



15 May 2006

Régis De Gouttes
 Chairman
 Committee on the Elimination of Racial Discrimination
 OHCHR
 Palais Wilson
 Geneva, Switzerland

Dear Mr. De Gouttes:

We are honored to submit for your Committee's consideration the attached parallel report, representing the collective effort of a diverse group of nongovernmental organizations, representing Israeli, Palestinian and international civil society institutions. It represents a tremendous exercise at integrating information from a variety of specialized sources to create a composite testimony in parallel to the Government of Israel's thirteenth periodic report: CERD/C/471/Add.2 of 23 June 2005.

The authors of the accompanying report would like to thank the Committee and the Chair for the opportunity to contribute to CERD's vital work to uphold the Convention on the Elimination of All Forms of Racial Discrimination and its enshrined rights. We should note that such contribution has been possible despite the lack of the State party's initiative for dialogue with civil society. Nonetheless, we are confident that the Committee will find this parallel contribution to be informative, highly relevant and constructive toward the needed solutions to remedy institutional discrimination. With this, we hope that the Committee will become better aware of the fundamentals of institutionalized discrimination that the State party and its parastatal institutions practice, as a prerequisite to recommending effective measures and solutions to the breaches under the Convention's binding provisions.

The trend is not all negative. There have been some advances in legislation and some hope arising from Israeli court rulings since 1998. The collective parallel report also acknowledges these. Nonetheless, in order to provide the Committee with an introduction to this report and a needed context, we wish to draw the Committee's attention to some

cardinal points that will guide its first full review of the State party's implementation of ICERD since 1997.

The present State party report

As in previous official reports to CERD, the State party has not acknowledged the fundamental and structural obstacles that prevent the State and its successive governments from addressing the most-serious forms of discrimination; that is, the formal discrimination arising from law and State (and parastatal) institutions. So far, the State has avoided any serious efforts to address these forms of discrimination, and parts of its report to your Committee are written in such a way as to obscure the basic features of institutionalized discrimination in Israel. The present collective report identifies and addresses those points in parallel fashion.

Since the last full CERD review of the Convention's implementation in Israel, events and developments have shed more light on the continuum of the mechanisms and practices that discriminate systematically and materially against certain classes of citizens and residents, both within the legal jurisdiction of the State and the areas under its effective control by way of military occupation. The newly heightened profile of that discrimination, detailed in the present parallel report, arises from the continued function of State laws and institutions that dispossess the indigenous Palestinian and Syrian populations throughout those territories. An understanding of these mechanisms also arises from prominent legal developments within the State party—referred to in the State party's report—as well as in international jurisdiction and monitoring, referred to also in this parallel report.

Long-entrenched institutional discrimination

CERD already has addressed one of the symptoms of the discriminatory predisposition of the State in its Early Warning decisions in 2003 and 2004. In the present review, however, the Committee faces the opportunity to address the more-fundamental bases and structural causes of such symptomatic discrimination.

For example, the Committee would benefit from a profounder understanding of the unique features of civil status in the State party and its discrimination based on "nationality." The only legally recognized nationality status in Israeli law—"Jewish nationality," or *le'om yahudi*—is the basis for enjoying a bundle of rights enshrined in ICERD. At its 66th session, the Committee also has an opportunity to correct the State party's misrepresentation of mere Israeli citizenship [*ezrahuf*] as if it were nationality [*le'om*]. They are not the same.

The State recognizes no such status as "Israeli nationality," and all civil statuses or demographic indicators are inferior in rights to the only nationality existing in Israel: "Jewish nationality." The State institutions and courts have rejected petitions to recognize an "Israeli nationality." The reason for this rejection is a fundamental system-wide commitment to an exclusive nationality status conveying special rights for "Jewish nationals."

The subjects of the discriminatory law addressed in the CERD 2003 and 2004 decisions are indigenous Palestinian Arabs who, despite a possible status as citizens in Israel, would never be eligible for rights and benefits arising from the superior status of "Jewish nationals." What is actually significant about the Temporary Order under the "Law of **Citizenship** and Entry into Israel," for example, is that the ban on Arab family unification as the latest criterion for revoking Israeli Arabs' citizenship and equal treatment is a further device for the State to discriminate in rights among Israeli citizens. However, that device is

not the most fundamental and intractable form of discrimination, which the Committee has yet to address.¹

Overlooking or confusing the materially important distinction between Israeli citizenship and “Jewish nationality” has allowed a wide public to be misguided by a (sometimes-official) mistranslation of the statute regulating citizenship as if it were a “law of *nationality* and entry into Israel.” In fact, the title and subject relate to “citizenship,” *not* nationality status in the Israeli sense.

This parallel report illustrates that the actual “Law of Citizenship” [*ezrahut*], when combined with other laws, ensures special rights and privileges conveyed only to “Jewish nationals,” and provide the institutional basis for material discrimination against the indigenous Palestinian Arab people in all areas under Israel’s jurisdiction and effective control. It is far reaching also in that it is also the basis for dispossession and denial of return to the millions of refugees arising from the territories controlled by the State.

The other key to understanding the consequences of this discrimination is found in a special relationship between the State of Israel and its “national” institutions, chartered to serve exclusively those holding *le’om yahudi* / “Jewish nationals” with benefits of development and possession of properties belonging to the indigenous people on both sides of the Green Line (1948–49 Armistice demarcations). The human rights consequences of these parastatal institutions, namely, the World Zionist Organization/Jewish Agency, Jewish National Fund and related bodies, is discussed in the present report.

In Israel, a legal and institutional system both discriminates on the basis of ethnicity and religion, giving priority to “Jewish nationals,” regardless of their citizenship. Thus, the system of denials and benefits extends privileges to a particular class of persons also extraterritorially, having serious implications for public international law norms of nationality and the rights of other States.

The State party’s laws, including Basic Laws, exclude of the indigenous population from equal economic, social and cultural rights, as nationality is defined by an ethnoreligious criterion, automatically affecting some 935,000 Palestinian Arab *citizens* of Israel.

It is this system, moreover, that the State party has superimposed through a military government in the territories occupied since 1967. However, in addition, the State party has devised a separate legal regime for the West Bank and Gaza Strip, where Israel’s military law and institutions govern much of the Palestinian population. Simultaneously, the State applies its domestic civil law exclusively to its citizens and settler population in those same besieged territories. This situation of distinct legal regimes applying respectively to different classes of persons fundamentally contravenes the universal and over-riding principle of nondiscrimination such that all persons in a single territory are to be governed by a single system of laws.

The forms of discrimination practiced in and by the State party are, in a sense, simultaneously simple and complex. For the purposes of applying ICERD, we refer to the obligations enshrined in Article 1, which provide:

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin [that] has the purpose or effect

¹ The 1998 and 2003 Concluding Observations of the Committee on Economic, Social and Cultural Rights are found in Annex X to the collective report, and are instructive on these fundamental issues.

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....

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, *provided that such provisions do not discriminate against any particular nationality.* [Emphasis added.]

It is precisely this core of the Convention that the State party has breached, and that should be remedied, not least to address the consequent deprivation so amply catalogued in the accompanying compilation. The State party has evaded this overarching and fundamental fact, and this unique situation also has evaded scrutiny by generations of this Committee to date. In fact, in its report to CERD, Israel has misrepresented, obfuscated and ultimately confused the two-tiered structure of civil status in Israel.

Developments during CERD's review period

The organizations submitting the present parallel report call the Committee's attention to the most significant developments concerning the State party since its 1998 review. These include the international jurisprudence of other treaty bodies,² as well as changes in the State party's population transfer program, including the implantation of settler colonies and settlers. That program is carried out by both government bodies and parastatal institutions, although the latter operate with surprisingly little oversight or controls.

The Committee on Economic, Social and Cultural Rights has observed, in its Concluding Observations of 1998, how the State party has established structural discrimination that disadvantages all non-Jewish persons in the State and the areas of its effective control, in particular, the Palestinian Arab citizens and inhabitants of the occupied Palestinian territory. Notably, CESCR found that:

10. ...excessive emphasis upon the State as a "Jewish State" encourages discrimination and accords a second-class status to its non-Jewish citizens. The Committee notes with concern that the Government of Israel does not accord equal rights to its Arab citizens, although they comprise over 19 per cent of the total population. This discriminatory attitude is apparent in the lower standard of living of Israeli Arabs as a result, *inter alia*, of lack of access to housing, water, electricity and health care and their lower level of education. The Committee also notes with concern that despite the fact that the Arabic language has official status in law, it is not given equal importance in practice.

11. ...the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.

13. ...the Law of Return, which allows any Jew from anywhere in the world to immigrate and thereby virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the diaspora upon whom the Government of Israel has imposed restrictive requirements which make it almost impossible to return to their land of birth.³

Consequently, that sister treaty body, also monitoring the over-riding nondiscrimination principle of application, has called for the State party to take required measures for it to come into compliance with its covenanted obligations:

² Not least of these includes the coincidence of all other treaty bodies recognizing the full applicability of all human rights treaties in the occupied Palestinian territories.

³ "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.27, 4 December 1998. (See Annex to the parallel report.)

34. The Committee calls upon the State party to ensure equality of treatment of all Israeli citizens in relation to all Covenant rights.

35. The Committee urges the State party to review the status of its relationship with the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, with a view to remedying the problems identified in paragraph 11 above.

36. In order to ensure respect of article 1 (2) of the Covenant and to ensure equality of treatment and nondiscrimination, the Committee strongly recommends a review of re-entry policies for Palestinians who wish to re-establish their domicile in their homeland, with a view to bringing such policies level with the Law of Return as applied to Jews.

While conditions for Palestinian Arabs have not improved since these legal findings, and whereas the State party had taken no measures to address these breaches of the Covenant's nondiscrimination provisions, the subsequent 2003 CESCR review of Israel reaffirmed its 1998 findings and, recognizing the pivotal nationality status as a basis for institutionalized discrimination. Thus, the Committee added that it is:

18. ...particularly concerned about the status of "Jewish nationality", which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees. The Committee is also concerned about the practice of restrictive family reunification with regard to Palestinians, which has been adopted for reasons of national security. In this regard, the Committee reiterates its concern contained in paragraph 13 of its 1998 concluding observations, and paragraph 14 of its 2001 concluding observations....

The Committee reiterated its recommendation that:

32. ...the State party undertake steps to ensure equality of treatment for all Israeli citizens in relation to all Covenant rights (1998 concluding observations, para. 34).⁴

In addition to this international jurisprudential recognition of "nationality" status in Israel as a basis for material discrimination, the State party also has undertaken dramatic steps to advance and reconsolidate its colonizing settlement pattern, reinforcing the institutional discrimination favoring "Jewish nationals" and depriving indigenous Palestinian Arabs inside Israel (Israeli *citizens*) and in the occupied Palestinian territories, to (1) erect the illegal separation barrier across the occupied West Bank and Jerusalem as part of a "racial separation" policy that it has implemented also in the form of (2) lavishly compensated Jewish colony resettlement from the occupied Gaza Strip and their consolidation in the occupied West Bank and elsewhere inside the State party's territory. That redeployment of settlers also has accompanied ever-greater isolation of the Gaza Strip, tighter Israeli military restrictions on the movement of Palestinian persons and goods and more depression of the local Palestinian economy. (Only a sustained European Union effort and exceptional United States intervention recently has made it possible for Gazans to pass through their border with Egypt.)

The result has amounted to no decline in the State party's occupation of Palestine and its people, but progressive dispossession of the Palestinian people and expansion of illegal settlements. In the past year, the State party's policies have spelt material deprivation for the Palestinian people, including:

- (1) an accelerated demolition of Bedouin citizens' homes and villages, particularly in the Naqab/Negev;
- (2) the complete dissection of the West Bank and isolation of Jerusalem, notably by the expansion of Ma`ale Edumim settler colony;

⁴ "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.90, 23 May 2003.

- (3) the grand-scale destruction of Palestinian homes and infrastructure throughout the Gaza Strip;
- (4) untold losses due to the ongoing construction of the separation barrier across the West Bank; and
- (5) the continued denial of refugee return, restitution and compensation.

Socioeconomic consequences and the dramatically unequal treatment through judicial and law enforcement performance are also prominent characteristics of the period under review since CERD's 1998 Concluding Observations.

While the State's performance of its ICERD treaty obligations has demonstrated steady breaches, other legislative developments have been positively progressive in the treatment of women, disabled persons, sexual minorities and some migrant workers. While acknowledging these positive aspects, the present report places needed focus on the structural discrimination that is most fundamental to the application of the Convention. Such structural discrimination imposes disadvantages on the Palestinian people through the institutionalization of a privileged nationality status that is available to Jewish persons, wherever they may be, and no others.

The contributors and endorsers of the present parallel report provide the appropriate detail of these and other issues as a guide for the Committee to assess Israel's institutional discrimination that has evaded the Committee's analysis since it began monitoring this particular State party's implementation in the early 1980s. The present coordinated civil society effort embodies the need and hope for CERD to recognize the evidence that substantiates the *fundamental* facets of that racial and nationality discrimination that long remains unremedied in one of the ICERD's States parties. Obvious are the implications of that foregone oversight for the peace and security of the region and the world.

We remain at the disposal of the Committee through its deliberations to provide any further clarifications or needed information for the important task before it.

Mr. Chariman, please be assured that you have our highest consideration

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