

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



Shadow Report submitted by
The Association for Civil Rights in Israel
(ACRI)

regarding Israel's consolidated tenth, eleventh, twelfth, and
thirteenth periodic report to the

UN Committee on the Elimination of All
Forms of Racial Discrimination (CERD)

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Executive Summary

The following shadow report on Israel's consolidated tenth, eleventh, twelfth, and thirteenth periodic report to CERD has been compiled by The Association for Civil Rights in Israel (ACRI) in order to provide the Committee with additional information regarding Israel's implementation of ICERD. The report does not attempt to provide an exhaustive assessment of Israel's compliance with its obligations under the Convention, but rather, focuses on a number of key areas of concern that ACRI wishes to bring to the Committee's attention.

The first section of the report, "House Demolitions and Discriminatory Planning and Enforcement Policies in the West Bank," focuses on Israel's discriminatory planning practices which lead to the lack of building permits for the Palestinian population in the West Bank. This is followed by an analysis of the discriminatory selective enforcement of planning laws on Palestinians living in the West Bank. As a result of these racially discriminatory policies and practices, Israeli settlements are expanding while most Palestinians continue to be prevented from building in most areas controlled by Israel in the West Bank. Unable to obtain permits, Palestinians build without building permits and live under the constant threat of having their homes demolished.

The second section of the report, "The Permit Regime in the Seam Zone between the Separation Barrier and the Green Line," describes the debilitating impact of the permit regime on the lives of thousands of Palestinians who live and/or pursue their livelihood in the seam zone. As a result of the discriminatory permit regime, the basic situation in the seam zone is that Israelis and even tourists are entitled to enter and stay in the seam zone without being subjected to any constraints whatsoever, whilst Palestinians represent the only "type of persons" who are required to hold a special personal permit in order to do so. The permit regime has turned the lives of Palestinians living near the separation barrier, and those who make a living from farming, in particular, into a bureaucratic nightmare, and severely infringes their rights to live in their own homes, to enjoy basic services such as education, health and sanitation services; it also violates the right to pursue a livelihood of those Palestinians who live on the other side of the separation barrier but have agricultural lands in the seam zone.

The section entitled, "Hebron: Segregationist and Discriminatory Practices Leading to the Destruction of the Center of Hebron and the Expulsion of its Palestinian Population," describes the ways in which the Israeli settlements established in the heart of Hebron are the cause of the severe infringement of the human rights of the city's Palestinian residents. The various means used by the Israeli government to encourage and protect the few hundred Israeli settlers living in Hebron, and the means of repression and control it employs against the majority Palestinian population, create egregious and systemic discrimination against Palestinians based solely on their national origin, and is reminiscent of policies characteristic of an Apartheid regime. The results today are clear – Area H-2, once populated by tens of thousands of Palestinians and the economic, social, and cultural center of Hebron, has become (since the establishment of a number of settlements in the heart of the city) a ghost town, heavily "decorated" with hateful, racist graffiti.

Section Four marks a shift from violations of ICERD within the Occupied Territories to violations of the Convention within Israel. "Two Systems of Justice: Discriminatory Detention and Deportation Procedures for Foreign Nationals," examines the discriminatory regulations relating to deportation that apply to foreign nationals, which greatly deviate from those that are considered acceptable according to the Israeli legal system. This section also provides a brief overview of the excessive use of force employed by the Immigration Police against migrant workers suspected of illegal residence in Israel. Also included in this section are Israel's violations of the rights of foreign minors who have been abandoned in Israel, and of the rights of asylum-seekers and their families.

Section Five, "Immigration and Access to Citizenship: Entry into Israel, Status in Israel, and the Right to Marriage and Choice of Spouse," highlights the glaring disparity between the automatic manner in which Jews are granted residency status for themselves, their families, and their

offspring, and the tight-fisted policy concerning the opportunities available to non-Jews who wish to acquire status. This creates an immigration policy which violates human rights in general, and the right to not be discriminated against on the basis of ethnic and national origin in particular. Another area of concern raised in this section is the discrimination against Palestinian residents of East Jerusalem, who are liable to lose their status in Israel, and with it their right to enter the country (including East Jerusalem itself), if they obtain foreign residency or citizenship status, or if they reside outside of Israel for a period of at least seven years. Also examined in this section is the Law of Citizenship and Entry into Israel (Temporary Order), which anchors in law severe racial discrimination against the Palestinian residents of the Occupied Territories and violates their right and the right of their spouses (in most cases Palestinian citizens of Israel) to marriage and choice of spouse.

The section entitled "Migrant Workers and Employment Rights" explores the ways in which Israel has failed to effectively address the ongoing and severe violations of the employment rights of migrant workers, who represent a particularly vulnerable group within Israeli society. This section also illustrates the fact that migrant workers are not equally protected by the labor laws which apply to Israeli citizens.

The final section of the report, "Racial Discrimination against the Arab Bedouin Residents of the Unrecognized Villages in the Negev in the Areas of Housing and Health Rights," analyzes the government's racially discriminatory policy regarding the Bedouins of the Negev. About half the Bedouin Arab population of the Negev lives in nearly 45 unrecognized villages that Israel refuses to recognize by providing a planning structure and converting them into municipalities. The residents of these villages suffer from the non-provision of basic and essential services (such as connections to water and electrical grids, sewer systems, telephone lines, and road networks) and from the inequitable allocation of educational, health, and social services. Furthermore, discriminatory planning policies and practices enable the existence and continued creation of over one hundred villages for the Jewish population in the Negev, while refraining from recognizing and planning the Bedouin Arab villages (most with a population of over 1,000 inhabitants) which have existed since before the establishment of the State, or were created following the forced transfer of the Bedouin population by the State in the early 1950s.

ACRI hopes that the Committee will find this report a useful tool in helping it to monitor Israel's implementation of the Convention, and would like to thank the Committee for its consideration of the information contained herein. We look forward to reading the Committee's Concluding Observations and Recommendations.

Set forth below is a list of suggested questions and recommendations that we respectfully request the Committee to consider:

Suggested Questions

Discriminatory Planning and Enforcement Policies in the West Bank

- In the West Bank, Israel adopts land allocation and planning policies which are based on racial discrimination and a rationale of ethnic and national segregation, resulting in segregated areas. The Israeli parts of these areas are allowed and encouraged to develop and expand, and their residents enjoy full rights, while the Palestinian areas are severely constricted in their development, creating a severe shortage of housing which is met by "illegal" construction, subject to demolition. Please explain how these policies are in compliance with Israel's obligation under Articles 2 and 3 of ICERD to prohibit and eradicate all practices of racial discrimination and segregation in territories under its jurisdiction?

- Why does Israel conduct a policy of house demolition directed only towards Palestinians engaged in “illegal construction”, instead of addressing the root cause of this construction: a high level of population density in Palestinian villages with outdated outline plans or plans made to limit the growth of these villages or towns?
- How does Israel intend to ensure the equal right to housing for Palestinians in the West Bank and abolish the system of racial segregation and discrimination?

The Permit Regime in the Seam Zone between the Separation Barrier and the Green Line

- How does Israel justify the severe discrimination against Palestinians concerning freedom of movement in the existing seam zone, created by the closing of this zone and the permit regime applied only to Palestinians, in light of its declaration that such a regime is not necessary to protect security needs in another, larger and more populated seam zone planned in another area of the West Bank (“Gush Etzion”)?

Hebron: Segregationist and Discriminatory Practices Leading to the Destruction of the Center of Hebron and the Expulsion of its Palestinian Population

- Why does Israel refrain from taking the same law-enforcement measures it takes to protect the lives and property of Israeli settlers in Hebron, in order to protect the lives and property of Palestinians in Hebron, who are recognized as “protected persons” under International Humanitarian Law? In particular, why do Israeli soldiers systematically refrain from using their legal powers against Israelis committing violent criminal offences against Palestinians and their property, often before the soldiers’ eyes?
- If Israel is of the opinion that it is not possible to protect several hundred Israeli settlers in Hebron without taking extreme, collective measures against tens of thousands of Palestinian inhabitants, causing effective ethnic cleansing in the Israeli controlled (H-2) area of Hebron, why does it not evacuate the Israeli settlers?

Two Systems of Justice: Discriminatory Detention and Deportation Procedures for Foreign Nationals

- Why does Israel engage in discriminatory detention procedures, which deviate sharply from accepted norms in Israeli law (especially as concerns the period of detention before judicial review, the nature of the reviewing body and the rule regarding release on bail), regarding foreign nationals suspected of illegal residence?
- Why does Israel fail to comply with its obligations to place the best interests of the child as its primary consideration, when treating abandoned foreign minors in Israel?
- Why does Israel deny asylum-seekers and their families basic social benefits – in particular the right to health care – during the period they await a decision on their case?

Immigration and Access to Citizenship: Entry into Israel, Status in Israel, and the Right to Marriage and Choice of Spouse

- How does Israel explain the existence of the Law of Citizenship and Entry into Israel (Temporary Order), which prevents Palestinians as such from entering and receiving status in Israel, other than as a racist, discriminatory law in violation of ICERD, especially in light of the lack of any factual foundation for the “security” arguments used by Israel to justify the law?

Migrant Workers and Employment Rights

- Why does Israel systematically refrain from using its powers to enforce labor laws concerning migrant workers, and specifically, from using its power to revoke the permit of offending employers to continue to employ migrant workers?

Racial Discrimination against the Arab Bedouin Residents of the Unrecognized Villages in the Negev in the Areas of Housing and Health Rights

- How does Israel justify its planning policy, which allows the existence and continued creation of over one hundred villages for the Jewish population in the Negev, while refraining from recognizing and planning the Bedouin Arab villages (most with a population of over 1,000 inhabitants) which have existed since before the establishment of the State, or were created following the transfer of the population by the State in the early 1950s? For example, how does it justify allocating the new village of "Gva'ot Bar" to the Jewish population instead of to the Bedouin population, and how does it justify the coercive measures taken against the unrecognized village of Wadi El-Na'am aimed at including their inhabitants in a town (Segev Shalom) against their will and in contradiction with their traditional rural lifestyle?
- Why does the government refuse to lay down general and equitable criteria regarding the establishment of health clinics, in order to prevent blatant discrimination in the availability and accessibility of primary health services to the Bedouin population of the Negev, discrimination which costs in the lives and health of Bedouin citizens?

List of Recommendations

Discriminatory Planning and Enforcement Policies in the West Bank

- As long as Israel continues to occupy Palestinian territories in the West Bank, it must prepare and approve modern outline plans for Palestinian villages and towns enabling them to develop and expand. Until such plans are prepared, creating a reasonable basis for legal construction to meet the housing needs of the Palestinian population, Israel should desist from issuing and enforcing demolition orders to Palestinian houses, on the sole basis of "construction without a permit".
- Israel should cease from its discriminatory planning and enforcement practices in the West Bank, and should refrain from issuing and enforcing demolition orders against Palestinian construction, as long as similar enforcement policies are not applied equally to Israeli illegal construction.

The Permit Regime in the Seam Zone between the Separation Barrier and the Green Line

- Israel should revoke the closure of the seam zone and the permit regime applying to it, allowing Palestinians freedom of movement (subject to on-site security checks if necessary) in and into the seam zone – which is an integral part of the Occupied Territories - equal to that allowed to Israelis.

Hebron: Segregationist and Discriminatory Practices Leading to the Destruction of the Center of Hebron and the Expulsion of its Palestinian Population

- Any collective measure taken in Hebron for the purpose of protecting security of persons and property must be equal in its effect, and cannot be applied in a discriminatory and segregationist manner, to Palestinian persons only. Opening certain areas and streets to Israeli movement only is a clear form of racial segregation and apartheid. Israel should therefore cancel all movement restrictions on Palestinians in the H-2 area of Hebron.

- Soldiers serving in Hebron (as in other parts of the Occupied Territories) must be directed and trained to use their legal powers of arrest against any person – regardless of their nationality – who they witness or reasonably suspect of committing a violent offence, and soldiers who are found to refrain from using these powers against Israelis only are to be disciplined.
- If the civilian Israeli presence in Hebron – in itself a violation of international law – cannot be maintained without causing severe violations of human rights of the Palestinian civilian population and creating racist and segregationist policies, this presence should be evacuated.

Two Systems of Justice: Discriminatory Detention and Deportation Procedures for Foreign Nationals

- Legislation and administrative regulations regarding the detention of foreign nationals suspected of illegal residence should be amended so as to accord with the norms of Israeli law regarding criminal detention and eliminate the current discrimination that exists against foreign nationals, particularly with regard to the period of detention prior to judicial review, the nature of the reviewing body and the rule regarding release on bail.
- When treating foreign nationals who are abandoned minors, Israel must take into account the fact of their being minors, and adjust its treatment of them accordingly, including in detention and deportation procedures, so as to fulfill its obligation to treat them in accordance with their best interests.
- Israel should reform its treatment regarding asylum-seekers and their families, in order to prevent the outcome whereby asylum-seekers and their families, including children, are left for extended periods without basic social benefits, in particular health insurance.

Immigration and Access to Citizenship: Entry into Israel, Status in Israel, and the Right to Marriage and Choice of Spouse

- The Law of Citizenship and Entry into Israel (Temporary Order), which prevents Palestinians as such from entering and receiving status in Israel, even if they are married to Israeli citizens or permanent residents, is a racist and severely discriminatory law and should be revoked.
- Israel should formalize its immigration policy and procedures with regard to non-Jewish foreign nationals wishing to acquire Israeli nationality, especially on the basis of the right to family life, so as to make the considerations and procedures regarding the granting of status transparent, and to reduce the bureaucratic hardships resulting from unclear and non-transparent regulations. A drastic change of attitude is required on the part of the Ministry of Interior, in order that each non-Jewish applicant for status is not regarded as threatening the Jewish character of the State and as such subject to bureaucratic abuse and discrimination.
- The legal state of affairs, in which civil marriage cannot be conducted in Israel, should not be exploited by the Ministry of Interior in order to raise hardships for couples who are left with no choice but to marry abroad.

Migrant Workers and Employment Rights

- All legislation which discriminates between Israeli and migrant workers in their entitlement to the protection of labor laws and of labor-related social security laws should be revoked. All workers in Israel should be fully and equally entitled to workers' rights, regardless of their formal residence status.
- Migrant workers in all branches of employment should be given the freedom to change employers and manpower agencies, in order to prevent their exploitation by those with the power to control

their stay permit; clear procedures should be laid down for this purpose, which will be comprehensible both to migrant workers and to the authorities responsible for enforcing these procedures.

Racial Discrimination against the Arab Bedouin Residents of the Unrecognized Villages in the Negev in the Areas of Housing and Health Rights

- Israel should grant recognition to all Bedouin villages with a population exceeding 500 persons, prepare outline plans for these villages and grant them municipal status.
- In the interim period, it should provide these villages with basic services including health, education, social services, water and electricity, on an equal and non-discriminatory basis as compared with their Jewish counterparts.

Introduction

The current social, economic, and political climate in Israel poses many challenges to human rights and democracy and has created an increasingly polarized society and a fertile breeding ground for xenophobia and racist sentiment. The disengagement from the Gaza Strip both revealed and deepened the already existing fissures among secular and religious, left-wing and right-wing, and Jewish and Palestinian Arab citizens. Furthermore, the jingoistic discourse and behavior of the disengagement opponents stood testament to the significant and worrying upsurge in racism within Israeli society.

Institutionalized racism is also on the increase, with the government constantly invoking "security considerations" as justification for discriminatory legislation and policies. In July 2005, the Knesset approved the amendments to the Citizenship and Entry into Israel Law and extended the validity of the law until the end of March 2006. According to the amended law, only Palestinian men aged 35 and older and women aged 25 and older are eligible to request Israeli citizenship through family unification. This law formally institutionalizes a form of racial discrimination based on nationality and tears thousands of families apart. In the same month, the Knesset also approved the amendment to the Civil Torts Law, effectively blocking Palestinian civilians injured by Israeli security forces from suing the state for damages. The law is blatantly discriminatory in that it denies the right to legal redress on the basis of the identity of the victim, rather than on the substance of the claim.

These are just two examples of the many violations of ICERD in Israel and the Occupied Territories. The Association for Civil Rights in Israel (ACRI), as the largest human rights organization in Israel and the only one dealing with the entire spectrum of human rights issues in Israel and the Occupied Territories, regards all of these violations as warranting concern and welcomes the opportunity to provide additional information to the Committee. In this report, however, we do not aim to provide an exhaustive analysis of the full range of racial discrimination issues; instead, we will focus on a number of key areas of concern which we wish to draw to the Committee's attention.

ACRI shares the Committee's view that Israel's obligations under the Convention apply to all territories and populations under its effective control. ACRI therefore regrets that Israel's report does not relate to the Occupied Territories, and finds it extremely troubling that the government of Israel considers itself exempt from implementing its obligations under ICERD to refrain from racial discrimination in the Occupied Territories. This is so particularly in light of the fact that Israel has actively encouraged the creation of a large Israeli civilian presence in these territories, in contravention of international law, and engages in systematic and severe discrimination against the Palestinian civilian population in order to maintain, protect and develop these settlements. This is clearly reflected in the three issues relating to the Occupied Territories which we will address in our report, namely: discriminatory and segregationist policies in Hebron which have created untenable living conditions for tens of thousands of Palestinians in order to allow several hundred Israeli settlers living in the heart of Hebron to pursue their routine lives; discrimination in planning and in the enforcement of planning laws in the West Bank which have resulted in an acute housing shortage and which legitimize house demolitions in Palestinian villages, while concurrently allowing and encouraging Israeli settlements to develop and expand; and the permit regime in the "seam zone" – the area between the separation barrier and the green line – which allows Israelis full freedom of movement while severely restricting the movement and access of Palestinians.

With regard to violations of the Convention within Israel, the most severe and systematic violations involve widespread discrimination against the Palestinian Arab minority in Israel. Adalah – The Legal Center for Arab Minority Rights in Israel submitted a shadow report to the Committee which focuses on discrimination against the Arab minority. We wish to endorse this report, which

presents an accurate and comprehensive assessment of violations of the Convention regarding the Arab minority and addresses the claims made in Israel's report on this subject. In our report, we will address discrimination regarding immigration and status issues, which affects other groups in addition to the Arab minority, including migrant workers and other non-Jews. In addition, we will elaborate on one of the central issues of discrimination against the Arab minority: discrimination against the Bedouin Arabs of the Negev in matters relating to planning and housing rights, and access to health services.

We would like to thank the Committee for its consideration of our report. We hope that the Committee members will find the information contained herein a useful supplement to Israel's report. We remain committed to providing the Committee with information relating to racial discrimination issues and are available to respond to any questions or requests for further information.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

House Demolitions and Discriminatory Planning and Enforcement Policies in the West Bank

Introduction

1. Since the Israeli occupation of the West Bank¹ in June 1967, thousands of Palestinian houses, buildings and farms have been demolished. As a result thousands of men, women and children have been forcibly evicted from their homes and made destitute or made to rely on relatives, friends and charity organizations for shelter. While the results are the same, the justification given by the Israeli authorities for the demolition and destruction of houses differ. The two main justifications are those of “military/security needs” and of the lack of building permits resulting in “illegal construction” subject to demolition. This report will focus on the latter and describe the discriminatory planning practices which lead to the lack of building permits for the Palestinian population. This will be followed by an analysis of the discriminatory selective enforcement of planning laws on Palestinians living in the West Bank.

Background

2. Israel emerged from the 1967 war as belligerent occupier of the West Bank and, as such, executed its control over all areas of the West Bank until 1995, the year in which the Interim Agreement between Israel and the PLO was signed in Washington DC. The Oslo accords defined the zones in the West Bank over which the Palestinian Authority (PA) would have jurisdiction in the interim period and the functions and responsibilities to be transferred to that authority for the interim period. Three zones were defined in terms of responsibilities. In Area A, the PA is responsible for internal security and most civil affairs including planning and building; in Area B, the PA is responsible for civil affairs including planning and building while Israel has overriding responsibility for security; and in Area C Israel controls both security matters and civil affairs including planning and construction.

3. The implementation of the Oslo accords resulted in setting the boundaries of Area A to include the major centers of Palestinian population in the cities, and the boundaries of Area B to include the Palestinian villages. Areas A and B include the majority of the Palestinian population and amount to 40% of the West Bank, albeit fragmented, without territorial continuity and surrounded by Area C. Most of the areas of the West Bank (60%) were allocated to Area C. This area does not include a significant Palestinian population, though it is essential for the development of Palestinian communities in Areas A and B.

4. The civil powers that have been transferred to the PA in areas A and B include local government, land registration and planning. Therefore it is with Area C that this report is mainly

¹ The policy of discriminatory house demolition and institutional discrimination in the planning system is common to all the Occupied Territories, including East Jerusalem. However, due to practical reasons and the different laws applicable in East Jerusalem following the Israeli annexation, Israeli polices in East Jerusalem will not be addressed in this report.

concerned, as that is where Israel still has full control, including control over the use and development of land and the demolition of houses. The process of declaring uncultivated lands in the West Bank as State lands has brought more than 40% of lands in the West Bank under direct control of the Israeli Civil Administration and its planning bodies. Under the laws of belligerent occupation, these lands are to be used for the military needs of the occupying army or for the benefit of the local population.

5. Area C covers all Israeli settlements, dozens of small Palestinian villages, as well as parts of scores of others, and the vast majority of agricultural land cultivated by Palestinians adjacent to their villages. Given the interrelation between Areas A and B, both of which are fragmented and surrounded by Area C, and Area C, the Israeli control of the latter affects not only the relatively small number of Palestinians whose homes are within it. It also affects the development prospects of every community in the West Bank and the interaction between these communities.

The Planning System in the West Bank

6. The planning system is charged with allocating the resources of a given area and determining the land use in accordance with the needs, perceptions and interests of the public and its members. This is done through an outline plan, which determines the size, location and zoning of each unit of land. **However, rather than being a system for the development of lands and protected communities living under occupation, the Israeli-controlled planning system is inherently discriminatory and is utilized to advance the political interests of the Israeli government and the illegal settlements in the West Bank.**

7. The planning system operates along two separate tracks – one for Israelis and the other for Palestinians. While the system works vigorously to establish and expand settlements, it also acts diligently to prevent the expansion of existing Palestinian towns and villages, to prevent the establishment of new ones, and to demolish houses built without permits, as the vast majority of applications for building permits are denied for reasons to be explored further below.

8. The planning system in the West Bank operates on the basis of Jordanian legislation that was in force at the time of occupation, principally the Planning of Cities, Villages and Buildings Act No. 79 adopted in 1966. The Jordanian law prescribes three categories of statutory hierarchical outline plans with an ascending level of detail: a regional outline plan, a general-local outline plan, and a detailed plan. These plans are to be prepared, approved and kept up-to-date by an institutional system reflecting each level: the Supreme Planning Council, the district planning committees and the local planning committees, respectively. The law also contains provisions relating to the process of consultation with relevant bodies when preparing the outline plans, the publication and deposition of plans for public review, the hearing of objections, and the like.

9. Israel amended the Jordanian planning law by means of Military Order No. 418 in 1971 and subsequent military orders. The amendments introduced far-reaching changes in the planning system to reflect Israeli interests, including the construction and expansion of settlements, and in order to exclude Palestinian representation and influence on planning. Under Military Order 418, all powers granted to the Minister of the Interior in the Jordanian law were transferred to the IDF commander in the West Bank. The latter replaced most of the Palestinian officials in the planning system with Israelis, most of whom were from the ranks of the IDF or were settlers.

10. Furthermore, all planning powers were concentrated in the Supreme Planning Council, now part of the Israeli Civil Administration. Israel also abolished the district planning committees responsible for the local-general outline plans and the planning authorities of the village councils responsible for detailed planning. These functions were transferred to the Central Planning Bureau, which is a technical and professional body operating alongside the Supreme Planning Council.

11. **The main tool used by Israel to restrict building by the Palestinian population outside the borders of the municipalities was simply to refrain from planning.** As a result of Jordanian and Israeli lack of planning over the years, up until this day two regional plans prepared in the 1940s by the British Mandate continue to apply in Area C – one in the north of the West Bank and the other in the south.

12. The outline plans from the Mandate period are outdated and form a completely unreasonable basis for urban planning due to several factors. The principal factor is the discrepancy, which has widened over the years, between the size of the population used as a basis for the Mandatory plans and the actual size of the population. The areas in which these plans permitted building, generally around existing built-up areas, were quickly exploited, while most of the area of the West Bank remained categorized as “agricultural areas” or “nature reserves,” where building is prohibited. The lack of correlation between the Mandatory outline plans and the planning needs of the Palestinian population is also exemplified in the limited number of zoning categories (agriculture, development, nature reserve and coastal reserve) compared to modern plans which include numerous land uses.

13. Moreover, in areas allocated for development, the Mandatory plans only permit the construction of a single housing unit in each parcel, while limiting the minimum size of a parcel to 1000 square meters, without any possibility to subdividing the parcel into smaller units (parcellation). The effect of canceling land parcellation, settlement and registration (by means of military order), combined with the characteristics of land ownership in the West Bank (where several members of the same expanded family jointly own large parcels of lands) and with the limitations of the Mandatory plans mentioned above, is to **severely restrict the possibility of obtaining building permits even in the limited areas allocated for development under the Mandatory Plans.**

14. The Israeli Civil Administration prepared and authorized partial outline plans for some four hundred villages in the West Bank in the early 1990s. Instead of permitting the development of these villages, the plans effectively constituted demarcation plans and construction was prohibited on land outside the line surrounding the existing built-up area of each village. According to the plans, construction in Palestinian villages is supposed to take place within the demarcated planning boundaries by the filling of vacant areas and through high-rise construction. Applications of Palestinians for building permits outside the demarcated areas of the plans are almost always rejected based on the fact that the area is located outside the plan area for the village and included within the Mandatory outline plans which designate it as an agricultural area or a nature reserve. As a result, most houses outside the demarcation areas of the village are built without a permit and their owners are served with demolition orders.

The Planning System for Israeli Settlements

15. Although the same legal and institutional system is applicable for planning in the settlements, the criteria applied to Palestinians and settlers are diametrically opposed. In the case of the former, the aim and result is to limit development and expansion and prevent the establishment of new communities. In the case of the latter, the aim and result is to control lands, establish settlements, and expand them.

16. A special subcommittee for settlement was established to operate under the Supreme Planning Council. The IDF commander, under Military Order 418, designated Israeli local authorities in the West Bank as special planning committees, entrusted with the powers of local and district planning committees, to prepare and submit to the Supreme Planning Council detailed outline plans and local-general outline plans, and to grant building permits to residents on the basis of these plans. By contrast, not a single Palestinian village council has ever been defined as a special planning committee possessing the same powers.

17. Israeli local authorities, in their function as the local and district planning committees for the settlements, operate in coordination and cooperation with the various institutions of the military and governmental system, in a constant process of expansion and growth.

18. In order to maintain the application of Mandatory plans for Palestinians and overcome the difficulties they pose for development and expansion of settlements, almost all the general local outline plans for the settlements are filed with the Supreme Planning Council as an amendment to Mandatory outline plans. This allows the military planning system to authorize the establishment of new settlements and the expansion of existing ones, on the one hand, without waiving the Mandatory outline plans, which are effectively used to restrict the expansion of Palestinian communities, on the other hand.

19. The conduct of the planning system and its results are discriminatory. Whereas it exhibits flexibility in developing and expanding settlements, it applies the black letter of the law when it comes to development in Palestinian communities. As a result, settlements are expanding while most Palestinians continue to be prevented from building in most areas controlled by Israel in the West Bank. Unable to obtain permits, Palestinians build without building permits and live under the constant threat of having their homes demolished.

Discriminatory Enforcement of Planning Laws

20. In addition to the discriminatory planning system, **the Israeli authorities in the West Bank enforce the planning laws selectively on a national basis.** They act vigorously against Palestinians, enforce the law strictly, issue demolition orders and demolish houses and structures. By contrast, when it comes to Israeli settlers, in most cases the authorities have adopted a policy of non-supervision and non-enforcement of planning laws, and stopped inspection of planning and building in the settlements. As a result, whole neighborhoods of settlements were built without any outline plans or building permits. In cases where demolition orders were issued against houses built by Israeli settlers in the West Bank, a policy of non-enforcement and non-demolition was adopted by the Israeli authorities. The policy of non-enforcement of building and planning laws against Israelis in the West Bank has been documented in the Sasson Report, commissioned by the Prime Minister's Office and adopted by it.²

Concluding Comments

21. Discrimination in the application and enforcement of planning laws in the occupied West Bank constitutes "racial discrimination", as defined by **Article 1** of the Convention, as it is based on national and ethnic origin and has the purpose and effect of advancing the rights of Israeli settlers through expansion and development of settlements, while limiting and choking the development of Palestinian communities in the West Bank, thus violating their exercise, on an equal footing, of the right to housing and development.

22. In its discriminatory planning and enforcement policies described above, Israel is therefore in direct violation of **Article 2(a)** of the Convention, which prohibits the State from engaging in any act of racial discrimination and obligates the State to ensure that all public authorities and institutions refrain from such discrimination.

23. This policy has resulted in a regime of racial segregation in the West Bank, applying completely different, and discriminatory, standards to Israeli and Palestinian towns and villages, in contravention of **Article 3** of the Convention. This regime is based on favoring Jewish settlers,

² Talia Sasson, *Opinion Concerning Unauthorized Outposts*, Prime Minister's Office, March 2005. (English summary available at: <http://www.pmo.gov.il/PMOEng/Communication/Spokesman/2005/03/spokemes090305.htm>)

their enjoyment of full rights and development of their communities while restricting the development of Palestinian communities, demolishing Palestinian houses and limiting Palestinians to build in specific delineated areas.

24. Also violated by the discriminatory planning and enforcement policy is **Article 5(e)(iii)** of the Convention, protecting the equal enjoyment of the right to housing. Since the 1970s, Israel has illegally limited the use of uncultivated lands that it declares "state lands," through its planning bodies described above, only to Israeli settlers and Israeli settlement construction, while completely excluding Palestinians.

25. Israel's discriminatory planning policy has severely and negatively impacted the development and growth of Palestinian villages and towns in all of the West Bank. In addition, as a result of discriminatory enforcement practices, house demolitions exercised exclusively against Palestinians have displaced thousands of families, while neglecting to enforce the planning laws on settlers as a declared policy.

The Permit Regime in the Seam Zone Between the Separation Barrier and the Green Line

Introduction

1. In August 2003, Israel completed its construction of Stage A of the separation barrier. This section runs for 125 kilometers – more than eighty percent of which is located east of the Green Line and severs Palestinian residents from their agricultural lands, places of employment, schools, health services, and in many instances, from their own family members. By encroaching deep into the Occupied Territories, the route of the separation barrier has created a seam zone between the green line and the separation barrier, in which thousands of Palestinians live, and in which tens of thousands of Palestinians living on the "Palestinian side" of the separation barrier, especially farmers, pursue their livelihood.
2. As remarked by the International Court of Justice, "The construction of the separation barrier has been accompanied by the creation of a new administrative regime"³ – the "Permit Regime". This regime was regulated in a series of orders issued by the Military Command of the Occupied Territories in the West Bank⁴. The essence of the new regime was described by the High Court of Justice in its recent decision on ACRI's petition regarding the Alfei-Menashe enclave⁵:

All territory left on the 'Israeli' (western) side of the fence in the framework of phase A – that is to say, the area between the fence and the State of Israel (hereinafter – "the seam-line area") – were declared a closed military area, pursuant to Territory Closure⁶... issued by the Commander of IDF Forces in the Judea and Samaria Area (hereinafter – "the declaration"). The seam-line area in the phase A area is approximately 87 km², and about 5,600 Palestinians and 21,000 Israeli residents live in it. The declaration forbade entrance and presence in the seam-line area, while **determining that the rule does not apply to**

³ *Legal Consequences of the Construction of a Separation Barrier in the Occupied Palestinian Territory* (Advisory Opinion), Judgment of 9 July 2004, 43 ILM 1999, Paragraph. 85.

⁴ For an English translation of these orders, see: http://www.hamoked.org.il/items_en.asp?cat_id=8&sub_cat_id=59§ion01_id=1§ion02_id=2

⁵ HCJ 7957/04 *Mara'abe v. The Prime Minister of Israel*, September 15 2005, Paragraph 6. English translation available at: http://elyon1.court.gov.il/files_eng/04/570/079/a14/04079570.a14.pdf

⁶ *Declaration Concerning the Closure of Area Numbers/2/03 (Seam Area)*: <http://domino.un.org/unispal.nsf/0/c6114997e0ba34c885256ddc0077146a?OpenDocument>

Israelis ...or people holding permits from the military commander to enter the seam-line area and be present in it [emphasis added].

3. According to the declaration, all other **"types of persons"** (in these specific words) other than Israelis, are only able to enter the seam zone if they hold the requisite general or personal permits. In order to continue residing in their own homes, Palestinian permanent residents of the seam zone are required to hold a "Permanent Residence Card"⁷. Palestinians, who are not permanent residents of the seam zone, such as farmers, teachers, service providers, and others, who wish to enter or stay in the seam zone, must obtain personal entry permits⁸.
4. **As a result of the permit regime, the basic situation in the seam zone is that Israelis and even tourists are entitled to enter and stay in the seam zone without being subjected to any constraints whatsoever, whilst Palestinians represent the only "type of persons" who are required to hold a special personal permit in order to do so.**
5. Furthermore, Palestinians, whether they reside in the seam zone or need to enter it for any purpose, are the sole "type of persons" whose entrance to the seam zone is restricted to the specific gates indicated in their permit, and the only ones who are unable to enter with a vehicle unless it belongs to them or to their first-degree relative, and its details are indicated in their personal permit.

The Effects of the Permit Regime

6. **The permit regime has turned the lives of Palestinians living near the separation barrier, and those who make a living from farming, in particular, into a bureaucratic nightmare, and severely infringes their rights to live in their own homes, to enjoy basic services such as education, health and sanitation services; it also violates the right to pursue a livelihood of those Palestinians who live on the other side of the separation barrier.**
7. UN Special Rapporteur, Professor John Dugard, has drawn attention to the debilitating impact of the permit regime:

Those living within the Closed Zone⁹ have difficulty in accessing family, hospitals, schools, markets and employment within the West Bank. Those living on the West Bank side of the separation barrier require permits to access their own agricultural land. Whereas in previous years such persons were mainly refused permits for security reasons, today it appears that permits are mainly denied when the owner or user of land is unable to provide convincing evidence of ownership or title to the land. A landowner applying for a permit to access his own land must submit a land registration certificate... [but] the demand for proof of land ownership or title to land is often an insurmountable obstacle¹⁰.
8. Israel's High Court of Justice has also described the permit regime as **"labyrinthine, complex, and burdensome"**. The court also remarked that the new state of affairs "...severely injures the farmers... their livelihood has been extremely damaged. Their difficult living conditions (due, for example, to high unemployment in that area) will only become more severe."¹¹
9. It is worth noting that when the orders were amended, the army announced a number of additional changes that were intended to ease the bureaucratic burden on Palestinians in need

⁷ *Regulations Regarding Permanent Resident in the Seam Area Permit*, 5764 – 2003
http://www.hamoked.org.il/items/3170_eng.pdf

⁸ *Regulations Regarding Permits to Enter and Stay in the Seam Area*, 5764 – 2003
http://www.hamoked.org.il/items/3160_eng.pdf

⁹ This term designates the area referred to as the "seam zone" throughout this report.

¹⁰ *Report of the Special Rapporteur of the Commission on Human Rights, Professor John Dugard, on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967*, A/60/271. 18 August 2005. (pp. 10-11, Paragraph 17):

<http://daccessdds.un.org/doc/UNDOC/GEN/N05/464/90/PDF/N0546490.pdf?OpenElement>
<http://domino.un.org/unispal.nsf/0/02bf82d785fe854a85257088004c374c?OpenDocument>

¹¹ H CJ 2056/04 *Beit Sourik Village Council v. The Government of Israel*, 58(5)P.D. 807, Paragraphs 59 and 60.

of permits. Their period of validity, for example, was extended from a few months to a year, sometimes two, and the authorities were required to present written justification for refusing to grant a permit. Those refused a permit were granted the right of appeal and a hearing before a committee. While these improvements are an attempt to ameliorate the basic infringement of the rights of Palestinians and disruption of their way of life, they serve more to demonstrate just how severe these infringements and disruptions are.

10. The serious disruption of the lives of Palestinians could set into motion a process described by the Special Rapporteur as the “de-Palestinization of the closed zone”:

Many persons whose land is adjacent to the "closed zone" find refused permits, closed gates and destroyed homes too much to bear. This explains why Palestinians are gradually leaving land and homes that they have occupied for generations... The neglect and abandonment of land will allow the Israeli authorities to seize the land under the terms of an old Ottoman law and to hand it over to the settlers¹².

11. **The security concerns that Israel claims justify this regime are undermined in light of the state's declaration to the court concerning plans for another region within the Occupied Territories, Gush Etzion**, where the route of the separation barrier is due to encroach into the occupied area, leaving 19,000 Palestinians on the “Israeli” side of the separation barrier. **The government has announced that the permit regime will not apply to this region, even though it is much larger and more densely populated by Palestinians than the area in which the permit regime does apply. This raises doubts as to whether the permit regime is indeed the sole available means of ensuring security.**

Israeli Settlement in the Seam Zone

12. The severe infringement of the rights and fabric of life of Palestinian residents of the seam zone is further intensified by discrimination that favors the Israeli settlers. While the Palestinians, already living in occupied enclaves, are faced with the threat of losing their homes and livelihoods there, the Israeli settlers are prospering. As already mentioned, the residents of the Israeli settlements are not subject to the permit regime. Cutting off these enclaves from the rest of the West Bank, and creating territorial contiguity between the enclaves and areas within the Green Line, makes them attractive to new settlers and raises property values within the settlements.
13. Furthermore, it recently became clear, inter alia from official statements, that in contrast to the State's original claims, the route of the separation barrier was determined not only to protect the existing Israeli settlements but also to enable their expansion.¹³
14. In its Advisory Opinion, the International Court of Justice already expressed the fear that:

...[I]n the view of the Court, since a significant number of Palestinians have already been compelled by the construction of the separation barrier and its associated régime to depart from certain areas, a process that will continue as more of the separation barrier is built, that construction, coupled with the establishment of the Israeli settlements ... above, is tending to alter the demographic composition of the Occupied Palestinian Territory.¹⁴

¹² *Ibid.* Paragraph 20, p.10.

¹³ For example, see the State's response, submitted on November 17 2005, in HCJ 8414/05 *Bil'in Village Council v. The Government of Israel* (pending); and Section 17 in the State's Response in HCJ 2732/05, *Head of the 'Azzun Local Council et al. v. Government of Israel* (pending). See also: B'tselem & Bimkom: *Under the Guise of Security: Routing the Separation Barrier to Enable Israeli Settlement Expansion in the West Bank*, September 2005. Available at: http://www.btselem.org/english/Press_Releases/20050915.asp

¹⁴ ICJ Advisory Opinion, *supra* note. Paragraph 133.

Concluding Comments

15. The violation of the basic rights of the Palestinians, caused by the permit regime, is especially grave because it discriminates on the basis of national origin.
16. The permit regime creates *de jure* and *de facto* "distinction, exclusion [and] restriction ... based on ... national or ethnic origin" of the Palestinians residents in the Occupied Territories, which has the effect of "nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." (**Article 1**). As such the permit regime infringes the obligation under **Article 2(1)(a)** of the Convention, namely, "to engage in no act or practice of racial discrimination."
17. The permit regime also infringes the obligations under **Article 5 (d) and (e)** of the Convention.
18. Concerning ICERD's prohibition on racial segregation (**Article 3**): In Paragraph 136 of its report, Israel states that there are "no restrictions of any kind as to place of residence nor is there any segregation of any kind". The state of affairs created by the permit regime undermines the validity of this statement, especially in the light of the de-Palestinization of the seam zone which may result from the permit regime.
19. The operation and the effects of the permit regime, and especially the privileged status – *de jure* and *de facto* – granted to Israeli individuals and settlements in the seam zone, casts a new light on Israel's traditional refusal to recognize the applicability of human rights conventions in the Occupied Territories. Physically cutting off people and lands from the rest of the West Bank, the creation of seam zones with territorial continuity with Israel's sovereign territory, and the permit regime which discriminates against the Palestinian inhabitants and landowners in these enclaves - effectively remove any substantive meaning from the lack of *de jure* annexation of those areas.
20. Finally, it should be noted that the situation described in the preceding sections relates only to the severe infringements caused by the permit regime and in no way detracts from the infringements and harm caused by the construction of the separation along a route which disregards the human rights violations that it causes, in contravention of the ICJ Advisory Opinion. Similarly, the demand to rescind the permit regime in all the enclaves created by the separation barrier does not override the prior demand that Israel not erect a separation barrier in areas which are inhabited and cultivated by Palestinians.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Hebron: Segregationist and Discriminatory Practices Leading to the Destruction of the Center of Hebron and the Expulsion of its Palestinian Population

Introduction

1. The report submitted by the government of Israel contains no mention of Israel's activities in the Occupied Territories. Nevertheless, the government makes the following general claim in Paragraph 136 of its report:

Apartheid has always been regarded as abhorrent by the Israeli Government and society and continues to be so regarded. Apartheid has never been practiced in Israel. There exist in Israel no restrictions of any kind as to place of residence nor is there any segregation of any kind.
2. **One of the most extreme examples of severe harm to the local population and its human rights, resulting from Israel's policy of nationality-based segregation and discrimination in the Occupied Territories, is the behavior of Israeli government authorities toward the Palestinian population in Hebron. These authorities are responsible for acts of segregation and discrimination that result fully and directly from Israel's policy of settling its citizens in densely populated Palestinian areas which are under continued Israeli occupation.**
3. Since the signing of the agreement between Israel and the Palestinian Authority in 1997, 20 percent of Hebron has remained fully under Israeli control. This area is populated by 500 Israelis and 35,000 Palestinians. The Israeli policy allows Israelis to maintain a high standard of living, to move about freely, and to enjoy their civil, social, and political rights. The Palestinians, on the other hand, are subjected to the humiliating living conditions of barriers, security checks, searches, restrictions on movement, and frequent harassment – with no actual form of protection. This unbearable situation has forced many of the region's Palestinian residents to leave. Jan Kristensen, who headed the Temporary International Presence in Hebron (TIPH), characterized the situation as that of a city undergoing "ethnic cleansing." The departure of Palestinians from the area, the curfews preventing them from moving about freely, and the fear of entering the very streets on which they live has turned Area H-2 (the area under Israeli control) into a ghost town in which only Jews are allowed freedom of movement. Today, only derisive, racist graffiti – "Death to the Arabs," "Kahana was right," "Revenge" – covers the walls of the mostly abandoned homes and the shutters of closed shops.
4. **Based on the various means used by the Israeli government to encourage and protect the few hundred Israeli settlers in Hebron, and, on the other hand, the means of repression and control it employs against the majority Palestinian population, and based on the effects of these two policies and practices on the Palestinian fabric of life in the city, the resulting picture is one of egregious and systemic discrimination against persons based solely on their national origin, and is reminiscent of policies that are characteristic of an Apartheid regime.**

Israeli Settlement in the Heart of Hebron

5. Hebron is the only site in the Occupied Territories in which Israelis live in the heart of a city densely populated by Palestinians. Israeli settlement in Hebron, which began with the Israeli occupation of the West Bank in 1967, has continually expanded over recent years and now includes several settlements in the heart of the Old City.¹⁵ The estimated number of Jews living in these areas does not exceed 500.
6. Since settlements were situated at its center, Hebron was the only West Bank city excluded from the interim agreement signed in 1995, and the I.D.F. did not withdraw from it, as it did from the other cities. The Hebron agreement, signed in 1977, divided the city into two sections: Area H-1, covering 18 kilometers and housing most of the city's Palestinian population, was fully transferred to Palestinian control; Area H-2, which covers 4.3 kilometers and includes the Old City – the economic and cultural center of Hebron – remained under Israeli control.
7. The total population of Hebron is 150,000, of which 35,000 live in Area H-2. On the eve of the second Intifada in late 2000, there were 2,500 Palestinians living in the Casbah (Old City). According to various estimates, since the start of the Intifada about half the Palestinian residents of the Casbah and areas adjacent to the Israeli settlements have abandoned their homes. Several hundred shops and businesses have closed.
8. Since its establishment, Israeli settlement in Hebron has met with opposition by the local Palestinian population. The residents attempted, unsuccessfully, to prevent the continued expansion of the settlements by appealing to Israeli government authorities, including petitions to the High Court of Justice.¹⁶ There were also violent responses to the continued expansion of the settlements in Hebron.¹⁷ These acts of violence, perpetrated by Palestinian militants, led to harsh, increasingly extreme measures against the local Palestinian population as a whole, particularly the residents living near the Israeli settlements.
9. At the same time, the settlers began to systematically harass the local Palestinian residents. The declared purpose of the harassment is to frighten away the Palestinian residents, allowing the settlers to fulfill their ambition to further expand Israeli settlement in the city. This issue was raised in a High Court petition as early as 1981.¹⁸ Although every relevant government authority has been aware of these incidents for many years, the laxity these authorities demonstrated in the earliest years of the settlements continues, even as the violence of settlers against the city's residents escalates.¹⁹

Harsher Measures Against the Local Hebron Population in the Name of Protecting Jewish Settlements in the Heart of the City

10. In the years following Baruch Goldstein's massacre of Muslims praying at the Tomb of the Patriarchs in Hebron in 1994, and even more so since the start of the second Intifada near the end of 2000, stronger measures have been taken against the Palestinian population. Israeli security forces have used extreme tactics for repressing and restricting the Palestinian

¹⁵ Israeli settlement in the Old City of Hebron is spread over several locations: the Avraham Avinu neighborhood, Beit Romano, Beit Hadassah, and Tel Rumeida.

¹⁶ HCJ 175/81Al-Tanasha et al vs. the Minister of Defense et al, P.D. 35, 361 (3) (Expansion of the settlement at Beit Hadassah); HCJ 3352/01 Zakaria Al-Bakri vs. the Civil Administration for the Judea and Samaria Region (P.D. of August 12, 2001) (unpublished) (Expansion of the settlement at Tel Rumeida); Additional Hearing HCJ 6442/01 Zakaria Al-Bakri vs. the Civil Administration for the Judea and Samaria Region (P.D. of October 29, 2001) (unpublished).

¹⁷ Evidence is found in arguments brought before the High Court of Justice in the petition HCJ 72/86 Zaloom vs. the I.D.F. Commander for the Area of Judea and Samaria, P.D. 41 (1) 528.

¹⁸ HCJ 175/81Al-Tanasha et al vs. the Minister of Defense et al, P.D. 35, 361 (3).

¹⁹ The serious shortcomings in the response of Israeli security forces to violent acts by settlers against the Palestinian population have been discussed in a long line of government and non-government reports, among them *Investigations of Suspicions Against Israelis in Judea and Samaria*, prepared by the Karp Commission and submitted to the Attorney General on May 23, 1982; the 1994 report of the committee investigating the massacre at the Tomb of the Patriarchs; *Silent Agreement: Law Enforcement Policy for Settlers in the Territories*, Information leaflet, March 2001; and many appeals by ACRI and other human rights organizations to discover who is responsible for the violent acts and investigate the failure of authorities to handle them.

residents of Hebron. These tactics are intended to ensure the way of life and full rights of the city's small Israeli population, and they are generally segregationist and discriminatory by nature.

11. Among the measures taken by Israel against the civilian Palestinian population of Hebron are:
 - A) Imposition of curfews.
 - B) Orders to close shops, businesses, and offices in Area H-2.
 - C) Confiscation of homes by military forces.
 - D) Searches, harassment, and arbitrary delays of Palestinians living or working in the city.
12. **Needless to say, these aggressive tactics are used only against the Palestinian population.** This is true for curfews, which are imposed on the Palestinian population only, as well as for denying residents access to the main streets in Area H-2, closing shops, confiscating homes, conducting searches, and causing delays.
13. Blatant discrimination is also evident in the reactions of the law enforcement authorities to the two populations, Palestinian and Israeli. Whereas almost no action is taken against violent law-breakers within the settler population, Palestinians seen attacking Israelis or their property are subjected to very severe administrative measures and criminal procedures. These steps are taken in addition to sanctions and other actions directed against entire groups within the population (curfews, searches, and other forms of harassment). **The result is severe discrimination in law enforcement, with Israeli security forces doing virtually nothing to protect the lives and property of the Palestinian population from continuing attacks by settlers residing in the city.**

Curfews Imposed on the Palestinian Population

14. Since the start of the second Intifada, the I.D.F. has imposed lengthy curfews on Area H-2 in Hebron. The main justification for the curfews on the Palestinian population in this area is to protect the daily lives of Israeli settlers living in the heart of the city and soldiers stationed there for the same purpose. The curfew applies only to the Palestinian population, while the Israeli residents are permitted to conduct their lives as usual.
15. According to information gathered by B'Tselem (in the absence of official I.D.F. data on the subject), the curfews restricted Palestinian residents to their homes for months at a time over the three years since the start of the second Intifada.²⁰ (*Hebron, Area H-2: Settlements Cause Mass Departure of Palestinians*, B'Tselem, August 2003 report, p. 18).
16. A High Court petition filed by ACRI to challenge the continued curfew and the military commander's illegitimate use of this extreme measure against the civilian population was rejected.²¹
17. Curfews have been imposed in only a few instances over the past two years. Nevertheless, military forces continue to make use of curfews against the residents of Area H-2, in response to acts of violence by either Palestinians or settlers, or as a measure allowing settlers to hold public events. A day-long curfew was imposed on the Palestinian residents of central Hebron on December 18, 2005, for instance, to permit a funeral to take place in the city's Jewish cemetery.

Prohibiting or Restricting the Movement of Palestinians in Area H-2

18. Since the 1994 massacre of Palestinians praying at the Tomb of the Patriarchs, severe and widespread restrictions have been placed on the Palestinian residents of Hebron. In the five

²⁰ At the start of the Intifada, the I.D.F. imposed a three-month curfew on the area. Immediately after the murder of the infant Shalhevet Pas, a three-week curfew was imposed. Following the incident on the "worshippers route" in which nine soldiers were killed, a six-month curfew was imposed on Area H-2.

²¹ HCJ 854/03 *Sufian Sultan vs. the I.D.F. Commander for the Area of Judea and Samaria* (P.D. of July 9, 2003) (unpublished).

years since the outbreak of the second Intifada, Palestinians have been denied free movement in extensive areas within Area H-2, including the Old City of Hebron and the surrounding region. These had previously been the commercial and cultural centers of the city.

19. During these years, and to the present day, the free movement of Palestinians has been strictly prohibited on several major roads – primarily those connecting the settlement of Kiryat Arba with Tomb of the Patriarchs and Israeli settlements with Hebron. On other roads, Palestinian vehicular traffic was banned.
20. Vehicular and pedestrian traffic on Shuhada Street is banned to Palestinians, despite the fact that every Palestinian entering the area is subject to a very strict security check (including x-ray devices and metal detectors). There is no apparent reason for the ban. The only possible explanation can be summarized in the words of a boy living in Beit Hadassah: “I do not want any Arabs passing by my house.”²²
21. Military forces even forbid Palestinian schoolgirls in the area from using the street that leads to their school since it passes near Israeli settlements. Instead, they must walk along a steep and dangerous dirt road to get to school. Even there, they are subject to regular attacks by children from the settlements. Soldiers stationed at the site who witness these repeated attacks do nothing to prevent them or to apprehend or arrest the perpetrators.
22. The army employs several measures to enforce prohibitions on the movement of Palestinians – setting up manned checkpoints, erecting iron gates at the entrance to streets and alleyways, and constructing various types of barriers – some of them cement separation barriers. Throughout last summer, OCHA observed a total of 101 different types of closures within Area H-2.²³
23. According to unofficial orders enforced in recent years by the military, only Jews are permitted to move freely on the streets of the above-mentioned areas. The purpose and effect, therefore, of banning Palestinian movement is to allow Jews living there, or Jews interested in visiting the area, to move about freely and safely, enjoying a normal and routine way of life and all of their freedoms and rights as citizens.
24. The closing of main streets and roads to Palestinians has completely disrupted their way of life. Their rights to employment, health care, education, family life and social life, and basic services have been severely impaired. The result of prohibitions on movement and the operation of shops and businesses is that thousands of Hebron's residents have lost their sources of income. Their access to essential services, such as health and education, has diminished considerably. Faced with the unavailability of accessible medical services, women in the late stages of pregnancy leave their homes in Area H-2 and move to other sections of the city. Since movement between areas is restricted or banned, basic services (such as garbage removal, electricity and water supply, and sewer drainage) have been severely lacking. Palestinians who are not registered as residents of the neighborhood are strictly forbidden from entering. As a result, for years the residents have been unable to host relatives and friends in their homes.
25. The situation has reached the point where Palestinian residents of Area H-2 who leave their homes are plagued by fear – fear they will not reach their destinations, fear they will not be allowed to return home, fear they will be detained and humiliated by soldiers at the checkpoint, fear they will be physically attacked by settlers while walking through the streets, and more.
26. Since the main Shuhada Street is closed to Palestinians, any Palestinian who wants to cross from one side of the street to the other must walk around the entire central section of the city, pass through checkpoints, and climb slopes.

²² Beit Hadassah is one of the Jewish settlements located in the heart of Hebron. The boy made this comment in the course of a tour conducted by ACRI in the city on September 12, 2005.

²³ OCHA, Humanitarian Update – *The Closure of Hebron's Old City* (July, 2005). See Appendix B.

27. The ban on movement has even prevented residents from reaching their homes. The entrances to homes along the entire length of Shuhada Street have been blocked, and residents are not allowed to pass through. They have had to find alternative methods of entering their own homes, which, for most, entails a steep climb over their neighbors' roofs. This has been a daily ordeal for hundreds of people – children, the elderly, the sick – for the past five years.
28. A number of Palestinian families living below the Jewish settlement of Tel Rumeida have been subject to the same types of restrictions. ACRI has repeatedly brought the matter to the attention of all relevant authorities, including the Attorney General.²⁴ The following excerpt from a March 1, 2004 letter to the Israeli Attorney General describes the hardships faced by Palestinians by recounting the daily journey of Hassam El-'Aza, who lives with his family in Tel Rumeida:

To enter his neighborhood, Mr. El-'Aza must pass through the manned checkpoint on Shuhada Street. After waiting in line at the checkpoint, every resident undergoes a highly thorough security check, which includes presenting written certification by the Civil Administration that he or she lives in Tel Rumeida. Once past the checkpoint, Mr. El-'Aza turns right to face a hill. After climbing the hill, he must then scale a meter-and-a-half tall stone separation barrier. On the other side, the I.D.F. has strung barbed wire around the homes of the Palestinians. After passing all these obstacles and jumping over the barbed wire, Mr. El-'Aza must sprint to enter his home, which is adjacent to the homes of the settlers, his hands shielding his head from the rocks and dangerous objects often – almost daily – thrown by the settlers toward the homes of Palestinians... The many restrictions and obstacles facing the residents have created an intolerable situation that cannot continue. Mr. El-'Aza's 70-year-old father, for example, who lives next-door, never leaves his home. On the rare occasion that he must leave to visit a medical clinic, he is carried on people's shoulders and lifted over the obstacles. There appears to be no reason for these restrictions on movement other than humiliation and scorn.
29. Following several months of correspondence by ACRI, drawing the attention of the relevant authorities to this matter, the blockages were temporarily removed. A few weeks ago, however, they were re-erected by the military.
30. Palestinian residents of Tel Rumeida are not permitted to drive their cars into the neighborhood, meaning that they cannot bring their vehicles close to their homes. Nor can ambulances reach their homes. One consequence of this restriction is that Mrs. Mediha Abu Hihal, aged 65, who suffers from several illnesses and has difficulty walking, has been confined to her home for 15 months. On July 10, 2005, her husband suffered a heart attack. The family called for an ambulance, but it was not allowed into the neighborhood. Her husband died, and even then the security forces did not allow the ambulance in to remove the body. Relatives and friends were forced to carry the body from the home at the top of Tel Rumeida – climbing over fences and along dangerous paths (the only possible route, as mentioned, since the main road had been blocked because of its proximity to the Jewish settlement in Tel Rumeida).
31. Denying Palestinians freedom of movement has paralyzed commerce in the region as shops closed one by one. Consequently, thousands have lost their sources of income and livelihood. This economic death blow struck not only owners of businesses on streets where movement was banned; it covered a much wider area that included the Old City. The result is clearly evident: hardly a soul can be found in these sections of the city.
32. Repeated efforts by ACRI and other organizations, including a petition to the High Court of Justice,²⁵ have not succeeded in rescinding the illegal restrictions on movement. In its response to the High Court petition,²⁶ the government of Israel admitted that these bans on movement

²⁴ Letters were sent to the Attorney General of the Commander of I.D.F. Forces in the West Bank on April 29, 2003 and June 15, 2003, and to the Israeli Attorney General on March 1, 2004.

²⁵ HCJ 11235/04 *City of Hebron vs. the State of Israel*.

²⁶ Government statement of November 16, 2005 in HCJ 11235/04. Section 22 of the statement reads:

existed. Security forces, it explained, work to create “protective buffer zones” between the Palestinian population and the Jewish population, in part by imposing bans on Palestinian movement and ordering store owners to close their doors and cease doing business. The bans on movement and commerce apply to the city’s entire Palestinian population, and only that population, and the sole basis for distinguishing it from others is national identity.

33. The purpose of the prohibitions, as stated before the High Court by government authorities, is to keep Palestinians from entering the center of the city – the area in which the Israeli settlements were built. The explanation given by Israel for these prohibitions, and for the severe harm they have done to the civilian population, is the need to protect residents of the city’s Israeli settlements from violent attacks.
34. Above all, the government’s responses to the High Court²⁷ are sufficient to confirm that the highest ranks of the Israeli government are aware of the widespread and draconian restrictions on the movement of the Palestinian population of Hebron, as well as Israel’s segregationist and discriminatory actions there.

Discriminatory Enforcement of Law and Order by the Israeli Authorities

35. Since its inception, Israeli settlement in Hebron has been the source of friction between settlers and Palestinians, and several violent attacks have destroyed lives and property.
36. This document has described some of the means employed by security forces to protect the lives and property of settlers from acts of violence perpetrated by Palestinian militants. There is a long line of additional measures used by these forces to restrict the local population.²⁸ Actions taken by security forces to enforce law and order among Palestinians are a mirror image of the actions – or rather, lack of actions – they take to enforce law and order among settlers and protect Palestinian lives and property.
37. **The Palestinian residents of Hebron, particularly those living adjacent to Israeli settlements, suffer from the settlers' persistent aggression and harassment, which for many years has been a regular fixture in their lives.** Former head of TIPH, Jan Kristensen, described the situation as follows: “The settlers go out almost every night and attack those who live near them. They break windows, cause damage, and effectively force the Palestinians to leave the area.”²⁹

According to the operational conception of I.D.F. forces in Hebron, there is a need at this time for a “protective buffer zone” adjacent to places likely to be targets of terror attacks, among them the neighborhoods of the city’s Jewish community – where people do not usually gather in large numbers, and where it is easier to identify a hostile element attempting to approach its destination and foil the potential attack.

In the estimation of sources within the highest-ranking I.D.F. commands, there is a military and operational need for protective buffer zones, as mentioned, to ensure the safety of I.D.F. soldiers and protect the lives of Jewish residents living in Hebron (similar to defense actions taken in relation to Israeli settlements in Judea and Samaria).

A copy of a map of the city of Hebron, which also notes the restrictions imposed on the movement of Palestinians, as well as the orders to close shops in the city, and which was submitted as an appendix to the government’s response of November 16, 2005, is attached as Appendix A. It should be noted that these bans and restrictions on movement do not reflect the existing situation. As described above and in the OCHA report (Appendix B), the current enforcement of restrictions on Palestinian movement and orders for shop closings is far more intensive and sweeping than the government claimed before the High Court of Justice.

²⁷ Similar statements were made by the government in its response to HCJ 7007/03 *Kawasme vs .the I.D.F. Commander for the Area of Judea and Samaria*, a petition served by ACRI challenging the closing of all places of business on “big” Shalala Street and “small” Shalala Street.

²⁸ Other methods used by the military to protect Jewish settlement in Hebron include confiscation of the private homes of Palestinians for use as guard posts, highly frequent searches of homes in the vicinity of the settlements, and the arbitrary detaining of passersby.

²⁹ A. Regular, “International Observer: I.D.F., Settlers, are ‘Cleansing’ Hebron’s H-2 Area,” *Haaretz*, February 16, 2004.

38. Besides physical attacks, the violence includes the throwing of rocks and other objects (trash, sand, water, chlorine, sharp objects) at passersbys, as well as targeted vandalism against property in the vicinity (damaging shops, smashing doors and windows, uprooting trees). These acts have been perpetrated for many years, despite the widespread presence of Israeli security forces throughout Area H-2. According to unofficial estimates, 1,500 soldiers are permanently positioned in Area H-2. The soldiers are spread out throughout the city – at guard posts, observations points, and blockades and on patrol vehicles. It is rare to find a spot, particularly in the area of the Israeli settlements, where Israeli security forces are not present. In fact, many of these violent incidents take place in full view of Israeli soldiers. Repeatedly, they claim they have no authority to act against the settlers.³⁰
39. **The disinterest and negligence of law enforcement authorities are most blatant in this area, where the same people persist in wreaking havoc on their Palestinian neighbors. In many cases, the perpetrators continue to live in the area and take part in violent acts against Palestinians and their property, even though complaints – and sometimes criminal indictments – have been filed against them.**
40. One recent event indicates the extent to which the authorities have been lax in performing their duties. On the morning of October 26, 2005, about 100 settlers from Kiryat Arba began throwing rocks at homes in the neighborhood of Wadi Hassin. They piled rocks to create a roadblock at the entrance to the neighborhood. As a result, the residents were confined to their homes, too frightened to go out. Those who did were attacked and forced to return. This state of affairs was allowed to continue for two whole days, despite the immediate presence of Israeli soldiers and police. These security forces did not take the necessary steps to quell the ongoing violent attacks and protect the residents of the neighborhood.
41. According to data received by ACRI from the Israeli Attorney General's office, the police responded to 294 incidents of violence by settlers in 2004. Suspects were identified in 198 of those incidents, and of these, 38 were indicted. In 2005 (as of October), the police responded to 352 incidents of violence by settlers, with 116 perpetrators identified and 27 indictments served. No information was provided about the number of those indicted who were later placed in confinement or otherwise restricted in order to distance them from the area and prevent them from continuing their acts of violence against the Palestinian population.
42. For this type of law enforcement as well, the authorities' responses to the Palestinian population, as opposed to the Israeli settler population, are blatantly discriminatory. A Palestinian accused of committing a crime against a settler will be tried in a military court, according to the security laws for the area, and he is likely to be incarcerated while his case is pending and be handed a lengthy prison sentence if found guilty. On the other hand, an Israeli living in the same area and accused of the same crime will be subject to Israeli criminal law and tried in a civilian court of law in Israel. Given the enormous difference in the legal approach and procedures, and given the totally different standards and trial procedures in these two legal systems, the Israeli perpetrator would not likely be incarcerated while waiting for trial (except for isolated cases), and his or her sentence is bound to be far less severe than imprisonment. Of all the indictments against settlers in 2004, the data show that only four resulted in a trial. Of those, the most severe judgment handed down was a suspended sentence. The other three who were indicted were required only to sign commitments to refrain from engaging in further criminal acts.³¹

³⁰ The I.D.F. Attorney General's office has clarified on several occasions that this claim is unfounded and that soldiers have the authority to act against any person who breaks the law – to detain or arrest the suspect, as the situation demands. Nevertheless, the phenomenon of soldiers doing nothing to prevent violent acts by settlers, or apprehend perpetrators, continues. This matter, as well, has been the subject of repeated complaints by ACRI and other human rights organizations.

³¹ From the appendix to the government response in HCJ 5354/04 *Rashed Murad et al. vs. the I.D.F. Commander for the Area of Judea and Samaria* (a petition served by ACRI to challenge the policy of preventing the access of Palestinians to their agricultural land based on suspicion of possible violence by settlers).

- 43. As a result of these acts of hostility and violence, which have been occurring for some time with no response by the Israeli security forces, many residents and merchants whose shops are located near the Israeli settlements have left the area. The others, people who have no alternative place of residence, continue to be the targets of systematic harassment and violence directed at them and their property.**

Concluding Comments

44. The Jewish settlements established in the heart of Hebron are the cause of the severe infringement of the human rights of the city's Palestinian residents and of the nationality-based segregationist and discriminatory practices that are strictly forbidden according to **Article 3 of ICERD**, which prohibits practices of racial segregation.
45. The military command's actions are so severe that they subject the local Palestinian population to a life of humiliation and repression, and of social and economic disintegration. These are unprecedented infringements of basic human rights, with blatant discrimination from which the Jewish population – whose rights and interests are respected – is exempt. These actions also constitute a violation of **Article 5 of ICERD, specifically Articles (a), (b), (d)(i), (e)(i), (e)(iii) and (e)(iv).**
46. These infringements are sufficient to be considered severe violations of **International Humanitarian Law and of Article 7 of the International Covenant on Civil and Political Rights regarding "cruel, inhuman or degrading treatment."** They are infringements that cannot be justified by any circumstance or situation.
47. We have seen that the living conditions imposed by the area's military command have led to "forced departures," which are equivalent to the "forcible transfer of protected persons" forbidden by **Article 49 of the Fourth Geneva Convention.**
48. These are not only prohibited infringements per se; they are procedures and orders that are much more far-reaching than what can be justified on the sole basis of security concerns. It is no secret that these measures are prompted, in many instances, by political pressure and a desire to avoid confrontations with settlers. The Israeli settlers in Hebron, many of whom hold racist views (and many of whom, apparently, belong to the racist and illegal organization Kach), wield great influence over the conduct of the military in the area.
49. The result is that the living conditions of the Palestinian population in the area under Israeli control are determined, for the most part, by the racist views of the city's settler population.
50. **The results today are clear – Area H-2, once populated by tens of thousands of Palestinians and the economic, social, and cultural center of Hebron, has become (since the establishment of a number of settlements in the heart of the city) a ghost town, heavily "decorated" with hateful, racist graffiti.**

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(d) Other civil rights;

Two Systems of Justice: Discriminatory Detention and Deportation Procedures for Foreign Nationals

Introduction

1. In matters relating to detention and deportation, foreign nationals are subjected to discriminatory policies and practices that do not apply to Israeli citizens. In **November 2002, an amendment to the Entry into Israel Law was enacted**, which was the first time that parliamentary legislation specified the detention and deportation procedures of foreign nationals who are illegally residing in Israel, or are suspected of doing so (see Paragraphs 312 to 319 of Israel's report). The amendment **creates two separate systems for the detention of foreign nationals suspected of being illegal residents and for the detention of Israeli citizens suspected of other criminal actions**. Distinctive and discriminatory regulations apply to foreign nationals, which greatly deviate from those that are considered acceptable according to the Israeli legal system.

Discriminatory Procedures

2. Under the amended law, the following procedures are taken against foreign nationals who are suspected of residing illegally in Israel:

(A) A detention and deportation order is issued by an appointed Border Patrol official, who is an employee of the Ministry of the Interior. The proceedings to examine the evidence against the individual suspected of illegal residency are conducted without any translation services, which prevents any substantive verification of the suspect's claims. This violation of the suspect's rights is especially serious in light of the law's presumption that an individual is residing illegally in Israel if he or she is unable to present a valid stay permit without a reasonable explanation, and in light of the frequency in which employers commit the criminal offence of confiscating their employees' passports.

(B) The review of the detention is conducted by a review tribunal, which is an administrative body, even though it involves a clear judicial decision relating to the denial of an individual's liberty. This is the only case in Israeli law in which a decision to deny an individual's liberty is reviewed by an administrative body rather than by a court of law. The review tribunal is appointed for three years only and is dependent for its re-appointment on the recommendation of the body whose decisions it is reviewing – the Ministry of the Interior. The majority of the hearings are held without a translator. Likewise, no specific permanent procedures have been instituted regarding these tribunals. For example, the waiting period until a decision is issued regarding a repeated request for release on bail can last between three days to a month depending on the tribunal's workload;

in addition, there has yet to be established a regularized procedure for referring detainees who are not represented by an attorney to the tribunal. These procedures fatally undermine the detainees' rights to liberty and to due process.

(C) The amended law stipulates that the detention of foreign nationals must come up for judicial review within fourteen days. This is an extreme deviation from the accepted norms of Israeli criminal law, according to which every detainee is to be brought before a judge within twenty-four hours. As a result of a petition submitted by ACRI and the Hotline for Migrant Workers, the Attorney General issued a directive that has been in effect since July 2004, according to which the detainee must be brought before the tribunal within four days. However, even after this directive, the stipulated period of time still deviates from the legal norms that apply in criminal law. Moreover, it is possible for an individual to be deported from Israel before his or her case has even been brought before the tribunal, since by law a person can be deported seventy-two hours after their arrest.

(D) **For foreign nationals suspected of illegal stay, detention is the rule and bail is the exception, unlike for other criminal detainees, for whom an alternative to detention must always be considered.** Contrary to Israel's claim in Paragraph 319 of its report, the position of the state, which was recently endorsed by a High Court of Justice ruling, is that even in the event that the special circumstances for release on bail stipulated by the law exist, there is no obligation to release the individual in detention on bail³². Likewise, it should be noted that despite the court instruction mentioned in Paragraph 314 of Israel's report, Border Patrol officials and the court do not view an extended period of residence in Israel as a basis for release on bail and delaying deportation.

The Detention of Abandoned Minors

3. The Immigration Police arrests foreign minors when it becomes clear that they have no parents in Israel. They are sent to detention centers and are then deported to their country of origin, even if there is nobody there to receive them. Some seventy such minors have been detained, some of whom have been deported, and approximately twenty of them are currently being held in detention. **The detention and deportation of these minors contravenes Israel's obligation to ensure the rights and welfare of the children as long as they are in Israel.**

The Immigration Police and Police Violence

4. In July 2002, the government decided to expel 50,000 "illegal" migrant workers from the country within one year. In order to implement the mass expulsions, the government set up the "Immigration Administration" in August 2002. Contrary to the impression that is likely to be created by Paragraphs 200 and 201 of Israel's report, which describes the actions taken by the Immigration Administration to protect the rights of migrant workers, this body essentially focuses on the detention of individuals suspected of residing illegally in Israel, and not on the protection of their rights. **The stipulation of a target number of deportees led the Immigration Police officers to use, in certain cases, excessive and illegal force against foreign nationals suspected of illegal residence in Israel.** Thus, in 2004, Hotline for Migrant Workers (a non-governmental organization) submitted 36 official complaints to the Police Investigations Department of the Ministry of Justice regarding police violence against migrant workers. It should be noted that in 39% of these cases, the victim was expelled from the country before being questioned by the Police Investigations Department, or before a decision was reached as to whether to take action against the offending police officers, and thus the investigations were effectively torpedoed.

³² Appeal no: 173/03 The State of Israel v. Salamah on 9 May 2005.

Refugees and Asylum Seekers

5. As stated in Paragraph 210 of the State's report, since 2002 a special inter-ministerial committee exists whose function is to advise the Minister of the Interior as to who should be recognized as a refugee. However, flaws of substance and procedure in the Israeli system create serious potential for the violation of the rights of asylum seekers and refugees to due process and protection. The procedure for examining asylum requests is based on an internal directive of the Ministry of the Interior that is not made public. The procedure before the inter-ministerial committee is not transparent, the asylum-seeker is not granted the right to be heard or to receive legal representation before the committee, and there is no real right of appeal.

6. The procedure for examining asylum requests begins with a selection process carried out by the local office of the United Nations High Commissioner for Refugees. The involvement of this body is problematic, due to its status as an external international body with its own agenda and constraints. Thus, the Commissioner refuses to handle asylum requests of Palestinians, as it claims Palestinians are under the mandate of UNRWA and are therefore outside the mandate of UNHCR. As a result, Palestinians are prevented from requesting asylum in Israel. Additional problems exist as a result of UNHCR's shortage of manpower, and thus an asylum-seeker who submits a request after having been detained is liable to wait months in detention before the examination of his or her case. The same is true of asylum seekers who submit their requests before they are detained, if their request has not yet been processed and they have not been interviewed. It should also be noted that even after one has been recognized as an asylum-seeker, one may be detained by the immigration police for hours and in extreme cases even for days, due to suspicions regarding the authenticity of the High Commissioner's documentation in one's possession.

7. Recognized asylum-seekers receive work permits but are not entitled to any social benefits, including the right to health services, during the period they wait for a decision on their case, that is liable to last for up to two years. Among asylum-seekers there are victims of torture and traumas who require psychiatric treatment, aged persons unable to work, and persons suffering from painful terminal illnesses. These individuals are liable to deteriorate to the point of death while waiting for a decision on their status.

8. During the waiting period, no status is granted to the spouse of the asylum-seeker and he or she is in danger of detention and expulsion. Even after an individual has been granted refugee status, his or her spouse is only granted a work visa and must wait twenty-seven months before receiving a temporary resident visa that entitles him or her to social benefits. This is true even in cases where the couple was married before coming to Israel. Likewise, despite a decision on the issue in principle, the Ministry of the Interior continues to make it difficult to register a refugee's children as temporary residents. As a result, his or her children have no access to public health services or other certain public services.

9. Although the principle of *non-refoulement* is recognized and accepted in Israel, several cases have occurred where women and men who arrived at Israel's borders were returned immediately to their place of origin, without having being given the opportunity to request asylum. Thus, for example, ACRI is aware of a case in which the IDF turned back, within a day, a young Syrian woman who crossed the border into Israel, without checking her claim that she is entitled to asylum due to persecution on the basis of gender. In other cases, asylum seekers have been interned at army camps after crossing the Israeli border and just "forgotten" for long periods of time. Thus, for example, last year a Sudanese asylum seeker was held for close to two months at the Ketziot army camp, before being brought before a tribunal which recommended that the man be placed in a Kibbutz until a country can be found willing to grant him asylum.

10. Citizens of enemy states do not receive protection in Israel: according to State regulations, they must be relocated to another country. The processing of their cases is lengthy and they are held in detention for months on end. Even after they are released for an interim period before being transferred to a different country, they do not receive any rights and some of them are pushed to the verge of starvation.

Concluding Comments

1. Recent legislation enshrines in law discrimination against foreign nationals in matters relating to detention (**Article 5 (a)**), and violates their right to equal treatment before the law.
2. In its **General Recommendation on Discrimination against Non-Citizens**³³, issued in 2004, CERD emphasizes the obligation of States parties to ensure that "non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies." As has been shown above, foreign nationals in Israel are in many cases denied equal access to such remedies.
3. The excessive force used by the Immigration Police against migrant workers violates their right to security of person and is in contravention of **Article 5 (b)** of ICERD. In its **General Recommendation 30 on Discrimination against Non-Citizens**, CERD recommends that State parties "**combat the ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations**".³⁴
4. In its treatment of abandoned foreign minors, Israel fails to comply with its obligations under the **Convention on the Rights of the Child** to act in the best interests of the child.
5. By denying asylum-seekers and their families basic social benefits – in particular the right to healthcare – during the period in which they await a decision on their case, Israel violates their right to public health, medical care, social security and social services as protected by **Article 5 (e)** of ICERD . In its **General Recommendation 30 on Discrimination against Non-Citizens**, CERD emphasized the obligation of State parties to "**respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.**"³⁵

³³ *Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens*, (Paragraph 25).

³⁴ *Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens* (Sixty-fourth session, 2004), (Paragraph 21).

³⁵ *Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens* (Sixty-fourth session, 2004), (Paragraph 36).

Article 5

(d) Other civil rights, in particular:

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

Immigration and Access to Citizenship: Entry into Israel, Status in Israel, and the Right to Marriage and Choice of Spouse

Introduction

1. Israeli law grants Jews preferred and almost exclusive status with regard to entry into Israel. The Law of Return, enacted in 1950, grants automatic right of entry to every Jew³⁶ and to members of his or her close family up until the third generation, even if they are not Jewish according to Jewish law or in practice. The Minister of the Interior has extremely limited authority when it comes to restricting the ability of an individual who complies with the criteria of the Law of Return to immigrate to Israel.

2. On the other hand, the law confers almost unlimited discretion on the Minister of the Interior concerning the granting of entry visas to non-Jews, and does not lay down criteria for issuing or refusing to issue these visas. The Minister of the Interior is not even required to explain his refusal to issue an entry visa and residence permit to an individual who is not Jewish³⁷.

3. A clear example of wrongful discrimination against persons on the basis of their belonging to a particular group, who wish to enter Israel, is the Law of Citizenship and Entry into Israel (Temporary Order), 2003, which limits the ability of Palestinians to enter Israel and absolutely denies them any possibility of obtaining permanent residency status in Israel (see below for further details).

Non-Jewish Individuals and the Obtaining of Israeli Residency Status

4. The granting of residency status in Israel to non-Jews is laid down in the provisions of the Law of Entry into Israel (1952), and in the Citizenship Law (1952). According to the Citizenship Law, in order to become a citizen of Israel, an individual must first acquire permanent Israeli residency status in accordance with the Law of Entry into Israel. Insofar as there exists a policy in Israel concerning the granting of the permanent status to non-Jews, it relates primarily to the children of Israeli citizens or residents, the spouses of Israeli citizens and residents and their children, and the family members of immigrants who migrated to the country by virtue of the Law of Return. The procedure in these cases is based on an "assessment period", a graduated procedure during which an individual acquires Israeli residency status and is subjected to periodic re-evaluations of his or her request for status.

³⁶ As stated in section 4(b) of the Law of Return: "a person who was born of a Jewish mother or has converted to Judaism and who is not a member of another religion."

³⁷ Section 9(b) of the Law for Amendments to the Registrars' Arrangements - Decision and Explanations, 1959.

5. Requests for permanent residency status in Israel submitted by individuals who do not fall within these groups are dependent upon the discretion of the Minister of the Interior. On this issue also, the law places almost no limitations on the Minister's discretion to decide whether or not to grant Israeli residency permits to non-Jews, and does not stipulate criteria for the granting or refusal of such permits. The Minister of the Interior does not even have to explain his refusal to grant Israeli residency permits to non-Jewish individuals. Israel's claim in Paragraph 260 of its report, that one of the criteria for acquiring status is "the capacity to show that one's life, or that of one's immediate family, is centered, as a practical matter, in Israel," is incorrect.

6. The official policy is not to grant long-term or permanent residency permits to non-Jews, and especially not citizenship status, apart from in "exceptional cases, for humanitarian reasons, in which there are special considerations" and in the event that Israel has a "special interest in the granting of permanent residency status."³⁸ This is a general criterion, which is very vague and restrictive. Israel does not make clear what constitutes humanitarian circumstances or special considerations. In practice, apart from the granting of citizenship to the spouse of an Israeli citizen or resident, to an aged parent of a citizen, or to a child (who is a minor) of an Israeli parent, there are no other criteria for granting formal status. A foreign national, who does not belong to one of these groups (and even an individual who does belong to one of these groups but whose case slightly deviates from the criteria determined by the regulations) cannot acquire permanent Israeli residency status without the authorization of "the Inter-Ministerial Committee for Special Cases" that convenes in the Ministry of the Interior from time to time, and which only grants residency permits in a very limited number of cases.

7. The option of appealing to the "Inter-Ministerial Committee" is not publicized; the identity of its members and the dates on which it convenes are unknown; one cannot appear before the committee; and its decisions – insofar as they are issued – are unexplained. Thus, for example, non-Jewish parents of children who are Israeli citizens, who have begun the naturalization procedure in Israel by virtue of their marriage to an Israeli citizen or resident, and who have separated from their partner before the completion of the procedure, must appeal to the committee in order to obtain residence status. Israel recognizes the right of these foreign nationals to residence status on the basis of their marriage, but refuses to determine criteria for the granting of formal status to these foreign nationals on the basis of parenthood; their requests are therefore handled as exceptional and anomalous cases. These parents are forced to wait for long periods of time with no official status and without any entitlement to social rights. The High Court of Justice refused to intervene with regard to this policy.³⁹

8. Since 2002, Palestinian residents of the Occupied Territories cannot enter Israel or gain formal residency status. This policy was first anchored in a government decision and was subsequently anchored in legislation enacted in 2003 (see below for further details).

9. A stark contrast exists between the automatic manner in which Jews are granted residency status for themselves, their families, and their offspring, and the tight-fisted policy concerning the opportunities available to non-Jews who wish to acquire status. This creates an immigration policy which violates human rights in general, and violates the right to not be discriminated against on the basis of race in particular. Moreover, the practices derived from this discriminatory policy – that is founded on the Ministry of the Interior's belief that its role is to protect the Jewish character of the State at any cost – also result in blatant human rights violations, among them the right to equality.

³⁸ From the Ministry of the Interior's published *Criteria for Granting Permanent Status Visas in Israel*.

³⁹ *H CJ 4156/01 Mario Dimitriov v. The Ministry of the Interior*.

Citizenship Status by Birth

10. A child who is born in Israel to an Israeli parent who is an Israeli citizen is entitled to citizenship at birth. However, contrary to Israel's claim in Paragraph 269 of its report, Israeli citizenship is not granted automatically at birth to every child without "any distinction in law or in fact between Jews or non-Jews." According to the Ministry of the Interior's procedures, when only the father is an Israeli citizen and the mother is a non-Jewish foreign national, a declarative court ruling is required which is based on DNA testing in order to prove paternity. This procedure is a prerequisite for granting formal status to the child. Until paternity is proved, the child remains without citizenship and is not entitled to health services or to social rights. It is up to the parents to appeal to the court and to carry out this very expensive testing at their own expense and on their own initiative.

11. A child who is born in Israel to a parent who is a permanent resident of Israel – for example, a resident of East Jerusalem – is also entitled to a permanent residency permit. However, many children of East Jerusalem residents are not registered and do not obtain formal status soon after their birth for a number of reasons: frequent changes in the Ministry of the Interior's policy regarding the granting of status to the children of permanent residents and the conditioning of the registration of the child on the "family reunification" procedure; the difficult physical conditions of the Population Registry offices in East Jerusalem; the multiple and exhaustive bureaucratic procedures; and the expense involved in the registration procedure (including the obligatory payment of large fees).

The Revocation of Status

12. Palestinian residents of East Jerusalem with permanent residency status are liable to lose their status in Israel, and with it their right to enter the country (including East Jerusalem itself), if they obtain foreign residency or citizenship status, or if they reside outside of Israel for a period of at least seven years. A Palestinian East Jerusalemite might only live a few kilometers outside of the declared municipal borders of Jerusalem, sometimes in neighborhoods which are partially within these borders and partially outside of them, but this will still cause their residency status to expire. In the 1990s, within the framework of the policy that has been termed "the quiet deportation," the Ministry of the Interior revoked the status of hundreds of permanent residents of East Jerusalem who had moved outside of the municipal boundaries of Jerusalem. As a result, the residents lost their homes, their social rights, and their right to enter Israel.⁴⁰

The Right to Marry

13. Marriage in Israel is governed by the (religious) personal status law of the couple wishing to marry. Leaving to aside those individuals who, according to their personal status law, are not permitted to marry members of their own religion for reasons stipulated by religious law (Jewish, Moslem, Christian or Druze), **Israeli law also does not enable: mixed marriages between members of different religions; marriages between persons without a religion; marriages in which one of the partners is not religiously classified (i.e. he or she is a member of a religious community that is not recognized by Israeli law); or same-sex marriages.** As a result of recent demographic changes in Israel, and primarily because of the large number of immigrants from the former Soviet Union, **the number of Israeli citizens or residents who cannot marry in Israel has reached hundreds of thousands of people.**

⁴⁰ "The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians," a joint report published by B'Tselem and Hamoked: Center for the Defence of the Individual (April 1997).

Non-Jewish Spouses and Immigration

14. The granting of permanent residency status to a non-Jewish spouse of an Israeli citizen or resident is viewed by Israel as an act of charity, or, in the words of the Ministry of the Interior, as a "humanitarian gesture" of family unification, and not as the realization of a basic right. Considerations relating to the nationality or ethnic origin of the non-Israeli spouse form the basis of the Ministry of the Interior's decision. Marriage to a spouse who is of Arab origin arouses great discontent on the part of the Ministry, especially if the spouse is Palestinian. Ministry clerks invest a great deal of effort into thwarting any chance of these non-Israeli spouses obtaining formal status in Israel.

15. In accordance with this approach, in March 2002, the Ministry of the Interior decided to freeze the processing of residency requests of Palestinian spouses. In May 2002, the State of Israel officially decided to adopt this policy. In **August 2003**, the **Law of Citizenship and Entry into Israel (Temporary Order)** was enacted, which anchored in law the government decision, and **in a sweeping manner prevented Palestinian spouses from obtaining formal status**. In order to oppose this racist law, which tears apart many families, ACRI, together with other human rights organizations, submitted a petition to the High Court of Justice. CERD denounced the discriminatory law in its Decision 1(63) and Decision 2 (65), and called for its revocation.

16. In January 2004, a hearing on this issue was held before an expanded panel of thirteen High Court justices. Many months have since passed, the law has been extended a number of times, and **for almost four years the right to family life has been denied to citizens who are married to Palestinians**. In July 2005, a number of minor "amendments" were introduced into the law, which permitted women over the age of twenty-five and men over the age of thirty-five to submit requests for entry permits. However, the amendments also stipulate that Palestinians with "dangerous family ties" – defined as family relations with individuals whom security officials suggest might constitute a security threat to Israel – will not be granted an entry permit into Israel. This is a form of collective punishment. The amendments to the law are insufficient; and the law continues to severely violate basic rights and should therefore be revoked.

17. Israel's report includes a series of incorrect factual claims regarding the background to the law and its ramifications (see Paragraphs 279 to 286). ACRI endorses the critique provided on pages 19 to 21 of Adalah's shadow report, which details the erroneous information included in the State's report. The High Court of Justice is expected to issue its decision on the constitutionality of the law in the coming months.

18. In August 2004, it became known that the Prime Minister had directed the General Security Services to stop issuing security clearance to citizens of Arab countries married to Israelis. The clearance is a necessary component of the multi-staged naturalization process a foreign national spouse of an Israeli citizen must undergo to gain residence status in Israel. The result of issuing such an order was the complete cessation of all naturalization procedures for spouses of Israeli citizens who are citizens of Arab countries. A petition was also submitted against this directive, and as a result the directive was cancelled.

19. The policy of the Ministry of the Interior regarding the status of non-Jewish spouses of Israeli citizens has undergone a number of changes during the last few years. As stated in Paragraph 278 of Israel's report, a graduated procedure has been instituted. According to this policy, an Israeli citizen who marries a non-Jewish foreign national, is entitled to obtain citizenship for his or her spouse through an incremental procedure which lasts four-and-a-half years.

20. In practice, **those individuals wishing to realize their right to family life are forced to undergo a turbulent and convoluted process in order to acquire formal status in Israel for their non-Jewish spouse, and in order to live with him or her in security and stability**. For many families, their lengthy dealings with the Ministry of the Interior are riddled with endless

difficulties and subject to unreasonable demands. Those wishing to set up a home with a non-Jewish foreign national pay a heavy price: years of temporary residency and uncertainty; difficulties in earning a livelihood as a result of their inferior temporary status; the loss of many working days spent in frustration at the Population Registry; inconsistent and exaggerated demands for various documents and evidence throughout the procedure; and, in many cases, arbitrary refusals to renew permits. The Ministry of the Interior does not comply with the procedure's prescribed timeframe, and the majority of applicants are forced, in practice, to wait for a longer period of time in order to formalize their status. It is not uncommon for these applicants to encounter a demand which is illegal or impossible to answer. One example is the requirement that as a precondition for formalizing his or her status, the applicant must incriminate family members who are illegally residing in Israel, or to ensure their expulsion. Services are often withheld from applicants who refuse to comply with such demands.

22. Mixed couples, in which the partners belong to different religions, cannot get married in Israel, and they are left with no alternative but to marry in a civil ceremony overseas. In order to enable the return of the non-Israeli spouse to Israel after the marriage ceremony, he or she must obtain an entry permit. However, as part of the ongoing war of attrition waged by the government against the marriage of Israeli citizens to non-Jews, the government decided to exploit the fact that these couples cannot get married in Israel in a civil ceremony by refusing to provide them in advance with a re-entry permit in time to marry overseas. Thus, after the couple marries overseas they must request a permit to return together to Israel.

Concluding Comments

1. Israel's procedures with regard to non-Jewish foreign nationals wishing to acquire Israeli citizenship lack transparency and in many cases create insurmountable and discriminatory bureaucratic obstacles for non-Jewish applicants for status which stem from the Ministry of the Interior's perception of them as posing a threat to the Jewish character of the State. In its **General Recommendation 30 on Discrimination against Non-Citizens**, CERD emphasizes the obligation of State parties "to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents."⁴¹

2. By not offering its citizens the option of civil marriage in Israel, Israel violates the right to marriage and choice of spouse as protected by **Article 5 (d) (iv)**; the Ministry of the Interior exploits and exacerbates this problematic state of affairs by posing hardship on couples who have been left with no choice but to marry abroad.

3. The current situation, whereby Palestinian residents of East Jerusalem with permanent residency status are liable to lose their status in Israel, and with it their right to enter the country (including East Jerusalem itself), if they obtain foreign residency or citizenship status, or if they reside outside of Israel for a period of at least seven years, discriminates against the Palestinian population of East Jerusalem and severely violates their rights according to **Articles 5 (d) (i) and (iii)** of ICERD. This policy also results in the denial of the Palestinian East Jerusalemites' right to social services and healthcare, which are linked to their residency status in Jerusalem.

4. The Law of Citizenship and Entry into Israel (Temporary Order) anchors in law severe racial discrimination against Palestinian residents of the Occupied Territories and violates their right and the right of their spouse (in most cases Palestinian citizens of Israel) to marriage and choice of spouse, as protected by **Article 5 (d) (iv)** of ICERD, and their right to nationality, as protected by **Article 5 (d) (iii)**. This law was denounced by CERD in 2003 and 2004, in Decisions 63 and 65, which call on Israel to revoke the law. Also relevant is **General Recommendation 30 on**

⁴¹ *Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens* (Sixty-fourth session, 2004), (Paragraph 13).

Discrimination against Non-Citizens, in which CERD recommends that State parties "recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States Parties' obligations to ensure non-discriminatory enjoyment of the right to nationality."⁴²

Article 5

(e) *Economic, social and cultural rights, in particular:*

(i) *The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;*

Migrant Workers and Employment Rights

Introduction

1. Israel fails to effectively enforce labor laws and to protect the rights of both Israeli and migrant workers. However, as a result of the special vulnerability of migrant workers and their difficulty accessing the legal system, this failure particularly harms them. Contrary to the claims made in Paragraph 198 of Israel's report regarding the revocation of the permits of employers to employ migrant workers, the Ministry of Industry, Trade and Labor almost completely avoids using its authority to revoke the permits of employers who violate the legal rights of migrant workers. According to the Ministry's procedures, "the revocation of a permit to employ [migrant workers] or the refusal to grant a permit in the future must be a special punishment that is imposed, primarily, in cases which are especially grave and exceptional."⁴³ Thus, for example, it is not enough that an employer breaches the Minimum Wage Law in order to justify the revocation of his or her permit; rather, the ministry requires that "the paid salary is significantly lower than minimum wage." Similarly, it is not enough that an employer has been criminally indicted or convicted; the indictment or conviction must be of "serious offences." **The threat of revocation is a powerful tool which is not being used.**

2. With regard to statements made in Paragraph 206 of Israel's report in relation to the imposition of administrative fines on employers: the Enforcement Unit indeed imposes administrative fines on criminal employers, but the majority of these fines are as punishment for employing migrant workers without a permit and not for violating these of workers' rights. As a result of bureaucratic failings, only a small number of these fines are collected. In practice, this creates an ineffective tool in the struggle against criminal employers. The ineffectiveness of administrative fines in this area is made apparent by figures presented by the Ministry of Industry, Labor and Trade to the Knesset Committee for Foreign Workers, in January 2005, according to which, in 2004, although heavy fines were imposed to the total of 161 million NIS on employers who employed migrant workers without a permit, or on account of their unfair conditions of employment, only 11 million NIS was actually collected, which represents 7% of the total sum.

3. Contrary to what is stated in Paragraph 345.2 of Israel's report, **migrant workers are not equally protected by the labor laws which apply to Israeli workers.** As a result of a recent amendment to the Foreign Workers Law, it is now possible to deny migrant workers dismissal compensation and other rights to which they are entitled by virtue of collective wage agreements, in the event that they remain in Israel after the expiry of their work permits.

⁴² *Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens (Sixty-fourth session, 2004), (Paragraph 14).*

⁴³ Section 3 of the Ministry's *Procedure Governing the Revocation of Permits*.

The Amendment to the National Insurance Law

4. Since March 2003, the amendment to the National Insurance Law has been in effect, which stipulates that an illegal resident will not be paid any benefits for the period of his or her illegal residency. The amendment cancels three types of benefit designed to ensure basic workers' rights: (i) benefits paid as a result of a work injury; (ii) maternity leave payments; and (iii) benefits paid to workers in the event that the employer goes bankrupt. Prior to the law's amendment, these benefits were paid to migrant workers irrespective of their legal status. Only as a result of a petition submitted by ACRI in partnership with other human rights organizations was a procedure instituted which ensured that in cases in which an undocumented worker suffers a work injury which requires emergency medical treatment, or a continued stay in Israel, the state is required to determine his or her level of disability and scope of entitlement, to grant him or her a stay permit, and entitle him or her to receive benefits during his or her stay in Israel.

The Payment of Recruitment Fees

5. Contrary to the claims made in Paragraphs 199 and 347 of Israel's report, regarding the prohibition on employment agencies' collection of commissions or fees from workers, Israel has given up the fight against this illegal practice; instead of intensifying the enforcement against those who demand mediation commissions from workers, the Ministry of Industry, Labor and Trade has chosen to legitimize the practice. Thus, as a result of the amendment to the Employment Agency Law, manpower agencies and organizations involved in the recruitment of migrant workers overseas can now legally demand recruitment fees from the workers. No official procedures to regularize this practice have yet been instituted, but the power to demand recruitment fees, at this stage from migrant workers only, has already been anchored in law.

Terms of Employment that Violate the Right to Human Dignity, to Individual Autonomy, and to Free Choice of Employment

6. **Contrary to statements made in Paragraph 346 of Israel's report, not all migrant workers can change employers:** in the current labor market in Israel there exist a number of arrangements governing the employment of migrant workers. In the industry and service provision branches, the "binding" arrangement applies, whereby the migrant worker's stay permit is bound to a specific employer. If the working relationship expires – irrespective of the reason – the migrant worker not only loses his place of work, but also becomes an illegal resident. For workers in these branches of employment there is no possibility of moving from one employer to another. For migrant workers employed in the agriculture and home nursing sectors, a procedure applies that theoretically permits the workers to change employers. However, in contrast to what is claimed in Paragraph 541 of Israel's report, the implementation of the procedure allowing migrant workers to change employers is problematic and in practice Population Registry clerks often contravene the procedure and effectively prevent workers from changing employers.

7. In the construction sector, a new procedure was implemented in May 2005 whereby workers employed by manpower agencies are permitted to change employers through their agency and can even periodically move from one manpower agency to another. However, it is already apparent that the procedure has not achieved its prescribed goals and the workers now find themselves bound to a manpower agency instead of to an employer.

8. The various procedures have generated great confusion among the workers. It is not clear which procedure is applicable to which specific worker, many workers are unaware of the different guidelines, and in some cases neither are the Population Registry clerks nor the members of the Ministry of the Interior's enforcement division. The price, as usual, is paid by the migrant workers, who on numerous occasions are detained after leaving an employer despite the fact that according to the applicable procedure they are entitled to change employers.

Concluding Comments

1. Israel has failed to effectively address the ongoing and severe violations of the employment rights of migrant workers, and to fulfill its obligation under **Article 5 (e) (i) of ICERD** to guarantee the protection of these rights.
2. In its **General Recommendation of 2004 on Discrimination against Non-citizens**, CERD calls on State parties to "take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects."⁴⁴ The measures taken by Israel to eliminate such discrimination against migrant workers have to date been largely ineffective.

Article 5

(e) Economic, social and cultural rights, in particular:

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

Racial Discrimination Against Residents of Unrecognized Villages in the Negev in the Areas of Housing and Health Rights

Introduction

1. The Bedouins of the Negev are an integral part of Israel's Arab-Palestinian minority – an indigenous, national ethnic minority (henceforth “the Bedouins” or “the indigenous Arab Bedouin minority in the Negev”). In contrast to the government's depiction of Negev Bedouins as living in hundreds of “illegal areas of concentration” (see Paragraph 379 of Israel's Report), **about half the Bedouin Arab population of the Negev lives in nearly 45 villages (henceforth “unrecognized villages”) that the State of Israel refuses to recognize by providing a planning structure and converting them into municipalities.** A large majority of these villages existed before Israel's establishment as a state; the others were created in the 1950s, when the government transferred the Bedouin population from territories they traditionally owned and/or maintained to a smaller area labeled a “restricted zone.” It should be noted that the transfer of this indigenous population was carried out without their informed consent. No formal arrangements were made, and the new area was not recognized as an alternative settlement site. Nor was any sort of compensation granted, not to mention the just, fair, and prompt compensation required in ICERD's General Recommendation No. 23: Indigenous Peoples, dated August 18, 1997 (Article 5). In its report, Israel clearly evades its responsibility for the creation of this situation by referring to these villages as “illegal clusters” (Paragraph 379 of Israel's Report).
2. **The government policy regarding the social, economic, and cultural rights of the Arab-Palestinian minority in Israel (protected by Article 5 (e)) – and particularly the Bedouins of the Negev – is racially discriminatory. This policy is evident in the unrecognized villages of the Negev, in part by the non-provision of basic and essential services (such as connections to water and electrical grids, sewer systems, telephone lines, and road networks) and in the discriminatory distribution of educational, health, and social**

⁴⁴ *Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens, Paragraph 33.*

services to residents of unrecognized villages. The government has not fulfilled its obligation to provide these services on a regular basis; instead, it acts in accordance with its policy of concentrating the population into a very confined area of seven townships (established for this purpose) and eight other communities that are now in the process of being planned, established, or recognized. Israel's Report misrepresents this policy and misleads the committee by claiming (in Paragraph 129) that the government initiated programs targeted for the Bedouin population, in cooperation with the relevant tribes and communities, and that its key goals were "to allow for sustainable integration of the Bedouin population into the State, while maintaining their traditional practices and lifestyle."

3. This practice of concentration is an extension of the Israeli government's policy of ignoring the historical territorial rights of the indigenous Arab minority in the Negev, in defiance of the **General Recommendation No. 23: Indigenous Peoples of the CERD Committee (18/08/97)**, in particular **Article 5** of the **General Recommendation**, calling on countries:

...to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

The declared policy of transferring the Negev Bedouins from land they use and/or claim to own, and concentrating them in a smaller area within municipalities or semi-municipalities that do not suit their needs, culture, or way of life, was evidenced recently in the Negev 2015 Plan – part of Government Resolution No. 4415 of November 20, 2005. The policy was described in the December 15, 2005 shadow report submitted to CERD by Adalah, the Legal Center for Arab Minority Rights in Israel (pp. 23-26, 27-29). The report also notes other examples of the policy that conflict with the concluding observations of the 1998 Committee, which expressed concern about "ethnic inequalities, particularly those centering upon what are known as 'unrecognized Arab villages.'"⁴⁵

4. This report will focus on two forms of discrimination against the Negev Bedouin population:

- Housing discrimination, as demonstrated in discrimination in planning and land distribution – **Article 5(e)(iii)**.
- Discrimination in the provision of health services in unrecognized villages in the Negev – **Article 5(e)(iv)**.

The Right to Housing

5. The unrecognized villages in the Negev were not marked in the District Outline Plan for the Southern Region (14/4). Their absence at the district outline plan level prevents the preparation of detailed local outline plans. Likewise, the absence of a local outline plan makes it **impossible to attain building permits and to realize the legal right to housing in unrecognized villages, where demolition orders are a constant threat**. On the other hand, most isolated farms and communities populated by Jews and established without outline plans are granted building permits retroactively.⁴⁶ Construction in these areas, which the government refers to in Paragraphs 379-389 as "illegal concentrations," is "illegal" since, in implementing the Planning and Construction Law of 1965, government agencies ignored the existence of the unrecognized

⁴⁵ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel*, dated March 30, 1998 (CERD/C/304/Add.45).

⁴⁶ Comptroller's Report 55b, pp. 155-191, notes irregularities in the establishment of Jewish communities in Israel.

villages, discriminating against them by excluding them from planning arrangements. Discrimination in planning leads to discrimination in the granting of housing rights.

6. The District Outline Plan for the Southern Region (14/4) is rife with racial discrimination against the Bedouin Arab minority in the Negev. The plan relates to the land in unrecognized villages as if it were uninhabited, ignoring the fact that tens of thousands of Bedouin families have lived on this land and earned their livelihoods there for dozens, sometimes hundreds, of years. The government policy, as described in the plan, is to evict the Bedouins from the unrecognized villages and concentrate them into towns, despite the fact that village life is best suited to their culture and way of life. On the other hand, the same plan allows the Jewish population the choice of living in any of the over 100 southern communities – among them cities, towns, community settlements, and agricultural settlements. To challenge this discrimination, ACRI filed a petition in March 2000 to the High Court of Justice on behalf of representatives of three unrecognized villages and other civil rights organizations.⁴⁷ The petitioners' demand was that the plan be amended to ensure the planning of agricultural villages for the Bedouin Arab population of the Negev.

7. An interim arrangement regarding this petition, achieved in July 2001, requires that the partial Outline Plan for the Beer Sheva Metropolis (23/14/4), which is now being drafted by the planning authorities, recommend solutions for the problem of Bedouin settlement in the metropolis region (which has a 25% Arab Bedouin population). The arrangement also requires the planning authorities to involve representatives of the Bedouin community in the planning process.

8. Since that time, the planning institutions have been dragging their feet, and despite High Court supervision, they have yet to finalize the plan that was due to be completed in January 2003. Contrary to the impression given in Israel's Report (Paragraph 385), Bedouin representatives did not take part in the planning process, and their "consultancy" amounted to a few meetings in which no concrete recommendations were discussed for the planning of unrecognized villages. The meetings were called only to satisfy the High Court's demand for progress in the matter of the petition.

9. If approved in its current form, the District Outline Plan 23/14/4 will only serve to perpetuate discrimination in planning, leaving the majority of unrecognized villages with no planning arrangements and denying their residents their legal rights to housing.

10. While the District Outline Plan 23/14/4 was being prepared, government authorities began to implement a 2000 resolution to develop outline plans for seven new Bedouin towns, some of which would have granted recognition to existing villages and expanded the jurisdiction area of some "existing (recognized) Bedouin towns." The intention was to plan most of these communities in their existing locations, which indicates some change in policy and recognition of the need to plan most of the communities as part of an overall arrangement for unrecognized villages. Nevertheless, it appears that the change of government in Israel brought about a change in planning policy; the Sharon government prefers to plan most of these communities as new towns for the overcrowded populations of unrecognized villages.⁴⁸

11. While the planning authorities involved representatives of some communities in various stages of planning, their efforts were very low-key. The residents were not truly involved in questions about the planned location, size, and character of their communities. The communities were given Hebrew names selected by the government, some of which were changed at a later date. Even when representatives were "consulted," the resulting planning

⁴⁷ HCJ 1991/00 *Abu-Hamad et al. vs. the National Planning Council et al.* (pending and undecided).

⁴⁸ Shlomo Swirski and Yael Hasson, "Transparent Citizens: Government Policy Toward Bedouins in the Negev," *Adva Center, Information on Equality*, Issue No. 14, September 2005, pp. 26-31.

efforts did not reflect the demands and/or needs of the residents, as was the case with Kassar Al-Sar, for example.

12. Paragraph 382 of Israel's Report relates to expanding the town of Segev Shalom, without mentioning that the expansion plan was rejected by the Regional Planning and Building Committee. Worse still, Segev Shalom's expansion was intended as a means of doubling its population through the forced eviction of nearly 5,000 residents of the unrecognized village of Wadi Al-Naam. The original residents of Wadi Al-Naam were transferred there in the 1950s from land that was historically theirs; however, the government neither recognized the new village nor created a municipal plan for it, and the residents were given no alternative but to move there⁴⁹. The village residents clearly opposed their transfer to the town of Segev Shalom, and for over two decades, they have been fighting to gain recognition in order to generate plans for a village-community suited to their needs and traditional way of life. Various government bodies have been using pressure tactics to "convince" the residents of Wadi Al-Naam to move to an existing town. The Israel Lands Authority, for instance, filed eviction orders against dozens of families in the village, and the planning authorities continue to hand out demolition orders on a massive scale, to destroy the homes of residents who have no other place to live, and to infringe on their social rights as a means of exerting pressure leading to another forced transfer.

13. It is important to note that, contrary to Paragraphs 380 and 388 of Israel's Report, the towns do not have a sufficient supply of developed and available plots of land just waiting for Bedouins who are willing to relocate to them. There is not enough available land in these towns to meet the needs of their current residents. One clear example is the town of Laqiya. In September 1999, ACRI filed a petition with the High Court of Justice on behalf of representatives of 50 families who were given a promise by the government in 1975: in exchange for agreeing to move to the town of Laqiya, the government would provide them with developed and available plots of land in the town. To this day, the government has not fulfilled its promise. For all of the intervening years, the petitioners have had to live in temporary structures in the town, with no connection to infrastructure – just like the residents of unrecognized villages.⁵⁰

14. While the planning process for the Bedouin population crawls along, the government authorities are engaging in fast-track planning for the Jewish population. By pressing for government resolutions and promoting tailor-made planning options, they have provided land for dozens of additional isolated farms and residential communities for the Jewish population, some of which are to be established in place of existing villages (such as the community of Hiran, which is slated to be built on the site of the unrecognized village of Atir-Um Al-Hiran). These plans move ahead despite blatant racial discrimination in planning in the Negev, which is evident in the glaring lack of outlines plan for the Bedouin Arab minority there and the oversupply of planned housing units for the Jewish population.⁵¹

15. One of the most blatant examples of discrimination in planning and housing rights is the community of Gva'ot Bar. There, despite the court ruling in the case of Ka'adan forbidding racial discrimination in the distribution of land resources, discriminatory practices continue.⁵² Although this community was planned as a Bedouin farming village, the authorities changed its designation at some point and, through an accelerated planning process and in accordance with a government decision, turned it into a Jewish community. This decision was made even though there is a Bedouin tribe, the El-Okbi tribe, with a known and acute need for a permanent living

⁴⁹ ACRI is handling an appeal by 25 families from Muadi Al-Naam who oppose a second eviction of the village residents without providing a planning solution in a location suited to their needs and way of life. R.I.A. 541/99 *Abu Amran et al. vs. Israeli Land Authority* (pending and undecided).

⁵⁰ HCJ 6459/99 *Abu-Ratiush et al. vs. Israel Land Authority* (pending and undecided).

⁵¹ Mordechai Mordechai (Director-General, Ministry of the Interior and Director of the Planning Administration. Report No. 14, according to the government resolution of June 5, 1994, plans according to Section 260 of the law (Beer Sheva, November 10, 2002).

⁵² HCJ 6698/95 *Kadan vs. the Israel Land Authority* P.D. 54(1) 265.

and housing arrangement, who had requested that this planned community be designated for their use. In the 1950s, members of the El-Okbi tribe were moved off their historically held land – the site of the planned community – to another area, which gradually shrank in size and was never officially planned. Its residents, who live in degrading conditions, requested that the planned community be allocated for their use so as to enable them to realize their right to housing suited to their needs and way of life. All of the tribes' requests to planning and judicial bodies were rejected, and an appeal of the latest judgment in the matter is pending and undecided.⁵³ The committee that discussed El-Okbi's appeal before the National Council for Planning and Building confirmed that discrimination in planning against Arab population in the southern region must end; however, it said, this must be accomplished within an overall planning framework as part of the District Outline Plan for the Southern Region (23/14/4). In rejecting the appeal, the National Council gave considerable weight to the refusal of the government and the Israel Land authority to allocate land resources to the tribe's resettlement in an area designated to become the community of Gva'ot Bar. In this matter as well, the information given in Paragraph 380 of Israel's Report – "In Israel every interested party can initiate a plan and build a town with the approval of the relevant authorities" – is not accurate. The Administrative Court, which rejected the petition filed by ACRI on behalf of the El-Okbi tribe, noted that the community of Gva'ot Bar is open to all citizens of Israel and that designating it for members of the El-Okbi tribe only would be a form of discrimination. This was the rationale behind the judgment, despite the fact that the Arab minority in Israel has encountered discrimination when applying for acceptance to residential communities, on the basis of vague rules about military service and "social suitability" that keep them from getting a foot in the door.⁵⁴ As it happened, five Bedouin families that applied to Gva'ot Bar discovered that service in the I.D.F. was a condition for acceptance.

16. Another recent expression of racial discrimination in planning and housing, also in the Negev 2015 plan, is anchored in Government Resolution No. 4415 of November 20, 2005. On the one hand, the plan is an attempt to encourage a massive increase in the Jewish population of the Negev, in part by creating a variety of settlement options and high-quality housing solutions, with government subsidies for the purchase of homes in the region. On the other hand, the plan continues to encourage evicting Bedouin residents from unrecognized villages ("scattered villages," as they are referred to in the plan) and transferring them to "permanent communities" that are more like towns. The proposed transfer is accomplished by **de-legitimizing the Bedouins' claim to land ownership rights and relating to Bedouins as if they were squatters**. The transfer policy is tainted by racial discrimination that has its roots in a government resolution of March 2003. The resolution approved the use of enforcement measures to deprive the indigenous Bedouin minority in the Negev of its traditional ownership rights and to infringe on its housing rights.⁵⁵

17. As part of the effort to implement the policy of evicting Bedouins from land they claim is theirs and resettling them in a small number of towns, the Knesset enacted the **"Eviction of Trespassers" amendment to the Public Land Law in January 2005. The law expands the already wide authority of the Israel Lands Authority and its enforcement bodies, allowing it to serve eviction notices and forcibly remove residents from government land, without abiding by due legal process – even when that land is under dispute between the government and the Bedouins who maintain it, work it, and/or live on it.** According to this law, which contradicts accepted legal principles, the burden of proof of land ownership rights is transferred to the Bedouin who maintains the land.

⁵³ Administrative Petition 257/04 *The Association for Assistance and Defense of the Rights of Bedouins et al. vs. the National Council for Planning and Construction et al.* The residents filed an appeal challenging the judgment against the administrative petition. (Pending and undecided)

⁵⁴ For more information, see Adalah's NGO Report to CERD, December 2005, pp. 21-24.

⁵⁵ See the references to the Sharon Plan in Adalah's NGO Report to CERD, December 2005, p. 25.

The Right to Health Care in Unrecognized Villages in the Negev

1. In 1995, Israel passed a government health law that guarantees health insurance for each resident of the country and requires the government and health funds (Kupot Holim) to provide health services according to the principles of justice and equality. The law specifies that health services be provided within a reasonable distance from the residences of the insured. Nevertheless, **the overwhelming majority of unrecognized villages have never housed health clinics.** The residents of these villages are therefore subject to discrimination in comparison with Jews who live in communities with much smaller populations than most unrecognized villages. Following a July 2000 petition filed by ACRI regarding discriminatory access to health services, four additional clinics were opened under order of the High Court of Justice.⁵⁶ This raised the number of clinics in unrecognized villages, which number 75,000 residents, to ten. The government plans to build three more. **The Ministry of Health refuses to set general and equitable criteria for the location of clinics – criteria that could correct the severe discrimination that now exists.** Regardless of their number, the services provided at clinics in unrecognized villages fall far short of those in recognized villages (Jewish and Arab), particularly because the clinics – like the unrecognized villages themselves – are not connected to electrical grids.

2. **Discrimination against the residents of unrecognized villages in the area of health care continues, despite the fact that their need for health services is greater than that of the general population.** Infant mortality, for one, is over three times greater for the Negev Bedouins than for the general population. Discrimination in the provision of health services is most threatening to distressed populations within unrecognized villages, namely women and children, who have no access to public transportation. Nearly 2% of Bedouin women give birth with no doctor present – at home or en route to the hospital, due to the difficulties of accessing the hospitals serving the region. These women often have no regular medical check-ups during pregnancy, owing to a lack of Mother and Child centers. Although most home births among Bedouins today result from discrimination in access to health services, the Knesset amended the Population Registry Law in 2000 in order to delay the registration of infants born at home. Only newborns registered in the Population Registry as residents are entitled to government health services. The registration delay and the requirements for registration infringe on the right of citizens to receive medical treatment. This law will lead to further racial discrimination in the provision of health services for Bedouin children.⁵⁷

Concluding Comments

1. The government policy regarding the social, economic, and cultural rights of the Arab-Palestinian minority in Israel (protected by **Article 5 (e)**) – and particularly the Bedouins of the Negev – is racially discriminatory.

2. The practice of concentrating the Bedouin Negev population into a limited number of planned towns, while allowing for over one hundred Jewish rural communities in the area, is an extension of the Israeli government's policy of ignoring the historical territorial rights of the indigenous Arab minority in the Negev, and is in defiance of the **General Recommendation No. 23: Indigenous Peoples of the CERD Committee (18/08/97)**, in particular **Article 5** of the **General Recommendation**.

⁵⁶ HCJ 4540/00 *Abu-Afash et al. vs. the Minister of Health et al.* ACRI filed the petition on behalf of representatives of three unrecognized villages, the Local Council of Unrecognized Bedouin Arab Villages in the Negev, Physicians for Human Rights, and the Negev Coexistence Forum. The petition demanded the construction of clinics in the petitioning villages. It also required the Minister of Health to set general and equitable criteria for the location of clinics in Israel and to establish clinics in unrecognized villages according to those criteria. The petitioners are now awaiting a judgment.

⁵⁷ Population Registry Law (Amendment No. 10 – Proof of Motherhood), 2005.

3. ACRI wishes to endorse Adalah's assessments about discrimination against the indigenous Bedouin Arab population in the Negev, as well as those of another shadow report on the rights of this population prepared by the following civil rights and grass roots organizations: the Recognition Forum, Negev Coexistence Forum, Association of Forty, Israeli Committee Against House Demolitions, and Regional Council of Unrecognized Bedouin Arab Villages in the Negev.

4. In its **Concluding Observations to Israel in 1998, the Committee on Economic, Social and Cultural Rights** noted with deep concern "that a significant proportion of Palestinian Arab citizens of Israel continue to live in unrecognized villages without access to water, electricity, sanitation and roads. Such an existence has caused extreme difficulties for the villagers in regard to their access to health care, education and employment opportunities. In addition, these villagers are continuously threatened with demolition of their home and confiscation of their land. The Committee regrets the inordinate delay in the provision of essential services to even the few villages that have been recognized."⁵⁸ As this report has shown, Israel is still not meeting its obligations to address this untenable situation and ensure the equal rights of the Bedouin Arab population.

⁵⁸ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 04/12/98, (26).*