popular among the Jewish settler population) on 4 September 2005, one of the residents of the unauthorized outposts made direct reference to their strategy and said that: "...we take over all the territory adjacent to the farms and the hilltops irrespective of whether or not it is state land, or Arab land, in order to settle the land. There is no chance that an Arab will enter the area surrounding a hilltop upon which we reside, because they understand that it is not 'healthy' for them to come close. Following ongoing and repeated clashes with them we were forced to explain to them that they were the losing party."

After facts have been determined on the ground and an illegal outpost has been established, the IDF provides the settlers with protection and blocks off the Palestinians' access to the fields that border the settlements and the unauthorized outposts, while claiming that this step is necessary in order to protect the Palestinians from attacks by settlers. As a result of a petition submitted by ACRI and Rabbis for Human Rights on behalf of Palestinian farmers, the IDF changed its reasoning and claimed that the closure of the territory was required to protect Israeli settlements in the occupied territories, and that the IDF intended to order the closure of 1,197 dunams (1 dunam = 4 acres) of agricultural land belonging to residents of the petitioning villages. It was claimed that most of the lands were closed to protect the unauthorized outposts and their access routes. Some time later the state again altered its reasoning, and today the official explanation is that the closure of the land to its Palestinian owners is carried out if it is required as a means of providing protection for settlers, including illegal settlements and outposts, and also as a means of contending with settler violence.

As a result of the petition, the policy of closing off land to Palestinians by the army has been officially limited, although on the ground there has been no real change: the army continues to exhibit a lax attitude toward the systematic violence of Jewish settlers against Palestinian farmers, and many Palestinians continue to be afraid to go to their fields or orchards for fear of being attacked by settlers; in some places these attacks involve the use of live fire.

It should also be noted that many of the settlers who carry out the attacks are equipped with weapons that were provided to them by the army. As previously mentioned, the army turns a blind eye to the attacks, and even closes off agricultural land from its Palestinian owners. In addition, the IDF soldiers tie the hands of Palestinians trying to defend themselves against the attacks. One example is found in an incident documented in a complaint that is currently being processed by ACRI: in August 2005, a group of settlers arrived at the site where two shepherds from Hirbat Sussia were tending their sheep on their land. According to the shepherds, the settlers threw stones at them, hit them with sticks, and tried to steal their flock. The shepherds tried to defend themselves and save their herd. A short time later, soldiers arrived to the site and demanded that one of the residents accompany them. The police arrested the two shepherds and held them in custody for more than a week; the shepherds are currently facing trial by a military court on charges of assault and are liable to be sentenced to an extended prison term. In contrast, no known steps have yet been

taken against the settler aggressors.

In those cases in which an investigation into settler violence has been opened, the investigation has not led to bringing those responsible to justice nor has it acted as a deterrent. Thus, for example, according to data provided by the Israeli police to ACRI, during the olive harvesting season in 2004, 40 investigations were opened against Israelis concerning assaults on Arab residents and/or their property. As of May 2005, not one person had been indicted for these incidents (16 files were closed on the grounds of 'unknown offender'; 6 files were closed on the grounds of insufficient evidence; 6 files were closed due to lack of public interest; 1 file was closed due to lack of culpability; 2 files were cancelled; the processing of 4 files has not yet been completed; and 5 files are currently at the office of the Attorney General where the evidence will be examined).

The Separation Barrier

During the past few years, Israel has been constructing the separation barrier, the declared purpose of which is to contend with security concerns related to the defense of Israeli territory; in practice, its construction results in: the Israeli annexation of large tracks of land in the West Bank; the expulsion of Palestinians from their homes and their land; and further restrictions on the freedom of movement of Palestinian residents of the occupied territories, who, even before the barrier was constructed, were subject to extremely limited freedom of movement. A report published by B'Tselem and Bimkom in September 2005 shows that, contrary to the state's claims that the barrier's route was determined solely by security considerations, the central consideration determining the route of many sections of the barrier was in fact the desire to include on the "Israeli" side of the barrier designated territory for the expansion of existing settlements and the establishment of new settlements. The report not only shows that security concerns were a secondary consideration in many areas, but that in areas where security concerns come into conflict with the desire to expand settlements, the planners chose to include the territory designated for the expansion of settlements on the "Israeli" side, even if it undermined security considerations. The state's settlement expansion plans therefore intensified the violation of the rights of the residents of the Palestinian villages adjacent to the settlements.

In June 2004, the Supreme Court issued a ruling ordering the state to change the planned route of some 30km of the barrier in the area of Beit Sourik (to the west and north-west of Jerusalem). The Supreme Court upheld the petition that was submitted by the residents of the village through Attorney Mohammed Dahla; the Court ruled that the balance between security needs and the needs of the residents was disproportionate, and that the military commander must reduce the scope of rights violations of the local residents (even if they cannot be completely averted). As a result of the court's decision, the route of the barrier was reconsidered and in some sections the route was changed.

In July 2004, the International Court of Justice in The Hague ruled that the construction of the separation barrier in the West Bank and around Jerusalem contravenes international law. The court further ruled that Israel must: stop the construction of the barrier in the occupied territories, including Jerusalem and the surrounding area;

dismantle all the sections that have already been built; revoke all legislation relating to the construction of the barrier and its associated regime; and provide compensation for all the damages caused by the construction of the barrier. The Prime Minister, Ariel Sharon, publicly stated that Israel rejects the advisory opinion. The construction of the barrier continues.

Swallowed Up Into Enclaves

The territory between the separation barrier and the Green Line ("the seam zone") has been declared as a "closed military area." No one can enter or continue to reside in this area without a permit issued by the army. The closure of the territory and the associated permit regime impose extreme restrictions on freedom of movement, and completely disrupt the lives of the Palestinian civilian population living adjacent to the barrier.

47 gates that are situated along the separation barrier between Salam and Lalkane are supposed to allow the free daily movement of Palestinian farmers to their land, of students and teachers to their schools, of businessman and merchants to their workplaces, and so on. The opening hours of the gates are erratic (gates are opened for a period of around half an hour each time), and some gates are not in operation. Despite many hearings in the Supreme Court on petitions dealing with the passage through these access points, no real improvements have ensued.

In September 2005, an expanded panel of nine Supreme Court justices accepted the petition submitted by ACRI on behalf of Palestinian residents of the Alfei Menashe enclave challenging the route of the barrier in their area. The petitioners claimed that the route of the separation barrier represents a flagrant violation of international law and illegally infringes human rights. The petitioners further argued that the advisory opinion issued by the International Court of Justice in The Hague reflects international law and is binding on Israel. In response, the Supreme Court ruled that the route of the barrier is illegitimate as it disproportionately violates the rights of the Palestinian residents in the five villages that are surrounded by the barrier and are severed from the rest of the West Bank. However, the Supreme Court rejected the findings of the advisory opinion issued by the International Court of Justice, according to which the construction of the barrier and its associated regime contravene international law. The Supreme Court ruled that the advisory opinion was based on an insufficient evidentiary basis.

The Supreme Court's decision is of great importance for the following two reasons: firstly, for the first time, the court accepted a petition calling for the dismantling of an existing section of the barrier; and secondly, the court ruled that plans for settlement expansion are not legal considerations that can determine the route of the barrier. In practice, the barrier has not yet been dismantled, as the state has still not decided on an alternative route. During the course of the hearings on the petition, demolition orders were issued for five buildings in the village of Wadi a'Rash, among them buildings belonging to three of the residents who were personally involved in the submission of the petition against the route of the barrier in the area; this sent a clear message to

the Palestinian residents designed to deter them from taking legal action against the barrier. Following ACRI's petition to the Supreme Court on this issue, the Court issued an interim injunction prohibiting the demolition orders from being carried out while the petition is pending.

Following the Supreme Court's ruling on the Alfei Menashe enclave, ACRI submitted a petition to the Supreme Court challenging the route of the barrier in the area around the villages of Jayyus and Falamiyah that was also clearly determined by settlement expansion plans.

The Barta'a enclave is located in the northern section of the barrier to the west of the separation barrier (to the west of the village of Ya'abed and the city of Jenin, and south east of Wadi Ara and Um el Faham). Some 4,300 Palestinians live in the enclave, the majority in the village of Ra'at a' Sharkia, and the minority (some 1,000 residents) in four additional villages. The route of the separation barrier runs between the enclave and other parts of the West Bank; there is no physical barrier between the enclave villages and Israeli territory, but movement into Israeli territory is only permitted to individuals holding Israeli identity cards and not to Palestinian residents of the enclave. The Palestinian residents can expect severe punishments if they dare to cross into the state's domain.

The limitations placed upon the opening hours of, and passage through, the gates have cut off the enclave from the rest of the West Bank and undermined freedom of movement, the ability to cultivate land and to reach the workplace, and access to places of education and health services. In July 2005, ACRI appealed to the Prime Minister and the Minister of Defense to abolish the Barta'a enclave, but so far there has been no final answer on the issue.

The Jerusalem Barrier

In Jerusalem, the separation barrier is a high wall that is built on the municipal boundaries of the city, in such a way as to bring about an artificial separation between Palestinian neighborhoods that are located within the municipal territory of the city, and the surrounding neighborhoods, suburbs, and villages that are, in fact, part of Jerusalem, and which represent the center of the residents' lives. The village of Akav, the northernmost neighborhood of Jerusalem, already has some 25,000 residents of the city who are "on the Palestinian side of the barrier". Currently, the construction of the barrier around the neighborhoods of Ras Hamis, Da hit a'Salam, and the Shuafat refugee camp is nearing completion.

In the A-Ram neighborhood in northern Jerusalem a large proportion of the barrier has already been constructed, and when completed will surround the southern and western parts of the neighborhood with a wall, and the southeast side of the neighborhood with a fence. The 58,000 residents living in A-Ram will thus be separated from Jerusalem and this will have a debilitating impact on them and on the residents of adjacent areas who work in the city.

The construction of the barrier around the neighborhood of A-Ram is an imposition of an arbitrary border within a contiguous municipal territory, that is part of the Jerusalem

metropolitan area, and involves cutting off a suburb and its residents from the city on which they depend for many aspects of their lives. This will impact on all elements of the residents' lives, the majority of whom have permanent Israeli residency status.

According to a professional statement of opinion that was prepared by the organization Bimkom – Planners for Planning Rights, it is blatantly apparent that A-Ram, despite the fact that it is a thriving and large municipal entity, is dependent on Jerusalem to such an extent that to cut if off from the city would result in the neighborhood's demise. The residents are dependent on the city for the majority of public services, and for basic infrastructure such as electricity, sewage disposal, and religious services, as well as other aspects of neighborhood management, both urban and cultural.

When the construction of the barrier is completed, the travel time from the neighborhood to the city will be significantly lengthened from the few minutes that it currently takes, and that is without taking into account the delays at checkpoints and passage points. In addition, the distance from A-Ram to surrounding communities in the West Bank will be lengthened by dozens of kilometers, and will result in delays of hours for thousands of people who have permanent residency status in Israel, who live in an urban area to the north of Jerusalem and make their way daily to the city and home again; even now before they have finally been sealed off by the barrier, the education services have been severely undermined, and three schools in A-Ram have already closed after a drastic drop in the number of children registering, who expect to be cut off from their school when the barrier is completed. The construction of the barrier is also expected to infringe upon the right of the residents to access medical services, which are dependent on hospitals and clinics in Jerusalem, and access to centers for the disabled that are located outside of A-Ram.

A-Ram is a vibrant and economic center of the West Bank, and there is a mutual dependence between the residents of the West Bank, in which commercial businesses in A-Ram act as commercial centers for them, and for the residents of A-Ram whose economy is highly dependent on the passage of residents of the West Bank and East Jerusalem through their neighborhood.

There is no logic in the claim made by the state that the barrier is situated along a route that has been dictated by security considerations; according to this rationale the barrier would act as a division between Palestinian and Jewish neighborhoods, and would not be situated on the jurisdictional lines of the city in a way that arbitrarily separates Palestinians from each other. Moreover, the state has not provided any security explanation for its preference for the existing route, over concrete suggestions for alternative routes that have been proposed by bodies such as The Council for Peace and Security, and IPCRI (Israel – Palestine Center for Research and Information). The state has not even clarified whether or not it will consider other security alternatives that would cause a less severe infringement of the rights of the Palestinian residents.

Freedom of Expression

Restrictions on Freedom of Expression during the Gaza Disengagement

Israel's disengagement from the Gaza Strip last year tested both the law enforcement authorities and the Israeli public at large – both proponents and opponents of the disengagement. The public debate over the issue demonstrated the difficulty in drawing the line between legitimate protest and rebellion, and between incitement to violence and breach of the law. In some instances, the authorities took disproportionate steps, unjustifiably infringing on the right to political expression and protest.

Prior to and during the disengagement, the authorities employed harsh measures against opponents, including attempts to restore archaic definitions of violations and attain legislative approval for new types of violations. For example, the Justice Ministry proposed legislation to narrow the limits for freedom of expression and expand the definition of incitement to violence. One result was a decision to charge protestors barricading roads with "rebellion" – a criminal charge from the British Mandate period that the Justice Ministry, in another era, determined was a threat to democracy. ACRI appealed to the Minister of Justice to express its concerns about these attempts to violate freedom of expression.

In July 2005, the police detained buses carrying disengagement protestors to a large demonstration in Netivot. According to some media reports, the licenses of some bus drivers were confiscated so that they could no longer continue transporting the protestors. The attempt to prevent a group of citizens from traveling from one city to another within Israel – based solely on a fear that some or all of them will continue on to a new location (in this case the Kissufim checkpoint) where they will disturb the peace – is not only illegal; it is a serious violation of the right to move about freely. The argument that the prospect of violence on the part of some protestors justified the extreme preventive measures taken by the police against a large number of people is a slippery slope leading to a much more frightening prospect – the sweeping violation of the right to protest. At the time of the incident, ACRI contacted Israel's Police Commissioner to demand that he immediately cancel all orders to detain buses headed for Netivot and act to ensure that citizens who wish to travel there will not be prevented from doing so.

In the complicated reality of the disengagement, law enforcement authorities were required to strike a balance between preserving law and order and ensuring individual rights. There was rioting at the time in which some demonstrators resorted to violence, but the response was never excessive. At the time of the disengagement, about 6,000 people were arrested and some 700 indictments were made (some of them against groups of protesters). Some of the detainees were minors held for a considerable length of time and not permitted to take high school matriculation exams. One 14-year-old girl, who violated "community arrest" to take part in an illegal demonstration but did not have a hand in violent acts, was held in a detention facility until the legal proceedings ended. (See the section on criminal injustice for more information about violations of prisoners' rights.)

Interrogation of Arab Journalists by General Security Service (GSS)

In November 2005, three Arab journalists were called in for interrogation by the General Security Service. They were questioned generally about their connections with media and journalists in Arab countries, as well as about their contact with specific journalists who, according to the GSS, are identified with hostile organizations. One of the journalists interrogated, the director of a web-based Arab news service, was asked to name the site's writers and describe how the site is managed and articles assigned. The interrogators demanded that he refrain from publishing articles by a particular journalist, the objection being not to their content but solely to the writer's identity.

In a letter to Israel's Attorney General, ACRI stressed the fact that interference by the GSS in content appearing in the Arab media is a serious violation of freedom of expression and freedom of the press. Interrogation of journalists about the way the media function, and direct or indirect threats of criminal sanctions for simply maintaining connections with journalists in Arab countries, create an atmosphere of fear that could deter the Arabic-language media from publishing content the government finds disagreeable and compel them to deliver only messages the government wants the Arab public to receive.

The Rights of Disabled Persons

Laws Promoting Equality for Disabled Persons

Last year, the Knesset approved important legislation that grants equal rights for people with disabilities. In March 2005, it passed a law requiring full access to public buildings and services for people suffering from any kind of disability (with full implementation to be achieved gradually over the next 14 years). The passage of this legislation is a landmark event for efforts to achieve equality in Israel.

The new Accessibility Chapter of the Equal Rights for People with Disabilities Law stipulates that offices, residential buildings, schools, event halls, beaches, banks, insurance firms, hospitals, hotels, restaurants, courts of law, public sidewalks, and a long list of other structures must be accessible to the disabled. The same holds true for all types of public services – religious, commercial, entertainment, sports, health, and others. Moreover, all forms of disability must be taken into account – by equipping entranceways with ramps for wheelchairs, employing sign language interpreters for the deaf, installing speaker systems in elevators for the visually disabled, supplying information that is comprehensible to persons with intellectual disabilities, making rules and guidelines more flexible for persons with psychosocial disabilities, and the like.

Other legislation approved by the Knesset in July 2005 requires that television broadcasts be made accessible to persons with hearing loss through subtitles or sign language interpretation. Another law approved in November 2005 makes criminal proceedings accessible to persons with intellectual and psychosocial disabilities by allowing them to provide testimony to the police or in the courtroom in ways appropriate to their particular needs and abilities (whether they are victims or witnesses, suspects or detainees).

According to Bizchut (the Center for Human Rights for Persons with Disabilities), which spearheaded the advocacy efforts in support of the legislation, the progress – however significant – must be accompanied by financial resources and enforcement.

Mental Health Services

A comprehensive reform of mental health treatment in Israel has been taking place over the past several years. The thrust of the reform is to transfer rehabilitation facilities from distant psychiatric institutions to the community. Community-based rehabilitation centers will replace hospitals, and insurance responsibility for mental health services will pass from the Health Ministry to the Kupot Holim (private health funds). Mental health rehabilitation is a prominent example of a social service that has undergone partial privatization in recent years. Some rehabilitation is provided in public, non-profit facilities, but most is performed by dozens of private businesses.

The process of transferring the mentally disabled from hospitals to community settings is proceeding at a rapid pace. Only a few years ago, the number of patients in mental health hospitals exceeded 7,000; by the end of 2005, that number is expected to have dropped considerably, to 3,500 (according to an agreement between the Health Ministry and Finance Ministry). However, community-based rehabilitation requires appropriate facilities for absorbing the patients. According to press accounts,[20] the interim findings of an internal monitoring staff, headed by the Ministry of Health Comptroller, indicate a disturbing decline in the quality of some mental health rehabilitation hostels. The situation has deteriorated to the point where some residents are receiving incompetent, negligent, or inappropriate treatment. The reason for the decline, according to the reports, is political pressure by senior staff at the Health Ministry, which led to some unwise choices of private operators of hostels for the mentally disabled.

These results led the Health Ministry to sever its contacts with the private psychiatric hospitals and transfer most of their patients to community facilities. One hundred of the patients were transferred to state hospitals. Four of Israel's five private psychiatric hospitals petitioned against the Ministry's actions, claiming they stemmed from a conflict of interest. They demanded that patient rolls be reduced in state, not private, hospitals. The Health Ministry claimed it based its decision on the fact that the service provided by the private hospitals fell far short of the service in state hospitals. The Ministry also noted that while state hospitals release nearly 98% of their patients within a year of admission, 88% of the patients at the four petitioning hospitals remain there for over four years. Efforts by the Health Ministry to examine the operation of these hospitals were met by firm – and sometimes violent – opposition.

In 2005, it became known that 70 of the men and women admitted to private psychiatric hospitals currently have no medical need to be there. Their freedom and dignity have clearly been violated as a result. Some have been in these facilities for decades, a situation that serves not the patients' interests but the economic interests of the hospital owners. The Ministry of Health is charged with supervising these hospitals, and it is ultimately responsible for the health and wellbeing of mentally disabled citizens. It has been lax in this function, however, and as of the time of writing (December 2005) has not yet proceeded with the planned transfer of patients to suitable community facilities.

[20] *Haaretz*, November 29, 2005.

Sexual Orientation and Gender Identity

Equality and Dignity

Over the past year, we have witnessed growing recognition in the public and legal arenas of the rights of gay, lesbian, bisexual, and transgender people, and partners in same-sex marriages.

In November 2004, the Knesset approved two important legislative amendments designed to protect the rights of gays and lesbians to equality and dignity – an amendment to the Patient Rights Law outlawing discrimination of patients based on their sexual orientation, and an amendment to the Penal Code that stiffens penalties for crimes motivated by racism or hostility toward a particular group, defined, among other things, by their sexual orientation.

Nevertheless, gay, lesbian, bisexual, and transgender people are still the target of discrimination by government authorities and the private sector. Last year, the first suit of its kind was filed in an Israeli labor court by a transsexual woman who was fired from her job for undergoing a sex change.[21] Since Israeli law does not address the issue of discrimination based on sexual identity, her defense was based on the existing prohibition of firing a worker based on his or her sex or sexual orientation. In the settlement of the case, the plaintiff withdrew her demand to return to her job and received, instead, compensation totaling 24 months' salary.

Despite the impressive progress within the legal system, gay, lesbian, bisexual, and transgender people are still the targets of speech and behavior that portray them as unworthy of existence. The mayor of Jerusalem, Uri Lupolianski, systematically discriminates against the city's Open House (an organization of lesbians, gay men, bisexuals, and transgendered people) in defiance of the official legal position of the municipality. In 2004, Lupolianski adamantly refused to allow the gay pride parade to take place in Jerusalem, and in 2005 the event was only allowed to take place following a ruling by the district court in response to an administrative petition filed by the Open House. The parade was surrounded by an atmosphere of violence, fanned by weeks of incitement by rabbis and others, some from the city's ultra-Orthodox neighborhoods. The violence reached its peak when an ultra-Orthodox man attacked participants with a knife, injuring three people. The perpetrator was charged with attempted murder and is now being tried.

The Rights of Same-Sex Couples

In December 2004, the Tel Aviv Administrative Court accepted a petition filed by ACRI on behalf of a same-sex couple, comprising an Israeli citizen and a foreign national, ordered to leave the country even before his application for legal status was considered. The court ruled that the prohibition on ordering a married couple to separate until a request for legal status is granted is also valid for common-law partners, even those of the same sex. Nevertheless, Israeli law does not fully recognize same-sex partners as a family unit and does not grant gays and lesbians the right to marry and have children. ACRI filed a petition with the Supreme Court on behalf of a gay couple married in Canada, requesting that they be officially registered in the Israeli Population Registry. In response to this and similar petitions, the government's response was that same-

[21] The plaintiff was represented by the Human Rights Program of the Tel Aviv University School of Law, in conjunction with the Association of Gays, Lesbians, Bisexuals and Transgenders in Israel.

sex marriages are not recognized by the state as a legal bond and therefore cannot be registered as such. The Attorney General's position is that this is an issue of social values that should be considered by the Knesset. One key to the Knesset's stance is its omission of same-sex couples from the marriage law amendment proposed by coalition party members, whose intention was to provide an alternative for couples who do not qualify for a religious marriage.

Same-Sex Parents

In response to a petition by a lesbian couple represented by Attorney Ira Hadar, the Supreme Court ruled in January 2005 that the law did not prevent the adoption of the biological child of a woman by her female partner. The court emphasized that its ruling was based on considerations for the welfare of the child; it neither granted new status to same-sex unions as a family unit nor recognized the couple as "man and wife." Another request for a hearing in the matter of parenthood, submitted to the Supreme Court by the government, is pending and undecided. It concerns a May 2000 ruling on a petition filed by ACRI demanding that a lesbian who adopted her female partner's daughter abroad be registered in the Population Registry, and on her citizen's identity card, as the mother of the child. Ever since the Supreme Court received the government's request for an additional hearing, the Interior Ministry has refused to grant any similar request for registration.

The Property Rights of Same-Sex Couples

There was continued momentum last year toward recognition of the property rights of same-sex couples by the legal system and government authorities:

- In November 2004, the Nazareth District Court, in response to an appeal by the Tel Aviv University Human Rights Program, ruled that same-sex couples are entitled to the same inheritance rights that apply to common-law heterosexual couples.
- In December 2004, Attorney General Meni Mazuz announced he had decided not to appeal the Nazareth District Court decision. His position, he stated, was that the property and inheritance rights of same-sex couples must be identical to those of common-law heterosexual couples.
- In February 2005, the Attorney General, in response to a petition filed by ACRI on behalf of a widower who requested survivor's benefits from the National Insurance Institute following the death of his same-sex partner, announced that same-sex partners must be recognized as widows or widowers who are entitled to receive survivor's benefits.
- In May 2005, the Vehicle Licensing Bureau permitted a lesbian couple to register their vehicle in both their names, without having to add a special notation for shared ownership, as is usually required for same-sex couples.