

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



NGO Information submitted by the Association for Civil Rights in Israel (ACRI) to the Human Rights Committee

For consideration when compiling the List of Issues on the Third Periodic Report of the State of Israel under the International Covenant on Civil and Political Rights

August 2009

Introduction

The Association for Civil Rights in Israel (ACRI) is pleased to present the Human Rights Committee with the following selection of issues relating to Israel's compliance with the International Covenant on Civil and Political Rights (ICCPR). The purpose of this preliminary document is to assist the Committee in compiling the list of issues during its consideration of Israel's Third Periodic Report. This document does not represent an exhaustive assessment of Israel's compliance with its obligations under ICCPR, but rather, focuses on a number of key areas of concern in Israel and the Occupied Territories that ACRI believes should be addressed within the list of issues:

Inside Israel:

1. Continued Binding of Migrant Workers

Article 8 (prohibition on slavery)

The employment and entry visas of migrant workers in Israel are based on "binding" them to a specific employer. This means that if work relations between a migrant worker and a specific employer who holds a permit to employ him/her are terminated for any reason (resignation, dismissal, the death of the employer, etc.), the migrant worker's Israeli visa is automatically cancelled and his or her presence in Israel is

deemed illegal. This arrangement severely harms the rights of migrant workers. Israel's High Court of Justice ruled in 2006 that these arrangements are “a modern form of slavery” and instructed the state to replace them with new arrangements for employment in the fields of health care, agriculture, and industry. So far, new arrangements have not yet been implemented.

2. Arrest of Refugees and Asylum Seekers

Article 13 (expulsion procedures)

No Israeli laws deal with the status of refugees or asylum seekers, hence, an asylum seeker who reaches Israel's shores is considered an infiltrator and unlawful resident. Expulsion or arrest orders are issued against all asylum seekers in Israel without a visa, and expulsions are carried out immediately upon conclusion of the procedure for examining his/her request for refugee status. As a result, asylum seekers remain under arrest for extended periods. In an effort to prevent infiltration, the government of Israel has even tabled a bill, currently in debate, that would allow the detainment without time limit of asylum seekers who entered Israel without a permit.

3. Freedom of Information

Article 19 (freedom of information)

Israel's Freedom of Information Law, passed in 2000, has not led to greater transparency. Not only has this law not been implemented in most government ministries, it often serves to prevent information from reaching the public. Many authorities do not even publish their administrative regulations, which by law the public must be able to access in an ongoing manner.

Israeli security services are fully exempt from the Freedom of Information Law. While many activities of these bodies must presumably remain confidential, the complete blackout on information thwarts all hope of public debate about the policies and principles of the security services, unlike the practice common in many democracies.

The absolute secrecy surrounding the activity of the security services and other classified agencies also extends to historical documents. Archival material from the security services that is older than fifty years must be accessible by law, but in practice is closed to the public; the IDF imposes many limitations on researchers who wish to examine historical documents in its archive; and the Office of the Prime

Minister plans to table a bill that will extend the classified period of state documents to seventy years.

4. Freedom to Demonstrate

Article 19 (freedom of expression)

Although the rights to assemble and demonstrate are basic rights in Israel, they are often violated by the state. Police frequently disperse quiet demonstrations on the grounds that they lack a permit, even though there is no need for a permit for such demonstrations. Many demonstrations were dispersed only because of threats and violence by passersby and counter demonstrators, despite repeated rulings by the court that the paramount role of the police is to protect the demonstrators and allow for their protest. Often the police wait years before closing investigations against demonstrators, and then finally close these cases in a way that leaves those investigated with a criminal record.

These troubling phenomena have appeared mainly during political demonstrations against state policy, and were particularly evident in early 2009 during the Cast Lead military operation in Gaza. Demonstrators who protested Israeli actions were violently dispersed, arrested, and beaten. Even public prosecutors joined in the repression of demonstrations, asserting in court that such demonstrations are not appropriate at a time of war and that they “undermine national morale”. Public figures from the Arab minority were summoned for warnings by the security services, and some were even arrested without cause to prevent them from organizing and participating in protests.

These and other practices intimidate and inhibit civilians who wish to participate in a quiet and legitimate protest. Although these practices are most evident at the lowest echelon of public administration, primarily local police chiefs, the policymakers, including the Attorney General, have not acted to prevent them.

Currently, the government is advocating a bill intended to prohibit virtually all demonstrations outside the homes of public figures or those who provide services to the public or regarding any public matter.

5. Family Unification

Article 2 (1) (non-discrimination), **Article 26** (equality before the law), **Article 23** (protection of the family)

Since May 2002, Israel has prevented – first by government decision and since 2003 by law – legalization of the status of Palestinians in Israel, even if they are spouses or children of Israeli citizens and residents. Although the avowed purpose of the law is security, decision makers have clarified more than once that the intent is demographic – to prevent Palestinians from having legal standing in Israel. Although the law permits spouses and children above a certain age to hold a temporary residence permit without social rights, it does not allow legalization of their status on a permanent basis. And since 2007, Israel has placed an absolute prohibition on legalizing the status of family members who are citizens of Syria, Lebanon, Iran, or Iraq and – from 2008 – also Gaza Strip residents. The law, while ostensibly enacted for security purposes, disproportionately harms the right to family life solely on the basis of nationality and ethnic origin. The law also undermines the principle of equality as it prevents Arab citizens and residents whose partners reside in Arab states or the Occupied Territories from realizing their right to a family life. In May 2006, the High Court of Justice rejected petitions against this law, asserting in a majority ruling that these orders are temporary despite the harm they cause. Subsequent petitions against extending the validity of this law are pending.

6. Civil Marriage

Article 2 (1) (non-discrimination), **Article 23** (right to marry)

In Israel, marriage is recognized only as a religious proceeding carried out according to the religious laws of the couple that seeks to marry. As a result, many do not have the option of marriage in Israel – couples of different religions, those who practice a religion not recognized by the Israeli religious establishment, those prevented from marrying for a religious reason, and same-sex couples. In addition, the freedom of religion and conscience of many individuals is undermined, including those who wish to marry not in a religious ceremony or those who wish to marry by groups not recognized by the state, such as the Conservative or Reform movements in Judaism.

7. Land Discrimination Agreement between Israel and the Jewish National Fund

Article 2 (1) (non-discrimination)

As part of a general reform in lands administration, an initial agreement was signed in June 2009 between the State of Israel and the Jewish National Fund (JNF) according to which the JNF will transfer to state ownership lands in the center of the country in its possession (that have so far been marketed and administered on behalf of Jews only) in exchange for undeveloped and unzoned land in the Negev and Galilee regions. The agreement asserts that the state shall administer the property “in a way that preserves JNF principles regarding its land”. The meaning of this assertion is that the properties must be marketed to Jews only, despite the fact that the authority to administer the land is a public body obligated to act with equality and fairness and in keeping with the principles of distributive justice.

This agreement harms the fundamental rights of Arab citizens, especially their right to equality and dignity. The use of land in the Negev and Galilee on behalf of Jews only will exacerbate the severe housing shortage of the Arab population, which lives primarily in the Negev and Galilee and is in dire need of development, proper planning, and the equitable distribution of resources. There is also concern that the state will transfer Negev lands to the JNF that are claimed by the Bedouin and/or on which unrecognized villages exist and/or that can help resolve the issue of Bedouin settlement in the Negev.

This agreement also establishes – and this was approved by the Knesset – that five of the thirteen members of the authority council, which will administer Israel’s lands, will be JNF representatives. This over-representation of the JNF in the council, with the authority to set land policy for the entire population, will harm the Arab public, as JNF representatives work for the benefit of the Jewish public and serve the goals of the JNF, entrusted with the interests of Jews only.

8. Violation of the Rights of Arab Citizens to Language and Culture

Article 27 (right to language and culture), **Article 19** (freedom of expression)

In May 2009, the Israeli government supported a bill that prohibits commemoration of the *nakba* (the Palestinian term for the events of the 1948 war and establishment of Israel), and carries a prison sentence for violation of the law. In the wake of a public

outcry, an amended version of the bill passed a preliminary reading in July; this version did not cite imprisonment as a penalty, but prohibits any state funded body from supporting activity that commemorates the *nakba*. Recently the Education Minister also removed the term *nakba* from the curriculum in Arab schools, a term that had been introduced during the tenure of the previous minister.

Israel and the Occupied Territories

9. Incommunicado Detention

Article 7 (prohibition on inhuman or degrading treatment), **Article 9** (prohibition on arbitrary detention, obligation of prompt judicial review), **Article 10(1)** (obligation of humane and respectful treatment)

As noted in Israel's report, Israeli law allows for the detention and interrogation of suspects of a security offense for up to 96 hours before being brought before a judge. Individuals detained under the Incarceration of Unlawful Combatants Law (2002) can be held up to 14 days without judicial review. In the Occupied Territories, an individual can be held up to 8 days before being brought before a judge. In addition, suspects of security offenses as well as those incarcerated as “unlawful combatants” can be prevented from meeting with an attorney for up to 21 days (30 days in the Occupied Territories). For criminal matters, once a suspect has been brought before a judge, his or her detention can be extended up to 15 or 20 days at a time.

The cumulative effect of these provisions is that individuals under interrogation can be held incommunicado for days without outside scrutiny over the interrogation process. This lack of oversight over interrogations invites abuse of detainees.

Of critical note, the statutory obligation to document interrogations via audio or video media does not apply to interrogations conducted by Israel's General Security Services. A temporary provision in force until 2012 also exempts the police from this obligation when conducting security interrogations.

10. Denial of Fundamental Rights Based on Secret Evidence

Article 9(1) (arbitrary detention prohibited), **Article 9(4)** (right to challenge detention in court), **Article 2(3)** (right to effective remedy)

Both in Israel and the Occupied Territories, individuals can be subject to far-reaching interference with their fundamental rights – including the rights to liberty (Article 9),

family (Articles 17 and 23), freedom of movement (Article 12), and freedom of association (Article 22) – on the basis of secret evidence withheld from both the defendant and the defendant’s attorney. The use of secret evidence to deny basic rights is far more routine in the Occupied Territories.

Perhaps the most striking example of this is in the realm of detention law. As of May 2009, 449 Palestinians from the Occupied Territories are being held in administrative detention. Of these, 218 had been in detention for over a year. In addition, several Palestinians were held in various forms of administrative detention in accordance with domestic Israeli laws such as the Incarceration of Unlawful Combatants Law (2002) and the Emergency Powers (Detentions) Law (1979). While administrative detention is subject to judicial review, and the courts are supposed to take extra care in evaluating confidential evidence and ensuring that as much information as possible is revealed to the detainee, in practice nearly all the evidence remains secret and defendants are often informed of the allegations against them in only the most general terms. As a result, detainees can be held for years (potentially indefinitely) without the minimal guarantee of due process.

The Occupied Territories

11. Lack of Official Recognition of Covenant Rights for Palestinian Residents of the Occupied Territories

Article 2 (application of the rights of the Covenant)

For over 42 years, Israel has maintained effective control over the Occupied Territories.¹ According to both Israeli declarations and the common view of the international community, this area is held by Israel as occupied territory. Despite the length of time that Israel has controlled this territory, it rejects application of the Geneva Conventions to the region, as well as its obligation to ensure the rights articulated in this Covenant to Palestinian residents of the territory. Thus, Israel has responsibility for creating a legal regime in which the rights of this Covenant are not enshrined in or protected by law.

¹ In 2005, Israel withdrew its troops from the Gaza Strip. However, even after completing this “disengagement”, Israel continues to control the fate of Gaza residents in many ways – by control over the land crossings, air space, and territorial waters of the Gaza Strip, as well as the population registry and additional mechanisms that directly and indirectly affect the lives of Gaza residents.

In addition, a regime of occupation inevitably leads to violation and severe curtailment of the human rights protections enshrined in the Covenant. Some rights, including the right to demonstrate, are entirely denied. While justification for this curtailment could be found for short periods, it cannot be justified for dozens of years.

12. Open-Fire Regulations and Failure to Investigate Civilians Casualties by Security Forces

Article 6 (right to life), **Article 26** (equality before the law and prohibition on discrimination)

The open-fire regulations in the Occupied Territories allow for shooting and the use of other lethal weapons even when there is no threat to life – such as opening fire to disperse nonviolent demonstrations or impose a curfew. Furthermore, they discriminate based on nationality.

When Palestinian civilians are killed or wounded, the declared policy of the Israel Defense Forces (IDF) since late 2000 has been to open a Military Police investigation only when there is a well substantiated suspicion that the killing or wounding was directed at civilians. The primary source for substantiating this suspicion is an operational debriefing of the military force involved in the event itself. In addition to this flawed policy, the JAG in practice has set the highest level of evidence as a condition for opening an investigation. As a result of this policy and its implementation, only a small number of investigations were carried out since the second Intifada broke out. This fosters a sense of immunity from sanction among soldiers and their officers. We also have information that how these investigations were conducted was also problematic.

13. Failure to Enforce the Law regarding Settler Violence against Palestinian Residents of the Territories

Article 6 (right to life), **Article 9** (right to security of person), **Article 2 (3)** (right to effective remedy)

Criminal acts by Israeli settlers against Palestinian residents of the Occupied Territories and their property are frequent – violent assaults, harassment, trespassing, appropriation of lands, and vandalism. These incidents gravely undermine the security of Palestinian residents of the Territories and their right to life and personal security. Although in many cases the authorities know about or can

anticipate these violent attacks, they do not take measures to prevent them. Indeed, the state consistently refrains from taking steps and using tools at its disposal to enforce the law on those involved in violent activities.

14. Disproportionate and Discriminatory Detention

Article 2 (non-discrimination), **Article 9** (obligation to judge and bring to trial within reasonable period), **Article 26** (equality before the law and protection from discrimination)

While Israelis living in the West Bank are subject to Israeli law, Palestinians are subject to military orders promulgated by the IDF as part of a regime of belligerent occupation. While Israeli law mandates that an individual arrested on suspicion of a crime must be brought before a judge within 24 hours (this can be extended under exceptional circumstances to 48 hours, or 96 hours in security cases), military law allows Palestinian criminal suspects in the Occupied Territories to be held up to 8 days without judicial review. Similarly, Israelis must be released after 9 months in pretrial detention if their trial has not yet ended (a period that can be extended only by the Supreme Court), while Palestinians can be held up to two years before the question of their continued detention must be brought before a Military Appeals Court.

15. Constraints on Freedom of Movement

Article 2 (non-discrimination), **Article 12** (liberty of movement), **Article 26** (equality before the law and protection from discrimination)

Israel continues to place restrictions and prohibitions on the movement of Palestinians within the Occupied Territories. Although some constraints within the West Bank have been eased in the past two years, hundreds of barriers remain, and in some areas the violation of freedom of movement is still severe.

Some of these restrictions discriminate on the basis of nationality. This includes the restriction on Palestinians entering settlements and restriction on the movement of Palestinians on specific West Bank roads. To enter the “seam zone” – the West Bank area on the “Israeli side” of the Separation Barrier – Palestinians are required to submit requests and obtain permits, even if they had previously lived there; Israelis, on the other hand, can enter this area at will.

Palestinians in Hebron have had sweeping restrictions on their movement over the past eight years and are barred from using major arteries on the grounds that these restrictions are necessary for the protection of the residents of Jewish settlements built in the heart of the city. These limitations transformed the H2 town center into a ghost town, and make life intolerable for the thousands of Palestinian residents of the area.

16. Separation and Discrimination Based on Nationality

Article 2 (non-discrimination), **Article 26** (equality before the law and protection from discrimination)

Israel constructed many settlements in the West Bank and settled in them hundreds of thousands of Jewish citizens of Israel. Over the years, a regime emerged in the area based on separation and discrimination. A separate legal system and judiciary are in force for Israeli and Palestinian residents; movement restrictions are imposed according to national identity (see issue 15 above); planning schemes limit Palestinian construction and the development of Palestinian towns, in contrast with the great planning flexibility enjoyed by the settlements; and natural resources such as land and water are allocated in a discriminatory manner, privileging settlers over the Palestinian residents, even though the latter are defined by international law as a protected civilian population in an occupied area.

Thank you for your attention to our comments. For further information, please contact Attorney Dana Alexander, the Director of ACRI's Civil and Political Rights Program, at dana@acri.org.il