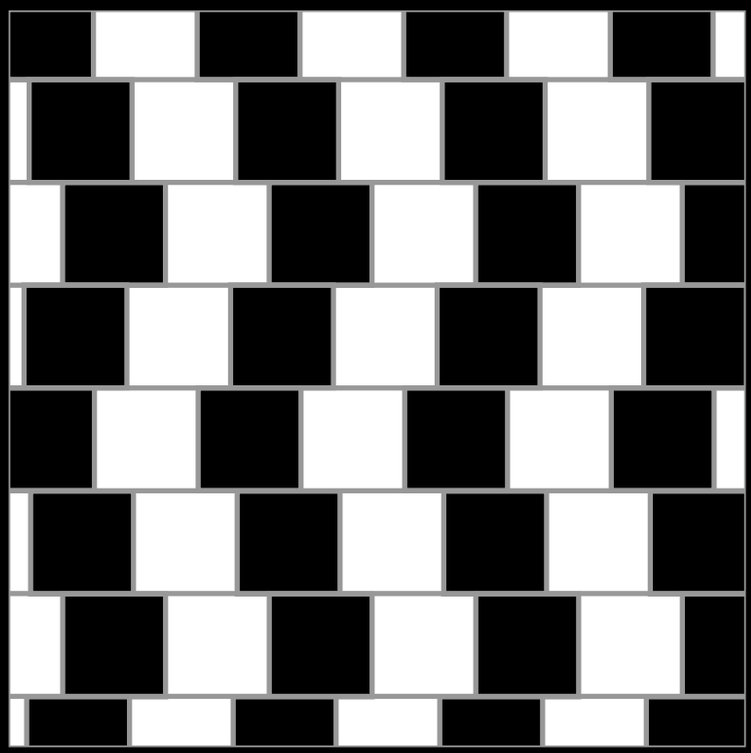
The State of Human Rights in Israel and the Occupied Territories



2009 Report

Human Rights - On Condition,
Democracy - On Condition

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

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Introduction

Every child in Israel learns in elementary school that ours is a democratic country. Commitment to democracy is ostensibly part and parcel of our identity. Both philosophically and historically, a democracy has always been closely linked to a human rights perspective, and some would say that a commitment to human and civil rights derives from democracy.[1] Thus, as we examine the state of human rights in Israel in 2009, what do we learn about the state of democracy in Israel? If human rights in this country are respected only conditionally, is our democracy conditional as well? What does our lack of moral force, which underlies the attempt to make human rights conditional, presage about the threats to our democracy – and to our identity as well?

It is common to distinguish between two approaches to democracy – formal and substantive. Formal democracy concerns only the decision-making apparatus in the state. In a formal democracy, all citizens above a certain age can vote periodically and freely for their government representatives. Between elections, the representatives manage the affairs of state according to the will of the majority. Majority rule is the key principle in the minimalist formal democracy, while human rights, especially those of minorities, depend to a great degree on the good will of the majority.

The principles of formal democracy, however, are insufficient to guarantee a democracy. The prevailing view in a substantive democracy is that the state exists for the benefit of the people, and not vice versa. Accordingly, the moral basis for democracy depends upon the realization of human and civil rights, derived from recognition of the value of human life and dignity, individual liberty, equality, and the understanding that all people, as members of the human race, are entitled to these basic rights. From the perspective of a substantive democracy, the protection of human rights is a central pillar to democratic rule. In this approach, conflicts between the will of the majority and protection of human rights are a natural and necessary reflection of the tension between these two key principles of democracy.

Furthermore, relations between human rights and democracy flow in both directions. On the one hand, the protection of some rights constitutes a necessary condition for democratic rule; these include freedom of expression, freedom of information, the right to organize, the right to elect and be elected, and so on. Without the ability to realize these rights, democracy cannot exist even in its narrow, formal sense – how could the majority express its will, one way or another, without open public debate and access to accurate information? Thus, without the protection of some rights, even a formal democracy cannot endure. Conversely, the safeguarding of human rights is critical to maintaining a substantive democracy, as noted above; hence

[1] For more, see Hagai Schneider, *Democracy without civil rights: Is it possible?*, http://www.acri.org.il/Story.aspx?id=362 (Hebrew); Ruth Gavison, *Civil rights and democracy*, http://www.acri.org.il/Story.aspx?id=365 (Hebrew).

violating certain principles of democracy – such as the separation of powers or due legislative process – also harms the ability to safeguard human rights.

A core theme in this report is a disturbing trend that has been gaining currency in Israel over the past year – both in public discourse and sometimes in practice – to make human rights conditional: on fulfilling some obligation, having financial means, or belonging (or not belonging) to certain groups. This trend, led at times by public officials, policymakers, government ministers, and Knesset Members, stands opposed to the basic tenets of a human rights perspective – that human rights are universal, that every human being is entitled to these rights, and that they cannot be made dependent upon the fulfillment of any duties. Such stipulations harm the cause of democracy, which is grounded, as noted, in the obligation to ensure human rights and protect the minority from the potential tyranny of the majority.

Conditioning or violating rights in Israel has been carried out in various ways and degrees. Sometimes it is open and explicit, especially when directed against minorities – as experienced by the Arab minority in Israel. This past year has seen a wave of racist statements, bills and initiatives threatening the freedom of expression and freedom of political activity of the Arab minority, as well as their right to their language and culture. Also threatened have been some of the Arab minority's most basic rights – to equality, education and employment – as well as their very citizenship, all made conditional on meeting certain requirements, such as army or national service, or accepting the Zionist narrative and "declaring loyalty". For large sectors of the Jewish population and their elected officials, Arab citizens of this country seem to be entitled to equality and safeguarding of their rights only on condition that they abandon their national identity, culture, language and historic heritage.

Conditioning rights has also been introduced indirectly, in covert and insidious ways. For example, the admission committees of various communities, through use of vague criteria such as "social suitability", have been used to exclude and violate the basic rights to equality and housing of anyone deemed "not one of us". These include Arabs, Mizrahim (Jews of Middle Eastern or North African origin), Russians, Ethiopians, religious people, people with disabilities, single-parent families, and same-sex couples. Similarly, some educational institutions have violated the principles of equality and the right to education by selection criteria demanding that students "suit the character of the school", on which basis some recognized but unofficial Haredi (ultra-Orthodox) schools have refused admission to Ethiopian and Mizrahi children.

Financial means has become another mechanism in increased use to condition rights. Over the past two decades, the State has drastically reduced its commitment to ensure social rights – the right to a dignified existence and social security, education, health, adequate housing, and employment. One expression of this is growing privatization, which has worked its way into even the most basic social services, threatening both equality and the universality of social rights. The

realization of these rights, especially the right to education and health care, has become increasingly contingent upon financial means. When social rights are regarded as commodities – accessible only to those who can afford them – democracy is undermined, for the ability to realize social rights is a basic condition for realizing civil rights. Without these, individuals cannot fully participate in or influence the society and state in which they live.

Finally, any discussion of democracy and human rights in Israel must address the situation in the Occupied Territories. For forty-two years, Israel has ruled in an undemocratic manner in the territories it conquered in 1967 – a regime that violates the fundamental rights of several million people in every aspect of their lives. The Occupation casts a dark shadow on Israel's status as a democracy. The human rights of Palestinians living in the Occupied Territories cannot be made conditional – as they do not exist at all. Israeli law has never offered to protect the rights of Palestinians in the territories; nor has the Supreme Court proven itself capable of ensuring even minimal protection for human rights under conditions of occupation.[2] The result of this protracted Occupation has been an undermining of the foundations of democracy within Israel proper – such as exposing the fragility of freedom of expression in Israel during the Gaza war.

When the norms and principles of democracy weaken, the first victims are always minority groups and the weakest segments of society. Sadly, the erosion of human rights in Israel is gaining momentum, both in the number of groups and the rights affected. In 2009, the slippery slope is no longer theoretical, but a tangible and dangerous slide. Human rights are relevant to everyone; together with democracy, they offer us protection. When human rights are compromised, for anyone, we are all in danger, and we will find that our own rights become compromised as well.

A commitment to human rights is a moral imperative and part of the substantive conception of democracy. For those who still recall their civics classes, it is also part of our identity. Particularly in a society as diverse and divided as Israel, a human rights orientation can play an additional role – one of opportunity: an opportunity that a shared identity can be built around our commitment to the universal values of human rights, without conceding religious, national or ethnic identities or any other aspect of our own personal identity. This commitment goes well beyond what divides us, representing values we all share. If we can someday realize this vision, none of us will ever be "on condition". On that day we will all be proud – both in our individual and collective identity – of belonging to Israeli society, as part of a substantive democracy that ensures the human rights of us all.

[2] For more on this, see, for example *Court rulings on trial*, HaMoked: Center for the Defense of the Individual, http://www.hamoked.org.il/bgz_home.asp (Hebrew).

Freedom of Expression – as long as you have nice things to say

Freedom of expression is a basic human right and an essential component of democratic rule. It is this freedom that enables us to exchange views and information regarding candidates, political parties and issues, and as such it represents a necessary condition for political participation by an informed citizenry. Freedom of expression allows citizens to influence and monitor their government, to express a range of opinions, and in particular to critique government activity. Excessive limitations on freedom of expression contravene the basic principles of democratic rule, a system that strives to keep to an absolute minimum the limitations on an individual's rights, particularly basic rights. Safeguarding freedom of expression is especially critical to protecting the rights of minorities.

Israel's Supreme Court, too, has recognized freedom of expression as a basic constitutional right. Like all human rights, freedom of expression is also not absolute, though the Supreme Court has repeatedly established that curtailing this freedom can be justified only in the most extreme cases, where there is a high probability ("near certainty") that such expressions would undermine state security or seriously endanger public order.

Freedom of expression is not conditional upon the content of the utterance. On the contrary, it is not just the freedom to express views espoused by a majority of the people or those in accord with government policy, but the principled freedom to express views that are not part of the national or public consensus, even if these views outrage large segments of the population. The true test of freedom of expression lies in allowing the airing of views that are extreme, controversial, or infuriating. It is the State's obligation to protect the right of its citizens to express such views and to protect their constitutional right to dissent, particularly in times of crisis when a democracy and the rights it guarantees are challenged. In early 2009, during the military operation in the Gaza Strip (Operation Cast Lead), Israel's protection of freedom of expression was put to the test – and failed.

Restrictions on Freedom of Expression and Demonstration during Operation Cast Lead[3]

On 27 December 2008, Israel launched Operation Cast Lead, a military offensive in the Gaza Strip. The activity of the authorities and law enforcement officials during this operation raises grave concerns about their willingness to allow legitimate dissent and to protect those who protest. From testimonies reported to human rights

[3] Written in collaboration with Atty. Avner Pinchuk of ACRI. See also Abeer Baker and Rana Asali, "Prohibited Protest: Law Enforcement Authorities Restrict the Freedom of Expression of Protestors against the Military Offensive in Gaza", Adalah, September 2009, http://www.adalah.org/features/prisoners/GAZA_REPORT_ENGLISH_FOR_THE_NEWSLETTER.pdf .

organizations, including ACRI, as well as reports published in the media, a picture emerges of a court system and police force that failed to internalize their fundamental obligation to safeguard freedom of expression. This is evidenced by their silencing of individuals who participated in fully legal demonstrations in protest of the fighting.

During the three weeks of the Gaza operation, numerous demonstrations and gatherings were held to protest Israel's military activity and the harming of noncombatants.[4] Many demonstrations were unlawfully dispersed because of their political nature, not out of fear of disturbing the peace or posing a security threat. In many instances, academic authorities or institutions prohibited quiet demonstrations or vigils from being held on their premises; law enforcement authorities were called upon to prevent or disperse these gatherings. When permits were approved for demonstrations, the terms were so restrictive that they constituted unjustified limitations on freedom of expression. Hundreds of those who attempted to demonstrate against government decisions and military actions were arrested, and many of these arrests were accompanied by intimidation and dubious charges.[5] Particularly salient was discrimination against the Arab public in Israel. In numerous cases, Arab citizens seeking to express dissent through legal demonstrations were prevented from doing so, either through prohibition of demonstrations, excessive use of force by security forces, preemptive detention of protesters, or harsh words hurled at them by political figures (for more about this, see the chapter on "Palestinian-Arab Citizens of Israel" below).

The State Prosecutor backed the severe policies against demonstrators. Remand requests and indictments were submitted without sufficient evidence, attesting to efforts to suppress dissent against government policies.[6] In several instances, participants in quiet and small demonstrations were indicted for "participating in unlawful gatherings". In one indictment during the war, holding signs with anti-war messages was characterized as "disturbing the peace".[7] During a remand hearing for a group of anti-war protestors, the police reported that they suspected the detainees would continue to "express their opinions"[8] if released. In another case, a police order was submitted to prohibit demonstrators from entering the Tel Aviv area on the grounds that their presence would "undermine national morale".[9] All these evoke images of other times and places, certainly not a democracy in 2009.

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[4] Regarding harm to noncombatants during the fighting in Gaza, see "The Occupied Territories" below.

[5] See, for example, Jonathan Lis, "Israel arrests 700 people, mostly Arabs, in protests against IDF Gaza op", *Ha'aretz Online*, 13 January 2009, http://www.Haaretz.com/hasen/spages/1054763.html.

[6] See, for example, the indictment against six protestors who were part of a completely legal protest vigil in Beersheba under the banner "the South Standing for Peace". In its legal representation of the demonstrators, ACRI argues that the indictment should be cancelled – that it was hastily issued within one day and without a hearing for the detainees, violating the legally protected right to be informed. In addition, contends ACRI, the indictment was filed to deliberately annoy and does not press any charges: the quiet vigil in which the accused participated did not require a permit and therefore there was no justification for its dispersal.

[7] Criminal Case (Miscellaneous Requests) 228/09, *State of Israel v. Tsoref et al*., 15 January 2009.

[8] Request to extend remand, from 000002/09, Tel Aviv-Jaffa Magistrate's Court, before Judge Avraham Cassirer, 2 January 2009.

[9] Misc. Requests 634/09, *State of Israel v. Mahmud Odeh et al*., 7 January 2009.

A review of the legal action taken against demonstrators and the tracking of related court hearings reveals the following: In their desire to silence the dissent of the minority, both the police and prosecutors evinced a disturbing ignorance of the law. For example, in requesting a restraining order against demonstrators arrested outside the Egyptian Embassy – an order that would prohibit them from entering Tel Aviv – the police claimed that the demonstrators were guilty of illegal assembly, when according to the law, this type of gathering does not require a police permit.[10] In another instance, a right-wing activist was arrested because he wrapped himself in an Israeli flag, ostensibly in protest of the display of Palestinian flags in one of the anti-war demonstrations. According to information that has reached ACRI, the counter-demonstrator was approximately one hundred meters from the anti-war group, waving his Israeli flag and not speaking. Police who were securing the demonstration arrested him on the grounds that waving an Israeli flag constituted a provocation. These examples testify to the deeply flawed understanding of Israeli law on the part of law enforcement officials. They reinforce the conviction that we may witness many more such unlawful strictures on freedom of expression in the future.

The conduct of State authorities was reflective of the general atmosphere of intolerance that was pervasive in Israel during the fighting. Media coverage and the voices they chose to broadcast were almost unanimously in support of the operation. Critical commentary that focused on the serious harm inflicted upon Palestinian civilians in the Gaza Strip was all but absent. Much of the information about Gaza conveyed by international or Palestinian sources did not reach the Israeli public at all. This was reinforced by a prohibition against the entry of Israeli and foreign journalists to the Gaza Strip in order to report on the situation from within. The restrictions on media coverage during the conflict led to a sharp drop in Israel's rating on journalistic freedom as measured by international human rights organizations.[11]

In the context of almost unanimous support of the operation by the Israeli public, tolerance of any dissent was minimal. Demonstrators were prey to threats and even attacks by passersby who were supportive of the military action. The atmosphere of violence targeting anyone who attempted to protest the events in Gaza or the manner in which the fighting was conducted – evident both on the streets as well as on the internet – represents one worrisome aspect of the war. However, the fact that the Israeli police, charged with protecting democracy, lent its hand to this serious and unjustified violation of freedom of expression, often with the support of the State Prosecutor, is more worrisome and far more dangerous.

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[10] Misc. Requests 634/09, ibid.

[11] As a result of the constraints on media coverage in Gaza during the fighting, the American organization Freedom House, which promotes media freedom, lowered Israel's rating on the Freedom of the Press Index to "partly free". This is the first such decline since 1980, when the organization first began rating freedom of the press around the world. See "New Study: Global Press Freedom Declines in Every Region for First Time; Israel, Italy and Hong Kong Lose Free Status", 5 January 2009, http://freedomhouse.org/template.cfm?page=70&release=811. Also, in the "Press Freedom Index" of Reporters without Borders, Israel's rating plunged 47 places to 93 in the world. Previously rated first in the Middle East, Israel is now listed after Kuwait, UAE and Lebanon, http://www.rsf.org/en-classement1003-2009.html.

Violations of Freedom of Expression after the War

After the war, freedom of expression continued to be violated, either deliberately or by repressive tendencies in Israeli public discourse. Instead of taking an honest look at its reflection, Israeli society and its institutions chose to smash the mirror; instead of dealing courageously with the unsettling voices of criticism, they turned a deaf ear. Not only were the critics silenced, they were accused and vilified, and their critiques unaddressed. The following are several examples:

- In June 2009, the Deputy State Prosecutor ordered a police investigation into the Indimedia website following the posting of a photo there of an Israeli soldier with the caption, "This soldier murdered Bassem Abu Rahme".[12] The photo referred to a demonstration that had taken place in April near the Separation Barrier on land belonging to the village of Bil'in. During that demonstration, Abu Rahme was killed, apparently by a tear gas canister fired at the demonstrators. The decision to open an investigation against Indimedia is unreasonable and does not give appropriate weight to freedom of expression. Moreover, the offenses listed – insulting a public servant and publication of a photograph that could humiliate or shame him – are groundless under the circumstances, and raise grave concerns about the actual intent of the investigation.[13] Opening an investigation against this website is particularly infuriating in light of the State's failure to investigate incidents of death in the Occupied Territories, including the death of the demonstrator in Bil'in.

- In August 2009, Dr. Neve Gordon, chair of the Department of Politics and Government at Ben-Gurion University of the Negev, published an opinion piece in the *Los Angeles Times* in which he called upon the international community to boycott Israel as a strategy to end the Occupation. Israel's Consul General in Los Angeles sent a strongly worded letter to the University president in protest of Gordon's remarks. This sort of intervention, where an appointed government official approaches a citizen's employer in a blatant attempt to limit the individual's freedom of expression, has no place in a democracy. Rather than rejecting the Consul's complaint outright, however, the university joined in the condemnation, claiming that Gordon's statements reflected a sharp departure from the limits of academic freedom.[14] With this response, the University violated Gordon's right to academic freedom and freedom of political expression, both inalienable and widely protected rights of every citizen in a democratic country.

- A different sort of violation of freedom of expression occurred in Jerusalem during the summer demonstrations by Haredim (ultra-Orthodox Jews) in protest of

[12] Tomer Zarchin, "Investigation against the news portal Indimedia for showing photo of IDF soldier captioned 'Murderer'", *Ha'aretz Online*, 21 June 2009, http://www.Haaretz.co.il/hasite/spages/1094530.html (Hebrew).
[13] See "ACRI to Deputy State Prosecutor: Close Investigation against Indimedia", ACRI, June 2009, http://www.acri.org.il/story.aspx?id=2188 (Hebrew); Avner Pinchuk, "Once again, a heavy-handed investigation against Indimedia", *Blog*: *Ha-Akh HaKatan*, 25 June 2009, http://www.pratiut.com/2009/06/blog-post.html (Hebrew).
[14] Yitzhak Benhorin with Ilana Curiel, "Israeli lecturer endorses international boycott of State", *YNet*, http://www.ynetnews.com/articles/0,7340,L-3765450,00.html.

the arrest of a woman from that community who was charged with starving her young son. Following the violent demonstrations, during which large public garbage bins were set on fire by the demonstrators, Jerusalem Mayor Nir Barkat announced that he would withhold municipal services from ultra-Orthodox neighborhoods where demonstrations took place.[15] So long as the provision of municipal services does not pose a threat to municipal workers, across-the-board withholding of such services constitutes collective punishment, which is prohibited and an illegitimate violation of freedom of expression.

Legislative Limitations on Freedom of Expression

This past year was characterized by a wave of anti-democratic Knesset bills that would also limit freedom of expression. These include the so-called Nakba Law, which, in its original version, threatened imprisonment for anyone who marked Israeli Independence Day as a day of mourning, and, in its current form, would withdraw public funding from any organization so marking the day; the Incitement Law, which threatens imprisonment for anyone who denies the existence of Israel as a Jewish and democratic state; and the proposed Loyalty to Israel Law, which would rescind Israeli citizenship from anyone refusing to take an oath of loyalty to the State. It is no coincidence that most of these proposals are directed against the Arab minority in Israel (see "Palestinian-Arab Citizens of Israel" below). It is particularly troubling that some of these bills received the backing of the government. The government also introduced a bill intended to almost completely ban demonstrations adjacent to the homes of public officials, public service providers, or others responsible for public welfare. The bill passed its first reading in the Knesset, but in the face of objections during a meeting of the Internal Affairs Committee in July 2009, the government is currently working on a revised version of it.[16]

[15] Jonathan Lis, Nir Hasson, Dana Weiler-Polak, Yair Ettinger and Dan Even, "Jerusalem mayor halts services to ultra-Orthodox neighborhoods after another day of violence", *Ha'aretz Online,* 17 July 2009, http://www.Haaretz.com/hasen/spages/1100585.html.

[16] "Protocol of the meeting of the Knesset Internal Affairs and Environment Committee: Proposed law for revision of Police Order (No. 26) (Licensing of Demonstrations) 2009", 21 July 2009, http://www.knesset.gov.il/protocols/data/html/pnim/2009-07-21-02.html (Hebrew).

Harassment of Human Rights Organizations and Activists: Freedom of Expression and Activity – as long as you don't criticize

In 1998, the United Nations General Assembly adopted the Declaration on Human Rights Activists,[17] which recognized the significance of the work of human rights activists and their special status. The Declaration obligates all state parties to respect the human rights of these activists, particularly during the course of their work, and to protect them from violence, threats, retaliatory action and any discrimination that may arise in connection with their activity. The Declaration establishes the right of activists "to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts... [that are] attributable to States" (Article 12(3)). Israel is a signatory to the Declaration, and thereby expressed its willingness to adhere to the provisions of the Declaration and protect human rights defenders.

The health and well-being of a democracy is also manifested in the legitimacy it accords organizations that criticize the conduct of its authorities. The work carried out by these organizations enriches and strengthens democracy, and is vital to it. In a democratic state that seeks to promote free and open public discourse, it is improper for government authorities to use their status and power to threaten or silence critical voices. Nevertheless, we have witnessed over the past two years an increased incidence of anti-democratic actions to limit and reduce the freedom of expression of human rights and political activists, to constrain their ability to carry out their work, and to intimidate and silence them. An alarming trend has emerged this past year: Figures in authority who have been criticized – including senior political figures, government ministers, Knesset Members, and IDF (Israel Defense Forces) commanders – have attempted to deflect the criticism by seeking to undermine the legitimacy of the criticizing organizations.

- In July 2009, Breaking the Silence, an organization made up of discharged combat veterans, published a pamphlet with testimonies of soldiers who participated in Operation Cast Lead.[18] These testimonies called into question the official Israeli version of events and challenged the IDF's image as the "most moral army in the world". The testimonies reported, inter alia, the use of human shields, the destruction of hundreds of homes and many mosques without military justification, the firing of white phosphorous into populated areas, the killing of innocent civilians by small-arms fire, the deliberate destruction of private property, and – most common – a permissive attitude among IDF commanders allowing soldiers to act with impunity.[19]

[17] In its full name, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms". See http://www2.ohchr.org/english/issues/defenders/docs/declaration/declaration.pdf.

[18] Testimonies are posted on Breaking the Silence's website, http://www.shovrimshtika.org/oferet/Hebrew_oferet.pdf (Hebrew).

[19] "Around 30 Israeli soldiers testify about their experiences in Operation Cast Lead", Breaking the Silence, 15 July 2009, http://www.shovrimshtika.org/news_item_e.asp?id=30.

Reaction to this publication by senior IDF officers, Foreign Ministry officials and others representing the Israeli government was harsh. Instead of responding to the content of the eyewitness testimonies, investigating them, and holding discussions about their significance, officials in the IDF and the government preferred a frontal assault on the organization, defaming it and seeking to undermine its credibility and findings. The Foreign Ministry went even further, asking the Netherlands, Britain, and Spain to halt funding for Breaking the Silence and its activities.[20]

- In September 2008, as authorized by the Attorney-General and State Prosecutor, a police investigation was launched against New Profile – a feminist organization calling for the demilitarization of Israeli society – on the suspicion that the organization had incited individuals to refuse to serve in the military. The investigation – the first of its kind in Israel – continued for over a year. In April 2009, the authorities adopted a more severe approach: Police entered the homes of several activists, detained them for questioning and confiscated documents and computers. Police actions were described by the media as a "raid",[21] a term generally used in conjunction with criminal activity. In November 2009, it was announced that the investigation had been closed as had all the case files against the activists, either for lack of culpability or lack of evidence.[22]

The investigation of New Profile represents a serious violation of freedom of expression, and could deter others from engaging in open discourse on a core issue in Israeli society – military service. While Israeli law does prohibit "inciting others to evade military duty", it in no way proscribes public discourse about pacifist ideology nor does it preclude addressing the question of military service as a value in Israeli society. In a democracy, everyone has the clear right to try and convince fellow citizens about whether service in the army is moral, and whether serving or refusing to serve is a more worthy act. The use of criminal procedures to stifle discourse about these issues is extremely troubling, and poses a serious threat to democracy.

- In July 2009, the Oz unit took over from the Immigration Police, intensifying enforcement against asylum-seekers and migrant workers residing in Israel (more about this in "Hate and Racism" below). But it wasn't only migrant workers who were targeted – human rights organizations that aid them were targets as well. Tziki Sela, who until recently was head of the Oz unit, was quoted in *Ma'ariv* newspaper and the NRG news portal as saying about these groups, "These organizations...are anarchists who want to destroy the State of Israel – with three exclamation marks!

[20] Barak Ravid, "Group that exposed 'IDF crimes' in Gaza slams Israel bid to choke off its funds", *Ha'aretz Online*, 26 July 2009, http://www.Haaretz.com/hasen/spages/1102793.html; Barak Ravid, "Israel asks Spain to stop funding group that reported IDF 'crimes' in Gaza, *Ha'aretz Online*, 4 August 2009, http://www.Haaretz.com/hasen/spages/1104513.html.

[21] See, for example, Yuval Goren, Amos Harel and Tomer Zarchin, "Police arrest seven suspected of inciting IDF draft-dodging", *Ha'aretz Online*, 27 April 2009, http://www.Haaretz.com/hasen/spages/1081366.html.

[22] Aviad Glickman with Daniel Edelson, "Case against New Profile Closed", *YNet*, 1 November 2009, http://www.ynet.co.il/english/articles/0,7340,L-3798368,00.html.

We have to uproot them. This is criminal behavior, pure and simple."[23] On a positive note, many Knesset Members and cabinet ministers immediately censured these statements. Minister of the Interior Eli Yishai, however, did not censure them, but rather expressed explicit support of Sela and added, according to published accounts, "These organizations represent a threat to the entire Zionist enterprise."[24] Statements of this kind were also directed against the Hotline for Migrant Workers by Yitzhak Drecksler, head of the Bonds and Guarantees Unit in the Ministry of the Interior, who referred to them as "those lawyers who, for money, are preventing the people of Israel from living in a properly run state and contributing to the demise of morality in Israel."[25] In November, the Hotline for Migrant Workers published a report showing that over the last decade, whenever the Shas party (now holding the Interior Ministry portfolio) held the Industry, Trade and Labor portfolio, the number of permits granted to migrant workers only increased – contradicting Shas statements that it seeks to reduce the number of migrant workers brought in to Israel.[26] In response, Minister of the Interior Yishai (Shas) severely attacked the aid organizations.[27] Again, rather than dealing with the content and critique, the party chose to vilify and undermine the legitimacy of the aid and human rights organizations.[28]

- In July 2009, Physicians for Human Rights – Israel (PHR) published a paper about torture in Israel and physicians' involvement in torture.[29] The organization charged in this paper that the Israeli Medical Association (IMA) has not taken a strong enough stand against torture and does not seriously addressed the issue. It called upon the IMA to "stop shutting its eyes". In response, IMA Chair Dr. Yoram Blachar asked IMA members to sever ties with PHR-Israel. As reported by correspondent Neri Livneh:[30]

> *"The doctors of the Israel Medical Association (IMA) have now been enlisted into the ranks of speech-suppressing patriots...Rather than holding a thorough investigation on such a complex issue, the IMA handed the list over to one man*

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[23] Liat Schlesinger, "Oz unit commander: The aid organizations are trying to destroy us", *Ma'ariv*, 5 August 2009 (Hebrew).

[24] Eric Bender and Michal Greenberg, "Anger at Sela: Opinions reminiscent of totalitarian regimes", *Ma'ariv-NRG*, 5 August 2009 http://www.nrg.co.il/online/1/ART1/926/045.html?hp=1&loc=1&tmp=5772 (Hebrew). Later Sela claimed his statements had been distorted. Dana Weiler-Polak, "Commander of Oz unit: Activities of aid organizations on behalf refugees are legitimate", *Ha'aretz Online*, 6 August 2009, http://www.Haaretz.com/hasite/spages/1105621.html (Hebrew). "Commander of Oz: "I was misquoted in the newspaper", *Galatz Online*, 6 August 2009, http://glz.co.il/NewsArticle.aspx?NewsId=45645 (Hebrew).

[25] Yonatan Golan, "Interior Ministry v. Defenders of Foreign Workers", *Yediot Aharonot*, 30 August 2009 (Hebrew).

[26] "A Decade of Activism for Migrants' Rights: Facts and Figures", The Hotline for Migrant Workers, November 2009, http://www.hotline.org.il/english/pdf/Press_Release_Decade_Report_%20Eng.pdf.

[27] Eyal Datz and Pinchas Wolf, "Yishai: "Migrant workers' aid organizations are anti-Zionist", *Walla*, 11 November 2009, http://news.walla.co.il/?w=/1/1604455&m=1&mid=78058 (Hebrew).

[28] See also Atty. Reut Michaeli, "Stop persecuting civil society organizations", *NRG-Ma'ariv*, August 5, 2009, http://www.nrg.co.il/online/1/ART1/926/211.html (Hebrew).

[29] Hadas Ziv, "Torture in Israel and Physicians' Involvement in Torture", Physicians for Human Rights – Israel, July 2009, http://www.phr.org.il/uploaded/Microsoft%20Word%20-%20%202009יולי-%20סופי%20העינויים%20בנושא%20רלא%20עמדת.pdf (Hebrew).

[30] Neri Livneh, "First and foremost a doctor", *Ha'aretz Online*, 14 August 2009, http://www.Haaretz.com/hasen/spages/1107242.html.

for examination... The superficial probe only served to strengthen the claim that Blachar, as head of IMA, does not take a stand against torture in Israel... But Blachar views it differently. In his eyes, whoever harms his position is anti-Zionist and anti-Semitic. That is to say, PHR is just another leftist, bleeding-heart, slanderous organization that is in need of a beating, like "Breaking the Silence," which is perhaps what they would say on Army Radio. Blachar cannot make such statements directly. Rather, he suggests disrupting the important medical activities offered by PHR and its volunteers. He has no right to do so. His position grants him no such right. It is inconceivable that his childish ego trip against [PHR founder Dr. Ruchama] Marton will prevent medical treatment from reaching those who already struggle to receive it. Blachar is forbidden from doing so, first and foremost because he is a doctor and, more important, because he heads an organization of people whose profession, like his, is fundamentally humanitarian".

- In July 2009, the Knesset resumed procedures to enact the Prevention of Infiltration Law (2008) that had passed its first reading in May 2008. As if the proposed provisions – in brazen violation of the basic precepts of providing protection and care to asylum-seekers – were not enough,[31] the bill also sets long prison terms for anyone convicted of aiding such "infiltrators". Thus, human rights activists who represent refugees or individuals who pity them offer them food or drink, are liable to find themselves guilty of "abetting infiltrators" and facing a prison term of up to seven years.

Harassment of Human Rights Activists in the Occupied Territories

In the Occupied Territories, matters are far worse. The activities there of human rights activists – Palestinians, Israelis, and citizens of other countries – include defending Palestinians from settler violence; helping Palestinians access their agricultural lands; documenting human rights violations carried out by the authorities; filing complaints; distributing information; and taking part in protest activities, such as demonstrations against the route of the Separation Barrier that passes through land of the Palestinian village Bil'in. These activists and organizations operate in areas under Israeli military control and in a hostile and stressful environment. Recently the IDF sought to constrain the activities of human rights activists.[32] Rather than address the issues raised by the activists, security forces prefer "to remove them from the scene", sometimes under the pretext of security. Such IDF actions include:

- **Preventing access under order of a Closed Military Zone.** IDF commanders make frequent use of orders declaring areas in the West Bank to be closed military zones in order to keep activists away, thus preventing them from offering aid to the

[31] "Draft law would imprison asylum-seekers and refugees for five years", ACRI, 4 June 2008 http://www.acri.org.il/eng/Story.aspx?id=492.
[32] See, for example, a letter from Atty. Debbie Gild-Hayo of ACRI to the Minister of Defense on 25 September 2008, http://www.acri.org.il/Story.aspx?id=2053 (Hebrew).

distressed civilian population. For an extended period in the second half of 2008, for example, IDF forces prevented Israeli human rights activists from reaching an area near the village of Tuwani,[33] where Palestinian villagers have long endured intimidation and attacks from settlers residing in nearby outposts. During this year's olive harvest, IDF forces prevented Israeli activists from joining Palestinian farmers in areas near settlements that were declared closed military zones, where Palestinian farmers have been frequently harassed by settlers during the harvest. In early July 2009, Maj. Gen. Gadi Shamni, GOC Central Command, issued an order that the military checkpoints surrounding Nablus were now closed military zones and therefore off limits to Israelis. According to published accounts,[34] the IDF claimed that "activists of leftist organizations, such as MachsomWatch women, represent an increasingly disruptive presence hampering the security activities of IDF soldiers". Israeli human rights organizations protested the sweeping decision to prevent access to the checkpoints. This case illustrates how the pretext of security can be used to deflect criticism and prevent the report and exposure of human rights violations by the IDF.

- **The use of detention, false arrest, and indictment of activists as a deterrent.** The case of Ezra Nawi, a long-time advocate for Palestinian residents of the southern Hebron Hills region and a defender of their most basic human rights, is a good example. In February 2007, Nawi participated in a protest together with residents of Umm el-Khir against the demolition of the home of one of the villagers. In an act of civil disobedience, Nawi sought to block the bulldozer and entered the structure being demolished. He was charged with assaulting a police officer and illegal assembly. Nawi admitted that he lay down in front of the bulldozer and entered the home, but denied he had been violent, and emphasized that he had acted to prevent violence by other participants in the protest.[35] The Court accepted the police

[33] One activist reported to ACRI: "On Saturday, 9 August 2008, we drove in two private cars to Tuwani to attend the 'graduation' ceremony of the day camp there, to be followed by a courtesy visit to Susiya. We departed from Jerusalem shortly after 9:00. The first car, which Ezra was driving, plus one passenger, arrived without incident while the second car, which I was driving, plus my three passengers was stopped five minutes later at the roadblock after Khirbet a-Dirat, before the settlement Carmel (adjacent to an army base). We were not allowed to cross the roadblock as the soldiers on guard informed us that a military order had been issued declaring the whole area a closed military zone, and we were not permitted to make a courtesy call in Susiya. We backtracked and circled, trying to get through via Beit Hagai and Otniel, but we were stopped at the roadblock on the road heading north before the settlement of Livneh. The soldiers were quite friendly, but firm in telling us that only Israeli residents of the area's settlements or their guests were permitted to use the roads in the entire area. We stood our ground in demanding to see a copy of the military order, and after a wait of approximately a half-hour, another jeep approached with an officer bearing a copy of the closure order for the Susiya district. In our conversation with him, we learned that there are prepared closure orders for most of the villages in this area and that it is also forbidden to travel on the road we were on. In answer to our question he added that the orders are in place not only for weekends, but during the week as well".

[34] "GOC Central Command declares roadblocks in Nablus district to be closed military zones", *Nana10*, 3 June 2009, http://www.nana10.co.il/Common/GeneralModules/Ticker/PopUp.asp?pid=48&ServiceID=126&ArticleID=640965&FromList=1&Inews=0 (Hebrew); Hanan Greenberg and Efrat Weiss, "More demolitions in the small outpost: Army roadblocks removed as well", *YNet*, 3 June 2009, http://www.ynet.co.il/articles/0,7340,L-3725481,00.html (Hebrew).

[35] See video clip of the incident on http://www.youtube.com/watch?v=ysIaQUJWBdk posted by the Committee in Support of Ezra Nawi, http://www.supportezra.net.

version and sentenced Nawi to a month in prison.[36]

- **Use of excessive force in dispersing demonstrations.** All acts of protest in the Occupied Territories, even nonviolent demonstrations, are viewed by the IDF as an unlawful disruption of the public order. From the beginning of the protests in Bil'in five years ago against the route of the Separation Barrier that passes through village land,[37] security forces have sought to disperse demonstrators and suppress dissent, often through the use of excessive force, massive and indiscriminate firing of rubber-coated metal bullets, the use of stun grenades, and other violent means, even when no violence on the part of the demonstrators preceded the IDF actions.[38] As a result of violent measures by security forces, demonstrator Bassem Abu Rahma was killed[39] and another demonstrator, Limor Goldstein, suffered serious head injuries,[40] in addition to many more protesters who were wounded.

In 2009, security forces escalated their efforts to suppress the protests at Bil'in. July through August saw an unprecedented wave of arrests carried out against Bil'in residents, including organizers of the protests against the Separation Barrier. Some 25 activists were arrested, some of these remanded until the completion of legal proceedings. These arrests do not appear to be "ordinary" cases of law enforcement, but rather tactics by the authorities to suppress legitimate popular dissent in the village. Accordingly, the detainees include not only youths suspected of throwing stones at security forces, but also local leadership involved in organizing the protest. Although local leaders have firmly insisted on nonviolent methods, some have been arrested and charged in military court with incitement to throw stones and other offenses.[41] The nonviolent protests held in the village of al-Ma'sara in the Bethlehem district have met similar treatment from security forces personnel, who use violence to disperse demonstrations and have arrested many activists.

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[36] Criminal Case (Jerusalem) 3246/07 *State of Israel v. Nawi Ezra*, ruling on 19 March 2009, sentence to begin 21 October 2009. See also Aviad Glickman, "Sentence for left-wing activist Ezra Nawi: One month in prison, *YNet*, 21 October 2009, http://www.ynet.co.il/articles/0,7340,L-3793081,00.html (Hebrew).

[37] The Bil'in demonstrations are as a rule based on a model of nonviolent protest. It is also important to note that in September 2007, the High Court of Justice ruled that the route of the Separation Barrier should be modified to minimize violation of the rights of the area residents. However, to date the State has yet to implement the Court ruling. See HCJ 8414/05 *Yassin v. State of Israel*.

[38] See for example Meron Rapoport, "Symbol of Struggle", *Ha'aretz*, 8 September 2005, http://www.Haaretz.com/hasen/pages/ShArt.jhtml?itemNo=622829.

[39] Bassem Abu Rahma was killed by tear gas canisters shot at him by an Israeli soldier during demonstrations in Bil'in on 17 April 2009. For a video clip documenting the shooting, see **"**22 April '09: B'Tselem to Judge Advocate General: Order security forces to stop firing tear-gas grenades directly at people", B'Tselem, 22 April 2009, http://www.btselem.org/english/firearms/20090422_firing_tear_gaz_canisters_directly_on_people.asp.

[40] Limor Goldstein suffered serious injuries to his head from rubber coated metal bullets shot at him by security forces during demonstrations in Bil'in on 11 August 2006. An indictment was filed solely against the police officer who shot Goldstein, while ACRI, legally representing Goldstein in an appeal to the High Court of Justice, demanded that measures also be taken against the commanding officer of the Border Police unit at the scene.

[41] Among those arrested was Adeeb Abu Rahma, a key organizer of the demonstrations, who was remanded until the completion of legal proceedings. Mohammad Khatib was also arrested, but released on 16 August 2009 with constraining conditions, including a prohibition on his being present in Bil'in on Fridays, when the demonstrations take place.

As noted, the actions of human rights organizations and individuals challenging governmental policies in violation of human rights are of vital importance in a democracy for safeguarding these rights and eradicating abuses. The mirror that human rights organizations hold up to society and the authorities allows us to examine events, draw lessons from them, and shape a more open society – one that is more moral and hence stronger. Therefore, it is incumbent upon the Israeli government to immediately cease all activities that would intimidate, silence or harm the legitimate activity of human rights organizations, allowing them to participate freely in public discourse and pursue their work.

Palestinian-Arab Citizens of Israel: Rights – as long as you're loyal

Discrimination against Israel's Arab citizens, which has existed as long as the State itself, has been documented in many surveys and studies, and recognized in court rulings, government decisions, State Comptroller reports, and other official papers. Nine years have passed since the events of October 2000, and six years since the publication of the recommendations of the Or Commission of Inquiry, appointed by the Israeli government to investigate those events. The Or Commission recommended that the State "act to erase the stain of discrimination against Arab citizens in all its various forms and expressions", but in the interim, the gap between Arabs and Jews in the areas enumerated by the commission – including education, regional planning, and land allocation – have only widened[42].

Over the last few years, and especially over the past year, discrimination against and exclusion of the Arab minority have worsened, taking on new and more severe expressions. The Arab citizens of Israel suffer first from the continuing decline of basic democratic values. Statements made by government ministers, political officials and other public figures reflect their view of Arab citizens as suspect at best; at worst they are portrayed as enemies. The past year saw a wave of proposed laws, racist in their very nature, which could ultimately harm freedom of expression, freedom of political participation, and the right of Arab citizens to preserve their own language and culture. Some would make the rights of Arab citizens conditional upon fulfilling certain duties and obligations, such as mandatory military or national service, or explicit acceptance of the Zionist narrative including a loyalty oath to the Jewish State and the Zionist vision. These contradict the basic tenets of democracy in which rights are inalienable and not contingent upon preconditions. Statements and initiatives of this sort disregard the unique cultural-linguistic heritage of Arab citizens as an ethnic minority, and undermine their legitimacy. Not only do they violate Arab citizens' rights to equality, dignity, and freedom of expression, they also harm their right to maintain their distinct national and cultural character. For many Jewish citizens and their elected officials, Arab Israelis are entitled to equality and protection of their rights only on condition that they relinquish their national identity, culture, language, and historic heritage.

[42] See, for example, Or Kashti, "Israel aids its needy Jewish students more than Arab counterparts", *Ha'aretz Online*, 12 August 2009, http://www.Haaretz.com/hasen/spages/1106955.html.

The Proposed "Nakba Law"[43]

In May 2009, the government supported the Knesset bill that would prohibit the marking of "Nakba Day" (the term, meaning "catastrophe" in Arabic, used by Palestinians to denote the events of the 1948 war and the establishment of Israel), setting prison terms for anyone commemorating this day. In the wake of public outrage, the bill was revised and passed in July in a preliminary reading. The revised version eliminated the threat of imprisonment, but included a clause that would withdraw public funding from any State-supported body that held activities marking the Nakba in any way.[44] At the same time, it was reported[45] that the current Minister of Education decided to remove the concept of Nakba from the Arab school curriculum – a concept that was only recently introduced to the curriculum by the previous Minister of Education. The ban on marking Nakba Day has severe implications. Palestinian citizens have the right to express their opinions, their collective identity, and their collective memory. Commemoration of the Nakba poses no security threat to Israel, but is rather a legitimate expression of a basic right shared by every individual, group, or nation to express its pain at what it considers to be a catastrophe. The proposed Nakba Law not only violates the rights of the Arab minority, but crosses a red line in suppressing freedom of expression for us all.

Removal of Arab Place Names from Road Signs

In July 2009, Minister of Transportation Yisrael Katz decided to revise road signs, doing away with Arab place names (in Arabic and English types) and replacing them with Arabic transliteration of the Hebrew names.[46] Setting aside the questionable logic of this move, the decision is in complete contravention of the recognized status of Arabic as an official language in Israel, which the Supreme Court has upheld. This is one more attempt to symbolically erase the Arab presence from the public sphere. The status of Arabic as an official State language gives recognition to the cultural and historical character of the Arab minority, and their right to a distinct language and culture. The minister's decision violates these rights as well as the basic right of Arab

[43] For more on legislation discriminating against Arab citizens this past year, see Mtanes Shihadeh, "Political monitoring report, April/May 2009", *Mada al-Carmel: Arab Center for Applied Social Research*, http://www.mada-research.org/UserFiles/file/PMP%20PDF/PMP-ENG/pmp4-eng-final.pdf.

[44] Proposed Independence Day Law (Amendment: Prohibition on commemoration of Independence Day or establishment of the State of Israel as a day of mourning) 2009.

[45] Naama Talmor and Nir Yahav, "Sa'ar decided: Arabs will no longer learn about the Nakba", *Walla*, 27 July 2009, http://news.walla.co.il/?w=/1/1524019 (Hebrew).

[46] Sharon Rofeh-Ofir, "The Arabs: Minister Katz may leave, but Jerusalem is forever القُدْس", *YNet*, 13 July 2009, http://www.ynet.co.il/articles/0,7340,L-3745579,00.html (Hebrew). In response to interventions by ACRI and like-minded organizations, the Ministry of Transportation announced that the matter is under further consideration and that no final decision has yet been taken. However, the policy behind the decision has already been implemented in other cases. On some signs directing to Acre and Lod, for example, the Arabic city names have been replaced with transliterations of the Hebrew names in Arabic script.

citizens to dignity and equality, and is especially egregious in its intent to delegitimize and undermine the status of the Arab minority in Israel.[47]

Conditioning Rights on Military Service

In August 2009, Foreign Minister Avigdor Lieberman announced his intention to bar any applicant who did not complete military or national service from the Ministry's diplomatic training program.[48] Another glaring example of this sort of discrimination was the firing by Israel Railways of forty Arab crossing guards at train junctions. Their employment was terminated when a condition was added to the vacancy announcement, requiring that all employees have served in the Israeli army.[49] Prior to the start of the current school year, Minister of Education Gideon Sa'ar presented his plans for compensating schools based on various parameters, including the percentage of students enlisting in the IDF.[50] Conditioning basic rights – such as the right to equality, the right to equal education, and the right to employment – upon military or national service contravenes the basic tenets of democracy.

Discrimination against those who have not served in the army harms not only the Arab minority in Israel, but also ultra-Orthodox Jews and the physically disabled, who are exempt from service. Conditioning rights upon army service has been directed against Jewish Israelis as well. Over the last few years, for example, several mayors in Israel have announced that they would refuse to allow entertainers who had not served in the army to perform in their cities.[51] Notwithstanding these examples, the use of military service as a precondition for rights has been wielded over the years primarily as a tool for discriminating against Arab citizens, and preventing the equal and just allocation of budgets and other public resources.

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[47] For a more extensive discussion, see letter by Auni Banna of ACRI to Minister of Transportation Yisrael Katz, from 16 July 2009, http://www.acri.org.il/pdf/shilut160709.pdf (Hebrew).

[48] Roni Sofer, "Lieberman: Close the cadet course to any who have not served in the IDF", *YNet*, 24 August 2009, http://www.ynet.co.il/articles/0,7340,L-3766191,00.html (Hebrew).

[49] The workers petitioned the Tel Aviv Regional Labor Court to issue a restraining order to bar their dismissal. They were represented in court by Atty. Dori Spivak of the Human Rights Clinic at Tel Aviv University, Atty. Tawfik Tibi and Atty. Sawsan Zaher of Adalah (Labor Case 4516/09 *Qadi et al. v. Israel Railways*). Atty. Tziona Koenig-Yair, Commissioner of Equal Employment Opportunities, joined the case in support of the workers' position. Once legal proceedings began, Israel Railways somewhat modified its stand, proposing "alternative criteria" that permit hiring even those who did not serve in the IDF. On 8 September 2009, the Court ruled in favor of the petition and issued a restraining order barring dismissal of the workers. Specifically, the Court accepted the argument that military service as a prerequisite was discriminatory and irrelevant. Regarding the new criteria, the Court ruled that they were cumulative criteria that an army veteran would meet (which other candidates, including Arabs, would not meet), and therefore they raised suspicion that they would discriminate against candidates who had not served in the army. The text of the Court decision: http://info1.court.gov.il/Prod03/ManamHTML5.nsf/794BAD635C57E24A4225762B0040A919/$FILE/E40094461BDF0A3B42257608003B395C.html?OpenElement (Hebrew).

[50] Yali Moran Zelicovitch, "Sa'ar: Bonuses to teachers as a reward for induction and excellence among students", *YNet*, 26 August 2009, http://www.ynet.co.il/articles/0,7340,L-3767255,00.html (Hebrew); Meirav Arlozorov, "Gideon Sa'ar: "We will reward all school employees from principals to secretaries", *The Marker*, 6 September 2009, http://www.themarker.com/tmc/article.jhtml?ElementId=skira20090906_1112552&from=Haaretz (Hebrew).

[51] See, for example, Hillel Luria Cohen, "You haven't served? You won't perform on Independence Day", *Galatz Online*, 1 April 2009, http://glz.co.il/NewsArticle.aspx?newsid=37919 (Hebrew).

Conditional Citizenship (and by implication all other rights)

The slogan "No loyalty, no citizenship" that headed Yisrael Beiteinu's political campaign prior to the February 2009 Knesset election was received with indifference by most Jewish Israelis, while some enthusiastically supported the notion. After the election, that slogan took substance in the form of the proposed Loyalty to Israel Law.[52] According to this bill, submitted in early April by Knesset Member David Rotem of Yisrael Beiteinu and others, the granting of Israeli citizenship would be conditional upon signing a loyalty oath to "the Jewish, Zionist, and democratic State of Israel, its symbols and values." This oath would obligate every citizen to serve in the military or perform other acceptable national service, and would authorize the Minister of the Interior to revoke the citizenship of anyone who does not sign the oath or refuses to serve the State in an accepted framework. In late May, the Ministerial Committee for Legislative Affairs rejected the bill.

In 1958, the United States Supreme Court ruled that "citizenship is not a license that expires upon misbehavior". Ever since, citizenship has been recognized around the world as a basic right from which all other rights derive. Here in Israel, on the other hand, citizenship remains a "conditional right", certainly where Arab citizens are concerned. In May 2009, for example, Minister Eli Yishai ordered the Ministry of the Interior to begin the process of revoking citizenship of four Arab citizens merely *suspected* of involvement in activities harming state security.[53] Revoking citizenship on the grounds of "breach of trust" is a tactic of totalitarian regimes; the broadly accepted position among democratic states today is that "breach of trust" can never serve as grounds for canceling citizenship. Such actions are exponentially more serious when they are taken on the sole basis of mere allegations. The appropriate response to a citizen suspected of trying to harm state security and the safety of its citizens does not lie in the revocation of citizenship, but rather in the criminal justice system. When such suspicions arise, the individual should be put on trial. If he or she is found guilty, the punishment will be determined by the courts.

Throughout the history of Israel, only in isolated cases has the Minister of the Interior revoked individuals' citizenship. In every case the person in question was Arab, despite the fact that Jewish citizens have also been convicted of treason and espionage, having transmitted state secrets across enemy lines. Initiatives to revoke citizenship do not preserve state security, and only serve to convey a discriminatory and humiliating message to Arab citizens, namely that Israeli citizenship is theirs only conditionally, and not guaranteed.

[52] Proposed Citizenship Law (Amendment: Declaration of Loyalty) 2009.
[53] "Interior Minister begins revocation of citizenship for 4 Arab-Israelis", *YNet*, 5 May 2009, http://www.ynet.co.il/articles/0,7340,L-3711162,00.html (Hebrew).

Violating the Right to Housing

Making rights conditional on "loyalty" has impacted the right to housing this past year. The media reported that the Misgav Regional Council was requiring candidates for residence to pledge loyalty to the Zionist vision and the values of the State of Israel as a Jewish democratic state.[54] Although never stated explicitly, this requirement was clearly intended to prevent Arab citizens from obtaining residence in the region's communities. Some Knesset Members were considering submission of a similar bill.[55] This exclusionary and separatist trend found expression in remarks made by Ariel Atias, Minister of Housing and Construction, who was reported to have expressed concern about the growing Arab population in the Wadi Ara region, stating that it was "inappropriate" for Jews and Arabs "to live together".[56] He proposed that lands be earmarked and marketed for each group separately.

On top of all this, an agreement signed in June 2009 between the State and the Jewish National Fund in the context of land reform provides a further example of discrimination in land allocation.[57] According to this agreement, which enables some privatization of land as part of the reform, the JNF will transfer to the State its ownership of lands in the central region in exchange for available and undeveloped lands in the Negev and Galilee regions. The agreement establishes that the State will administer the JNF lands "in a manner that will preserve the basic principles of the JNF vis-à-vis its lands". The significance of this clause effectively ensures the continued policy of discrimination against Arab citizens in allocating and marketing lands, despite the fact that the body replacing the Israel Land Administration in administering these lands is public, i.e., obligated to respect the principles of equality, fairness, and distributive justice.[58] This policy also dismisses the legal opinion of the Attorney-General, who stated that JNF lands must be administered on the basis of equality.[59] In short, the agreement violates the basic rights of Arab citizens, specifically their right to equality and dignity. Allocation of lands in the Galilee and

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[54] Jack Khoury, "Galilee community admits only supporters of Zionism", *Ha'aretz Online*, 2 June 2009, http://www.Haaretz.com/hasen/spages/1089466.html; Jack Khoury, "Second Galilee town considering 'Zionist values' bylaws", *Ha'aretz Online*, 3 June 2, 2009, http://www.Haaretz.com/hasen/spages/1089728.html; Jack Khoury, "Another Jewish town adds 'Zionist loyalty' to by-laws", *Ha'aretz Online*, 18 November 2009, http://www.Haaretz.com/hasen/spages/1128408.html.

[55] Jack Khoury, "Proposed law: Committee to preserve the "Zionist character' of the community", *Ha'aretz Online*, 2 June 2009, http://www.Haaretz.co.il/hasite/spages/1089820.html (Hebrew). Two such bills were submitted to the Knesset in November by Knesset Members Uri Ariel, Yisrael Hasson, Shai Hermesh, and David Rotem.

[56] Guy Lieberman, "Housing Minister: Spread of Arab population must be stopped", *Ha'aretz Online*, 2 July 2009, http://www.Haaretz.com/hasen/spages/1097411.html.

[57] The reform is anchored in Israel Lands Administration Law (Amendment No. 7) 2009, http://www.justice.gov.il/NR/rdonlyres/6CFC1998-3E3B-4D29-B2B8-D8744AB08CF6/16075/2209.pdf (Hebrew).

[58] See letter from Atty. Suhad Bishara of Adalah and Atty. Auni Banna of ACRI to the Attorney-General, Part II: "Sections of the Transfer Agreement between the State and JNF are Illegal and Discriminatory", ACRI, 13 July 2009, http://www.acri.org.il/Story.aspx?id=2203 (Hebrew).

[59] As reflected in petitions pending in the High Court of Justice concerning discrimination against Arabs in the marketing of JNF land. See HCJ 7452/04 *Abu Rea Gad v. Israel Lands Administration – Northern Region*; HCJ 9010/04 *Arab Center for Alternative Planning v. Israel Lands Administration*, (submitted by ACRI); HCJ 9205/04 *Adalah: Legal Center for Arab Minority Rights in Israel v. Israel Lands Administration*.

Negev exclusively for the benefit of Jews will only exacerbate the plight of the Arab population living predominantly in the Galilee and Negev. The communities suffer from a severe lack of development, proper planning, and egalitarian allocation of land. Furthermore, the agreement raises concerns that the State will transfer to the JNF lands over which ownership suits by members of the Bedouin community are pending and on which unrecognized Bedouin villages have been built, or lands that could in the future provide solutions to the planning crisis of the Negev Bedouin.

Violating Freedom of Expression and Political Involvement

In the previous section on freedom of expression, we discussed the violations of this basic right over the past year, particularly during Operation Cast Lead. As is generally the case, whenever there is a decline in democratic norms and principles, the first to be negatively impacted are minority groups; here too, the main victims were Arabs.

During the attack on Gaza, protests against the military action took place in most Arab towns in Israel. Often these demonstrations were dispersed by the police through undue force or the mass arrests of protestors. In many cases, police prevented demonstrations from taking place at all.[60] Testimonies collected by ACRI indicate that law enforcement officials used a heavy hand and unreasonable force against Arab demonstrators. Furthermore, the police response to events on the Arab street represented a departure from the normal guidelines used in responding to Jewish demonstrators. The belligerent and discriminatory attitude of State authorities toward Israeli Arab protest activities was also evident in many statements made by Israeli public figures at the time. These include: "We have to hit the Arab rioters in Jaffa with all our force, an iron fist and no mercy";[61] "we will act with an iron fist against any Hamas sympathizers in our midst";[62] "no loyalty, no academic degrees"[63] (in response to Arab student protests).

Testimonies collected by ACRI also point to preemptive arrests on the part of police and security forces during the war period. Arab activists and public figures were arrested on suspicion that they might take part in anti-war activities, with no real evidence of their having broken any law. Many other activists were subjected to "persuasive discussions" with security officials in an attempt to dissuade them from participating in protest activities. These testimonies present a troubling picture in which the Israel Police together with the General Security Services coordinated a well-planned intimidation campaign to suppress political dissent against the

[60] See Abeer Baker and Rana Asali, "Prohibited Protest: Law Enforcement Authorities Restrict the Freedom of Expression of Protestors against the Military Offensive in Gaza", Adalah, September 2009, http://www.adalah.org/features/prisoners/GAZA_REPORT_ENGLISH_FOR_THE_NEWSLETTER.pdf

[61] Yoav Zeitun, "We have to hit the Arab rioters in Jaffa with all our might", *MyNet*, 15 January 2009 (Hebrew).

[62] Shahar Ilan, "Operation Cast Lead. Ehud Barak: 'We will expand the operation as necessary'; Benjamin Netanyahu: 'We will act with an iron fist against Hamas sympathizers in our midst'", *Ha'aretz Online*, 29 December 2008, http://www.Haaretz.co.il/hasite/spages/1050938.html (Hebrew).

[63] Nativ Nachmani, Naama Talmor, and Nir Yahav, "Hundreds of demonstrators block major artery in central Tel Aviv", *Walla*, 29 December 2008, http://news.walla.co.il/?w=/22/1407164 (Hebrew).

government's policies during the war. For example, the summoning of activists to the police station for "discussions" often included the unexpected appearance of security officials at individuals' homes, invasive body searches, harassment, and verbal threats even before the police began the official interrogation. These illegal summonses ended with the activists seated opposite seasoned interrogators who would launch into a tirade of insinuations, verbal humiliations, and threats. Interrogators leveled accusations lacking any factual basis, all for the purpose of intimidating the activists. In this way, law enforcement officials attempted to dictate the political agenda of the Israeli mainstream to the Arab minority, and to nip in the bud any political dissent by Arab citizens.

The Arab population in Israel is part of the Palestinian people. In light of the cultural connection and familial ties between Arabs in Israel and Gaza residents, it was natural and to be expected that protest of the war would occur on a larger scale in the Arab sector. The conduct of security forces toward Arab protest highlights the insufficient understanding on the part of the establishment and law enforcement agents of the limits on freedom of expression as applied to the Arab minority. A similar point was noted by the Or Commission, when describing the reaction of security forces to the protest of Arab citizens during the events of October 2000. The commission emphasized that:

> "*It is imperative that we act to uproot manifestations of prejudice against the Arab sector that were demonstrated even by the most respected senior police officers. The police must impress upon its officers the idea that the Arab public as a whole is not their enemy, and must not be treated as such*".[64]

The basic attitude of the security forces and of many Israelis toward Arab dissent seems not to have changed since the events of October 2000. They continue to view the Arab minority as a threat which must be silenced. The conduct of the police forces during Operation Cast Lead proves that they still relate to the Arab citizen, and even more so to the Arab citizen who wishes to protest or demonstrate, as an enemy who presents a clear and present danger. Another example of the problematic mind-set on the part of the security forces was exposed recently in the *Ma'ariv* newspaper and the NRG news portal, which reported that a scenario was scripted by security forces in which, during a war in the north of Israel, an infantry regiment would be assigned to prevent a "revolt" by residents of Umm al-Fahm.[65] The message is clear: From the army's point of view, Arab citizens of Israel side with the enemy and therefore the army must be ready to act against them.

Yet another example in which the Arab minority's freedom of political expression was violated occurred at the beginning of the year, when the Central Elections Committee decided to ban the Balad and United Arab List-Ta'al parties from running in the

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[64] *The Official State Investigation into the Clashes between Security Forces and Israeli Citizens in October 2000*, Chapter 6: Summary and Conclusions, Parag. 15, http://elyon1.court.gov.il/heb/veadot/or/inside6.htm (Hebrew).

[65] Roi Sharon, "The fear: In wartime Arab Israelis will revolt", *Ma'ariv-NRG*, 5 May 2009, http://www.nrg.co.il/online/1/ART1/886/421.html (Hebrew).

Knesset elections of February. The decision did not hold up in court: the Supreme Court overruled the ban and allowed both parties to run in the elections.[66] However, the mere fact that such an attempt was made – to exclude the elected representatives of a national minority group from running for Knesset, to silence opposition voices, and to violate the right to elect and be elected – is a setback not only to the minority group in question, but to democratic rule in Israel as a whole.

Racist Views

The message conveyed to the general public, namely that the Arab minority in Israel is presumed an enemy – to mistreat, exclude and discriminate against – is no less damaging than efforts to constrain Arab activity. The attitudes evinced by State authorities toward Arab citizens serve as a model for the public's attitude toward them. According to the 2009 Democracy Index published by the Israel Democracy Institute,[67] 53% of the Jewish public in Israel supports encouraging the emigration from Israel of Arabs; 54% of the total population (both Jews and Arabs) agree that "only citizens loyal to the State are entitled to civil rights"; 38% of the Jewish public believe that Jewish citizens are entitled to more rights than non-Jewish citizens; and only 33% of the native Jewish population and 23% of new immigrants are willing to have Arab parties join the government. According to the survey authors, the data reflect relatively broad support for revoking the political rights of Israel's Arab minority.

The events in Acre during Yom Kippur in September 2008 also demonstrate the danger of tolerating such a fiery and hostile atmosphere toward the Arab public in Israel. The violent clashes that erupted in the city between Jews and Arabs – sparked by an Arab man driving through the streets on Yom Kippur Eve and ending with dozens injured and extensive damage to (mostly Arab) property – reflect the destructive byproducts of such a social climate.[68]

A true democracy must be able to incorporate an indigenous national minority and to respect its culture, language, and historical memory. A state that would limit the basic rights of its citizens to freedom of expression and political liberty, that repeatedly narrows the boundaries of legitimate public discourse, and that brands citizens as enemies is a state that deals a blow to human rights, seriously endangers democratic values, and calls into question its ability to be defined as a democracy.

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[66] Election Appeal, 561/09 *Balad: National Democratic Alliance et al. v. Central Elections Committee for the Eighteenth Knesset et al.*, http://elyon1.court.gov.il/files/09/610/005/n02/09005610.n02.htm (Hebrew). Adalah submitted the appeal.

[67] Asher Arian, Michael Philippov and Anna Knafelman, *The Israel Democracy Index 2009: Twenty Years of Immigration from the Soviet Union*, Israel Democracy Institute, http://www.idi.org.il/sites/english/PublicationsCatalog/Documents/Democracy_Index%2009.pdf. See also Idan Yosef, "One third of the Arabs: 'Only those loyal to the State are entitled to rights'", *news1*, 3 August 2009, http://www.news1.co.il/Archive/001-D-209468-00.html?tag=09-36-48 (Hebrew).

[68] On the events in Acre, see Yossi Mizrachi, "Police add forces following events in Acre: 700 police officers posted around city", *Channel 2 News-YNet*, 10 October 2008, http://reshet.ynet.co.il/6154.aspx (Hebrew); Jack Khoury, Nadav Shragai and Yoav Stern, "Police spread across Acre in tense wake of Arab-Jewish riots", *Ha'aretz Online*, 11 October 2008, http://www.Haaretz.com/hasen/spages/1027633.html.

Bedouin Rights – as long as you live where we tell you

In the Negev, tens of thousands of people live in over thirty unrecognized villages that have existed for decades, some predating the establishment of the State. Some Bedouin reside on their ancestral land, some on lands to which they were evicted by the government decades ago. The State refuses to officially recognize these villages, excluding them from regional and municipal planning. The authorities refer to these villages and their inhabitants as "the dispersion". As far as the State is concerned, these villages are illegal settlements that have to be evacuated and their residents moved to existing townships. In the absence of proper plans, construction in these villages is executed without a permit, and residents fear for losing their homes and having criminal measures taken against them. Since the villages are classified as unrecognized, the State denies them the most basic services and infrastructure, including running water and sewage infrastructure, roads, and connection to telephone lines and electricity grids, thereby effectively denying them the right to build a home legally. The education, welfare and health care services as well as employment opportunities in the villages are extremely limited. As a result, the basic rights of residents are continuously violated and curtailed, including the rights to health, education, housing, dignity, and equality.

The State offers two alternatives to citizens who reside in these unofficial villages: to continue living there in appalling conditions or to be uprooted from their rural villages and moved to one of seven recognized townships – centers of poverty and unemployment – or to one of the rural villages that have received official recognition over the past few years and been incorporated into the Abu Basma Regional Council, but at the expense of relinquishing rights to their lands and traditional lifestyle.

In December 2008, the Commission for the Resolution of Arab Settlement in the Negev chaired by retired Supreme Court Justice Eliezer Goldberg ("the Goldberg Commission") released its findings.[69] On a declarative level, the Commission made several critically important statements – some unprecedented. The Commission recognizes that Israel's official policies toward Bedouin citizens in the Negev have been inappropriate, and it recognizes them as Arab citizens dwelling on their historic lands or on lands allocated to them by the State. They are recognized as residents of the Negev and not "trespassers". The Commission recommends that the State recognize existing Bedouin villages and legalize construction within them – construction that occurred without permits for lack of an alternative. Despite these promising statements, the Commission's practical recommendations could very well maintain the very injustices it acknowledges.[70] The Commission's report fails to say

[69] Commission report on the *Ministry of Construction and Housing* website: http://www.moch.gov.il/Moch/VariousPages/DochVaadaHetiashbutBeduit.htm (Hebrew).

[70] See Hassin al-Rifa'ah, "Response to the Report of the Committee on Regulation of Settlement in the Negev", Regional Council of Unrecognized Villages, 28 December 2008, submitted to the Prime Minister, Interior Minister and Housing Minister. The document was posted on the website of the newspaper *Akhbar Alankab*, http://www.akhbarna.com/upload_file/6088421235722138.pdf (Arabic).

unequivocally how to go about recognizing specific Bedouin villages. On the contrary, it presents a number of impediments that could indefinitely delay or even halt the recognition process for individual villages. For example, the report recommends that recognition of villages be conditional upon their alignment with current regional plans, although the current master plan ignores the existence of many of these villages. Furthermore, the report fails to provide clear recommendations for implementing a joint planning process or concrete guidelines to guarantee basic services and infrastructure and spur economic development.[71]

The government accepted the Goldberg Commission recommendations and established a committee to oversee its implementation under Ehud Prawer, head of policy planning in the Office of the Prime Minister. The Prawer committee's recommendations have not yet been released, but if the previous handling of the unrecognized settlements and the Negev Bedouin is any indicator, even the positive conclusions of the Goldberg Commission may very well result in more authorities, committees, and official bodies issuing decisions that go nowhere,[72] rather than implementing any real change.

[71] On the issue of land ownership, the report makes statements that are not reflected adequately in its recommendations. The Commission notes that according to a pre-State survey commissioned by the British, the Bedouin were cultivating 2 million dunam of land in the Negev in 1943. Following conquest of the Negev in 1948, most of the Negev Bedouin were ousted from their lands and transferred by government order to a restricted zone (the *Sayeg*) – located between Beersheba, Arad, Yeruham, and Dimona. Of the 2 million dunam cultivated by the Bedouin before Israel took over the Negev, the Bedouin claim they now own less than 800,000 dunam (by ACRI's calculations, constituting about 6% of Negev lands). The Commission report states that these ownership claims are based on the traditional Bedouin deed system, which were never accepted by either the Ottoman or the Israeli legal systems and never stood a chance of being recognized. Today Bedouin are actively maintaining their claims to fewer than 600,000 dunam of land (according to ACRI's calculations, a bit more than 4% of Negev lands) (Goldberg Commission Report, http://www.moch.gov.il/Moch/VariousPages/DochVaadaHetiashbutBeduit.htm, pp. 8-19) (Hebrew). The Commission recommends recognizing ownership of only a small portion of this land, and – in the new arrangements –most landowners would be dispossessed from a significant portion of their lands. Regarding the land ownership claims, the Regional Council of Unrecognized Villages claims in response to the report that the Commission essentially recommends adopting some solutions that have failed in the past, and even adding its own new discriminatory mechanisms.

[72] For an analysis of Israeli government policy toward the Bedouin over the years, see Shlomo Swirski and Yael Hasson, "Invisible Citizens: Israel Government Policy Toward the Negev Bedouin", February 2006, Adva Center, http://adva.org/UPLOADED/NegevEnglishFull.pdf. The Goldberg Commission itself, under the heading "More and more commissions", notes, "We will not list here the many commissions that have in the past recommended solutions to the Bedouin settlement issue. The proliferation of commissions has not resulted in the significant improvement for which they were established, they left no lasting impression, and in fact almost nothing has changed in their wake". See Goldberg Commission Report, pg. 19, http://www.moch.gov.il/Moch/VariousPages/DochVaadaHetiashbutBeduit.htm (Hebrew).

Criminal Justice Rights – as long as you're not suspected of a security offense[73]

In recent years, Israeli law has seen important developments in the protection of the basic rights of criminal suspects and detainees. The constitutional right to legal representation was bolstered significantly in a 2006 precedent-setting ruling by the Supreme Court that a violation of this right could, in certain cases, lead to the inadmissibility of a confession made by the suspect.[74] The right of an individual suspected of a serious crime to have his or her interrogation properly documented has also garnered recent support. After repeated delays, the constitutional obligation to record interrogations by video when the offense carries a possible sentence of 15 years or more has recently come into effect.[75]

In this context, it is important to recall that a suspect enjoys the presumption of innocence while his or her possible involvement in a crime is being examined. Any investigation or interrogation that does not respect the rights of the suspect and takes place without the requisite oversight could yield false confessions and the conviction of innocent people.

Despite these advances, when an individual is suspected of a security offense, the most basic guarantees for ensuring due process are shamelessly discarded. In cases of security offenses, a suspect may be detained and interrogated for several days, cut off entirely from the outside world – without being brought before a judge or being allowed to meet with an attorney – and left to the mercy of his interrogators. Such incarceration, sometimes called incommunicado detention, represents a very serious violation of the constitutional principles of Israeli law and the norms of international law. It opens the door to the use of improper interrogation techniques, even torture, and severely undermines due process.

In cases of security offenses, the initial judicial oversight following arrest can be delayed under certain circumstances for up to ninety-six hours.[76] At the same time, the suspect may be prevented from meeting with an attorney for three full weeks.[77] As if this were not enough, interrogations carried out by the General Security Services are always exempt from the requirement of video documentation.[78] According to a temporary order extended in 2008 for an additional four years, police investigations of security offenses are also exempt from the video requirement.[79]

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[73] This chapter was written by Atty. Lila Margalit of ACRI.
[74] Criminal Appeal 5121/98 *Issascharov* v. JAG (unpublished, ruling from 4 May 2006).
[75] Criminal Procedures (Interrogation of Suspects) Law (2002). The requirement to document investigations for crimes carrying sentences of 10 years or more is also scheduled to take effect by 1 January 2010.
[76] Parag. 3 of the Criminal Procedures (Detainees Suspected of Security Offenses) (Temporary Order) Law (2006).
[77] Parag. 35 of the Criminal Procedures (Enforcement Authority: Arrests) Law (1996).
[78] Parag. 1 of the Criminal Procedures (Interrogation of Suspects) Law (2002), which, in fact, defines interrogation as a preliminary inquiry by a police officer.
[79] Parag. 17 of the law.

The situation in the Occupied Territories is considerably worse. Even for offenses not related to security, arrested suspects are routinely held for eight days before being brought before a judge (for more on detentions in the territories, see "The Occupied Territories" below). Draconian regulations prevent suspects from meeting with an attorney, and the obligation to document interrogations does not apply at all. According to the Incarceration of Unlawful Combatants Law (2002), a suspect can be detained for up to fourteen days with no judicial oversight whatsoever and prevented from meeting with an attorney for up to twenty-one days.

Hate and Racism: Rights – as long as you're one of us

In mid-2008, the Oz unit replaced the Immigration Police and began to intensify enforcement of residency laws against asylum-seekers and migrant workers living in Israel.[80] Once again, migrant workers were accused of causing unemployment, although it was Israel that invited them here and continues to invite thousands more to work in areas neglected by the local labor force – nursing care, agriculture, and construction. Law enforcement efforts were also accompanied by harsh statements against these foreign nationals made by Oz officers and other public figures, statements that went so far as to dehumanize them. A sample of statements made by Oz inspectors, as reported in *Ma'ariv* and NRG: "Burglars, junkies, and street people"; "They pollute the country with drugs and disease and take jobs away from our unemployed...They come and stay and have children...pollution and filth...they can spread diseases. They rob and steal".[81] When interviewed by the newspaper about the arrest of migrant workers, inspectors used terms more appropriate to describe merchandise than human beings – [the workers were…] "picked", "amassed", "stored", "loaded into", and "stockpiled". It was also reported in the media that upon creation of the Oz unit, a senior Ministry of the Interior official sent them off with the words of Deuteronomy, "And you shall excise the evil from within your midst".[82] In another instance, the Ministry of the Interior made public the arrest of a foreign resident with leprosy who had been working in a Herzliya restaurant. The Ministry's announcement, in deliberate violation of the law, was issued for the sole purpose of fomenting fear and hatred. It failed to mention that the migrant worker was in treatment, not contagious and posed no risk to the public.[83] The media further quoted Interior Minister Eli Yishai, as saying that migrant workers "will bring with them a bounty of diseases".[84]

In this harsh reality, a ray of light is the wave of public protest in the wake of heightened expulsion efforts: Human rights activists have joined with refugees, migrant workers, and ordinary citizens to express their protest; Israel's president together with cabinet ministers and Knesset Members have voiced opposition to the Interior Ministry policy of expelling the children of migrant workers, and have

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[80] See, for example, Dana Weiler-Polak, "65% of Immigration detainees – political refugees", *Ha'aretz Online*, 20 July 2009, http://www.Haaretz.co.il/hasite/spages/1101501.html (Hebrew); Dana Weiler-Polak, "Oz unit report: 700 foreign workers arrested, 2,400 leave voluntarily", *Ha'aretz Online*, 19 October 2009, http://www.Haaretz.co.il/hasite/spages/1122064.html (Hebrew).

[81] Liat Schlesinger, "Hunting season: A week in the field with the Oz unit", *NRG-Ma'ariv*, 8 August 2009, http://www.nrg.co.il/online/1/ART1/926/528.html?hp=1&loc=3&tmp=7961 (Hebrew).

[82] Dana Weiler-Polak, "Email to Immigration Authority employees: 'And you shall excise evil from within your midst'", *Ha'aretz Online*, 7 July 2009, http://www.Haaretz.co.il/hasite/spages/1098432.html (Hebrew).

[83] Ronny Linder-Ganz, "Who is the leper here?", *Ha'aretz Online*, 11 August 2009, http://www.Haaretz.com/hasite/pages/ShArt.jhtml?itemNo=1106832&contrassID=2&subContrassID=6&sbSubContrassID=0 (Hebrew); Ran Cohen, "The truth about the leper in Herzliya, *YNet*, 11 August 2009, http://www.ynet.co.il/articles/0,7340,L-3760243,00.html (Hebrew).

[84] Eyal Datz, "It appears deportation of children of foreign workers will be postponed", *Walla*, 31 October 2009, http://news.walla.co.il/?w=/90/1599189 (Hebrew).

supported efforts to resolve their status issues;[85] city council members in Jerusalem and Tel Aviv published emotional letters of support for refugees, asylum-seekers, and migrant workers living in their cities, declaring that Oz inspectors are not welcome in their towns.[86] In light of the public protest, the "Hadera-Gedera" rule – forbidding asylum-seekers from residing in the center of the country, anywhere between Hadera in the north and Gedera in the south – was rescinded.[87] In July, Prime Minister Benjamin Netanyahu announced a three-month suspension in expelling the illegal children of migrant workers[88] to enable formulation of a policy for dealing with the children and their parents, and this period was recently extended until the end of the school year.[89] However, no policy has been set to date, neither regarding the refugees and asylum-seekers nor the status of Israeli-born children of foreign citizens. And the State continues its old ways – pursuing migrant workers and then coming up with temporary solutions only when forced to do so. A far more appropriate course would be for the State to chart a clear and reasonable policy toward migrant workers,[90] cancel the "binding arrangements", and fight the revolving-door policy[91] in which migrant workers are brought to Israel, eventually lose their status and face expulsion, and are replaced by new migrant workers.

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[85] For example, Gideon Sa'ar, Minister of Education, submitted a proposal to the government against deporting children here illegally and their parents (see "Minister Sa'ar against deportation of foreign workers' children", Website of Reshet Bet, Kol Israel, 28 July 2009, http://www.iba.org.il/bet/?entity_code=554637) (Hebrew). Knesset member Nitzan Horowitz introduced a bill intended to prohibit the arrest of minors solely for purposes of deporting them – see http://www.acri.org.il/Story.aspx?id=2202 (Hebrew). President of Israel Shimon Peres called on Interior Minister Eli Yishai not to deport the children of foreign workers (see Smadar Peled and Oren Aharoni, "Yishai concedes: Refugees are permitted to live in the center of the country as well", Channel 2 news-mako, Keshet, 30 July 2009, http://www.mako.co.il/news-israel/education/Article-de4e3d9912cc221004.htm) (Hebrew).

[86] See reports of letters sent by Dr. Meir Margalit, Jerusalem City Councilor, and Asaf Zamir, Deputy Mayor of Tel Aviv, to the commander of the Oz Unit: Dana Weiler-Polak, "65% of Immigration detainees – political refugees**",** *Ha'aretz Online*, 20 July 2009, http://www.Haaretz.co.il/hasite/spages/1101501.html (Hebrew); Yoav Zeitun, "Children of refugees know who Herzl and Bialik were", *MyNet*, 29 July 2009, http://www.mynet.co.il/articles/0,7340,L-3753929,00.html (Hebrew).

[87] In July 2009, a consortium of human rights groups, ACRI among them, submitted a petition against this policy. In the wake of the Interior Minister's announcement that the policy had been rescinded, and after 250 foreign residents held in custody for breaking this regulation were released, the petition was cancelled, http://www.acri.org.il/Story.aspx?id=2197 (Hebrew).

[88] "Press Release to the Media Regarding Illegal Migrant Workers", Prime Minister's Office, 30 July 2009, http://www.pmo.gov.il/PMO/Communication/Spokesman/2009/07/spokeimm300709.htm (Hebrew).

[89] "Prime Minister's Decision regarding Illegal Aliens in Israel", Prime Minister's Office, 1 November 2009, http://www.pmo.gov.il/PMO/Communication/Spokesman/2009/11/spoovdim011109.htm (Hebrew).

[90] See "Principles for the Settlement of Employment Arrangements of Migrant Workers in Israel**",** Kav LaOved, ACRI, Hotline for Migrant Workers, Physicians for Human Rights – Israel, Adva Center, and the Tel Aviv University Law and Welfare Program, August 2009, http://www.acri.org.il/pdf/migrantworkers0809.pdf.

[91] See, for example: Dana Weiler-Polak, "The revolving door: Israel struggling with deportations of migrant workers, while State continues to issue new permits", *Ha'aretz Online*, 15 July 2009, http://www.Haaretz.com/hasite/spages/1100270.html (Hebrew); Gilad Natan, "Reform in employment of foreign workers in the nursing sector put to the test", Knesset Research and Information Center, December 2009, http://www.knesset.gov.il/mmm/doc.asp?doc=m02167&type=doc (Hebrew); Ruti Sinai, "Why is the government investing NIS 200 million to deport 50,000 foreign workers? To make room for 100,000 new migrant workers who will earn the big shots big bucks", *Ha'aretz Online*, 2 October 2002, http://www.Haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=215228&contrassID=0 (Hebrew).

Hate and racism do not stop there. Over the past year, they have targeted not only "foreigners", but also other subgroups in a society riddled with dissension and conflict.[92] A survey published by *Ha'aretz* in August 2009 pointed to a high level of intolerance and negative attitudes toward most sub-sectors of Israeli society – Arabs, ethnic Ethiopians and Russians, Haredim (ultra-Orthodox Jews), and settlers. It also reported that many of those surveyed felt that their own sector was singled out for incitement, while at the same time they noted their own intolerance toward other groups. According to the 2009 Democracy Index, issued by the Israel Democracy Institute and devoted to the twentieth anniversary of the large immigration wave to Israel from the Soviet Union, the veteran Israeli population has developed negative stereotypes regarding the "Jewishness" of the Russian immigrants and the rise in crime. About one-third of the veteran population, according to the data, is unhappy that the immigration ever took place.[93] Negative attitudes toward Russian immigrants have been on the rise this year, also in connection with the shocking murder of the Oshrenko family of Rishon Lezion, when it was revealed that the alleged murderer was of Russian origin.[94]

The Haredi population draws a particularly high level of hate and incitement against it. Whether because of unusual cases regarding allegations of child-abuse by Haredi mothers (nicknamed by the media "The Starving Mother" and "The Taliban Mother"), or Haredi demonstrations against the opening of Jerusalem parking lots on the Sabbath, or other incidents, intense racism has been directed against the entire Haredi community. Take, for example, the protest that erupted against a few Haredim moving into the Ramat Aviv neighborhood and their plan to open a religious preschool there.[95] The media reported on a meeting held by local residents who decided "to make life in the neighborhood unbearable for the Haredim".[96] In Kfar Yona, town residents signed a petition against establishing a secondary school under the auspices of the Shas party.[97] In Jerusalem, the Hebrew University canceled tenders for the purchase of two buildings it owned in the Kiryat Hayovel

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[92] "Israelis are homophobic, fearful, and intolerant toward most sectors", *Ha'aretz Online,* 7 August 2009, http://www.Haaretz.com/hasite/spages/1105758.html (Hebrew).

[93] Asher Arian, Michael Philippov, and Anna Knafelman, *The Israel Democracy Index 2009: Twenty Years of Immigration from the Soviet Union*, Israel Democracy Institute, http://www.idi.org.il/sites/english/PublicationsCatalog/Documents/Democracy_Index%2009.pdf.

[94] Lili Galili, "Crying over spilt blood", *Ha'aretz Online*, 12 November 2009, http://www.Haaretz.com/hasen/spages/1126282.html; Lili Galili, "Police: Russian immigrants have not raised the national crime rate", *Ha'aretz Online*, 8 November 2009, http://www.Haaretz.com/hasen/spages/1126294.html; Ronen Leibovitch, "Landver: Gratuitous racism surrounding Oshrenko murders", *Nana10*, 3 November 2009, http://news.nana10.co.il/Article/?ArticleID=675406 (Hebrew).

[95] Karin Spingold, "Religious wars in Ramat Aviv: Parents at the Arazim School threaten to sue the Municipality", *NRG-Ma'ariv,* 23 July 2009, http://www.nrg.co.il/online/1/ART1/920/593.html (Hebrew).

[96] "Ramat Aviv residents plan to chase out the ultra-Orthodox", *MyNet*, http://www.mynet.co.il/articles/0,7340,L-3713551,00.html (Hebrew). See also Gideon Levy, "Anti-Semitism is rearing its head in Tel Aviv", *Ha'aretz Online*, 14 May 2009, http://www.Haaretz.com/hasen/spages/1085474.html.

[97] Liran Tetro, "Kfar Yona: Residents oppose the Shas school", *NRG-Ma'ariv*, 11 July 2009, http://www.nrg.co.il/online/54/ART1/914/798.html (Hebrew) and http://www.Haaretz.co.il/hasite/spages/1103182.html (Hebrew).

neighborhood, because of pressure on the University not to sell the buildings to a Haredi purchasing group.[98]

A serious outgrowth of hatred is violence. The hatred, racism, and intolerance of the past year seem to have led to a particularly high level of violence – both interpersonal and society-wide. This was reflected, especially in the latter half of this year, in a series of shocking murders, exceptional both in their number and cruelty. Although the appalling murders in August at the Israeli LGBT (Lesbian, Gay, Bisexual, and Transgendered) Center in Tel Aviv[99] were condemned unequivocally by public figures of all political stripes, the depth of animosity toward members of the gay community was evident in the responses of internet surfers[100] and the reactions of some of the victims' own families, who turned their backs on them at this most difficult hour. One Haredi website outdid itself in calling for the arrest and trial of the managers of the "pervert club" in which the murders took place.[101] Intolerance was also seen among members of the gay community, who hurried to blame Haredim,[102] without any knowledge of the circumstances of the crime or a single clue tying the murders to the Haredim or any other sector.

As journalist Aluf Benn wrote:

> "*Lacking an external enemy (at least so far), 2009 should be called "the year of hatred". Israeli public discourse has focused in recent months on virulent attacks on various groups: Arabs, the ultra-Orthodox, settlers, liberal-secular. 'They' are depicted as terrible enemies plotting against us, as people whose political and social power must be broken…These days it is unacceptable to incite against Mizrahim [Jews of Middle Eastern or North African origin] or people from the former Soviet Union or Ethiopia. After the recent murders at the gay community center, derogatory remarks about homosexuals and lesbians have been delegitimized. It's a pity that it took bloodshed*".[103]

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[98] Nir Hasson, "Under pressure: Hebrew University decides not to sell to ultra-Orthodox", *Ha'aretz Online*, 27 July 2009, http://www.Haaretz.co.il/hasite/spages/1103182.html [Hebrew); Ronen Medzini, "Ultra-Orthodox on cancellation of the tender: Apartheid and hypocrisy", *YNet*, 28 July 2009, http://www.ynet.co.il/articles/0,7340,L-3752999,00.html (Hebrew).

[99] An armed person entered the center during a social gathering of LGBT youth, and opened fire, killing Nir Katz, a youth leader, and Liz Trobishi, and injuring ten others. See "Murder at Bar-Noar", GLBT Union, http://www.glbt.org.il/contentItems.php?sectionID=1145&parentID=664 (Hebrew).

[100] Tom Goldhand, "Censored talkbacks: Portrait of the nation", *Walla*, 2 August 2009, http://news.walla.co.il/?w=//1530512 (Hebrew)**;** "The pride community registers complaint against Facebook group", *Nana10*, 5 August 2009, http://news.nana10.co.il/Article/?ArticleID=655614 (Hebrew).

[101] Uri Blau, "Ultra-Orthodox website finds the murderer of the gay-lesbian youth: The club leaders", *Ha'aretz Online*, 20 August 2009, http://www.Haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=1108907 (Hebrew).

[102] Ilan Goren, "Incitement by rabbis and other public figures led to the community's bloodletting", *Nana10*, 2 August 2009, http://news.nana10.co.il/Article/?ArticleID=654661&sid=126 (Hebrew); Amnon Miranda, "Chair of the Gay-Lesbian Union: This is a baseless hate crime", *YNet*, 2 August 2009, http://www.ynet.co.il/articles/0,7340,L-3755413,00.html (Hebrew); Ayala Hananel, "We must use caution when laying sectoral blame for the Tel Aviv shooting", *Walla*, 3 August 2009, http://news.walla.co.il/?w=/1/1531484 (Hebrew).

[103] Aluf Benn, "The year of hatred", *Ha'aretz Online*, 13 August 2009, http://www.Haaretz.com/hasen/spages/1106974.html.

Rights of the Elderly – as long as you're young[104]

The elderly in Israel represent one of the fastest growing minority groups in the country, the result of a falling birth rate combined with increased life expectancy. The collapse of the Pensioners Party in the last parliamentary election signaled a return of the elderly to the status of an excluded and deprived population. Despite the traditional attitude of Judaism, Christianity, and Islam, which ensures the dignity of their elders, many older people in Israeli society suffer from ageism, exclusion, discrimination, and poverty.

Poverty rates for the elderly in Israel are among the highest in the western world.[105] Whereas this past year has seen a slight drop in the poverty rate due to an increase in old-age allowances (primarily for those of advanced age), these allowances are no longer linked to the average wage but to the Consumer Price Index. This means that the real value of pensions in the coming years will likely drop, and the financial situation of the elderly can be expected to deteriorate.[106]

Regarding health, long-term care for the chronically ill (in facilities serving the mentally frail or other chronically ill patients) has remained the responsibility of the Ministry of Health and has not been transferred to the national health funds (Kupot Holim), despite the recommendations of the Netanyahu Committee.[107] Therefore, the health funds have no financial incentive to invest in preventive health care or rehabilitation for patients approaching old age, because these funds bear none of the financial burden for providing long-term, chronic care. Indeed, to obtain State support for long-term chronic care, both the elderly patient and his or her adult children must pass a means test, in direct contravention of the universal right to health care. Furthermore, as a result of the new pricing system used for Ministry of Health tenders, chronic care facilities in Israel are receiving reduced compensation for their services, leaving them unable to provide the appropriate, dignified care that their elderly residents and hospitalized patients require. Thus we see a growing number of institutions that cannot maintain minimal medical standards, or are forced to reduce or infringe on the rights of their staff, all of which has the effect of lowering the standard of health care for elderly patients.

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[104] This chapter was authored by Dr. Israel (Issi) Doron, Atty. Carmit Shai, and the Association of Law in the Service of the Elderly.

[105] During the first half of 2008, poverty levels in Israel among families headed by an elderly person was 53.1%, not including various pension payments and taxes, and 22.2%, after adding these amounts. Jenny Brodsky, Yitschak Shnoor, and Shmuel Be'er, *The Elderly in Israel: A Statistical Abstract- 2008*, Myers-JDC-Brookdale Institute and Eshel: Association for the Planning and Development of Services for the Aged in Israel, http://www.jointnet.org.il/mashav/publications.php?cat=7&incat=0 (Hebrew). For comparison, in countries like Austria, Canada, France or Germany, poverty levels among the elderly (including allowances and taxes) are under 10%.

[106] This is because, over time, the average salary will increase more than the Consumer Price Index, allowing for an overall rise in quality of life and actual purchasing power of the family. Thus while quality of life is rising for the rest of society, that of individuals relying on a state pension linked to the index remains static and therefore, compared with the rest of society, the quality of life slowly declines.

[107] The Report of the Official State Commission of Inquiry to Analyze the Functioning and Efficiency of the Israeli Health care System, headed by Supreme Court Judge Shoshana Netanyahu, was submitted in 1990.

In the field of employment, the elderly in Israel are both excluded and suffer blatant discrimination. The Retirement Age Law (2004) is largely responsible for this, enabling employers to oust workers who reach retirement age, regardless of their skills or qualifications, without this being considered formal dismissal.[108] Unlike the United States and certain Canadian provinces that have done away with mandatory retirement, Israel continues to prevent people from keeping their jobs solely on the basis of age.

The Equal Opportunity in Employment Law (1988), which prohibits discrimination on the basis of age, has become a weak tool for combating age discrimination. Two years ago, in a disappointing decision, the Supreme Court ruled that if a job candidate is past retirement age, the State may take his or her age into consideration when considering preferences for the recruitment of new employees, and that this does not constitute age discrimination.[109] It is not only the elderly, but also significantly younger people, aged 50 and up, who encounter real difficulties in finding jobs, especially when employers illegally discriminate against applicants solely on the basis of age.

Excluding the elderly from employment reinforces their negative image in society, and this job discrimination spills over into other areas of life, including participation in cultural activities, social activities and volunteer work. Three years ago, for example, the civil guard in Israel began excluding senior citizens from its ranks of volunteers. It currently refuses to accept retirees, and has instituted "mandatory retirement" for volunteers who have reached the usual retirement age of the job market.[110]

An important area in which the rights of the elderly have been trampled this year concerns chronic-care insurance. This chapter in the National Insurance Law represents one of the greatest legislative successes in ensuring the rights of the elderly in Israel, and a high percentage of the elderly make use of this benefit. Nevertheless, economic pressure has been exerted to reduce the scope of this law, and the results are significant. For example, an amendment to a law (framed as a temporary order) was supposed to have established administrative committees for the purpose of expediting appeals against decisions by the National Insurance Institute (NII) to deny chronic-care benefits, but until recently the amendment was not enacted. Only following a petition to the High Court of Justice[111] was the law amended, the appeals committees established, and a government bill drafted to extend the temporary order. Because of the State's failure to do so before the petition

[108] A lawsuit is currently being deliberated in the Regional Labor Court that challenges the constitutionality of the Retirement Law: Labor Court 5526/09 *Libby Weinberger, Law in the Service of the Elderly Organization, et al. v. Bar Ilan University*.

[109] HCJ 4487/06 *Kelner and Law in the Service of the Elderly v. National Labor Court et al.,* http://elyon1.court.gov.il/files/06/870/044/H09/06044870.h09.htm. (Hebrew).

[110] A petition is pending on this matter – HCJ 7957/07 *Sadeh et al. v. Minister of the Interior et al.* – that was submitted jointly by former civil guard volunteers, Law in the Service of the Elderly, the Yad Riva organization, and the Israel Association of Retired Persons.

[111] HCJ 44/09 *Fatma Sandekali and Law in the Service of the Elderly v. National Insurance Institute*.

was submitted, many of the insured elderly were unable to challenge decisions made by the NII to deny them chronic-care benefits.

An important positive development has been the recent Court decision to obligate the NII to inform all clients who receive survivor benefits that they also have the right to submit claims for old-age benefits. The Magistrate's Court in Haifa ruled[112] that the NII is obligated to send letters to all insured clients and inform them of this in plain language and within a reasonable amount of time before they reach the age of eligibility. The letter must also explain the possible implications of postponing such a claim. This Court ruling sends a meaningful and principled message to the NII regarding its obligations toward elderly clients.

Finally, there is ever-increasing awareness of the physical abuse and neglect of the elderly. In recognizing the seriousness of the problem, Israeli criminal law has been amended[113] so that any attack on a senior citizen that causes serious bodily injury is now considered a felony for which punishment can be especially severe – more so than an "ordinary" assault on a non-senior – with a mandatory prison term. Similarly, the Prohibition on Slander Law was recently modified to include a prohibition on humiliating a person on the basis of his or her age.[114] Though statistics point to some reduction in the number of attacks on the elderly over the last few years, this has far from disappeared. We are still witness to shocking assault, abuse, and neglect of helpless seniors, sometimes perpetrated by family members and sometimes by caretakers or the professionals charged with protecting them. Similarly, the elderly still encounter financial exploitation, which has not yet been addressed by the law.

In summary, Israel's social policies continue to take a view of the elderly that focuses on their dependency, weakness, and neediness. The time has come for Israeli law and society to focus on the strengths and rights of the elderly population. We should concentrate on effectively ensuring their equality, social rights, and full participation as citizens in Israeli society, to prevent them from becoming dependent and impoverished.

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[112] Magistrate Court Case 8227-07-08 *Friedman v. National Insurance Institute*, http://www.nevo.co.il/Psika_word/shalom/SH-08-07-8227-827.doc**.** Law in the Service of the Elderly joined the case as *amicus curiae*.

[113] Article 368f of the Penal Law 1977.

[114] http://www.knesset.gov.il/Laws/Data/law/2214/2214.pdf (Hebrew). After this amendment, Parag. 1(4) of the law states that slander constitutes expressing scorn for someone on the basis of his race, ethnicity, place of residence, age, sex, sexual orientation, or disability.

The Right to Education – as long as you fit in[115]

One expression of privatization in Israel's education system is the "private schools". Although they have existed in Israel for years and some have been adopted by the establishment (e.g., the kibbutz school system), over the past few years private schools have proliferated.[116] The term "private school" refers to any school not under the auspices of the State or regional councils, including schools in the longstanding Amal or ORT networks, kibbutz schools, Arab schools run by the Church, and Haredi (ultra-Orthodox) schools. Recently "private" secular schools have appeared with specific educational agendas or philosophies, such as the democratic and anthroposophic schools, as well as schools whose uniqueness is the better conditions they offer (e.g., smaller class size, high-quality teachers, etc.).

The term "private schools" is misleading, however. All these schools are actually part of the "recognized but unofficial" education system and receive significant State funding. Recognized but unofficial schools receive from the Ministry of Education 75% of the funding allocated to official State schools.[117] In May 2007, an amendment to the State Education Law was passed,[118] requiring that regional councils, too, fund these unofficial institutions at 75% of what they allocate to official schools.

To be "recognized", a school must have more than ten students and apply for a license from the Education Ministry. To receive the license and recognized status (meaning 75% State funding), the institution must meet criteria set by law and the Education Minister. These include pedagogical standards (proper curricula, staff training, etc.), technical standards (safety, equipment, etc.), and oversight of tuition. As reported in the media, according to Knesset Member Zevulun Orlev,[119] who heads the Knesset Education Committee, the application process is quite simple and the Education Ministry has almost no authority to prevent private schools from opening. After schools receive recognition, State authorities do not have adequate tools to oversee them, ensuring that they abide by State laws, such as preventing discriminatory behavior (see below).

The entire subject of "recognized but unofficial" schools is a complex one that raises profound questions about the right of parents to make decisions about their children's

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[115] Prepared with the assistance of Atty. Michal Pinchuk of ACRI.

[116] For data, see for example Meirav Arlozorov, "Israel is destroying its public education system", *The Marker*, 3 September 2009, http://www.themarker.com/tmc/article.jhtml?ElementId=/ibo/repositories/stories/m1_2000/skira20090903_1111998 (Hebrew)

[117] With the exception of schools belonging to the independent (ultra-Orthodox) and *Ma'ayan HaHinukh HaTorani* (Shas) movements, which receive full funding per Parag. 3(10) of the Foundations of the Budget Law. A third category is Schools with Exemptions, which include Talmud Torah institutes that have minimal Ministry of Education oversight and are exempt from the provisions of the Compulsory Education Law. These schools receive an allocation equivalent to 55% of standard school hours. .

[118] Parag. 11a of the State Education Law, an amendment known as "the Nahari Law", http://www.knesset.gov.il/Laws/Data/law/2096/2096.pdf (Hebrew).

[119] Lior Datel and Rina Rosenberg, "We aren't relying on the Ministry of Education: How private education is purchased at public expense", *The Marker*, 28 August 2009, http://www.themarker.com/tmc/article.jhtml?ElementId=skira20090828_1110681 (Hebrew).

education, equality in education, the legitimacy of State intervention in determining educational content and the character of a given school (by setting conditions for public funding), and more. We will deal here briefly with two of these issues.

Violating the Right to Equality in Education

Gaining entry into recognized but unofficial schools is limited to relatively few students due to the admissions policies in place (despite Ministry of Education directives, which are not enforced). Admission may depend on entrance exams, the decisions of admissions committees, or other criteria. Policies of discrimination in admission to these schools made headlines at the start of the current school year, when the media revealed that schools in Petah Tikva had closed their doors to Ethiopian students. According to reports,[120] the three national-religious "private" schools in Petah Tikva conditioned admission of Ethiopian students on their "fitting in with the character of the school" – a criterion that essentially guaranteed their rejection. In the Haredi school system, instances of segregating Ashkenazi and Mizrahi (Jews of Middle Eastern or North African origin) students are well-known, as are quota systems limiting the acceptance of Mizrahi students to certain schools. In August 2009, the Supreme Court accepted a petition claiming discrimination against Mizrahi elementary school girls in the Beis Yaakov school in the town of Emmanuel.[121] According to reports, however, discrimination there continues unabated.[122] Recent reports of a new trend have reached the media: Mizrahi families have been changing their last names to more Ashkenazi or neutral-sounding name to improve their child's chances of admission to a desirable school.[123]

Because unofficial recognized schools are heavily subsidized by public funds (at a rate of 75%), they must be accessible to the entire public without discrimination. A number of recent court rulings on the subject have re-affirmed this principle: A religious or cultural minority has the right to establish schools suited to its needs, offering an education in accord with its specific worldview; if the school receives

[120] See, for example, Or Kashti, "Ten days till school starts: Petah Tikva schools stand fast in refusal to accept Ethiopian students", *Ha'aretz Online*, 20 August 2009, http://www.Haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=1108855&contrassID=1&subContrassID=10 (Hebrew).

[121] HCJ 1067/08 *Noar K'Halakha v. Ministry of Education*, http://elyon1.court.gov.il/files/08/670/010/o24/08010670.o24.htm (Hebrew). Already in 2006 in response to an ACRI petition, the Administrative Court in Jerusalem stated that it is up to the authorities (the Ministry of Education and the Jerusalem Municipality) to prevent ethnic discrimination in the Beis Ya'akov girls' seminaries. Administrative Petition 241/06 *ACRI v. Ministry of Education, Culture and Sports* (Judge Yehudit Tzur, ruling from 26 April 2006).

[122] Or Kashti, "Despite Supreme Court ruling, discrimination against Mizrahi students continues in Emmanuel", *Ha'aretz Online*, 4 September 2009, http://www.Haaretz.co.il/hasite/spages/1112378.html (Hebrew).

[123] Kobi Nachshoni, "The road to a Lithuanian style yeshiva via Ministry of the Interior", *YNet*, 7 September 2009, http://www.ynet.co.il/articles/0,7340,L-3772998,00.html (Hebrew).

State funding, however, it must safeguard the principle of equality, as the State is obligated to equality in allocating its resources.[124]

The high tuition charged by unofficial recognized schools creates an additional layer of discrimination – financial, in which students are accepted based on their parents' financial means. These two filters – admission criteria and a family's financial means – are no longer unique to unofficial but recognized schools; they have found their way into the public school system as well. Both types of discrimination are also commonplace in State-sponsored "supra-regional specialized schools" – schools that offer targeted curricula and are therefore in high demand – such as the Nature School and the School for the Arts, both in Tel Aviv. Despite the prohibition, both schools require entrance exams and also charge high tuition. Although some specialized schools offer financial aid to assist families with limited means, not all children of such families are eligible. A similar example is the "specialized track" in regular public schools not classified as supra-regional specialized schools. Enrollment in a "special track" entails additional tuition of thousands of shekel a year and also requires a personal interview to determine the child's suitability for the special program.[125] In this way, public schools can offer higher quality education to some children whose parents can afford additional tuition fees, while being subsidized by public funds. In effect, they have created two educational systems – one for children from families with means and one for those with limited means – within the same public school.

Decline of the Public School System

It is not coincidental that the proliferation of recognized but unofficial schools has been accompanied by an ongoing decline in the public school system. According to the latest annual report of the OECD (the Organization for Economic Cooperation and Development) for the years 2006-07, the economic investment per student in Israel[126] is relatively low,[127] classrooms are much more crowded than the average in developed nations, teacher salaries are low, and student achievement is mediocre. It shouldn't surprise, then, that 61% of parents polled in a recent survey reported that they would prefer to send their children to "a private school".[128]

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[124] HCJ 4805/07 *Religious Action Center v. Ministry of Education*; HCJ 1067/08 *Noar K'Halakha v. Ministry of Education*.

[125] For example, the Ben-Gurion School in Givatayim reportedly administers an "Arts and Environment" class with fewer students and extra class hours; parents of these pupils pay approximately NIS 1,000 additional tuition per month. See Or Kashti, "At the Ben Gurion School in Givatayim, longer school hours and enhanced conditions are on sale for NIS 10,000 a year", *Ha'aretz Online*, 22 October 2009 http://www.Haaretz.com/hasite/spages/1122753.html (Hebrew).

[126] See, for example, Or Kashti, "OECD report: Low investment in the student and the teacher", *Ha'aretz Online*, 8 September 2009 http://www.Haaretz.co.il/hasite/spages/1113170.html (Hebrew)

[127] Although reports show that the portion of the Gross National Product (GNP) allocated to education is comparable to other developed nations, the per-student allocation is relatively low because of the relatively high proportion of students in the population and a relatively low GNP.

[128] "YNet survey: Judaism and the Yesodot Organization. The public prefers private schools", *YNet* 1 September 2009, http://www.ynet.co.il/articles/0,7340,L-3770203,00.html (Hebrew).

These private schools supported by public funding attract excellent teachers and students of financial means. As a result, they weaken the public education system and contribute to its ongoing deterioration, while helping perpetuate a vicious circle: as the services offered by the official education system continue to deteriorate, the more established and higher-income strata of society rely more on private services; at the same time, these strata have a reduced interest in pressuring the government to improve the public education system, which now primarily serves the lower and middle classes. Thus public education deteriorates even further.

Recently, Minister of Education Gideon Sa'ar turned his attention to the subject of "private schools", announcing[129] that he will introduce legislation to amend the current law and broaden the Ministry's discretionary powers in deciding whether a recognized but unofficial school can open. According to the announcement, the Minister of Education would be authorized "to weigh whether or not to grant recognition to an institution based on educational and financial considerations, such as whether such recognition might cause the closing of classrooms in public education institutions, reduce the number of students in public education, lead to fewer jobs in public education, or harm the integrated nature of the public education system". This initiative comes in defense of public education, and is commendable. However, additional amendments are also warranted. The above amendment deals only with recognition, and does not address increased supervision by the Ministry or the local board of education after recognition has been granted. To prevent repeated discrimination, such as that against the Ethiopian children in Petah Tikva, the Ministry of Education and local boards of education must have the authority to intervene in the admissions process of recognized but unofficial schools, even after they are granted recognition. Such authorization would obviate the need for the most drastic measures proposed in the law – withdrawal of recognition or revocation of the school's license – measures that have such dire implications for the educational system that no one makes use of them. It would be possible, for example, to grant authority to a local board of education, through its discretionary power over educational policy, to instruct an unofficial but recognized school that it cannot admit only certain types of students because of the school's policy. Similarly, we call upon the Ministry of Education to take advantage of its authority under existing legislation[130] – by which it can reduce by up to 10% the budgetary allocations to schools that do not adhere to the integration of its student body – to stem the tide of rampant segregation in private education.

[129] *Amendment to the State Education Law: Broader discretion to be used in recognizing educational institutions in order to protect the official education system*, Education Ministry website, 21 September 2009.
[130] Amendment 9 of the State Education Regulations (for Recognized Institutions) 1953.

The Right to Housing – as long as you're one of us

"S. will never forget that moment. He stood there, together with his wife, in the office of the community secretariat, waiting to hear the results. He believed it was just a procedural formality, that they would soon be able to move into the village, build a spacious home, enjoy their garden and the view.

'Social incompatibility'. That was the reason given by the Admissions Committee for the rejection, preventing them from buying a plot in the community. Ever since, they have been wracking their brains, trying to figure out what they did or said wrong. Sometimes S. asks himself if it could be because of his ethnicity. His skin color is quite dark, but that doesn't necessarily mean anything. And there are probably other Mizrahim [Jews of Middle Eastern or North African origin] in the community. Or are there?"[131]

Admissions Committees

Decision 1015 of the Israel Lands Administration (ILA), approved in August 2004,[132] allows for the creation of admissions committees to agricultural communities and small communal settlements. These committees discuss the applications of candidates who wish to buy plots and settle there, and recommend to the ILA whether to grant leasing rights to the applicants or prevent them from gaining access and building homes there.[133] The criteria used by the committees include, inter alia, vague and dubious considerations such as "social compatibility". Even though the ILA prohibits admissions committees from discriminating against minority groups, in practice they allow criteria that enable discrimination against anyone not "one of us". These may be Mizrahim, Russians, Ethiopians, religious families, people with disabilities, single-parent families, same-sex couples, and especially Arabs. Note that the communities in question are not kibbutzim or collective moshavim, which are based in part on economic cooperation and community involvement of residents, nor are they intended for specific population segments such as Haredim (ultra-Orthodox). These are up-scale, rural, or private home developments built on what was once kibbutz and moshav fields, now the property of the State and offering a high standard of living at an affordable price.

The screening and selection of the admissions committees violate basic human rights, among them the right to equality, property, and housing. It limits the access of citizens to a vital public resource – land – to which all have an equal right. The screening process, often invasive and humiliating, further violates the right to privacy and human dignity.

[131] Atty. Tali Nir, "Socially Incompatible", *Yediot Aharonot*, 22 July 2009 (Hebrew).
[132] And its revision, Decision 1064 from July 2005
[133] Although the decisions of the admission's committees are defined as "recommendations", the ILA generally issues blanket approval of these recommendations.

The extremely problematic nature of this selection process has been discussed in a number of petitions to the High Court of Justice, and currently two petitions are pending, which seek to completely eliminate admissions committees from this kind of community.[134] Notwithstanding these efforts, a recent legislative amendment could be interpreted as license for their continued existence. In the context of land reform,[135] a clause was added to the law establishing that the Land Authority, the body that will replace the ILA, will have the power to condition the sale of lots in agricultural and small communal settlements on the consent of residents' associations. In other words, the law could be understood as granting veto power to a private group, such as a residents' association, over decisions to sell land to an individual, including someone who did not pass the screening of the community's admissions committee – and all this without oversight. What's more, this clause was added to the law without proper legislative procedures – as a hasty, last-minute maneuver, with barely any public discussion (for more about the improper legislative process, see the chapter on "Undermining the Foundations of Democracy" below).

Sectoral Marketing and Acquisition Groups[136]

One worrisome trend that has been gaining currency in Israel's housing market is discrimination in the marketing of apartments. In the past, the fight against housing discrimination was principally a legal battle against ILA decisions and its allocation of land to specific populations. Over the past few years, however, we have seen increasing discrimination through the practice of marketing to specific groups by private developers, as they make decisions about who will live in the buildings they construct. This trend stems from the proliferation of "acquisition groups" vying for land tenders.

In essence, an acquisition group is a positive consumer mechanism – a group of individuals form a collective to compete for a lot, and take advantage of their group status to lower the cost of the project, ultimately leading to a reduction in the cost of housing. Unfortunately, acquisition groups can also become a tool for illegitimate discrimination. Groups have become more homogeneous over the past few years, accepting only those who meet specific criteria or receive the approval of their own admissions committees. Sometimes developers decide to limit sales to acquisition groups in a specific profession, or they openly promise that they will screen to ensure "quality neighbors". In a building tender for a project in the "wholesale market" area in Tel Aviv, for example, developers announced that if they won, they would limit residence to people working in high-tech or finance by only admitting individuals working in such professions to the acquisition group they formed. Following ACRI's petition against this practice, the Tel Aviv Municipality agreed to include a clause in

[134] HCJ 3552/08, *Kempler v. Israel Lands Administration*, submitted by ACRI and the Kemplers, through the human rights clinic at Tel Aviv University, http://www.acri.org.il/Story.aspx?id=1826, and HCJ 8036/07 *Ebriq Zubeidat v. Israel Lands Administration*.
[135] Israel Lands Administration Law (Amendment #7), 2009; see footnote 57 above .
[136] Written with the assistance of Atty. Gil Gan-Mor of ACRI.

the tender requiring the winner to market the apartments to any and all interested parties.[138]

This precedent will help prevent screening mechanisms from seeping into urban projects, as screening leads to closed communities, where children learn from an early age that "some people" are not fit to be their neighbors. Such closed communities also lead to social gaps as wealthier neighborhoods siphon off the best public services, while those for the general public deteriorate.

More encouraging progress in the elimination of housing discrimination came in July 2009,[137] with an announcement by the Attorney-General that he was weighing the possibility of obligating developers to commit to non-discriminatory marketing of apartments as a precondition for all tenders on public land administered by the ILA. This announcement was also made to the Supreme Court in the context of the Ajami petition, a case in which Jaffa property was sold to the Emunah organization, which organized an acquisition group exclusively for national-religious Jews. In the context of an appeal[138] that addresses the authority of the Administrative Court to rule on the petition, the Supreme Court issued a temporary restraining order that would prohibit the ILA from selling to Emunah the rights to the Ajami compound.

[138] Administrative Appeal 2365/08 *ACRI v. Tel Aviv-Jaffa et al.*

[137] In response to ACRI's intervention. See "A significant step in eradicating housing discrimination", ACRI, 15 July 2009, http://www.acri.org.il/Story.aspx?id=2207 (Hebrew).

[138] Administrative Appeal 5514/09 *Saba v. Israel Lands Administration,* http://www.acri.org.il/eng/Story.aspx?id=639. The appeal was submitted by *ACRI* on behalf of 25 Jewish and Arab residents of Jaffa, and also on behalf of Bimkom-Planners for Planning Rights and Rabbis for Human Rights.

The Right to Social Security – as long as you're gainfully employed[139]

The Economic Crisis and the Social Security Safety Net

The global economic crisis that erupted in 2008 began affecting the Israeli economy by the end of that year, but the brunt of the impact was felt in 2009. The job market was hit particularly hard and led to a sharp increase in unemployment. According to the Central Bureau of Statistics, unemployment rates from April to July 2009 were 7.7-7.9% as compared with 5.9-6% for the same period in 2008.[140]

The many newcomers to the ranks of the unemployed are discovering that since 2000, there has been an ongoing deterioration in the safety net the State provides the jobless. The steady erosion of unemployment insurance has made it one of the most meager in the western world; unemployment insurance in Israel bears no resemblance to income levels earned prior to their unemployment. At the same time, the criteria for eligibility have become more stringent, and since 2002 the number of people eligible for unemployment insurance decreased by about 50%. In 2007, even before the global economic crisis struck, less than one-quarter of Israel's unemployed were entitled to monthly stipends. As a result, the jobless are pushed back into the workforce, even as employment conditions in Israel continue to decline. They are forced into jobs with abysmal pay – often below minimum wage – and in working conditions that violate their rights and are in fact illegal. Moreover, they have no real prospects for career development since they cannot rely on unemployment payments to tide them over while they seek more suitable and lucrative opportunities – jobs that will allow them to realize their full earning potential.

It is well known that high-quality, professional training courses contribute significantly to the reintegration of the unemployed into the workforce, and this training is viewed as one of the most effective tools for reducing unemployment. Nonetheless, the professional training division of the Ministry of Industry, Trade, and Labor has significantly reduced the number of courses it offers, and has all but halted courses for those eligible for unemployment insurance. The remaining courses concentrate primarily on employment opportunities generally filled by migrant workers. All this serves to further reduce the power of retraining as a way to break out of the cycle of poverty. In the last few years, the State has repeatedly sought to cut back the professional training division through the Economic Arrangements Law.

Someone without a job, whose eligibility for unemployment insurance has expired or who was never eligible, may qualify for income-support payments if his or her household is eligible according to a long list of criteria. Because the income-support system is a last resort for assisting the unemployed, those receiving it represent the

[139] Authored by Atty. Oshrat Maimon of ACRI

[140] Preliminary Trend Data of the Unemployment Rate for August 2009, Central Bureau of Statistics, October 2009, http://www.cbs.gov.il/reader/newhodaot/hodaa_template.html?hodaa=200920232.

most financially vulnerable in society. But since 2003, when sweeping restrictions were imposed on eligibility for income support, this payment has lost its ability to guarantee a dignified existence. The drastic cut to income-support and unemployment insurance has contributed to Israel's high ranking in the Inequality Index of the Organization for Economic Cooperation and Development (OECD) – it placed fourth among developed countries – and first in the poverty ranking.[141]

Underlying any attempt to strengthen the security net for the unemployed must be an understanding that you cannot "push" the jobless into the workforce. Rather it is the State's responsibility to work towards reducing socioeconomic gaps and inequalities and help lift the unemployed out of poverty. The State must also work to increase appropriate, high-quality job opportunities, improve the enforcement of labor laws, foster and strengthen workers' unions, and generally transform employment in Israel into a worthwhile pursuit – one that fends off poverty. Furthermore the State must establish fair policies to facilitate re-entry into the workforce, recognize the right to services that enable employment, reinvigorate the role of income-support payments, and guarantee a dignified existence for those not working.

The Wisconsin Plan

The Wisconsin Plan (known initially as "From the Heart" and later as "Lights to Employment") began as an experimental pilot project in the summer of 2005. The program was to be tested in four separate regions – Jerusalem, Ashkelon, Hadera, and Nazareth – and administered by private companies. The stated goal of the program was to reintegrate income-support recipients into the workforce. However a close look at the program and its implementation reveal that it primarily focused on reducing the number of people on the income-support rolls.

The pilot exposed numerous problems, which we will not discuss here, and evoked widespread criticism. Among other issues, the way the private companies were compensated for operating the program created a serious conflict of interest: The companies made a profit each time a participant was removed from the income-support rolls; at the same time the companies themselves were given the authority to revoke a participant's eligibility for this support. Social change organizations, which closely monitored the program, claimed that the program failed to take into account obstacles found in the open job market and that prevented some participants from fully integrating into the workforce. By its nature, the program was not suitable for many of the participants. The companies did not invest sufficiently in services to encourage employment, such as retraining, on-site childcare, and programs for the completion of academic degrees. Moreover, participants who wished to appeal the implementing companies' decisions came up against significant stumbling blocks.

[141] Miri Endeweld, Alex Fruman, Netanel Berkley, and Daniel Gottlieb, "Poverty and Social Gaps: Annual Report 2008", National Insurance Institute, October 2009, http://www.btl.gov.il/Publications/oni_report/Documents/oni2008.pdf (Hebrew).

Even the State Comptroller[142] along with an inter-ministerial committee appointed to review the pilot program pointed to many failures.[143] In light of this harsh criticism, and a petition submitted to the High Court of Justice against extending the program,[144] significant changes were made to its structure over the years. Unfortunately, even the new, "improved" version is riddled with flaws.

Privatization is a major characteristic of both the original and the current program: The program is implemented by private companies whose employees are given wide-ranging authority in a number of areas: They set the daily routine for participants, determine which of them will have access to the limited resources, and even determine whether to reveal private and personal information about them. Most critically, company employees have the authority to decide whether a participant is fulfilling his or her work obligations, resulting in the cessation of the income-support payments. Thus a situation was created in which one of the most basic rights – the right to a dignified existence – is contingent upon the fulfillment of rigid and unreasonable conditions and dependent upon the decision – sometimes arbitrary and unjustified – of clerks hired by private companies. The power concentrated in the hands of these employees has negatively impacted participants' freedom of expression as well as their right to autonomy and human dignity. These practices are being used against the weakest sectors of society, who are utterly reliant on the last security net available to them – their living stipends.

Many of the Wisconsin Plan's provisions are based on an essentially flawed concept of relations between the individual and the government as a reciprocal, give-and-take, contractual relationship. In this relationship, the right to a dignified existence and social security no longer goes hand-in-hand with the right to employment and fair work conditions; rather these rights have been made conditional upon obligations imposed upon the job-seeker. These multiple obligations not only limit the rights of the job seeker, but also establish detailed preconditions. This is a significant departure from the traditional concept of the welfare state and the idea of unconditional human rights. It is also abundantly clear that a program whose stated goal is to re-integrate the unemployed into the workforce cannot continuously belittle, humiliate, and demoralize its participants. In its current incarnation, the Wisconsin Plan is not calibrated to change the realities of the Israeli job market. Rather it seeks to "re-educate" the unemployed and use sanctions to force them back into the current adverse job market through means that weaken their ability to realize their rights.

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[142] State Comptroller, "Aspects of the Me'halev program ("the Wisconsin Plan")", State Comptroller's website June 2007, http://www.mevaker.gov.il/serve/contentTree.asp?bookid=490&id=157&contentid=&parentcid=undefined&sw=800&hw=530 (Hebrew).

[143] "Report of the Me'halev Program Follow-up Commission (the Dinor Commission)", published June 2007 on the Office of the Prime Minister website, http://www.pmo.gov.il/NR/rdonlyres/E1B3C16F-C413-40A8-9DEE-283BE838AE30/0/doch.pdf (Hebrew).

[144] HCJ 125/07 *Commitment to Peace and Social Justice et al. v. Minister of Industry, Trade, and Labor et al.*

Testimonies compiled by human rights organizations[145] reveal many examples of the program's incompatibility with participants' personal, familial and cultural realities. Other accounts reveal faulty training programs; work referrals for jobs that do not respect basic human dignity; violations of rights; and employment advisors who treat participants in a degrading, disparaging or discriminatory manner. Above all, the testimonies themselves reveal the depth of distress among participants, and the degradation and helplessness some of them felt:

> "*Each time I arrived for a meeting with my advisor at the center, he spoke to me disparagingly...His behavior made me anxious and was hurtful, but I didn't say a word because I was afraid of getting into trouble*".
>
> "*In this program you have to demand and fight for all the things you rightly deserve....The feeling is that you have to be very thick-skinned to survive this program in one piece*".
>
> "*This is the second time they're sending me to interview with the same company and this time they want me to lie about all kinds of things during the interview. I want to work...but it's not okay that they're asking me not to tell the truth during my interview. It hurts me that I have to lie, and that if I tell the truth, I'm faced with the threat of losing my stipend*".
>
> "*The worst was when they sent me to Sha'ar Menashe, a psychiatric hospital....I was very afraid of the patients. One of them wanted to hug me, another tried to kiss me, someone else assaulted me, and then I complained to my advisor, who threatened to mark my file with 'refuses to work' if I left the job. I stayed there for two months*".
>
> "*They were constantly threatening to list me as refusing work. And there was nothing I wanted more than to work*".
>
> "*I work six hours a day, and still only receive the supplementary support stipend. Even though I don't have to go to the Wisconsin program, my advisor keeps threatening me that I have to continue to come and do what he says*".
>
> "*I think the employment advisors have too much power and discretion. There are no clear rules for things, new regulations are constantly added, so it's impossible to know what you're eligible for, and exactly what your rights are, everything is decided at the advisor's discretion. This creates a situation where participants with similar problems will be handled completely differently from one advisor to the next, and this provides fertile ground for discrimination*".

[145] Testimonies originally published in Tami Gross and Nitzan Tinami, "Testimonies, First Person: Testimonies of Participants in the Wisconsin Program in Israel", in "From the Heart: Monitoring the Lights to Employment Program", a project established by Commitment to Peace and Social Justice, Community Advocacy, ACRI, Rabbis for Human Rights, and the Mizrahi Democratic Rainbow. The paper was presented at the conference "The Wisconsin Plan: Who's it Working For?" (March 2009) and presents the stories of 14 program participants in Hadera and Jerusalem.

The Right to Health Care – as long as you pay

Enactment of the National Health Insurance Law in 1994 was intended to express the commitment of the State of Israel to providing universal and equal health care to all its residents. This commitment, however, has been waning. Gradual cuts in the health budget and the privatization process promoted by successive Israeli governments – led by the Ministry of Finance – are slowly divesting this law of content, and leaving the weakest sections of society isolated and helpless. The public health system, often the only health resource available to vulnerable groups, and to some extent even to the middle class, is under severe financial pressure. Portions of the health care system, specifically those provided directly by the State (not through the national health funds) have been privatized, resulting in a deterioration of their quality. In parallel, more people have been paying out of their own pockets to cover the cost of private health care services. This has led to the development of two parallel, but very unequal, health care systems: higher quality care for the rich and lesser quality care for the poor. The gaps between the two are apparent, as measured by statistical health indicators (morbidity and mortality) across regions, socioeconomic levels, and ethnic groups. This is not new, and past ACRI reports have covered this subject in depth. In this report, we focus on several features of the public health system that demonstrate the transformation of health care in Israel from a right to a commodity, limited to those with financial means: Consumer elements of the system include co-payments and supplementary insurance packages, as well as a looming proposal to establish a fifth national health fund as a profit-making enterprise.

But first, we note a welcome and positive development in dental health care over the past year. Generally dental care is not included in the health care services provided by the State, and these expenses are shouldered by the individual. As such, dental care is only truly available to those who can afford it. Dental health expenses, however, are the largest component of total family health expenditures,[146] and many families are forced to forgo dental care due to financial constraints.[147] Dental morbidity rates in Israel are high relative to other developed countries, with large gaps between high-income and low-middle income families. This gap begins in childhood, and results primarily from parental financial means. Preventive dental care, which is supposed to be provided to every schoolchild, has been waning over the years: A Health Ministry regulation shifted this responsibility to the local authorities, if they choose to make it available. As a result, preventive dental care is no longer offered in most authorities. While the local councils that are more financially established often do provide health services that include basic dental

[146] Tuvia Horev and Jonathan Mann, "Oral and Dental Health: The Responsibility of the State Towards its Citizens", Taub Center for Social Policy Studies in Israel, July 2007, http://www.taubcenter.org.il/files/H2007_Oral_Dental_Health.pdf (Hebrew).

[147] For example, according to 2007 data from the Central Bureau of Statistics, 40% of people needing dental care did not obtain it due to financial constraints.

checkups and treatment, poorer municipalities provide no dental services at all to local schoolchildren, and the number of authorities offering dental services drops continually year after year.

In the wake of a petition submitted by ACRI and Physicians for Human Rights – Israel (PHR),[148] the Health Ministry announced in May 2009 that it would assume funding of basic preventive dental services for every schoolchild in Israel – thus ensuring that all children will receive equivalent care, independent of the financial means of their local authority. This decision carries great importance for it represents the first step by the government to establish public dental care for children. The focus on preventive care has both medical and financial advantages, with implications that last a lifetime: Without basic investment in preventive dental medicine, children may suffer long-term harm that later requires painful and expensive treatment. It is still not clear exactly what arrangements the State will eventually make and how it will provide these services, which include education and dental examinations, as well as a limited number of dental treatments.

ACRI and other organizations have established a broad coalition to advocate for the inclusion of comprehensive dental care in the universal basket of services, focusing first on dental care for children and the elderly. The coalition, which seeks to make dental health an integral part of the National Health Insurance Law, has proposed detailed legislation on the matter. Deputy Health Minister Yaakov Litzman already announced at the beginning of his term of office that he intends to ensure public dental care for children,[149] paying for it with funds from the allocation for new medicines. The source of the funding raised public opposition.[150] but the goal is clearly a step in the right direction.

Co-payments

> "*It's heartbreaking to see families with health care insurance who don't go to the doctor because they can't afford the NIS 19 co-payment set by law for each visit…I've seen our pharmacists sometimes take money out of their own pockets to make the co-payment on certain medicines when the insured patients simply have no money*".[151]

[148] HCJ 2311/08 *Association for Civil Rights in Israel v. Ministry of Health*, petition submitted by Atty. Dori Spivak of the Tel Aviv University Human Rights Law Clinic, http://www.acri.org.il/hebrew-acri/petition/hit2311.pdf (Hebrew).
[149] Orli Vilnai, "Deputy Health Minister plans: Free dental treatments for children and elderly", *Ha'aretz Online*, 22 July 2009, http://www.Haaretz.com/hasite/spages/1101993.html (Hebrew).
[150] Dan Even, "Deputy Health Minister Yaakov Litzman: Pediatric dental treatments will be added to the basket", *Ha'aretz Online*, 10 November 2009, http://www.Haaretz.com/hasite/spages/1127199.html (Hebrew).
[151] Nissim Alon, CEO of the Leumit Health Fund, at the Health Insurance Conference, as referenced in: Elazar Levin, "Leumit CEO: My heart breaks when the sick cannot afford to pay the doctor", *News1*, 10 September 2009, http://www.news1.co.il/Archive/001-D-213404-00.html?tag=12-58-56 (Hebrew).

Co-payments are fees that individuals are required to pay for medical services, drugs, and equipment included in the health care basket – the range of services to which everyone insured is entitled. The Economic Arrangements Law of 1998 allowed the national health funds to increase the amount of the co-payment they collect from their members for medicines and medical services, and also allowed for additional fees. These fees have been on the rise ever since. According to the Central Bureau of Statistics, 32% of the national health expenditure in 2008 was funded by direct payments made by individuals for drugs and medical services, including dental care.[152] "The substantial increases in the co-payment rates", wrote the State Comptroller,[153] "were approved in the absence of a deliberate policy and with no overall vision by the Ministries of Health and Finance to the detriment of patients – who are the only ones harmed".

Thus individuals with limited means often find it difficult to make co-payments. Data published in recent years have repeatedly demonstrated the ever-widening circles of patients who do without medical services because the cost is prohibitive, especially among the poor.[154] Interviews conducted by PHR with 44 family doctors and pediatricians[155] revealed that physicians use a variety of methods to help their poorer patients obtain medicines that are not within their financial reach. Sometimes physicians give patients "sample" drugs received from the pharmaceutical companies; sometimes they backdate or postdate a prescription so that the record of the purchase will be in a different financial quarter, thus within the patient's quarterly allowance on medical expenses, as mandated by law. Physicians have transferred therapeutic drugs from a patient who does not require them to one who does; they have recovered medicines from the family members of deceased patients to distribute them to poor patients; they have substituted expensive drugs with cheaper drugs that have more side effects; and they have also paid out of their own pockets to finance medicines for their patients. These methods, according to PHR, are not only beyond the call of the physician's duties; they also raise serious ethical issues. It should be emphasized that in all these cases, the medicines in question are part of the health basket, and thus supposed to be accessible and available to all.

Co-payments are intended to serve two primary goals: to prevent the overuse of medical services and to increase the financial resources of the health care system. It does not appear, however, that the first goal has been met, and the second goal

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[152] "In 2008, the national expenditure on health – 7.7% of the GDP", *Central Bureau of Statistics*, 16 August 2009, http://www.cbs.gov.il/www/hodaot2009n/08_09_172b.pdf.

[153] State Comptroller, "Annual Report 58b for 2007: Co-payments by the Insured for Health care Services", May 2008, pg. 411, published on the State Comptroller's website, http://www.mevaker.gov.il/serve/contentTree.asp?bookid=514&id=57&contentid=&parentcid=undefined&sw=1024&hw=698 (Hebrew)

[154] See, for example, "Amount of co-payments paid by the insured for health care services in 2009", *Israel Medical Association*, http://www.ima.org.il/MainSite/ViewCategory.aspx?CategoryId=910 (Hebrew).

[155] Findings reported in: Dr. Dani Filc, Atty. Dori Spivak, Shlomit Avni-Vaknin, and Rami Adut, "Position paper on the scope of co-payments paid by the insured for health care services", Physicians for Human Rights-Israel and ACRI, March 2009, http://www.phr.org.il/default.asp?PageID=68&ItemID=114 (Hebrew).

imposes a heavy price, violating the right to equality and to health care for some of Israel's residents. PHR has been conducting a public information campaign against co-payments since 2005. A position paper published this year by PHR and ACRI[156] summarizes the negative influences that are a direct result of the imposition of co-payments for medical services:

- In the long run, co-payments do not reduce the overall use of health care services. In specific instances, they do reduce the short-term use of a service, but over time the total demand returns to its previous level. This is because the need for health care services in the general population is not flexible.
- Co-payments are known to have an effect on the demand for health care services among the lower socioeconomic strata, and indeed the application for such health services by vulnerable population groups diminishes over time. Co-payments, however, do not reduce the demand for nonessential services, but rather for medical services that the patient genuinely needs. According to the Israel Medical Association,[157] not only are the rights of patients compromised, so is the effectiveness of the health care system. Doing without primary medical care may in many cases lead to complications that require extensive secondary and tertiary treatments. In the long run, this is far more expensive for the health care system. Because of the costs, disadvantaged populations also make less use of early detection and preventive care, even though in the long run this means that the health care system will treat diseases at more advanced stages, which is more expensive over time.
- Co-payments undermine the principles of social justice and mutual assistance that underlie the National Health Insurance Law: They are regressive in that they impose a heavier burden on the individual as income levels fall; as such, they represent a tax on sicknesses. The main consumers of health care services are the elderly and the chronically ill, two groups with generally low income – the elderly because they are no longer employed, and the chronically ill because their ability to earn a livelihood is often diminished by their illness. Absurdly, it is these two groups that are required to pay the highest co-payments.
- Co-payments lead families of low socioeconomic status to forgo other important needs, such as education or clothing, to pay for medicines. In this way, co-payments contribute to perpetuating hardship over generations.
- Co-payments compromise the trust in the provider-patient relationship, and make it hard for the physician to fulfill his or her duty to preserve the welfare of the patient above all. They create a "dual loyalty" for physicians – one toward the health care system they serve and one toward the welfare of the

[156] Ibid., "Amount of co-payments paid by the insured…"
[157] Ibid., "Amount of co-payments paid by the insured…"

patient – and force them to take measures that have serious ethical implications, as described above.

ACRI and PHR propose in their position paper that co-payments for prescription drugs and medical services in the health basket be gradually phased out, and they propose alternative sources of funding to compensate the health funds for their loss of income. The Israeli Medical Association also believes that co-payments should be abolished for some medical services, chiefly for preventive medicine, and proposes other mechanisms designed "to achieve the appropriate balance between ensuring medical care for all and efficiency of the system".[158] At the start of 2009, the Health Ministry appointed a committee of experts to examine the subject of co-payments. According to published accounts, the committee was supposed to have submitted its recommendations by the end of March,[159] but to the best of our knowledge, these recommendations have yet to be published.

Supplementary Insurance[160]

As noted above, since the National Health Insurance Law was passed in 1994, the basic health basket has become smaller and smaller. To cover the gaps in the health basket, supplementary insurance policies have been created by the national health funds, which provide – to those who can afford it – treatments and medicines that are not included in the standard basket. Supplementary insurance constitutes a hybrid between public and private health insurance: The health funds – charged with providing public health services – also sell private health insurance to the same patients they insure in the public system, with the approval and regulation of the government. Thus, under the cloak of publicly supervised insurance, the health funds have added layers of additional insurance. As a result, health has become a commodity: Those who can afford it buy a "supplemental" policy, later purchasing "ideal", "preferred", "upgraded", or "ultimate" policies. Those who cannot afford these policies are not covered for the missing services. As such, 24% of the population has no such insurance. Of these, 52% declined supplementary insurance because of financial constraints. Naturally those who are not covered by supplementary insurance are generally from the weakest population sectors: over 30% of the members of the Clalit Health Fund, which insures a disproportionate share of the disadvantaged compared with the other health funds; 53% of the Arab population in Israel; 38% of the immigrants who arrived in the 1990s; and 40% of low-income earners. Moreover, 32% of those who define their health as "not good" lack supplementary health insurance.[161] Because the premium for supplementary insurance increases with age, the ability of the elderly and low-income earners to purchase this sort of insurance is even more limited. In other words, not only does

[158] Ibid., "Amount of co-payments paid by the insured…" Section IV: "Co-Payments: Significance to the Public".
[159] Dan Even, "Ministry of Health v. Co-Payments", *Ma'ariv*, 4 March 2009.
[160] Prepared with the assistance of Rami Adut of ACRI.
[161] Data from the Central Bureau of Statistics, Social Survey 2007.

supplementary insurance fail to provide solutions for all, it is actually widening the gap between lower and middle classes, and expediting the process that is turning health care from a right into a commodity.

The proliferation of supplementary insurance policies has reinforced two trends – the ongoing shrinking of the health basket of basic drugs and medical services that the State is obligated to provide, and the increased spectrum of medical services that individuals receive in return for larger financial outlays. With the expansion of supplementary health insurance, which serves the immediate needs of the middle class, those in the lower socioeconomic class become more isolated. Once the middle class is able to afford supplementary insurance, it loses motivation to wield its political power to expand the health basket for the benefit of all. Supplementary insurance contributes to the widening gap in another way. It's profitable for the health funds to invest in marketing supplementary health insurance policies to groups with greater purchasing power – generally speaking, the young, healthy, and well-off residents of Israel's urban center. Thus, the national health funds have no real incentive to invest in developing their services in Israel's periphery, or addressing the needs of weaker and poorer groups.

Supplementary insurance has become a magnet for health care reforms, some of which would actually increase the health gap between the rich and poor. For example, an old proposal was revived in the current Knesset that would introduce private medical services into public hospitals, this time through the medium of supplementary insurance.[162] Bringing private medicine into public hospitals could create two categories of patients lying side-by-side in the hospital – the "public" patient, whose doctor is assigned, and the "private" patient, who can choose his or her doctor. This proposed bill was shelved by the Ministerial Legislative Committee due to pressure from social change organizations, including ACRI, but the proposal enjoys wide support among senior health officials, and can be expected to be tabled again in the Knesset.

The Fifth Health Fund

Another symptom of the commoditization of Israel's health care system is the proposal to establish a fifth national health fund, this one on a profit-making basis. The National Health Insurance Law defines the national health funds as public bodies in every sense, and further declares that no new national health fund shall be created unless it is non-profit. The current government, however, guided by the principle of reduced government spending, has been pushing the national health funds to adopt business norms and patterns, and even pressuring them to privatize. One prime example of this is the proposal raised by the government in 1998 that would allow the establishment of a new national health fund on a profit-making basis. Although the

[162] Proposed Bill for Amendment of the National Health Insurance Law (Amendment – Option to Choose a Surgeon) 2009.

proposal then failed, new life was injected into it, and it was included in the Economic Arrangements Law of 2009-2010. Ultimately the proposal was not brought to a vote in the Knesset, to some extent because of pressure from social change organizations.[163]

A profit-driven health fund within a health care system where the other providers are non-profits would constitute a kind of "Trojan horse". The new health fund would likely exert influence on the other health funds and encourage their transformation into business enterprises. The Ministry of Finance views the establishment of another health fund as an opportunity to enhance competition and efficiency, but the experience of other countries suggests that the introduction of market economy principles into a public health system does not lead to savings in resources, but to increased inequality of access and quality of health care. Experience also teaches that the elderly and chronically ill do not easily switch doctors or the health funds to which they are accustomed, so a fifth health fund would draw mostly young and middle-aged people who are relatively healthy. It would operate at the expense of the public health funds, which would have to continue insuring the most expensive patients. Thus, establishment of a fifth health fund would not solve the problems of the public health system, but rather undermine social solidarity and deepen the inequality that already exists.[164]

[163] For example, Barbara Swirski, Dr. Dani Filc, Rami Adut, and Atty. Debbie Gild-Hayo, "Economic Arrangements Law 2009-2010 with respect to health care: Government retreat from responsibility for the health of its residents", Adva Center, Physicians for Human Rights-Israel, and ACRI, May 2009, http://www.acri.org.il/story.aspx?id=2120 (Hebrew).

[164] Dr. Dani Filc, "Establishment of a Fifth Health Fund is Bad for Our Health", Adva, Physicians for Human Rights and ACRI, June 2009, http://www.phr.org.il/uploaded/קופת%20חולים%20חמישית%20דני%20פילק.pdf (Hebrew).

Occupied Territories: Rights – as long as you're Israeli

The Gaza Strip[165]

> "*What does it mean to fire back at the sources of fire? The source of fire, you know, lies within population centers. Firing back means the use of artillery fire, which will target innocent people. We will do nothing of the sort. Not where we come from. A black flag of immorality flies over any such proposal*".[166]

On 27 December 2008, Israel embarked on a military campaign in the Gaza Strip (Operation Cast Lead). The decision to attack came after the renewal of indiscriminate rocket fire launched by Hamas at communities in the south of Israel, rocket fire that had continued intermittently for years. During the first days of the fighting, information began accumulating regarding the killing of civilians in Gaza and widespread injury and destruction.

A significant portion of the attacks carried out by Israel include airstrikes directed at targets in the very heart of civilian population centers or adjacent to them. The mosques, schools, and apartment buildings were struck on the grounds that these buildings were allegedly being used for arms caches or that fire had come from them. Similarly strikes were carried out against UN compounds, factories, shops, and commercial areas. On occasion, the IDF used various methods to inform the local civilian population that they should evacuate specific residential areas. However the IDF did not provide residents with an escape corridor nor designate protected areas; as a result, many civilians felt compelled to remain in combat zones, exposed to harm. Israel intentionally and deliberately bombed government buildings and civilian institutions in Gaza. These buildings, even if they served the Hamas regime and were symbols of its rule, were still civilian in nature and thus protected from military attack by the rules of international law.

A total of 1,387 Palestinians were killed in the assault on Gaza, of which 773 did not take part in combat. Of these, 320 were youth under the age of eighteen and 109 were women above the age of 18.[167] Additional thousands were injured.[168] More than 4,000 residential homes in Gaza were completely destroyed and some 17,000 were partially destroyed, leaving tens of thousands of residents without a roof over their heads.

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[165] Based on "Israeli Human Rights Groups Respond to Goldstone Report", ACRI, Gisha, The Public Committee Against Torture in Israel, HaMoked, Yesh Din, Adalah, and Physicians for Human Rights – Israel, June 2009, http://www.acri.org.il/pdf/goldstone2.pdf

[166] Benny Begin, from an interview a few days before the outbreak of Operation Cast Lead: Ari Shavit, "Theater of the Absurd", *Ha'aretz Online*, 2 January 2009, http://www.Haaretz.com/hasen/spages/1051965.html.

[167] "B'Tselem Publishes Complete Fatality Figures from Operation Cast Lead", B'Tselem, 9 September 2009, http://www.btselem.org/english/press_releases/20090909.asp.

[168] See for example: "The Humanitarian Monitor", Edition 33, January 2009, OCHA-UN Office for the Monitoring of Humanitarian Affairs, http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_01_15_english.pdf.

The attack brought health services in Gaza, which were already severely weakened due to the protracted closure imposed by Israel, to the brink of collapse. During combat, IDF forces are suspected of not scrupulously honoring the special protections reserved for medical and rescue groups during combat. Sixteen medical personnel were killed and another 25 injured during the evacuation of the wounded and dead, 34 medical stations and 29 ambulances were damaged, and the rescue and evacuation activities of Palestinian teams were severely hampered.

During the course of the operation, IDF shelling inflicted severe damage on Gaza's electricity, water, and sewage infrastructures, whose condition was already severely compromised. The Red Cross provided the IDF with the locations of all the water pumping stations and sewage purification plants in the Gaza Strip, yet shells hit wells, water mains, sewage lines, and sewage stations. The damage from the bombing, combined with the closure of water and sewage services due to the electricity outage, caused raw sewage to flow into populated areas and left more than 800,000 residents without running water. Because of electricity and gas shortages, most of Gaza's bakeries were severely affected, leading to shortages in bread supplies for residents.

From testimonies reported to human rights organizations, Palestinians detained in the first hours and days of the Gaza operation were held in open trenches, exposed to the cold, shackled, and blindfolded, without basic sanitary conditions, and with limited food supplies. Even more seriously, some detainees were apparently held in close proximity to IDF tanks in areas of active combat, this in blatant violation of international humanitarian law prohibiting the holding of prisoners or detainees in areas exposed to danger.[169]

The two basic legal principles of wartime conduct – the principle of differentiation between combatants and civilians, and the principle of proportionality – are intended to serve the higher purpose of humanitarian law, namely to reduce the suffering of civilian populations during armed conflict. International law prohibits indiscriminate attacks and the use of any combat means that cannot be directed against specific military targets, or whose injury to civilian populations cannot be contained. The bombing of a civilian building on the basis of general suspicion is prohibited. There must be well-grounded information that civilian buildings are being used for military purposes to permit such an attack, and then only after the danger to civilian life has been carefully weighed. The significant number of civilians injured or killed during the attack on Gaza, in addition to the extensive physical damage and destruction, give rise to strong suspicions that Israel committed serious violations of international humanitarian law.

[169] See the appeal of ACRI, The Public Committee against Torture in Israel, HaMoked: the Center for the Defence of the Individual, Physicians for Human Rights – Israel, B'Tselem, Yesh Din, and Adalah to the JAG and the Attorney-General on 28 January 2009, http://www.acri.org.il/eng/Story.aspx?id=604.

Israel's Refusal to Hold an Independent Investigation

In light of the extensive injury to the civilian population of Gaza, immediately upon the cessation of combat in the Gaza Strip, ACRI appealed to Israel's Attorney-General in the name of seven Israeli human rights organizations, demanding the establishment of an independent body to examine instances in which the IDF was suspected of committing war crimes.[170] The response, submitted in the name of the Attorney-General, was that the State of Israel had no intention of creating such a body and that any inquiry would be limited to evaluating military performance and examinations of operational effectiveness. Any findings of inappropriate conduct would be passed on to the Judge Advocate General (JAG), and then to the Attorney-General.[171] A second appeal, which spelled out Israel's legal obligation to hold a proper investigation, was also rejected.[172] This rejection is inconsistent with the obligation incumbent upon Israel and Israel's declarations of its respect for international law. The type of inquiry cited by the Attorney-General cannot meet the fundamental need to expose the truth. Indeed the investigations published by the IDF[173] concluded that dozens of innocent Palestinian civilians had been killed in what it termed isolated "mishaps"; however, declarations made by officials together with accumulating data reveal that the strikes on civilians and civilian structures were generally not the result of a spontaneous, low-level decision, but rather of decisions and directives made by senior echelons in the government and the IDF with the approval of the JAG.[174]

Denial and repression were also evident in the IDF's response to the testimony of soldiers who served in Operation Cast Lead published by Breaking the Silence,[175] and this denial was even more apparent in Israel's stance toward the UN committee charged with investigating allegations of war crimes committed during the fighting in Gaza ("the Goldstone Committee"). Israel refused to cooperate with the committee's investigation[176] and also refused to accept its findings. Rather than treating the findings seriously, senior public officials in Israel responded with harsh verbal attacks questioning the credibility of the Goldstone Committee.[177] The need to address the

[170] See "ACRI and Organizations: Investigate Israel's Attacks on Civilians", ACRI website, January 2009, http://www.acri.org.il/eng/story.aspx?id=602.

[171] Letter by Raz Nizri, Senior Advisor to the Attorney-General, to ACRI, 24 February 2009, http://www.acri.org.il/pdf/yoamash240209.pdf (Hebrew).

[172] The appeal as posted on the ACRI website, 19 March 2009, http://www.acri.org.il/Story.aspx?id=2070 (Hebrew); response of Atty. Raz Nizri, Senior Advisor to the Attorney-General, 10 September 2009, http://www.acri.org.il/pdf/yoamash100909.pdf (Hebrew).

[173] Anschel Pfeffer, "Cast Lead Investigations: No intentional harming of civilians took place", *Ha'aretz Online*, 22 April 2009, http://www.Haaretz.co.il/hasite/spages/1080242.html (Hebrew).

[174] See "Rights Groups: Investigate Detention Conditions of Gaza Prisoners", an appeal by ACRI, The Public Committee against Torture in Israel, HaMoked, Physicians for Human Rights – Israel, B'Tselem, Yesh Din, and Adalah to the JAG and the Attorney-General on 28 January 2009 http://www.acri.org.il/eng/Story.aspx?id=604.

[175] For more information on the booklet of testimonies compiled by Breaking the Silence and responses to it, see the chapter on "Harassment of Human Rights Organizations and Activists" above.

[176] Goldstone committee report, pg. 42, on the UN's Human Rights Council website, http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf.

[177] See, for example, Irit Avisar, "Peres: 'Goldstone has no concept of justice – Investigation should be against him", *Globes*, 11 November 2009, http://www.globes.co.il/news/article.aspx?did=1000513168 (Hebrew); Roni Sofer, "Netanyahu: Goldstone Report – a kangaroo court and prize to terrorism", *YNet*, 16 September 2009, http://www.ynet.co.il/articles/0,7340,L-3778069,00.html (Hebrew); Roni Sofer and

events in Gaza is not a recommendation, but a legal and moral imperative. Israel is under obligation to examine the IDF's conduct and the considerations that guided its decisions; its policies must be exposed to public scrutiny. A thorough investigation conducted by neutral parties is vital to protecting the rights of noncombatants in future armed conflict, and is also in the country's best interest – so that Israel can learn important lessons and safeguard the morality and strength of its society.

Continuing the Siege and Preventing Gaza's Rehabilitation

Almost a year after the military incursion, Israel continues to control Gaza's border crossings and impose a closure that almost entirely constricts freedom of movement of people and goods in to and out of the Gaza Strip. As such, Israel has limited the inflow of construction materials, raw materials, and spare parts that are necessary for rebuilding and rehabilitating Gaza after the war. As a result, the population has been unable to rebuild or repair homes that were destroyed or damaged during the fighting. Tens of thousands of people still lack a roof over their heads, some sleeping in tents while others crowd in with relatives, in shelters or in other temporary housing. As of October 2009, approximately 6,000 homes in Gaza are still in need of thorough repair or complete reconstruction.[178] Additionally, the closure has prevented the repair of significant portions of Gaza's electricity, water, and sewage systems. Winter (the rainy season) is approaching, and there are rising fears that water sources will be contaminated and property will sustain heavy damage because of the defective condition of the sewage system.[179]

Ever since Hamas gained control of the government, Israel has viewed Gaza as "enemy territory", whose 1.5 million residents are being held responsible for the actions of their government and viewed as legitimate targets for collective punishment, as a means of bringing down the Hamas government. This view underlies Israel's harsh closure policy, preventing the passage of gasoline and other essential goods into the Gaza Strip before, during, and after the military operation. Apparently, this is the position of the IDF as well, and integral to the army's stance toward civilians in Gaza. It is this attitude that led to the disproportionate and indiscriminate injury to civilians and civilian property during Operation Cast Lead. This policy is a violation of Israel's basic obligation to protect civilians in areas of armed conflict, under international humanitarian and human rights law.

Aviad Glickman, "Peres on the Goldstone Report: Making a joke of history", *YNet*, 16 September 2009, http://www.ynet.co.il/articles/0,7340,L-3777769,00.html (Hebrew).

[178] "Protection of Civilians: 21-27 October 2009", OCHA-UN Office for the Coordination of Humanitarian Affairs, http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2009_10_27_english.pdf.

[179] Ibid.

The West Bank: Discrimination and Segregation

> "*Separation undermines a person's sense of self. It expresses an unrestrained ability to humiliate and is an infuriating demonstration of insensitivity.*
>
> *He who continues to tread the path of apartheid loses – slowly, but surely – control over his own humanity. Apartheid becomes a habit, and over time a disease. The return to dignity and humanity becomes impossible…*
>
> *But we focus on the cases of overt cruelty, try to obtain 'humanitarian exceptions', but do not realize that the prohibition of entry to Arabs, the separate roads, the separation between certain people and others, all these are the great crime*".[180]

In the West Bank, both the massive presence of Jewish settlements in the heart of occupied territory and the policies adopted toward them have created a de facto regime of separation and institutionalized discrimination, voiding the principle of "equality before the law" of all content. Within the same territorial boundaries and under the same regime, two populations live side-by-side with entirely separate infrastructure and bound by two systems of justice which are entirely separate and fundamentally dissimilar. One population enjoys full civil rights, while the other has no civil rights. The complete separation between these two populations is carried out solely on the basis of their nationality. The lives of Israeli citizens residing in the Occupied Territories, despite the fact that the territory is under military rule, are conducted – almost to the last detail – just like those of Israeli citizens living in Israel proper. This contrasts sharply with the lives of the local Palestinians residing in the same territory, who continue to live under the military regime of a conquering power. If an Israeli were to commit a crime, for example, he would retain all the rights of the accused under Israeli law and would be tried by a civilian court. If a Palestinian were to commit the same crime – even if the two were partners to the same crime – he would be subject to far more stringent military legislation and tried before a military court. Other such examples abound. The volume of water allocated to settlers allows them to water lawns and fill swimming pools, while many Palestinians are forced to buy drinking water transported by tanker trucks. With regard to land, not only has Israel not ensured planning and development for Palestinian communities in Area C commensurate with life in a modern society, it has implemented policies that limit community development to such an extent that they do not allow for adequate living conditions. The prevention of Palestinian development is carried out through various planning and legal mechanisms, while at the same time settlements continue to grow and develop. Side by side, we can see the growth of an Israeli settlement and the ruins of a Palestinian village. We will elaborate on some of these matters below.

[180] Boaz Okon, "The Way of Apartheid", *Yediot Aharonot*, 10 October 2008 (Hebrew).

This discrimination – in which people of different nationalities are subject to different legal systems and receive a different set of services; in which the allocation and accessibility of natural resources are granted preferentially and separately to different groups of people living in the same territory – is in blatant violation of the principle of equality, undermining the very foundation of the rule of law. Over the past few years, we have witnessed the establishment of a discriminatory regime of separation in the Occupied Territories, with the support and stamp of approval of the Israeli legal system. It is important to note that this situation is in absolute contravention of the principles of international law. According to international law, Palestinians living in the Occupied Territories are a protected civilian population in conquered territory, and as such should be accorded the special protection of the ruling power.

Separate Roads

In October 2009, more than three years after submission of the petition, the High Court of Justice announced its ruling on the first petition against the regime of separate roads in the West Bank based on national or ethnic origin.[181] The petition was submitted by ACRI in the name of 22 Palestinian villages in the western Hebron Hills, after the area's main thoroughfare (connecting Beit Awa with Dura) was closed to Palestinian traffic and permitted only to Israelis. The Court ruled that the closure of the road to tens of thousands of Palestinian residents for the benefit of fewer than 200 residents of Israeli outposts was disproportionate. However, the Court did not rule, as it should have, that the existence of separate roads for Israelis and Palestinians is itself illegitimate.

For the tens of thousands of Palestinians living in the area, the opening of this road – if it is opened - to free movement will represent a life-saving change:[182] For the eight years in which they were prohibited from using the road, their lives were disrupted, their freedom of movement and dignity severely violated.[183] The Court arrived at its decision through the test of proportionality only, and by using only this test, it skirted all the other legal issues in the case, avoiding discussion and a legal decision on the larger principle of policies of segregation and discrimination in the West Bank. Avoidance of these issues is liable to give the impression that the Court implicitly accepts segregation and that it could uphold its use in another case, on another road.

The two prime examples of the separation regime on West Bank roads are Route 443 and Hebron's main road. For nine years, sweeping limitations have been imposed on the center of Hebron, prohibiting the Palestinian residents of the city from

[181] HCJ 3969/06 *Alharov v. Commander of IDF Forces in the West Bank*, http://www.acri.org.il/eng/story.aspx?id=691.
[182] In the ruling from 22 October 2009, the Court gave the IDF three months to implement the change.
[183] For a video clip documenting the Jadallah family, who were essentially under house arrest since the road was closed, see "The army continues to harm the freedom of movement of Palestinians in the southwest Hebron hills", B'Tselem, August 2009, http://www.btselem.org/english/video/20090806_beit_awwa_road.asp.

driving or walking on the city's main roads or opening their stores on them.[184] Regarding Route 443, this was an existing road that was significantly widened during the late1980s through the expropriation of public and privately-owned Palestinian lands in the West Bank. In 1983, the High Court of Justice rejected a petition submitted by the owners of the lands against the expropriation, accepting the IDF claim that the widening and paving of the road was designed to meet the needs of the Palestinian residents living in the area.[185] Until the outbreak of the second Intifada, Route 443 served as a central artery for Palestinian traffic between the city of Ramallah and its western suburbs, as well as for Israeli traffic between Jerusalem and Tel Aviv and the coastal plain.

Since the end of 2000, with the onset of the second Intifada, the IDF began prohibiting Palestinian traffic from using the road after Israeli vehicles traveling on it had been attacked and a number of civilians killed. As of 2002, all Palestinian movement on the road was prohibited, and roadblocks were erected on all access roads connecting Palestinian villages with Route 443. These roadblocks effectively banned local Palestinian residents from using their primary access road, the same road that was paved through the expropriation of their lands; moreover, it constituted a severe violation.of their basic rights. That is how Israel came to control land resources in occupied territory, using them for its own financial and transportation needs, all this in blatant disregard of the explicit rulings of the High Court of Justice.

As an alternative to Route 443, the army began paving "fabric of life" roads – alternative routes designated solely for Palestinian traffic, which necessitated additional land expropriations from local residents. In March 2008, arguments were heard in Court on ACRI's petition against the policy of prohibiting Palestinians from using Route 443.[186] During these proceedings, the Court seemed to give an implicit green light to the policy of separation when it ordered the State to submit an update regarding progress on the "fabric of life" roads. At the start of 2009, their paving was completed, and now the segregated regime of roads – one for Palestinians and one for Israelis – is complete. The petition is still pending.

Separate roads are only one example among many of the restrictions on freedom of movement imposed on Palestinian residents of the West Bank. Many of these restrictions are the direct result of settlements and outposts built in the midst of Palestinian villages, their purpose to protect the free and secure movement of settlers and other Israeli citizens. While over the past two years, the number of

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[184] For further discussion see: Ofir Feuerstein, "Ghost Town: Israel's Separation Policies and Forced Eviction of Palestinians from the Center of Hebron", B'Tselem and ACRI, May 2007, http://www.acri.org.il/pdf/ghosttown.pdf; "Human Rights in Hebron (Fact Sheet)", ACRI, 6 October 2008, http://www.acri.org.il/eng/Story.aspx?id=555.

[185] HCJ 393/82 *Jam'iyyat Iskan al-Mu'aliman Altauniya Almahduda Almasauliya v. Commander of IDF Forces in Judea and Samaria* (PD 37(4) 785). The Court ruled that had the road been designated an Israeli "service road", it would have been illegal.

[186] HCJ 2150/07 *Ali Hussein Mahmoud Abu Safiya v. Minister of Defense*, http://www.acri.org.il/Story.aspx?id=1770 (Hebrew). ACRI submitted this petition in March 2007 on behalf of six villages along Route 443. See also "ACRI Condemns Court's Approval of Segregated Route 443", ACRI 9 April 2008, http://www.acri.org.il/eng/Story.aspx?id=592.

checkpoints and roadblocks in the West Bank has decreased, many still exist. The violation of rights is especially severe when restrictions on movement are imposed within areas where Palestinian residents live. In these cases, the violation on freedom of movement is accompanied by a serious violation of human dignity.

Criminal Justice? Separate and Unequal Systems[187]

Two Hebron residents get into a fight within the West Bank and both are arrested. The first, a Jewish resident of Kiryat Arba, is immediately questioned by police and, as required by law, brought before a judge in the Jerusalem Magistrate's Court the following morning to extend his remand. In that hearing, the Court orders that the defendant be released on bail; the crime is not particularly serious, and the defendant has claimed self-defense. The second, a Palestinian resident of Hebron, is incarcerated for a period of eight full days before being brought before a judge in the military court in the Ofer base (the Judea Military Court). He is not actually questioned until day seven of his detention. The military court accepts the police account of the events and orders his arrest extended for ten days.

Israelis who live in the Occupied Territories live under the rule of Israeli law, administered by the Israeli justice system. As such, they enjoy the protection of the rights of the accused, anchored in Israeli legislation and legal precedents. Conversely, Palestinian residents of the Occupied Territories live under military law enacted by the Israeli military commander (hereinafter, "military legislation"). This law is by far the more severe of the two, with Palestinians judged in military courts by judges who are part of the military system. It is hard to describe a more serious violation of human dignity and rights than a situation in which two individuals living side-by-side are set apart for differential treatment before the law, entirely based on one factor – nationality. Here, we focus on differences during the period of detention.

The length of the period of detention set in military regulations is excessive and inconsistent with the obligation to respect the basic right of the individual, including suspects, to freedom from confinement. Prolonged arrest severely violates the most basic rights of the Palestinian residents: their right to liberty, due process, dignity, and equality. The violation of these rights contravenes the explicit provisions of international law and the principles of public law in Israel, which are incumbent upon Israeli authorities wherever they function. Lengthy periods of detention combined with other restrictions imposed on many Palestinian detainees – such as preventing them from meeting with legal counsel – allow authorities to hold detainees for prolonged periods, isolated from the world, without any judicial oversight or supervision of the arrest or interrogation. This situation opens the door to inappropriate treatment of the suspect by the investigators and potentially to the use of prohibited interrogation methods.

[187] Written with the assistance of Atty. Lila Margalit of ACRI.

The table below summarizes differences in the period of detainment that apply to Israeli and Palestinian residents of the West Bank:

	Procedures for Israelis[188]	**Procedures for Palestinians**[189]
Preliminary detainment until judicial review	24 hours (48 hours in exceptional cases) (For suspects of security crimes – 96 hours in exceptional cases)	8 days
Maximum detainment for interrogation, prior to remand request	15 days (20 days for security crimes)	30 days
Total detainment for investigative purposes	30 days (35 for security crimes) or 75 days with the approval of the Attorney-General (for both security and non-security crimes) Additional extensions may be granted only by decision of the Supreme Court	98 days Additional extensions of up to a total of 3 months may be granted, on approval of the District Attorney and decision of the Military Court of Appeals.
Arrest until the end of legal proceedings, prior to indictment	As a rule, 30 days unless the accused or his counsel request otherwise	No comparable arrangement
Arrest until the end of legal proceedings and before a verdict	9 months Additional extensions of up to 3 months at a time, by instruction of the Supreme Court	2 years Additional extensions of up to 6 months at a time, by instruction of the Military Court of Appeals

Differences between the two legal systems are pronounced not only with respect to the treatment of adult Jewish and Palestinian suspects, but also the treatment of juveniles. Israeli minors suspected of a crime – including minors living in the Occupied Territories – enjoy the protection anchored in the Youth (Adjudication, Sentencing, and Procedures) Law (1971). In general, the periods of detention imposed on minors are shorter than the periods imposed on adult suspects. Despite this, the military legal system in the Occupied Territories does not differentiate between adults and youth when they are Palestinians suspected of a crime. The

[188] The detention procedures that apply to Israeli citizens, including those living in the Occupied Territories, are subject to the Criminal Procedures (Enforcement Authority: Arrests) Law (1996). In addition to the regular arrangements set by this law, an additional set was established for suspects of security crimes by the Criminal Procedures Law (Detainees Suspected of Security Offenses) (Temporary Order) (2006).

[189] The procedures currently in effect in the West Bank are listed in Article 4 of the Order for Security Provisions (No. 378) (1970).

difference between the two legal systems begins with the very definition of what constitutes an adult: 16 years old for a Palestinian versus 18 years old for an Israeli.

In other aspects of the legal process, as well, Palestinian minors do not enjoy the special protections afforded by Israeli law, but are treated by the military legal system as adults in practically all matters. As opposed to Israeli courts whose approach to minors is rehabilitative and treatment-oriented and where imprisonment is rare, the military court's approach is punitive. Prison sentences – for juveniles too – are the norm, and it is the exception when the sentence is conditional or more lenient. Contrary to the requirements of international law, minors are not held separately from adult detainees in the military system – they are arrested, held, and tried together with adult suspects.

A recent military order called for the establishment of a military court for youth in the West Bank. The order was intended to correct the phenomenon of Palestinian minors being tried together with adults, by establishing a special court exclusively for the adjudication of juvenile defendants.[190] Nevertheless, the order does not change the aforementioned definition of adulthood, does not affect the long detention periods for them, and does not redress the prison sentences imposed on Palestinian minors.

Access to Resources: Running Water is Not a Given

Many Palestinians living in the West Bank suffer from water shortages, irregular supply of water, and inferior water quality. Water shortages intensify during summer months and arid years. The water situation has serious implications for the quality of life of Palestinians and their basic rights, notably their right to health, livelihood (water is essential for both agriculture and raising livestock), and a dignified existence.

According to the World Health Organization, the minimal amount of water required to meet basic human needs (including home, municipal, and industrial usage) is 100 liters per person per day. The average daily water consumption of Palestinians is one-third less than this recommended amount, and stands at 66 liters per person.[191] But the water shortage suffered by Palestinian residents is unrelated to the actual availability of water in the Occupied Territories: In fact, there is enough water in the West Bank to meet the needs of all its residents – including home, municipal, industrial, and agricultural needs. The problem is the discriminatory manner in which Israel allocates the water, with the amount supplied to the Palestinians significantly lower than the amount provided to Israeli citizens living in the territories. Some examples:[192] The average daily consumption of water is 30 liters per person for the

[190] Order regarding Security Provisions (Temporary Order), Amendment No. 109.
[191] Figures collected by B'Tselem from Palestinian Water Authority data are correct to the end of 2007. See "The Water Crisis", B'Tselem, http://www.btselem.org/english/water/index.asp; and "B'Tselem Warns of Grave Water Shortage in the West Bank", press release, B'Tselem, 1 July 2008, http://www.btselem.org/english/water/2008070_acute_water_shortage_in_the_west_bank.asp.
[192] "World Water Day – 22 March – Waters that Cross Borders", B'Tselem, March 2009, http://www.btselem.org/english/water/20090322_international_water_day.asp.

48,000 Palestinian residents of the Tubas area in the northeast West Bank, while the average consumption rate for the 175 Jewish residents in the nearby settlement of Bekaot is 401 liters per person; the average daily water consumption for the 180,000 Palestinian residents of the Bethlehem district, south of Jerusalem, is 71 liters per person, while the 7,714 settlers of Efrat, just south of Bethlehem, consume 217 liters per person daily. According to the World Bank,[193] the amount of water available to Palestinians in the West Bank is just over one-quarter that available to Israelis.

One-third of the Palestinian communities in the West Bank, comprising 10% of its total population, are not connected to the water system. In autumn and winter months, residents of these communities collect rainwater in cisterns near their homes and use this water for all their needs. This does not stop the Civil Administration, however, from issuing demolition orders for these cisterns, even in areas where the need for water is particularly dire, such as the area of the "cave-dwellers" in the southern Hebron Hills. In the spring and summer months, when the rainwater in cisterns dwindles, these residents are forced to rely upon groundwater from local wells, and to purchase additional water supplied to them by private trucks carrying water tanks. The cost of water delivered by these tankers is significantly higher than the water supplied through the main water system; households not connected to the system typically spend one-sixth of their income, or more, on purchasing privately-transported water. For many families, the financial burden is too difficult to bear.

The water crisis for Palestinian residents of the West Bank is not limited to communities that are "off the grid". Hundreds of thousands of Palestinians live in towns connected to the main water system, but receive a limited and irregular supply of water, which does not reach the homes of all the residents and does not meet their needs. In the summer, some of these neighborhoods receive water intermittently, once every few days or for a few hours a day. To meet their needs, these residents must also buy water from the private trucks.

As long as Israel continues to hold and control the territory of the West Bank, it bears responsibility for the fate and welfare of its population, and is obligated to treat those living under its rule equitably. Israel controls the vast majority of the West Bank's water sources, and has the ability to further develop these resources. The restriction on water allocated to the Palestinian residents of the West Bank is a flagrant violation of the principles of international law, which obligate occupying powers to ensure the human rights and maintain the standard of living of populations under their rule. Moreover, the basic precepts of international law obligate an occupying power to ensure that residents in occupied territory have free access to their natural

[193] "West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development" (report No. 47657-gz), The World Bank, April 2009. According to the report, while each Palestinian West Bank resident is allocated 75 cubic meters of water a year, the allocation for Israeli residents is 240 cubic meters a year (as of 2005).

resources, and they prohibit the occupying power from exploiting the territory or its resources for its own benefit.[194]

Right to Personal Security: Discrimination in Law Enforcement[195]

Israeli security and police forces in the West Bank have had to deal for years with increasing disruptions of the public order, injuries to residents' property, and harm to their personal security. These have affected the lives of both Palestinian and Israeli residents of the West Bank. When it comes to protecting Jewish settlers however, security forces have adopted numerous and diverse measures for ensuring their safety. These include wide-ranging, ongoing deployment of security forces to ensure public order and enforcement of the law; a variety of systems of security and fortification; amendments to the law granting security forces greater law-enforcement authority; and also the instruction and training of forces in the region.

When it comes to protecting the security of Palestinians from the attacks of Israelis, on the other hand, the system has consistently refrained from using many of the security measures and tools at its disposal. Moreover in many cases the only "response" to the threats posed by Israelis to Palestinian security and property, has been to limit and violate the freedom of the Palestinians - the victims - rather than bringing to justice those responsible for the violence. For years, security forces have preferred to take the easy route of imposing restrictions on Palestinian residents rather than taking the more appropriate (and far more difficult) action of enforcing the law against Israelis involved in breaking the law and attacking Palestinians.

Incidents of violence perpetrated by Israeli civilians have severely affected the personal security of many Palestinian residents of the West Bank, threatening their basic right to life, personal security, livelihood, and property. These incidents include violent assault, harassment, trespassing, taking over Palestinian-owned land, and destroying property. During this past year, some extreme settlers have instituted a "price tag" policy: Whenever an illegal outpost is evacuated or the government initiates legal proceedings against settlements, they exact a price by attacking Palestinian residents or property. This turns the Palestinians into double victims, first when the outposts are established and then when they are dismantled.[196]

Although it is the IDF's obligation to protect the wellbeing of civilian populations under its military occupation, and although the Supreme Court has so ruled and elucidated

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[194] "The Military Commander is not authorized to weigh the national, economic, or social interests of his state…a territory belligerently occupied is not an open area for economic or other exploitation", HCJ 393/82 *Jam'iyyat Iskan al-Mu'aliman Altauniya Almahduda Almasauliya v. Commander of IDF Forces in Judea and Samaria* (PD 37(4) 785, 794).

[195] Written with the assistance of Atty. Limor Yehuda of ACRI.

[196] For example, Nadav Shragai, "The new settler state: A 'price tag' for each IDF evacuation", *Ha'aretz Online*, 3 October 2008, http://www.Haaretz.co.il/hasite/spages/1026113.html (Hebrew). See also "Settler Violence and Evacuation of Outposts", OCHA: Office for the Coordination of Humanitarian Affairs, November 2009, http://www.ochaopt.org/documents/ocha_opt_settler_violence_fact_sheet_2009_11_15_english.pdf.

this basic principle,[197] security forces continue to demonstrate impotence in the face of this violence. Often security authorities have known about violent attacks in advance or could have expected them, as there are times (e.g., during outpost evacuations) and places (e.g., near Yitzhar, near Havat Gilad, and in the southern Hebron Hills) when and where such attacks are foreseen. Despite this knowledge, on most of these occasions – with the exception of the olive harvest – security forces operating in these areas have not ensured the necessary reinforcements and are generally unprepared to deal with the events. As a general rule, IDF soldiers and their commanders refrain from enforcing the law against Israeli lawbreakers in the Occupied Territories. Soldiers are not instructed about their policing authority and obligation to prevent violence and uphold the law, and soldiers generally perceive their mission and sole function to be defense of the Jewish population from the Palestinian population. Accordingly, there are many instances when security forces have stood by idly while settlers attacked Palestinians or damaged their property, intervening only later when the Palestinians began to defend themselves.

Moreover, while the actions of security forces toward Palestinian residents can often be characterized as over-stepping their authority, the actions of the police towards Jewish criminal suspects is typified by an unwillingness to use their authority to enforce the law. The unwillingness of security authorities to arrest Jewish suspects or identify them at the scene of the crime, the ineffective handling of complaints lodged by Palestinians, and the defective investigations carried out by the Judea and Samaria District Police – all lead to the closing of many cases due to "unknown perpetrator" or insufficient evidence to prosecute.[198]

Unless the protection of Palestinian personal security and property is redefined as a matter of highest importance, as is the protection of Jewish residents, no meaningful improvement can be expected. Perhaps if the defense of Palestinians and their property were defined as a military objective – on whose basis the performance of senior Israeli officials, including IDF commanders, would be evaluated – the matter might receive appropriate treatment and response. Any such treatment would have to begin by eradicating the prejudices based on a person's nationality, and replacing them with new orders and assumptions that view all human beings as equal.

[197] HCJ 9593/04 *Murar v. IDF Commander of Military Forces in Judea and Samaria* (ruling issued 26 June 2006), http://elyon1.court.gov.il/files/04/930/095/n21/04095930.n21.HTM (Hebrew). The petition was submitted by ACRI on behalf of five West Bank villages and Rabbis for Human Rights.

[198] Monitoring over the last few years by Yesh Din has revealed that roughly 90% of police investigations of suspected crimes by Israeli citizens against Palestinians in the West Bank end in failure: cases closed due to "lack of evidence", "unknown perpetrator" or simply complaints that are lost or never investigated. See "Data Sheet: Law Enforcement for Israelis in the West Bank", Yesh Din, July 2008, http://www.yesh-din.org/sys/images/File/LESVDataSheetJuly2008Heb[1].pdf (Hebrew).

Undermining the Foundations of Democracy

So far in this report, we have examined various ways in which rights have been made conditional. This is but one aspect of the dangerous process in Israel that has been chipping away at human rights and the principles of democracy. In this final chapter, we discuss two other phenomena that should serve as warning signals, calling into serious question the health of Israel's democracy.

Legislative Initiatives

In recent years, a growing number of laws and amendments have been legislated in an improper manner, one that does not realize the Knesset's honor and responsibility or allow it to fulfill its role – to engage in in-depth, critical debate on government initiatives, and to check the authority of government officials. Decisions on weighty matters with far-reaching implications for civil rights have been pushed through the Knesset hastily, sometimes by hijacking the procedures, thereby preventing the Knesset and the public from engaging in full discussion about the proposed law. At times, parliamentary debate has been a sham, and Knesset Members themselves do not understand what they were voting on. To push measures they believe are necessary, government representatives have at times hampered the Knesset's work and prevented its members from fulfilling their public role and obligation to their electorates. As a result, democracy is harmed. Below we discuss several examples.

The Biometric Database Law

Over the past year, the government has advanced a bill that would create a biometric database managed by the Ministry of the Interior, which would store fingerprints and facial feature identification of all Israeli citizens and residents. During the course of Knesset debate on the biometric database, incisive criticism of the bill was sounded by experts in law and technology, as well as human rights activists, who warned about the dangers of such a database, in use by no other democratic country in the world.[199] Experience teaches that all databases – especially those with highly sensitive information – are valuable resources that some individuals will try, and sometimes succeed, in penetrating. This concern is especially weighty in light of the sensitivity of the information stored in the biometric database, and the poor state of public databases in Israel, which are not sufficiently secured against infiltration.[200] As with other public databases, there is a real fear that the biometric database will come

[199] See "Campaign against 'The Giant Brother Law' – No to the Biometric Database", ACRI, http://acri-antibiometric.blogspot.com (Hebrew).
[200] See State Comptroller, "Annual Report 59b for 2008 and Fiscal Year Accounts for 2007", May 2009, pg 859, http://www.mevaker.gov.il/serve/contentTree.asp?bookid=545&id=57&contentid=10196&parentcid=undefined&bctype=10195&sw=1024&hw=698 (Hebrew).

under intense pressure from public and private bodies that seek to broaden their access to the information contained within it for a variety of purposes.[201]

Beyond the inherent danger of leaks and misuse of information, the creation of the biometric database will concentrate a tremendous amount of power in the hands of the government, upsetting the checks and balances that safeguard democracy and individual liberties. This could lead us down a slippery slope toward a "big brother" regime. This disregard for democratic norms by the government lies not only in the content of the proposed legislation, but also in the manner it was advanced through the Knesset. A dangerous law, one that could severely violate the right to privacy and result in a human rights disaster, was debated in cursory and hasty proceedings.

In preparing the bill for its second and third readings, a joint panel of the Knesset Information and Interior Affairs Committees held eight marathon sessions over a period of some three weeks. In a deviation from common practice, these debates were held simultaneously with intense deliberations on the proposed budget and Economic Arrangements Law, land reform, and sometimes even plenary sessions. As a result, most Knesset Members were unable to participate in the discussions on the biometric database.[202] Several were not even aware they had been appointed to the joint panel.[203] Pressure was applied on the Knesset to rapidly complete preparation of the legislation based on some disinformation supplied by the government – it was implied that the creation of the database was necessary for the issue of "smart" identity cards, although these are separate subjects and the new identity cards could be issued without a biometric database. The unnecessarily feverish schedule of debate also forced the Justice Ministry, Interior Ministry, and Police into holding their own marathon discussions – some lasting through the night – to address problems in the proposed legislation that came to light in the joint committee debate. This is how new provisions, some with profound repercussions, were crammed into the wording of the bill during late-night sessions, and then placed on the desks of committee members the following morning, moments before resuming debate. Under these circumstances, committee members did not have a chance to carefully study the changes and new addenda to the bill, or study their full implications.[204] Knesset Member Meir Sheetrit, who chaired the joint committee and

[201] At the contract signing ceremony for issue of the new ID cards, the CEO of Hewlett Packard commented that, in the future, the smart ID cards could be used for identification by banks and also during the election process. Guy Grimland, "In another year, Israelis will have Smart ID Cards, and that's final", *The Marker*, 1 December 2008, http://it.themarker.com/tmit/article/5053 (Hebrew).

[202] Thus, for example, Knesset Member Eitan Cabel in one of the deliberations: "…I feel uncomfortable every time you say that colleagues were not there…A person like me, who is not particularly big, has a hard time splitting himself into more than one person…Knesset Member Sheetrit, every day for two months, from nine until three, you were busy…there's no one like you, everyone is running around in other places." For references to the quotations in footnotes 202-205, see: "ACRI to the Speaker of the Knesset: Don't lend a hand to the 'Biometric Maneuver' during parliamentary recess", ACRI, 11 August 2009, http://www.acri.org.il/Story.aspx?id=2230 (Hebrew).

[203] Knesset Member Hamad Amar: "I only learned that I was a member of the committee via the media. I received no appointment, no letter, nothing....As soon as I read about it in the paper, you [Meir Sheetrit] alone voted on all the articles…on most of the articles, you were the sole vote". Ibid.

[204] Knesset Member Meir Sheetrit to Atty. Yonatan Klinger, one of the participants in the debate, who asked for more time to study the material: "I am not responsible for your schedule...I'm finishing this today. Anyone who wants to can comment, and if you don't, that's fine too".

had advanced the bill during his tenure as Interior Minister, refused to consider any alternatives to the biometric database – alternatives that could have achieved the same objectives without jeopardizing privacy, human rights, or democracy.[205]

A Legislative Travesty: The Economic Arrangements Law

The Economic Arrangements Law bestows upon the executive branch of government the power to make radical changes in Israel's socioeconomic policies – violating human and social rights all along the way – with no checks and balances, no parliamentary oversight, and no thorough debate in the Knesset committees that specialize in the matters at issue. In February 2005, the High Court of Justice rejected ACRI's petition challenging the Economic Arrangements Law for 2004. In its ruling, the Court found that the legislative process for the law does meet the formal requirements of Israeli law. However, the Court did express its hope that the Knesset and government would in the future minimize use of such legislation, which in the Court's words arouses "profound regret, and principally deep concern that legislation enacted so rashly and with such far-reaching consequences does not receive due consideration from the house of legislature".[206]

Use of the Economic Arrangements Law, however, has not diminished since; the size and number of provisions in this omnibus law have only grown from year to year. True, over the last few years the law has not been debated as a single slate before the Finance Committee, but rather its provisions have been split up and apportioned to the appropriate Knesset committees for discussion. Nevertheless, at the end of the day, the government still brings before a Knesset under intense pressure and after a very short process, a "legislative monster" that includes dozens of pages and hundreds of provisions. A large number of these provisions bear no connection whatsoever to the State budget, and some represent significant changes and reforms that deserve serious and orderly parliamentary debate. In many cases, Knesset members do not know about what they are voting.

The government's budgeting process was even more chaotic this year: The document from which both the Budget Law and the Economic Arrangements Law derived was submitted to the government in three separate parts which were not coordinated with one another and at times even contradicted each other. All were

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Knesset Member Hamad Amar: "I view this as an important law and I see that you enthusiastically view it as extremely important, but I can't help thinking, we lived without this for 61 years, we can postpone it until after the recess…and then open things up, discuss them, and examine them deeply". Ibid.

[205] Nira Lamai Rechlevski (Legal Advisor to the Committee): "The question of the database and a possible alternative raises a substantive constitutional question...when we discussed raising the subject for further debate, to open it up during its reading, the position of the head of the committee was 'no.'...We were expected to discuss alternatives, but the head of the committee decided not to examine them...and that's his right as the person in charge of the committee".

[206] HCJ 3106/04 *Association for Civil Rights in Israel v. Knesset* http://www.acri.org.il/Story.aspx?id=1864 (Hebrew). Also HCJ 4885/03 *Poultry Farmers' Association v. Government of Israel* http://elyon1.court.gov.il/files/03/850/048/N11/03048850.n11.htm (Hebrew).

submitted close to the date of the scheduled government debate and, as a result, cabinet ministers had difficulty learning and understanding the bill's details in time.

In a game whose rules are known in advance to all participants, several Knesset Members and social change organizations are successful each year in doing away with some of the most egregious provisions, or at least detaching them from the Economic Arrangements Law so that they can be considered separately in full and orderly parliamentary debate. For example, this year a provision seeking to limit the obligations of law enforcement authorities to videotape the interrogations of criminal suspects was successfully deleted from the Economic Arrangements Law,[207] as was a provision seeking to broaden the scope of the Wisconsin Plan (see below). But these examples are a drop in the bucket and, in general, the government and the Finance Ministry are able to legislate almost all of the provisions they want to pass. Moreover, the fact that a particular provision was detached from the Arrangements Law does not necessarily guarantee that it will receive serious and rational parliamentary debate, for detached provisions are sometimes debated at the same time as the Economic Arrangements Law, and within the same crowded time frame.

Expanding the Wisconsin Plan Nationally

> "*Knesset members approved the law, apparently because of the encouraging words in the title…but under those words lurked a different reality with a different purpose, which later was reflected in the contracts of the operators of the Wisconsin Plan in its four centers. Then the true character of the project was revealed as entirely different. When the Knesset approved the law, I believe they were negligent*".[208]

The Wisconsin Plan, which seeks to reduce the number of people receiving income support payments and to absorb them into the job market, has been operating for the last four years as a pilot project in four separate regions of Israel. However from the perspective of legislative due process, the project was conceived in sin and born out of a provision in the Economic Arrangements Law of 2004, whose problematic nature was spelled out above. But enactment of the Wisconsin Plan also exemplifies the damaged standing of the legislator in the context of privatization. Many details of the project, some critical to determining how it was run, were deleted from the text of the law and inserted instead into the contracts later signed between the government and the private operators. As a result, the legislators had little influence over how the project would be run. During the years wherein it was executed, the project has been severely criticized (see "The Right to Social Security" above). Nevertheless, the government sought this year to extend the scope of the project to the entire country –

[207] See ACRI's appeal on the matter to the Constitution, Law, and Justice Committee, 2 July 2009 http://www.acri.org.il/Story.aspx?id=2199 (Hebrew).

[208] Knesset Member Yuri Stern in *Session of the Committee on the State Comptroller's Report regarding: Request for Expert Opinion from the State Comptroller on the Wisconsin Plan*, 27 November 2006 http://www.knesset.gov.il/protocols/data/html/bikoret/2006-11-27.html (Hebrew).

again in a provision of the Economic Arrangements Law that would bypass public debate, ignore the lessons of the pilot project, and ensure that we repeat the mistakes of the past. Only through intense lobbying by social rights organizations[209] and support of the Labor Committee did the Knesset agree to detach the section dealing with the Wisconsin Plan from the Economic Arrangements Law, and send it to the Labor Committee for consideration as a separate law.

Land Reform – Land Grab

Regarding the proposed reform of the Israel Lands Administration,[210] detaching the section on reform from the body of the Economic Arrangements Law was not adequate to bring about a profound and incisive debate on the subject. The proposal deals with matters of considerable import – such as the privatization of land, the composition of the council to administer the land, and procedures for planning and building – all of which have significant social, environmental, and financial implications. Nevertheless the reform was bulldozed through the Knesset in a problematic legislative process. The timetable for debate on the proposal closely resembled that of the Economic Arrangements Law, which did not allow for a close examination of details or for all relevant voices to be heard.[211] The media reported that Deputy Defense Minister Matan Vilna'i submitted a complaint to the Knesset Speaker, claiming he was being threatened into attending the vote on the reform.[212]

Especially troubling was the government's conduct in discussions about admissions committees for agricultural communities and small community settlements. On the last day of debate, a new article was introduced into the law that had not been mentioned in earlier drafts. This article anchors the law in a mechanism that could be interpreted as giving the Knesset seal of approval to the practice of admissions committees, despite their discriminatory and controversial nature. Government representatives and legal advisors did not bother to explain to the Knesset Members that this "technical" article dealt with matters that bear directly on discrimination in Israel and the right to equality, and that the provision is at the heart of a deep public controversy. Likewise, Knesset Members were not informed that the article contravenes decisions by the ILA and Supreme Court rulings, and that the matter is still pending in a number of petitions. The article was accepted in less than five minutes of discussion. Following protests from ACRI[213] and other organizations comprising the civil-environmental Coalition against Land Reform, Speaker of the

[209] For example, see appeal of ACRI, Community Advocacy, Rabbis for Human Rights, and the Mizrahi Democratic Rainbow to Government Ministers to reject the article in the bill regarding that would extend the program, May 2009, http://www.acri.org.il/story.aspx?id=2125 (Hebrew).
[210] Israel Lands Administration Law (Amendment 7) 2009, ibid. See footnote 57 above.
[211] Avi Dabush, "Land privatization madness", *NRG-Ma'ariv,* 12 July 2009 http://www.nrg.co.il/online/1/ART1/915/434.html (Hebrew).
[212] Meirav David, "Vilna'i Complains: They threatened me to be at the Vote", *NRG--Ma'ariv*, 27 July 2009, http://www.nrg.co.il/online/1/ART1/922/134.html.
[213] "Late-night maneuvers: Information withheld from Knesset Members leads to passage of racist proposal, ACRI website, 14 July 2009, http://www.acri.org.il/Story.aspx?id=2206 (Hebrew).

Knesset Reuven Rivlin decided to hold a new debate on the article. Soon after, the article passed, though no significant debate had preceded the re-vote.

Contempt of Court: Ignoring Supreme Court Rulings[214]

In 2007, ACRI warned[215] of a growing phenomenon that was undermining the status of the High Court of Justice, namely a proposed bill that would allow for circumventing Court decisions, while also violating human rights. This trend, which not only includes "private initiatives" introduced by Knesset Members, but also the explicit involvement of the broader Knesset and government, has persisted. For example, the government has continued to advance a proposed amendment that would prevent Palestinians from submitting compensation claims against the State for any injury to their person or property caused by IDF forces during non-wartime activity.[216] This contravenes a unanimous ruling by an extended panel of nine Supreme Court justices in December 2006, which rejected a similar amendment.[217]

Another dangerous phenomenon is the State's blatant disregard of rulings by the High Court of Justice and the Administrative Courts. It is difficult to fathom – a court of law in Israel makes a clear legal decision and the State ignores it, as if it never happened. Even petitions to hold the State in contempt have not always improved matters, to the extent that Chief Justice Dorit Beinisch recently had to remind the State that "a ruling of this Court does not constitute a recommendation".[218] The State's disregard of judicial oversight in a democracy supposedly based on checks and balances is a recipe for the crumbling of democracy, the violation of rights, and the tyranny of the majority through the executive and legislative branches of government. Below we present several examples of this dangerous trend:

The "Binding Arrangement" of Migrant Workers to their Original Employer:[219] More than three and a half years ago, the High Court of Justice handed down a ruling that the "binding arrangement" violates the migrant worker's rights, as it makes his or her residence conditional upon continued employment with one specific employer. The Court instructed the State to formulate new employment arrangements within six months for migrant workers employed in nursing care, agriculture, and industry. Since then, the introduction of new arrangements has been postponed time and time

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[214] Written with the assistance of Maskit Bendel of ACRI.
[215] "The State of Human Rights in Israel and the Occupied Territories – 2007", ACRI, December 2007, http://www.acri.org.il/pdf/state2007.pdf.
[216] The proposed Civilian Damages Law (State Responsibility) (Amendment 8) 2007. In September 2009, the Constitution Committee began to prepare the law for second and third readings. See the position paper by ACRI, Hamoked: Center for the Defense of the Individual, and Adalah opposing the proposed law: http://www.acri.org.il/story.aspx?id=2146 (Hebrew).
[217] HCJ 8276/05 *Adalah: Legal Center for Arab Minority Rights in Israel v. Minister of Defense*, http://elyon1.court.gov.il/files/05/760/082/A13/05082760.a13.htm (Hebrew).
[218] HCJ 2732/05 *Hasin v. Government of Israel* – decision on a request under the Contempt of Court Ordinance, 5 October 2009, http://elyon1.court.gov.il/files/05/320/027/n18/05027320.n18.htm (Hebrew).
[219] HCJ 4542/02 *Hotline for Migrant Workers v. Government of Israel*. The petition was filed by ACRI and other organizations via the program for law and welfare at Tel Aviv University. The ruling: http://elyon1.court.gov.il/Files/02/420/045/o28/02045420.o28.HTM (Hebrew). The request under the Contempt of Court Ordinance: http://www.acri.org.il//pdf/petitions/hit4542biz.pdf (Hebrew).

again, and the "binding arrangement" remains in force. In November 2008, the High Court of Justice found the State in contempt of court and ordered it to report within thirty days how and when the new employment arrangements would be published. Still the State continues to flout the Court ruling. In agriculture and industry, new arrangements have not been set, and in nursing care, the new arrangement is only partial and does not rectify the issue of "binding" to one employer.

National Priority Areas:[220] In February 2006, an expanded Supreme Court panel of seven justices ruled that the government decision to assign national priority status to certain regions for the allocation of educational resources was illegal and discriminatory against Israel's Arab citizens. The Court gave the State twelve months to cancel this decision. Only after the twelve months had passed, did the State submit a request to postpone implementation of the Court's ruling by an additional six months, so that it could anchor in legislation the authority to establish national priority areas. Later, the State asked for an additional five-year extension to complete the complex task of setting alternative criteria for the allocation of Ministry of Education resources. In June 2007, the Court granted the State a one-year extension to carry out its ruling. When this was not accomplished, the original petitioners submitted a request that the State be held in contempt, and the Court responded by pushing back the deadline for implementation to 1 September 2009. As of November 2009, there are still no indications that the government is preparing to carry out the Court ruling.

Dismantling Sections of the Separation Barrier: In several petitions, the High Court of Justice ruled that the route of the Separation Barrier through specific areas is illegal and disproportionately violates the rights of Palestinian residents. In these locations, the Court instructed the State to either determine an alternative route for the barrier or dismantle sections already been erected. In some cases, the State has repeatedly delayed implementation of the Court's ruling, and additional Court intervention has been required. For example:

- *The area of the villages 'Azzun and Nabi Elyas*:[221] Despite a Court ruling from June 2006, which explicitly determined that the Separation Barrier in this area must be removed as quickly as possible, the State dragged its feet for more than three years, only beginning to remove the barrier after a contempt of court petition was submitted. In a harshly worded decision from 5 October 2009, the Court criticized the government for delaying the implementation for three years, accusing it of taking the law into its own hands and treating Court rulings as "recommendations only".

- *The southern Hebron Hills area*:[222] In December 2006, the High Court of

[220] HCJ 11163/03 *Higher Arab Monitoring Committee v. Prime Minister of Israel*, http://elyon1.court.gov.il/files/03/630/111/A18/03111630.a18.htm (Hebrew). Submitted by Adalah.

[221] HCJ 2732/05 *Hasin v. the Government of Israel* http://elyon1.court.gov.il/files/05/320/027/n18/05027320.n18.htm (Hebrew). Submitted on behalf of the villages' council heads and Hamoked: Center for the Defense of the Individual, by Atty. Michael Sfard.

[222] HCJ 1748/06 *Kisiyah v. Commander of IDF Forces in the West Bank*. The petition was submitted by ACRI and deliberated together with other petitions submitted by Rabbis for Human Rights and the Samu'a Municipality. The decision: http://elyon1.court.gov.il/files/06/480/017/A20/06017480.a20.htm (Hebrew). The request under the Contempt of Court Ordinance:

Justice gave the State six months to take down the internal fence that the army had erected within this region. The State ignored the ruling despite the extended amount of time set by the Court to carry out the decision. Three days before the implementation period was to expire, State representatives asked for an extension. The Supreme Court found the State in contempt of court and instructed it to remove the barrier within fourteen days. Only then was the order implemented.

- *The village Bil'in*:[223] In September 2007, the Court instructed the State to consider an alternative route for the Separation Barrier running through lands belonging to Bil'in "within a reasonable period of time". The petitioner has since issued two demands to find the State in contempt of court – the first after the State did not announce an alternative route within nine months, and the second when an alternative route was published but did not meet the Court ruling's requirements. In December 2008, the Court instructed the State to map an appropriate new route without delay. In April 2009, the IDF published a new route, and the village's opposition was rejected. As of October 2009, work on the new route has yet to begin.

Fortification of schools in Sderot[224]: In May 2007, the Supreme Court accepted two petitions to fortify the educational institutions in Sderot and the Gaza-border communities against rocket fire. The Court instructed the State to fortify all the classrooms, and not simply provide "safe zones" within the school. Two weeks before the deadline to complete the work was to expire, the State submitted a request to postpone implementation of the ruling, claiming that it was unable to meet the Court-set timetable. Since then, work has begun on fortifying some schools and rebuilding others, but the State has periodically requested (and received) additional extensions for carrying out work in certain schools.

Shortage of classrooms in East Jerusalem:[225] In recent years, this subject has been deliberated several times by the High Court of Justice, which has ruled that the Ministry of Education and the Jerusalem Municipality are obligated to construct hundreds of additional classrooms for Palestinian schoolchildren in East Jerusalem. Despite this ruling, and despite the State's repeated promises to build the required classrooms, only a handful of classrooms has actually been built in recent years. There has been no serious attempt to address the existing shortage, which today numbers more than 1,000 classrooms, and the result is that tens of thousands of students have no place to study within the public school system of Jerusalem.

Interior Ministry disregard for the rulings of Administrative Courts: The Administrative Courts have become the country's main venue for adjudicating

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http://www.acri.org.il/story.aspx?id=1539 (Hebrew). The ruling of 24 July 2007: http://elyon1.court.gov.il/Files/06/480/017/n26/06017480.n26.HTM (Hebrew).

[223] HCJ 8414/05 *Yassin v. Government of Isr*ael, http://elyon1.court.gov.il/files/05/140/084/N25/05084140.n25.htm (Hebrew). Submitted by Atty. M. Sfard.

[224] HCJ 8397/06 *Wasser v. Minister of Defense*; HCJ 8619/06 *Sderot Municipality Parents' Committee v. Minister of Defense*, http://elyon1.court.gov.il/Files/06/970/083/n21/06083970.n21.HTM (Hebrew).

[225] HCJ 5185/01 *Fadi v. Jerusalem Municipality* and other petitions. See "Status Report: The Arab-Palestinian School System in East Jerusalem as the 2009-10 School Year Begins", Ir Amim and ACRI, September 2009, http://www.acri.org.il/pdf/EJeducation2009en.pdf.

matters of entry and immigration to Israel. However, experience has shown that the Ministry of the Interior does not hold the principled decisions of these Courts in high regard, nor does it see itself obligated by their rulings. The Interior Ministry only respects Court rulings about individual cases, not general decisions regarding Ministry policies; the Ministry does not generally alter its policies and decisions in keeping with the rulings of these Courts. Indeed, the Ministry often does not appeal these rulings, but continues to conduct business-as-usual based on policies that have been found faulty. This disregard for principled legal decisions effectively eliminates the possibility of addressing the Ministry's illegal conduct.

For example, in the case of legalizing the residency status of common-law partners:[226] In a ruling from July 2007, the Court rejected the position of the Interior Ministry, which refused to grant legal status to a non-Israeli common-law partner of an Israeli citizen, who had separated but not divorced from his Israeli wife. The Court instructed the Ministry to amend its regulations regarding common-law partners, and discontinue its formal demand that the Israeli citizen be "free" [single]. The Ministry amended its regulations, but continues to refuse requests from such couples when a previous formal marriage exists. When it does occasionally grant such requests, it claims to be doing so beyond the obligation of the law.

A similar matter involved publication of the Interior Ministry's rules regarding immigration, legal status, and registration. In December 2007, the Court determined that the Ministry had violated for many years a previous legal obligation instructing it to publish the regulations. The Court gave the Ministry thirty days to publish all of its rules and regulations.[227] The Ministry published many, but not others – including regulations central to the Ministry's operation. Among the unpublished regulations are those addressing the treatment of migrant workers and asylum-seekers.

In the words of Dorit Beinisch, Supreme Court Chief Justice:

> "*Let us never forget that the checks and balances of a democracy are reflected in the mutual respect among the branches of government, and that the barrier to anarchy is law and justice. Contempt for the law, of which Court rulings are a part, could undermine the foundations of democratic rule. In the past, respect for Court orders was self-evident, even when the decision was not to the authority's liking. Unfortunately, there is no guarantee today that we are not on the brink of a slippery slope that could lead us to a place where judicial orders are not honored. I can only hope that this fear will never materialize*".[228]

[226] Administrative Appeal (Jerusalem) 139/07 *Cohen v. Minister of the Interior*.
[227] Administrative Appeal (Jerusalem) 530/07 *ACRI v. Minister of the Interior*, http://www.acri.org.il/Story.aspx?id=1972 (Hebrew).
[228] Keynote address, 2009 Israeli Democracy Index Conference, the Israel Democracy Institute, See conference report: http://www.idi.org.il/sites/english/PublicationsCatalog/Documents/Democracy_Index%2009.pdf.